

TABLE OF CONTENTS

TITLE 20 DECEDENTS, ESTATES AND FIDUCIARIES

Chapter 1. Short Title and Definitions

- § 101. Short title.
- § 102. Definitions.

Chapter 3. Ownership of Property; Legal Title and Equitable Estate

- § 301. Title to real and personal estate of a decedent.
- § 302. Title to real and personal estate of an incapacitated person.
- § 303. Title to real and personal estate of a minor.
- § 304. Application of payments made to fiduciaries.
- § 305. Right to dispose of a decedent's remains.

Chapter 7. Orphans' Court Divisions

Subchapter A. Organization

- § 701. Orphans' court divisions.

Subchapter B. Jurisdiction

- § 711. Mandatory exercise of jurisdiction through orphans' court division in general.
- § 712. Nonmandatory exercise of jurisdiction through orphans' court division.
- § 713. Special provisions for Philadelphia County.
- § 714. Conflict of laws.
- § 715. Incidental powers (Repealed).

Subchapter C. Venue

- § 721. Venue of decedents', minors' and incapacitated persons' estates.
- § 722. Venue of trust estates.
- § 723. Situs of testamentary trust (Deleted by amendment).
- § 724. Situs of inter vivos trust (Deleted by amendment).
- § 725. Change of situs; order of court (Deleted by amendment).
- § 726. Venue of nonprofit corporations.
- § 727. Venue of cemetery companies.

Subchapter D. Judges (Repealed)

- § 731 - § 732 (Repealed).

Subchapter E. Duties of the Clerk and Sheriff

- § 741. Duties of the clerk (Repealed).
- § 742. Dockets (Repealed).
- § 743. Bill of costs (Repealed).
- § 744. Translation of foreign language documents (Repealed).
- § 745. Advertisement of accounts.
- § 746. Money paid into court (Repealed).
- § 747. Powers and duties of the sheriff (Repealed).
- § 748. Fees (Repealed).

Subchapter F. Masters, Auditors, Examiners, Guardians Ad Litem and Trustees Ad Litem

- § 751. Appointment; purpose.
- § 752. Compensation.
- § 753. Subpoenas.
- § 754. Power to administer oaths (Repealed).

Subchapter G. Procedure

- § 761. Petitions.
- § 762. Accounts.
- § 763. Writs of habeas corpus (Repealed).
- § 764. Citation.
- § 765. Service of citation.
- § 766. Proof of service.
- § 767. Parties in interest.
- § 768. Manner of service; proof.
- § 769. Power of orphans' court division (Repealed).
- § 771. Decree without prior hearing; attachment; sequestration (Repealed).
- § 772. Injunctions (Repealed).
- § 773. Subpoenas (Repealed).
- § 774. Depositions and discovery.
- § 775. Perpetuation of testimony and court records.
- § 776. Testimony in proceedings removed from register.
- § 777. Right to jury trial; discretion of orphans' court division.
- § 778. Procedure for jury trials.
- § 779. Nonsuits.
- § 781. Methods of enforcement.
- § 782. Procedure on attachment of the person.
- § 783. Procedure on sequestration of real or personal property.
- § 784. Procedure on execution on personal property.
- § 785. Procedure on attachment execution.
- § 786. Procedure on execution on real estate.
- § 791. Allowance and allocation (Repealed).
- § 792. Right of appeal (Repealed).
- § 793. Effect of appeal.
- § 794. Disposition of cases on appeal (Repealed).

Chapter 9. Register of Wills

Subchapter A. Jurisdiction and Powers

- § 901. Register's jurisdiction.
- § 902. Deputy register.
- § 903. Witnesses; testimony.
- § 904. Witness fees.
- § 905. Enforcement of subpoenas, orders and costs.
- § 906. Caveat.
- § 907. Certification of records to court.
- § 908. Appeals.
- § 909. Bill of costs (Repealed).
- § 910. Transmission of accounts to the court.
- § 911. Attestation of certain applications and documents.

Subchapter B. Records and Certified Copies

- § 921. Wills.
- § 922. Inventories.
- § 923. Certified copies.

- § 924. Recording proceedings in another county.
- § 925. Certificates and affidavits of death.

Chapter 21. Intestate Succession

- § 2101. Intestate estate.
- § 2102. Share of surviving spouse.
- § 2103. Shares of others than surviving spouse.
- § 2104. Rules of succession.
- § 2105. Spouse's rights.
- § 2106. Forfeiture.
- § 2107. Persons born out of wedlock.
- § 2108. Adopted person.
- § 2109. Advancements (Repealed).
- § 2109.1. Advancements.
- § 2110. Spouse's allowance; procedure.
- § 2111. Procedure to establish title to real property when spouse claims entire estate (Repealed).
- § 2112. Property distributable to the Commonwealth (Repealed).
- § 2113. Limitations of claims (Repealed).
- § 2114. Personal estate of nonresident (Repealed).

Chapter 22. Elective Share of Surviving Spouse

- § 2201. Definition of conveyance.
- § 2202. Right of election; nonresident decedent.
- § 2203. Right of election; resident decedent.
- § 2204. Disclaimers, releases and charges against elective share.
- § 2205. Transfers for value excluded.
- § 2206. Right of election personal to surviving spouse.
- § 2207. Waiver of right to elect.
- § 2208. Forfeiture of right of election.
- § 2209. Surviving spouse as witness.
- § 2210. Procedure for election; time limit.
- § 2211. Determination of effect of election; enforcement.

Chapter 25. Wills

- § 2501. Who may make a will.
- § 2502. Form and execution of a will.
- § 2503. Nuncupative wills (Repealed).
- § 2504. Witnesses (Repealed).
- § 2504.1. Validity of execution.
- § 2505. Revocation of a will.
- § 2506. Revival of revoked or invalid will.
- § 2507. Modification by circumstances.
- § 2508. Change by election of surviving spouse (Repealed).
- § 2509. Forfeiture of right of election (Repealed).
- § 2510. How election made (Repealed).
- § 2511. Time for making election (Repealed).
- § 2512. Failure to make an election (Repealed).
- § 2513. Grantee or lienholder (Repealed).
- § 2514. Rules of interpretation.
- § 2515. Devise or bequest to trust.
- § 2516. Devise in fee tail abolished.
- § 2517. Rule in Shelley's case and doctrine of worthier title.
- § 2518. Alienage.
- § 2519. Testamentary guardian.
- § 2520. Personal estate of nonresident (Repealed).
- § 2521. Penalty clause for contest.

Chapter 27. Contractual Arrangements Relating to Succession

§ 2701. Contracts concerning succession.

Chapter 28. Formula Clauses for Federal Tax Purposes

§ 2801. Definitions.

§ 2802. Interpretation of formula clauses.

§ 2803. Judicial proceeding.

Chapter 31. Dispositions Independent of Letters; Family Exemption; Probate of Wills and Grant of Letters

Subchapter A. Dispositions Independent of Letters

§ 3101. Payments to family and funeral directors.

§ 3102. Settlement of small estates on petition.

Subchapter B. Family Exemption

§ 3121. When allowable.

§ 3122. Payment or delivery of exemption.

§ 3123. Payment from real estate.

§ 3124. Income.

§ 3125. Other remedies.

§ 3126. Grantee or lienholder.

Subchapter C. Probate

§ 3131. Place of probate.

§ 3132. Manner of probate.

§ 3132.1. Self-proved wills.

§ 3133. Limit of time for probate.

§ 3134. Nuncupative wills (Repealed).

§ 3135. Wills in foreign language.

§ 3136. Wills probated outside the Commonwealth.

§ 3137. Enforcing production of will.

§ 3138. Later will or codicil.

Subchapter D. Grant of Letters

§ 3151. Proper county.

§ 3152. When 21 years elapsed.

§ 3153. Contents of petition.

§ 3154. Affidavit and oath.

§ 3155. Persons entitled.

§ 3156. Persons not qualified.

§ 3157. Nonresidents.

§ 3158. Letters of administration C.T.A.

§ 3159. Letters of administration D.B.N. or D.B.N.C.T.A.

§ 3160. Letters of administration durante minoritate, durante absentia, and pendente lite.

§ 3161. Oath of personal representative.

§ 3162. Advertisement of grant of letters.

Subchapter E. Personal Representative; Bond

§ 3171. Individual estate.

§ 3172. Register's responsibility.

§ 3173. Fiduciary estate.

§ 3174. When not required.

§ 3175. Requiring or changing amount of bond.

Subchapter F. Personal Representative; Revocation of Letters; Removal and Discharge

- § 3181. Revocation of letters.
- § 3182. Grounds for removal.
- § 3183. Procedure for and effect of removal.
- § 3184. Discharge of personal representative and surety.

Chapter 33. Administration and Personal Representatives

Subchapter A. Inventory

- § 3301. Duty of personal representative.
- § 3302. Valuations.
- § 3303. Supplemental inventory.
- § 3304. Claims against personal representative.
- § 3305. Objections to inventory.

Subchapter B. Personal Representatives; Powers, Duties and Liabilities

- § 3311. Possession of real and personal estate; exception.
- § 3312. Renunciation of right to administer property.
- § 3313. Liability insurance.
- § 3314. Continuation of business.
- § 3315. Incorporation of estate's business.
- § 3316. Investment of funds.
- § 3316.1. Set-aside.
- § 3317. Claims against co-fiduciary.
- § 3318. Revival of judgments against personal representative.
- § 3319. Power of attorney; delegation of power over subscription rights and fractional shares; authorized delegations.
- § 3320. Voting stock by proxy.
- § 3321. Nominee registration; corporate fiduciary as agent; deposit of securities in a clearing corporation; book-entry securities.
- § 3322. Acceptance of deed in lieu of foreclosure.
- § 3323. Compromise of controversies.
- § 3324. Death or incapacity of fiduciary.
- § 3325. Administrator C.T.A.
- § 3326. Administrator D.B.N. and D.B.N.C.T.A.
- § 3327. Surviving or remaining personal representatives.
- § 3328. Disagreement of personal representatives.
- § 3329. Effect of revocation of letters, probate of will, later will or codicil.
- § 3330. Notice of devise or bequest to corporation or association.
- § 3331. Liability of personal representative on contracts.
- § 3332. Inherent powers and duties.

Subchapter C. Sales, Pledges, Mortgages, Leases, Options and Exchanges

- § 3351. Power to sell.
- § 3352. Power to lease.
- § 3353. Order of court.
- § 3354. Power given in governing instrument.
- § 3355. Restraint of sale.
- § 3356. Purchase by personal representative.
- § 3357. Title of purchaser.

- § 3358. Collateral attack.
- § 3359. Record of proceedings; county where real estate lies.
- § 3360. Contracts, inadequacy of consideration or better offer; brokers' commissions.

Subchapter D. Abatement, Survival and Control of Actions

- § 3371. Actions which survive.
- § 3372. Substitution of personal representative in pending action or proceedings.
- § 3373. Action by or against personal representative.
- § 3374. Death or removal of fiduciary.
- § 3375. Abatement of action for failure to take out letters.
- § 3376. Limitations against debt due estate.
- § 3377. Execution on judgments.

Subchapter E. Claims; Charges; Rights of Creditors

- § 3381. Liens and charges existing at death not impaired.
- § 3382. Judgments which are liens at death.
- § 3383. Statutes of limitations; claims not barred at death.
- § 3384. Notice of claim.
- § 3384.1. Notice after settlor of revocable trust has died.
- § 3385. Limitation upon claims.
- § 3386. Failure to present claim at audit.
- § 3387. Claims not due; certain to become due.
- § 3388. Claims not certain to become due.
- § 3389. Claims subject to litigation in other courts.
- § 3390. Specific performance of contracts.
- § 3391. Proceeding against personal representative.
- § 3392. Classification and order of payment.
- § 3393. Notice to Commonwealth and political subdivisions.

Chapter 35. Accounts and Distribution

Subchapter A. Accounts

- § 3501. Accounting required (Repealed).
- § 3501.1. Accounting by personal representative.
- § 3501.2. Annexation of account of terminated trust, guardianship or agency.
- § 3502. Where filed.
- § 3503. Notice to parties in interest.
- § 3504. Representation of parties in interest (Repealed).

Subchapter B. Audits

- § 3511. Audits in counties having separate orphans' court division.
- § 3512. Audits in counties having no separate orphans' court division.
- § 3513. Statement of proposed distribution.
- § 3514. Confirmation of account and approval of proposed distribution.

Subchapter C. Review

- § 3521. Rehearing; relief granted.

Subchapter D. Distribution

- § 3531. Estates not exceeding \$50,000.

- § 3532. At risk of personal representative.
- § 3533. Award upon final confirmation of account.
- § 3534. Distribution in kind.
- § 3534.1. Cost of distribution of tangible personal property.
- § 3535. Delivery of possession of real estate.
- § 3536. Recording and registering decrees awarding real estate.
- § 3537. Compensation.
- § 3538. Distributions involving persons born out of wedlock.
- § 3539. Change in law after pattern of distribution established.
- § 3540. Absentee and additional distributees.

Subchapter E. Rights of Distributees

- § 3541. Order of abatement.
- § 3542. Contribution.
- § 3543. Income on distributive shares.
- § 3544. Liability of personal representative for interest.
- § 3545. Transcripts of balances due by personal representative.
- § 3546. Determination of title to decedent's interest in real estate.

Subchapter F. Legacies, Annuities, and Other Charges

- § 3551. Enforcement of payment.
- § 3552. Discharge of portion of property from charges payable in the future.
- § 3553. Discharge of property from lien of charge.
- § 3554. Presumption of payment, release or extinguishment.

Chapter 37. Apportionment of Death Taxes

- § 3701. Power of decedent.
- § 3702. Equitable apportionment of Federal estate tax.
- § 3703. Apportionment of Pennsylvania inheritance tax.
- § 3704. Apportionment of Pennsylvania estate tax.
- § 3705. Apportionment of Federal generation-skipping tax.
- § 3706. Enforcement of contribution or exoneration of Federal estate tax.

Chapter 41. Foreign Fiduciaries

Subchapter A. Powers and Duties

- § 4101. In general.
- § 4102. Powers with respect to securities and bank accounts.
- § 4103. Service of process (Repealed).
- § 4104. Proof of authority in court proceedings.
- § 4105. Effect of local proceedings.

Subchapter B. Distributions to Foreign Fiduciaries

- § 4111. To foreign personal representative.
- § 4112. To foreign trustee, guardian or committee.

Subchapter C. Transfer of Administration

- § 4121. Award to foreign guardian when minor or incapacitated person becomes a nonresident.

Chapter 43. Temporary Fiduciaries

- § 4301. Appointment of temporary fiduciary.
- § 4302. Petition for relief; joinder of parties; notice.
- § 4303. Security by substituted fiduciaries; duties and responsibilities.
- § 4304. Duration of decree; impeachment of acts.
- § 4305. Fiduciaries temporarily relieved of duties and liabilities.
- § 4306. Power to control, remove, discharge and settle accounts.

Chapter 45. Sureties

Subchapter A. Rights in Administration

- § 4501. Agreement concerning deposit of assets.
- § 4502. Notice.
- § 4503. Participation in administration.
- § 4504. Information from fiduciary; accounting.
- § 4505. Release of surety before discharge of fiduciary.

Subchapter B. Enforcement of Bond

- § 4521. Suits on bonds.
- § 4522. Service of process on nonresident surety (Repealed).

Chapter 51. Minors

Subchapter A. Small Estates

- § 5101. When guardian unnecessary.
- § 5102. Power of natural guardian.
- § 5103. Sequestered deposit.

Subchapter B. Appointment of Guardian

- § 5111. County of appointment.
- § 5112. Persons not qualified to be appointed by the court.
- § 5113. Persons preferred in appointment.
- § 5114. Service of process on nonresident guardian (Repealed).
- § 5115. Appointment of guardian in conveyance.
- § 5116. Orphan beneficiaries, charitable uses or trusts; administration, cities of first class.

Subchapter C. Bond

- § 5121. Necessity, form and amount.
- § 5122. When bond not required.
- § 5123. Requiring or changing amount of bond.

Subchapter D. Removal and Discharge

- § 5131. Grounds and procedure.

Subchapter E. Powers, Duties and Liabilities; in General

- § 5141. Possession of real and personal property.
- § 5142. Inventory.
- § 5143. Abandonment of property.
- § 5144. Powers, duties and liabilities identical with personal representatives.
- § 5145. Investments.
- § 5146. Guardian named in conveyance.

§ 5147. Proceedings against guardian.

Subchapter F. Sales, Pledges, Mortgages, Leases, Options and Exchanges

- § 5151. Power to sell personal property.
- § 5152. Power to lease.
- § 5153. Provisions identical to other estates.
- § 5154. Title of purchaser.
- § 5155. Order of court.

Subchapter G. Accounts, Audits, Reviews, Distribution

- § 5161. When accounting filed.
- § 5162. Where accounts filed.
- § 5163. Notice, audits, reviews and distribution.
- § 5163.1. Distribution to personal representative (Repealed).
- § 5164. Distributions for support and education.
- § 5165. Notice to guardian or guardian ad litem.
- § 5166. Death of minor.
- § 5167. Failure to present claim at audit.

Chapter 53. Pennsylvania Uniform Transfers to Minors Act

- § 5301. Short title of chapter and definitions.
- § 5302. Scope and jurisdiction.
- § 5303. Nomination of custodian.
- § 5304. Transfer by gift or exercise of power of appointment.
- § 5305. Transfer authorized by will or trust.
- § 5306. Other transfer by fiduciary.
- § 5307. Transfer by obligor.
- § 5308. Receipt for custodial property.
- § 5309. Manner of creating custodial property and effecting transfer.
- § 5310. Single custodianship.
- § 5311. Validity and effect of transfer.
- § 5312. Care of custodial property.
- § 5313. Powers of custodian.
- § 5314. Use of custodial property.
- § 5315. Expenses, compensation and bond of custodian.
- § 5316. Exemption of third person from liability.
- § 5317. Liability to third persons.
- § 5318. Renunciation, resignation, death or removal of custodian.
- § 5319. Accounting by and determination of liability of custodian.
- § 5320. Termination of custodianship.
- § 5321. Delay in transfer of custodial property after minor attains age 21.

Chapter 54. Health Care

Subchapter A. General Provisions

- § 5421. Applicability.
- § 5422. Definitions.
- § 5423. Legislative findings and intent.
- § 5424. Compliance.
- § 5425. Conflicting advance health care directives.
- § 5426. Death not suicide or homicide.
- § 5427. Life insurance.
- § 5428. Health care instruments optional.

- § 5429. Pregnancy.
- § 5430. Effect of divorce.
- § 5431. Liability.
- § 5432. Criminal penalties.
- § 5433. Forms.
- § 5434. Construction.

Subchapter B. Living Wills

- § 5441. Short title of subchapter.
- § 5442. Execution.
- § 5443. When living will operative.
- § 5444. Revocation.
- § 5445. Emergency medical services.
- § 5446. Validity.
- § 5447. Form.

Subchapter C. Health Care Agents and Representatives

- § 5451. Short title of subchapter.
- § 5452. Execution.
- § 5453. Requirements and options.
- § 5454. When health care power of attorney operative.
- § 5455. Appointment of health care agents.
- § 5456. Authority of health care agent.
- § 5457. Countermand.
- § 5458. Amendment.
- § 5459. Revocation.
- § 5460. Relation of health care agent to court-appointed guardian and other agents.
- § 5461. Decisions by health care representative.
- § 5462. Duties of attending physician and health care provider.
- § 5463. Effect on other State law.
- § 5464. Validity.
- § 5465. Form.

Subchapter D. Combined Form

- § 5471. Example.

Subchapter E. Out-of-Hospital Nonresuscitation

- § 5481. Short title of subchapter.
- § 5482. Legislative findings and intent.
- § 5483. Definitions.
- § 5484. Orders, bracelets and necklaces.
- § 5485. Revocation.
- § 5486. Absence of order, bracelet or necklace.
- § 5487. Emergency medical services.
- § 5488. Advisory committee.

Chapter 54A. Out-of-Hospital Nonresuscitation (Deleted by amendment)

- § 54A01 - § 54A13 (Deleted by amendment).

Chapter 55. Incapacitated Persons

Subchapter A. General Provisions

- § 5501. Meaning of incapacitated person.
- § 5502. Purpose of chapter.

Subchapter B. Small Estates

§ 5505. Provisions similar to small estates of minors.

Subchapter C. Appointment of Guardian; Bonds; Removal and Discharge

- § 5511. Petition and hearing; independent evaluation.
- § 5512. County of appointment; qualifications.
- § 5512.1. Determination of incapacity and appointment of guardian.
- § 5512.2. Review hearing.
- § 5512.3. Annual report.
- § 5513. Emergency guardian.
- § 5514. To fill vacancy; co-guardian.
- § 5515. Provisions similar to other estates.
- § 5516. Fiduciary estate.
- § 5517. Adjudication of capacity and modification of existing orders.
- § 5518. Evidence of incapacity.
- § 5518.1. Cross-examination of witnesses.

Subchapter D. Powers, Duties and Liabilities of Guardians

- § 5521. Provisions concerning powers, duties and liabilities.
- § 5522. Power to lease.
- § 5523. Collateral attack.
- § 5524. Effect of determination of incapacity.
- § 5525. Notice to Commonwealth and political subdivisions.

Subchapter E. Accounts, Audits, Reviews and Distribution

- § 5531. When accounting filed.
- § 5532. Where accounts filed.
- § 5533. Notice, audits, reviews and distribution.
- § 5533.1. Account of personal representative of deceased incompetent (Repealed).
- § 5534. Recognition of claims.
- § 5535. Disposition of trust income.
- § 5536. Distributions of income and principal during incapacity.
- § 5537. Reserve for funeral.

Subchapter F. Guardianship Support

- § 5551. Guardianship support agencies; legislative intent.
- § 5552. Services to individuals whose decision-making ability is impaired.
- § 5553. Guardianship services.
- § 5554. Services to courts, guardians and others.
- § 5555. Costs and compensation.

Chapter 56. Powers of Attorney

- § 5601. General provisions.
- § 5601.1. Powers of attorney presumed durable.
- § 5601.2. Special rules for gifts (Repealed).
- § 5601.3. Agent's duties.
- § 5601.4. Authority that requires specific and general grant of authority.
- § 5602. Form of power of attorney.

- § 5603. Implementation of power of attorney.
- § 5604. Durable powers of attorney.
- § 5605. Power of attorney not revoked until notice.
- § 5606. Proof of continuance of powers of attorney by affidavit.
- § 5607. Corporate agent.
- § 5608. Acceptance of and reliance upon power of attorney.
- § 5608.1. Liability for refusal to accept power of attorney.
- § 5608.2. Activities through employees.
- § 5609. Compensation and reimbursement for expenses.
- § 5610. Account.
- § 5611. Validity.
- § 5612. Principles of law and equity.

Chapter 57. Absentees and Presumed Decedents

- § 5701. Proof of death.
- § 5702. Trustee for absentee.
- § 5703. Distribution of property of absentee.
- § 5704. Notice to absentee.
- § 5705. Search for absentee.
- § 5706. Persons presumed dead from September 11, 2001, terrorist attack.

Chapter 58. Mental Health Care

Subchapter A. General Provisions

- § 5801. Applicability.
- § 5802. Definitions.
- § 5803. Legislative findings and intent.
- § 5804. Compliance.
- § 5805. Liability.
- § 5806. Penalties.
- § 5807. Rights and responsibilities.
- § 5808. Combining mental health instruments.

Subchapter B. Mental Health Declarations

- § 5821. Short title of subchapter.
- § 5822. Execution.
- § 5823. Form.
- § 5824. Operation.
- § 5825. Revocation.
- § 5826. Amendment.

Subchapter C. Mental Health Powers of Attorney

- § 5831. Short title of subchapter.
- § 5832. Execution.
- § 5833. Form.
- § 5834. Operation.
- § 5835. Appointment of mental health care agents.
- § 5836. Authority of mental health care agent.
- § 5837. Removal of agent.
- § 5838. Effect of divorce.
- § 5839. Revocation.
- § 5840. Amendment.
- § 5841. Relation of mental health care agent to court-appointed guardian and other agents.
- § 5842. Duties of attending physician and mental health care provider.

- § 5843. Construction.
- § 5844. Conflicting provisions.
- § 5845. Validity.

Chapter 59. Uniform Adult Guardianship and Protective Proceedings Jurisdiction

Subchapter A. General Provisions

- § 5901. Short title of chapter.
- § 5902. Definitions.
- § 5903. International application of chapter.
- § 5904. Communication between courts.
- § 5905. Cooperation between courts.
- § 5906. Taking testimony in another state.

Subchapter B. Jurisdiction

- § 5911. Definitions; significant connection factors.
- § 5912. Exclusive basis.
- § 5913. Jurisdiction.
- § 5914. Special jurisdiction.
- § 5915. Exclusive and continuing jurisdiction.
- § 5916. Appropriate forum.
- § 5917. Jurisdiction declined by reason of conduct.
- § 5918. Notice of proceeding.
- § 5919. Proceedings in more than one state.

Subchapter C. Transfer of Guardianship or Conservatorship

- § 5921. Transfer of guardianship or conservatorship to another state.
- § 5922. Accepting guardianship or conservatorship transferred from another state.

Subchapter D. Registration and Recognition of Orders from Other States

- § 5931. Registration of guardianship orders.
- § 5932. Registration of protective orders.
- § 5933. Effect of registration.

Subchapter E. Miscellaneous Provisions

- § 5991. Uniformity of application and construction.
- § 5992. Relation to Electronic Signatures in Global and National Commerce Act.

Chapter 61. Estates

- § 6101. Definitions.
- § 6102. Termination of trusts (Deleted by amendment).
- § 6103. Release or disclaimer of powers or interests.
- § 6104. Rule against perpetuities.
- § 6105. Rule against perpetuities; disposition when invalidity occurs.
- § 6106. Income accumulations; when valid.
- § 6107. Income accumulations; disposition when invalidity occurs.
- § 6107.1. Applicability of rule against perpetuities.
- § 6108. Designation of beneficiaries of insurance or employee death benefits not testamentary.

- § 6109. Combination of charitable trusts (Repealed).
- § 6110. Administration of charitable interests (Deleted by amendment).
- § 6111. Conveyances to defeat marital rights (Repealed).
- § 6111.1. Modification by divorce or pending divorce.
- § 6111.2. Effect of divorce or pending divorce on designation of beneficiaries.
- § 6112. Spendthrift trusts (Deleted by amendment).
- § 6113. Limited estates in personalty and in the proceeds of the conversion of real estate.
- § 6114. Rules of interpretation.
- § 6115. Estates pur autre vie.
- § 6116. Estates in fee tail abolished.
- § 6117. Rule in Shelley's case and doctrine of worthier title.
- § 6118. Invalidity of certain gifts (Repealed).

Chapter 62. Disclaimers

- § 6201. Right to disclaim.
- § 6202. Disclaimers by fiduciaries or agents.
- § 6203. Interests subject to disclaimer.
- § 6204. Filing, delivery and recording.
- § 6205. Effect of disclaimer.
- § 6206. Bar to disclaimer.
- § 6207. Other statutes.

Chapter 63. Multiple-Party Accounts

- § 6301. Definitions.
- § 6302. Applicability of chapter.
- § 6303. Ownership during lifetime.
- § 6304. Right of survivorship.
- § 6305. Form of account.
- § 6306. Accounts and transfers nontestamentary.

Chapter 64. Transfer on Death Security Registration

- § 6401. Definitions.
- § 6402. Registration in beneficiary form.
- § 6403. Law applicable to registration.
- § 6404. Origination of registration in beneficiary form.
- § 6405. Form of registration in beneficiary form.
- § 6406. Effect of registration in beneficiary form.
- § 6407. Ownership on death of owner.
- § 6408. Protection of registering entity.
- § 6409. Nontestamentary transfer on death.
- § 6410. Terms, conditions and forms for registration.
- § 6411. Transfers of securities and security accounts.
- § 6412. Construction of chapter.
- § 6413. Application of chapter.

Chapter 71. Trust Estates (Deleted by amendment)

Subchapters A through G (Deleted by amendment)

Chapter 72. Prudent Investor Rule

- § 7201. Definitions.
- § 7202. Default rule.
- § 7203. Prudent investor rule.
- § 7204. Diversification.
- § 7205. Retention of inception assets.

- § 7206. Delegation.
- § 7207. Retention of cash; temporary investments.
- § 7208. Life insurance.
- § 7209. Mutual funds.
- § 7210. Common trust fund and mortgage investment fund.
- § 7211. Further investment authority.
- § 7212. Degree of care.
- § 7213. Judgment of fiduciary's decisions.
- § 7214. Language invoking chapter.

Chapter 73. Municipalities Investments

- § 7301. Definition of fiduciary.
- § 7302. Authorized investments; in general.
- § 7303. Government obligations.
- § 7304. Obligations of Federal organizations.
- § 7305. Obligations of Pennsylvania governmental organizations.
- § 7306. Obligations of governmental organizations existing pursuant to the laws of Pennsylvania, other states and the District of Columbia.
- § 7307. Corporate bonds.
- § 7308. Mortgages.
- § 7309. Fractional interests.
- § 7310. Stocks.
- § 7310.1. Further investment authority.
- § 7311. Real estate.
- § 7312. Ground rent.
- § 7313. Interest-bearing deposit.
- § 7314. Common trust fund and mortgage investment fund.
- § 7314.1. Mutual funds.
- § 7315. Retention of investments.
- § 7315.1. Retention of cash; temporary investments.
- § 7316. Life insurance, building and loan shares, and similar assets.
- § 7317. Investments which become unauthorized.
- § 7318. Court direction.
- § 7319. Directions of testator or settlor.

Chapter 75. Limitations on Exercise of Trustee Powers and Powers of Beneficiaries to Appoint Trustees

- § 7501. Legislative intent.
- § 7502. Definitions.
- § 7503. Application of chapter.
- § 7504. Certain trustee powers not exercisable.
- § 7505. Joint powers and appointment of nondisqualified substituted trustees.
- § 7506. Certain powers of beneficiaries not exercisable.

Chapter 77. Trusts

Subchapter A. General Provisions

- § 7701. Short title of chapter - UTC 101.
- § 7702. Scope of chapter - UTC 102.
- § 7703. Definitions - UTC 103.
- § 7704. Knowledge - UTC 104.
- § 7705. Trust instrument controls; mandatory rules - UTC 105.
- § 7706. Common law of trusts; principles of equity - UTC 106.
- § 7707. Governing law - UTC 107.
- § 7708. Situs of trust.
- § 7709. Methods and waiver of notice - UTC 109.

- § 7710. Notice; others treated as beneficiaries - UTC 110.
- § 7710.1. Nonjudicial settlement agreements - UTC 111.
- § 7710.2. Rules of construction - UTC 112.

Subchapter B. Judicial Proceedings

- § 7711. Role of court in administration of trust - UTC 201.
- § 7712. Jurisdiction over trustee and beneficiary - UTC 202.
- § 7713. (Reserved).
- § 7714. Venue - UTC 204.

Subchapter C. Representation

- § 7721. Scope; definition of trust matter.
- § 7722. Representation of parties in interest in general.
- § 7723. Representatives and persons represented.
- § 7724. Appointment of representative.
- § 7725. Notice of representation.
- § 7726. Representation ineffective if person objects.

Subchapter D. Creation, Validity, Modification and Termination of Trust

- § 7731. Creation of trust - UTC 401.
- § 7732. Requirements for creation - UTC 402.
- § 7733. Written trusts created in other jurisdictions - UTC 403.
- § 7734. Trust purposes - UTC 404.
- § 7735. Charitable purposes; enforcement - UTC 405.
- § 7736. Creation of trust induced by fraud, duress or undue influence - UTC 406.
- § 7737. Oral trusts unenforceable.
- § 7738. Trust for care of animal - UTC 408.
- § 7739. Noncharitable trust without ascertainable beneficiary - UTC 409.
- § 7740. Termination of trusts; proceedings for termination or modification of trusts - UTC 410.
 - § 7740.1. Modification or termination of noncharitable irrevocable trust by consent - UTC 411.
 - § 7740.2. Modification or termination of noncharitable irrevocable trust by court - UTC 412.
 - § 7740.3. Charitable trusts - UTC 413.
 - § 7740.4. Modification or termination of noncharitable trust - UTC 414.
 - § 7740.5. Reformation to correct mistakes - UTC 415.
 - § 7740.6. Modification to achieve settlor's tax objectives - UTC 416.
 - § 7740.7. Division of trusts.
 - § 7740.8. Combination of trusts.

Subchapter E. Creditor's Claims; Spendthrift and Discretionary Trusts

- § 7741. Rights of beneficiary's creditor or assignee - UTC 501.
- § 7742. Spendthrift provision - UTC 502.
- § 7743. Exceptions to spendthrift provision - UTC 503.
- § 7744. Discretionary trusts; effect of standard - UTC 504.
- § 7745. Creditor's claim against settlor - UTC 505(a).
- § 7746. Overdue distribution - UTC 506.
- § 7747. Personal obligations of trustee - UTC 507.
- § 7748. Property subject to power of withdrawal - UTC 505(b).

Subchapter F. Revocable Trusts

- § 7751. Capacity of settlor of revocable trust - UTC 601.
- § 7752. Revocation or amendment of revocable trust - UTC 602.
- § 7753. Trustee's duties; powers of withdrawal - UTC 603.
- § 7754. Actions contesting validity of revocable trust.
- § 7755. Claims and distribution after settlor's death.

Subchapter G. Office of Trustee

- § 7761. Accepting or declining trusteeship - UTC 701.
- § 7762. Trustee's bond - UTC 702.
- § 7763. Cotrustees - UTC 703.
- § 7764. Vacancy in trusteeship; appointment of successor - UTC 704.
- § 7765. Resignation of trustee; filing resignation.
- § 7766. Removal of trustee - UTC 706.
- § 7767. Delivery of property by former trustee - UTC 707.
- § 7768. Compensation of trustee - UTC 708.
- § 7769. Reimbursement of expenses - UTC 709.
- § 7770. Liability of successor trustee.

Subchapter H. Duties and Powers of Trustee

- § 7771. Duty to administer trust - UTC 801.
- § 7772. Duty of loyalty - UTC 802.
- § 7773. Impartiality - UTC 803.
- § 7774. Prudent administration - UTC 804.
- § 7775. Costs of administration - UTC 805.
- § 7776. Trustee's skills - UTC 806.
- § 7777. Delegation by trustee.
- § 7778. Powers to direct - UTC 808.
- § 7779. Control and protection of trust property - UTC 809.
- § 7780. Record keeping and identification of trust property - UTC 810.
- § 7780.1. Enforcement and defense of claims - UTC 811.
- § 7780.2. (Reserved).
- § 7780.3. Duty to inform and report.
- § 7780.4. Discretionary powers.
- § 7780.5. Powers of trustees - UTC 815.
- § 7780.6. Illustrative powers of trustee.
- § 7780.7. Distribution upon termination.

Subchapter I. Liability of Trustees and Rights of Persons Dealing with Trustees

- § 7781. Remedies for breach of trust - UTC 1001.
- § 7782. Damages for breach of trust - UTC 1002.
- § 7783. Damages in absence of breach - UTC 1003.
- § 7784. (Reserved).
- § 7785. Limitation of action against trustee.
- § 7786. Reliance on trust instrument - UTC 1006.
- § 7787. Event affecting administration or distribution - UTC 1007.
- § 7788. Exculpation of trustee - UTC 1008.
- § 7789. Beneficiary's consent, release or ratification - UTC 1009.
- § 7790. Limitation on personal liability of trustee - UTC 1010.
- § 7790.1. Interest as general partner - UTC 1011.
- § 7790.2. Protection of person dealing with trustee - UTC 1012.
- § 7790.3. Certification of trust - UTC 1013.

Subchapter J. Miscellaneous Provisions

- § 7791. Abandonment of property.
- § 7792. Powers, duties and liabilities identical with personal representatives.
- § 7793. Effect of removal, or of probate of later will or codicil.
- § 7794. Title of purchaser.
- § 7795. Reports for school district trustees.
- § 7796. Jurisdiction.
- § 7797. Filing accounts.
- § 7798. Failure to present claim at audit.
- § 7799. Income on distributive shares.
- § 7799.1. Annexation of account of distributed estate or trust.
- § 7799.2. Accounts, audits and distributions.
- § 7799.3. Pooled trusts for individuals with disabilities.

Chapter 81. Principal and Income

Subchapter A. Preliminary Provisions; Power to Adjust; Power to Convert to Unitrust

- § 8101. Short title of chapter.
- § 8102. Definitions.
- § 8103. Fiduciary duties; general principles.
- § 8104. Trustee's power to adjust.
- § 8105. Power to convert to unitrust.
- § 8106. Judicial control of discretionary powers.
- § 8107. Express trusts.
- § 8108. (Reserved).
- § 8109. (Reserved).
- § 8110. (Reserved).
- § 8111. (Reserved).
- § 8112. (Reserved).
- § 8113. Charitable trusts.

Subchapter B. Decedent's Estate or Terminating Income Interest

- § 8121. Determination and distribution of net income.
- § 8122. Distribution to residuary and remainder beneficiaries.

Subchapter C. Apportionment at Beginning and End of Income Interest

- § 8131. When right to income begins and ends.
- § 8132. Apportionment of receipts and disbursements when decedent dies or income interest begins.
- § 8133. Apportionment when income interest ends.

Subchapter D. Allocation of Receipts During Administration of Trust

- § 8141. Character of receipts.
- § 8142. Distribution from trust or estate.
- § 8143. Business and other activities conducted by trustee.
- § 8144. Principal receipts.
- § 8145. Rental property.
- § 8146. Obligation to pay money.
- § 8147. Insurance policies and similar contracts.
- § 8148. Insubstantial allocations not required.

- § 8149. Retirement benefits, individual retirement accounts, deferred compensation, annuities and similar payments.
- § 8150. Liquidating asset.
- § 8151. Minerals, water and other natural resources.
- § 8152. Timber.
- § 8153. Property not productive of income.
- § 8154. Derivatives and options.
- § 8155. Asset-backed securities.

Subchapter E. Allocation of Disbursements During Administration of Trust

- § 8161. Mandatory disbursements from income.
- § 8162. Mandatory disbursements from principal.
- § 8163. Discretionary allocation of disbursements.
- § 8164. Transfers from income to principal for depreciation.
- § 8165. Transfers from income to reimburse principal.
- § 8166. Income taxes.
- § 8167. Adjustments between principal and income because of taxes.

Subchapters F and G (Reserved)

Subchapter H. Miscellaneous Provisions

- § 8191. Uniformity of application and construction.

Chapter 82. Revised Price Act (Repealed)

- § 8201 - § 8234 (Repealed).

Chapter 83. Inalienable Property

- § 8301. Powers of court to authorize sale, etc. of real property.
- § 8302. Venue where real property is wholly in one county.
- § 8303. Venue where real property is in more than one county.
- § 8304. Procedure.
- § 8305. Sale of real property subject to future inalienable interests; disposition of proceeds.
- § 8306. Title of purchaser.

Chapter 84. Military Service

Subchapter A. Fiduciaries in Military Service (Repealed)

- § 8401 - § 8407 (Repealed).

Subchapter B. Notice to Veterans' Bureau

- § 8411. Notice of action to United States Veterans' Bureau.
- § 8412. Veterans' Bureau's objection to account; costs.

Chapter 85. Simultaneous Death

- § 8501. No sufficient evidence of survivorship.
- § 8502. Beneficiaries of another person's disposition of property.
- § 8503. Joint tenants or tenants by the entirety.
- § 8504. Insurance policies.
- § 8505. Chapter does not apply if decedent provides otherwise.

Chapter 86. Anatomical Gifts

Subchapter A. General Provisions

§ 8601. Definitions.

Subchapter B. Express Anatomical Gifts

- § 8611. Persons who may execute anatomical gift.
- § 8612. Persons who may become donees; purposes for which anatomical gifts may be made.
- § 8613. Manner of executing anatomical gifts.
- § 8614. Delivery of document of gift.
- § 8615. Amendment or revocation of gift.
- § 8616. Rights and duties at death.
- § 8617. Requests for anatomical gifts.
- § 8618. Voluntary contribution system (Repealed).
- § 8619. Use of driver's license or identification card to indicate organ or tissue donation.
- § 8620. Police and emergency personnel responsibilities.
- § 8621. The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund contributions.
- § 8622. The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund.
- § 8623. Confidentiality requirement.
- § 8624. Prohibited activities.

Subchapter C. Corneal Transplants

- § 8641. Removal of corneal tissue permitted under certain circumstances.
- § 8642. Limitation of liability.

Chapter 87. Employee Benefits

- § 8701. Existing trusts may continue for term necessary to accomplish purpose.
- § 8702. Combining trusts.
- § 8703. Transfer of assets to corporate trustee; investments; common trust funds.
- § 8704. Payments upon employee's death; third party claims.

Chapter 88. Slayers

- § 8801. Definition of terms.
- § 8802. Slayer not to acquire property as result of slaying.
- § 8803. Descent, distribution, dower, courtesy, and statutory rights as survivor.
- § 8804. Legacies.
- § 8805. Tenancies by the entirety.
- § 8806. Joint tenants, joint owners and joint obligees.
- § 8807. Reversions and vested remainders.
- § 8808. Interests dependent on survivorship or continuance of life.
- § 8809. Contingent remainders and executory or other future interests.
- § 8810. Powers of appointment.
- § 8811. Proceeds of insurance.
- § 8812. Bona fide payment by insurance company or obligor.
- § 8813. Bona fide purchasers.
- § 8814. Record of conviction as evidence.

- § 8814.1. Preadjudication rule.
§ 8815. Broad construction; policy of State.

TITLE 20
DECEDENTS, ESTATES AND FIDUCIARIES

Chapter

1. Short Title and Definitions
3. Ownership of Property; Legal Title and Equitable Estate
7. Orphans' Court Divisions
9. Register of Wills
21. Intestate Succession
22. Elective Share of Surviving Spouse
25. Wills
27. Contractual Arrangements Relating to Succession
28. Formula Clauses for Federal Tax Purposes
31. Dispositions Independent of Letters; Family Exemption; Probate of Wills and Grant of Letters
33. Administration and Personal Representatives
35. Accounts and Distribution
37. Apportionment of Death Taxes
41. Foreign Fiduciaries
43. Temporary Fiduciaries
45. Sureties
51. Minors
53. Pennsylvania Uniform Transfers to Minors Act
54. Health Care
- 54A. Out-of-Hospital Nonresuscitation (Deleted by amendment)
55. Incapacitated Persons
56. Powers of Attorney
57. Absentees and Presumed Decedents
58. Mental Health Care
59. Uniform Adult Guardianship and Protective Proceedings Jurisdiction
61. Estates
62. Disclaimers
63. Multiple-Party Accounts
64. Transfer on Death Security Registration
71. Trust Estates (Deleted by amendment)
72. Prudent Investor Rule
73. Municipalities Investments
75. Limitations on Exercise of Trustee Powers and Powers of Beneficiaries to Appoint Trustees
77. Trusts
81. Principal and Income
82. Revised Price Act (Repealed)
83. Inalienable Property
84. Military Service
85. Simultaneous Death
86. Anatomical Gifts
87. Employee Benefits
88. Slayers

Enactment. Unless otherwise noted, the provisions of Title 20 were added June 30, 1972, P.L.508, No.164, effective July 1, 1972.

Special Provisions in Appendix. See section 4 of Act 164 of 1972 in the appendix to this title for special provision relating to effective date and savings provisions of title and preservation of rights and liabilities.

Title Heading. The heading of Title 20 was amended June 30, 1972, P.L.508, No.164; December 10, 1974, P.L.816, No.271; and December 10, 1974, P.L.867, No.293.

CHAPTER 1
SHORT TITLE AND DEFINITIONS

Sec.

- 101. Short title.
- 102. Definitions.

Enactment. Chapter 1 was added June 30, 1972, P.L.508, No.164, effective July 1, 1972.

§ 101. Short title.

This title shall be known and may be cited as the "Probate, Estates and Fiduciaries Code." Each chapter herein shall be known and may be cited by its chapter heading.

§ 102. Definitions.

Subject to additional definitions contained in subsequent provisions of this title which are applicable to specific provisions of this title, the following words and phrases when used in this title shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Clerk." Means the clerk of the orphans' court division of the court of common pleas.

"Court, orphans' court, or orphans' court division." Means the court of common pleas exercising the jurisdiction referred to in this title through its orphans' court division.

"Fiduciary." Includes personal representatives, guardians, and trustees, whether domiciliary or ancillary, individual or corporate, subject to the jurisdiction of the orphans' court division.

"First complete advertisement of the grant of letters." In counties having no legal publication, means the first of the three times that the grant of letters is advertised in a newspaper, and, in counties having a legal publication, it means when it has been advertised, on at least one occasion, in both the newspaper and in the legal publication.

"Foreign fiduciary." Means a personal representative, guardian of a minor or incapacitated person, trustee or one performing the functions of any such fiduciary, who is subject primarily to the control of the court of another jurisdiction and has not received ancillary authority in the Commonwealth.

"Foreign guardian." Means a guardian, or one performing the function of a guardian, who is subject primarily to the control of the court of another jurisdiction and has not received ancillary authority in the Commonwealth.

"General rule or rule of court." A rule or order promulgated by the governing authority, as defined in 42 Pa.C.S. § 102 (relating to definitions), of the unified judicial system.

"Guardian." Means a fiduciary who has the care and management of the estate or person of a minor or an incapacitated person.

"Incapacitated person." Means a person determined to be an incapacitated person under the provisions of Chapter 55 (relating to incapacitated persons).

"Letters." Means letters testamentary or letters of administration of any description.

"Minor." Means an individual under the age of 18 years.

"Personal representative." Means an executor or administrator of any description.

"Register." Means the register of wills having jurisdiction of granting of letters testamentary or of administration.

"Trust." Means any trust, whether testamentary or inter vivos, subject to the jurisdiction of the orphans' court division.

"Will." Means a written will, codicil or other testamentary writing.

(Dec. 6, 1972, P.L.1461, No.331; July 9, 1976, P.L.551, No.135, eff. imd.; Apr. 28, 1978, P.L.202, No.53, eff. 60 days; Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

CHAPTER 3

OWNERSHIP OF PROPERTY; LEGAL TITLE AND EQUITABLE ESTATE

Sec.

- 301. Title to real and personal estate of a decedent.
- 302. Title to real and personal estate of an incapacitated person.
- 303. Title to real and personal estate of a minor.
- 304. Application of payments made to fiduciaries.
- 305. Right to dispose of a decedent's remains.

Enactment. Chapter 3 was added June 30, 1972, P.L.508, No.164, effective July 1, 1972.

§ 301. Title to real and personal estate of a decedent.

(a) Personal estate.--Legal title to all personal estate of a decedent shall pass at his death to his personal representative, if any, as of the date of his death.

(b) Real estate.--Legal title to all real estate of a decedent shall pass at his death to his heirs or devisees, subject, however, to all the powers granted to the personal representative by this title and lawfully by the will and to all orders of the court.

§ 302. Title to real and personal estate of an incapacitated person.

Legal title to all real estate and personal property of an incapacitated person shall remain in him, subject, however, to all the powers granted to his guardian by this title and lawfully by a governing instrument and to all orders of the court.

(Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

§ 303. Title to real and personal estate of a minor.

Legal title to all real and personal property of a minor shall remain in him, subject, however, to all the powers granted to his guardian by this title and lawfully by a governing instrument and to all orders of the court.

§ 304. Application of payments made to fiduciaries.

A person who, in good faith, pays or transfers to a fiduciary any money or other property, which the fiduciary as such is authorized to receive, is not responsible for the proper application thereof by the fiduciary, and any right or title

acquired from the fiduciary in consideration of the payment or transfer is not invalid in consequence of a misapplication by the fiduciary.

(Oct. 12, 1984, P.L.929, No.182, eff. imd.)

1984 Amendment. Act 182 added section 304. Section 15 of Act 182 provided that Act 182 shall apply to the estates of all decedents dying on or after the effective date of Act 182.

§ 305. Right to dispose of a decedent's remains.

(a) General rule.--Except as specified in subsection (a.1), the determination of the final disposition of a decedent's remains shall be as set forth in this section unless otherwise specifically provided by waiver and agreement of the person entitled to make such determination under this section, subject to the provisions of a valid will executed by the decedent and section 8611(a) (relating to persons who may execute anatomical gift).

(a.1) Exception for members of the armed forces.--The determination of the final disposition of a decedent's remains shall be as set forth in this section unless otherwise specifically provided by a DD Form 93 executed later in time than a valid will executed by the decedent or a waiver and agreement of the person entitled to make such determination under this section, subject to the provisions of section 8611(a).

(b) Disposition of the remains of a deceased spouse.--Absent an allegation of enduring estrangement, incompetence, contrary intent or waiver and agreement which is proven by clear and convincing evidence, a surviving spouse shall have the sole authority in all matters pertaining to the disposition of the remains of the decedent.

(c) Disposition of the remains of others.--If there is not a surviving spouse, absent an allegation of enduring estrangement, incompetence, contrary intent or waiver and agreement which is proven by clear and convincing evidence, the next of kin shall have sole authority in all matters pertaining to the disposition of the remains of the decedent.

(d) Procedure.--Where a petition alleging enduring estrangement, incompetence, contrary intent or waiver and agreement is made within 48 hours of the death or discovery of the body of the decedent, whichever is later, a court may order that no final disposition of the decedent's remains take place until a final determination is made on the petition. Notice to each person with equal or higher precedence than the petitioner to the right to dispose of the decedent's remains and to his attorney if known and to the funeral home or other institution where the body is being held must be provided concurrently with the filing of the petition. A suitable bond may be required by the court.

(1) If the court determines that clear and convincing evidence establishes enduring estrangement, incompetence, contrary intent or waiver and agreement, the court shall enter an appropriate order regarding the final disposition which may include appointing an attorney in fact to arrange the final disposition, with reasonable costs chargeable to the estate.

(2) If two or more persons with equal standing as next of kin disagree on disposition of the decedent's remains, the authority to dispose shall be determined by the court, with preference given to the person who had the closest relationship with the deceased.

(3) If the court determines that the petition is not supported by a clear and convincing evidence, the court may award attorney fees. An award of attorney fees shall constitute a setoff against any claim by the petitioner against the estate.

(e) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Armed forces." The armed forces of the United States, including a reserve component or the National Guard.

"Contrary intent." An explicit and sincere expression, either verbal or written, of a decedent adult or emancipated minor prior to death and not subsequently revoked that a person other than the one authorized by this section determine the final disposition of his remains.

"DD Form 93." A valid document or a successor form provided by the Department of Defense that is signed by a member of the armed forces and designates a person to direct the disposition of the remains of the person who signed the form.

"Enduring estrangement." A physical and emotional separation from the deceased at the time of death of the person authorized by this section to determine the final disposition of the decedent's remains, which has existed for a period of time that clearly demonstrates an absence of due affection, trust and regard for the deceased.

"Next of kin." The spouse and relatives by blood of the deceased in order that they be authorized to succeed to the deceased's estate under Chapter 21 (relating to intestate succession) as long as the person is an adult or an emancipated minor.

(Nov. 17, 1998, P.L.786, No.99, eff. 60 days; July 2, 2013, P.L.254, No.45, eff. 60 days)

2013 Amendment. Act 45 amended subsec. (a) and added subsec. (a.1) and the defs. of "armed forces" and "DD Form 93" in subsec. (e).

1998 Amendment. Act 99 added section 305.

CHAPTER 7 ORPHANS' COURT DIVISIONS

Subchapter

- A. Organization
- B. Jurisdiction
- C. Venue
- D. Judges (Repealed)
- E. Duties of the Clerk and Sheriff
- F. Masters, Auditors, Examiners, Guardians Ad Litem and Trustees Ad Litem
- G. Procedure

Enactment. Chapter 7 was added June 30, 1972, P.L.508, No.164, effective July 1, 1972.

Cross References. Chapter 7 is referred to in sections 711, 7705 of this title.

SUBCHAPTER A ORGANIZATION

Sec.

701. Orphans' court divisions.

Enactment. Subchapter A was added April 28, 1978, P.L.202, No.53, effective in 60 days.

Prior Provisions. Former Subchapter A, which related to the same subject matter, was added June 30, 1972, P.L.508, No.164, and repealed April 28, 1978, P.L.202, No.53, effective in 60 days.

§ 701. Orphans' court divisions.

Orphans' court divisions shall be organized as provided by Title 42 (relating to judiciary and judicial procedure). Except as otherwise provided or prescribed by law, each orphans' court division shall possess the powers vested in the whole court.

**SUBCHAPTER B
JURISDICTION**

Sec.

711. Mandatory exercise of jurisdiction through orphans' court division in general.

712. Nonmandatory exercise of jurisdiction through orphans' court division.

713. Special provisions for Philadelphia County.

714. Conflict of laws.

715. Incidental powers (Repealed).

§ 711. Mandatory exercise of jurisdiction through orphans' court division in general.

Except as provided in section 712 (relating to nonmandatory exercise of jurisdiction through the orphans' court division) and section 713 (relating to special provisions for Philadelphia County), the jurisdiction of the court of common pleas over the following shall be exercised through its orphans' court division:

(1) **Decedents' estates.**--The administration and distribution of the real and personal property of decedents' estates and the control of the decedent's burial.

(2) **Testamentary trusts.**--The administration and distribution of the real and personal property of testamentary trusts, and the reformation and setting aside of any such trusts, whether created before or after the effective date of this chapter, except any testamentary trust created before the effective date of the Fiduciaries Act of 1917, jurisdiction of which was acquired by the court of common pleas prior to January 1, 1969 unless the president judge of such court orders the jurisdiction of the trust to be exercised through the orphans' court division.

(3) **Inter vivos trusts.**--The administration and distribution of the real and personal property of inter vivos trusts, and the reformation or setting aside of any such trusts, whether created before or after the effective date of this chapter, except any inter vivos trust jurisdiction of which was acquired by the court of common pleas prior to January 1, 1969 unless the president judge of such court orders the jurisdiction of the trust to be exercised through the orphans' court division.

"Inter vivos trust" means an express trust other than a trust created by a will, taking effect during the lifetime or at or after the death of the settlor.

It includes:

(i) a life insurance trust;

- (ii) a trust created under a deed, agreement, or declaration except as hereinafter excluded;
- (iii) a common trust fund or mortgage investment fund created by a corporate fiduciary for the investment of funds held by it as fiduciary or co-fiduciary;
- (iv) a tentative trust; and
- (v) similar trusts.

"Inter vivos trust" does not include:

- (vi) a resulting or constructive trust created by operation of law;
- (vii) a trust for creditors;
- (viii) an escrow relationship;
- (ix) a temporary trust to hold disputed property;
- (x) a principal and agent relationship;
- (xi) a trust primarily for the benefit of business employees, their families or appointees, under a stock bonus, pension, disability or death benefit, profit-sharing or other employee-benefit plan;
- (xii) a trust for bondholders;
- (xiii) a mortgagee in possession relationship;
- (xiv) a business trust, including a trust subject to 15 Pa.C.S. Ch. 95 (relating to business trusts); and
- (xv) similar trusts or fiduciary relationships.

(4) Minors' estates.--The administration and distribution of the real and personal property of minors' estates.

(5) Custodianships for minors' property.--Matters relating to custodianship of the property of minors, as provided by law.

(6) Guardian of persons of minors.--The appointment, control and removal of the guardian of the person of any minor.

(7) Adoptions.--Adoptions, subject to the provisions of section 713.

(8) Custody of minors.--The determination of the right to the custody of a minor in connection with any proceeding for his adoption or for the appointment of a guardian of his person, except as provided in section 713.

(9) Birth records.--Except as provided in section 713, all proceedings which may be necessary to be presented to a court for determination with regard to issues concerning recordation of birth and birth records or the alteration, amendment or modification of such birth records or the right to obtain a certified copy of the same. Whenever a person is entitled to take an appeal from the action of the Department of Health in connection with any matters concerning birth records the appeal shall be taken to the orphans' court division of the county in which the person is a resident. In all other matters in which a petition is addressed to a court in connection with matters of birth records, the filing of which petition is not in the nature of an appeal but is an original proceeding, shall be filed and determined by the orphans' court division of the county in which the petitioner resides.

(10) Incapacitated persons' estates.--The administration and distribution of the real and personal property of the estates of incapacitated persons, except where jurisdiction thereof was acquired by the court of common pleas prior to January 1, 1969 unless the president judge of such court orders the jurisdiction of the estate to be exercised through the orphans' court division.

(11) Absentees' and presumed decedents' estates.--The administration and distribution of the real and personal property of absent persons and of presumed decedents.

(12) Fiduciaries.--The appointment, control, settlement of the accounts of, removal and discharge of, and allowance to and allocation of compensation among, all fiduciaries of estates and trusts, jurisdiction of which is exercised through the orphans' court division, except that the register shall continue to grant letters testamentary and of administration to personal representatives as heretofore.

(13) Specific performance of contracts.--To enforce specifically the performance by either party of any agreement made by a decedent to purchase or sell real or personal property.

(14) Legacies, annuities and charges.--Proceedings for the enforcement of legacies, annuities and charges placed on real or personal property by will, inter vivos trust, or decree of an orphans' court or orphans' court division or for the discharge of the lien thereof.

(15) Construction of administrative power.--The construction of an administrative power as to real estate proposed to be exercised by a fiduciary of an estate or trust, jurisdiction of which is exercised through the orphans' court division.

(16) Disposition of title to real estate to render it freely alienable.--The disposition of any interest in real estate of one disabled from dealing with it when title to it has been acquired by descent or will, or is in an estate or trust jurisdiction of which is exercised through the orphans' court division.

(17) Title to personal property.--The adjudication of the title to personal property in the possession of the personal representative, or registered in the name of the decedent or his nominee, or alleged by the personal representative to have been in the possession of the decedent at the time of his death.

(18) Appeals and proceedings from registers.--Appeals from and proceedings removed from registers.

(19) Marriage licenses.--Marriage licenses, as provided by law.

(20) Inheritance and estate taxes.--Matters relating to inheritance and estate taxes, as provided by law.

(21) Nonprofit corporations.--The administration and proper application of funds awarded by an orphans' court or an orphans' court division to a nonprofit corporation heretofore or hereafter organized under the laws of the Commonwealth of Pennsylvania for a charitable purpose at the direction of the orphans' court or orphans' court division or at the direction of a settlor or testator of a trust or estate, jurisdiction of which is exercised through the orphans' court division except as the administrative, presiding or president judge of such division disclaims the exercise of future jurisdiction thereof.

(22) Agents.--All matters pertaining to the exercise of powers by agents acting under powers of attorney as provided in Subchapter C of Chapter 54 (relating to health care agents and representatives) or in Chapter 56 (relating to powers of attorney).

(Dec. 10, 1974, P.L.867, No.293, eff. imd.; Dec. 21, 1988, P.L.1444, No.177, eff. Oct. 1, 1989; Apr. 16, 1992, P.L.108, No.24, eff. 60 days; Dec. 16, 1992, P.L.1163, No.152, eff. imd.;

Oct. 12, 1999, P.L.422, No.39, eff. 60 days; Nov. 29, 2006, P.L.1484, No.169, eff. 60 days)

2006 Amendment. Act 169 amended par. (22).

1992 Amendments. Act 24 amended par. (10) and Act 152 amended par. (2). See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability. See section 27(b) of Act 152 in the appendix to this title for special provisions relating to applicability.

1988 Amendment. Act 177 amended par. (3).

1974 Amendment. Act 293 amended the intro. par. and par. (10).

Cross References. Section 711 is referred to in sections 712, 713 of this title; section 102 of Title 15 (Corporations and Unincorporated Associations); section 933 of Title 42 (Judiciary and Judicial Procedure).

§ 712. Nonmandatory exercise of jurisdiction through orphans' court division.

The jurisdiction of the court of common pleas over the following may be exercised through either its orphans' court division or other appropriate division:

(1) Title to real estate.--The determination of the persons to whom the title to real estate of a decedent or of the creator of an estate or trust has passed by devise or descent or by the terms of the trust instrument where jurisdiction of such estate or trust is exercised through the orphans' court division: Provided, That nothing herein shall be construed to restrict the provisions of section 711 (relating to mandatory exercise of jurisdiction through orphans' court division in general) relating to distribution of real estate in an estate or trust.

(2) Guardian of person.--The appointment, control and removal of the guardian of the person of any incapacitated person.

(3) Other matters.--The disposition of any case where there are substantial questions concerning matters enumerated in section 711 and also matters not enumerated in that section.

(4) Powers of attorney.--(Deleted by amendment).
(Dec. 10, 1974, P.L.867, No.293, eff. imd.; July 9, 1976, P.L.551, No.135, eff. imd.; Apr. 28, 1978, P.L.77, No.37, eff. 60 days; Apr. 16, 1992, P.L.108, No.24, eff. 60 days; Dec. 1, 1994, P.L.655, No.102, eff. 60 days; Oct. 12, 1999, P.L.422, No.39, eff. 60 days)

1999 Amendment. See section 13(8) of Act 39 in the appendix to this title for special provisions relating to applicability.

1994 Amendment. Section 10 of Act 102 provided that the amendment of par. (4) shall apply beginning with the effective date of Act 102.

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 712 is referred to in section 711 of this title.

§ 713. Special provisions for Philadelphia County.

The provisions of section 711 (relating to mandatory exercise of jurisdiction through orphans' court division in general), insofar as they relate to adoptions and birth records, shall not apply to Philadelphia County. In Philadelphia County the jurisdiction over adoptions and all proceedings which may be necessary to be presented to a court for determination with

regard to issues concerning recordation of birth and birth records or the alteration, amendment or modification of such birth records or the right to obtain a certified copy of the same, shall be exercised through the family court division of the court of common pleas. Whenever a resident of Philadelphia is entitled to take an appeal from the action of the Department of Health in connection with any matters concerning birth records, the appeal shall be taken to the family court division of the court of common pleas of Philadelphia. In all other matters in which a petition is addressed to a court by a resident of Philadelphia in connection with matters of birth records, the filing of which petition is not in the nature of an appeal but is an original proceeding, the petition shall be determined by the family court division of the court of common pleas of Philadelphia.

Cross References. Section 713 is referred to in section 711 of this title; section 933 of Title 42 (Judiciary and Judicial Procedure).

§ 714. Conflict of laws.

Nothing in this chapter shall be construed to interfere with the rules of law applicable to the determination of the question whether Pennsylvania courts have jurisdiction of the subject matters enumerated in this chapter.

§ 715. Incidental powers (Repealed).

1978 Repeal. Section 715 was repealed April 28, 1978, P.L.202, No.53, effective in 60 days.

SUBCHAPTER C

VENUE

Sec.

- 721. Venue of decedents', minors' and incapacitated persons' estates.
- 722. Venue of trust estates.
- 723. Situs of testamentary trust (Deleted by amendment).
- 724. Situs of inter vivos trust (Deleted by amendment).
- 725. Change of situs; order of court (Deleted by amendment).
- 726. Venue of nonprofit corporations.
- 727. Venue of cemetery companies.

§ 721. Venue of decedents', minors' and incapacitated persons' estates.

When a Pennsylvania court has jurisdiction of a decedent's, a minor's, or an incapacitated person's estate, except as otherwise provided by law, the venue for all purposes shall be as follows:

(1) Decedents' estates.--In the case of a decedent's estate, in the county where the letters are granted to the personal representative, and in the absence of such letters, then where the decedent had his last family or principal residence, and if the decedent had no domicile in the Commonwealth, then in any county where any of his property is located.

(2) Minors' and incapacitated persons' estates.--In the case of a guardian of a minor or incapacitated person appointed by the court, in the county whose court appointed the guardian. In the case of a guardian of a minor or incapacitated person not appointed by the court, or when there is a minor's or incapacitated person's estate but no guardian, in the county whose court at the time proceedings

are first initiated would have jurisdiction to appoint a guardian of the estate.
(Dec. 10, 1974, P.L.867, No.293, eff. imd.; Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.
§ 722. Venue of trust estates.

When a Pennsylvania court has jurisdiction of any trust, testamentary or inter vivos, except as otherwise provided by law, the venue for all purposes shall be in the county where at the time being is the situs of the trust. The situs of the trust shall remain in the county of the court which first assumed jurisdiction of the trust, unless and until such court shall order a change of situs under the provisions of this chapter.

§ 723. Situs of testamentary trust (Deleted by amendment).

2006 Amendment. Section 723 was deleted by amendment July 7, 2006, P.L.625, No.98, effective in 120 days.

§ 724. Situs of inter vivos trust (Deleted by amendment).

2006 Amendment. Section 724 was deleted by amendment July 7, 2006, P.L.625, No.98, effective in 120 days.

§ 725. Change of situs; order of court (Deleted by amendment).

2006 Amendment. Section 725 was deleted by amendment July 7, 2006, P.L.625, No.98, effective in 120 days.

§ 726. Venue of nonprofit corporations.

Except as otherwise prescribed by general rules, in exercising the jurisdiction of the court over the property or affairs of a domestic or foreign nonprofit corporation, the venue shall be in the county where the registered office of the corporation is located or deemed to be located for venue purposes or, in the absence of a registered office within this Commonwealth, in a county where any property held or controlled by the nonprofit corporation is located.

(Apr. 28, 1978, P.L.77, No.37, eff. 60 days; Dec. 19, 1990, P.L.834, No.198, eff. imd.)

§ 727. Venue of cemetery companies.

Except as otherwise provided in Title 9 (relating to burial grounds) or prescribed by general rules, in exercising the jurisdiction of the court over the property or affairs of a domestic or foreign cemetery company in matters relating to burial grounds or to property held for the burial of the dead or for the care or adornment of burial grounds, the venue shall be in the county where the burial ground, or any part thereof is located or, in the absence of any involved burial grounds within this Commonwealth, in a county where any property held or controlled by the cemetery company is located.

(Apr. 28, 1978, P.L.77, No.37, eff. 60 days; Dec. 19, 1990, P.L.834, No.198, eff. imd.)

SUBCHAPTER D

JUDGES

(Repealed)

1978 Repeal. Subchapter D (§§ 731 - 732) was repealed April 28, 1978, P.L.202, No.53, effective in two years as to section 731 and 60 days as to section 732.

SUBCHAPTER E
DUTIES OF THE CLERK AND SHERIFF

Sec.

- 741. Duties of the clerk (Repealed).
- 742. Dockets (Repealed).
- 743. Bill of costs (Repealed).
- 744. Translation of foreign language documents (Repealed).
- 745. Advertisement of accounts.
- 746. Money paid into court (Repealed).
- 747. Powers and duties of the sheriff (Repealed).
- 748. Fees (Repealed).

1978 Repeal. Subchapter E (except section 745(a) and (b)) was repealed April 28, 1978, P.L.202, No.53, effective in 60 days unless otherwise noted.

- § 741. Duties of the clerk (Repealed).**
- § 742. Dockets (Repealed).**
- § 743. Bill of costs (Repealed).**

1978 Repeal Note. The repeal of section 743 is effective one year from April 28, 1978.

- § 744. Translation of foreign language documents (Repealed).**
- § 745. Advertisement of accounts.**

(a) Requirement of notice; contents of notice.--The clerk of the orphans' court division shall give notice by advertisement of the time when accounts filed with him will be presented to the division for confirmation, stating in the advertisement the names and capacities of the respective accountants.

(b) Manner of advertisement.--The notice shall be advertised at least once a week during the two weeks immediately preceding the time for presentation of the accounts to the division:

- (1) in the legal publication, if any, designated by rule of court for the publication of legal notices; and
- (2) in at least one newspaper of general circulation published within the county, and if no such newspaper is published in that county, then in one such newspaper published nearest to that county.

(Apr. 28, 1978, P.L.202, No.53, eff. 1 year; Oct. 12, 1984, P.L.929, No.182, eff. imd.; Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. Act 24 amended subsec. (b). See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

- § 746. Money paid into court (Repealed).**

1978 Repeal. The repeal of section 746 is effective two years from April 28, 1978.

- § 747. Powers and duties of the sheriff (Repealed).**
- § 748. Fees (Repealed).**

SUBCHAPTER F
MASTERS, AUDITORS, EXAMINERS, GUARDIANS AD
LITEM AND TRUSTEES AD LITEM

Sec.

- 751. Appointment; purpose.

752. Compensation.
753. Subpoenas.
754. Power to administer oaths (Repealed).

§ 751. Appointment; purpose.

The orphans' court division may appoint:

(1) **Masters.**--A master to investigate any issue of fact and to report his findings of fact, conclusions of law and recommendations to the court.

(2) **Auditors of accounts of fiduciaries.**--Except in the circumstances prohibited by law, an auditor to examine and audit an account and to determine distribution.

(3) **Auditors to state accounts.**--An auditor to state an account when a proper account cannot be obtained from a fiduciary or other person required to state an account.

(4) **Examiners of assets.**--By general rule or special order, an examiner or examiners to make periodic or special examinations of assets of estates or trusts, and to require all persons in whose custody or control such assets may be held to present them for examination.

(5) **Guardians and trustees ad litem.**--On petition or on its own motion, a guardian or a trustee ad litem to represent the interest, not already represented by a fiduciary, of:

- (i) a person not sui juris; or
- (ii) an absentee; or
- (iii) a presumed decedent; or
- (iv) an unborn or unascertained person.

(6) **Representation of parties in interest.**--Persons interested in an estate as beneficiary or heir, if minors or otherwise legally incapacitated, and possible unborn or unascertained persons, may be represented in a judicial proceeding by a guardian or trustee ad litem if the court deems necessary. The court may dispense with the appointment of a guardian or trustee ad litem for a person who is a minor or otherwise legally incapacitated, unborn or unascertained if there is a living person sui juris having a similar interest or if such person is or would be issue of a living ancestor sui juris and interested in the estate whose interest is not adverse to his. If the whereabouts of any beneficiary or heir is unknown or if there is doubt as to his existence, the court shall provide for service of notice and representation in the judicial proceeding as it deems proper.

(Oct. 12, 1999, P.L.422, No.39, eff. 60 days; July 7, 2006, P.L.625, No.98, eff. 120 days)

2006 Amendment. Act 98 amended par. (6).

§ 752. Compensation.

The compensation of any master, auditor, examiner, guardian ad litem, or trustee ad litem, subject to any inconsistent general rule shall be paid from such source as the court shall direct.

(Apr. 28, 1978, P.L.202, No.53, eff. 60 days)

§ 753. Subpoenas.

Masters, auditors and examiners shall have the power to issue subpoenas with or without a clause of duces tecum to witnesses to appear before them when necessary for the performance of any of their duties. If any person who has been duly subpoenaed fails to obey the subpoena, the master, auditor, or examiner issuing the subpoena may report the neglect or refusal to the orphans' court division.

(Apr. 28, 1978, P.L.202, No.53, eff. 60 days)

§ 754. Power to administer oaths (Repealed).

1978 Repeal. Section 754 was repealed April 28, 1978, P.L.202, No.53, effective in 60 days.

SUBCHAPTER G
PROCEDURE

Sec.

- 761. Petitions.
- 762. Accounts.
- 763. Writs of habeas corpus (Repealed).
- 764. Citation.
- 765. Service of citation.
- 766. Proof of service.
- 767. Parties in interest.
- 768. Manner of service; proof.
- 769. Power of orphans' court division (Repealed).
- 771. Decree without prior hearing; attachment; sequestration (Repealed).
- 772. Injunctions (Repealed).
- 773. Subpoenas (Repealed).
- 774. Depositions and discovery.
- 775. Perpetuation of testimony and court records.
- 776. Testimony in proceedings removed from register.
- 777. Right to jury trial; discretion of orphans' court division.
- 778. Procedure for jury trials.
- 779. Nonsuits.
- 781. Methods of enforcement.
- 782. Procedure on attachment of the person.
- 783. Procedure on sequestration of real or personal property.
- 784. Procedure on execution on personal property.
- 785. Procedure on attachment execution.
- 786. Procedure on execution on real estate.
- 791. Allowance and allocation (Repealed).
- 792. Right of appeal (Repealed).
- 793. Effect of appeal.
- 794. Disposition of cases on appeal (Repealed).

§ 761. Petitions.

All applications to the orphans' court division shall be by petition in the form prescribed by general rules and shall be attested either by an affidavit or by a verified statement. In the case of the latter alternative, the statement shall set forth that it is subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities). (Apr. 28, 1978, P.L.202, No.53, eff. 60 days; July 11, 1980, P.L.565, No.118, eff. 60 days)

§ 762. Accounts.

The orphans' court division may decide or dispose of any question relating to the administration or distribution of an estate or trust and exercise any of its powers in respect thereof upon the filing of an account or in any other appropriate proceeding. The account may be a complete accounting of the estate or trust or of only the transactions which raise the question to be determined.

§ 763. Writs of habeas corpus (Repealed).

1978 Repeal. Section 763 was repealed April 28, 1978, P.L.202, No.53, effective in 60 days.

§ 764. Citation.

Jurisdiction of the person shall be obtained by citation to be awarded by the orphans' court division upon application of any party in interest. The citation shall direct the party named therein to file a complete answer under oath to the averments of the petition on or before a day certain, which shall be not less than ten days after the service thereof, and to show cause as the decree of the division shall provide.

§ 765. Service of citation.

A citation to obtain jurisdiction of a person may be served by an adult person, or by the sheriff of the county wherein the citation issued, or by deputization of the sheriff of the county where the service may be had in any county of the Commonwealth, in the same manner as a writ of summons in an action of assumpsit. When no other time is specially fixed by the orphans' court division, the order awarding the citation shall be void unless the citation is issued within six months.

§ 766. Proof of service.

Proof of service shall be by affidavit of the person or the return of the sheriff making service, and shall set forth the same information as a sheriff's return in an action of assumpsit.

§ 767. Parties in interest.

In any proceeding where the orphans' court division considers that the interests of any taxing authority, including the United States, any state and any political subdivision thereof, may be adversely affected directly or indirectly by a decision of such division because of the effect of such decision on assets subject to tax or for any other reason, the division shall have the power on its own motion or on the application of any party in interest, including the taxing authority, and upon such notice as it may direct, to authorize the taxing authority through its proper officer to appear as a party in interest, and if such an appearance is entered, the taxing authority shall be considered to be a party in interest aggrieved by any decision adversely affecting its interests.

§ 768. Manner of service; proof.

Notice of any proceeding in an orphans' court division may be given within or outside the Commonwealth by personal service, by registered mail, by publication, or otherwise, as the division shall direct by general rule or special order. Notice may be in the form of a citation served as provided in this section.

§ 769. Power of orphans' court division (Repealed).

1978 Repeal. Section 769 was repealed April 28, 1978, P.L.202, No.53, effective in 60 days.

§ 771. Decree without prior hearing; attachment; sequestration (Repealed).

1978 Repeal. Section 771 was repealed April 28, 1978, P.L.202, No.53, effective in two years.

§ 772. Injunctions (Repealed).

1978 Repeal. Section 772 was repealed April 28, 1978, P.L.202, No.53, effective in 60 days.

§ 773. Subpoenas (Repealed).

1980 Repeal. Section 773 was repealed October 5, 1980, P.L.693, No.142, effective in 60 days.

§ 774. Depositions and discovery.

The orphans' court division, by general rule or special order, may prescribe the practice relating to depositions,

discovery, and the production of documents. To the extent not provided for by general rule or special order, the practice relating to such matters shall conform to the practice in the division of the court having jurisdiction over actions at law.

§ 775. Perpetuation of testimony and court records.

The orphans' court division, by general rule or special order, may prescribe the practice relating to the perpetuation of testimony and to the perpetuation of lost or destroyed court records. When proved, such court records shall have the same legal effect as original records would have had. Notice of proceedings for the perpetuation of testimony and for the perpetuation of lost or destroyed court records shall be given in such manner as the division shall direct.

§ 776. Testimony in proceedings removed from register.

On appeal from the register, or in a proceeding removed from the register, the orphans' court division may find, upon the testimony taken before the register, that a substantial dispute of fact exists and grant a jury trial. When upon the testimony taken before the register a jury trial is not granted, the division shall hear the testimony de novo unless all parties appearing in the proceeding agree that the case be heard on the testimony taken before the register. In any event, the division may require witnesses already examined and other witnesses to appear before it. The division, in its discretion, may impanel a jury at any stage of the proceedings.

§ 777. Right to jury trial; discretion of orphans' court division.

(a) **Title to property.**--When a substantial dispute of fact shall arise concerning the decedent's title to property, real or personal, any party in interest shall be entitled to a trial of such issue by a jury. The verdict of the jury shall have the same effect as the verdict of a jury in a case at law.

(b) **Determination of incapacity.**--Any person against whom proceedings have been instituted to establish his incapacity shall be entitled to a trial of such issue by a jury. The verdict of the jury shall have the same effect as the verdict of a jury in a case at law.

(c) **Will contest and other matters.**--When a contest shall arise concerning the validity of a writing alleged to be testamentary, or concerning any matter other than as provided in subsections (a) and (b) of this section, the orphans' court division, in its discretion at any stage of the proceedings, may impanel a jury to decide any question of fact, but the verdict of the jury shall be advisory only.

(d) **Waiver of right.**--A person desiring a trial by jury shall make demand therefor in writing at least ten days prior to the initial hearing before the orphans' court division or; if the initial hearing is dispensed with as provided in section 778(b) (relating to combined hearings and trials) then at least ten days prior to the trial. The right to trial by jury is waived if such demand is not so made or, after having been made, the person claiming the right fails to appear.
(Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. Act 24 amended subsec. (b). See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

§ 778. Procedure for jury trials.

(a) **Jury.**--Jury trials in any case begun before or certified or appealed to an orphans' court division shall be tried in the division. The division shall draw a jury and preside at the trial of the issue and shall have all the powers of a judge in

trials by jury in cases at law. The panel of jurors drawn for service in other divisions of the court shall be available for such service in the orphans' court division when required, and in judicial districts where there is a separate orphans' court division, the court of common pleas shall, by appropriate rules, provide for and regulate the manner in which the jurors shall be made available and sent to the orphans' court division when required for the trial of issues therein.

(b) Combined hearings and trials.--In any case begun before or certified or appealed to the orphans' court division, the court may, on its own motion or on motion of a party and with reasonable notice to all parties:

(1) combine the hearing to determine whether a substantial dispute of fact exists with the trial to determine the dispute, and impanel a jury before determining whether or not a substantial dispute of fact exists; and

(2) combine the hearing and trial on all wills, the issues in regard to which are closely interrelated.

The court may withdraw the case from the jury, if the court determines that no substantial dispute of fact exists.

(c) Rules of court.--Unless and until an orphans' court division otherwise directs, the appropriate rules of the division of the court having jurisdiction over actions at law shall apply to jury trials of issues in the orphans' court division, and matters relating to such trials shall be heard and disposed of by the orphans' court division.

Cross References. Section 778 is referred to in section 777 of this title.

§ 779. Nonsuits.

(a) In general.--The orphans' court division may enter a nonsuit under the same circumstances, subject to review in the same manner and with the same effect as in an action at law.

(b) Will contest.--A nonsuit may be entered against a contestant in a will contest whenever the contestant has the burden of overcoming the presumption of validity arising from due proof of execution as required by law and the contestant has failed to satisfy that burden.

(c) Other cases.--In any other case a nonsuit may be entered against a party where the disposition of the case depends on an issue on which that party has the burden of proof and has failed to satisfy that burden.

(Dec. 10, 1974, P.L.867, No.293, eff. imd.)

1974 Amendment. Act 293 added section 779.

§ 781. Methods of enforcement.

Compliance with an order or decree of an orphans' court division may be enforced by attachment of the person; sequestration of real or personal property; execution on personal property; attachment execution; or execution on real estate.

§ 782. Procedure on attachment of the person.

(a) Direction of writs.--A writ of attachment of the person shall be directed to and executed by the sheriff of the county in which the court or branch of the court is located or of any county where the person to be attached is located.

(b) Discharge of person attached for contempt.--Any person attached for contempt may be discharged from custody by the orphans' court division upon purging himself of contempt to the satisfaction of the division by whose order he was attached.

§ 783. Procedure on sequestration of real or personal property.

A writ of sequestration of real or personal property of an estate or trust, or of the respondent, to enforce an order or decree of the orphans' court division in the administration of the estate or trust shall be allowed by the orphans' court division as fully as in any court of equity, and shall be directed to and executed by the sheriff of the county in which the court or branch of the court is located or of any county where property to be sequestered is located. The orphans' court division, by general rule or special order, may prescribe the practice relating to sequestration of real and personal property. To the extent not provided for by general rule or special order, the practice relating to sequestration shall conform to the practice in the division of the court having jurisdiction over actions at law.

§ 784. Procedure on execution on personal property.

Writs of execution on personal property shall be allowed by the orphans' court division and directed to and executed by the sheriff of the proper county. The proceedings thereon shall be the same as on execution on personal property issued out of the division of the court having jurisdiction over actions at law.

§ 785. Procedure on attachment execution.

Writs of attachment execution shall be allowed by the orphans' court division and directed to and executed by the sheriff of the proper county. The proceedings thereon shall be the same as attachment executions issued out of the division of the court having jurisdiction over actions at law.

§ 786. Procedure on execution on real estate.

(a) **Filing.**--The prothonotary of any court of common pleas shall, on demand of the fiduciary or of any party in interest, file and docket a certified transcript or extract from the record showing that an orphans' court division has adjudged an amount to be due by any person, and such transcripts or extract shall constitute a judgment of the court against such person from the time of its filing with the same effect as if it had been obtained in an action in the division of the court having jurisdiction over actions at law. If the amount adjudged to be due shall be increased or decreased on appeal, the prothonotary shall, if the decree of the appellate court is certified to him, change his records accordingly, and if the appellate court has increased the amount, the excess shall constitute a judgment from the time when the records are so changed.

(b) **Satisfaction and discharge.**--If the orphans' court division shall order such person to be relieved from any such judgment, the prothonotary shall, on demand of any party in interest, enter on his records a certified copy of such order, which shall operate as a satisfaction of the judgment.

(c) **Executions.**--Execution may be issued on the judgment out of the court against the real estate of such respondent by any interested party for the recovery of so much as may be due to him, in the same manner as upon any other judgment rendered by the court.

§ 791. Allowance and allocation (Repealed).

1978 Repeal. Section 791 was repealed April 28, 1978, P.L.202, No.53, effective in one year.

§ 792. Right of appeal (Repealed).

1978 Repeal. Section 792 was repealed April 28, 1978, P.L.202, No.53, effective in 60 days.

§ 793. Effect of appeal.

No appeal from an order or decree of an orphans' court division concerning the validity of a will or the right to

administer shall suspend the powers or prejudice the acts of a personal representative acting thereunder. The reversal or modification of any decree of an orphans' court division in a proceeding in which the division has jurisdiction of the sale, mortgage, exchange or conveyance of real or personal estate shall not divest any estate or interest acquired thereunder by a person not a party to the appeal.

Saved from Repeal. Section 793 is saved from repeal by the act of April 28, 1978, P.L.202, No.53, which put into effect the provisions of Title 42 (Judiciary and Judicial Procedure).
§ 794. Disposition of cases on appeal (Repealed).

1978 Repeal. Section 794 was repealed April 28, 1978, P.L.202, No.53, effective in 60 days.

CHAPTER 9

REGISTER OF WILLS

Subchapter

- A. Jurisdiction and Powers
- B. Records and Certified Copies

Enactment. Chapter 9 was added June 30, 1972, P.L.508, No.164, effective July 1, 1972.

SUBCHAPTER A

JURISDICTION AND POWERS

Sec.

- 901. Register's jurisdiction.
- 902. Deputy register.
- 903. Witnesses; testimony.
- 904. Witness fees.
- 905. Enforcement of subpoenas, orders and costs.
- 906. Caveat.
- 907. Certification of records to court.
- 908. Appeals.
- 909. Bill of costs (Repealed).
- 910. Transmission of accounts to the court.
- 911. Attestation of certain applications and documents.

§ 901. Register's jurisdiction.

Within the county for which he has been elected or appointed, the register shall have jurisdiction of the probate of wills, the grant of letters to a personal representative, and any other matter as provided by law.

§ 902. Deputy register.

Every register shall appoint a deputy or two deputies who shall have power to perform the duties of the office in his behalf and for whose conduct he and his surety shall be accountable. In case of a vacancy in the office of register, the first deputy shall exercise all the powers of the register until a successor is appointed or elected.

§ 903. Witnesses; testimony.

The register shall have power to:

(1) **Subpoenas.**--Issue a subpoena to any person in any county of the Commonwealth to appear or produce papers or records before him.

(2) **Administering oaths.**--Administer oaths and affirmations to parties and witnesses appearing before him

and to designate any clerk or clerks in his employ to administer such oaths and affirmations to parties and witnesses appearing before them, whether within or without the county of the register's jurisdiction, or without the Commonwealth.

(3) Depositions.--Issue commissions or rules to take the depositions of witnesses in another county or outside the Commonwealth. The practice relating thereto shall conform to the practice in the local orphans' court division.

§ 904. Witness fees.

Witnesses appearing before the register in obedience to the register's subpoena shall be entitled to the same fees and mileage as are allowed by law to witnesses in the orphans' court division.

§ 905. Enforcement of subpoenas, orders and costs.

Should any person refuse to comply with any subpoena or order of the register or to pay all costs, the register shall forthwith certify the record of the proceedings to the court. The court, upon petition of any party in interest, shall compel payment of the costs and shall enforce obedience to the subpoena or order in the same manner as in cases of subpoenas and orders issued or made by the court.

§ 906. Caveat.

(a) Bond.--When a caveat has been filed, the register shall not delay the probate of a will or the grant of letters for more than ten days after the filing of the petition for probate or for the grant of letters, or after the filing of the caveat, whichever shall be later, unless within such ten-day period a party in interest shall file with the register his bond in the name of the Commonwealth with sufficient surety in such amount, not less than \$500 or more than \$5,000, as the register considers necessary, conditioned for the payment of any costs which may be decreed against the caveator.

(b) Failure to give bond.--If no bond is filed within the ten-day period, the caveat shall be considered abandoned, except as the register, for cause shown, shall extend the time.

(c) Costs.--The register, or the court upon appeal, shall determine the amount of costs occasioned by a caveat and direct by whom they shall be paid. If all or part of the costs shall be finally decreed to be paid by the caveator, any party interested in the costs may bring suit on the caveator's bond as provided by law.

§ 907. Certification of records to court.

Whenever a caveat shall be filed or a dispute shall arise before the register concerning the probate of a will, the grant of letters or the performance of any other function by the register, he may certify, or the court upon petition of any party in interest may direct the register at any stage of the proceedings to certify, the entire record to the court, which shall proceed to a determination of the issue in dispute. No letters of administration pendente lite shall be granted by the register after proceedings have been removed to the court except by leave of court.

§ 908. Appeals.

(a) When allowed.--Any party in interest seeking to challenge the probate of a will or who is otherwise aggrieved by a decree of the register, or a fiduciary whose estate or trust is so aggrieved, may appeal therefrom to the court within one year of the decree: Provided, That the executor designated in an instrument shall not by virtue of such designation be deemed a party in interest who may appeal from a decree refusing

probate of it. The court, upon petition of a party in interest, may limit the time for appeal to three months.

(b) Bond.--The court, upon cause shown and after such notice, if any, as it shall direct, may require a surety bond to be filed by anyone appealing from a decree of the register conditioned for the payment of any costs or charges that may be decreed against him. The sufficiency of the surety shall be determined by the register in the first instance, with right of appeal to the court. If a bond in compliance with the final applicable order is not filed within ten days thereafter, the appeal shall be considered abandoned.

(c) Effect of appeal.--No appeal from a decree of the register shall suspend the powers or prejudice the acts of a personal representative to whom letters have been granted.

(d) Excepted appeals.--This section shall not apply to appeals for inheritance tax purposes, or to appeals specially regulated by law.

(Dec. 10, 1974, P.L.867, No.293, eff. imd.; July 9, 1976, P.L.551, No.135, eff. imd.; July 7, 2006, P.L.625, No.98, eff. 60 days)

2006 Amendment. Act 98 amended subsec. (a).

1976 Amendment. Act 135 amended subsecs. (a) and (b).

1974 Amendment. Act 293 amended subsec. (d), retroactive to July 1, 1972.

Cross References. Section 908 is referred to in section 3133 of this title.

§ 909. Bill of costs (Repealed).

1978 Repeal. Section 909 was repealed April 28, 1978, P.L.202, No.53, effective in one year.

§ 910. Transmission of accounts to the court.

All accounts filed with the register shall be transmitted to the court for audit and confirmation on dates fixed by the court by general rule or special order and shall be advertised as required by law.

§ 911. Attestation of certain applications and documents.

Except as provided otherwise in section 3154 (relating to affidavit and oath), applications and documents submitted to the register for which attestation is required may be attested either by an affidavit or by a verified statement. In case of the latter alternative, the statement shall set forth that it is subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(Dec. 16, 1992, P.L.1163, No.152, eff. imd.)

1992 Amendment. Act 152 added section 911. Section 27(e) of Act 152 provided that section 911 shall apply beginning with the effective date of Act 152.

SUBCHAPTER B

RECORDS AND CERTIFIED COPIES

Sec.

921. Wills.

922. Inventories.

923. Certified copies.

924. Recording proceedings in another county.

925. Certificates and affidavits of death.

§ 921. Wills.

All probated wills shall be indexed and recorded by the register, and shall remain in his office, except for the period required to be in the custody of a higher court. The recording may be accomplished by photographic or other mechanical process.

§ 922. Inventories.

The register shall index and record all inventories filed with him. The recording may be accomplished by photographic or other mechanical process.

(Dec. 10, 1974, P.L.867, No.293, eff. imd.)

§ 923. Certified copies.

Every register upon the request of any person paying the fee therefor, shall make and certify under the seal of his office true copies of his records or of papers filed with him or of proceedings before him. Such certified copies shall be as good evidence as the original in any judicial proceeding in the Commonwealth.

§ 924. Recording proceedings in another county.

Copies of wills and probate proceedings and records of the grant of letters of administration and proceedings relating thereto, duly certified by the register, may be filed in the office of the register in any county where real estate of the decedent is located. The register with whom such papers are filed shall forthwith record the same, and the record thereof shall be as valid and effectual in law as the original, or its duly certified copy, or its record would be for all purposes of vesting title, of evidence, and of notice.

§ 925. Certificates and affidavits of death.

Where it is not necessary to have letters granted to administer a decedent's estate but it is desired to have a public record of his death, a certificate of death may be filed with the register except that where a certificate of death cannot be obtained the affidavit of a relative or other interested party may be filed with the register setting forth the decedent's name, residence, date, time and place of death, and age at death. The register shall index and record all such certificates and affidavits filed with him.

(Dec. 10, 1974, P.L.867, No.293, eff. imd.)

1974 Amendment. Act 293 added section 925.

(Dec. 22, 1993, P.L.555, No.79, eff. 60 days; June 25, 1997, P.L.331, No.35, eff. imd.)

1997 Repeal Note. Act 35 repealed subsec. (a).

1993 Amendment. Act 79 amended subsec. (b).

Cross References. Section 1304 is referred to in sections 1306, 3304 of this title; section 1201 of Title 4 (Amusements).

CHAPTER 21

INTESTATE SUCCESSION

Sec.

- 2101. Intestate estate.
- 2102. Share of surviving spouse.
- 2103. Shares of others than surviving spouse.
- 2104. Rules of succession.
- 2105. Spouse's rights.
- 2106. Forfeiture.
- 2107. Persons born out of wedlock.
- 2108. Adopted person.
- 2109. Advancements (Repealed).
- 2109.1. Advancements.

- 2110. Spouse's allowance; procedure.
- 2111. Procedure to establish title to real property when spouse claims entire estate (Repealed).
- 2112. Property distributable to the Commonwealth (Repealed).
- 2113. Limitations of claims (Repealed).
- 2114. Personal estate of nonresident (Repealed).

Enactment. Chapter 21 was added June 30, 1972, P.L.508, No.164, effective July 1, 1972.

Cross References. Chapter 21 is referred to in sections 305, 6306 of this title; section 6115 of Title 18 (Crimes and Offenses).

§ 2101. Intestate estate.

(a) **General rule.**--All or any part of the estate of a decedent not effectively disposed of by will or otherwise passes to his heirs as prescribed in this chapter, except as modified by the decedent's will.

(b) **Modification by decedent's will.**--A decedent by will may expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which the individual or class would have succeeded passes as if that individual or each member of that class had disclaimed his intestate share.
(Apr. 18, 1978, P.L.42, No.23, eff. 60 days; Dec. 1, 1994, P.L.655, No.102, eff. 60 days)

1994 Amendment. Section 10 of Act 102 provided that the amendment of section 2101 shall apply to the estates of decedents dying on or after the effective date of Act 102.

1978 Amendment. Section 9 of Act 23 provided that Act 23 shall apply only to decedents dying after the effective date of Act 23.

§ 2102. Share of surviving spouse.

The intestate share of a decedent's surviving spouse is:

(1) If there is no surviving issue or parent of the decedent, the entire intestate estate.

(2) If there is no surviving issue of the decedent but he is survived by a parent or parents, the first \$30,000 plus one-half of the balance of the intestate estate.

Notwithstanding the foregoing, in the case of a decedent who died as a result of the terrorist attacks of September 11, 2001, a surviving spouse shall be entitled to 100% of any compensation award paid pursuant to the Air Transportation Safety and System Stabilization Act (Public Law 107-42, 115 Stat. 230).

(3) If there are surviving issue of the decedent all of whom are issue of the surviving spouse also, the first \$30,000 plus one-half of the balance of the intestate estate.

(4) If there are surviving issue of the decedent one or more of whom are not issue of the surviving spouse, one-half of the intestate estate.

(5) In case of partial intestacy any property received by the surviving spouse under the will shall satisfy pro tanto the \$30,000 allowance under paragraphs (2) and (3).
(Apr. 18, 1978, P.L.42, No.23, eff. 60 days; July 11, 1980, P.L.565, No.118, eff. 60 days; Oct. 3, 2003, P.L.175, No.26, eff. imd.)

2003 Amendment. Section 2 of Act 26 provided that Act 26 shall be retroactive to September 11, 2001.

§ 2103. Shares of others than surviving spouse.

The share of the estate, if any, to which the surviving spouse is not entitled, and the entire estate if there is no surviving spouse, shall pass in the following order:

(1) Issue.--To the issue of the decedent.

(2) Parents.--If no issue survives the decedent, then to the parents or parent of the decedent.

(3) Brothers, sisters, or their issue.--If no parent survives the decedent, then to the issue of each of the decedent's parents.

(4) Grandparents.--If no issue of either of the decedent's parents but at least one grandparent survives the decedent, then half to the paternal grandparents or grandparent, or if both are dead, to the children of each of them and the children of the deceased children of each of them, and half to the maternal grandparents or grandparent, or if both are dead to the children of each of them and the children of the deceased children of each of them. If both of the paternal grandparents or both of the maternal grandparents are dead leaving no child or grandchild to survive the decedent, the half which would have passed to them or to their children and grandchildren shall be added to the half passing to the grandparents or grandparent or to their children and grandchildren on the other side.

(5) Uncles, aunts and their children, and grandchildren.--If no grandparent survives the decedent, then to the uncles and aunts and the children and grandchildren of deceased uncles and aunts of the decedent as provided in section 2104(1) (relating to taking in different degrees).

(6) Commonwealth.--In default of all persons hereinbefore described, then to the Commonwealth of Pennsylvania.

(Apr. 18, 1978, P.L.42, No.23, eff. 60 days)

1978 Amendment. Section 9 of Act 23 provided that Act 23 shall apply only to decedents dying after the effective date of Act 23.

Cross References. Section 2103 is referred to in section 2104 of this title.

§ 2104. Rules of succession.

The provisions of this chapter shall be applied to both real and personal estate in accordance with the following rules:

(1) Taking in different degrees.--The shares passing under this chapter to the issue of the decedent, to the issue of his parents or grandparents or to his uncles or aunts or to their children, or grandchildren, shall pass to them as follows: The part of the estate passing to any such persons shall be divided into as many equal shares as there shall be persons in the nearest degree of consanguinity to the decedent living and taking shares therein and persons in that degree who have died before the decedent and have left issue to survive him who take shares therein. One equal share shall pass to each such living person in the nearest degree and one equal share shall pass by representation to the issue of each such deceased person, except that no issue of a child of an uncle or aunt of the decedent shall be entitled to any share of the estate unless there be no relatives as close as a child of an uncle or aunt living and taking a share therein, in which case the grandchildren of uncles and aunts of the decedent shall be entitled to share, but no issue of

a grandchild of an uncle or aunt shall be entitled to any share of the estate.

(2) Taking in same degree.--When the persons entitled to take under this chapter other than as a surviving spouse are all in the same degree of consanguinity to the decedent, they shall take in equal shares.

(3) Whole and half blood.--Persons taking under this chapter shall take without distinction between those of the whole and those of the half blood.

(4) After-born persons; time of determining relationships.--Persons begotten before the decedent's death but born thereafter, shall take as if they had been born in his lifetime.

(5) Source of ownership.--Real estate shall pass under this chapter without regard to the ancestor or other relation from whom it has come.

(6) Quantity of estate.--Any person taking real or personal estate under this chapter shall take such interest as the decedent had therein.

(7) Tenancy in estate.--When real or personal estate or shares therein shall pass to two or more persons, they shall take it as tenants in common, except that if it shall pass to a husband and wife they shall take it as tenants by the entireties.

(8) Alienage.--Real and personal estate shall pass without regard to whether the decedent or any person otherwise entitled to take under this chapter is or has been an alien.

(9) Person related to decedent through two lines.--A person related to the decedent through two lines of relationship shall take one share only which shall be the larger share.

(10) Requirement that heir survive decedent for five days.--Any person who fails to survive the decedent by five days shall be deemed to have predeceased the decedent for purposes of intestate succession and the decedent's heirs shall be determined accordingly. If the time of death of the decedent or of a person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir survived the decedent by five days, that person shall be deemed to have failed to survive for the required period. This section shall not be applied where its application would result in a taking by the Commonwealth under section 2103(6) (relating to shares of others than surviving spouse).

(11) Intestacy following valid prior estate.--In the event of an intestacy occurring at the termination of a valid prior estate, the identity and shares of the intestate heirs then entitled to take shall be ascertained as though the death of the testator, settlor or grantor had occurred at the time of the termination of the prior estate.

(July 9, 1976, P.L.551, No.135, eff. imd.; Apr. 18, 1978, P.L.42, No.23, eff. 60 days; May 16, 2002, P.L.330, No.50, eff. 60 days)

2002 Amendment. Act 50 added par. (11). Section 14(b)(2) of Act 50 provided that the amendment shall apply to intestacies occurring on or after the effective date of Act 50, even if the trust became irrevocable before the effective date of Act 50.

Cross References. Section 2104 is referred to in sections 2103, 6205 of this title.

§ 2105. Spouse's rights.

(a) **Widow.**--The share of the estate to which a widow is entitled under this title shall be in lieu and full satisfaction of her dower at common law.

(b) **Surviving husband.**--The share of the estate to which a surviving husband is entitled under this title shall be in lieu and full satisfaction of his curtesy at common law.
(Apr. 18, 1978, P.L.42, No.23, eff. 60 days)

1978 Amendment. Section 9 of Act 23 provided that Act 23 shall apply only to decedents dying after the effective date of Act 23.

§ 2106. Forfeiture.

(a) **Spouse's share.**--

(1) A spouse who, for one year or upwards previous to the death of the other spouse, has willfully neglected or refused to perform the duty to support the other spouse, or who for one year or upwards has willfully and maliciously deserted the other spouse, shall have no right or interest under this chapter in the real or personal estate of the other spouse.

(2) A spouse shall have no right or interest under this chapter in the real or personal estate of the other spouse if:

- (i) the other spouse dies domiciled in this Commonwealth during the course of divorce proceedings;
- (ii) **no decree of divorce has been entered pursuant to 23 Pa.C.S. § 3323 (relating to decree of court); and**
- (iii) **grounds have been established as provided in 23 Pa.C.S. § 3323(g).**

(b) **Parent's share.**--Any parent who, for one year or upwards previous to the death of the parent's minor or dependent child, has:

(1) failed to perform the duty to support the minor or dependent child or who, for one year, has deserted the minor or dependent child; or

(2) been convicted of one of the following offenses under Title 18:

section 4303 (relating to concealing death of child);
section 4304 (relating to endangering welfare of children);

section 6312 (relating to sexual abuse of children);
or an equivalent crime under Federal law or the law of another state involving his or her child;

shall have no right or interest under this chapter in the real or personal estate of the minor or dependent child. The determination under paragraph (1) shall be made by the court after considering the quality, nature and extent of the parent's contact with the child and the physical, emotional and financial support provided to the child.

(c) **Slayer's share.**--Any person who participates either as a principal or as an accessory before the fact in the willful and unlawful killing of any person shall not in any way acquire property or receive any benefits as the result of such killing, but such property or benefits shall be distributed as provided in Chapter 88 (relating to slayers).

(d) **Surviving spouse as witness.**--The surviving husband or wife shall be a competent witness as to all matters pertinent to the issue of forfeiture under this section.

(Dec. 10, 1974, P.L.867, No.293, eff. imd.; July 9, 1976, P.L.551, No.135, eff. imd.; Mar. 7, 1984, P.L.103, No.21, eff.

imd.; Dec. 20, 2000, P.L.838, No.118, eff. 60 days; Oct. 27, 2010, P.L.837, No.85, eff. 60 days)

2010 Amendment. Act 85 amended subsec. (a).

2000 Amendment. Act 118 amended subsec. (b).

1976 Amendment. Act 135 amended subsec. (a) and deleted subsec. (b).

1974 Amendment. Act 293 amended subsec. (c).

Cross References. Section 2106 is referred to in section 2208 of this title.

§ 2107. Persons born out of wedlock.

(a) **Child of mother.**--For purposes of descent by, from and through a person born out of wedlock, he shall be considered the child of his mother.

(b) **Marriage of parents.**--(Deleted by amendment).

(c) **Child of father.**--For purposes of descent by, from and through a person born out of wedlock, he shall be considered the child of his father when the identity of the father has been determined in any one of the following ways:

(1) If the parents of a child born out of wedlock shall have married each other.

(2) If during the lifetime of the child, the father openly holds out the child to be his and receives the child into his home, or openly holds the child out to be his and provides support for the child which shall be determined by clear and convincing evidence.

(3) If there is clear and convincing evidence that the man was the father of the child, which may include a prior court determination of paternity.

(Nov. 26, 1978, P.L.1269, No.303, eff. imd.)

1978 Amendment. Section 5 of Act 303 provided that Act 303 shall not apply to wills or conveyances executed prior to the effective date of Act 303 or to rights from and through a child's father if the father had died prior to the effective date of Act 303.

Cross References. Section 2107 is referred to in sections 2514, 6114 of this title.

§ 2108. Adopted person.

For purposes of inheritance by, from and through an adopted person he shall be considered the issue of his adopting parent or parents. An adopted person shall not be considered as continuing to be the child or issue of his natural parents except in distributing the estate of a natural kin, other than the natural parent, who has maintained a family relationship with the adopted person. If a natural parent shall have married the adopting parent, the adopted person for purposes of inheritance by, from and through him shall also be considered the issue of such natural parent.

