

**MODIFICATION AND TERMINATION OF IRREVOCABLE TRUSTS UNDER
VIRGINIA'S UNIFORM TRUST CODE**

Paul W. Barnett
Attorney at Law
MANNING & MURRAY,
A Professional Corporation
6045 Wilson Boulevard, Suite 300
Arlington, VA 22205
Telephone (703) 532-5400, Ext. 5
Facsimile (703)-532-6351
Website: www.manning-murray.com
pbarnett@manning-murray.com

[Presented at the 2016 VAELA UnProgram](#)

The author is grateful for and acknowledges the use of materials prepared by Alvi Aggarwal, Esq., with Yates Campbell & Hoeg LLP; Lauren A. Jenkins, Esq., with Offit|Kurman; the Virginia Legislative Information System; and the National Conference of Commissioners on Uniform State Laws.

TABLE OF CONTENTS

MODIFICATION AND TERMINATION METHODS	3
Termination and Modification Where No Court Approval Is Required.....	3
The Terms of the Trust Allow for Modification or Termination	3
Decanting	3
Loss of Purpose	4
Uneconomic Trust	4
Combination and Division of Trusts	4
Non-Judicial Settlement Agreement	5
Termination and Modification of an Irrevocable Trust by the Court	7
Modification or Termination by Consent.....	7
Unanticipated Circumstances	8
Inability to Administer Effectively	8
Cy Pres	8
Uneconomic Trust	8
Reformation to Correct Mistakes	9
Modification to Achieve Tax Objectives	9
ISSUES.....	9
Material Purpose	9
Notice.....	11
Notice Outside of a Judicial Proceeding	11
Notice of a Judicial Proceeding.....	12
Representation.....	12
Representation by Fiduciaries, Parents and Ancestors.....	13
Representation by Person Having Substantially Identical Interest	13
Conflicts of Interest	14
Court Appointed Representative	14
Attorney as Representative.....	15

Note: Virginia's Uniform Trust Code is attached at the end of the outline.

MODIFICATION AND TERMINATION OF IRREVOCABLE TRUSTS UNDER VIRGINIA'S UNIFORM TRUST CODE

by

**Paul W. Barnett
Manning & Murray, P.C.
Arlington, Virginia**

One might consider that an irrevocable trust is just that – irrevocable. But, even prior to Virginia's adoption of the Uniform Trust Code ("Virginia UTC"), there were ways to modify or terminate an otherwise irrevocable trust. Many of these ways were codifications of equitable remedies that had developed under the common law to avoid harsh or unfair results that might otherwise befall innocent beneficiaries if an irrevocable trust were left to operate as designed. However, the practitioner seeking such a remedy had to navigate through a myriad of code provisions scattered throughout the Virginia Code and case law to find these methods.

The Virginia UTC, which became effective July 1, 2006, centralized these code provisions under one chapter within the Uniform Trust Code. While most of the statutes contained in the Virginia UTC are default rules allowing a settlor to opt out of them, the powers of a court to modify or terminate a trust under the relevant code provisions (Virginia Code §§ 64.2-728 through 64.2-734) are mandatory rules. That is to say, the settlor of a trust cannot opt out of them. Virginia Code § 64.2-703(B)(4).

The Virginia UTC applies to old and new trusts. "This chapter applies to all trusts created before, on, or after July 1, 2006," as well as to all judicial proceedings concerning trusts commenced on or after July 1, 2006." Virginia Code § 64.2-808

Why would someone want to modify or terminate an irrevocable trust? Some of the common reasons include:

- The dispositive terms of the trust no longer reflect the intentions of the settlor.
- A change in law results in adverse tax treatment with respect to the trust assets.
- To eliminate a credit shelter trust for a surviving spouse given the increase in the high estate tax exemption amounts.
- Reformation -- drafting issues or mistakes.
- A beneficiary has special needs and the trust is not a special needs trust.

- To change an income only trust to a Unitrust or Total Return Trust to increase the payout to the current beneficiary.

A note of caution: although it may be possible under Virginia law to modify or terminate an irrevocable trust, such actions can have adverse income, gift, estate, and/or generation-skipping transfer (GST) tax implications. Therefore, it is imperative that the practitioner evaluate the tax repercussions before advising a client to proceed with modifying or terminating an irrevocable trust.

MODIFICATION AND TERMINATION METHODS

Prior to the adoption of the Virginia Uniform Trust Code (“Virginia UTC”), a mishmash of the common law, case law and various statutes in the Code of Virginia had to be examined for authority to modify an irrevocable trust. Virginia’s UTC provides a comprehensive statutory scheme for the creation, administration, modification and termination of Virginia trusts, though the common law still plays a role in trust modifications and terminations. Virginia Code § 64.2-704.

The Virginia UTC empowers the court under certain circumstances to modify or terminate an irrevocable trust. The Virginia UTC also sets forth ways to modify or terminate an irrevocable trust without involving the court, though the court may still be asked for its approval or disapproval.

Termination and Modification Where No Court Approval Is Required

Virginia’s UTC empowers a Trustee to terminate a trust under certain circumstances. While obtaining court approval is not required, a wise Trustee will find it prudent to seek the approval or disapproval from the court prior to doing so if there is any issue or concern.

The Terms of the Trust Allow for Modification or Termination

The terms of the trust may provide a way to terminate or modify the trust. Virginia Code § 64.2-728. Some commonly found terms in trusts:

- Uneconomical Trust – a trust may empower a trustee to terminate a trust if it is uneconomical.
- Discretionary Distributions – if the standard for distributions are broad enough a trustee can terminate a trust by distributing out all of the assets to the beneficiary over a period of time.
- Trust Protector or Advisor -- a trust protector or advisor may be empowered to modify or terminate a trust. This provision is increasingly found in more modern trusts.
- Power to Combine Separate Trusts or Divide into Separate Trusts.

Decanting

Decanting allows a trustee to create a new trust and transfers all of the assets of an old trust to the new trust. Virginia Code § 64.2-778.1. To decant, a trustee must determine that the old trust is eligible to be decanted -- the trust must be irrevocable, and the trustee must have a discretionary power to distribute principal or income to or for the benefit of one or more current beneficiaries. Virginia Code § 64.2-778.1(A). The trustee must then create a

new trust or identify an existing trust in which to decant. The Virginia Trust Code imposes restrictions on how different the terms of that second trust can be from the terms of the old trust. Virginia Code § 64.2-778.1(C). But those restrictions are eliminated where the second trust is a “special needs trust (note: term not defined). Virginia Code § 64.2-778.1(C)(9). Decanting is an effective way to transform an irrevocable trust that would not otherwise be a special needs trust into a special needs trust.

Decanting has advantages and disadvantages. Court involvement is optional, it is specifically permitted by statute, and it does not require the involvement of all of the beneficiaries. The downsides to decanting are in the limits on what can be accomplished, the potential liability of the trustee, and the uncertainty of the tax consequences. A settlor can opt out of decanting by expressly denying to a trustee the power to decant.

Loss of Purpose

Virginia Code § 64.2-728(A) provides that a “a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.”

Uneconomic Trust

After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than \$100,000 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration. Virginia Code § 64.2-732(A).

Combination and Division of Trusts

After notice to qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts as long as such action “does not materially impair rights of any beneficiary or adversely affect achievement of the purpose of the trust.” Virginia Code § 64.2-735.

While it is not necessary for the terms of the trusts to be identical, a trustee should tread cautiously when combining trusts with substantially different terms. In such a case, obtaining the consent of qualified beneficiaries, or court approval, will offer protection to the trustee against claims by disgruntled beneficiaries if the combining of trusts or division of a trust results in a substantial decrease in value to trust assets or adverse tax implications.

Reasons for combining two or more trusts include:

- preventing a trust from becoming uneconomical
- reducing administration expenses
- leveraging assets of the trusts for investment purposes
- simplifying the administration of multiple trusts with similar terms

Reasons for dividing trusts include:

- generation skipping tax issues (GST)
- income tax implications
- different investment goals and strategies.

Non-Judicial Settlement Agreement

Virginia's UTC § 64.2-709 provides that "interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust." The term "any matter" may be a bit misleading as the provision goes on to limit what an agreement may address.

The agreement must not violate a material purpose of the trust and must include "terms and conditions" that a court could approve. The statute sets forth a list of illustrative examples of matters that may be resolved by agreement such as interpreting the terms of the trust, the approval of an accounting, transferring the principal place of administration, appointment of a trustee and the liability of a trustee.

Terms and Conditions that a Court Can Approve Must Be Included

Since the agreement must contain terms and conditions a court could approve, it follows that the any of the express provisions of the Virginia UTC dealing with termination or modification that require court approval would satisfy this requirement. These provisions are found in §§ 64.2-729 through 64.2-735.

These provisions are:

- Termination and Modification Where Court Action Is Required
- Reformation to Correct Mistakes
- Combination and Division of Trusts
- Unanticipated Circumstances
- Inability to Administer Effectively
- Modification to Achieve Tax Objectives
- Cy Pres
- Uneconomic Trust
- Modification or Termination by Consent

Each of these provisions is discussed later in this outline. This list is not exclusive. For example, Virginia Code § 64.2-778.1(I) authorizes the court to approve or disapprove of a trustee's proposal to decant.

Also, Virginia Code § 64.2-710(C) gives to the court a broad role involving trust matters. This section provides that a "judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights." Such language might be relied upon to authorize a court to approve of a term or condition in an agreement if it can be couched as related to an "action to declare rights."

Other provisions of the Virginia UTC authorizing court involvement include a trustee's compensation (Virginia Code § 64.2-761), surety bond for a trustee (Virginia Code § 64.2-755), vacancy in a trusteeship (Virginia Code § 64.2-757), resignation of a trustee (Virginia Code § 64.2-758), removal of a trustee (Virginia Code § 64.2-759), and award of attorney fees and costs (Virginia Code § 64.2-77965).

Material Purpose

The agreement must not violate a material purpose of the trust. However, "material purpose" is not a defined term. See pages 9 to 11 of the outline for a detailed discussion of this term.

Interested Persons

Virginia Code § 64.2-709 requires that all "interested persons" sign a nonjudicial settlement agreement. The term "interested persons" means "persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court." Consequently, who the interested persons are will depend on the section of the Virginia Uniform Trust Code being used to authorize the change. Most likely the interested persons

will include the trustee, qualified beneficiaries, beneficiaries, and the settlor (if still alive) – all of which are defined terms. Virginia Code § 64.2-701. Representation can be used in nonjudicial settlement agreements. Virginia Code §§ 64.2-714 and 709(E). The concept of representation is more fully discussed on pages 12 to 15 of the outline.

Court Approval

Any interested person may petition the court to approve a nonjudicial settlement agreement, to determine whether “representation” was adequate and to determine whether the terms and conditions in the agreement are ones the court could have properly approved. Virginia Code § 64.2-709(E).

Termination and Modification of an Irrevocable Trust by the Court

Virginia Code § 64.2-728(B) provides express authority for the court to approve or disapprove of a proposed termination or modification of an irrevocable trust based on:

- Modification or Termination by Consent
- Unanticipated Circumstances
- Inability to Administer Effectively
- Cy Pres
- Uneconomic Trust
- Reformation to Correct Mistakes
- Modification to Achieve Tax Objectives

Either a trustee or a beneficiary may institute such a proceeding.

Modification or Termination by Consent

The Virginia Uniform Trust Code **requires** that a court terminate or modify an irrevocable trust if “upon petition the court finds that the settlor and all beneficiaries consent to the modification or termination...even if the modification or termination is inconsistent with a material purpose of the trust.” Virginia Code § 64.2-729. The irrevocable trust must be noncharitable, which is not a defined term. However, Virginia Code § 64.2-723 describes when a trust may be created for charitable purposes.

