Legislative Council,
General Assembly
State of Delaware

Title 12

Decedents' Estates and Fiduciary Relations

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Part I
General Provisions
Chapter 1
DEFINITIONS

§ 101 Definitions [For application of this section, see 79 Del. Laws, c. 352, § 6]

For the purpose of wills, intestate succession and for all other purposes under this title, the following definitions shall apply:

(1) "Child" includes any individual entitled to take as a child under this title by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild or any more remote descendant.

(2) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing.

(3) "Heir" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent and shall include kin and kindred.

(4) "Issue" of a person means all of the person's lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this title.

(5) "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this title by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent or grandparent.

(6) "Personal representative" includes executor, administrator, successor administrator and administrator with will annexed, and persons who perform substantially the same function under the law governing their status.

(7) The definitions of "child," "issue" or "parent" contained in this section shall not limit the right of a testator to provide by will for a definition different from those contained in this section.

(59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 352, § 1.)

Part II
Wills
Chapter 2
GENERAL PROVISIONS
Subchapter I
Tenets and Principles

§ 201 Who may make a will.

Any person of the age of 18 years, or upwards, of sound and disposing mind and memory, may make a will of real and personal estate. No person under the age of 18 years shall be capable of making a will either of real or personal estate.

(Code 1852, § 1644; 14 Del. Laws, c. 550, § 5; 15 Del. Laws, c. 165, § 5; Code 1915, § 3240; Code 1935, § 3704; 45 Del. Laws, c. 233, § 1; 12 Del. C. 1953, § 101; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 202 Requisites and execution of will.

(a) Every will, whether of personal or real estate, must be:

(1) In writing and signed by the testator or by some person subscribing the testator's name in the testator's presence and by the testator's express direction; and

(2) Subject to § 1306 of this title, attested and subscribed in testator's presence by 2 or more credible witnesses.

(b) Any will not complying with subsection (a) of this section shall be void.

(Code 1852, § 1645; Code 1915, § 3241; Code 1935, § 3705; 12 Del. C. 1953, § 102; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 203 Witnesses; persons competent.

(a) Any person generally competent to be a witness may act as a witness to a will.

(b) A will or any provision thereof is not invalid because the will is signed by an interested person.

(Code 1852, § 1646; Code 1915, § 3242; Code 1935, § 3706; 12 Del. C. 1953, § 103; 59 Del. Laws, c. 384, § 1.)

§ 204 Devise of real estate generally.

Lands, tenements and hereditaments are devisable by last will and testament.

(Code 1852, § 1643; Code 1915, § 3239; Code 1935, § 3703; 12 Del. C. 1953, § 105; 59 Del. Laws, c. 384, § 1.)

§ 205 Devise of real estate without limitation.

A devise of real estate, without words of limitation, shall be construed to pass the fee simple, or other whole estate, or interest, which the testator could lawfully devise in such real estate, unless a contrary intention appears by the will.

(Code 1852, § 1667; Code 1915, § 3243; Code 1935, § 3707; 12 Del. C. 1953, § 106; 59 Del. Laws, c. 384, § 1.)

§ 206 After-acquired real estate.

Any estate, right or interest in lands, acquired by a testator after the making of a will, shall pass thereby in manner as if possessed at the making of the will, unless a contrary intention appears by the will.

(Code 1852, § 1668; 18 Del. Laws, c. 671, § 1; Code 1915, § 3244; Code 1935, § 3708; 12 Del. C. 1953, § 107; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 207 Power of sale of executor or trustee; liability of purchaser.

(a) Where, by the terms of a will or trust instrument, an express power to sell real property is granted to a trustee, such trustee may sell or exchange such real property as is not specifically required to be distributed in kind to any beneficiary, and it shall not be necessary for any beneficiary of the trust to join in the instrument transferring or conveying such property.

(b) Where, by the terms of a will, an executor is expressly directed to sell real property, such executor may sell or exchange such real property and it shall not be necessary for any beneficiary of the estate to join in the instrument transferring or conveying such property.

(c) Where, by the terms of a will, an express power to sell real property is granted to an executor, such executor may sell or exchange such real property as is not specifically devised and as the executor reasonably believes, at the time of such sale or exchange, is necessary to be sold in order to pay the debts of the decedent or the expenses of administration (including estate and inheritance taxes and taxes imposed upon the income of the estate) of the estate, and it shall not be necessary for any beneficiary of the estate to join in the instrument transferring or conveying such property. In any sale of real estate authorized by this subsection (c) of this section, it shall not be necessary for the executor to obtain an Order from the Court of Chancery authorizing the sale pursuant to Chapter 27 of this title.

(d) In any sale made by an executor, administrator or other personal representative or by a trustee pursuant to this section, there shall be no liability upon the purchaser to see to the application of the purchase money, unless the will or trust expressly imposes such liability, and the purchaser shall be entitled to rely without liability therefor upon the representation by the executor in the deed of conveyance that any sale of real property is for the purposes set forth in subsection (c) of this section.

(e) No conveyance by an executor, prior to January 1, 1985, of real property not specifically devised shall be invalid or ineffective solely because 1 or more devisees of such property failed to join in the instrument of conveyance.

(f) For purposes of this section, the term "executor" shall include any personal representative of a testate estate.

(Code 1915, § 3244-A; 30 Del. Laws, c. 208, § 1; Code 1935, § 3709; 12 Del. C. 1953, § 108; 59 Del. Laws, c. 384, § 1; 64 Del. Laws, c. 252, § 1; 74 Del. Laws, c. 272, §§ 1-3.)

§ 208 Revocation of wills generally.

A last will and testament, or any clause thereof, shall not be altered, or revoked, except by canceling by the testator, or by some person in the testator's presence and by the testator's express direction, or by a valid last will and testament, or by a writing signed by the testator, or by some person subscribing the testator's name in the testator's presence and by the testator's express direction, and attested and subscribed in the testator's presence by 2 or more credible witnesses; but this clause shall not preclude nor extend to an implied revocation.

(Code 1852, § 1652; Code 1915, § 3250; Code 1935, § 3715; 12 Del. C. 1953, § 109; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 209 Revocation by divorce; no revocation by other changes or circumstances.

If after executing a will, the testator is divorced or the testator's marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse and any nomination of the former spouse, as executor, trustee, guardian or other fiduciary, unless the will expressly provides otherwise. Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent. If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section. No changes or circumstances other than as described in this section revokes a will or any part thereof.

(59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 210 Alteration, theft or destruction of will; class E felony.

Whoever wilfully adds to, alters, defaces, erases, obliterates, mutilates, blots, blurs, hides, conceals, destroys, misplaces with intent to conceal or commits an act of theft of any instrument of writing purporting to be or in the nature of a last will and testament and intended to take effect upon the death of the testator, whether the person shall have been given custody or possession thereof by the testator, or shall have obtained custody or possession of the purported last will and testament in any other manner whatsoever, shall be guilty of a class E felony.

(27 Del. Laws, c. 268, § 1; Code 1915, § 3264; Code 1935, § 3728; 12 Del. C. 1953, § 110; 59 Del. Laws, c. 384, § 1.)

§ 211 Testamentary additions to trusts.

(a) A will may validly devise or bequeath property to the trustee of a trust established or to be established (i) during the testator's lifetime by the testator, by the testator and some other person or by some other person including a funded or unfunded life insurance trust, although the trustor has reserved any or all rights of ownership of the insurance contracts, or (ii) at the testator's death by the testator's devise to the trustee, if the trust is identified in the testator's will and its terms are set forth in a written instrument other than a will executed before, concurrently with or after the execution of the testator's will or in another individual's will if that other individual has predeceased the testator, regardless of the existence, size or character of the corpus of the trust. The devise or bequest is not invalid because the trust is amendable or revocable or because the trust was amended after the execution of the will or the testator's death.

(b) Unless the testator's will provides otherwise, property devised or bequeathed to a trust described in subsection (a) of this section is not held under a testamentary trust of the testator, but it becomes a part of the trust to which it is devised or bequeathed and must be administered and disposed of in accordance with the provisions of the governing instrument setting forth the terms of the trust, including any amendments thereto made before or after the testator's death.

(c) Unless the testator's will provides otherwise, a revocation or termination of the trust before the testator's death causes the devise or bequest to lapse.

(66 Del. Laws, c. 278, § 1; 71 Del. Laws, c. 76, § 1.)

§ 212 Bequest of tangible personal property by separate writing.

A will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, and securities, and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing:

(1) Must either be in the handwriting of the testator or be signed by the testator and must identify the items and the legatees with reasonable certainty;

(2) Must not be inconsistent with the terms of the will; and

(3) Must not be inconsistent with any other writing permitted by this section unless the writing is dated in which case the writing with the latest date will control.

Notwithstanding the foregoing, in the case of a writing that includes both provisions for dispositions that are consistent with the terms of the will or any other writing permitted by this section and provisions for dispositions that are inconsistent with the terms of the will or any other writing permitted by this section, such writing shall be admissible under this section as evidence of the intended disposition of those items of tangible personal property that would be disposed of by the provisions of the writing that are not inconsistent with the terms of the will or any other writing permitted by this section. The writing may be referred to as one to be in existence at the time of the testator's death; it may be prepared before or after the execution of the will; it may be altered by the testator after its preparation; and it may be a writing which has no significance apart from its effect upon the dispositions made by the will.

(59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1; 77 Del. Laws, c. 98, § 1.)

§ 213 Rules for construction or interpretation of will or trust.

In the construction or interpretation of any will or trust, the following rules shall apply in the absence of any contrary expression of intent in such will or trust:

(1) The period of time during which an interest in trust is revocable pursuant to the uncontrolled volition of the person having such a power of revocation shall not be included in determining whether the trust is invalid under the rule against perpetuities.

(2) There shall be no presumption that a testator or trustor did or did not intend that any law apply to a will or trust which was not in effect on the date of execution of such will or trust instrument.

(3) Except where the will or trust instrument expressly provides to the contrary, the determination of a class shall be governed by the law in effect on the date the will or trust instrument becomes irrevocable.

(64 Del. Laws, c. 253, § 1; 65 Del. Laws, c. 422, § 2.)

§ 214 Devolution of property; administration of decedents' estates.

Solely for the purposes of determining the rights of any person to property of a decedent, it shall be presumed that tangible personal property acquired

(1) By a decedent through gift or inheritance, or

(2) Solely with the funds of the decedent, or

(3) Acquired by the decedent before marriage to the surviving spouse,

is the sole property of the decedent notwithstanding that such property consists of household goods or that any such property was subject to joint possession and use by a decedent and the surviving spouse.

(66 Del. Laws, c. 372, § 1; 70 Del Laws, c. 186, § 1.)

Subchapter II

Delaware Uniform International Wills Act

§ 251 Definitions.

In this subchapter:

(1) "Authorized person" and "person authorized to act in connection with international wills" means a person who is empowered by § 259 of this title or by the laws of the United States, including a member of the diplomatic and consular service of the United States designated by foreign service regulations, to supervise the execution of international wills.

(2) "International will" means a will executed in conformity with §§ 252 through 255 of this title.

(71 Del. Laws, c. 81, § 2.)

§ 252 International will; validity.

(a) A will is valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the requirements of this subchapter.

(b) The invalidity of the will as an international will does not affect its formal validity as a will of another kind.

(c) This subchapter does not apply to the form of testamentary dispositions made by 2 or more persons in 1 instrument.

(d) This subchapter deals only with the form of execution of an international will. Delaware law regarding the scope of testamentary power, revocation of wills, competency of witnesses, regulation of probate, interpretation and construction of wills, and the administration of decedents' estates remains applicable to an international will.

(71 Del. Laws, c. 81, § 2.)