(July 9, 1976, P.L.551, No.135, eff. imd.)

§ 2109. Advancements (Repealed).

1976 Repeal. Section 2109 was repealed July 9, 1976, P.L.551, No.135, effective immediately.

§ 2109.1. Advancements.

If a person dies intestate as to all or any part of his estate, property which he gave in his lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a writing by the decedent or acknowledged in writing by the heir to be an advancement. For this purpose the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as

of the time of death of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue unless the declaration or acknowledgment so provides. (July 9, 1976, P.L.551, No.135, eff. imd.)

1976 Amendment. Act 135 added section 2109.1.

§ 2110. Spouse's allowance; procedure.

The allowance shall be set aside and awarded in distribution to the surviving spouse, or his successor in interest, in the same manner as other distributive shares of the estate are awarded, without any right in the surviving spouse to choose particular real or personal property in satisfaction thereof. Nothing herein shall be construed as limiting the right of the surviving spouse and other distributees to demand that property, not theretofore sold, be distributed in kind to them.

§ 2111. Procedure to establish title to real property when spouse claims entire estate (Repealed).

1978 Repeal. Section 2111 was repealed April 18, 1978, P.L.42, No.23, effective in 60 days.

§ 2112. Property distributable to the Commonwealth (Repealed).

1976 Repeal. Section 2112 was repealed July 9, 1976, P.L.551, No.135, effective immediately.

§ 2113. Limitations of claims (Repealed).

1976 Repeal. Section 2113 was repealed July 9, 1976, P.L.551, No.135, effective immediately.

§ 2114. Personal estate of nonresident (Repealed).

1976 Repeal. Section 2114 was repealed July 9, 1976, P.L.551, No.135, effective immediately.

CHAPTER 22

ELECTIVE SHARE OF SURVIVING SPOUSE

Sec.

- 2201. Definition of conveyance.
- 2202. Right of election; nonresident decedent.
- 2203. Right of election; resident decedent.
- 2204. Disclaimers, releases and charges against elective share.
- 2205. Transfers for value excluded.
- 2206. Right of election personal to surviving spouse.
- 2207. Waiver of right to elect.
- 2208. Forfeiture of right of election.
- 2209. Surviving spouse as witness.
- 2210. Procedure for election; time limit.
- 2211. Determination of effect of election; enforcement.

Enactment. Chapter 22 was added April 18, 1978, P.L.42, No.23, effective in 60 days.

Cross References. Chapter 22 is referred to in sections 2201, 2209, 3702 of this title.

§ 2201. Definition of conveyance.

As used in this chapter, unless the context clearly indicates otherwise, "conveyance" means an act by which it is intended to create an interest in real or personal property whether the act is intended to have inter vivos or testamentary operation.

§ 2202. Right of election; nonresident decedent.

When a married person not domiciled in this Commonwealth dies, the rights, if any, of his surviving spouse to an elective share in property in this Commonwealth are governed by the laws of the decedent's domicile at death, but the rights of the electing spouse shall be subject to the rights of fiduciaries, custodians and obligors within this Commonwealth and transferees for value of and holders of liens for value on real estate or tangible personal property located in this Commonwealth under section 2211 (relating to determination of effect of election; enforcement).

§ 2203. Right of election; resident decedent.

(a) Property subject to election.--Except as provided in subsection (c), when a married person domiciled in this Commonwealth dies, his surviving spouse has a right to an elective share of one-third of the following property:

- (1) Property passing from the decedent by will or intestacy.
- (2) Income or use for the remaining life of the spouse of property conveyed by the decedent during the marriage to the extent that the decedent at the time of his death had the use of the property or an interest in or power to withdraw the income thereof.
- (3) Property conveyed by the decedent during his lifetime to the extent that the decedent at the time of his death had a power to revoke the conveyance or to consume, invade or dispose of the principal for his own benefit.
- (4) Property conveyed by the decedent during the marriage to himself and another or others with right of survivorship to the extent of any interest in the property that the decedent had the power at the time of his death unilaterally to convey absolutely or in fee.
- (5) Survivorship rights conveyed to a beneficiary of an annuity contract to the extent it was purchased by the decedent during the marriage and the decedent was receiving annuity payments therefrom at the time of his death.
- (6) Property conveyed by the decedent during the marriage and within one year of his death to the extent that the aggregate amount so conveyed to each donee exceeds \$3,000, valued at the time of conveyance.

In construing this subsection, a power in the decedent to withdraw income or principal, or a power in any person whose interest is not adverse to the decedent to distribute to or use for the benefit of the decedent any income or principal, shall be deemed to be a power in the decedent to withdraw so much of the income or principal as is subject to such power, even though such income or principal may be distributed only for support or other particular purpose or only in limited periodic amounts.

(b) Property not subject to election.--The provisions of subsection (a) shall not be construed to include any of the following except to the extent that they pass as part of the decedent's estate to his personal representative, heirs, legatees or devisees:

- (1) Any conveyance made with the express consent or joinder of the surviving spouse.
- (2) The proceeds of insurance, including accidental death benefits, on the life of the decedent.
- (3) Interests under any broad-based nondiscriminatory pension, profit sharing, stock bonus, deferred compensation, disability, death benefit or other such plan established by an employer for the benefit of its employees and their beneficiaries.

(4) Property passing by the decedent's exercise or nonexercise of any power of appointment given by someone other than the decedent.

(c) Nonapplicability.--Pursuant to 23 Pa.C.S. § 3323(d.1) (relating to decree of court), this section shall not apply in the event a married person domiciled in this Commonwealth dies during the course of divorce proceedings, no decree of divorce has been entered pursuant to 23 Pa.C.S. § 3323 and grounds have been established as provided in 23 Pa.C.S. § 3323(g). (July 11, 1980, P.L.565, No.118, eff. 60 days; Nov. 29, 2004, P.L.1357, No.175, eff. 60 days)

2004 Amendment. Act 175 amended subsec. (a) and added subsec. (c). Section 5(4) of Act 175 provided that the amendment or addition of subsections (a) and (c) shall apply to the death of one of the parties on or after the effective date of par. (4) irrespective of whether the divorce proceeding was commenced before, on or after the effective date of par. (4).

Cross References. Section 2203 is referred to in sections 2204, 2205 of this title.

§ 2204. Disclaimers, releases and charges against elective share.

(a) Disclaimers.--Except as provided in subsections (b) and (c), an election by a spouse to take his elective share shall be deemed a disclaimer of any beneficial interest of the spouse in the following, to the extent that such interest would otherwise be payable to or enjoyed by the spouse after the decedent's death:

(1) Property subject to the spouse's election not awarded to the spouse as part of his elective share.

(2) Property appointed by the decedent's exercise of a general or special power of appointment, and property passing in default of appointment to the extent that the decedent had power to exclude his spouse from any interest therein.

(3) Property in any trust created by the decedent during his lifetime.

(4) Proceeds of insurance, including accidental death benefits, on the life of the decedent attributable to premiums paid by him, his employer, partner or creditor.

(5) Any annuity contract purchased by the decedent, his employer, partner or creditor.

(6) Any pension, profit sharing, stock bonus, deferred compensation, disability, death benefit or other plan established by an employer for the benefit of its employees and their beneficiaries, exclusive of the Federal social security system and railroad retirement system, by reason of services performed or disabilities incurred by the decedent.

(7) Community property in the proportion that it represents the decedent's earnings or contributions.

(8) All intangible or tangible personal property and all real property owned by the decedent and his spouse by the entirety or jointly with right of survivorship, in the proportion that such property represents contributions by the decedent.

(9) All intangible or tangible personal property and all real property given to his spouse by the decedent during his lifetime which, or the proceeds of which, are still owned by his spouse at the time of the decedent's death.

(b) Conveyances and releases.--Except as provided in subsection (c), if any of the foregoing beneficial interests has already been accepted or cannot be disclaimed for any other

reason, the spouse shall be entitled to an elective share only if the spouse conveys or releases such interest to those who would take it if the spouse had disclaimed it, and such conveyance or release shall be valid regardless of any spendthrift or similar provision.

(c) Charges against elective share.--Notwithstanding the provisions of subsections (a) and (b), the spouse may elect to retain any beneficial interest described in subsection (a) which immediately after the decedent's death consists of property owned by the spouse outright or in fee simple absolute, and have the value thereof at the time of the decedent's death charged against the elective share. The value at the time of the decedent's death of any beneficial interest described in subsection (a), regardless of its form, shall also be so charged against the elective share to the extent that it cannot be disclaimed, conveyed or released. If any property retained by the spouse pursuant to this subsection would have reverted to the personal representative of the decedent's estate under section 2211(b)(2) and (3) (relating to determination of effect of election; enforcement) had the property been disclaimed, its value shall be added to the value of the property passing by will or intestacy for the purpose of computing the spouse's elective share under section 2203(a)(1) (relating to right of election; resident decedent).

(d) Definition of "beneficial interest".--The term "beneficial interest" as used in this section shall include any power of appointment or power of consumption and any benefit arising from a direction by the decedent regarding the source of payment of inheritance or estate taxes.

(e) Conditional decree.--Any award to the electing spouse shall be conditioned upon:

(1) the spouse's delivery, in recordable form in the case of real estate, of such disclaimers, releases or conveyances as may be appropriate to insure protection to the person or persons entitled to disclaimed, released or conveyed property; and

(2) the filing with the court of proof of compliance with the condition.

(July 11, 1980, P.L.565, No.118, eff. 60 days; Dec. 16, 1992, P.L.1163, No.152, eff. imd.)

1992 Amendment. Act 152 amended subsec. (a)(8) and (9). Section 27(d) of Act 152 provided that the amendment of subsec. (a)(8) and (9) shall apply to the estates of decedents dying on or after the effective date of Act 152.

1980 Amendment. Act 118 amended subsec. (c).

Cross References. Section 2204 is referred to in section 2205 of this title.

§ 2205. Transfers for value excluded.

Conveyances and contracts made by the decedent are excluded from the provisions of section 2203 (relating to right of election; resident decedent) and section 2204 (relating to disclaimers, releases and charges against elective share), to the extent that the decedent received adequate consideration therefor in money or money's worth.

§ 2206. Right of election personal to surviving spouse.

The right of election of the surviving spouse may be exercised in whole or in part only during his lifetime by him or by his agent in accordance with section 5603(d) (relating to implementation of power of attorney). In the case of a minor spouse, the right of election may be exercised in whole or in part only by the spouse's guardian; in the case of an

incapacitated spouse, the right of election may be exercised in whole or in part only by the spouse's guardian or by his agent in accordance with section 5603(d) if the power of attorney qualifies as a durable power of attorney under section 5604 (relating to durable powers of attorney); provided, that, in each case, the election shall be exercised only upon order of the court having jurisdiction of the minor's or the incapacitated person's estate, after finding that exercise of the right is advisable.

(Feb. 18, 1982, P.L.45, No.26, eff. imd.; Apr. 16, 1992, P.L.108, No.24, eff. 60 days; Oct. 12, 1999, P.L.422, No.39, eff. 60 days)

1999 Amendment. See section 13(8) of Act 39 in the appendix to this title for special provisions relating to applicability.

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 2206 is referred to in section 5603 of this title.

§ 2207. Waiver of right to elect.

The right of election of a surviving spouse may be waived, wholly or partially, before or after marriage or before or after the death of the decedent.

§ 2208. Forfeiture of right of election.

A surviving spouse who under the provisions of section 2106 (relating to forfeiture) would not be entitled to a share of the decedent's estate had he died intestate shall have no right of election.

§ 2209. Surviving spouse as witness.

A person who is or claims to be the surviving spouse shall be a competent witness as to all matters pertinent to his rights under this chapter other than the creation of his status as the surviving spouse.

(Feb. 18, 1982, P.L.45, No.26, eff. imd.)

1982 Amendment. Section 13 of Act 26 provided that the amendment shall be effective as of June 17, 1978, and shall apply to the estates of all decedents dying on or after that date.

§ 2210. Procedure for election; time limit.

(a) How election made.--A surviving spouse's election to take or not to take his elective share shall be by a writing signed by him and filed with the clerk of the orphans' court division of the county where the decedent died domiciled. Notice of the election shall be given to the decedent's personal representative, if any.

(b) Time limit.--The election must be filed with the clerk before the expiration of six months after the decedent's death or before the expiration of six months after the date of probate, whichever is later. The court may extend the time for election for such period and upon such terms and conditions as the court shall deem proper under the circumstances on application of the surviving spouse filed with the clerk within the foregoing time limit. Failure to file an election in the manner and within the time limit set forth in this section shall be deemed a waiver of the right of election.

(c) Costs.--The costs of filing and recording the election shall be reimbursed out of the estate as a part of the administration expenses.

(Feb. 18, 1982, P.L.45, No.26, eff. imd.)

§ 2211. Determination of effect of election; enforcement.

(a) Power of court of domicile.--After notice and hearing, the orphans' court division of the county of the decedent's domicile shall determine all matters concerning the spouse's election, including the interests and liabilities of the spouse and others in or with respect to all property, regardless of its situs, which is subject to the election or which must be disclaimed, released or conveyed by the spouse or charged against the elective share.

(b) Effect of election.--In exercising its powers under subsection (a), the court shall honor any provision in the decedent's will or other conveyance concerning interests of those other than his spouse in the event of an election. Subject to any such provision, the court shall be guided by the following rules but shall have the power to supplement or to depart from them if, in its opinion, a different determination of the rights of the spouse and others would more nearly carry out what would have been the particular decedent's intention had he known of the election:

(1) In general.--Property which otherwise would pass by intestacy shall first be applied toward satisfaction of the spouse's elective share. The balance of the elective share shall then be charged separately against each conveyance subject to the election, the passing of property by will to be treated as a conveyance for this purpose, but the spouse shall have no right to share in any particular item of property within each conveyance. After the value of the electing spouse's fractional interest in each conveyance at the time of distribution is determined, items of property within the conveyance may be allocated disproportionately at distribution values between the elective and nonelective shares in order to give maximum effect to the decedent's intention with respect to the disposition of particular items or kinds of property. Property in the nonelective share shall be distributed among the beneficiaries of each conveyance in accordance with the rules of abatement or by analogy thereto.

(2) Disclaimed interests contingent on survival.--If a surviving spouse has disclaimed an interest which would have terminated at the spouse's death or was contingent upon the spouse surviving the decedent, the interests of others shall be as they would have been if the spouse had predeceased the decedent.

(3) Other disclaimed interests.--Except as above provided, disclaimed interests shall pass to other beneficiaries of the conveyance according to section 2514 (relating to rules of interpretation), which may be applied by analogy to inter vivos conveyances or, where those provisions cannot be applied, by way of reversion to the personal representative of the decedent's estate.

(4) Windfalls.--If the election and disclaimers, releases and conveyances by a surviving spouse in connection therewith result in an increase in the value of the interest of a beneficiary, the court may require contributions from such a beneficiary, directly or by sequestering the disclaimed, released or conveyed interests, in relief of other beneficiaries, so that no beneficiary will receive more value than he would have received in the absence of the election.

(c) Enforcement.--The rights of the electing spouse may be enforced, as the court considers appropriate, by orders, decrees or judgments requiring the performance of specific acts by, or imposing personal liability on:

(1) any fiduciary, custodian or obligor to the extent that he is in possession of property subject to the spouse's election or its proceeds; or

(2) the original beneficial recipient of such property or the donee of that recipient, including successive donees, to the extent that each donee is in possession of such property or its proceeds.

Any such order, decree or judgment of the orphans' court division of the county of the decedent's domicile under this section may be further enforced as necessary by suits in other courts. The liabilities as determined by the court may be enforced against fewer than all persons against whom relief could be sought but no person shall be subject to contribution in any greater amount than he would have been if full relief had been secured against all persons subject to contribution.

(d) Restraining orders.--The court on petition of a surviving spouse may restrain any person from making a payment or transfer of property which may be subject to the spouse's election, either before or after an election is made.

(e) Protection of fiduciaries, custodians and obligors.--Unless restrained by court decree, no fiduciary, custodian or obligor, other than the personal representative of the decedent's estate, shall be liable for making such payments or distributions of property subject to the spouse's election as would have been required by the terms of the conveyance or contract in the absence of an election.

(f) Transferees and lienholders for value.--No transferee of or holder of a lien against property subject to a spouse's election shall be liable to a surviving spouse if the transferee or lienholder has given a bona fide consideration, unless a certified copy of an order or decree of court providing to the contrary with respect to real property has been recorded in the office for the recording of deeds of the county where the real estate lies prior to the recording of the transfer or the entry of the lien of record. The recording of any such order or decree shall be indexed in the grantor's index under the name of the decedent.

Cross References. Section 2211 is referred to in sections 2202, 2204, 5603 of this title.

CHAPTER 25 WILLS

Sec.

- 2501. Who may make a will.
- 2502. Form and execution of a will.
- 2503. Nuncupative wills (Repealed).
- 2504. Witnesses (Repealed).
- 2504.1. Validity of execution.
- 2505. Revocation of a will.
- 2506. Revival of revoked or invalid will.
- 2507. Modification by circumstances.
- 2508. Change by election of surviving spouse (Repealed).
- 2509. Forfeiture of right of election (Repealed).
- 2510. How election made (Repealed).
- 2511. Time for making election (Repealed).
- 2512. Failure to make an election (Repealed).
- 2513. Grantee or lienholder (Repealed).
- 2514. Rules of interpretation.
- 2515. Devise or bequest to trust.

- 2516. Devise in fee tail abolished.
- 2517. Rule in Shelley's case and doctrine of worthier title.
- 2518. Alienage.
- 2519. Testamentary guardian.
- 2520. Personal estate of nonresident (Repealed).
- 2521. Penalty clause for contest.

Enactment. Chapter 25 was added June 30, 1972, P.L.508, No.164, effective July 1, 1972.

Cross References. Chapter 25 is referred to in section 6306 of this title; section 5603 of Title 23 (Domestic Relations).

§ 2501. Who may make a will.

Any person 18 or more years of age who is of sound mind may make a will.

(Dec. 6, 1972, P.L.1461, No.331; Dec. 10, 1974, P.L.867, No.293, eff. imd.; July 9, 1976, P.L.551, No.135, eff. imd.)

§ 2502. Form and execution of a will.

Every will shall be in writing and shall be signed by the testator at the end thereof, subject to the following rules and exceptions:

(1) Words following signature.--The presence of any writing after the signature to a will, whether written before or after its execution, shall not invalidate that which precedes the signature.

(2) Signature by mark.--If the testator is unable to sign his name for any reason, a will to which he makes his mark and to which his name is subscribed before or after he makes his mark shall be as valid as though he had signed his name thereto: Provided, That he makes his mark in the presence of two witnesses who sign their names to the will in his presence.

(3) Signature by another.--If the testator is unable to sign his name or to make his mark for any reason, a will to which his name is subscribed in his presence and by his express direction shall be as valid as though he had signed his name thereto: Provided, That he declares the instrument to be his will in the presence of two witnesses who sign their names to it in his presence.

(Dec. 10, 1974, P.L.867, No.293, eff. imd.; Dec. 1, 1994, P.L.655, No.102, eff. 60 days)

1994 Amendment. Act 102 amended the intro. par. and par. (2). Section 10 of Act 102 provided that the amendment of the intro. par. and par. (2) shall apply to wills executed on or after the effective date of Act 102.

Cross References. Section 2502 is referred to in sections 2504.1, 3132.1, 3154 of this title.

§ 2503. Nuncupative wills (Repealed).

1974 Repeal. Section 2503 was repealed December 10, 1974, P.L.867, No.293, effective immediately.

§ 2504. Witnesses (Repealed).

1974 Repeal. Section 2504 was repealed December 10, 1974, P.L.867, No.293, effective immediately.

§ 2504.1. Validity of execution.

A will is validly executed if executed in compliance with section 2502 (relating to form and execution of a will), or in compliance with the law of the jurisdiction where the testator was domiciled at the time of the execution of the will or at the time of his death.

(Dec. 10, 1974, P.L.867, No.293, eff. imd.)

1974 Amendment. Act 293 added section 2504.1.

§ 2505. Revocation of a will.

No will or codicil in writing, or any part thereof, can be revoked or altered otherwise than:

(1) **Will or codicil.**--By some other will or codicil in writing;

(2) **Other writing.**--By some other writing declaring the same, executed and proved in the manner required of wills; or

(3) **Act to the document.**--By being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revocation, by the testator himself or by another person in his presence and by his express direction. If such act is done by any person other than the testator, the direction of the testator must be proved by the oaths or affirmations of two competent witnesses.

§ 2506. Revival of revoked or invalid will.

If, after the making of any will, the testator shall execute a later will which expressly or by necessary implication revokes the earlier will, the revocation of the later will shall not revive the earlier will, unless the revocation is in writing and declares the intention of the testator to revive the earlier will, or unless, after such revocation, the earlier will shall be reexecuted. Oral republication of itself shall be ineffective to revive a will.

§ 2507. Modification by circumstances.

Wills shall be modified upon the occurrence of any of the following circumstances, among others:

(1) **Death within 30 days; religious and charitable gifts.**--(Repealed).

(2) **Divorce or pending divorce.**--Any provision in a testator's will in favor of or relating to the testator's spouse shall become ineffective for all purposes unless it appears from the will that the provision was intended to survive a divorce, if the testator:

(i) is divorced from such spouse after making the will; or

(ii) **dies domiciled in this Commonwealth during the course of divorce proceedings, no decree of divorce has been entered pursuant to 23 Pa.C.S. § 3323 (relating to decree of court) and grounds have been established as provided in 23 Pa.C.S. § 3323(g).**

(3) **Marriage.**--If the testator marries after making a will, the surviving spouse shall receive the share of the estate to which he would have been entitled had the testator died intestate, unless the will shall give him a greater share or unless it appears from the will that the will was made in contemplation of marriage to the surviving spouse.

(4) **Birth or adoption.**--If the testator fails to provide in his will for his child born or adopted after making his will, unless it appears from the will that the failure was intentional, such child shall receive out of the testator's property not passing to a surviving spouse, such share as he would have received if the testator had died unmarried and intestate owning only that portion of his estate not passing to a surviving spouse.

(5) **Slaying.**--Any person who participates either as a principal or as an accessory before the fact in the willful and unlawful killing of any person shall not in any way acquire property or receive any benefits as the result of the willful and unlawful killing but such property or

benefits shall be distributed as provided by Chapter 88 (relating to slayers).
(July 9, 1976, P.L.551, No.135, eff. imd.; Dec. 16, 1992, P.L.1163, No.152, eff. imd.; Oct. 27, 2010, P.L.837, No.85, eff. 60 days)

2010 Amendment. Act 85 amended par. (2).

1992 Amendment. Act 152 amended pars. (2) and (3). Section 27(d) of Act 152 provided that the amendment of pars. (2) and (3) shall apply to the estates of decedents dying on or after the effective date of Act 152.

1976 Repeal. Act 135 repealed par. (1).

Cross References. Section 2507 is referred to in section 3153 of this title.

§ 2508. Change by election of surviving spouse (Repealed).

1978 Repeal. Section 2508 was repealed April 18, 1978, P.L.42, No.23, effective in 60 days.

§ 2509. Forfeiture of right of election (Repealed).

1978 Repeal. Section 2509 was repealed April 18, 1978, P.L.42, No.23, effective in 60 days.

§ 2510. How election made (Repealed).

1978 Repeal. Section 2510 was repealed April 18, 1978, P.L.42, No.23, effective in 60 days.

§ 2511. Time for making election (Repealed).

1978 Repeal. Section 2511 was repealed April 18, 1978, P.L.42, No.23, effective in 60 days.

§ 2512. Failure to make an election (Repealed).

1978 Repeal. Section 2512 was repealed April 18, 1978, P.L.42, No.23, effective in 60 days.

§ 2513. Grantee or lienholder (Repealed).

1978 Repeal. Section 2513 was repealed April 18, 1978, P.L.42, No.23, effective in 60 days.

§ 2514. Rules of interpretation.

In the absence of a contrary intent appearing therein, wills shall be construed as to real and personal estate in accordance with the following rules:

(1) Wills construed as if executed immediately before death.--(Repealed).

(1.1) Construction that will passes all property.--A will shall be construed to apply to all property which the testator owned at his death, including property acquired after the execution of his will.

(2) After-acquired property.--(Repealed).

(3) Devises of real estate.--All devises of real estate shall pass the whole estate of the testator in the premises devised, although there be no words of inheritance or of perpetuity.

(4) Meaning of "heirs" and "next of kin," etc.; time of ascertaining class.--A devise or bequest of real or personal estate, whether directly or in trust, to the testator's or another designated person's "heirs" or "next of kin" or "relatives" or "family" or to "the persons thereunto entitled under the intestate laws" or to persons described by words of similar import, shall mean those persons, including the spouse, who would take under the

intestate laws if the testator or other designated person were to die intestate at the time when such class is to be ascertained, a resident of the Commonwealth, and owning the estate so devised or bequeathed: Provided, however, That the share of a spouse, other than the spouse of the testator, shall not include the allowance under the intestate laws. The time when such class is to be ascertained shall be the time when the devise or bequest is to take effect in enjoyment.

(5) Time for ascertaining class.--In construing a devise or bequest to a class other than a class described in section 2514(4), the class shall be ascertained at the time the devise or bequest is to take effect in enjoyment, except that the issue then living of any member of the class who is then dead shall take per stirpes the share which their deceased ancestor would have taken if he had then been living.

(6) Meaning of "die without issue" and similar phrases.--In any devise or bequest of real or personal estate, the words "die without issue," "die without leaving issue," "have no issue," or other words importing either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in his lifetime or at his death, and not an indefinite failure of his issue.

(7) Adopted children.--In construing paragraphs (9), (10) and (11) of this section, relating to lapsed and void devises and legacies, and in construing a will making a devise or bequest to a person or persons described by relationship to the testator or to another, any adopted person shall be considered the child of his adopting parent or parents, except that, in construing the will of a testator who is not the adopting parent, an adopted person shall not be considered the child of his adopting parent or parents unless the adoption occurred during the adopted person's minority or reflected an earlier parent-child relationship that existed during the child's minority. An adopted person who is considered the child of his adopting parent or parents under this paragraph shall not be considered as continuing to be the child of his natural parents except in construing the will of a natural kin, other than the natural parent, who has maintained a family relationship with the adopted person. If a natural parent shall have married the adopting parent, the adopted person shall also be considered the child of such natural parent.

(8) Persons born out of wedlock.--In construing paragraphs (9), (10) and (11), relating to lapsed and void devises and legacies, and in construing a will making a devise or bequest to a person or persons described by relationship to the testator or to another, a person born out of wedlock shall be considered the child of the natural mother and also of the natural father if paternity of the natural father has been determined pursuant to the provisions of section 2107 (relating to persons born out of wedlock).

(9) Lapsed and void devises and legacies; substitution of issue.--A devise or bequest to a child or other issue of the testator or to his brother or sister or to a child of his brother or sister whether designated by name or as one of a class shall not lapse if the beneficiary shall fail to survive the testator and shall leave issue surviving the testator but shall pass to such surviving issue who shall

take per stirpes the share which their deceased ancestor would have taken had he survived the testator: Provided, That such a devise or bequest to a brother or sister or to the child of a brother or sister shall lapse to the extent to which it will pass to the testator's spouse or issue as a part of the residuary estate or under the intestate laws.

(10) Lapsed and void devises and legacies; shares not in residue.--A devise or bequest not being part of the residuary estate which shall fail or be void because the beneficiary fails to survive the testator or because it is contrary to law or otherwise incapable of taking effect or which has been revoked by the testator or is undisposed of or is released or disclaimed by the beneficiary, if it shall not pass to the issue of the beneficiary under the provisions of paragraph (9) hereof, and if the disposition thereof shall not be otherwise expressly provided for by law, shall be included in the residuary devise or bequest, if any, contained in the will.

(11) Lapsed and void devises and legacies; shares in residue.--When a devise or bequest as described in paragraph (10) hereof shall be included in a residuary clause of the will and shall not be available to the issue of the devisee or legatee under the provisions of paragraph (9) hereof, and if the disposition shall not be otherwise expressly provided for by law, it shall pass to the other residuary devisees or legatees, if any there be, in proportion to their respective shares or interests in the residue.

(12) Real estate subject to a mortgage.--(Repealed).

(12.1) Property subject to a security interest.--A specific devise or bequest of real or personal property passes that property subject to any security interest therein existing at the date of the testator's death, without any right of exoneration out of any other estate of the testator regardless whether the security interest was created by the testator or by a previous owner and any general directive in the will to pay debts.

(13) Power of appointment.--A general devise of the real estate of the testator, or of the real estate of the testator in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend, as the case may be, which he shall have power to appoint in any manner he shall think proper, and shall operate as an execution of such power. In like manner, a bequest of the personal estate of the testator, or any bequest of personal property described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend, as the case may be, which he shall have power to appoint in any manner he shall think proper, and shall operate as an execution of such power. In like manner, a general pecuniary legacy, when the assets of the individual estate of the testator are not sufficient for its payment, shall, to the extent necessary to make possible the payment of the legacy, be construed to include any estate which the testator shall have power to appoint in any manner he shall think proper, and shall to such extent operate as an execution of such power.

(14) Cemetery lot.--If in a will no express disposition or other mention is made of a cemetery lot owned by the testator at his decease and wherein he or any member of his family is buried, the ownership of the lot shall not pass

from his lawful heirs by a residuary or other general clause of the will but shall descend to his heirs as if he had died intestate.

(15) Inheritance tax.--The inheritance tax imposed by the Inheritance and Estate Tax Act of 1961 upon the transfer of real or personal property which passes by will absolutely and in fee, and which is not part of the residuary estate, shall be paid out of the residuary estate and charged in the same manner as a general administration expense. Such inheritance tax imposed upon the transfer of any estate, income or interest for a term of years, for life or for other limited period, shall be paid out of the principal of the property by which the estate income or interest is supported.

(16) Ademption.--(Repealed).

(16.1) Nonademption; incapacity.--If property of an adjudicated incapacitated person specifically devised or bequeathed is sold or exchanged or if a condemnation award or insurance proceeds are paid to the estate of an incapacitated person as a result of condemnation, fire or casualty, the specific legatee or devisee has the right to the net sale price, the property received in exchange, the condemnation award or the insurance proceeds. This paragraph does not apply if subsequent to the sale, exchange, condemnation, or casualty, the testator has been adjudicated not to be an incapacitated person and survives the adjudication by one year.

(16.2) Nonademption; agent.--If an agent under a power of attorney, during the time that his principal is an incapacitated person within the meaning of section 5501 (relating to meaning of incapacitated person), sells or exchanges property of the principal which is specifically devised or bequeathed, the specific legatee or devisee has the right to the net sale price or the property received in exchange. For the purposes of this paragraph, a sale or exchange of property made by an agent shall be deemed to have been made during the time that the principal is an incapacitated person, unless shown to the contrary. This paragraph does not apply if it is shown that for a period of at least one year subsequent to the sale or exchange the principal was not an incapacitated person within the meaning of section 5501.

(17) Change in securities.--If the testator intended a specific bequest of securities owned by him at the time of the execution of his will, rather than the equivalent value thereof, the legatee is entitled only to:

- (i) as much of those securities as formed a part of the testator's estate at the time of his death;
- (ii) any additional or other securities issued by the same entity thereon and owned by the testator by reason of a stock dividend, stock split or other action by the entity, excluding any acquired by exercise of purchase options for more than a fractional share; and
- (iii) securities of another entity received thereon or in exchange therefor and owned by the testator as a result of a merger, consolidation or reorganization of the entity or other similar change.

(18) Nonademption; balance.--A devisee or legatee of property specifically devised or bequeathed has the right to any of that property which the testator still owned at his death and:

- (i) any balance of the purchase price or balance of property to be received in exchange, together with

any security interest, owing from a purchaser to the testator at his death by reason of a sale or exchange of the property by the testator;

(ii) any amount due for the condemnation of the property and unpaid at the testator's death;

(iii) any proceeds unpaid at the testator's death on fire or casualty insurance on the property; and

(iv) property owned by the testator at his death as a result of foreclosure, or obtained in lieu of foreclosure, of the security for a specifically bequeathed obligation.

(19) Employee benefits.--Benefits received by a trust under a Federally qualified profit sharing, pension or stock bonus plan shall not be available for the payment of obligations of the decedent or of his estate.

(20) Corporate fiduciaries.--Provisions authorizing or restricting investment in the securities or common trust funds of a corporate fiduciary or the exercise of voting rights in its securities shall also apply to the securities or common trust funds of any corporation which is an affiliate of the corporate fiduciary within the meaning of section 1504 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1504).

(July 9, 1976, P.L.551, No.135, eff. imd.; Nov. 26, 1978, P.L.1269, No.303, eff. imd.; Oct. 12, 1984, P.L.929, No.182, eff. imd.; Apr. 16, 1992, P.L.108, No.24, eff. 60 days; Dec. 16, 1992, P.L.1163, No.152, eff. imd.; Oct. 12, 1999, P.L.422, No.39, eff. 60 days)

1999 Amendment. Act 39 amended par. (16.2). See section 13(8) of Act 39 in the appendix to this title for special provisions relating to applicability.

1992 Amendments. Act 24 amended pars. (16.1) and (16.2) and Act 152 added par. (20). See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability. See section 27(b) of Act 152 in the appendix to this title for special provisions relating to applicability.

1978 Amendment. Act 303 amended par. (8). Section 5 of Act 303 provided that Act 303 shall not apply to wills or conveyances executed prior to the effective date of Act 303 or to rights from and through a child's father if the father had died prior to the effective date of Act 303.

1976 Amendment. Act 135 amended par. (7), repealed pars. (1), (2), (12) and (16) and added pars. (1.1), (12.1), (16.1), (17), (18) and (19).

References in Text. The act of June 15, 1961 (P.L.373, No.207), known as the Inheritance and Estate Tax Act of 1961, referred to in par. (15), was repealed by the act of December 13, 1982 (P.L.1086, No.255). The subject matter is now contained in Article XXI of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

Cross References. Section 2514 is referred to in section 2211 of this title.

§ 2515. Devise or bequest to trust.

A devise or bequest in a will may be made to the trustee of a trust, including any unfunded trust, established in writing by the testator or any other person before, concurrently with or after the execution of the will. Such devise or bequest shall not be invalid because the trust is amendable or revocable, or both, or because the trust was amended after execution of the will. Unless the will provides otherwise, the property so devised or bequeathed shall not be deemed held under a

testamentary trust of the testator but shall become and be a part of the principal of the trust to which it is given to be administered and disposed of in accordance with the provisions of the instrument establishing that trust and any amendment thereof. An entire revocation of the trust prior to the testator's death shall invalidate the devise or bequest unless the will directs otherwise.

(Dec. 16, 1992, P.L.1163, No.152, eff. imd.)

1992 Amendment. See section 27(b) of Act 152 in the appendix to this title for special provisions relating to applicability.

§ 2516. Devise in fee tail abolished.

Whenever by any devise an estate in fee tail would be created according to the common law of the Commonwealth, it shall pass an estate in fee simple, and as such shall be inheritable and freely alienable.

§ 2517. Rule in Shelley's case and doctrine of worthier title.

(a) Rule in Shelley's case.--The rule in Shelley's case and its corollaries shall not be applied, and a devise or bequest directly or in trust which shall express an intent to create an estate for life with remainder to the life tenant's heirs or the heirs of his body or his issue or his next of kin or persons described by words of similar import shall not operate to give such life tenant an estate in fee in real estate or an absolute estate in personalty.

(b) Doctrine of worthier title.--The doctrine of worthier title shall not be applied as a rule of law or as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor's heirs, heirs at law, next of kin, distributees, relatives or family or language of similar import shall not create or presumptively create a reversionary interest in the transferor.

(Dec. 1, 1994, P.L.655, No.102, eff. 60 days)

1994 Amendment. Section 10 of Act 102 provided that the amendment of section 2517 shall apply to wills executed, trusts created and conveyances made before, on or after the effective date of Act 102.

§ 2518. Alienage.

Real and personal estate shall pass without regard to whether the testator or any devisee or legatee is or has been an alien.

§ 2519. Testamentary guardian.

(a) Guardian of the person.--A person competent to make a will, being the sole surviving parent or adopting parent of any unmarried minor child, may appoint a testamentary guardian of the person of such child during his minority, or for any shorter period except that no parent who, for one year or upwards previous to his death, shall have willfully neglected or refused to provide for his child, or who, for a like period, shall have deserted the child or willfully failed to perform parental duties, shall have the right to appoint a testamentary guardian of the person of such child.

(b) Guardian of the estate.--Any person may by will appoint a guardian of real or personal property passing to a minor upon his death, when such property:

(1) Is devised, bequeathed or appointed to the minor in that person's will or descends from that person to the minor by intestacy.

(2) Is the proceeds of an insurance or annuity contract on the testator's life, unless the owner of the contract has made an inter vivos designation of a guardian therefor.

(3) Arises from an inter vivos transfer, the major portion of which constituted a gift from the testator, unless the testator has made an inter vivos designation of a guardian therefor.

(4) Is a cause of action arising by reason of the testator's death.

(5) Is a pension or death benefit from an employer of the testator or a society or organization of which the testator was a member.

(6) Is a tentative trust of which the testator was the settlor.

(Oct. 4, 1978, P.L.909, No.173, eff. 60 days)

1978 Amendment. Act 173 amended subsec. (a).

Cross References. Section 2519 is referred to in section 5615 of Title 23 (Domestic Relations).

§ 2520. Personal estate of nonresident (Repealed).

1976 Repeal. Section 2520 was repealed July 9, 1976, P.L.551, No.135, effective immediately.

§ 2521. Penalty clause for contest.

A provision in a will or trust purporting to penalize an interested person for contesting the will or trust or instituting other proceedings relating to the estate or trust is unenforceable if probable cause exists for instituting proceedings.

(Dec. 1, 1994, P.L.655, No.102, eff. 60 days)

1994 Amendment. Act 102 added section 2521. Section 10 of Act 102 provided that section 2521 shall apply to wills executed, trusts created and conveyances made before, on or after the effective date of Act 102.

CHAPTER 27 CONTRACTUAL ARRANGEMENTS RELATING TO SUCCESSION

Sec.

2701. Contracts concerning succession.

Enactment. Chapter 27 was added December 16, 1992, P.L.1163, No.152, effective immediately.

§ 2701. Contracts concerning succession.

(a) Establishment of contract.--A contract to die intestate or to make or not to revoke a will or testamentary provision or an obligation dischargeable only at or after death can be established in support of a claim against the estate of a decedent only by:

(1) provisions of a will of the decedent stating material provisions of the contract;

(2) an express reference in a will of the decedent to a contract and extrinsic evidence proving the terms of the contract; or

(3) a writing signed by the decedent evidencing the contract.

(b) Joint will or mutual wills.--The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills.

§ 2707. Disabled veterans and former prisoners of war.

(a) General rule for disabled veterans.--Any disabled veteran who has a disability incurred in any war or armed conflict which consists of the loss of one or more limbs, or the loss of use of one or more limbs, or total blindness, or who is 100% disabled as certified by the United States Department of Veterans Affairs, and who meets the qualifications of section 2701 (relating to resident fishing licenses), shall be issued a free resident fishing license upon application to the commission or a county treasurer. An application submitted by a disabled veteran shall, in addition to any information required under section 2701, contain a statement that the applicant is a war or armed conflict veteran and that the qualifying disability was service incurred. The issuing agent or the commission may require the production of the discharge papers of the applicant.

(a.1) General rule for former prisoners of war.--A former prisoner of war who meets the qualifications of section 2701 shall be issued a resident fishing license at the cost of \$1 upon application to the commission or a county treasurer. An application submitted by a former prisoner of war shall, in addition to any information required under section 2701, contain a statement that the applicant is a former prisoner of war. As used in this subsection, the term "former prisoner of war" means an individual who was imprisoned by enemy forces while in the service of the armed forces of the United States as certified by the appropriate branch of the armed forces of the United States.

(b) Lifetime licenses.--

(1) If a disabled veteran who qualifies for issuance of a free resident fishing license under subsection (a) presents documentation to show that the qualifying disability is permanent, the commission or county treasurer shall issue a disabled veteran lifetime fishing license.

(2) A former prisoner of war who meets the qualifications of section 2701(b) shall be issued a senior resident lifetime fishing license at the cost of \$1 upon application to the commission or a county treasurer.

(c) Home rule and optional plan counties.--In a county where there is no county treasurer by virtue of a home rule charter or optional plan of government, the county official who performs the functions of a county treasurer and who has been designated an issuing agent by the commission shall issue free resident fishing licenses to disabled veterans and reduced fee resident fishing licenses to former prisoners of war under this section.

CHAPTER 28

FORMULA CLAUSES FOR FEDERAL TAX PURPOSES

Sec.

- 2801. Definitions.
- 2802. Interpretation of formula clauses.
- 2803. Judicial proceeding.

Enactment. Chapter 28 was added October 27, 2010, P.L.837, No.85, effective immediately.

Applicability. Section 9(1) of Act 85 of 2010 provided that Chapter 28 shall apply to any decedent dying after December 31, 2009.

§ 2801. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Formula clause." A clause that has any of the following characteristics:

(1) Refers to the unified credit, estate tax exemption, applicable exemption amount, applicable credit amount, applicable exclusion amount, generation-skipping transfer tax exemption, GST exemption, marital deduction, maximum marital deduction, unlimited marital deduction or charitable deduction, or other words relating to Federal tax exemptions, exclusions, deductions or credits where the meaning of the words is dependent on the current state of the Federal tax laws.

(2) Measures a share of an estate or trust based on the amount that can pass free of Federal estate taxes or affects the inclusion ratio for generation-skipping transfer tax purposes.

(3) Is based on a similar provision of Federal estate tax or generation-skipping transfer tax law.

"Other dispositive instrument." Includes the following:

(1) A beneficiary designation pertaining to insurance or retirement assets.

(2) An instrument that exercises a power of appointment held by the decedent at death.

(3) A similar instrument that:

(i) expresses a decedent's intent regarding assets over which the decedent had dispositive authority at death; or

(ii) otherwise disposes of assets as a result of the decedent's death.

§ 2802. Interpretation of formula clauses.

(a) General rule.--Except as provided in subsection (b) and subject to section 2803 (relating to judicial proceeding), a will, trust or other dispositive instrument of a decedent who dies after December 31, 2009, and before January 1, 2011, that contains a formula clause shall be rebuttably presumed to be interpreted pursuant to the Federal estate tax and generation-skipping transfer tax laws applicable to estates of decedents dying on December 31, 2009.

(b) Exception.--

(1) Subsection (a) shall not apply with respect to a will, trust or other dispositive instrument that:

(i) is executed or amended after December 31, 2009;

or

(ii) manifests an intent that a contrary rule shall apply if the decedent dies on a date on which there is no applicable Federal estate tax or generation-skipping transfer tax in effect.

(2) If the Federal estate tax or generation-skipping transfer tax applies to an estate of a decedent dying or generation-skipping transfer occurring before January 1, 2011, then with respect to each such Federal tax, the initial reference to January 1, 2011, in this section shall refer instead to the first date after December 31, 2009, on which such tax applies to decedents' estates or generation-skipping transfers.

§ 2803. Judicial proceeding.

(a) Standing.--The decedent's personal representative, trustee or any affected beneficiary under the will, trust or other dispositive instrument may bring a proceeding to interpret a formula clause.

(b) Commencement.--A proceeding under this section must be commenced within 12 months following the death of the decedent.

(c) Considerations.--In a proceeding under this section, the court shall consider all of the following:

(1) The provisions and purposes of the will, trust or other dispositive instrument.

(2) The facts surrounding the creation of the will, trust or other dispositive instrument.

(3) The decedent's known or probable intent, based on all the facts and circumstances surrounding the creation of the will, trust or other dispositive instrument. In determining this intent, the court may consider evidence that contradicts the plain meaning of the will, trust or other dispositive instrument.

(4) The identity and interests of beneficiaries of different shares resulting from the application of the formula clause.

(d) Modifications.--The court shall have the power to modify a provision of a will, trust or other dispositive instrument in a manner that is not contrary to the decedent's probable intention in order to achieve the decedent's tax and other objectives.

(e) Effective date of interpretation or modification.--The court may provide that an interpretation or modification pursuant to this chapter shall be effective as of the decedent's date of death.

Cross References. Section 2803 is referred to in section 2802 of this title.

CHAPTER 31

DISPOSITIONS INDEPENDENT OF LETTERS; FAMILY EXEMPTION; PROBATE OF WILLS AND GRANT OF LETTERS

Subchapter

- A. Dispositions Independent of Letters
- B. Family Exemption
- C. Probate
- D. Grant of Letters
- E. Personal Representative; Bond
- F. Personal Representative; Revocation of Letters; Removal and Discharge

Enactment. Chapter 31 was added June 30, 1972, P.L.508, No.164, effective July 1, 1972.

SUBCHAPTER A

DISPOSITIONS INDEPENDENT OF LETTERS

Sec.

- 3101. Payments to family and funeral directors.
- 3102. Settlement of small estates on petition.

Cross References. Subchapter A is referred to in section 3126 of this title.

§ 3101. Payments to family and funeral directors.

(a) Wages, salary or employee benefits.--Any employer of a person dying domiciled in this Commonwealth at any time after the death of the employee, whether or not a personal

representative has been appointed, may pay wages, salary or any employee benefits due the deceased in an amount not exceeding \$5,000 to the spouse, any child, the father or mother, or any sister or brother (preference being given in the order named) of the deceased employee. Any employer making such a payment shall be released to the same extent as if payment had been made to a duly appointed personal representative of the decedent and he shall not be required to see to the application thereof. Any person to whom payment is made shall be answerable therefor to anyone prejudiced by an improper distribution.

(b) Deposit account.--Any bank, savings association, savings and loan association, building and loan association, credit union or other savings organization, at any time after the death of a depositor, member or certificate holder, shall pay the amount on deposit or represented by the certificate, when the total standing to the credit of the decedent in that institution does not exceed \$10,000, to the spouse, any child, the father or mother or any sister or brother (preference being given in the order named) of the deceased depositor, member or certificate holder, provided that a receipted funeral bill or an affidavit, executed by a licensed funeral director which sets forth that satisfactory arrangements for payment of funeral services have been made, is presented. Any bank, association, credit union or other savings organization making such a payment shall be released to the same extent as if payment had been made to a duly appointed personal representative of the decedent and it shall not be required to see to the application thereof. Any person to whom payment is made shall be answerable therefor to anyone prejudiced by an improper distribution.

(c) Patient's care account.--When the decedent was a qualified recipient of medical assistance from the Department of Public Welfare, the facility in which he was a patient may make payment of funds, if any, remaining in the patient's care account, for the decedent's burial expenses to a licensed funeral director in an amount not exceeding \$10,000 whether or not a personal representative has been appointed. After the payment of decedent's burial expenses, the facility may pay the balance of decedent's patient's care account, as long as the payments, including the payment for burial expenses, does not exceed \$10,000, to the spouse, any child, the father or mother or any sister or brother (preference being given in the order named) of the deceased patient. Any facility making such a payment shall be released to the same extent as if payment had been made to a duly appointed personal representative of the decedent and it shall not be required to see to the application thereof. Any licensed funeral director or other person to whom payment is made shall be answerable therefor to anyone prejudiced by an improper distribution.

(d) Life insurance payable to estate.--Any insurance company which upon the death of an individual residing in this Commonwealth owes his estate a total amount of \$11,000 or less under any policy of life, endowment, accident or health insurance, or under any annuity or pure endowment contract, may at any time after 60 days following his death pay all or any part of that amount to the spouse, any child, the father or mother or any sister or brother of the decedent (preference being given in the order named) provided that at the time of the payment no written claim for that money has been received at the office of the company specified in the policy or contract for the receipt of claims from any duly appointed personal representative of the decedent. Any insurance company making any payment in accordance with this section to an adult may

rely on the affidavit of any of the persons named in this subsection concerning the existence and relationship of these persons and shall be released to the same extent as if payment had been made to a duly appointed personal representative of the decedent and the insurance company shall not be required to see to the application thereof. Any person to whom payment is made shall be answerable therefor to anyone prejudiced by an improper distribution.

(e) Unclaimed property.--

(1) In any case where property or funds owned by an individual who has died a resident of this Commonwealth have been reported to the Commonwealth and are in the custody of the State Treasurer as unclaimed or abandoned property, the State Treasurer, at any time after the death of the individual, shall be authorized under this section to distribute the property or to pay the amount being held in custody where all of the following conditions are present:

(i) The amount of the funds or the value of the property is \$11,000 or less.

(ii) The person claiming the property or the funds is the surviving spouse, child, mother or father, or sister or brother of the decedent, with preference given in that order.

(iii) A personal representative of the decedent has not been appointed or five years have lapsed since the appointment of a personal representative of the decedent.

(2) Upon being presented with a claim for property owned by a decedent, the State Treasurer shall require the person claiming the property to provide all of the following prior to distributing the property or paying the amount held in custody:

(i) A certified death certificate of the owner.

(ii) A sworn affidavit under the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities) setting forth the relationship of the claimant to the decedent, the existence or nonexistence of a duly appointed personal representative of the decedent and any other persons that may be entitled under this section to make a claim to the decedent's property.

(iii) Other information determined by the State Treasurer to be necessary in order to distribute property or pay funds under this section to the proper person.

(3) If the State Treasurer determines the claimant to be a person entitled to claim property of a decedent owner, the State Treasurer shall pay or distribute such property to the claimant and shall thereby be released to the same extent as if payment or distribution had been made to a duly appointed personal representative of the decedent and shall not be required to oversee the application of the payments made. Any claimant to whom payment is made shall be answerable therefore to anyone prejudiced by an improper distribution or payment.

(May 10, 1974, P.L.282, No.84, eff. imd.; Dec. 19, 1975, P.L.598, No.168, eff. imd.; July 9, 1976, P.L.551, No.135, eff. imd.; July 11, 1980, P.L.565, No.118, eff. 60 days; Feb. 18, 1982, P.L.45, No.26, eff. imd.; June 28, 1993, P.L.181, No.38, eff. imd.; Dec. 1, 1994, P.L.655, No.102, eff. 60 days; June 28, 2002, P.L.478, No.80, eff. imd.; July 2, 2013, P.L.199, No.35, eff. 60 days)

2013 Amendment. Act 35 amended subsecs. (b) and (c). Section 2 of Act 35 provided that the amendment of subsecs. (b) and (c)

shall apply to estates of decedents dying on or after the effective date of section 2.

2002 Amendment. Act 80 added subsec. (e).

1994 Amendment. Act 102 amended subsec. (a). Section 10 of Act 102 provided that the amendment of subsec. (a) shall apply to the estates of decedents dying on or after the effective date of Act 102.

1982 Amendment. Act 26 amended subsec. (c) and added subsec. (d).

References in Text. The Department of Public Welfare, referred to in this section, was redesignated as the Department of Human Services by Act 132 of 2014.

Cross References. Section 3101 is referred to in section 3102 of this title.

§ 3102. Settlement of small estates on petition.

When any person dies domiciled in the Commonwealth owning property (exclusive of real estate and of property payable under section 3101 (relating to payments to family and funeral directors), but including personal property claimed as the family exemption) of a gross value not exceeding \$50,000, the orphans' court division of the county wherein the decedent was domiciled at the time of his death, upon petition of any party in interest, in its discretion, with or without appraisement, and with such notice as the court shall direct, and whether or not letters have been issued or a will probated, may direct distribution of the property (including property not paid under section 3101) to the parties entitled thereto. The authority of the court to award distribution of personal property under this section shall not be restricted because of the decedent's ownership of real estate, regardless of its value. The decree of distribution so made shall constitute sufficient authority to all transfer agents, registrars and others dealing with the property of the estate to recognize the persons named therein as entitled to receive the property to be distributed without administration, and shall in all respects have the same effect as a decree of distribution after an accounting by a personal representative. Within one year after such a decree of distribution has been made, any party in interest may file a petition to revoke it because an improper distribution has been ordered. If the court shall find that an improper distribution has been ordered, it shall revoke the decree and shall direct restitution as equity and justice shall require.

(Dec. 10, 1974, P.L.867, No.293, eff. imd.; July 11, 1980, P.L.565, No.118, eff. 60 days; Dec. 1, 1994, P.L.655, No.102, eff. 60 days; July 2, 2013, P.L.199, No.35, eff. 60 days)

2013 Amendment. Section 2 of Act 35 provided that the amendment of section 3102 shall apply to estates of decedents dying on or after the effective date of section 2.

1994 Amendment. Section 10 of Act 102 provided that the amendment of section 3102 shall apply to estates of decedents dying on or after the effective date of Act 102.

SUBCHAPTER B
FAMILY EXEMPTION

Sec.

- 3121. When allowable.
- 3122. Payment or delivery of exemption.
- 3123. Payment from real estate.
- 3124. Income.

3125. Other remedies.
3126. Grantee or lienholder.

§ 3121. When allowable.

The spouse of any decedent dying domiciled in the Commonwealth, and if there be no spouse, or if he has forfeited his rights, then such children as are members of the same household as the decedent, and in the event there are no such children, then the parent or parents of the decedent who are members of the same household as the decedent, may retain or claim as an exemption either real or personal property, or both, not theretofore sold by the personal representative, to the value of \$3,500: Provided, That property specifically devised or bequeathed by the decedent, or otherwise specifically disposed of by him, may not be so retained or claimed if other assets are available for the exemption. The surviving husband or wife shall be a competent witness as to all matters pertinent to the issue of forfeiture of the right to exemption. (June 27, 1974, P.L.383, No.130, eff. imd.; Dec. 1, 1994, P.L.655, No.102, eff. 60 days)

1994 Amendment. Section 10 of Act 102 provided that the amendment of section 3121 shall apply to the estates of decedents dying on or after the effective date of Act 102.

§ 3122. Payment or delivery of exemption.

(a) **Items claimed.**--The personal representative, if any, shall deliver to the spouse, child or children, parent or parents, the items of personal property claimed as the exemption, at the values fixed by the inventory and appraisal.

(b) **Property set aside for minors or incapacitated persons.**--When any spouse, child or parent entitled to all or part of the exemption is a minor or an incapacitated person, the guardian of his estate, and if no such guardian has been appointed then the personal representative, without request made to him by anyone, shall select, for the use and benefit of the minor or incapacitated person, real or personal property to the full value to which he is entitled, and in so doing the guardian or personal representative shall be governed by the necessities of the minor or incapacitated person in the circumstances of each case.

(c) **Control of court.**--On petition of any party in interest, the court, with or without appraisal and on such notice as it shall direct, may control the distribution and the valuation of articles of personal property retained or claimed. (Dec. 10, 1974, P.L.867, No.293, eff. imd.; Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. Act 24 amended subsec. (b). See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

§ 3123. Payment from real estate.

(a) **Appraisal.**--If the exemption is claimed in whole or in part out of real estate, the appraisal of the real estate shall be made by two appraisers appointed by the court, upon petition and after such notice as the court shall direct. The orphans' court division of the county where letters testamentary or of administration have been granted, or should no letters have been granted then of the county within which was the family or principal residence of the decedent, shall have jurisdiction concerning the exemption, whether the real estate is situate in that county or in any other county of the Commonwealth. When real estate is located outside of the county of original

jurisdiction, the orphans' court division of the county of original jurisdiction may, in its discretion, direct that an application for the appointment of appraisers shall be made to the orphans' court division of the county in which the real estate is located. The appraisers so appointed shall fix the value of the real estate as of the date of presenting the petition for their appointment and shall receive such compensation as shall be allowed by the court appointing them. Exceptions to appraisements shall be filed with the court of original jurisdiction which may, in its discretion, refer the exceptions to the orphans' court division of the county in which the real estate is located. Upon compliance with such requirements of notice as the court shall direct, the court of original jurisdiction may confirm the appraisal and set apart the real estate to the surviving spouse, child or children, parent or parents entitled thereto.

(b) Real estate valued at more than amount claimed.--When the real estate of the decedent cannot be divided so as to set apart the amount claimed without prejudice to or spoiling the whole or any parcel of it and the appraisers shall value such real estate or parcel thereof at any sum exceeding the amount claimed, it shall be lawful for the orphans' court division of original jurisdiction to confirm the appraisal and to set apart such real estate or parcel thereof for the use of the surviving spouse, child or children, parent or parents, conditioned, however, that the surviving spouse, child or children, parent or parents shall pay the amount of the valuation in excess of the amount claimed, without interest, within six months from the date of confirmation of the appraisal. If the surviving spouse, child or children, parent or parents shall refuse to take the real estate or parcel thereof at the appraisal, or shall fail to make payment as provided above, the court, on application of any party in interest, may direct the personal representative or a trustee appointed by the court to sell the same and the sale in such case shall be upon such terms and security as the court shall direct.

(c) Payment of surplus.--The real estate, if taken by the surviving spouse, child or children, parent or parents, shall vest in him or them, upon his or their payment of the surplus above so much of the exemption as shall be claimed out of the real estate to the parties entitled thereto or to the personal representative of the decedent, as the court, in its discretion, shall direct. If the real estate is sold, so much of the exemption as shall be claimed out of it shall be paid out of the purchase money to the surviving spouse, child or children, parent or parents entitled thereto, and the balance, after payment of costs, shall be distributed to the parties entitled thereto or to the personal representative of the decedent, as the court, in its discretion, shall direct.

(d) Recording and registering decrees.--A certified copy of every decree confirming an appraisal of real estate and setting it apart to the surviving spouse, child or children, parent or parents shall be recorded in the deed book in the office of the recorder of deeds of each county where the real estate shall lie, shall be indexed by the recorder in the grantor's index under the name of the decedent and in the grantee's index under the name of such surviving spouse, child or children, parent or parents, and shall be registered in the survey bureau or with the proper authorities empowered to keep a register of real estate in the county: Provided, That no decree conditioned upon payment of any surplus by the surviving

spouse, child or children, parent or parents shall be recorded or registered unless there is offered for recording, concurrently therewith, written evidence of the payment of such surplus.

(e) Costs and expenses.--All costs, appraisers' fees and expenses of recording and registering incurred in claiming the exemption shall be part of the general administration expenses of the estate.

§ 3124. Income.

When the family exemption does not exhaust the entire real and personal estate, the income of the estate shall be equitably prorated among the surviving spouse, child or children, parent or parents and the others taking the estate.

§ 3125. Other remedies.

The surviving spouse, child or children, parent or parents may also collect the exemption out of real and personal estate, together with income thereon, in the manner provided by law for the collection of legacies.

§ 3126. Grantee or lienholder.

(a) Rights accruing before death; purchase money obligation.--Nothing in Subchapter A of this chapter (relating to dispositions independent of letters) and this subchapter shall be construed as impairing any lien existing at death for the purchase money of real estate.

(b) Rights accruing after death.--A decree setting apart a family exemption shall be void as against a subsequent bona fide grantee of, or holder of a lien on, real estate, unless the decree granting the exemption from real estate, or a duplicate original or certified copy thereof, is recorded in the deed book in the office of the recorder of deeds in the county in which the real estate lies, within one year after the death of the decedent, or, if thereafter, then before the recording or entering of the instrument or lien under which such grantee or lienholder claims.

**SUBCHAPTER C
PROBATE**

Sec.

3131. Place of probate.

3132. Manner of probate.

3132.1. Self-proved wills.

3133. Limit of time for probate.

3134. Nuncupative wills (Repealed).

3135. Wills in foreign language.

3136. Wills probated outside the Commonwealth.

3137. Enforcing production of will.

3138. Later will or codicil.

§ 3131. Place of probate.

The will of a decedent domiciled in the Commonwealth at the time of his death shall be probated only before the register of the county where the decedent had his last family or principal residence. If the decedent had no domicile in the Commonwealth, his will may be probated before the register of any county where any of his property is located.

§ 3132. Manner of probate.

All wills shall be proved by the oaths or affirmations of two competent witnesses and

(1) Will signed by testator.--In the case of a will to which the testator signed his name, proof by subscribing witnesses, if there are such, shall be preferred to the

extent that they are readily available, and proof of the signature of the testator shall be preferred to proof of the signature of a subscribing witness.

(2) Will signed by mark or by another.--In the case of a will signed by mark or by another in behalf of the testator, the proof must be by subscribing witnesses, except to the extent that the register is satisfied that such proof cannot be adduced by the exercise of reasonable diligence. In that event other proof of the execution of the will, including proof of the subscribers' signatures, may be accepted, and proof of the signature of a witness who has subscribed to an attestation clause shall be prima facie proof that the facts recited in the attestation clause are true.

(3) Nuncupative will.--(Repealed).
(Dec. 10, 1974, P.L.867, No.293, eff. imd.)

1974 Repeal. Act 293 repealed par. (3).
§ 3132.1. Self-proved wills.

(a) Proof.--Unless there is a contest with respect to the validity of the will, or unless the will is signed by mark or by another as provided in section 2502 (relating to form and execution of a will), an affidavit of witness made in conformity with this section shall be accepted by the register as proof of the facts stated as if it had been made under oath before the register at the time of probate.

(b) Acknowledgment and affidavits.--An attested will may at the time of its execution or at any subsequent date be made self-proved by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of this Commonwealth or under the laws of the state where execution occurs, or made before an attorney at law and certified to such an officer as provided in subsection (c) and evidenced, in either case, by the officer's certificate, under official seal, attached or annexed to the will. A separate affidavit may be used for each witness whose affidavit is not taken at the same time as the testator's acknowledgment. The acknowledgment and affidavits shall in form and content be substantially as set forth in the Uniform Probate Code or as follows:

Acknowledgment

Commonwealth of Pennsylvania (or State of _____)
County of _____

I, _____, the testator whose name is signed to the attached or foregoing instrument, having been duly qualified according to law, do hereby acknowledge that I signed and executed the instrument as my Last Will; and that I signed it willingly and as my free and voluntary act for the purposes therein expressed.

Sworn to or affirmed and acknowledged before me
by _____, the testator, this _____
day of _____, 19____.

(Testator)

(Signature of officer or attorney)
(Seal and official capacity of
officer or state of admission of
attorney)

Affidavit

Commonwealth of Pennsylvania (or State of _____)
County of _____

We (or I), _____ and _____, the witness(es) whose name(s) are (is) signed to the attached or foregoing instrument, being duly qualified according to law, do depose and say that we were (I was) present and saw the testator sign and execute the instrument as his Last Will; that the testator signed willingly and executed it as his free and voluntary act for the purposes therein expressed; that each subscribing witness in the hearing and sight of the testator signed the will as a witness; and that to the best of our (my) knowledge the testator was at that time 18 or more years of age, of sound mind and under no constraint or undue influence.

Sworn to or affirmed and subscribed to before me by _____ and _____, witness(es), this _____ day of _____, 19____.

Witness

Witness

(Signature of officer or attorney)
(Seal and official capacity of officer or state of admission of attorney)

(c) Acknowledgment and affidavit taken before an attorney at law.--The acknowledgment of the testator and the affidavit of a witness required by subsection (b) may be made before a member of the bar of the Supreme Court of Pennsylvania or of the highest court of the state in which execution of the will occurs who certifies to an officer authorized to administer oaths that the acknowledgment and affidavit was made before him. In such case, in addition to the acknowledgment and affidavit required by subsection (b), the attorney's certification shall be evidenced by the officer before whom it was made substantially as follows:

Commonwealth of Pennsylvania (or State of _____)
County of _____

On this, the _____ day of _____, 19____, before me _____, the undersigned officer, personally appeared _____, known to me or satisfactorily proven to be a member of the bar of the highest court of (Pennsylvania or the state in which execution of the will took place), and certified that he was personally present when the foregoing acknowledgment and affidavit were signed by the testator and witnesses.

In witness whereof, I hereunto set my hand and official seal.

(Signature, seal and official capacity of officer)

(June 24, 1976, P.L.434, No.105, eff. 60 days; Feb. 18, 1982, P.L.45, No.26, eff. imd.; Oct. 12, 1984, P.L.929, No.182, eff. imd.)

1984 Amendment. Section 15 of Act 182 provided that Act 182 shall apply to the estates of all decedents dying on or after the effective date of Act 182.

Cross References. Section 3132.1 is referred to in section 6204 of Title 42 (Judiciary and Judicial Procedure).

§ 3133. Limit of time for probate.

(a) Original probate.--A will may be offered for probate at any time.

(b) Conclusiveness of original probate.--The probate of a will shall be conclusive as to all property, real or personal, devised or bequeathed by it, unless an appeal shall be taken from probate as provided in section 908 (relating to appeals), or the probate record shall have been amended as authorized by section 3138 (relating to later will or codicil).

(c) Effect upon grantee or lienholder.--A will offered for original or subsequent probate more than one year after the testator's death shall be void against a bona fide grantee or holder of a lien on real estate of the testator if the conveyance or lien is entered of record before the will is offered for probate.

(Dec. 10, 1974, P.L.867, No.293, eff. imd.; July 11, 1980, P.L.565, No.118, eff. 60 days)

1980 Amendment. Act 118 amended subsec. (c).

1974 Amendment. Act 293 amended subsec. (a).

§ 3134. Nuncupative wills (Repealed).

1974 Repeal. Section 3134 was repealed December 10, 1974, P.L.867, No.293, effective immediately.

§ 3135. Wills in foreign language.

A writing not in English shall not be filed for probate or for any other purpose in the office of the register unless there is attached to it and filed with it a translation into English, sworn to be correct. The register shall attach the translation to the original and shall file them in his office, and in all cases where a recording is now or hereafter may be required, both the original and the translation shall be recorded. A writing filed in violation of this section shall not constitute notice to any person.

§ 3136. Wills probated outside the Commonwealth.

A duly authenticated copy of a will proved outside of the Commonwealth according to the law of the place of probate may be offered for probate before any register having jurisdiction, and letters testamentary or of administration with a will annexed may be granted thereon as though the original will had been offered before such register. If, in addition to such copy, there shall be produced a duly authenticated copy of the record of the probate proceeding of the original instrument, the will shall be entitled to probate in this Commonwealth and appropriate letters shall be issued thereon without the production or examination of the witnesses to prove such will, unless the will was probated outside of the United States and the record shows or it is satisfactorily proved that an essential requirement of Pennsylvania law for a valid will has not been met. If the will was probated outside of the United States, the probate proceedings may be supplemented by the submission of additional evidence to the register.

§ 3137. Enforcing production of will.

The register, at the request of any party in interest, shall issue a citation directed to any person alleged to have possession or control of a will of a decedent requiring him to show cause why it should not be deposited with him. In the absence of good cause shown, the register shall order the will to be deposited with him.

(Dec. 10, 1974, P.L.867, No.293, eff. imd.)

§ 3138. Later will or codicil.

If a later will or codicil is submitted to the register for probate within three months of the testator's death but after the register shall have probated an earlier instrument, the register, after such notice as he deems advisable, but with at least ten-days' notice to the petitioner who presented the probated instrument if he has not requested probate of the later will or codicil, shall have power to open the probate record, receive proof of the later instrument or instruments and amend his probate record.

Cross References. Section 3138 is referred to in section 3133 of this title.

SUBCHAPTER D
GRANT OF LETTERS

Sec.

- 3151. Proper county.
- 3152. When 21 years elapsed.
- 3153. Contents of petition.
- 3154. Affidavit and oath.
- 3155. Persons entitled.
- 3156. Persons not qualified.
- 3157. Nonresidents.
- 3158. Letters of administration C.T.A.
- 3159. Letters of administration D.B.N. or D.B.N.C.T.A.
- 3160. Letters of administration durante minoritate, durante absentia, and pendente lite.
- 3161. Oath of personal representative.
- 3162. Advertisement of grant of letters.

§ 3151. Proper county.

Letters testamentary or of administration on the estate of a decedent domiciled in the Commonwealth at the time of his death shall be granted only by the register of the county where the decedent had his last family or principal residence. If the decedent had no such domicile in the Commonwealth, letters testamentary or of administration may be granted by the register of any county wherein property of the estate shall be located and, when granted, shall be exclusive throughout the Commonwealth. If the decedent had no such domicile in the Commonwealth, and had no property located therein, and service of process is to be made in the Commonwealth upon his personal representative as authorized by law, then letters testamentary or of administration on his estate may be granted by the register of any county of the Commonwealth and, when granted, shall be exclusive throughout the Commonwealth.

§ 3152. When 21 years elapsed.

Letters testamentary or of administration shall not be granted after the expiration of 21 years from the decedent's death, except on the order of the court, upon cause shown.

§ 3153. Contents of petition.

A petition for the grant of letters testamentary or of administration shall state, under oath, so far as they are known:

- (1) The decedent's name, age, state or country of domicile, his last family or principal residence, and the place and day of his death.
- (2) If the decedent died intestate, the name and residence address of the surviving spouse, if any, and the names, relationships and residence addresses of other heirs.

(3) If the decedent died testate, whether the will was modified by the occurrence of any of the circumstances delineated in section 2507 (relating to modification by circumstances).

(4) If the decedent was domiciled in the Commonwealth at the time of his death, the estimated value of all his personal property, and the estimated value and the location of his real property situated in the Commonwealth.

(5) If the decedent was not domiciled in the Commonwealth at the time of his death, the estimated value of his personal property in the Commonwealth, the estimated value of his personal property in the county in which the petition is filed, and the estimated value and location of his real property in the Commonwealth.

(6) The name and residence address of each person to whom letters are requested to be granted.

(7) Any other facts necessary to entitle the petitioner to letters.

(Dec. 10, 1974, P.L.867, No.293, eff. imd.; July 11, 1980, P.L.565, No.118, eff. 60 days)

1980 Amendment. Act 118 amended par. (1).

1974 Amendment. Act 293 amended par. (3).

§ 3154. Affidavit and oath.

(a) Fiduciary and witness.--The affidavit to a petition for the grant of letters and the oath of the fiduciary relative to the performance of his duties and, except as provided in subsection (b), the oath of a witness relative to probate of a will shall be taken before and administered by:

(1) Within the Commonwealth.--The register of any county of the Commonwealth.

(2) Outside of the Commonwealth.--A public officer of another jurisdiction having duties similar to those of a register who has been authorized to do so by the register of the county where the application for letters is to be made.

(b) Subscribing witness.--Unless there is a contest with respect to the validity of the will or unless the will is signed by mark or by another under section 2502(2) or (3) (relating to form and execution of a will), the oath of a subscribing witness relative to probate of a will may be taken before an officer authorized to administer oaths under the laws of this Commonwealth or under the laws of another state.

(July 14, 1988, P.L.553, No.99, eff. imd.)

Cross References. Section 3154 is referred to in section 911 of this title.

§ 3155. Persons entitled.

(a) Letters testamentary.--Letters testamentary shall be granted by the register to the executor designated in the will, whether or not he has declined a trust under the will.

(b) Letters of administration.--Letters of administration shall be granted by the register, in such form as the case shall require, to one or more of those hereinafter mentioned and, except for good cause, in the following order:

(1) Those entitled to the residuary estate under the will.

(2) The surviving spouse.

(3) Those entitled under the intestate law as the register, in his discretion, shall judge will best administer the estate, giving preference, however, according to the sizes of the shares of those in this class.

(4) The principal creditors of the decedent at the time of his death.

(5) Other fit persons.

(6) If anyone of the foregoing shall renounce his right to letters of administration, the register, in his discretion, may appoint a nominee of the person so renouncing in preference to the persons set forth in any succeeding paragraph.

(7) A guardianship support agency serving as guardian of an incapacitated person who dies during the guardianship administered pursuant to Subchapter F of Chapter 55 (relating to guardianship support).

(8) A redevelopment authority formed pursuant to the act of May 24, 1945 (P.L.991, No.385), known as the Urban Redevelopment Law.

(c) Time limitation.--Except with the consent of those enumerated in paragraphs (1), (2) and (3), no letters shall be issued to those enumerated in paragraph (4), (5) or (8) of subsection (b) until 30 days after the decedent's death.

(d) Death charges.--Notwithstanding the provisions of subsections (a) and (b), the register shall not grant letters testamentary or letters of administration to any person charged, whether by indictment, information or otherwise, by the United States, the Commonwealth or any of the several states, with voluntary manslaughter or homicide, except homicide by vehicle, in connection with a decedent's death unless and until the charge is withdrawn, dismissed or a verdict of not guilty is returned.

(Apr. 16, 1992, P.L.108, No.24, eff. 60 days; Dec. 20, 2000, P.L.838, No.118, eff. 60 days; Nov. 29, 2006, P.L.1536, No.171, eff. 60 days)

Cross References. Section 3155 is referred to in sections 3181, 3182 of this title.

§ 3156. Persons not qualified.

No person shall be qualified to serve as a personal representative who is:

(1) Under 18 years of age.

(2) A corporation not authorized to act as fiduciary in the Commonwealth.

(3) A person, other than an executor designated by name or description in the will, found by the register to be unfit to be entrusted with the administration of the estate.

(4) The nominee of any beneficiary, legatee or person having any interest whatsoever, when such beneficiary, legatee or person is a citizen or resident of any country outside the territorial limits or possessions of the United States, when it shall appear doubtful to the register that in the distribution of the estate any such person will have the actual benefit, use, enjoyment or control of the money or other property representing his share or interest therein.

(5) Charged, whether by indictment, information or otherwise, by the United States, the Commonwealth or any of the several states, with voluntary manslaughter or homicide, except homicide by vehicle, in connection with a decedent's death unless and until the charge is withdrawn, dismissed or a verdict of not guilty is returned.

(Dec. 6, 1972, P.L.1461, No.331; Dec. 20, 2000, P.L.838, No.118, eff. 60 days)

2000 Amendment. Act 118 added par. (5).

1972 Amendment. Act 331 amended par. (1).

Cross References. Section 3156 is referred to in sections 3181, 3182 of this title.

§ 3157. Nonresidents.

The register shall have discretion to refuse letters of administration to any individual not a resident of this Commonwealth.

(Apr. 28, 1978, P.L.202, No.53, eff. 60 days)

§ 3158. Letters of administration C.T.A.

When there is a will, but no executor qualifies, letters of administration cum testamento annexo may be granted to the person or persons entitled thereto.

§ 3159. Letters of administration D.B.N. or D.B.N.C.T.A.

When an entire vacancy occurs in the office of personal representative before administration is completed, the register, in a case of intestacy, shall grant letters of administration de bonis non, and in the case of testacy, letters de bonis non cum testamento annexo, to the person or persons entitled thereto.

§ 3160. Letters of administration durante minoritate, durante absentia, and pendente lite.

Whenever the circumstances of the case require, letters of administration durante minoritate, durante absentia, or pendente lite may be granted to any fit person or persons, after such notice, if any, as the register shall require.

§ 3161. Oath of personal representative.

Before letters shall be granted to a personal representative by the register, the personal representative shall swear that he will well and truly administer the estate according to law. The oath of a corporate personal representative may be taken by any of its officers.

§ 3162. Advertisement of grant of letters.

(a) Notice generally.--The personal representative, immediately after the grant of letters, shall cause notice thereof to be given in one newspaper of general circulation published at or near the place where the decedent resided or, in the case of a nonresident decedent, at or near the place where the letters were granted, and in the legal periodical, if any, designated by rule of court for the publication of legal notices, once a week for three successive weeks, together with his name and address; and in every such notice, he shall request all persons having claims against the estate of the decedent to make known the same to him or his attorney, and all persons indebted to the decedent to make payment to him without delay.

(b) Proofs of advertisement to trustee.--A personal representative who has advertised the grant of letters and received the notice required by section 7780.3(c) (relating to duty to inform and report) shall promptly send copies of the proofs of that advertisement to the trustee.

(Apr. 28, 1978, P.L.77, No.37, eff. 60 days; Oct. 27, 2010, P.L.837, No.85, eff. 60 days)

Cross References. Section 3162 is referred to in section 7755 of this title.

SUBCHAPTER E

PERSONAL REPRESENTATIVE; BOND

Sec.

- 3171. Individual estate.
- 3172. Register's responsibility.
- 3173. Fiduciary estate.

3174. When not required.

3175. Requiring or changing amount of bond.

§ 3171. Individual estate.

Except as hereinafter provided, before letters shall be granted to any personal representative, he shall execute and file a bond which shall be in the name of the Commonwealth, with sufficient surety, in such amount as the register considers necessary, having regard to the value of the personal estate which will come into the control of the personal representative, and conditioned in the following form:

(1) **When one personal representative.**--The condition of this obligation is, that if the said personal representative shall well and truly administer the estate according to law, this obligation shall be void; but otherwise, it shall remain in force.

(2) **When two or more personal representatives.**--The condition of this obligation is, that if the said personal representatives or any of them shall well and truly administer the estate according to law, this obligation shall be void as to the personal representative or representatives who shall so administer the estate; but otherwise, it shall remain in force.

§ 3172. Register's responsibility.

If any register shall grant letters without having taken such bond as is required by law, he and his surety shall be liable to pay all damages which shall accrue to any person by reason thereof. Nothing herein stated shall be deemed to relieve the personal representative from liability which would otherwise be imposed upon him by law.

§ 3173. Fiduciary estate.

The register, in his discretion, upon the application of any party in interest, in addition to any bond required for the decedent's individual estate, may require a separate bond in the name of the Commonwealth, with sufficient surety, in such amount as the register shall consider necessary for the protection of the parties in interest in an estate of which the decedent was a fiduciary, and conditioned in the following form:

(1) **When one personal representative.**--The condition of this obligation is, that if the said personal representative shall well and truly account for property held by the decedent as fiduciary according to law, this obligation shall be void; but otherwise, it shall remain in force.

(2) **When two or more personal representatives.**--The condition of this obligation is, that if the said personal representatives or any of them shall well and truly account for property held by the decedent as fiduciary according to law, this obligation shall be void as to the personal representative or representatives who shall so account; but otherwise, it shall remain in force.

§ 3174. When not required.

(a) **Corporate personal representative.**--No bond shall be required of:

(1) A bank and trust company or of a trust company incorporated in this Commonwealth.

(2) A national bank having its principal office in this Commonwealth.

(3) A foreign corporate fiduciary or a national bank having its principal office out of this Commonwealth, otherwise qualified to act if the laws of the state in which it is incorporated or in which the national bank is located

provide a similar exemption for corporations existing under the laws of this Commonwealth.

(b) Individual personal representative.--Unless a bond is ordered by the court or is required by the will, if any, no bond shall be required of an individual personal representative who:

(1) Is named in the will as an original or successor personal representative and:

(i) is a resident of this Commonwealth;

(ii) has been excused from filing a bond by the express direction of the testator in his will; or

(iii) is not a resident of this Commonwealth but will serve with a resident co-personal representative of whom no bond is required if the petition for letters includes an averment that all assets will remain in the custody and control of the resident co-personal representative.

(2) Is not named in the will, if any, as an original or successor personal representative but is a resident of this Commonwealth and is either the sole residuary legatee or next of kin or is the nominee of all residuary legatees or next of kin who are adult and sui juris.

(July 9, 1976, P.L.551, No.135, eff. imd.; Apr. 18, 1978, P.L.42, No.23, eff. 60 days; July 11, 1980, P.L.565, No.118, eff. 60 days)

§ 3175. Requiring or changing amount of bond.

The court, upon cause shown and after such notice, if any, as it shall direct, may require a surety bond, or increase or decrease the amount of an existing bond, or require more or less security therefor.

SUBCHAPTER F

PERSONAL REPRESENTATIVE; REVOCATION OF LETTERS; REMOVAL AND DISCHARGE

Sec.

3181. Revocation of letters.

3182. Grounds for removal.

3183. Procedure for and effect of removal.

3184. Discharge of personal representative and surety.

§ 3181. Revocation of letters.

(a) When no will.--The register may revoke letters of administration granted by him whenever it appears that the person to whom the letters were granted is not entitled thereto.

(b) When a will.--The register may amend or revoke letters testamentary or of administration granted by him not in conformity with the provisions of a will admitted to probate.

(c) Death charges.--Whether or not a will has been submitted or admitted, the register may revoke letters testamentary or of administration when it appears that the person to whom the letters were granted has been charged with voluntary manslaughter or homicide, except homicide by vehicle, as set forth in sections 3155 (relating to persons entitled) and 3156 (relating to persons not qualified), provided that the revocation shall not occur on these grounds if and when the charge has been dismissed, withdrawn or terminated by a verdict of not guilty.

(Dec. 20, 2000, P.L.838, No.118, eff. 60 days)

2000 Amendment. Act 118 added subsec. (c).

§ 3182. Grounds for removal.

The court shall have exclusive power to remove a personal representative when he:

(1) is wasting or mismanaging the estate, is or is likely to become insolvent, or has failed to perform any duty imposed by law; or

(2) (Deleted by amendment).

(3) has become incapacitated to discharge the duties of his office because of sickness or physical or mental incapacity and his incapacity is likely to continue to the injury of the estate; or

(4) has removed from the Commonwealth or has ceased to have a known place of residence therein, without furnishing such security or additional security as the court shall direct; or

(4.1) has been charged with voluntary manslaughter or homicide, except homicide by vehicle, as set forth in sections 3155 (relating to persons entitled) and 3156 (relating to persons not qualified), provided that the removal shall not occur on these grounds if the charge has been dismissed, withdrawn or terminated by a verdict of not guilty; or

(5) when, for any other reason, the interests of the estate are likely to be jeopardized by his continuance in office.

(Apr. 16, 1992, P.L.108, No.24, eff. 60 days; Dec. 20, 2000, P.L.838, No.118, eff. 60 days)

2000 Amendment. Act 118 added par. (4.1).

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 3182 is referred to in sections 5131, 5515 of this title.

§ 3183. Procedure for and effect of removal.

The court on its own motion may, and on the petition of any party in interest alleging adequate grounds for removal shall, order the personal representative to appear and show cause why he should not be removed, or, when necessary to protect the rights of creditors or parties in interest, may summarily remove him. Upon removal, the court may direct the grant of new letters testamentary or of administration by the register to the person entitled and may, by summary attachment of the person or other appropriate orders, provide for the security and delivery of the assets of the estate, together with all books, accounts and papers relating thereto. Any personal representative summarily removed under the provisions of this section may apply, by petition, to have the decree of removal vacated and to be reinstated, and, if the court shall vacate the decree of removal and reinstate him, it shall thereupon make any orders which may be appropriate to accomplish the reinstatement.

Cross References. Section 3183 is referred to in sections 5131, 5515, 7766 of this title.

§ 3184. Discharge of personal representative and surety.

After confirmation of his final account and distribution to the parties entitled, a personal representative and his surety may be discharged by the court from future liability. The court may discharge only the surety from future liability, allowing the personal representative to continue without surety, upon condition that no further assets shall come into the control of the personal representative until he files another bond with sufficient surety, as required by the register.

Cross References. Section 3184 is referred to in sections 5131, 5515, 7766, 7792 of this title.

CHAPTER 33
ADMINISTRATION AND PERSONAL REPRESENTATIVES

Subchapter

- A. Inventory
- B. Personal Representatives; Powers, Duties and Liabilities
- C. Sales, Pledges, Mortgages, Leases, Options and Exchanges
- D. Abatement, Survival and Control of Actions
- E. Claims; Charges; Rights of Creditors

Enactment. Chapter 33 was added June 30, 1972, P.L.508, No.164, effective July 1, 1972.

SUBCHAPTER A
INVENTORY

Sec.

- 3301. Duty of personal representative.
- 3302. Valuations.
- 3303. Supplemental inventory.
- 3304. Claims against personal representative.
- 3305. Objections to inventory.

§ 3301. Duty of personal representative.

(a) **General assets.**--Every personal representative shall file with the register a verified inventory of all real and personal estate of the decedent, except real estate outside of this Commonwealth. An ancillary personal representative shall include in the inventory only assets for which he is responsible.

(b) **Real estate outside of Commonwealth.**--The inventory shall include at the end a memorandum of real estate outside of this Commonwealth. The memorandum, at the election of the personal representative, may indicate the value of each item of real estate included therein, but the values so fixed shall not be extended into the total of the inventory or included as real estate in subsequent accountings.

(c) **Time for filing.**--The personal representative shall file his inventory no later than the date he files his account or the due date, including any extension, for the filing of the inheritance tax return for the estate, whichever is earlier. Any party in interest in the estate may request the filing of an inventory at an earlier date by writing delivered to the personal representative or his attorney in which event an inventory shall be filed within three months after the appointment of the personal representative or within 30 days after the request, whichever is later. The court may direct the personal representative to file an inventory of estate assets at any time.

(Oct. 12, 1984, P.L.929, No.182, eff. imd.; Oct. 27, 2010, P.L.837, No.85, eff. 60 days)

2010 Amendment. Act 85 amended subsec. (c).

§ 3302. Valuations.

The personal representative shall determine and state in figures opposite each item of the inventory its fair value as of the date of the decedent's death.

§ 3303. Supplemental inventory.

Whenever any property not included in the inventory comes to the knowledge of the personal representative, he shall file, within 30 days of its discovery, a supplemental inventory thereof with the register.

§ 3304. Claims against personal representative.

The appointment of a personal representative shall not operate as a discharge or bequest of any debt which he owes the decedent or of any claim which the decedent had against him, but any such debt or claim, if it survives, shall be included in the inventory.

§ 3305. Objections to inventory.

Objections to the inventory may be made by any party in interest at any time up to and including the time fixed by rule of court for making objections to the first account of the personal representative. Such objections in the discretion of the court may be heard at the audit of the account. Objections to the inventory also may be made in the form of objections to the account.

SUBCHAPTER B

**PERSONAL REPRESENTATIVES; POWERS,
DUTIES AND LIABILITIES**

Sec.

- 3311. Possession of real and personal estate; exception.
- 3312. Renunciation of right to administer property.
- 3313. Liability insurance.
- 3314. Continuation of business.
- 3315. Incorporation of estate's business.
- 3316. Investment of funds.
- 3316.1. Set-aside.
- 3317. Claims against co-fiduciary.
- 3318. Revival of judgments against personal representative.
- 3319. Power of attorney; delegation of power over subscription rights and fractional shares; authorized delegations.
- 3320. Voting stock by proxy.
- 3321. Nominee registration; corporate fiduciary as agent; deposit of securities in a clearing corporation; book-entry securities.
- 3322. Acceptance of deed in lieu of foreclosure.
- 3323. Compromise of controversies.
- 3324. Death or incapacity of fiduciary.
- 3325. Administrator C.T.A.
- 3326. Administrator D.B.N. and D.B.N.C.T.A.
- 3327. Surviving or remaining personal representatives.
- 3328. Disagreement of personal representatives.
- 3329. Effect of revocation of letters, probate of will, later will or codicil.
- 3330. Notice of devise or bequest to corporation or association.
- 3331. Liability of personal representative on contracts.
- 3332. Inherent powers and duties.

§ 3311. Possession of real and personal estate; exception.

(a) Personal representative.--A personal representative shall have the right to and shall take possession of, maintain and administer all the real and personal estate of the decedent, except real estate occupied at the time of death by an heir or devisee with the consent of the decedent. He shall collect the rents and income from each asset in his possession until it is sold or distributed, and, during the administration of the

estate, shall have the right to maintain any action with respect to it and shall make all reasonable expenditures necessary to preserve it. The court may direct the personal representative to take possession of, administer and maintain real estate so occupied by an heir or a devisee if this is necessary to protect the rights of claimants or other parties. Nothing in this section shall affect the personal representative's power to sell real estate occupied by an heir or devisee.

(b) Redevelopment authority.--A redevelopment authority granted letters of administration shall have the power to take, clear, combine or transfer title to real property of the estate as necessary to return such property to productive use and, upon payment of fair market value of the property in its current state, to the estate.

(Nov. 29, 2006, P.L.1536, No.171, eff. 60 days)

§ 3312. Renunciation of right to administer property.

When any property is of no value to the estate, the court may authorize the personal representative to renounce his right to administer it.

§ 3313. Liability insurance.

The personal representative, at the expense of the estate, may protect himself, his employees and the beneficiaries by insurance from liability to third persons arising from the administration of the estate.

Cross References. Section 3313 is referred to in sections 5144, 5521 of this title.

§ 3314. Continuation of business.

The court, aided by the report of a master if necessary, may authorize the personal representative to continue any business of the estate for the benefit of the estate and in doing so the court, for cause shown, may disregard the provisions of the governing instrument, if any. The order may be with or without notice. If prior notice is not given to all parties in interest, it shall be given within five days after the order or within such extended time as the court, for cause shown, shall allow. Any party in interest may, at any time, petition the court to revoke or modify the order. The order may provide:

- (1) for the conduct of business, by the personal representative alone or jointly with others, or, unless restricted by the terms of the governing instrument, as a corporation to be formed;
 - (2) the extent of the liability of the estate or any part thereof, or of the personal representative, for obligations incurred in the continuation of the business;
 - (3) whether liabilities incurred in the conduct of the business are to be chargeable solely to the part of the estate set aside for use in the business or to the estate as a whole;
 - (4) the period of time the business may be conducted;
- and
- (5) such other regulations, including accountings, as the court shall deem advisable.

Cross References. Section 3314 is referred to in sections 5144, 5521 of this title.

§ 3315. Incorporation of estate's business.

After notice to all parties in interest, aided by the report of a master if necessary, the court, unless restricted by the terms of the governing instrument, may authorize the personal representative alone or jointly with others, to organize a corporation to carry on the business of the estate, whether the

business was owned solely or with others, and may contribute for stock of the corporation, as capital, all or part of the property of the estate which was invested in the business.

Cross References. Section 3315 is referred to in sections 5144, 5521 of this title.

§ 3316. Investment of funds.

Subject to his duty to liquidate the estate for prompt distribution and to the provisions of the will, if any, the personal representative may invest the funds of the estate but shall have no duty to do so. Any such investment, except as the court or the will may otherwise authorize or direct, shall be restricted to:

(1) obligations of the United States or the United States Treasury, of the Commonwealth, or of any political subdivision of the Commonwealth;

(2) an interest-bearing deposit in any bank, bank and trust company, savings bank or national banking association located within this Commonwealth if:

(i) the maturity date or the permissible date of withdrawal does not exceed one year from the date of the deposit or any renewal thereof; and

(ii) the deposits do not exceed the amount which is fully insured by the Federal Deposit Insurance Corporation pursuant to the Federal Deposit Insurance Act (64 Stat. 873, 12 U.S.C. §§ 264 and 1811 et seq.);

(3) savings accounts of any savings association incorporated under the laws of this Commonwealth, or of any Federal savings and loan association incorporated under the laws of the United States, if the withdrawal or repurchase value thereof is insured by the Federal Deposit Insurance Corporation pursuant to the Federal Deposit Insurance Act; and

(4) a money market mutual fund affiliated with a corporate personal representative.

The personal representative may also make temporary investments as authorized by section 7207 (relating to retention of cash; temporary investments) without regard to any investment restrictions imposed by the will.

(Dec. 16, 1992, P.L.1163, No.152, eff. imd.; June 25, 1999, P.L.212, No.28, eff. 6 months)

1999 Amendment. See section 6(a) of Act 28 in the appendix to this title for special provisions relating to applicability.

1992 Amendment. See section 27(b) of Act 152 in the appendix to this title for special provisions relating to applicability.

§ 3316.1. Set-aside.

A personal representative may, without court approval, set aside property in a separate fund prior to actual distribution, after which income earned on the separate fund and appreciation or depreciation of the property set-aside shall belong to the separate fund.

(Oct. 12, 1999, P.L.422, No.39, eff. 60 days)

1999 Amendment. Act 39 added section 3316.1. See section 13(8) of Act 39 in the appendix to this title for special provisions relating to applicability.

§ 3317. Claims against co-fiduciary.

When one of two or more personal representatives shall be individually liable to the estate, the other or others shall take any legal action against him necessary to protect the estate.

Cross References. Section 3317 is referred to in sections 5144, 5521 of this title.

§ 3318. Revival of judgments against personal representative.

When the estate holds a judgment which is a lien on the real estate of the personal representative, any party in interest may suggest his interest in the judgment upon the record thereof and bring an appropriate action to revive it and to continue its lien. Any judgment so revived shall remain for the use of all parties in interest.

Cross References. Section 3318 is referred to in sections 5144, 5521 of this title.

§ 3319. Power of attorney; delegation of power over subscription rights and fractional shares; authorized delegations.

(a) Power of attorney.--A personal representative may convey real estate, transfer title to personal estate, or perform any other act of administration by an attorney or agent under a power of attorney. Nothing in this subsection authorizes the delegation of any discretionary power.

(b) Delegation of power over subscription rights and fractional shares.--Where there is more than one personal representative, one or more may delegate to another the power to decide whether rights to subscribe to stock should be sold or should be exercised, and also the power to decide whether a fractional share of stock should be sold or should be rounded out to a whole share through the purchase of an additional fraction, and also the power to carry out any such decision. Any delegation may extend to all subscription rights and fractional shares from time to time received by the personal representatives on account of stock held by them, or may be limited to any extent specified in the delegation. No exercise of any delegated power shall be valid, unless:

(1) the stock on which the subscription rights or fractional shares are issued are listed or traded on the New York Stock Exchange or any other exchange approved by the Department of Banking; and

(2) the shares held by the personal representatives on which the subscription rights or fractional shares are issued constitute less than 5% of the total outstanding shares of the same class of the same corporation.

(c) Delegation authorized by governing instrument.--Nothing in this section precludes a delegation authorized by the governing instrument.

(Oct. 12, 1999, P.L.422, No.39, eff. 60 days)

1999 Amendment. Act 39 amended subsec. (a). See section 13(8) of Act 39 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 3319 is referred to in sections 5144, 5521 of this title.

§ 3320. Voting stock by proxy.

The personal representatives or a majority of them, either in person or by proxy, may vote stock owned by the estate.

Cross References. Section 3320 is referred to in sections 5144, 5521 of this title.

§ 3321. Nominee registration; corporate fiduciary as agent; deposit of securities in a clearing corporation; book-entry securities.

(a) Corporate personal representative.--A bank and trust company or a trust company incorporated in the Commonwealth, or a national bank with trust powers having its principal office in the Commonwealth, may keep investments or fractional interests in investments held by it, either as sole personal representative or jointly with other personal representatives, in the name or names of the personal representatives or in the name of the nominee of the corporate personal representative: Provided, That the consent thereto of all the personal representatives is obtained: And provided further, That all such investments shall be so designated upon the records of the corporate personal representative that the estate to which they belong shall appear clearly at all times.

(b) Individual personal representative.--A personal representative serving jointly with a bank and trust company or a trust company incorporated in the Commonwealth, or with a national bank having its principal office in the Commonwealth, may authorize or consent to the corporate personal representative having exclusive custody of the assets of the estate and to the holding of such investments in the name of a nominee of such corporate personal representative, to the same extent and subject to the same requirements that the corporate personal representative, if it were the sole personal representative, would be authorized to hold such investments in the name of its nominee.

(c) Corporate fiduciary as agent.--An individual personal representative may employ a bank and trust company or a trust company incorporated in the Commonwealth, or a national bank with trust powers having its principal office in the Commonwealth, to act as his agent under a power of attorney in the performance of ministerial duties, including the safekeeping of estate assets, and such agent, when so acting, may be authorized to hold such investments in the name of its nominee to the same extent and subject to the same requirements that such agent, if it were the personal representative, would be authorized to hold such investments in the name of the nominee.

(d) Deposit of securities in a clearing corporation.--A personal representative holding securities in its fiduciary capacity, any bank and trust company, trust company or National bank holding securities as an agent pursuant to subsection (c) of this section, is authorized to deposit or arrange for the deposit of such securities in a clearing corporation (as defined in Division 8 of Title 13 (relating to investment securities)). When such securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other such securities deposited in such clearing corporation by any person regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such bank and trust company, trust company or National bank acting as an agent under a power of attorney for a personal representative shall at all times show the name of the party for whose account the securities are so deposited. Title to such securities may be transferred by bookkeeping entry on the books of such clearing corporation without physical delivery of certificates representing such securities. A bank and trust company, trust company or National bank so depositing securities pursuant to this section shall be subject to such rules and regulations as, in the case of State chartered institutions, the Department of Banking and, in the case of National banking associations, the

comptroller of the currency may from time to time issue including, without limitation, standards for, or the method of making a determination of, the financial responsibility of any clearing corporation in which securities are deposited. A bank and trust company, trust company or National bank acting as custodian for a personal representative shall, on demand by the personal representative, certify in writing to the personal representative the securities so deposited by such bank and trust company, trust company or National bank in such clearing corporation for the account of such personal representative. A personal representative shall, on demand by any party to a judicial proceeding for the settlement of such personal representative's account or on demand by the attorney for such party, certify in writing to such party the securities deposited by such personal representative in such clearing corporation for its account as such personal representative.

(e) Accounting for book-entry securities.--With respect to securities which are available in book-entry form as an alternative to securities in definitive form, the receipt, holding or transfer of such securities in book-entry form by a bank and trust company, trust company or National bank acting as a sole or joint personal representative, or as an attorney-in-fact for a personal representative, is for all purposes equivalent to the receipt, holding or transfer of such securities in definitive form and no segregation of such book-entry securities shall be required other than by appropriate accounting records to identify the accounts for which such securities are held.

(Oct. 10, 1974, P.L.720, No.242, eff. imd.; Nov. 1, 1979, P.L.255, No.86, eff. Jan. 1, 1980; Dec. 16, 1992, P.L.1163, No.152, eff. imd.; Oct. 12, 1999, P.L.422, No.39, eff. 60 days)

1999 Amendment. Act 39 amended the section heading and subsecs. (c) and (d). See section 13(8) of Act 39 in the appendix to this title for special provisions relating to applicability.

1992 Amendment. Act 152 amended subsec. (e). Section 27(e) of Act 152 provided that the amendment shall apply beginning with the effective date of Act 152.

1974 Amendment. Act 242 amended the section heading and added subsecs. (d) and (e). Section 4 of Act 242 provided that the amendment or addition of the section heading and subsecs. (d) and (e) shall apply without regard to the date of the instrument or court order under which a fiduciary is acting or may act.

Cross References. Section 3321 is referred to in sections 5144, 5521, 5607, 7780, 7792 of this title.

§ 3322. Acceptance of deed in lieu of foreclosure.

The personal representative may take for the estate from the owner of property encumbered by a mortgage owned by the estate, a deed in lieu of foreclosure, in which event the real estate shall be considered personalty to the same extent as though title were acquired by foreclosure at sheriff's sale. Any deed or deeds heretofore so accepted are hereby made valid in accordance with the provisions hereof.

Cross References. Section 3322 is referred to in sections 5144, 5521 of this title.

§ 3323. Compromise of controversies.

(a) In general.--Whenever it shall be proposed to compromise or settle any claim, whether in suit or not, by or against an estate, or to compromise or settle any question or dispute

concerning the validity or construction of any governing instrument, or the distribution of all or any part of any estate, or any other controversy affecting any estate, the court, on petition by the personal representative or by any party in interest setting forth all the facts and circumstances, and after such notice as the court shall direct, aided if necessary by the report of a master, may enter a decree authorizing the compromise or settlement to be made.

(b) Pending court action.--

(1) Court order.--Whenever it is desired to compromise or settle an action in which damages are sought to be recovered on behalf of an estate, any court or division thereof in which such action is pending and which has jurisdiction thereof may, upon oral motion by plaintiff's counsel of record in such action, or upon petition by the personal representative of such decedent, make an order approving such compromise or settlement. Such order may approve an agreement for the payment of counsel fees and other proper expenses incident to such action.

(2) Order not subject to collateral attack.--The order of the court approving such compromise or settlement or an agreement for the payment of counsel fees and other expenses shall not be subject to collateral attack in the orphans' court division in the settlement of an estate.

(3) Filing copy of order; additional security.--The personal representative shall file a copy of the order of the court approving such compromise or settlement in the office of the register of wills or clerk of the court having jurisdiction of the estate. When the personal representative has been required to give bond, he shall not receive the proceeds of any such compromise or settlement until the court of the county having jurisdiction of his estate has made an order excusing him from entering additional security or requiring additional security, and in the latter event, only after he has entered the additional security.

Cross References. Section 3323 is referred to in sections 5144, 5521, 7792 of this title.

§ 3324. Death or incapacity of fiduciary.

The personal representative of the estate of a deceased fiduciary or the guardian of an adjudged incapacitated fiduciary by reason of his position shall not succeed to the administration of, or have the right to possess, any asset of an estate which was being administered by the deceased or incapacitated fiduciary, except to protect it pending its delivery to the person entitled to it. The account of the deceased or incapacitated fiduciary may be filed by the fiduciary of his estate and it shall be filed if the court shall so direct. The court may direct the fiduciary of a deceased or incapacitated fiduciary to make the distribution and to make the transfers and assignments necessary to carry into effect a decree of distribution.

(Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 3324 is referred to in sections 5144, 5521, 7792 of this title.

§ 3325. Administrator C.T.A.

An administrator with the will annexed shall have all the powers given by the will to the executor, unless otherwise provided by the will. When he has been required to give bond,

no proceeds of real estate shall be paid to him until the court has made an order excusing him from entering additional security or requiring additional security, and in the latter event, only after he has entered the additional security.

§ 3326. Administrator D.B.N. and D.B.N.C.T.A.

An administrator de bonis non, with or without a will annexed, shall have the power to recover the assets of the estate from his predecessor in administration or from the personal representative of such predecessor and, except as the will shall provide otherwise, shall stand in his predecessor's stead for all purposes, except that he shall not be personally liable for the acts of his predecessor. When he has been required to give bond, no proceeds of real estate shall be paid to him until the court has made an order excusing him from entering additional security or requiring additional security, and in the latter event, only after he has entered the additional security.

§ 3327. Surviving or remaining personal representatives.

Surviving or remaining personal representatives shall have all the powers of the original personal representatives, unless otherwise provided by the governing instrument.

Cross References. Section 3327 is referred to in sections 5144, 5521 of this title.

§ 3328. Disagreement of personal representatives.

(a) Decision of majority.--If a dispute shall arise among personal representatives, the decision of the majority shall control unless otherwise provided by the governing instrument, if any. A dissenting personal representative shall join with the majority to carry out a majority decision requiring affirmative action and may be ordered to do so by the court. A dissenting personal representative shall not be liable for the consequences of any majority decision even though he joins in carrying it out, if his dissent is expressed promptly to all the other personal representatives: Provided, That liability for failure to join in administering the estate or to prevent a breach of trust may not be thus avoided.

(b) When no majority.--When a dispute shall arise among personal representatives as to the exercise or nonexercise of any of their powers and there shall be no agreement of a majority of them, unless otherwise provided by the governing instrument, the court, upon petition filed by any of the personal representatives or by any party in interest, aided if necessary by the report of a master, in its discretion, may direct the exercise or nonexercise of the power as the court shall deem for the best interest of the estate.

Cross References. Section 3328 is referred to in sections 5144, 5521 of this title.

§ 3329. Effect of revocation of letters, probate of will, later will or codicil.

No act of administration performed by a personal representative in good faith shall be impeached by the subsequent revocation of his letters or by the subsequent probate of a will, of a later will or of a codicil: Provided, That regardless of the good or bad faith of the personal representative, no person who deals in good faith with a duly qualified personal representative shall be prejudiced by the subsequent occurrence of any of these contingencies.

§ 3330. Notice of devise or bequest to corporation or association.