The court may also terminate a noncharitable irrevocable trust upon consent of all of the beneficiaries “if the court concludes that continuance of the trust is not necessary to achieve **any** [emphasis added] material purpose of the trust.” And the court may modify a noncharitable irrevocable trust upon consent of all of the beneficiaries “if the court concludes that modification is not inconsistent with a material purpose of the trust.” Virginia Code § 64.2-729(B).

Even if not all of the beneficiaries consent to a proposed modification or termination of the trust, the court may still approve the modification or termination if the trust could have been modified or terminated if all the beneficiaries had consented and the interests of a beneficiary who does not consent will be adequately protected. Virginia Code § 64.2-729(D).

Unanticipated Circumstances

Under Virginia Code § 64.2-730(A), a court may modify the terms, or terminate, the trust “because of circumstances not anticipated by the settlor.” The modification or termination must further the purposes of the trust and be consistent with the “settlor’s probable intention, to the “extent practicable.”

Inability to Administer Effectively

The court “may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.” Virginia Code § 64.2-730(B). This code provision does not allow the court to terminate the trust for this reason.

Cy Pres

The cy-près doctrine (see-pray) is a legal doctrine that originated in courts of equity regarding the law of charitable trusts. The legal French term literally means "so near/close" and can be translated as "as near as possible" or "as near as may be." When the original objective of the settlor or the testator became impossible, impracticable, or illegal to perform, the cy-près doctrine allowed the court to amend the terms of the charitable trust as closely as possible to the original intention of the testator or settlor to prevent the trust from failing.

The cy-près doctrine is incorporated into Virginia Code § 64.2-731. If a charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful, the court may apply the cy-près doctrine to modify or terminate the trust by directing that the trust property be distributed in a manner consistent with the settlor's charitable purposes.

Uneconomic Trust

The court may modify or terminate a trust (or remove the trustee and appoint a different trustee) if it determines that the value of the trust property is insufficient to justify the cost of administration. Virginia Code § 64.2-732.

Reformation to Correct Mistakes

The Virginia UTC allows a court to reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that a mistake of fact or law affected the settlor's intent and the terms of the trust. Virginia Code § 64.2-733.

Modification to Achieve Tax Objectives

A court may modify an irrevocable trust to achieve the settlor's tax objectives as long as the modification is not contrary to the settlor's probable intention. The court may make the effect of the modification retroactive. Virginia Code § 64.2-734.

ISSUES

Material Purpose

Virginia's Uniform Trust Code uses the term "material purpose" in several contexts.

A nonjudicial settlement agreement cannot violate a material purpose of the trust. Virginia Code § 64.2-709.

The Virginia Uniform Trust Code requires that a court terminate or modify an irrevocable trust if "upon petition the court finds that the settlor and all beneficiaries consent to the modification or termination...even if the modification or termination is inconsistent with a material purpose of the trust." Virginia Code § 64.2-729(A).

The court may terminate a noncharitable irrevocable trust upon consent of all of the beneficiaries "if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust." Virginia Code § 64.2-729(B).

And the court may modify a noncharitable irrevocable trust upon consent of all of the beneficiaries "if the court concludes that modification is not inconsistent with a material purpose of the trust." Virginia Code § 64.2-729(B).

After notice to qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts as long as such action "does not materially impair rights of any beneficiary or adversely affect achievement of the purpose of the trust." Virginia Code § 64.2-735.

What, then, constitutes a "material purpose"? This term is not defined, but rather comes from the *Clafin Doctrine*. In the United States, most courts follow the famous 1889

Massachusetts case of *Clafin v. Clafin*, 20 N.E. 454 (Mass. 1889), which rejected the English position that to deny the sole beneficiary of a trust the right to terminate the trust is to impose an impermissible restraint on the beneficiary's right to alienate his or her property. *Loring and Rounds: A Trustee's Handbook (2013 Ed.)*, p. 1064, FN 197.

Virginia's Uniform Trust Code is derived from the Uniform Trust Code drafted by the National Conference of Commissioners on Uniform State Laws (referred to herein as the "Model Uniform Trust Code"). The comments to the Uniform Law Commission's Uniform Trust Code confirm that the term "material purpose" "carries forward the *Clafin* rule. Model Uniform Trust Code § 411 cmt., p. 73.

The comments also reference the Restatement (Third) of Trusts explanation of the meaning of "material purpose." The comments provide:

The requirement that the trust no longer serve a material purpose before it can be terminated by the beneficiaries does not mean that the trust has no remaining function. In order to be material, the purpose remaining to be performed must be of some significance:

Material purposes are not readily to be inferred. A finding of such a purpose generally requires some showing of a particular concern or objective on the part of the settlor, such as concern with regard to the beneficiary's management skills, judgment, or level of maturity. Thus, a court may look for some circumstantial or other evidence indicating that the trust arrangement represented to the settlor more than a method of allocating the benefits of property among multiple beneficiaries, or a means of offering to the beneficiaries (but not imposing on them) a particular advantage. Sometimes, of course, the very nature or design of a trust suggests its protective nature or some other material purpose.

Model Uniform Trust Code § 411 cmt., citing Restatement (Third) of Trusts Section 65 cmt. d (Tentative Draft No. 3, approved 2001), pp. 74, 75.

The comments to the Model Uniform Trust Code note that the common "insertion of a spendthrift provision in the terms of the trust may also constitute a material purpose sufficient to prevent termination of the trust by agreement of the beneficiaries," although the Model Uniform Trust Code does not presume this result. § 103 cmt., p. 18.

Spendthrift terms have sometimes been construed to constitute a material purpose without inquiry into the intention of the particular settlor. For examples, see Restatement

(Second) of Trusts Section 337 (1959); George G. Bogert & George T. Bogert, *The Law of Trusts and Trustees* Section 1008 (Rev. 2d ed. 1983); and 4 Austin W. Scott & William F. Fratcher, *The Law of Trusts* Section 337 (4th ed. 1989). This result is troublesome because spendthrift provisions are often added to instruments with little thought. Under the Model Uniform Trust Code, the question of whether that was the intent of a particular settlor is a matter of fact to be determined on the totality of the circumstances. § 411 cmt., p. 75.

The Model Uniform Trust Code includes an optional clause that if adopted by a state legislature would clarify that a spendthrift clause, by itself, would not prevent modification or termination. The Virginia UTC does not include this optional provision. And, prior to Virginia's adoption of the Uniform Trust Code, Virginia Code § 55-19.4, now repealed, stated that a spendthrift clause precluded the modification or termination of a trust.

One of the few Virginia Supreme Court cases decided after Virginia's enactment of the Uniform Trust Code is the case of *Ladysmith Rescue Squad, Inc. v. Newlin*, 280 Va 195 (2010). The appeal involved a request to divide an irrevocable trust and to terminate (and distribute) a portion of the trust. The Supreme Court did not allow the division or the termination citing the settlor's expressed purposes were to "provide a stream of income to [the] income beneficiaries. . ." and to restrict their access to the trust funds, shield the income beneficiaries from their creditors, under a spendthrift provision contained in the trust, and to require the trustees to manage and preserve the trust's corpus until the trust called for distribution. Clearly, the *Ladysmith* court found creditor protection to be a material purpose of the trust.

Notice

The Virginia Uniform Trust Code requires notice to be sent under a number of provisions and draws a distinction between notice of a judicial proceeding and notice outside of a judicial proceeding.

Notice Outside of a Judicial Proceeding

Notice to a person is accomplished if done "in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document." The Virginia UTC expressly provides that permissible "methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed electronic message." Virginia Code § 64.2-707(A). The person entitled to notice may waive the right to notice. Virginia Code § 64.2-707(C).

For example, a trustee may terminate a trust if the trust property has a total value of less than \$100,000 or combine two or more trusts, after giving notice to qualified beneficiaries. Virginia Code §§ 64.2-732(A) and 64.2-735.

A trustee does not need to send notice to “a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.” Virginia Code § 64.2-707(B).

Notice of a Judicial Proceeding

Notice outside of a judicial proceeding is straightforward. Notice of a judicial proceeding is not. Virginia Code § 64.2-707(D) provides that notice “of a judicial proceeding shall be given as provided in § 64.2-713,” which code section provides:

3. Notice shall be given:

a. Pursuant to Chapter 8 (§ 8.01-285 et seq.) of Title 8.01 and the Rules of Supreme Court of Virginia: (i) to every interested party or to a person who can bind an interested party pursuant to subdivision 2 a or 2 b;...[the notice provisions relevant to modifying or terminating charitable trust are not reproduced here].

b. To unborn or unascertained persons who are not represented pursuant to subdivision 2 a or 2 b by giving notice to all known persons whose interests in the proceeding are substantially identical to those of the unborn or unascertained persons.

“Pursuant to Chapter 8 (§ 8.01-285 et seq.)” means that formal service of process (Sheriff, private process server) must be utilized to serve the individual. What are the service and jurisdictional issues if the beneficiary resides, as is often the case, in another state? If this is a “friendly” proceeding the formal service of process rules can be circumvented by having the persons to be served execute a waiver pursuant to Virginia Code § 8.01-286.1.

To most trust and estate planning practitioners, if a judicial proceeding is to be filed, it is time to bring in the litigator, if only to ensure the notice requirements are satisfied.

Representation

The Virginia Uniform Trust Code permits certain people to legally represent other people. This may be for purposes of sending notice, either outside of or as part of, a judicial proceeding, or for obtaining consent. This concept is referred to as “representation.”

Obtaining the consent of, or sending notice to, a minor, incapacitated person or someone not yet born is, to say the least, problematic. There may also be a class of beneficiaries, such as grandchildren or nieces and nephews, so numerous that obtaining consent would be too onerous. Or, there may be persons whose identity or location is unknown and not reasonably ascertainable.

The Virginia UTC's remedy to this is to allow one person to represent another person. Virginia Code § 64.2-714(A) provides that notice "to a person who may represent and bind another person under this chapter has the same effect as if notice were given directly to the other person." And, the "consent of a person who may represent and bind another person under this chapter is binding on the person represented unless the person represented objects to the representation by notifying the trustee or the representative before the consent would otherwise have become effective." Virginia Code § 64.2-714(B).

Representation by Fiduciaries, Parents and Ancestors

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

1. A conservator or guardian of the estate may represent and bind the estate that such fiduciary controls;
2. A guardian may represent and bind the ward if a conservator or guardian of the ward's estate has not been appointed;
3. An agent having authority to act with respect to the particular question or dispute may represent and bind the principal;
4. A trustee may represent and bind the beneficiaries of the trust;
5. A personal representative of a decedent's estate may represent and bind persons interested in the estate;
6. A parent may represent and bind the parent's minor or unborn child if a guardian of the estate or guardian for the child has not been appointed; and
7. If a minor or unborn person is not otherwise represented under this section, a grandparent or more remote ancestor may represent and bind that minor or unborn person.

Virginia Code § 64.2-716.

Representation by Person Having Substantially Identical Interest

Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown (and not reasonably ascertainable), may be

represented by a person having a substantially identical interest in regards to the particular question or dispute, but only to the extent there is no conflict of interest with respect to the particular question or dispute between the representative and the person represented. Virginia Code § 64.2-717.

Conflicts of Interest

All of the representation sections require there to be no conflict of interest between the represented person and the person being represented. As such, ensuring that no conflict of interest exists between the representative and the person being represented is an essential requirement for representation to work.

With a nonjudicial settlement agreement, Virginia Code § 64.2-709(E) authorizes the court to determine whether representation was adequate upon petition. Another good reason to ask the court to approve the agreement; however, instituting a judicial action has its own set of issues regarding the formal service of process requirements.

A residuary beneficiary will almost always have a conflict of interest with a contingent residuary beneficiary regarding the termination of a trust. Take for example the common situation with most creditor shelter trusts where the surviving spouse is still alive, the children are the residuary beneficiaries upon the death of the surviving spouse and the settlor's grandchildren are the contingent beneficiaries behind the children.