§ 253 International will; requirements.

(a) The will must be made in writing. It need not be written by the testator himself or herself. It may be written in any language, by hand or by any other means.

(b) The testator shall declare in the presence of 2 credible witnesses and of a person authorized to act in connection with international wills that the document is the testator's will and that the testator knows the contents thereof. The testator need not inform the witnesses or the authorized person of the contents of the will.

(c) In the presence of the witnesses and of the authorized person, the testator shall sign the will or, if the testator has previously signed it, shall acknowledge the signature.

(d) If the testator is unable to sign, the absence of the testator's signature does not affect the validity of the international will if the testator indicates the reason for the inability to sign and the authorized person makes note thereof on the will. In that case, it is permissible for any other person present, including the authorized person or 1 of the witnesses, at the direction of the testator, to sign the testator's name for the testator if the authorized person makes note of this on the will, but it is not required that any person sign the testator's name.

(e) The witnesses and the authorized person shall there and then attest the will by signing in the presence of the testator.

(71 Del. Laws, c. 81, § 2; 70 Del. Laws, c. 186, § 1.)

§ 254 International wills; other points of form.

(a) The signatures must be placed at the end of the will. If the will consists of several sheets, each sheet must be signed by the testator or, if the testator is unable to sign, by the person signing on the testator's behalf or, if there is no such person, by the authorized person. In addition, each sheet must be numbered.

(b) The date of the will must be the date of its signature by the authorized person. That date must be noted at the end of the will by the authorized person.

(c) The authorized person shall ask the testator whether the testator wishes to make a declaration concerning the safekeeping of the will. If so, and at the express request of the testator, the place where the testator intends to have the will kept must be mentioned in the certificate provided for in § 255 of this title.

(d) A will executed in compliance with § 253 of this title is not invalid merely because it does not comply with this section.

(71 Del. Laws, c. 81, § 2; 70 Del. Laws, c. 186, § 1.)

§ 255 International will; certificate.

The authorized person shall attach to the will a certificate to be signed by the authorized person establishing that the requirements of this subchapter for valid execution of an international will have been fulfilled. The authorized person shall keep a copy of the certificate and deliver another to the testator. The certificate must be substantially in the following form:

CERTIFICATE

I, _____ (name, address and capacity), a person authorized to act in connection with international wills, certify that on _____ (date) at _____ (place) (testator) _____ (name, address, date and place of birth) in my presence and that of the witness (a) _____ (name, address, date and place of birth) and

(b) _____ (name, address, date and place of birth)

has declared that the attached document is his or her will and that he or she knows the contents thereof.

I furthermore certify that:

(a) In my presence and in that of the witnesses:

(1) The testator has signed the will or has acknowledged his or her signature previously affixed.

(2) * Following a declaration of the testator stating that he or she was unable to sign the will for the following reason _____, I have mentioned this declaration on the will, * and the signature has been affixed by _____ (name and address);

(b) The witnesses and I have signed the will;

(c) * Each page of the will has been signed by _____ and numbered;

(d) I have satisfied myself as to the identity of the testator and of the witnesses as designated above;

(e) The witnesses met the conditions requisite to act as such according to the law under which I am acting;

(f) * The testator has requested me to include the following statement concerning the safekeeping of the will:

_____

PLACE OF EXECUTION

DATE

SIGNATURE and, if necessary, SEAL

* to be completed if appropriate

(71 Del. Laws, c. 81, § 2; 70 Del. Laws, c. 186, § 1.)

§ 256 International will; effect of certificate.

In the absence of evidence to the contrary, the certificate of the authorized person is conclusive of the formal validity of the instrument as a will under this subchapter. The absence or irregularity of a certificate does not affect the formal validity of a will under this subchapter.

(71 Del. Laws, c. 81, § 2.)

§ 257 International will; revocation.

An international will is subject to the rules of revocation of wills appearing at §§ 208 and 209 of this title.

(71 Del. Laws, c. 81, § 2.)

§ 258 Source and construction.

Sections 251 through 257 of this title derive from Annex to Convention of October 26, 1973, Providing a Uniform Law on the Form of an International Will. In interpreting and applying this subchapter, regard shall be had to its international origin and to the need for uniformity in its interpretation.

(71 Del. Laws, c. 81, § 2.)

§ 259 Persons authorized to act in relation to international will; eligibility; recognition by authorizing agency.

Individuals who have been admitted to practice law before the courts of this State and who are in good standing as active law practitioners in this State, are hereby declared to be authorized persons in relation to international wills.

(71 Del. Laws, c. 81, § 2.)

Subchapter III

Disposition of a Person's Last Remains

§ 260 Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Adult" means a natural person 18 years of age or older.

(2) "Declarant" means a competent adult who signs a declaration pursuant to the provisions of this article.

(3) "Declaration instrument" means a written instrument, signed by a declarant, governing the disposition of the declarant's last remains and the ceremonies planned after a declarant's death, including a document governing the disposition of last remains under this title or a United States Department of Defense Record of Emergency Data Form (DD Form 93) or any successor form executed by the declarant. Such a declaration may be made within a prepaid funeral, burial, or cremation contract with a mortuary or crematorium.

(4) "Interested person" means the deceased's spouse, parent, adult child, sibling, grandchild, and other person designated in a declaration instrument.

(5) "Last remains" means the deceased's body or cremains after death.

(6) "Reasonable under the circumstances", applied to the declarant's instructions, means appropriate in relation to the declarant's finances, cultural or family customs, and religious or spiritual beliefs. "Reasonable under the circumstances" implies consideration of factors that include, but are not limited to, a prepaid funeral, burial or cremation plan of the declarant; the size of the declarant's estate; the declarant's cultural or family customs; the declarant's religious or spiritual beliefs; and the known or reasonably ascertainable creditors of the declarant.

(7)a. "Third party" means a person:

1. Who is requested by a declaration instrument to act in good faith in reliance upon such instrument;

2. Who is delegated discretion over ceremonial or dispositional arrangements in a declaration instrument under § 264 of this title; or

3. Who is delegated discretion over ceremonial or dispositional arrangements in a declaration instrument.

b. "Third party" includes, but is not limited to, a funeral director, mortician, mortuary, crematorium, or cemetery.

(8) "Unreasonable" means an act that is clearly unreasonable, pursuant to the definition of "reasonable under the circumstances" under paragraph (6) of this section.

(74 Del. Laws, c. 295, § 1; 77 Del. Laws, c. 296, § 1.)

§ 261 Limitations.

This subchapter shall not be construed to:

(1) Invalidate a declaration instrument or will, codicil, trust, power of appointment or power of attorney;

(2) Invalidate any act of an agent, guardian, or conservator;

(3) Affect any claim, right or remedy that accrued prior to June 30, 2004;

(4) Authorize or encourage acts that violate the constitution, statutes, rules, case law or public policy of Delaware or the United States;

(5) Abridge contracts;

(6) Modify the standards, ethics or protocols of the practice of medicine;

(7) Compel or authorize a health care provider or health care facility, to administer medical treatment that is medically inappropriate or contrary to federal or other Delaware law; or

(8) Permit or authorize euthanasia or an affirmative or deliberate act to end a person's life.

(74 Del. Laws, c. 295, § 1.)

§ 262 Declaration of Disposition of Last Remains.

The declarant may specify, in a declaration instrument, any 1 or more of the following:

(1) The disposition to be made of the declarant's last remains;

(2) Who may direct the disposition of the declarant's last remains;

(3) The ceremonial arrangements to be performed after the declarant's death;

(4) Who may direct the ceremonial arrangement after the declarant's death; or

(5) The rights, limitations, immunities, and other terms of third parties dealing with the declaration instrument.

(74 Del. Laws, c. 295, § 1.)

§ 263 Reliance upon Declaration instruments.

(a) A third party who acts in good faith reliance on a declaration instrument that is legally executed shall not be subject to civil liability to any greater extent than if the third party were dealing directly with the declarant as a fully competent and living person. Such third party shall not be subject to criminal liability or regulatory sanction for such reliance.

(b) A third party who deals with a declaration instrument may presume in the absence of actual knowledge to the contrary:

(1) That the declaration instrument was validly executed; and

(2) That the declarant was competent at the time the instrument was executed.

(c) A third party who reasonably relies on a declaration instrument shall not be civilly or criminally liable for the proper application of property delivered or surrendered to comply with the declarant's instructions in the declaration instrument.

(d) The directions of a declarant expressed in a declaration instrument shall be binding on all persons as if the declarant were alive and competent.

(e) A third party who has reasonable cause to question the authenticity or validity of a declaration instrument may promptly and reasonably seek additional information from the person proffering such declaration or from other involved persons. A third party may require exhibition of the original declaration instrument or a notarized copy.

(f) A third party seeking to fulfill a declarant's intent regarding disposition of last remains or ceremonial arrangements may disregard such intent if such intent is unreasonable under the circumstances.

(74 Del. Laws, c. 295, § 1.)

§ 264 Right to dispose of remains.

(a) The right to control disposition of the last remains or ceremonial arrangements of a decedent vests in and devolves upon the following persons, at the time of the decedent's death, in the following order:

(1) The decedent if acting through a declaration instrument;

(2) The surviving spouse of the decedent, if not legally separated from the decedent;

(3) Either the appointed personal representative or administrator of the decedent's estate if such person has been appointed; or the nominee for appointment as personal representative under the decedent's will if a personal representative or administrator has not been appointed;

(4) A majority of the surviving adult children of the decedent whose whereabouts are reasonably ascertainable;

(5) The surviving parents or legal guardians of the decent whose whereabouts are reasonably ascertainable;

(6) A majority of the surviving adult siblings of the decedent whose whereabouts are reasonably ascertainable;

(7) The person in the classes of the next degree of kinship, in descending order, under the laws of descent and distribution to inherit the estate of the decedent. If there is more than 1 person of the same degree, any person of that degree may exercise the right of disposition;

(8) In the absence of any person under paragraphs (a)(1) through (a)(6) of this section, any other person willing to assume the responsibilities to act and arrange the final disposition of the decedent's remains, including the personal representative of the decedent's estate or the funeral director with the custody of the body, after attesting in writing that a good faith effort has been made to no avail to contact the individuals under paragraphs (a)(1) through (a)(6) of this section;

(9) The public administrator for the decedent's estate.

(b) To exercise the right to control final disposition pursuant to paragraph (a)(5) of this section, the majority of parents and guardians shall act in writing.

(c) If the assent of multiple persons under paragraphs (a)(4), (a)(5), or (a)(6) of this section cannot be obtained, a final judgment of the Chancery Court of the county of the decedent's residence shall be required to exercise the right to control final disposition. Such final judgment shall be consistent with the decedent's last wishes to the extent they are reasonable under the circumstances.

(d) Notwithstanding any provision of this subchapter to the contrary, a United States Department of Defense Record of Emergency Data Form (DD Form 93) executed by a declarant who thereafter dies while serving in any branch of in the United States Military, as defined 10 U.S.C. § 1481, shall constitute a valid form of declaration instrument and shall govern the disposition of such declarant's last remains, unless a subsequent declaration instrument has been executed by the declarant.

(74 Del. Laws, c. 295, § 1; 76 Del. Laws, c. 112, § 1; 77 Del. Laws, c. 296, § 2.)

§ 265 Declaration of Disposition of Last Remains; form.