A personal representative to whom original letters are granted shall send a written notice, within three months after the grant of letters, to each corporation or association named as a beneficiary in the decedent's will, stating the date of the decedent's death, the county where the will has been probated, and that it is named as a beneficiary.

§ 3331. Liability of personal representative on contracts.

Unless he expressly contracts otherwise, in writing, a personal representative shall not be personally liable on any written contract which is within his authority as personal representative and discloses that he is contracting as personal representative of a named estate. Any action on such a contract shall be brought against the personal representative in his fiduciary capacity only, or against his successor in such capacity, and execution upon any judgment obtained therein shall be had only against property of the estate.

Cross References. Section 3331 is referred to in sections 5144, 5521 of this title.

§ 3332. Inherent powers and duties.

Except as otherwise provided in this title, nothing in this title shall be construed to limit the inherent powers and duties of a personal representative.

Cross References. Section 3332 is referred to in sections 5144, 5521, 7792 of this title.

SUBCHAPTER C

**SALES, PLEDGES, MORTGAGES, LEASES,
OPTIONS AND EXCHANGES**

Sec.

- 3351. Power to sell.
- 3352. Power to lease.
- 3353. Order of court.
- 3354. Power given in governing instrument.
- 3355. Restraint of sale.
- 3356. Purchase by personal representative.
- 3357. Title of purchaser.
- 3358. Collateral attack.
- 3359. Record of proceedings; county where real estate lies.
- 3360. Contracts, inadequacy of consideration or better offer; brokers' commissions.

§ 3351. Power to sell.

Except as otherwise provided by the will, if any, the personal representative may sell, at public or private sale, any personal property whether specifically bequeathed or not, and any real property not specifically devised, and with the joinder of the specific devisee real property specifically devised. When the personal representative has been required to give a bond, no proceeds of real estate, including proceeds arising by reason of involuntary conversion, shall be paid to him until the court has made an order excusing him from entering additional security or requiring additional security, and in the latter event, only after he has entered the additional security.

(Dec. 10, 1974, P.L.867, No.293, eff. imd.)

1974 Amendment. Section 20(b) of Act 293 provided that the amendment of section 3351 shall be retroactive to July 1, 1972.

§ 3352. Power to lease.

Except as otherwise provided by the will, if any, the personal representative may lease any real or personal property which he is entitled to possess. The lease may be for a term expiring not more than one year after the decedent's death unless it is terminable by the personal representative at any later time on 30 days' notice, or unless a longer term is approved by the court.

§ 3353. Order of court.

When the personal representative is not authorized to do so by this title or is denied the power to do so by the governing instrument, if any, or when it is advisable that a sale have the effect of a judicial sale, he may sell any real or personal property of the estate, including property specifically devised, at public or private sale, or may pledge, mortgage, lease, or exchange any such property, or grant an option for the sale, lease, or exchange of any such property, under order of the orphans' court division of the county where letters testamentary or of administration were granted, upon such terms and upon such security and after such notice as the court shall direct, whenever the court shall find such sale, pledge, mortgage, lease, exchange, or option to be desirable for the proper administration and distribution of the estate.
(Dec. 10, 1974, P.L.867, No.293, eff. imd.)

Cross References. Section 3353 is referred to in sections 3357, 7792, 7794 of this title; section 8152 of Title 42 (Judiciary and Judicial Procedure).

§ 3354. Power given in governing instrument.

A testamentary power given in the governing instrument to sell, unless expressly restricted, shall include the power to sell at public or private sale or to pledge or mortgage for any purpose of administration or distribution, but shall not include the right to grant an option without court order. A private sale may be made, with court approval, under the provisions of this title, although the governing instrument has directed a public sale. A power in the governing instrument to sell, pledge, mortgage, lease, or exchange, or to grant an option for a purchase, lease, or exchange of property not given to any person by name or description shall be deemed to have been given to the personal representative and may be exercised without court approval. When the personal representative has been required to give bond, no proceeds of real estate shall be paid to him until the court has made an order excusing him from entering additional security or requiring additional security, and in the latter event, only after he has entered the additional security.

Cross References. Section 3354 is referred to in section 7792 of this title.

§ 3355. Restraint of sale.

The court, on its own motion or upon application of any party in interest, in its discretion, may restrain a personal representative from making any sale under an authority not given by the governing instrument or from carrying out any contract of sale made by him under an authority not so given. The order may be conditioned upon the applicant giving bond for the protection of parties in interest who may be prejudiced thereby. The order shall be void as against a bona fide grantee of, or holder of a lien on, real estate unless the decree restraining the sale, or a duplicate original or certified copy thereof, is recorded in the deed book in the office of the recorder of deeds in the county in which such real estate lies, before the

recording or entering of the instrument or lien under which such grantee or lienholder claims.

Cross References. Section 3355 is referred to in sections 5153, 5521, 7792 of this title.

§ 3356. Purchase by personal representative.

In addition to any right conferred by a governing instrument, if any, the personal representative, in his individual capacity, may bid for, purchase, take a mortgage on, lease, or take by exchange, real or personal property belonging to the estate, subject, however, to the approval of the court, and under such terms and conditions and after such reasonable notice to parties in interest as it shall direct. The court may make an order directing a co-fiduciary, if any, or the court's clerk to execute a deed or other appropriate instrument to the purchasing personal representative.

(Dec. 10, 1974, P.L.867, No.293, eff. imd.)

Cross References. Section 3356 is referred to in sections 5153, 5521, 7792 of this title.

§ 3357. Title of purchaser.

(a) General rule.--If the personal representative has given such bond, if any, as shall be required in accordance with this title, any sale, mortgage, or exchange by him, whether pursuant to a decree or to the exercise of a testamentary power or of a power under this title, shall pass the full title of the decedent therein, unless otherwise specified, discharged from the lien of legacies, from liability for all debts and obligations of the decedent, from all liabilities incident to the administration of the decedent's estate, and from all claims of distributees and of persons claiming in their right, except that no such sale, mortgage or exchange by a personal representative, unless made under section 3353 (relating to order of court) for the purpose of divesting a lien existing at the decedent's death, shall divest the interest of a bona fide grantee of, or a holder of a lien on, real property of the decedent who has acquired such interest for value under a prior recorded document from or through those entitled to the interest of the decedent in the real property by will or by intestacy, either:

(1) more than one year after the death of the decedent and when no letters issued in the Commonwealth upon the decedent's estate were in effect; or

(2) within such year if no letters upon the decedent's estate have been issued in the Commonwealth during that year.

(b) Effect of certain circumstances.--Persons dealing with the personal representative shall have no obligation to see to the proper application of the cash or other assets given in exchange for the property of the estate. Any sale or exchange by a personal representative pursuant to a decree under section 3353 shall have the effect of a judicial sale, but the court may decree a sale or exchange freed and discharged from the lien of any mortgage otherwise preserved from discharge by existing law, if the holder of such mortgage shall consent by writing filed in the proceeding. No such sale, mortgage, exchange, or conveyance shall be prejudiced by the terms of any will or codicil thereafter probated or by the subsequent revocation of the letters of the personal representative who made the sale, mortgage, exchange, or conveyance if the person dealing with the personal representative did so in good faith. (July 9, 1976, P.L.551, No.135, eff. imd.)

Cross References. Section 3357 is referred to in section 8152 of Title 42 (Judiciary and Judicial Procedure).

§ 3358. Collateral attack.

No decree entered pursuant to this title shall be subject to collateral attack on account of any irregularity if the court which entered it had jurisdiction to do so.

Cross References. Section 3358 is referred to in sections 5153, 7792 of this title.

§ 3359. Record of proceedings; county where real estate lies.

Certified copies of proceedings of any court of the Commonwealth relating to or affecting real estate may be recorded in the office for the recording of deeds in any county in which the real estate lies.

Cross References. Section 3359 is referred to in sections 5153, 5521, 7792 of this title.

§ 3360. Contracts, inadequacy of consideration or better offer; brokers' commissions.

(a) Inadequacy of consideration or better offer.--When a personal representative shall make a contract not requiring approval of court, or when the court shall approve a contract of a personal representative requiring approval of the court, neither inadequacy of consideration, nor the receipt of an offer to deal on other terms shall, except as otherwise agreed by the parties, relieve the personal representative of the obligation to perform his contract or shall constitute ground for any court to set aside the contract, or to refuse to enforce it by specific performance or otherwise: Provided, That this subsection shall not affect or change the inherent right of the court to set aside a contract for fraud, accident or mistake. Nothing in this subsection shall affect the liability of a personal representative for surcharge on the ground of negligence or bad faith in making a contract.

(b) Brokers' commissions.--When a personal representative shall enter into an agreement of sale of real estate in good faith, which is not binding under subsection (a) of this section and which is set aside upon receipt of a higher offer for such real estate, he shall not be relieved from the payment of real estate broker or broker's commissions to the broker who had procured such agreement of sale, and in the event that more than one real estate broker is entitled to commissions for said agreements of sale, then such commissions shall be equally divided between or among such real estate brokers: Provided further, That the total aggregate commission paid as a percentage of the gross consideration of the final sale shall in no event exceed a fair commission for a single sale of the property involved.

(Dec. 10, 1974, P.L.867, No.293, eff. imd.)

1974 Amendment. Act 293 amended subsec. (b).

Cross References. Section 3360 is referred to in sections 5153, 5521 of this title.

SUBCHAPTER D

ABATEMENT, SURVIVAL AND CONTROL OF ACTIONS

Sec.

3371. Actions which survive.

3372. Substitution of personal representative in pending action or proceedings.

- 3373. Action by or against personal representative.
- 3374. Death or removal of fiduciary.
- 3375. Abatement of action for failure to take out letters.
- 3376. Limitations against debt due estate.
- 3377. Execution on judgments.

§ 3371. Actions which survive.

All causes of action or proceedings shall survive as provided by 42 Pa.C.S. § 8302 (relating to survival action).

(Apr. 28, 1978, P.L.202, No.53, eff. 60 days).

§ 3372. Substitution of personal representative in pending action or proceedings.

Substitution of the personal representative of a deceased party to a pending action or proceeding shall be as provided by law.

Cross References. Section 3372 is referred to in section 5521 of this title.

§ 3373. Action by or against personal representative.

An action or proceeding to enforce any right or liability which survives a decedent may be brought by or against his personal representative alone or with other parties as though the decedent were alive.

§ 3374. Death or removal of fiduciary.

An action or proceeding to which a fiduciary is a party is not abated by his death or resignation or by the termination of his authority. The successor of the fiduciary may be substituted in the action or proceeding in the manner provided by law.

Cross References. Section 3374 is referred to in section 5521 of this title.

§ 3375. Abatement of action for failure to take out letters.

If a plaintiff or petitioner in any action or proceeding now pending or hereafter brought dies and a personal representative is not appointed within one year after a suggestion of such death is filed in the action or proceeding, any defendant or respondent may petition the court to abate the action as to the cause of action of the decedent. Copies of the petition shall be served upon the executor named in the will, if known to the defendant, and otherwise upon all known next of kin entitled to letters of administration. The court shall abate the action as to the cause of action of the decedent if the delay in taking out letters is not reasonably explained.

§ 3376. Limitations against debt due estate.

Any statute of limitation which would bar any debt or liability owed the estate of a decedent within one year after the decedent's death shall be extended until the end of one year following the decedent's death. Failure or delay in taking out letters testamentary or of administration shall not affect the operation of any statute of limitations applicable to a debt or liability owed the estate of a decedent.

(July 9, 1976, P.L.551, No.135, eff. imd.)

§ 3377. Execution on judgments.

(a) When prohibited.--No execution shall issue against, nor shall any levy be made upon, any real or personal property of the estate of a decedent by virtue of a judgment against him or his personal representative unless:

(1) agreed to by the personal representative in a writing filed in the action or proceeding; or

(2) approved by the orphans' court division of the county in which letters testamentary or of administration have been granted, or if none have been granted, then by the

orphans' court division of the county in which the principal or family residence of the decedent was located. The court may require the giving of notice to the personal representative and to parties in interest or may waive all notice.

(b) When allowed.--The restrictions of subsection (a) of this section shall not apply to actions or proceedings to enforce mortgages, ground rents, pledges, or conditional sales of real or personal property.

Saved from Suspension. Pennsylvania Rule of Civil Procedure for Justices of the Peace No.482, as amended April 25, 1979, provided that section 3377 shall not be deemed suspended or affected. Rules 401 through 482 relate to execution of judgments for the payment of money rendered by justices of the peace. Act 207 of 2004 changed justices of the peace to magisterial district judges. Rule 482 can now be found in Rules of Conduct, Office Standards and Civil Procedure for Magisterial District Judges.

Pennsylvania Rule of Civil Procedure No. 3159(b)(1), adopted April 20, 1998, provided that section 5107 shall not be deemed suspended or affected by Rules 3101 through 3149 relating to enforcement of money judgments for the payment of money.

SUBCHAPTER E

CLAIMS; CHARGES; RIGHTS OF CREDITORS

Sec.

- 3381. Liens and charges existing at death not impaired.
- 3382. Judgments which are liens at death.
- 3383. Statutes of limitations; claims not barred at death.
- 3384. Notice of claim.
- 3384.1. Notice after settlor of revocable trust has died.
- 3385. Limitation upon claims.
- 3386. Failure to present claim at audit.
- 3387. Claims not due; certain to become due.
- 3388. Claims not certain to become due.
- 3389. Claims subject to litigation in other courts.
- 3390. Specific performance of contracts.
- 3391. Proceeding against personal representative.
- 3392. Classification and order of payment.
- 3393. Notice to Commonwealth and political subdivisions.

§ 3381. Liens and charges existing at death not impaired.

Nothing in this title shall be construed as impairing any lien or charge on real or personal estate of the decedent which existed at his death.

Cross References. Section 3381 is referred to in section 3385 of this title.

§ 3382. Judgments which are liens at death.

Any judgment which at the decedent's death was a lien on real estate then owned by him or on real estate which he had conveyed by deed not recorded during his life shall continue to bind the real estate for five years from the inception or last revival of the lien or for one year from the decedent's death, whichever shall be longer, although the judgment be not revived after his death. During this period, the judgment shall rank according to its priority at the time of death, and after this period, it shall not continue to be a lien on the real estate, unless revived. Any judgment against the decedent which is a lien on real estate alienated by him may be revived by an

action of scire facias brought against the decedent, but before any judgment shall be entered thereon, the personal representative shall be made a party defendant and served with process in the action.

Cross References. Section 3382 is referred to in section 3385 of this title.

§ 3383. Statutes of limitations; claims not barred at death.

The death of a person shall not stop the running of the statute of limitations applicable to any claim against him, but a claim which otherwise would be barred within one year after the death of the decedent shall not be barred until the expiration of one year after his death. Nothing in this section shall be construed to shorten the period which would have been allowed by any applicable statute of limitations if the decedent had continued to live.

§ 3384. Notice of claim.

(a) Written notice.--Written notice of any claim against a decedent given to the personal representative or his attorney of record before the claim is barred shall toll the statute of limitations.

(b) Acts equivalent to written notice.--Any of the following acts by a claimant shall be equivalent to the giving of written notice of a claim to the personal representative:

(1) Instituting proceedings to compel the filing of an account.

(2) Bringing an action against the personal representative in any court having jurisdiction of the claim and having the writ or pleading duly served on the personal representative.

(3) Substituting the personal representative as a defendant in an action pending against the decedent.

(4) Receiving a written acknowledgment by the personal representative or his attorney of record of the existence of the claim.

Cross References. Section 3384 is referred to in section 7755 of this title.

§ 3384.1. Notice after settlor of revocable trust has died.

No later than 30 days after the date on which the trustee of a revocable trust learns that a personal representative has been appointed for the deceased settlor's estate, the trustee shall send to the settlor's personal representative the notice described in section 7780.3(i) (relating to duty to inform and report).

(July 7, 2006, P.L.625, No.98, eff. 120 days)

2006 Amendment. Act 98 added section 3384.1.

§ 3385. Limitation upon claims.

All claims against the decedent, subject only to the provisions of section 3381 (relating to liens and charges existing at death not impaired) and section 3382 (relating to judgments which are liens at death), shall become unenforceable after one year from the decedent's death against a bona fide grantee of, or holder of a lien on, real property of the decedent who has acquired his interest for value from or through those entitled to the property by will or by intestacy, either:

(1) more than one year after the death of the decedent and when no letters issued in the Commonwealth upon the decedent's estate were in effect; or

(2) within such year if no letters upon the decedent's estate have been issued in the Commonwealth during that year.

Nothing in this section shall be construed to limit the right of a personal representative subsequently appointed to recover from the heir or devisee the value of property so sold or encumbered.

§ 3386. Failure to present claim at audit.

If any claimant whose claim is not reported to the court by the personal representative as an admitted claim shall fail to present it at the call for audit or confirmation, he shall not be entitled to receive any share of the real and personal estate distributed pursuant to such audit or confirmation, whether the estate of the decedent be solvent or insolvent.

§ 3387. Claims not due; certain to become due.

Upon satisfactory proof or admission of a claim which is not due but certain to become due, the court may provide for payment by one of the following methods:

(1) Awarding the present value of the claim, as agreed to by the claimant and the personal representative.

(2) Ordering the personal representative to retain or pay into the court sufficient assets to pay on maturity of the claim the whole amount then due, or a proportionate amount in case of insolvency.

Cross References. Section 3387 is referred to in section 7755 of this title.

§ 3388. Claims not certain to become due.

Upon satisfactory proof or admission of a claim which may or may not become due at a future time, the court may provide for payment by one of the following methods:

(1) Awarding the present value of the claim, as agreed to by the claimant and the personal representative.

(2) Ordering the personal representative to distribute the estate but to retain or pay into court sufficient assets to pay the claim, or a proportionate amount in case of insolvency, if and when it becomes absolute.

(3) Making such other provisions for the disposition or satisfaction of the claim as shall be equitable.

Cross References. Section 3388 is referred to in section 7755 of this title.

§ 3389. Claims subject to litigation in other courts.

When any claim not proved in the orphans' court division is being litigated in any other division or court, State or Federal, having jurisdiction thereof, the court may make such provision for the disposition or satisfaction of the claim as shall be equitable.

§ 3390. Specific performance of contracts.

(a) Application to court.--If any person makes a legally binding agreement to purchase or sell real or personal estate and dies before its consummation, his personal representative shall have power to consummate it, but if he does not do so, the court, on the application of any party in interest and after such notice and with such security, if any, as it may direct, in its discretion, may order specific performance of the agreement if it would have been enforced specifically had the decedent not died.

(b) Execution and effect of deed or transfer.--Any necessary deed or transfer shall be executed by the personal representative or by such other person as the court shall direct. The title of any purchaser under an agreement in which the decedent was the vendor shall be the same as though the decedent had conveyed or transferred such property in his lifetime.

(c) Indexing in judgment or ejectment and miscellaneous indexes.--When any petition for specific performance of an agreement to purchase or sell real estate is filed, the prothonotary of the court of common pleas where the real estate or any part of it lies, upon the receipt of a certificate of such fact by the clerk of the court where the petition was filed, shall enter the petition upon either the judgment or ejectment and miscellaneous indexes against the defendants as directed by local rules of court and shall certify it as lis pendens in any certificate of search which he is required to make by virtue of his office.

Cross References. Section 3390 is referred to in section 5521 of this title.

§ 3391. Proceeding against personal representative.

Any proceeding may be brought against a personal representative or the surety on his bond in the county where his letters have been granted, and if the personal representative or surety does not reside in that county, process may be served on either of them personally, or as follows:

(1) When resident of another county.--By a duly deputized sheriff of any other county of the Commonwealth in which he shall be found.

(2) When a nonresident of the Commonwealth.--By the sheriff of the county where letters have been granted sending, by registered mail, return receipt requested, a true and attested copy of the process to the Department of State, accompanied by the fee prescribed by law, and to the personal representative or surety at his last known address, with an endorsement thereon showing that service has been so made upon the Department of State.

§ 3392. Classification and order of payment.

If the applicable assets of the estate are insufficient to pay all proper charges and claims in full, the personal representative, subject to any preference given by law to claims due the United States, shall pay them in the following order, without priority as between claims of the same class:

(1) The costs of administration.

(2) The family exemption.

(3) The costs of the decedent's funeral and burial, and the costs of medicines furnished to him within six months of his death, of medical or nursing services performed for him within that time, of hospital services including maintenance provided him within that time, of services provided under the medical assistance program provided within that time and of services performed for him by any of his employees within that time.

(4) The cost of a gravemarker.

(5) Rents for the occupancy of the decedent's residence for six months immediately prior to his death.

(5.1) Claims by the Commonwealth and the political subdivisions of the Commonwealth.

(6) All other claims.

(Feb. 21, 2006, P.L.45, No.17, eff. imd.)

2006 Amendment. Section 2 of Act 17 provided that Act 17 shall apply to the estate of a decedent who dies on or after the effective date of Act 17.

Cross References. Section 3392 is referred to in section 7755 of this title.

§ 3393. Notice to Commonwealth and political subdivisions.

When the Commonwealth or a political subdivision thereof has a claim for maintaining in an institution a person who has died in the institution, the personal representative, within three months after the grant of letters, shall give notice thereof to the Department of Revenue or to the proper officer of such political subdivision, as the case may be.

Cross References. Section 3393 is referred to in section 7755 of this title.

CHAPTER 35

ACCOUNTS AND DISTRIBUTION

Subchapter

- A. Accounts
- B. Audits
- C. Review
- D. Distribution
- E. Rights of Distributees
- F. Legacies, Annuities, and Other Charges

Enactment. Chapter 35 was added June 30, 1972, P.L.508, No.164, effective July 1, 1972.

SUBCHAPTER A

ACCOUNTS

Sec.

- 3501. Accounting required (Repealed).
- 3501.1. Accounting by personal representative.
- 3501.2. Annexation of account of terminated trust, guardianship or agency.
- 3502. Where filed.
- 3503. Notice to parties in interest.
- 3504. Representation of parties in interest (Repealed).
- § 3501. Accounting required (Repealed).**

1974 Repeal. Section 3501 was repealed December 10, 1974, P.L.867, No.293, effective immediately.

§ 3501.1. Accounting by personal representative.

A personal representative may file his account at any time after four months from the first complete advertisement of the original grant of letters, but shall not file it earlier unless directed to do so by the court. A personal representative may be cited to file an account at any time after the expiration of six months from the first complete advertisement of the original grant of letters. A personal representative may be directed by the court to file an account of his administration at any time.

(Dec. 10, 1974, P.L.867, No.293, eff. imd.)

1974 Amendment. Act 293 added section 3501.1.

§ 3501.2. Annexation of account of terminated trust, guardianship or agency.

A personal representative who has received property from a trustee, guardian or agent following the decedent's death may annex a copy of an account of the administration of the trust, guardianship or agency to an account filed by the personal representative covering the administration of the estate. If notice of the annexation of the account of the trust,

guardianship or agency is given to the persons required to be notified of the filing of the account of the estate, confirmation of the account of the estate shall relieve both the personal representative and the trustee, guardian or agent of all liability to the persons so notified for transactions shown in the accounts so annexed to the same extent as if the annexed account had been separately filed and confirmed. (Oct. 12, 1984, P.L.929, No.182, eff. imd.)

1984 Amendment. Act 182 added section 3501.2. Section 15 of Act 182 provided that section 3501.2 shall apply to trusts and the estates of decedents, whether the trust was created or the decedent died before, on or after the effective date of Act 182, as well as to funds presently held by the clerks.

Cross References. Section 3501.2 is referred to in section 7799.1 of this title.

§ 3502. Where filed.

The account of the personal representative shall be filed in the office of the clerk.

(Oct. 12, 1984, P.L.929, No.182, eff. imd.)

1984 Amendment. Section 15 of Act 182 provided that the amendment of section 3502 shall apply to the estates of all decedents dying on or after the effective date of Act 182.

§ 3503. Notice to parties in interest.

The personal representative shall give written notice of the filing of his account and of its call for audit or confirmation to every person known to the personal representative to have or assert an interest in the estate as beneficiary, heir, next of kin or claimant, unless the interest of such person has been satisfied or unless such person fails to respond to a demand under section 3532(b.1) (relating to at risk of personal representative).

(Dec. 16, 1992, P.L.1163, No.152, eff. imd.)

1992 Amendment. Section 27(d) of Act 152 provided that the amendment of section 3503 shall apply to the estates of decedents dying on or after the effective date of Act 152.

Cross References. Section 3503 is referred to in sections 5163, 5533 of this title.

§ 3504. Representation of parties in interest (Repealed).

1999 Repeal. Section 3504 was repealed October 12, 1999, P.L.422, No.39, effective in 60 days.

**SUBCHAPTER B
AUDITS**

Sec.

3511. Audits in counties having separate orphans' court division.

3512. Audits in counties having no separate orphans' court division.

3513. Statement of proposed distribution.

3514. Confirmation of account and approval of proposed distribution.

§ 3511. Audits in counties having separate orphans' court division.

In any county having a separate orphans' court division, the account of a personal representative shall be examined and audited by the court without expense to the parties, except

when all parties in interest in a pending proceeding shall nominate an auditor whom the court may in its discretion appoint.

Cross References. Section 3511 is referred to in sections 5163, 5533, 7799.2 of this title.

§ 3512. Audits in counties having no separate orphans' court division.

In any county having no separate orphans' court division, the account of a personal representative shall be confirmed by the court or by the clerk, as local rules shall prescribe, if no objections are presented within a time fixed by general rule of court. If any party in interest shall object to the account, or shall request its reference to an auditor, the court, in its discretion, may appoint an auditor.

Cross References. Section 3512 is referred to in sections 5163, 5533, 7799.2 of this title.

§ 3513. Statement of proposed distribution.

A personal representative filing an account shall file a statement of proposed distribution or a request that distribution be determined by the court or by an auditor, as local rules may prescribe. The statement of proposed distribution shall be in such form, and such notice thereof shall be given by advertisement or otherwise, and objections thereto may be made, as local rules prescribe.

Cross References. Section 3513 is referred to in sections 5163, 5533, 7799.2 of this title.

§ 3514. Confirmation of account and approval of proposed distribution.

No account shall be confirmed, or statement of proposed distribution approved, until an adjudication or a decree of distribution is filed in conformity with local rules by the court or by the clerk of the court, expressly confirming the account or approving the statement of proposed distribution and specifying or indicating by reference to the statement of proposed distribution the names of the persons to whom the balance available for distribution is awarded and the amount or share awarded to each.

Cross References. Section 3514 is referred to in sections 5163, 5533, 7799.2 of this title.

**SUBCHAPTER C
REVIEW**

Sec.

3521. Rehearing; relief granted.

§ 3521. Rehearing; relief granted.

If any party in interest shall, within five years after the final confirmation of any account of a personal representative, file a petition to review any part of the account or of an auditor's report, or of the adjudication, or of any decree of distribution, setting forth specifically alleged errors therein, the court shall give such relief as equity and justice shall require: Provided, That no such review shall impose liability on the personal representative as to any property which was distributed by him in accordance with a decree of court before the filing of the petition. The court or master considering the petition may include in his adjudication or report, findings

of fact and of law as to the entire controversy, in pursuance of which a final order may be made.

Cross References. Section 3521 is referred to in sections 5163, 5167, 5533, 7798, 7799.2 of this title.

SUBCHAPTER D DISTRIBUTION

Sec.

- 3531. Estates not exceeding \$50,000.
- 3532. At risk of personal representative.
- 3533. Award upon final confirmation of account.
- 3534. Distribution in kind.
- 3534.1. Cost of distribution of tangible personal property.
- 3535. Delivery of possession of real estate.
- 3536. Recording and registering decrees awarding real estate.
- 3537. Compensation.
- 3538. Distributions involving persons born out of wedlock.
- 3539. Change in law after pattern of distribution established.
- 3540. Absentee and additional distributees.

§ 3531. Estates not exceeding \$50,000.

When the gross real and personal estate of a decedent does not exceed the value of \$50,000, the personal representative, after the expiration of one year from the date of the first complete advertisement of the grant of letters, may present his petition to the court with an annexed account showing the administration of the estate, the distribution theretofore made and suggesting the proper distribution of the estate not theretofore distributed. Thereupon, the court, upon satisfactory proof of notice to all known parties in interest, may approve the distribution theretofore made and order distribution of the assets not theretofore distributed and discharge the personal representative and his sureties from future liability without the expense of proceedings as in a formal account. The court may discharge only the surety from future liability, and may allow the personal representative to continue without surety upon condition that no further assets shall come into the possession of the personal representative until he files another bond, with sufficient surety, as required by the register. (Dec. 10, 1974, P.L.867, No.293, eff. imd.; Dec. 1, 1994, P.L.655, No.102, eff. 60 days; July 2, 2013, P.L.199, No.35, eff. 60 days)

2013 Amendment. Section 2 of Act 35 provided that the amendment of section 3531 shall apply to estates of decedents dying on or after the effective date of section 2.

1994 Amendment. Section 10 of Act 102 provided that the amendment of section 3531 shall apply to estates of decedents dying on or after the effective date of Act 102.

§ 3532. At risk of personal representative.

(a) Rights of claimants against personal representatives.--A personal representative, at his own risk and without the filing, audit or confirmation of his account, may distribute real or personal property and such distribution shall be without liability to any claimant against the decedent, unless the claim of such claimant is known to the personal representative within one year after the first complete advertisement of the grant of letters to such personal representative or thereafter but prior to such distribution.

(b) Rights of claimants against distributed property.--

(1) Personal property.--No claimant shall have any claim against personal property distributed by a personal representative at his own risk pursuant to subsection (a), unless the claim of such claimant is known to the personal representative within one year after the first complete advertisement of the grant of letters or thereafter but prior to such distribution.

(2) Real property.--No claimant shall have any claim against real property conveyed by a personal representative in distribution at his own risk pursuant to subsection (a) hereof, unless such claimant, within one year after the decedent's death, files a written notice of his claim with the clerk. Such claim against real property shall expire at the end of five years after the decedent's death, unless within that time the personal representative files an account or the claimant files a petition to compel an accounting.

(3) Liens and charges existing at death.--Nothing in this section shall be construed as affecting any lien or charge which existed at the time of the decedent's death on his real or personal property.

(b.1) Limitation on rights of claimants.--A personal representative may make written demand by mail or delivery to any person who may have a claim but who has not previously given written notice of his claim to the personal representative. If the personal representative's demand requests the person to give written notice of his claim within 60 days from the mailing or delivery of the demand or within one year from the first complete advertisement of the grant of letters, whichever is later, and the person fails to do so, the person shall not have any rights with respect to such claim under subsection (a) or (b)(1) and shall not have any right on account of such claim to receive notice of the filing of the personal representative's account and of its call for audit or confirmation. The personal representative shall not be liable to any such person or to any beneficiary, heir or next of kin or creditor of the estate for making or failing to make demand under this subsection.

(c) Record of risk distributions.--The personal representative may file with the clerk receipts, releases and refunding agreements which he may have received from persons to whom he has made a risk distribution, or from other parties in interest. Receipts, releases and refunding agreements so filed shall be indexed under the name of the estate. Their acceptance shall not be construed as court approval of any act of administration or distribution therein reflected.

(July 9, 1976, P.L.551, No.135, eff. imd.; Dec. 16, 1992, P.L.1163, No.152, eff. imd.)

1992 Amendment. Act 152 amended subsecs. (a) and (b)(1) and added subsec. (b.1). Section 27(d) of Act 152 provided that the amendment or addition of subsecs. (a), (b)(1) and (b.1) shall apply to the estates of decedents dying on or after the effective date of Act 152.

1976 Amendment. Act 135 added subsec. (c).

Cross References. Section 3532 is referred to in sections 3503, 5163, 5533, 7799.2 of this title.

§ 3533. Award upon final confirmation of account.

A personal representative shall be relieved of liability with respect to all real and personal estate distributed in conformity with a decree of court or in accordance with rule of court after confirmation of an account. In making any such distribution, the personal representative shall not be entitled

to demand refunding bonds from the distributees, except as provided by this title or as directed by the court.

Cross References. Section 3533 is referred to in sections 5163, 5533, 7799.2 of this title.

§ 3534. Distribution in kind.

The court, for cause shown, may order the estate to be distributed in kind to the parties in interest, including fiduciaries. In such case, when there are two or more distributees, distribution may be made of undivided interests in real or personal estate or the personal representative or a distributee may request the court to divide, partition and allot the property, or to direct the sale of the property. If such a request is made, the court, after such notice as it shall direct, shall fairly divide, partition and allot the property among the distributees in proportion to their respective interests, or the court may direct the personal representative to sell at a sale confined to the distributees, or at a private or public sale not so confined, any property which cannot be so divided, partitioned or allotted.

Cross References. Section 3534 is referred to in sections 5163, 5533 of this title.

§ 3534.1. Cost of distribution of tangible personal property.

Except as otherwise provided in the will, if any, the personal representative shall pay as an expense of administration the reasonable expenses of storage, insurance, packing and delivery of tangible personal property to a beneficiary.

(July 7, 2006, P.L.625, No.98, eff. 60 days)

2006 Amendment. Act 98 added section 3534.1. Section 16(1) of Act 98 provided that section 3534.1 shall apply to the estates of decedents who die on or after the effective date of par. (1).

§ 3535. Delivery of possession of real estate.

Upon application of any party in interest and after such notice as the court shall direct, the court may order the personal representative to deliver to any distributee possession of any real estate to which he is entitled, provided that claimants and other distributees are not prejudiced thereby. The personal representative shall cease to be responsible for the maintenance of such real estate unless and until possession of it is returned to him with his consent or by order of court. The court, at any time prior to a final decree approving the distribution, may order the distributee to return the possession of any such real estate to the personal representative or may require the distributee to give security for the rents or rental value pending a decree of distribution.

§ 3536. Recording and registering decrees awarding real estate.

A certified copy of every adjudication or decree awarding real estate or an appropriate excerpt from either of them shall be recorded, at the expense of the estate, in the deed book in the office of the recorder of deeds of each county where the real estate so awarded lies, shall be indexed by the recorder in the grantor's index under the name of the decedent and in the grantee's index under the name of the distributee, and shall be registered in the survey bureau or with the proper authorities empowered to keep a register of real estate in the county: Provided, That no adjudication or decree awarding real estate subject to the payment of any sum by the distributee shall be recorded or registered unless there is offered for

recording, concurrently therewith, written evidence of the payment of such sum.

Cross References. Section 3536 is referred to in sections 5163, 5533, 7799.2 of this title.

§ 3537. Compensation.

The court shall allow such compensation to the personal representative as shall in the circumstances be reasonable and just, and may calculate such compensation on a graduated percentage.

§ 3538. Distributions involving persons born out of wedlock.

A personal representative may administer an estate on the assumption that no person born out of wedlock is entitled to share as a distributee unless the personal representative has knowledge or has received notice that such a person with possible distributee's rights exists. If a personal representative has distributed an estate, or part thereof, in good faith without knowledge of a person born out of wedlock who has rights as a distributee, said distribution actually made shall not impose liability on the personal representative. Except as herein otherwise provided, a person born out of wedlock shall have the same rights in an estate and shall be subject to such time limitations and to such procedures as are applied to any other heir or claimant against an estate. (Nov. 26, 1978, P.L.1269, No.303, eff. imd.)

1978 Amendment. Act 303 added section 3538. Section 5 of Act 303 provided that Act 303 shall not apply to wills or conveyances executed prior to the effective date of Act 303 or to rights from and through a child's father if the father had died prior to the effective date of Act 303.

Cross References. Section 3538 is referred to in section 7799.2 of this title.

§ 3539. Change in law after pattern of distribution established.

A personal representative shall have no liability for continued distribution of real or personal property in accordance with a pattern of distribution that conformed to the law in effect when distribution began, notwithstanding any intervening change in law that would require a different pattern of distribution, unless he is actually aware, after the law is changed, of information relevant to the change in the rights of interested parties or otherwise fails to act reasonably in ascertaining such rights. Nothing in this section shall in any way affect any cause of action which the parties in interest may have among themselves.

(July 11, 1980, P.L.565, No.118, eff. 60 days; Oct. 12, 1984, P.L.929, No.182, eff. imd.)

1984 Amendment. Section 15 of Act 182 provided that the amendment of section 3539 shall apply to distributions begun and changes in law occurring before, on or after the effective date of Act 182.

Cross References. Section 3539 is referred to in section 7799.2 of this title.

§ 3540. Absentee and additional distributees.

(a) Distributions due absentees.--

(1) If the continued existence or whereabouts of an heir, devisee or legatee who once existed cannot be ascertained at the time of the audit of the personal representative's account, the court, unless it finds pursuant to section 5701 (relating to proof of death) that the

absentee's death has disqualified him as a distributee of the estate, or unless a trustee has been appointed for such absentee pursuant to section 5702 (relating to trustee for absentee), shall direct that any property distributable to the absentee shall be converted into money that shall be paid into the State Treasury, through the Department of Revenue. The moneys shall be held in a custodial capacity subject to refund, without appropriation, pursuant to section 24 of Article III of the Constitution of Pennsylvania.

(2) The court shall retain jurisdiction with respect to any claim to such moneys. Upon further findings and order of court that a claimant is entitled to all or a part of the moneys, the Department of Revenue, upon petition, shall refund such moneys pursuant to the order of court.

(b) Possibility of additional distributees.--If the existence of a person or persons would affect the distribution of an estate but there is no proof that such a person ever existed, and the court is satisfied that all reasonable steps have been taken to determine whether such a person existed, the court may award distribution of the estate to those who would be entitled if no such person existed, with or without refunding bonds. Any such bond shall be without security, shall be in such form and amount as the court directs, shall be executed by each distributee and filed with the clerk, and shall provide that if, within seven years or any shorter period fixed by the court, it is later established that there is an additional person or persons entitled to share in the distribution of the estate, the distributee upon demand will return such portion or all of the property received by him as the court may direct or, if it has been disposed of, will make such restitution as the court deems equitable. In the case of distribution under this subsection to the Commonwealth as intestate heir, in lieu of bond, payment shall be as provided in subsection (a). (July 11, 1980, P.L.565, No.118, eff. imd.; Oct. 12, 1984, P.L.929, No.182, eff. imd.)

1984 Amendment. Section 15 of Act 182 provided that the amendment of section 3540 shall apply to trusts and the estates of decedents, whether the trust was created or the decedent died before, on or after the effective date of Act 182, as well as to funds presently held by the clerks.

Cross References. Section 3540 is referred to in section 7799.2 of this title.

SUBCHAPTER E

RIGHTS OF DISTRIBUTEES

Sec.

- 3541. Order of abatement.
- 3542. Contribution.
- 3543. Income on distributive shares.
- 3544. Liability of personal representative for interest.
- 3545. Transcripts of balances due by personal representative.
- 3546. Determination of title to decedent's interest in real estate.

§ 3541. Order of abatement.

(a) General rules.--Except as otherwise provided by the will, if the assets are insufficient to pay all claimants and distributees in full, the shares of distributees, without distinction between real and personal estate, shall have priority of distribution in the following order:

- (1) Property specifically devised or bequeathed to or for the benefit of the surviving spouse.
- (2) Property specifically devised or bequeathed to or for the benefit of the decedent's issue.
- (3) Property specifically devised or bequeathed to or for the benefit of other distributees.
- (4) Property disposed of by will in the form of a general bequest of cash, stocks or bonds.
- (5) Property disposed of by general devise or bequest and not included in a residuary clause.
- (6) Property devised or bequeathed in a residuary clause.
- (7) Property not disposed of by the will.

(b) Demonstrative legacies.--Property out of which a demonstrative legacy is primarily to be paid shall be deemed to be specifically devised or bequeathed to the extent of such demonstrative legacy.

Cross References. Section 3541 is referred to in sections 3542, 7799.2 of this title.

§ 3542. Contribution.

The court may make orders of contribution among legatees or devisees to accomplish an abatement in accordance with the provisions of section 3541 (relating to order of abatement), and may determine whether the amount thereof shall be paid before distribution or shall constitute a lien on particular property which is distributed.

§ 3543. Income on distributive shares.

(a) Pecuniary legacy.--A pecuniary legacy bequeathed in trust shall be entitled to income at the rate of 5% per annum from the death of the decedent until the payment of the legacy, and when not in trust from one year after the death of the decedent until the payment of the legacy.

(b) Specific legacy or devise.--A specific legatee or devisee shall be entitled to the net income from property given to him accrued from the date of the death of the decedent.

(c) Demonstrative legacy.--A demonstrative legacy shall be entitled to income from the death of the decedent until the payment of the legacy at the rate earned by the property out of which it is primarily payable, and to the extent that it is not paid from that source, at the rate of 5% per annum from one year after the death of the decedent until the payment of the legacy.

(d) Residuary legacy or devise.--All income from real and personal estate earned during the period of administration and not payable to others pursuant to the governing instrument or this section shall be distributed pro rata among the income beneficiaries of any trust created out of the residuary estate and the other persons entitled to the residuary estate.

(e) Future date.--A legacy payable at a future date, unless earlier set aside as a separate trust, shall not begin to bear income until three months after the date fixed for payment or delivery.

(f) Relationship.--Income shall be paid on distributive shares with no distinction because of the relationship of the distributee to the decedent.

(g) Testamentary provisions.--All rules set forth in this section are subject to the provisions of the decedent's will. (July 11, 1980, P.L.565, No.118, eff. imd.; July 7, 2006, P.L.625, No.98, eff. 60 days)

Cross References. Section 3543 is referred to in sections 7799, 8121 of this title.

§ 3544. Liability of personal representative for interest.

A personal representative who has committed a breach of duty with respect to estate assets shall, in the discretion of the court, be liable for interest, not exceeding the legal rate on such assets.

Cross References. Section 3544 is referred to in sections 5163, 5533 of this title.

§ 3545. Transcripts of balances due by personal representative.

(a) **Filing in common pleas.**--The prothonotary of any court of common pleas shall, on demand of any party in interest, file and docket a certified transcript or extract from the record showing that an orphans' court division has adjudged an amount to be due by a personal representative, and such transcript or extract shall constitute a judgment against the personal representative from the time of its filing with the same effect as if it had been obtained in an action in the trial or civil division of the court of common pleas. If the amount adjudged to be due by the personal representative shall be increased or decreased on appeal, the prothonotary shall, if the decree of the appellate court is certified to him, change his records accordingly, and if the appellate court has increased the amount, the excess shall constitute a judgment against the personal representative from the time when the records are so changed.

(b) **Satisfaction and discharge.**--If the orphans' court division shall order the personal representative to be relieved from any such judgment, the prothonotary shall, on demand of any party in interest, enter on his records a certified copy of such order, which shall operate as a satisfaction of the judgment.

(Dec. 10, 1974, P.L.867, No.293, eff. imd.)

1974 Amendment. Act 293 amended subsec. (a).

Cross References. Section 3545 is referred to in sections 5163, 5533, 7799.2 of this title.

§ 3546. Determination of title to decedent's interest in real estate.

When a person shall die leaving an interest in real estate within the Commonwealth and no letters testamentary or of administration have been granted on the estate of the decedent in the Commonwealth, and one year has expired since the decedent's death, or if a personal representative has been appointed and has not filed his account within six years of the death of the decedent, any person claiming an interest in the real estate as or through an heir or devisee of the decedent may present a petition to establish title thereto in the orphans' court division of the county where the letters testamentary or of administration have been granted, or should no letters have been granted, then in the orphans' court division of the county within which was the family or principal residence of the decedent. If the decedent was a nonresident of the Commonwealth, the petition may be presented in the orphans' court division of any county wherein any of the real estate shall lie. The court, aided if necessary by the report of a master, may enter its decree nisi adjudging that the title to the decedent's interest in the real estate is in such person or persons as the court shall determine. Notice of the decree nisi shall be given to creditors and other parties in interest, by advertisement and otherwise, as the court shall direct. If

no exception to the decree is filed within three months, it shall be confirmed absolutely, free of all decedent's debts not then liens of record, and regardless of the provisions of any testamentary writing of the decedent thereafter probated. A certified copy of the decree shall be recorded in the office of the recorder of deeds of each county where real estate included in the decree shall lie, shall be indexed by the recorder in the grantor's index under the name of the decedent and in the grantee's index under the name of each distributee, and shall be registered in the survey bureau or with the proper authorities empowered to keep a register of real estate in the county.

SUBCHAPTER F
LEGACIES, ANNUITIES, AND OTHER CHARGES

Sec.

3551. Enforcement of payment.

3552. Discharge of portion of property from charges payable in the future.

3553. Discharge of property from lien of charge.

3554. Presumption of payment, release or extinguishment.

§ 3551. Enforcement of payment.

When a sum of money is charged upon real or personal property by will, inter vivos trust or decree, and has become payable, the court having jurisdiction of the estate or trust, upon petition of a party in interest and after notice to all persons liable for its payment and to the owner of the property charged, may enter a decree directing payment by the person liable, and in default of payment, may direct the fiduciary or a trustee to be appointed to sell the property charged, or so much of it as shall be necessary, upon such terms and security as the court shall direct, in which event the proceeds of the sale shall be distributed under the direction of the court as in other cases of judicial sales, to the persons legally entitled to receive them.

§ 3552. Discharge of portion of property from charges payable in the future.

When a sum of money is charged upon real or personal property by will, inter vivos trust or decree, and is payable at a future date, the court having jurisdiction of the estate or trust, upon petition of a party in interest and after such notice as it shall direct, aided by the report of a master if necessary, or at the audit of any accounting, may enter a decree not contrary to any expressed provision in the will or trust instrument, exonerating and discharging such portion of the real and personal property charged as to it may seem beyond the amount requisite for providing a sufficient continuing security for the payment of the charge, or may direct that excess income be accumulated for the further protection of the charge, or be distributed to the persons entitled thereto. When an annuity is not restricted by the will or trust instrument to the income of the property charged with its payment, the court may authorize the payment of the annuity from the principal of the property set apart to secure its payment, should income at any time prove insufficient.

§ 3553. Discharge of property from lien of charge.

(a) **Payment into court.**--When real or personal property by will, inter vivos trust or decree is subject to a charge which has become payable, the court which has jurisdiction of the estate or trust, upon petition of a party in interest and after

such notice as it shall direct, shall enter a decree fixing the amount of the charge then payable, and directing that it be paid into court and that upon such payment the property shall be discharged from so much of the charge as shall be paid into court. When the amount of the charge does not appear as a matter of record, the court, by appointment of a master or by investigation in open court, may ascertain and fix the amount. A certified copy of every decree relieving real property of the lien of a charge shall be recorded in the deed book in the office of the recorder of deeds of each county where the real estate shall lie, and shall be indexed by the recorder in the grantor's index under the name of the decedent or settlor, as the case may be, and in the grantee's index under the name of the owner of the land: Provided, That no conditional decree shall be recorded unless there is offered for recording, concurrently therewith, written evidence of compliance with the condition.

(b) Distribution of moneys paid into court.--Any money paid into court under the provisions of this section, subject to the laws of the Commonwealth relating to the payment of unclaimed funds into the State Treasury without escheat, shall remain there until the court, on petition of a party in interest and after such notice as it shall direct, aided by the report of a master if necessary, shall direct distribution to the persons entitled. The court may, in its discretion, appoint an auditor to make such distribution.

§ 3554. Presumption of payment, release or extinguishment.

(a) Lapse of 20 years.--When:

(1) for 20 years after the same or any part thereof becomes due, no payment has been made on account of a dower, recognizance, legacy, annuity instalment, or other charge, created by will, agreement, inter vivos trust or court decree, upon real property; or

(2) no proceeding has been brought or no written acknowledgment of the existence thereof or no written promise to pay the same has been made within such period by the owner or owners of the property subject to the charge; a release or extinguishment thereof shall be presumed, and the charge shall thereafter be irrecoverable.

(b) Perpetuation of evidence.--The evidence of any such payment or written acknowledgment or promise may be perpetuated by recording it in the office of the recorder of deeds of the county or counties in which the real property bound by the charge is situate. The recorder of deeds shall index such evidence in the grantor's index under the name of the record owner or owners of the real property and in the grantee's index under the name of the owner or owners of the charge.

(c) Renewal of evidence every 20 years.--If such evidence of the charge is so recorded and indexed within the said period of 20 years, it shall remain a charge on the real property for a period of 20 years from the time of indexing and no longer: Provided, That such evidence may be renewed within successive periods of 20 years, as often as necessary.

(d) Irrecoverable after 20 years.--If such evidence does not appear of record and is not indexed as herein provided within a period of 20 years or within the periods provided for a renewal thereof, then said dower, recognizance, legacy, annuity instalment, or other charge shall be irrecoverable from any purchaser, mortgagee, or other lien creditor.

APPORTIONMENT OF DEATH TAXES

Sec.

- 3701. Power of decedent.
- 3702. Equitable apportionment of Federal estate tax.
- 3703. Apportionment of Pennsylvania inheritance tax.
- 3704. Apportionment of Pennsylvania estate tax.
- 3705. Apportionment of Federal generation-skipping tax.
- 3706. Enforcement of contribution or exoneration of Federal estate tax.

Enactment. Present Chapter 37 was added February 18, 1982, P.L.45, No.26, effective immediately.

Applicability. Section 13 of Act 26 of 1982 provided that Chapter 37 shall apply to the estates of all decedents dying on or after the effective date of Act 26.

Prior Provisions. Former Chapter 37, which related to the same subject matter, was added June 30, 1972, P.L.508, No.164, and repealed February 18, 1982, P.L.45, No.26, effective immediately.

§ 3701. Power of decedent.

A testator, settlor, donor or possessor of any appropriate power of appointment may direct how the Federal estate tax or the Federal generation-skipping transfer tax due because of his death, including interest and penalties, shall be apportioned or may grant a discretionary power to another so to direct, but:

(1) any direction regarding apportionment of the Federal generation-skipping transfer tax must expressly refer to that tax; and

(2) any direction waiving the right of recovery of Federal estate tax, provided for under section 2207A of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 2207A), on property includable in the gross estate by reason of section 2044 of the Internal Revenue Code of 1986, must expressly refer to that right.

Any such direction shall take precedence over the provisions of this chapter insofar as the direction provides for the payment of the tax or any part thereof from property the disposition of which can be controlled by the instrument containing the direction or delegating the power to another. (Dec. 16, 1992, P.L.1163, No.152, eff. imd.; Dec. 1, 1994, P.L.655, No.102, eff. 60 days; May 16, 2002, P.L.330, No.50, eff. 60 days)

2002 Amendment. See section 14(a) of Act 50 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 3701 is referred to in sections 3702, 3705 of this title.

§ 3702. Equitable apportionment of Federal estate tax.

(a) **General rule.**--Subject to the provisions of section 3701 (relating to power of decedent), the Federal estate tax shall be apportioned equitably among all parties interested in property includible in the gross estate for Federal estate tax purposes in proportion to the value of the interest of each party, subject to the rules stated in this section.

(b) Pre-residuary.--

(1) No Federal estate tax shall be apportioned against a beneficiary of any pre-residuary gift made by will. Any Federal estate tax attributable thereto shall be paid entirely from the residue of the estate and charged in the same manner as a general administration expense of the

estate, except that when a portion of the residue of the estate is allowable as a deduction for Federal estate tax purposes the tax shall be paid to the extent possible from the portion of the residue which is not so allowable.

(2) No Federal estate tax shall be apportioned against a beneficiary of any pre-residuary gift made by inter vivos trust. Any Federal estate tax attributable thereto shall be paid entirely from the residue of the trust and charged in the same manner as a general administration expense of the trust, except that when a portion of the residue of the trust is allowable as a deduction for Federal estate tax purposes the tax shall be paid to the extent possible from the portion of the residue which is not so allowable.

(c) Deductions.--No Federal estate tax shall be apportioned against an interest allowable as a Federal estate tax marital or charitable deduction (determined and valued without regard to any Pennsylvania inheritance tax or other state or foreign death taxes apportioned against such interest) except as otherwise provided in subsections (b) and (g).

(d) Credits.--Any Federal estate tax credit for state or foreign death taxes on property includable in the gross estate for Federal estate tax purposes shall inure to the benefit of the parties chargeable with the payment of the state or foreign death taxes in proportion to the amount of the taxes paid by each party, but any credit inuring to the benefit of a party shall not exceed the Federal estate tax apportionable to that party. Any unified credit against Federal estate tax, credit for tax on prior transfers (sometimes called the credit for property previously taxed) or credit for gift taxes paid by the decedent or his estate with respect to gifts made by the decedent before January 1, 1977, shall inure to the benefit of all parties liable to apportionment in proportion to the amount of Federal estate tax apportioned against each party under the other provisions of this chapter. Any Federal estate tax credit for gift taxes paid by the donee of a gift made before January 1, 1977, shall inure to the benefit of the donee.

(e) Election by spouse.--Property passing to a spouse who elects to take an elective share under Chapter 22 (relating to elective share of surviving spouse) shall be exempt from apportionment of Federal estate tax only to the extent provided in subsection (c).

(f) Additional Federal estate tax.--

(1) Any increase in Federal estate tax caused by the inclusion under section 2044 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 2044) of a qualified terminable interest trust in the estate of a decedent shall be apportioned against that trust.

(2) Any increase in Federal estate tax caused by a taxable event occurring in a qualified domestic trust under section 2056A of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 2056A) shall be apportioned against that trust notwithstanding the provisions of subsection (b) or (c).

(3) Any additional Federal estate tax due because a qualified heir disposes of qualified real property or ceases to use it for the qualified use shall be apportioned against the qualified heir notwithstanding the provisions of subsection (b).

(g) Present and future interests.--When both a present and a future interest are involved, the Federal estate tax apportioned, including interest and penalties, shall be paid entirely from principal, except as otherwise provided in

subsection (h), even if the future interest qualifies for a Federal estate tax charitable deduction or the holder of the present interest also has rights in the principal or the principal is otherwise exempt from apportionment.

(h) Interest and penalties.--Interest and penalties shall be apportioned in the same manner as the principal amount of the Federal estate tax unless the court finds it inequitable to do so by reason of special circumstances, in which case the court may direct a different apportionment of interest and penalties. To the extent the interest or penalties are apportioned to or are payable out of a residuary estate or a trust, they shall be paid from income or principal in the same manner as the Federal estate tax, subject to a fiduciary's power to adjust under Chapter 81 (relating to principal and income).

(i) Values.--The values used in determining the amount of Federal estate tax liability shall be used for Federal estate tax apportionment purposes.

(j) Gift tax.--Gift tax paid by the decedent and imposed on a gift by the decedent or his spouse within three years of the date of his death and included in his gross estate shall be treated in the same manner as though the amount of such gift tax had been a preresiduary testamentary gift by the decedent to the donee of the gift.

(Dec. 16, 1992, P.L.1163, No.152, eff. imd.; May 16, 2002, P.L.330, No.50, eff. 60 days; July 7, 2006, P.L.625, No.98, eff. imd.)

2006 Amendment. Act 98 amended subsec. (h). Section 16(2) of Act 98 provided that the amendment of subsec. (h) shall apply to the estates of decedents who die on or after the effective date of par. (2).

2002 Amendment. Act 50 amended subsecs. (f) and (h) and added subsec. (j). See section 14(a) of Act 50 in the appendix to this title for special provisions relating to applicability.

1992 Amendment. Act 152 amended subsecs. (a), (b), (c) and (d).

Cross References. Section 3702 is referred to in section 3705 of this title.

§ 3703. Apportionment of Pennsylvania inheritance tax.

The Pennsylvania inheritance tax shall be apportioned as provided in Article XXI of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.
(Dec. 16, 1992, P.L.1163, No.152, eff. imd.)

1992 Amendment. Section 27(e) of Act 152 provided that the amendment of section 3703 shall apply beginning with the effective date of Act 152.

§ 3704. Apportionment of Pennsylvania estate tax.

The Pennsylvania estate tax shall be apportioned in the same manner as the Federal estate tax.

§ 3705. Apportionment of Federal generation-skipping tax.

Subject to the provisions of section 3701 (relating to power of decedent), the Federal generation-skipping tax shall be apportioned as provided by Federal law and, to the extent not provided by Federal law, shall be apportioned by analogy to the rules specified in section 3702 (relating to equitable apportionment of Federal estate tax).

§ 3706. Enforcement of contribution or exoneration of Federal estate tax.

(a) Duty to pay.--Parties liable for apportionment of the Federal estate tax, whether residents or nonresidents of this Commonwealth, shall pay the amounts apportioned against them

at the time the Federal estate tax is due, without regard to any extension of time for paying such tax.

(b) Power of fiduciary.--The fiduciary charged with the duty to pay the Federal estate tax may recover from parties liable to apportionment the amounts of Federal estate tax apportioned to them. If the fiduciary pays the tax apportioned against another party, the fiduciary may recover from the other party the tax payment so advanced, together with interest of 5% per annum from the date of payment.

(c) Suspending distribution.--Distribution or delivery of property to any party, other than a fiduciary charged with a duty to pay the Federal estate tax, shall not be required of any fiduciary until that party pays the Federal estate tax apportioned to that party.

(d) Court decrees.--Notwithstanding subsections (a) and (b), the court, upon petition or at an accounting or in any appropriate action or proceeding, shall make such decrees or orders as it shall deem advisable apportioning the Federal estate tax. The court may direct a fiduciary to collect the apportioned amounts from the property or interests in his possession of any parties against whom apportionment has been made and may direct all other parties against whom the Federal estate tax has been or may be apportioned or from whom any part of the Federal estate tax may be recovered to make payment of the apportioned amounts to the fiduciary. When a fiduciary holds property of a party liable to apportionment insufficient to satisfy the apportioned Federal estate tax, the court may direct that the balance of the apportioned amount of Federal estate tax shall be paid to the fiduciary by the party liable. Should an overpayment of the Federal estate tax be made by any party or on his behalf, the court may direct an appropriate reimbursement for the overpayment. If the court apportions any part of the Federal estate tax against any party interested in nontestamentary property or among the respective interests created by any nontestamentary instrument, the court, in its discretion, may assess against those properties or interests an equitable share of the expenses incurred in connection with the determination and apportionment of the Federal estate tax. If the fiduciary cannot recover the Federal estate tax apportioned against a party benefited, the unrecovered amount shall be charged in such manner as the court may determine. (Dec. 16, 1992, P.L.1163, No.152, eff. imd.; Oct. 27, 2010, P.L.837, No.85, eff. 60 days)

CHAPTER 41

FOREIGN FIDUCIARIES

Subchapter

- A. Powers and Duties
- B. Distributions to Foreign Fiduciaries
- C. Transfer of Administration

Enactment. Chapter 41 was added June 30, 1972, P.L.508, No.164, effective July 1, 1972.

SUBCHAPTER A

POWERS AND DUTIES

Sec.

4101. In general.

- 4102. Powers with respect to securities and bank accounts.
- 4103. Service of process (Repealed).
- 4104. Proof of authority in court proceedings.
- 4105. Effect of local proceedings.

§ 4101. In general.

A foreign fiduciary may institute proceedings in the Commonwealth, subject to the conditions and limitations imposed on nonresident suitors generally, and may exercise all the other powers of a similar local fiduciary, but a foreign personal representative shall have no such power when there is an administration in the Commonwealth. Except in the case of powers with respect to securities and bank accounts, for which special provision is made in section 4102 (relating to powers with respect to securities and bank accounts) the maintenance of a proceeding or the exercise of any other power by a foreign fiduciary shall be subject to the following additional conditions and limitations:

(1) Copy of appointment.--The foreign fiduciary shall file with the register of the county where the power is to be exercised, or the proceeding is instituted, or the property concerning which the power is to be exercised is located, an exemplified copy of his appointment or other qualification in the foreign jurisdiction, together with an exemplified copy of the will or other instrument, if any, in pursuance of which he has been appointed or qualified. When he is an executor, administrator C.T.A., testamentary trustee, or testamentary guardian under a will of a decedent who either died prior to April 1, 1956, or whose will was probated outside of the United States, and wishes to exercise a power with respect to Pennsylvania real estate, the will must be admitted to probate in Pennsylvania as required by law.

(2) Affidavit.--The foreign fiduciary shall execute and file an affidavit with the register of the county where the power is to be exercised or the proceeding is instituted or the property concerning which the power is to be exercised is located, stating that after diligent search and inquiry, the estate of which he is fiduciary is not, to his knowledge or so far as he has been able to discover, indebted to any person in the Commonwealth, and that he will not exercise any power which he would not be permitted to exercise in the jurisdiction of his appointment. The affidavit shall be attached to the copy of appointment.

(3) Time limitation.--When the foreign fiduciary is a personal representative or a trustee under the will of a nonresident decedent, he shall not exercise any of his powers within the Commonwealth for one month after the decedent's death.

(4) Taxes.--When the foreign fiduciary exercises a power to sell or mortgage any Pennsylvania real estate, all taxes due thereon to the Commonwealth or to any subdivision thereof must be paid or provided for.

Cross References. Section 4101 is referred to in sections 4102, 4104 of this title.

§ 4102. Powers with respect to securities and bank accounts.

(a) Securities.--When there is no administration in the Commonwealth, a foreign fiduciary, upon submission of a certificate of his appointment, shall have all of the powers of a similar local fiduciary with respect to stock, bonds and other securities of a Pennsylvania corporation or of a Federal corporation located in Pennsylvania, and shall not be required

to comply with the conditions and limitations of section 4101 (relating to in general).

(b) Bank accounts.--When there is no administration in this Commonwealth, a foreign fiduciary shall have all the powers of a similar local fiduciary with respect to money deposited or invested in a financial institution located in this Commonwealth and shall not be required to comply with the conditions and limitations of section 4101 if he has submitted to the financial institution a certificate of his appointment and an affidavit stating that after diligent search and inquiry the estate of which he is fiduciary is not, to his knowledge or so far as he has been able to discover, indebted to any person in this Commonwealth and that any taxes owing by such estate to the Commonwealth or any subdivision thereof have been paid or provided for.

(c) Definition.--As used in subsection (b) of this section "financial institution" means a bank, a bank and trust company, a trust company, a savings and loan association, a building and loan association, a credit union, a savings bank, a private bank and a national bank.

(Feb. 18, 1982, P.L.45, No.26, eff. imd.)

1982 Amendment. Act 26 amended subsec. (b).

Cross References. Section 4102 is referred to in section 4101 of this title.

§ 4103. Service of process (Repealed).

1978 Repeal. Section 4103 was repealed April 28, 1978, P.L.202, No.53, effective in 60 days.

§ 4104. Proof of authority in court proceedings.

Upon commencing any proceeding in any court of the Commonwealth, the foreign fiduciary, in addition to the requirements of section 4101 (relating to in general), shall file with the court in which the proceeding is commenced, an exemplified copy of his official bond, if he has given a bond. If the court believes that he should furnish security or additional security in the Commonwealth or in the domiciliary jurisdiction, it may, at any time, order the action or proceeding stayed until sufficient security is furnished.

§ 4105. Effect of local proceedings.

No person who, before receiving actual notice of local administration or of application therefor, has changed his position by relying on the powers granted to foreign fiduciaries by this chapter shall be prejudiced by reason of the application for or grant of local administration.

SUBCHAPTER B

DISTRIBUTIONS TO FOREIGN FIDUCIARIES

Sec.

4111. To foreign personal representative.

4112. To foreign trustee, guardian or committee.

§ 4111. To foreign personal representative.

When a share of an estate administered in the Commonwealth is distributable to a deceased nonresident creditor or other distributee, the court may award it to his domiciliary personal representative or to some other person performing the function of a personal representative, unless it shall appear that the rights of any resident of the Commonwealth may be adversely affected or the court shall determine that for any reason ancillary administration within the Commonwealth is advisable.

§ 4112. To foreign trustee, guardian or committee.

When a share of an estate administered in the Commonwealth is distributable to a nonresident minor, a trustee subject to the jurisdiction of a foreign court, or a nonresident incapacitated person, the court may award it to the guardian or committee of the nonresident appointed in the foreign jurisdiction, or to such trustee: Provided, That the court shall be satisfied, in all cases where an applicable will or trust instrument does not direct distribution to the foreign guardian, committee or trustee, that adequate security or other protection has been provided in the domiciliary jurisdiction by the domiciliary law for the protection of the persons beneficially interested in the share so awarded.

(Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

SUBCHAPTER C
TRANSFER OF ADMINISTRATION

Sec.

4121. Award to foreign guardian when minor or incapacitated person becomes a nonresident.

§ 4121. Award to foreign guardian when minor or incapacitated person becomes a nonresident.

When the minor or incapacitated person for whose estate a guardian has been appointed by the court is or becomes a nonresident of the Commonwealth, the court, upon satisfactory proof that it will be for the best interests of the minor or incapacitated person and that no rights of a resident of the Commonwealth will be adversely affected and that removal of the property will not conflict with any limitations upon the right of the minor or incapacitated person to such property, may direct the locally appointed guardian to transfer the assets of the minor or incapacitated person within his control to a duly qualified guardian or guardians in the jurisdiction where the minor or incapacitated person resides.

(Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

CHAPTER 43
TEMPORARY FIDUCIARIES

Sec.

- 4301. Appointment of temporary fiduciary.
- 4302. Petition for relief; joinder of parties; notice.
- 4303. Security by substituted fiduciaries; duties and responsibilities.
- 4304. Duration of decree; impeachment of acts.
- 4305. Fiduciaries temporarily relieved of duties and liabilities.
- 4306. Power to control, remove, discharge and settle accounts.

Enactment. Chapter 43 was added December 10, 1974, P.L.896, No.294, effective immediately.

Cross References. Chapter 43 is referred to in section 7781 of this title.

§ 4301. Appointment of temporary fiduciary.

Whenever and for so long as any fiduciary is in military service, in other government service, in a position of conflicting interest or in any situation where his functioning as a fiduciary for a temporary period may not be in the best interests of the estate, the court having jurisdiction over such fiduciary shall have the power in its discretion:

(1) to authorize the cofiduciary or cofiduciaries, if any, to exercise all or specified powers of the incapacitated fiduciary, whether discretionary or ministerial; or

(2) to appoint a substituted fiduciary pro tem to act in place of the incapacitated fiduciary and to authorize the substituted fiduciary pro tem to exercise all or specified powers and discretion of the incapacitated fiduciary.

Cross References. Section 4301 is referred to in sections 4302, 4303, 4304, 4305, 4306 of this title.

§ 4302. Petition for relief; joinder of parties; notice.

The relief authorized by section 4301 (relating to appointment of temporary fiduciary) may be granted upon petition of any party in interest, including the fiduciary himself or any cofiduciary. It shall not be necessary to secure the joinder of any other party in interest in such petition, but notice of the presentation of the petition shall be given in such manner as the court may direct by general rule or special order.

§ 4303. Security by substituted fiduciaries; duties and responsibilities.

Any substituted fiduciary pro tem appointed under the provisions of section 4301 (relating to appointment of temporary fiduciary) shall enter such security, if any, as the court may direct and shall receive such compensation as the court may allow. Such substituted fiduciary pro tem shall be subject to such duties and responsibilities with respect to accounting, and otherwise, during the period that he holds office as the court shall direct.

§ 4304. Duration of decree; impeachment of acts.

Any decree entered pursuant to the provisions of section 4301 (relating to appointment of temporary fiduciary) shall remain in force for the period specified in the court's original order or until revoked by the court upon petition and no act done by any substituted fiduciary pro tem or cofiduciary or cofiduciaries while such decree is in force shall be impeached on the ground that fiduciary temporarily removed was not acting.

§ 4305. Fiduciaries temporarily relieved of duties and liabilities.

So long as any decree entered pursuant to the provisions of section 4301 (relating to appointment of temporary fiduciary) remains in force, the fiduciary named therein shall exercise none of his fiduciary powers or discretion and shall be under no liability for any acts or omissions of the substituted fiduciary pro tem or of any cofiduciary or cofiduciaries during that period: Provided, That nothing contained in this chapter shall relieve a fiduciary from liability for the administration of the estate before the entry of a decree under the provisions of section 4301 and upon the reinstatement of such fiduciary.

§ 4306. Power to control, remove, discharge and settle accounts.

The court appointing a substituted fiduciary pro tem under the provisions of section 4301 (relating to appointment of temporary fiduciary) shall have the same powers of control, removal, discharge and settlement of the accounts of such

substituted fiduciary as are conferred upon it by existing law with respect to other fiduciaries.

CHAPTER 45

SURETIES

Subchapter

- A. Rights in Administration
- B. Enforcement of Bond

Enactment. Chapter 45 was added June 30, 1972, P.L.508, No.164, effective July 1, 1972.

SUBCHAPTER A

RIGHTS IN ADMINISTRATION

Sec.

- 4501. Agreement concerning deposit of assets.
- 4502. Notice.
- 4503. Participation in administration.
- 4504. Information from fiduciary; accounting.
- 4505. Release of surety before discharge of fiduciary.

§ 4501. Agreement concerning deposit of assets.

A fiduciary may agree with his surety for the deposit of any or all moneys or other assets of the estate with a bank or bank and trust company or other depository approved by the court, if such deposit is otherwise proper, on such terms as to prevent the withdrawal of such moneys or other assets without the written consent of the surety, or on order of the court made on such notice to the surety as the court may direct.

§ 4502. Notice.

Except as otherwise provided by contract, the surety of every fiduciary shall be entitled to written notice by the fiduciary of all accountings and of other court proceedings in which the fiduciary is a party. The fiduciary's failure to give notice hereby required shall not affect the rights or remedies of claimants and other parties in interest against the surety.

§ 4503. Participation in administration.

The surety of a fiduciary may intervene in any proceeding which may affect the liability of the fiduciary and shall have the right to except to and appeal from any action which may affect the fiduciary's liability. When the court has finally determined the liability of the fiduciary, the surety shall not be permitted thereafter to deny such liability in any proceeding to determine or enforce his individual liability, whether or not he received notice of the proceedings which established the liability of the fiduciary.

§ 4504. Information from fiduciary; accounting.

Upon the application of his surety, every fiduciary shall make available to him his complete files and records relating to the administration of the estate. The surety shall have the same right as a party in interest to enforce the filing of a court accounting and the performance of any duty of the fiduciary's office.

§ 4505. Release of surety before discharge of fiduciary.

For good cause, the court, upon the petition of any surety of a fiduciary, may order the surety's release and require the fiduciary to procure a new surety. In such case, the original surety shall remain liable for all breaches of the obligation of the bond occurring prior to the execution of the bond by the

new surety and his approval by the court, but not for breaches thereafter.

SUBCHAPTER B ENFORCEMENT OF BOND

Sec.

4521. Suits on bonds.

4522. Service of process on nonresident surety (Repealed).

§ 4521. Suits on bonds.

Any bond of a fiduciary shall be in the name of the Commonwealth for the use of those interested in the estate. Suit may be brought thereon by any person interested therein, as provided by law.

§ 4522. Service of process on nonresident surety (Repealed).

1978 Repeal. Section 4522 was repealed April 28, 1978, P.L.202, No.53, effective in 60 days.

CHAPTER 51 MINORS

Subchapter

- A. Small Estates
- B. Appointment of Guardian
- C. Bond
- D. Removal and Discharge
- E. Powers, Duties and Liabilities; in General
- F. Sales, Pledges, Mortgages, Leases, Options and Exchanges
- G. Accounts, Audits, Reviews, Distribution

Enactment. Chapter 51 was added June 30, 1972, P.L.508, No.164, effective July 1, 1972.

Cross References. Chapter 51 is referred to in section 5702 of this title.

SUBCHAPTER A SMALL ESTATES

Sec.

5101. When guardian unnecessary.

5102. Power of natural guardian.

5103. Sequestered deposit.

§ 5101. When guardian unnecessary.

When the entire real and personal estate, wherever located of a resident or nonresident minor has a net value of \$25,000 or less, all or any part of it may be received and held or disposed of by the minor, or by the parent or other person maintaining the minor, without the appointment of a guardian or the entry of security, in any of the following circumstances:

(1) **Award from decedent's estate or trust.**--When the court having jurisdiction of a decedent's estate or of a trust in awarding the interest of the minor shall so direct.

(2) **Interest in real estate.**--When the court having jurisdiction to direct the sale or mortgage of real estate in which the minor has an interest shall so direct as to the minor's interest in the real estate.

(3) Other circumstances.--In all other circumstances, when the court which would have had jurisdiction to appoint a guardian of the estate of the minor shall so direct. (Dec. 10, 1974, P.L.867, No.293, eff. imd.; Dec. 1, 1994, P.L.655, No.102, eff. 60 days)

1994 Amendment. Section 10 of Act 102 provided that the amendment of section 5101 shall apply beginning with the effective date of Act 102.

Cross References. Section 5101 is referred to in sections 5102, 5505 of this title.

§ 5102. Power of natural guardian.

The court may authorize or direct the parent, person, or institution maintaining the minor to execute as natural guardian, any receipt, deed, mortgage, or other appropriate instrument necessary to carry out a decree entered under section 5101 (relating to when guardian unnecessary) and, in such event, may require the deposit of money in a savings account or the care of securities in any manner considered by the court to be for the best interests of the minor. The decree so made, except as the court shall expressly provide otherwise, shall constitute sufficient authority to all transfer agents, registrars and others dealing with property of the minor to recognize the persons named therein as entitled to receive the property, and shall in all respects have the same force and effect as an instrument executed by a duly appointed guardian under court decree.

Cross References. Section 5102 is referred to in section 5505 of this title.

§ 5103. Sequestered deposit.

Without the appointment of a guardian, any amount in cash of a resident or nonresident minor may be ordered by the court to be deposited in one or more savings accounts in the name of the minor in banks, building and loan associations or savings and loan associations insured by a Federal governmental agency, provided that the amount deposited in any one such savings institution shall not exceed the amount to which accounts are thus insured. Every such order shall contain a provision that no withdrawal can be made from any such account until the minor attains his majority, except as authorized by a prior order of the court.

(Dec. 10, 1974, P.L.867, No.293, eff. imd.)

1974 Amendment. Act 293 added section 5103.

Cross References. Section 5103 is referred to in section 5505 of this title.

SUBCHAPTER B
APPOINTMENT OF GUARDIAN

Sec.

- 5111. County of appointment.
- 5112. Persons not qualified to be appointed by the court.
- 5113. Persons preferred in appointment.
- 5114. Service of process on nonresident guardian (Repealed).
- 5115. Appointment of guardian in conveyance.
- 5116. Orphan beneficiaries, charitable uses or trusts;
administration, cities of first class.

Cross References. Subchapter B is referred to in section 6106 of Title 23 (Domestic Relations).

§ 5111. County of appointment.

(a) **Resident minor.**--A guardian of the person or of the estate of a minor may be appointed by the court of the county in which the minor resides.

(b) **Nonresident minor.**--A guardian of the estate within the Commonwealth of a minor residing outside the Commonwealth may be appointed by the court of the county having jurisdiction of a decedent's estate or of a trust from which the minor's estate is derived. When the nonresident minor's estate is derived otherwise than from a decedent's estate or a trust, a guardian may be appointed by the court of any county where an asset of the minor's estate is located.

(c) **Exclusiveness of appointment.**--When a court has appointed a guardian of a minor's estate pursuant to subsections (a) or (b), no other court shall appoint a similar guardian for the minor within the Commonwealth.

§ 5112. Persons not qualified to be appointed by the court.

The court shall not appoint as guardian of the estate of a minor any person who is:

(1) Under 18 years of age.

(2) A corporation not authorized to act as fiduciary in the Commonwealth.

(3) A parent of the minor, except that a parent may be appointed a co-guardian with another fiduciary or fiduciaries.

(Dec. 6, 1972, P.L.1461, No.331)

1972 Amendment. Act 331 amended par. (1).

§ 5113. Persons preferred in appointment.

A person of the same religious persuasion as the parents of the minor shall be preferred as guardian of his person. A person nominated by a minor over the age of 14, if found by the court to be qualified and suitable, shall be preferred as guardian of his person or estate.

§ 5114. Service of process on nonresident guardian (Repealed).

1978 Repeal. Section 5114 was repealed April 28, 1978, P.L.202, No.53, effective in 60 days.

§ 5115. Appointment of guardian in conveyance.

Any person, who makes a deed or gift inter vivos or exercises a right under an insurance or annuity policy to designate the beneficiary to receive the proceeds of such policy, may in such deed or in the instrument creating such gift or designating such beneficiary, appoint a guardian of the estate or interest of each beneficiary named therein who shall be a minor or otherwise incapacitated. Payment by an insurance company to the guardian of such beneficiary so appointed shall discharge the insurance company to the extent of such payment to the same effect as payment to an otherwise duly appointed and qualified guardian.

(Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 5115 is referred to in section 5515 of this title.

§ 5116. Orphan beneficiaries, charitable uses or trusts; administration, cities of first class.

Whenever any city of the first class of this Commonwealth shall be charged with the administration of any charitable use

or trust for both the maintenance and education of orphans, it shall, without application to any court, act as guardian of the person and estate of each of such orphans, through the same agency that administers the charitable use or trust. In case any such orphan child, at or before the time said city is charged with the administration of such a charitable use or trust, or during the remaining time it acts as guardian of his estate, shall possess or become entitled to any effects or property, the said city shall be entitled, in like manner as other guardians, to demand and receive the same from any person having possession thereof, or owning the same, and to give acquittance therefor; and it shall be the duty of the said city to take care of the same as guardians, and to make the same productive as far as reasonably can be, and to deliver and pay over the same with the increase, less expenditures made in the exercise of a reasonable discretion, to the said orphan, on his attaining the age of 18 years, or to his legal representatives if he shall die before attaining that age.
(Apr. 28, 1978, P.L.77, No.37, eff. 60 days)

SUBCHAPTER C

BOND

Sec.

5121. Necessity, form and amount.

5122. When bond not required.

5123. Requiring or changing amount of bond.

§ 5121. Necessity, form and amount.

Except as hereinafter provided, every guardian of the estate of a minor shall execute and file a bond which shall be in the name of the Commonwealth, with sufficient surety, in such amount as the court considers necessary, having regard to the value of the personal estate which will come into the control of the guardian, and conditioned in the following form:

(1) When one guardian.--The condition of this obligation is, that if the said guardian shall well and truly administer the estate according to law, this obligation shall be void; but otherwise, it shall remain in force.

(2) When two or more guardians.--The condition of this obligation is, that if the said guardians or any of them shall well and truly administer the estate according to law, this obligation shall be void as to the guardian or guardians who shall so administer the estate; but otherwise, it shall remain in force.

Cross References. Section 5121 is referred to in section 5515 of this title.

§ 5122. When bond not required.

(a) Guardian named in conveyance.--No bond shall be required of a guardian appointed by or in accordance with the terms of a will, inter vivos instrument, or insurance contract as to the property acquired under the authority of such appointment, unless it is required by the conveyance, or unless the court, for cause shown, deems it advisable.

(b) Corporate guardian.--No bond shall be required of a bank and trust company or of a trust company incorporated in the Commonwealth, or of a national bank having its principal office in the Commonwealth, unless the court, for cause shown, deems it advisable.

(c) Nonresident corporation.--A nonresident corporation or a national bank having its principal office out of the

Commonwealth, otherwise qualified to act as guardian, in the discretion of the court, may be excused from giving bond.

(d) Other cases.--In all other cases, the court may dispense with the requirement of a bond when, for cause shown, it finds that no bond is necessary.

Cross References. Section 5122 is referred to in section 5515 of this title.

§ 5123. Requiring or changing amount of bond.

The court, for cause shown, and after such notice, if any, as it shall direct, may require a surety bond, or increase or decrease the amount of an existing bond, or require more or less security therefor.

Cross References. Section 5123 is referred to in section 5515 of this title.

SUBCHAPTER D
REMOVAL AND DISCHARGE

Sec.

5131. Grounds and procedure.

§ 5131. Grounds and procedure.

The grounds and the procedure for the removal or discharge of a guardian and his surety and the effect of such removal or discharge shall be the same as are set forth in this title relating to the removal and discharge of a personal representative and his surety, with regard to the following:

(1) Grounds for removal, as in section 3182 (relating to grounds for removal).

(2) Procedure for and effect of removal, as in section 3183 (relating to procedure for and effect of removal), for which purpose the minor shall be deemed a party in interest.

(3) Discharge of guardian and surety, as in section 3184 (relating to discharge of personal representative and surety).

SUBCHAPTER E
POWERS, DUTIES AND LIABILITIES; IN GENERAL

Sec.

5141. Possession of real and personal property.

5142. Inventory.

5143. Abandonment of property.

5144. Powers, duties and liabilities identical with personal representatives.

5145. Investments.

5146. Guardian named in conveyance.

5147. Proceedings against guardian.

§ 5141. Possession of real and personal property.

The guardian of the estate of a minor appointed by the court until it is distributed or sold shall have the right to, and shall take possession of, maintain and administer, each real and personal asset of the minor to which his appointment extends, collect the rents and income from it, and make all reasonable expenditures necessary to preserve it. He shall also have the right to maintain any action with respect to such real or personal property of the minor.

Cross References. Section 5141 is referred to in section 5521 of this title.

§ 5142. Inventory.

Every guardian, within three months after real or personal estate of his ward comes into his possession, shall verify by oath and file with the clerk an inventory and appraisalment of such personal estate, a statement of such real estate, and a statement of any real or personal estate which he expects to acquire thereafter.

Cross References. Section 5142 is referred to in section 5521 of this title.

§ 5143. Abandonment of property.

When any property is so burdensome or is so encumbered or is in such condition that it is of no value to the estate, the guardian may abandon it. When such property cannot be abandoned without transfer of title to another or without a formal renunciation, the court may authorize the guardian to transfer or renounce it without consideration if it shall find that this will be for the best interests of the estate.

Cross References. Section 5143 is referred to in section 5521 of this title.

§ 5144. Powers, duties and liabilities identical with personal representatives.

The provisions concerning the powers, duties and liabilities of a guardian appointed by the court shall be the same as those set forth in the following provisions of this title for the administration of a decedent's estate:

Section 3313 (relating to liability insurance).

Section 3314 (relating to continuation of business).

Section 3315 (relating to incorporation of estate's business).

Section 3317 (relating to claims against co-fiduciary).

Section 3318 (relating to revival of judgments against personal representative).

Section 3319 (relating to power of attorney; delegation of power over subscription rights and fractional shares; authorized delegations).

Section 3320 (relating to voting stock by proxy).

Section 3321 (relating to nominee registration; corporate fiduciary as agent; deposit of securities in a clearing corporation; book-entry securities).

Section 3322 (relating to acceptance of deed in lieu of foreclosure).

Section 3323 (relating to compromise of controversies).

Section 3324 (relating to death or incapacity of fiduciary).

Section 3327 (relating to surviving or remaining personal representatives).

Section 3328 (relating to disagreement of personal representatives).

Section 3331 (relating to liability of personal representatives on contracts).

Section 3332 (relating to inherent powers and duties). (Feb. 18, 1982, P.L.45, No.26, eff. imd.; Apr. 16, 1992, P.L.108, No.24, eff. 60 days; Oct. 12, 1999, P.L.422, No.39, eff. 60 days)

1999 Amendment. See section 13(8) of Act 39 in the appendix to this title for special provisions relating to applicability.

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

§ 5145. Investments.

Subject only to the provisions of a governing instrument, if any, a guardian may accept, hold, invest in and retain investments as provided by Chapter 72 (relating to prudent investor rule).

(June 25, 1999, P.L.212, No.28, eff. 6 months)

1999 Amendment. See section 6(a) of Act 28 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 5145 is referred to in section 5521 of this title.

§ 5146. Guardian named in conveyance.

(a) In general.--The powers, duties and liabilities of a guardian not appointed by the court as to property of the minor to which his appointment lawfully extends shall be the same as the powers, duties and liabilities of a court appointed guardian, except as the instrument making the appointment shall provide otherwise.

(b) Substituted or succeeding guardian.--A substituted or succeeding guardian, except as otherwise provided by the instrument, if any, appointing the original guardian, in addition to the powers of a guardian appointed by the court, shall have all the powers, duties and liabilities of the original guardian. He shall have the power to recover the assets of the minor from his predecessor in administration or from the fiduciary of such predecessor and, except as otherwise provided in an applicable instrument, shall stand in the predecessor's stead for all purposes, except that he shall not be personally liable for the acts of his predecessor.

(c) Effect of removal, or of probate of later will or codicil.--No act of administration performed by a testamentary guardian in good faith shall be impeached by the subsequent revocation of the probate of the will from which he derives his authority, or by the subsequent probate of a later will or of a codicil, or by the subsequent dismissal of the guardian: Provided, That regardless of the good or bad faith of the testamentary guardian, no person who deals in good faith with a testamentary guardian shall be prejudiced by the subsequent occurrence of any of these contingencies.

Cross References. Section 5146 is referred to in section 5521 of this title.

§ 5147. Proceedings against guardian.

Any proceeding may be brought against a guardian or the surety on his bond in the court having jurisdiction of the estate, and if he does not reside in the county, process may be served on him personally, or as follows:

(1) When resident of another county.--By a duly deputized sheriff of any other county of the Commonwealth in which he shall be found.

(2) When a nonresident of the Commonwealth.--By the sheriff of the county of the court having jurisdiction of the estate.

(Feb. 18, 1982, P.L.45, No.26, eff. imd.)

1982 Amendment. Act 26 amended par. (2).

Cross References. Section 5147 is referred to in section 5521 of this title.

SUBCHAPTER F
SALES, PLEDGES, MORTGAGES, LEASES, OPTIONS
AND EXCHANGES

Sec.

- 5151. Power to sell personal property.
- 5152. Power to lease.
- 5153. Provisions identical to other estates.
- 5154. Title of purchaser.
- 5155. Order of court.

§ 5151. Power to sell personal property.

A guardian appointed by the court may sell, at public or private sale, any personal property of the minor.

Cross References. Section 5151 is referred to in section 5521 of this title.

§ 5152. Power to lease.

A guardian appointed by the court may lease any real or personal property of the minor. Unless a longer term is approved by the court, the lease shall not extend beyond the date when the minor, if living, will attain his majority, nor for more than five years after the date it is executed.

§ 5153. Provisions identical to other estates.

The provisions concerning guardians and minors' estates shall be the same as those set forth in the following provisions of this title for personal representatives and for the administration of decedents' estates:

Section 3355 (relating to restraint of sale).

Section 3356 (relating to purchase by personal representative).

Section 3358 (relating to collateral attack).

Section 3359 (relating to record of proceedings; county where real estate lies).

Section 3360 (relating to contracts, inadequacy of consideration or better offer; brokers' commissions).
(Dec. 10, 1974, P.L.867, No.293, eff. imd.; Feb. 18, 1982, P.L.45, No.26, eff. imd.)

§ 5154. Title of purchaser.

If the guardian has given the bond, if any, required in accordance with this title, any sale, pledge, mortgage, or exchange by him, whether pursuant to a decree or to a power under this title, shall pass the full title of the minor therein, free of any right of his spouse, unless otherwise specified. Persons dealing with the guardian shall have no obligation to see to the proper application of the cash or other assets given in exchange for the property of the minor. Any sale or exchange by a guardian pursuant to a decree under section 5155 (relating to order of court) shall have the effect of a judicial sale as to the discharge of liens, but the court may decree a sale or exchange freed and discharged from the lien of any mortgage otherwise preserved from discharge by existing law, if the holder of such mortgage shall consent by writing filed in the proceeding. No such sale, mortgage, exchange, or conveyance shall be prejudiced by the subsequent dismissal of the guardian, nor shall any such sale, mortgage, exchange, or conveyance by a testamentary guardian be prejudiced by the terms of any will or codicil thereafter probated, if the person dealing with the guardian did so in good faith.

(Dec. 10, 1974, P.L.867, No.293, eff. imd.)

1974 Amendment. Section 4(b) of Act 293 provided that the amendment of the first sentence shall be retroactive to July 1, 1972.

Cross References. Section 5154 is referred to in section 5521 of this title.

§ 5155. Order of court.

Whenever the court finds it to be for the best interests of the minor, a guardian may, for any purpose of administration or distribution, and on the terms, with the security and after the notice directed by the court:

- (1) sell at public or private sale, pledge, mortgage, lease or exchange any real or personal property of the minor;
- (2) grant an option for the sale, lease or exchange of any such property;
- (3) join with the spouse of the minor in the performance of any of the foregoing acts with respect to property held by the entireties; or
- (4) release the right of the minor in the property of his spouse and join in the deed of the spouse in behalf of the minor.

(Dec. 10, 1974, P.L.867, No.293, eff. imd.)

1974 Amendment. Act 293 added section 5155.

Cross References. Section 5155 is referred to in sections 5154, 5521 of this title.

SUBCHAPTER G

ACCOUNTS, AUDITS, REVIEWS, DISTRIBUTION

Sec.

5161. When accounting filed.

5162. Where accounts filed.

5163. Notice, audits, reviews and distribution.

5163.1. Distribution to personal representative (Repealed).

5164. Distributions for support and education.

5165. Notice to guardian or guardian ad litem.

5166. Death of minor.

5167. Failure to present claim at audit.

§ 5161. When accounting filed.

A guardian shall file an account of his administration whenever directed to do so by the court or may file an account at the termination of the guardianship, or at any other time or times authorized by the court.

(Apr. 28, 1978, P.L.77, No.37, eff. 60 days)

§ 5162. Where accounts filed.

All accounts of guardians shall be filed in the office of the clerk.

§ 5163. Notice, audits, reviews and distribution.

The provisions concerning accounts, audits, reviews, distribution and rights of distributees in a minor's estate shall be the same as those set forth in the following provisions of this title for the administration of a decedent's estate:

Section 3503 (relating to notice to parties in interest).

Section 3504 (relating to representation of parties in interest).

Section 3511 (relating to audits in counties having separate orphans' court division).

Section 3512 (relating to audits in counties having no separate orphans' court division).

Section 3513 (relating to statement of proposed distribution).

Section 3514 (relating to confirmation of account and approval of proposed distribution).

Section 3521 (relating to rehearing; relief granted).

Section 3532(c) (relating to record of risk distributions).

Section 3533 (relating to award upon final confirmation of account).

Section 3534 (relating to distribution in kind).

Section 3536 (relating to recording and registering decrees awarding real estate).

Section 3544 (relating to liability of personal representative for interest).

Section 3545 (relating to transcripts of balances due by personal representative).

(Apr. 28, 1978, P.L.77, No.37, eff. 60 days)

References in Text. Section 3504, referred to in this section, is repealed. The subject matter is now contained in section 751(6).

§ 5163.1. Distribution to personal representative (Repealed).

1984 Repeal. Section 5163.1 was repealed October 12, 1984, P.L.929, No.182, effective immediately.

§ 5164. Distributions for support and education.

All income received by a guardian of the estate of a minor, including, subject to the requirements of Federal law relating thereto, all funds received from the Department of Veterans' Affairs, Social Security Administration and other periodic retirement or disability payments under private or government plans, in the exercise of a reasonable discretion, may be expended in the care, maintenance and education of the minor without the necessity of court approval. The court, for cause shown and with only such notice as it considers appropriate in the circumstances, may authorize or direct the payment or application of any or all of the income or principal of the estate of a minor for the care, maintenance or education of the minor, his spouse or children, or for the reasonable funeral expenses of the minor's spouse, child or indigent parent. In proper cases, the court may order payment of amounts directly to the ward for his maintenance or for incidental expenses and may ratify payments made for these purposes. For purposes of this section, the term "income" means income as determined in accordance with the rules set forth in Chapter 81 (relating to principal and income), other than the power to adjust and the power to convert to a unitrust.

(Dec. 16, 1992, P.L.1163, No.152, eff. imd.; May 16, 2002, P.L.330, No.50, eff. 60 days)

2002 Amendment. See section 14(a) of Act 50 in the appendix to this title for special provisions relating to applicability.

§ 5165. Notice to guardian or guardian ad litem.

The guardian of the estate of a minor shall be given notice of proceedings affecting the interest of his ward in any property to which his appointment extends, in the same manner as is provided for notice to persons of full age having similar interests. If the minor has no guardian authorized to act for him in respect to the interest involved, the court in which the proceedings are pending, upon petition or on its own motion, may appoint a guardian ad litem for the minor, to whom the required notice can be given. Nothing herein shall be construed to require the appointment of a guardian ad litem to represent the interest of a minor in an estate unless the court, upon

petition or on its own motion, shall consider such appointment to be advisable. The court may dispense with the appointment of a guardian ad litem when there is a living person sui juris having a similar interest, or where the minor is issue of a living ancestor sui juris interested in the estate whose interest is not adverse to that of the minor.

§ 5166. Death of minor.

Upon the audit of the account of the guardian of a person who has died during minority, the auditing judge or auditor passing on the account, in his discretion, may award distribution to those entitled to receive the minor's property, unless the estate is, or is likely to be, involved in litigation making it advisable to distribute the balance to a personal representative of the minor's estate.

§ 5167. Failure to present claim at audit.

(a) In general.--Any person who at the audit of a guardian's account has a claim which arose out of the administration of the estate of a minor or arises out of the distribution of a minor's estate or upon an accounting of the guardian of the estate of a minor, whether the minor is still a minor or has attained his majority, and which is not reported to the court as an admitted claim, and who shall fail to present his claim at the call for audit or confirmation, shall be forever barred, against:

- (1) any property of the minor distributed pursuant to such audit or confirmation;
- (2) the minor, if then of full age; and
- (3) except as otherwise provided in section 3521 (relating to rehearing; relief granted), any property of the minor awarded back to a continuing or succeeding guardian pursuant to such audit or confirmation.

(b) Effect on lien or charge.--Nothing in subsection (a) of this section shall be construed as impairing any lien or charge on real or personal estate of the minor existing at the time of audit.

Cross References. Section 5167 is referred to in section 5533 of this title.

CHAPTER 53
PENNSYLVANIA UNIFORM TRANSFERS TO
MINORS ACT

Sec.

5301. Short title of chapter and definitions.
5302. Scope and jurisdiction.
5303. Nomination of custodian.
5304. Transfer by gift or exercise of power of appointment.
5305. Transfer authorized by will or trust.
5306. Other transfer by fiduciary.
5307. Transfer by obligor.
5308. Receipt for custodial property.
5309. Manner of creating custodial property and effecting transfer.
5310. Single custodianship.
5311. Validity and effect of transfer.
5312. Care of custodial property.
5313. Powers of custodian.
5314. Use of custodial property.
5315. Expenses, compensation and bond of custodian.
5316. Exemption of third person from liability.

- 5317. Liability to third persons.
- 5318. Renunciation, resignation, death or removal of custodian.
- 5319. Accounting by and determination of liability of custodian.
- 5320. Termination of custodianship.
- 5321. Delay in transfer of custodial property after minor attains age 21.

Enactment. Chapter 53 was added Dec. 16, 1992, P.L.1163, No.152, effective immediately.

Special Provisions in Appendix. See section 26 of Act 152 of 1992 in the appendix to this title for special provisions relating to applicability and validation.

Prior Provisions. Former Chapter 53, which related to Pennsylvania Uniform Gifts to Minors Act, was added June 30, 1972, P.L.508, No.164, and repealed December 16, 1992, P.L.1163, No.152, effective immediately.

Cross References. Chapter 53 is referred to in sections 5301, 5302, 5308, 5309, 5310, 5311, 5312, 5316, 5319, 5320, 5603, 7201, 7780.6 of this title; section 4304.1 of Title 23 (Domestic Relations).

§ 5301. Short title of chapter and definitions.

(a) Short title of chapter.--This chapter shall be known and may be cited as the Pennsylvania Uniform Transfers to Minors Act.

(b) Definitions.--The following words and phrases when used in this chapter shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Benefit plan." An employer's plan for the benefit of an employee or partner.

"Broker." A person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

"Custodial property." Any interest in property transferred to a custodian under this chapter and the income from and proceeds of that interest in property.

"Custodian." A person so designated under section 5309 (relating to manner of creating custodial property and effecting transfer) or a successor or substitute custodian designated under section 5318 (relating to renunciation, resignation, death or removal of custodian).

"Financial institution." A bank, trust company, savings institution or credit union chartered and supervised under Federal or state law.

"Legal representative." An individual's personal representative or guardian.

"Member of the minor's family." The minor's parent, stepparent, spouse, grandparent, brother, sister, uncle or aunt, whether of the whole or half blood or by adoption.

"Minor." An individual who has not attained 21 years of age, except that, when used with reference to the beneficiary for whose benefit custodial property is held or is to be held, an individual who has not attained the age at which the custodian is required under sections 5320 (relating to termination of custodianship) and 5321 (relating to delay in transfer of custodial property after minor attains age 21) to transfer the custodial property to the beneficiary.

"Transfer." A transaction that creates custodial property under section 5309 (relating to manner of creating custodial property and effecting transfer).

"Transferor." A person who makes a transfer under this chapter.

"Trust company." A financial institution, corporation or other legal entity authorized to exercise general trust powers. (May 16, 2002, P.L.330, No.50, eff. 60 days)

2002 Amendment. Act 50 amended the def. of "minor" in subsec. (b). See section 14(a) of Act 50 in the appendix to this title for special provisions relating to applicability.

Validation. Section 26(b) of Act 152 of 1992 provided that any transfer of custodial property defined in section 5301(b) made before the effective date of Act 152 shall be validated notwithstanding that there was no specific authority in the Pennsylvania Uniform Gifts to Minors Act for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

§ 5302. Scope and jurisdiction.

(a) Application of chapter.--This chapter applies to a transfer that refers to this chapter in the designation under section 5309(a) (relating to manner of creating custodial property and effecting transfer) by which the transfer is made if, at the time of the transfer, the transferor, the minor or the custodian is a resident of this Commonwealth or the custodial property is located in this Commonwealth. The custodianship created remains subject to this chapter despite a subsequent change in residence of a transferor, the minor or the custodian or the removal of custodial property from this Commonwealth.

(b) Jurisdiction over custodian.--A person designated as custodian under this chapter is subject to personal jurisdiction in this Commonwealth with respect to any matter relating to the custodianship.

(c) Laws of other states.--A transfer that purports to be made and which is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in this Commonwealth if, at the time of the transfer, the transferor, the minor or the custodian is a resident of the designated state or the custodial property is located in the designated state.

1992 Amendment. See section 26(a) of Act 152 of 1992 in the appendix to this title for special provisions relating to applicability.

§ 5303. Nomination of custodian.

(a) General rule.--A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: "as custodian for (name of minor) under the Pennsylvania Uniform Transfers to Minors Act." The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines or is ineligible to serve. The nomination may be made in a will, trust or deed or in an instrument exercising a power of appointment or in a writing designating a beneficiary of contractual rights and registered with or delivered to the payor, issuer or other obligor of the contractual rights.

(b) Qualification of custodian.--A custodian nominated under this section must be a person to whom a transfer of property

of that kind may be made under section 5309(a) (relating to manner of creating custodial property and effecting transfer).

(c) When effective.--The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under section 5309. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event, the custodianship becomes effective, and the custodian shall enforce a transfer of the custodial property pursuant to section 5309.

Cross References. Section 5303 is referred to in sections 5305, 5307, 5311, 5318, 5320, 5321 of this title.

§ 5304. Transfer by gift or exercise of power of appointment.

A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to section 5309 (relating to manner of creating custodial property and effecting transfer).

Cross References. Section 5304 is referred to in sections 5315, 5318, 5320, 5321 of this title.

§ 5305. Transfer authorized by will or trust.

(a) General rule.--A personal representative or trustee may make an irrevocable transfer pursuant to section 5309 (relating to manner of creating custodial property and effecting transfer) to a custodian for the benefit of a minor as authorized in the governing will or trust.

(b) Transfer to custodian.--If the testator or settlor has nominated a custodian under section 5303 (relating to nomination of custodian) to receive the custodial property, the transfer must be made to that person.

(c) Designation of custodian.--If the testator or settlor has not nominated a custodian under section 5303 or all persons so nominated as custodian die before the transfer or are unable, decline or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under section 5309(a).

Cross References. Section 5305 is referred to in sections 5307, 5320, 5321 of this title.

§ 5306. Other transfer by fiduciary.

(a) Irrevocable transfer by personal representative or trustee.--Subject to subsection (c), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to section 5309 (relating to manner of creating custodial property and effecting transfer) in the absence of a will or under a will or trust that does not contain an authorization to do so.

(b) Irrevocable transfer by guardian.--Subject to subsection (c), a guardian may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to section 5309.

(c) Additional requirements for transfer.--A transfer under subsection (a) or (b) may be made only if:

- (1) the personal representative, trustee or guardian considers the transfer to be in the best interest of the minor;

(2) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement or other governing instrument; and

(3) the transfer is authorized by the court if it exceeds \$25,000 in value.

(Oct. 12, 1999, P.L.422, No.39, eff. 60 days)

1999 Amendment. Act 39 amended subsec. (c). See section 13(8) of Act 39 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 5306 is referred to in sections 5307, 5320 of this title.

§ 5307. Transfer by obligor.

(a) Irrevocable transfer for benefit of minor.--Subject to subsections (b) and (c), a person not subject to section 5305 (relating to transfer authorized by will or trust) or 5306 (relating to other transfer by fiduciary) who holds property of or owes a liquidated debt to a minor not having a guardian may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to section 5309 (relating to manner of creating custodial property and effecting transfer).

(b) Transfer to custodian.--If a person having the right to do so under section 5303 (relating to nomination of custodian) has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(c) Transfer to minor's family or trust company.--If no custodian has been nominated under section 5303 or all persons so nominated as custodian die before the transfer or are unable, decline or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds \$10,000 in value.

Cross References. Section 5307 is referred to in section 5320 of this title.

§ 5308. Receipt for custodial property.

A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this chapter.

§ 5309. Manner of creating custodial property and effecting transfer.

(a) Creation of custodial property.--Custodial property is created and a transfer is made whenever:

(1) An uncertificated security or a certificated security in registered form is either:

(i) registered in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "as custodian for (name of minor) under the Pennsylvania Uniform Transfers to Minors Act"; or

(ii) delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (b).

(2) Money is paid or delivered to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "as custodian

for (name of minor) under the Pennsylvania Uniform Transfers to Minors Act."

(3) The ownership of a life or endowment insurance policy or annuity contract is either:

(i) registered with the issuer in the name of the transferor, an adult other than the transferor or a trust company followed in substance by the words: "as custodian for (name of minor) under the Pennsylvania Uniform Transfers to Minors Act"; or

(ii) assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodian for (name of minor) under the Pennsylvania Uniform Transfers to Minors Act."

(4) An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer or other obligor that the right is transferred to the transferor, an adult other than the transferor or a trust company, whose name in the notification is followed in substance by the words: "as custodian for (name of minor) under the Pennsylvania Uniform Transfers to Minors Act."

(5) An interest in real property is recorded in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "as custodian for (name of minor) under the Pennsylvania Uniform Transfers to Minors Act."

(6) A certificate of title issued by a state or the Federal Government which evidences title to tangible personal property is either:

(i) issued in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "as custodian for (name of minor) under the Pennsylvania Uniform Transfers to Minors Act"; or

(ii) delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: "as custodian for (name of minor) under the Pennsylvania Uniform Transfers to Minors Act."

(7) An interest in any property not described in paragraphs (1) through (6) is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (b).

(b) Form.--An instrument in the following form satisfies the requirements of subsection (a)(1)(ii) and (7):

TRANSFER UNDER THE PENNSYLVANIA
UNIFORM TRANSFERS TO MINORS ACT

I, (name of transferor or name and representative capacity if a fiduciary), hereby transfer to (name of custodian), as custodian for (name of minor) under the Pennsylvania Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Dated:.....
.....