The children have an inherent conflict in that their parent, the surviving spouse, will receive the trust assets upon termination, and at death, will likely leave those assets to the children. The grandchildren, arguably, would prefer for the assets to remain in trust until the death of the surviving spouse. This way if their parent predeceases the surviving spouse, the grandchildren would receive the assets.

While a parent of such children (i.e., the grandchildren of the settlor) is authorized to act as a representative of their children, to ensure there is no conflict of interest, it would be prudent to at least have the grandchildren's other parent, who presumably is the spouse of the settlor's child, join in as a representative. To be even safer, an uncle of the grandchildren might be included as a representative as well.

Court Appointed Representative

Another option for representation is to ask the court to appoint a representative pursuant to Virginia Code § 64.2-718. This is an option whether or not a judicial proceeding concerning the trust is pending. Before appointing such a representative, the court must first determine "that an interest is not represented under this chapter, or that the otherwise available representation might be inadequate." Upon making this determination the court "may appoint a representative to receive notice, give consent, and otherwise represent, bind,

and act on behalf of a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown.” Such a representative may represent several persons or interests.

There is no qualification as to whom the court may appoint as a representative. Consequently, the representative might be a relative or friend of the person.

If the matter involves a judicial proceeding, then the court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn or unascertained person, or a person whose identity or address is unknown, if the court determines that representation would otherwise be inadequate. The guardian ad litem may be appointed to represent several persons or interests so long as there is no conflict of interest among those persons or interests. The reasons for appointing a guardian ad litem shall be stated in the record of the proceedings. Virginia Code § 64.2-713(A)(3)(4)(a).

Attorney as Representative

The Virginia Uniform Trust Code also provides that “a minor or other person under a disability may be represented by an attorney-at-law...who has entered of record an appearance on his behalf to the extent permitted by § 8.01-9.”

Chapter 7. Uniform Trust Code.

Article 1. General Provisions and Definitions.

§ 64.2-700. Scope.

A. This chapter applies to express inter vivos trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust. This chapter also applies to testamentary trusts, except to the extent that specific provision is made for them in Part A (§ 64.2-1200 et seq.) of Subtitle IV or elsewhere in the Code of Virginia, or to the extent it is clearly inapplicable to them. Section 64.2-775, which provides the duties of a trustee to inform and report to the trust's beneficiaries, shall apply to testamentary trusts. For purposes of this subsection, the word "trust" and the words "trustee" or "fiduciary," as used in Part A (§ 64.2-1200 et seq.) of Subtitle IV, shall be deemed to refer to testamentary trusts and testamentary trustees, except to the extent that the use of such words is clearly inapplicable to testamentary trusts and testamentary trustees. This chapter shall not apply to:

1. A trust that is primarily used for business, investment, or commercial transactions, including business trusts, land trusts (§ 55-17.1), deeds of trusts (Article 2 (§ 55-58 et seq.) of Chapter 4 of Title 55), voting trusts, common trust funds, security arrangements, liquidation trusts, trusts created by deposit arrangement in a financial institution, and trusts created for paying debts, dividends, interest, or profits.
2. A trust that is used primarily for employment including trusts created for paying salaries, wages, pensions, or employee benefits of any kind.
3. A trust under which a person is a nominee or escrowee for another.
4. Other special purpose trusts governed by particular statutes, including trusts under Title 57.

B. Notwithstanding subsection A, a court, in exercising jurisdiction over the supervision or administration of trusts, may determine that application of the policies, procedures, or rules of the Code is appropriate to resolution of particular issues.

2005, c. 935, § 55-541.02; 2012, c. 614.

§ 64.2-701. Definitions.

In this chapter:

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

"Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of § 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986 .

"Beneficiary" means a person that (i) has a present or future beneficial interest in a trust, vested or contingent; or (ii) in a capacity other than that of trustee, holds a power of appointment over trust property.

"Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described

in § 64.2-723.

"Conservator" means a person appointed by the court to administer the estate of an adult individual.

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

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

"Guardian of the estate" means a person appointed by the court to administer the estate of a minor.

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

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

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

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

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

"Qualified beneficiary" means a living or then-existing beneficiary who, on the date the beneficiary's qualification is determined, (i) is a distributee or permissible distributee of trust income or principal; (ii) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in clause (i) terminated on that date, but the termination of those interests would not cause the trust to terminate; or (iii) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

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

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

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

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

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

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

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

2005, c. 935, § 55-541.03; 2012, c. 614.

§ 64.2-702. Knowledge.

A. Subject to subsection B, a person has knowledge of a fact if the person:

1. Has actual knowledge of it;
2. Has received a notice or notification of it; or
3. From all the facts and circumstances known to the person at the time in question, has reason to know it.

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

2005, c. 935, § 55-541.04; 2012, c. 614.

§ 64.2-703. Default and mandatory rules.

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

B. The terms of a trust prevail over any provision of this chapter except:

1. The requirements for creating a trust;
2. The duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries;
3. The requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;
4. The power of the court to modify or terminate a trust under §§ 64.2-728 through 64.2-734;
5. The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Article 5 (§ 64.2-742 et seq.);
6. The power of the court under § 64.2-755 to require, dispense with, or modify or terminate a

bond;

7. The power of the court under subsection B of § 64.2-761 to adjust a trustee's compensation specified in the terms of the trust that is unreasonably low or high;
8. The effect of an exculpatory term under § 64.2-799;
9. The rights under §§ 64.2-801 through 64.2-804 of a person other than a trustee or beneficiary;
10. Periods of limitation for commencing a judicial proceeding; and
11. The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice.

2005, c. 935, § 55-541.05; 2007, c. 216; 2012, c. 614.

§ 64.2-704. Common law of trusts; principles of equity.

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

2005, c. 935, § 55-541.06; 2012, c. 614.

§ 64.2-705. Governing law.

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

1. The law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue; or
2. In the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

2005, c. 935, § 55-541.07; 2012, c. 614.

§ 64.2-706. Principal place of administration.

A. Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of an inter vivos trust designating the principal place of administration are valid and controlling if:

1. A trustee's principal place of business is located in or a trustee is a resident of the designated jurisdiction; or
2. All or part of the administration occurs in the designated jurisdiction.

B. Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee of an inter vivos trust may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States that is appropriate to the trust's purposes, its administration, and the interests of the beneficiaries.

C. When the proposed transfer of a trust's principal place of administration is to another state or to a jurisdiction outside of the United States, the trustee shall notify the qualified beneficiaries of the proposed transfer not less than 60 days before initiating the transfer. A corporate trustee that maintains a place of business in the Commonwealth where one or more trust officers are available on a regular basis for personal contact with trust customers and beneficiaries shall not

be deemed to have transferred its principal place of administration if all or significant portions of the administration of the trust are performed outside the Commonwealth. The notice of proposed transfer shall include:

1. The name of the jurisdiction to which the principal place of administration is to be transferred;
2. The address and telephone number at the new location at which the trustee can be contacted;
3. An explanation of the reasons for the proposed transfer;
4. The date on which the proposed transfer is anticipated to occur; and
5. The date, not less than 60 days after the giving of the notice, by which the qualified beneficiary shall notify the trustee of an objection to the proposed transfer.

D. The authority of a trustee under this section to transfer a trust's principal place of administration to another state or to a jurisdiction outside of the United States terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

E. In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to § [64.2-757](#).

F. The court, for good cause shown, may transfer the principal place of administration of a testamentary trust to another state or to a jurisdiction outside of the United States upon such conditions, if any, as it may deem appropriate.

2005, c. [935](#), § 55-541.08; 2012, c. [614](#).

§ 64.2-707. Methods and waiver of notice.

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

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

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

D. Notice of a judicial proceeding shall be given as provided in § [64.2-713](#).

2005, c. [935](#), § 55-541.09; 2012, c. [614](#).

§ 64.2-708. Others treated as qualified beneficiaries.

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

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

organization, on the date of the charitable organization's qualification is being 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 upon the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions; or
3. Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

C. A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in § 64.2-726 or 64.2-727 has the rights of a qualified beneficiary under this chapter.

D. The Attorney General has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in the Commonwealth but need not be given notices or information required under §§ 64.2-758 and 64.2-775 unless otherwise requested.

2005, c. 935, § 55-541.10; 2012, c. 614.

§ 64.2-709. Nonjudicial settlement agreements.

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

B. Except as otherwise provided in subsection C, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

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

D. Matters that may be resolved by a nonjudicial settlement agreement include:

1. The interpretation or construction of the terms of the trust;
2. The approval of a trustee's report or accounting;
3. Direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;
4. The resignation or appointment of a trustee and the determination of a trustee's compensation;
5. Transfer of a trust's principal place of administration; and
6. Liability of a trustee for an action relating to the trust.

E. Any interested person may petition the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in Article 3 (§ 64.2-714 et seq.) was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

2005, c. 935, § 55-541.11; 2012, c. 614.

Article 2. Judicial Proceedings.

§ 64.2-710. Role of court in administration of trust.

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

B. Except as provided in Part A (§ 64.2-1200 et seq.) of Subtitle IV, a trust is not subject to continuing judicial supervision unless ordered by the court.

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

2005, c. 935, § 55-542.01; 2012, c. 614.

§ 64.2-711. Jurisdiction over trustee and beneficiary.

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

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

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

2005, c. 935, § 55-542.02; 2012, c. 614.

§ 64.2-712. Proceedings to appoint or remove trustees.

A. Proceedings to appoint or remove trustees may be brought by motion pursuant to §§ 64.2-1405 and 64.2-1406.

B. Proceedings to appoint or remove trustees also may be brought by petition or complaint. In such a proceeding, beneficiaries who are not qualified beneficiaries shall not be necessary parties, nor shall it be necessary to join (i) a trustee who has declined to accept the trust, resigned or been adjudicated an incapacitated person or (ii) the personal representative of a trustee.

2005, c. 935, § 55-542.05; 2012, c. 614.

§ 64.2-713. Pleadings; parties; orders; notice.

A. In judicial proceedings involving trusts governed under this chapter, including proceedings to modify or terminate a trust:

1. Interests to be affected by the proceeding shall be described in pleadings that give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in any other appropriate manner.

2. Orders shall bind persons as follows:

a. An order binding the sole holder or all co-holders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, binds other persons to the extent their interests as objects, takers in default or otherwise are subject to such power.

b. To the extent there is no conflict of interest between or among them:

(1) An order binding a conservator or a guardian of an estate binds the person whose estate he controls;

(2) An order binding a guardian of the person binds the ward if no conservator or guardian of his estate has been appointed;

(3) An order binding a trustee binds beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary, and in proceedings involving creditors or other third parties;

(4) An order binding a personal representative binds persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate; and

(5) An order binding a sole holder or all co-holders of a general testamentary power of appointment binds other persons to the extent their interests as objects, takers in default, or otherwise are subject to the power.

c. Unless otherwise represented, a minor, an incapacitated, unborn, or unascertained person is bound by an order if his interest is adequately represented by another party having a substantially identical interest in the proceedings.

3. Notice shall be given:

a. Pursuant to Chapter 8 (§ [8.01-285](#) et seq.) of Title 8.01 and the Rules of Supreme Court of Virginia: (i) to every interested party or to a person who can bind an interested party pursuant to subdivision 2 a or 2 b; and (ii) if the proceeding seeks the modification or termination of a charitable trust or the sale of any of its real estate, to the public at large by order of publication published once a week for three consecutive weeks prior to any hearing or trial in a paper of general circulation in the county or city (a) of the trust's principal place of administration and (b) where any affected real estate of the trust is located. This notice provision does not change the common law rule that members of the public at large are not entitled to be parties to such judicial proceedings or to have any right to appear therein. The purpose of the notice, which shall be stated therein, is solely to make the public aware of the nature of such proceedings, the remedy being sought therein, and the opportunity to share their views in regard thereto with the Attorney General. The court shall not conduct any hearing or trial until it has made a finding that the required notice to the public has been given as specified herein.

b. To unborn or unascertained persons who are not represented pursuant to subdivision 2 a or 2 b by giving notice to all known persons whose interests in the proceeding are substantially identical to those of the unborn or unascertained persons.