The following declaration of disposition of last remains must be substantially in the following form:

DECLARATION OF DISPOSITION OF LAST REMAINS

I, _____ (Name of Declarant), being of sound mind and lawful age, hereby revoke all prior declarations, wills, codicils, trusts, powers of appointment, and powers of attorney regarding the disposition of my last remains, and I declare and direct that after my death the following provisions be taken:

1. If permitted by law, my body shall be (Initial ONE choice):

_____ Buried. I direct that my body be buried at ___.

_____ Cremated. I direct that my cremated remains be disposed of as follows:

___.

_____ Entombed. I direct that my body be entombed at ___.

_____ Other. I direct that my body be disposed of as follows: ___

___.

_____ Disposed of as _____ (Name of Designee) shall decide in writing. If

2. I request that the following ceremonial arrangements be made (initial desired choice or choices):

_____ I request _____ (Name of designee) make all arrangements for any ceremonies, consistent with my directions set forth in this declaration. If

_____ Funeral. I request the following arrangements for my funeral: ___

___.

_____ Memorial Service. I request the following arrangements for my memorial service: ___

___.

3. Special Instructions. In addition to the instructions above, I request (on the following lines you may make special requests regarding ceremonies or lack of ceremonies): ___

___

___.

Note: Those persons or entities asked to carry out a declarant's intent regarding disposition of last remains and ceremonial arrangements need do so only if the declarant's intent is reasonable under the circumstances. "Reasonable under the Circumstances" may take into consideration factors such as a known prepaid funeral, burial, or cremation plan of the declarant, the size of the declarant's estate, cultural or family customs, the declarant's religious or spiritual beliefs, the known or reasonably ascertainable creditors of the declarant, and the declarant's financial situation prior to death.

I may revoke or amend this declaration in writing at any time. I agree that a third party who receives a copy of this declaration may act according to it. Revocation of this declaration is not effective as to a third party until the third party learns of my revocation. My estate shall indemnify any third party for costs incurred as a result of claims that arise against the third party because of good-faith reliance on this declaration.

I execute this declaration as my free and voluntary act, on ___.

(Declarant) ___.

The following section regarding organ and tissue donation is optional. To make a donation, initial the option you select and sign below.

In the hope that I might help others, I hereby make an anatomical gift, to be effective upon my death, of:

A. _____ Any needed organs/tissues.

B. _____ The following organs/tissues: ___

___.

Donor signature: ___.

Notarization Optional:

State of Delaware

County of _____ :

Acknowledged before me by _____, Declarant, on _____, _____. My commission expires:

*(Seal) Notary Public___ .

(74 Del. Laws, c. 295, § 1.)

§ 266 Declaration; other points of form.

(a) The form set forth in § 265 of this title is not exclusive, and a person may use another form of declaration instrument if the wording of the form complies substantially with § 265 of this title, the form is properly completed, and the form is in writing, dated, and signed by the declarant.

(b) A declaration instrument may be acknowledged, but lack of acknowledgment shall not render the declaration ineffective.

(c) This subchapter shall apply to declaration instruments executed or exercised in Delaware and to declaration instruments signed or exercised by a person who is a resident of Delaware when such instrument is signed or exercised.

(d) The provisions of the most recent declaration instrument shall control over any other document regarding the disposition of the last remains.

(74 Del. Laws, c. 295, § 1.)

§ 267 Declaration; revocation generally.

A declaration may be revoked by the declarant in writing or by burning, tearing, canceling, obliterating, or destroying the declaration instrument with the intent to revoke such instrument.

(74 Del. Laws, c. 295, § 1.)

§ 268 Declaration; revocation by divorce.

Unless otherwise expressly provided in a declaration instrument, a subsequent divorce, dissolution of marriage, annulment of marriage, or legal separation between the declarant and spouse automatically revokes a delegation to the declarant's spouse to direct the disposition of the declarant's last remains or ceremonies after the declarant's death. This section shall not be construed to revoke the remaining provisions of the declaration instrument.

(74 Del. Laws, c. 295, § 1.)

§ 269 Declaration; revocation of designee.

Unless otherwise specified in the declaration instrument, if a declarant revokes a delegation to a person to direct the disposition of the declarant's last remains or ceremonies after the declarant's death, or if such person is unable or unwilling to serve, the nomination of such person shall be ineffective as to such person. If an alternate designee is not nominated by the declarant, § 264 of this title shall govern. This section shall not be construed to revoke the remaining provisions of the declaration instruments.

(74 Del. Laws, c. 295, § 1.)

§ 270 Interstate effect of declaration.

(a) Unless otherwise stated in a declaration instrument, it shall be presumed that the declarant intends to have that declarant's own declaration instrument executed pursuant to this subchapter and recognized to the fullest extent possible by other states.

(b) Unless otherwise provided in the declaration instrument, a declaration instrument or similar instrument executed in another state that complies with the requirements of this subchapter may, in good faith, be relied upon by a third party in this State if an action requested by such declarant does not violate any law of the federal government, Delaware, or a political subdivision.

(74 Del. Laws, c. 295, § 1; 70 Del. Laws, c. 186, § 1.)

Part II
Wills
Chapter 3
AFTER-BORN CHILDREN; MARRIAGE AFTER WILL
Subchapter I
After-Born Children

§ 301 Shares of after-born children.

A child born after its parent has made a last will and testament and for which such parent made no provision, vested or contingent, specifically or as member of a class, by will or otherwise, shall take the same portion of its parent's estate, both real and personal, that the child would have been entitled to if such parent had died intestate. This section shall not apply and no intestacy shall be created as to any child or children born after the date of the execution of a will in any case where the testator has provided in the last will and testament that the birth of any child or children subsequently shall not affect the will.

(Code 1852, § 1654; Code 1915, § 3252; Code 1935, § 3716; 46 Del. Laws, c. 204, § 1; 12 Del. C. 1953, § 301; 70 Del Laws, c. 186, § 1.)

§ 302 Raising share of after-born child.

Towards the raising of the portion of an after-born child, any intestate estate of the deceased, real or personal, shall be first applied and the residue of such portion, if there be a deficiency of such intestate estate to make up the same, or the whole of the portion if there be no such intestate estate, shall be contributed proportionable by the devisees and legatees, taking under the last will and testament, out of the estate or parts devised or bequeathed to them respectively.

(Code 1852, § 1655; Code 1915, § 3253; Code 1935, § 3717; 12 Del. C. 1953, § 302.)

§ 303 Appraisal and assignment of intestate real estate; appointment and duties of freeholders.

(a) The Court of Chancery, upon the petition of any after-born child (which petition in the case of infancy shall be preferred by a guardian) setting forth the facts of the case and specifying any real or personal estate of which the deceased parent died intestate, may, by an order, appoint 5 judicious and impartial freeholders, taken from the county of the parent's last residence or from any county where intestate real estate of the parent may be situated or from different counties, who shall go to all the lands, tenements and hereditaments, both testate and intestate, of which the deceased parent died seised and with the assistance of a skillful and impartial surveyor, by them to be nominated, if deemed necessary, shall appraise the same at the true value thereof in money and also shall ascertain and estimate the amount and value of the decedent's clear personal estate, whether bequeathed or intestate.

(b) If the intestate real estate of the deceased parent be sufficient for that purpose (subject to the rights of the surviving spouse, if there is a surviving spouse), then they shall appraise at the true value thereof in money and lay off and allot to the after-born child so much of the intestate real estate as will, in their judgment, be equal in value to what would have been such after-born child's share of both the real and personal estate (subject as aforesaid) of the deceased parent, if such parent had died intestate; and if all the intestate real estate shall not, in the judgment of the freeholders, be equal in value (subject as aforesaid) to what would have been the after-born child's share of the real and personal estate of the deceased parent if the parent had died intestate, then the freeholders shall appraise all the intestate real estate at the true value thereof in money and, at such appraisement, allot the same to the after-born child towards such child's share of the deceased parent's estate. The allotment of intestate real estate under the foregoing provisions to after-born children, where there are more than 1, shall not be made to them in severalty, but as parceners. If there shall be a surviving spouse entitled to dower or thirds in or to any portion of the deceased parent's estate, real or personal, testate or intestate, the value of the whole estate and of the share of the after-born child shall be ascertained as aforesaid with reference to the rights and interests of such surviving spouse, in such manner as to do justice to the parties concerned and unless dower shall have been previously assigned to or released by the surviving spouse the real estate allotted to such after-born child shall be so allotted subject to such surviving spouse's interest therein.

(c) The Court of Chancery, in making the order, may add such further instructions as it deems necessary to give full effect to the foregoing provisions.

(Code 1852, §§ 1656-1658; Code 1915, §§ 3254, 3255; Code 1935, §§ 3718, 3719; 12 Del. C. 1953, § 303; 57 Del. Laws, c. 402, § 3; 70 Del Laws, c. 186, § 1.)

§ 304 Oath of freeholders and surveyor; action by majority.

The freeholders and surveyor and all persons employed in the premises shall, before entering upon their respective duties under the order of the Court of Chancery, be severally sworn or affirmed faithfully and impartially according to the best of their skill and judgment to perform the duties assigned them by the order under which they act. A majority of the freeholders may act in the premises.

(Code 1852, § 1659; Code 1915, § 3256; Code 1935, § 3720; 12 Del. C. 1953, § 304; 57 Del. Laws, c. 402, § 3.)

§ 305 Vacancies among freeholders.

The Court of Chancery may fill any vacancy occurring among the freeholders.

(Code 1852, § 1661; Code 1915, § 3258; Code 1935, § 3722; 12 Del. C. 1953, § 305; 57 Del. Laws, c. 402, § 3.)

§ 306 Return of freeholders; conclusiveness.

The freeholders shall return their proceedings in the premises, under their hands, to the Court of Chancery at the next stated term thereof and the same, being confirmed by the Court, shall be conclusive.

(Code 1852, § 1660; Code 1915, § 3257; Code 1935, § 3721; 12 Del. C. 1953, § 306; 57 Del. Laws, c. 402, § 3.)

§ 307 Contribution from devisees or legatees.

If the intestate real estate, allotted under the foregoing provisions, shall not, at the appraisement thereof, be equal in value to what would have been the share of the after-born child or children of the entire estate of the deceased parent, had such parent died intestate, the deficiency shall be made up from the intestate personal estate, if any, of such parent. If there shall be no intestate personal estate or not sufficient to make up such deficiency the devisees and legatees, taking under the will of the deceased parent, shall proportionately contribute such sum or sums of money as, added to the intestate estate, will be sufficient to raise the portion of such after-born child or children.

(Code 1852, § 1662; Code 1915, § 3259; Code 1935, § 3723; 12 Del. C. 1953, § 307.)

§ 308 Disposition of residue of intestate real or personal estate.

Any residue of intestate estate, real or personal, remaining after an allotment is made to an after-born child or children, under the foregoing provisions, shall belong to the person as by law would have been entitled to the same if no child had been born after the making of the parent's will.

(Code 1852, § 1663; Code 1915, § 3260; Code 1935, § 3724; 12 Del. C. 1953, § 308.)

§ 309 Application of intestacy laws to lands allotted after-born children.

Lands and tenements allotted to after-born children under the foregoing provisions shall be subject to all the provisions of law respecting intestate estates, as fully in all respects, as if the deceased parent had died intestate leaving no other real estate and no other issue but the children to whom the same shall be allotted.

(Code 1852, § 1664; Code 1915, § 3261; Code 1935, § 3725; 12 Del. C. 1953, § 309.)

§ 310 Posthumous children.

Posthumous children or children in the mother's womb, if born alive, are within the foregoing provisions respecting after-born children. Such children shall take any estate or property, real or personal, by descent, transmission, gift, devise, limitation or otherwise in the same manner as if absolutely born at the decease of its parent. If such child is not born alive, the effect shall be the same, to all intents and purposes, as if no such child had ever existed.

(Code 1852, § 1665; Code 1915, § 3262; Code 1935, § 3726; 12 Del. C. 1953, § 310; 70 Del. Laws, c. 186, § 1.)