(Signature)

(name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Pennsylvania Uniform Transfers to Minors Act.

Dated:.....
.....

(Signature of custodian)

(c) Control of custodial property.--A transferor shall place the custodian in control of the custodial property as soon as practicable.

Cross References. Section 5309 is referred to in sections 5301, 5302, 5303, 5304, 5305, 5306, 5307, 5311, 5318, 5320, 5321 of this title.

§ 5310. Single custodianship.

A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this chapter by the same custodian for the benefit of the same minor constitutes a single custodianship.

§ 5311. Validity and effect of transfer.

(a) Validity of transfer.--The validity of a transfer made in a manner prescribed in this chapter is not affected by:

(1) failure of the transferor to comply with section 5309(c) (relating to manner of creating custodial property and effecting transfer) concerning possession and control;

(2) designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under section 5309(a); or

(3) death or incapacity of a person nominated under section 5303 (relating to nomination of custodian) or designated under section 5309 as custodian or the disclaimer of the office by that person.

(b) Irrevocability of transfer.--A transfer made pursuant to section 5309 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties and authority provided in this chapter, and neither the minor nor the minor's legal representative has any right, power, duty or authority with respect to the custodial property except as provided in this chapter.

(c) Incorporation of provisions of this chapter.--By making a transfer, the transferor incorporates in the disposition all the provisions of this chapter and grants to the custodian and to any third person dealing with a person designated as custodian the respective powers, rights and immunities provided in this chapter.

§ 5312. Care of custodial property.

(a) Duties of custodian.--A custodian shall:

(1) Take control of custodial property.

(2) Register or record title to custodial property if appropriate.

(3) Collect, hold, manage, invest and reinvest custodial property.

(b) Standard of care.--In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

(c) Life insurance and endowment policies.--A custodian may invest in or pay premiums on life insurance or endowment policies on:

(1) the life of the minor only if the minor or the minor's estate is the sole beneficiary; or

(2) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate or the custodian in the capacity of custodian is the irrevocable beneficiary.

(d) Segregation of custodial property.--A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered or held in an account designated in the name of the custodian, followed in substance by the words: "as a custodian for (name of minor) under the Pennsylvania Uniform Transfers to Minors Act."

(e) Records.--A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained 14 years of age.

Cross References. Section 5312 is referred to in section 5313 of this title.

§ 5313. Powers of custodian.

(a) General rule.--A custodian, acting in a custodial capacity, has all the rights, powers and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers and authority in that capacity only.

(b) Liability for breach of standard of care.--This section does not relieve a custodian from liability for breach of section 5312 (relating to care of custodial property).

§ 5314. Use of custodial property.

(a) Without court order.--A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to:

(1) the duty or ability of the custodian personally or of any other person to support the minor; or

(2) any other income or property of the minor which may be applicable or available for that purpose.

(b) With court order.--On petition of an interested person or the minor if the minor has attained 14 years of age, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(c) Obligation of support not affected.--A delivery, payment or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

§ 5315. Expenses, compensation and bond of custodian.

(a) Expenses.--A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(b) Compensation.--Except for one who is a transferor under section 5304 (relating to transfer by gift or exercise of power of appointment), a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(c) Bond.--Except as provided in section 5318(f) (relating to renunciation, resignation, death or removal of custodian), a custodian need not give a bond.

§ 5316. Exemption of third person from liability.

A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

- (1) the validity of the purported custodian's designation;
- (2) the propriety of or the authority under this chapter for any act of the purported custodian;
- (3) the validity or propriety under this chapter of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or
- (4) the propriety of the application of any property of the minor delivered to the purported custodian.

§ 5317. Liability to third persons.

(a) Claim against custodial property.--Any claim based on the following may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable:

- (1) A contract entered into by a custodian acting in a custodial capacity.
- (2) An obligation arising from the ownership or control of custodial property.
- (3) A tort committed during the custodianship.

(b) Limitation on custodian's liability.--A custodian is not personally liable:

- (1) on a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or
- (2) for an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(c) Limitation on minor's personal liability.--A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

Cross References. Section 5317 is referred to in section 5319 of this title.

§ 5318. Renunciation, resignation, death or removal of custodian.

(a) Renunciation.--A person nominated under section 5303 (relating to nomination of custodian) or designated under section 5309 (relating to manner of creating custodial property and effecting transfer) as custodian may decline to serve by delivering a valid disclaimer under Chapter 62 (relating to disclaimers) to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no

substitute custodian able, willing and eligible to serve was nominated under section 5303, the person who made the nomination may nominate a substitute custodian under section 5303. Otherwise, the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer. In either case, the substitute custodian shall be from among the persons eligible to serve as custodian for that kind of property under section 5309(a). The custodian so designated has the rights of a successor custodian.

(b) Designation of trust company or adult as successor custodian.--A custodian at any time may designate a trust company or an adult other than a transferor under section 5304 (relating to transfer by gift or exercise of power of appointment) as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated or is removed.

(c) Resignation.--A custodian may resign at any time by delivering written notice to the minor if the minor has attained 14 years of age and to the successor custodian and by delivering the custodial property to the successor custodian.

(d) Ineligibility, death or incapacitation.--If a custodian is ineligible, dies or becomes incapacitated without having effectively designated a successor and the minor has attained 14 years of age, the minor may designate as successor custodian, in the manner prescribed in subsection (b), an adult member of the minor's family, a guardian of the minor or a trust company. If the minor has not attained 14 years of age or fails to act within 60 days after the ineligibility, death or incapacity, the guardian of the minor becomes successor custodian. If the minor has no guardian or the guardian declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family or any other interested person may petition the court to designate a successor custodian.

(e) Transfer of custodial property and records to successor custodian.--A custodian who declines to serve under subsection (a) or resigns under subsection (c) or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(f) Removal for cause.--A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the guardian of the minor or the minor if the minor has attained 14 years of age may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under section 5304 or to require the custodian to give appropriate bond.

Cross References. Section 5318 is referred to in sections 5301, 5315, 5319 of this title.

§ 5319. Accounting by and determination of liability of custodian.

(a) Petition.--A minor who has attained 14 years of age, the minor's guardian of the person or legal representative, an

adult member of the minor's family, a transferor or a transferor's legal representative may petition the court for:

- (1) an accounting by the custodian or the custodian's legal representative; or
- (2) a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under section 5317 (relating to liability to third persons) to which the minor or the minor's legal representative was a party.

(b) Petition by successor custodian for accounting by predecessor.--A successor custodian may petition the court for an accounting by the predecessor custodian.

(c) Court order to account.--The court, in a proceeding under this chapter or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(d) Court order when custodian removed.--If a custodian is removed under section 5318(f) (relating to removal for cause), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

§ 5320. Termination of custodianship.

The custodian shall transfer in an appropriate manner the custodial property to the minor or the minor's estate upon the earlier of:

- (1) the minor's attainment of 21 years of age with respect to custodial property transferred by gift under section 5304 (relating to transfer by gift or exercise of power of appointment);
- (2) the minor's attainment of 21 years of age with respect to a custodian nominated under section 5303 (relating to nomination of custodian) or with respect to custodial property transferred by exercise of power of appointment under section 5304 or by will or trust under section 5305 (relating to transfer authorized by will or trust), unless the time of transfer of the custodial property to the minor is delayed under section 5321 (relating to delay in transfer of custodial property after minor attains age 21) to a time after the minor attains 21 years of age;
- (3) the time specified in the transfer pursuant to section 5309 (relating to manner of creating custodial property and effecting transfer) if the time of transfer of the custodial property to the minor is delayed under section 5321 to a time after the time the minor attains 21 years of age;
- (4) the minor's attainment of majority under the laws of this Commonwealth other than this chapter with respect to custodial property transferred under section 5306 (relating to other transfer by fiduciary) or 5307 (relating to transfer by obligor); or
- (5) the minor's death.

(May 16, 2002, P.L.330, No.50, eff. 60 days)

2002 Amendment. See section 14(a) of Act 50 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 5320 is referred to in sections 5301, 5321 of this title.

§ 5321. Delay in transfer of custodial property after minor attains age 21.

(a) General rule.--Subject to the requirements and limitations of this section, the time for transfer to the minor of custodial property transferred under or pursuant to section 5303 (relating to nomination of custodian), 5304 (relating to transfer by gift or exercise of power of appointment) or 5305 (relating to transfer authorized by will or trust) may be delayed until a specified time after the time the minor attains 21 years of age, which time shall be specified in the transfer pursuant to section 5309 (relating to manner of creating custodial property and effecting transfer).

(b) How to specify a delayed time for transfer.--To specify a delayed time for transfer to the minor of the custodial property, the words "as custodian for (name of minor) until age (age for delivery of property to minor) under the Pennsylvania Uniform Transfers to Minors Act" shall be substituted in substance for the words "as custodian for (name of minor) under the Pennsylvania Uniform Transfers to Minors Act" in making the transfer pursuant to section 5309.

(c) Transfer authorized by will or trust; nomination of custodian.--The time for transfer to the minor of custodial property transferred under or pursuant to section 5303 or 5305 may be delayed under this section only if the governing will or trust or nomination provides in substance that the custodianship is to continue until the time the minor attains a specified age, which time may not be later than the time the minor attains 25 years of age, and in that case the governing will or trust or nomination shall determine the time to be specified in the transfer pursuant to section 5309.

(d) Transfer by exercise of power appointment.--The time for transfer to the minor of custodial property transferred by the irrevocable exercise of a power of appointment under section 5304 may be delayed under this section only if the transfer pursuant to section 5309 provides in substance that the custodianship is to continue until the time the minor attains a specified age, which time may not be later than the time the minor attains 25 years of age.

(e) When section not applicable.--This section shall not apply to the time for transfer to the minor of custodial property transferred by irrevocable gift under section 5304.

(f) When transfer does not specify age.--If the transfer pursuant to section 5309 does not specify any age, the time for the transfer of the custodial property to the minor under section 5320 (relating to termination of custodianship) is the time when the minor attains 21 years of age.

(g) When transfer provides for a longer duration of custodianship than permitted by this section.--If the transfer pursuant to section 5309 provides in substance that the duration of the custodianship is for a time longer than the maximum time permitted by this section for the duration of a custodianship created by that type of transfer, the custodianship shall be deemed to continue only until the time the minor attains the maximum age permitted by this section for the duration of a custodianship created by that type of transfer.

(May 16, 2002, P.L.330, No.50, eff. 60 days)

2002 Amendment. Act 50 added section 5321. See section 14(a) of Act 50 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 5321 is referred to in sections 5301, 5320 of this title.

CHAPTER 54
HEALTH CARE

Subchapter

- A. General Provisions
- B. Living Wills
- C. Health Care Agents and Representatives
- D. Combined Form
- E. Out-of-Hospital Nonresuscitation

Enactment. Chapter 54 was added November 29, 2006, P.L.1484, No.169, effective in 60 days.

Prior Provisions. Former Chapter 54, which related to advance directive for health care, was added April 16, 1992, P.L.108, No.24, and deleted by amendment November 29, 2006, P.L.1484, No.169, effective in 60 days.

Special Provisions in Appendix. See sections 6 and 7 of Act 169 of 2006 in the appendix to this title for special provisions relating to regulations and validity of declarations under former chapter.

Cross References. Chapter 54 is referred to in sections 5421, 5422, 5423, 5426, 5427, 5429, 5431, 5434 of this title; section 2713 of this Title 18(Crimes and Offenses).

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

- 5421. Applicability.
- 5422. Definitions.
- 5423. Legislative findings and intent.
- 5424. Compliance.
- 5425. Conflicting advance health care directives.
- 5426. Death not suicide or homicide.
- 5427. Life insurance.
- 5428. Health care instruments optional.
- 5429. Pregnancy.
- 5430. Effect of divorce.
- 5431. Liability.
- 5432. Criminal penalties.
- 5433. Forms.
- 5434. Construction.

§ 5421. Applicability.

(a) **General rule.**--This chapter applies to advance health care directives and out-of-hospital nonresuscitation orders.

(b) **Preservation of existing rights.**--The provisions of this chapter shall not impair or supersede any existing rights or responsibilities not addressed in this chapter.

§ 5422. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Advance health care directive." A health care power of attorney, living will or a written combination of a health care power of attorney and living will.

"Attending physician." The physician who has primary responsibility for the health care of a principal or patient.

"Bracelet." An out-of-hospital do-not-resuscitate bracelet as defined under section 5483 (relating to definitions).

"Cardiopulmonary resuscitation." Any of the following procedures:

- (1) Cardiac compression.
- (2) Invasive airway technique.
- (3) Artificial ventilation.
- (4) Defibrillation.
- (5) Any other procedure related to those set forth in paragraphs (1) through (4).

"Competent." A condition in which an individual, when provided appropriate medical information, communication supports and technical assistance, is documented by a health care provider to do all of the following:

- (1) Understand the potential material benefits, risks and alternatives involved in a specific proposed health care decision.
- (2) Make that health care decision on his own behalf.
- (3) Communicate that health care decision to any other person.

This term is intended to permit individuals to be found competent to make some health care decisions, but incompetent to make others.

"DNR." Do not resuscitate.

"Emergency medical services provider." As defined under section 5483 (relating to definitions).

"End-stage medical condition." An incurable and irreversible medical condition in an advanced state caused by injury, disease or physical illness that will, in the opinion of the attending physician to a reasonable degree of medical certainty, result in death, despite the introduction or continuation of medical treatment. Except as specifically set forth in an advance health care directive, the term is not intended to preclude treatment of a disease, illness or physical, mental, cognitive or intellectual condition, even if incurable and irreversible and regardless of severity, if both of the following apply:

- (1) The patient would benefit from the medical treatment, including palliative care.
- (2) Such treatment would not merely prolong the process of dying.

"Health care." Any care, treatment, service or procedure to maintain, diagnose, treat or provide for physical or mental health, custodial or personal care, including any medication program, therapeutical and surgical procedure and life-sustaining treatment.

"Health care agent." An individual designated by a principal in an advance health care directive.

"Health care decision." A decision regarding an individual's health care, including, but not limited to, the following:

- (1) Selection and discharge of a health care provider.
- (2) Approval or disapproval of a diagnostic test, surgical procedure or program of medication.
- (3) Directions to initiate, continue, withhold or withdraw all forms of life-sustaining treatment, including instructions not to resuscitate.

"Health care power of attorney." A writing made by a principal designating an individual to make health care decisions for the principal.

"Health care provider." A person who is licensed, certified or otherwise authorized by the laws of this Commonwealth to administer or provide health care in the ordinary course of business or practice of a profession. The term includes personnel recognized under the act of July 3, 1985 (P.L.164, No.45), known as the Emergency Medical Services Act.

"Health care representative." An individual authorized under section 5461 (relating to decisions by health care representative) to make health care decisions for a principal.

"Incompetent." A condition in which an individual, despite being provided appropriate medical information, communication supports and technical assistance, is documented by a health care provider to be:

- (1) unable to understand the potential material benefits, risks and alternatives involved in a specific proposed health care decision;
- (2) unable to make that health care decision on his own behalf; or
- (3) unable to communicate that health care decision to any other person.

The term is intended to permit individuals to be found incompetent to make some health care decisions, but competent to make others.

"Invasive airway technique." Any advanced airway technique, including endotracheal intubation.

"Life-sustaining treatment." Any medical procedure or intervention that, when administered to a patient or principal who has an end-stage medical condition or is permanently unconscious, will serve only to prolong the process of dying or maintain the individual in a state of permanent unconsciousness. In the case of an individual with an advance health care directive or order, the term includes nutrition and hydration administered by gastric tube or intravenously or any other artificial or invasive means if the advance health care directive or order so specifically provides.

"Living will." A writing made in accordance with this chapter that expresses a principal's wishes and instructions for health care and health care directions when the principal is determined to be incompetent and has an end-stage medical condition or is permanently unconscious.

"Medical command physician." A licensed physician who is authorized to give a medical command under the act of July 3, 1985 (P.L.164, No.45), known as the Emergency Medical Services Act.

"Necklace." An out-of-hospital do-not-resuscitate necklace as defined under section 5483 (relating to definitions).

"Order." An out-of-hospital do-not-resuscitate order as defined under section 5483 (relating to definitions).

"Patient." An out-of-hospital do-not-resuscitate patient as defined under section 5483 (relating to definitions).

"Permanently unconscious." A medical condition that has been diagnosed in accordance with currently accepted medical standards and with reasonable medical certainty as total and irreversible loss of consciousness and capacity for interaction with the environment. The term includes, without limitation, an irreversible vegetative state or irreversible coma.

"Person." Any individual, corporation, partnership, association or other similar entity, or any Federal, State or local government or governmental agency.

"Principal." An individual who executes an advance health care directive, designates an individual to act or disqualifies an individual from acting as a health care representative or an individual for whom a health care representative acts in accordance with this chapter.

"Reasonably available." Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the individual's health care needs.

References in Text. The act of July 3, 1985 (P.L.164, No.45), known as the Emergency Medical Services Act, referred to in the defs. of "health care provider" and "medical command physician," was repealed by the act of August 18, 2009 (P.L.308, No.37). The subject matter is now contained in Chapter 81 of Title 35 (Health and Safety).

Cross References. Section 5422 is referred to in section 2713 of Title 18 (Crimes and Offenses).

§ 5423. Legislative findings and intent.

(a) Intent.--This chapter provides a statutory means for competent adults to control their health care through instructions written in advance or by health care agents or health care representatives and requested orders. Nothing in this chapter is intended to:

- (1) affect or supersede the holdings of *In re Fiori* 543 Pa. 592, 673 A.2d 905 (1996);
- (2) condone, authorize or approve mercy killing, euthanasia or aided suicide; or
- (3) permit any affirmative or deliberate act or omission to end life other than as defined in this chapter.

(b) Presumption not created.--This chapter does not create any presumption regarding the intent of an individual who has not executed an advance health care directive to consent to the use or withholding of life-sustaining treatment in the event of an end-stage medical condition or in the event the individual is permanently unconscious.

(c) Findings in general.--The General Assembly finds that:

- (1) Individuals have a qualified right to make decisions relating to their own health care.
- (2) This right is subject to certain interests of society, such as the maintenance of ethical standards in the medical profession and the preservation and protection of human life.
- (3) Modern medical technological procedures make possible the prolongation of human life beyond natural limits.
- (4) The application of some procedures to an individual suffering a difficult and uncomfortable process of dying may cause loss of dignity and secure only continuation of a precarious and burdensome prolongation of life.
- (5) It is in the best interest of individuals under the care of health care providers if health care providers initiate discussions with them regarding living wills and health care powers of attorney during initial consultations, annual examinations, at diagnosis of a chronic illness or when an individual under their care transfers from one health care setting to another so that the individuals under their care may make known their wishes to receive, continue, discontinue or refuse medical treatment in the event that they are diagnosed with an end-stage medical condition or become permanently unconscious.
- (6) Health care providers should initiate such discussions, including discussion of out-of-hospital do-not-resuscitate orders, with individuals under their care at the time of determination of an end-stage medical condition and should document such discussion in the individual's medical record.

§ 5424. Compliance.

(a) Notification by attending physician or health care provider.--If an attending physician or other health care provider cannot in good conscience comply with a living will or health care decision of a health care agent or health care

representative or if the policies of a health care provider preclude compliance with a living will or health care decision of a health care agent or health care representative, the attending physician or health care provider shall so inform the principal if the principal is competent or the principal's health care agent or health care representative if the principal is incompetent.

(b) Transfer.--The attending physician or health care provider under subsection (a) shall make every reasonable effort to assist in the transfer of the principal to another physician or health care provider who will comply with the living will or health care decision of the health care agent or health care representative.

(c) Employee or staff member of health care provider.--

(1) An employee or a staff member of a health care provider may not be required to participate in the withholding or withdrawal of life-sustaining treatment.

(2) A health care provider that is an employer may not discharge or in any other manner discriminate against its employee or staff member as a result of informing the employer of the employee's choice not to participate in the withholding or withdrawal of life-sustaining treatment.

(3) A health care provider that is an employer may require its employee or staff member to express in writing the wishes or unwillingness of the employee or staff member as set forth in this subsection.

(d) Liability.--If transfer under subsection (b) is impossible, the provision of life-sustaining treatment to a principal may not subject an attending physician or a health care provider to criminal or civil liability or administrative sanction for failure to carry out either the provisions of a living will or a health care decision of a health care agent or health care representative.

Cross References. Section 5424 is referred to in sections 5431, 5443 of this title.

§ 5425. Conflicting advance health care directives.

If a provision of an advance health care directive conflicts with a provision of another advance health care directive, the provision of the instrument latest in date of execution shall prevail to the extent of the conflict unless the instruments expressly provide otherwise.

§ 5426. Death not suicide or homicide.

The withholding or withdrawal of life-sustaining treatment from a principal or patient resulting in death, in accordance with the provisions of this chapter, shall not, for any purpose, constitute suicide or homicide.

§ 5427. Life insurance.

The making of or failure to make an advance health care directive, to request an order or to designate or disqualify a health care representative in accordance with this chapter shall not affect in any manner the sale, procurement or issuance of a policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining treatment from an insured individual, notwithstanding a term of the policy to the contrary.

§ 5428. Health care instruments optional.

A health care provider, a health care service plan, a health maintenance organization, an insurer issuing disability insurance, a self-insured employee welfare benefit plan, a

nonprofit hospital plan and a Federal, State or local government sponsored or operated program may not:

(1) Require an individual to execute an advance health care directive or order or to designate or disqualify a health care representative as a condition for being insured for or receiving health care services.

(2) Charge an individual a different rate or fee whether or not the individual executes or has executed an advance health care directive or order or designated or disqualified a health care representative.

§ 5429. Pregnancy.

(a) Living wills and health care decisions.--Notwithstanding the existence of a living will, a health care decision by a health care representative or health care agent or any other direction to the contrary, life-sustaining treatment, nutrition and hydration shall be provided to a pregnant woman who is incompetent and has an end-stage medical condition or who is permanently unconscious unless, to a reasonable degree of medical certainty as certified on the pregnant woman's medical record by the pregnant woman's attending physician and an obstetrician who has examined the pregnant woman, life-sustaining treatment, nutrition and hydration:

(1) will not maintain the pregnant woman in such a way as to permit the continuing development and live birth of the unborn child;

(2) will be physically harmful to the pregnant woman;
or

(3) will cause pain to the pregnant woman that cannot be alleviated by medication.

(b) Rule for orders.--Notwithstanding the existence of an order or direction to the contrary, life-sustaining treatment, cardiopulmonary resuscitation, nutrition and hydration shall be provided to a pregnant patient unless, to a reasonable degree of medical certainty as certified on the pregnant patient's medical record by the attending physician and an obstetrician who has examined the pregnant patient, life-sustaining treatment, nutrition and hydration:

(1) will not maintain the pregnant patient in such a way as to permit the continuing development and live birth of the unborn child;

(2) will be physically harmful to the pregnant patient;
or

(3) would cause pain to the pregnant patient that cannot be alleviated by medication.

(c) Pregnancy test.--Nothing in this chapter shall require a physician to perform a pregnancy test unless the physician has reason to believe that the woman may be pregnant.

(d) Payment of expenses by Commonwealth.--

(1) In the event that treatment, cardiopulmonary resuscitation, nutrition and hydration are provided to a pregnant woman, notwithstanding the existence of a living will, health care decision by a health care representative or health care agent, order or direction to the contrary, the Commonwealth shall pay all usual, customary and reasonable expenses directly, indirectly and actually incurred by the pregnant woman to whom such treatment, cardiopulmonary resuscitation, nutrition and hydration are provided.

(2) The Commonwealth shall have the right of subrogation against all moneys paid by any third-party health insurer on behalf of the pregnant woman.

(3) The expenditures incurred on behalf of the pregnant woman constitute a grant, and a lien may not be placed upon the property of the pregnant woman, her estate or her heirs.

Cross References. Section 5429 is referred to in section 5456 of this title.

§ 5430. Effect of divorce.

(a) **General rule.**--If the spouse of a principal is designated as the principal's health care agent and thereafter either spouse files an action in divorce, the designation of the spouse as health care agent shall be revoked as of the time the action is filed unless it clearly appears from the advance health care directive that the designation was intended to continue to be effective notwithstanding the filing of an action in divorce by either spouse.

(b) **Construction.**--A revocation under this section shall not be construed to invalidate an advance health care directive unless its terms expressly direct otherwise.

§ 5431. Liability.

(a) **General rule.**--A health care provider or another person may not be subject to criminal or civil liability, discipline for unprofessional conduct or administrative sanctions and may not be found to have committed an act of unprofessional conduct as a result of any of the following:

(1) Causing or participating in the initiating, continuing, withholding or withdrawal of life-sustaining treatment or cardiopulmonary resuscitation from a patient or principal, if the health care provider believes in good faith that he has followed the patient's or principal's wishes as expressed in a living will, order or revocation made under this chapter.

(2) Complying with a direction or decision of an individual who the health care provider believes in good faith has authority to act as a principal's health care agent or health care representative so long as the direction or decision is not clearly contrary to the terms of an advance health care directive that has been delivered to the provider.

(3) Refusing to comply with a direction or decision of an individual based on a good faith belief that the individual lacks authority to act as a principal's health care agent or health care representative or is not acting in accordance with section 5456(c) (relating to authority of health care agent) or 5461(c) (relating to decisions by health care representative).

(4) Complying with an advance health care directive under the assumption that it was valid when made and the health care provider believes in good faith that it has not been amended or revoked.

(5) Disclosing health care information to another person based upon a good faith belief that the disclosure is authorized, permitted or required by this chapter.

(6) Refusing to comply with a direction or decision of an individual based on a good faith belief that compliance with the direction or decision would be unethical or, to a reasonable degree of medical certainty, would result in medical care having no medical basis in addressing any medical need or condition of the individual, provided that the health care provider complies in good faith with sections 5424 (relating to compliance) and 5462(c) (relating to duties of attending physician and health care provider).

(b) Same effect as if dealing with principal.--Any health care provider and other person acting under subsection (a) is protected and released to the same extent as if dealing directly with a competent principal.

(c) Health care agent.--No health care agent acting according to the terms of a health care power of attorney shall be subject to civil or criminal liability for acting in good faith for a principal or failing in good faith to act for a principal.

(d) Health care representative.--No health care representative who in good faith acts or fails in good faith to act for the principal shall be subject to civil or criminal liability for the action or failure to act.

§ 5432. Criminal penalties.

(a) Criminal homicide.--A person shall be subject to prosecution for criminal homicide as provided in 18 Pa.C.S. Ch. 25 (relating to criminal homicide) if the person intends to cause the withholding or withdrawal of life-sustaining treatment contrary to the wishes of the principal or patient and, because of that action, directly causes life-sustaining treatment to be withheld or withdrawn and death to be hastened and:

(1) falsifies or forges the advance health care directive, order, bracelet or necklace of that principal or patient; or

(2) willfully conceals or withholds personal knowledge of a revocation of an advance health care directive or DNR status.

(b) Interference with health care directive.--A person commits a felony of the third degree if that person willfully:

(1) conceals, cancels, alters, defaces, obliterates or damages an advance health care directive, order, bracelet or necklace without the consent of the principal or patient;

(2) causes a person to execute an advance health care directive or order or wear a bracelet or necklace by undue influence, fraud or duress; or

(3) falsifies or forges an advance health care directive, order, bracelet or necklace or any amendment or revocation thereof, the result of which is a direct change in the health care provided to the principal or patient.

§ 5433. Forms.

(a) Substance of forms.--

(1) An advance health care directive may be in the form provided under Subchapter D (relating to combined form) or in any other written form that contains the information required under Subchapters B (relating to living wills) and C (relating to health care agents and representatives).

(2) A Commonwealth agency that licenses health care providers or regulates health care may not prescribe a mandatory form of an advance health care directive.

(b) Combining forms.--A living will and health care power of attorney may be combined into one document.

§ 5434. Construction.

Nothing in this chapter shall be construed as requiring a health care provider to maintain copies of medical records beyond the requirements otherwise imposed by applicable law and regulation.

**SUBCHAPTER B
LIVING WILLS**

Sec.

- 5441. Short title of subchapter.
- 5442. Execution.
- 5443. When living will operative.
- 5444. Revocation.
- 5445. Emergency medical services.
- 5446. Validity.
- 5447. Form.

Cross References. Subchapter B is referred to in sections 5433, 5441, 5446 of this title.

§ 5441. Short title of subchapter.

This subchapter shall be known and may be cited as the Living Will Act.

§ 5442. Execution.

(a) Who may make.--An individual of sound mind may make a living will governing the initiation, continuation, withholding or withdrawal of life-sustaining treatment if the individual:

- (1) is 18 years of age or older;
- (2) has graduated from high school;
- (3) has married; or
- (4) is an emancipated minor.

(b) Requirements.--A living will shall be:

- (1) dated and signed by the principal by signature or mark or by another individual on behalf of and at the direction of the principal if the principal is unable to sign but specifically directs another individual to sign the living will; and
- (2) witnessed by two individuals, each of whom is 18 years of age or older.

(c) Witnesses.--

- (1) An individual who signs a living will on behalf of and at the direction of a principal may not witness the living will.
- (2) A health care provider and its agent may not sign a living will on behalf of and at the direction of a principal if the health care provider or agent provides health care services to the principal.

§ 5443. When living will operative.

(a) When operative.--A living will becomes operative when:

- (1) a copy is provided to the attending physician; and
- (2) the principal is determined by the attending physician to be incompetent and to have an end-stage medical condition or to be permanently unconscious.

(b) Compliance.--When a living will becomes operative, the attending physician and other health care providers shall act in accordance with its provisions or comply with the transfer provisions of section 5424 (relating to compliance).

(c) Invalidity of specific direction.--If a specific direction in a living will is held to be invalid, the invalidity does not negate other directions in the living will that can be effected without the invalid direction.

(d) Medical record.--Any health care provider to whom a copy of a living will is furnished shall make it a part of the medical record of the principal and, if unwilling to comply with the living will, promptly so advise the principal or the principal's health care agent or representative.

(e) Duration.--Unless a living will states a time of termination, it is valid until revoked by the principal, notwithstanding the lapse of time since its execution.

(f) Absence of living will.--If an individual does not make a living will, a presumption does not arise regarding the intent of the individual to consent to or to refuse the initiation,

continuation, withholding or withdrawal of life-sustaining treatment.

(g) Duty of physician to certify end-stage medical condition.--Promptly after a determination that the principal has an end-stage medical condition or is permanently unconscious, the attending physician shall certify in writing that the principal has an end-stage medical condition or is permanently unconscious.

Cross References. Section 5443 is referred to in section 5445 of this title.

§ 5444. Revocation.

(a) When living will may be revoked.--A living will may be revoked at any time and in any manner by the principal regardless of the mental or physical condition of the principal.

(b) Effect of revocation.--A revocation is effective upon communication to the attending physician or other health care provider by the principal or a witness to the revocation.

(c) Medical record.--The attending physician or other health care provider shall make the revocation part of the medical record of the principal.

§ 5445. Emergency medical services.

(a) General rule.--An emergency medical services provider shall, in the course of providing care to a principal, at all times comply with the instructions of an authorized medical command physician to withhold or discontinue cardiopulmonary resuscitation for a principal whose living will has become operative under section 5443(a) (relating to when living will operative).

(b) Applicability.--This section is applicable only in those instances where an out-of-hospital DNR order is not in effect under section 5484 (relating to orders, bracelets and necklaces).

§ 5446. Validity.

(a) Living will executed prior to effective date of subchapter.--This subchapter does not limit the validity of a living will executed prior to the effective date of this subchapter.

(b) Living will executed in another state or jurisdiction.--A living will executed in another state or jurisdiction and in conformity with the laws of that state or jurisdiction shall be considered valid in this Commonwealth, except to the extent that the living will executed in another state or jurisdiction would allow a principal to direct procedures inconsistent with the laws of this Commonwealth.

§ 5447. Form.

A living will may be in any written form expressing the wishes of a principal regarding the initiation, continuation, withholding or withdrawal of life-sustaining treatment and may include other specific directions, including, but not limited to, designation of a health care agent to make health care decisions for the principal if the principal is determined to be incompetent and to have an end-stage medical condition or is permanently unconscious. An example of a living will appears in the combined form set forth in Subchapter D (relating to combined form).

SUBCHAPTER C

HEALTH CARE AGENTS AND REPRESENTATIVES

Sec.

- 5451. Short title of subchapter.
- 5452. Execution.
- 5453. Requirements and options.
- 5454. When health care power of attorney operative.
- 5455. Appointment of health care agents.
- 5456. Authority of health care agent.
- 5457. Countermand.
- 5458. Amendment.
- 5459. Revocation.
- 5460. Relation of health care agent to court-appointed guardian and other agents.
- 5461. Decisions by health care representative.
- 5462. Duties of attending physician and health care provider.
- 5463. Effect on other State law.
- 5464. Validity.
- 5465. Form.

Cross References. Subchapter C is referred to in sections 711, 5433, 5451, 5463, 5464 of this title; section 2713 of Title 18 (Crimes and Offenses).

§ 5451. Short title of subchapter.

This subchapter shall be known and may be cited as the Health Care Agents and Representatives Act.

§ 5452. Execution.

(a) Who may make.--An individual of sound mind may make a health care power of attorney if the individual:

- (1) is 18 years of age or older;
- (2) has graduated from high school;
- (3) has married; or
- (4) is an emancipated minor.

(b) Requirements.--A health care power of attorney must be:

- (1) dated and signed by the principal by signature or mark or by another individual on behalf of and at the direction of the principal if the principal is unable to sign but specifically directs another individual to sign the health care power of attorney; and
- (2) witnessed by two individuals, each of whom is 18 years of age or older.

(c) Witnesses.--

- (1) An individual who signs a health care power of attorney on behalf of and at the direction of a principal may not witness the health care power of attorney.
- (2) A health care provider and its agent may not sign a health care power of attorney on behalf of and at the direction of a principal if the health care provider or agent provides health care services to the principal.

Cross References. Section 5452 is referred to in sections 5458, 5459 of this title.

§ 5453. Requirements and options.

(a) General rule.--A health care power of attorney shall:

- (1) Identify the principal and appoint the health care agent.
- (2) Declare that the principal authorizes the health care agent to make health care decisions on behalf of the principal.

(b) Optional provisions.--A health care power of attorney may, but need not:

- (1) Describe any limitations that the principal imposes upon the authority of the health care agent.

(2) Indicate the intent of the principal regarding the initiation, continuation, withholding or withdrawal of life-sustaining treatment.

(3) Indicate whether the principal wants tube feeding or any other artificial or invasive form of nutrition or hydration.

(4) Disqualify an individual from acting as a health care representative, prohibit the appointment of a health care representative or provide for an order of priority of appointment of a health care representative pursuant to section 5461(d) (relating to decisions by health care representative).

(5) Nominate a guardian of the person of the principal as provided in section 5460 (relating to relation of health care agent to court-appointed guardian and other agents).

(6) Contain other provisions as the principal may specify regarding the implementation of health care decisions and related actions by the health care agent or health care representative.

(7) Request that the health care agent or health care representative exercise his sole and absolute discretion to consult the principal's relative, cleric or physician should the health care agent or health care representative be uncertain of the principal's wishes or best interests.

§ 5454. When health care power of attorney operative.

(a) **When operative.**--Unless otherwise specified in the health care power of attorney, a health care power of attorney becomes operative when:

(1) a copy is provided to the attending physician; and

(2) the attending physician determines that the principal is incompetent.

(b) **When inoperative.**--Unless otherwise specified in the health care power of attorney, a health care power of attorney becomes inoperative during such time as, in the determination of the attending physician, the principal is competent.

(c) **Invalidity of specific direction.**--If a specific direction in the health care power of attorney is held to be invalid, the invalidity does not negate other directions in the health care power of attorney that can be effected without the invalid direction.

(d) **Duration.**--Unless the health care power of attorney states a time of termination, it is valid until revoked by the principal or the principal's guardian of the person, notwithstanding the lapse of time since its execution.

(e) **Court approval unnecessary.**--A health care decision made by a health care agent for a principal is effective without court approval.

Cross References. Section 5454 is referred to in section 5456 of this title.

§ 5455. Appointment of health care agents.

(a) **Multiple and successor health care agents.**--A principal may appoint the following in a health care power of attorney:

(1) More than one health care agent who shall act jointly unless the health care power of attorney expressly provides otherwise.

(2) One or more successor agents who shall serve in the order named in the health care power of attorney unless the principal expressly directs to the contrary.

(b) **Who may not be appointed health care agent.**--Unless related to the principal by blood, marriage or adoption, a

health care agent of the principal may not be any of the following:

(1) The principal's attending physician or other health care provider.

(2) An owner, operator or employee of a health care provider in which the principal is receiving care.

§ 5456. Authority of health care agent.

(a) Extent of authority.--Except as expressly provided otherwise in a health care power of attorney and subject to subsection (b) and section 5460 (relating to relation of health care agent to court-appointed guardian and other agents), a health care agent shall have the authority to make any health care decision and to exercise any right and power regarding the principal's care, custody and health care treatment that the principal could have made and exercised. The health care agent's authority may extend beyond the principal's death to make anatomical gifts, dispose of the remains and consent to autopsies.

(b) Life-sustaining treatment decisions.--A life-sustaining treatment decision made by a health care agent is subject to this section and sections 5429 (relating to pregnancy), 5454 (relating to when health care power of attorney operative) and 5462(a) (relating to duties of attending physician and health care provider).

(c) Health care decisions.--

(1) The health care agent shall gather information on the principal's prognosis and acceptable medical alternatives regarding diagnosis, treatments and supportive care.

(2) In the case of procedures for which informed consent is required under section 504 of the act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act, the information shall include the information required to be disclosed under that act.

(3) In the case of health care decisions regarding end of life of a patient with an end-stage medical condition, the information shall distinguish between curative alternatives, palliative alternatives and alternatives which will merely serve to prolong the process of dying. The information shall also distinguish between the principal's end-stage medical condition and any other concurrent disease, illness or physical, mental, cognitive or intellectual condition that predated the principal's end-stage medical condition.

(4) After consultation with health care providers and consideration of the information obtained in accordance with paragraphs (1), (2) and (3), the health care agent shall make health care decisions in accordance with the health care agent's understanding and interpretation of the instructions given by the principal at a time when the principal had the capacity to understand, make and communicate health care decisions. Instructions include an advance health care directive made by the principal and any clear written or verbal directions that cover the situation presented.

(5) (i) In the absence of instruction, the health care agent shall make health care decisions that conform to the health care agent's assessment of the principal's preferences and values, including religious and moral beliefs.

(ii) If the health care agent does not know enough about the principal's instructions, preferences and values to decide accordingly, the health care agent shall

take into account what the agent knows of the principal's instructions, preferences and values, including religious and moral beliefs, and the health care agent's assessment of the principal's best interests, taking into consideration the following goals and considerations:

(A) The preservation of life.

(B) The relief from suffering.

(C) The preservation or restoration of functioning, taking into account any concurrent disease, illness or physical, mental, cognitive or intellectual condition that may have predated the principal's end-stage medical condition.

(iii) (A) In the absence of a specific, written authorization or direction by a principal to withhold or withdraw nutrition and hydration administered by gastric tube or intravenously or by other artificial or invasive means, a health care agent shall presume that the principal would not want nutrition and hydration withheld or withdrawn.

(B) The presumption may be overcome by previously clearly expressed wishes of the principal to the contrary. In the absence of such clearly expressed wishes, the presumption may be overcome if the health care agent considers the values and preferences of the principal and assesses the factors set forth in subparagraphs (i) and (ii) and determines it is clear that the principal would not wish for artificial nutrition and hydration to be initiated or continued.

(6) The Department of Health shall ensure as part of the licensure process that health care providers under its jurisdiction have policies and procedures in place to implement this subsection.

(d) Health care information.--

(1) Unless specifically provided otherwise in a health care power of attorney, a health care agent has the same rights and limitations as the principal to request, examine, copy and consent or refuse to consent to the disclosure of medical or other health care information.

(2) Disclosure of medical or other health care information to a health care agent does not constitute a waiver of any evidentiary privilege or of a right to assert confidentiality. A health care provider that discloses such information to a health care agent in good faith shall not be liable for the disclosure. A health care agent may not disclose health care information regarding the principal except as is reasonably necessary to perform the agent's obligations to the principal or as otherwise required by law.

Cross References. Section 5456 is referred to in sections 5431, 5461, 5463 of this title.

§ 5457. Countermand.

(a) Competent principal.--A principal of sound mind may countermand any health care decision made by the principal's health care agent at any time and in any manner by personally informing the attending physician or health care provider.

(b) Incompetent principal.--Regardless of the principal's mental or physical capacity, a principal may countermand a health care decision made by the principal's health care agent that would withhold or withdraw life-sustaining treatment at

any time and in any manner by personally informing the attending physician.

(c) Attending physician.--The attending physician or health care provider shall make reasonable efforts to promptly inform the health care agent of a countermand under this section.

(d) Health care agent.--A countermand exercised under this section shall not affect the authority of a health care agent to make other health care decisions in accordance with the health care power of attorney.

§ 5458. Amendment.

While of sound mind, a principal may amend a health care power of attorney by a writing executed in accordance with the provisions of section 5452 (relating to execution). An amendment may include the revocation in part of the health care power of attorney or the designation of new or additional health care agents.

§ 5459. Revocation.

(a) When health care power of attorney may be revoked.--While of sound mind, a principal may revoke a health care power of attorney by a writing executed in accordance with the provisions of section 5452 (relating to execution) or by personally informing the attending physician, health care provider or health care agent that the health care power of attorney is revoked.

(b) Reliance on health care power of attorney.--A health care provider may rely on the effectiveness of a health care power of attorney unless notified of its revocation.

(c) Subsequent action by agent.--A health care agent, knowing of the revocation of the health care power of attorney, may not make or attempt to make health care decisions for the principal.

§ 5460. Relation of health care agent to court-appointed guardian and other agents.

(a) Accountability of health care agent.--If a principal who has executed a health care power of attorney is later adjudicated an incapacitated person and a guardian of the person to make health care decisions is appointed by a court, the health care agent is accountable to the guardian as well as to the principal. The guardian shall have the same power to revoke or amend the appointment of a health care agent that the principal would have if the principal were not incapacitated but may not revoke or amend other instructions in an advance health directive absent judicial authorization.

(b) Nomination of guardian of person.--In a health care power of attorney, a principal may nominate a guardian of the person for the principal for consideration by a court if incapacity proceedings for the principal's person are thereafter commenced. If a court determines that the appointment of a guardian is necessary, the court shall appoint a guardian in accordance with the principal's most recent nomination except for good cause or disqualification.

(c) Reasonable expenses.--In fulfilling the health care needs for a principal, a health care agent may incur reasonable expenses, including the purchase of health care insurance, to the extent the expenses are not otherwise covered by insurance or other similar benefits. Payment for the expenses or reimbursement to the health care agent for the expenses from the principal's funds shall be made by either of the following:

- (1) A guardian of the estate of the principal.
- (2) An agent acting on behalf of the principal under a power of attorney if the agent has the power to disburse the funds of the principal.

Cross References. Section 5460 is referred to in sections 5453, 5456, 5461 of this title.

§ 5461. Decisions by health care representative.

(a) General rule.--A health care representative may make a health care decision for an individual whose attending physician has determined that the individual is incompetent if:

(1) the individual is at least 18 years of age, has graduated from high school, has married or is an emancipated minor;

(2) (i) the individual does not have a health care power of attorney; or

(ii) the individual's health care agent is not reasonably available or has indicated an unwillingness to act and no alternate health care agent is reasonably available; and

(3) a guardian of the person to make health care decisions has not been appointed for the individual.

(b) Application.--This section applies to decisions regarding treatment, care, goods or services that a caretaker is obligated to provide to a care-dependent person who has an end-stage medical condition or is permanently unconscious as permitted under 18 Pa.C.S. § 2713(e)(5) (relating to neglect of care-dependent person).

(c) Extent of authority of health care representative.--Except as set forth in section 5462(c)(1) (relating to duties of attending physician and health care provider), the authority and the decision-making process of a health care representative shall be the same as provided for a health care agent in section 5456 (relating to authority of health care agent) and 5460(c) (relating to relation of health care agent to court-appointed guardian and other agents).

(d) Who may act as health care representative.--

(1) An individual of sound mind may, by a signed writing or by personally informing the attending physician or the health care provider, designate one or more individuals to act as health care representative. In the absence of a designation or if no designee is reasonably available, any member of the following classes, in descending order of priority, who is reasonably available may act as health care representative:

(i) The spouse, unless an action for divorce is pending, and the adult children of the principal who are not the children of the spouse.

(ii) An adult child.

(iii) A parent.

(iv) An adult brother or sister.

(v) An adult grandchild.

(vi) An adult who has knowledge of the principal's preferences and values, including, but not limited to, religious and moral beliefs, to assess how the principal would make health care decisions.

(2) An individual may by signed writing, including a health care power of attorney, provide for a different order of priority.

(3) An individual with a higher priority who is willing to act as a health care representative may assume the authority to act notwithstanding the fact that another individual has previously assumed that authority.

(e) Disqualification.--An individual of sound mind may disqualify one or more individuals from acting as health care representative in the same manner as specified under subsection

(d) for the designation of a health care representative. An individual may also disqualify one or more individuals from acting as health care representative by a health care power of attorney. Upon the petition of any member of the classes set forth in subsection (d), the court may disqualify for cause shown an individual otherwise eligible to serve as a health care representative.

(f) Limitation on designation of health care representative.--Unless related by blood, marriage or adoption, a health care representative may not be the principal's attending physician or other health care provider nor an owner, operator or employee of a health care provider in which the principal receives care.

(g) Decision of health care representative.--

(1) If more than one member of a class assumes authority to act as a health care representative, the members do not agree on a health care decision and the attending physician or health care provider is so informed, the attending physician or health care provider may rely on the decision of a majority of the members of that class who have communicated their views to the attending physician or health care provider.

(2) If the members of the class of health care representatives are evenly divided concerning the health care decision and the attending physician or health care provider is so informed, an individual having a lower priority may not act as a health care representative. So long as the class remains evenly divided, no decision shall be deemed made until such time as the parties resolve their disagreement. Notwithstanding such disagreement, nothing in this subsection shall be construed to preclude the administration of health care treatment in accordance with accepted standards of medical practice.

(h) Duty of health care representative.--Promptly upon assuming authority to act, a health care representative shall communicate the assumption of authority to the members of the principal's family specified in subsection (d) who can be readily contacted.

(i) Countermand of health care decision.--

(1) A principal of sound mind may countermand any health care decision made by the principal's health care representative at any time and in any manner by personally informing the attending physician or health care provider.

(2) Regardless of the principal's mental or physical capacity, a principal may countermand a health care decision made by the principal's health care representative that would withhold or withdraw life-sustaining treatment at any time and in any manner by personally informing the attending physician.

(3) The attending physician or health care provider shall make reasonable efforts to promptly inform the health care representative of a countermand exercised under this section.

(4) A countermand exercised under this section shall not affect the authority of the health care representative to make other health care decisions.

(j) Court approval unnecessary.--A health care decision made by a health care representative for a principal shall be effective without court approval.

(k) Written declaration of health care representative.--An attending physician or health care provider may require a person claiming the right to act as health care representative for a

principal to provide a written declaration made under penalty of perjury stating facts and circumstances reasonably sufficient to establish the claimed authority.

Cross References. Section 5461 is referred to in sections 5422, 5431, 5453 of this title; section 2713 of Title 18 (Crimes and Offenses).

§ 5462. Duties of attending physician and health care provider.

(a) Duty to certify end-stage medical condition.--Promptly after a determination that a principal has an end-stage medical condition or is permanently unconscious, the attending physician shall certify in writing that the principal has an end-stage medical condition or is permanently unconscious.

(b) Communication of health care decision.--Whenever possible before implementing a health care decision made by a health care representative or health care agent, an attending physician or health care provider shall promptly communicate to the principal the decision and the identity of the person making the decision.

(c) Compliance with decisions of health care agent and health care representative.--

(1) Health care necessary to preserve life shall be provided to an individual who has neither an end-stage medical condition nor is permanently unconscious, except if the individual is competent and objects to such care or a health care agent objects on behalf of the principal if authorized to do so by the health care power of attorney or living will. In every other case, subject to any limitation specified in the health care power of attorney, an attending physician or health care provider shall comply with a health care decision made by a health care agent or health care representative to the same extent as if the decision had been made by the principal.

(2) In all circumstances this subsection shall be construed so as to be consistent with the Americans with Disabilities Act of 1990 (Public Law 101-336, 104 Stat. 327).

(d) Medical record.--

(1) An attending physician or health care provider who is given a health care power of attorney shall arrange for the health care power of attorney or a copy to be placed in the medical record of the principal.

(2) An attending physician or health care provider to whom an amendment or revocation of a health care power of attorney is communicated shall promptly enter the information in the medical record of the principal and maintain a copy if one is furnished.

(e) Record of determination.--An attending physician who determines that a principal is incompetent or has become competent or makes a determination that affects the authority of a health care agent shall enter the determination in the medical record of the principal and, if possible, promptly inform the principal and any health care agent of the determination.

Cross References. Section 5462 is referred to in sections 5431, 5456, 5461 of this title.

§ 5463. Effect on other State law.

(a) Mental health.--This subchapter does not affect the requirements of other laws of this Commonwealth regarding consent to observation, diagnosis, treatment or hospitalization for a mental illness.

(b) Prohibited care.--This subchapter does not authorize a health care agent or health care representative to consent to any health care prohibited by the laws of this Commonwealth.

(c) Consent.--This subchapter does not affect the laws of this Commonwealth regarding any of the following:

- (1) The standard of care of a health care provider required in the administration of health care.
- (2) When consent is required for health care.
- (3) Informed consent for health care.
- (4) Consent to health care in an emergency.

(d) Preservation of religious rights.--This subchapter does not prevent a health care agent or health care representative from consenting to health care administered in good faith pursuant to religious beliefs of the principal or from withholding consent to health care that is contrary to religious beliefs of the principal.

(e) Rights of individuals.--This subchapter does not affect the right of an individual to make health care decisions.

(f) Disclosure.--The disclosure requirements of section 5456(d) (relating to authority of health care agent) supersede any provision in any other State statute or regulation that requires the principal to consent to disclosure or which otherwise conflicts with section 5456(d), including, but not limited to, the following:

- (1) Section 8 of the act of April 14, 1972 (P.L.221, No.63), known as the Pennsylvania Drug and Alcohol Abuse Control Act.
- (2) Section 111 of the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act.
- (3) Section 15 of the act of October 5, 1978 (P.L.1109, No.261), known as the Osteopathic Medical Practice Act.
- (4) Section 41 of the act of December 20, 1985 (P.L.457, No.112), known as the Medical Practice Act of 1985.
- (5) Section 7 of the act of November 29, 1990 (P.L.585, No.148), known as the Confidentiality of HIV-Related Information Act.

§ 5464. Validity.

This subchapter does not limit the validity of a power of attorney executed prior to the effective date of this subchapter. A health care power of attorney executed in another state or jurisdiction and in conformity with the laws of that state or jurisdiction shall be considered valid in this Commonwealth, except to the extent that the health care power of attorney executed in another state or jurisdiction would allow a health care agent to make a health care decision inconsistent with the laws of this Commonwealth.

§ 5465. Form.

A health care power of attorney may be in any written form identifying the principal, appointing a health care agent and declaring that the principal authorizes the health care agent to make health care decisions on behalf of the principal. An example of a health care power of attorney appears in the combined form set forth in Subchapter D (relating to combined form).

SUBCHAPTER D COMBINED FORM

Sec.

5471. Example.

Cross References. Subchapter D is referred to in sections 5433, 5447, 5465 of this title.

§ 5471. Example.

The following is an example of a document that combines a living will and health care power of attorney:

DURABLE HEALTH CARE POWER OF ATTORNEY
AND HEALTH CARE TREATMENT INSTRUCTIONS
(LIVING WILL)

PART I

INTRODUCTORY REMARKS ON
HEALTH CARE DECISION MAKING

You have the right to decide the type of health care you want.

Should you become unable to understand, make or communicate decisions about medical care, your wishes for medical treatment are most likely to be followed if you express those wishes in advance by:

- (1) naming a health care agent to decide treatment for you; and
- (2) giving health care treatment instructions to your health care agent or health care provider.

An advance health care directive is a written set of instructions expressing your wishes for medical treatment. It may contain a health care power of attorney, where you name a person called a "health care agent" to decide treatment for you, and a living will, where you tell your health care agent and health care providers your choices regarding the initiation, continuation, withholding or withdrawal of life-sustaining treatment and other specific directions.

You may limit your health care agent's involvement in deciding your medical treatment so that your health care agent will speak for you only when you are unable to speak for yourself or you may give your health care agent the power to speak for you immediately. This combined form gives your health care agent the power to speak for you only when you are unable to speak for yourself. A living will cannot be followed unless your attending physician determines that you lack the ability to understand, make or communicate health care decisions for yourself and you are either permanently unconscious or you have an end-stage medical condition, which is a condition that will result in death despite the introduction or continuation of medical treatment. You, and not your health care agent, remain responsible for the cost of your medical care.

If you do not write down your wishes about your health care in advance, and if later you become unable to understand, make or communicate these decisions, those wishes may not be honored because they may remain unknown to others.

A health care provider who refuses to honor your wishes about health care must tell you of its refusal and help to transfer you to a health care provider who will honor your wishes.

You should give a copy of your advance health care directive (a living will, health care power of attorney or a document containing both) to your health care agent, your physicians, family members and others whom you expect would likely attend to your needs if you become unable to understand, make or communicate decisions about medical care. If your health care wishes change, tell your physician and write a new advance health care directive to replace your old one. It is important in selecting a health care agent

that you choose a person you trust who is likely to be available in a medical situation where you cannot make decisions for yourself. You should inform that person that you have appointed him or her as your health care agent and discuss your beliefs and values with him or her so that your health care agent will understand your health care objectives.

You may wish to consult with knowledgeable, trusted individuals such as family members, your physician or clergy when considering an expression of your values and health care wishes. You are free to create your own advance health care directive to convey your wishes regarding medical treatment. The following form is an example of an advance health care directive that combines a health care power of attorney with a living will.

NOTES ABOUT THE USE OF THIS FORM

If you decide to use this form or create your own advance health care directive, you should consult with your physician and your attorney to make sure that your wishes are clearly expressed and comply with the law.

If you decide to use this form but disagree with any of its statements, you may cross out those statements.

You may add comments to this form or use your own form to help your physician or health care agent decide your medical care.

This form is designed to give your health care agent broad powers to make health care decisions for you whenever you cannot make them for yourself. It is also designed to express a desire to limit or authorize care if you have an end-stage medical condition or are permanently unconscious. If you do not desire to give your health care agent broad powers, or you do not wish to limit your care if you have an end-stage medical condition or are permanently unconscious, you may wish to use a different form or create your own. YOU SHOULD ALSO USE A DIFFERENT FORM IF YOU WISH TO EXPRESS YOUR PREFERENCES IN MORE DETAIL THAN THIS FORM ALLOWS OR IF YOU WISH FOR YOUR HEALTH CARE AGENT TO BE ABLE TO SPEAK FOR YOU IMMEDIATELY. In these situations, it is particularly important that you consult with your attorney and physician to make sure that your wishes are clearly expressed.

This form allows you to tell your health care agent your goals if you have an end-stage medical condition or other extreme and irreversible medical condition, such as advanced Alzheimer's disease. Do you want medical care applied aggressively in these situations or would you consider such aggressive medical care burdensome and undesirable?

You may choose whether you want your health care agent to be bound by your instructions or whether you want your health care agent to be able to decide at the time what course of treatment the health care agent thinks most fully reflects your wishes and values.

If you are a woman and diagnosed as being pregnant at the time a health care decision would otherwise be made pursuant to this form, the laws of this Commonwealth prohibit implementation of that decision if it directs that life-sustaining treatment, including nutrition and hydration, be withheld or withdrawn from you, unless your attending physician and an obstetrician who have examined you certify in your medical record that the life-sustaining treatment:

(1) will not maintain you in such a way as to permit the continuing development and live birth of the unborn child;

(2) will be physically harmful to you; or

(3) will cause pain to you that cannot be alleviated by medication.

A physician is not required to perform a pregnancy test on you unless the physician has reason to believe that you may be pregnant.

Pennsylvania law protects your health care agent and health care providers from any legal liability for following in good faith your wishes as expressed in the form or by your health care agent's direction. It does not otherwise change professional standards or excuse negligence in the way your wishes are carried out. If you have any questions about the law, consult an attorney for guidance.

This form and explanation is not intended to take the place of specific legal or medical advice for which you should rely upon your own attorney and physician.

PART II

DURABLE HEALTH CARE POWER OF ATTORNEY

I,, of.....
County, Pennsylvania, appoint the person named below to be my health care agent to make health and personal care decisions for me.

Effective immediately and continuously until my death or revocation by a writing signed by me or someone authorized to make health care treatment decisions for me, I authorize all health care providers or other covered entities to disclose to my health care agent, upon my agent's request, any information, oral or written, regarding my physical or mental health, including, but not limited to, medical and hospital records and what is otherwise private, privileged, protected or personal health information, such as health information as defined and described in the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191, 110 Stat. 1936), the regulations promulgated thereunder and any other State or local laws and rules. Information disclosed by a health care provider or other covered entity may be redisclosed and may no longer be subject to the privacy rules provided by 45 C.F.R. Pt. 164.

The remainder of this document will take effect when and only when I lack the ability to understand, make or communicate a choice regarding a health or personal care decision as verified by my attending physician. My health care agent may not delegate the authority to make decisions.

MY HEALTH CARE AGENT HAS ALL OF THE FOLLOWING POWERS SUBJECT TO THE HEALTH CARE TREATMENT INSTRUCTIONS THAT FOLLOW IN PART III (CROSS OUT ANY POWERS YOU DO NOT WANT TO GIVE YOUR HEALTH CARE AGENT):

1. To authorize, withhold or withdraw medical care and surgical procedures.

2. To authorize, withhold or withdraw nutrition (food) or hydration (water) medically supplied by tube through my nose, stomach, intestines, arteries or veins.

3. To authorize my admission to or discharge from a medical, nursing, residential or similar facility and to make agreements for my care and health insurance for my care, including hospice and/or palliative care.

4. To hire and fire medical, social service and other support personnel responsible for my care.

5. To take any legal action necessary to do what I have directed.

6. To request that a physician responsible for my care issue a do-not-resuscitate (DNR) order, including an out-of-hospital DNR order, and sign any required documents and consents.

APPOINTMENT OF HEALTH CARE AGENT

I appoint the following health care agent:

Health Care Agent:.....
(Name and relationship)

Address:.....

.....
Telephone Number: Home..... Work.....

E-mail:.....

IF YOU DO NOT NAME A HEALTH CARE AGENT, HEALTH CARE PROVIDERS WILL ASK YOUR FAMILY OR AN ADULT WHO KNOWS YOUR PREFERENCES AND VALUES FOR HELP IN DETERMINING YOUR WISHES FOR TREATMENT. NOTE THAT YOU MAY NOT APPOINT YOUR DOCTOR OR OTHER HEALTH CARE PROVIDER AS YOUR HEALTH CARE AGENT UNLESS RELATED TO YOU BY BLOOD, MARRIAGE OR ADOPTION.

If my health care agent is not readily available or if my health care agent is my spouse and an action for divorce is filed by either of us after the date of this document, I appoint the person or persons named below in the order named. (It is helpful, but not required, to name alternative health care agents.)

First Alternative Health Care Agent:.....
(Name and relationship)

Address:.....

.....
Telephone Number: Home..... Work.....

E-mail:.....

Second Alternative Health Care Agent:.....
(Name and relationship)

Address:.....

.....
Telephone Number: Home..... Work.....

E-mail:.....

GUIDANCE FOR HEALTH CARE AGENT (OPTIONAL) GOALS

If I have an end-stage medical condition or other extreme irreversible medical condition, my goals in making medical decisions are as follows (insert your personal priorities such as comfort, care, preservation of mental function, etc.):.....
.....
.....

SEVERE BRAIN DAMAGE OR BRAIN DISEASE

If I should suffer from severe and irreversible brain damage or brain disease with no realistic hope of significant recovery, I would consider such a condition intolerable and the application of aggressive medical care to be burdensome. I therefore request that my health care agent respond to any intervening (other and separate) life-threatening conditions in the same manner as directed for an end-stage medical condition or state of permanent unconsciousness as I have indicated below.

Initials.....I agree

Initials.....I disagree

PART III

HEALTH CARE TREATMENT INSTRUCTIONS IN THE EVENT OF END-STAGE MEDICAL CONDITION

OR PERMANENT UNCONSCIOUSNESS
(LIVING WILL)

The following health care treatment instructions exercise my right to make my own health care decisions. These instructions are intended to provide clear and convincing evidence of my wishes to be followed when I lack the capacity to understand, make or communicate my treatment decisions:

IF I HAVE AN END-STAGE MEDICAL CONDITION (WHICH WILL RESULT IN MY DEATH, DESPITE THE INTRODUCTION OR CONTINUATION OF MEDICAL TREATMENT) OR AM PERMANENTLY UNCONSCIOUS SUCH AS AN IRREVERSIBLE COMA OR AN IRREVERSIBLE VEGETATIVE STATE AND THERE IS NO REALISTIC HOPE OF SIGNIFICANT RECOVERY, ALL OF THE FOLLOWING APPLY (CROSS OUT ANY TREATMENT INSTRUCTIONS WITH WHICH YOU DO NOT AGREE):

1. I direct that I be given health care treatment to relieve pain or provide comfort even if such treatment might shorten my life, suppress my appetite or my breathing, or be habit forming.

2. I direct that all life prolonging procedures be withheld or withdrawn.

3. I specifically do not want any of the following as life prolonging procedures: (If you wish to receive any of these treatments, write "I do want" after the treatment)

- heart-lung resuscitation (CPR).....
- mechanical ventilator (breathing machine).....
- dialysis (kidney machine).....
- surgery.....
- chemotherapy.....
- radiation treatment.....
- antibiotics.....

Please indicate whether you want nutrition (food) or hydration (water) medically supplied by a tube into your nose, stomach, intestine, arteries, or veins if you have an end-stage medical condition or are permanently unconscious and there is no realistic hope of significant recovery.

(Initial only one statement.)

TUBE FEEDINGS

.....I want tube feedings to be given

OR

NO TUBE FEEDINGS

.....I do not want tube feedings to be given.

HEALTH CARE AGENT'S USE OF INSTRUCTIONS

(INITIAL ONE OPTION ONLY).

.....My health care agent must follow these instructions.

OR

.....These instructions are only guidance.

My health care agent shall have final say and may override any of my instructions. (Indicate any exceptions).....

If I did not appoint a health care agent, these instructions shall be followed.

LEGAL PROTECTION

Pennsylvania law protects my health care agent and health care providers from any legal liability for their good faith actions in following my wishes as expressed in this form or in complying with my health care agent's direction. On behalf of myself, my executors and heirs, I further hold my health care agent and my health care providers harmless and indemnify them against any claim for their good faith actions

in recognizing my health care agent's authority or in following my treatment instructions.

ORGAN DONATION (INITIAL ONE OPTION ONLY.)

..... I consent to donate my organs and tissues at the time of my death for the purpose of transplant, medical study or education. (Insert any limitations you desire on donation of specific organs or tissues or uses for donation of organs and tissues.)

OR

..... I do not consent to donate my organs or tissues at the time of my death.

SIGNATURE.....

Having carefully read this document, I have signed it this.....day of....., 20..., revoking all previous health care powers of attorney and health care treatment instructions.

..... (SIGN FULL NAME HERE FOR HEALTH CARE POWER OF ATTORNEY AND HEALTH CARE TREATMENT INSTRUCTIONS)

WITNESS:.....

WITNESS:.....

Two witnesses at least 18 years of age are required by Pennsylvania law and should witness your signature in each other's presence. A person who signs this document on behalf of and at the direction of a principal may not be a witness. (It is preferable if the witnesses are not your heirs, nor your creditors, nor employed by any of your health care providers.)

NOTARIZATION (OPTIONAL)

(Notarization of document is not required by Pennsylvania law, but if the document is both witnessed and notarized, it is more likely to be honored by the laws of some other states.)

On this.....day of, 20..., before me personally appeared the aforesaid declarant and principal, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County of....., State of..... the day and year first above written.

..... Notary Public

..... My commission expires

SUBCHAPTER E

OUT-OF-HOSPITAL NONRESUSCITATION

Sec.

- 5481. Short title of subchapter.
- 5482. Legislative findings and intent.
- 5483. Definitions.
- 5484. Orders, bracelets and necklaces.
- 5485. Revocation.
- 5486. Absence of order, bracelet or necklace.
- 5487. Emergency medical services.
- 5488. Advisory committee.

Cross References. Subchapter E is referred to in sections 5481, 5482, 5483 of this title.

§ 5481. Short title of subchapter.

This subchapter shall be known and may be cited as the Out-of-Hospital Nonresuscitation Act.

§ 5482. Legislative findings and intent.

The General Assembly finds and declares as follows:

(1) Although cardiopulmonary resuscitation has saved the lives of individuals about to experience sudden, unexpected death, present medical data indicates that cardiopulmonary resuscitation rarely leads to prolonged survival in individuals with terminal illnesses in whom death is expected.

(2) In many circumstances, the performance of cardiopulmonary resuscitation may inflict unwanted and unnecessary pain and suffering.

(3) Existing emergency medical services protocols may require emergency medical services personnel to proceed to cardiopulmonary resuscitation when an individual is found in a cardiac or respiratory arrest even if the individual has completed an advance health care directive indicating that the individual does not wish to receive cardiopulmonary resuscitation.

(4) The administration of cardiopulmonary resuscitation by emergency medical services personnel to an individual with an out-of-hospital do-not-resuscitate order offends the dignity of the individual and conflicts with standards of accepted medical practice.

(5) This subchapter provides clear direction to emergency medical services personnel and other health care providers in regard to the performance of cardiopulmonary resuscitation.

§ 5483. Definitions.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Department." The Department of Health of the Commonwealth.

"Emergency medical services provider." A health care provider recognized under the act of July 3, 1985 (P.L.164, No.45), known as the Emergency Medical Services Act. The term includes those individuals recognized under 42 Pa.C.S. § 8331.2 (relating to good Samaritan civil immunity for use of automated external defibrillator).

"EMS." Emergency medical services.

"Health care provider." A person who is licensed, certified or otherwise authorized by the laws of this Commonwealth to administer or provide health care in the ordinary course of business or practice of a profession. The term includes personnel recognized under the act of July 3, 1985 (P.L.164, No.45), known as the Emergency Medical Services Act, and those individuals recognized under 42 Pa.C.S. § 8331.2 (relating to good Samaritan civil immunity for use of automated external defibrillator).

"Out-of-hospital do-not-resuscitate bracelet." A bracelet in the standard format set forth in section 5484 (relating to orders, bracelets and necklaces), supplied by the department and issued by the attending physician, which may be worn at the patient's option to notify emergency medical services providers of the presence of an order.

"Out-of-hospital do-not-resuscitate necklace." A necklace in the standard format set forth in section 5484 (relating to orders, bracelets and necklaces), supplied by the department and issued by the attending physician, which may be worn at the patient's option to notify emergency medical services providers of the presence of an order.

"Out-of-hospital do-not-resuscitate order." An order in the standard format set forth in section 5484 (relating to orders, bracelets and necklaces), supplied by the department and issued by the attending physician, directing emergency medical services providers to withhold cardiopulmonary resuscitation from the patient in the event of respiratory or cardiac arrest.

"Out-of-hospital do-not-resuscitate patient." An individual who:

(1) Has an end-stage medical condition or is permanently unconscious.

(2) Pursuant to section 5484(a) (relating to orders, bracelets and necklaces), possesses and in any manner displays or causes to be displayed for emergency medical services providers an apparently valid order, bracelet or necklace.

"Surrogate." A health care agent or a health care representative.

References in Text. The act of July 3, 1985 (P.L.164, No.45), known as the Emergency Medical Services Act, referred to in the defs. of "emergency medical services provider" and "health care provider," was repealed by the act of August 18, 2009 (P.L.308, No.37). The subject matter is now contained in Chapter 81 of Title 35 (Health and Safety).

Cross References. Section 5483 is referred to in section 5422 of this title.

§ 5484. Orders, bracelets and necklaces.

(a) Issuance.--An attending physician, upon the request of a patient who is at least 18 years of age, has graduated from high school, has married or is an emancipated minor, or the patient's surrogate if the surrogate is so authorized, shall issue to the patient an order and may issue at the request of the patient or the patient's surrogate a bracelet or necklace supplied by the department. The patient may, at the patient's option, wear the bracelet or display the order or necklace to notify emergency medical services providers of the patient's DNR status.

(b) Format of order.--The department shall, with the advice of the Pennsylvania Emergency Health Services Council and with the assistance of the regional emergency medical services councils, make available standard orders for issuance to patients by attending physicians of this Commonwealth. The form of the order shall contain, but not be limited to, the following:

PENNSYLVANIA OUT-OF-HOSPITAL
DO-NOT-RESUSCITATE ORDER

Patient's full legal name:

I, the undersigned, state that I am the attending physician of the patient named above. The above-named patient or the patient's surrogate has requested this order, and I have made the determination that the patient is eligible for an order and satisfies one of the following:

..... has an end-stage medical condition.
..... is permanently unconscious and has a living will directing that no cardiopulmonary resuscitation be provided to the patient in the event of the patient's cardiac or respiratory arrest.

I direct any and all emergency medical services personnel, commencing on the effective date of this order, to withhold cardiopulmonary resuscitation (cardiac compression, invasive airway techniques, artificial ventilation, defibrillation and other related procedures)

from the patient in the event of the patient's respiratory or cardiac arrest. I further direct such personnel to provide to the patient other medical interventions, such as intravenous fluids, oxygen or other therapies necessary to provide comfort care or to alleviate pain, unless directed otherwise by the patient or the emergency medical services provider's authorized medical command physician.

Signature of attending physician:

Printed name of attending physician:

Dated:

Attending physician's emergency telephone number:

I, the undersigned, hereby direct that in the event of my cardiac and/or respiratory arrest efforts at cardiopulmonary resuscitation not be initiated and that they may be withdrawn if initiated. I understand that I may revoke these directions at any time by giving verbal instructions to the emergency medical services providers, by physical cancellation or destruction of this form or my bracelet or necklace or by simply not displaying this form or the bracelet or necklace for my EMS caregivers.

Signature of patient (if capable of making informed decisions):

I, the undersigned, hereby certify that I am authorized to execute this order on the patient's behalf by virtue of having been designated as the patient's surrogate and/or by virtue of my relationship to the patient (specify relationship:). I hereby direct that in the event of the patient's cardiac and/or respiratory arrest efforts at cardiopulmonary resuscitation not be initiated and be withdrawn if initiated.

Signature of surrogate (if patient is incapable of making informed decisions):

(c) Format of bracelet.--The department shall, with the advice of the Pennsylvania Emergency Health Services Council and with the assistance of the regional emergency medical services councils, make available standard bracelets for issuance to patients by attending physicians. The bracelets shall be uniform in design and shall, at a minimum, on the face clearly indicate OUT-OF-HOSPITAL DNR and the name of the patient and attending physician as well as the dated signature of the attending physician.

(d) Format of necklace.--The department shall, with the advice of the Pennsylvania Emergency Health Services Council and with the assistance of the regional emergency medical services councils, make available standard necklaces for issuance to patients by attending physicians. The necklaces shall be uniform in design and shall, at a minimum, on the face clearly indicate OUT-OF-HOSPITAL DNR and the name of the patient and attending physician as well as the dated signature of the attending physician.

Cross References. Section 5484 is referred to in section 5445, 5483 of this title.

§ 5485. Revocation.

(a) Patient.--If a patient has obtained an order, only the patient may revoke the patient's DNR status.

(b) Surrogate.--If a surrogate has obtained an order, the patient or the surrogate may revoke a patient's status.

(c) Manner.--Revocation under this section may be done at any time without regard to the patient's physical or mental condition and in any manner, including verbally or by destroying or not displaying the order, bracelet or necklace.

§ 5486. Absence of order, bracelet or necklace.

If an order has not been issued by an attending physician, a presumption does not arise as to the intent of the individual to consent to or to refuse the initiation, continuation or termination of life-sustaining treatment.

§ 5487. Emergency medical services.

(a) Medical command instructions.--Notwithstanding the absence of an order, bracelet or necklace pursuant to this section, emergency medical services providers shall at all times comply with the instructions of an authorized medical command physician to withhold or discontinue resuscitation.

(b) Effect of order, bracelet or necklace.--

(1) Emergency medical services providers are authorized to and shall comply with an order if made aware of the order by examining a bracelet, a necklace or the order itself.

(2) Emergency medical services providers shall provide other medical interventions necessary and appropriate to provide comfort and alleviate pain, including intravenous fluids, medications, oxygen and any other intervention appropriate to the level of the certification of the provider, unless otherwise directed by the patient or the emergency medical services provider's authorized medical command physician.

(3) As used in this subsection, the term "comply" means:

(i) to withhold cardiopulmonary resuscitation from the patient in the event of respiratory or cardiac arrest; or

(ii) to discontinue and cease cardiopulmonary resuscitation in the event the emergency medical services provider is presented with an order or discovers a necklace or bracelet after initiating cardiopulmonary resuscitation.

(c) Uncertainty regarding validity or applicability of order, bracelet or necklace.--

(1) Emergency medical services providers who in good faith are uncertain about the validity or applicability of an order, bracelet or necklace shall render care in accordance with their level of certification.

(2) Emergency medical services providers who act under paragraph (1) shall not be subject to civil or criminal liability or administrative sanction for failure to comply with an order under this section.

(d) Recognition of other states' orders.--Emergency medical services or out-of-hospital DNR orders, bracelets or necklaces valid in states other than this Commonwealth shall be recognized in this Commonwealth to the extent that these orders, bracelets or necklaces and the criteria for their issuance are consistent with the laws of this Commonwealth. Emergency medical services providers shall act in accordance with the provisions of this section when encountering a patient with an apparently valid EMS or out-of-hospital DNR form, bracelet or necklace issued by another state. Emergency medical services providers acting in good faith under this section shall be entitled to the same immunities and protections that would otherwise be applicable.

§ 5488. Advisory committee.

(a) Establishment.--Within 60 days of the effective date of this section, the department shall establish a committee to assist it in determining the advisability of using a standardized form containing orders by qualified physicians that detail the scope of medical treatment for patients' life-sustaining wishes.

(b) Membership.--The committee shall include representatives from the Pennsylvania Medical Society, the Hospital and Health System Association of Pennsylvania, the Joint State Government Commission's Advisory Committee on Decedents' Estates Laws, the Pennsylvania Bar Association, the Department of Aging, the Department of Public Welfare and other interested persons at the department's discretion.

(c) Scope of review.--The committee's review shall include, but not be limited to, examination of the following:

(1) The need to adopt this type of standardized form in view of the existing use of do-not-resuscitate orders.

(2) The use and evaluation of use of such forms in other states.

(3) Any other matters determined by the department to be relevant to its determination.

References in Text. The Department of Public Welfare, referred to in this section, was redesignated as the Department of Human Services by Act 132 of 2014.

CHAPTER 54A

OUT-OF-HOSPITAL NONRESUSCITATION

(Deleted by amendment)

2006 Deletion. Chapter 54A (§§ 54A01 - 54A13) was added June 19, 2002, P.L.409, No.59, and deleted by amendment November 29, 2006, P.L.1484, No.169, effective in 60 days.

CHAPTER 55

INCAPACITATED PERSONS

Subchapter

- A. General Provisions
- B. Small Estates
- C. Appointment of Guardian; Bonds; Removal and Discharge
- D. Powers, Duties and Liabilities of Guardians
- E. Accounts, Audits, Reviews and Distribution
- F. Guardianship Support

Enactment. Chapter 55 was added June 30, 1972, P.L.508, No.164, effective July 1, 1972.

Chapter Heading. The heading of Chapter 55 was amended April 16, 1992, P.L.108, No.24, effective in 60 days.

Cross References. Chapter 55 is referred to in sections 102, 5502, 5512.2, 5523, 5902, 5912, 5922 of this title; section 4A211 of Title 13 (Commercial Code); section 62A05 of Title 42 (Judiciary and Judicial Procedure).

SUBCHAPTER A

GENERAL PROVISIONS

Sec.

5501. Meaning of incapacitated person.

5502. Purpose of chapter.

Subchapter Heading. The heading of Subchapter A was amended April 16, 1992, P.L.108, No.24, effective in 60 days.

§ 5501. Meaning of incapacitated person.

"Incapacitated person" means an adult whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that he is partially or totally unable to manage his financial resources or to meet essential requirements for his physical health and safety.
(Dec. 10, 1974, P.L.899, No.295, eff. imd.; Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 5501 is referred to in section 2514 of this title.

§ 5502. Purpose of chapter.

Recognizing that every individual has unique needs and differing abilities, it is the purpose of this chapter to promote the general welfare of all citizens by establishing a system which permits incapacitated persons to participate as fully as possible in all decisions which affect them, which assists these persons in meeting the essential requirements for their physical health and safety, protecting their rights, managing their financial resources and developing or regaining their abilities to the maximum extent possible and which accomplishes these objectives through the use of the least restrictive alternative; and recognizing further that when guardianship services are necessary, it is important to facilitate the finding of suitable individuals or entities willing to serve as guardians.
(Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. Act 24 added section 5502. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

SUBCHAPTER B
SMALL ESTATES

Sec.

5505. Provisions similar to small estates of minors.

§ 5505. Provisions similar to small estates of minors.

The provisions concerning small estates of incapacitated persons shall be the same as are set forth in the following provisions of this title relating to minors' estates:

Section 5101 (relating to when guardian unnecessary).

Section 5102 (relating to power of natural guardian).

Section 5103 (relating to sequestered deposit).

(Dec. 10, 1974, P.L.867, No.293, eff. imd.; Feb. 18, 1982, P.L.45, No.26, eff. imd.; Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

SUBCHAPTER C
APPOINTMENT OF GUARDIAN; BONDS; REMOVAL
AND DISCHARGE

Sec.

5511. Petition and hearing; independent evaluation.

5512. County of appointment; qualifications.

- 5512.1. Determination of incapacity and appointment of guardian.
- 5512.2. Review hearing.
- 5512.3. Annual report.
- 5513. Emergency guardian.
- 5514. To fill vacancy; co-guardian.
- 5515. Provisions similar to other estates.
- 5516. Fiduciary estate.
- 5517. Adjudication of capacity and modification of existing orders.
- 5518. Evidence of incapacity.
- 5518.1. Cross-examination of witnesses.

Cross References. Subchapter C is referred to in section 5833 of this title.

§ 5511. Petition and hearing; independent evaluation.

(a) Resident.--The court, upon petition and hearing and upon the presentation of clear and convincing evidence, may find a person domiciled in the Commonwealth to be incapacitated and appoint a guardian or guardians of his person or estate. The petitioner may be any person interested in the alleged incapacitated person's welfare. The court may dismiss a proceeding where it determines that the proceeding has not been instituted to aid or benefit the alleged incapacitated person or that the petition is incomplete or fails to provide sufficient facts to proceed. Written notice of the petition and hearing shall be given in large type and in simple language to the alleged incapacitated person. The notice shall indicate the purpose and seriousness of the proceeding and the rights that can be lost as a result of the proceeding. It shall include the date, time and place of the hearing and an explanation of all rights, including the right to request the appointment of counsel and to have counsel appointed if the court deems it appropriate and the right to have such counsel paid for if it cannot be afforded. The Supreme Court shall establish a uniform citation for this purpose. A copy of the petition shall be attached. Personal service shall be made on the alleged incapacitated person, and the contents and terms of the petition shall be explained to the maximum extent possible in language and terms the individual is most likely to understand. Service shall be no less than 20 days in advance of the hearing. In addition, notice of the petition and hearing shall be given in such manner as the court shall direct to all persons residing within the Commonwealth who are sui juris and would be entitled to share in the estate of the alleged incapacitated person if he died intestate at that time, to the person or institution providing residential services to the alleged incapacitated person and to such other parties as the court may direct, including other service providers. The hearing may be closed to the public and without a jury unless the alleged incapacitated person or his counsel objects. The hearing shall be closed and with or without a jury if the person alleged to be incapacitated or his counsel so requests. The hearing may be held at the residence of the alleged incapacitated person. The alleged incapacitated person shall be present at the hearing unless:

- (1) the court is satisfied, upon the deposition or testimony of or sworn statement by a physician or licensed psychologist, that his physical or mental condition would be harmed by his presence; or
- (2) it is impossible for him to be present because of his absence from the Commonwealth. It shall not be necessary

for the alleged incapacitated person to be represented by a guardian ad litem in the proceeding. Petitioner shall be required to notify the court at least seven days prior to the hearing if counsel has not been retained by or on behalf of the alleged incapacitated person. In appropriate cases, counsel shall be appointed to represent the alleged incapacitated person in any matter for which counsel has not been retained by or on behalf of that individual.

(b) Nonresident.--The court may find a person not domiciled in the Commonwealth, having property in the Commonwealth, to be incapacitated and may appoint a guardian of his estate. The appointment may be made after petition, hearing and notice, as in the case of a person domiciled in the Commonwealth, or upon the submission of an exemplified copy of a decree establishing his incapacity in another jurisdiction. The court shall give preference in its appointment to the foreign guardian of the nonresident incapacitated person, unless it finds that such appointment will not be for the best interests of the incapacitated person.

(c) Payment of certain costs.--If the alleged incapacitated person is unable to pay for counsel or for the evaluation, the court shall order the county to pay these costs. These costs shall be reimbursed by the Commonwealth in the following fiscal year.

(d) Independent evaluation.--The court, upon its own motion or upon petition by the alleged incapacitated person for cause shown, shall order an independent evaluation which shall meet the requirements of section 5518 (relating to evidence of incapacity). The court shall give due consideration to the appointment of an evaluator nominated by the alleged incapacitated person.

(e) Petition contents.--The petition, which shall be in plain language, shall include the name, age, residence and post office address of the alleged incapacitated person, the names and addresses of the spouse, parents and presumptive adult heirs of the alleged incapacitated person, the name and address of the person or institution providing residential services to the alleged incapacitated person, the names and addresses of other service providers, the name and address of the person or entity whom petitioner asks to be appointed guardian, an averment that the proposed guardian has no interest adverse to the alleged incapacitated person, the reasons why guardianship is sought, a description of the functional limitations and physical and mental condition of the alleged incapacitated person, the steps taken to find less restrictive alternatives, the specific areas of incapacity over which it is requested that the guardian be assigned powers and the qualifications of the proposed guardian. If a limited or plenary guardian of the estate is sought, the petition shall also include the gross value of the estate and net income from all sources to the extent known.

(f) Who may be appointed guardian.--The court may appoint as guardian any qualified individual, a corporate fiduciary, a nonprofit corporation, a guardianship support agency under Subchapter F (relating to guardianship support) or a county agency. In the case of residents of State facilities, the court may also appoint, only as guardian of the estate, the guardian office at the appropriate State facility. The court shall not appoint a person or entity providing residential services for a fee to the incapacitated person or any other person whose interests conflict with those of the incapacitated person except where it is clearly demonstrated that no guardianship support agency or other alternative exists. Any family relationship to

such individual shall not, by itself, be considered as an interest adverse to the alleged incapacitated person. If appropriate, the court shall give preference to a nominee of the incapacitated person.

(Dec. 10, 1974, P.L.867, No.293, eff. imd.; Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 5511 is referred to in sections 5513, 5808, 5822, 5823, 5832, 5833, 7764 of this title; section 3206 of Title 18 (Crimes and Offenses); section 8123 of Title 35 (Health and Safety).

§ 5512. County of appointment; qualifications.

(a) Resident incapacitated person.--A guardian of the person or estate of an incapacitated person may be appointed by the court of the county in which the incapacitated person is domiciled, is a resident or is residing in a long-term care facility.

(b) Nonresident incapacitated person.--A guardian of the estate within the Commonwealth of an incapacitated person domiciled outside of the Commonwealth may be appointed by the court of the judicial district having jurisdiction of a decedent's estate or of a trust in which the incapacitated person has an interest. When the nonresident incapacitated person's estate is derived otherwise than from a decedent's estate or a trust within the Commonwealth, a guardian may be appointed by the court of any county where an asset of the incapacitated person is located.

(c) Exclusiveness of appointment.--When a court has appointed a guardian of the person or estate of an incapacitated person pursuant to subsection (a) or (b), no other court shall appoint a similar guardian for the incapacitated person within the Commonwealth.

(Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

§ 5512.1. Determination of incapacity and appointment of guardian.

(a) Determination of incapacity.--In all cases, the court shall consider and make specific findings of fact concerning:

(1) The nature of any condition or disability which impairs the individual's capacity to make and communicate decisions.

(2) The extent of the individual's capacity to make and communicate decisions.

(3) The need for guardianship services, if any, in light of such factors as the availability of family, friends and other supports to assist the individual in making decisions and in light of the existence, if any, of advance directives such as durable powers of attorney or trusts.

(4) The type of guardian, limited or plenary, of the person or estate needed based on the nature of any condition or disability and the capacity to make and communicate decisions.

(5) The duration of the guardianship.

(6) The court shall prefer limited guardianship.

(b) Limited guardian of the person.--Upon a finding that the person is partially incapacitated and in need of guardianship services, the court shall enter an order appointing

a limited guardian of the person with powers consistent with the court's findings of limitations, which may include:

(1) General care, maintenance and custody of the incapacitated person.

(2) Designating the place for the incapacitated person to live.

(3) Assuring that the incapacitated person receives such training, education, medical and psychological services and social and vocational opportunities, as appropriate, as well as assisting the incapacitated person in the development of maximum self-reliance and independence.

(4) Providing required consents or approvals on behalf of the incapacitated person.

(c) Plenary guardian of the person.--The court may appoint a plenary guardian of the person only upon a finding that the person is totally incapacitated and in need of plenary guardianship services.

(d) Limited guardian of the estate.--Upon a finding that the person is partially incapacitated and in need of guardianship services, the court shall enter an order appointing a limited guardian of the estate with powers consistent with the court's finding of limitations, which shall specify the portion of assets or income over which the guardian of the estate is assigned powers and duties.

(e) Plenary guardian of the estate.--A court may appoint a plenary guardian of the estate only upon a finding that the person is totally incapacitated and in need of plenary guardianship services.

(f) No presumption.--No presumption of incapacity shall be raised from the alleged incapacitated person's institutionalization.

(g) Legal rights retained.--Except in those areas designated by court order as areas over which the limited guardian has power, a partially incapacitated person shall retain all legal rights.

(h) Information as to rights.--At the conclusion of a proceeding in which the person has been adjudicated incapacitated, the court shall assure that the person is informed of his right to appeal and to petition to modify or terminate the guardianship.

(Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. Act 24 added section 5512.1. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

§ 5512.2. Review hearing.

(a) Time of hearing.--The court may set a date for a review hearing in its order establishing the guardianship or hold a review hearing at any time it shall direct. The court shall conduct a review hearing promptly if the incapacitated person, guardian or any interested party petitions the court for a hearing for reason of a significant change in the person's capacity, a change in the need for guardianship services or the guardian's failure to perform his duties in accordance with the law or to act in the best interest of the incapacitated person. The court may dismiss a petition for review hearing if it determines that the petition is frivolous.

(b) Burden of proof and rights.--The incapacitated person shall have all of the rights enumerated in this chapter. Except when the hearing is held to appoint a successor guardian, the burden of proof, by clear and convincing evidence, shall be on

the party advocating continuation of guardianship or expansion of areas of incapacity.

(Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. Act 24 added section 5512.2. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 5512.2 is referred to in section 5517 of this title.

§ 5512.3. Annual report.

The court shall annually file with the Supreme Court Administrator's Office on forms furnished by the office a statistical and descriptive report to assist in evaluating the operation and costs of the guardianship system.

(Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. Act 24 added section 5512.3. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

§ 5513. Emergency guardian.

Notwithstanding the provisions of section 5511 (relating to petition and hearing; independent evaluation), the court, upon petition and a hearing at which clear and convincing evidence is shown, may appoint an emergency guardian or guardians of the person or estate of a person alleged to be incapacitated, when it appears that the person lacks capacity, is in need of a guardian and a failure to make such appointment will result in irreparable harm to the person or estate of the alleged incapacitated person. The provisions of section 5511, including those relating to counsel, shall be applicable to such proceedings, except when the court has found that it is not feasible in the circumstances. An emergency guardian so appointed for the person or estate of an alleged incapacitated person shall only have and be subject to such powers, duties and liabilities and serve for such time as the court shall direct in its decree. An emergency order appointing an emergency guardian of the person may be in effect for up to 72 hours. If the emergency continues, then the emergency order may be extended for no more than 20 days from the expiration of the initial emergency order. After expiration of the emergency order or any extension, a full guardianship proceeding must be initiated pursuant to section 5511. The court may also appoint an emergency guardian of the person pursuant to this section for an alleged incapacitated person who is present in this Commonwealth but is domiciled outside of this Commonwealth, regardless of whether the alleged incapacitated person has property in this Commonwealth. An emergency order appointing an emergency guardian of the estate shall not exceed 30 days. After 30 days, a full guardianship proceeding must be initiated pursuant to section 5511.

(Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 5513 is referred to in section 5914 of this title.

§ 5514. To fill vacancy; co-guardian.

The court, after such notice to parties in interest as it shall direct, may without a hearing appoint a succeeding guardian to fill a vacancy in the office of guardian or may appoint a co-guardian of the estate of an incapacitated person. Where the vacating guardian was a parent who is now deceased,

any testamentary nominee of the parent shall be given preference by the court.

(Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

§ 5515. Provisions similar to other estates.

The provisions relating to a guardian of an incapacitated person and his surety shall be the same as are set forth in the following provisions of this title relating to a personal representative or a guardian of a minor and their sureties:

Section 3182 (relating to grounds for removal).

Section 3183 (relating to procedure for and effect of removal).

Section 3184 (relating to discharge of personal representative and surety).

Section 5115 (relating to appointment of guardian in conveyance).

Section 5121 (relating to necessity, form and amount).

Section 5122 (relating to when bond not required).

Section 5123 (relating to requiring or changing amount of bond).

(Dec. 10, 1974, P.L.867, No.293, eff. imd; Feb. 18, 1982, P.L.45, No.26, eff. imd.; Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

§ 5516. Fiduciary estate.

The court, in its discretion, upon the application of any party in interest, in addition to any bond required for the incapacitated person's individual estate, may require a separate bond in the name of the Commonwealth, with sufficient surety, in such amount as the court shall consider necessary for the protection of the parties in interest in an estate of which the incapacitated person is serving in the capacity as a fiduciary and conditioned in the following form:

(1) When one guardian.--The condition of this obligation is that, if the said guardian shall well and truly account for property held by the incapacitated person as fiduciary according to law, this obligation shall be void; but otherwise it shall remain in force.

(2) When two or more guardians.--The condition of this obligation is that, if the said guardians or any of them shall well and truly account for property held by the incapacitated person as fiduciary according to law, this obligation shall be void as to the guardian or guardians who shall so account; but otherwise it shall remain in force.

(Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

§ 5517. Adjudication of capacity and modification of existing orders.

The court, after a hearing under section 5512.2 (relating to review hearing), may order that a person previously adjudged incapacitated is no longer incapacitated or the court may find that the incapacitated person has regained or lost capacity in certain areas in which case the court shall modify the existing guardianship order.

(Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 5517 is referred to in section 8123 of Title 35 (Health and Safety).

§ 5518. Evidence of incapacity.

To establish incapacity, the petitioner must present testimony, in person or by deposition from individuals qualified by training and experience in evaluating individuals with incapacities of the type alleged by the petitioner, which establishes the nature and extent of the alleged incapacities and disabilities and the person's mental, emotional and physical condition, adaptive behavior and social skills. The petition must also present evidence regarding the services being utilized to meet essential requirements for the alleged incapacitated person's physical health and safety, to manage the person's financial resources or to develop or regain the person's abilities; evidence regarding the types of assistance required by the person and as to why no less restrictive alternatives would be appropriate; and evidence regarding the probability that the extent of the person's incapacities may significantly lessen or change.

(Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 5518 is referred to in section 5511 of this title.

§ 5518.1. Cross-examination of witnesses.

Testimony as to the capacity of the alleged incapacitated person shall be subject to cross-examination by counsel for the alleged incapacitated person.

(Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. Act 24 added section 5518.1. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

SUBCHAPTER D

POWERS, DUTIES AND LIABILITIES OF GUARDIANS

Sec.

5521. Provisions concerning powers, duties and liabilities.

5522. Power to lease.

5523. Collateral attack.

5524. Effect of determination of incapacity.

5525. Notice to Commonwealth and political subdivisions.

§ 5521. Provisions concerning powers, duties and liabilities.

(a) Duty of guardian of the person.--It shall be the duty of the guardian of the person to assert the rights and best interests of the incapacitated person. Expressed wishes and preferences of the incapacitated person shall be respected to the greatest possible extent. Where appropriate, the guardian shall assure and participate in the development of a plan of supportive services to meet the person's needs which explains how services will be obtained. The guardian shall also encourage the incapacitated person to participate to the maximum extent of his abilities in all decisions which affect him, to act on his own behalf whenever he is able to do so and to develop or regain, to the maximum extent possible, his capacity to manage his personal affairs.

(b) Duty of guardian of the estate.--The provisions concerning the powers, duties and liabilities of guardians of incapacitated persons' estates shall be the same as those set forth in the following provisions of this title relating to personal representatives of decedents' estates and guardians of minors' estates:

Section 3313 (relating to liability insurance).

Section 3314 (relating to continuation of business).

Section 3315 (relating to incorporation of estate's business).

Section 3317 (relating to claims against co-fiduciary).

Section 3318 (relating to revival of judgments against personal representative).

Section 3319 (relating to power of attorney; delegation of power over subscription rights and fractional shares; authorized delegations).

Section 3320 (relating to voting stock by proxy).

Section 3321 (relating to nominee registration; corporate fiduciary as agent; deposit of securities in a clearing corporation; book-entry securities).

Section 3322 (relating to acceptance of deed in lieu of foreclosure).

Section 3323 (relating to compromise of controversies).

Section 3324 (relating to death or incapacity of fiduciary).

Section 3327 (relating to surviving or remaining personal representatives).

Section 3328 (relating to disagreement of personal representatives).

Section 3331 (relating to liability of personal representative on contracts).

Section 3332 (relating to inherent powers and duties).

Section 3355 (relating to restraint of sale).

Section 3356 (relating to purchase by personal representative).

Section 3359 (relating to record of proceedings; county where real estate lies).

Section 3360 (relating to contracts, inadequacy of consideration or better offer; brokers' commissions).

Section 3372 (relating to substitution of personal representative in pending action or proceedings).

Section 3374 (relating to death or removal of fiduciary).

Section 3390 (relating to specific performance of contracts).

Section 5141 (relating to possession of real and personal property).

Section 5142 (relating to inventory).

Section 5143 (relating to abandonment of property).

Section 5145 (relating to investments).

Section 5146 (relating to guardian named in conveyance).

Section 5147 (relating to proceedings against guardian).

Section 5151 (relating to power to sell personal property).

Section 5154 (relating to title of purchaser).

Section 5155 (relating to order of court).

(c) Reports.--

(1) Each guardian of an incapacitated person shall file with the court appointing him a report, at least once within the first 12 months of his appointment and at least annually thereafter, attesting to the following:

(i) Guardian of the estate:

(A) current principal and how it is invested;

- (B) current income;
- (C) expenditures of principal and income since the last report; and
- (D) needs of the incapacitated person for which the guardian has provided since the last report.

(ii) Guardian of the person:

- (A) current address and type of placement of the incapacitated person;
- (B) major medical or mental problems of the incapacitated person;
- (C) a brief description of the incapacitated person's living arrangements and the social, medical, psychological and other support services he is receiving;
- (D) the opinion of the guardian as to whether the guardianship should continue or be terminated or modified and the reasons therefor; and
- (E) number and length of times the guardian visited the incapacitated person in the past year.

(2) Within 60 days of the death of the incapacitated person or an adjudication of capacity and modification of existing orders, the guardian shall file a final report with the court.

(d) Powers and duties only granted by court.--Unless specifically included in the guardianship order after specific findings of fact or otherwise ordered after a subsequent hearing with specific findings of fact, a guardian or emergency guardian shall not have the power and duty to:

(1) Consent on behalf of the incapacitated person to an abortion, sterilization, psychosurgery, electroconvulsive therapy or removal of a healthy body organ.

(2) Prohibit the marriage or consent to the divorce of the incapacitated person.

(3) Consent on behalf of the incapacitated person to the performance of any experimental biomedical or behavioral medical procedure or participation in any biomedical or behavioral experiment.

(e) Knowledge of objection.--In a hearing to determine whether a guardian shall be ordered to consent to a specific act or omission, if the guardian knows or has reason to know of the incapacitated person's objection to the action or omission, whether such objection had been expressed prior or subsequent to the determination of incapacity, the guardian shall report to the court such knowledge or information.

(f) Powers and duties not granted to guardian.--The court may not grant to a guardian powers controlled by other statute, including, but not limited to, the power:

(1) To admit the incapacitated person to an inpatient psychiatric facility or State center for the mentally retarded.

(2) To consent, on behalf of the incapacitated person, to the relinquishment of the person's parental rights.

(g) Criminal and civil immunity.--In the absence of gross negligence, recklessness or intentional misconduct, a unit of local government, nonprofit corporation or guardianship support agency under Subchapter F (relating to guardianship support) appointed as a guardian shall not be criminally liable or civilly liable for damages for performing duties as a guardian of the person, as authorized under this chapter.

(Dec. 10, 1974, P.L.867, No.293, eff. imd.; Feb. 18, 1982, P.L.45, No.26, eff. imd.; Apr. 16, 1992, P.L.108, No.24, eff. 60 days; Oct. 12, 1999, P.L.422, No.39, eff. 60 days)

1999 Amendment. Act 39 amended subsec. (b). See section 13(8) of Act 39 in the appendix to this title for special provisions relating to applicability.

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 5521 is referred to in section 5553 of this title.

§ 5522. Power to lease.

A guardian may lease any real or personal property of the incapacitated person for a term not exceeding five years after its execution.

(Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

§ 5523. Collateral attack.

No decree entered pursuant to this chapter shall be subject to collateral attack on account of any irregularity if the court which entered it had jurisdiction to do so.

§ 5524. Effect of determination of incapacity.

A partially incapacitated person shall be incapable of making any contract or gift or any instrument in writing in those specific areas in which the person has been found to be incapacitated. A totally incapacitated person shall be incapable of making any contract or gift or any instrument in writing. This section shall not impair the interest in real estate acquired by a bona fide grantee of, or a bona fide holder of a lien on, real estate in a county other than that in which the decree establishing the incapacity is entered, unless the decree or a duplicate original or certified copy thereof is recorded in the office of the recorder of deeds in the county in which the real estate lies before the recording or entering of the instrument or lien under which the grantee or lienholder claims. (Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

§ 5525. Notice to Commonwealth and political subdivisions.

When the Commonwealth or a political subdivision thereof has a claim for maintaining an incapacitated person in an institution, the guardian, within three months of his appointment, shall give notice thereof to the Department of Public Welfare or the proper officer of such political subdivision, as the case may be.

(Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

References in Text. The Department of Public Welfare, referred to in this section, was redesignated as the Department of Human Services by Act 132 of 2014.

SUBCHAPTER E

ACCOUNTS, AUDITS, REVIEWS AND DISTRIBUTION

Sec.

5531. When accounting filed.

5532. Where accounts filed.

5533. Notice, audits, reviews and distribution.

- 5533.1. Account of personal representative of deceased incompetent (Repealed).
5534. Recognition of claims.
5535. Disposition of trust income.
5536. Distributions of income and principal during incapacity.
5537. Reserve for funeral.

§ 5531. When accounting filed.

A guardian shall file an account of his administration whenever directed to do so by the court or may file an account at the termination of the guardianship, or at any other time or times authorized by the court.

(Apr. 28, 1978, P.L.77, No.37, eff. 60 days)

§ 5532. Where accounts filed.

All accounts of guardians shall be filed in the office of the clerk.

§ 5533. Notice, audits, reviews and distribution.

The provisions concerning accounts, audits, reviews, distribution and rights of distributees in an incapacitated person's estate shall be the same as those set forth in the following provisions of this title for the administration of a decedent's or minor's estate:

Section 3503 (relating to notice to parties in interest).

Section 3504 (relating to representation of parties in interest).

Section 3511 (relating to audits in counties having separate orphans' court division).

Section 3512 (relating to audits in counties having no separate orphans' court division).

Section 3513 (relating to statement of proposed distribution).

Section 3514 (relating to confirmation of account and approval of proposed distribution).

Section 3521 (relating to rehearing; relief granted).

Section 3532(c) (relating to record of risk distributions).

Section 3533 (relating to award upon final confirmation of account).

Section 3534 (relating to distribution in kind).

Section 3536 (relating to recording and registering decrees awarding real estate).

Section 3544 (relating to liability of personal representative for interest).

Section 3545 (relating to transcripts of balances due by personal representative).

Section 5167 (relating to failure to present claim at audit).

(Apr. 28, 1978, P.L.77, No.37, eff. 60 days; Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

References in Text. Section 3504, referred to in this section, is repealed. The subject matter is now contained in section 751(6).

§ 5533.1. Account of personal representative of deceased incompetent (Repealed).

1984 Repeal. Section 5533.1 was repealed October 12, 1984, P.L.929, No.182, effective immediately.

§ 5534. Recognition of claims.

Upon the audit of the account of the guardian of a person who has died during incapacity, the auditing judge or auditor

passing on the account shall not pass upon any claims against the estate of the incapacitated person other than necessary administration expenses, including compensation of the guardian and his attorney. All claims remaining unpaid at the incapacitated person's death shall be presented to the personal representative.

(Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

§ 5535. Disposition of trust income.

Except as otherwise provided by the trust instrument, the trustee of an inter vivos or testamentary trust, with the approval of the court having jurisdiction of the trust, may pay income distributable to a beneficiary who is an incapacitated person for whose estate no guardian has been appointed directly to the incapacitated person, or expend and apply it for his care and maintenance or the care, maintenance and education of his dependents.

(Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

§ 5536. Distributions of income and principal during incapacity.

(a) In general.--All income received by a guardian of the estate of an incapacitated person, including (subject to the requirements of Federal law relating thereto) all funds received from the Veterans' Administration, Social Security Administration and other periodic retirement or disability payments under private or governmental plans, in the exercise of a reasonable discretion, may be expended in the care and maintenance of the incapacitated person, without the necessity of court approval. The court, for cause shown and with only such notice as it considers appropriate in the circumstances, may authorize or direct the payment or application of any or all of the income or principal of the estate of an incapacitated person for the care, maintenance or education of the incapacitated person, his spouse, children or those for whom he was making such provision before his incapacity, or for the reasonable funeral expenses of the incapacitated person's spouse, child or indigent parent. In proper cases, the court may order payment of amounts directly to the incapacitated person for his maintenance or for incidental expenses and may ratify payments made for these purposes. For purposes of this subsection, the term "income" means income as determined in accordance with the rules set forth in Chapter 81 (relating to principal and income), other than the power to adjust and the power to convert to a unitrust.