4. Persons under a disability, or unborn or incapacitated persons may be represented during the course of a judicial proceeding as follows:

a. At any point in a judicial proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. The guardian ad litem may be appointed to represent several persons or interests to the extent there is no conflict of interest among those persons or interests. The reasons for appointing a guardian ad litem shall be stated in the record of the proceedings.

b. A minor or other person under a disability may be represented by an attorney-at-law duly licensed to practice in the Commonwealth who has entered of record an appearance on his behalf to the extent permitted by § 8.01-9.

B. The provisions of this section shall apply notwithstanding the Rules of Supreme Court of Virginia or any applicable provisions in Title 8.01.

2005, c. 935, § 55-542.06; 2007, c. 752; 2012, c. 614.

Article 3. Representation.

§ 64.2-714. Representation; basic effect.

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

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

C. Except as otherwise provided in §§ 64.2-729 and 64.2-751, a person who under this chapter may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

D. A settlor may not represent and bind a beneficiary under this chapter with respect to the termination or modification of a trust under § 64.2-729.

2005, c. 935, § 55-543.01; 2012, c. 614.

§ 64.2-715. Representation by holder of general testamentary power of appointment.

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

2005, c. 935, § 55-543.02; 2012, c. 614.

§ 64.2-716. Representation by fiduciaries and parents or other ancestors.

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

1. A conservator or guardian of the estate may represent and bind the estate that such fiduciary controls;

2. A guardian may represent and bind the ward if a conservator or guardian of the ward's estate has not been appointed;

3. An agent having authority to act with respect to the particular question or dispute may represent and bind the principal;
4. A trustee may represent and bind the beneficiaries of the trust;
5. A personal representative of a decedent's estate may represent and bind persons interested in the estate;
6. A parent may represent and bind the parent's minor or unborn child if a guardian of the estate or guardian for the child has not been appointed; and
7. If a minor or unborn person is not otherwise represented under this section, a grandparent or more remote ancestor may represent and bind that minor or unborn person.

2005, c. 935, § 55-543.03; 2012, c. 614.

§ 64.2-717. Representation by person having substantially identical interest.

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

2005, c. 935, § 55-543.04; 2012, c. 614.

§ 64.2-718. Appointment of representative.

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

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

C. In making decisions, a representative may consider general benefit accruing to the living members of the individual's family.

2005, c. 935, § 55-543.05; 2012, c. 614.

Article 4. Creation, Validity, Modification, and Termination of Trust.

§ 64.2-719. Methods of creating trust.

A trust may be created by:

1. Transfer of property to another person as trustee during the settlor's lifetime by the settlor or by the settlor's agent, acting in accordance with § 64.2-1612, under a power of attorney that expressly authorizes the agent to create a trust on the settlor's behalf; or by will or other disposition taking effect upon the settlor's death;
2. Declaration by the owner of property that the owner holds identifiable property as trustee;
3. Exercise of a power of appointment in favor of a trustee; or

4. A conservator acting in accordance with § 64.2-2023.

2005, c. 935, § 55-544.01; 2010, cc. 455, 632;2012, c. 614;2013, c. 523.

§ 64.2-720. Requirements for creation.

A. A trust is created only if:

1. The settlor has capacity to create a trust; or when the trust is created by the settlor's agent under a power of attorney, which expressly authorizes the agent to create a trust on the settlor's behalf;
2. The settlor or his agent indicates an intention to create the trust;
3. The trust has a definite beneficiary or is:
 - a. A charitable trust;
 - b. A trust for the care of an animal, as provided in § 64.2-726;or
 - c. A trust for a noncharitable purpose, as provided in § 64.2-727;
4. The trustee has duties to perform; and
5. The same person is not the sole trustee and sole beneficiary.

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

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

2005, c. 935, § 55-544.02; 2010, cc. 455, 632;2012, c. 614.

§ 64.2-721. Trusts created in other jurisdictions.

A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

1. The settlor was domiciled, had a place of abode, or was a national;
2. A trustee was domiciled or had a place of business; or
3. Any trust property was located.

2005, c. 935, § 55-544.03; 2012, c. 614.

§ 64.2-722. Trust purposes.

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

2005, c. 935, § 55-544.04; 2012, c. 614.

§ 64.2-723. Charitable purposes; enforcement.

A. A charitable trust may be created for the relief of poverty, the advancement of education or

religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.

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

C. The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust.

2005, c. 935, § 55-544.05; 2012, c. 614.

§ 64.2-724. Creation of trust induced by fraud, duress, or undue influence.

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

2005, c. 935, § 55-544.06; 2012, c. 614.

§ 64.2-725. Evidence of oral trust.

Except as required by a statute other than this chapter, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

2005, c. 935, § 55-544.07; 2012, c. 614.

§ 64.2-726. Trust for care of animal.

A. 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. Funds from the trust may be applied to any outstanding expenses of the trust and for burial or other postdeath expenditures for animal beneficiaries as provided for in the instrument creating the trust.

B. The instrument creating the trust shall be liberally construed to bring the transfer within the scope of trusts governed by this section, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

C. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person 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. The appointed person shall have the rights of a trust beneficiary for the purpose of enforcing the trust, including receiving accountings, notices, and other information from the trustee and providing consents. Reasonable compensation for a person appointed by the court may be paid from the assets of the trust.

D. Except as ordered by a court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or surety bond shall be required by reason of the existence of the fiduciary relationship of the trustee.

E. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not

required for the intended use shall be distributed to the settlor, if then living. If the settlor is deceased, such property shall be distributed pursuant to the residuary clause of the settlor's will if the trust for the animal was created in a preresiduary clause in the will or pursuant to the residuary provisions of the inter vivos trust if the trust for the animal was created in a preresiduary clause in the trust instrument; otherwise, such property shall be distributed to the settlor's successors in interest.

2005, c. 935, § 55-544.08; 2006, c. 666. 2012, c. 614.

§ 64.2-727. Noncharitable trust without ascertainable beneficiary.

Except as otherwise provided in § 64.2-726 or by another statute, the following rules apply:

1. A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than 21 years.
2. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.
3. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use shall be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

2005, c. 935, § 55-544.09; 2012, c. 614.

§ 64.2-728. Modification or termination of trust; proceedings for approval or disapproval.

A. In addition to the methods of termination prescribed by §§ 64.2-729 through 64.2-732, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

B. A proceeding to approve or disapprove a proposed modification or termination under §§ 64.2-729 through 64.2-734, or trust combination or division under § 64.2-735, may be commenced by a trustee or beneficiary. The settlor of a charitable trust may maintain a proceeding to modify the trust under § 64.2-731.

2005, c. 935, § 55-544.10; 2012, c. 614.

§ 64.2-729. Modification or termination of noncharitable irrevocable trust by consent.

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

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

C. Upon termination of a trust under subsection A or B, the trustee shall distribute the trust property as agreed by the beneficiaries.

D. If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection A or B, the modification or termination may be approved by the court if the court is satisfied that:

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

2005, c. 935, § 55-544.11; 2012, c. 614.

§ 64.2-730. Modification or termination because of unanticipated circumstances or inability to administer trust effectively.

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

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

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

2005, c. 935, § 55-544.12; 2012, c. 614.

§ 64.2-731. Cy pres.

A. Except as otherwise provided in subsection B, if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

1. The trust does not fail, in whole or in part;
2. The trust property does not revert to the settlor or the settlor's successors in interest; and
3. The court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

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

1. The trust property is to revert to the settlor and the settlor is still living; or

2. Fewer than 21 years have elapsed since the date of the trust's creation.

2005, c. 935, § 55-544.13; 2012, c. 614.

§ 64.2-732. Modification or termination of uneconomic trust.

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

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

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

D. This section does not apply to an easement for conservation or preservation.

2005, c. 935, § 55-544.14; 2012, c. 614.

§ 64.2-733. Reformation to correct mistakes.

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

2005, c. 935, § 55-544.15; 2012, c. 614.

§ 64.2-734. Modification to achieve settlor's tax objectives.

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

2005, c. 935, § 55-544.16; 2012, c. 614.

§ 64.2-735. Combination and division of trusts.

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

2005, c. 935, § 55-544.17; 2012, c. 614.

§ 64.2-736. Amendment of trust where gift, grant, or will establishes private foundation or constitutes a charitable trust or a split-interest trust.

When any such gift, grant, devise, or bequest establishes a private foundation, as defined in § 509 of the Internal Revenue Code, or constitutes a charitable trust, as described in § 4947(a)(1) of the Internal Revenue Code, or a split-interest trust, as described in § 4947(a)(2) of the Internal Revenue Code, the trustee or trustees of such trust, with the concurrence of the creator of the trust, if then living and able to give such consent, and the Attorney General, may, without resort to any court, unless such amendment is inconsistent with an express provision of such trust's governing instrument, amend the terms of such trust to bring such trust into or continue such trust in conformity with requirements for exemption of such trust, or any interest therein, from

federal taxes. When such gift, grant, or will is recorded, a copy of such amendment shall be similarly recorded.

2005, c. 935, § 55-544.18; 2012, c. 614.

§ 64.2-737. Distribution of income of trust that is a private foundation or a charitable trust; prohibitions as to such private foundation.

Every trust that is a private foundation, as defined in § 509 of the Internal Revenue Code, or a charitable trust, as described in § 4947(a)(1) of the Internal Revenue Code, unless its governing instrument expressly includes specific provisions to the contrary, shall distribute its income, and if necessary principal, for each taxable year at such time and in such manner as not to subject such trust to tax under § 4942 of the Internal Revenue Code, and such trust shall not engage in any act of self-dealing, as defined in § 4941(d) of the Internal Revenue Code, retain any excess business holdings, as defined in § 4943(c) of the Internal Revenue Code, make any investments in such manner as to give rise to liability for the tax imposed by § 4944 of the Internal Revenue Code, or make any taxable expenditures, as defined in § 4945(d) of the Internal Revenue Code .

2005, c. 935, § 55-544.19; 2012, c. 614.

§ 64.2-738. Prohibitions as to trust that is deemed a split-interest trust.

Every trust that is a split-interest trust, as described in § 4947(a)(2) of the Internal Revenue Code, unless its governing instrument expressly includes specific provisions to the contrary, shall not engage in any act of self-dealing, as defined in § 4941(d) of the Internal Revenue Code, retain any excess business holdings, as defined in § 4943(c) of the Internal Revenue Code, that would give rise to liability for the tax imposed by § 4943(a) of the Internal Revenue Code, make any investments in such manner as to give rise to liability for the tax imposed by § 4944 of the Internal Revenue Code, or make any taxable expenditures, as defined in § 4945(d) of the Internal Revenue Code . This section shall not apply with respect to:

1. Any amounts payable under the terms of such trust to income beneficiaries, unless a deduction was allowed under § 170(f)(2)(B), 2055(e)(2)(B), or 2522(c)(2)(B) of the Internal Revenue Code;
2. Any amounts in trust other than amounts for which a deduction was allowed under § 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 of the Internal Revenue Code, if such other amounts are segregated from amounts for which no deduction was allowable; or
3. Any amounts transferred in trust before May 27, 1969.

2005, c. 935, § 55-544.20; 2012, c. 614.

§ 64.2-739. Application of §§ 64.2-737 and 64.2-738.

Sections 64.2-737 and 64.2-738 shall apply to any private foundation, charitable trust, or split-interest trust defined or described therein and established after December 31, 1969; and to any such private foundation, charitable trust, or split-interest trust established before January 1, 1970, only for its taxable years beginning on and after January 1, 1972, unless the exceptions provided in § 508(e)(2)(A) or (B) of the Internal Revenue Code shall apply or unless the trustee or trustees shall elect that this section shall not apply by filing written notice of such election with the Attorney General, and with the clerk of the court in which its governing instrument may be recorded, on or before December 31, 1971.