Subchapter II

Marriage After Will

§ 321 Share of surviving spouse.

The descent or devolution of the estate, real or personal, of a married person who, before the marriage, has made a last will and testament and has not made provision for the married person's spouse by will or otherwise, shall be subject to the following rights of the surviving husband or widow:

(1) If the testator leaves a widow, she shall have the same part of his estate, real and personal, as she would have been entitled to if he had died intestate;

(2) If the testatrix leaves a husband, he shall have the same part of her estate, real and personal, as he would have been entitled to if she had died intestate.

(Code 1852, § 1666; Code 1915, § 3263; 38 Del. Laws, c. 178, § 1; Code 1935, § 3727; 12 Del. C. 1953, § 321; 70 Del Laws, c. 186, § 1.)

§ 322 Assignment of share to surviving spouse.

The part to which the surviving spouse shall be entitled under § 321 of this title shall be assigned and distributed in the same manner as if the deceased spouse had died intestate. When there are several devisees of such real estate or several legatees of such personal estate, such assignment and distribution to the surviving spouse shall be so made that each devisee or legatee shall contribute a just portion thereof.

(Code 1852, § 1666; Code 1915, § 3263; 38 Del. Laws, c. 178, § 1; Code 1935, § 3727; 12 Del. C. 1953, § 322.)

§ 323 Revocation of will by subsequent marriage.

Subsequent marriage shall not revoke the last will and testament of a person who, by such last will and testament or otherwise, shall have made provision for a surviving spouse.

(Code 1852, § 1666; Code 1915, § 3263; 38 Del. Laws, c. 178, § 1; Code 1935, § 3727; 12 Del. C. 1953, § 323; 70 Del. Laws, c. 186, § 1.)

Part III
Descent and Distribution; Escheat
Chapter 5
INTESTATE SUCCESSION

§ 501 Intestate estate.

Any part of the real or personal estate of a decedent not effectively disposed of by will passes to the decedent's heirs as prescribed in the following sections of this chapter.

(59 Del. Laws, c. 384, § 1.)

§ 502 Share of spouse.

The intestate share of the surviving spouse is:

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

(2) If there is no surviving issue but the decedent is survived by a parent or parents, the first $50,000 of the intestate personal estate, plus one half of the balance of the intestate personal estate, plus a life estate in the intestate real estate;

(3) If there are surviving issue all of whom are issue of the surviving spouse also, the first $50,000 of the intestate personal estate, plus one half of the balance of the intestate personal estate, plus a life estate in the intestate real estate;

(4) If there are surviving issue, one or more of whom are not issue of the surviving spouse, one half of the intestate personal estate, plus a life estate in the intestate real estate.

(59 Del. Laws, c. 384, § 1; 60 Del. Laws, c. 199, § 6.)

§ 503 Share of heirs other than surviving spouse.

The part of the intestate estate not passing to the surviving spouse under § 502 of this title, or the entire intestate estate if there is no surviving spouse, passes as follows:

(1) To the issue of the decedent, per stirpes;

(2) If there is no surviving issue, to the decedent's parent or parents equally;

(3) If there is no surviving issue or parent, to the brothers and sisters and the issue of each deceased brother or sister, per stirpes;

(4) If there is no surviving issue, parent or issue of a parent, then to the next of kin of the decedent, and to the issue of a deceased next of kin, per stirpes;

(5) Any property passing under this section to 2 or more persons passes to such persons as tenants in common.

(59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 504 Requirement that heir survive decedent for 120 hours.

Any person who fails to survive the decedent by 120 hours is deemed to have predeceased the decedent for purposes of intestate succession, and the decedent's heirs are determined accordingly. If the time of death of the decedent or of the person who would otherwise be an heir, or the times of death of both, cannot be determined, and it cannot be established that the person who would otherwise be an heir has survived the decedent by 120 hours, it is deemed that the person failed to survive for the required period. This section is not to be applied where its application would result in a taking of intestate estate by the State under this title.

(59 Del. Laws, c. 384, § 1.)

§ 505 Posthumous children.

Posthumous children, born alive, shall be considered as though living at the death of their parent.

(59 Del. Laws, c. 384, § 1.)

§ 506 Kindred of half blood.

Relatives of the half blood inherit the same share they would inherit if they were of the whole blood.

(59 Del. Laws, c. 384, § 1.)

§ 507 Alienage.

No person is disqualified to take as an heir because the person or a person through whom the person claims is or has been an alien.

(59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 508 Meaning of "child" and related terms [For application of this section, see 79 Del. Laws, c. 172, § 6]

If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person:

(1) An adopted person is the child of an adopting parent and not of the natural parent except that adoption of a child by the spouse of a natural parent has no effect on the relationship between the child and that natural parent.

(2) In cases not covered by paragraph (1) of this section, a person born out of wedlock is a child of the mother. That person is also a child of the father, if legitimated pursuant to Chapter 13 of Title 13 or, notwithstanding any contrary provision of Chapter 13 of Title 13, if:

a. The natural parents participated in a marriage ceremony before or after the birth of the child, even though the attempted marriage is void; or

b. The paternity is established by an adjudication before the death of the father or is established thereafter by preponderance of the evidence; except, that the paternity established under this paragraph is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his, and has not refused to support the child.

(59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 172, § 1.)

§ 509 Advancements.

If a person dies intestate as to all the estate, property which the person gave in the person's lifetime to an heir is treated as an advancement against the latter's share of the estate only if declared in a contemporaneous writing by the decedent or acknowledged in writing by the heir to be an advancement. For this purpose, the property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of death of the decedent, whichever first occurs. If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the intestate share to be received by the recipient's issue, unless the declaration or acknowledgement provides otherwise.

(59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 510 Debts owed to decedent.

A debt owed to the decedent is charged against the intestate share of the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's issue.

(59 Del. Laws, c. 384, § 1.)

§ 511 Dower and curtesy abolished.

The estates of dower and curtesy are abolished.

(59 Del. Laws, c. 384, § 1.)

§ 512 [Reserved.]

Part III
Descent and Distribution; Escheat
Chapter 6
DISCLAIMER

§ 601 Short title.

This chapter may be cited as the "Delaware Disclaimer Act."

(63 Del. Laws, c. 448, § 1; 75 Del. Laws, c. 302, § 1.)

§ 602 Definitions.

In this chapter, unless the context otherwise requires:

(1) "Beneficiary designation" means a testamentary or nontestamentary instrument or contract, other than an instrument creating a trust, naming the beneficiary of:

a. An annuity or insurance policy;

b. An account with a designation for payment on death;

c. A security registered in beneficiary form;

d. A pension, profit-sharing, retirement, or other employment-related benefit plan; or

e. Any other non-probate interest in property with a designation for transfer on death.

(2) "Code" means the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1 et seq.), or the comparable provisions of any later law.

(3) "Disclaimant" means the person to whom a disclaimed interest in property would have passed had the disclaimer not been made, or the person who would have had a power over property or with respect to property, including a power of appointment, had the disclaimer not been made.

(4) "Disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer not been made.

(5) "Disclaimed power" means the power that the disclaimant would have had over property in the nature of a power of appointment with respect to an interest in property or any other power that a disclaimant could have exercised with respect to property had the disclaimer not been made.

(6) "Disclaimer" means the refusal to accept an interest in or power over property.

(7) "Fiduciary" means a personal representative, trustee of a trust, agent acting under a power of attorney, conservator, custodian under a Uniform Transfers to Minors Act [Chapter 45 of this title] or similar statute of any jurisdiction, guardian, or other person authorized to act as a fiduciary with respect to the property or power of another person.

(8) "Holder" means the person holding a power of appointment over an interest in property held in a trust, or holding a power over a trust, who is granted the right or authority to exercise the power of appointment over an interest in property held in a trust or of a power over a trust under the terms of the instrument governing the trust.

(9) "Jointly held property" means property held in the name of 2 or more persons under an arrangement in which all owners have concurrent interests and under which the last surviving owner is entitled to the whole of the property. The term "jointly held property" specifically includes a tenancy by the entirety, and an "owner" shall include a tenant by the entirety.

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

(11) "This State" means the State of Delaware, and "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, or Alaskan native village, recognized by federal law or formally acknowledged by a State.

(12) "Trust" means:

a. An express trust, charitable or noncharitable, with additions thereto, whenever and however created; and

b. A trust created pursuant to a statute, judgment, or decree which requires the trust to be administered in the manner of an express trust.

(75 Del. Laws, c. 302, § 1.)

§ 603 Scope; property subject to disclaimer.

This chapter applies to disclaimers of any interest in or power over property, whenever created, and whether any interest in or power over property is disclaimed at the time of the creation of the interest in or power over property, or at any time thereafter as provided hereafter in this chapter.

(63 Del. Laws, c. 448, § 1; 75 Del. Laws, c. 302, § 1.)

§ 604 Chapter supplemented by other law; chapter not exclusive.

(a) Unless displaced by a provision of this chapter, the principles of law and equity supplement this chapter.

(b) This chapter does not limit any right of a person to waive, release, disclaim, or renounce property, an interest in property or a power over property under a law other than this chapter.

(63 Del. Laws, c. 448, § 1; 75 Del. Laws, c. 302, § 1.)

§ 605 Power to disclaim; requisites and execution; when irrevocable.

(a) A person may disclaim, in whole or part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power notwithstanding any limitation under the terms of the instrument creating the interest in property or granting a power to the holder in the nature of a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

(b) Except to the extent that a fiduciary's right to disclaim is expressly restricted or limited by another statute of this State or by the instrument creating the fiduciary relationship a fiduciary may disclaim, in whole or part, any interest in or power over property, including a power of appointment, whether acting in a personal or in a fiduciary capacity. A fiduciary may disclaim an interest in property or power notwithstanding any limitation on the interest or power of the disclaimant in the nature of a spendthrift provision or similar restriction on transfer or a restriction or limitation on the disclaimant's right to disclaim under the instrument creating the interest or power in the disclaimant (which is distinct from the instrument creating the fiduciary relationship).

(c) To be effective, the disclaimer shall:

(1) Be in a writing;

(2) Declare the disclaimer and the extent thereof;

(3) Describe the interest or power disclaimed;

(4) Be signed either by:

a. The person making the disclaimer; or

b. Some person subscribing the name of the person making the disclaimer, in the person's presence and by such person's express direction in the presence of 2 or more witnesses competent to witness a will under Chapter 2 of this title; and

(5) Be delivered in the form and in the manner provided in § 612 of this title.

(d) A disclaimer may be of a part of an interest in property or power over property and may be expressed as a fractional share, a percentage, a term of years, a limitation of a power, an interest or estate in property, or any lesser included interest or estate in property, including a lesser included interest or estate having a specific monetary value.

(e) A disclaimer becomes irrevocable when it is delivered pursuant to § 612 of this title or when it becomes effective as provided in §§ 606-611 of this title, whichever occurs later.

(f) A disclaimer made under this chapter is not a transfer, assignment or release by the disclaimant.

(63 Del. Laws, c. 448, § 1; 75 Del. Laws, c. 302, § 1.)

§ 606 Disclaimer of interest in property.

(a) Except for a disclaimer governed by § 607 or § 608 of this title, the following rules apply to a disclaimer of an interest in property:

(1) If the interest was created by an instrument, the disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, and the disclaimed interest passes as follows:

a. If the instrument creating the interest includes a provision providing for the disposition of the interest, if the interest is disclaimed, or of disclaimed interests in general, the interest passes according to the provisions in the instrument governing the disposition of the disclaimed interest.

b. If the instrument creating the interest does not include a provision described in paragraph (a)(1)a. of this section, if the disclaimant is an individual, the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution, and if the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist at the time of distribution.

c. If the disclaimant is an individual, and if, by law or under the provisions of the instrument creating the interest, the descendants of the disclaimant, or the descendants of any other individual, if applicable, would share in the disclaimed interest by any method of representation had the disclaimant died immediately before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant, or the descendants of the other applicable individual, who survive the time of distribution.