(b) Estate plan.--The court, upon petition and with notice to all parties in interest and for good cause shown, shall have the power to substitute its judgment for that of the incapacitated person with respect to the estate and affairs of the incapacitated person for the benefit of the incapacitated person, his family, members of his household, his friends and charities in which he was interested. This power shall include, but is not limited to, the power to:

(1) Make gifts, outright or in trust.

(2) Convey, release or disclaim his contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety.

(3) Release or disclaim his powers as trustee, personal representative, custodian for minors, or guardian.

(4) Exercise, release or disclaim his powers as donee of a power of appointment.

(5) Enter into contracts.

(6) Create for the benefit of the incapacitated person or others, revocable or irrevocable trusts of his property which may extend beyond his disability or life.

(7) Exercise options of the incapacitated person to purchase or exchange securities or other property.

(8) Exercise all rights and privileges under life insurance policies, annuity contracts or other plans or contractual arrangements providing for payments to the incapacitated person or to others after his death.

(9) Exercise his right to claim or disclaim an elective share in the estate of his deceased spouse and renounce any interest by testate or intestate succession or by inter vivos transfer.

(10) Change the incapacitated person's residence or domicile.

(11) Modify by means of codicil or trust amendment, as the case may be, the terms of the incapacitated person's will or of any revocable trust created by the incapacitated person, as the court may deem advisable in light of changes in applicable tax laws.

In the exercise of its judgment for that of the incapacitated person, the court, first being satisfied that assets exist which are not required for the maintenance, support and well-being of the incapacitated person, may adopt a plan of gifts which results in minimizing current or prospective taxes, or which carries out a lifetime giving pattern. The court in exercising its judgment shall consider the testamentary and inter vivos intentions of the incapacitated person insofar as they can be ascertained.

(July 9, 1976, P.L.836, No.144, eff. imd.; Feb. 18, 1982, P.L.45, No.26, eff. imd.; Apr. 16, 1992, P.L.108, No.24, eff. 60 days; Dec. 16, 1992, P.L.1163, No.152, eff. imd.; May 16, 2002, P.L.330, No.50, eff. 60 days)

2002 Amendment. Act 50 amended subsec. (a). See section 14(a) of Act 50 in the appendix to this title for special provisions relating to applicability.

1992 Amendments. Act 24 amended the entire section and Act 152 amended subsec. (b).

§ 5537. Reserve for funeral.

(a) In general.--The court may authorize the guardian to retain such assets as are deemed appropriate for the anticipated expense of the incapacitated person's funeral, including the cost of a burial lot or other resting place, which shall be exempt from all claims including claims of the Commonwealth. The court with notice thereof to the institution or person having custody of the incapacitated person may also authorize the guardian or another person to set aside such assets in the form of a savings account in a financial institution which account shall not be subject to escheat during the lifetime of the incapacitated person. Such assets may be disbursed by the guardian or person who set aside such assets or by the financial institution for such funeral expenses without further authorization or accounting. Any part of such assets not so disbursed shall constitute a part of the deceased incapacitated person's estate. Should the incapacitated person become capacitated or should such assets become excessive, the court,

upon petition of any party in interest, may make such order as the circumstances shall require.

(b) Definition.--As used in this section, "financial institution" includes a bank, a bank and trust company, a trust company, a savings and loan association, a building and loan association, a savings bank, a private bank and a national bank. (Feb. 18, 1982, P.L.45, No.26, eff. imd.; Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

SUBCHAPTER F

GUARDIANSHIP SUPPORT

Sec.

- 5551. Guardianship support agencies; legislative intent.
- 5552. Services to individuals whose decision-making ability is impaired.
- 5553. Guardianship services.
- 5554. Services to courts, guardians and others.
- 5555. Costs and compensation.

Enactment. Subchapter F was added April 16, 1992, P.L.108, No.24, effective in 60 days.

Applicability. See section 21 of Act 24 of 1992 in the appendix to this title for special provisions relating to applicability.

Cross References. Subchapter F is referred to in sections 3155, 5511, 5521 of this title.

§ 5551. Guardianship support agencies; legislative intent.

The General Assembly finds that there is a need for agencies to provide services, as an alternative to guardianship, to individuals whose decision-making ability is impaired, to serve as guardian when an individual is found to need a guardian and no other person is willing and qualified to serve and to provide services to courts, guardians and others.

§ 5552. Services to individuals whose decision-making ability is impaired.

Guardianship support agencies shall provide guardianship services under this chapter. Such services shall include, but not be limited to:

- (1) Assistance to individuals in decision making, including financial management training.
- (2) Assistance to individuals in securing and maintaining benefits and services.
- (3) Recruiting, training and maintaining a group of individuals to serve as representative payees or similar fiduciaries established by benefit-issuing agencies, agents pursuant to a power of attorney, and trustees.

(Oct. 12, 1999, P.L.422, No.39, eff. 60 days)

1999 Amendment. See section 13(8) of Act 39 in the appendix to this title for special provisions relating to applicability.

§ 5553. Guardianship services.

(a) In general.--The guardianship support agency shall be available to serve as guardian of the estate or of the person, or both, of an incapacitated person when no less restrictive alternative will meet the needs of the individual and when no other person is willing and qualified to become guardian. The agency itself may be appointed guardian and no individual need

be specified by the court. If appointed, the guardianship support agency shall have all of the powers and duties of a corporate fiduciary and shall not be required to post bond.

(b) Powers and duties.--The guardianship support agency shall be treated the same as all other guardians in regard to appointment as guardian or successor or co-guardian, reporting, powers and duties, compensation and in all other respects. In addition to section 5521 (relating to provisions concerning powers, duties, and liabilities), a guardianship support agency shall have the power and duty to:

(1) Invest the principal and income of incapacitated persons for whom it is the guardian of the estate. For this purpose, it may pool the principal and income, but shall maintain an individual account for each incapacitated person reflecting the person's participation therein.

(2) Expend and, if necessary, advance costs necessary to administer guardianships for which it has been appointed guardian.

(3) Apply for letters or otherwise administer the estate of any incapacitated person for whom it has been appointed guardian who dies during the guardianship when no one else is willing and qualified to serve.

§ 5554. Services to courts, guardians and others.

(a) Services to courts.--Guardianship support agencies may be available to assist courts on request with reviewing petitions for appointment of a guardian, recommending alternatives to guardianship, investigating petitions, explaining petitions to respondents or reviewing reports and monitoring guardianship arrangements.

(b) Services to guardians.--Guardianship support agencies may be available to assist guardians in filing reports, monitoring incapacitated persons and otherwise fulfilling their duties.

(c) Services to petitioners and others.--Guardianship support agencies may be available to assist in the filing of petitions for guardianship, to provide information on available alternatives to potential petitioners, to locate and train individuals skilled in providing functional evaluations of alleged incapacitated persons and to perform such other duties as required.

§ 5555. Costs and compensation.

Recipients of service shall be charged for services based on their ability to pay. Guardianship support agencies shall make every effort to minimize costs, including minimizing personnel costs through the use of volunteers.

CHAPTER 56

POWERS OF ATTORNEY

Sec.

5601. General provisions.

5601.1. Powers of attorney presumed durable.

5601.2. Special rules for gifts (Repealed).

5601.3. Agent's duties.

5601.4. Authority that requires specific and general grant of authority.

5602. Form of power of attorney.

5603. Implementation of power of attorney.

5604. Durable powers of attorney.

5605. Power of attorney not revoked until notice.

5606. Proof of continuance of powers of attorney by affidavit.

- 5607. Corporate agent.
- 5608. Acceptance of and reliance upon power of attorney.
- 5608.1. Liability for refusal to accept power of attorney.
- 5608.2. Activities through employees.
- 5609. Compensation and reimbursement for expenses.
- 5610. Account.
- 5611. Validity.
- 5612. Principles of law and equity.

Enactment. Present Chapter 56 was added February 18, 1982, P.L.45, No.26, effective immediately.

Applicability. Section 13 of Act 26 of 1982 provided that Chapter 56 shall apply to all powers of attorney executed on or after the date of enactment of Act 26 and provided that nothing in Act 26 shall be construed to limit the effectiveness of powers of attorney in effect prior to the date of enactment of Act 26.

Prior Provisions. Former Chapter 56, which related to the same subject matter, was added December 10, 1974, P.L.899, No.295, and repealed February 18, 1982, P.L.45, No.26, effective immediately.

Cross References. Chapter 56 is referred to in sections 711, 5601, 7732 of this title section 2713 of Title 18 (Crimes and Offenses).

§ 5601. General provisions.

(a) General rule.--In addition to all other powers that may be delegated to an agent, any or all of the powers referred to in section 5602(a) (relating to form of power of attorney) may lawfully be granted in writing to an agent and, unless the power of attorney expressly directs to the contrary, shall be construed in accordance with the provisions of this chapter.

(b) Execution.--

(1) A power of attorney shall be dated, and it shall be signed by the principal by signature or mark, or by another individual on behalf of and at the direction of the principal if the principal is unable to sign but specifically directs another individual to sign the power of attorney.

(2) If the power of attorney is executed by mark or by another individual, then it shall be witnessed by two individuals, each of whom is 18 years of age or older. A witness shall not be the individual who signed the power of attorney on behalf of and at the direction of the principal.

(3) For a power of attorney executed on or after the effective date of this paragraph, the signature or mark of the principal, or the signature or mark of another individual signing a power of attorney on behalf of and at the direction of the principal, shall be:

(i) Acknowledged before a notary public or other individual authorized by law to take acknowledgments. The notary public or other individual authorized by law to take acknowledgments shall not be the agent designated in the power of attorney.

(ii) Witnessed by two individuals, each of whom is 18 years of age or older. A witness shall not be the individual who signed the power of attorney on behalf of and at the direction of the principal, the agent designated in the power of attorney or the notary public or other person authorized by law to take acknowledgments before whom the power of attorney is acknowledged.

(c) Notice.--All powers of attorney shall include the following notice in capital letters at the beginning of the power of attorney. The notice shall be signed by the principal.

In the absence of a signed notice, upon a challenge to the authority of an agent to exercise a power under the power of attorney, the agent shall have the burden of demonstrating that the exercise of this authority is proper.

NOTICE

The purpose of this power of attorney is to give the person you designate (your "agent") broad powers to handle your property, which may include powers to sell or otherwise dispose of any real or personal property without advance notice to you or approval by you.

This power of attorney does not impose a duty on your agent to exercise granted powers, but, when powers are exercised, your agent must use due care to act for your benefit and in accordance with this power of attorney.

Your agent may exercise the powers given here throughout your lifetime, even after you become incapacitated, unless you expressly limit the duration of these powers or you revoke these powers or a court acting on your behalf terminates your agent's authority.

Your agent must act in accordance with your reasonable expectations to the extent actually known by your agent and, otherwise, in your best interest, act in good faith and act only within the scope of authority granted by you in the power of attorney.

The law permits you, if you choose, to grant broad authority to an agent under power of attorney, including the ability to give away all of your property while you are alive or to substantially change how your property is distributed at your death. Before signing this document, you should seek the advice of an attorney at law to make sure you understand it.

A court can take away the powers of your agent if it finds your agent is not acting properly.

The powers and duties of an agent under a power of attorney are explained more fully in 20 Pa.C.S. Ch. 56.

If there is anything about this form that you do not understand, you should ask a lawyer of your own choosing to explain it to you.

I have read or had explained to me this notice and I understand its contents.

.....
.....
(Principal) (Date)

(d) Acknowledgment executed by agent.--An agent shall have no authority to act as agent under the power of attorney unless the agent has first executed and affixed to the power of attorney an acknowledgment in substantially the following form:

I, _____, have read the attached power of attorney and am the person identified as the agent for the principal. I hereby acknowledge that when I act as agent:

I shall act in accordance with the principal's reasonable expectations to the extent actually known by me and, otherwise, in the principal's best interest, act in good faith and act only within the scope of authority granted to me by the principal in the power of attorney.

.....
.....
(Agent) (Date)

(e) Fiduciary relationship.--(Deleted by amendment).

(e.1) Limitation on applicability in commercial transaction.--

(1) (Deleted by amendment).

(1.1) Subsections (b)(3)(ii), (c) and (d) do not apply to:

(i) A power contained in an instrument used in a commercial transaction which authorizes an agency relationship.

(ii) A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a loan or other credit transaction.

(iii) A power exclusively granted to facilitate transfer of stock, bonds and other assets.

(iv) A power contained in the governing document for a corporation, partnership or limited liability company or other legal entity by which a director, partner or member authorizes others to do other things on behalf of the entity or a proxy or other delegation to exercise voting rights or management rights with respect to a legal entity.

(v) A warrant of attorney conferring authority to confess judgment.

(vi) A power given to a dealer as defined by the act of December 22, 1983 (P.L.306, No.84), known as the Board of Vehicles Act, when using the power in conjunction with a sale, purchase or transfer of a vehicle as authorized by 75 Pa.C.S. § 1119 (relating to application for certificate of title by agent).

(vii) A power created on a form prescribed by a Commonwealth agency, political subdivision or an authority or instrumentality of the Commonwealth or a political subdivision.

(2) Powers and powers of attorney exempted by this subsection need not be dated.

(e.2) Limitation on applicability in health care and mental health care powers of attorney.--Subsections (b)(3)(i), (c) and (d) and section 5601.3 (relating to agent's duties) do not apply to a power of attorney which exclusively provides for health care decision making or mental health care decision making.

(f) Definitions.--The following words and phrases when used in this chapter shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

"Agent." A person designated by a principal in a power of attorney to act on behalf of that principal.

"Good faith." Honesty in fact.
(Dec. 16, 1992, P.L.1163, No.152, eff. imd.; Oct. 12, 1999, P.L.422, No.39; May 16, 2002, P.L.330, No.50, eff. Apr. 12, 2000; Nov. 25, 2003, P.L.211, No.36, eff. 60 days; July 2, 2014, P.L.855, No.95)

2014 Amendment. Act 95 amended subsecs. (b), (c), (d), (e.1), (e.2) and (f) and deleted subsec. (e), effective immediately as to subsec. (f) and January 1, 2015, as to the remainder of the section. See section 9 of Act 95 in the appendix to this title for special provisions relating to application of law.

1999 Amendment. Act 39 amended the entire section, effective in six months as to subsecs. (c) and (d) and 60 days as to the remainder of the section. See section 13(1), (2), (3) and (8) of Act 39 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 5601 is referred to in sections 5608.1, 5843 of this title.

§ 5601.1. Powers of attorney presumed durable.

Unless specifically provided otherwise in the power of attorney, all powers of attorney shall be durable as provided in section 5604 (durable powers of attorney).
(Dec. 16, 1992, P.L.1163, No.152, eff. imd.)

1992 Amendment. Act 152 added section 5601.1. Section 27(c) of Act 152 provided that section 5601.1 shall apply to powers of attorney executed on or after the effective date of Act 152.
§ 5601.2. Special rules for gifts (Repealed).

2014 Repeal. Section 5601.2 was repealed July 2, 2014, P.L.855, No.95, effective January 1, 2015.

§ 5601.3. Agent's duties.

(a) General rule.--Notwithstanding any provision in the power of attorney, an agent that has accepted appointment shall:

(1) Act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest.

(2) Act in good faith.

(3) Act only within the scope of authority granted in the power of attorney.

(b) Other duties.--Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall:

(1) Act loyally for the principal's benefit.

(1.1) Keep the agent's funds separate from the principal's funds unless:

(i) the funds were not kept separate as of the date of the execution of the power of attorney; or

(ii) the principal commingles the funds after the date of the execution of the power of attorney and the agent is the principal's spouse.

(2) Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest.

(3) Act with the care, competence and diligence ordinarily exercised by agents in similar circumstances.

(4) Keep a record of all receipts, disbursements and transactions made on behalf of the principal.

(5) Cooperate with a person who has authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest.

(6) Attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:

(i) The value and nature of the principal's property.

(ii) The principal's foreseeable obligations and need for maintenance.

(iii) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer and gift taxes.

(iv) Eligibility for a benefit, program or assistance under a statute or regulation.

(c) Nonliability of agent.--

(1) An agent that acts in good faith shall not be liable to a beneficiary of the principal's estate plan for failure to preserve the plan.

(2) An agent that acts with care, competence and diligence for the best interest of the principal shall not be liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

(3) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence and diligence under the circumstances.

(4) Absent a breach of duty to the principal, an agent shall not be liable if the value of the principal's property declines.

(5) An agent that exercises authority to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal shall not be liable for an act, error of judgment or default of that person if the agent exercises care, competence and diligence in selecting and monitoring the person.

(d) Disclosure of receipts, disbursements or transactions.--

(1) Except as otherwise provided in the power of attorney, an agent shall not be required to disclose receipts, disbursements or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, conservator, another fiduciary acting for the principal, governmental agency having authority to protect the welfare of the principal or, upon the death of the principal, the personal representative or successor in interest of the principal's estate.

(2) Within 30 days of the request, the agent shall either comply with the request or provide a writing or other record substantiating the reason additional time is needed, in which case the agent shall comply with the request within an additional 30 days.

(July 2, 2014, P.L.855, No.95, eff. Jan. 1, 2015)

2014 Amendment. Act 95 added section 5601.3. See section 9 of Act 95 in the appendix to this title for special provisions relating to application of law.

Cross References. Section 5601.3 is referred to in section 5601 of this title.

§ 5601.4. Authority that requires specific and general grant of authority.

(a) General rule.--An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

(1) Create, amend, revoke or terminate an inter vivos trust other than as permitted under section 5602(a)(2), (3) and (7) (relating to form of power of attorney).

(2) Make a gift.

(3) Create or change rights of survivorship.

(4) Create or change a beneficiary designation.

(5) Delegate authority granted under the power of attorney.

(6) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan.

(7) Exercise fiduciary powers that the principal has authority to delegate.

(8) Disclaim property, including a power of appointment.

(b) Limitation.--Notwithstanding a grant of authority to do an act described in subsection (a), unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse or descendant of the principal may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer or otherwise.

(c) Scope of authority.--Subject to subsections (a), (b), (d) and (e), if a power of attorney grants to an agent authority to do all acts that a principal is authorized to perform, the agent has all of the powers which may be incorporated by reference pursuant to section 5602(a).

(d) Gifts.--Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to section 5603(a.1) (relating to implementation of power of attorney).

(e) Similar or overlapping subjects.--Subject to subsections (a), (b) and (d), if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

(f) Property.--Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this State and whether or not the authority is exercised or the power of attorney is executed in this State.

(g) Legal effect of agent's actions.--An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

(July 2, 2014, P.L.855, No.95, eff. Jan. 1, 2015)

2014 Amendment. Act 95 added section 5601.4. See section 9 of Act 95 in the appendix to this title for special provisions relating to application of law.

Cross References. Section 5601.4 is referred to in section 5603 of this title.

§ 5602. Form of power of attorney.

(a) Specification of powers.--A principal may, by inclusion of the language quoted in any of the following paragraphs or by inclusion of other language showing a similar intent on the part of the principal, empower an agent to do any or all of the following, each of which is defined in section 5603 (relating to implementation of power of attorney):

(1) "To make limited gifts."

(2) "To create a trust for my benefit."

(3) "To make additions to an existing trust for my benefit."

(4) "To claim an elective share of the estate of my deceased spouse."

(5) (Deleted by amendment).

(6) "To renounce fiduciary positions."

(7) "To withdraw and receive the income or corpus of a trust."

(8) "To authorize my admission to a medical, nursing, residential or similar facility and to enter into agreements for my care."

- (9) "To authorize medical and surgical procedures."
- (10) "To engage in real property transactions."
- (11) "To engage in tangible personal property transactions."
- (12) "To engage in stock, bond and other securities transactions."
- (13) "To engage in commodity and option transactions."
- (14) "To engage in banking and financial transactions."
- (15) "To borrow money."
- (16) "To enter safe deposit boxes."
- (17) "To engage in insurance and annuity transactions."
- (18) "To engage in retirement plan transactions."
- (19) "To handle interests in estates and trusts."
- (20) "To pursue claims and litigation."
- (21) "To receive government benefits."
- (22) "To pursue tax matters."
- (23) "To make an anatomical gift of all or part of my body."

(a.1) Modification of authority.--A principal may modify the authority of an agent that is incorporated by reference as described in subsection (a).

(b) Appointment of agent and successor agent.--A principal may provide for:

(1) The appointment of more than one agent, who shall act jointly, severally or in any other combination that the principal may designate, but if there is no such designation, such agents shall only act jointly.

(1.1) The delegation of one or more powers by the agent to such person or persons as the agent may designate and on terms as the power of attorney may specify.

(2) The appointment of one or more successor agents who shall serve in the order named in the power of attorney, unless the principal expressly directs to the contrary.

(3) The delegation to an original or successor agent of the power to appoint his successor or successors.

(c) Filing and recording of power of attorney.--An originally executed power of attorney may be filed with the clerk of the orphans' court division of the court of common pleas in the county in which the principal resides, and, if it is acknowledged, it may be recorded in the office for the recording of deeds of the county of the principal's residence and of each county in which real property to be affected by an exercise of the power is located. A power of attorney executed in electronic form may be recorded in the same manner as a document subject to the act of July 5, 2012 (P.L.935, No.100), known as the Uniform Real Property Electronic Recording Act. The clerk of the orphans' court division or any office for the recording of deeds with whom the power has been filed may, upon request, issue certified copies of the power of attorney. Each such certified copy shall have the same validity and the same force and effect as if it were the original, and it may be filed of record in any other office of this Commonwealth (including, without limitation, the clerk of the orphans' court division or the office for the recording of deeds) as if it were the original.

(d) Copy of power of attorney.--Except for the purpose of filing or recording under subsection (c), a photocopy or electronically transmitted copy of an originally executed power of attorney has the same effect as the original.
(Dec. 16, 1992, P.L.1163, No.152, eff. imd.; Dec. 1, 1994, P.L.655, No.102, eff. 90 days; Oct. 12, 1999, P.L.422, No.39, eff. 60 days; July 2, 2014, P.L.855, No.95, eff. Jan. 1, 2015)

2014 Amendment. Act 95 amended subsecs. (a)(17) and (c), added subsecs. (a.1) and (d) and deleted subsec. (a)(5). See section 9 of Act 95 in the appendix to this title for special provisions relating to application of law.

1999 Amendment. See section 13(5) and (8) of Act 39 in the appendix to this title for special provisions relating to applicability.

1994 Amendment. Section 10 of Act 102 provided that the amendment shall apply beginning with the effective date of Act 102.

1992 Amendment. Section 27(e) of Act 152 provided that the amendments to subsecs. (a)(10), (11), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21) and (22) and (b)(1.1) shall apply beginning with the effective date of Act 152.

Cross References. Section 5602 is referred to in sections 5601, 5601.4 of this title.

§ 5603. Implementation of power of attorney.

(a) Power to make limited gifts.--(Deleted by amendment).

(a.1) Power to make limited gifts.--

(1) Unless the power of attorney otherwise provides, the power to make limited gifts or other language in a power of attorney granting general authority with respect to gifts authorizes the agent only to:

(i) Make outright to or for the benefit of a person, a gift of any of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal:

(A) in an amount per donee not to exceed the annual dollar limits of the Federal gift tax exclusion under section 2503(b) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 2503(b)), without regard to whether the Federal gift tax exclusion applies to the gift; or

(B) if the principal's spouse agrees to consent to a split gift pursuant to section 2513 of the Internal Revenue Code of 1986 (26 U.S.C. § 2513), in an amount per donee not to exceed twice the annual Federal gift tax exclusion limit.

(ii) Consent, pursuant to section 2513 of the Internal Revenue Code of 1986, to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

(2) An agent may make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including:

(i) The value and nature of the principal's property.

(ii) The principal's foreseeable obligations and need for maintenance.

(iii) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer and gift taxes.

(iv) Eligibility for a benefit, program or assistance under a statute or regulation.

(v) The principal's personal history of making or joining in making gifts.

(3) As used in this subsection, the phrase "a gift for the benefit of a person" includes a gift to a trust, an account under Chapter 53 (relating to Pennsylvania Uniform Transfers to Minors Act) and a tuition savings account or prepaid tuition plan as defined under section 529 of the Internal Revenue Code of 1986 (26 U.S.C. § 529).

(b) Power to create a trust.--A power "to create a trust for my benefit" shall mean that the agent may execute a deed of trust, designating one or more persons (including the agent) as original or successor trustees and transfer to the trust any or all property owned by the principal as the agent may decide, subject to the following conditions:

(1) The income and corpus of the trust shall either be distributable to the principal or to the guardian of his estate, or be applied for the principal's benefit, and upon the principal's death, any remaining balance of corpus and unexpended income of the trust shall be distributed to the deceased principal's estate.

(2) The deed of trust may be amended or revoked at any time and from time to time, in whole or in part, by the principal or the agent, provided that any such amendment by the agent shall not include any provision which could not be included in the original deed.

(c) Power to make additions to an existing trust.--A power "to make additions to an existing trust for my benefit" shall mean that the agent, at any time or times, may add any or all of the property owned by the principal to any trust in existence when the power was created, provided that the terms of such trust relating to the disposition of the income and corpus during the lifetime of the principal are the same as those set forth in subsection (b). The agent and the trust and its beneficiaries shall be answerable as equity and justice may require to the extent that an addition to a trust is inconsistent with prudent estate planning or financial management for the principal or with the known or probable intent of the principal with respect to disposition of his estate.

(d) Power to claim an elective share.--A power "to claim an elective share of the estate of my deceased spouse" shall mean that the agent may elect to take against the will and conveyances of the principal's deceased spouse, disclaim any interest in property which the principal is required to disclaim as a result of such election, retain any property which the principal has the right to elect to retain, file petitions pertaining to the election, including petitions to extend the time for electing and petitions for orders, decrees and judgments in accordance with section 2211(c) and (d) (relating to determination of effect of election; enforcement), and take all other actions which the agent deems appropriate in order to effectuate the election: Provided, however, That the election shall be made only upon the approval of the court having jurisdiction of the principal's estate in accordance with section 2206 (relating to right of election personal to surviving spouse) in the case of a principal who has been adjudicated an incapacitated person, or upon the approval of the court having jurisdiction of the deceased spouse's estate in the case of a principal who has not been adjudicated an incapacitated person.

(e) Power to disclaim any interest in property.--(Deleted by amendment).

(f) Power to renounce fiduciary position.--

(1) A power "to renounce fiduciary positions" shall mean that the agent may:

(i) renounce any fiduciary position to which the principal has been appointed; and

(ii) resign any fiduciary position in which the principal is then serving, and either file an accounting with a court of competent jurisdiction or settle on receipt and release or other informal method as the agent deems advisable.

(2) The term "fiduciary" shall be deemed to include, without limitation, an executor, administrator, trustee, guardian, agent or officer or director of a corporation.

(g) Power to withdraw and receive.--A power "to withdraw and receive the income or corpus of a trust" shall mean that the agent may:

(1) demand, withdraw and receive the income or corpus of any trust over which the principal has the power to make withdrawals;

(2) request and receive the income or corpus of any trust with respect to which the trustee thereof has the discretionary power to make distribution to or on behalf of the principal; and

(3) execute a receipt and release or similar document for the property received under paragraphs (1) and (2).

(h) Power to authorize admission to medical facility and power to authorize medical procedures.--

(1) A power "to authorize my admission to a medical, nursing, residential or similar facility, and to enter into agreements for my care" shall mean that the agent may apply for the admission of the principal to a medical, nursing, residential or other similar facility, execute any consent or admission forms required by such facility which are consistent with this paragraph, and enter into agreements for the care of the principal by such facility or elsewhere during his lifetime or for such lesser period of time as the agent may designate, including the retention of nurses for the principal.

(2) A power "to authorize medical and surgical procedures" shall mean that the agent may arrange for and consent to medical, therapeutical and surgical procedures for the principal, including the administration of drugs.

(i) Power to engage in real property transactions.--A power to "engage in real property transactions" shall mean that the agent may:

(1) Acquire or dispose of real property (including the principal's residence) or any interest therein, including, but not limited to, the power to buy or sell at public or private sale for cash or credit or partly for each; exchange, mortgage, encumber, lease for any period of time; give or acquire options for sales, purchases, exchanges or leases; buy at judicial sale any property on which the principal holds a mortgage.

(2) Manage, repair, improve, maintain, restore, alter, build, protect or insure real property; demolish structures or develop real estate or any interest in real estate.

(3) Collect rent, sale proceeds and earnings from real estate; pay, contest, protest and compromise real estate taxes and assessments.

(4) Release in whole or in part, assign the whole or a part of, satisfy in whole or in part and enforce any mortgage, encumbrance, lien or other claim to real property.

(5) Grant easements, dedicate real estate, partition and subdivide real estate and file plans, applications or other documents in connection therewith.

(6) In general, exercise all powers with respect to real property that the principal could if present.

(j) Power to engage in tangible personal property transactions.--A power to "engage in tangible personal property transactions" shall mean that the agent may:

(1) Buy, sell, lease, exchange, collect, possess and take title to tangible personal property.

(2) Move, store, ship, restore, maintain, repair, improve, manage, preserve and insure tangible personal property.

(3) In general, exercise all powers with respect to tangible personal property that the principal could if present.

(k) Power to engage in stock, bond and other securities transactions.--A power to "engage in stock, bond and other securities transactions" shall mean that the agent may:

(1) Buy or sell (including short sales) at public or private sale for cash or credit or partly for cash all types of stocks, bonds and securities; exchange, transfer, hypothecate, pledge or otherwise dispose of any stock, bond or other security.

(2) Collect dividends, interest and other distributions.

(3) Vote in person or by proxy, with or without power of substitution, either discretionary, general or otherwise, at any meeting.

(4) Join in any merger, reorganization, consolidation, dissolution, liquidation, voting-trust plan or other concerted action of security holders and make payments in connection therewith.

(5) Hold any evidence of the ownership of any stock, bond or other security belonging to the principal in the name of a nominee selected by the agent.

(6) Deposit or arrange for the deposit of securities in a clearing corporation as defined in Division 8 of Title 13 (relating to investment securities).

(7) Receive, hold or transfer securities in book-entry form.

(8) In general, exercise all powers with respect to stocks, bonds and securities that the principal could if present.

(l) Power to engage in commodity and option transactions.--A power to "engage in commodity and option transactions" shall mean that the agent may:

(1) Buy, sell, exchange, assign, convey, settle and exercise commodities future contracts and call and put options on stocks and stock indices traded on a regulated options exchange and collect and receipt for all proceeds of any such transactions.

(2) Establish or continue option accounts for the principal with any securities of a futures broker.

(3) In general, exercise all powers with respect to commodity and option transactions that the principal could if present.

(m) Power to engage in banking and financial transactions.--A power to "engage in banking and financial transactions" shall mean that the agent may:

(1) Sign checks, drafts, orders, notes, bills of exchange and other instruments ("items") or otherwise make withdrawals from checking, savings, transaction, deposit,

loan or other accounts in the name of the principal and endorse items payable to the principal and receive the proceeds in cash or otherwise.

(2) Open and close such accounts in the name of the principal, purchase and redeem savings certificates, certificates of deposit or similar instruments in the name of the principal and execute and deliver receipts for any funds withdrawn or certificates redeemed.

(3) Deposit any funds received for the principal in accounts of the principal.

(4) Do all acts regarding checking, savings, transaction, deposit, loan or other accounts, savings certificates, certificates of deposit or similar instruments, the same as the principal could do if personally present.

(5) Sign any tax information or reporting form required by Federal, State or local taxing authorities, including, but not limited to, any Form W-9 or similar form.

(6) In general, transact any business with a banking or financial institution that the principal could if present.

(n) Power to borrow money.--A power to "borrow money" shall mean that the agent may borrow money and pledge or mortgage any properties that the principal owns as a security therefor.

(o) Power to enter safe deposit boxes.--A power to "enter safe deposit boxes" shall mean that the agent may enter any safe deposit box in the name of the principal; add to or remove the contents of such box, open and close safe deposit boxes in the name of the principal; however, the agent shall not deposit or keep in any safe deposit box of the principal any property in which the agent has a personal interest.

(p) Power to engage in insurance and annuity transactions.--A power to "engage in insurance and annuity transactions" shall mean that the agent may:

(1) Purchase, continue, renew, convert or terminate any type of insurance (including, but not limited to, life, accident, health, disability or liability insurance) or annuity and pay premiums and collect benefits and proceeds under insurance policies and annuity contracts.

(2) Exercise nonforfeiture provisions under insurance policies and annuity contracts.

(3) In general, exercise all powers with respect to insurance and annuities that the principal could if present, provided, however, that the agent shall have no power to create or change a beneficiary designation unless authorized in accordance with section 5601.4 (relating to authority that requires specific and general grant of authority).

(q) Power to engage in retirement plan transactions.--A power to "engage in retirement plan transactions" shall mean that the agent may contribute to, withdraw from and deposit funds in any type of retirement plan (including, but not limited to, any tax qualified or nonqualified pension, profit sharing, stock bonus, employee savings and retirement plan, deferred compensation plan or individual retirement account), select and change payment options for the principal, make roll-over contributions from any retirement plan to other retirement plans and, in general, exercise all powers with respect to retirement plans that the principal could if present, provided, however, that the agent shall have no power to create or change a beneficiary designation unless authorized in accordance with section 5601.4.

(r) Power to handle interests in estates and trusts.--A power to "handle interests in estates and trusts" shall mean that the agent may receive a bequest, devise, gift or other

transfer of real or personal property to the principal in the principal's own right or as a fiduciary for another and give full receipt and acquittance therefor or a refunding bond therefor; approve accounts of any estate, trust, partnership or other transaction in which the principal may have an interest; and enter into any compromise and release in regard thereto.

(s) Power to pursue claims and litigation.--A power to "pursue claims and litigation" shall mean that the agent may:

(1) Institute, prosecute, defend, abandon, arbitrate, compromise, settle or otherwise dispose of, and appear for the principal in, any legal proceedings before any tribunal regarding any claim relating to the principal or to any property interest of the principal.

(2) Collect and receipt for any claim or settlement proceeds; waive or release rights of the principal; employ and discharge attorneys and others on such terms (including contingent fee arrangements) as the agent deems appropriate.

(3) In general, exercise all powers with respect to claims and litigation that the principal could if present.

(t) Power to receive government benefits.--A power to "receive government benefits" shall mean that the agent may prepare, sign and file any claim or application for Social Security, unemployment, military service or other government benefits; collect and receipt for all government benefits or assistance; and, in general, exercise all powers with respect to government benefits that the principal could if present.

(u) Power to pursue tax matters.--A power to "pursue tax matters" shall mean that the agent may:

(1) Prepare, sign, verify and file any tax return on behalf of the principal, including, but not limited to, joint returns and declarations of estimated tax; examine and copy all the principal's tax returns and tax records.

(2) Sign an Internal Revenue Service power of attorney form.

(3) Represent the principal before any taxing authority; protest and litigate tax assessments; claim, sue for and collect tax refunds; waive rights and sign all documents required to settle, pay and determine tax liabilities; sign waivers extending the period of time for the assessment of taxes or tax deficiencies.

(4) In general, exercise all powers with respect to tax matters that the principal could if present.

(u.1) Power to make anatomical gift.--A power "to make an anatomical gift of all or part of my body" shall mean that the agent may arrange and consent, either before or after the death of the principal, to procedures to make an anatomical gift in accordance with Chapter 86 (relating to anatomical gifts).

(v) Powers generally.--

(1) All powers described in this section shall be exercisable with respect to any matter in which the principal is in any way interested at the giving of the power of attorney or thereafter and whether arising in this Commonwealth or elsewhere.

(2) A principal may, in a power of attorney, modify any power described in this section.

(April 16, 1992, P.L.108, No.24, eff. 60 days; Dec. 16, 1992, P.L.1163, No.152, eff. imd.; Dec. 1, 1994, P.L.655, No.102, eff. 90 days; Oct. 12, 1999, P.L.422, No.39, eff. 60 days; Oct. 27, 2010, P.L.837, No.85, eff. 60 days; July 2, 2014, P.L.855, No.95, eff. Jan. 1, 2015)

2014 Amendment. Act 95 amended subsecs. (k)(4), (p), (q) and (v), added subsec. (a.1) and deleted subsecs. (a) and (e). See section 9 of Act 95 in the appendix to this title for special provisions relating to application of law.

Cross References. Section 5603 is referred to in sections 2206, 5601.4, 5602 of this title.

§ 5604. Durable powers of attorney.

(a) Definition.--A durable power of attorney is a power of attorney by which a principal designates another his agent in writing. The authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity. A principal may provide in the power of attorney that the power shall become effective at a specified future time or upon the occurrence of a specified contingency, including the disability or incapacity of the principal.

(b) Durable power of attorney not affected by disability or lapse of time.--All acts done by an agent pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were competent and not disabled. Unless the power of attorney states a time of termination, it is valid notwithstanding the lapse of time since its execution.

(c) Relation of agent to court-appointed guardian.--

(1) If, following execution of a durable power of attorney, the principal is adjudicated an incapacitated person and a guardian is appointed for his estate, the agent is accountable to the guardian as well as to the principal. The guardian shall have the same power to revoke or amend the power of attorney that the principal would have had if he were not an incapacitated person.

(2) A principal may nominate, by a durable power of attorney, the guardian of his estate or of his person for consideration by the court if incapacity proceedings for the principal's estate or person are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

(d) Discovery of information and records regarding actions of agent.--

(1) If the agency acting pursuant to the act of November 6, 1987 (P.L.381, No.79), known as the Older Adults Protective Services Act, is denied access to records necessary for the completion of a proper investigation of a report or a client assessment and service plan or the delivery of needed services in order to prevent further abuse, neglect, exploitation or abandonment of the older adult principal reported to be in need of protective services, the agency may petition the court of common pleas for an order requiring the appropriate access when either of the following conditions applies:

(i) the older adult principal has provided written consent for confidential records to be disclosed and the agent denies access; or

(ii) the agency can demonstrate that the older adult principal has denied or directed the agent to deny access to the records because of incompetence, coercion, extortion or justifiable fear of future abuse, neglect, exploitation or abandonment.

(2) This petition may be filed in the county wherein the agent resides or has his principal place of business or, if a nonresident, in the county wherein the older adult

principal resides. The court, after reasonable notice to the agent and to the older adult principal, may conduct a hearing on the petition.

(3) Upon the failure of the agent to provide the requested information, the court may make and enforce such further orders.

(4) A determination to grant or deny an order, whether in whole or in part, shall not be considered a finding regarding the competence, capacity or impairment of the older adult principal, nor shall the granting or denial of an order preclude the availability of other remedies involving protection of the person or estate of the older adult principal or the rights and duties of the agent.

(e) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Abandonment." As that term is defined in the act of November 6, 1987 (P.L.381, No.79), known as the Older Adults Protective Services Act.

"Abuse." As that term is defined in the act of November 6, 1987 (P.L.381, No.79), known as the Older Adults Protective Services Act.

"Agency." As that term is defined in the act of November 6, 1987 (P.L.381, No.79), known as the Older Adults Protective Services Act, except that in cities of the first class the term shall mean the Department of Aging.

"Exploitation." As that term is defined in the act of November 6, 1987 (P.L.381, No.79), known as the Older Adults Protective Services Act.

"Neglect." As that term is defined in the act of November 6, 1987 (P.L.381, No.79), known as the Older Adults Protective Services Act.

"Older adult principal." A principal who is 60 years of age or older.

(Apr. 16, 1992, P.L.108, No.24, eff. 60 days; Dec. 16, 1992, P.L.1163, No.152, eff. imd.; Oct. 12, 1999, P.L.422, No.39, eff. 60 days; Dec. 20, 2000, P.L.978, No.137, eff. imd.)

2000 Amendment. Act 137 added subsecs. (d) and (e).

1999 Amendment. See section 13(8) of Act 39 in the appendix to this title for special provisions relating to applicability.

1992 Amendments. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability. See section 27(b) of Act 152 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 5604 is referred to in sections 2206, 5601.1, 6202 of this title.

§ 5605. Power of attorney not revoked until notice.

(a) Death of principal.--The death of a principal who has executed a written power of attorney, durable or otherwise, shall not revoke or terminate the agency as to the agent or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, shall bind successors in interest of the principal.

(b) Disability or incapacity of principal.--The disability or incapacity of a principal who has previously executed a written power of attorney which is not a durable power shall not revoke or terminate the agency as to the agent or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power.

Any action so taken, unless otherwise invalid or unenforceable, shall bind the principal and his successors in interest.

(c) Filing a complaint in divorce.--If a principal designates his spouse as his agent and thereafter either the principal or his spouse files an action in divorce, the designation of the spouse as agent shall be revoked as of the time the action was filed, unless it appears from the power of attorney that the designation was intended to survive such an event.

(Dec. 16, 1992, P.L.1163, No.152, eff. imd.; Oct. 12, 1999, P.L.422, No.39, eff. 60 days)

1999 Amendment. See section 13(1) of Act 39 in the appendix to this title for special provisions relating to applicability.

1992 Amendment. Section 27(c) of Act 152 provided that the amendment of section 5605 shall apply to powers of attorney executed on or after the effective date of Act 152.

§ 5606. Proof of continuance of powers of attorney by affidavit.

As to acts undertaken in good faith reliance thereon, an affidavit executed by the agent under a power of attorney stating that he did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation, death or, if applicable, disability or incapacity or the filing of an action in divorce and that, if applicable, the specified future time or contingency has occurred, is conclusive proof of the nonrevocation or nontermination of the power at that time and conclusive proof that the specified time or contingency has occurred. The agent shall furnish an affidavit to a person relying upon the power of attorney on demand; however, good faith reliance on the power shall protect the person who acts without an affidavit. If the exercise of the power of attorney requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable. This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

(Dec. 16, 1992, P.L.1163, No.152, eff. imd.; Oct. 12, 1999, P.L.422, No.39, eff. 60 days)

1999 Amendment. See section 13(8) of Act 39 in the appendix to this title for special provisions relating to applicability.

1992 Amendment. Section 27(e) of Act 152 provided that the amendment of section 5606 shall apply beginning with the effective date of Act 152.

Cross References. Section 5606 is referred to in sections 5608, 5608.1 of this title.

§ 5607. Corporate agent.

A bank and trust company or a trust company authorized to act as a fiduciary in this Commonwealth and acting as an agent pursuant to a power of attorney, or appointed by another who possesses such a power, shall have the powers, duties and liabilities set forth in section 3321 (relating to nominee registration; corporate fiduciary as agent; deposit of securities in a clearing corporation; book-entry securities). (Oct. 12, 1999, P.L.422, No.39, eff. 60 days)

1999 Amendment. See section 13(8) of Act 39 in the appendix to this title for special provisions relating to applicability.

§ 5608. Acceptance of and reliance upon power of attorney.

(a) Third party liability.--(Deleted by amendment).

(b) Third party immunity.--(Deleted by amendment).

(c) Genuineness.--A person who in good faith accepts a power of attorney without actual knowledge that a signature or mark of any of the following are not genuine may, without liability, rely upon the genuineness of the signature or mark of:

- (1) The principal.
- (2) A person who signed the power of attorney on behalf of the principal and at the direction of the principal.
- (3) A witness.
- (4) A notary public or other person authorized by law to take acknowledgments.

(d) Immunity.--A person who in good faith accepts a power of attorney without actual knowledge of any of the following may, without liability, rely upon the power of attorney as if the power of attorney and agent's authority were genuine, valid and still in effect and the agent had not exceeded and had properly exercised the authority that:

- (1) The power of attorney is void, invalid or terminated.
- (2) The purported agent's authority is void, invalid or terminated.
- (3) The agent is exceeding or improperly exercising the agent's authority.

(e) Request for information.--A person who is asked to accept a power of attorney may request and, without liability, rely upon without further investigation:

- (1) An agent's certification under penalty of perjury of any factual matter concerning the principal, agent or power of attorney or an affidavit under section 5606 (relating to proof of continuance of powers of attorney by affidavit).
- (2) An English translation of the power of attorney, if the power of attorney contains, in whole or in part, language other than English.
- (3) An opinion of counsel relating to whether the agent is acting within the scope of the authority granted by the power of attorney if the person making the request provides in writing or other record the reason for the request.

(f) Additional request for information.--A person who has accepted a power of attorney, whether or not the person has a certification or an opinion of counsel under subsection (e) or an affidavit under section 5606, and has acted upon it by allowing the agent to exercise authority granted under the power of attorney, shall not be precluded from requesting at later times a certification or an opinion of counsel under this subsection, subsection (e) or an affidavit under section 5606 with regard to any further exercise of authority by the agent under the power of attorney.

(g) English translation.--An English translation or an opinion of counsel requested under this section shall be at the principal's expense, unless the request is made more than seven business days after the power of attorney or any revision or addition to a power of attorney:

- (1) is presented for acceptance; or
- (2) after being previously accepted by a person, is presented to exercise a power not previously exercised by the agent in a transaction with that person.

(h) Limitations.--Except as otherwise provided by law, nothing in this section shall in itself:

- (1) validate a forged instrument conveying an interest in real property;

(2) provide that the recording of a forged instrument gives constructive notice of a conveyance of an interest in real property; or

(3) limit the liability of an insurer, indemnitor or guarantor of contractual obligations to indemnify, hold harmless or defend a person who accepts or relies upon a power of attorney.

(Dec. 16, 1992, P.L.1163, No.152, eff. imd.; Oct. 12, 1999, P.L.422, No.39, eff. 60 days; July 2, 2014, P.L.855, No.95, eff. imd.)

2014 Amendment. See section 9 of Act 95 in the appendix to this title for special provisions relating to application of law.

1999 Amendment. See section 13(8) of Act 39 in the appendix to this title for special provisions relating to applicability.

1992 Amendment. Section 27(e) of Act 152 provided that section 5608 shall apply beginning with the effective date of Act 152.

Cross References. Section 5608 is referred to in sections 5608.1, 5608.2 of this title.

§ 5608.1. Liability for refusal to accept power of attorney.

(a) Acceptance required.--Except as provided under subsections (b) and (d):

(1) A person shall either:

(i) accept a power of attorney; or

(ii) request one of the following:

(A) an affidavit under section 5606 (relating to proof of continuance of powers of attorney by affidavit); or

(B) a certification, translation or an opinion of counsel under section 5608(e) (relating to acceptance of and reliance upon power of attorney); not later than seven business days after presentation of the power of attorney for acceptance.

(2) If a person requests a certification, a translation, an affidavit under section 5606 or an opinion of counsel under section 5608(e), the person shall accept the power of attorney not later than five business days after receipt of the certification, translation, affidavit or opinion of counsel or unless the information provided by the certification, translation, affidavit or opinion of counsel provides a substantial basis for making a further request under section 5606 or 5608(e).

(3) A person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.

(b) Acceptance not required.--A person may not be required to accept a power of attorney if any of the following applies:

(1) The person is not otherwise required to engage in a transaction with the principal in the same circumstances.

(2) Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with any provisions of this chapter, including:

(i) the failure of the power of attorney to be executed in the manner required under section 5601(b) (relating to general provisions); and

(ii) circumstances in which an agent has no authority to act because of the absence of an acknowledgment as provided under section 5601(d), except as provided under section 5601(e.1) or (e.2).

(3) Engaging in a transaction with the agent in the same circumstances would be inconsistent with any other law or regulation.

(4) The person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power.

(5) A request for a certification, a translation, an affidavit under section 5606 or an opinion of counsel under section 5608(e) is refused, including a certification, an affidavit or an opinion of counsel requested to demonstrate that the exercise of authority pursuant to a power of attorney is proper without the notice provided for under section 5601(c), except as provided under section 5601(e.1) or (e.2).

(6) The person in good faith believes that the power of attorney is not valid or the agent does not have the authority to perform the act requested, whether or not a certification, a translation, an affidavit under section 5606 or an opinion of counsel under section 5608(e) has been requested or provided.

(7) The person makes a report to the local protective services agency under section 302 of the act of November 6, 1987 (P.L.381, No.79), known as the Older Adults Protective Services Act, stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation or abandonment by the agent or someone acting for or with the agent.

(8) The person has actual knowledge that another person has made a report to the local protective services agency under section 302 of the Older Adults Protective Services Act stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation or abandonment by the agent or someone acting for or with the agent.

(c) Violation.--A person who refuses, in violation of this section, to accept a power of attorney shall be subject to:

(1) Civil liability for pecuniary harm to the economic interests of the principal proximately caused by the person's refusal to comply with the instructions of the agent designated in the power of attorney.

(2) A court order mandating acceptance of the power of attorney.

(d) Nonapplicability.--The requirements and penalties of this section shall not apply to:

(1) a power of attorney subject to the laws of another state or jurisdiction; or

(2) a power of attorney prescribed by a government or governmental subdivision, agency or instrumentality for a governmental purpose.

(July 2, 2014, P.L.855, No.95, eff. imd.)

2014 Amendment. Act 95 added section 5608.1. See section 9 of Act 95 in the appendix to this title for special provisions relating to application of law.

Cross References. Section 5608.1 is referred to in section 5608.2 of this title.

§ 5608.2. Activities through employees.

For the purposes of sections 5608 (relating to acceptance of and reliance upon power of attorney) and 5608.1 (relating to liability for refusal to accept power of attorney), the following shall apply:

(1) A person who conducts activities through employees shall be considered to be without actual knowledge of a fact relating to a power of attorney, a principal or an agent, if the employee conducting the transaction involving the power of attorney is without knowledge of the fact.

(2) An employee has knowledge of a fact if the employee has actual knowledge of the fact or acts with conscious disregard or willful ignorance regarding the existence of the fact.

(July 2, 2014, P.L.855, No.95, eff. imd.)

2014 Amendment. Act 95 added section 5608.2. See section 9 of Act 95 in the appendix to this title for special provisions relating to application of law.

§ 5609. Compensation and reimbursement for expenses.

(a) **Compensation.**--In the absence of a specific provision to the contrary in the power of attorney, the agent shall be entitled to reasonable compensation based upon the actual responsibilities assumed and performed.

(b) **Reimbursement for expenses.**--An agent shall be entitled to reimbursement for actual expenses advanced on behalf of the principal and to reasonable expenses incurred in connection with the performance of the agent's duties.

(Oct. 12, 1999, P.L.422, No.39, eff. 60 days)

1999 Amendment. Act 39 added section 5609. See section 13(8) of Act 39 in the appendix to this title for special provisions relating to applicability.

§ 5610. Account.

An agent shall file an account of his administration whenever directed to do so by the court and may file an account at any other time. All accounts shall be filed in the office of the clerk in the county where the principal resides.

(Oct. 12, 1999, P.L.422, No.39, eff. 60 days)

1999 Amendment. Act 39 added section 5610. See section 13(8) of Act 39 in the appendix to this title for special provisions relating to applicability.

§ 5611. Validity.

A power of attorney executed in or under the laws of another state or jurisdiction shall be valid in this Commonwealth if, when the power of attorney was executed, the execution complied with:

(1) the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, the law of the jurisdiction in which the power of attorney was executed; or

(2) the requirements for a military power of attorney under 10 U.S.C. § 1044(b) (relating to legal assistance).

(Oct. 12, 1999, P.L.422, No.39, eff. 60 days; July 2, 2014, P.L.855, No.95, eff. imd.)

2014 Amendment. See section 9 of Act 95 in the appendix to this title for special provisions relating to application of law.

1999 Amendment. Act 39 added section 5611. See section 13(8) of Act 39 in the appendix to this title for special provisions relating to applicability.

§ 5612. Principles of law and equity.

Unless displaced by a provision of this chapter, the principles of law and equity supplement this chapter.

(July 2, 2014, P.L.855, No.95, eff. imd.)

2014 Amendment. Act 95 added section 5612. See section 9 of Act 95 in the appendix to this title for special provisions relating to application of law.

CHAPTER 57
ABSENTEES AND PRESUMED DECEDENTS

Sec.

- 5701. Proof of death.
- 5702. Trustee for absentee.
- 5703. Distribution of property of absentee.
- 5704. Notice to absentee.
- 5705. Search for absentee.
- 5706. Persons presumed dead from September 11, 2001, terrorist attack.

Enactment. Chapter 57 was added June 30, 1972, P.L.508, No.164, effective July 1, 1972.

§ 5701. Proof of death.

(a) Finding of death.--When a person domiciled in the Commonwealth disappears and is absent from his place of residence without being heard of after diligent inquiry, the court of the county where he last resided, aided by the report of a master if necessary, upon the petition of any party in interest, and, if a trustee has been appointed for the absentee, at any time during the trusteeship, may make a finding and decree that the absentee is dead and of the date of his death, provided the notice required by section 5704 (relating to notice to absentee) has been given to the absentee.

(b) Presumption from absence.--When the death of a person or the date thereof is in issue, his unexplained absence from his last known place of residence and the fact that he has been unheard of for seven years may be a sufficient ground for finding that he died seven years after he was last heard of.

(c) Exposure to specific peril.--The fact that an absentee was exposed to a specific peril of death may be sufficient ground for finding that he died less than seven years after he was last heard of.

(d) Competency of witnesses.--All persons shall be competent to testify concerning the death or disappearance of an absentee regardless of relationship by marriage to him or of interest in his estate.

(e) Distribution of estate or trust.--If the continued existence of an absentee would affect the distribution of an estate or trust, the court having jurisdiction of the estate or trust may, for purposes of distribution of that estate or trust, make a finding and decree of death, as provided in this section, regardless of where the absentee was domiciled or last resided.

(July 9, 1976, P.L.551, No.135, eff. imd.)

1976 Amendment. Act 135 added subsec. (e).

Cross References. Section 5701 is referred to in sections 3540, 5706 of this title.

§ 5702. Trustee for absentee.

(a) Appointment.--When a person domiciled or having property in the Commonwealth disappears and is absent from his last known place of residence for a period of one year without being heard of after diligent inquiry, the court of the county where the absentee last resided or, if a nonresident, the court of the

county where any of his property shall be located, aided by the report of a master if necessary, upon the petition of any person who would be a party in interest were the absentee deceased or of any insurer or creditor of the absentee, after notice as provided in section 5704 (relating to notice to absentee), upon good cause being shown, may find that the absentee's property requires protection and that he was last heard of on a date certain and may appoint a trustee to take charge of his estate. The absentee shall be made a party to the proceeding and any other person who would have an interest in the property of the absentee were he deceased, upon direction of the court, may be made a party to the proceeding. The period of one year specified in this subsection may be shortened in the discretion of the court.

(b) Bonds, powers, duties and liabilities.--A trustee for an absentee shall give such bond, shall be removed and discharged, and, except as otherwise expressly provided, shall have the same powers, duties and liabilities in the administration of the absentee's real and personal estate as are provided in Chapter 51 (relating to minors), with respect to a guardian in the administration of a minor's estate and, in addition, shall have the right to pay premiums on policies of insurance insuring the life of the absentee and, with the approval of the court, to pay or expend and apply so much of the absentee's property or the income therefrom, as may be necessary for the support of anyone whom the absentee, if living, would be under a legal duty to support, or for the education of his minor children. He shall not have the power to sell or dispose of any asset of the estate or to enter into any lease without prior court approval.

(c) Temporary trustee.--Upon the filing of a petition for the appointment of a trustee for an absentee, the court, if it finds it necessary to protect the property of the absentee, may appoint a temporary trustee to take charge of it and to conserve it, in the manner directed by the court, pending a hearing on the petition. The temporary trustee shall give such bond as the court shall require. Should a permanent trustee be appointed, the temporary trustee shall deliver to the permanent trustee all property of the absentee in his possession, less such as may be necessary to cover his expenses and compensation, as allowed by the court, shall file his final account, and upon its confirmation may be discharged. Should the petition for a permanent trustee be denied, the court shall make appropriate orders for the disposition of the property.

Cross References. Section 5702 is referred to in section 3540 of this title.

§ 5703. Distribution of property of absentee.

Upon the entry of a decree establishing the death of a person domiciled in the Commonwealth, based in whole or in part upon his absence from his place of residence, the real and personal property of the absentee shall be administered by his personal representative as in the case of other decedents. However, the personal representative shall make no distribution of such property to the persons entitled thereto by will or by intestacy, nor shall such persons acquire indefeasible title thereto, except under decree of court. The court, in awarding distribution, shall require that a refunding bond, with or without security and in such form and amount as the court shall direct, shall be executed by each distributee and filed with the clerk. The bond shall be conditioned that, if it shall later be established that the absentee was in fact alive at the time

of distribution, the distributee upon demand will return the property received by him or, if it has been disposed of, will make such restitution therefor as the court shall deem equitable. Should a distributee not execute the bond, the court shall appoint a trustee to receive and hold his share until further order of the court.

Cross References. Section 5703 is referred to in section 5706 of this title.

§ 5704. Notice to absentee.

The court, if satisfied concerning the interest of the petitioner, shall cause to be advertised in a newspaper of general circulation in the county of the absentee's last known residence and in the legal journal, if any, designated by rule of court for publication of legal notices, once a week for four successive weeks or for such shorter period as the court may deem appropriate, and to be otherwise advertised as the court according to the circumstances of the case shall deem advisable, the fact of such application, together with notice that on a specified day, which shall be at least two weeks after the last appearance of any such advertisement, the court, or a master appointed by the court for that purpose, will hear evidence concerning the alleged absence, including the circumstances and duration thereof.

(Dec. 16, 1992, P.L.1163, No.152, eff. imd.)

1992 Amendment. Section 27(e) of Act 152 provided that the amendment of section 5704 shall apply beginning with the effective date of Act 152.

Cross References. Section 5704 is referred to in sections 5701, 5702, 5706 of this title.

§ 5705. Search for absentee.

The court, on its own motion or upon the application of any party in interest, may direct the trustee to search for the absentee in any manner which the court shall deem appropriate, or may appoint a master, investigator or appropriate agency to do so. The expenses of such a search shall be paid out of the property of the absentee.

§ 5706. Persons presumed dead from September 11, 2001, terrorist attack.

The requirements of sections 5703 (relating to distribution of property of absentee) and 5704 (relating to notice to absentee) shall not apply with respect to a person who is presumed dead as a result of the terrorist attacks on September 11, 2001. These terrorist attacks constitute specific perils within the meaning of section 5701(c) (relating to proof of death) which would justify a court to immediately determine that the presumed decedent died on September 11, 2001.

(May 16, 2002, P.L.330, No.50, eff. imd.)

2002 Amendment. Act 50 added section 5706. See section 14(a) of Act 50 in the appendix to this title for special provisions relating to applicability.

CHAPTER 58
MENTAL HEALTH CARE

Subchapter

- A. General Provisions
- B. Mental Health Declarations
- C. Mental Health Powers of Attorney

Enactment. Chapter 58 was added November 30, 2004, P.L.1525, No.194, effective in 60 days.

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

- 5801. Applicability.
- 5802. Definitions.
- 5803. Legislative findings and intent.
- 5804. Compliance.
- 5805. Liability.
- 5806. Penalties.
- 5807. Rights and responsibilities.
- 5808. Combining mental health instruments.

§ 5801. Applicability.

(a) **General rule.**--This chapter applies to mental health declarations and mental health powers of attorney.

(b) **Preservation of existing rights.**--The provisions of this chapter shall not be construed to impair or supersede any existing rights or responsibilities not addressed in this chapter.

§ 5802. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Attending physician." A physician who has primary responsibility for the treatment and care of the declarant or principal.

"Declarant." An individual who makes a declaration in accordance with this chapter.

"Declaration." A writing made in accordance with this chapter that expresses a declarant's wishes and instructions for mental health care and mental health care directions and which may contain other specific directions.

"Mental health care." Any care, treatment, service or procedure to maintain, diagnose, treat or provide for mental health, including any medication program and therapeutical treatment.

"Mental health care agent." An individual designated by a principal in a mental health power of attorney.

"Mental health care provider." A person who is licensed, certified or otherwise authorized by the laws of this Commonwealth to administer or provide mental health care in the ordinary course of business or practice of a profession.

"Mental health power of attorney." A writing made by a principal designating an individual to make mental health care decisions for the principal.

"Mental health treatment professional." A licensed physician who has successfully completed a residency program in psychiatry or a person trained and licensed in social work, psychology or nursing who has a graduate degree and clinical experience in mental health.

"Principal." An individual who makes a mental health power of attorney in accordance with this chapter.

§ 5803. Legislative findings and intent.

(a) **Intent.**--This chapter provides a means for competent adults to control their mental health care either directly through instructions written in advance or indirectly through a mental health care agent.

(b) Presumption not created.--This chapter shall not be construed to create any presumption regarding the intent of an individual who has not executed a declaration or mental health care power of attorney to consent to the use or withholding of treatment.

(c) Findings in general.--The General Assembly finds that all capable adults have a qualified right to control decisions relating to their own mental health care.

§ 5804. Compliance.

(a) Duty to comply.--

(1) An attending physician and mental health care provider shall comply with mental health declarations and powers of attorney.

(2) If an attending physician or other mental health care provider cannot in good conscience comply with a declaration or mental health care decision of a mental health care agent because the instructions are contrary to accepted clinical practice and medical standards or because treatment is unavailable or if the policies of a mental health care provider preclude compliance with a declaration or mental health care decision of a mental health care agent, immediately upon receipt of the declaration or power of attorney and as soon as any possibility of noncompliance becomes apparent, the attending physician or mental health care provider shall so inform the following:

(i) The declarant if the declarant is competent.

(ii) The substitute named in the declaration if the declarant is incompetent.

(iii) The guardian or other legal representative of the declarant if the declarant is incompetent and a substitute is not named in the declaration.

(iv) The mental health care agent of the principal.

(3) The physician or mental health care provider shall document the reasons for noncompliance.

(b) Transfer.--An attending physician or mental health care provider under subsection (a) (2) shall make every reasonable effort to assist in the transfer of the declarant or principal to another physician or mental health care provider who will comply with the declaration or mental health care decision of the mental health care agent. While the transfer is pending, the patient shall be treated consistent with the declaration or mental health care decision of the mental health agent. If reasonable efforts to transfer fail, the patient may be discharged.

Cross References. Section 5804 is referred to in section 5824 of this title.

§ 5805. Liability.

(a) General rule.--A person who is a physician, another mental health care provider or another person who acts in good faith and consistent with this chapter may not be subject to criminal or civil liability, discipline for unprofessional conduct or administrative sanctions and may not be found to have committed an act of unprofessional conduct by any professional board or administrative body with such authority as a result of any of the following:

(1) Complying with a direction or decision of an individual who the person believes in good faith has authority to act as a principal's mental health care agent so long as the direction or decision is not clearly contrary to the terms of the mental health power of attorney.

(2) Refusing to comply with a direction or decision of an individual based on a good faith belief that the individual lacks authority to act as a principal's mental health care agent.

(3) Complying with a mental health care power of attorney or declaration under the assumption that it was valid when made and has not been amended or revoked.

(4) Disclosing mental health care information to another person based upon a good faith belief that the disclosure is authorized, permitted or required by this chapter.

(5) Refusing to comply with the direction or decision of an individual due to conflicts with a provider's contractual, network or payment policy restrictions.

(6) Refusing to comply with a declaration or mental health power of attorney which violates accepted clinical standards or medical standards of care.

(7) Making a determination that the patient lacks capacity to make mental health decisions that causes a declaration or a mental health power of attorney to become effective.

(8) Failing to determine that a patient lacks capacity to make mental health decisions for the purposes of this chapter.

(b) Same effect as if dealing with principal.--Any attending physician, mental health care provider and other person who acts under subsection (a) shall be protected and released to the same extent as if dealing directly with a competent principal.

(c) Good faith of mental health care agent.--A mental health care agent who acts according to the terms of a mental health power of attorney may not be subject to civil or criminal liability for acting in good faith for a principal or failing in good faith to act for a principal.

§ 5806. Penalties.

(a) Offense defined.--A person commits a felony of the third degree by willfully:

(1) Concealing, canceling, altering, defacing, obliterating or damaging a declaration without the consent of the declarant.

(2) Concealing, canceling, altering, defacing, obliterating or damaging a mental health power of attorney or any amendment or revocation thereof without the consent of the principal.

(3) Causing a person to execute a declaration or power of attorney under this chapter by undue influence, fraud or duress.

(4) Falsifying or forging a mental health power of attorney or declaration or any amendment or revocation thereof, the result of which is a direct change in the mental health care provided to the principal.

(b) Removal and liability.--An agent who willfully fails to comply with a mental health power of attorney may be removed and sued for actual damages.

§ 5807. Rights and responsibilities.

(a) Declarants and principals.--Persons who execute a declaration or a mental health power of attorney shall have the following rights and responsibilities:

(1) For the purposes of this chapter, persons are presumed capable of making mental health decisions, including the execution of a mental health declaration or power of attorney, unless they are adjudicated incapacitated, involuntarily committed or found to be incapable of making

mental health decisions after examination by a psychiatrist and one of the following: another psychiatrist, psychologist, family physician, attending physician or mental health treatment professional. Whenever possible, at least one of the decision makers shall be a treating professional of the declarant or principal.

(2) Persons shall be required to notify their mental health care provider of the existence of any declaration or mental health power of attorney.

(3) Persons shall execute or amend their declarations or mental health powers of attorney every two years; however, if a person is incapable of making mental health care decisions at the time this document would expire, the document shall remain in effect and be reviewed at the time when the person regains capacity.

(4) Persons shall give notice of amendment and revocation to providers, agents and guardians, if any.

(b) Providers.--Mental health treatment providers shall have the following rights and responsibilities:

(1) Inquire as to the existence of declarations or powers of attorney for persons in their care.

(2) Inform persons who are being discharged from treatment about the availability of mental health declarations and powers of attorney as part of discharge planning.

(3) Not require declarations or powers of attorney as conditions of treatment. Mental health treatment providers may not choose whether to accept a person for treatment based solely on the existence or absence of a mental health declaration or power of attorney.

§ 5808. Combining mental health instruments.

(a) General rule.--A declaration and mental health power of attorney may be combined into one mental health document.

(b) Form.--A combined declaration and mental health power of attorney may be in the following form or any other written form which contains the information required under Subchapters B (relating to mental health declarations) and C (relating to mental health powers of attorney):

Combined Mental Health Care Declaration
and Power of Attorney Form

Part I. Introduction.

I, _____, having capacity to make mental health decisions, willfully and voluntarily make this declaration and power of attorney regarding my mental health care. I understand that mental health care includes any care, treatment, service or procedure to maintain, diagnose, treat or provide for mental health, including any medication program and therapeutic treatment. Electroconvulsive therapy may be administered only if I have specifically consented to it in this document. I will be the subject of laboratory trials or research only if specifically provided for in this document. Mental health care does not include psychosurgery or termination of parental rights.

I understand that my incapacity will be determined by examination by a psychiatrist and one of the following: another psychiatrist, psychologist, family physician, attending physician or mental health treatment professional. Whenever possible, one of the decision makers will be one of my treating professionals.

Part II. Mental Health Declaration.

A. When this declaration becomes effective.

This declaration becomes effective at the following designated time:

When I am deemed incapable of making mental health care decisions.

When the following condition is met:
(List condition)

B. Treatment preferences.

1. Choice of treatment facility.

In the event that I require commitment to a psychiatric treatment facility, I would prefer to be admitted to the following facility:

(Insert name and address of facility)

In the event that I require commitment to a psychiatric treatment facility, I do not wish to be committed to the following facility:

(Insert name and address of facility)

I understand that my physician may have to place me in a facility that is not my preference.

2. Preferences regarding medications for psychiatric treatment.

I consent to the medications that my treating physician recommends.

I consent to the medications that my treating physician recommends with the following exception, preference or limitation:

(List medication and reason for exception, preference or limitation)

The exception, preference or limitation applies to generic, brand name and trade name equivalents. I understand that dosage instructions are not binding on my physician.

I do not consent to the use of any medications.

I have designated an agent under the power of attorney portion of this document to make decisions related to medication.

3. Preferences regarding electroconvulsive therapy (ECT).

I consent to the administration of electroconvulsive therapy.

I do not consent to the administration of electroconvulsive therapy.

I have designated an agent under the power of attorney portion of this document to make decisions related to electroconvulsive therapy.

4. Preferences for experimental studies or drug trials.

I consent to participation in experimental studies if my treating physician believes that the potential benefits to me outweigh the possible risks to me.

I have designated an agent under the power of attorney portion of this document to make decisions related to experimental studies.

I do not consent to participation in experimental studies.

I consent to participation in drug trials if my treating physician believes that the potential benefits to me outweigh the possible risks to me.

I have designated an agent under the power of attorney portion of this document to make decisions related to drug trials.

I do not consent to participation in any drug trials.

5. Additional instructions or information.

Examples of other instructions or information that may be included:

Activities that help or worsen symptoms.
Type of intervention preferred in the event of a crisis.
Mental and physical health history.
Dietary requirements.
Religious preferences.
Temporary custody of children.
Family notification.
Limitations on the release or disclosure of mental health records.
Other matters of importance.

C. Revocation.

This declaration may be revoked in whole or in part at any time, either orally or in writing, as long as I have not been found to be incapable of making mental health decisions. My revocation will be effective upon communication to my attending physician or other mental health care provider, either by me or a witness to my revocation, of the intent to revoke. If I choose to revoke a particular instruction contained in this declaration in the manner specified, I understand that the other instructions contained in this declaration will remain effective until:

- (1) I revoke this declaration in its entirety;
- (2) I make a new combined mental health declaration and power of attorney; or
- (3) two years after the date this document was executed.

D. Termination.

I understand that this declaration will automatically terminate two years from the date of execution unless I am deemed incapable of making mental health care decisions at the time that this declaration would expire.

(Specify date)

E. Preference as to a court-appointed guardian.

I understand that I may nominate a guardian of my person for consideration by the court if incapacity proceedings are commenced under 20 Pa.C.S. § 5511. I understand that the court will appoint a guardian in accordance with my most recent nomination except for good cause or disqualification. In the event a court decides to appoint a guardian, I desire the following person to be appointed:

(Insert name, address, telephone number of the designated person)

() The appointment of a guardian of my person will not give the guardian the power to revoke, suspend or terminate this declaration.

() Upon appointment of a guardian, I authorize the guardian to revoke, suspend or terminate this declaration.

Part III. Mental Health Power of Attorney.

I, _____, having the capacity to make mental health decisions, authorize my designated health care agent to make certain decisions on my behalf regarding my mental health care. If I have not expressed a choice in this document or in the accompanying declaration, I authorize my agent to make the decision that my agent determines is the decision I would make if I were competent to do so.

A. Designation of agent.

I hereby designate and appoint the following person as my agent to make mental health care decisions for me as authorized in this document. This authorization applies only to mental health decisions that are not addressed in the accompanying signed declaration.

(Insert name of designated person)

Signed:

(My name, address, telephone number)

Witnesses' signatures:

(Insert names, addresses, telephone numbers of witnesses)

Agent's acceptance:

I hereby accept designation as mental health care agent for

(Insert name of declarant)

Agent's signature:

(Insert name, address, telephone number of designated person)

B. Designation of alternative agent.

In the event that my first agent is unavailable or unable to serve as my mental health care agent, I hereby designate and appoint the following individual as my alternative mental health care agent to make mental health care decisions for me as authorized in this document:

(Insert name of designated person)

Signed:

(My name, address, telephone number)

Witnesses' signatures:

(Insert names, addresses, telephone numbers of witnesses)

Alternative agent's acceptance:

I hereby accept designation as alternative mental health care agent for (Insert name of declarant)

Alternative agent's signature:

(Insert name, address, telephone number of alternative agent)

C. When this power of attorney become effective.

This power of attorney will become effective at the following designated time:

() When I am deemed incapable of making mental health care decisions.

() When the following condition is met:

(List condition)

D. Authority granted to my mental health care agent.

I hereby grant to my agent full power and authority to make mental health care decisions for me consistent with the instructions and limitations set forth in this document. If I have not expressed a choice in this power of attorney or in the accompanying declaration, I authorize my agent to make the decision that my agent determines is the decision I would make if I were competent to do so.

(1) Preferences regarding medications for psychiatric treatment.

() My agent is authorized to consent to the use of any medications after consultation with my treating psychiatrist and any other persons my agent considers appropriate.

() My agent is not authorized to consent to the use of any medications.

(2) Preferences regarding electroconvulsive therapy (ECT).

() My agent is authorized to consent to the administration of electroconvulsive therapy.

() My agent is not authorized to consent to the administration of electroconvulsive therapy.

(3) Preferences for experimental studies or drug trials.

() My agent is authorized to consent to my participation in experimental studies if, after consultation with my treating physician and any other individuals my agent deems appropriate, my agent believes that the potential benefits to me outweigh the possible risks to me.

() My agent is not authorized to consent to my participation in experimental studies.

() My agent is authorized to consent to my participation in drug trials if, after consultation with my treating

physician and any other individuals my agent deems appropriate, my agent believes that the potential benefits to me outweigh the possible risks to me.

() My agent is not authorized to consent to my participation in drug trials.

E. Revocation.

This power of attorney may be revoked in whole or in part at any time, either orally or in writing, as long as I have not been found to be incapable of making mental health decisions.

My revocation will be effective upon communication to my attending physician or other mental health care provider, either by me or a witness to my revocation, of the intent to revoke. If I choose to revoke a particular instruction contained in this power of attorney in the manner specified, I understand that the other instructions contained in this power of attorney will remain effective until:

(1) I revoke this power of attorney in its entirety;

(2) I make a new combined mental health care declaration and power of attorney; or

(3) two years from the date this document was executed.

I understand that this power of attorney will automatically terminate two years from the date of execution unless I am deemed incapable of making mental health care decisions at the time that the power of attorney would expire.

I am making this combined mental health care declaration and power of attorney on the (insert day) day of (insert month), (insert year).

My signature:

(My name, address, telephone number)

Witnesses' signatures:

(Names, addresses, telephone numbers of witnesses).

If the principal making this combined mental health care declaration and power of attorney is unable to sign this document, another individual may sign on behalf of and at the direction of the principal.

Signature of person signing on my behalf:

(Name, address, telephone number)

SUBCHAPTER B

MENTAL HEALTH DECLARATIONS

Sec.

5821. Short title of subchapter.

5822. Execution.

5823. Form.

5824. Operation.

5825. Revocation.

5826. Amendment.

Cross References. Subchapter B is referred to in section 5808 of this title.

§ 5821. Short title of subchapter.

This subchapter shall be known and may be cited as the Advance Directive for Mental Health Act.

§ 5822. Execution.

(a) **Who may make.**--An individual who is at least 18 years of age or an emancipated minor and has not been deemed incapacitated pursuant to section 5511 (relating to petition and hearing; independent evaluation) or severely mentally disabled pursuant to Article III of the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act,

may make a declaration governing the initiation, continuation, withholding or withdrawal of mental health treatment.

(b) Requirements.--A declaration must be:

(1) Dated and signed by the declarant by signature or mark or by another individual on behalf of and at the direction of the declarant.

(2) Witnessed by two individuals, each of whom must be at least 18 years of age.

(c) Witnesses.--

(1) An individual who signs a declaration on behalf of and at the direction of a declarant may not witness the declaration.

(2) A mental health care provider and its agent may not sign a declaration on behalf of and at the direction of a declarant if the mental health care provider or agent provides mental health care services to the declarant.

Cross References. Section 5822 is referred to in section 5826 of this title.

§ 5823. Form.

A declaration may be in the following form or any other written form that expresses the wishes of a declarant regarding the initiation, continuation or refusal of mental health treatment and may include other specific directions, including, but not limited to, designation of another individual to make mental health treatment decisions for the declarant if the declarant is incapable of making mental health decisions:

Mental Health Declaration.

I, _____, having the capacity to make mental health decisions, willfully and voluntarily make this declaration regarding my mental health care.

I understand that mental health care includes any care, treatment, service or procedure to maintain, diagnose, treat or provide for mental health, including any medication program and therapeutic treatment. Electroconvulsive therapy may be administered only if I have specifically consented to it in this document. I will be the subject of laboratory trials or research only if specifically provided for in this document. Mental health care does not include psychosurgery or termination of parental rights.

I understand that my incapacity will be determined by examination by a psychiatrist and one of the following: another psychiatrist, psychologist, family physician, attending physician or mental health treatment professional. Whenever possible, one of the decision makers will be one of my treating professionals.

A. When this declaration becomes effective.

This declaration becomes effective at the following designated time:

() When I am deemed incapable of making mental health care decisions.

() When the following condition is met:

(List condition)

B. Treatment preferences.

1. Choice of treatment facility.

() In the event that I require commitment to a psychiatric treatment facility, I would prefer to be admitted to the following facility:

(Insert name and address of facility)

() In the event that I require commitment to a psychiatric treatment facility, I do not wish to be committed to the following facility:

(Insert name and address of facility)

I understand that my physician may have to place me in a facility that is not my preference.

2. Preferences regarding medications for psychiatric treatment.

I consent to the medications that my treating physician recommends with the following exception, preference or limitation:

(List medication and reason for exception, preference or limitation)

This exception, preference or limitation applies to generic, brand name and trade name equivalents. I understand that dosage instructions are not binding on my physician.

I do not consent to the use of any medications.

3. Preferences regarding electroconvulsive therapy (ECT).

I consent to the administration of electroconvulsive therapy.

I do not consent to the administration of electroconvulsive therapy.

4. Preferences for experimental studies or drug trials.

I consent to participation in experimental studies if my treating physician believes that the potential benefits to me outweigh the possible risks to me.

I do not consent to participation in experimental studies.

I consent to participation in drug trials if my treating physician believes that the potential benefits to me outweigh the possible risks to me.

I do not consent to participation in any drug trials.

5. Additional instructions or information.

Examples of other instructions or information that may be included:

Activities that help or worsen symptoms.

Type of intervention preferred in the event of a crisis.

Mental and physical health history.

Dietary requirements.

Religious preferences.

Temporary custody of children.

Family notification.

Limitations on the release or disclosure of mental health records.

Other matters of importance.

C. Revocation.

This declaration may be revoked in whole or in part at any time, either orally or in writing, as long as I have not been found to be incapable of making mental health decisions. My revocation will be effective upon communication to my attending physician or other mental health care provider, either by me or a witness to my revocation, of the intent to revoke. If I choose to revoke a particular instruction contained in this declaration in the manner specified, I understand that the other instructions contained in this declaration will remain effective until:

(1) I revoke this declaration in its entirety;

(2) I make a new mental health care declaration; or

(3) two years after the date this document was executed.

D. Termination.

I understand that this declaration will automatically terminate two years from the date of execution unless I am deemed incapable of making mental health care decisions at the time that the declaration would expire.

E. Preference as to a court-appointed guardian.

I understand that I may nominate a guardian of my person for consideration by the court if incapacity proceedings are commenced pursuant to 20 Pa.C.S. § 5511. I understand that the court will appoint a guardian in accordance with my most recent nomination except for good cause or disqualification. In the event a court decides to appoint a guardian, I desire the following person to be appointed:

(Insert name, address and telephone number
of designated person)

() The appointment of a guardian of my person will not give the guardian the power to revoke, suspend or terminate this declaration.

() Upon appointment of a guardian, I authorize the guardian to revoke, suspend or terminate this declaration.

I am making this declaration on the (insert day) of (insert month), (insert year).

My signature:

(My name, address, telephone number)

Witnesses' signatures:

(Names, addresses, telephone numbers of witnesses)

If the principal making this declaration is unable to sign it, another individual may sign on behalf of and at the direction of the principal.

Signature of person signing on my behalf:

(Name, address and telephone number)

§ 5824. Operation.

(a) When operative.--A declaration becomes operative when:

(1) A copy is provided to the attending physician.

(2) The conditions stated in the declaration are met.

(b) Compliance.--When a declaration becomes operative, the attending physician and other mental health care providers shall act in accordance with its provisions or comply with the transfer provisions of section 5804 (relating to compliance).

(c) Invalidity of specific direction.--If a specific direction in the declaration is held to be invalid, the invalidity shall not be construed to negate other directions in the declaration that can be effected without the invalid direction.

(d) Mental health record.--A physician or other mental health care provider to whom a copy of a declaration is furnished shall make it a part of the mental health record of the declarant for at least two years from the date of execution and, if unwilling to comply with the declaration, promptly so advise those listed in section 5804(a)(2).

(e) Duration.--A declaration shall be valid until revoked by the declarant or until two years from the date of execution. If a declaration for mental health treatment has been invoked and is in effect at the specified expiration date after its execution, the declaration shall remain effective until the principal is no longer incapable.

(f) Absence of declaration.--If an individual does not make a declaration, a presumption does not arise regarding the intent of the individual to consent to or to refuse a mental health treatment.

§ 5825. Revocation.

(a) When declaration may be revoked.--A declaration may be revoked by the declarant at any time, either orally or in writing, in whole or in part, unless the individual has been found to be incapable of making mental health decisions or the individual has been involuntarily committed.

(b) Capacity to revoke.--Subsection (a) notwithstanding, during a period of involuntary commitment pursuant to Article III of the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act, a declarant may revoke the declaration only if found to be capable of making mental health decisions after examination by a psychiatrist and one of the following: another psychiatrist, a psychologist, a family physician, an attending physician or a mental health treatment professional. Whenever possible, at least one of the decision makers shall be a treating professional of the declarant or principal.

(c) Effect of revocation.--A revocation of a declaration shall be effective upon communication to the attending physician or other mental health care provider by the declarant or a witness to the revocation of the intent to revoke.

(d) Mental health record.--An attending physician or other mental health care provider shall make revocation, a finding of capacity or a declaration part of the mental health record of the declarant.

§ 5826. Amendment.

(a) Capacity to amend.--While having the capacity to make mental health decisions, a declarant may amend a declaration by a writing executed in accordance with the provisions of section 5822 (relating to execution).

(b) Determination of capacity.--During the period of involuntary treatment pursuant to Article III of the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act, a declarant may amend the declaration if the individual is found to be capable of making mental health decisions after examination by a psychiatrist and one of the following: another psychiatrist, a psychologist, family physician, attending physician or mental health treatment professional. Whenever possible, at least one of the decision makers shall be a treating professional of the declarant or principal.

SUBCHAPTER C

MENTAL HEALTH POWERS OF ATTORNEY

Sec.

- 5831. Short title of subchapter.
- 5832. Execution.
- 5833. Form.
- 5834. Operation.
- 5835. Appointment of mental health care agents.
- 5836. Authority of mental health care agent.
- 5837. Removal of agent.
- 5838. Effect of divorce.
- 5839. Revocation.
- 5840. Amendment.
- 5841. Relation of mental health care agent to court-appointed guardian and other agents.
- 5842. Duties of attending physician and mental health care provider.
- 5843. Construction.
- 5844. Conflicting provisions.
- 5845. Validity.

Cross References. Subchapter C is referred to in section 5808 of this title.

§ 5831. Short title of subchapter.

This subchapter shall be known and may be cited as the Mental Health Care Agents Act.

§ 5832. Execution.

(a) **Who may make.**--An individual who is at least 18 years of age or an emancipated minor and who has not been deemed incapacitated pursuant to section 5511 (relating to petition and hearing; independent evaluation) or found to be severely mentally disabled pursuant to Article III of the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act, may make a mental health power of attorney governing the initiation, continuation, withholding or withdrawal of mental health treatment.

(b) **Requirements.**--A mental health power of attorney must be:

(1) Dated and signed by the principal by signature or mark or by another individual on behalf of and at the direction of the principal.

(2) Witnessed by two individuals, each of whom must be at least 18 years of age.

(c) **Witnesses.**--

(1) An individual who signs a mental health power of attorney on behalf of and at the direction of a principal may not witness the mental health power of attorney.

(2) A mental health care provider and its agent may not sign a mental health power of attorney on behalf of and at the direction of a principal if the mental health care provider or agent provides mental health care services to the principal.

Cross References. Section 5832 is referred to in section 5840 of this title.

§ 5833. Form.

(a) **Requirements.**--A mental health power of attorney must do the following:

(1) Identify the principal and appoint the mental health care agent.

(2) Declare that the principal authorizes the mental health care agent to make mental health care decisions on behalf of the principal.

(b) **Optional provisions.**--A mental health power of attorney may:

(1) Describe any limitations that the principal imposes upon the authority of the mental health care agent.

(2) Indicate the intent of the principal regarding the initiation, continuation or refusal of mental health treatment.

(3) Nominate a guardian of the person of the principal as provided in Subchapter C of Chapter 55 (relating to appointment of guardian; bonds; removal and discharge).

(4) Contain other provisions as the principal may specify regarding the implementation of mental health care decisions and related actions by the mental health care agent.

(c) **Written form.**--A mental health power of attorney may be in the following form or any other written form identifying the principal, appointing a mental health care agent and declaring that the principal authorizes the mental health care agent to make mental health care decisions on behalf of the principal:

Mental Health Power of Attorney

I, _____, having the capacity to make mental health decisions, authorize my designated health care agent

to make certain decisions on my behalf regarding my mental health care. If I have not expressed a choice in this document, I authorize my agent to make the decision that my agent determines is the decision I would make if I were competent to do so.

I understand that mental health care includes any care, treatment, service or procedure to maintain, diagnose, treat or provide for mental health, including any medication program and therapeutic treatment. Electroconvulsive therapy may be administered only if I have specifically consented to it in this document. I will be the subject of laboratory trials or research only if specifically provided for in this document. Mental health care does not include psychosurgery or termination of parental rights.

I understand that my incapacity will be determined by examination by a psychiatrist and one of the following: another psychiatrist, psychologist, family physician, attending physician or mental health treatment professional. Whenever possible, one of the decision makers shall be one of my treating professionals.

A. Designation of agent.

I hereby designate and appoint the following person as my agent to make mental health care decisions for me as authorized in this document:

(Insert name of designated person)

Signed:

(My name, address, telephone number)

(Witnesses' signatures)

(Names, addresses, telephone numbers of witnesses)

Agent's acceptance:

I hereby accept designation as mental health care agent for
(Insert name of declarant)

Agent's signature:

(Insert name, address, telephone number of designated person)

B. Designation of alternative agent.

In the event that my first agent is unavailable or unable to serve as my mental health care agent, I hereby designate and appoint the following individual as my alternative mental health care agent to make mental health care decisions for me as authorized in this document:

(Insert name of designated person)

Signed:

(Witnesses' signatures)

(Names, addresses, telephone numbers of witnesses)

Alternative agent's acceptance:

I hereby accept designation as alternative mental health care agent for

(Insert name of declarant)

Alternative agent's signature:

(Insert name, address, telephone number)

C. When this power of attorney becomes effective.

This power of attorney will become effective at the following designated time:

() When I am deemed incapable of making mental health care decisions.

() When the following condition is met:

(List condition)

D. Authority granted to my mental health care agent.

I hereby grant to my agent full power and authority to make mental health care decisions for me consistent with the instructions and limitations set forth in this power of attorney. If I have not expressed a choice in this power of

attorney, I authorize my agent to make the decision that my agent determines is the decision I would make if I were competent to do so.

E. Treatment preferences.

1. Choice of treatment facility.

() In the event that I require commitment to a psychiatric treatment facility, I would prefer to be admitted to the following facility:

(Insert name and address of facility)

() In the event that I require commitment to a psychiatric treatment facility, I do not wish to be committed to the following facility:

(Insert name and address of facility)

I understand that my physician may have to place me in a facility that is not my preference.

2. Preferences regarding medications for psychiatric treatment.

() I consent to the medications that my agent agrees to after consultation with my treating physician and any other persons my agent considers appropriate.

() I consent to the medications that my agent agrees to, with the following exception or limitation:

(List exception or limitation)

This exception or limitation applies to generic, brand name and trade name equivalents.

() My agent is not authorized to consent to the use of any medications.

3. Preferences regarding electroconvulsive therapy (ECT).

() My agent is authorized to consent to the administration of electroconvulsive therapy.

() My agent is not authorized to consent to the administration of electroconvulsive therapy.

4. Preferences for experimental studies or drug trials.

() My agent is authorized to consent to my participation in experimental studies if, after consultation with my treating physician and any other individuals my agent deems appropriate, my agent believes that the potential benefits to me outweigh the possible risks to me.

() My agent is not authorized to consent to my participation in experimental studies.

() My agent is authorized to consent to my participation in drug trials if, after consultation with my treating physician and any other individuals my agent deems appropriate, my agent believes that the potential benefits to me outweigh the possible risks to me.

() My agent is not authorized to consent to my participation in drug trials.

5. Additional information and instructions.

Examples of other information that may be included:

Activities that help or worsen symptoms.

Type of intervention preferred in the event of a crisis.

Mental and physical health history.

Dietary requirements.

Religious preferences.

Temporary custody of children.

Family notification.

Limitations on release or disclosure of mental health records.

Other matters of importance.

F. Revocation.

This power of attorney may be revoked in whole or in part at any time, either orally or in writing, as long as I have not been found to be incapable of making mental health decisions.

My revocation will be effective upon communication to my attending physician or other mental health care provider, either by me or a witness to my revocation, of the intent to revoke. If I choose to revoke a particular instruction contained in this power of attorney in the manner specified, I understand that the other instructions contained in this power of attorney will remain effective until:

- (1) I revoke this power of attorney in its entirety;
- (2) I make a new mental health power of attorney; or
- (3) two years after the date this document was executed.

G. Termination.

I understand that this power of attorney will automatically terminate two years from the date of execution unless I am deemed incapable of making mental health care decisions at the time the power of attorney would expire.

H. Preference as to a court-appointed guardian.

I understand that I may nominate a guardian of my person for consideration by the court if incapacity proceedings are commenced pursuant to 20 Pa.C.S. § 5511. I understand that the court will appoint a guardian in accordance with my most recent nomination except for good cause or disqualification. In the event a court decides to appoint a guardian, I desire the following person to be appointed:

(Insert name, address, telephone number of designated person)

() The appointment of a guardian of my person will not give the guardian the power to revoke, suspend or terminate this power of attorney.

() Upon appointment of a guardian, I authorize the guardian to revoke, suspend or terminate this power of attorney.

I am making this power of attorney on the (insert day) of (insert month), (insert year).

My signature:

(My name, address, telephone number)

Witnesses' signatures:

(Names, addresses, telephone numbers of witnesses)

If the principal making this power of attorney is unable to sign it, another individual may sign on behalf of and at the direction of the principal.

Signature of person signing on my behalf:

(Name, address, telephone number)

§ 5834. Operation.

(a) When operative.--A mental health power of attorney shall become operative when:

- (1) A copy is provided to the attending physician.
- (2) The conditions stated in the power of attorney are met.

(b) Invalidity of specific direction.--If a specific direction in a mental health power of attorney is held to be invalid, the invalidity does not negate other directions in the mental health power of attorney that can be effected without the invalid direction.

(c) Duration.--A mental health power of attorney shall be valid until revoked by the principal or until two years after the date of execution. If a mental health power of attorney for mental health treatment has been invoked and is in effect at the specified date of expiration after its execution, the mental health power of attorney shall remain effective until the principal is no longer incapable.

(d) Court approval unnecessary.--A mental health care decision made by a mental health care agent for a principal shall be effective without court approval.

§ 5835. Appointment of mental health care agents.

(a) Successor mental health care agents.--A principal may appoint one or more successor agents who shall serve in the order named in the mental health power of attorney unless the principal expressly directs to the contrary.

(b) Who may not be appointed mental health care agent.--Unless related to the principal by blood, marriage or adoption, a principal may not appoint any of the following to be the mental health care agent:

(1) The principal's attending physician or other mental health care provider or an employee of the attending physician or other mental health care provider.

(2) An owner, operator or employee of a residential facility in which the principal receives care.

§ 5836. Authority of mental health care agent.

(a) Extent of authority.--Except as expressly provided otherwise in a mental health power of attorney and subject to subsections (b) and (c), a mental health care agent may make any mental health care decision and exercise any right and power regarding the principal's care, custody and mental health care treatment that the principal could have made and exercised.

(b) Powers not granted.--A mental health power of attorney may not convey the power to relinquish parental rights or consent to psychosurgery.

(c) Powers and duties only specifically granted.--Unless specifically included in a mental health power of attorney, the agent shall not have the power to consent to electroconvulsive therapy or to experimental procedures or research.

(d) Mental health care decisions.--After consultation with mental health care providers and after consideration of the prognosis and acceptable alternatives regarding diagnosis, treatments and side effects, a mental health care agent shall make mental health care decisions in accordance with the mental health care agent's understanding and interpretation of the instructions given by the principal at a time when the principal had the capacity to make and communicate mental health care decisions. Instructions include a declaration made by the principal and any clear written or verbal directions that cover the situation presented. In the absence of instructions, the mental health care agent shall make mental health care decisions conforming with the mental health care agent's assessment of the principal's preferences.

(e) Mental health care information.--

(1) Unless specifically provided otherwise in a mental health power of attorney, a mental health care agent shall have the same rights and limitations as the principal to request, examine, copy and consent or refuse to consent to the disclosure of mental health care information.

(2) Disclosure of mental health care information to a mental health care agent shall not be construed to constitute a waiver of any evidentiary privilege or right to assert confidentiality.

(3) A mental health care provider that discloses mental health care information to a mental health care agent in good faith shall not be liable for the disclosure.

(4) A mental health care agent may not disclose mental health care information regarding the principal except as is reasonably necessary to perform the agent's obligations to the principal or as otherwise required by law.

(f) Liability of agent.--A mental health care agent shall not be personally liable for the costs of care and treatment of the principal.

Cross References. Section 5836 is referred to in section 5843 of this title.

§ 5837. Removal of agent.

(a) Grounds for removal.--A mental health care agent may be removed by the court for any of the following reasons:

- (1) Death or incapacity.
- (2) Noncompliance with a mental health power of attorney.
- (3) Physical assault or threats of harm.
- (4) Coercion.
- (5) Voluntary withdrawal by the agent.
- (6) Divorce.

(b) Notice of voluntary withdrawal.--

(1) A mental health care agent who voluntarily withdraws shall inform the principal.

(2) If the mental health power of attorney is in effect, the agent shall notify providers of mental health treatment.

(c) Challenges.--Third parties may challenge the authority of a mental health agent in the orphan's court division of the court of common pleas.

(d) Effect of removal.--If a mental health power of attorney provides for a substitute agent, then the substitute agent shall assume responsibility when the agent is removed. If the power of attorney does not provide for a substitute, then a mental health care provider shall follow any instructions in the power of attorney.

§ 5838. Effect of divorce.

If the spouse of a principal is designated as the principal's mental health care agent and thereafter either spouse files an action in divorce, the designation of the spouse as mental health care agent shall be revoked as of the time the action is filed unless it clearly appears from the mental health power of attorney that the designation was intended to continue to be effective notwithstanding the filing of an action in divorce by either spouse.

§ 5839. Revocation.

(a) When a mental health power of attorney may be revoked.--A mental health power of attorney may be revoked by the principal at any time, either orally or in writing in whole or in part, unless the principal has been found to be incapable of making mental health treatment decisions or the principal has been involuntarily committed.

(b) Capacity to revoke.--Notwithstanding subsection (a), during a period of involuntary commitment pursuant to Article III of the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act, a principal may revoke the mental health power of attorney only if found to be capable of making mental health decisions after examination by a psychiatrist and one of the following: another psychiatrist, a psychologist, a family physician, an attending physician or a mental health treatment professional. Whenever possible, at least one of the decision makers shall be a treating professional of the declarant or principal.

(c) Effect of revocation.--A revocation shall be effective upon communication to the attending physician or other mental health care provider by the principal or a witness to the revocation of the intent to revoke.

(d) Mental health record.--The attending physician or other mental health care provider shall make the revocation or a finding of capacity part of the mental health record of the declarant.

(e) Reliance on mental health power of attorney.--A physician or other mental health care provider may rely on the effectiveness of a mental health power of attorney unless notified of its revocation.

(f) Subsequent action by agent.--A mental health care agent who has notice of the revocation of a mental health power of attorney may not make or attempt to make mental health care decisions for the principal.

§ 5840. Amendment.

While having the capacity to make mental health decisions, a principal may amend a mental health power of attorney by a writing executed in accordance with the provisions of section 5832 (relating to execution).

§ 5841. Relation of mental health care agent to court-appointed guardian and other agents.

(a) Procedure.--

(1) Upon receipt of notice of a guardianship proceeding, a provider shall notify the court and the agent at the guardianship proceeding of the existence of a mental health advance directive.

(2) Upon receipt of a notice of guardianship proceeding, the agent shall inform the court of the contents of the mental health advance directive.

(b) Accountability of mental health care agent.--

(1) If a principal who has executed a mental health power of attorney is later adjudicated an incapacitated person, the mental health power of attorney shall remain in effect.

(2) The court shall give preference to allowing the agent to continue making mental health care decisions as provided in the mental health advance directive unless the principal specified that the guardian has the power to terminate, revoke or suspend the mental health power of attorney in the advance directive.

(3) If, after thorough examination, the court grants the powers contained in the mental health advance directive to the guardian, the guardian shall be bound by the same obligations as the agent would have been.

(c) Nomination of guardian of person.--In a mental health power of attorney, a principal may nominate the guardian of the person for the principal for consideration by the court if incapacity proceedings for the principal's person are thereafter commenced. If the court determines that the appointment of a guardian is necessary, the court shall appoint in accordance with the principal's most recent nomination except for good cause or disqualification.

§ 5842. Duties of attending physician and mental health care provider.

(a) Compliance with decisions of mental health care agent.--Subject to any limitation specified in a mental health power of attorney, an attending physician or mental health care provider shall comply with a mental health care decision made by a mental health care agent to the same extent as if the decision had been made by the principal.

(b) Mental health record.--

(1) An attending physician or mental health care provider who is given a mental health power of attorney shall

arrange for the mental health power of attorney or a copy to be placed in the mental health record of the principal.

(2) An attending physician or mental health care provider to whom an amendment or revocation of a mental health power of attorney is communicated shall promptly enter the information in the mental health record of the principal and maintain a copy if one is furnished.

(c) Record of determination.--An attending physician who determines that a principal is unable to make or has regained the capacity to make mental health treatment decisions or makes a determination that affects the authority of a mental health care agent shall enter the determination in the mental health record of the principal and, if possible, promptly inform the principal and any mental health care agent of the determination.

§ 5843. Construction.

(a) General rule.--Nothing in this subchapter shall be construed to:

(1) Affect the requirements of other laws of this Commonwealth regarding consent to observation, diagnosis, treatment or hospitalization for a mental illness.

(2) Authorize a mental health care agent to consent to any mental health care prohibited by the laws of this Commonwealth.

(3) Affect the laws of this Commonwealth regarding any of the following:

(i) The standard of care of a mental health care provider required in the administration of mental health care or the clinical decision-making authority of the mental health care provider.

(ii) When consent is required for mental health care.

(iii) Informed consent for mental health care.

(4) Affect the ability to admit a person to a mental health facility under the voluntary and involuntary commitment provisions of the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act.

(b) Disclosure.--

(1) The disclosure requirements of section 5836(e) (relating to authority of mental health care agent) shall supersede any provision in any other State statute or regulation that requires a principal to consent to disclosure or which otherwise conflicts with section 5836(e), including, but not limited to, the following:

(i) The act of April 14, 1972 (P.L.221, No.63), known as the Pennsylvania Drug and Alcohol Abuse Control Act.

(ii) Section 111 of the act of July 9, 1976 (P.L.817, No.143), known as the Mental Health Procedures Act.

(iii) The act of October 5, 1978 (P.L.1109, No.261), known as the Osteopathic Medical Practice Act.

(iv) Section 41 of the act of December 20, 1985 (P.L.457, No.112), known as the Medical Practice Act of 1985.

(v) The act of November 29, 1990 (P.L.585, No.148), known as the Confidentiality of HIV-Related Information Act.

(2) The disclosure requirements under section 5836(e) shall not apply to the extent that the disclosure would be prohibited by Federal law and implementing regulations.

(c) Notice and acknowledgment requirements.--The notice and acknowledgment requirements of section 5601(c) and (d) (relating

to general provisions) shall not apply to a power of attorney that provides exclusively for mental health care decision making.

(d) Legal remedies.--An interested party may file a petition seeking a determination that following the directions in the declaration or the mental health power of attorney may cause potential irreparable harm or death. In that event, the court may invalidate some or all of the provisions and issue orders appropriate to the circumstances authorizing treatment. The courts shall issue an order within 72 hours from the filing of the petition.

§ 5844. Conflicting provisions.

If a provision of a mental health power of attorney conflicts with:

(1) The provision of another mental health power of attorney or with a provision of a declaration, the provision of the instrument latest in date of execution shall prevail to the extent of the conflict.

(2) A power of attorney, the provision in the mental health power of attorney shall prevail to the extent of the conflict regardless of the date of execution.

§ 5845. Validity.

This subchapter shall not be construed to limit the validity of a health care power of attorney executed prior to the effective date of this subchapter. A mental health power of attorney executed in another state or jurisdiction and in conformity with the laws of that state or jurisdiction shall be considered valid in this Commonwealth, except to the extent that the mental health power of attorney executed in another state or jurisdiction would allow a mental health care agent to make a mental health care decision inconsistent with the laws of this Commonwealth.

CHAPTER 59

**UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS
JURISDICTION**

Subchapter

- A. General Provisions
- B. Jurisdiction
- C. Transfer of Guardianship or Conservatorship
- D. Registration and Recognition of Orders from Other States
- E. Miscellaneous Provisions

Enactment. Chapter 59 was added July 5, 2012, P.L.975, No.108, effective in 60 days.

Special Provisions in Appendix. See section 2 of Act 108 of 2012 in the appendix to this title for special provisions relating to application of law.

SUBCHAPTER A

GENERAL PROVISIONS

Sec.

- 5901. Short title of chapter.
- 5902. Definitions.
- 5903. International application of chapter.
- 5904. Communication between courts.
- 5905. Cooperation between courts.
- 5906. Taking testimony in another state.

Special Provisions in Appendix. See section 2 of Act 108 of 2012 in the appendix to this title for special provisions relating to application of law.

§ 5901. Short title of chapter.

This chapter shall be known and may be cited as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

§ 5902. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Adult." An individual who has attained 18 years of age.

"Conservator." A person appointed by the court to administer the property of an adult, including a person appointed under Chapter 55 (relating to incapacitated persons) as the guardian of the estate of an adult.

"Guardian." A person appointed by the court to make decisions regarding the person of an adult, including a person appointed under Chapter 55 (relating to incapacitated persons) as the guardian of the person of an adult.

"Guardianship order." An order appointing a guardian.

"Guardianship proceeding." A judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

"Incapacitated person." An adult for whom a guardian has been appointed.

"Party." The respondent, petitioner, guardian, conservator or any other person allowed by the court to participate in a guardianship or protective proceeding.

"Person." Notwithstanding 1 Pa.C.S. § 1991 (relating to definitions) and except in the term "incapacitated person" or "protected person," any:

- (1) individual;
- (2) corporation;
- (3) business trust;
- (4) estate;
- (5) trust;
- (6) partnership;
- (7) limited liability company;
- (8) association;
- (9) joint venture;
- (10) public corporation;
- (11) government or governmental subdivision, agency or instrumentality; or
- (12) other legal or commercial entity.

"Protected person." An adult for whom a protective order has been issued.