2005, c. 935, § 55-544.21; 2012, c. 614.

§ 64.2-740. Interpretation of references to Internal Revenue Code in §§ 64.2-736 through 64.2-739.

Each reference to a section of the Internal Revenue Code made in §§ 64.2-736 through 64.2-739 shall include future amendments to such Code sections and corresponding provisions of future internal revenue laws.

2005, c. 935, § 55-544.22; 2012, c. 614.

§ 64.2-741. Powers of courts not impaired by §§ 64.2-736 through 64.2-740.

Nothing in §§ 64.2-736 through 64.2-740 shall impair the power of a court of competent jurisdiction with respect to any such foundation or trust.

2005, c. 935, § 55-544.23; 2012, c. 614; 2015, c. 709.

Article 5. Creditor's Claims; Spendthrift and Discretionary Trusts.

§ 64.2-742. Rights of beneficiary's creditor or assignee.

To the extent a beneficiary's interest is not subject to a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

2005, c. 935, § 55-545.01; 2007, c. 216; 2012, c. 614.

§ 64.2-743. Spendthrift provision.

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

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

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

2005, c. 935, § 55-545.02; 2012, c. 614.

§ 64.2-744. Exceptions to spendthrift provision.

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

B. Even if a trust contains a spendthrift provision, a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance, or a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust, may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary.

C. Subject to the limitations of § 64.2-745, no spendthrift provision shall operate to the prejudice of the United States, the Commonwealth, or any county, city, or town.

D. A claimant against which a spendthrift provision cannot be enforced may obtain from a court

an order attaching present or future distributions to or for the benefit of a beneficiary. The court may limit the award of such relief as is appropriate under the circumstances.

2005, c. [935](#), § 55-545.03; 2007, c. [216](#); 2012, c. [614](#).

§ 64.2-745. Certain claims for reimbursement for public assistance.

A. Notwithstanding any contrary provision in the trust instrument, if a statute or regulation of the United States or Commonwealth requires a beneficiary to reimburse the Commonwealth or any agency or instrumentality thereof, for public assistance, including medical assistance, furnished or to be furnished to the beneficiary, the Attorney General or an attorney acting on behalf of the state agency responsible for the program may file a petition in the circuit court having jurisdiction over the trustee requesting reimbursement. The petition may be filed prior to obtaining a judgment. The beneficiary, the guardian of his estate, his conservator, or his committee shall be made a party.

B. Following its review of the circumstances of the case, the court may:

1. Order the trustee to satisfy all or part of the liability out of all or part of the amounts to which the beneficiary is entitled, whether presently or in the future, to the extent the beneficiary has the right under the trust to compel the trustee to pay income or principal to or for the benefit of the beneficiary; or

2. Regardless of whether the beneficiary has the right to compel the trustee to pay income or principal to or for the benefit of the beneficiary, order the trustee to satisfy all or part of the liability out of all or part of any future payments that the trustee chooses to make to or for the benefit of the beneficiary in the exercise of discretion under the trust.

C. A duty in the trustee under the instrument to make disbursements in a manner designed to avoid rendering the beneficiary ineligible for public assistance to which he might otherwise be entitled, however, shall not be construed as a right possessed by the beneficiary to compel such payments.

D. The court shall not issue an order pursuant to this section if the beneficiary is a person who has a medically determined physical or mental disability that substantially impairs his ability to provide for his care or custody, and constitutes a substantial handicap.

2005, c. [935](#), § 55-545.03:1; 2012, c. [614](#).

§ 64.2-745.1. Self-settled spendthrift trusts.

A. A settlor may transfer assets to a qualified self-settled spendthrift trust and retain in that trust a qualified interest, and, except as otherwise provided in this article, § [64.2-747](#) shall not apply to such qualified interest.

B. Section [64.2-747](#) shall continue to apply with respect to any interest held by a settlor in a qualified self-settled spendthrift trust, other than a qualified interest.

C. A settlor's transfer to a qualified self-settled spendthrift trust shall not, to the extent of the settlor's qualified interest, be deemed to have been made with intent to delay, hinder, or defraud creditors, for purposes of § [55-80](#), merely because it is made to a trust with respect to which the settlor retains a qualified interest and merely because it is made without consideration. A settlor's transfer to a qualified self-settled spendthrift trust may, however, be set aside under § [55-80](#) or [55-81](#) on other bases, such as if the transfer renders the settlor insolvent.

D. A settlor's creditor may bring an action under § 55-82 to avoid a transfer to a qualified self-settled spendthrift trust or otherwise to enforce a claim that existed on the date of the settlor's transfer to such trust within five years after the date of the settlor's transfer to such trust to which such claim relates.

E. A creditor shall have only such rights with respect to a settlor's transfer to a qualified self-settled spendthrift trust as are provided in this section. No creditor and no other person shall have any claim or cause of action against any trustee, trust adviser, trust director, or any person involved in the counseling, drafting, preparation, or execution of, or transfers to a qualified self-settled spendthrift trust.

F. If a settlor makes more than one transfer to the same qualified self-settled spendthrift trust, the following rules shall apply:

1. The settlor's making of a subsequent transfer shall be disregarded in determining whether a creditor's claim with respect to a prior transfer is valid under this section;

2. With respect to each subsequent transfer by the settlor, the five-year limitations period provided in subsection D, with respect to actions brought under Chapter 5 of Title 55 with respect to the subsequent transfer, commences on the date of such subsequent transfer; and

3. Any distribution to a beneficiary is deemed to have been made from the latest such transfer.

G. The movement to the Commonwealth of the administration of an existing trust, which, after such movement to the Commonwealth, meets for the first time all of the requirements of a qualified self-settled spendthrift trust, shall be treated, for purposes of this section, as a transfer to this trust by the settlor on the date of such movement of all of the assets previously transferred to the trust by the settlor.

2012, c. 555, § 55-545.03:2; 2012, c. 614.

§ 64.2-745.2. Definitions; vacancies; right to withdraw.

A. As used in this article, unless the context requires a different meaning:

"Independent qualified trustee" means a qualified trustee who is not, and whose actions are not, subject to direction by:

1. The settlor;

2. Any natural person who is not a resident of the Commonwealth;

3. Any entity that is not authorized under Title 6.2 to engage in trust business within the Commonwealth;

4. The settlor's spouse;

5. A parent of the settlor;

6. Any issue of the settlor;

7. A sibling of the settlor;

8. An employee of the settlor;

9. A business entity in which the settlor's holdings represent at least 30 percent of the total voting power of all interests entitled to vote;
10. A subordinate employee of the settlor; or
11. A subordinate employee of a business entity in which the settlor is an executive.

"Qualified interest" means a settlor's interest in a qualified self-settled spendthrift trust, to the extent that such interest entitles the settlor to receive distributions of income, principal, or both, in the sole discretion of an independent qualified trustee. A settlor may have a qualified interest in a qualified self-settled spendthrift trust and also have an interest in the same trust that is not a qualified interest, and the rules of § 64.2-747 shall apply to each interest of the settlor in the same trust other than the settlor's qualified interest.

"Qualified self-settled spendthrift trust" means a trust if:

1. The trust is irrevocable;
2. The trust is created during the settlor's lifetime;
3. There is, at all times when distributions could be made to the settlor pursuant to the settlor's qualified interest, at least one beneficiary other than the settlor (i) to whom income may be distributed, if the settlor's qualified interest relates to trust income, (ii) to whom principal may be distributed, if the settlor's qualified interest relates to trust principal, or (iii) to whom both income and principal may be distributed, if the settlor's qualified interest relates to both trust income and principal;
4. The trust has at all times at least one qualified trustee, who may be, but need not be, an independent qualified trustee;
5. The trust instrument expressly incorporates the laws of the Commonwealth to govern the validity, construction, and administration of the trust;
6. The trust instrument includes a spendthrift provision, as defined in § 64.2-743, that restrains both voluntary and involuntary transfer of the settlor's qualified interest; and
7. The settlor does not have the right to disapprove distributions from the trust.

"Qualified trustee" means any person who is a natural person residing within the Commonwealth or a legal entity authorized to engage in trust business within the Commonwealth and who maintains or arranges for custody within the Commonwealth of some or all of the property that has been transferred to the trust by the settlor, maintains records within the Commonwealth for the trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation within the Commonwealth of fiduciary income tax returns for the trust, or otherwise materially participates within the Commonwealth in the administration of the trust. A trustee is not a qualified trustee if such trustee's authority to make distributions of income or principal or both are subject to the direction of someone who, were that person a trustee of the trust, would not meet the requirements to be a qualified trustee.

B. A vacancy in the position of qualified trustee that occurs for any reason, whether or not there is then serving another trustee, shall be filled in the following order of priority:

1. By a person eligible to be a qualified trustee and who is designated pursuant to the terms of the

trust to act as successor trustee;

2. By a person eligible to be a qualified trustee and who is designated by unanimous agreement of the qualified beneficiaries; or

3. By a person eligible to be a qualified trustee and who is appointed by the court pursuant to §§ [64.2-1405](#) and [64.2-1406](#) or pursuant to § [64.2-712](#).

C. A vacancy in the position of independent qualified trustee that occurs for any reason, whether or not there is then serving another trustee, shall be filled in the following order of priority:

1. By a person eligible to be an independent qualified trustee and who is designated pursuant to the terms of the trust to act as successor trustee;

2. By a person eligible to be an independent qualified trustee and who is designated by unanimous agreement of the qualified beneficiaries; or

3. By a person eligible to be an independent qualified trustee and who is appointed by the court pursuant to §§ [64.2-1405](#) and [64.2-1406](#) or pursuant to § [64.2-712](#).

D. A trust instrument shall not be deemed revocable on account of the inclusion of any one or more of the following rights, powers, and interests:

1. A power of appointment, exercisable by the settlor by will or other written instrument effective only upon the settlor's death, other than a power to appoint to the settlor's estate or the creditors of the settlor's estate;

2. The settlor's qualified interest in the trust;

3. The settlor's right to receive income or principal pursuant to an ascertainable standard;

4. The settlor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust (each within the meaning of § 664(d) of the Internal Revenue Code) and the settlor's right, at any time, and from time to time, to release, in writing delivered to the qualified trustee, all or any part of the settlor's retained interest in such trust;

5. The settlor's receipt each year of a percentage, not to exceed five percent, specified in the trust instrument of the initial value of the trust assets or their value determined from time to time pursuant to the trust instrument;

6. The settlor's right to remove a trustee and to appoint a new trustee;

7. The settlor's potential or actual use of real property held under a personal residence trust (within the meaning of § 2702(c) of the Internal Revenue Code);

8. The settlor's potential or actual receipt or use of a qualified annuity interest (within the meaning of § 2702 of the Internal Revenue Code);

9. The ability of a qualified trustee, whether pursuant to discretion or direction, to pay, after the settlor's death, all or any part of the settlor's debts outstanding at the time of the settlor's death, the expenses of administering the settlor's estate, or any estate inheritance tax imposed on or with respect to the settlor's estate; and

10. A settlor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on trust income, or the direct payment of such taxes to the applicable tax authorities, pursuant to a provision in the trust instrument that expressly provides for the direct payment of such taxes or the reimbursement of the settlor for such tax payments.

E. A beneficiary who has the right to withdraw his entire beneficial interest in a trust shall be treated as its settlor to the extent of such withdrawal right, when such right to withdraw has lapsed, been released, or otherwise expired, without regard to the limitations otherwise imposed by subsection B of § 64.2-747.

2012, c. 555, 55-545.03:3; 2012, c. 614.

§ 64.2-746. Discretionary trusts; effect of standard.

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

B. Except as otherwise provided in subsection C and § 64.2-745, 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; or
2. The trustee has abused the discretion.