(2) If the interest in property being disclaimed arose under the law of intestate succession, the disclaimer takes effect as of the time of the intestate's death.

(3) If a disclaimant disclaims an interest in property preceding the future interest or interests of any person or persons in such property:

a. A future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution.

b. A future interest in the property held by the disclaimant that the disclaimant retained when disclaiming the preceding interest will not accelerate the disclaimant's possession or enjoyment of the future interest retained by the disclaimant.

(b) For the purposes of this section:

(1) "Future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of the creation of the interest.

(2) "Time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment.

(63 Del. Laws, c. 448, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 302, § 1.)

§ 607 Disclaimer of rights of survivorship in jointly held property.

(a) Upon the death of an owner of jointly held property:

(1) If, during the deceased owner's lifetime, the deceased owner could have unilaterally reacquired a portion of the property attributable to the deceased owner's contributions without the consent of the other owner or owners, a surviving owner may disclaim, in whole or in part, a fractional share of that portion of the property attributable to the deceased owner's contribution determined by dividing the number 1 by the number of joint owners alive immediately after the death of the owner to whose death the disclaimer relates.

(2) For all other jointly held property, an owner who survives a deceased owner may disclaim, in whole or part, a fraction of the whole of the property the numerator of which is 1 and the denominator of which is the product of:

a. The number of joint owners alive immediately before the death of the owner to whose death the disclaimer relates;

b. Multiplied by the number of joint owners alive immediately after the death of the owner to whose death the disclaimer relates.

(b) A disclaimer under subsection (a) of this section takes effect as of the death of the owner of jointly held property to whose death the disclaimer relates.

(c) An interest in jointly held property disclaimed by a surviving owner of the property passes as if the disclaimant predeceased the owner to whose death the disclaimer relates.

(d) Disclaimers of interests in property not governed by this section are governed by § 606 of this title.

(63 Del. Laws, c. 448, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 302, § 1.)

§ 608 Disclaimer of interest by trustee.

Except as limited by § 3324(a) of this title, if a trustee disclaims an interest in property, as authorized under § 3325(1) of this title, that otherwise would have become trust property, the interest does not become trust property.

(63 Del. Laws, c. 448, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 302, § 1.)

§ 609 Disclaimer of power held in fiduciary capacity.

If a holder who is a fiduciary disclaims a power held in a fiduciary capacity, the following rules apply:

(1) If the fiduciary holder has not previously exercised the power held in a fiduciary capacity the disclaimer of the power takes effect as of the time the instrument creating the power becomes irrevocable.

(2) If the fiduciary holder has previously exercised the power held in a fiduciary capacity the disclaimer of the power takes effect immediately after the last exercise of the power.

(3) A disclaimer under this section is effective as to another fiduciary and is binding upon the estate, trust or other person for whom the fiduciary is acting as limited by Delaware law unless otherwise stated within the instrument.

(63 Del. Laws, c. 448, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 302, § 1.)

§ 610 Disclaimer of power of appointment or other power not held in fiduciary capacity.

If a holder that is not a fiduciary disclaims a power of appointment, whether such power is a general power of appointment or a power that is not a general power of appointment, or other power over a trust, granted to the nonfiduciary holder under the terms of an instrument, the following rules apply:

(1) If the holder has not previously exercised the power of appointment or the power over a trust, the disclaimer of a power of appointment or a power over a trust by a holder takes effect as of the time the instrument granting the power to the holder became or becomes irrevocable.

(2) If the holder has previously exercised a general power of appointment and the disclaimer is of the right to exercise such general power of appointment, whether or not the holder presently has the power to exercise such general power of appointment, the disclaimer of such power of appointment takes effect immediately after the last time the holder exercised such general power of appointment.

(3) If the holder has previously exercised a power of appointment and the disclaimer is of a power of appointment that is not a general power of appointment, whether or not the holder presently has the power to exercise such power of appointment, the disclaimer of such power of appointment takes effect immediately after the last time the holder exercised such power of appointment.

(4) If the holder has previously exercised a power over a trust and the disclaimer is of a power over a trust, whether or not the holder presently has the power to exercise such power over the trust, the disclaimer of the power over a trust takes effect immediately after the last time the holder exercised such power over the trust.

(5) The instrument granting the power of appointment or power over the trust to the holder shall be construed as if the power of the holder ceased to exist with respect to the power of appointment or power over the trust when the disclaimer became effective.

(63 Del. Laws, c. 448, § 1; 75 Del. Laws, c. 302, § 1.)

§ 611 Disclaimer by appointee, permissible appointee, or taker in default of exercise of power of appointment.

(a) A disclaimer of an interest in property by an appointee of such interest in property as a result of an exercise of a power of appointment by a holder takes effect as of the time the instrument by which the holder exercised the power becomes irrevocable.

(b) A disclaimer of an interest in property by a permissible appointee of an interest in property or by a taker of an interest in property as a result of a holder's failure to effectively exercise a power of appointment granted to such holder (a taker in default) takes effect as of the time the instrument creating the power of appointment becomes irrevocable.

(63 Del. Laws, c. 448, § 1; 75 Del. Laws, c. 302, § 1.)

§ 612 Delivery and recording requirements.

(a) Subject to subsections (b) through (k) of this section, delivery of a disclaimer may be effected by personal delivery, first class mail, or any other method likely to result in its receipt, subject to the following:

(1) A disclaimer is considered as delivered to the person to whom such disclaimer is required to be delivered, if the method of delivery of the disclaimer would be considered delivered on the date by which it would be considered a timely mailing and treated as a timely filing if the disclaimer were a return or other document required to be filed within a prescribed period or on or before a prescribed date under the Code and would be considered to be timely filed under the provisions of § 7502 of the Code [26 U.S.C. § 7502], or the comparable provisions of any later law, and the regulations promulgated thereunder.

(2) If 2 or more persons or fiduciaries are acting as a person or fiduciary to whom a disclaimer is required to be delivered under subsections (b) through (k) of this section, delivery of such disclaimer shall be made on all such persons or fiduciaries.

(b) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(1) A disclaimer must be delivered to the personal representative of the decedent's estate, if one is then serving; and

(2) It must also be delivered to the court in the county in which proceedings for administration of the estate of a deceased transferor of the property or interest or a deceased donee of the power have been commenced or could be commenced.

(c) In the case of an interest in a testamentary trust:

(1) A disclaimer must be delivered to the trustee then serving, or if no trustee is then serving, to the personal representative of the decedent's estate; and

(2) It must also be delivered to the court in the county in which proceedings for administration of the estate of a deceased transferor of the property or interest or a deceased donee of the power have been commenced or could be commenced.

(d) In the case of an interest in an inter vivos trust:

(1) A disclaimer must be delivered to the trustee then serving; or

(2) If no trustee is then serving, it must be delivered to the court having jurisdiction to enforce the trust.

(3) If the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest.

(e) In the case of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, a disclaimer must be delivered to the person making the beneficiary designation.

(f) In the case of an interest created by a beneficiary designation made after the time the designation becomes irrevocable, a disclaimer must be delivered to the person obligated to distribute the interest.

(g) In the case of a disclaimer by a surviving owner of jointly held property the disclaimer must be delivered to the person or persons to whom the disclaimed interest passes.

(h) In the case of a disclaimer by a permissible appointee or a taker in default of the exercise of a power of appointment at any time after the power was created:

(1) The disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(2) If no fiduciary is then serving, it must be delivered to a court having jurisdiction to appoint the fiduciary.

(i) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

(1) The disclaimer must be delivered to the holder, the personal representative of the holder's estate or to the fiduciary under the instrument that created the power; or

(2) If no fiduciary is then serving, it must be delivered to a court having jurisdiction to appoint the fiduciary.

(j) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection (b), (c), or (d) of this section, as if the power disclaimed were an interest in property.

(k) In the case of a disclaimer of a power by an agent or attorney-in-fact, the disclaimer must be delivered to the principal or the principal's representative.

(l) No fiduciary, person or entity having custody of the disclaimed interest shall be liable for any otherwise proper distribution made without actual notice of the disclaimer, or, if the disclaimer is barred under § 614 of this title, for any otherwise proper distribution made in reliance of the disclaimer, if the distribution is made without actual knowledge of the facts constituting the bar of the right to disclaim.

(m) For purposes of this section, when delivery of a disclaimer to a court is referenced, the disclaimant may fulfill this requirement by filing the disclaimer with the register of wills or the register in chancery for the county in which proceedings for administration of the estate of a deceased transferor of the property or interest, a deceased donee of the power or a deceased joint tenant has been commenced.

(n) A copy of the disclaimer may also be delivered to the person or persons entitled to the property or interest in the event of disclaimer; however, failure to make such delivery shall not affect the validity of the disclaimer. Such delivery is in addition to and not in lieu of the delivery and recording otherwise required under this section.

(63 Del. Laws, c. 448, § 1; 70 Del Laws, c. 186, § 1; 75 Del. Laws, c. 302, § 1.)

§ 613 Disclaimers affecting real property.

If the property interest being disclaimed is an interest in real property, the disclaimer shall be acknowledged in the manner provided for deeds of real property. The disclaimer shall not be valid as against any person, except the beneficiary, the heirs and devisees of the beneficiary, and any other person having actual notice of the disclaimer, unless an original thereof, or an attested copy thereof if the original is required to be filed elsewhere, is recorded in the office for recording of deeds for the county or district in which the real property is located.

(63 Del. Laws, c. 448, § 1; 70 Del Laws, c. 186, § 1; 75 Del. Laws, c. 302, § 1.)

§ 614 When disclaimer barred or limited.

(a) A disclaimer is barred by a written waiver of the right to disclaim.

(b) A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

(1) The disclaimant accepts the interest sought to be disclaimed;

(2) The disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so;

(3) A judicial sale of the interest sought to be disclaimed occurs.

(c) A disclaimer is barred or limited if so provided by law other than this chapter.

(d) A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

(e) A disclaimer of a power over property which is barred by this section is ineffective. A disclaimer of an interest in property which is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under this chapter had the disclaimer not been barred.

(63 Del. Laws, c. 448, § 1; 75 Del. Laws, c. 302, § 1.)

§ 615 Tax qualified disclaimer.

Notwithstanding any other provision of this chapter, if as a result of a disclaimer or transfer the disclaimed or transferred interest is treated pursuant to the provisions of the Code, and the regulations promulgated thereunder, as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under this chapter.

(75 Del. Laws, c. 302, § 1.)

§ 616 Application to existing and expired relationships.

(a) Except as otherwise provided in § 614 of this title, an interest in or power over property existing on June 27, 2006, as to which the 9 months for receipt or filing a disclaimer under Delaware law superseded by this chapter has not expired may be disclaimed after June 27, 2006.

(b) Any interest in or power over property that has expired under Delaware law superseded by this chapter prior to June 27, 2006, shall remain expired.

(63 Del. Laws, c. 448, § 1; 75 Del. Laws, c. 302, § 1.)

§ 617 Severability clause.

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

(75 Del. Laws, c. 302, § 1.)

Part III
Descent and Distribution; Escheat
Chapter 7
SIMULTANEOUS DEATH

§ 701 Insufficient evidence of survivorship.

Where the title to property or the devolution thereof depends upon priority of death and there is not sufficient evidence that the persons have died otherwise than simultaneously, the property of each person shall be disposed of as if each person had survived, except as otherwise provided in this chapter.