"Protective order." An order appointing a conservator or other order related to management of an adult's property.

"Protective proceeding." A judicial proceeding in which a protective order is sought or has been issued.

"Record." Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Respondent." An adult for whom a protective order or the appointment of a guardian is sought.

"State." A state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, a federally recognized Indian tribe or any territory or insular possession subject to the jurisdiction of the United States.

§ 5903. International application of chapter.

A court of this Commonwealth may treat a foreign country as if it were a state for the purpose of applying this subchapter and Subchapters B (relating to jurisdiction), C (relating to transfer of guardianship or conservatorship) and E (relating to miscellaneous provisions).

§ 5904. Communication between courts.

(a) Authorization.--A court of this Commonwealth may communicate with a court in another state concerning a proceeding arising under this chapter. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (b), the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(b) Exception.--Courts may communicate concerning schedules, calendars, court records and other administrative matters without making a record.

§ 5905. Cooperation between courts.

(a) Initiation.--In a guardianship or protective proceeding in this Commonwealth, a court of this Commonwealth may request the appropriate court of another state to do any of the following:

- (1) Hold an evidentiary hearing.
- (2) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state.
- (3) Order that an evaluation or assessment be made of the respondent.
- (4) Order any appropriate investigation of a person involved in a proceeding.
- (5) Forward to the court of this Commonwealth a certified copy of the transcript or other record of a hearing under paragraph (1) or any other proceeding, any evidence otherwise produced under paragraph (2) and any evaluation or assessment prepared in compliance with an order under paragraph (3) or (4).
- (6) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person.
- (7) Issue an order authorizing the release of medical, financial, criminal or other relevant information in that state, including protected health information as defined in 45 CFR 160.103 (relating to definitions).
- (8) Take or refrain from taking any other action to facilitate the prompt and fair resolution of matters subject to this chapter.

(b) Response.--If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (a), a court of this Commonwealth has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

§ 5906. Taking testimony in another state.

(a) General procedures.--In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this Commonwealth for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(b) Means.--In a guardianship or protective proceeding, a court in this Commonwealth may permit a witness located in

another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this Commonwealth shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

SUBCHAPTER B **JURISDICTION**

Sec.

- 5911. Definitions; significant connection factors.
- 5912. Exclusive basis.
- 5913. Jurisdiction.
- 5914. Special jurisdiction.
- 5915. Exclusive and continuing jurisdiction.
- 5916. Appropriate forum.
- 5917. Jurisdiction declined by reason of conduct.
- 5918. Notice of proceeding.
- 5919. Proceedings in more than one state.

Cross References. Subchapter B is referred to in section 5903 of this title.

§ 5911. Definitions; significant connection factors.

(a) Definitions.--The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Emergency." A circumstance:

- (1) which likely will result in substantial harm to a respondent's health, safety or welfare; and
- (2) for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf.

"Home state." One of the following:

- (1) The state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian.
- (2) If the requirement of paragraph (1) is not met, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.

"Significant-connection state." A state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(b) Significant connection factors.--In determining under sections 5913 (relating to jurisdiction) and 5921(e) (relating to transfer of guardianship or conservatorship to another state) whether a respondent has a significant connection with a particular state, the court shall consider all of the following:

- (1) The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding.
- (2) The length of time the respondent at any time was physically present in the state and the duration of any absence.
- (3) The location of the respondent's property.

(4) The extent to which the respondent has ties to the state. This paragraph includes voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship and receipt of services.

Cross References. Section 5911 is referred to in section 5921 of this title.

§ 5912. Exclusive basis.

Notwithstanding any inconsistent provisions of Chapter 55 (relating to incapacitated persons), this subchapter provides the exclusive jurisdictional basis for a court of this Commonwealth to appoint a guardian or issue a protective order for an adult.

§ 5913. Jurisdiction.

A court of this Commonwealth has jurisdiction to appoint a guardian or issue a protective order for a respondent if one of the following paragraphs applies:

(1) This Commonwealth is the respondent's home state.

(2) On the date the petition is filed, all of the following subparagraphs apply:

(i) This Commonwealth is a significant-connection state.

(ii) One of the following clauses applies:

(A) The respondent does not have a home state, or a court of the respondent's home state has declined to exercise jurisdiction because this Commonwealth is a more appropriate forum or has declined to exercise jurisdiction in a manner not inconsistent with a determination that this Commonwealth is a more appropriate forum.

(B) The respondent has a home state; a petition for an appointment or order is not pending in a court of that state or another significant-connection state; and, before the court makes the appointment or issues the order:

(I) a petition for an appointment or order is not filed in the respondent's home state;

(II) an objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(III) the court in this Commonwealth concludes that it is an appropriate forum under the factors set forth in section 5916 (relating to appropriate forum).

(3) All of the following subparagraphs apply:

(i) This Commonwealth does not have jurisdiction under either paragraph (1) or (2).

(ii) The respondent's home state and all significant-connection states have declined to exercise jurisdiction because this Commonwealth is the more appropriate forum or has declined to exercise jurisdiction in a manner not inconsistent with a determination that this Commonwealth is a more appropriate forum.

(iii) Jurisdiction in this Commonwealth is consistent with the Constitution of the United States and the Constitution of Pennsylvania.

(4) The requirements for special jurisdiction under section 5914 (relating to special jurisdiction) are met.

Cross References. Section 5913 is referred to in sections 5911, 5914, 5916, 5917, 5919 of this title.

§ 5914. Special jurisdiction.

(a) **Scope.**--Notwithstanding the requirements of section 5913 (relating to emergency guardian) as it relates to limiting the duration of an order appointing an emergency guardian of the person or estate, a court of this Commonwealth lacking jurisdiction under section 5913(1), (2) or (3) (relating to jurisdiction) has special jurisdiction to do any of the following:

(1) Appoint a guardian in an emergency for a term not exceeding 90 days for a respondent who is physically present in this Commonwealth.

(2) Issue a protective order with respect to real or tangible personal property located in this Commonwealth, including, in an emergency, a protective order for a term not exceeding 90 days.

(3) Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to section 5921 (relating to transfer of guardianship or conservatorship to another state).

(b) **Dismissal.**--If a petition for the appointment of a guardian in an emergency is brought in this Commonwealth and this Commonwealth was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

Cross References. Section 5914 is referred to in sections 5913, 5915, 5919 of this title.

§ 5915. Exclusive and continuing jurisdiction.

Except as otherwise provided in section 5914 (relating to special jurisdiction), a court that has appointed a guardian or issued a protective order consistent with this chapter has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

§ 5916. Appropriate forum.

(a) **Decline to exercise jurisdiction.**--A court of this Commonwealth having jurisdiction under section 5913 (relating to jurisdiction) to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(b) **Procedure.**--If a court of this Commonwealth declines to exercise its jurisdiction under subsection (a), it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(c) **Consideration.**--In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

- (1) any expressed preference of the respondent;
- (2) whether abuse, neglect or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect or exploitation;

(3) the length of time the respondent was physically present in or was a legal resident of this Commonwealth or another state;

(4) the distance of the respondent from the court in each state;

(5) the financial circumstances of the respondent's estate;

(6) the nature and location of the evidence;

(7) the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

(8) the familiarity of the court of each state with the facts and issues in the proceeding; and

(9) if an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

Cross References. Section 5916 is referred to in sections 5913, 5917 of this title.

§ 5917. Jurisdiction declined by reason of conduct.

(a) Judicial options.--If a court of this Commonwealth determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may exercise an option under any of the following paragraphs:

(1) Decline to exercise jurisdiction.

(2) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to:

(i) ensure the health, safety and welfare of the respondent or the protection of the respondent's property; or

(ii) prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction.

(3) Continue to exercise jurisdiction after considering:

(i) the extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(ii) whether it is a more appropriate forum than the court of any other state under the factors set forth in section 5916(c) (relating to appropriate forum); and

(iii) whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of section 5913 (relating to jurisdiction).

(b) Costs and fees.--If a court of this Commonwealth determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney fees, investigative fees, court costs, communication expenses, witness fees and expenses and travel expenses. The court may not assess fees, costs or expenses of any kind against the Commonwealth, a political subdivision or an instrumentality of the Commonwealth unless authorized by law other than this chapter.

§ 5918. Notice of proceeding.

If a petition for the appointment of a guardian or issuance of a protective order is brought in this Commonwealth and this Commonwealth was not the respondent's home state on the date the petition was filed, in addition to complying with the notice

requirements of this Commonwealth, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this Commonwealth.

§ 5919. Proceedings in more than one state.

Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this Commonwealth under section 5914(a)(1) or (2) (relating to special jurisdiction), if a petition for the appointment of a guardian or issuance of a protective order is filed in this Commonwealth and in another state and neither petition has been dismissed or withdrawn, all of the following apply:

(1) If the court in this Commonwealth has jurisdiction under section 5913 (relating to jurisdiction), it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to section 5913 before the appointment or issuance of the order.

(2) If the court in this Commonwealth does not have jurisdiction under section 5913, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this Commonwealth shall dismiss the petition unless the court in the other state determines that the court in this Commonwealth is a more appropriate forum.

SUBCHAPTER C

TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

Sec.

5921. Transfer of guardianship or conservatorship to another state.

5922. Accepting guardianship or conservatorship transferred from another state.

Special Provisions in Appendix. See section 2 of Act 108 of 2012 in the appendix to this title for special provisions relating to application of law.

Cross References. Subchapter C is referred to in section 5903 of this title.

§ 5921. Transfer of guardianship or conservatorship to another state.

(a) **Petition.**--A guardian or conservator appointed in this Commonwealth may petition the court to transfer the guardianship or conservatorship to another state.

(b) **Notice.**--Notice of a petition under subsection (a) must be given to the persons that would be entitled to notice of a petition in this Commonwealth for the appointment of a guardian or conservator.

(c) **Hearing.**--The court shall hold a hearing on a petition filed under subsection (a):

(1) on its own motion; or

(2) on request of:

(i) the guardian or conservator;

(ii) the incapacitated or protected person; or

(iii) another person required to be notified of the petition.

(d) Provisional guardianship order.--The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(1) the incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(2) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and

(3) plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

(e) Provisional conservatorship order.--The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(1) the protected person is physically present in or is reasonably expected to move permanently to the other state or the protected person has a significant connection to the other state considering the factors in section 5911(b) (relating to definitions; significant connection factors);

(2) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(3) adequate arrangements will be made for management of the protected person's property.

(f) Final order.--The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(1) a provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to section 5922 (relating to accepting guardianship or conservatorship transferred from another state); and

(2) the documents required to terminate a guardianship or conservatorship in this Commonwealth.

Cross References. Section 5921 is referred to in sections 5911, 5914, 5922 of this title.

§ 5922. Accepting guardianship or conservatorship transferred from another state.

(a) Petition.--To confirm transfer of a guardianship or conservatorship transferred to this Commonwealth under provisions similar to section 5921 (relating to transfer of guardianship or conservatorship to another state), the guardian or conservator must petition the court in this Commonwealth to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

(b) Notice.--Notice of a petition under subsection (a) must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this Commonwealth. The notice must be given in the same manner as notice is required to be given in this Commonwealth.

(c) Hearing.--The court shall hold a hearing on a petition filed under subsection (a):

- (1) on its own motion; or
- (2) on request of:
 - (i) the guardian or conservator;
 - (ii) the incapacitated or protected person; or
 - (iii) another person required to be notified of the petition.

(d) Provisional order.--The court shall issue an order provisionally granting a petition filed under subsection (a) unless:

- (1) an objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or
- (2) the guardian or conservator is ineligible for appointment in this Commonwealth.

(e) Final order.--The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this Commonwealth upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to section 5921 transferring the proceeding to this Commonwealth.

(f) Modification.--Not later than 90 days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship requires modification to conform to the laws of this Commonwealth.

(g) Recognition of order from other state.--In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

(h) Effect of denial.--The denial by a court of this Commonwealth of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this Commonwealth under Chapter 55 (relating to incapacitated persons) if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

Cross References. Section 5922 is referred to in section 5921 of this title.

SUBCHAPTER D

REGISTRATION AND RECOGNITION OF ORDER FROM OTHER STATES

Sec.

- 5931. Registration of guardianship orders.
- 5932. Registration of protective orders.
- 5933. Effect of registration.

Special Provisions in Appendix. See section 2 of Act 108 of 2012 in the appendix to this title for special provisions relating to application of law.

§ 5931. Registration of guardianship orders.

If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this Commonwealth, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this Commonwealth by filing as a foreign judgment in a court, in any appropriate judicial district of this Commonwealth, certified copies of the order and letters of office.

§ 5932. Registration of protective orders.

If a conservator has been appointed in another state and a petition for a protective order is not pending in this Commonwealth, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this Commonwealth by filing as a foreign judgment in a court of this Commonwealth, in any judicial district in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

§ 5933. Effect of registration.

(a) Powers.--Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this Commonwealth all powers authorized in the order of appointment except as prohibited under the laws of this Commonwealth, including maintaining actions and proceedings in this Commonwealth and, if the guardian or conservator is not a resident of this Commonwealth, subject to any conditions imposed upon nonresident parties.

(b) Relief authorized.--A court of this Commonwealth may grant any relief available under this chapter and other law of this Commonwealth to enforce a registered order.

SUBCHAPTER E

MISCELLANEOUS PROVISIONS

Sec.

5991. Uniformity of application and construction.

5992. Relation to Electronic Signatures in Global and National Commerce Act.

Special Provisions in Appendix. See section 2 of Act 108 of 2012 in the appendix to this title for special provisions relating to application of law.

Cross References. Subchapter E is referred to in section 5903 of this title.

§ 5991. Uniformity of application and construction.

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

§ 5992. Relation to Electronic Signatures in Global and National Commerce Act.

(a) General rule.--Except as set forth in subsection (b), this chapter modifies, limits or supersedes the Electronic Signatures in Global and National Commerce Act (Public Law 106-229, 15 U.S.C. § 7001 et seq.).

(b) Exceptions.--

(1) This chapter does not modify, limit or supersede section 101(c) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001(c)).

(2) This chapter does not authorize electronic delivery of any of the notices described in section 103(b) of the

CHAPTER 61
ESTATES

Sec.

- 6101. Definitions.
- 6102. Termination of trusts (Deleted by amendment).
- 6103. Release or disclaimer of powers or interests.
- 6104. Rule against perpetuities.
- 6105. Rule against perpetuities; disposition when invalidity occurs.
- 6106. Income accumulations; when valid.
- 6107. Income accumulations; disposition when invalidity occurs.
- 6107.1. Applicability of rule against perpetuities.
- 6108. Designation of beneficiaries of insurance or employee death benefits not testamentary.
- 6109. Combination of charitable trusts (Repealed).
- 6110. Administration of charitable interests (Deleted by amendment).
- 6111. Conveyances to defeat marital rights (Repealed).
- 6111.1. Modification by divorce or pending divorce.
- 6111.2. Effect of divorce or pending divorce on designation of beneficiaries.
- 6112. Spendthrift trusts (Deleted by amendment).
- 6113. Limited estates in personalty and in the proceeds of the conversion of real estate.
- 6114. Rules of interpretation.
- 6115. Estates pur autre vie.
- 6116. Estates in fee tail abolished.
- 6117. Rule in Shelley's case and doctrine of worthier title.
- 6118. Invalidity of certain gifts (Repealed).

Enactment. Chapter 61 was added June 30, 1972, P.L.508, No.164, effective July 1, 1972.

§ 6101. Definitions.

The following words and phrases, when used in this chapter, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

"Charity" or "charitable purposes." (Deleted by amendment).

"Conveyance." An act by which it is intended to create an interest in real or personal property whether the act is intended to have inter vivos or testamentary operation. It shall include an act by which a power of appointment whenever given is exercised.

(Apr. 18, 1978, P.L.42, No.23, eff. 60 days; July 7, 2006, P.L.625, No.98, eff. 120 days)

§ 6102. Termination of trusts (Deleted by amendment).

2006 Amendment. Section 6102 was deleted by amendment July 7, 2006, P.L.625, No.98, effective in 120 days.

§ 6103. Release or disclaimer of powers or interests.

(a) Powers and interests releasable.--Any power of appointment, or power of consumption, whether general or special, other than a power in trust which is imperative, and any interest in, to, or over real or personal property held or owned outright, or in trust, or in any other manner which is reserved or given to any person by deed, will or otherwise, and irrespective of any limitation of such power or interest by virtue of any restriction in the nature of a so-called

spendthrift trust provision, or similar provision, may be released or disclaimed, either with or without consideration by written instrument signed by the person possessing the power or the interest and delivered as hereinafter provided, but nothing in this section shall authorize an income beneficiary of a spendthrift trust to release or disclaim his right to such income, unless as a result of the release or disclaimer the released or disclaimed income will pass to one or more of the beneficiary's descendants. This section shall not apply to an interest that may be disclaimed under Chapter 62 (relating to disclaimers).

(b) Form of release or disclaimer.--A power or interest which is releasable or disclaimable may be released or disclaimed either absolutely or conditionally, and may also be released or disclaimed with respect to the whole or any part of the property subject to such power or interest, and may also be released or disclaimed in such manner as to reduce or limit the persons or objects or classes of persons or objects in whose favor such power or interest would otherwise be exercisable. No release or disclaimer of a power or of an interest shall be deemed to make imperative a power or interest which was not imperative prior to such release or disclaimer unless the instrument of release or disclaimer expressly so provides.

(c) Delivery of release or disclaimer.--Such release or disclaimer may be delivered to any one of the following:

(1) Any person specified for such purpose in the instrument creating the power or interest.

(2) Any trustee of the property to which the power or interest relates.

(3) The clerk of the court having jurisdiction of the trust for filing in said court.

(4) The recorder of deeds for recording in the county in which the person possessing the power or interest resides, or in which the deed, will, or other instrument creating the power or interest is recorded or filed.

(d) Grantee or lienholder.--A release or disclaimer shall be void as against a bona fide grantee of or holder of a lien on real estate in any county unless the release or disclaimer or a duplicate original or certified copy thereof is recorded in the county where the real estate lies before the recording or entering of the instrument or lien under which such grantee or lienholder claims.

(Dec. 10, 1974, P.L.867, No.293, eff. imd.; July 9, 1976, P.L.562, No.136, eff. imd.)

1976 Amendment. Act 136 amended subsec. (a). Section 3 of Act 136 provided that the amendment of subsec. (a) shall apply to any disclaimer hereafter made of any interest that would have devolved by reason of a transfer or death whether before or after the effective date of Act 136.

1974 Amendment. Act 293 amended subsec. (b). Section 20(b) provided that the amendment of subsec. (b) shall be retroactive to July 1, 1972.

Cross References. Section 6103 is referred to in section 5603 of this title.

§ 6104. Rule against perpetuities.

(a) General.--No interest shall be void as a perpetuity except as herein provided.

(b) Void interest; exceptions.--Upon the expiration of the period allowed by the common law rule against perpetuities as measured by actual rather than possible events, any interest not then vested and any interest in members of a class the

membership of which is then subject to increase shall be void. This subsection shall not apply to:

(1) Interest exempt at common law.--Interests which would not have been subject to the common law rule against perpetuities.

(2) Cemetery trusts.--Interests which are directed to be used for the maintenance, care, or adornment of any cemetery, churchyard, or other place for the burial of the dead, or any portion thereof, or any grave therein or any improvement on or about the same, and which are subject to no condition precedent at the end of the period described in subsection (b).

(3) Pension or profit-sharing plans.--Interests created by a bona fide trust inter vivos primarily for the benefit of business employees, their families or appointees, under a stock bonus, pension, disability or death benefit, profit-sharing or other employee-benefit plan.

(4) Administrative powers.--Powers which contribute to the effective management of trust assets, including powers to sell, mortgage, or lease trust assets, powers relating to investment of trust assets, powers to determine what is principal and what is income, and powers to name successor trustees.

(c) Time for beginning period.--The period allowed by the common law rule against perpetuities under subsection (b) of this section shall be measured from the expiration of any time during which one person while living has the unrestricted power to transfer to himself the entire legal and beneficial interest in the property.

(d) Applicability.--The provisions of this section and of section 6105 (relating to rule against perpetuities; disposition when invalidity occurs) shall apply to all interests created before January 1, 2007.

(Apr. 28, 1978, P.L.77, No.37, eff. 60 days; July 7, 2006, P.L.615, No.98, eff. imd.)

2006 Amendment. Act 98 amended subsec. (d).

Cross References. Section 6104 is referred to in sections 6105, 6107.1 of this title.

§ 6105. Rule against perpetuities; disposition when invalidity occurs.

(a) Valid interests following void interests.--A valid interest following a void interest in income shall be accelerated to the termination date of the last preceding valid interest.

(b) Void interests on condition subsequent or special limitation.--A void interest following a valid interest on condition subsequent or special limitation shall vest in the owner of such valid interest.

(c) Other void interests.--Any other void interest shall vest in the person or persons entitled to the income at the expiration of the period described in section 6104(b) (relating to void interest; exceptions).

Cross References. Section 6105 is referred to in sections 6104, 6107.1 of this title.

§ 6106. Income accumulations; when valid.

(a) General.--Except as set forth in section 6107.1 (relating to applicability of rule against perpetuities), no direction or authorization to accumulated income shall be void, except as herein provided.

(b) Void accumulations; exceptions.--Except as set forth in section 6107.1, upon the expiration of the period allowed by the common law rule against perpetuities as measured by actual rather than possible events, any direction or authorization to accumulate income shall be void. This subsection shall not apply to:

(1) Directions or authorizations to accumulate income in a trust for any charitable purpose or purposes.

(2) Directions or authorizations to accumulate income in a bona fide trust inter vivos primarily for the benefit of business employees, their families or appointees, under a stock bonus, pension, disability or death benefit, profit-sharing or other employee-benefit plan.

(c) Time for beginning period.--Except as set forth in section 6107.1, the period allowed by the common law rule against perpetuities under subsection (b) of this section shall be measured from the expiration of any time during which one person while living has the unrestricted power to transfer to himself the entire legal and beneficial interest in the property.

(July 7, 2006, P.L.625, No.98, eff. imd.)

Cross References. Section 6106 is referred to in section 6107.1 of this title.

§ 6107. Income accumulations; disposition when invalidity occurs.

Except as set forth in section 6107.1 (relating to applicability of rule against perpetuities), income subject to a void direction or authorization to accumulate shall be distributed to the person or proportionately to the persons in whom the right to such income has vested by the terms of the instrument or by operation of law.

(July 7, 2006, P.L.625, No.98, eff. imd.)

Cross References. Section 6107 is referred to in section 6107.1 of this title.

§ 6107.1. Applicability of rule against perpetuities.

(a) Traditional rule.--Sections 6104 (relating to rule against perpetuities), 6105 (relating to rule against perpetuities; disposition when invalidity occurs), 6106 (relating to income accumulations; when valid) and 6107 (relating to income accumulations; disposition when invalidity occurs):

(1) shall apply to every interest created before January 1, 2007; but

(2) shall not apply to any interest created after December 31, 2006.

(b) Modern rule.--All of the following apply to every interest created after December 31, 2006:

(1) Except as provided in paragraph (3), no interest shall be void as a perpetuity.

(2) No direction or authorization to accumulate income shall be void as a perpetuity.

(3) If a power of appointment is exercised to create a new power of appointment, any interest created by the exercise of the new power of appointment is invalid if it does not vest within 360 years of the creation of the original power of appointment, unless the exercise of the new power of appointment expressly states that this provision shall not apply to the interests created by the exercise.

(4) Void interests shall be disposed of in the manner provided in section 6105.

(July 7, 2006, P.L.625, No.98, eff. imd.; Oct. 27, 2010, P.L.837, No.85, eff. imd.)

2010 Amendment. Section 9(2) of Act 85 provided that the amendment of section 6107.1 shall apply to any interest created after December 31, 2006. Section 10(b) of Act 85 provided that the amendment of section 6107.1 shall be retroactive to January 1, 2007.

Cross References. Section 6107.1 is referred to in sections 6106, 6107 of this title.

§ 6108. Designation of beneficiaries of insurance or employee death benefits not testamentary.

(a) In general.--The designation of beneficiaries of life insurance, annuity or endowment contracts, or of any agreement entered into by an insurance company in connection therewith, supplemental thereto or in settlement thereof, and the designation of beneficiaries of benefits payable upon or after the death of a participant under any pension, bonus, profit-sharing, retirement annuity, or other employee-benefit plan, shall not be considered testamentary and shall not be subject to any law governing the transfer of property by will. This section shall apply regardless of whether the insurance contract or the employee-benefit plan designates the ultimate beneficiaries or makes the proceeds payable, directly or indirectly, to a trustee of a trust under a will or under a separate trust instrument which designates the ultimate beneficiaries, and regardless of whether any such trust is amendable or revocable, or both, or is funded or unfunded, and notwithstanding a reservation to the settlor of all rights of ownership in the insurance contracts or under the employee-benefit plans. Unless otherwise expressly provided in the conveyance, funds or other property so passing to a trust under a will shall become and be a part of the testamentary trust to be administered and disposed of in accordance with the provisions thereof, without forming any part of the testator's estate for administration by his personal representative.

(b) Applicability.--The provisions of subsection (a) of this section relating to the designation of beneficiaries of benefits payable under employee-benefit plans shall apply to designations made prior or subsequent to January 1, 1970, by persons who die on or after said date, and shall not be deemed to create any implication of invalidity of any such designation made by any person who dies before said date.

§ 6109. Combination of charitable trusts (Repealed).

1980 Repeal. Section 6109 was repealed July 11, 1980, P.L.565, No.118, effective in 60 days.

§ 6110. Administration of charitable interests (Deleted by amendment).

2006 Amendment. Section 6110 was deleted by amendment July 7, 2006, P.L.625, No.98, effective in 120 days.

§ 6111. Conveyances to defeat marital rights (Repealed).

1978 Repeal. Section 6111 was repealed April 18, 1978, P.L.42, No.23, effective in 60 days.

§ 6111.1. Modification by divorce or pending divorce.

Any provision in a conveyance which was revocable by a conveyor at the time of the conveyor's death and which was to take effect at or after the conveyor's death in favor of or relating to the conveyor's spouse shall become ineffective for all purposes unless it appears in the governing instrument that

the provision was intended to survive a divorce, if the conveyor:

(1) is divorced from such spouse after making the conveyance; or

(2) **dies domiciled in this Commonwealth during the course of divorce proceedings, no decree of divorce has been entered pursuant to 23 Pa.C.S. § 3323 (relating to decree of court) and grounds have been established as provided in 23 Pa.C.S. § 3323(g).**

(Apr. 18, 1978, P.L.42, No.23, eff. 60 days; Dec. 16, 1992, P.L.1163, No.152, eff. imd.; Oct. 27, 2010, P.L.837, No.85, eff. 60 days)

§ 6111.2. Effect of divorce or pending divorce on designation of beneficiaries.

(a) Applicability.--This section is applicable if an individual:

(1) is domiciled in this Commonwealth;

(2) designates the individual's spouse as beneficiary of the individual's life insurance policy, annuity contract, pension or profit-sharing plan or other contractual arrangement providing for payments to the spouse; and

(3) either:

(i) at the time of the individual's death is divorced from the spouse; or

(ii) **dies during the course of divorce proceedings, no decree of divorce has been entered pursuant to 23 Pa.C.S. § 3323 (relating to decree of court) and grounds have been established as provided in 23 Pa.C.S. § 3323(g).**

(b) General rule.--Any designation described in subsection (a) (2) in favor of the individual's spouse or former spouse that was revocable by the individual at the individual's death shall become ineffective for all purposes and shall be construed as if the spouse or former spouse had predeceased the individual, unless it appears the designation was intended to survive the divorce based on:

(1) the wording of the designation;

(2) a court order;

(3) a written contract between the individual and the spouse or former spouse; or

(4) a designation of a former spouse as a beneficiary after the divorce decree has been issued.

(c) Liability.--

(1) Unless restrained by court order, no insurance company, pension or profit-sharing plan trustee or other obligor shall be liable for making payments to a spouse or former spouse which would have been proper in the absence of this section.

(2) Any spouse or former spouse to whom payment is made shall be answerable to anyone prejudiced by the payment.

(Dec. 16, 1992, P.L.1163, No.152, eff. imd.; Dec. 1, 1994, P.L.655, No.102, eff. 60 days; Oct. 27, 2010, P.L.837, No.85, eff. 60 days)

§ 6112. Spendthrift trusts (Deleted by amendment).

2006 Amendment. Section 6112 was deleted by amendment July 7, 2006, P.L.625, No.98, effective in 120 days.

§ 6113. Limited estates in personalty and in the proceeds of the conversion of real estate.

A person having a present interest in personal property, or in the proceeds of the conversion of real estate, which is not

in trust, and which is subject to a future interest, shall be deemed to be a trustee of such property, and not a debtor to the remainderman, with the ordinary powers and duties of a trustee, except that he shall not be required to change the form of the investment to an investment authorized for Pennsylvania fiduciaries, nor shall he be entitled to compensation as trustee. Such person, unless given a power of consumption or excused from entering security by the terms of the conveyance, shall be required to enter such security for the protection of persons entitled to the future interests as the court in its discretion shall direct. If a person having a present interest shall not enter security as directed, the court shall appoint a trustee who shall enter such security as the court shall direct, and who shall exercise all the ordinary powers and duties of a trustee, except that he shall not be required to change the form of the investment to an investment authorized for Pennsylvania fiduciaries.

§ 6114. Rules of interpretation.

(a) General rule.--Except as provided in subsection (b), in the absence of a contrary intent appearing therein, conveyances shall be construed, as to real and personal estate, in accordance with the following rules:

(1) Meaning of "heirs" and "next of kin," etc.; time of ascertaining class.--A conveyance of real or personal property, whether directly or in trust, to the conveyor's or another designated person's "heirs" or "next of kin" or "relatives" or "family" or to "the persons thereunto entitled under the intestate laws," or to persons described by words of similar import, shall mean those persons, including the spouse, who would take under the intestate laws if such conveyor or other designated person were to die intestate at the time when such class is to be ascertained, a resident of the Commonwealth, and owning the property so conveyed: Provided, That the share of a spouse other than the spouse of the conveyor, shall not include the allowance under the intestate laws. The time when such class is to be ascertained shall be when the conveyance to the class is to take effect in enjoyment.

(2) Time for ascertaining class.--In construing a conveyance to a class other than a class described in paragraph (1) of this section, the class shall be ascertained at the time the conveyance is to take effect in enjoyment, except that the issue then living of any member of the class who is then dead shall take per stirpes the share which their deceased ancestor would have taken if he had then been living.

(3) Meaning of "die without issue" and similar phrases.--In any conveyance of real or personal estate, the words "die without issue," "die without leaving issue," "have no issue," or other words importing either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in his lifetime or at his death, and not an indefinite failure of his issue.

(4) Adopted children.--In construing a conveyance to a person or persons described by relationship to the conveyor or to another, any adopted person shall be considered the child of his adopting parent or parents, except that, in construing the conveyance of a conveyor who is not the adopting parent, an adopted person shall not be considered the child of his adopting parent or parents unless the adoption occurred during the adopted person's minority or

reflected an earlier parent-child relationship that existed during the child's minority. An adopted person who is considered the child of his adopting parent or parents under this paragraph shall not be considered as continuing to be the child of his natural parents except in construing the conveyance of a natural kin, other than the natural parent, who has maintained a family relationship with the adopted person. If a natural parent shall have married the adopting parent, the adopted person shall also be considered the child of such natural parent.

(5) Persons born out of wedlock.--In construing a conveyance to a person or persons described by relationship to the conveyor or to another, a person born out of wedlock shall be considered the child of the natural mother and also of the natural father if the paternity of the natural father has been determined according to the provisions of section 2107 (relating to persons born out of wedlock).

(6) Inheritance tax.--The inheritance tax imposed by the Inheritance and Estate Tax Act of 1961 upon the conveyance of any estate, income or interest, for a term of years, for life, or for other limited period, shall be paid out of the principal of the property by which the estate, income or interest is supported.

(7) Employee benefits.--Benefits received by a trust under a Federally qualified profit sharing, pension or stock bonus plan shall not be available for the payment of obligations of the decedent or of his estate.

(8) Corporate fiduciaries.--Provisions authorizing or restricting investment in the securities or common trust funds of a corporate fiduciary or the exercise of voting rights in its securities shall also apply to the securities or common trust funds of any corporation which is an affiliate of the corporate fiduciary within the meaning of section 1504 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1504).

(b) Exception.--This section does not apply to trusts under Chapter 77 (relating to trusts).

(July 9, 1976, P.L.551, No.135, eff. imd.; Nov. 26, 1978, P.L.1269, No.303, eff. imd.; Dec. 16, 1992, P.L.1163, No.152, eff. imd.; July 7, 2006, P.L.625, No.98, eff. 120 days)

References in Text. The act of June 15, 1961 (P.L.373, No.207), known as the Inheritance and Estate Tax Act of 1961, referred to in par. (6), was repealed by the act of December 13, 1982 (P.L.1086, No.255). The subject matter is now contained in Article XXI of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

§ 6115. Estates pur autre vie.

An interest conveyed to a person for the life of another, whether or not such conveyance is to him and his heirs, shall, on his death before expiration of the interest, be considered as personal property forming a part of his estate and shall be subject to distribution in like manner as a lease for a term of years.

§ 6116. Estates in fee tail abolished.

Whenever by any conveyance an estate in fee tail would be created according to the common law of the Commonwealth, it shall pass an estate in fee simple, and as such shall be inheritable and freely alienable.

§ 6117. Rule in Shelley's case and doctrine of worthier title.

(a) Rule in Shelley's case.--The rule in Shelley's case and its corollaries shall not be applied, and a conveyance directly

or in trust which shall express an intent to create an estate for life with remainder to the life tenant's heirs or the heirs of his body or his issue or his next of kin or persons described by words of similar import, shall not operate to give such life tenant an estate in fee in real estate or an absolute estate in personalty.

(b) Doctrine of worthier title.--The doctrine of worthier title shall not be applied as a rule of law or as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor's heirs, heirs at law, next of kin, distributees, relatives or family or language of similar import shall not create or presumptively create a reversionary interest in the transferor.
(Dec. 1, 1994, P.L.655, No.102, eff. 60 days)

1994 Amendment. Section 10 of Act 102 provided that the amendment of section 6117 shall apply to wills executed, trusts created and conveyances made before, on or after the effective date of Act 102.

§ 6118. Invalidity of certain gifts (Repealed).

1976 Repeal. Section 6118 was repealed July 9, 1976, P.L.551, No.135, effective immediately.

CHAPTER 62 DISCLAIMERS

Sec.

- 6201. Right to disclaim.
- 6202. Disclaimers by fiduciaries or agents.
- 6203. Interests subject to disclaimer.
- 6204. Filing, delivery and recording.
- 6205. Effect of disclaimer.
- 6206. Bar to disclaimer.
- 6207. Other statutes.

Enactment. Chapter 62 was added July 9, 1976, P.L.562, No.136, effective immediately.

Cross References. Chapter 62 is referred to in sections 5318, 6103 of this title.

§ 6201. Right to disclaim.

A person to whom an interest in property would have devolved by whatever means, including a beneficiary under a will, an appointee under the exercise of a power of appointment, a person entitled to take by intestacy, a joint tenant with right of survivorship, a donee of an inter vivos transfer, a donee under a third-party beneficiary contract (including beneficiaries of life insurance and annuity policies and pension, profit-sharing and other employee benefit plans), and a person entitled to a disclaimed interest, may disclaim it in whole or in part by a written disclaimer which shall:

- (1) describe the interest disclaimed;
- (2) declare the disclaimer and extent thereof; and
- (3) be signed by the disclaimant.

The right to disclaim shall exist notwithstanding any limitation on the interest in the nature of a spendthrift provision or similar restriction.

(Oct. 12, 1984, P.L.929, No.182, eff. imd.; Dec. 1, 1994, P.L.655, No.102, eff. 60 days)

1994 Amendment. Section 10 of Act 102 provided that the amendment of section 6201 shall apply to joint tenancies with a right of survivorship created before, on or after the effective date of Act 102.

§ 6202. Disclaimers by fiduciaries or agents.

A disclaimer on behalf of a decedent, a minor or an incapacitated person may be made by his personal representative, the guardian of his estate or in the case of an incapacitated person who executed a power of attorney which confers the authority to disclaim upon his agent and which qualifies as a durable power of attorney under section 5604 (relating to durable powers of attorney) by such agent, if, in each case, the court having jurisdiction of the estate authorizes the disclaimer after finding that it is advisable and will not materially prejudice the rights of creditors, heirs or beneficiaries of the decedent, the minor or his creditors, or the incapacitated person or his creditors, as the case may be. A personal representative may make a disclaimer on behalf of his decedent without court authorization if the will of the decedent so authorizes him.

(Feb. 18, 1982, P.L.45, No.26, eff. imd.; Oct. 12, 1984, P.L.929, No.182, eff. imd.; Apr. 16, 1992, P.L.108, No.24, eff. 60 days; Oct. 12, 1999, P.L.422, No.39, eff. 60 days)

1999 Amendment. See section 13(8) of Act 39 in the appendix to this title for special provisions relating to applicability.

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

§ 6203. Interests subject to disclaimer.

A disclaimer in whole or in part may be made of any present or future interest, vested or contingent, including a possible future right to take as an appointee under an unexercised power of appointment or under a discretionary power to distribute income or principal.

§ 6204. Filing, delivery and recording.

(a) Will or intestacy.--If the interest would have devolved to the disclaimant by will or by intestacy, the disclaimer shall be filed with the clerk of the orphans' court division of the county where the decedent died domiciled or, if the decedent was not domiciled in this Commonwealth, of the county where the property involved is located, and a copy of the disclaimer shall be delivered to any personal representative, trustee or other fiduciary in possession of the property.

(b) Inter vivos transfers.--If the interest would have devolved to the disclaimant by an inter vivos instrument, the disclaimer or a copy thereof shall be delivered to the trustee or other person having legal title to or possession of the property or interest disclaimed or who is entitled thereto by reason of the disclaimer.

(b.1) Third-party disclaimer.--If the interest would have devolved to the disclaimant by a third-party beneficiary contract (including life insurance and annuity policies and pension, profit-sharing and other employee benefit plans), the disclaimer or copy thereof shall be delivered to the insurance company, employer or other obligor, as the case may be, and to the person who is entitled to the interest by reason of the disclaimer.

(c) Powers of appointment.--If the interest would have devolved to the disclaimant by reason of the exercise of a power of appointment, the disclaimer or a copy thereof shall be filed or delivered as required by the above provisions if the donor of the power is regarded as the donor of the interest or if the

person who exercised the power is regarded as the donor of the interest.

(d) Real estate.--If an interest in real property is disclaimed, a copy of the disclaimer may be recorded in the office for the recording of deeds of the county where the real estate is situated and it shall not be effective as to a bona fide grantee or holder of a lien against the property who has given value therefor before the disclaimer is so recorded. (Oct. 12, 1984, P.L.929, No.182, eff. imd.)

1984 Amendment. Act 182 added subsec. (b.1). Section 15 of Act 182 provided that Act 182 shall apply to the estates of all decedents dying on or after the effective date of Act 182.

§ 6205. Effect of disclaimer.

(a) In general.--A disclaimer relates back for all purposes to the date of the death of the decedent or the effective date of the inter vivos transfer or third-party beneficiary contract as the case may be. The disclaimer shall not in any way diminish the interest of any person other than the disclaimant in such person's own right under the instrument creating the disclaimed interest or under the intestate laws nor diminish any interest to which such person becomes entitled under subsection (b) by reason of the disclaimer.

(b) Rights of other parties.--Unless a testator or donor has provided for another disposition, the disclaimer shall, for purposes of determining the rights of other parties, be equivalent to the disclaimant's having died before the decedent in the case of a devolution by will or intestacy or before the effective date of an inter vivos transfer, or third-party beneficiary contract, except that, when applying section 2104(1) (relating to rules of succession) or analogous provisions of a governing instrument, the fact that the disclaimant actually survived shall be recognized in determining whether other parties take equally or by representation, and except that if, as a result of a disclaimer, property passes to a fund in which the disclaimant has an interest or power which he has not disclaimed, the disclaimant shall retain his interest or power in the fund as augmented by the disclaimed property.

(c) Powers of appointment.--In applying this section to an interest that would have devolved by reason of the exercise of a power of appointment, the person exercising the power shall be regarded as the decedent or transferor, as the case may be.

(d) Rights of creditors of disclaimant.--Nothing in this section shall determine the effect of a disclaimer upon the rights of creditors of the disclaimant.

(Oct. 12, 1984, P.L.929, No.182, eff. imd.; May 16, 2002, P.L.330, No.50, eff. 60 days)

2002 Amendment. Act 50 amended subsec. (a) and added subsec. (d). See section 14(b)(3) of Act 50 in the appendix to this title for special provisions relating to applicability.

1984 Amendment. Act 182 amended subsecs. (a) and (b).
§ 6206. Bar to disclaimer.

(a) Acceptance.--A disclaimer may be made at any time before acceptance. An acceptance may be express or may be inferred from actions of the person entitled to receive an interest in property such as the following:

(1) The taking of possession or accepting delivery of the property or interest.

(2) A written waiver of the right to disclaim.

(3) An assignment, conveyance, encumbrance, pledge or other transfer of the interest or a contract to do so.

(4) A representation that the interest has been or will be accepted to a person who relies thereon to his detriment.

(5) A sale of the interest under a judicial sale.

To constitute a bar to a disclaimer, a prior acceptance must be affirmatively proved. The mere lapse of time, with or without knowledge of the interest on the part of the disclaimant, shall not constitute an acceptance.

(b) Partial acceptance within six months.--The acceptance of part of a single interest shall be considered as only a partial acceptance and will not be a bar to a subsequent disclaimer of any part or all of the balance of the interest if the part of the interest is accepted before the expiration of six months from:

(1) the death of the decedent in the case of an interest that would have devolved by will or intestacy; or

(2) the effective date of the transfer in the case of an interest that would have devolved by an inter vivos transfer or third-party beneficiary contract.

In applying this subsection to an interest that would have devolved by reason of the exercise of a power of appointment, the person exercising the power shall be regarded as the decedent or the transferor, as the case may be.

(c) Partial acceptance after six months.--The acceptance of a part of a single interest after the expiration of such six-month period shall be considered an acceptance of the entire interest and a bar to any subsequent disclaimer thereof but shall not be an acceptance of any separate interest given under the same instrument. In construing this subsection:

(1) income for life or any other period shall be considered a single interest but separate from any interest in the principal or any additional interest in income to take effect upon the happening of a future event; and

(2) an interest in periodic payments to be made from principal or income, or both, for the life of the beneficiary or any other period shall be considered a single interest but separate from any additional payments to be made upon the happening of a future event.

(Oct. 12, 1984, P.L.929, No.182, eff. imd.)

1984 Amendment. Act 182 amended subsec. (b). Section 15 that Act 182 provided that Act 182 shall apply to the estates of all decedents dying on or after the effective date of Act 182.

§ 6207. Other statutes.

The provisions of this chapter do not abridge the right of a person to disclaim interests under any other statute and do not affect any additional requirements for a disclaimer to be effective for inheritance tax purposes or other purposes covered specifically in other statutory provisions.

CHAPTER 63

MULTIPLE-PARTY ACCOUNTS

Sec.

- 6301. Definitions.
- 6302. Applicability of chapter.
- 6303. Ownership during lifetime.
- 6304. Right of survivorship.
- 6305. Form of account.
- 6306. Accounts and transfers nontestamentary.

Enactment. Chapter 63 was added July 9, 1976, P.L.547, No.134, effective September 1, 1976.

§ 6301. Definitions.

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Account" means a contract of deposit of funds between a depositor and a financial institution, and includes a checking account, savings account, certificate of deposit, share account and other like arrangements.

"Beneficiary" means a person named in a trust account as one for whom a party to the account is named as trustee.

"Financial institution" means any organization authorized to do business under State or Federal laws relating to financial institutions, including, without limitation, banks and trust companies, savings banks, building and loan associations, savings and loan companies or associations and credit unions.

"Joint account" means an account payable on request to one or more of two or more parties whether or not mention is made of any right of survivorship.

"Multiple-party account" is either a joint account or a trust account. It does not include accounts established for deposit of funds of a partnership, joint venture, or other association for business purposes, or accounts controlled by one or more persons as the duly authorized agent or trustee for a corporation, unincorporated association, charitable or civic organization or a regular fiduciary or trust account where the relationship is established other than by deposit agreement.

"Net contribution" of a party to a joint account as of any given time is the sum of all deposits thereto made by or for him, less all withdrawals made by or for him which have not been paid to or applied to the use of any other party, plus a pro rata share of any interest or dividends included in the current balance. The term includes, in addition, any proceeds of life insurance added to the account by reason of the death of the party whose net contribution is in question.

"Party" means a person who, by the terms of the account, has a present right, subject to request, to payment from a multiple-party account. A beneficiary of a trust account is a party only after the account becomes payable to him by reason of his surviving the original trustee. Unless the context otherwise requires, it includes a guardian, personal representative, assignee, or attaching creditor, of a party. It also includes a person identified as a trustee of an account for another whether or not a beneficiary is named, but it does not include any named beneficiary unless he has a present right of withdrawal.

"Payment" of a sum on deposit includes withdrawal, payment on check or other directive of a party, any pledge of a sum on deposit by a party, and any set-off or reduction or other disposition of all or part of an account pursuant to a pledge.

"Request" means a proper request for withdrawal, or a check or order for payment, which complies with all conditions of the account, including special requirements concerning necessary signatures and regulations of the financial institution; but if the financial institution conditions withdrawal or payment on advance notice, for purposes of this chapter the request for withdrawal or payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for withdrawal.

"Sum on deposit" means the balance payable on a multiple-party account including interest, dividends, and in addition any life insurance proceeds added to the account by reason of the death of a party.

"Trust account" means an account in the name of one or more parties as trustee for one or more beneficiaries where the relationship is established by the form of the account and the deposit agreement with the financial institution and there is no subject of the trust other than the sum on deposit in the account; it is not essential that payment to the beneficiary be mentioned in the deposit agreement. A trust account does not include a regular trust account under a testamentary trust or a trust agreement which has significance apart from the account, or a fiduciary account arising from a fiduciary relation such as attorney-client.

"Withdrawal" includes payment to a third person pursuant to check or other directive of a party.

§ 6302. Applicability of chapter.

The provisions of this chapter are applicable solely to the determination of property rights among parties to multiple-party accounts and all claims made through them but do not apply to and do not affect financial institutions or their rights and liabilities with respect to multiple-party accounts, which shall be determined exclusively by applicable law other than this chapter. No right or claim against a financial institution may be based on this chapter. Nothing in this chapter shall affect the taxability of transfers under the act of June 15, 1961 (P.L.373, No.207), known as the "Inheritance and Estate Tax Act of 1961."

References in Text. The act of June 15, 1961 (P.L.373, No.207), known as the Inheritance and Estate Tax Act of 1961, referred to in this section, was repealed by the act of December 13, 1982 (P.L.1086, No.255). The subject matter is now contained in Article XXI of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971.

§ 6303. Ownership during lifetime.

(a) Joint account.--A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sum on deposit, unless there is clear and convincing evidence of a different intent.

(b) Trust account.--Unless a contrary intent is manifested by the terms of the account or the deposit agreement or there is other clear and convincing evidence of an irrevocable trust, a trust account belongs beneficially to the trustee during his lifetime, and if two or more parties are named as trustees of the account during their lifetimes beneficial rights as between them are governed by subsection (a). If there is an irrevocable trust, the account belongs beneficially to the beneficiary.

Cross References. Section 6303 is referred to in section 6304 of this title.

§ 6304. Right of survivorship.

(a) Joint account.--Any sum remaining on deposit at the death of a party to a joint account belongs to the surviving party or parties as against the estate of the decedent unless there is clear and convincing evidence of a different intent at the time the account is created. If there are two or more surviving parties, their respective ownerships during lifetime shall be in proportion to their previous ownership interests under section 6303 (relating to ownership during lifetime) augmented by an equal per capita share for each survivor of any

interest the decedent may have owned in the account immediately before his death; and the right of survivorship continues between the surviving parties.

(b) Trust account.--At the death of the trustee or the survivor of two or more trustees, any sum remaining on deposit belongs to the person or persons named as beneficiaries, if surviving, or to the survivor or survivors of them if one or more die before the trustee or last surviving trustee, unless there is clear and convincing evidence of a contrary intent; if two or more beneficiaries survive, there is no right of survivorship in event of death of any beneficiary thereafter unless the terms of the account or deposit agreement expressly provide for survivorship between them.

(c) Other cases.--In other cases, the death of any party to a multiple-party account has no effect on beneficial ownership of the account other than that the rights of the decedent become part of his estate.

(d) Change by will prohibited.--A right of survivorship arising from the express terms of an account or under this section, or a beneficiary designation in a trust account cannot be changed by will.

Cross References. Section 6304 is referred to in sections 6305, 6306 of this title.

§ 6305. Form of account.

The applicability of the provisions of section 6304 (relating to right of survivorship) is determined by the form of the account at the death of a party.

§ 6306. Accounts and transfers nontestamentary.

No transfer resulting from the application of section 6304 (relating to right of survivorship) shall be considered as testamentary or subject to Chapter 21 (relating to intestate succession) or Chapter 25 (relating to wills).

CHAPTER 64

TRANSFER ON DEATH SECURITY REGISTRATION

Sec.

- 6401. Definitions.
- 6402. Registration in beneficiary form.
- 6403. Law applicable to registration.
- 6404. Origination of registration in beneficiary form.
- 6405. Form of registration in beneficiary form.
- 6406. Effect of registration in beneficiary form.
- 6407. Ownership on death of owner.
- 6408. Protection of registering entity.
- 6409. Nontestamentary transfer on death.
- 6410. Terms, conditions and forms for registration.
- 6411. Transfers of securities and security accounts.
- 6412. Construction of chapter.
- 6413. Application of chapter.

Enactment. Chapter 64 was added December 18, 1996, P.L.1118, No.168, effective in 60 days.

§ 6401. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Beneficiary form." A registration of a security which indicates the present owner of the security and the intention

of the owner regarding the person who will become the owner of the security upon the death of the owner.

"Financial institution." Any regulated financial institution insured by the Federal Deposit Insurance Corporation or its successor or an affiliate of the financial institution.

"Heirs." Those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

"Person." An individual, a corporation, an organization or other legal entity.

"Personal representative." The term includes an executor, administrator, successor personal representative, special administrator and persons who perform substantially the same function under the law governing their status.

"Property." The term includes both real and personal property or any interest therein and anything that may be the subject of ownership.

"Register." To issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

"Registering entity." A person who originates or transfers a security title by registration. The term includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

"Security." A share, participation or other interest in property, in a business or in an obligation of an enterprise or other issuer. The term also includes a certificated security, an uncertificated security and a security account.

"Security account."

(1) A reinvestment account associated with a security, a securities account with a financial institution or a securities dealer or broker and any cash balance in a brokerage account with a financial institution or a securities dealer or broker or cash, interest, earnings or dividends earned or declared on a security in an account, a reinvestment account or a brokerage account, whether or not credited to the account before the owner's death.

(2) A cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

"State." Any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession subject to the legislative authority of the United States.

§ 6402. Registration in beneficiary form.

Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entirety or as owners of community property held in survivorship form and not as tenants in common.

§ 6403. Law applicable to registration.

A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration or by this or a similar statute of the law of the state listed as the

owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

§ 6404. Origination of registration in beneficiary form.

A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary, which may include a trustee of a trust, to take the ownership at the death of the owner or the deaths of all multiple owners.

§ 6405. Form of registration in beneficiary form.

Registration in beneficiary form may be shown by the words "transfer on death" or the acronym "TOD," or by the words "pay on death" or the acronym "POD," after the name of the registered owner and before the name of a beneficiary.

§ 6406. Effect of registration in beneficiary form.

The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners, without the consent of the beneficiary.

§ 6407. Ownership on death of owner.

On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

Cross References. Section 6407 is referred to in section 6408 of this title.

§ 6408. Protection of registering entity.

(a) General rule.--A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this chapter.

(b) Implementation.--By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on death of the deceased owner as provided in this chapter.

(c) Discharge.--A registering entity is discharged from all claims to a security by the estate, creditors, heirs or devisees of a deceased owner if it registers a transfer of a security in accordance with section 6407 (relating to ownership on death of owner) and does so in good faith reliance on the registration, on this chapter and on information provided to it by affidavit of the personal representative of the deceased owner or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity. The protections of this chapter do not extend to a reregistration or payment made after the

registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this chapter.

(d) Rights of beneficiaries not affected.--The protection provided by this chapter to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

§ 6409. Nontestamentary transfer on death.

(a) General rule.--A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this chapter and is not testamentary.

(b) Creditors.--This chapter does not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this Commonwealth.

§ 6410. Terms, conditions and forms for registration.

(a) Terms and conditions.--A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests for registrations in beneficiary form and for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters "LDPS," standing for "lineal descendants per stirpes." This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(b) Forms.--The following are illustrations of registrations in beneficiary form which a registering entity may authorize:

(1) Sole owner-sole beneficiary: John S. Brown TOD (or POD) John S. Brown, Jr., or John S. Brown TOD to Sally Smith, trustee under my trust (under will or deed) dated.

(2) Multiple owners-sole beneficiary: John S. Brown Mary B. Brown JT TEN TOD John S. Brown, Jr.

(3) Multiple owners-primary and secondary (substituted) beneficiaries: John S. Brown Mary B. Brown JT TEN TOD John S. Brown, Jr., SUB BENE Peter Q. Brown or John S. Brown Mary B. Brown JT TEN TOD John S. Brown, Jr., LDPS.

§ 6411. Transfers of securities and security accounts.

(a) Payment of inheritance tax.--No corporation, financial institution, broker or similar entity shall transfer on its books or issue a new certificate for any share of its capital stock, its registered bonds, a security or a security account, belonging to or standing in the name of a resident decedent,

belonging to or standing in the joint names of a resident decedent and one or more persons, held in trust by or for a resident decedent or in a beneficiary form indicating that a resident decedent was the present owner or became the owner upon the death of another, unless the inheritance tax upon the transfer has actually been paid, or the written consent of the Secretary of Revenue, or its designee, is first secured, or there is presented to it an affidavit of the personal representative or heir of the decedent, or his or their attorney, that the decedent was a nonresident at the time of his death, or that the person in whose name said security, security account, shares of registered bond stands jointly with the decedent by right of survivorship was the spouse of the decedent at the time of death and that the ownership in or designation of such spouse was not created within one year before the decedent's death, or written notification of the transfer is given to the Secretary of Revenue within ten days of the transfer as provided in subsection (d).

(b) Certificate of payment.--Whenever the inheritance tax upon the transfer of a security, security account, share or registered bank referred to herein is paid, it shall be the duty of the secretary upon his motion or the request of any party in interest or of such corporation, association, financial institution, broker or similar entity to provide a certification of such payment. The assessment notice subjecting said security, etc., to tax issued by the Department of Revenue shall serve as certification of such payment if accompanied by proof of payment.

(c) Exemption.--The provisions of this section shall not apply to the transfer of stock, registered bonds, securities or a securities account assigned by a decedent before his death as collateral security for a loan, provided that any lender so holding such item shall, upon selling it, send a written report to the department stating the amount for which the items were sold and the amount which was applied in reduction or payment of the loan. Any entity, hereinabove described, may transfer such item upon presentation to it of an affidavit of the lender, or someone acting under the authority of the lender and on its behalf, that the item was held as security at the time of decedent's death.

(d) Notification.--Notification to the Secretary of Revenue shall include the name of the deceased person, the purchase date of the capital stock, registered bond, security or security account, the date of death value of the item being transferred and the name, address and social security number of the person to whom the item is being transferred.

§ 6412. Construction of chapter.

This chapter shall be liberally construed and applied to promote its underlying purposes and policy and to make uniform the laws with respect to the subject of this chapter among states enacting it. Unless displaced by the particular provisions of this chapter, the principles of law and equity supplement its provisions.

§ 6413. Application of chapter.

This chapter applies to registration of securities in beneficiary form made before or after the effective date of this chapter by decedents dying on or after the effective date of this chapter.

(Deleted by amendment)

2006 Deletion. Chapter 71 (Subchapters A - G) was added June 30, 1972, P.L.508, No.164, and deleted by amendment July 7, 2006, P.L.625, No.98, effective in 120 days. The subject matter is now contained in Chapter 77.

CHAPTER 72
PRUDENT INVESTOR RULE

Sec.

- 7201. Definitions.
- 7202. Default rule.
- 7203. Prudent investor rule.
- 7204. Diversification.
- 7205. Retention of inception assets.
- 7206. Delegation.
- 7207. Retention of cash; temporary investments.
- 7208. Life insurance.
- 7209. Mutual funds.
- 7210. Common trust fund and mortgage investment fund.
- 7211. Further investment authority.
- 7212. Degree of care.
- 7213. Judgment of fiduciary's decisions.
- 7214. Language invoking chapter.

Enactment. Chapter 72 was added June 25, 1999, P.L.212, No.28, effective in six months unless otherwise noted.

Special Provisions in Appendix. See section 6 of Act 28 of 1999 in the appendix to this title for special provisions relating to applicability.

Cross References. Chapter 72 is referred to in sections 5145, 7780.6 of this title; sections 5548, 5586 of Title 15 (Corporations and Unincorporated Associations).

§ 7201. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Fiduciary." Includes guardians and trustees, whether domiciliary or ancillary, individual or corporate, subject to the jurisdiction of the orphans' court. The term shall not include a custodian under Chapter 53 (relating to Pennsylvania Uniform Transfers to Minors Act), an agent acting under a power of attorney, a personal representative, an administrator of a municipal pension or retirement plan or a person whose fiduciary duties are, by statute, governed by the principles of Chapter 73 (relating to municipalities investments).

"Mutual fund." The securities of an investment company registered under the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.).

"Trust." Includes guardianships and trusts subject to the jurisdiction of the orphans' court and having property owned or managed by a fiduciary. The term shall not include custodianships, agencies created by a power of attorney, decedents' estates or municipal pension or retirement plans. (July 7, 2006, P.L.625, No.98, eff. imd.)

2006 Amendment. Act 98 amended the def. of "mutual fund."

§ 7202. Default rule.

(a) General rule.--Except as otherwise provided by the governing instrument, a fiduciary shall invest and manage

property held in a trust in accordance with the provisions of this chapter.

(b) Exception.--Where the instrument establishing a trust contains a restriction on the fiduciary's power of investment and the court having jurisdiction over the trust finds that adherence to the restriction is impractical or that the existing or reasonably foreseeable economic conditions are so far different from those prevailing at the creation of the trust that adherence to the restriction might deprive the respective beneficiaries of income and principal of the full benefits the testator or settlor intended them to enjoy, the court may release the fiduciary from the restriction to the extent and on conditions, if any, as the court may deem appropriate.

(c) Court direction.--A fiduciary appointed by the court and not acting under a trust instrument, in addition to or in place of the investments authorized by this chapter, may make, and retain without liability for resulting loss, investments as the court, upon petition of the fiduciary or of any party in interest, after notice as it shall direct, aided by the report of a master if necessary, shall authorize or direct, subject only to the conditions and limitations as shall be fixed by the court in the decree authorizing or directing the investment.

§ 7203. Prudent investor rule.

(a) General rule.--A fiduciary shall invest and manage property held in a trust as a prudent investor would, by considering the purposes, terms and other circumstances of the trust and by pursuing an overall investment strategy reasonably suited to the trust.

(b) Permissible investments.--A fiduciary may invest in every kind of property and type of investment, including, but not limited to, mutual funds and similar investments, consistent with this chapter.

(c) Considerations in making investment and management decisions.--In making investment and management decisions, a fiduciary shall consider, among other things, to the extent relevant to the decision or action:

- (1) the size of the trust;
- (2) the nature and estimated duration of the fiduciary relationship;
- (3) the liquidity and distribution requirements of the trust;
- (4) the expected tax consequences of investment decisions or strategies and of distributions of income and principal;
- (5) the role that each investment or course of action plays in the overall investment strategy;
- (6) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries, including, in the case of a charitable trust, the special relationship of the asset and its economic impact as a principal business enterprise on the community in which the beneficiary of the trust is located and the special value of the integration of the beneficiary's activities with the community where that asset is located;
- (7) to the extent reasonably known to the fiduciary, the needs of the beneficiaries for present and future distributions authorized or required by the governing instrument; and
- (8) to the extent reasonably known to the fiduciary, the income and resources of the beneficiaries and related trusts.

(d) Requirements for charitable trusts having voting control of certain publicly traded business corporations.--

(1) Notwithstanding any other legal requirement or process which may include court review of the activities of a charitable trust, a fiduciary for a charitable trust with a majority of its beneficiaries at a principal location within this Commonwealth having voting control of a publicly traded business corporation received as an asset from the settlor shall not consummate any transaction, or vote to permit consummation of or otherwise act to consummate any transaction, which would result in the trust no longer having voting control of that corporation, by sale, merger, consolidation or otherwise, without:

(i) serving notice upon the Attorney General at least 60 days prior to the consummation of the transaction; and

(ii) directing that at least 30 days' prior notice of the consummation of the transaction be provided by the publicly traded business corporation controlled by the trust to employees of that corporation who are located in this Commonwealth.

(2) In addition to any other power or duty provided by law, the Attorney General also has the power to seek judicial review pursuant to this subsection from the court having jurisdiction over the trust if the Attorney General concludes that the consummation of a transaction described in paragraph (1) is unnecessary for the future economic viability of the corporation and would constitute a failure to comply with the provisions of subsection (c) or an impairment of the charitable purpose of the trust.

(3) In a judicial proceeding commenced by the Attorney General under this subsection, the Attorney General must prove by a preponderance of the evidence that consummation of a transaction which would result in the charitable trust no longer having voting control of the corporation is unnecessary for the future economic viability of the corporation and must be prevented in order to avoid noncompliance with the provisions of subsection (c) or an impairment of the charitable purpose of the trust.

(3.1) If a fiduciary provides the notice under paragraph (1)(i), the following apply:

(i) Except as set forth in subparagraph (ii), upon expiration of the notice period under paragraph (1)(i), the fiduciary may:

(A) vote to permit consummation of a transaction described in paragraph (1); or

(B) otherwise act to consummate the transaction described in paragraph (1).

(ii) The fiduciary has no authority under subparagraph (i) if the Attorney General has, within 30 days of receiving the notice under paragraph (1)(i), commenced a judicial proceeding under paragraph (2).

(iii) If the fiduciary is enjoined in a judicial proceeding under subparagraph (ii), the fiduciary shall not have authority under subparagraph (i)(A) or (B) unless the injunction is dissolved by:

(A) stipulation of the fiduciary and the Attorney General; or

(B) an order of a court of competent jurisdiction which is not subject to further judicial review as of right.

(4) In the event court approval to consummate a transaction described in paragraph (1) is obtained pursuant to this subsection, the court shall ensure that the provisions of 15 Pa.C.S. Ch. 25 Subchs. I (relating to severance compensation for employees terminated following certain control-share acquisitions) and J (relating to business combination transactions - labor contracts) apply to the business corporation described in paragraph (1) upon the consummation of the transaction.

(5) A fiduciary of a charitable trust with a majority of its beneficiaries at a principal location within this Commonwealth having voting control of a publicly traded business corporation received as an asset from the settlor shall not be subject to liability for the commercially reasonable sale of certain shares of the corporation not necessary to maintain voting control and for which no control premium is realized if the fiduciary reasonably determined that such sale was authorized in a manner consistent with the requirements of this section and other applicable provisions of this title.

(6) The requirements of this subsection shall not apply to a noncharitable trust, including a noncharitable trust with a charitable remainder and a charitable trust which reverts to noncharitable purposes.

(7) As used in this subsection, the term "voting control" means a majority of the voting power of the outstanding shares of stock entitled to vote on the election of directors.

(Nov. 6, 2002, P.L.1101, No.133, eff. imd.; Nov. 30, 2004, P.L.1525, No.194, eff. imd.)

2004 Amendment. Act 194 amended subsec. (d).

2002 Amendment. Act 133 amended subsec. (c)(6) and added subsec. (d).

Cross References. Section 7203 is referred to in section 7207 of this title; sections 3303, 4303, 5303 of Title 68 (Real and Personal Property).

§ 7204. Diversification.

(a) Requirement.--Except as provided in section 7205 (relating to retention of inception assets), a fiduciary shall reasonably diversify investments, unless the fiduciary reasonably determines that it is in the interests of the beneficiaries not to diversify, taking into account the purposes, terms and other circumstances of the trust and the requirements of this chapter.

(b) Applicability.--Subsection (a) does not apply to any of the following:

(1) A trust which became irrevocable prior to December 25, 1999. This paragraph applies even if the action of the trustee occurs after December 25, 1999.

(2) A trust created by a revocable instrument executed prior to December 25, 1999, if such instrument is not amended after December 24, 1999. This paragraph applies even if the action of the trustee occurs after December 25, 1999.

(Nov. 6, 2002, P.L.1101, No.133, eff. imd.)

2002 Amendment. Act 133 reenacted and amended the entire section. Section 5 of Act 133 provided that the General Assembly finds and declares that the amendment of section 7204 is intended to clarify existing law and shall not be construed to change existing law.

Special Provisions in Appendix. See section 6(b) of Act 28 of 1999 in the appendix to this title for special provisions relating to applicability.

§ 7205. Retention of inception assets.

A fiduciary, in the exercise of reasonable care, skill and caution, may retain any asset received in kind, even though the asset constitutes a disproportionately large share of the portfolio.

Cross References. Section 7205 is referred to in section 7204 of this title.

§ 7206. Delegation.

(a) Permissible delegation.--A fiduciary may delegate investment and management functions that a prudent investor of comparable skills might delegate under the circumstances.

(b) Duties of fiduciary.--A fiduciary shall not be responsible for the investment decisions or actions of the investment agent to which the investment functions are delegated if the fiduciary exercises reasonable care, skill and caution in selecting the investment agent, in establishing the scope and specific terms of the delegation and in reviewing periodically the investment agent's actions in order to monitor the investment agent's performance and compliance with the scope and specific terms of the delegation.

(c) Duties of investment agent.--The investment agent shall comply with the scope and terms of the delegation and shall exercise the delegated function with reasonable care, skill and caution and shall be liable to the trust for failure to do so. An investment agent who represents that he has special investment skills shall exercise those skills.

(d) Jurisdiction.--An investment agent who accepts the delegation of a fiduciary's function from a fiduciary who is subject to the jurisdiction of a court of this Commonwealth shall be deemed to have submitted to the jurisdiction of that court even if the delegation agreement provides for a different jurisdiction or venue.

(e) When cofiduciary may delegate to another cofiduciary.--A cofiduciary may delegate investment and management functions to another cofiduciary if the delegating cofiduciary reasonably believes that the other cofiduciary has greater investment skills than the delegating cofiduciary with respect to those functions. The delegating cofiduciary shall not be responsible for the investment decisions or actions of the other cofiduciary to which the investment functions are delegated if the delegating cofiduciary exercises reasonable care, skill and caution in establishing the scope and specific terms of the delegation and in reviewing periodically the other cofiduciary's actions in order to monitor the cofiduciary's performance and compliance with the scope and specific terms of the delegation.

(f) Mutual funds.--Investment in a mutual fund is not a delegation of investment function, and neither the mutual fund nor its advisor is an investment agent.

Special Provisions in Appendix. See section 6(b) of Act 28 of 1999 in the appendix to this title for special provisions relating to applicability.

§ 7207. Retention of cash; temporary investments.

(a) Uninvested cash.--A fiduciary may hold cash uninvested:

(1) which the fiduciary reasonably expects to:

(i) distribute to beneficiaries as income on a quarterly or more frequent basis;

(ii) use for payment of debts, taxes, expenses of administration or reinvestment within the next 90 days; or

(2) when the amount available for investment does not justify the administrative burden of making the investment determined in the light of the facilities available to the fiduciary.

A corporate fiduciary may deposit uninvested funds in its own or an affiliate's commercial department.

(b) Temporary investments.--A fiduciary may make temporary investment of funds which the fiduciary is entitled to hold uninvested or which the fiduciary wishes to hold in liquid form in short-term interest-bearing obligations or deposits, or other short-term liquid investments, selected in each case in compliance with the standards of section 7203 (relating to prudent investor rule) but without regard to any investment restrictions imposed by the governing instrument and may make a reasonable charge, in addition to all other compensation to which the fiduciary is entitled, for services rendered in making the temporary investment.

Cross References. Section 7207 is referred to in section 3316 of this title.

§ 7208. Life insurance.

A trustee may acquire or retain a contract of life insurance upon the life of the settlor or the settlor's spouse, or both, without liability for a loss arising from the trustee's failure to:

- (1) determine whether the contract is or remains a proper investment;
- (2) investigate the financial strength of the life insurance company;
- (3) exercise nonforfeiture provisions available under the contract; or
- (4) diversify the contract.

Special Provisions in Appendix. See section 6(b) of Act 28 of 1999 in the appendix to this title for special provisions relating to applicability.

§ 7209. Mutual funds.

Notwithstanding that a bank or trust company or an affiliate provides services to the investment company or investment trust, including that of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor or manager, and receives reasonable compensation for those services and notwithstanding any other provision of law, a bank or trust company acting as a fiduciary, agent or otherwise may invest and reinvest in a mutual fund if the portfolio of the mutual fund consists substantially of investments not prohibited by the governing instrument. With respect to any funds invested, the basis upon which compensation is calculated, expressed as a percentage of asset value or otherwise, shall be disclosed by prospectus, account statement or otherwise to all persons to whom statements of the account are rendered.

Cross References. Section 7209 is referred to in section 7772 of this title.

§ 7210. Common trust fund and mortgage investment fund.

Any corporate fiduciary and its cofiduciary, if any, may invest in:

- (1) A common trust fund or collective trust fund containing only investments authorized for fiduciaries,

established and maintained by the corporate fiduciary or by any affiliate of the corporate fiduciary within the meaning of section 1504 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1504) and otherwise in conformity with the laws of this Commonwealth and of the United States.

(2) A mortgage investment fund containing only mortgages and other investments authorized for fiduciaries, established and maintained by the corporate fiduciary in conformity with the laws of this Commonwealth and of the United States.

§ 7211. Further investment authority.

Unless a contrary intent is clearly expressed in the instrument, the authority to invest in specified types of investments includes authorization to invest in a mutual fund, or in any common or collective trust fund established and maintained by a corporate fiduciary, or by any affiliate of a corporate fiduciary within the meaning of section 1504 of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1504) or any successor provision, if the portfolio of the mutual fund or of the common or collective trust fund consists of the specified types of investments and is otherwise in conformity with the laws of this Commonwealth and of the United States.

§ 7212. Degree of care.

A fiduciary shall exercise reasonable care, skill and caution in making and implementing investment and management decisions.

A fiduciary who represents that he has special investment skills shall exercise those skills.

§ 7213. Judgment of fiduciary's decisions.

The rules of this chapter are standards of conduct and not of outcome or performance. Compliance with the rules of this chapter shall be determined in light of the facts and circumstances prevailing at the time of the fiduciary's decision or action and not by hindsight. A fiduciary is not liable to the extent the fiduciary acted in substantial compliance with the rules of this chapter or in reasonable reliance on the terms and provisions of the governing instrument. A fiduciary's investment and management decisions respecting individual assets shall be considered in the context of the trust portfolio as a whole and as part of an overall investment strategy, and not in isolation. No specific investment or course of action, taken alone, shall be considered inherently prudent or imprudent.

§ 7214. Language invoking chapter.

The following terms or words or words of similar import in the provisions of a trust, unless otherwise limited or modified, shall authorize any investment or investment strategy permitted under this chapter: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their own funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule" and "prudent investor rule."

CHAPTER 73

MUNICIPALITIES INVESTMENTS

Sec.

7301. Definition of fiduciary.

7302. Authorized investments; in general.

- 7303. Government obligations.
- 7304. Obligations of Federal organizations.
- 7305. Obligations of Pennsylvania governmental organizations.
- 7306. Obligations of governmental organizations existing pursuant to the laws of Pennsylvania, other states and the District of Columbia.
- 7307. Corporate bonds.
- 7308. Mortgages.
- 7309. Fractional interests.
- 7310. Stocks.
- 7310.1. Further investment authority.
- 7311. Real estate.
- 7312. Ground rent.
- 7313. Interest-bearing deposit.
- 7314. Common trust fund and mortgage investment fund.
- 7314.1. Mutual funds.
- 7315. Retention of investments.
- 7315.1. Retention of cash; temporary investments.
- 7316. Life insurance, building and loan shares, and similar assets.
- 7317. Investments which become unauthorized.
- 7318. Court direction.
- 7319. Directions of testator or settlor.

Enactment. Chapter 73 was added June 30, 1972, P.L.508, No.164, effective July 1, 1972.

Chapter Heading. The heading of Chapter 73 was amended June 25, 1999, P.L.212, No.28, effective in six months.

Cross References. Chapter 73 is referred to in section 7201 of this title; section 1201 of Title 4 (Amusements); section 1316 of Title 8 (Boroughs and Incorporated Towns); section 11804.1 of Title 11 (Cities); section 7416 of Title 35 (Health and Safety); section 1512 of Title 64 (Public Authorities and Quasi-Public Corporations).

§ 7301. Definition of fiduciary.

The term "fiduciary" as used in this chapter shall include an administrator of a municipal pension or retirement plan and any other person whose fiduciary duties are, by statute, governed by the principles of this chapter. The provisions of this chapter shall apply only to such fiduciaries.
(June 25, 1999, P.L.212, No.28, eff. 6 months)

1999 Amendment. See section 6(a) of Act 28 in the appendix to this title for special provisions relating to applicability.

§ 7302. Authorized investments; in general.

(a) Specifically authorized.--Subject only to the provisions of the governing instrument, if any, a fiduciary may accept, hold, invest in, and retain, any of the investments authorized by this chapter, and shall not be liable for loss on such investments so long as he exercises due care and prudence in the performance of his duties in regard to them. "Legal investment" or "authorized investment" or words of similar import used in a trust instrument shall be construed to mean any investment authorized by this chapter.

(b) Prudent man rule.--Any investment shall be an authorized investment if purchased or retained in the exercise of that degree of judgment and care, under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income to be derived therefrom as well as the probable safety of their capital. The

authorization to make and retain investments pursuant to this subsection shall be in addition to, and independent of, authorizations to make investments pursuant to other provisions of this chapter and requirements applicable under other provisions of this chapter shall not affect investments also authorized by this subsection.

Cross References. Section 7302 is referred to in section 7315.1 of this title.

§ 7303. Government obligations.

Obligations of the following governmental bodies shall be authorized investments:

(1) **United States.**--Obligations of the United States or the United States Treasury or those for the payment of which the faith and credit of the United States is pledged, including obligations of the District of Columbia. The obligations may be held directly or in the form of securities of or other interest in any open-end or closed-end management-type investment company or investment trust registered under the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.), if the portfolio of the investment company or investment trust is limited to such obligations and repurchase agreements fully collateralized by such obligations.

(2) **Pennsylvania.**--Obligations of the Commonwealth of Pennsylvania or those for the payment of which the faith and credit of the Commonwealth is pledged.

(3) **State and local government.**--Obligations of any commonwealth or state of the United States, or any county, city, borough, town, township, school district, institution district, or other political subdivision, having the power to levy taxes, of any such commonwealth or state: Provided, That the faith and credit of such commonwealth, state, or political subdivision thereof, is pledged for the payment of said obligations: And provided further, That at the date of the investment in such obligations, such commonwealth, state, or political subdivision, is not in default in the payment of any part of the principal or interest owing by it upon any part of its funded indebtedness.

(4) **International bank for reconstruction and development.**--Bonds, notes or other obligations issued, assumed or guaranteed by the International Bank for Reconstruction and Development which contain an unconditional promise to pay by the International Bank for Reconstruction and Development, or an unconditional guarantee by the International Bank for Reconstruction and Development of the payment of the interest thereon regularly, and the principal thereof on or before a specified date, in lawful currency of the United States. Not more than 2% of the funds in the custody or under the control of the fiduciary at the time of making the investment shall be invested in such bonds, notes or obligations. The principal office of the obligor shall be located within the United States.

(July 14, 1988, P.L.553, No.99, eff. imd)

1988 Amendment. Act 99 amended par. (1).

Cross References. Section 7303 is referred to in section 7309 of this title.

§ 7304. Obligations of Federal organizations.

Obligations of the following organizations constituted under the laws of the United States shall be authorized investments:

(1) **National Housing Administration.**--Obligations issued pursuant to any housing act of the United States heretofore or hereafter enacted, but only if fully and unconditionally guaranteed as to principal and interest by the United States.

(2) **Federal land banks.**--Obligations of any Federal land bank and consolidated obligations, being the joint and several obligations of all Federal land banks, issued pursuant to the act of Congress of July 17, 1916 (39 Stat. 380), and its amendments and supplements heretofore or hereafter enacted.

(3) **Federal home loan banks.**--Obligations of any Federal home loan bank and consolidated obligations, being the joint and several obligations of all Federal home loan banks, issued pursuant to the act of Congress of July 22, 1932 (47 Stat. 725), and its amendments and supplements heretofore or hereafter enacted.

(4) **Federal intermediate credit banks.**--Consolidated obligations, being the joint and several obligations of all Federal intermediate credit banks, issued pursuant to the act of Congress of March 4, 1923 (42 Stat. 1456), and its amendments and supplements heretofore or hereafter enacted.

(5) **Federal National Mortgage Association.**--Obligations of the Federal National Mortgage Association issued pursuant to the act of Congress of August 2, 1954 (68 Stat. 612), and its amendments and supplements.

(6) **Banks for cooperatives.**--Obligations of the Central Bank for Cooperatives and consolidated obligations of the Central Bank for Cooperatives, and the regional banks for cooperatives issued pursuant to the provisions of the act of Congress of June 16, 1933, known as the "Farm Credit Act of 1933" (48 Stat. 257), and its amendments and supplements heretofore or hereafter enacted.

(7) **Tennessee Valley Authority.**--Obligations issued, assumed or guaranteed by the Tennessee Valley Authority.

§ 7305. Obligations of Pennsylvania governmental organizations.

Obligations of the following Pennsylvania governmental organizations shall be authorized investments:

(1) **General State Authority and other State authorities.**--Obligations issued by The General State Authority and other authorities created by the General Assembly of the Commonwealth of Pennsylvania, for the payment of which faith and credit of the authority is pledged.

(2) **Housing authorities.**--Obligations of any housing authority issued pursuant to the laws of the Commonwealth relating to the creation or operation of housing authorities.

(3) **Pennsylvania Housing Agency.**--Bonds and notes of the Pennsylvania Housing Agency created by the "Housing Agency Law."

(4) **Municipality authorities.**--Obligations of any municipality authority issued pursuant to the laws of the Commonwealth relating to the creation or operation of municipality authorities, if the obligations are not in default and if the project for which the obligations were issued is under lease to a school district or school districts, or if the obligations are not in default and if the project for which the obligations were issued is under lease to a municipality or municipalities or subject to a service contract with a municipality or municipalities, pursuant to which the authority will receive lease rentals or service charges available for fixed charges on the obligations, which will average not less than one and one-fifth times the average annual fixed charges of such

obligations over the life thereof, or if the obligations are not in default and if for the period of five fiscal years next preceding the date of acquisition, the income of such authority available for fixed charges has averaged not less than one and one-fifth times its average annual fixed charges of such obligations over the life of such obligations. As used in this clause, the term "income available for fixed charges" shall mean income after deducting operating and maintenance expenses, and, unless the obligations are payable in serial, annual maturities, or are supported by annual sinking fund payments, depreciation, but excluding extraordinary nonrecurring items of income or expenses; and the term "fixed charges" shall include principal, both maturity and sinking fund, and interest on bonded debt. In computing such income available for fixed charges for the purposes of this paragraph, the income so available of any corporation acquired by any municipality authority may be included, such income to be calculated as though such corporation has been operated by a municipality authority and an equivalent amount of bonded debt were outstanding. The eligibility for investment purposes of obligations of each project of a municipality authority shall be separately considered hereunder.

(5) Parking authorities, public auditorium authorities, and port authorities.--Obligations of any parking authority, public auditorium authority, or port authority issued pursuant to the Parking Authority Law, the Public Auditorium Authorities Law or the Second Class County Port Authority Act, as the same have been heretofore or may be hereafter amended, if the obligations are not in default and if the project or facility for which the obligations were issued is under lease to a municipality or municipalities or is subject to a service contract or grant contract with a municipality or municipalities, and if the term of such lease or contract is not less than the term of the final maturity of the obligations, and if the authority will receive or is entitled to receive under such lease or contract annual rentals, service charges, or grants available for fixed charges on such obligations of not less than the average annual fixed charges on such obligations over the life thereof, or if the obligations are not in default, and if for the period of five fiscal years next preceding the date of acquisition the income of such authority available for fixed charges has averaged not less than one and one-fifth times its average annual fixed charges of such obligation over the life of such obligations. As used in this paragraph, the term "income available for fixed charges" shall mean income after deducting operating and maintenance expenses and, unless the obligations are payable in serial, annual maturities, or are supported by annual sinking fund payments, depreciation, but excluding extraordinary nonrecurring items of income or expenses, and the term "fixed charges" shall include principal, both maturity and sinking fund, and interest on bonded debt.

(6) Delaware River Joint Commission.--Obligations of the Delaware River Joint Commission issued pursuant to the act of June 12, 1931 (P.L.575, No.200), and its amendments and supplements heretofore or hereafter enacted.

(7) Delaware River Joint Toll Bridge Commission.--Obligations of the Delaware River Joint Toll Bridge Commission issued pursuant to the act of June 25,

1931 (P.L.1352, No.332), and its amendments and supplements heretofore or hereafter enacted.

(8) Delaware Tunnel Board.--Obligations issued by or with the approval of the Delaware Tunnel Board pursuant to the act of July 8, 1947 (P.L.1452, No.561), and its amendments and supplements heretofore or hereafter enacted.

(9) Pennsylvania Turnpike Commission.--Obligations of the Pennsylvania Turnpike Commission issued pursuant to:

(i) the act of May 21, 1937 (P.L.774, No.211);

(ii) the Pennsylvania Turnpike Philadelphia Extension Act of May 16, 1940 (Spec.Sess. P.L.949, No.11); and

(iii) the Western Pennsylvania Turnpike Extension Act of June 11, 1941 (P.L.101, No.53);

and the amendments and supplements of each heretofore or hereafter enacted.

(10) Pennsylvania Parkway Commission.--Obligations of the Pennsylvania Parkway Commission, issued pursuant to the act of July 16, 1941 (P.L.386, No.149), and its amendments and supplements heretofore or hereafter enacted.

(11) Redevelopment authorities.--Obligations of any redevelopment authority issued pursuant to the laws of the Commonwealth relating to the creation or operation of redevelopment authorities.

(12) The Pennsylvania State University.--Obligations of The Pennsylvania State University.

(13) Municipalities issuing nondebt revenue bonds.--Obligations issued pursuant to subdivision (b) of Article VI of the act of June 25, 1941 (P.L.159, No.87), known as the "Municipal Borrowing Law," and its amendments, if the obligations are not in default and if, for the period of five fiscal years next preceding the date of acquisition the income of the municipality issuing such obligations from the facility from which revenues are pledged for the payment for such obligations, available for fixed charges has averaged not less than one and one-fifth times the average annual fixed charges of such obligations over the life of such obligations. As used in this paragraph, the term "income available for fixed charges" shall mean income after deducting operating and maintenance expenses, and, unless the obligations are payable in serial, annual maturities, or are supported by annual sinking fund payments, depreciation, but excluding extraordinary nonrecurring items of income or expenses; and the term "fixed charges" shall include principal, both maturity and sinking fund, and interest on bonded debt.

References in Text. The General State Authority, referred to in par. (1), was abolished and its functions transferred to the Department of General Services by the act of July 22, 1975 (P.L.75, No.45).

The act of June 25, 1941 (P.L.159, No.87), known as the Municipal Borrowing Law, referred to in par. (13), was repealed by the act of July 12, 1972 (P.L.781, No.185), known as the Local Government Unit Debt Act. The Local Government Unit Debt Act was repealed by the act of December 19, 1996 (P.L.1158, No.177). The subject matter is now contained in Subpart B of Part VII (relating to indebtedness and borrowing) of Title 53 (Municipalities Generally).

The act of June 5, 1947 (P.L.458, No.208), known as the Parking Authority Law, referred to in par. (5), was repealed by the act of June 19, 2001 (P.L.287, No.22). The subject matter

is now contained in Chapter 55 (relating to parking authorities) of Title 53 (Municipalities Generally).

The act of July 8, 1947 (P.L.1452, No.561), referred to in par. (8), was repealed by the act of February 18, 1970 (P.L.50, No.20).

The short title of the act of December 3, 1959 (P.L.1688, No.621), known as the Housing Agency Law, referred to in par. (3), was amended by the act of December 5, 1972 (P.L.1259, No.282). The amended short title is now the Housing Finance Agency Law.

The Pennsylvania Parkway Commission, referred to in par. (10), was terminated December 31, 1987, under the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act.

§ 7306. Obligations of governmental organizations existing pursuant to the laws of Pennsylvania, other states and the District of Columbia.

Obligations of any authority, commission or similar governmental organization existing pursuant to the laws of this Commonwealth or the laws of any other state or of the District of Columbia shall be authorized investments if purchased or retained in the exercise of that degree of judgment and care, under circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income to be derived therefrom as well as the probable safety of their capital. The authorization to make and retain investments pursuant to this section shall be in addition to, and independent of, authorizations to make investments pursuant to other provisions of this chapter and requirements applicable under other provisions of this chapter shall not affect investments also authorized by this section.
(Dec. 10, 1974, P.L.867, No.293, eff. imd.)

§ 7307. Corporate bonds.

(a) In general.--Any interest-bearing obligation, including bonds, notes, debentures, and car-trust certificates, issued, guaranteed, or assumed by, a corporation organized under the laws of the United States, of any commonwealth or state thereof, or of the District of Columbia, shall be an authorized investment if purchased or retained in the exercise of that degree of judgment and care, under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income to be derived therefrom as well as the probable safety of their capital.

(b) Definition.--As used in this section "corporation" shall include a voluntary association, a joint-stock association or company, a business trust, a Massachusetts trust, a common-law trust, a municipal or quasi-municipal corporation by whatever name called, and any other organization organized and existing for any lawful purpose and which, like a corporation, continues to exist notwithstanding changes in the personnel of its members or participants, and conducts its affairs through a committee, a board, or some other group acting in a representative capacity.

§ 7308. Mortgages.

One or more bonds or other obligations secured by one or more mortgages, or in connection with which the obligor gives

one or more mortgages to indemnify the insurer of the obligation, shall be an authorized investment if:

(1) Insured by Federal Housing Administrator.--Insured by the Federal Housing Administrator pursuant to the National Housing Act of June 27, 1934 (48 Stat. 1246), and its amendments and supplements heretofore or hereafter enacted; or

(2) Guaranteed or insured under Federal Servicemen's Readjustment Act.--Guaranteed or insured under the Federal Servicemen's Readjustment Act of June 22, 1944 (58 Stat. 284), and its amendments and supplements heretofore or hereafter enacted: Provided, That at the date of acquisition the guaranty shall be in an amount not less than one-third of the sum invested, or, if an insured mortgage, the insurance shall be in an amount not less than 15% thereof; or

(3) Insured by the Farmers Home Administration, United States Department of Agriculture.--Insured by the Farmers Home Administration, United States Department of Agriculture, pursuant to the Bankhead-Jones Farm Tenant Act of July 22, 1937 (50 Stat. 522), and its amendments and supplements heretofore or hereafter enacted, or pursuant to the act of August 28, 1937 (50 Stat. 869), and its amendments and supplements heretofore or hereafter enacted; or

(4) Other mortgages.--At the date of the acquisition or of any extension of the mortgage it shall meet the following requirements:

(i) Contain an unconditional promise to pay the principal of and interest upon obligations which it secures.

(ii) Be a first lien upon improved real estate situated within the Commonwealth, including improved farm lands, prior to all other liens except the lien of taxes previously levied or assessed but not then payable and except taxes then due or payable or delinquent for the payment of which taxes provision is made in the mortgage settlement.

(iii) The unpaid principal amount of the obligations shall not exceed four-fifths of the fair value of the real estate as fixed by two persons familiar with real estate values in the vicinity who shall have actually inspected it and shall so certify in a written appraisal preserved among the records of the fiduciary.

(iv) The principal debt evidenced by the obligations shall be payable in not more than five years after the date of acquisition by the fiduciary, or be amortized within a period of not exceeding 30 years from the date of the acquisition in substantially equal payments at successive intervals of not more than one year each and in an amount sufficient to pay the principal debt and interest thereon within the term of the loan.

(v) All interest has been paid in full to the next preceding interest payment date.

Nothing in this paragraph shall be construed to be a limitation upon the power of a fiduciary to accept a purchase money obligation in exchange for an asset of the estate or trust upon such terms and conditions and with such security as shall be reasonable under the circumstances.

Cross References. Section 7308 is referred to in section 7309 of this title.

§ 7309. Fractional interests.

(a) Mortgages.--A fractional interest in an obligation naming a fiduciary as the obligee, secured by one or more mortgages, shall be an authorized investment for an estate of which the fiduciary is sole fiduciary or co-fiduciary, if the whole of the obligation would be an authorized investment under the provisions of section 7308 (relating to mortgages). Appraisalment of the real estate subject to the lien of such mortgage or mortgages need not be made concurrently with the acquisition of such fractional interest, if:

(1) it is a fractional interest in a mortgage referred to in section 7308(1) or (2); or

(2) an appraisalment has been made within three years immediately preceding the acquisition, in accordance with the requirements of section 7308(4), and if a person qualified at the time of the acquisition to serve as an appraiser of the real estate shall certify, in a writing to be preserved among the fiduciary's records, that at the date of the acquisition the unpaid principal amount of the obligation does not exceed four-fifths of the fair value of the real estate.

(b) Government obligations.--A fractional interest in a governmental obligation, the whole of which would be an authorized investment under section 7303, whether it be in bearer form or names the fiduciary as the obligee, shall be an authorized investment for an estate of which the fiduciary is sole fiduciary or co-fiduciary.

§ 7310. Stocks.

(a) Preferred and common stock.--Preferred and common stock of any corporation organized under the laws of the United States or of any commonwealth or state thereof, or of the District of Columbia, shall be an authorized investment if purchased or retained in the exercise of that degree of judgment and care, under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income to be derived therefrom as well as the probable safety of their capital.

"Corporation" as used in this subsection shall include an investment company (as hereinafter defined), a voluntary association, a joint-stock association or company, a business trust, a Massachusetts trust, a common-law trust, and any other organization organized and existing for any lawful purpose and which, like a corporation, continues to exist notwithstanding changes in the personnel of its members or participants, and conducts its affairs through a committee, a board, or some other group acting in a representative capacity.

"Investment company" as used in this subsection shall mean a corporation (as defined in this subsection) which is registered as an investment company under the Federal Investment Company Act of 1940, as from time to time amended, and which has no preferred stock, bonds, loans or any other outstanding securities having preference or priority as to assets or earnings over its common stock and which shall have net assets of not less than \$10,000,000 at the date of purchase.

"Common stock" as used in this subsection shall include the stock certificates, certificates of beneficial interests or trust participation certificates issued by any corporation or unincorporated association included under the definition of "corporation" in this subsection.

(b) Savings accounts insured by Federal savings and loan insurance corporation.--Savings accounts of any savings association incorporated under the laws of the Commonwealth, or of any Federal savings and loan association incorporated under the laws of the United States shall be an authorized investment if the withdrawal or repurchase value thereof is insured by the Federal savings and loan insurance corporation pursuant to the act of Congress of June 27, 1934 (48 Stat. 1255), and its supplements and amendments heretofore or hereafter enacted.

§ 7310.1. Further investment authority.

Unless a contrary intent is clearly expressed in the instrument, the authority to invest in specified types of investments will include authorization to invest in the stock of any investment company as defined in this chapter, or in any common or collective trust fund established and maintained by a corporate fiduciary, or by any affiliate of a corporate fiduciary within the meaning of section 1504 of the Internal Revenue Code of 1954 (68A Stat. 3, 26 U.S.C. § 1504), or any successor provision, if the portfolio of the investment company or of the common or collective trust fund consists of such specified types of investments and is otherwise in conformity with the laws of the Commonwealth and of the United States. (July 14, 1988, P.L.553, No.99, eff. imd.)

1988 Amendment. Act 99 added section 7310.1.

§ 7311. Real estate.

Real estate located in Pennsylvania, other than ground rents, shall be an authorized investment if the court, upon petition, aided if necessary by the report of a master, and being of the opinion that the investment will be for the advantage of the estate and that no change will be made in the course of succession by the investment, shall direct such investment.

§ 7312. Ground rent.

A ground rent secured upon unencumbered improved real estate located within the Commonwealth shall be an authorized investment if the reserved annual rent, capitalized at the rate of 5% per annum, shall not exceed four-fifth of the fair value of the real estate out of which it issues, determined by appraisal, as in the case of mortgages.

§ 7313. Interest-bearing deposit.

An interest-bearing deposit in any bank, bank and trust company, savings bank, or national banking association, located within the Commonwealth, shall be an authorized investment if:

(1) the maturity date or the permissible date of withdrawal does not exceed one year from the date of the deposit or any renewal thereof; and

(2) such deposits do not exceed the amount which is fully insured by the Federal Deposit Insurance Corporation, pursuant to the act of Congress of June 16, 1933 (48 Stat. 168), and its supplements and amendments, heretofore or hereafter enacted.

§ 7314. Common trust fund and mortgage investment fund.

Any corporate fiduciary and its co-fiduciary, if any, may invest in:

(1) Common trust fund.--A common trust fund containing only investments authorized for fiduciaries, established and maintained by the corporate fiduciary or by any affiliate of the corporate fiduciary within the meaning of section 1504 of the Internal Revenue Code and otherwise in conformity with the laws of the Commonwealth and of the United States; and

(2) Mortgage investment fund.--A mortgage investment fund containing only mortgages and other investments authorized for fiduciaries, established and maintained by the corporate fiduciary in conformity with the laws of the Commonwealth and of the United States.

(Oct. 12, 1984, P.L.929, No.182, eff. imd.)

1984 Amendment. Act 182 amended par. (1). Section 15 of Act 182 provided that the amendment of par. (1) shall apply to trusts and the estates of decedents, whether the trust was created or the decedent died before, on or after the effective date of Act 182, as well as to funds presently held by the clerks.

§ 7314.1. Mutual funds.

Notwithstanding that a bank or trust company or an affiliate provides services to the investment company or investment trust, including that of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor or manager, and receives reasonable compensation for those services and notwithstanding any other provision of law, a bank or trust company acting as a fiduciary, agent or otherwise may invest and reinvest in the securities of an investment company registered under the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.) if the portfolio of the investment company or investment trust consists substantially of investments not prohibited by the governing instrument. With respect to any funds invested, the basis upon which compensation is calculated, expressed as a percentage of asset value or otherwise, shall be disclosed by prospectus, account statement or otherwise to all persons to whom statements of the account are rendered.

(Dec. 16, 1992, P.L.1163, No.152, eff. imd.; July 7, 2006, P.L.625, No.98, eff. imd.)

§ 7315. Retention of investments.

A fiduciary, if he exercises the same care and prudence as he would in the case of an authorized investment, may retain without liability for resulting loss:

(1) any asset received in kind, even though it is not an authorized investment;

(2) any asset purchased in reliance upon a construction, by the court, of the instrument or a provision contained therein even though the court in a subsequent proceeding adopts a contrary construction thereof; and

(3) shares of stock or other securities (and securities received as distributions in respect thereof) of a holding company subject to the Federal Bank Holding Company Act of 1956, as amended, received upon conversion of, or in exchange for, shares of stock or other securities of a bank or a holding company subject to the Federal Bank Holding Company Act of 1956, as amended, which the fiduciary was directed or authorized to retain, in the instrument establishing the trust or otherwise.

(June 12, 1973, P.L.62, No.25, eff. imd.; Oct. 12, 1984, P.L.929, No.182, eff. imd.)

1984 Amendment. Act 182 amended par. (3). Section 15 of Act 182 provided that the amendment of par. (3) shall apply to trusts and the estates of decedents, whether the trust was created or the decedent died before, on or after the effective date of Act 182, as well as to funds presently held by the clerks.

§ 7315.1. Retention of cash; temporary investments.

(a) Uninvested cash.--A fiduciary may hold cash uninvested:

- (1) which he reasonably expects to:
 - (i) distribute to beneficiaries as income on a quarterly or more frequent basis;
 - (ii) use for payment of debts, taxes, expenses of administration or reinvestment within the next 90 days;or
- (2) when the amount available for investment does not justify the administrative burden of making the investment determined in the light of the facilities available to the fiduciary.

A corporate fiduciary may deposit uninvested funds in its own commercial department.

(b) Temporary investments.--A fiduciary may make temporary investment of funds which he is entitled to hold uninvested or which he wishes to hold in liquid form in short-term interest-bearing obligations or deposits, or other short-term liquid investments, selected in each case in compliance with the standards of section 7302(b) (relating to authorized investments; in general), but without regard to any investment restrictions imposed by the governing instrument and may make a reasonable charge, in addition to all other compensation to which he is entitled, for services rendered in making the temporary investment.

(Oct. 12, 1984, P.L.929, No.182, eff. imd.; Dec. 16, 1992, P.L.1163, No.152, eff. imd.)

1992 Amendment. Act 152 amended subsec. (b). See section 27(b) of Act 152 in the appendix to this title for special provisions relating to applicability.

1984 Amendment. Act 182 added section 7315.1. Section 15 of Act 182 provided that section 7315.1 shall apply to trusts and the estates of decedents, whether the trust was created or the decedent died before, on or after the effective date of Act 182, as well as to funds presently held by the clerks.

§ 7316. Life insurance, building and loan shares, and similar assets.

A fiduciary receiving in kind a contract of life insurance, stock in a building and loan association, or any similar asset providing for periodic payments, may retain it and continue to make the periodic payments and otherwise comply with the provisions thereof without liability for resulting loss so long as he, in the exercise of due care and prudence, shall consider advisable under the circumstances.

§ 7317. Investments which become unauthorized.

A fiduciary may retain without liability for resulting loss any investment which was authorized when received or made although such investment no longer qualifies as an authorized investment, provided he exercises due care and prudence in the disposition or retention of any such nonlegal investment.

§ 7318. Court direction.

A fiduciary appointed by the court and not acting under a trust instrument, in addition to or in place of the investments authorized by this chapter, may make and retain without liability for resulting loss, such investments as the court, upon petition of the fiduciary or of any party in interest, and after such notice as it shall direct, aided by the report of a master if necessary, shall authorize or direct, subject only to such conditions and limitations as shall be fixed by the court in the decree authorizing or directing the investment.

§ 7319. Directions of testator or settlor.

(a) General rule.--The testator or settlor in the instrument establishing a trust may prescribe the powers, duties and

liabilities of the fiduciary regarding the investment or noninvestment of principal and income and the acquisition, by purchase or otherwise, retention, and disposition, by sale or otherwise, of any property which, at any time or by reason of any circumstance, shall come into his control; and whenever any such provision shall conflict with this chapter, such provision shall control notwithstanding this chapter, unless the court having jurisdiction over the trust shall otherwise decree pursuant to subsection (b) of this section. In the absence, however, of an express restriction to the contrary in the trust instrument, the fiduciary may invest in any investment authorized by this chapter.

(b) Exception.--Where the instrument establishing a trust contains a restriction on the fiduciary's power of investment and the court having jurisdiction over the trust finds that adherence to the restriction is impractical or that the existing or reasonably foreseeable economic conditions are so far different from those prevailing at the creation of the trust that adherence to the restriction might deprive the respective beneficiaries of income and principal of the full benefits the testator or settlor intended them to enjoy, the court may release the fiduciary from the restriction to such extent and on such conditions, if any, as the court may deem appropriate. (Dec. 10, 1974, P.L.867, No.293, eff. imd.)

1974 Amendment. Act 293 amended subsec. (b).

CHAPTER 75

LIMITATIONS ON EXERCISE OF TRUSTEE POWERS AND POWERS OF BENEFICIARIES TO APPOINT TRUSTEES

Sec.

- 7501. Legislative intent.
- 7502. Definitions.
- 7503. Application of chapter.
- 7504. Certain trustee powers not exercisable.
- 7505. Joint powers and appointment of nondisqualified substituted trustees.
- 7506. Certain powers of beneficiaries not exercisable.

Enactment. Chapter 75 was added December 21, 1998, P.L.1067, No.141, effective immediately.

§ 7501. Legislative intent.

This chapter is enacted to codify, clarify and confirm certain existing common law principles of fiduciary and trust law relating to conflicts of interest on the part of trustees.

§ 7502. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Interested party." Each trustee then serving and each person having an interest in income or principal whom it would be necessary to join as a party in a proceeding for the judicial settlement of a trustee's account. The term "interested party" does not include a person who has not attained majority or is otherwise incapacitated unless a court has appointed a guardian for the person for some purpose other than acting under section 7503 (relating to application of chapter) or an agent has been appointed under a durable power of attorney that is sufficient to grant authority to act under section 7503.

§ 7503. Application of chapter.

(a) General rule.--This chapter shall apply to:

(1) Any trust created under a governing instrument executed on or after March 21, 1999, unless the governing instrument expressly provides that this chapter does not apply.

(2) Any trust created under a governing instrument executed before March 21, 1999, unless all interested parties affirmatively elect on or before December 21, 2001, by a written declaration signed by or on behalf of each interested party and delivered to the trustee, not to be subject to the application of this chapter. In the case of a testamentary trust, the declarations shall be filed with the register in the county in which the will was admitted to probate.

(b) Exclusion.--This chapter shall not apply to:

(1) Any trust during the time that the trust is revocable or amendable by its settlor.

(2) A spouse of a decedent or settlor where the spouse is the trustee of a testamentary or inter vivos trust for which a marital deduction has been allowed.

(3) (Deleted by amendment).

(4) A trust under a governing instrument that by specific reference expressly rejects the application of this chapter.

(5) (Deleted by amendment).

(July 7, 2006, P.L.625, No.98, eff. 60 days)

2006 Amendment. Act 98 amended subsec. (b).

Cross References. Section 7503 is referred to in section 7502 of this title.

§ 7504. Certain trustee powers not exercisable.

(a) General rule.--The following powers conferred by a governing instrument upon a trustee in his or her capacity as a trustee shall not be exercised by that trustee:

(1) The power to make discretionary distributions of either principal or income to or for the benefit of the trustee, the trustee's estate or the creditors of either unless the power is either:

(i) limited by an ascertainable standard relating to the trustee's health, education, support or maintenance within the meaning of 26 U.S.C. §§ 2041 (relating to powers of appointment) and 2514 (relating to powers of appointment); or

(ii) exercisable by the trustee only in conjunction with another person having a substantial interest in the property subject to the power which is adverse to the interest of the trustee within the meaning of 26 U.S.C. § 2041(b)(1)(C)(ii).