C. To the extent a trustee has not complied with a standard of distribution or has abused a discretion:

1. A distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary's child; and
2. The court shall direct the trustee to pay to the child such amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

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

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

2005, c. 935, § 55-545.04; 2012, c. 614.

§ 64.2-747. Creditor's claim against settlor.

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

1. During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.
2. With respect to an irrevocable trust, except to the extent otherwise provided in §§ 64.2-745.1 and 64.2-745.2, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the

creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution. A trustee's discretionary authority to pay directly or to reimburse the settlor for any tax on trust income or principal that is payable by the settlor shall not be considered to be an amount that can be distributed to or for the settlor's benefit, and a creditor or assignee of the settlor shall not be entitled to reach any amount solely by reason of this discretionary authority.

3. After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children including the family allowance, the right to exempt property, and the homestead allowance to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances. This section shall not apply to life insurance proceeds under § 38.2-3122. No proceeding to subject a trustee, trust assets, or distributees of such assets to such claims, costs, and expenses shall be commenced unless the personal representative of the settlor has received a written demand by a surviving spouse, a creditor, or one acting for a minor or dependent child of the settlor, and no proceeding shall be commenced later than two years following the death of the settlor. This section shall not affect the right of a trustee to make distributions required or permitted by the terms of the trust prior to being served with process in a proceeding brought by the personal representative.

B. For purposes of this section:

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

2. Upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greatest of (i) the amount specified in § 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, (ii) the amount specified in § 2503(b) of the Internal Revenue Code of 1986, or (iii) two times the amount specified in § 2503(b) of the Internal Revenue Code of 1986 if the donor was married at the time of the transfer to which the power of withdrawal applies.

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

2005, c. 935, § 55-545.05; 2011, c. 354; 2012, cc. 555, 614, 718; 2013, c. 784.

§ 64.2-748. Overdue distribution.

A. In this section "mandatory distribution" means a distribution of income or principal that the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. The term does not include a distribution subject to the exercise of the trustee's discretion even if (i) the discretion is expressed in the form of a standard of distribution or (ii) the terms of the trust authorizing a distribution use language of discretion with language of direction.

B. Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary

may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

2005, c. 935, § 55-545.06; 2007, c. 216; 2012, c. 614.

§ 64.2-749. Personal obligations of trustee.

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

2005, c. 935, § 55-545.07; 2012, c. 614.

Article 6. Revocable Trusts.

§ 64.2-750. Capacity of settlor of revocable trust.

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

2005, c. 935, § 55-546.01; 2012, c. 614.

§ 64.2-751. Revocation or amendment of revocable trust.

A. Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before July 1, 2006.

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

1. To the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses;
2. To the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution; and
3. Upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

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

1. By substantial compliance with a method provided in the terms of the trust; or
2. If the terms of the trust do not provide a method, by any method manifesting clear and convincing evidence of the settlor's intent.

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

E. A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent, acting in accordance with § 64.2-1612, under a power of attorney that expressly authorizes such action except to the extent expressly prohibited by the terms of the trust.

F. A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust

property only (i) to the extent expressly authorized by the terms of the trust or (ii) if authorized by the court supervising the conservatorship or guardianship for good cause shown.

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

2005, c. 935, § 55-546.02; 2010, cc. 455, 632; 2012, c. 614.

§ 64.2-752. Settlor's powers; powers of withdrawal.

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

B. During the period the power may be exercised, 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.

2005, c. 935, § 55-546.03; 2012, c. 614.

§ 64.2-753. Limitation on action contesting validity of revocable trust; distribution of trust property.

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

1. Two years after the settlor's death; or
2. Six months after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

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

1. The trustee knows of a pending judicial proceeding contesting the validity of the trust; or
2. A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within 60 days after the contestant sent the notification.

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

2005, c. 935, § 55-546.04; 2007, c. 218; 2012, c. 614.

Article 7. Office of Trustee.

§ 64.2-754. Accepting or declining trusteeship.

A. Except as otherwise provided in subsection C, a person designated as trustee accepts the trusteeship:

1. By substantially complying with a method of acceptance provided in the terms of the trust; or
2. If the terms of the trust do not provide a method or the method provided in the terms is not

expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

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

C. A person designated as trustee, without accepting the trusteeship, may:

1. Act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary; and

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

2005, c. 935, § 55-547.01; 2012, c. 614.

§ 64.2-755. Trustee's bond.

A. Except as otherwise provided in Part A (§ 64.2-1200 et seq.) of Subtitle IV, a trustee shall give bond, or bond with surety or other security, 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 terms of the trust and the court has not dispensed with the requirement.

B. The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.

C. A regulated financial service institution qualified to do trust business in the Commonwealth need not give bond, even if required by the terms of the trust.

2005, c. 935, § 55-547.02; 2012, c. 614.

§ 64.2-756. Cotrustees.

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

B. If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

C. A cotrustee 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 other law, or other temporary incapacity, or the cotrustee has properly delegated the performance of the function to another trustee.

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

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

F. Except as otherwise provided in subsection G, a trustee who does not join in an action of another trustee is not liable for the action.

G. Each trustee shall exercise reasonable care to:

1. Prevent a cotrustee from committing a serious breach of trust; and
2. Compel a cotrustee to redress a serious breach of trust.

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

2005, c. 935, § 55-547.03; 2012, c. 614.

§ 64.2-757. Vacancy in trusteeship; appointment of successor.

A. A vacancy in a trusteeship occurs if:

1. A person designated as trustee rejects the trusteeship;
2. A person designated as trustee cannot be identified or does not exist;
3. A trustee resigns;
4. A trustee is disqualified or removed;
5. A trustee dies; or
6. An individual serving as trustee is adjudicated an incapacitated person.

B. If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship shall be filled if the trust has no remaining trustee.

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

1. By a person designated pursuant to the terms of the trust to act as successor trustee;
2. By a person appointed by unanimous agreement of the qualified beneficiaries; or
3. By a person appointed by the court pursuant to §§ 64.2-1405 and 64.2-1406, or pursuant to § 64.2-712.

D. 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 pursuant to the terms of the trust to act as successor trustee;
2. By a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust, subject, however, to the concurrence of the Attorney General in any case in which he has previously requested of an organization so designated that he be consulted regarding the selection of successor; or
3. By a person appointed by the court pursuant to §§ 64.2-1405 and 64.2-1406, or pursuant to § 64.2-712.

E. Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

F. A successor or surviving trustee shall succeed to all the rights, powers, and privileges, and shall be subject to all the duties, liabilities, and responsibilities imposed upon the original trustee without regard to the nature of discretionary powers conferred by the instrument, unless the trust instrument expressly provides to the contrary, or unless an order appointing the successor trustee provides otherwise.

2005, c. 935, § 55-547.04; 2012, c. 614.

§ 64.2-758. Resignation of trustee.

A. A trustee may resign:

1. Upon at least 30 days' notice to the settlor, if living, to all cotrustees, and to the qualified beneficiaries except those qualified beneficiaries under a revocable trust that the settlor has the capacity to revoke; or
2. With the approval of the court.

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

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

2005, c. 935, § 55-547.05; 2012, c. 614.

§ 64.2-759. Removal of trustee.

A. The settlor, a cotrustee, or a beneficiary, or, in the case of a charitable trust, the Attorney General may petition the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

B. The court may remove a trustee if:

1. The trustee has committed a serious breach of trust;
2. Lack of cooperation among cotrustees substantially impairs the administration of the trust;
3. Because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or
4. There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

C. Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under subsection B of § 64.2-792 as may be necessary to protect the trust property or the interests of the beneficiaries.

2005, c. 935, § 55-547.06; 2012, c. 614.

§ 64.2-760. Delivery of property by former trustee.

A. Unless a cotrustee remains in office or the court otherwise orders, and until the trust property

is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

B. A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to it.

C. Title to all trust property shall be owned and vested in any successor trustee, upon acceptance of the trusteeship, without any conveyance, transfer, or assignment by the prior trustee.

2005, c. 935, § 55-547.07; 2012, c. 614.

§ 64.2-761. Compensation of trustee.

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

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

1. The duties of the trustee are substantially different from those contemplated when the trust was created; or
2. The compensation specified by the terms of the trust would be unreasonably low or high.

2005, c. 935, § 55-547.08; 2012, c. 614.

§ 64.2-762. Reimbursement of expenses.

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

1. Expenses that were properly incurred in the administration of the trust; and
2. To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

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

2005, c. 935, § 55-547.09; 2012, c. 614.

Article 8. Duties and Powers of Trustee.

§ 64.2-763. Duty to administer trust and invest.

Upon acceptance of a trusteeship, the trustee shall administer the trust and invest trust assets in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this chapter. In administering, managing and investing trust assets, the trustee shall comply with the provisions of the Uniform Prudent Investor Act (§ 64.2-780 et seq.) and the Uniform Principal and Income Act (§ 64.2-1000 et seq.).

2005, c. 935, § 55-548.01; 2012, c. 614.

§ 64.2-764. Duty of loyalty.

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

B. Subject to the rights of persons dealing with or assisting the trustee as provided in § 64.2-803, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or that is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

1. The transaction was authorized by the terms of the trust;
2. The transaction was approved by the court;
3. The beneficiary did not commence a judicial proceeding within the time allowed by § 64.2-796;
4. The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with § 64.2-800; or
5. The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

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

1. The trustee's spouse;
2. The trustee's descendants, siblings, parents, or their spouses;
3. An agent or attorney of the trustee; or
4. A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

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

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

F. An investment by a trustee in securities of an investment company, investment trust, mutual fund, or other investment or financial product to which the trustee, or an affiliate of the trustee, sponsors, sells, or provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the Uniform Prudent Investor Act (§ 64.2-780 et seq.) and § 64.2-1506. The trustee may be compensated by the investment company, investment trust, mutual fund, or other investment or financial product, or by the affiliated entity sponsoring, selling, or providing such service, and such compensation may be in addition to the compensation the trustee is receiving as a trustee if the trustee notifies the persons entitled to receive a copy of the trustee's annual report under § 64.2-775 of the rate and method by which that compensation was determined and of any subsequent changes to such rate or method of compensation.

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

H. This section does not preclude the following transactions, if fair to the beneficiaries:

1. An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;
2. Payment of reasonable compensation to the trustee;
3. A transaction between a trust and another trust, decedent's estate, or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;
4. A deposit of trust money in a regulated financial service institution operated by the trustee; or
5. An advance by the trustee of money for the protection of the trust.

I. The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

2005, c. 935, § 55-548.02; 2012, c. 614.

§ 64.2-765. Impartiality.

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

2005, c. 935, § 55-548.03; 2012, c. 614.

§ 64.2-766. Prudent administration.

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

2005, c. 935, § 55-548.04; 2012, c. 614.

§ 64.2-767. Costs of administration.

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

2005, c. 935, § 55-548.05; 2012, c. 614.

§ 64.2-768. Trustee's skills.

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

2005, c. 935, § 55-548.06; 2012, c. 614.

§ 64.2-769. Delegation by trustee.

A. A trustee may delegate duties and powers that a prudent trustee of comparable skills could

properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

1. Selecting an agent;
2. Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
3. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

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

C. A trustee who complies with subsection A is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

D. By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of the Commonwealth, an agent submits to the jurisdiction of the courts of the Commonwealth.

2005, c. 935, § 55-548.07; 2012, c. 614.

§ 64.2-770. Powers to direct.

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

B. If (i) the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee and (ii) subsection E does not apply, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

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

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

E. The provisions of this subsection shall apply if the settlor incorporates this subsection into the trust instrument by specific reference. The provisions of this subsection shall also apply if this subsection is incorporated into the trust instrument by a nonjudicial settlement agreement under § 64.2-709 by specific reference.

1. For the purpose of this subsection, a "trust director" means any person who is not a trustee and who has, pursuant to the governing instrument, a power to direct the trustee on any matter. No person shall be a "trust director" for purposes of this subsection merely by holding a general or limited power of appointment over the trust assets.