(45 Del. Laws, c. 234, § 1; 12 Del. C. 1953, § 701; 70 Del Laws, c. 186, § 1.)

§ 702 Beneficiaries of another person's disposition of property.

Where 2 or more beneficiaries are designated to take successively by reason of survivorship under another person's disposition of property and there is no sufficient evidence that these beneficiaries have died otherwise than simultaneously, the property thus disposed of shall be divided into as many equal portions as there are successive beneficiaries and these portions shall be distributed respectively to those who would have taken in the event that each designated beneficiary had survived.

(45 Del. Laws, c. 234, § 2; 12 Del. C. 1953, § 702.)

§ 703 Joint tenants or tenants by the entirety.

Where there is no sufficient evidence that 2 joint tenants or tenants by the entirety have died otherwise than simultaneously, the property so held shall be distributed one half as if 1 had survived and one half as if the other had survived. If there are more than 2 joint tenants and all of them have so died, the property thus distributed shall be in the proportion that 1 bears to the whole number of joint tenants.

(45 Del. Laws, c. 234, § 3; 12 Del. C. 1953, § 703.)

§ 704 Insurance policies.

Where the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured had survived the beneficiary.

(45 Del. Laws, c. 234, § 4; 12 Del. C. 1953, § 704.)

§ 705 Retroactive effect of chapter.

This chapter shall not apply to the distribution of the property of a person who died before April 18, 1945.

(45 Del. Laws, c. 234, § 5; 12 Del. C. 1953, § 705.)

§ 706 Application of chapter.

This chapter shall not apply in the case of wills, living trusts, deeds or contracts of insurance wherein provision has been made for distribution of property different from the provisions of this chapter.

(45 Del. Laws, c. 234, § 6; 12 Del. C. 1953, § 706.)

§ 707 Uniformity of interpretation.

This chapter shall be so construed and interpreted as to effectuate its general purpose to make uniform the law in those states which enact it.

(45 Del. Laws, c. 234, § 7; 12 Del. C. 1953, § 707.)

Part III
Descent and Distribution; Escheat
Chapter 8
UNIFORM TOD SECURITY REGISTRATION ACT

§ 801 Definitions.

In this chapter, unless the context otherwise requires:

(1) "Beneficiary form" means a registration of a security which indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) "Devisee" means any person designated in a will to receive a disposition of real or personal property.

(3) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(4) "Person" means an individual, a corporation, an organization or other legal entity.

(5) "Personal representative" includes executor, administrator, successor personal representative, special administrator and persons who perform substantially the same function under the law governing their status.

(6) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(7) "Register," including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(8) "Registering entity" means a person who originates or transfers a security title by registration and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(9) "Security" means a share, participation or other interest in property, in a business or in an obligation of an enterprise or other issuer and includes a certificated security, an uncertificated security and a security account.

(10) "Security account" means:

a. A reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings or dividends earned or declared on a security in an account, a reinvestment account or a brokerage account, whether or not credited to the account before the owner's death, or

b. A cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

(11) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession subject to the legislative authority of the United States.

(70 Del. Laws, c. 394, § 1.)

§ 802 Registration in beneficiary form; sole or joint tenancy ownership.

Only individuals whose registration of a security shows sole ownership by 1 individual or multiple ownership by 2 or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties or as owners of community property held in survivorship form and not as tenants in common.

(70 Del. Laws, c. 394, § 1.)

§ 803 Registration in beneficiary form; applicable law.

A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state of organization of the issuer or registering entity, the location of the registering entity's principal office, the office of its transfer agent or its office making the registration, or by this or a similar statute of the law of the state listed as the owner's address at the time of registration. A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

(70 Del. Laws, c. 394, § 1.)

§ 804 Origination of registration in beneficiary form.

A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

(70 Del. Laws, c. 394, § 1.)

§ 805 Form of registration in beneficiary form.

Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD" or by the words "pay on death" or the abbreviation "POD" after the name of the registered owner and before the name of a beneficiary.

(70 Del. Laws, c. 394, § 1.)

§ 806 Effect of registration in beneficiary form.

The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then surviving owners without the consent of the beneficiary.

(70 Del. Laws, c. 394, § 1.)

§ 807 Ownership on death of owner.

On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

(70 Del. Laws, c. 394, § 1.)

§ 808 Protection of registering entity.

(a) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by this chapter.

(b) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on the death of the deceased owner as provided in this chapter.

(c) A registering entity is discharged from all claims to a security by the estate, creditors, heirs or devisees of a deceased owner if it registers a transfer of the security in accordance with § 807 of this title and does so in good faith reliance (i) on the registration, (ii) on this chapter, and (iii) on information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives or other information available to the registering entity. The protections of this chapter do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under this chapter.

(d) The protection provided by this chapter to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

(70 Del. Laws, c. 394, § 1.)

§ 809 Nontestamentary transfer on death.

(a) A transfer on death resulting from a registration in beneficiary form is effective by reason of the contract regarding the registration between the owner and the registering entity and this chapter and is not testamentary.

(b) This chapter does not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this State.

(70 Del. Laws, c. 394, § 1.)

§ 810 Terms, conditions, and forms for registration.

(a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests (i) for registrations in beneficiary form, and (ii) for implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary. The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for "lineal descendants per stirpes." This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death governing inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on 1 or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(b) The following are illustrations of registrations in beneficiary form which a registering entity may authorize:

(1) Sole owner-sole beneficiary: John S. Brown TOD (or POD) John S. Brown, Jr.

(2) Multiple owners-sole beneficiary: John S. Brown, Mary B. Brown, JT TEN TOD John S. Brown, Jr.

(3) Multiple owners-primary and secondary (substituted) beneficiaries: John S. Brown, Mary B. Brown, JT TEN TOD John S. Brown, Jr. SUB BENE Peter Q. Brown or John S. Brown, Mary B. Brown JT TEN TOD John S. Brown, Jr. LDPS.

(70 Del. Laws, c. 394, § 1.)

§ 811 Short title.

This chapter shall be known as and may be cited as the "Uniform TOD Security Registration Act."

(70 Del. Laws, c. 394, § 1.)

§ 812 Application of chapter.

This chapter applies to registrations of securities in beneficiary form made before or after June 26, 1996, by decedents dying on or after June 26, 1996.

(70 Del. Laws, c. 394, § 1.)

Part III
Descent and Distribution; Escheat
Chapter 9
ELECTIVE SHARE

§ 901 Right to elective share.

(a) If a married person domiciled in this State dies, the surviving spouse has a right of election to take an elective share of an amount equal to one third of the elective estate, less the amount of all transfers to the surviving spouse by the decedent, under the limitations and conditions hereinafter stated. The elective share may be satisfied in cash or in kind, or partly in each. Assets distributed in satisfaction of the elective share shall be valued at date of distribution.

(b) In determining the elective share under subsection (a) of this section or in the case of the death of a married person not domiciled in this State, the right, if any, of the surviving spouse to take an elective share in real or tangible personal property shall be governed by the law of the situs of such property.

(59 Del. Laws, c. 384, § 1; 65 Del. Laws, c. 428, § 1; 67 Del. Laws, c. 240, § 1; 74 Del. Laws, c. 271, § 1.)

§ 902 Elective estate defined.

(a) The elective estate means the amount of the decedent's gross estate for federal estate tax purposes, regardless of whether or not a federal estate tax return is filed for the decedent, modified as follows:

(1) Less those deductions allowable under §§ 2053 and 2054 of the Internal Revenue Code of 1986, as amended [26 U.S.C. §§ 2053 and 2054], or the comparable provisions of any later law ("the Code"); and

(2) The extent of the inclusion in the decedent's gross estate for federal estate tax purposes of certain joint interests of the decedent and the surviving spouse under § 2040(b) of the Code [26 U.S.C. § 2040(b)] shall be modified as follows: the decedent's gross estate for federal estate tax purposes shall include one half of any interest in property created at any time, including interests created before January 1, 1977, held by the decedent and the surviving spouse as:

a. Tenants by the entirety, or

b. Joint tenants with right of survivorship, but only if the decedent and the surviving spouse are the only joint tenants.

(b) For purposes of this chapter, if the federal estate tax is not applicable, because of its permanent or temporary repeal, to the estates of persons dying on the date of the decedent's death, any reference in this chapter to "the Code" as defined in paragraph (a)(1) of this section, "federal estate tax purposes", and to other terms dependent upon the federal estate tax provisions of the Code shall be deemed to refer to the provisions of the Code in effect on the last date on which the federal estate tax was applicable to the estates of persons dying before the date of the decedent's death.

(c) In every case where an elective share petition has been filed, the personal representative of the estate shall prepare a Form 706 (United States Estate Tax Return) for the estate, regardless of whether such form is required to be filed. If such form is not required to be filed because of the permanent or temporary repeal of the federal estate tax, the personal representative shall use in such preparation the Form 706, or its equivalent form, last authorized by the Internal Revenue Service before the repeal became effective. A copy of the form must be provided to the surviving spouse by the latest of the following dates:

(1) The due date for the Form 706, as extended;

(2) If a Form 706 or an equivalent form is not required to be filed, whether or not because of the permanent or temporary repeal of the federal estate tax, 15 months from the date of the decedent's death; or

(3) Three months after the elective share petition has been timely filed.

(59 Del. Laws, c. 384, § 1; 67 Del. Laws, c. 240, § 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 353, § 3; 76 Del. Laws, c. 150, §§ 1-3.)

§ 903 Transfers to surviving spouse by decedent.

The value of the property transferred to the surviving spouse by the decedent for purposes of § 901(a) of this title is an amount which equals the value of the property derived from the decedent by virtue of death. For purposes of this section:

(1) Property derived from the decedent by virtue of death shall be:

a. Property which is a part of the decedent's estate which passes to the surviving spouse by testate or intestate succession;

b. Any property transferred to the surviving spouse by the decedent during the decedent's lifetime and includable in the decedent's gross estate under § 2036 of the Code [26 U.S.C. § 2036];

c. One half of any interest in property created at any time, including interests created before January 1, 1977, held by the decedent and the surviving spouse as:

1. Tenants by the entirety, or

2. Joint tenants with right of survivorship, but only if the decedent and the surviving spouse are the only joint tenants;

d. Any beneficial interest of the surviving spouse in a trust created by the decedent during the decedent's lifetime or under the decedent's will;

e. Any property appointed to the spouse by the decedent's exercise of a general or special power of appointment;

f. Any lump sum immediately payable to the surviving spouse and the present value of amounts payable to the surviving spouse in the future, under any trust, contract or other arrangement, which are attributable to proceeds of insurance, including accidental death benefits, on the life of the decedent and includible in the decedent's gross estate for federal estate tax purposes;

g. Any lump sum immediately payable to the surviving spouse and the present value of amounts payable to the surviving spouse in the future under annuity contracts under which the decedent was the primary annuitant; under any public or private plan or arrangement for the payment of pension or other retirement benefits, disability compensation, death benefits, salary continuation, or deferred compensation; and under any individual retirement account, but not including payments to the surviving spouse under the federal Social Security system or any other similar state or federal retirement system providing an individual right to a surviving spouse to receive payments as a result of the decedent's death;

h. Any lump sum immediately payable to the surviving spouse and the present value of amounts payable to the surviving spouse in the future, under any trust, contract or other arrangement, which are attributable to property transferred by the decedent during the decedent's lifetime; and

i. The value of the share of the surviving spouse resulting from rights in community property owned by the decedent in this or any other state.

(2) Property owned by the spouse at the decedent's death is valued as of the date it is valued for purposes of computing the elective estate. Income earned by included property prior to the decedent's death is not treated as property derived from the decedent.