(2) The power to make discretionary distributions of either principal or income to satisfy any of the trustee's personal legal obligations for support or other purposes.

(3) The power to make discretionary allocations in the trustee's personal favor of receipts or expenses as between income and principal unless the trustee has no power to enlarge or shift any beneficial interest except as an incidental consequence of the discharge of the trustee's fiduciary duties.

(4) The power to exercise any of the powers proscribed in this subsection with regard to an individual other than the trustee to the extent that the individual could exercise a similar prohibited power in connection with a trust that benefits the trustee.

(b) Limited exercise of prohibited power.--

(1) If a trustee is prohibited by subsection (a)(1) from exercising a power conferred upon the trustee, the trustee nevertheless may exercise that power but shall be limited to distributions for the trustee's health, education, support or maintenance to the extent otherwise permitted by the terms of the trust.

(2) Unless otherwise prohibited by the provisions of this section, a trustee may exercise a power described herein in favor of someone other than the trustee, the trustee's estate or the creditors of either.

(c) Exceptions.--This section shall not apply to:

(1) A trustee who possesses in his individual capacity an unlimited right to withdraw the entire principal of the trust or has a general testamentary power of appointment over the entire principal of the trust.

(2) A trust created under a governing instrument executed on or before March 21, 1999, if no part of the principal of the trust would have been included in the gross estate of the trustee for Federal estate tax purposes if the trustee had died on March 21, 1999, without having exercised the power under the governing instrument to make discretionary distributions of principal or income to or for the benefit of the trustee, the trustee's estate or the creditors of either.

(July 7, 2006, P.L.625, No.98, eff. 60 days)

2006 Amendment. Act 98 added subsec. (c).

Cross References. Section 7504 is referred to in section 7505 of this title.

§ 7505. Joint powers and appointment of nondisqualified substituted trustees.

If a governing instrument contains a power proscribed under section 7504 (relating to certain trustee powers not exercisable), the following shall apply:

(1) If the power is conferred on two or more trustees, it may be exercised by the trustee or trustees who are not so prohibited as if they were the only trustee or trustees.

(2) If there is no trustee in office who can exercise the power as provided in paragraph (1), the court, upon petition and hearing after such notice as it may direct, shall appoint a trustee who is not disqualified and whose term in office shall be as the court directs for the sole purpose of exercising the powers that the other trustees cannot exercise.

§ 7506. Certain powers of beneficiaries not exercisable.

(a) General rule.--No beneficiary of a trust in an individual, trustee or other capacity may appoint himself or herself as trustee or remove a trustee and appoint in place of the trustee so removed a trustee who is related or subordinate to the beneficiary within the meaning of section 672(c) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 672(c)) in each case unless:

(1) the trustee's discretionary power to make distributions to or for the beneficiary is limited by an ascertainable standard relating to the beneficiary's health, education, support or maintenance within the meaning of sections 2041 and 2514 of the Internal Revenue Code of 1986 (26 U.S.C. §§ 2041 and 2514);

(2) the trustee's discretionary power may not be exercised to satisfy any of the beneficiary's legal obligations for support or other purposes; and

(3) the trustee's discretionary power may not be exercised to grant to the beneficiary a general power to appoint property of the trust to the beneficiary, the beneficiary's estate or the creditors of either within the meaning of section 2041 of the Internal Revenue Code of 1986 (26 U.S.C. § 2041).

(b) Exceptions.--This section shall not apply:

(1) if the appointment of the trustee by the beneficiary may be made only in conjunction with another person having a substantial interest in the property of the trust subject to the power which is adverse to the exercise of the power in favor of the beneficiary within the meaning of section 2041(b)(1)(C)(ii) of the Internal Revenue Code of 1986 (26 U.S.C. § 2041(b)(1)(C)(ii)) or the appointment is in conformity with a procedure governing appointments approved by the court before December 21, 1998;

(2) to any beneficiary who possesses in an individual capacity an unlimited right to withdraw the entire principal of the trust or has a general testamentary power of appointment over the entire principal of the trust; or

(3) to a trust created under a governing instrument executed on or before March 21, 1999, if no part of the principal of the trust would have been included in the gross estate of the beneficiary for Federal estate tax purposes if the beneficiary had died on March 21, 1999.

(July 7, 2006, P.L.625, No.98, eff. 60 days)

CHAPTER 77 TRUSTS

Subchapter

- A. General Provisions
- B. Judicial Proceedings
- C. Representation
- D. Creation, Validity, Modification and Termination of Trust
- E. Creditor's Claims; Spendthrift and Discretionary Trusts
- F. Revocable Trusts
- G. Office of Trustee
- H. Duties and Powers of Trustee
- I. Liability of Trustees and Rights of Persons Dealing with Trustees
- J. Miscellaneous Provisions

Enactment. Chapter 77 was added July 7, 2006, P.L.625, No.98, effective in 120 days.

Applicability. Section 16(3) of Act 98 of 2006 provided that, except for sections 7737 and 7752(a), Chapter 77 shall apply to all trusts created before, on or after the effective date of par. (3).

Cross References. Chapter 77 is referred to in section 6114 of this title; sections 5547, 5548, 5550, 9135 of Title 15 (Corporations and Unincorporated Associations).

SUBCHAPTER A GENERAL PROVISIONS

Sec.

- 7701. Short title of chapter - UTC 101.
- 7702. Scope of chapter - UTC 102.
- 7703. Definitions - UTC 103.

- 7704. Knowledge - UTC 104.
- 7705. Trust instrument controls; mandatory rules - UTC 105.
- 7706. Common law of trusts; principles of equity - UTC 106.
- 7707. Governing law - UTC 107.
- 7708. Situs of trust.
- 7709. Methods and waiver of notice - UTC 109.
- 7710. Notice; others treated as beneficiaries - UTC 110.
- 7710.1. Nonjudicial settlement agreements - UTC 111.
- 7710.2. Rules of construction - UTC 112.

Cross References. Subchapter A is referred to in section 7701 of this title.

§ 7701. Short title of chapter - UTC 101.

Subchapters A (relating to general provisions) through I (relating to liability of trustees and rights of persons dealing with trustees) shall be known and may be cited as the Uniform Trust Act.

§ 7702. Scope of chapter - UTC 102.

This chapter applies to express trusts, charitable and 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.

§ 7703. Definitions - UTC 103.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Action." With respect to an act of a trustee, includes a failure to act.

"Beneficiary." A person that:

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

(2) in a capacity other than that of trustee or protector, holds a power of appointment over trust property.

"Charitable trust." A trust, or portion of a trust, created for a charitable purpose described in section 7735(a) (relating to charitable purposes; enforcement - UTC 405).

"Current beneficiary." A person 18 years of age or older to or for whom income or principal of a trust must be distributed currently or a person 25 years of age or older to or for whom income or principal of a trust may, in the trustee's discretion, be distributed currently.

"Guardian." A person other than a guardian ad litem who is appointed by the court to make decisions regarding the property of an individual.

"Interests of the beneficiaries." The beneficial interests provided in the trust instrument.

"Jurisdiction." With reference to a geographic area, a country, state or county.

"Power of withdrawal." The unrestricted power of a beneficiary, acting as a beneficiary and not as a trustee, to transfer to himself or herself the entire legal and beneficial interest in all or a portion of trust property. However, a power to withdraw the greater of the amount specified in section 2041(b)(2), 2503(b) or 2514(e) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 2041(b)(2), 2503(b) or 2514(e)), or any lesser amount determined by reference to one or more of these provisions, may not be treated as a power of withdrawal.

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

"Qualified beneficiary." Assuming nonexercise of all testamentary powers of appointment, a beneficiary who on the date the beneficiary's qualification is determined:

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

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

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

"Revocable trust." A trust is revocable to the extent the settlor, immediately before the time as of which the determination is made, had the power, acting without the consent of the trustee or any person holding an interest adverse to revocation, to prevent the transfer of the trust property at the settlor's death by revocation or amendment of or withdrawal of property from the trust.

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

"Spendthrift provision." A provision in a trust instrument that restrains both voluntary and involuntary transfer of a beneficiary's interest.

"Trust instrument." A will or other written instrument executed by the settlor that contains trust provisions, including any amendments thereto.

"Trustee." Includes an original, additional and successor trustee and a cotrustee.

§ 7704. Knowledge - UTC 104.

(a) **When person has knowledge.**--For the purposes of this chapter and subject to subsection (b), a person has knowledge of a fact involving a trust if the person has:

(1) actual knowledge of it;

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

(3) reason to know it from all the facts and

circumstances known to the person at the time in question.

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

§ 7705. Trust instrument controls; mandatory rules - UTC 105.

(a) **Trust instrument controls.**--Except as provided in subsection (b), the provisions of a trust instrument prevail over any contrary provisions of this chapter.

(b) **Mandatory rules.**--Notwithstanding a contrary provision in the trust instrument, the following rules apply:

(1) The requirements for creating a trust set forth in section 7732 (relating to requirements for creation - UTC 402).

(2) The duty of a trustee to act in good faith and in accordance with the purposes of the trust as set forth in section 7771 (relating to duty to administer trust - UTC 801).

(3) The requirement in section 7734 (relating to trust purposes - UTC 404) that a trust's purpose be lawful and not contrary to public policy.

(4) The power of the court to modify or terminate a trust under sections 7740 (relating to termination of trusts; proceedings for termination or modification of trusts - UTC 410) through 7740.6 (relating to modification to achieve settlor's tax objectives - UTC 416).

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Subchapter E (relating to creditor's claims; spendthrift and discretionary trusts).

(6) The power of the court under section 7762 (relating to trustee's bond - UTC 702).

(7) The power of the court under section 7768(b) (relating to compensation of trustee - UTC 708) to adjust a trustee's compensation specified in the trust instrument.

(8) The duty of a trustee under section 7780.3 (relating to duty to inform and report).

(9) (Reserved).

(10) The effect of an exculpatory term under section 7788 (relating to exculpation of trustee - UTC 1008).

(11) The rights under sections 7790 (relating to limitation on personal liability of trustee - UTC 1010) through 7790.3 (relating to certification of trust - UTC 1013) of a person other than a trustee or beneficiary.

(12) Periods of limitation for commencing a judicial proceeding.

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

(14) The subject matter jurisdiction of the court described in Chapter 7 (relating to orphans' court divisions) and venue for commencing a proceeding as provided in section 7714 (relating to venue - UTC 204).

Cross References. Section 7705 is referred to in section 7707 of this title.

§ 7706. Common law of trusts; principles of equity - UTC 106.

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

§ 7707. Governing law - UTC 107.

The meaning and effect of the provisions of a trust instrument shall be determined by:

(1) the law of the jurisdiction designated in the trust instrument, but the mandatory rules of section 7705(b) (relating to trust instrument controls; mandatory rules - UTC 105) shall govern if different from the law of the jurisdiction designated in the trust instrument; or

(2) in the absence of an effective designation in the trust instrument, the law of the jurisdiction in which the settlor is domiciled when the trust becomes irrevocable.

§ 7708. Situs of trust.

(a) **Specified in trust instrument.**--Without precluding other means for establishing a sufficient connection with the

designated jurisdiction, provisions of a trust instrument designating the situs of the trust are valid and controlling if:

- (1) a trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction;
- (2) all or part of the trust administration occurs in the designated jurisdiction; or
- (3) one or more of the beneficiaries resides in the designated jurisdiction.

(b) Unspecified in trust instrument.--If the trust instrument does not specify a situs:

- (1) The situs of a testamentary trust shall be:
 - (i) in the county where letters were granted to the personal representative;
 - (ii) if letters under subparagraph (i) have not been granted, in a county where the letters might have been granted; or
 - (iii) if letters under subparagraph (i) have not been granted and are not subject to being granted, in a county in which any trustee resides or has a place of business.
- (2) The situs of an inter vivos trust whose settlor is domiciled in this Commonwealth when the trust becomes irrevocable or, in the case of a revocable trust, when the first application is made to a court concerning the trust shall be:
 - (i) during the settlor's lifetime, either in the county of the settlor's principal residence or in the county in which any of the trustees resides or has a place of business; and
 - (ii) after the settlor's death:
 - (A) in the county in which letters have been granted to the settlor's personal representative;
 - (B) in a county in which letters might have been granted;
 - (C) in a county which is the principal place of the trust's administration; or
 - (D) in a county in which any trustee resides or has a place of business.
- (3) The situs of an inter vivos trust whose settlor either is living and not domiciled in this Commonwealth at the time when the first application is made to a court concerning the trust or was not domiciled in this Commonwealth at the settlor's death after which the first application to a court concerning the trust is made thereafter shall be in a county where:
 - (i) a trustee's principal place of business is located or a trustee is a resident;
 - (ii) all or part of the trust administration occurs;or
 - (iii) one or more of the beneficiaries reside.

(c) Transfer.--By complying with subsections (d) and (e), the trustee may transfer the trust's situs to another jurisdiction if either immediately before or immediately after the proposed transfer:

- (1) a trustee's principal place of business is located in or a trustee is a resident of the proposed jurisdiction;
- (2) all or part of the trust administration occurs in the proposed jurisdiction; or
- (3) one or more of the beneficiaries reside in the proposed jurisdiction.

(d) Notice of transfer.--The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's situs at least 60 days before the date as of which the trustee intends to change the situs. The notice of proposed transfer must include the following:

(1) The name of the jurisdiction to which the situs is to be transferred.

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

(3) The reasons for the proposed transfer.

(4) The date on which the proposed transfer is anticipated to occur.

(5) A statement that if the situs is changed as the trustee proposes, venue will thereafter be in the county of the new situs consistent with section 7714 (relating to venue - UTC 204).

(6) The name and address of the court before which judicial actions involving the trust will be heard after the situs is changed as the trustee proposes.

(7) A statement that the change in situs will occur only if all qualified beneficiaries of the trust consent in writing to the change.

(e) Consent to transfer.--A trustee may transfer a trust's situs under this section without court approval if all the qualified beneficiaries of the trust consent in writing to the change.

(f) Successor trustee.--In connection with a transfer of the trust's situs, the trustee may transfer some or all of the trust property to a successor trustee designated in the trust instrument or appointed pursuant to section 7764 (relating to vacancy in trusteeship; appointment of successor - UTC 704).

(g) Court-directed change in situs.--A court having jurisdiction of a testamentary or inter vivos trust, on application of a trustee or any party in interest, after notice as the court shall direct and aided if necessary by the report of a master and after accounting as the court shall require, may direct, notwithstanding any other provision of this chapter, that the situs of the trust shall be changed to any other place within or without this Commonwealth if the court shall find the change necessary or desirable for the proper administration of the trust.

(h) Claims not discharged.--A change in situs under this section does not discharge any claim against the trustee.

§ 7709. Methods and waiver of notice - UTC 109.

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

(b) Unknown identity or location.--Notice otherwise required under this chapter or a document otherwise required to be sent under this chapter need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee, but the trustee shall create and maintain indefinitely a written record of the steps the trustee took to identify or locate the person.

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

(d) Notice of judicial proceeding.--Notice of a judicial proceeding must be given as provided in the applicable rules of court.

§ 7710. Notice; others treated as beneficiaries - UTC 110.

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

(b) Enforcement by charitable organization expressly named in instrument.--A charitable organization expressly named in the trust instrument to receive distributions from the trust has the rights of a beneficiary under this chapter.

(c) Enforcement by others.--A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in section 7738 (relating to trust for care of animal - UTC 408) or 7739 (relating to noncharitable trust without ascertainable beneficiary - UTC 409) has the rights of a beneficiary under this chapter.

(d) Office of Attorney General.--The Office of Attorney General has the rights of a charitable organization expressly named in the trust instrument to receive distributions from a trust having its situs in this Commonwealth and the right to notice of any proceeding or nonjudicial settlement agreement in which there is a charitable interest or purpose.

§ 7710.1. Nonjudicial settlement agreements - UTC 111.

(a) (Reserved).

(b) General rule.--Except as otherwise provided in subsection (c), all beneficiaries and trustees of a trust may enter into a binding nonjudicial settlement agreement with respect to any matter involving the trust. The rules of Subchapter C (relating to representation) shall apply to a settlement agreement under this section.

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

(d) Matters that may be resolved.--Matters that may be resolved by a nonjudicial settlement agreement include the following:

(1) The interpretation or construction of the provisions of a trust instrument.

(2) The approval of a trustee's report or accounting or waiver of the preparation of a trustee's report or accounting.

(3) Direction to a trustee to perform or refrain from performing a particular act.

(4) The resignation or appointment of a trustee and the determination of a trustee's compensation.

(5) Transfer of a trust's situs.

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

(7) The grant to a trustee of any necessary or desirable power.

(8) The exercise or nonexercise of any power by a trustee.

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

(10) An action or proposed action by or against a trust or trustee.

(11) The modification or termination of a trust.

(12) An investment decision, policy, plan or program of a trustee.

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

(e) Request of court.--Any beneficiary or trustee of a trust may request the court to approve a nonjudicial settlement agreement to determine whether the representation as provided in Subchapter C was adequate or whether the agreement contains terms and conditions the court could have properly approved.

Cross References. Section 7710.1 is referred to in section 7721 of this title.

§ 7710.2. Rules of construction - UTC 112.

The rules of construction that apply in this Commonwealth to the provisions of testamentary trusts also apply as appropriate to the provisions of inter vivos trusts.

SUBCHAPTER B
JUDICIAL PROCEEDINGS

Sec.

7711. Role of court in administration of trust - UTC 201.

7712. Jurisdiction over trustee and beneficiary - UTC 202.

7713. (Reserved).

7714. Venue - UTC 204.

Cross References. Subchapter B is referred to in section 7701 of this title.

§ 7711. Role of court in administration of trust - UTC 201.

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

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

(c) Scope of proceeding.--A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for declaratory judgment.

§ 7712. Jurisdiction over trustee and beneficiary - UTC 202.

(a) Personal jurisdiction over trustee.--By accepting the trusteeship of a trust having its situs in this Commonwealth or by moving the situs to this Commonwealth, the trustee submits personally to the jurisdiction of the courts of this Commonwealth regarding any matter involving the trust.

(b) Personal jurisdiction over beneficiary.--With respect to their interests in the trust, the beneficiaries of a trust having its situs in this Commonwealth are subject to the jurisdiction of the courts of this Commonwealth regarding any matter involving the trust. By not releasing or disclaiming the beneficiary's beneficial interest in the trust, a beneficiary of a trust having its situs in this Commonwealth submits personally to the jurisdiction of the courts of this Commonwealth regarding any matter involving the trust.

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

§ 7713. (Reserved).

§ 7714. Venue - UTC 204.

(a) General rule.--Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a

trust is in the county of this Commonwealth in which the trust's situs is located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

(b) Exceptions.--

- (1) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in:
 - (i) any county in which a beneficiary resides;
 - (ii) any county in which trust property is located;or
 - (iii) if the trust is created by will, the county in which the decedent's estate was or is being administered.
- (2) The venue of proceedings that are pending on the effective date of this section shall not be disturbed.

Cross References. Section 7714 is referred to in sections 7705, 7708 of this title.

**SUBCHAPTER C
REPRESENTATION**

Sec.

7721. Scope; definition of trust matter.
7722. Representation of parties in interest in general.
7723. Representatives and persons represented.
7724. Appointment of representative.
7725. Notice of representation.
7726. Representation ineffective if person objects.

Cross References. Subchapter C is referred to in sections 7701, 7710.1, 7740.1 of this title.

§ 7721. Scope; definition of trust matter.

(a) Scope.--This subchapter shall apply to this entire chapter unless the context clearly specifies the contrary.

(b) Definition.--As used in this subchapter, the term "trust matter" includes a judicial proceeding and a nonjudicial settlement, agreement or act pertaining to any matter listed in section 7710.1(d) (relating to nonjudicial settlement agreements - UTC 111).

§ 7722. Representation of parties in interest in general.

(a) Judicial proceeding.--In a judicial proceeding involving a trust matter, an order or decree of the court that binds the representative or representatives is binding upon a person, class of persons or both represented in accordance with section 7723 (relating to representatives and persons represented) if the trustee notifies the representatives in writing whom they represent, they do not decline the representation as provided in section 7725 (relating to notice of representation) and they act in good faith.

(b) Nonjudicial resolution.--In a nonjudicial resolution of a trust matter, notice to, the consent or approval of or the waiver or release by the representative or representatives is binding upon a person, class of persons or both represented in accordance with section 7723 if the trustee notifies the representatives in writing whom they represent, they do not decline the representation as provided in section 7725 and they act in good faith.

(c) Permissible consideration.--In making decisions, a representative may consider general benefit accruing to the living members of the family of the person represented.

§ 7723. Representatives and persons represented.

The following rules except as set forth in paragraph (7) apply to the extent there is no conflict of interest with respect to the matter at issue between the representative and the person or persons represented that might affect the impartiality of the representative and, if two or more persons are being represented, to the extent there is no conflict of interest with respect to the matter at issue between or among the persons represented that might affect the impartiality of the representative:

(1) A plenary guardian represents the person whose estate the guardian supervises, and a limited guardian represents the person whose estate the guardian supervises within the scope of authority prescribed by the court order that defines the guardian's authority.

(2) An agent under a general power of attorney represents the agent's principal, and an agent under a limited power of attorney represents the principal within the scope of the agent's authority under the power of attorney.

(3) Where property or an interest in property is vested in a class of persons, the living sui juris class members represent the class members who are minors, unborn, unknown or unascertained.

(4) Where property or an interest in property will pass to a class of persons upon the occurrence of a future event, the living sui juris class members represent the class members who are minors, unborn, unknown or unascertained. The class members entitled to represent other class members or potential class members are the persons who would take the property or interest in property if the future event had occurred immediately before the commencement of the judicial proceeding relating to the property or interest in property or immediately before the effective date of the nonjudicial resolution of the matter.

(5) Where property or an interest in property will pass to a person, class of persons or both upon the occurrence of a future event, but the property or interest in property will pass to another person, class of persons or both upon the occurrence of an additional future event, the person, class of persons or both who would take upon the occurrence of the first event represents the person, class of persons or both who would take upon the occurrence of the additional event, provided their interests are identical or substantially similar for purposes of the particular trust matter. If a class of persons would take upon the occurrence of the first event, paragraph (4) applies to representation between or among the class.

(6) A person represents all minors or unborn individuals and persons whose identity or location is unknown and not reasonably ascertainable, to the extent such persons are not otherwise represented, if the interests of the person and the person represented are substantially identical with respect to the particular question or dispute involved.

(7) Whether or not there is a conflict of interest described in this section, the sole holder or all coholders of a presently exercisable or testamentary power of appointment represent all potential appointees and all takers in default of exercise of the power of appointment if the holder may appoint to:

(i) the holder's estate, the holder's creditors or the creditors of the holder's estate; or

(ii) anyone other than the holder's estate, the holder's creditors and the creditors of the holder's estate.

(8) The sole holder or all coholders of a presently exercisable or testamentary power of appointment not described in paragraph (7) represent all potential appointees and all takers in default of exercise of the power who are also potential appointees.

(9) Except as provided in paragraph (1), a person represents the person's minor and unborn descendants.

Cross References. Section 7723 is referred to in sections 7722, 7724 of this title.

§ 7724. Appointment of representative.

Notwithstanding any other provision of this subchapter, if in any judicial proceeding involving a trust matter the court determines that the representation provided by section 7723 (relating to representatives and persons represented) is or might be inadequate, the court may appoint a guardian ad litem or trustee ad litem to represent the inadequately represented person, class of persons or both.

§ 7725. Notice of representation.

A person representing another must be given written notice by the trustee that the person is representing the other person. A person to whom the notice is given is presumed to accept the representation unless the person declines the representation in a writing delivered to the trustee no later than 30 days after receipt of the notice.

(Oct. 27, 2010, P.L.837, No.85, eff. 60 days)

Cross References. Section 7725 is referred to in section 7722 of this title.

§ 7726. Representation ineffective if person objects.

Notwithstanding the provisions of this subchapter, a person may not represent another who is sui juris and files a written objection to representation with the trustee.

SUBCHAPTER D
CREATION, VALIDITY, MODIFICATION
AND TERMINATION OF TRUST

Sec.

- 7731. Creation of trust - UTC 401.
- 7732. Requirements for creation - UTC 402.
- 7733. Written trusts created in other jurisdictions - UTC 403.
- 7734. Trust purposes - UTC 404.
- 7735. Charitable purposes; enforcement - UTC 405.
- 7736. Creation of trust induced by fraud, duress or undue influence - UTC 406.
- 7737. Oral trusts unenforceable.
- 7738. Trust for care of animal - UTC 408.
- 7739. Noncharitable trust without ascertainable beneficiary - UTC 409.
- 7740. Termination of trusts; proceedings for termination or modification of trusts - UTC 410.
- 7740.1. Modification or termination of noncharitable irrevocable trust by consent - UTC 411.
- 7740.2. Modification or termination of noncharitable irrevocable trust by court - UTC 412.
- 7740.3. Charitable trusts - UTC 413.

- 7740.4. Modification or termination of noncharitable trust - UTC 414.
- 7740.5. Reformation to correct mistakes - UTC 415.
- 7740.6. Modification to achieve settlor's tax objectives - UTC 416.
- 7740.7. Division of trusts.
- 7740.8. Combination of trusts.

Cross References. Subchapter D is referred to in section 7701 of this title.

§ 7731. Creation of trust - UTC 401.

A trust may be created by:

- (1) transfer of property under a written instrument to another person as trustee during the settlor's lifetime or by will or other written disposition taking effect upon the settlor's death;
- (2) written declaration, signed by or on behalf and at the direction of the owner of property as required by section 7732 (relating to requirements for creation - UTC 402), that the owner holds identifiable property as trustee; or
- (3) written exercise of a power of appointment in favor of a trustee.

§ 7732. Requirements for creation - UTC 402.

(a) Requirements.--A trust is created only if:

- (1) the settlor has capacity to create a trust;
- (2) the settlor signs a writing that indicates an intention to create the trust and contains provisions of the trust;
- (3) the trust has a definite beneficiary or is:
 - (i) a charitable trust;
 - (ii) a trust for the care of an animal, as provided in section 7738 (relating to trust for care of animal - UTC 408); or
 - (iii) a trust for a noncharitable purpose, as provided in section 7739 (relating to noncharitable trust without ascertainable beneficiary - UTC 409);
- (4) the trustee has duties to perform; and
- (5) the same person is not the sole trustee and sole beneficiary of the trust.

(b) (Reserved).

(b.1) Signature by mark or another.--A trust instrument other than a will may be signed by mark or by a person other than the settlor on behalf of and at the direction of the settlor in the same manner as a power of attorney under Chapter 56 (relating to powers of attorney).

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

(d) Definition.--As used in this section, the term "definite beneficiary" means a beneficiary that can be ascertained now or in the future, subject to any applicable rule against perpetuities.

Cross References. Section 7732 is referred to in sections 7705, 7731 of this title.

§ 7733. Written trusts created in other jurisdictions - UTC 403.

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

the trust instrument was executed or the law of the jurisdiction in which, at the time of creation:

- (1) the settlor was domiciled, had a residence or was a national;
- (2) a trustee was domiciled or had a place of business; or
- (3) any trust property was located.

§ 7734. Trust purposes - UTC 404.

A trust may be created only to the extent its purposes are lawful and not contrary to public policy.

Cross References. Section 7734 is referred to in section 7705 of this title.

§ 7735. Charitable purposes; enforcement - UTC 405.

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

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

(c) Proceeding to enforce trust.--A proceeding to enforce a charitable trust may be brought by the settlor during the settlor's lifetime or at any time by the Attorney General, a charitable organization expressly named in the trust instrument to receive distributions from the trust or any other person who has standing to do so.

Cross References. Section 7735 is referred to in section 7703 of this title.

§ 7736. Creation of trust induced by fraud, duress or undue influence - UTC 406.

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

§ 7737. Oral trusts unenforceable.

Oral trusts are unenforceable in this Commonwealth.

Applicability. Section 16(4)(i) of Act 98 of 2006 provided that section 7737 shall not apply to oral trusts created before the effective date of par. (4)(i).

§ 7738. Trust for care of animal - UTC 408.

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

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

(c) Limitation.--Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the trust instrument, property not

required for the intended use must be distributed to the settlor if then living, otherwise to the settlor's successors in interest.

Cross References. Section 7738 is referred to in sections 7710, 7732, 7739 of this title.

§ 7739. Noncharitable trust without ascertainable beneficiary - UTC 409.

Except as otherwise provided in section 7738 (relating to trust for care of animal - UTC 408) or by another statute:

(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than 21 years.

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

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

Cross References. Section 7739 is referred to in sections 7710, 7732 of this title.

§ 7740. Termination of trusts; proceedings for termination or modification of trusts - UTC 410.

(a) **Termination.**--A trust terminates to the extent it is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved or the purposes of the trust have become unlawful or contrary to public policy. In addition, a trust may be terminated by the methods prescribed by sections 7740.1 (relating to modification or termination of noncharitable irrevocable trust by consent - UTC 411) through 7740.4 (relating to modification or termination of noncharitable trust - UTC 414).

(b) **Proceedings for termination or modification.**--The settlor, the trustee or a beneficiary may commence a proceeding to approve or disapprove a proposed modification or termination under sections 7740.1 through 7740.6 (relating to modification to achieve settlor's tax objectives - UTC 416), the division of a trust under section 7740.7 (relating to division of trusts) or the combination of trusts under section 7740.8 (relating to combination of trusts). The settlor of a charitable trust may commence a proceeding to modify the trust under section 7740.3 (relating to charitable trusts - UTC 413).

Cross References. Section 7740 is referred to in section 7705 of this title.

§ 7740.1. Modification or termination of noncharitable irrevocable trust by consent - UTC 411.

(a) **Consent by settlor and beneficiaries.**--A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by a guardian, an agent under the settlor's general power of attorney or an agent under the

settlor's limited power of attorney that specifically authorizes that action. Notwithstanding Subchapter C (relating to representation), the settlor may not represent a beneficiary in the modification or termination of a trust under this subsection.

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

(b.1) Spendthrift provision.--A spendthrift provision in a trust instrument is presumed to constitute a material purpose of the trust.

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

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

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

Cross References. Section 7740.1 is referred to in sections 7705, 7740 of this title.

§ 7740.2. Modification or termination of noncharitable irrevocable trust by court - UTC 412.

(a) Unanticipated circumstances.--The court may modify the administrative or dispositive provisions of a noncharitable irrevocable trust, make an allowance from the principal of the trust or terminate the trust if, because of circumstances that apparently were not anticipated by the settlor, modification, allowance or termination will further the purposes of the trust. To the extent practicable, the modification or allowance shall approximate the settlor's probable intention.

(b) Inability to administer effectively.--The court may modify the administrative provisions of a noncharitable irrevocable trust if adherence to the existing provisions would be impracticable or wasteful or impair the trust's administration.

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

Cross References. Section 7740.2 is referred to in sections 7705, 7740 of this title.

§ 7740.3. Charitable trusts - UTC 413.

(a) General rule.--Except as otherwise provided in subsection (b), if a particular charitable purpose becomes unlawful, impracticable or wasteful:

- (1) the trust does not fail, in whole or in part;
- (2) the trust property does not revert to the settlor or the settlor's successors in interest; and

(3) the court shall apply cy pres to fulfill as nearly as possible the settlor's charitable intention, whether it be general or specific.

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

(c) Administrative deviation.--A court may modify an administrative provision of a charitable trust to the extent necessary to preserve the trust.

(d) Administrative termination of small charitable trusts.--A trust solely for charitable purposes having assets of less than \$100,000 may be terminated at its inception or at any time thereafter by the trustee with the consent of the Attorney General and all charitable organizations that are designated as beneficiaries by name in the trust instrument. Upon termination, the assets, subject to the approval of the Attorney General, shall be delivered to the organizations, if any, designated in the trust instrument or, if none, to organizations selected by the trustee, in either case to be held and applied for the general or specific charitable purposes and on the terms that will, in the trustee's discretion, fulfill as nearly as possible the settlor's intention.

(e) Judicial termination of charitable trusts.--If the separate existence of a trust, whenever created, solely for charitable purposes results or will result in administrative expense or other burdens unreasonably out of proportion to the charitable benefits, the court may, upon application of the trustee or any interested person and after notice to the Attorney General, terminate the trust, either at its inception or at any time thereafter, and award the assets outright, free of the trust, to the charitable organizations, if any, designated in the trust instrument or, if none, to charitable organizations selected by the court, in either case for the purposes and on the terms that the court may direct to fulfill as nearly as possible the settlor's intentions other than any intent to continue the trust, if the court is satisfied that the charitable organizations will properly use or administer the assets.

Cross References. Section 7740.3 is referred to in sections 7705, 7740 of this title.

§ 7740.4. Modification or termination of noncharitable trust - UTC 414.

(a) Trustee's authority.--A trustee of a noncharitable trust may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration, the trustee has given written notice to the qualified beneficiaries at least 60 days before the proposed termination and no qualified beneficiary provides the trustee with a written objection to the proposed termination on or before the date specified in the notice.

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

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

Cross References. Section 7740.4 is referred to in sections 7705, 7740 of this title.

§ 7740.5. Reformation to correct mistakes - UTC 415.

The court may reform a trust instrument, even if unambiguous, to conform to the settlor's probable intention if it is proved by clear and convincing evidence that the settlor's intent as expressed in the trust instrument was affected by a mistake of fact or law, whether in expression or inducement. The court may provide that the modification have retroactive effect.

Cross References. Section 7740.5 is referred to in sections 7705, 7740 of this title.

§ 7740.6. Modification to achieve settlor's tax objectives - UTC 416.

The court may modify a trust instrument in a manner that is not contrary to the settlor's probable intention in order to achieve the settlor's tax objectives. The court may provide that the modification have retroactive effect.

Cross References. Section 7740.6 is referred to in sections 7705, 7740 of this title.

§ 7740.7. Division of trusts.

(a) Without court approval.--A trustee may, without court approval, divide a trust into separate trusts, allocating to each separate trust either a fractional share of each asset and each liability held by the original trust or assets having an appropriate aggregate fair market value and fairly representing the appreciation or depreciation in the assets of the original trust as a whole. The beneficiaries of the separate trusts may be different so long as their rights are not impaired. If the division reflects disclaimers or different tax elections, the division shall relate back to the date to which the disclaimer or tax election relates.

(b) With court approval.--The court, for cause shown, may authorize the division of a trust into two separate trusts upon such terms and conditions and with notice as the court shall direct.

(c) Separate fund.--A trustee may, without court approval, set aside property in a separate fund prior to actual distribution, after which income earned on the separate fund and appreciation or depreciation of the fund set-aside shall belong to the separate fund.

Cross References. Section 7740.7 is referred to in section 7740 of this title.

§ 7740.8. Combination of trusts.

(a) With court approval.--The court, for cause shown, may authorize the combination of separate trusts with substantially similar provisions upon terms and conditions and with notice as the court shall direct notwithstanding that the trusts may have been created by separate instruments and by different persons. If necessary to protect possibly different future interests, the assets shall be valued at the time of the combination, and a record made of the proportionate interest of each separate trust in the combined fund.

(b) Without court approval.--A trustee may, without court approval, combine trusts that were created under the same or different instruments if the trusts have identical provisions, tax attributes and trustees.

Cross References. Section 7740.8 is referred to in section 7740 of this title.

SUBCHAPTER E
CREDITOR'S CLAIMS; SPENDTHRIFT AND
DISCRETIONARY TRUSTS

Sec.

- 7741. Rights of beneficiary's creditor or assignee - UTC 501.
- 7742. Spendthrift provision - UTC 502.
- 7743. Exceptions to spendthrift provision - UTC 503.
- 7744. Discretionary trusts; effect of standard - UTC 504.
- 7745. Creditor's claim against settlor - UTC 505(a).
- 7746. Overdue distribution - UTC 506.
- 7747. Personal obligations of trustee - UTC 507.
- 7748. Property subject to power of withdrawal - UTC 505(b).

Cross References. Subchapter E is referred to in sections 7701, 7705 of this title.

§ 7741. Rights of beneficiary's creditor or assignee - UTC 501.

A judgment creditor or assignee of the beneficiary may reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means to the extent the beneficiary's interest is not subject to a spendthrift provision.

§ 7742. Spendthrift provision - UTC 502.

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

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

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

§ 7743. Exceptions to spendthrift provision - UTC 503.

(a) (Reserved).

(b) Who may override.--A spendthrift provision is unenforceable against:

(1) a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance, to the extent of the beneficiary's interests in the income and principal of the trust;

(2) any other person who has a judgment or court order against the beneficiary for support or maintenance, to the extent of the beneficiary's interest in the trust's income;

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

(4) a claim of the United States or the Commonwealth to the extent Federal law or a statute of this Commonwealth provides.

(c) Remedy if unenforceable.--A claimant against whom a spendthrift provision cannot be enforced may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary. The court may limit the award to such relief as is appropriate under the circumstances.

(d) Definition.--As used in this section, the term "child" includes any person for whom an order or judgment for child support has been entered in this Commonwealth or another state.

§ 7744. Discretionary trusts; effect of standard - UTC 504.

(a) (Reserved).

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

- (1) the discretion is expressed in the form of a standard of distribution;
- (2) the trustee has abused the discretion; or
- (3) the beneficiary is the trustee or a cotrustee of the trust.

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

- (1) a distribution from the trust's income, principal or both may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child to the extent of the beneficiary's interests in the trust's income, principal or both, and the court shall direct the trustee to pay the child from the trust an amount as is equitable under the circumstances, but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion; and
- (2) a distribution from trust income may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of any person other than the beneficiary's child to the extent of the beneficiary's interest in the income of the trust, and the court shall direct the trustee to pay the person an amount from the income of the trust as is equitable under the circumstances, but not more than the amount of income the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

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

(e) (Reserved).

(f) Definition.--As used in this section, the term "child" includes any person for whom an order or judgment for child support has been entered in this Commonwealth or another state.

Cross References. Section 7744 is referred to in section 7745 of this title.

§ 7745. Creditor's claim against settlor - UTC 505(a).

Whether or not a trust instrument contains a spendthrift provision and notwithstanding section 7744 (relating to discretionary trusts; effect of standard - UTC 504):

- (1) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.
- (2) A judgment creditor or assignee of the settlor of an irrevocable trust may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the creditor or assignee of a particular settlor may reach the portion of the trust

attributable to that settlor's contribution. However, the assets of an irrevocable trust are not subject to the claims of a creditor of the settlor solely because of the existence of the trustee's discretionary power to pay directly to the taxing authorities or to reimburse the settlor for any income tax payable by the settlor attributable to trust income or principal.

(3) After the death of the settlor and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a revocable trust is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains and the family exemption to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses and exemption and no other statute specifically exempts the property from those claims.

(Oct. 27, 2010, P.L.837, No.85, eff. imd.)

2010 Amendment. Section 10(a)(1) of Act 85 provided that the amendment of section 7745 shall be retroactive to November 6, 2006.

§ 7746. Overdue distribution - UTC 506.

(a) Distribution not made within reasonable time.--Whether or not the interest of the beneficiary in the trust is subject to a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the mandated distribution date.

(b) Definition.--As used in this section, the term "mandatory distribution" means a distribution of income or principal that the trustee is required by the trust instrument to make to a beneficiary, including a distribution upon the termination of the trust. The term excludes a distribution that is subject to the exercise of the trustee's discretion regardless of whether the trust instrument includes a support or other standard to guide the trustee in making distribution decisions or provides that the trustee "may" or "shall" make discretionary distributions, including distributions pursuant to a support or other standard.

§ 7747. Personal obligations of trustee - UTC 507.

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

§ 7748. Property subject to power of withdrawal - UTC 505(b).

Trust property that is subject to a power of withdrawal, during the period the power may be exercised and after its lapse, release or waiver, may be reached by a creditor or an assignee of the holder of the power whether or not the interest of the holder in the trust is subject to a spendthrift provision.

SUBCHAPTER F
REVOCABLE TRUSTS

Sec.

- 7751. Capacity of settlor of revocable trust - UTC 601.
- 7752. Revocation or amendment of revocable trust - UTC 602.
- 7753. Trustee's duties; powers of withdrawal - UTC 603.
- 7754. Actions contesting validity of revocable trust.

7755. Claims and distribution after settlor's death.

Cross References. Subchapter F is referred to in section 7701 of this title.

§ 7751. Capacity of settlor of revocable trust - UTC 601.

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

§ 7752. Revocation or amendment of revocable trust - UTC 602.

(a) Power to revoke or amend.--The settlor may revoke or amend a trust unless the trust instrument expressly provides that the trust is irrevocable.

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

(1) to the extent the trust consists of community property, either spouse alone who notifies the other spouse may revoke the trust, but the trust may be amended only by joint action of both spouses;

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

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

(c) How to revoke or amend.--The settlor may revoke or amend a revocable trust only:

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

(2) if the trust instrument does not provide a method or the method provided in the trust instrument is not expressly made exclusive, by a later writing, other than a will or codicil, that is signed by the settlor and expressly refers to the trust or specifically conveys property that would otherwise have passed according to the trust instrument.

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

(e) Agent.--A settlor's powers with respect to revocation or amendment of the nondispositive provisions of or withdrawal of property from a trust may be exercised by an agent under a power of attorney only to the extent expressly authorized by the trust instrument or the power. The agent under a power of attorney that expressly authorizes the agent to do so may amend the dispositive provisions of a revocable trust as the court may direct.

(f) Guardian.--A guardian of the settlor's estate may exercise the settlor's powers with respect to revocation or amendment of or withdrawal of property from a revocable trust as the court may direct.

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

Applicability. Section 16(4)(ii) of Act 98 of 2006 provided that subsec. (a) shall not apply to trusts created before the effective date of par. (4)(ii).

§ 7753. Trustee's duties; powers of withdrawal - UTC 603.

(a) Power of settlor.--Regardless of the legal capacity of the settlor, the rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor while a trust is revocable.

(b) Holder of power of withdrawal.--The holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power during the period the power may be exercised.

§ 7754. Actions contesting validity of revocable trust.

(a) How action may be commenced.--A person having standing to do so may contest the validity of a revocable trust by filing a petition with the court.

(b) Time limit.--The petition described in subsection (a) must be filed no later than one year after the date on which the trustee gave the notice required by section 7780.3(c) (relating to duty to inform and report). The court, upon petition of a party in interest and with such notice as the court may direct, may limit the time by which a petition under this section must be filed to six months after the date on which the trustee gave the notice required by section 7780.3(c).

(c) Grounds for contest.--The grounds for contesting the validity of a revocable trust shall be the same as those for contesting the validity of a will.

(d) Competency of witnesses.--The competency of a witness in an action contesting the validity of a revocable trust shall be governed by the same rules that apply in actions contesting the validity of a will.

(Oct. 27, 2010, P.L.837, No.85, eff. 60 days)

2010 Amendment. Act 85 added subsec. (d).

§ 7755. Claims and distribution after settlor's death.

(a) Creditors' rights.--Creditors of the settlor of a revocable trust shall have the same rights against the trust assets determined immediately before the settlor's death as they have against the settlor's estate, but the assets of the settlor's estate shall be applied first toward satisfaction of the creditors' claims. This subsection shall not expose to creditors' claims trust assets for which other provisions of substantive law provide exemption from the claims of the settlor's creditors.

(b) Enforcement of claim against revocable trust.--A creditor may make a claim against a revocable trust by notifying the settlor's personal representative as provided in section 3384 (relating to notice of claim) or, if no personal representative has been appointed, by notifying the trustee according to the methods set forth in section 3384. A personal representative who receives notice shall within 20 days notify the trustee in writing and upon doing so shall have no liability under this section to the creditor.

(c) Trustee's duty to advertise.--

(1) A trustee of a revocable trust:

(i) May advertise at any time after the settlor's death.

(ii) Shall advertise if the first advertisement of the grant of letters by the settlor's personal representative does not occur within 90 days after the settlor's death.

(2) Advertisements by the trustee under this subsection shall be in the manner set forth in section 3162 (relating to advertisement of grant of letters), shall be done in the

jurisdiction of the deceased settlor's domicile and shall include:

(i) The fact of the trust's existence.

(ii) The trustee's name and address.

(3) The personal representative of the settlor of a revocable trust shall send to the trustee copies of the proof of publication of the advertisement of the grant of letters.

(d) Liability of personal representative.--A personal representative who has received the notice required by section 7780.3(c) (relating to duty to inform and report) and does not notify the trustee of a revocable trust of a creditor's claim known to the personal representative within one year after the first complete advertisement of the grant of letters to the personal representative shall be liable to the creditor to the extent the creditor's interest is prejudiced thereby. A personal representative shall have no liability under this section to a creditor whose claim is not known to the personal representative within one year after the first complete advertisement of the grant of letters to the personal representative. The provisions of this section shall not affect the liability of the settlor's personal representative under other provisions of law.

(e) Liability to any creditor.--At the trustee's own risk and without the filing, audit or confirmation of the trustee's account, a trustee of a revocable trust who has either given the settlor's personal representative the notice required by section 7780.3(c) or given the notice required by subsection (c) may distribute real or personal property of the revocable trust. That distribution shall be without liability to any creditor of the settlor unless the claim of that creditor is known to the trustee within 13 months after the first complete advertisement of the grant of letters to the personal representative or, if no personal representative has been appointed, within one year after the first complete advertisement under subsection (c).

(f) Rights of creditors against distributed property.--

(1) No creditor shall have any claim against personal property distributed by the trustee of a revocable trust at the trustee's own risk under subsection (e) unless the claim of the creditor is known to the trustee within 13 months after the first complete advertisement of the grant of letters to the personal representative or, if no personal representative has been appointed, within one year after the first complete advertisement of the trust under subsection (c).

(2) No creditor shall have any claim against real property distributed by the trustee of a revocable trust at the trustee's own risk under subsection (e) unless the creditor, within one year after the settlor's death, files a written notice of claim with the clerk. The claim against real property shall expire at the end of five years after the settlor's death unless within that time the trustee files an account or the creditor files a petition to compel an accounting.

(g) Judicial principles.--In any proceeding by a creditor against a trustee or beneficiary of a revocable trust, the court shall apply principles analogous to:

(1) section 3387 (relating to claims not due; certain to become due);

(2) section 3388 (relating to claims not certain to become due);

(3) section 3392 (relating to classification and order of payment); and

(4) section 3393 (relating to notice to Commonwealth and political subdivisions).
(Oct. 27, 2010, P.L.837, No.85, eff. 60 days)

2010 Amendment. Act 85 amended subsec. (c).

SUBCHAPTER G
OFFICE OF TRUSTEE

Sec.

- 7761. Accepting or declining trusteeship - UTC 701.
- 7762. Trustee's bond - UTC 702.
- 7763. Cotrustees - UTC 703.
- 7764. Vacancy in trusteeship; appointment of successor - UTC 704.
- 7765. Resignation of trustee; filing resignation.
- 7766. Removal of trustee - UTC 706.
- 7767. Delivery of property by former trustee - UTC 707.
- 7768. Compensation of trustee - UTC 708.
- 7769. Reimbursement of expenses - UTC 709.
- 7770. Liability of successor trustee.

Cross References. Subchapter G is referred to in section 7701 of this title.

§ 7761. Accepting or declining trusteeship - UTC 701.

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

- (1) by substantially complying with a method of acceptance provided in the trust instrument; or
- (2) if the trust instrument does not provide a method or the method provided in the trust instrument is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee or by otherwise indicating acceptance of the trusteeship.

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

(c) Actions not constituting acceptance of trusteeship.--A person designated as trustee, without accepting the trusteeship, may:

- (1) act to preserve the trust property if, within a reasonable time after acting, the person sends a written rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary; and
- (2) inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

§ 7762. Trustee's bond - UTC 702.

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

(b) Judicial authority.--The court may specify the amount of a bond, its liabilities and whether sureties are necessary. The court may modify or terminate a bond at any time.

(c) Institutional trustees.--An institution qualified to do trust business in this Commonwealth need not give bond even if required by the trust instrument.

Cross References. Section 7762 is referred to in section 7705 of this title.

§ 7763. Cotrustees - UTC 703.

(a) Majority decision.--Cotrustees who do not reach a unanimous decision may act by majority decision.

(a.1) When no majority.--When a dispute arises among trustees as to the exercise or nonexercise of any of their powers and there is no agreement by a majority of them, unless otherwise provided by the trust instrument, the court in its discretion, upon petition filed by any of the trustees or any party in interest, aided if necessary by the report of a master, may direct the exercise or nonexercise of the power as it deems necessary for the best interest of the trust.

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

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

(d) Unavailability.--If a cotrustee is unavailable to perform duties and prompt action is necessary to achieve the purposes of the trust or to avoid injury or loss to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) (Reserved).

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

(g) Reasonable care.--Each trustee shall exercise reasonable care to:

- (1) prevent a cotrustee from committing a breach of trust involving fraud or self-dealing; and
- (2) compel a cotrustee to redress a breach of trust involving fraud or self-dealing.

(h) Dissenting trustee.--A dissenting trustee shall join the majority to carry out a majority decision requiring affirmative action and may be ordered to do so by the court. A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a breach of trust involving fraud or self-dealing.

§ 7764. Vacancy in trusteeship; appointment of successor - UTC 704.

(a) When vacancy occurs.--A vacancy in a trusteeship occurs if:

- (1) a person designated as trustee rejects the trusteeship;
- (2) a person designated as trustee cannot be identified or does not exist;
- (3) a trustee resigns;
- (4) a trustee is disqualified or removed;
- (5) a trustee dies; or
- (6) a trustee is determined by the court to be incapacitated pursuant to section 5511 (relating to petition and hearing; independent evaluation).

(b) Filling of vacancy.--A vacancy in a trusteeship need not be filled if one or more cotrustees remain in office and the trust instrument does not require that it be filled. A vacancy shall be filled if the trust has no remaining trustee.

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

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

(2) by a person appointed by unanimous written agreement of the qualified beneficiaries; or

(3) by a person appointed by the court.

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

(1) by a person designated in or under the provisions of the trust instrument to act as successor trustee;

(2) by a person selected by unanimous written agreement of the qualified beneficiaries if the Office of Attorney General concurs in the selection; or

(3) by a person appointed by the court.

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

(f) Filing appointment.--An appointment of a trustee and an acceptance of an appointment of a trustee may be filed with the clerk of court having jurisdiction over the trust.

Cross References. Section 7764 is referred to in section 7708 of this title.

§ 7765. Resignation of trustee; filing resignation.

(a) Court approval.--A trustee may resign with court approval.

(b) Without court approval if authorized by trust instrument.--A trustee may resign without court approval if authorized to resign by the trust instrument.

(c) Without court approval and without authorization in trust instrument.--

(1) Unless expressly provided to the contrary in the trust instrument, an individual trustee may resign without court approval and without authorization in the trust instrument if:

(i) there is at least one cotrustee and all cotrustees consent in writing to the resignation; and

(ii) all the qualified beneficiaries consent in writing to the resignation.

(2) This subsection shall not authorize the sole trustee of a trust to resign unless the trust instrument names a successor trustee or provides a method for appointing a successor trustee, and in either case the resignation shall not be effective until the successor trustee accepts the appointment in writing.

(d) Liability.--The resignation of a trustee shall not by itself relieve the resigning trustee of liability in connection with the administration of the trust.

(e) Filing resignation.--A resignation of a trustee may be filed with the clerk of the court having jurisdiction over the trust.

§ 7766. Removal of trustee - UTC 706.

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

(b) When court may remove trustee.--The court may remove a trustee if it finds that removal of the trustee best serves the interests of the beneficiaries of the trust and is not inconsistent with a material purpose of the trust, a suitable cotrustee or successor trustee is available and:

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

(3) the trustee has not effectively administered the trust because of the trustee's unfitness, unwillingness or persistent failures; or

(4) there has been a substantial change of circumstances. A corporate reorganization of an institutional trustee, including a plan of merger or consolidation, is not itself a substantial change of circumstances.

(c) Court remedies.--Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order appropriate relief under section 7781(b) (relating to remedies for breach of trust - UTC 1001) as may be necessary to protect the trust property or the interests of the beneficiaries.

(d) Procedure.--The procedure for removal and discharge of a trustee and the effect of removal and discharge shall be the same as that set forth in sections 3183 (relating to procedure for and effect of removal) and 3184 (relating to discharge of personal representative and surety).

(e) Cross reference.--See section 1608 of the act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965.

(Oct. 27, 2010, P.L.837, No.85, eff. 60 days)

2010 Amendment. Act 85 amended subsec. (b) and added subsec. (e).

Cross References. Section 7766 is referred to in section 7781 of this title.

§ 7767. Delivery of property by former trustee - UTC 707.

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

(b) Delivery of trust property.--A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee or other person entitled to it.

§ 7768. Compensation of trustee - UTC 708.

(a) If unspecified.--If neither the trust instrument nor a separate written agreement signed by the settlor or anyone who is authorized by the trust instrument to do so specifies the trustee's compensation, the trustee is entitled to compensation that is reasonable under the circumstances. Neither a compensation provision in a trust instrument nor a fee agreement governs compensation payable from trust principal unless it explicitly so provides.

(b) If specified; adjustment.--If a trust instrument or written fee agreement signed by the settlor or anyone who is authorized by the trust instrument to do so specifies a

trustee's compensation, the trustee is entitled to the specified compensation. The court may allow reasonable compensation that is more or less than that specified if:

(1) the duties of the trustee have become substantially different from those contemplated when the trust was created or when the fee agreement was executed;

(2) the compensation specified in the trust instrument or fee agreement would be unreasonable; or

(3) the trustee performed extraordinary services, and the trust instrument or fee agreement does not specify the trustee's compensation for those services.

(c) Entitlement not barred.--None of the following shall bar a trustee's entitlement to compensation from the income or principal of the trust:

(1) The trust is perpetual or for any other reason has not yet terminated.

(2) The trustee's term of office has not yet ended.

(3) The trustee of a testamentary trust also acted as a personal representative of the settlor and was or might have been compensated for services as a personal representative from the principal of the settlor's estate.

(d) Court authority.--In determining reasonable compensation, the court may consider, among other facts, the market value of the trust and may determine compensation as a fixed or graduated percentage of the trust's market value. The court may allow compensation from principal, income or both and determine the frequency with which compensation may be collected. Compensation at levels that arise in a competitive market shall be presumed to be reasonable in the absence of compelling evidence to the contrary.

(e) Cemetery lots.--The authority in this section to pay compensation from trust principal shall not apply to trusts created by cemetery lot owners as endowments for the endowed care and maintenance of burial or cemetery lots if the principal sum involved is less than \$20,000. Compensation shall be paid exclusively from the income of such trusts.

Cross References. Section 7768 is referred to in section 7705 of this title.

§ 7769. Reimbursement of expenses - UTC 709.

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

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

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

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

§ 7770. Liability of successor trustee.

A successor trustee shall not be personally liable for the acts or omissions of the trustee's predecessor and shall have no duty to investigate the acts or omissions of the predecessor.

Cross References. Section 7770 is referred to in section 7780.1 of this title.

Sec.

- 7771. Duty to administer trust - UTC 801.
- 7772. Duty of loyalty - UTC 802.
- 7773. Impartiality - UTC 803.
- 7774. Prudent administration - UTC 804.
- 7775. Costs of administration - UTC 805.
- 7776. Trustee's skills - UTC 806.
- 7777. Delegation by trustee.
- 7778. Powers to direct - UTC 808.
- 7779. Control and protection of trust property - UTC 809.
- 7780. Recordkeeping and identification of trust property - UTC 810.
- 7780.1. Enforcement and defense of claims - UTC 811.
- 7780.2. (Reserved).
- 7780.3. Duty to inform and report.
- 7780.4. Discretionary powers.
- 7780.5. Powers of trustees - UTC 815.
- 7780.6. Illustrative powers of trustee.
- 7780.7. Distribution upon termination.

Cross References. Subchapter H is referred to in section 7701 of this title.

§ 7771. Duty to administer trust - UTC 801.

Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its provisions and purposes and the interests of the beneficiaries and in accordance with applicable law.

Cross References. Section 7771 is referred to in section 7705 of this title.

§ 7772. Duty of loyalty - UTC 802.

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

(b) Effect of conflict of interest.--Subject to the rights of persons dealing with or assisting the trustee as provided in section 7790.2 (relating to protection of person dealing with trustee - UTC 1012), a sale, purchase, exchange, encumbrance or other disposition of property between a trust and either the trustee in the trustee's individual capacity or one of the persons identified in subsection (c) is voidable by a court upon application by a beneficiary affected by the transaction unless:

- (1) the transaction was authorized by the trust instrument;
- (2) the transaction was approved by the court;
- (3) the beneficiary did not commence a judicial proceeding within the time allowed by section 7785 (relating to limitation of action against trustee);
- (4) the beneficiary consented to the trustee's conduct, ratified the transaction or released the trustee in compliance with section 7789 (relating to beneficiary's consent, release or ratification - UTC 1009); or
- (5) the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming a trustee.

(c) What constitutes conflict of interest.--A sale, purchase, exchange, encumbrance or other disposition of property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

- (1) the trustee's spouse;
- (2) the trustee's parent or a spouse of the parent;

(3) a descendant of the trustee's parent or a spouse of the descendant;

(4) an agent of the trustee unless the trustee is a corporation and the agent is an affiliate of the corporation or the transaction is authorized by section 7209 (relating to mutual funds);

(5) a corporation or other person or enterprise in which the trustee or a person that owns a significant interest in the trustee has an interest that might affect the trustee's judgment, but this paragraph does not apply to an affiliate of a corporate trustee or to a transaction authorized by section 7209; or

(6) the trustee personally.

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

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

(f) (Reserved).

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

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

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

(2) payment of reasonable compensation to the trustee and payment of reasonable compensation to affiliates of a corporate trustee if the compensation is disclosed to the current beneficiaries;

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

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

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

(6) a transaction authorized by section 7209.

(i) (Reserved).

§ 7773. Impartiality - UTC 803.

If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing and distributing the trust property, giving due regard to the beneficiaries' respective interests in light of the purposes of the trust. The duty to act impartially does not mean that the trustee must treat the beneficiaries equally. Rather, the trustee must treat the beneficiaries equitably in light of the purposes of the trust.

§ 7774. Prudent administration - UTC 804.

A trustee shall administer the trust as a prudent person would, by considering the purposes, provisions, distributional requirements and other circumstances of the trust and by exercising reasonable care, skill and caution.

§ 7775. Costs of administration - UTC 805.

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

§ 7776. Trustee's skills - UTC 806.

A trustee who has special skills or expertise relevant to a trust or who is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise relevant to a trust shall use those special skills or expertise in the administration of the trust.

§ 7777. Delegation by trustee.

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

- (1) selecting an agent;
- (2) establishing the scope and specific terms of the delegation, consistent with the purposes and provisions of the trust; and
- (3) reviewing periodically the agent's actions in order to monitor the agent's performance and compliance with the scope and specific terms of the delegation.

(b) Agent's duty.--The agent shall comply with the scope and terms of the delegation and shall exercise the delegated duties and powers with reasonable care, skill and caution and shall be liable to the trust for failure to do so. An agent who represents having special skills or expertise shall use those special skills or that expertise.

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

(d) Jurisdiction.--An agent who accepts the delegation of duties or powers from a trustee who is subject to the jurisdiction of a court of this Commonwealth shall be deemed to have submitted to the jurisdiction of that court even if the terms of the delegation provide for a different jurisdiction or venue.

(e) When one trustee may delegate to another.--A trustee may delegate duties and powers to another trustee if the delegating trustee reasonably believes that the other trustee has greater skills than the delegating trustee with respect to those duties and powers and the other trustee accepts the delegation. The delegating trustee shall not be responsible for the decisions, actions or inactions of the trustee to whom those duties and powers have been delegated if the delegating trustee has exercised reasonable care, skill and caution in establishing the scope and specific terms of the delegation and in reviewing periodically the performance of the trustee to whom the duties and powers have been delegated and that trustee's compliance with the scope and specific terms of the delegation.

§ 7778. Powers to direct - UTC 808.

(a) Direction of settlor.--While a trust is revocable, the trustee may follow a written direction of the settlor that is contrary to the trust instrument.

(b) Compliance with power.--If a trust instrument confers upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act

in accordance with a written exercise of the power unless the attempted exercise is manifestly contrary to the trust instrument or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

(c) Modification or termination of trust.--A trust instrument may confer upon a trustee or other person a power to modify or terminate the trust.

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

§ 7779. Control and protection of trust property - UTC 809.

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

§ 7780. Recordkeeping and identification of trust property - UTC 810.

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

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

(c) Designating trust property.--Except as otherwise provided in subsection (d) and section 3321 (relating to nominee registration; corporate fiduciary as agent; deposit of securities in a clearing corporation; book-entry securities), a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(d) Investing property of separate trusts.--If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

§ 7780.1. Enforcement and defense of claims - UTC 811.

Except as provided in section 7770 (relating to liability of successor trustee), a trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust. When one of several trustees is individually liable to the trust, the other trustee or trustees shall take any legal action against that trustee necessary to protect the trust.

§ 7780.2. (Reserved).

§ 7780.3. Duty to inform and report.

(a) Duty to respond to requests.--A trustee shall promptly respond to a reasonable request by the settlor of a trust or by a beneficiary of an irrevocable trust for information related to the trust's administration. A trustee shall promptly respond to the Department of Public Welfare's reasonable request for information related to the trust's administration when a settlor or beneficiary is a resident in a State-owned facility or an applicant for or recipient of cash or medical assistance from the Commonwealth and the department certifies in writing that it has obtained a currently valid consent for the disclosure of such information from the settlor or beneficiary of the trust. A trustee may rely upon the department's certification without investigating its accuracy.

(b) Notice after settlor of revocable trust has been adjudicated incapacitated.--No later than 30 days after the date on which the trustee of a revocable trust learns that the settlor has been adjudicated incapacitated, the trustee shall

send the notice described in subsection (i) to the settlor's guardian.

(c) Notice after settlor of revocable trust has died.--No later than 30 days after the date on which the trustee of a revocable trust learns that the settlor has died, the trustee shall send the notice described in subsection (i) to:

- (1) the settlor's personal representative;
- (2) the settlor's spouse or, if the settlor's spouse is incapacitated, the spouse's guardian;
- (3) each of the settlor's children who is sui juris and the guardian, if any, of each child who is not sui juris; and
- (4) the trust's current beneficiaries.

(d) Notice after settlor of irrevocable trust has been adjudicated incapacitated.--No later than 30 days after the date on which the trustee of an irrevocable trust learns that the settlor has been adjudicated incapacitated, the trustee shall send the notice described in subsection (i) to the trust's current beneficiaries. A revocable trust shall not be deemed irrevocable for the purposes of this subsection merely because the settlor has been adjudicated incapacitated.

(e) Notice after settlor of irrevocable trust has died.--No later than 30 days after the date on which the trustee of an irrevocable trust learns that the settlor has died, the trustee shall send the notice described in subsection (i) to the trust's current beneficiaries unless the settlor had been adjudicated incapacitated and the trustee sent notices to the current beneficiaries as required by subsection (d).

(f) Notice to current beneficiaries.--No later than 30 days after the date on which the trustee of an irrevocable trust learns that a person who did not previously receive the notice described in subsection (i) is a current beneficiary of the trust, the trustee shall send the notice described in subsection (i) to the current beneficiary if, at that time, the trustee knows that the settlor is then deceased or has been adjudicated incapacitated. With respect to a testamentary trust, the time specified in this subsection commences to run when the trust is first funded, whether or not the trust is completely funded on that date.

(g) Change in trusteeship.--

- (1) Each time there is a change in trusteeship of any trust, the trustee shall notify the settlor in writing of the change.
- (2) Each time there is a change in trusteeship of any trust whose settlor is deceased or of an irrevocable trust whose settlor has been adjudicated incapacitated, the trustee shall notify the current beneficiaries in writing of the change.
- (3) Notice under this subsection shall include the trustee's name, address and telephone number.

(h) Trustee's notice to any beneficiary at any time.--Apart from the requirements of this section, the trustee may send the notice described in subsection (i) to any beneficiary of the trust at any time.

(i) Contents of notice.--Except as provided in subsection (g), any notice under this section shall be written and convey the following information:

- (1) The fact of the trust's existence.
- (2) The identity of the settlor.
- (3) The trustee's name, address and telephone number.
- (4) The recipient's right to receive upon request a copy of the trust instrument.

(5) Each current beneficiary's right to receive, at least annually, upon request, periodic written financial reports concerning the trust.

(j) Waiver.--Any beneficiary may waive in writing the right to receive the notice described in subsection (i) and thereafter may rescind in writing that waiver.

(k) Notice to settlor's appointee.--The settlor of a trust may in the trust instrument appoint one or more persons or a succession of persons to receive, on behalf of one or more named current beneficiaries of the trust, the notices required by this section. The trustee giving the notice required by this section to that appointee satisfies the trustee's duty to give to the named current beneficiary the notice required by this section if:

(1) the trustee notifies the appointee that the notice is being given to the appointee as representing the named current beneficiary; and

(2) the appointee does not decline to receive the notice in a writing delivered to the trustee no later than 30 days after receipt of the trustee's notice.

(l) Applicability.--

(1) If the death or adjudication of incapacity described in subsection (b), (c), (d) or (e) occurs on or after November 6, 2006, the time limit for notice set forth in that subsection shall apply.

(2) If the death or adjudication of incapacity described in subsection (b), (d) or (e) has occurred before November 6, 2006, the time limit for notice set forth in that subsection shall be November 6, 2008.

(3) The notice under subsection (f) shall not be required to be completed until two years after November 6, 2006.

(Oct. 27, 2010, P.L.837, No.85)

2010 Amendment. Act 85 amended subsecs. (a), (f), (g), (i), (k) and (l), effective immediately as to subsec. (l)(2) and in 60 days as to subsecs. (a), (f), (g), (i), (k) and (l)(1) and (3). Section 10(a)(2) of Act 85 provided that the amendment of subsec. (l)(2) shall be retroactive to November 6, 2006.

References in Text. The Department of Public Welfare, referred to in this section, was redesignated as the Department of Human Services by Act 132 of 2014.

Cross References. Section 7780.3 is referred to in sections 3162, 3384.1, 7705, 7754, 7755, 7785 of this title.

§ 7780.4. Discretionary powers.

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

§ 7780.5. Powers of trustees - UTC 815.

(a) Exercise of power.--Except as otherwise provided in the trust instrument or in other provisions of this title, a trustee has all the powers over the trust property that an unmarried competent owner has over individually owned property and may exercise those powers without court approval from the time of creation of the trust until final distribution of the assets of the trust.

(b) (Reserved).

Cross References. Section 7780.5 is referred to in sections 7780.6, 7790.2 of this title.

§ 7780.6. Illustrative powers of trustee.

(a) Listing.--The powers which a trustee may exercise pursuant to section 7780.5 (relating to powers of trustees - UTC 815) include the following powers:

(1) To accept, hold, invest in and retain investments as provided in Chapter 72 (relating to prudent investor rule).

(2) To pay or contest a claim; settle a claim by or against the trust by compromise, arbitration or otherwise; and release, in whole or in part, any claim belonging to the trust.

(3) To resolve a dispute regarding the interpretation of the trust or the administration of the trust by mediation, arbitration or other alternative dispute resolution procedures.

(4) To prosecute or defend actions, claims or proceedings for the protection of trust assets and of the trustee in the performance of the trustee's duties.

(5) To abandon or decline to administer any property which is of little or no value, transfer title to abandoned property and decline to accept title to and administer property which has or may have environmental or other liability attached to it.

(6) To insure the assets of the trust against damage or loss and, at the expense of the trust, protect the trustee, the trustee's agents and the beneficiaries from liability to third persons arising from the administration of the trust.

(7) To advance money for the protection of the trust and for all expenses, losses and liability sustained in the administration of the trust or because of the holding or ownership of any trust assets. The trustee has a lien on the trust assets as against the beneficiary for an advance under this paragraph, including interest on the advance.

(8) To pay taxes, assessments, compensation of the trustee and employees and agents of the trustee and other expenses incurred in the administration of the trust.

(9) To receive additions to the assets of the trust.

(10) To sell or exchange any real or personal property at public or private sale, without obligation to repudiate an otherwise binding agreement in favor of better offers. If the trustee has been required to give bond, no proceeds of the sale of real estate, including proceeds arising by the reason of involuntary conversion, shall be paid to the trustee until:

(i) the court has made an order excusing the trustee from entering additional security; or

(ii) the court has made an order requiring additional security and the trustee has entered the additional security.

(11) To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.

(12) To grant options for sales or leases of a trust asset and acquire options for the acquisition of assets, including options exercisable after the trust terminates.

(13) To join in any reorganization, consolidation, merger, dissolution, liquidation, voting trust plan or other concerted action of securityholders and to delegate discretionary duties with respect thereto.

(14) To vote a security, in person or by general or limited proxy, with or without power of substitution.

(15) To borrow funds and mortgage or pledge trust assets as security for repayment of the funds borrowed, including repayments after the trust terminates.

(16) To make loans to and buy property from the personal representatives of the settlor and the settlor's spouse. Loans under this paragraph shall be adequately secured, and the purchases under this paragraph shall be for fair market value.

(17) To partition, subdivide, repair, improve or develop real estate; enter into agreements concerning the partition, subdivision, repair, improvement, development, zoning or management of real estate; impose or extinguish restrictions on real estate; dedicate land and easements to public use; adjust boundaries; and do anything else regarding real estate which is commercially reasonable or customary under the circumstances.

(18) With respect to possible liability for violation of environmental law:

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

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

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

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

(v) to pay the expense of inspection, review, abatement or remedial action to comply with environmental law.

(19) To operate, repair, maintain, equip and improve any farm or farm operation; to purchase and sell livestock, crops, feed and other property that is normally perishable; and to purchase, use and dispose of farm equipment and employ one or more farm managers and others in connection with farm equipment and pay them reasonable compensation.

(20) To make ordinary or extraordinary repairs or alterations in buildings or other structures; demolish improvements; and raze existing or erect new party walls or buildings.

(21) To enter into a lease or arrangements for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.

(22) To exercise all rights and incidents of ownership of life insurance policies held by the trust, including borrowing on policies, entering into and terminating split-dollar plans, exercising conversion privileges and rights to acquire additional insurance and selecting settlement options.

(23) To employ a custodian; hold property unregistered or in the name of a nominee, including the nominee of any

institution employed as custodian, without disclosing the fiduciary relationship and without retaining possession and control of securities or other property so held or registered; and pay reasonable compensation to the custodian.

(24) To apply funds distributable to a beneficiary who is, in the trustee's opinion, disabled by illness or other cause and unable properly to manage the funds directly for the beneficiary's benefit or to pay such funds for expenditure on the beneficiary's behalf to:

- (i) the beneficiary;
- (ii) a guardian of the beneficiary's estate;
- (iii) an agent acting under a general power of attorney for the beneficiary; or
- (iv) if there is no agent or guardian, a relative or other person having legal or physical custody or care of the beneficiary.

(25) To pay funds distributable to a minor beneficiary to the minor or to a guardian of the minor's estate or to apply the funds directly for the minor's benefit.

(26) To do any of the following:

- (i) Pay any funds distributable to a beneficiary who is not 21 years of age or older to:
 - (A) the beneficiary;
 - (B) an existing custodian for the beneficiary under Chapter 53 (relating to Pennsylvania Uniform Transfers to Minors Act) or under any other state's version of the Uniform Transfers to Minors Act;
 - (C) an existing custodian for the beneficiary under the former Pennsylvania Uniform Gifts to Minors Act or under any other state's version of the Uniform Gifts to Minors Act; or
 - (D) a custodian for the beneficiary appointed by the trustee under Chapter 53.

(ii) Apply the funds for the beneficiary.

(27) To pay calls, assessments and other sums chargeable or accruing against or on account of securities.

(28) To sell or exercise stock subscription or conversion rights.

(29) To continue or participate in the operation of any business or other enterprise and to effect incorporation, merger, consolidation, dissolution or other change in the form of the organization of the business or enterprise.

(30) To select a mode of payment under a qualified employee benefit plan or a retirement plan payable to the trustee and exercise rights under the plan.

(31) To distribute in cash or in kind or partly in each and allocate particular assets in proportionate or disproportionate shares.

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

(33) To exercise elections with respect to Federal, State and local taxes.

(34) To execute and deliver instruments which will accomplish or facilitate the exercise of the trustee's powers.

(b) Effect.--The trustee shall have no further responsibility or liability for funds upon any of the following:

- (1) Payment under subsection (a)(24).

- (2) Payment under subsection (a)(25).
 - (3) Payment or application under subsection (a)(26).
- (Oct. 27, 2010, P.L.837, No.85, eff. imd.)

2010 Amendment. Act 85 amended subsec. (a). Section 10(a)(3) of Act 85 provided that the amendment of subsec. (a) shall be retroactive to November 6, 2006.

Cross References. Section 7780.6 is referred to in section 7790.2 of this title.

§ 7780.7. Distribution upon termination.

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

SUBCHAPTER I

**LIABILITY OF TRUSTEES AND RIGHTS
OF PERSONS DEALING WITH TRUSTEES**

Sec.

- 7781. Remedies for breach of trust - UTC 1001.
- 7782. Damages for breach of trust - UTC 1002.
- 7783. Damages in absence of breach - UTC 1003.
- 7784. (Reserved).
- 7785. Limitation of action against trustee.
- 7786. Reliance on trust instrument - UTC 1006.
- 7787. Event affecting administration or distribution - UTC 1007.
- 7788. Exculpation of trustee - UTC 1008.
- 7789. Beneficiary's consent, release or ratification - UTC 1009.
- 7790. Limitation on personal liability of trustee - UTC 1010.
- 7790.1. Interest as general partner - UTC 1011.
- 7790.2. Protection of person dealing with trustee - UTC 1012.
- 7790.3. Certification of trust - UTC 1013.

Cross References. Subchapter I is referred to in section 7701 of this title.

§ 7781. Remedies for breach of trust - UTC 1001.

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

(b) Remedies.--To remedy a breach of trust that has occurred or may occur, the court may order any appropriate relief, including the following:

- (1) Compelling the trustee to perform the trustee's duties.
- (2) Enjoining the trustee from committing a breach of trust.
- (3) Compelling the trustee to redress a breach of trust by paying money, restoring property or other means.
- (4) Ordering a trustee to file an account.
- (5) Taking any action authorized by Chapter 43 (relating to temporary fiduciaries).
- (6) (Reserved).
- (7) Removing the trustee as provided in section 7766 (relating to removal of trustee - UTC 706).
- (8) Reducing or denying compensation to the trustee.

(9) Subject to section 7790.2 (relating to protection of person dealing with trustee - UTC 1012):

- (i) voiding an act of the trustee;
 - (ii) imposing a lien or a constructive trust on trust property; or
 - (iii) tracing trust property wrongfully disposed of and recovering the property or its proceeds.
- (10) (Reserved).

Cross References. Section 7781 is referred to in section 7766 of this title.

§ 7782. Damages for breach of trust - UTC 1002.

(a) Liability for breach of trust.--A trustee who commits a breach of trust is liable to the beneficiaries affected.

(b) Contribution.--

(1) Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees.

(2) A trustee is not entitled to contribution if the trustee:

- (i) was substantially more at fault than another trustee; or
- (ii) committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries.

(3) A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

§ 7783. Damages in absence of breach - UTC 1003.

(a) Profit.--A trustee is accountable to an affected beneficiary for any profit, excluding reasonable compensation, made by the trustee arising from the administration of the trust, even absent a breach of trust.

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

§ 7784. (Reserved).

§ 7785. Limitation of action against trustee.

(a) Imposed by trustee's written reports.--

(1) A beneficiary is barred from challenging a transaction or asserting a claim against a trustee for breach of trust if:

- (i) the trustee provided the beneficiary at least annually with periodic written financial reports concerning the trust;
- (ii) the transaction was disclosed in a report to which subparagraph (i) refers or such report provided sufficient information so that the beneficiary knew or should have known of the potential claim or should have inquired into its existence;
- (iii) in the 30 months after a report to which subparagraph (ii) refers was sent by the trustee to the beneficiary, the beneficiary did not notify the trustee in writing that the beneficiary challenges the transaction or asserts a claim and provides in writing the basis for that challenge or assertion; and
- (iv) all reports were accompanied by a conspicuous written statement describing the effect of this paragraph.

(2) A claim not barred by paragraph (1) may nevertheless be barred by subsection (b).

(b) Five-year absolute bar.--If not previously barred by subsection (a) or section 7798 (relating to failure to present claim at audit):

(1) Except as provided in paragraph (1.1), (2) or (3), a claim by a beneficiary against a trustee, including a claim preserved by the beneficiary notifying the trustee in the manner described in subsection (a), shall be barred five years after the first to occur of the following events:

(i) the date after the removal, resignation or death of the trustee on which the beneficiary was given the notice required by section 7780.3(g) (relating to duty to inform and report);

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

(iii) the termination of the trust.

(1.1) A beneficiary who has challenged a transaction or asserted a claim as provided in subsection (a)(1)(iii) may not challenge the transaction or assert the claim against the trustee in a court or an arbitration proceeding commenced more than five years after the date the trustee sent the beneficiary the report described in subsection (a)(1)(i) and (ii).

(2) Except as set forth in paragraph (3), if the first to occur of the events set forth in paragraph (1) occurred before November 6, 2006, a claim described in paragraph (1) shall be barred five years after November 6, 2006.

(3) A claim described in paragraph (1) or (1.1) is not barred if, prior to the respective date set forth in either paragraph (1) or (2), the trustee has filed an account with the court or the beneficiary has petitioned the court to compel the trustee to file an account.

(Oct. 27, 2010, P.L.837, No.85, eff. 60 days)

Cross References. Section 7785 is referred to in section 7772 of this title.

§ 7786. Reliance on trust instrument - UTC 1006.

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

§ 7787. Event affecting administration or distribution - UTC 1007.

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

§ 7788. Exculpation of trustee - UTC 1008.

(a) When exculpatory provision unenforceable.--A provision of a trust instrument relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

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

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

(b) Exculpatory provision by trustee.--An exculpatory term drafted or caused to be drafted by the trustee is invalid as an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the settlor.

Cross References. Section 7788 is referred to in section 7705 of this title.

§ 7789. Beneficiary's consent, release or ratification - UTC 1009.

A trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the conduct constituting the breach, released the trustee from liability for the breach or ratified the transaction constituting the breach, unless the consent, release or ratification of the beneficiary was induced by improper conduct of the trustee.

Cross References. Section 7789 is referred to in section 7772 of this title.

§ 7790. Limitation on personal liability of trustee - UTC 1010.

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

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

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

Cross References. Section 7790 is referred to in section 7705 of this title.

§ 7790.1. Interest as general partner - UTC 1011.

(a) Contractual liability.--Except as otherwise provided in subsection (c) or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to 15 Pa.C.S. Ch. 83 (relating to general partnerships) or 85 (relating to limited partnerships).

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

(c) When immunity inapplicable.--The immunity provided by this section does not apply if an interest in the partnership is held by:

- (1) the trustee in a capacity other than that of trustee;
- (2) the trustee's spouse; or

(3) the trustee's descendant, sibling or parent or the spouse of a descendant, sibling or parent.

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

Cross References. Section 7790.1 is referred to in section 7705 of this title.

§ 7790.2. Protection of person dealing with trustee - UTC 1012.

(a) (Reserved).

(a.1) Protection from liability.--Unless a person assisting or dealing with a trustee has actual knowledge that the trustee is committing a breach of trust or has knowledge of such facts that the trustee's conduct amounts to bad faith, the person:

(1) may assume without inquiry the existence of trust powers and their proper exercise by the trustee;

(2) is not bound to inquire whether the trustee has power to act or is properly exercising the power; and

(3) is fully protected in dealing with the trustee as if the trustee possessed and properly exercised the powers the trustee purports to exercise.

(b) No requirement to inquire.--A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

(c) (Reserved).

(c.1) Ultra vires.--A trustee's act may not be set aside or not specifically enforced because the trustee's act was not authorized by section 7780.5 (relating to powers of trustees - UTC 815) or 7780.6 (relating to illustrative powers of trustee) or because the trustee's act was authorized but the authority was improperly exercised. A court's power to set aside a transaction for fraud, accident, mistake or self-dealing is unaffected by this subsection.

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

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

Cross References. Section 7790.2 is referred to in sections 7705, 7772, 7781 of this title.

§ 7790.3. Certification of trust - UTC 1013.

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

(1) The trust's existence and the date the trust instrument was executed.

(2) The identity of the settlor.

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

(4) The powers of the trustee.

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

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

(7) The trust's taxpayer identification number.

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

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

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

(d) Dispositive trust provisions.--A certification of trust need not contain the dispositive provisions of the trust instrument.

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

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

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

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

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

Cross References. Section 7790.3 is referred to in section 7705 of this title.

SUBCHAPTER J MISCELLANEOUS PROVISIONS

Sec.

- 7791. Abandonment of property.
- 7792. Powers, duties and liabilities identical with personal representatives.
- 7793. Effect of removal, or of probate of later will or codicil.
- 7794. Title of purchaser.
- 7795. Reports for school district trustees.
- 7796. Jurisdiction.
- 7797. Filing accounts.
- 7798. Failure to present claim at audit.
- 7799. Income on distributive shares.
- 7799.1. Annexation of account of distributed estate or trust.
- 7799.2. Accounts, audits and distributions.

7799.3. Pooled trusts for individuals with disabilities.

§ 7791. Abandonment of property.

If any property is so burdensome or is so encumbered or is in such condition that it is of no value to the trust, the trustee may abandon it. If property without value cannot be abandoned without transfer of title to another or without a formal renunciation, the court may authorize the trustee to transfer or renounce it without consideration if it finds that this will be for the best interests of the trust.

§ 7792. Powers, duties and liabilities identical with personal representatives.

The provisions concerning the powers, duties and liabilities of a trustee shall be the same as those set forth in the following provisions of this title for the administration of a decedent's or a minor's estate:

Section 3184 (relating to discharge of personal representative and surety).

Section 3321(d) and (e) (relating to nominee registration; corporate fiduciary as agent; deposit of securities in a clearing corporation; book-entry securities).

Section 3323 (relating to compromise of controversies).

Section 3324 (relating to death or incapacity of fiduciary).

Section 3332 (relating to inherent powers and duties).

Section 3353 (relating to order of court).

Section 3354 (relating to power given in governing instrument).

Section 3355 (relating to restraint of sale).

Section 3356 (relating to purchase by personal representative).

Section 3358 (relating to collateral attack).

Section 3359 (relating to record of proceedings; county where real estate lies).

§ 7793. Effect of removal, or of probate of later will or codicil.

(a) No impeachment.--No act of administration performed by a testamentary trustee in good faith shall be impeached by the subsequent:

(1) revocation of the probate of the will from which the trustee derives authority;

(2) probate of a later will or of a codicil; or

(3) dismissal of the trustee.

(b) Good faith dealings.--Regardless of the good or bad faith of the testamentary trustee, no person who deals in good faith with a testamentary trustee shall be prejudiced by the occurrence of any of the contingencies set forth in subsection (a).

§ 7794. Title of purchaser.

If the trustee has given a bond as required in accordance with this title, any sale, pledge, mortgage or exchange by a trustee, whether pursuant to a decree or to the exercise of a power conferred by the trust instrument or of a power under this title, shall pass the full title of the trust in the property, unless otherwise specified. Persons dealing with the trustee shall have no obligation to see to the proper application of the cash or other assets given in exchange for the property of the trust. A sale or exchange by a trustee pursuant to a decree under section 3353 (relating to order of court) shall have the effect of a judicial sale as to the discharge of liens, but the court may decree a sale or exchange freed and discharged from the lien of any mortgage otherwise preserved from discharge by existing law if the holder of the

mortgage consents by writing filed in the proceeding. No sale, mortgage, exchange or conveyance shall be prejudiced by the subsequent dismissal of the trustee. No sale, mortgage, exchange or conveyance by a testamentary trustee shall be prejudiced by the terms of a will or codicil thereafter probated if the person dealing with the trustee did so in good faith.

§ 7795. Reports for school district trustees.

(a) Scope.--This section applies if a school district is a trustee of land in accordance with all of the following:

- (1) The land is held for the benefit of the public.
- (2) The land is not used directly for school purposes.

(b) Requirement.--

(1) By January 30, the school district shall prepare a report for the prior year concerning the trust.

(2) The report shall detail all of the following:

- (i) Revenues generated.
- (ii) Expenses incurred.
- (iii) Balance of funds held by the school district as trustee.

(iv) A statement regarding the activities taken by the trustee during the prior year to advance the purposes of the trust.

(3) The report must be certified as correct by the district superintendent.

(4) The report shall be made public as follows:

(i) The report shall be published in 14-point type in a newspaper of general circulation in each county in which the land is located.

(ii) The report shall be available during business hours for inspection and copying at the office of the district superintendent. A reasonable fee may be charged for copying.

Cross References. Section 7795 is referred to in section 7796 of this title.

§ 7796. Jurisdiction.

Notwithstanding 42 Pa.C.S. § 931 (relating to original jurisdiction and venue), jurisdiction over an action involving land referred to in section 7795 (relating to reports for school district trustees) shall be vested in the court of common pleas in the judicial district where:

- (1) all of the land is located; or
- (2) more than 50% of the land is located.

§ 7797. Filing accounts.

(a) When to file.--A trustee shall file an account of his administration whenever directed to do so by the court and may file an account at any other time.

(b) Where to file.--All accounts of trustees shall be filed in the office of the clerk.

§ 7798. Failure to present claim at audit.

(a) Applicability.--This section applies to a person that, at the audit of a trustee's account, has a claim that:

(1) arose out of the administration of trust property or arises out of the distribution of trust property upon any interim or final accounting of the trust; and

(2) is not reported to the court as an admitted claim.

(b) Bar.--A person that fails, at the call for audit or confirmation, to present a claim under subsection (a) shall be forever barred from making a claim against:

(1) trust property distributed pursuant to the audit or confirmation;

(2) a distributee of trust property distributed pursuant to the audit or confirmation; and

(3) except as otherwise provided in section 3521 (relating to rehearing; relief granted), trust property awarded back upon further trust pursuant to the audit or confirmation.

(c) Liens and charges unimpaired.--Nothing in this section shall be construed as impairing any lien or charge on real or personal estate of the trust existing at the time of the audit.

Cross References. Section 7798 is referred to in section 7785 of this title.

§ 7799. Income on distributive shares.

Except as otherwise provided by the trust instrument or by the provisions of section 3543 (relating to income on distributive shares):

(1) If a sum of money is directed to be set aside at a specified time as a separate trust, it shall be entitled to income at the annual rate of 5% from the date it was to be set aside until it is set aside. If a sum of money is directed to be paid outright, it shall be entitled to income at the annual rate of 5% from three months after it became payable until it is paid.

(2) A donee of a gift of specific real or personal property directed to be distributed from a trust shall be entitled to the net income from property given to the donee accrued from the date it became distributable.

(3) All income from real and personal property earned during the administration of a trust and not payable to others pursuant to the governing instrument or the provisions of this section shall be distributed pro rata among the income beneficiaries of a continuing trust and other persons entitled to residuary shares of the trust.

Cross References. Section 7799 is referred to in section 8121 of this title.

§ 7799.1. Annexation of account of distributed estate or trust.

A trustee who has received property from a personal representative or from another trustee in distribution of an estate or another trust may annex a copy of an account of the administration of the estate or other trust to an account filed by the trustee covering the administration of the trust under the trustee's management. If notice of the annexation of the account of the estate or other trust is given to the persons required to be notified of the filing of the trustee's account of the principal trust, confirmation of the principal account shall relieve both the trustee of the principal trust and the personal representative or trustee of the distributed estate or other trust of all liability to beneficiaries of the principal trust for transactions shown in the account so annexed to the same extent as if the annexed account had been separately filed and confirmed. If the fund covered by the annexed account has itself received property from another source under circumstances that would have permitted annexation of an account under this section or under section 3501.2 (relating to annexation of account of terminated trust, guardianship or agency), accounts for both funds may be annexed.

§ 7799.2. Accounts, audits and distributions.

The provisions concerning accounts, audits and distributions in trust estates shall be the same as those set forth in the following provisions of this title for the administration of a decedent's estate:

Section 3511 (relating to audits in counties having separate orphans' court division).

Section 3512 (relating to audits in counties having no separate orphans' court division).

Section 3513 (relating to statement of proposed distribution).

Section 3514 (relating to confirmation of account and approval of proposed distribution).

Section 3521 (relating to rehearing; relief granted).

Section 3533 (relating to award upon final confirmation of account).

Section 3536 (relating to recording and registering decrees awarding real estate).

Section 3538 (relating to distributions involving persons born out of wedlock).

Section 3539 (relating to change in law after pattern of distribution established).

Section 3540 (relating to absentee and additional distributees).

Section 3541 (relating to order of abatement).

Section 3545 (relating to transcripts of balances due by personal representative).

§ 7799.3. Pooled trusts for individuals with disabilities.

(a) Scope.--This section relates to pooled trusts.

(b) Organization of pooled trust.--

(1) A pooled trust shall be administered by a trustee governed by a board. The trust may employ persons as necessary.

(2) The members of a board and employees of a trustee, if any, shall stand in a fiduciary relationship to the beneficiaries and the trustee regarding investment of the trust and shall not profit, either directly or indirectly, with respect to the investment.

(3) A trustee shall maintain a separate account for each beneficiary of a pooled trust; but, for purposes of investment and management of funds, the trustee may pool these accounts. The trustee shall have exclusive control and authority to manage and invest the money in the pooled trust in accordance with this section, subject, however, to the exercise of that degree of judgment, skill and care under the prevailing circumstances that persons of prudence, discretion and intelligence who are familiar with investment matters exercise in the management of their affairs, considering the probable income to be derived from the investment and the probable safety of their capital. The trustee may charge a trust management fee to cover the costs of administration and management of the pooled trust.

(4) A board member shall disclose and abstain from participation in a discussion or voting on an issue if a conflict of interest arises with the board member on a particular issue or vote.

(5) No board member may receive compensation for services provided as a member of the board. No fees or commissions may be paid to a board member. A board member may be reimbursed for necessary expenses incurred which are in the best interest of the beneficiaries of the pooled trust as a board member upon presentation of receipts.

(6) The trustee shall disburse money from a beneficiary's account for the sole benefit of the beneficiary. A disbursement from a beneficiary's account must have a reasonable relationship to the needs of the beneficiary.

(c) Pooled trust fund.--Before the funding of a pooled trust, all liens and claims in favor of the Department of Public Welfare for repayment of cash and medical assistance shall first be satisfied. All money received for pooled trust funds shall be deposited with a court-approved corporate fiduciary or with the State Treasury if no court-approved corporate fiduciary is available to the trustee. The funds shall be pooled for investment and management. A separate account shall be maintained for each beneficiary, and quarterly accounting statements shall be provided to each beneficiary by the trustee. The court-approved corporate fiduciary or the State Treasury shall provide quarterly accounting statements to the trustee. The court-approved corporate fiduciary or the State Treasury may charge a trust management fee to cover the costs of managing the funds in the pooled trust.

(d) Reporting.--

(1) In addition to reports required to be filed under 15 Pa.C.S. Pt. III (relating to partnerships and limited liability companies), the trustee shall file an annual report with the Office of Attorney General and the Department of Public Welfare, along with an itemized statement which shows the funds collected for the year, income earned, salaries paid, other expenses incurred and the opening and final trust balances. A copy of this statement shall be available to the beneficiary, settlor or designee of the settlor upon request.

(2) The trustee shall prepare and provide each settlor or the settlor's designee annually with a detailed individual statement of the services provided to the settlor's beneficiary during the previous 12 months and of the services to be provided during the following 12 months. The trustee shall provide a copy of this statement to the beneficiary upon request.

(e) Coordination of services.--

(1) The Department of Public Welfare shall review and approve the pooled trust of an applicant for medical assistance.

(2) In the determination of eligibility for medical assistance benefits, the interest of a disabled beneficiary in a pooled trust that has been approved by the Department of Public Welfare shall not be considered as a resource for purposes of determining the beneficiary's eligibility for medical assistance.

(3) No State agency may reduce the benefits or services available to an individual because that person is a beneficiary of a pooled trust. The beneficiary's interest in a pooled trust is not reachable in satisfaction of a claim for support and maintenance of the beneficiary.

(f) Notice.--The Office of Attorney General and the Department of Public Welfare shall make available information on the treatment of pooled trusts for the individuals with disabilities in the medical assistance program.

(g) Applicability.--This section shall apply to all of the following:

(1) Pooled trusts established after March 8, 2003.

(2) Accounts of individual beneficiaries established after March 8, 2003, in pooled trusts created before March 9, 2003.

(h) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Beneficiary." An individual with a disability who has the right to receive services and benefits of a pooled trust.

"Board." A group of persons vested with the management of the business affairs of a trustee.

"Disability." A physical or mental impairment as defined in section 1614 of the Social Security Act (49 Stat. 620, 42 U.S.C. § 1382c).

"Pooled trust." A trust which meets all of the following:

(1) The trust contains assets of more than one beneficiary.

(2) Each beneficiary is an individual with a disability.

(3) The trust is managed by a nonprofit corporation.

(4) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts. Accounts in the trust may be established by the parent, grandparent or legal guardian of the individual with a disability, by the individual with a disability or by a court.

(5) The trust provides that any money remaining in a beneficiary's account upon the death of the beneficiary that is not retained by the trust will be paid to the Commonwealth, up to the total amount of medical assistance paid on behalf of the beneficiary.

"Trustee." A nonprofit organization that manages a pooled trust.

(Oct. 27, 2014, P.L.2897, No.186, eff. 60 days)

2014 Amendment. Act 186 amended the section heading and subsecs. (f) and (h).

Special Provisions in Appendix. See section 15 of Act 98 of 2006 in the appendix to this title for special provisions relating to consolidation of Pooled Trust Act.

References in Text. The Department of Public Welfare, referred to in this section, was redesignated as the Department of Human Services by Act 132 of 2014.

CHAPTER 81

PRINCIPAL AND INCOME

Subchapter

- A. Preliminary Provisions; Power to Adjust; Power to Convert to Unitrust
- B. Decedent's Estate or Terminating Income Interest
- C. Apportionment at Beginning and End of Income Interest
- D. Allocation of Receipts During Administration of Trust
- E. Allocation of Disbursements During Administration of Trust
- F. (Reserved)
- G. (Reserved)
- H. Miscellaneous Provisions

Enactment. Chapter 81 was added May 16, 2002, P.L.330, No.50, effective in 60 days.

Prior Provisions. Former Chapter 81, which related to the same subject matter, was added June 30, 1972, P.L.508, No.164, and repealed May 16, 2002, P.L.330, No.50, effective in 60 days.

Cross References. Chapter 81 is referred to in sections 3702, 5164, 5536 of this title.

SUBCHAPTER A

PRELIMINARY PROVISIONS; POWER TO ADJUST;

POWER TO CONVERT TO UNITRUST

Sec.

- 8101. Short title of chapter.
- 8102. Definitions.
- 8103. Fiduciary duties; general principles.
- 8104. Trustee's power to adjust.
- 8105. Power to convert to unitrust.
- 8106. Judicial control of discretionary powers.
- 8107. Express trusts.
- 8108. (Reserved).
- 8109. (Reserved).
- 8110. (Reserved).
- 8111. (Reserved).
- 8112. (Reserved).
- 8113. Charitable trusts.

Cross References. Subchapter A is referred to in section 8149 of this title.

§ 8101. Short title of chapter.

This chapter shall be known and may be cited as the Pennsylvania Uniform Principal and Income Act.

§ 8102. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Accounting period." A calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period which begins when an income interest begins or ends when an income interest ends.

"Beneficiary." Includes:

(1) in the case of a decedent's estate, any heir, legatee and devisee; and

(2) in the case of a trust, an income beneficiary and a remainder beneficiary.

"Fiduciary." A personal representative or a trustee.

"Income." Money or property which a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange or liquidation of a principal asset to the extent provided in Subchapter D (relating to allocation of receipts during administration of trust).

"Income beneficiary." A person to whom or which net income of a trust is or may be payable.

"Income interest." The right of an income beneficiary to receive all or part of net income, whether the governing instrument requires it to be distributed or authorizes it to be distributed in the trustee's discretion.

"Mandatory income interest." The right of an income beneficiary to receive net income which the governing instrument requires the fiduciary to distribute.

"Net income." The:

(1) total receipts allocated to income during an accounting period; minus

(2) disbursements made from income during the period; plus or minus

(3) transfers under this chapter to or from income during the period.

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

"Principal." Property held in trust for distribution to a remainder beneficiary when the trust terminates or property held in trust in perpetuity.

"Remainder beneficiary." A person entitled to receive principal when an income interest ends.

"Sui juris beneficiary." Includes:

- (1) a court-appointed guardian of an incapacitated beneficiary;
- (2) an agent for an incompetent beneficiary; and
- (3) a court-appointed guardian of a minor beneficiary's estate.

"Trust." Includes a legal life estate arrangement.

"Trustee." Includes an original, additional or successor trustee whether or not appointed or confirmed by a court. (July 7, 2006, P.L.625, No.98, eff. 60 days)

2006 Amendment. Act 98 amended the defs. of "principal" and "sui juris beneficiary."

§ 8103. Fiduciary duties; general principles.

(a) Allocation.--In allocating receipts and disbursements to or between principal and income and with respect to any matter within the scope of this chapter, the following shall apply:

(1) A fiduciary shall administer a trust or estate in accordance with the governing instrument, even if there is a different provision in this chapter.

(2) A fiduciary may administer a trust or estate by the exercise of a discretionary power of administration regarding a matter within the scope of this chapter given to the fiduciary by the governing instrument, even if the exercise of the power produces a result different from a result required or permitted by this chapter. No inference that the fiduciary has improperly exercised the discretionary power shall arise from the fact that the fiduciary has made an allocation contrary to a provision of this chapter.

(3) A fiduciary shall administer a trust or estate in accordance with this chapter if the governing instrument does not contain a different provision or does not give the fiduciary a discretionary power of administration regarding a matter within the scope of this chapter.

(4) A fiduciary shall add a receipt or charge a disbursement to principal to the extent that the governing instrument and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(b) Discretionary power.--In exercising a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the governing instrument or this chapter, including sections 8104 (relating to trustee's power to adjust) and 8105 (relating to power to convert to unitrust), a fiduciary shall administer a trust or estate impartially based on what is fair and reasonable to all of the beneficiaries, except to the extent that the governing instrument clearly manifests an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

Cross References. Section 8103 is referred to in section 8104 of this title.

§ 8104. Trustee's power to adjust.

(a) Adjustment.--Subject to subsections (c) and (f), a trustee may adjust between principal and income by allocating an amount of income to principal or an amount of principal to income to the extent the trustee considers appropriate if:

(1) the governing instrument describes what may or must be distributed to a beneficiary by referring to the trust's income; and

(2) the trustee determines, after applying the rules in section 8103(a) (relating to fiduciary duties; general principles), that the trustee is unable to comply with section 8103(b).

(b) Considerations.--In deciding whether and to what extent to exercise the power conferred by subsection (a), a trustee may consider, among other things, all of the following:

(1) The size of the trust.

(2) The nature and estimated duration of the trust.

(3) The liquidity and distribution requirements of the trust.

(4) The needs for regular distributions and preservation and appreciation of capital.

(5) The expected tax consequences of an adjustment.

(6) The net amount allocated to income under the other sections of this chapter and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available.

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

(8) To the extent reasonably known to the trustee, the needs of the beneficiaries for present and future distributions authorized or required by the governing instrument.

(9) Whether and to what extent the governing instrument gives the trustee the power to invade principal or accumulate income or prohibits the trustee from invading principal or accumulating income and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income.

(10) The intent of the settlor or testator.

(11) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation.

(c) Prohibited adjustments.--A trustee may not make an adjustment under this section if any of the following apply:

(1) The adjustment would diminish the income interest in a trust which requires all of the income to be paid at least annually to a spouse and for which a Federal estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment.

(2) The adjustment would reduce the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a Federal gift tax exclusion.

(3) The adjustment would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.

(4) The adjustment is from any amount which is permanently set aside for charitable purposes under the governing instrument and for which a Federal estate or gift tax charitable deduction has been taken unless both income and principal are so set aside.

(5) If:

(i) possessing or exercising the power to make an adjustment would cause an individual to be treated as the owner of all or part of the trust for Federal income tax purposes; and

(ii) the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment.

(6) If:

(i) possessing or exercising the power to make an adjustment would cause all or part of the trust assets to be subject to Federal estate or gift tax with respect to an individual; and

(ii) the assets would not be subject to Federal estate or gift tax with respect to the individual if the trustee did not possess the power to make an adjustment.

(7) If the trustee is a beneficiary of the trust.

(8) If the trust has been converted under section 8105 (relating to power to convert to unitrust).

(d) Permissible adjustment when otherwise prohibited.--If subsection (c) (5), (6) or (7) applies to a trustee and there is more than one trustee, a co-trustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is prohibited by the governing instrument.

(e) Release of the power to adjust.--

(1) If paragraph (2) applies, a trustee may release any of the following:

(i) The entire power conferred by subsection (a).

(ii) The power to adjust from income to principal.

(iii) The power to adjust from principal to income.

(2) A release under paragraph (1) is permissible if any of the following apply:

(i) The trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (c) (1) through (6).

(ii) The trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (c).

(3) The release may be permanent or for a specified period, including a period measured by the life of an individual.

(f) Application.--A governing instrument which limits the power of a trustee to make an adjustment between principal and income does not affect the application of this section unless it is clear from the governing instrument that it is intended to deny the trustee the power of adjustment conferred by subsection (a).

(July 7, 2006, P.L.625, No.98, eff. 60 days)

2006 Amendment. Act 98 amended subsec. (c) (4).

Cross References. Section 8104 is referred to in sections 8103, 8105, 8148, 8149, 8153 of this title.

§ 8105. Power to convert to unitrust.

(a) Conversion.--Unless expressly prohibited by the governing instrument, a trustee may release the power under

section 8104 (relating to trustee's power to adjust) and convert a trust into a unitrust as described in this section if all of the following apply:

(1) The trustee determines that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust.

(2) The trustee gives written notice of the trustee's intention to release the power to adjust and to convert the trust into a unitrust and of how the unitrust will operate, including what initial decisions the trustee will make under this section, to all the sui juris beneficiaries who:

(i) are currently eligible to receive income from the trust;

(ii) would be eligible to receive, if no powers of appointment were exercised, income from the trust if the interest of all those eligible to receive income under subparagraph (i) were to terminate immediately prior to the giving of notice; and

(iii) would receive, if no powers of appointment were exercised, a distribution of principal if the trust were to terminate immediately prior to the giving of notice.

(3) There is at least one sui juris beneficiary under paragraph (2)(i) and at least one sui juris beneficiary under either paragraph (2)(ii) or (iii).

(4) No sui juris beneficiary objects to the conversion to a unitrust in a writing delivered to the trustee within 60 days of the mailing of the notice under paragraph (2).

(b) Judicially approved conversion.--

(1) The trustee may petition the court to approve the conversion to a unitrust if any of the following apply:

(i) A beneficiary timely objects to the conversion to a unitrust.