Notwithstanding anything in the trust instrument to the contrary, the trust director shall be

deemed 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 trust director is liable for any loss that results from a breach of the trust director's fiduciary duty. Unless the governing instrument provides otherwise, the trust director may assert defenses to liability on the same basis as a trustee serving under the governing instrument, other than defenses provided to the trustee under this subsection. Notwithstanding the foregoing, a term of a trust relieving a trust director of liability for breach of trust is unenforceable to the extent that it (i) relieves the trust director 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 (ii) was inserted as the result of an abuse by the trust director of a fiduciary or confidential relationship to the settlor. An exculpatory term drafted or caused to be drafted by the trust director is invalid as an abuse of a fiduciary or confidential relationship unless the trust director proves that the existence and contents of the exculpatory term were adequately communicated to the settlor.

2. A trustee who acts in accordance with a direction in the governing instrument that the trustee is to follow the trust director's direction or act only with the trust director's consent or direction shall not, other than in cases of willful misconduct or gross negligence on the part of the directed trustee, be liable for any loss resulting directly or indirectly from any act taken or not taken by the trustee (i) pursuant to the trust director's direction or (ii) as a result of the trust director's failure to direct, consent, or act, after receiving a request by the trustee for such direction, consent, or action.

3. A trustee shall not, except as otherwise expressly provided in the trust instrument, have any duty to (i) monitor the trust director's conduct; (ii) provide the trust director with information, other than material facts related to the trust administration expressly requested in writing by the trust director; (iii) inform or warn any beneficiary or third party that the trustee disagrees with any of the trust director's actions or directions; (iv) notify the trust director that the trustee disagrees with any of the trust director's actions or directions; (v) do anything to prevent the trust director from giving any direction or taking any action; or (vi) compel the trust director to redress its action or direction.

4. The actions of the trustee pertaining to matters within the scope of the authority of the trust director, including confirming that the trust director's directions have been carried out and recording and reporting actions taken pursuant to the trust director's direction, shall, absent clear and convincing evidence to the contrary, presumptively be considered administrative actions by the trustee and not be considered to constitute either monitoring the trust director's actions or participating in the actions of the trust director.

2005, c. 935, § 55-548.08; 2012, cc. 562, 614; 2014, c. 749.

§ 64.2-771. Control and protection of trust property.

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

2005, c. 935, § 55-548.09; 2012, c. 614.

§ 64.2-772. Recordkeeping and identification of trust property.

A. A trustee shall keep adequate records of the administration of the trust.

B. A trustee shall keep trust property separate from the trustee's own property.

C. Except as otherwise provided in subsection D, a trustee shall cause the trust property to be

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

D. If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

E. A deed or other instrument purporting to convey or transfer real or personal property to a trust instead of to the trustee or trustees of the trust shall be deemed to convey or transfer such property to the trustee or trustees as fully as if made directly to the trustee or trustees.

2005, c. 935, § 55-548.10; 2007, c. 197; 2012, c. 614.

§ 64.2-773. Enforcement and defense of claims.

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

2005, c. 935, § 55-548.11; 2012, c. 614.

§ 64.2-774. Collecting trust property.

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

2005, c. 935, § 55-548.12; 2012, c. 614.

§ 64.2-775. Duty to inform and report.

A. A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust. A trustee who fails to furnish information to a beneficiary or respond to a request for information regarding the administration of the trust in a good faith belief that to do so would be unreasonable under the circumstances or contrary to the purposes of the settlor shall not be subject to removal or other sanctions therefor.

B. A trustee:

1. Upon request of a beneficiary, shall promptly furnish to the beneficiary a copy of the trust instrument;
2. Within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;
3. Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in subsection C; and
4. Shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.

C. A trustee shall send to the distributees or permissible distributees of trust income or principal,

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

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

E. Subdivisions B 2 and B 3 and subsection C apply only to an irrevocable trust created on or after the effective date of this chapter, and to a revocable trust that becomes irrevocable on or after the effective date of this chapter.

2005, c. 935, § 55-548.13; 2007, c. 254; 2012, c. 614.

§ 64.2-776. Discretionary powers; tax savings.

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

B. Subject to subsection D, and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

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

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

For purposes of this subsection, "trustee" includes a person who is deemed to have any power of a trustee, whether because such person has the right to remove or replace any trustee or because a reciprocal trust or power doctrine applies.

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

D. Subsection B does not apply to:

1. A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in § 2056(b)(5) or 2523(e) of the Internal Revenue Code of 1986, as in effect on the effective date of this chapter, or as later amended, was previously allowed;

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

3. A trust if contributions to the trust qualify for the annual exclusion under § 2503(c) of the Internal Revenue Code of 1986, as in effect on the effective date of this chapter, or as later

amended.

2005, c. 935, § 55-548.14; 2012, c. 614; 2013, c. 324.

§ 64.2-777. General powers of trustee.

A. A trustee, without authorization by the court, may exercise:

1. Powers conferred by the terms of the trust; and
2. Except as limited by the terms of the trust:
 - a. All powers over the trust property that an unmarried competent owner has over individually owned property;
 - b. Any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and
 - c. Any other powers conferred by this chapter.

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

C. Any reference in a trust instrument incorporating the powers authorized under § 64.2-105 shall not be construed to limit powers a trustee may exercise pursuant to this section, unless the settlor expressly states in the trust instrument that such reference should be so construed.

2005, c. 935, § 55-548.15; 2012, c. 614.

§ 64.2-778. Specific powers of trustee.

A. Without limiting the authority conferred by § 64.2-777, a trustee may:

1. Collect trust property and accept or reject additions to the trust property from a settlor or any other person;
2. Acquire or sell property, for cash or on credit, at public or private sale;
3. Exchange, partition, or otherwise change the character of trust property;
4. Deposit trust money in an account in a regulated financial service institution;
5. Borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;
6. With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;
7. With respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:
 - a. Vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;
 - b. Hold a security in the name of a nominee or in other form without disclosure of the trust so

that title may pass by delivery;

c. Pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and

d. Deposit the securities with a depository or other regulated financial service institution;

8. With respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

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

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

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

12. Abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

13. With respect to possible liability for violation of environmental law:

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

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

c. Decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

d. Compromise claims against the trust that may be asserted for an alleged violation of environmental law; and

e. Pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

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

15. Pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

16. Exercise elections with respect to federal, state, and local taxes;

17. Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;
 18. Make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;
 19. Pledge trust property to guarantee loans made by others to the beneficiary;
 20. Appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;
 21. Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:
 - a. Paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;
 - b. Paying it to the beneficiary's custodian under the Uniform Transfers to Minors Act (§ 64.2-1900 et seq.) or custodial trustee under the Uniform Custodial Trust Act (§ 64.2-900 et seq.), and, for that purpose, creating a custodianship or custodial trust;
 - c. If the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or
 - d. Managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;
 22. On distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;
 23. Resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;
 24. Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;
 25. Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers; and
 26. On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.
- B. Any reference in a trust instrument incorporating the powers authorized under § 64.2-105

shall not be construed to limit powers a trustee may exercise pursuant to this section, unless the settlor expressly states in the trust instrument that such reference should be so construed.

2005, c. 935, § 55-548.16; 2012, c. 614.

§ 64.2-778.1. Trustee's special power to appoint to a second trust.

A. As used in this section unless the context requires a different meaning:

"Current beneficiary" means a person who is a permissible distributee of trust income or principal.

"Interested distributee" means a current beneficiary who has the power to remove the existing trustee of the original trust and designate as successor trustee a person who may be a "related or subordinate party," as that term is defined in 26 U.S.C. § 672(c), with respect to such current beneficiary.

"Interested trustee" means (i) an individual trustee who is a current beneficiary of the original trust or to whom the net income or principal of the original trust would be distributed if the original trust were terminated, (ii) any trustee of the original trust who may be removed and replaced by an interested distributee, or (iii) an individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the original trust.

"Original trust" means a trust created by an irrevocable inter vivos or testamentary trust instrument pursuant to the terms of which a trustee has a discretionary power to distribute principal or income of the trust to or for the benefit of one or more current beneficiaries.

"Second trust" means a trust created by an irrevocable inter vivos or testamentary trust instrument, the current beneficiaries of which are one or more of the current beneficiaries of the original trust.

B. The trustee of an original trust may, without authorization by the court, exercise the discretionary power to distribute principal or income to or for the benefit of one or more current beneficiaries of the original trust by appointing all or part of the principal or income of the original trust subject to the power in favor of a trustee of a second trust. The trustee of the original trust may exercise this power whether or not there is a current need to distribute principal or income under any standard provided in the terms of the original trust. The trustee's power to appoint trust principal or income in further trust under this section includes the power to create the second trust.

C. The terms of the second trust shall be subject to the following conditions:

1. The beneficiaries of the second trust shall include only beneficiaries of the original trust;
2. If the power to distribute principal or income in the original trust is subject to an ascertainable standard, the power to distribute income or principal in the second trust shall be exercisable in favor of the same current beneficiaries as in the original trust and, unless the court approves otherwise, shall be subject to the same ascertainable standard as in the original trust;
3. A beneficiary who has only a future beneficial interest, vested or contingent, in the original trust shall not have the future beneficial interest accelerated to a present interest in the second trust;

4. The terms of the second trust shall not reduce any fixed income, annuity, or unitrust interest of a beneficiary in the original trust;
5. If any contribution to the original trust qualified for a marital or charitable deduction for federal income, gift, or estate tax purposes under the Internal Revenue Code, then the second trust shall not contain any provision that, if included in the original trust, would have prevented the original trust from qualifying for the deduction or that would have reduced the amount of the deduction;
6. If contributions to the original trust have been excluded from the gift tax by the application of 26 U.S.C. § 2503(b) and (c), the second trust shall provide that the beneficiary's remainder interest in the contributions shall vest and become distributable no later than the date upon which the interest would have vested and become distributable under the terms of the original trust;
7. If any beneficiary of the original trust has a power of withdrawal over trust property, then either:
 - a. The terms of the second trust shall provide a power of withdrawal in the second trust identical to the power of withdrawal in the original trust; or
 - b. Sufficient trust property shall remain in the original trust to satisfy the outstanding power of withdrawal;
8. The terms of the second trust may confer a power of appointment upon a current beneficiary of the original trust. The permissible appointees of the power of appointment conferred upon a beneficiary may include persons who are not beneficiaries of the original trust or the second trust. The power of appointment conferred upon a beneficiary shall be subject to the provisions of §§ 55-12.1 through 55-13.3, covering the time at which the permissible period of the rule against perpetuities begins and the law that determines the permissible period of the rule against perpetuities of the original trust; and
9. Notwithstanding subdivisions 1 through 8, the power under this section may be exercised to appoint a second trust that is a special needs trust, subject to the other provisions of this section.
 - D. A trustee who is an interested trustee may not exercise the power to appoint under this section. The remaining cotrustee or a majority of the remaining cotrustees who are not interested trustees may exercise the power under this section. If all the trustees are interested trustees, or at the request of any of the trustees, the court may appoint a special fiduciary with authority to exercise the power under this section.
 - E. The exercise of the power under this section shall be:
 1. Subject to the fiduciary duties of the trustee of the original trust;
 2. Treated for all purposes as the exercise of a power of appointment in a fiduciary capacity that is not a power exercisable in favor of the trustee individually, the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate;
 3. Subject to the provisions of §§ 55-12.1 through 55-13.3, covering the time at which the permissible period of the rule against perpetuities begins and the law that determines the permissible period of the rule against perpetuities of the original trust; and

4. Permitted regardless of whether the original trust has a spendthrift provision or prohibits amendment or revocation of the original trust.

F. The exercise of the power under this section shall be made by a written instrument, signed and acknowledged by the trustee, setting forth the manner of the exercise of the power, the terms of the second trust, and the effective date of the exercise of the power. The instrument shall be filed with the records of the original trust.