(3) For purposes of this section, property or an interest in property considered derived from the decedent by virtue of death which has been disclaimed or renounced by the surviving spouse shall be deemed not to have been disclaimed or renounced for the purpose of computing the value of the property transferred to the surviving spouse under this chapter, subject to the following:

a. If the surviving spouse is the primary beneficiary of an interest in a trust that:

1. Does not qualify for the marital deduction for federal estate tax purposes, whether or not an election is made to qualify the trust for a marital deduction for federal estate tax purposes under the Code, and

2. Does not provide the surviving spouse with amounts payable in the future for which a present value can be determined as of the date of the decedent's death,

any interest in the trust that the surviving spouse disclaims or renounces shall not be considered derived by the surviving spouse from the decedent under paragraph (1) of this section.

b. The surviving spouse shall be considered the primary beneficiary of a trust if:

1. The surviving spouse is designated as the primary beneficiary in the trust's governing instrument;

2. There are no other beneficiaries of the trust entitled to distributions from the trust during the surviving spouse's lifetime; or

3. There are other beneficiaries of the trust entitled to discretionary distributions from the trust during the surviving spouse's lifetime, but the discretionary distributions can be made only after taking into consideration the interest of the surviving spouse, and if the discretionary distributions are based on an ascertainable standard.

(59 Del. Laws, c. 384, § 1; 67 Del. Laws, c. 240, § 3; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 150, §§ 4-11.)

§ 904 Right of election personal to surviving spouse.

The right of election of the surviving spouse may be exercised only during the spouse's lifetime; provided the personal representative of the spouse's estate shall succeed to the surviving spouse's rights under a right of election exercised by the spouse. In the case of a protected person, the right of election may be exercised only by order of the court in which protective proceedings as to the protected person's property are pending, after finding that exercise is necessary to provide adequate support for the protected person during a probable life expectancy. For purposes of this section a "protected person" is a minor or other person for whom a guardian or trustee has been appointed or other protective order has been made.

(59 Del. Laws, c. 384, § 1; 67 Del. Laws, c. 240, § 4; 70 Del. Laws, c. 186, § 1.)

§ 905 Waiver of right to elect and of other rights.

The right of election of a surviving spouse may be waived, wholly or partially, before or after marriage, by a written contract, agreement or waiver signed by the party waiving. Unless it provides to the contrary, a waiver of "all rights" (or equivalent language) in the property or estate of a present or prospective spouse or a complete property settlement entered into, after or in anticipation of separation or divorce is a waiver of all rights to the elective share by each spouse in the property of the other and a renunciation by each of all benefits which would otherwise pass to each from the other by intestate succession or by virtue of any will executed before the waiver or property settlement.

(59 Del. Laws, c. 384, § 1; 67 Del. Laws, c. 240, § 5; 70 Del. Laws, c. 186, § 1.)

§ 906 Proceeding for elective share; time limit.

(a) The surviving spouse may elect to take an elective share in the elective estate by filing in the Court of Chancery and mailing or delivering to the personal representative a petition for the elective share within 6 months after the grant of letters testamentary or of administration. The Court, upon petition, may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired.

(b) The surviving spouse shall give at least 10 days' notice by certified mail of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the elective estate whose interests will be adversely affected by the taking of the elective share.

(c) The surviving spouse may withdraw demand for an elective share at any time before entry of a final determination by the Court of Chancery.

(d) After notice and hearing, the Court of Chancery shall determine the amount of the elective share and shall enter a judgment and order apportioning the liability for the amount of the elective share among the recipients of the contributing estate and directing payment of such liability as provided in § 908(a) of this title. If it appears that a fund or property included in the elective estate has not come into the possession of the personal representative, or has been distributed by the personal representative, the Court nevertheless shall fix the liability of any person who has any interest in the property or who has possession thereof, whether as trustee or otherwise.

(e) The order or judgment of the Court of Chancery may be enforced as necessary in suit for contribution or payment in other courts of this State or other jurisdictions.

(f) The Court of Chancery on petition of a surviving spouse may restrain any person from making a payment or transfer of property which constitutes part of the contributing estate, either before or after a petition for an elective share is filed.

(g) No transferee of, or holder of a lien against, real property comprising part of the contributing estate shall be liable to a surviving spouse if the transferee or lienholder has given bona fide consideration to the recipient of such real property from the decedent unless a certified copy of the judgment, order or decree of the Court of Chancery providing to the contrary with respect to such real property has been recorded in the office for the recording of deeds in the county where the real property is located prior to the recordation of the deed, mortgage or other instrument transferring, or creating the lien against, such real property. The recording of any such judgment, order or decree shall be indexed in the grantor's index under the names of the decedent and the recipient of such real property from the decedent.

(59 Del. Laws, c. 384, § 1; 67 Del. Laws, c. 240, § 6; 70 Del. Laws, c. 186, § 1.)

§ 907 Effect of election on benefits derived from decedent.

(a) The surviving spouse's election of an elective share does not affect the share of the surviving spouse under any provisions made for the surviving spouse under the decedent's will, any trust established by the decedent, or the intestate succession laws unless the surviving spouse also either expressly disclaims the benefit of all or any of the provisions in accordance with Chapter 6 of this title, or expressly renounces in the petition for an elective share the benefit of all or any of the provisions. If any provision is so disclaimed or renounced, the property or other benefit which would otherwise have passed to the surviving spouse thereunder is treated, subject to contribution under § 908(a) of this title, as if the surviving spouse had predeceased the decedent for all purposes, except that such property or other benefit disclaimed or renounced by the surviving spouse shall nonetheless be deemed to be property transferred to the surviving spouse by the decedent to the extent specified in §§ 903 and 901(a) of this title.

(b) A surviving spouse is entitled to the surviving spouse's allowance whether or not the surviving spouse elects to take an elective share.

(59 Del. Laws, c. 384, § 1; 67 Del. Laws, c. 240, § 7; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 98, § 2.)

§ 908 Liability for elective share.

(a) The liability for the amount of the elective share shall be apportioned among the recipients of "the decedent's contributing estate" (as defined in subsection (b) of this section). Such apportionment shall be made in the proportion, as near as may be, that the value of the property of each such recipient bears to the total value of the property received by all such recipients interested in the contributing estate, provided that in any case where a person is given an interest in income or an estate for years, or for life, or other temporary interest in any property, the liability for the elective share on both such temporary interest and on the remainder thereafter shall not be apportioned between or among the recipients of such interest but shall be charged in rem against and paid out of the corpus of such property without apportionment between remainders and temporary estates. Until it is paid or satisfied the surviving spouse's elective share shall be a proportionate charge against the properties constituting the decedent's contributing estate based upon the values of all such property for purposes of determining the elective estate. No person or property shall be liable for contribution in any greater amount than the person or such property would have been if relief had been secured against all persons and property subject to contribution.

(b) For purposes of this section, the decedent's contributing estate consists of only that portion of the elective estate of which the decedent was the sole owner at death and which was not transferred or deemed transferred to a surviving spouse by the decedent as described in § 903(1) of this title. The decedent's contributing estate does not include any jointly owned property with the right of survivorship of which the decedent was a joint owner, any insurance proceeds which are payable to a beneficiary other than to the estate, or any property held in trust.

(c) A recipient of property comprising part of the contributing estate may pay a proportionate elective share liability with respect to such property or may choose to give up such property, thereby relieving personal liability. If a recipient elects to give up such property the recipient shall be entitled to any value realized upon the sale or other disposition of such property in excess of the recipient's proportionate elective share liability.

(59 Del. Laws, c. 384, § 1; 67 Del. Laws, c. 240, § 8; 70 Del. Laws, c. 186, § 1.)

Part III
Descent and Distribution; Escheat
Chapter 11
ESCHEATS
Subchapter I
Intestate Property

§ 1101 Escheat of estates.

If any person, being at the time of death seized or possessed of any real or personal estate within this State, dies intestate, without heirs or any known kindred who can inherit and hold the intestate's estate, such estate is escheat to the State, subject to all legal demands on the same.

(Code 1852, § 1587; Code 1915, § 123; Code 1935, § 112; 42 Del. Laws, c. 57, § 1; 12 Del. C. 1953, § 1101; 49 Del. Laws, c. 51; 60 Del. Laws, c. 292, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1102 Escheator of the State.

There shall be an Escheator of the State, who shall be the Secretary of Finance or the Secretary's delegate. The administration and enforcement of this subchapter are vested in the Secretary of Finance or the Secretary's delegate.

(Code 1852, § 1588; Code 1915, § 124; Code 1935, § 113; 42 Del. Laws, c. 57, § 1; 12 Del. C. 1953, § 1102; 57 Del. Laws, c. 741, § 48A; 60 Del. Laws, c. 292, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1103 Suit to determine escheat.

(a) *Filing suit.* — The Escheator, upon personal knowledge or upon receipt of information of any person dying intestate and without heirs or any known kindred who can inherit and hold the intestate property within this State, of which at the time of death such person was seized or possessed, and which has not previously been escheated to the State by order of the Probate Court, shall cause to be filed a suit in the Court of Chancery of the State in the county wherein such property is located (or if located in more than 1 county in any such county) to inquire whether, as shall be alleged, the person has died without heirs or any known kindred who can inherit and hold the estate, and whether such person was, at the time of death, seized or possessed of any and what estate, real or personal, in the county or counties, and also in whose possession the same shall be.

(b) *Notice of Court action.* — Upon filing suit in the Court of Chancery, the Escheator shall cause to be published at least once a week for 3 consecutive weeks in a newspaper of general circulation in the county or counties wherein such property is located, notice that the State has filed suit in the Court of Chancery to secure an order that the decedent's property has escheated to the State due to failure of heirs or next of kin qualified to inherit such property.

Said notice shall invite any person having a valid claim to the intestate property of the decedent to file written notice of such claim with the Court of Chancery within 30 days of the date of the third and final publication notice. The Escheator shall also cause similar notice to be posted at the site of any real property the decedent may have owned, and give similar notice by registered mail to all persons known to the Escheator to be in actual possession of the decedent's property.

(Code 1852, § 1590; Code 1915, § 126; Code 1935, § 115; 42 Del. Laws, c. 57, § 1; 12 Del. C. 1953, § 1103; 60 Del. Laws, c. 292, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1104 Final hearing and order.

After the required notice has been given, a hearing shall be scheduled by the Court of Chancery at which all claimants may present evidence in support of their respective claims. If the Court finds that the conditions for escheat have been met, the Court shall issue an order that the decedent's property escheated to the State as of the date of death. If the Court finds that the conditions for escheat have not been met, the State's petition shall be dismissed and the decedent's property shall be disposed of as otherwise provided by law.

(Code 1852, § 1591; Code 1915, § 127; Code 1935, § 116; 12 Del. C. 1953, § 1104; 60 Del. Laws, c. 292, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1105 Presumption of death.

If any person is absent from the State for 7 consecutive years, and no evident proof is made of the person's life in any hearing held under the foregoing provisions of this subchapter, the person shall be accounted dead.

(Code 1852, § 1592; Code 1915, § 128; Code 1935, § 117; 12 Del. C. 1953, § 1105; 60 Del. Laws, c. 292, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1106 Seizure of escheated personalty.

If, after hearing as provided herein, the Court finds that goods and chattels have escheated to the State and that said goods and chattels are not in the possession of the Court or the Escheator, the Escheator shall issue a writ, directed to the sheriff of the county, commanding

the sheriff to seize, attach and secure such escheated goods and chattels, in whose hands the same are found, or if it is found at the aforesaid hearing that the goods and chattels or any part thereof have been eloigned, then to seize and attach so much of the goods and chattels of the person who has eloigned the same as shall be equal in value to the goods and chattels which the person eloigned.