(ii) There are no sui juris beneficiaries under subsection (a)(2)(i).

(iii) There are no sui juris beneficiaries under either subsection (a)(2)(ii) or (iii).

(2) A beneficiary may request a trustee to convert to a unitrust. If the trustee does not convert, the beneficiary may petition the court to order the conversion.

(3) The court shall approve the conversion or direct the requested conversion if the court concludes that the conversion will enable the trustee to better carry out the intent of the settlor or testator and the purposes of the trust.

(c) Consideration.--In deciding whether to exercise the power conferred by subsection (a), a trustee may consider, among other things, all of the following:

(1) The size of the trust.

(2) The nature and estimated duration of the trust.

(3) The liquidity and distribution requirements of the trust.

(4) The needs for regular distributions and preservation and appreciation of capital.

(5) The expected tax consequences of the conversion.

(6) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property or real property; and the extent to which an asset is used by a beneficiary.

(7) To the extent reasonably known to the trustee, the needs of the beneficiaries for present and future

distributions authorized or required by the governing instrument.

(8) Whether and to what extent the governing instrument gives the trustee the power to invade principal or accumulate income or prohibits the trustee from invading principal or accumulating income and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income.

(9) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation.

(d) Post conversion.--After a trust is converted to a unitrust, all of the following apply:

(1) The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived:

(i) from appreciation of capital;

(ii) from earnings and distributions from capital;

or

(iii) from both.

(2) The trustee shall make regular distributions in accordance with the governing instrument construed in accordance with the provisions of this section.

(3) The term "income" in the governing instrument shall mean an annual distribution (the unitrust distribution) equal to 4% (the payout percentage) of the net fair market value of the trust's assets, whether such assets would be considered income or principal under other provisions of this chapter, averaged over the lesser of:

(i) the preceding years in the smoothing period selected by the trustee; or

(ii) the period during which the trust has been in existence.

(e) Discretion of trustee.--The trustee may, in the trustee's discretion from time to time, determine all of the following:

(1) The effective date of a conversion to a unitrust.

(2) The provisions for prorating a unitrust distribution for a short year in which a beneficiary's right to payments commences or ceases.

(3) The frequency of unitrust distributions during the year.

(4) The effect of other payments from or contributions to the trust on the trust's valuation.

(5) Whether to value the trust's assets annually or more frequently.

(5.1) Whether to average the net assets of the trust over a smoothing period of three, four or five years.

(6) What valuation dates to use.

(7) How frequently to value nonliquid assets and whether to estimate their value.

(8) Whether to omit from the calculations trust property occupied or possessed by a beneficiary.

(9) Any other matters necessary for the proper functioning of the unitrust.

(f) Allocation.--

(1) Expenses which would be deducted from income if the trust were not a unitrust may not be deducted from the unitrust distribution.

(2) Unless otherwise provided by the governing instrument, the unitrust distribution shall be considered

to have been paid from the following sources in order of priority:

- (i) net income determined as if the trust were not a unitrust;
- (ii) ordinary income for Federal income tax purposes that is not allocable to net income under subparagraph (i);
- (iii) net realized short-term capital gains for Federal income tax purposes;
- (iv) net realized long-term capital gains for Federal income tax purposes; and
- (v) the principal of the trust estate.

(g) Court orders.--The trustee or, if the trustee declines to do so, a beneficiary may petition the court to:

- (1) Select a payout percentage different than 4%.
- (2) Provide for a distribution of net income, as would be determined if the trust were not a unitrust, in excess of the unitrust distribution if such distribution is necessary to preserve a tax benefit.
- (3) Average the valuation of the trust's net assets over a period other than three years.
- (4) Reconvert from a unitrust. Upon a reconversion, the power to adjust under section 8104 shall be revived.

(g.1) Reconversion from unitrust.--A trustee may reconvert a unitrust following the same procedures as in subsection (a) for converting a trust into a unitrust with the exception that the written notice shall state that the intent is to reconvert the unitrust into a trust for which income is defined under this chapter. Upon reconversion, the power to adjust under section 8104 shall be revived.

(h) Application.--A conversion to a unitrust does not affect a provision in the governing instrument directing or authorizing the trustee to distribute principal or authorizing a beneficiary to withdraw a portion or all of the principal.

(i) Prohibited conversions.--A trustee may not convert a trust into a unitrust in any of the following circumstances:

- (1) If payment of the unitrust distribution would change the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets.
- (2) If the unitrust distribution would be made from trust funds which are permanently set aside for charitable purposes under the governing instrument and for which a Federal estate or gift tax charitable deduction has been taken, unless both income and principal are so set aside. If both income and principal are so set aside, then section 8113 (relating to charitable trusts) and not this section shall be available.

(3) If:

(i) possessing or exercising the power to convert would cause an individual to be treated as the owner of all or part of the trust for Federal income tax purposes; and

(ii) the individual would not be treated as the owner if the trustee did not possess the power to convert.

(4) If:

(i) possessing or exercising the power to convert would cause all or part of the trust assets to be subject to Federal estate or gift tax with respect to an individual; and

(ii) the assets would not be subject to Federal estate or gift tax with respect to the individual if the trustee did not possess the power to convert.

(5) If the conversion would result in the disallowance of a Federal estate tax or gift tax marital deduction which would be allowed if the trustee did not have the power to convert.

(6) If the trustee is a beneficiary of the trust.

(j) Permissible conversion when otherwise prohibited.--

(1) If subsection (i)(3), (4) or (6) applies to a trustee and there is more than one trustee, a co-trustee to whom the provision does not apply may convert the trust unless the exercise of the power by the remaining trustee or trustees is prohibited by the governing instrument.

(2) If subsection (i)(3), (4) or (6) applies to all the trustees, the trustees may petition the court to direct a conversion.

(k) Release of the power to convert.--

(1) A trustee may release the power conferred by subsection (a) to convert to a unitrust if any of the following apply:

(i) The trustee is uncertain about whether possessing or exercising the power will cause a result described in subsection (i)(3), (4) or (5).

(ii) The trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (i).

(2) The release may be permanent or for a specified period, including a period measured by the life of an individual.

(July 7, 2006, P.L.625, No.98, eff. 60 days; Oct. 27, 2010, P.L.837, No.85, eff. 60 days)

2010 Amendment. Act 85 amended subsecs. (d) and (e).

Cross References. Section 8105 is referred to in sections 8103, 8104, 8149 of this title.

§ 8106. Judicial control of discretionary powers.

(a) Standard of review.--A court shall not change a fiduciary's decision to exercise or not to exercise a discretionary power conferred by this chapter unless it determines that the decision was an abuse of the fiduciary's discretion.

(b) Remedies.--If a court determines that a fiduciary has abused its discretion regarding a discretionary power conferred by this chapter, the remedy is to restore the income and remainder beneficiaries to the positions they would have occupied if the fiduciary had not abused its discretion, according to the following rules:

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

(2) To the extent that the abuse of discretion has resulted in a distribution to a beneficiary which is too large, the court shall restore the beneficiaries, the trust or both, in whole or in part, to their appropriate positions by requiring the fiduciary to withhold an amount from one or more future distributions to the beneficiary who received

the distribution that was too large or requiring that beneficiary or that beneficiary's estate to return some or all of the distribution to the trust, notwithstanding a spendthrift or similar provision.

(3) If the abuse of discretion concerns the power to convert a trust into a unitrust, the court shall require the trustee either to convert into a unitrust or to reconvert from a unitrust.

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

§ 8107. Express trusts.

(a) **General rule.**--In the absence of a contrary intent appearing in the governing instrument of an express unitrust, the governing instrument shall be construed in accordance with the following rules:

(1) The trustee shall follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived from:

- (i) appreciation of capital;
- (ii) earnings and distributions from capital; or
- (iii) both.

(2) The unitrust distribution shall be an annual distribution of an amount equal to 4% of the net fair market value of the trust's assets, whether the assets would be considered income or principal under other provisions of this chapter, averaged over the lesser of:

- (i) the three preceding years; or
- (ii) the period during which the trust has been in existence.

(3) The trustee may, in the trustee's discretion from time to time, determine all of the following:

(i) The provisions for prorating a unitrust distribution for a short year in which the beneficiary's right to payments commences or ceases.

(ii) The frequency of unitrust distributions during the year.

(iii) The effect of other payments from or contributions to the trust on the trust's valuation.

(iv) Whether to value the trust's assets annually or more frequently.

(v) What valuation dates to use.

(vi) How frequently to value nonliquid assets and whether to estimate their value.

(vii) Whether to omit from the calculations residential real estate, tangible personal property or other trust property used, occupied or possessed by a beneficiary.

(viii) Any other matters necessary for the proper functioning of the unitrust.

(4) Expenses which would be deducted from income if the trust were not a unitrust shall not be deducted from the unitrust distribution.

(5) The unitrust distribution shall be considered to have been paid from the following sources in order of priority:

- (i) net income determined as if the trust were not an express unitrust;

(ii) ordinary income for Federal income tax purposes that is not allocable to net income under subparagraph (i);

(iii) net realized short-term capital gains for Federal income tax purposes;

(iv) net realized long-term capital gains for Federal income tax purposes; and

(v) the principal of the trust estate.

(b) Definition.--As used in this section, the term "express unitrust" shall mean a trust which by its governing instrument creates a trust, other than a trust solely for charitable purposes or a qualified charitable split interest trust under section 664(d) or 170(f)(2)(B) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 664(d) or 170(f)(2)(B)), and provides for an annual distribution, the unitrust distribution, equal to a fixed percentage of the net fair market value of the trust's assets, valued at least annually, and computed with reference to such value in one or more years. If the fixed percentage is not less than 3% nor more than 5%, the unitrust distribution shall be considered the income of the trust for the purposes of this chapter.
(July 7, 2006, P.L.625, No.98, eff. 60 days)

Cross References. Section 8107 is referred to in section 8149 of this title.

§ 8108. (Reserved).

§ 8109. (Reserved).

§ 8110. (Reserved).

§ 8111. (Reserved).

§ 8112. (Reserved).

§ 8113. Charitable trusts.

(a) Election.--Notwithstanding the foregoing provisions of this chapter, the trustee of a trust held exclusively for charitable purposes may elect to be governed by this section unless the governing instrument expressly provides that the election provided by this section shall not be available.

(b) Eligibility for election.--To make an election under this section, the trustee shall adopt and follow an investment policy seeking a total return for the investments held by the trust, whether the return is to be derived from appreciation of capital or earnings and distributions with respect to capital or both. The policy constituting the election shall be in writing, shall be maintained as part of the permanent records of the trust and shall recite that it constitutes an election to be governed by this section.

(c) Effect of election.--If an election is made to be governed by this section, the term "income" shall mean a percentage of the value of the trust. The trustee shall, in a writing maintained as part of the permanent records of the trust, select the percentage and determine that it is consistent with the long-term preservation of the real value of the principal of the trust, but in no event shall the percentage be less than 2% nor more than 7% per year. The term "principal" shall mean all other assets held by the trustee with respect to the trust. The selection may be made either annually or subject to change only when the trustee deems such change necessary and prudent.

(d) Revocation of election.--The trustee may revoke an election to be governed by this section if the revocation is made as part of an alternative investment policy seeking the long-term preservation of the real value of the principal of the trust. The revocation and alternative investment policy

shall be in writing and maintained as part of the permanent records of the trust.

(e) Value determination.--For purposes of applying this section, the value of the trust shall be the fair market value of the cash and other assets held by the trustee with respect to the trust, whether such assets would be considered "income" or "principal" under the other provisions of this chapter, determined at least annually and averaged over a period of three or more preceding years. However, if the trust has been in existence less than three years, the average shall be determined over the period during which the trust has been in existence.

(f) Charitable organizations.--For a charitable organization defined under the act of June 17, 1971 (P.L.181, No.23), known as the Charitable Instruments Act of 1971, the provisions of that act shall supersede subsection (c) if necessary to comply with the minimum investment return requirements. (July 7, 2006, P.L.625, No.98, eff. 60 days)

2006 Amendment. Act 98 amended subsec. (c) and added subsec. (f).

Cross References. Section 8113 is referred to in section 8105 of this title.

SUBCHAPTER B
DECEDENT'S ESTATE OR
TERMINATING INCOME INTEREST

Sec.

8121. Determination and distribution of net income.

8122. Distribution to residuary and remainder beneficiaries.

Cross References. Subchapter B is referred to in section 8149 of this title.

§ 8121. Determination and distribution of net income.

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

(1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under paragraph (5) and the provisions applicable to trustees in Subchapters C (relating to apportionment at beginning and end of income interest), D (relating to allocation of receipts during administration of trust) and E (relating to allocation of disbursements during administration of trust). The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright and shall allocate to a pecuniary amount in trust the income or other amount provided by the governing instrument or section 3543 (relating to income on distributive shares) or 7799 (relating to income on distributive shares) from net income determined under paragraph (3) or from principal to the extent that net income is insufficient.

(3) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the provisions applicable to trustees in Subchapters C, D and E and by:

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

(ii) paying from principal debts, funeral expenses, costs of disposition of remains, the family exemption, fees of personal representatives and their attorneys and accountants, and death taxes and related interest and penalties which are apportioned to the estate or terminating income interest by the governing instrument or applicable law.

(4) A fiduciary shall distribute the net income remaining after distributions required by paragraph (2) in the manner described in section 8122 (relating to distribution to residuary and remainder beneficiaries) to all other beneficiaries.

(5) A fiduciary may not reduce principal or income receipts from property described in paragraph (1) because of a payment described in section 8151 (relating to minerals, water and other natural resources) or 8152 (relating to timber) to the extent that the governing instrument or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by:

(i) including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on or after the date of a decedent's death or an income interest's terminating event; and

(ii) making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

(July 7, 2006, P.L.625, No.98, eff. 120 days)

2006 Amendment. Act 98 amended par. (2).

Cross References. Section 8121 is referred to in sections 8122, 8132 of this title.

§ 8122. Distribution to residuary and remainder beneficiaries.

(a) Distribution of net income.--Each beneficiary described in section 8121(4) (relating to determination and distribution of net income) is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(b) Allocation of net income.--In determining a beneficiary's share of net income, the following rules apply:

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

(2) The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts.

(3) The beneficiary's fractional interest in the undistributed principal assets must be calculated on the

basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.

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

(d) Application.--To the extent that the fiduciary considers it appropriate, if this section applies to the income from an asset, the fiduciary may apply the rules in this section to net gain or loss from the disposition of a principal asset realized after the date of death or terminating event or earlier distribution date.

(e) Distribution date.--For purposes of this section, the distribution date may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

Cross References. Section 8122 is referred to in section 8121 of this title.

SUBCHAPTER C

APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST

Sec.

8131. When right to income begins and ends.

8132. Apportionment of receipts and disbursements when decedent dies or income interest begins.

8133. Apportionment when income interest ends.

Cross References. Subchapter C is referred to in sections 8121, 8149 of this title.

§ 8131. When right to income begins and ends.

(a) Accrual of income interest.--An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins:

(1) on the date specified in the governing instrument;

or

(2) if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(b) Asset subject to a trust.--An asset becomes subject to a trust:

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

(2) on the date of a testator's death in the case of an asset which becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

(3) on the date of an individual's death in the case of an asset which is transferred to a fiduciary by a third party because of the individual's death.

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

(d) End of income interest.--An income interest ends on:

(1) the day before an income beneficiary dies or another terminating event occurs; or

(2) the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

§ 8132. Apportionment of receipts and disbursements when decedent dies or income interest begins.

(a) Allocation to principal.--Unless section 8121(1) (relating to determination and distribution of net income) applies, a trustee shall allocate an income receipt or disbursement to principal if its due date occurs before:

- (1) a decedent dies in the case of an estate; or
- (2) an income interest begins in the case of a trust or successive income interest.

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

(c) Due dates.--An item of income or an obligation is due on the date the payor is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which section 8141 (relating to character of receipts) applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

§ 8133. Apportionment when income interest ends.

(a) End of mandatory income interest.--When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed income which is not disposed of under the governing instrument unless the beneficiary has an unqualified power to revoke more than 5% of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked shall be added to principal.

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

(c) Definition.--As used in this section, the term "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense which is due or accrued or net income which has been added or is required to be added to principal under the governing instrument.

SUBCHAPTER D
ALLOCATION OF RECEIPTS DURING
ADMINISTRATION OF TRUST

Sec.

- 8141. Character of receipts.
- 8142. Distribution from trust or estate.
- 8143. Business and other activities conducted by trustee.
- 8144. Principal receipts.
- 8145. Rental property.
- 8146. Obligation to pay money.
- 8147. Insurance policies and similar contracts.
- 8148. Insubstantial allocations not required.
- 8149. Retirement benefits, individual retirement accounts, deferred compensation, annuities and similar payments.
- 8150. Liquidating asset.
- 8151. Minerals, water and other natural resources.
- 8152. Timber.
- 8153. Property not productive of income.
- 8154. Derivatives and options.
- 8155. Asset-backed securities.

Cross References. Subchapter D is referred to in sections 8102, 8121, 8149 of this title.

§ 8141. Character of receipts.

(a) Allocation to income.--Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity, including reinvested cash dividends.

(b) Allocation to principal.--A trustee shall allocate the following receipts from an entity to principal:

(1) Property other than money, excluding reinvested cash dividends.

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

(3) Money received in total or partial liquidation of the entity.

(4) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a short-term or long-term capital gain dividend for Federal income tax purposes.

(c) When received in partial liquidation.--Money is received in partial liquidation:

(1) to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(2) if the total amount of money and property distributed by the entity to its owners in one distribution or a series of related distributions is greater than 20% of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

(d) When not received in partial liquidation.--Money is not received in partial liquidation nor may it be taken into account under subsection (c)(2) to the extent that it does not exceed the amount of income tax that a trust beneficiary must pay on taxable income of the entity that distributes the money.

(e) Reliance upon a statement.--A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

(f) Definition.--As used in this section, the term "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust,

common trust fund or any other organization in which a trustee has an interest other than:

(1) a trust or estate to which section 8142 (relating to distribution from trust or estate) applies;

(2) a business or activity to which section 8143 (relating to business and other activities conducted by trustee) applies;

(3) a payment to which section 8149 (relating to retirement benefits, individual retirement accounts, deferred compensation, annuities and similar payments) applies; or

(4) an asset-backed security to which section 8155 (relating to asset-backed securities) applies.

(July 7, 2006, P.L.625, No.98, eff. 60 days)

2006 Amendment. Act 98 amended subsecs. (c) and (d).

Cross References. Section 8141 is referred to in sections 8132, 8142, 8155 of this title.

§ 8142. Distribution from trust or estate.

A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity or a decedent or donor transfers an interest in such a trust to a trustee, section 8141 (relating to character of receipts) or 8155 (relating to asset-backed securities) applies to a receipt from the trust.

Cross References. Section 8142 is referred to in section 8141 of this title.

§ 8143. Business and other activities conducted by trustee.

(a) Separate accounting for business or activity.--If a trustee that conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(b) Net receipts.--

(1) A trustee that accounts separately for a business or other activity may determine the extent to which:

(i) its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets and other reasonably foreseeable needs of the business or activity; and

(ii) the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records.

(2) If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(c) Permissible activities for separate accounting.--Activities for which a trustee may maintain separate accounting records include:

(1) Retail, manufacturing, service and other traditional business activities.

- (2) Farming.
- (3) Raising and selling livestock and other animals.
- (4) Management of rental properties.
- (5) Extraction of minerals and other natural resources.
- (6) Timber operations.
- (7) Activities to which section 8154 (relating to derivatives and options) applies.

Cross References. Section 8143 is referred to in sections 8141, 8147, 8154, 8164 of this title.

§ 8144. Principal receipts.

A trustee shall allocate to principal any of the following:

(1) To the extent not allocated to income under this chapter, assets received from:

- (i) a transferor during the transferor's lifetime;
- (ii) a decedent's estate;
- (iii) a trust with a terminating income interest;

or

(iv) a payor under a contract naming the trust or its trustee as beneficiary.

(2) Money or other property received from a principal asset's sale, exchange, liquidation or change in form. This paragraph includes realized profit subject to this subchapter.

(3) Amounts recovered from third parties to reimburse the trust because of disbursements described in section 8162(a)(8) (relating to mandatory disbursements from principal) or for other reasons to the extent not based on the loss of income.

(4) Proceeds of property taken by eminent domain. A separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income.

(5) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income.

(6) Other receipts as provided in sections 8148 (relating to insubstantial allocations not required) through 8155 (relating to asset-backed securities).

§ 8145. Rental property.

(a) Rent.--To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property. This subsection includes an amount received for cancellation or renewal of a lease.

(b) Deposit.--An amount received as a refundable deposit, including a security deposit or a deposit which is to be applied as rent for future periods:

- (1) shall be added to principal;
- (2) shall be held subject to the terms of the lease;

and

(3) is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

§ 8146. Obligation to pay money.

(a) Interest allocated to income.--An amount received as interest, whether determined at a fixed, variable or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, shall be allocated to income without any provision for amortization of premium.

(b) Allocation of obligations.--A trustee shall allocate to principal an amount received from the sale, redemption or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation the purchase price or value of which when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust shall be allocated to income.

(c) Application.--This section does not apply to an obligation to which any of the following apply:

- (1) Section 8149 (relating to retirement benefits, individual retirement accounts, deferred compensation, annuities and similar payments).
- (2) Section 8150 (relating to liquidating asset).
- (3) Section 8151 (relating to minerals, water and other natural resources).
- (4) Section 8152 (relating to timber).
- (5) Section 8154 (relating to derivatives and options).
- (6) Section 8155 (relating to asset-backed securities).

§ 8147. Insurance policies and similar contracts.

(a) General rule.--

(1) Except as otherwise provided in subsection (b) or (c), a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary. This paragraph includes a contract which insures the trust or its trustee against loss for damage to, destruction of or loss of title to a trust asset.

(2) If the premiums on the policy or contract are paid from income, the trustee shall allocate to income dividends on the policy or contract.

(3) If the premiums on the policy or contract are paid from principal, the trustee shall allocate to principal dividends on the policy or contract.

(b) Allocation of proceeds to income.--Except as provided in subsection (c), a trustee shall allocate to income proceeds of a contract which insures the trustee against any of the following:

(1) Loss of occupancy or other use by an income beneficiary.

(2) Loss of income.

(3) Subject to section 8143 (relating to business and other activities conducted by trustee), loss of profits from a business.

(c) Application.--This section does not apply to a contract to which section 8149 (relating to retirement benefits, individual retirement accounts, deferred compensation, annuities and similar payments) applies.

§ 8148. Insubstantial allocations not required.

If a trustee determines that an allocation between principal and income required by section 8149 (relating to retirement benefits, individual retirement accounts, deferred compensation, annuities and similar payments), 8150 (relating to liquidating asset), 8151 (relating to minerals, water and other natural resources), 8152 (relating to timber) or 8155 (relating to asset-backed securities) is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in section 8104(c) (relating to trustee's power to adjust) applies to the allocation. This power may be exercised by a co-trustee in the circumstances described

in section 8104(d) and may be released for the reasons and in the manner described in section 8104(e). An allocation is presumed to be insubstantial if:

(1) the amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 5%; or

(2) the value of the asset producing the receipt for which the allocation would be made is less than 5% of the total value of the trust's assets at the beginning of the accounting period.

Cross References. Section 8148 is referred to in section 8144 of this title.

§ 8149. Retirement benefits, individual retirement accounts, deferred compensation, annuities and similar payments.

(a) General rule.--

(1) The trustee shall allocate to income the greater of:

(i) the portion of a payment characterized by the payor as interest or a dividend or a remittance in lieu of interest or a dividend; or

(ii) the portion of the payment characterized as imputed interest for Federal income tax purposes.

(2) The balance of any such payment shall be allocated to principal.

(b) Allocation under contract calling for equal installments.--

(1) If no part of a payment under a contract calling for equal installments over a fixed period of time is allocable to income under the provisions of subsection (a), the difference between the trust's acquisition value of the contract and the total expected return shall be deemed to be interest.

(2) The trustee shall allocate to income the portion of each payment equivalent to interest on the then unpaid principal balance at the rate specified in the contract or a rate necessary to thus amortize the difference between the expected return and the acquisition value, where that rate is readily ascertainable by the trustee.

(c) Allocation when internal net income of fund is readily ascertained.--

(1) If no portion of a payment from a separate fund held exclusively for the benefit of the trust is allocable to income under subsections (a) and (b) but the internal net income of the fund determined as if the fund were a separate trust subject to Subchapters A (relating to preliminary provisions; power to adjust; power to convert to unitrust), B (relating to decedent's estate or terminating income interest), C (relating to apportionment at beginning and end of income interest), D (relating to allocation of receipts during administration of trust) and E (relating to allocation of disbursements during administration of trust) is readily ascertainable by the trustee, the internal net income of the fund shall be considered to be the income earned by the fund, and the portion of the payment equal to the then undistributed net income of the fund realized since the trust acquired its interest in the fund shall be deemed to be a distribution of such income and shall be allocated to the trust income account.

(2) The balance of any such payment shall be allocated to principal.

(3) The power to adjust under section 8104 (relating to trustee's power to adjust), the power to convert to a unitrust under section 8105 (relating to power to convert to unitrust) and the provisions governing express trusts under section 8107 (relating to express trusts) shall apply to retirement benefits covered by this subsection which are payable to a trust. These powers may be exercised separately and independently by the payee trustee or in the governing instrument as between the retirement benefits and the trust as if they were separate trusts subject to this chapter.

(d) When not otherwise allocable to income.--

(1) The trustee shall allocate to income 10% of the part of the payment which is required to be made during the accounting period and the balance to principal if:

- (i) no part of the payment is allocable to income under subsection (a), (b) or (c); and
- (ii) all or part of the payment is required to be made.

(2) The trustee shall allocate the entire payment to principal if:

- (i) no part of a payment is required to be made;
- or
- (ii) the payment received is the entire amount to which the trustee is entitled.

(3) For purposes of this subsection, a payment is not required to be made to the extent that it is made because the trustee exercises a right of withdrawal.

(e) Allocation to obtain marital deduction.--If, to obtain a Federal estate or gift tax marital deduction for a trust, the trustee must allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

(f) Application.--This section does not apply to payments to which section 8150 (relating to liquidating asset) applies.

(g) Definition.--As used in this section, the term "payment" means a payment that a trustee may receive over a fixed period of time or during the life of one or more individuals because of services rendered or property transferred to the payor in exchange for future payments. The term includes all of the following:

- (1) A payment made in money or property from:
 - (i) the payor's general assets; or
 - (ii) a separate fund created by the payor or another.
- (2) A payment on or from:
 - (i) an installment contract or note;
 - (ii) a private or commercial annuity;
 - (iii) a deferred compensation agreement;
 - (iv) an employee death benefit;
 - (v) an individual retirement account; or
 - (vi) a pension, profit-sharing, stock or other bonus, or stock-ownership plan.

(Oct. 27, 2010, P.L.837, No.85, eff. 60 days)

2010 Amendment. Act 85 amended subsec. (c).

Cross References. Section 8149 is referred to in sections 8141, 8144, 8146, 8147, 8148, 8150, 8155 of this title.

§ 8150. Liquidating asset.

(a) Allocation.--A trustee shall allocate to income 10% of the receipts from a liquidating asset and the balance to principal.

(b) Definition.--As used in this section, the term "liquidating asset" means an asset the value of which will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right and right to receive payments during a period of more than one year under an arrangement which does not provide for the payment of interest on the unpaid balance. The term does not include any of the following:

(1) A payment subject to section 8149 (relating to retirement benefits, individual retirement accounts, deferred compensation, annuities and similar payments).

(2) Resources subject to section 8151 (relating to minerals, water and other natural resources).

(3) Timber subject to section 8152 (relating to timber).

(4) An activity subject to section 8154 (relating to derivatives and options).

(5) An asset subject to section 8155 (relating to asset-backed securities).

(6) An asset for which the trustee establishes a reserve for depreciation under section 8163 (relating to discretionary allocation of disbursements).

Cross References. Section 8150 is referred to in sections 8144, 8146, 8148, 8149 of this title.

§ 8151. Minerals, water and other natural resources.

(a) Allocation for receipts from minerals and other natural resources.--To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources under this section, the trustee shall allocate them as follows:

(1) If received as nominal delay rental or nominal annual rent on a lease, a receipt shall be allocated to income.

(2) If received from a production payment, a receipt shall be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance shall be allocated to principal.

(3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus or delay rental is more than nominal:

(i) sixty-six and two-thirds percent shall be allocated to principal; and

(ii) the balance shall be allocated to income.

(4) If an amount is received from a working interest or any other interest not provided for in paragraph (1), (2) or (3):

(i) sixty-six and two-thirds percent of the net amount received shall be allocated to principal; and

(ii) the balance shall be allocated to income.

(b) Allocation for receipts from water.--

(1) An amount received on account of an interest in renewable water shall be allocated to income.

(2) An amount received on account of an interest in nonrenewable water shall be allocated as follows:

(i) Sixty-six and two-thirds percent of the amount shall be allocated to principal.

(ii) The balance shall be allocated to income.

(c) Application.--This chapter applies whether or not a decedent or donor was extracting minerals, water or other natural resources before the interest became subject to the trust.

Cross References. Section 8151 is referred to in sections 8121, 8144, 8146, 8148, 8150 of this title.

§ 8152. Timber.

(a) Allocation of net receipts.--To the extent that a trustee accounts for receipts from the sale of timber and related products under this section, the trustee shall allocate the net receipts:

(1) To income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest.

(2) To principal to the extent that:

(i) the amount of timber removed from the land exceeds the rate of growth of the timber; or

(ii) the net receipts are from the sale of standing timber.

(3) To or between income and principal, by determining the amount of timber removed from the land under the lease or contract and applying the rules in paragraphs (1) and (2) if the net receipts are from:

(i) the lease of timberland; or

(ii) a contract to cut timber from land owned by a trust.

(4) To principal to the extent that advance payments, bonuses and other payments are not allocated under paragraph (1), (2) or (3).

(b) Determining net receipts.--In determining net receipts to be allocated under subsection (a), a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(c) Application.--This chapter applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

Cross References. Section 8152 is referred to in sections 8121, 8144, 8146, 8148, 8150 of this title.

§ 8153. Property not productive of income.

(a) General rule.--If a Federal estate or gift tax marital deduction is allowed for all or part of a trust whose income is required to be paid to the settlor's or testator's spouse and whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under section 8104 (relating to trustee's power to adjust) and that the trustee distributes to the spouse from principal pursuant to the governing instrument are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time or exercise the power conferred by section 8104(a). The trustee may decide which action or combination of actions to take.

(b) Other cases.--In cases not governed by subsection (a), proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

Cross References. Section 8153 is referred to in section 8144 of this title.

§ 8154. Derivatives and options.

(a) Derivatives.--To the extent that a trustee does not account under section 8143 (relating to business and other

activities conducted by trustee) for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(b) Options.--If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor or testator of the trust for services rendered, must be allocated to principal.

(c) Definition.--As used in this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

Cross References. Section 8154 is referred to in sections 8143, 8144, 8146, 8150 of this title.

§ 8155. Asset-backed securities.

(a) General rule.--If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets:

(1) The trustee shall allocate to income the portion of the payment which the payor identifies as being from interest or other current return.

(2) The trustee shall allocate the balance of the payment to principal.

(b) Allocation where liquidating trust's interest in security.--

(1) If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal.

(2) If a payment is one of a series of payments which will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate:

(i) ten percent of the payment to income; and

(ii) the balance to principal.

(c) Definition.--As used in this section, the term "asset-backed security" means an asset the value of which is based upon the right it gives the owner to receive distributions from the proceeds of financial assets which provide collateral for the security. The term includes an asset which gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which section 8141 (relating to character of receipts) or 8149 (relating to retirement benefits, individual retirement accounts, deferred compensation, annuities and similar payments) applies.

Cross References. Section 8155 is referred to in sections 8141, 8142, 8144, 8146, 8148, 8150 of this title.

SUBCHAPTER E
ALLOCATION OF DISBURSEMENTS DURING
ADMINISTRATION OF TRUST

Sec.

- 8161. Mandatory disbursements from income.
- 8162. Mandatory disbursements from principal.
- 8163. Discretionary allocation of disbursements.
- 8164. Transfers from income to principal for depreciation.
- 8165. Transfers from income to reimburse principal.
- 8166. Income taxes.
- 8167. Adjustments between principal and income because of taxes.

Cross References. Subchapter E is referred to in sections 8121, 8149 of this title.

§ 8161. Mandatory disbursements from income.

A trustee shall make the following disbursements from income:

- (1) Interest, except interest on death taxes.
- (2) Ordinary repairs.
- (3) Real estate and other regularly recurring taxes assessed against principal.
- (4) Recurring premiums on fire or other insurance covering the loss of a principal asset or the loss of income from or use of the asset.

Cross References. Section 8161 is referred to in sections 8162, 8163, 8165 of this title.

§ 8162. Mandatory disbursements from principal.

(a) Mandatory disbursements.--A trustee shall make the following disbursements from principal:

- (1) Extraordinary expenses incurred in connection with the administration, management or preservation of trust property and the distribution of income.
- (2) Extraordinary repairs.
- (3) Compensation for legal services to the trustee.
- (4) Expenses in connection with accountings and judicial or other proceedings. This paragraph includes proceedings to construe, modify or reform the trust or to protect the trust or its property.
- (5) Payments on the principal of a trust debt.
- (6) Premiums paid on a policy of insurance not described in section 8161(4) (relating to mandatory disbursements from income) of which the trust is the owner and beneficiary.
- (7) Estate, inheritance and other transfer taxes, including interest and penalties, apportioned to the trust.
- (8) Disbursements related to environmental matters.

This paragraph includes:

- (i) Reclamation.
- (ii) Assessing environmental conditions.
- (iii) Remedying and removing environmental contamination.
- (iv) Monitoring remedial activities and the release of substances.
- (v) Preventing future releases of substances.
- (vi) Collecting amounts from persons liable or potentially liable for the costs of those activities.

(vii) Penalties imposed under environmental statutes or regulations and other payments made to comply with those statutes or regulations.

(viii) Statutory or common law claims by third parties.

(ix) Defending claims based on environmental matters.

(b) Mandatory reimbursement.--If a principal asset is encumbered with an obligation which requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

Cross References. Section 8162 is referred to in sections 8144, 8163 of this title.

§ 8163. Discretionary allocation of disbursements.

Subject to sections 8161 (relating to mandatory disbursements from income) and 8162 (relating to mandatory disbursements from principal), a trustee may, in the trustee's discretion, allocate to income or principal or partly to each ordinary expenses incurred in connection with the administration, management or preservation of trust property and the distribution of income, including, but not limited to, the compensation of the trustee and of any person providing investment advisory, custodian or income tax return preparation services to the trustee.

Cross References. Section 8163 is referred to in sections 8150, 8165 of this title.

§ 8164. Transfers from income to principal for depreciation.

(a) Transfers.--A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation. However, a trustee may not transfer any amount for depreciation:

(1) of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

(2) during the administration of a decedent's estate;

or

(3) under this section if the trustee is accounting under section 8143 (relating to business and other activities conducted by trustee) for the business or activity in which the asset is used.

(b) Separate fund unnecessary for amount transferred.--An amount transferred to principal need not be held as a separate fund.

(c) Definition.--As used in this section, the term "depreciation" means a reduction in value due to wear, tear, decay, corrosion or gradual obsolescence of a fixed asset having a useful life of more than one year.

§ 8165. Transfers from income to reimburse principal.

(a) Permissible reimbursements.--A trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future disbursements if the trustee makes or expects to make a disbursement from principal which is allocable to income under section 8161 (relating to mandatory disbursements from income) or 8163 (relating to discretionary allocation of disbursements) and which:

(1) is paid from principal because it is unusually large; or

(2) is made to prepare property for rental, including tenant allowances, leasehold improvements and broker's commissions.

(b) Continued transfers.--If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (a).

(c) Application.--This section shall not apply to the extent the trustee has been or expects to be reimbursed by a third party.

§ 8166. Income taxes.

(a) Receipts allocated to income.--A tax required to be paid by a trustee based on receipts allocated to income shall be paid from income.

(b) Receipts allocated to principal.--A tax required to be paid by a trustee based on receipts allocated to principal shall be paid from principal even if the tax is called an income tax by the taxing authority.

(c) Tax on entity's taxable income.--A tax required to be paid by a trustee on the trust's share of an entity's taxable income shall be paid proportionately:

(1) from income to the extent that receipts from the entity are allocated to income; and

(2) from principal to the extent that:

(i) receipts from the entity are allocated to principal; and

(ii) the trust's share of the entity's taxable income exceeds the total receipts described in paragraph (1) and subparagraph (i).

(d) Reductions in receipts allocated to principal or income.--For purposes of this section, receipts allocated to principal or income shall be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

§ 8167. Adjustments between principal and income because of taxes.

A trustee may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from any of the following:

(1) An election or decision which the trustee makes regarding tax matters.

(2) An income tax or any other tax which is imposed upon the trustee or a beneficiary as a result of a transaction involving the trust or distribution from the trust.

(3) The ownership by a trust of an interest in an entity the taxable income of which, whether or not distributed, is includable in the taxable income of the trust or a beneficiary.

SUBCHAPTERS F and G
(Reserved)

SUBCHAPTER H
MISCELLANEOUS PROVISIONS

Sec.

8191. Uniformity of application and construction.

§ 8191. Uniformity of application and construction.

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

CHAPTER 82
REVISED PRICE ACT
(Repealed)

1974 Repeal. Chapter 82 (§§ 8201 - 8234) was added June 30, 1972, P.L.508, No.164, and repealed December 10, 1974, P.L.867, No.293, effective immediately. The subject matter is now contained in Chapter 83 of this title.

CHAPTER 83
INALIENABLE PROPERTY

Sec.

- 8301. Powers of court to authorize sale, etc. of real property.
- 8302. Venue where real property is wholly in one county.
- 8303. Venue where real property is in more than one county.
- 8304. Procedure.
- 8305. Sale of real property subject to future inalienable interests; disposition of proceeds.
- 8306. Title of purchaser.

Enactment. Chapter 83 was added December 10, 1974, P.L.867, No.293, effective immediately.

Prior Provisions. Similar provisions were formerly contained in Chapter 82 of this title.

§ 8301. Powers of court to authorize sale, etc. of real property.

The court of common pleas, operating through its appropriate division, may authorize the sale, mortgage, lease or exchange of real property or grant declaratory relief with respect to real property:

- (1) Where the legal title is held:
 - (i) by a person whose spouse is an incapacitated person, or has abandoned him or her for one year, or has been absent in circumstances from which the law would presume his or her decease;
 - (ii) by a tenant of an estate by entireties, when the other tenant of such estate has been absent in circumstances from which the law would presume his or her decease;
 - (iii) by corporations of any kind having no capacity to convey, or by any unincorporated association;
 - (iv) by any religious, beneficial, or charitable society or association, incorporated or unincorporated, whose title is subject to forfeiture if real property is held in excess of the amount authorized by law; or
 - (v) by any religious, beneficial or charitable society or association, incorporated or unincorporated, whose title is subject to reversion, possibility of reverter or right of reentry for condition broken if the real property ceases to be used for a purpose specified in a deed, subject to the following:
 - (A) A petition to declare the real property free from reversion, possibility of reverter or right of reentry shall contain an affidavit of an officer of the religious, beneficial or charitable society or

association, stating in detail what reasonable efforts have been made to locate or contact the grantor or the grantor's heirs, successors or assigns to obtain a conveyance of the reversion, possibility of reverter or right of reentry, why the real property should be declared free of the reversion, possibility of reverter or right of reentry, and the use of the funds, if any, to be derived from sale of the real property.

(B) The court shall have the power to consider all of the circumstances and to grant such equitable relief as shall be just and proper and impose such restrictions upon the use of the funds to be derived from the sale of real property as the court shall deem to be appropriate to further the religious, beneficial or charitable purpose reflected in the deed containing the reversion, possibility of reverter or right of reentry for condition broken.

(2) Where the legal title is an estate tail, or is subject to contingent remainders, executory interests, or remainders to a class some or all of whom may not be in being or ascertained at the time of the entry of the decree.

(3) Where the legal title is otherwise inalienable.
(Apr. 16, 1992, P.L.108, No.24, eff. 60 days; Dec. 16, 1992, P.L.1163, No.152, eff. imd.)

1992 Amendments. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability. See section 27(b) of Act 152 in the appendix to this title for special provisions relating to applicability.

§ 8302. Venue where real property is wholly in one county.

In all proceedings under the provisions of this chapter involving real property lying wholly within one county the petition shall be presented only in the court of that county.

§ 8303. Venue where real property is in more than one county.

In all proceedings under the provisions of this chapter involving real property through which the line dividing two or more counties runs, the court of the county in which the residence is situated; or, if there be no residence, the court of the county where the principal improvements may be; or, if there be no improvements, the court of either county, may exercise jurisdiction as to the whole of such real property, irrespective of the county line; and its decree relating to that real property shall be as effectual as if the whole of that real property had been within the county whereof said court has jurisdiction. A certified copy of all proceedings shall be recorded in the office of the recorder of deeds of each county in which any of the real property is situated.

§ 8304. Procedure.

All jurisdiction conferred by this chapter shall be exercised on the petition of any party in interest, upon such terms and upon such security and after such notice as the court shall direct by general rule or special order.

§ 8305. Sale of real property subject to future inalienable interests; disposition of proceeds.

Where real property is held by a person or persons subject to future interests in a person or persons unborn, unascertained or not sui juris and it shall appear to the court that it would be to the interests of such persons having future interests that the real property should be sold, mortgaged, leased or exchanged, the court, upon the application of any party in interest, may appoint a trustee to sell, mortgage, lease or

exchange the real property and to receive the proceeds and hold them in trust for such present and future interests as shall be directed by the court.

§ 8306. Title of purchaser.

If such bond, if any, as has been required by the court, has been given, the title acquired through any sale, mortgage, lease or exchange made pursuant to a decree of the court shall be indefeasible by any person ascertained or unascertained, or any class of persons, referred to in the petition or decree and having a present or expectant interest in the property, and shall be unprejudiced by any error in the proceedings. No party who pays cash or other consideration pursuant to the decree shall be liable to see to the proper application thereof, nor shall he be in any manner subject to any trust limitation on, or defect in, the title set out in the petition or decree. Any sale or exchange under this chapter shall have the effect of a judicial sale as to the discharge of liens, but the court may decree a sale or exchange freed and discharged from the lien of any mortgage otherwise preserved from discharge by existing law, if the holder of such mortgage shall so consent by writing filed in the proceeding.

CHAPTER 84
MILITARY SERVICE

Subchapter

- A. Fiduciaries in Military Service (Repealed)
- B. Notice to Veterans' Bureau

Enactment. Chapter 84 was added June 30, 1972, P.L.508, No.164, effective July 1, 1972.

SUBCHAPTER A
FIDUCIARIES IN MILITARY SERVICE
(Repealed)

1974 Repeal. Subchapter A (§§ 8401 - 8407) was repealed December 10, 1974, P.L.896, No.294, effective immediately. The subject matter is now covered in Chapter 43 of this title.

SUBCHAPTER B
NOTICE TO VETERANS' BUREAU

Sec.

- 8411. Notice of action to United States Veterans' Bureau.
- 8412. Veterans' Bureau's objection to account; costs.

§ 8411. Notice of action to United States Veterans' Bureau.

In any action brought under any law of this Commonwealth for the appointment of a committee or guardian for a veteran of any war, or a minor child, or incapacitated dependent of a veteran of any war, on whose account benefits of compensation or insurance or other gratuity is payable by the United States Veterans' Bureau, or its successor, or upon the filing of any petition or account by any such committee or guardian of any such person, notice of such action, or of the filing of such petition or account, and of the hearing thereon, shall be mailed the attorney of the United States Veterans' Bureau office having jurisdiction over such person. In all such cases, the United States Veterans' Bureau, or its successor, shall be a party in

interest, and a certified copy of each account filed in the court shall be supplied the said bureau by the committee or guardian.

(Apr. 16, 1992, P.L.108, No.24, eff. 60 days)

1992 Amendment. See section 21 of Act 24 in the appendix to this title for special provisions relating to applicability.

Saved from Suspension. Pennsylvania Rule of Civil Procedure No. 2248, as amended June 3, 1994, provided that section 8411 shall not be deemed suspended or affected by Rules 2226 through 2232 relating to joinder of parties.

§ 8412. Veterans' Bureau's objection to account; costs.

In any action or proceeding wherein the attorney of the bureau objects to the account of the committee or guardian, and such committee or guardian is removed for cause, costs shall not be allowed out of the ward's estate, but may be taxed against the defaulting committee or guardian.

CHAPTER 85

SIMULTANEOUS DEATH

Sec.

- 8501. No sufficient evidence of survivorship.
- 8502. Beneficiaries of another person's disposition of property.
- 8503. Joint tenants or tenants by the entirety.
- 8504. Insurance policies.
- 8505. Chapter does not apply if decedent provides otherwise.

Enactment. Chapter 85 was added June 30, 1972, P.L.508, No.164, effective July 1, 1972.

§ 8501. No sufficient evidence of survivorship.

Where the title to property or the devolution thereof depends upon priority of death and there is no sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if he had survived, except as provided otherwise in this chapter.

§ 8502. Beneficiaries of another person's disposition of property.

Where two or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries, and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

§ 8503. Joint tenants or tenants by the entirety.

Where there is no sufficient evidence that two joint tenants or tenants by the entirety have died otherwise than simultaneously, the property so held shall be distributed, one-half as if one had survived, and one-half as if the other had survived. If there are more than two joint tenants, and all of them have so died, the property thus distributed shall be in the proportion that one bears to the whole number of joint tenants.

§ 8504. Insurance policies.

Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the

proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

§ 8505. Chapter does not apply if decedent provides otherwise.

This chapter shall not apply in the case of wills, living trusts, deeds or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this chapter.

CHAPTER 86
ANATOMICAL GIFTS

Subchapter

- A. General Provisions
- B. Express Anatomical Gifts
- C. Corneal Transplants

Enactment. Chapter 86 was added December 1, 1994, P.L.655, No.102, effective in 90 days.

Prior Provisions. Former Chapter 86, which related to the same subject matter, was added June 30, 1972, P.L.508, No.164, and repealed December 1, 1994, P.L.655, No.102, effective in 90 days.

Cross References. Chapter 86 is referred to in section 5603 of this title.

SUBCHAPTER A
GENERAL PROVISIONS

Sec.

8601. Definitions.

§ 8601. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Acute care general hospital." Any hospital which has an emergency room facility.

"Advisory committee." The Organ Donation Advisory Committee established under section 8622 (relating to The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund).

"Bank or storage facility." A facility licensed, accredited or approved under the laws of any state for storage of human bodies or parts thereof.

"Board." The Humanity Gifts Registry.

"Decedent." A deceased individual, including a stillborn infant or fetus.

"Donor." An individual who makes a gift of all or part of his body.

"Fund." The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund established under section 8622 (relating to The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund).

"Hospital." An institution licensed in this Commonwealth having an organized medical staff established for the purpose of providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services for the care of persons who are injured, disabled, pregnant, diseased, sick or mentally ill or rehabilitation services for the rehabilitation of persons who are injured, disabled, pregnant,

diseased, sick or mentally ill. The term includes facilities for the diagnosis and treatment of disorders within the scope of specific medical specialties. The term does not include facilities caring exclusively for the mentally ill.

"Organ procurement organization." An organization that meets the requirements of section 371 of the Public Health Service Act (58 Stat. 682, 42 U.S.C. § 273).

"Part." Organs, tissues, eyes, bones, arteries, blood, other fluids and any other portions of a human body.

"Person." An individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association or any other legal entity.

"Physician" or "surgeon." A physician or surgeon licensed or authorized to practice under the laws of any state.

"State." Any state, district, commonwealth, territory, insular possession and any other area subject to the legislative authority of the United States of America.

"Unlawful competition." Conduct declared unlawful under section 3 of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law.

(Dec. 20, 2000, P.L.881, No.120, eff. imd.)

2000 Amendment. See sections 2, 3 and 4 of Act 120 in the appendix to this title for special provisions relating to references to Organ Donation Awareness Trust Fund, use of existing forms by Department of Revenue and use of existing forms by Department of Transportation.

SUBCHAPTER B

EXPRESS ANATOMICAL GIFTS

Sec.

- 8611. Persons who may execute anatomical gift.
- 8612. Persons who may become donees; purposes for which anatomical gifts may be made.
- 8613. Manner of executing anatomical gifts.
- 8614. Delivery of document of gift.
- 8615. Amendment or revocation of gift.
- 8616. Rights and duties at death.
- 8617. Requests for anatomical gifts.
- 8618. Voluntary contribution system (Repealed).
- 8619. Use of driver's license or identification card to indicate organ or tissue donation.
- 8620. Police and emergency personnel responsibilities.
- 8621. The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund contributions.
- 8622. The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund.
- 8623. Confidentiality requirement.
- 8624. Prohibited activities.

§ 8611. Persons who may execute anatomical gift.

(a) General rule.--Any individual of sound mind and 18 years of age or more may give all or any part of his body for any purpose specified in section 8612 (relating to persons who may become donees; purposes for which anatomical gifts may be made), the gift to take effect upon death. Any agent acting under a power of attorney which authorizes the agent to make anatomical gifts may effectuate a gift for any purpose specified in section 8612. Any individual who is a minor and 16 years of age or older may effectuate a gift for any purpose specified in section 8612,

provided parental or guardian consent is deemed given. Parental or guardian consent shall be noted on the minor's donor card, application for the donor's learner's permit or driver's license or other document of gift. A gift of the whole body shall be invalid unless made in writing at least 15 days prior to the date of death or consent is obtained from the legal next of kin. Where there are adult children of the deceased who are not children of the surviving spouse, their consent shall also be required for a gift of the whole body for anatomical study.

(b) Others entitled to donate anatomy of decedent.--Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purpose specified in section 8612:

- (1) The spouse.
- (2) An adult son or daughter.
- (3) Either parent.
- (4) An adult brother or sister.
- (5) A guardian of the person of the decedent at the time of his death.
- (6) Any other person authorized or under obligation to dispose of the body.

(c) Donee not to accept in certain cases.--If the donee has actual notice of contrary indications by the decedent or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by subsection (b) may make the gift after or immediately before death.

(d) Examinations.--A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(e) Rights of donee paramount.--The rights of the donee created by the gift are paramount to the rights of others except as provided by section 8616(d) (relating to rights and duties at death).

(June 18, 1998, P.L.529, No.74, eff. imd.; Oct. 12, 1999, P.L.422, No.39, eff. 60 days)

1999 Amendment. Act 39 amended subsec. (a). See section 13(7) of Act 39 in the appendix to this title for special provisions relating to applicability.

Cross References. Section 8611 is referred to in sections 305, 8613, 8616, 8617, 8641 of this title.

§ 8612. Persons who may become donees; purposes for which anatomical gifts may be made.

The following persons may become donees of gifts of bodies or parts thereof for any of the purposes stated:

- (1) Any hospital, surgeon or physician for medical or dental education, research, advancement of medical or dental science, therapy or transplantation.
- (2) Any accredited medical or dental school, college or university for education, research, advancement of medical or dental science or therapy.
- (3) Any bank or storage facility for medical or dental education, research, advancement of medical or dental science, therapy or transplantation.
- (4) Any specified individual for therapy or transplantation needed by him.
- (5) The board.

Cross References. Section 8612 is referred to in section 8611 of this title.

§ 8613. Manner of executing anatomical gifts.

(a) Gifts by will.--A gift of all or part of the body under section 8611(a) (relating to persons who may execute anatomical gift) may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(b) Gifts by other documents.--A gift of all or part of the body under section 8611(a) may also be made by document other than a will. The gift becomes effective upon the death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor in the presence of two witnesses who must sign the document in his presence. If the donor is mentally competent to signify his desire to sign the document but is physically unable to do so, the document may be signed for him by another at his direction and in his presence in the presence of two witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(c) Specified and unspecified donees.--The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

(d) Designation of person to carry out procedures.--Notwithstanding section 8616(b) (relating to rights and duties at death), the donor may designate in his will, card or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose, or, in the case of a gift of eyes, he may employ or authorize a person who is a funeral director licensed by the State Board of Funeral Directors, an eye bank technician or medical student, if the person has successfully completed a course in eye enucleation approved by the State Board of Medical Education and Licensure, or an eye bank technician or medical student trained under a program in the sterile technique for eye enucleation approved by the State Board of Medical Education and Licensure to enucleate eyes for an eye bank for the gift after certification of death by a physician. A qualified funeral director, eye bank technician or medical student acting in accordance with the terms of this subsection shall not have any liability, civil or criminal, for the eye enucleation.

(e) Consent not necessary.--If a donor card, donor driver's license, living will, durable power of attorney or other document of gift evidencing a gift of organs or tissue has been executed, consent of any person designated in section 8611(b) at the time of the donor's death or immediately thereafter is not necessary to render the gift valid and effective.

(f) Documentation of gifts by others.--Any gift by a person designated in section 8611(b) shall be made by a document signed

by him or made by his telegraphic, recorded telephonic or other recorded message.

§ 8614. Delivery of document of gift.

If the gift is made by the donor to a specified donee, the will, card or other document or an executed copy thereof may be delivered to the donee to expedite the appropriate procedures immediately after death. Delivery is not necessary to the validity of the gift. The will, card or other document or an executed copy thereof may be deposited in any hospital, bank or storage facility that accepts it for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination.

§ 8615. Amendment or revocation of gift.

(a) Document delivered to donee.--If the will, card or other document or executed copy thereof has been delivered to a specified donee, the donor may amend or revoke the gift by any of the following:

(1) The execution and delivery to the donee of a signed statement.

(2) An oral statement made in the presence of two persons and communicated to the donee.

(3) A statement during a terminal illness or injury addressed to an attending physician and communicated to the donee.

(4) A signed card or document found on his person or in his effects.

(b) Document not delivered to donee.--Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (a) or by destruction, cancellation or mutilation of the document and all executed copies thereof.

(c) Gifts by will.--Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills or as provided in subsection (a).

§ 8616. Rights and duties at death.

(a) Donees and relatives.--The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he shall, subject to the terms of the gift, authorize embalming and the use of the body in funeral services if the surviving spouse or next of kin as determined in section 8611(b) (relating to persons who may execute anatomical gift) requests embalming and use of the body for funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin or other persons under obligation to dispose of the body.

(b) Physicians.--The time of death shall be determined by a physician who tends the donor at his death or, if none, the physician who certifies the death. The physician or person who certifies death or any of his professional partners or associates shall not participate in the procedures for removing or transplanting a part.

(c) Certain liability limited.--A person who acts in good faith in accordance with the terms of this subchapter or with the anatomical gift laws of another state or a foreign country is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act.

(d) Law on autopsies applicable.--The provisions of this subchapter are subject to the laws of this Commonwealth prescribing powers and duties with respect to autopsies.

Cross References. Section 8616 is referred to in sections 8611, 8613 of this title.

§ 8617. Requests for anatomical gifts.

(a) Procedure.--On or before the occurrence of each death in an acute care general hospital, the hospital shall make contact with the regional organ procurement organization in order to determine the suitability for organ, tissue and eye donation for any purpose specified under this subchapter. This contact and the disposition shall be noted on the patient's medical record.

(b) Limitation.--If the hospital administrator or his designee has received actual notice of opposition from any of the persons named in section 8611(b) (relating to persons who may execute anatomical gift) and the decedent was not in possession of a validly executed donor card, the gift of all or any part of the decedent's body shall not be requested.

(c) Donor card.--Notwithstanding any provision of law to the contrary, the intent of a decedent to participate in an organ donor program as evidenced by the possession of a validly executed donor card, donor driver's license, living will, durable power of attorney or other document of gift shall not be revoked by any member of any of the classes specified in section 8611(b).

(d) Identification of potential donors.--Each acute care general hospital shall develop within one year of the date of final enactment of this section, with the concurrence of the hospital medical staff, a protocol for identifying potential organ and tissue donors. It shall require that, at or near the time of every individual death, all acute care general hospitals contact by telephone their regional organ procurement organization to determine suitability for organ, tissue and eye donation of the individual in question. The person designated by the acute care general hospital to contact the organ procurement organization shall have the following information available prior to making the contact:

- (1) The patient's identifier number.
- (2) The patient's age.
- (3) The cause of death.
- (4) Any past medical history available.

The organ procurement organization, in consultation with the patient's attending physician or his designee, shall determine the suitability for donation. If the organ procurement organization in consultation with the patient's attending physician or his designee determines that donation is not appropriate based on established medical criteria, this shall be noted by hospital personnel on the patient's record, and no further action is necessary. If the organ procurement organization in consultation with the patient's attending physician or his designee determines that the patient is a suitable candidate for anatomical donation, the acute care general hospital shall initiate a request by informing the persons and following the procedure designated under section 8611(b) of the option to donate organs, tissues or eyes. The person initiating the request shall be an organ procurement organization representative or a designated requestor. The organ procurement organization representative or designated requestor shall ask persons pursuant to section 8611(b) whether the deceased was an organ donor. If the person designated under section 8611(b) does not know, then this person shall be informed of the option to donate organs and tissues. The protocol shall encourage discretion and sensitivity to family

circumstances in all discussions regarding donations of tissue or organs. The protocol shall take into account the deceased individual's religious beliefs or nonsuitability for organ and tissue donation.

(e) Tissue procurement.--

(1) The first priority use for all tissue shall be transplantation.

(2) Upon Department of Health approval of guidelines pursuant to subsection (f)(1)(ii), all acute care general hospitals shall select at least one tissue procurement provider. A hospital shall notify the regional organ procurement organization of its choice of tissue procurement providers. If a hospital chooses more than one tissue procurement provider, it may specify a rotation of referrals by the organ procurement organization to the designated tissue procurement providers.

(3) Until the Department of Health has approved guidelines pursuant to subsection (f)(1)(ii), tissue referrals at each hospital shall be rotated in a proportion equal to the average rate of donors recovered among the tissue procurement providers at that hospital during the two-year period ending August 31, 1994.

(4) The regional organ procurement organization, with the assistance of tissue procurement providers, shall submit an annual report to the General Assembly on the following:

(i) The number of tissue donors.

(ii) The number of tissue procurements for transplantation.

(iii) The number of tissue procurements recovered for research by each tissue procurement provider operating in this Commonwealth.

(f) Guidelines.--

(1) The Department of Health, in consultation with organ procurement organizations, tissue procurement providers and the Hospital Association of Pennsylvania, donor recipients and family appointed pursuant to section 8622(c)(3) (relating to The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund) shall, within six months of the effective date of this chapter, do all of the following:

(i) Establish guidelines regarding efficient procedures facilitating the delivery of anatomical gift donations from receiving hospitals to procurement providers.

(ii) Develop guidelines to assist hospitals in the selection and designation of tissue procurement providers.

(2) Each organ procurement organization and each tissue procurement provider operating within this Commonwealth shall, within six months of the effective date of this chapter, file with the Department of Health, for public review, its operating protocols.

(g) Death record review.--

(1) The Department of Health shall make annual death record reviews at acute care general hospitals to determine their compliance with subsection (d).

(2) To conduct a review of an acute care general hospital, the following apply:

(i) The Department of Health shall select to carry out the review the Commonwealth-licensed organ procurement organization designated by the Health Care Financing Administration for the region within which the acute care general hospital is located. For an organ

procurement organization to be selected under this subparagraph, the organization must not operate nor have an ownership interest in an entity which provides all of the functions of a tissue procurement provider.

(ii) If there is no valid selection under subparagraph (i) or if the organization selected under subparagraph (i) is unwilling to carry out the review, the department shall select to carry out the review any other Commonwealth-licensed organ procurement organization. For an organ procurement organization to be selected under this subparagraph, the organization must not operate nor have an ownership interest in an entity which provides all of the functions of a tissue procurement provider.

(iii) If there is no valid selection under subparagraph (ii) or if the organization selected under subparagraph (ii) is unwilling to carry out the review, the department shall carry out the review using trained department personnel.

(3) There shall be no cost assessed against a hospital for a review under this subsection.

(4) If the department finds, on the basis of a review under this subsection, that a hospital is not in compliance with subsection (d), the department may impose an administrative fine of up to \$500 for each instance of noncompliance. A fine under this paragraph is subject to 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action). Fines collected under this paragraph shall be deposited into the fund.

(h) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Designated requestor." A hospital employee completing a course offered by an organ procurement organization on how to approach potential donor families and request organ or tissue donation.

"Noncompliance." Any failure on the part of a hospital to contact an organ procurement organization as required under subsection (d).

(Dec. 20, 2000, P.L.881, No.120, eff. imd.)

2000 Amendment. Act 120 amended subsec. (f). See sections 2, 3 and 4 of Act 120 in the appendix to this title for special provisions relating to references to Organ Donation Awareness Trust Fund, use of existing forms by Department of Revenue and use of existing forms by Department of Transportation.

Cross References. Section 8617 is referred to in sections 8622, 8624 of this title.

§ 8618. Voluntary contribution system (Repealed).

1997 Repeal. Section 8618 was repealed May 7, 1997, P.L.85, No.7, effective immediately.

§ 8619. Use of driver's license or identification card to indicate organ or tissue donation.

(a) General rule.--The Department of Transportation shall redesign the driver's license and identification card application system to process requests for information regarding consent of the individual to organ or tissue donation. The following question shall be asked on both the application for

a driver's license or identification card and on the organ donor designation at a photo center:

Pennsylvania strongly supports organ and tissue donation because of its life-saving and life-enhancing opportunities.

Do you wish to have the organ donor designation printed on your driver's license?

Only an affirmative response of an individual shall be noted on the front of the driver's license or identification card and shall clearly indicate the individual's intent to donate his organs or tissue. A notation on an individual's driver's license or identification card that he intends to donate his organs or tissue is deemed sufficient to satisfy all requirements for consent to organ or tissue donation.

(b) Electronic access.--The organ procurement organizations designated by the Federal Government in the Commonwealth of Pennsylvania as part of the nationwide organ procurement network may be given 24-hour-a-day electronic access to information necessary to confirm an individual's organ donor status through the Department of Transportation's driver licensing database. Necessary information shall include the individual's name, address, date of birth, driver's license number and organ donor status. Notwithstanding 75 Pa.C.S. § 6114 (relating to limitation on sale, publication and disclosure of records), the Department of Transportation is authorized to provide the organ procurement organizations, after a written agreement between the Department of Transportation and the organ procurement organizations is first obtained, with the foregoing information. The organ procurement organization shall not use such information for any purpose other than to confirm an individual's organ donor status at or near or after an individual's death. The organ procurement organizations shall not be assessed the fee for such information prescribed by 75 Pa.C.S. § 1955(a) (relating to information concerning drivers and vehicles).

(June 23, 2006, P.L.201, No.48, eff. imd.; Dec. 17, 2015, P.L.452, No.79, eff. 60 days)

2015 Amendment. Act 79 amended subsec. (a).

§ 8620. Police and emergency personnel responsibilities.

Police and emergency personnel responding to the scene of an accident or trauma shall take reasonable steps to insure that the driver's license or personal identification card, donor card or other document of gift and medical alert bracelet, if any, of the individual involved in the accident or trauma accompanies the individual to the hospital or other health care facility. The hospital or other health care facility shall, within five days, if practicable, return the driver's license or identification card to the Department of Transportation, accompanied by a form prescribed by the Department of Transportation, if the individual involved in the accident is deceased.

§ 8621. The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund contributions.

(a) Driver's license.--Beginning as soon as practicable, but no later than January 1, 1995, the Department of Transportation shall provide an applicant for an original or renewal driver's license or identification card the opportunity to make a contribution of \$1 to the fund. The contribution shall be added to the regular fee for an original or renewal driver's license or identification card. One contribution may be made for each issuance or renewal of a license or identification

card. Contributions shall be used exclusively for the purposes set out in section 8622 (relating to The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund). The Department of Transportation shall monthly determine the total amount designated under this section and shall report that amount to the State Treasurer, who shall transfer that amount to The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund.

(b) Vehicle registration.--The Department of Transportation shall provide an applicant for a renewal vehicle registration the opportunity to make a contribution of \$1 to The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund. The contribution shall be added to the regular fee for a renewal of a vehicle registration. One contribution may be made for each renewal vehicle registration. Contributions shall be used exclusively for the purposes described in section 8622. The Department of Transportation shall monthly determine the total amount designated under this section and shall report that amount to the State Treasurer, who shall transfer that amount to The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund. The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund shall reimburse the department for the initial costs incurred in the development and implementation of the contribution program under this subsection. The General Fund shall reimburse the Department of Transportation for the actual annual operating costs of the program for vehicle registrations as described in this subsection subject to the following limits: For the first fiscal year during which this subsection is effective, the General Fund shall reimburse the Department of Transportation for the actual operating costs of the program in this subsection up to a maximum of \$100,000. For each fiscal year thereafter, the General Fund shall reimburse the Department of Transportation for the actual operating costs of the program in this subsection in an amount not to exceed the prior year's actual operating costs on a full fiscal year basis plus 3%. The amounts approved by the Governor as necessary are hereby appropriated from the General Fund for this purpose.

(June 18, 1998, P.L.529, No.74, eff. July 1, 1999; Dec. 20, 2000, P.L.881, No.120, eff. imd.)

2000 Amendment. See sections 2, 3 and 4 of Act 120 in the appendix to this title for special provisions relating to references to Organ Donation Awareness Trust Fund, use of existing forms by Department of Revenue and use of existing forms by Department of Transportation.

Cross References. Section 8621 is referred to in section 8622 of this title.

§ 8622. The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund.

(a) Establishment.--All contributions received by the Department of Transportation under section 8621 (relating to The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund contributions) and the Department of Revenue under section 8618 (relating to voluntary contribution system) and the Department of Health under section 8617 (relating to requests for anatomical gifts) shall be deposited into a special fund in the State Treasury to be known as The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund, which is hereby established.

(b) Appropriation.--All moneys deposited in the fund and interest which accrues from those funds are appropriated on a

continuing basis subject to the approval of the Governor to compensate the Department of Transportation, the Department of Health and the Department of Revenue for actual costs related to implementation of this chapter, including all costs of the Organ Donation Advisory Committee created in subsection (c). Any remaining funds are appropriated subject to the approval of the Governor for the following purposes:

(1) 10% of the total fund may be expended annually by the Department of Health for reasonable hospital and other medical expenses, funeral expenses and incidental expenses incurred by the donor or donor's family in connection with making a vital organ donation. Such expenditures shall not exceed \$3,000 per donor and shall only be made directly to the funeral home, hospital or other service provider related to the donation. No part of the fund shall be transferred directly to the donor's family, next of kin or estate. The advisory committee shall develop procedures, including the development of a pilot program, necessary for effectuating the purposes of this paragraph.

(2) 50% may be expended for grants to certified organ procurement organizations for the development and implementation of organ donation awareness programs in this Commonwealth. The Department of Health shall develop and administer this grant program, which is hereby established.

(3) 15% may be expended by the Department of Health, in cooperation with certified organ procurement organizations, for the Project-Make-A-Choice program, which shall include information pamphlets designed by the Department of Health relating to organ donor awareness and the laws regarding organ donation, public information and public education about contributing to the fund when obtaining or renewing a driver's license and when completing a State individual income tax return form.

(4) 25% may be expended by the Department of Education for the implementation of organ donation awareness programs in the secondary schools in this Commonwealth.

(c) Advisory committee.--The Organ Donation Advisory Committee is hereby established, with membership as follows:

(1) Two representatives of organ procurement organizations.

(2) Two representatives of tissue procurement providers.

(3) Six members representative of organ, tissue and eye recipients, families of recipients and families of donors.

(4) Three representatives of acute care hospitals.

(5) One representative of the Department of Health.

(6) One representative of eye banks.

All members shall be appointed by the Governor. Appointments shall be made in a manner that provides representation of the northwest, north central, northeast, southwest, south central and southeast regions of this Commonwealth. Members shall serve five-year terms. The Governor may reappoint advisory committee members for successive terms. Members of the advisory committee shall remain in office until a successor is appointed and qualified. If vacancies occur prior to completion of a term, the Governor shall appoint another member in accordance with this subsection to fill the unexpired term. The advisory committee shall meet at least biannually to review progress in the area of organ and tissue donation in this Commonwealth, recommend education and awareness training programs, recommend priorities in expenditures from the fund and advise the Secretary of Health on matters relating to administration of the fund. The advisory committee shall recommend legislation

as it deems necessary to fulfill the purposes of this chapter. The advisory committee shall submit a report concerning its activities and progress to the General Assembly within 30 days prior to the expiration of each legislative session. The Department of Health shall reimburse members of the advisory committee for all necessary and reasonable travel and other expenses incurred in the performance of their duties under this section.

(d) Reports.--The Department of Health and the Department of Education shall submit an annual report to the General Assembly on expenditures of fund moneys and any progress made in reducing the number of potential donors who were not identified.

(e) Definition.--As used in this section, the term "vital organ" means a heart, lung, liver, kidney, pancreas, small bowel, large bowel or stomach for the purpose of transplantation.

(Dec. 20, 2000, P.L.881, No.120, eff. imd.)

2000 Amendment. Act 120 amended the section heading and subsec. (a). See sections 2, 3 and 4 of Act 120 in the appendix to this title for special provisions relating to references to Organ Donation Awareness Trust Fund, use of existing forms by Department of Revenue and use of existing forms by Department of Transportation.

Special Provisions in Appendix. See section 9 of Act 102 of 1994 in the appendix to this title for special provisions relating to secondary education program.

References in Text. Section 8618, referred to in this section, is repealed.

Cross References. Section 8622 is referred to in sections 8601, 8617, 8621 of this title.

§ 8623. Confidentiality requirement.

The identity of the donor and of the recipient may not be communicated unless expressly authorized by the recipient and next of kin of the decedent.

§ 8624. Prohibited activities.

(a) Affiliates.--No organ procurement organization selected by the Department of Health under section 8617(g) (relating to requests for anatomical gifts) to conduct annual death reviews may use that review authority or any powers or privileges granted thereby to coerce or attempt to coerce a hospital to select the organization or any tissue procurement provider contractually affiliated with the organization as a designated tissue procurement provider under section 8617(e).

(b) Unfair acts.--No organ procurement organization or tissue procurement provider may disparage the services or business of other procurement providers by false or misleading representations of fact, engage in any other fraudulent conduct to influence the selection by a hospital of a qualified tissue procurement provider nor engage in unlawful competition or discrimination. This subsection is not intended to restrict or preclude any organ procurement organization or tissue procurement provider from marketing or promoting its services in the normal course of business.

SUBCHAPTER C CORNEAL TRANSPLANTS

Sec.

8641. Removal of corneal tissue permitted under certain circumstances.

8642. Limitation of liability.

§ 8641. Removal of corneal tissue permitted under certain circumstances.

(a) General rule.--On a request from an authorized official of an eye bank for corneal tissue, a coroner or medical examiner may permit the removal of corneal tissue if all of the following apply:

(1) The decedent from whom the tissue is to be removed died under circumstances requiring an inquest.

(2) The coroner or medical examiner has made a reasonable effort to contact persons listed in section 8611 (relating to persons who may execute anatomical gift).

(3) No objection by a person listed in section 8611 is known by the coroner or medical examiner.

(4) The removal of the corneal tissue will not interfere with the subsequent course of an investigation or autopsy or alter the decedent's postmortem facial appearance.

(b) Definition.--As used in this section, the term "eye bank" means a nonprofit corporation chartered under the laws of this Commonwealth to obtain, store and distribute donor eyes to be used by physicians or surgeons for corneal transplants, research or other medical purposes and the medical activities of which are directed by a physician or surgeon in this Commonwealth.

§ 8642. Limitation of liability.

A person who acts in good faith in accordance with the provisions of this subchapter shall not be subject to criminal or civil liability arising from any action taken under this subchapter. The immunity provided by this section shall not extend to persons if damages result from the gross negligence, recklessness or intentional misconduct of the person.

CHAPTER 87
EMPLOYEE BENEFITS

Sec.

8701. Existing trusts may continue for term necessary to accomplish purpose.

8702. Combining trusts.

8703. Transfer of assets to corporate trustee; investments; common trust funds.

8704. Payments upon employee's death; third party claims.

Enactment. Chapter 87 was added June 30, 1972, P.L.508, No.164, effective July 1, 1972.

§ 8701. Existing trusts may continue for term necessary to accomplish purpose.

Any trust created prior to January 1, 1948, primarily for the benefit of employees, their families or appointees, under any stock, bonus, pension, disability, death benefit, profit sharing or other employee-benefit plan, to which contributions are made by the employer or employees or both for the purpose of distributing to or for the benefit of the employees, their families, or appointees, the earnings or the principal, or both earnings and principal of the fund held in trust, may continue in perpetuity, or for such time as may be necessary to accomplish the purpose for which it was created, and shall not be invalid as violating any statute or rule of law against

perpetuities, or against accumulations or concerning the suspension of the power of alienation of the title to property.

§ 8702. Combining trusts.

Whenever two or more trusts heretofore have been or hereafter shall be created primarily for the benefit of the employees of the same employer or their families or appointees under any stock, bonus, pension, disability, death benefit, profit sharing or other employee-benefit plan or plans and the court of common pleas having jurisdiction over any one of such trusts, upon the application of the employer who established such trusts, any trustee thereof or any other party in interest, shall find that such trusts can be more effectively administered if they are combined, the court, in its discretion, after such notice to parties in interest as the court shall direct, may order that they be combined into one trust, which may be one of such existing trusts, in the manner and to the extent that the court shall approve, but not so as to violate any express provision to the contrary in any conveyance creating any of the trusts so combined.

§ 8703. Transfer of assets to corporate trustee; investments; common trust funds.

The trustee or trustees of any employee-benefit plan, such as a pension, welfare, profit sharing, share, purchase, or other plan, may transfer any part of the property and assets of the plan, in trust, to a corporate trustee which shall be a bank and trust company or trust company, incorporated under the laws of Pennsylvania, or a national banking association, having fiduciary powers and having its principal office in Pennsylvania, and may authorize such corporate trustee to invest and reinvest such property and assets subject to the same powers, restrictions and obligations with respect to investment and reinvestment of such property and assets as are applicable to the trustee or trustees making such transfer, and to contribute such property and assets to any common trust fund which the transferee may be otherwise authorized to maintain and to pay over the net income therefrom at such intervals as may be agreed: Provided, however, That such transfer in trust may be at any time revoked by action of the trustee or trustees so making transfer.

§ 8704. Payments upon employee's death; third party claims.

The trustee, custodian or committee charged with the responsibility of disbursing funds from any trust, custodial account, annuity or other funding arrangement under a pension, profit sharing, stock bonus, deferred compensation, disability, death benefit or other plan established by an employer for the benefit of its employees and their beneficiaries may pay funds upon the death of an employee or former employee to the beneficiaries entitled thereto under the plan or under a designation by the employee made pursuant to the plan and by making such payment shall be released from all claims by third parties. Pending such payment, such trustee, custodian or committee shall not be required to recognize any claim by third parties or to withhold disbursement pending the resolution of such claims, in the absence of an appropriate court order directed to it restraining such disbursement until further order of such court or instructing it to make disbursement of the account as provided in the order. Any person to whom payment is made shall be answerable therefor to anyone prejudiced thereby.

SLAYERS

Sec.

- 8801. Definition of terms.
- 8802. Slayer not to acquire property as result of slaying.
- 8803. Descent, distribution, dower, curtesy, and statutory rights as survivor.
- 8804. Legacies.
- 8805. Tenancies by the entirety.
- 8806. Joint tenants, joint owners and joint obligees.
- 8807. Reversions and vested remainders.
- 8808. Interests dependent on survivorship or continuance of life.
- 8809. Contingent remainders and executory or other future interests.
- 8810. Powers of appointment.
- 8811. Proceeds of insurance.
- 8812. Bona fide payment by insurance company or obligor.
- 8813. Bona fide purchasers.
- 8814. Record of conviction as evidence.
- 8814.1. Preadjudication rule.
- 8815. Broad construction; policy of State.

Enactment. Chapter 88 was added June 30, 1972, P.L.508, No.164, effective July 1, 1972.

Cross References. Chapter 88 is referred to in sections 2106, 2507 of this title.

§ 8801. Definition of terms.

As used in this chapter:

"Slayer." Means any person who participates, either as a principal or as an accessory before the fact, in the willful and unlawful killing of any other person.

"Decedent." Means any person whose life is so taken.

"Property." Includes any real and personal property and any right or interest therein.

§ 8802. Slayer not to acquire property as result of slaying.

No slayer shall in any way acquire any property or receive any benefit as the result of the death of the decedent, but such property shall pass as provided in the sections following.

§ 8803. Descent, distribution, dower, curtesy, and statutory rights as survivor.

The slayer shall be deemed to have predeceased the decedent as to property which would have passed from the decedent or his estate to the slayer under the statutes of descent and distribution or have been acquired by dower, by curtesy or by statutory right as surviving spouse.

§ 8804. Legacies.

Property which would have passed to or for the benefit of the slayer by devise or legacy from the decedent shall be distributed as if he had predeceased the decedent.

§ 8805. Tenancies by the entirety.

One-half of any property held by the slayer and the decedent as tenants by the entirety shall pass upon the death of the decedent to his estate, and the other half shall be held by the slayer during his life, subject to pass upon his death to the estate of the decedent.

§ 8806. Joint tenants, joint owners and joint obligees.

(a) **Joint ownership by slayer and decedent.**--One-half of any property held by the slayer and the decedent as joint tenants, joint owners or joint obligees shall pass upon the death of the decedent to his estate, and the other half shall pass to his estate upon the death of the slayer, unless the

slayer obtains a separation or severance of the property or a decree granting partition.

(b) Joint ownership by three or more persons.--As to property held jointly by three or more persons, including the slayer and the decedent, any enrichment which would have accrued to the slayer as a result of the death of the decedent shall pass to the estate of the decedent. If the slayer becomes the final survivor, one-half of the property shall immediately pass to the estate of the decedent and the other half shall pass to his estate upon the death of the slayer, unless the slayer obtains a separation or severance of the property or a decree granting partition.

(c) Enforceable agreements unaffected.--The provisions of this section shall not affect any enforceable agreement between the parties or any trust arising because a greater proportion of the property has been contributed by one party than by the other.

§ 8807. Reversions and vested remainders.

Property in which the slayer holds a reversion or vested remainder and would have obtained the right of present possession upon the death of the decedent shall pass to the estate of the decedent during the period of the life expectancy of the decedent; if he held the particular estate or if the particular estate is held by a third person it shall remain in his hands for such period.

§ 8808. Interests dependent on survivorship or continuance of life.

Any interest in property, whether vested or not, held by the slayer, subject to be divested, diminished in any way or extinguished, if the decedent survives him or lives to a certain age, shall be held by the slayer during his lifetime or until the decedent would have reached such age, but shall then pass as if the decedent had died immediately thereafter.

§ 8809. Contingent remainders and executory or other future interests.

As to any contingent remainder or executory or other future interest held by the slayer, subject to become vested in him or increased in any way for him upon the condition of the death of the decedent:

(1) If the interest would not have become vested or increased if he had predeceased the decedent, he shall be deemed to have so predeceased the decedent.

(2) In any case the interest shall not be vested or increased during the period of the life expectancy of the decedent.

§ 8810. Powers of appointment.

(a) Property appointed by will.--Property appointed by the will of the decedent to or for the benefit of the slayer shall be distributed as if the slayer had predeceased the decedent.

(b) Other property.--Property held either presently or in remainder by the slayer, subject to be divested by the exercise by the decedent of a power of revocation or a general power of appointment shall pass to the estate of the decedent, and property so held by the slayer, subject to be divested by the exercise by the decedent of a power of appointment to a particular person or persons or to a class of persons, shall pass to such person or persons, or in equal shares to the members of such class of persons, exclusive of the slayer.

§ 8811. Proceeds of insurance.

(a) Policies on life of decedent.--Insurance proceeds payable to the slayer as the beneficiary or assignee of any policy or certificate of insurance on the life of the decedent,

or as the survivor of a joint life policy, shall be paid to the estate of the decedent, unless the policy or certificate designates some person not claiming through the slayer as alternative beneficiary to him.

(b) Policies on life of slayer.--If the decedent is beneficiary or assignee of any policy or certificate of insurance on the life of the slayer, the proceeds shall be paid to the estate of the decedent upon the death of the slayer, unless the policy names some person other than the slayer or his estate as alternative beneficiary, or unless the slayer by naming a new beneficiary or assigning the policy performs an act which would have deprived the decedent of his interest in the policy if he had been living.

§ 8812. Bona fide payment by insurance company or obligor.

Any insurance company making payment according to the terms of its policy or any bank or other person performing an obligation for the slayer as one of several joint obligees shall not be subject to additional liability by the terms of this chapter, if such payment or performance is made without notice of the killing by a slayer.

§ 8813. Bona fide purchasers.

The provisions of this chapter shall not affect the rights of any person who, before the interests of the slayer have been adjudicated, purchases from the slayer for value and without notice property which the slayer would have acquired except for the terms of this chapter, but all proceeds received by the slayer from such sale shall be held by him in trust for the persons entitled to the property under the provisions of this title, and the slayer shall also be liable both for any portion of such proceeds which he may have dissipated and for any difference between the actual value of the property and the amount of such proceeds.

§ 8814. Record of conviction as evidence.

The record of his conviction of having participated in the willful and unlawful killing of the decedent shall be admissible in evidence against a claimant of property in any civil action arising under this chapter.

§ 8814.1. Preadjudication rule.

(a) General rule.--If a person has been charged, whether by indictment, information or otherwise, by the United States, the Commonwealth or any of the several states, with voluntary manslaughter or homicide, except homicide by vehicle, in connection with a decedent's death, then any and all property or benefit that would otherwise pass to that person from the decedent's estate shall be placed and preserved in escrow by the person duly appointed by the register as personal representative. Upon dismissal or withdrawal of the charge, or upon the return of a verdict of not guilty, the property or benefit held in escrow shall pass as if no charge had been filed or made. Upon conviction of the charge, the property or benefit held in escrow shall pass in accordance with the terms and provisions of this chapter.

(b) Exception.--Notwithstanding subsection (a), the duly appointed personal representative shall be authorized upon notice to all interested parties, including, but not limited to, the accused, to petition the orphans' court division of the court of common pleas in the county where the estate lies for payment from the escrowed funds of child support and related expenses and of expenses of estate administration. Disposition of the petition shall lie in the sound discretion of the court.

(c) Notice to register of wills.--Within seven days of charging, whether by indictment, information or otherwise, a

person with homicide or manslaughter the district attorney shall, in writing, notify the register of the name of the person charged, the name of the decedent and the charge.
(Dec. 20, 2000, P.L.838, No.118, eff. 60 days)

2000 Amendment. Act 118 added section 8814.1.

§ 8815. Broad construction; policy of State.

This chapter shall not be considered penal in nature, but shall be construed broadly in order to effect the policy of this State that no person shall be allowed to profit by his own wrong, wherever committed.

**APPENDIX TO TITLE 20
DECEDENTS, ESTATES AND FIDUCIARIES**

Supplementary Provisions of Amendatory Statutes

1972, JUNE 30, P.L.508, NO.164

§ 4. Effective date and savings provision.

This act shall take effect on July 1, 1972. The provisions of this code, so far as they are common to those of laws repealed herein, are intended as a continuation of such laws, and not as new enactments. All rights provided by and liabilities incurred under such earlier law are preserved and may be enforced.

1974, OCTOBER 10, P.L.720, NO.242

§ 4. Effective date and applicability.

This act shall take effect immediately and shall apply without regard to the date of the instrument or court order under which a fiduciary is acting or may act.

Explanatory Note. Act 242 added section 3321(d) and (e) and amended section 7133(8) of Title 20.

1974, DECEMBER 10, P.L.867, NO.293

§ 20. Effective date and legislative intent.

(a) In general.--This act shall take effect immediately.

(b) Exceptions; legislative intent.--As it is the intent of the General Assembly that the language added to sections 908, 2510, the second, fourth and fifth sentences of section 3102, section 3351, paragraph (6) of section 5153, the first sentence of section 5154, section 5303, the second sentence of subsection (g) of section 5305, paragraph (31) of section 5521, section 5533.1, subsection (b) of section 6103, subsection (d) of section 6111, and paragraph (21.1) of section 7133, should have been enacted in the Probate, Estates and Fiduciaries Code, said inclusions shall be retroactive to July 1, 1972, the effective date of said code.

1976, JULY 9, P.L.562, NO.136

§ 3. Effective date and applicability.

This act shall take effect immediately and shall apply to any disclaimer hereafter made of any interest that would have devolved by reason of a transfer or death whether before or after the effective date of this act.

Explanatory Note. Act 136 amended section 6103(a) and added Chapter 62 of Title 20.

1978, NOVEMBER 26, P.L.1269, NO.303

§ 5. Effective date and applicability.

This act shall be effective immediately, but its provisions shall not apply to wills or conveyances executed prior to its effective date or to rights from and through a child's father if the father had died prior to the effective date of this act.

Explanatory Note. Act 303 amended or added sections 2107, 2514(8), 3538, 6114(5) and 7183(14) of Title 20.

1982, FEBRUARY 18, P.L.45, NO.26

§ 13. Effective date and applicability.

This act shall take effect immediately and shall apply to the estates of all decedents dying on or after the effective date and, as to the termination of trusts under 20 Pa.C.S. § 6110 (relating to administration of charitable estates), it shall apply to all trusts regardless of the date the trust was created and, as to 20 Pa.C.S. § 2209 (relating to surviving spouse as witness), it shall be effective as of June 17, 1978 and shall apply to the estates of all decedents dying on or after that date; and, as to powers of attorney, it shall apply to all powers of attorney executed on or after the date of enactment of this act, provided nothing in this act shall be construed to limit the effectiveness of powers of attorney in effect prior to the date of enactment of this act, and provided further that all such powers of attorney which qualified under the provisions of 20 Pa.C.S. § 5601 (relating to when power of attorney not affected by disability) prior to its repeal shall continue to be governed by the provisions of the said section as if no repeal occurred.

Explanatory Note. Act 26 amended, added or repealed sections 2206, 2209, 2210, 3101(c) and (d), 3132.1(b), 3701 through 3706, 4102(b), 5144, 5147(2), 5153, 5302, 5303, 5305(e), (f) and (g), 5308(a), (b), (d) and (e), 5309, 5505, 5515, 5521, 5536, 5537(a), 5601 through 5607, 6102(a), 6110, 6202, 7121, 7133, 7143, 7183, 7185(b) and 7186 of Title 20.

1984, OCTOBER 12, P.L.929, NO.182

§ 14. Applicability of prior amendment.

Section 7185 (relating to compensation), as amended by the act of February 18, 1982 (P.L.45, No.26), shall apply to all trusts regardless of whether the trust was created before, on or after February 18, 1982.

Explanatory Note. Act 182 amended, added or repealed sections 304, 745, 2514, 3132.1, 3301, 3501.2, 3502, 3539, 3540, 5163.1, 5533.1, 6201, 6202, 6204, 6205, 6206, 7183, 7314, 7315 and 7315.1 of Title 20.

§ 15. Effective date and applicability.

(a) Distributions.--The amendments to sections 3539 (relating to change in law after pattern of distribution established) and 7183 (relating to notice, audits, reviews, and distribution) shall take effect immediately and shall apply to distributions begun and changes in law occurring before, on or after the effective date of this act.

(b) Trusts and estates of decedents.--The amendments to sections 3501.2 (relating to annexation of account of terminated trust, guardianship or agency), 3540 (relating to absentee and additional distributees), 7314 (relating to common trust fund and mortgage investment fund), 7315 (relating to retention of investments) and 7315.1 (relating to retention of cash; temporary investments) shall take effect immediately and shall apply to trusts and the estates of decedents, whether the trust was created or the decedent died before, on or after the effective date of this act, as well as to funds presently held by the clerks.

(c) Estates of decedents.--The remainder of this act shall take effect immediately and shall apply to the estates of all decedents dying on or after the effective date.

1992, APRIL 16, P.L.108, NO.24

§ 20. Severability.

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

Explanatory Note. Act 24 amended or added sections 102, 302, 711, 712, 721, 745, 777, 2206, 2514, 3122, 3155, 3182, 3324, 3504, 4112, 4121, 5115 and 5144, Chapter 54, the headings of Chapter 55 and Subchapter A of Chapter 55, sections 5501, 5502, 5505, 5511, 5512, 5512.1, 5512.2, 5512.3, 5513, 5514, 5515, 5516, 5517, 5518, 5518.1, 5521, 5522, 5524, 5525, 5533, 5534, 5535, 5536 and 5537, Subchapter F of Chapter 55 and sections 5603, 5604, 6202, 7133, 8301 and 8411 of Title 20 (Decedents, Estates and Fiduciaries); sections 3307, 3508, 4405 and 8308 of Title 13 (Commercial Code); sections 311, 509, 2901, 2905 and 3206 of Title 18 (Crimes and Offenses); section 2711 of Title 23 (Domestic Relations); and section 5322 of Title 42 (Judiciary and Judicial Procedure).

§ 21. Applicability.

Except for the addition of 20 Pa.C.S. Ch. 54, the amendment of 20 Pa.C.S. shall apply to all guardianship proceedings in which petitions for the appointment of a guardian are filed subsequent to the effective date of this section. Where a petition has been filed prior to the effective date of this section but where a guardian has not yet been appointed, the procedures of the amendment of 20 Pa.C.S., except for the addition of 20 Pa.C.S. Ch. 54, shall apply. Existing guardianship may be modified by the court in accordance with

the amendment of 20 Pa.C.S., except for the addition of 20 Pa.C.S. Ch. 54, upon petition of any interested party.

1992, DECEMBER 16, P.L.1163, NO.152

§ 26. Applicability of Pennsylvania Uniform Transfers to Minors Act.

(a) In general.--The addition of 20 Pa.C.S. Ch. 53 (relating to Pennsylvania Uniform Transfers to Minors Act) shall apply to a transfer within the scope of 20 Pa.C.S. § 5302 (relating to scope and jurisdiction) made after the effective date of this act if:

(1) the transfer purports to have been made under the Pennsylvania Uniform Gifts to Minors Act repealed by this act; or

(2) the instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Pennsylvania Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of 20 Pa.C.S. Ch. 53 is necessary to validate the transfer.

(b) Validation of transfers.--Any transfer of custodial property now defined in 20 Pa.C.S. § 5301(b) (relating to short title of chapter and definitions) made before the effective date of this act shall be validated notwithstanding that there was no specific authority in the Pennsylvania Uniform Gifts to Minors Act for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(c) Transfers prior to Act 152.--The addition of 20 Pa.C.S. Ch. 53 shall apply to all transfers made before the effective date of this act in a manner and form prescribed in the Pennsylvania Uniform Gifts to Minors Act, except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on the effective date of this act.

Explanatory Note. Act 152 amended or added sections 711, 911, 2204, 2507, 2514 and 2515, Chapter 27, sections 3316, 3321, 3503, 3532, 3701, 3702, 3703, 3706 and 5164, repealed and added Chapter 53, and amended or added sections 5536, 5601, 5601.1, 5602, 5603, 5604, 5605, 5606, 5608, 5704, 6111.1, 6111.2, 6114, 7188, 7191, 7314.1, 7315.1 and 8301 of Title 20.

§ 27. Applicability of other provisions.

(a) Contractual arrangements relating to succession.--The addition of 20 Pa.C.S. Ch. 27 (relating to contractual arrangements relating to succession) shall apply to contracts made on or after January 1 of the calendar year following the year of enactment.

(b) Instruments, trusts and estates of decedents.--The amendment of 20 Pa.C.S. §§ 711 (relating to mandatory exercise of jurisdiction through orphans' court division in general), 2514 (relating to rules of interpretation), 2515 (relating to devise or bequest to trust), 3316 (relating to investment of funds), 5604(b) (relating to durable powers of attorney), 6114 (relating to rules of interpretation), 7314.1 (relating to mutual funds), 7315.1 (relating to retention of cash; temporary investments) and 8301 (relating to powers of court to authorize sale, etc. of real property) shall apply to instruments, trusts and the estates of decedents whether the instrument was

executed, the trust was created or the decedent died before, on or after the effective date of this act.

(c) Powers of attorney.--The amendment of 20 Pa.C.S. §§ 5601.1 (relating to powers of attorney presumed durable) and 5605(c) (relating to powers of attorney not revoked until notice) shall apply to powers of attorney executed on or after the effective date of the act.

(d) Estates of decedents.--The amendment of 20 Pa.C.S. §§ 2204 (relating to disclaimers, releases and charges against elective share), 2507 (relating to modification by circumstances), 3503 (relating to notice to parties in interest), 3532 (relating to at risk of personal representative), 6111.1 (relating to modification by divorce) and 6111.2 (relating to effect of divorce on designation of beneficiaries) shall apply to the estates of decedents dying on or after the effective date of this act.

(e) Other amendments.--The remaining amendments in this act shall apply beginning with the effective date of this act.

1994, DECEMBER 1, P.L.655, NO.102

§ 9. Secondary education program.

Upon availability of funding established under 20 Pa.C.S. § 8622(b)(3), the Department of Education, in cooperation with the Department of Health and organ procurement organizations, shall establish a program that can be used for secondary education purposes, which shall include:

(1) Information about State law relating to anatomical gifts, including how to become an organ donor.

(2) General information about organ transplantation in the United States.

Explanatory Note. Act 102 amended, added or repealed sections 712, 724, 2101, 2502, 2517, 2521, 3101, 3102, 3121, 3504, 3531, 3701, 5101, 5404, 5602, 5603, 6110, 6111.2, 6117, 6201 and 7183 and Chapter 86 of Title 20.

1999, JUNE 25, P.L.212, NO.28

§ 6. Applicability.

(a) In general.--This act shall apply to all actions of fiduciaries occurring on or after the effective date of this subsection, regardless of whether the guardianship or trust was created before, on or after that effective date, except as provided in subsection (b).

(b) Exceptions.--

(1) The addition of 20 Pa.C.S. § 7204 shall not apply to guardianships created prior to the effective date of section 7204, even if the action of the guardian occurs after that date.

(2) (Repealed).

(3) The addition of 20 Pa.C.S. § 7206 shall apply to actions of guardians and trustees on or after the effective date of the addition of that section.

(4) The addition of 20 Pa.C.S. § 7208 shall apply to actions of trustees before, on or after the effective date of the addition of that section.

(Nov. 6, 2002, P.L.1101, No.133, eff. imd.)

2002 Repeal. Act 133 repealed subsec. (b)(2).

Explanatory Note. Act 28 amended or added sections 3316, 5145 and 7134, Chapter 72, Chapter 73 heading and section 7301 of Title 20 and section 5548 of Title 15 (Corporations and Unincorporated Associations).

1999, OCTOBER 12, P.L.422, NO.39

§ 13. Applicability.

This act shall apply as follows:

(1) The amendment or addition of 20 Pa.C.S. §§ 5601(b), 5601.2(a), (b) and (c) and 5605(c) shall apply to powers of attorney executed on or after the effective date of the amendment or addition of those sections.

(2) The addition of 20 Pa.C.S. § 5601(c) shall apply to powers of attorney executed on or after the effective date of the addition of that subsection.

(3) The addition of 20 Pa.C.S. § 5601(d) shall apply to agents acting under powers of attorney executed on or after the effective date of the addition of that subsection.

(4) The amendment or addition of 20 Pa.C.S. §§ 5601.2(d) and (e) and 5603(a)(2)(i), (ii), (iv) and (v) and (u.1) shall apply to powers of attorney executed before, on or after the effective date of the amendment or addition of those sections.

(5) The amendment or repeal of 20 Pa.C.S. §§ 5602(a)(1) and 5603(a)(1) shall apply to powers of attorney executed on or after the effective date of the amendment or repeal of those sections. The amendment or repeal of sections 5602(a)(1) and 5603(a)(1) shall not affect the authority of an agent to make unlimited gifts under any power of attorney relying on those sections, executed before the effective date of the amendment or repeal of those sections.

(6) The repeal of 20 Pa.C.S. § 5603(a)(2)(iii), (3), (4) and (5) shall apply beginning with the effective date of the repeal of that section.

(7) The amendment of 20 Pa.C.S. § 8611(a) shall apply to agents acting under powers of attorney executed before, on or after the effective date of the amendment of that section.

(8) The remaining amendments in this act shall apply beginning with the effective date of the amendments of those sections.

Explanatory Note. Act 39 amended, added or repealed sections 711, 712, 751, 2206, 2514, 3316.1, 3319, 3321, 3504, 5144, 5306, 5521, 5552, 5601, 5601.2, 5602, 5603, 5604, 5605, 5606, 5607, 5608, 5609, 5610, 5611, 6202, 7133, 7191 and 8611.

2000, DECEMBER 20, P.L.881, NO.120

§ 2. References to Organ Donation Awareness Trust Fund.

A reference to the Organ Donation Awareness Trust Fund in any other law shall be deemed a reference to The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund as if the reference to The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund were specifically set forth therein.

Explanatory Note. Act 120 amended sections 8601, 8617, 8621 and 8622 of Title 20.

§ 3. Use of existing forms by Department of Revenue.

The Department of Revenue shall continue to use or recycle all forms which contain references to the Organ Donation Awareness Trust Fund for purposes of taxable years ending on or before December 31, 2000. For taxable years beginning on or after January 1, 2001, the Department of Revenue shall use forms which contain references to The Governor Robert P. Casey Memorial Organ and Tissue Donation Awareness Trust Fund.

§ 4. Use of existing forms by Department of Transportation.

The Department of Transportation shall continue to use or recycle all forms which contain references to the Organ Donation Awareness Trust Fund until the existing forms are depleted.

2002, MAY 16, P.L.330, NO.50

§ 14. Applicability.

(a) In general.--Except as otherwise expressly provided in the governing instrument, in the addition of 20 Pa.C.S. Ch. 81 or in subsection (b), this act shall apply to all of the following:

(1) A trust existing on or after the effective date of this act.

(2) The estate of a decedent who dies on or after the effective date of this act.

(b) Trusts, intestacies and disclaimers.--This act shall apply as follows:

(1) The amendment of 20 Pa.C.S. § 724 shall apply to trusts created before, on or after the effective date of this act.

(2) The amendment of 20 Pa.C.S. § 2104 shall apply to intestacies occurring on or after the effective date of this act, even if the trust became irrevocable before the effective date of this act.

(3) The amendment of 20 Pa.C.S. § 6205 shall apply to disclaimers made on or after the effective date of this act and shall apply to disclaimers made before the effective date of this act to the extent the distribution thereunder is made after the effective date of this act or, if made prior to the effective date, such distribution was consistent with this act.

(4) The addition of 20 Pa.C.S. §§ 7104 and 7105 shall apply to trusts created before, on or after the effective date of this act.

Explanatory Note. Act 50 amended or added sections 724, 2104, 3701, 3702, 5164, 5301, 5320, 5321, 5536, 5601, 5706, 6205, 7104 and 7105 and repealed and added Chapter 81 of Title 20.

2006, JULY 7, P.L.625, NO.98

§ 15. Consolidation of Pooled Trust Act.

(a) General rule.--Except as set forth in subsection (b), the addition of 20 Pa.C.S. § 7799.3 is a consolidation of the act of December 9, 2002 (P.L.1379, No.168), known as the Pooled Trust Act. Any differences between 20 Pa.C.S. § 7799.3 and the Pooled Trust Act are intended only to conform to the style of the Pennsylvania Consolidated Statutes and are not intended to

change or affect the legislative intent, judicial construction or administration and implementation of the Pooled Trust Act.

(b) Exception.--Subsection (a) does not apply to the addition of 20 Pa.C.S. § 7799.3(d) (1), (e) (1), (f) and paragraph (5) of the definition of "pooled trust" in subsection (h).

Explanatory Note. Act 98 amended, added or deleted sections 723, 724, 725, 751, 908, 3384.1, 3534.1, 3543, 3702, 6101, 6102, 6104, 6106, 6107, 6107.1, 6110, 6112 and 6114, Chapter 71, sections 7201, 7314.1, 7503, 7504 and 7506, Chapter 77 and sections 8102, 8104, 8105, 8107, 8113, 8121 and 8141 of Title 20.

2006, NOVEMBER 29, P.L.1484, NO.169

§ 6. Regulations.

The Department of Health shall adopt regulations, as necessary, to facilitate implementation of 20 Pa.C.S. Ch. 54 Subch. E. Regulations adopted under former 20 Pa.C.S. Ch. 54A shall remain effective unless they are inconsistent with 20 Pa.C.S. Ch. 54 or until they are superseded by regulations promulgated under this act.

Explanatory Note. Act 169 amended, added or deleted section 711 and Chapters 54 and 54A of Title 20.

§ 7. Validity of declarations under former chapter.

The repeal of 20 Pa.C.S. Ch. 54 shall not affect the validity of any declaration executed pursuant to the sample form provided in former 20 Pa.C.S. § 5404(b) before, on or after the effective date of this section.

2012, JULY 5, P.L.975, NO.108

§ 2. Application of law.

Applicability is as follows:

(1) Subject to paragraph (2), the addition of 20 Pa.C.S. Ch. 59 applies to guardianship and protective proceedings begun on or after the effective date of this act.

(2) The addition of the following provisions of 20 Pa.C.S. Ch. 59 apply to proceedings begun before the effective date of this section, regardless of whether a guardianship or protective order has been issued:

- (i) Subchapter A.
- (ii) Subchapter C.
- (iii) Subchapter D.
- (iv) Subchapter E.

Explanatory Note. Act 108 added Chapter 59 of Title 20.

2014, JULY 2, P.L.855, NO.95

§ 9. Application of law.

The following shall apply:

(1) Except as provided by this section, the provisions of this act apply to powers of attorney created before, on or after the respective effective dates of such provisions, but do not apply to the acts or omissions of agents, or third

parties presented with instructions by agents, that occur before such respective effective dates.

(2) Except as provided by this section, the provisions of this act apply to judicial proceedings concerning a power of attorney commenced before, on or after the respective effective dates of such provisions, unless the court finds that application of a provision of this act would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies.

(3) The amendment, addition or repeal of 20 Pa.C.S. §§ 5601(b), (c), (d) and (e.2), 5601.2, 5601.4, 5602(a)(5) and (17) and 5603 apply only to powers of attorney created on or after the effective dates of those provisions.

(4) The amendment of 20 Pa.C.S. §§ 5601(f) and 5608 shall apply retroactively to acts performed after December 15, 1992, and to judicial proceedings commenced prior to the effective dates of those provisions.

(5) In interpreting and applying the amendment or addition of 20 Pa.C.S. §§ 5601(f), 5608, 5608.1, 5608.2 and 5611, a court shall give due consideration of the intent of the General Assembly to reverse the interpretation of 20 Pa.C.S. § 5608 as set forth in *Teresa M. Vine v. Commonwealth of Pennsylvania, State Employees' Retirement Board*, 9 A.3d 1150 (Pa. 2010).

Explanatory Note. Act 95 amended, added or repealed sections 5601, 5601.2, 5601.3, 5601.4, 5602, 5603, 5608, 5608.1, 5608.2, 5611 and 5612 of Title 20.