G. At least 60 days prior to the effective date of the exercise of the power under this section, the trustee of the original trust shall give written notice of the trustee's intent to exercise the power, including a copy of the written instrument made pursuant to subsection F, to (i) the grantor of the original trust, if living; (ii) without regard to the exercise of any power of appointment, the qualified beneficiaries of the original trust as determined under §§ 64.2-701 and 64.2-708, other than the Attorney General, and (iii) all persons acting as advisor or protector of the original trust. The representation provisions of §§ 64.2-714, 64.2-716, 64.2-717, and 64.2-718 shall apply to the notice under this subsection. If all qualified beneficiaries of the original trust waive the notice required by this subsection in a signed written instrument delivered to the trustee of the original trust, the trustee may exercise the power under this section without providing the notice required by this subsection. The receipt of notice under this subsection shall not abrogate any right or remedy of any beneficiary against the trustee under the laws of the Commonwealth other than this section.

H. Nothing in this section shall be construed to (i) create or imply a duty of the trustee to exercise the power granted in this section, and no inference of impropriety shall be made as a result of a trustee not exercising the power granted in this section, or (ii) limit the right of any trustee who has a power to appoint property in further trust under the terms of the original trust or by law.

I. A trustee or beneficiary may commence a proceeding to approve or disapprove a proposed exercise of the power under this section.

J. If accounts for the original trust are filed with the commissioner of accounts, the accounts for the second trust shall be filed with the commissioner of accounts unless the court orders otherwise.

K. Subject to the provisions of the governing instrument, this section shall be construed as pertaining to the administration of a trust and shall be available to any trust that is administered under the law of the Commonwealth, regardless of the date the trust was created, unless the governing instrument expressly prohibits the exercise of the power under this section. A provision in the governing instrument that "The provisions of § 64.2-778.1, Code of Virginia, as amended, or any corresponding provision of future law, shall not be used in the administration of this trust" or "My trustee shall not have the power to appoint the income or principal of this trust to another trust" or similar words reflecting such intent shall be sufficient to preclude the application of this section.

2012, c. 559, § 55-548.16:1; 2012, 614; 2014, c. 378.

§ 64.2-779. Distribution upon termination.

A. Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within 30 days after the

proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

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

C. A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

1. It was induced by improper conduct of the trustee; or
2. The beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

2005, c. [935](#), § 55-548.17; 2012, c. [614](#).

Article 9. Uniform Prudent Investor Act.

§ 64.2-780. Definition of terms.

As used in this article:

"Controlling document" means the will, agreement, power of attorney, court order, or other instrument creating the fiduciary powers.

"Trust" includes the assets under the control or management of the trustee.

"Trustee" includes any fiduciary as defined in § [8.01-2](#), an attorney-in-fact or agent acting for a principal under a written power of attorney, a custodian under § [64.2-1911](#), and a custodial trustee under § [64.2-906](#).

1999, c. [772](#), § 26-45.13; 2007, c. [517](#); 2012, c. [614](#).

§ 64.2-781. Prudent investor rule.

A. Except as otherwise provided in subsection B or § [2.2-4519](#) or [64.2-1502](#), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this article.

B. The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A general authorization in a controlling document authorizing a trustee to invest in such assets as the trustee, in his sole discretion, may deem best, or other language purporting to expand the trustee's investment powers, shall not be construed to waive the rule of subsection A unless the controlling document expressly manifests an intention that it be waived (i) by reference to the "prudent man" or "prudent investor" rule, (ii) by reference to power of the trustee to make "speculative" investments, (iii) by an express authorization to acquire or retain a specific asset or type of asset such as a closely held business, or (iv) by other language synonymous with clause (i), (ii) or (iii). A trustee shall not be liable to a beneficiary for the trustee's good faith reliance on a waiver of the rule of subsection A.

1999, c. [772](#), § 26-45.3; 2012, c. [614](#).

§ 64.2-782. Standard of care; portfolio strategy; risk and return objectives.

A. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying

this standard, the trustee shall exercise reasonable care, skill, and caution.

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

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

1. General economic conditions;
2. The possible effect of inflation or deflation;
3. The expected tax consequences of investment decisions or strategies;
4. The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;
5. The expected total return from income and the appreciation of capital;
6. Other resources of the beneficiaries;
7. Needs for liquidity, regularity of income, and preservation or appreciation of capital; and
8. An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

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

E. A trustee may invest in any kind of property or type of investment consistent with the standards of this article.

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

G. A trustee may hold any policies of life insurance acquired by gift or pursuant to an express permission or direction in the governing instrument including an authority granted by subdivision B 19 of § 64.2-105 with no duty or need to (i) determine whether any such policy is or remains a proper investment, (ii) dispose of such policy in order to diversify the investments of the trust, or (iii) exercise policy options under any such contract not essential to the continuation of the life insurance provided by such contract. However, apart from these specific authorities, this subsection is not intended and shall not be construed to affect the application of the standard of judgment and care as set forth in this section. This subsection shall apply to all trusts, regardless of when established.

1999, c. 772, § 26-45.4; 2012, c. 614.

§ 64.2-783. Diversification by trustee.

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

1999, c. 772, § 26-45.5; 2012, c. 614.

§ 64.2-784. Duties at inception of trusteeship.

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this article.

1999, c. 772, § 26-45.6; 2012, c. 614.

§ 64.2-785. Loyalty and impartiality.

A. A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

B. If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

1999, c. 772, § 26-45.7; 2012, c. 614.

§ 64.2-786. Investment costs.

In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

1999, c. 772, § 26-45.8; 2012, c. 614.

§ 64.2-787. Reviewing compliance.

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

1999, c. 772, § 26-45.9; 2012, c. 614.

§ 64.2-788. Delegation of investment and management functions.

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

1. Selecting an agent;
2. Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
3. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

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

C. A trustee who complies with the requirements of subsection A is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

D. By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of the Commonwealth, an agent submits to the jurisdiction of the courts of the

Commonwealth.

1999, c. 772, § 26-45.10; 2012, c. 614.

§ 64.2-789. Language invoking standard of article.

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified by language articulating the investment standard to which the trustee is to be held, authorizes any investment or strategy permitted under this article: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

1999, c. 772, § 26-45.11; 2012, c. 614.

§ 64.2-790. Application to existing trusts.

This article applies to trusts existing on and created after January 1, 2000. As applied to trusts existing on its effective date, this article governs only decisions or actions occurring after that date.

1999, c. 772, § 26-45.12; 2012, c. 614.

§ 64.2-791. Uniformity of application and construction.

This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among the states enacting it.

1999, c. 772, § 26-45.14; 2012, c. 614.

Article 10. Liability of Trustees and Rights of Persons Dealing with Trustee.

§ 64.2-792. Remedies for breach of trust.

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

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

1. Compel the trustee to perform the trustee's duties;
2. Enjoin the trustee from committing a breach of trust;
3. Compel the trustee to redress a breach of trust by paying money, restoring property, or other means;
4. Order a trustee to account;
5. Appoint a special fiduciary to take possession of the trust property and administer the trust;
6. Suspend the trustee;
7. Remove the trustee as provided in § 64.2-759;
8. Reduce or deny compensation to the trustee;

9. Subject to § 64.2-803, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or

10. Order any other appropriate relief.

2005, c. 935, § 55-550.01; 2012, c. 614.

§ 64.2-793. Damages for breach of trust.

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

1. The amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or
2. The profit the trustee made by reason of the breach.

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

2005, c. 935, § 55-550.02; 2012, c. 614.

§ 64.2-794. Damages in absence of breach.

A. A trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.

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

2005, c. 935, § 55-550.03; 2012, c. 614.

§ 64.2-795. Attorney fees and costs.

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

2005, c. 935, § 55-550.04; 2012, c. 614.

§ 64.2-796. Limitation of action against trustee.

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

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

C. If subsection A does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust shall be commenced within five years after the first to occur of:

1. The removal, resignation, or death of the trustee;
2. The termination of the beneficiary's interest in the trust; or
3. The termination of the trust.

D. Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this chapter, or if fraud is used to avoid or circumvent the provisions or purposes of this chapter, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person benefiting from the fraud, whether innocent or not, except for a bona fide purchaser. Any proceeding shall be commenced within two years after the fraud is discovered, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time the fraud is committed. This section does not apply to remedies for fraud practiced on a decedent during his lifetime that affects the succession of his estate.

E. The provisions of this section shall not operate to reduce the period of limitations applicable to actions and suits governed by § 8.01-245.

2005, c. 935, § 55-550.05; 2012, c. 614.

§ 64.2-797. Reliance on trust instrument.

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

2005, c. 935, § 55-550.06; 2012, c. 614.

§ 64.2-798. Event affecting administration or distribution.

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

2005, c. 935, § 55-550.07; 2012, c. 614.

§ 64.2-799. Exculpation of trustee.

A. A term of a trust 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. 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 existence and contents of the exculpatory term were adequately communicated to the settlor.

2005, c. 935, § 55-550.08; 2012, c. 614.

§ 64.2-800. Beneficiary's consent, release, or ratification.

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

1. The consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or
2. At the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

2005, c. 935, § 55-550.09; 2012, c. 614.

§ 64.2-801. Limitation on personal liability of trustee.

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

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

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

2005, c. 935, § 55-550.10; 2012, c. 614.

§ 64.2-802. Interest as general partner.

A. Except as otherwise provided in subsection C or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to the Uniform Partnership Act (§ 50-73.79 et seq.).

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

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

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

2005, c. 935, § 55-550.11; 2012, c. 614.

§ 64.2-803. Protection of person dealing with trustee.

- A. A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers, is protected from liability as if the trustee properly exercised the power.
- B. A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.
- C. A person who in good faith delivers assets to a trustee need not ensure their proper application.
- D. A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated is protected from liability as if the former trustee were still a trustee.
- E. Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

2005, c. 935, § 55-550.12; 2012, c. 614.

§ 64.2-804. Certification of trust.

- A. Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust containing the following information:
1. That the trust exists and the date the trust instrument was executed;
 2. The identity of the settlor;
 3. The identity and address of the currently acting trustee;
 4. The powers of the trustee;
 5. The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;
 6. The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee;
 7. The trust's taxpayer identification number; and
 8. The manner of taking title to trust property.
- B. A certification of trust may be signed or otherwise authenticated by any trustee.
- C. A certification of trust shall state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.
- D. A certification of trust need not contain the dispositive terms of a trust.
- E. A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments that designate the trustee and confer upon the trustee the power to act in the pending transaction.

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

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

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

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

2005, c. 935, § 55-550.13; 2012, c. 614.

Article 11. Miscellaneous Provisions.

§ 64.2-805. Uniformity of application and construction.

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

2005, c. 935, § 55-551.01; 2012, c. 614.

§ 64.2-806. Electronic records and signatures.

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

2005, c. 935, § 55-551.02; 2012, c. 614.

§ 64.2-807. Repealed.

Repealed by Acts 2015, c. 709, cl. 2.

§ 64.2-808. Application to existing relationships.

A. Except as otherwise provided in this chapter:

1. This chapter applies to all trusts created before, on, or after July 1, 2006;
2. This chapter applies to all judicial proceedings concerning trusts commenced on or after July 1, 2006;
3. This chapter applies to judicial proceedings concerning trusts commenced before July 1, 2006, unless the court finds that application of a particular provision of this chapter would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this chapter does not apply and the superseded law applies;

4. Any rule of construction or presumption provided in this chapter applies to trust instruments executed before July 1, 2006, unless there is a clear indication of a contrary intent in the terms of the trust; and

5. An act done before July 1, 2006, is not affected by this chapter.

B. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before July 1, 2006, that statute continues to apply to the right even if it has been repealed or superseded.

2005, c. [935](#), § 55-551.06; 2012, c. [614](#).