(Code 1852, § 1593; Code 1915, § 129; Code 1935, § 118; 12 Del. C. 1953, § 1106; 60 Del. Laws, c. 292, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1107 Sale of seized property by sheriff.

The sheriff shall sell the goods and chattels seized and attached in accordance with this subchapter at public auction, after notice as in the case of sale of goods and chattels under execution process and shall, without delay, pay over the proceeds, thence arising to the Escheator for deposit in the General Fund. The sheriff shall be accountable, as in other cases, to the Escheator for money which by virtue of this section, shall come into the sheriff's hands.

(Code 1852, § 1594; Code 1915, § 130; Code 1935, § 119; 12 Del. C. 1953, § 1107; 57 Del. Laws, c. 741, § 48B; 60 Del. Laws, c. 292, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1108 Return of writ of seizure.

(a) The writ prescribed in § 1106 of this title shall be duly returned to the Escheator, with an inventory and appraisement of the goods and chattels seized and attached by virtue thereof, and an account of the sale.

(b) The Escheator shall immediately upon receiving the writ transmit a duly certified copy thereof, and of the return, inventory and appraisement and account of sale to the Secretary of Finance and the State Treasurer.

(Code 1852, §§ 1595, 1596; Code 1915, §§ 131, 132; Code 1935, §§ 120, 121; 12 Del. C. 1953, §§ 1108, 1109; 60 Del. Laws, c. 292, § 1.)

§ 1109 Lease, retention or sale of real property.

If, after hearing under this subchapter, the Court finds that real property has escheated to the State, the Escheator, subject to the approval of the Governor, may lease such property upon a reasonable rent therefor, or retain such property for the benefit and use of the State. If the real property is not leased or retained, the Escheator shall sell such property, at public auction, upon like public notice as required by law for the sale of lands under execution process.

(Code 1852, § 1597; Code 1915, § 133; Code 1935, § 122; 12 Del. C. 1953, § 1110; 60 Del. Laws, c. 292, § 1.)

§ 1110 Conveyance of realty to purchaser after sale.

Immediately after sale under § 1109 of this title, the Escheator shall certify the same to the Governor, who, on filing such certificate in the office of the Secretary of State, together with a receipt from the State Treasurer for the price of the lands, shall, by and under the great seal, grant the lands and tenements to the purchaser thereof, to hold to the purchaser, the purchaser's heirs and assigns forever.

(Code 1852, § 1602; Code 1915, § 138; Code 1935, § 127; 12 Del. C. 1953, § 1115; 57 Del. Laws, c. 741, § 48B; 60 Del. Laws, c. 292, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1111 Nature of title of purchaser of realty.

The title conveyed by virtue of a deed under § 1110 of this title shall be subject to any reversion, remainder, lease, rent, mortgage or encumbrance of the lands to which they were respectively subject prior to escheat as determined by the Court of Chancery at the hearing; in default of presentment at the hearing, such claims shall forever be barred.

(Code 1852, § 1603; Code 1915, § 139; Code 1935, § 128; 12 Del. C. 1953, § 1116; 60 Del. Laws, c. 292, § 1.)

§ 1112 Proceeds of sale.

The Escheator shall pay over the proceeds received from the sale or disposition of all escheated intestate property, real or personal, to the State Treasurer for deposit in the General Fund.

(60 Del. Laws, c. 292, § 1.)

§ 1113 Claims to proceeds of sale.

Any person who did not participate in or receive actual notice of the hearing provided by § 1104 of this title shall have the right within 2 years of the date of sale of any property under this subchapter to file a claim by way of petition in the Court of Chancery, to all or any portion of the escheated property. If such claim is established and allowed by the Court, such person shall be entitled to receive from the State Treasurer, under a warrant for the same signed by the Secretary of Finance, all such proceeds as the State shall have received on the sale of such property or portion thereof, after all charges thereon are deducted, or all escheated property, real or personal, still held by the State, subject to paying all costs of the escheat.

(Code 1852, §§ 1604, 1605; Code 1915, §§ 140, 141; Code 1935, §§ 129, 130; 12 Del. C. 1953, § 1117; 49 Del. Laws, c. 57, § 1; 57 Del. Laws, c. 741, § 48B; 60 Del. Laws, c. 292, § 1.)

§ 1114 Recovery of credits or property of the intestate not included in the Court's initial escheat order.

If any person, at the death of any intestate, shall be indebted to the intestate, or if any part of such estate, real or personal, was not mentioned and included in the Court's initial escheat order, be in the possession of any person, the same shall be recovered to the use of the State by such action as the case may require, in which proceedings the initial escheat order touching the estate of such intestate shall be admissible evidence to prove that the intestate died without heirs or known kindred.

(Code 1852, § 1606; Code 1915, § 142; Code 1935, § 131; 12 Del. C. 1953, § 1118; 60 Del. Laws, c. 292, § 1.)

§ 1115 Expenses of Escheator.

The Escheator may, from time to time, draw a warrant upon the State Treasurer for sums necessary to pay the expenses of the enforcement of this subchapter, which warrants, when approved by the Secretary of Finance, shall be paid by the Treasurer out of the General Fund of the State.

(Code 1935, § 133; 42 Del. Laws, c. 57, § 1; 12 Del. C. 1953, § 1120; 57 Del. Laws, c. 741, § 48B; 60 Del. Laws, c. 292, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1116 Conveyance of certain escheated real property previously owned by a religious body.

The Secretary of State shall convey to a properly organized corporation of this State whatever title the State may have in any real property which was formerly held by or for a religious body and which has or may have escheated provided that:

(1) The Secretary is satisfied that the grantee corporation is the proper successor to the body previously holding equitable or legal title to the property;

(2) A certified copy of the recorded certificate of incorporation of the grantee corporation is provided;

(3) Prior notice of any such proposed conveyance is given by registered mail to the record title holders where known; and

(4) Notice of such proposed conveyance is published in a newspaper of general circulation in the county where the property is situated each week for 3 weeks prior to the execution of the conveyance.

All expenses of such conveyance and notices shall be paid by the grantee corporation.

(Code 1852, § 1587; Code 1915, § 123; Code 1935, § 112; 42 Del. Laws, c. 57, § 1; 12 Del. C. 1953, § 1101; 49 Del. Laws, c. 51; 60 Del. Laws, c. 292, § 1; 70 Del. Laws, c. 186, § 1.)

Subchapter II
Abandoned or Unclaimed Property

§ 1130 Definitions.

As used in this subchapter:

"Banking organization" includes any organization, corporation or association organized and existing under Chapter 7, 15 or 17 of Title 5 or the corresponding provisions of statutes in effect prior to February 12, 1953, or any bank or credit union created under the laws of the United States or any state.

(12 Del. C. 1953, § 1130; 50 Del. Laws, c. 507, § 1; 67 Del. Laws, c. 267, § 3; 70 Del. Laws, c. 298, § 1; 70 Del. Laws, c. 327, § 49.)

§ 1131 Deposit to General Fund.

(a) Subject to limitations contained in § 6102(s) of Title 29, the State Escheator shall deposit into the General Fund all moneys or proceeds of property received pursuant to this subchapter.

(b) The payment of all claims, the right to which is established pursuant to this subchapter, shall be made from the General Fund upon voucher signed by the State Escheator.

(12 Del. C. 1953, § 1131; 50 Del. Laws, c. 507, § 1; 57 Del. Laws, c. 741, § 48B; 60 Del. Laws, c. 598, § 2; 79 Del. Laws, c. 79, § 29.)

§ 1132 [Reserved.]

§ 1140 Statutes of limitations not a bar.

The expiration of any period of time specified by law during which an action or proceeding may be commenced or enforced to secure payment of a claim for money or recovery of property shall not prevent any money or property from being deemed abandoned property as defined in this subchapter, nor affect any duty to file a report required by this subchapter or to pay or deliver to the State Escheator any such abandoned property, and shall not serve as a defense in any action or proceeding by or on behalf of the State Escheator to compel the filing of any report or the payment or delivery of any abandoned property required by this subchapter or to enforce or collect any penalty provided by this subchapter.

(12 Del. C. 1953, § 1140; 50 Del. Laws, c. 507, § 1.)

§ 1141 Confidentiality of records.

(a) *Confidentiality of unclaimed property owner information.* — The State Escheator shall maintain a public record of all names and last known addresses of the person or persons appearing to be entitled to abandoned property paid or delivered to the State Escheator

pursuant to this chapter. Other identifying information set forth in any report or record made or delivered to the State Escheator shall be retained by the State Escheator but shall be considered confidential and may be disclosed only in the discretion of the State Escheator. The State Escheator shall not reveal the amount of any abandoned property, except to a person who has presented satisfactory proof of an interest in or title to such property or except for purposes directly connected with the administration of this chapter.

(b) *Confidentiality of certain records provided by holders.* — Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for any officer or employee of the Department of Finance or the Department of State or for any other officer or employee of this State to disclose or make known in any manner to any person who is not a current officer or employee of this State the amount of abandoned or unclaimed property that has been reported to and received by the State Escheator or the Secretary of State or both by any holder, pursuant to this chapter, or to disclose the terms of or supporting documentation related to any annual filing, unclaimed property voluntary self-disclosure agreement, or settlement agreement resulting from the reporting of any unclaimed property pursuant to this chapter. This applies to all agreements entered into pursuant to this chapter, including past agreements.

For purposes of this section, the term "officer or employee" shall include present and former officers and employees, and any person or persons currently or formerly employed or retained by the State. In addition, for purposes of this section, the term "person" shall include a natural person, a corporation, a copartnership, a voluntary association and any other association or organization of individuals.

(c) Any violation of this section shall be a misdemeanor, punishable upon conviction by a fine not to exceed $1,000, or imprisonment not to exceed 6 months, or both. The Superior Court shall have exclusive original jurisdiction over such misdemeanor.

(12 Del. C. 1953, § 1141; 50 Del. Laws, c. 507, § 1; 79 Del. Laws, c. 2, § 1; 79 Del. Laws, c. 278, § 1.)

§ 1142 Publication of abandoned property by State Escheator.

(a) In the month of October of each year the State Escheator shall publish in a daily newspaper of this State a statement of abandoned or unclaimed property or funds paid to the Escheator during the 12 months ending July 1 next preceding such publication which shall not have been paid to claimants and which shall not have been previously advertised under the provisions of § 1161, § 1172 or § 1183 of this title.

(b) Such statement shall be in such form and classified in such manner as the State Escheator shall determine, except that names of persons appearing to be entitled to any such abandoned property shall be listed in alphabetical order within each such classification.

(c) Such statement shall set forth:

(1) The names and last known addresses of all persons appearing from the records in the State Escheator's office to be entitled to receive such abandoned property consisting of money not less than $10 in amount;

(2) The names and last known addresses of all persons appearing from the records in the State Escheator's office to be entitled to receive such abandoned property consisting of personal property other than money and which the State Escheator shall not have determined, as provided in § 1143 of this title, to be valueless or of such little value that a sale thereof would cost in excess of the probable proceeds therefrom;

(3) Where any such abandoned property consisted of personal property other than money and was converted into money pursuant to § 1143 of this title and such money amounts to $10 or more, the names and last known addresses of the persons appearing from the records in the State Escheator's office to be entitled to receive the same;

(4) Such other information as the State Escheator may determine; and

(5) A statement:

a. That a public record is maintained in the office of the State Escheator of all abandoned property in accordance with § 1141 of this title; and

b. That a claim for any such abandoned property should be filed with the State Escheator at the Escheator's office in the City of Wilmington.

(d) Notwithstanding the foregoing provisions of this section, the State Escheator may omit from such statement the name and last known address of any person where special circumstances make it desirable that such information be withheld.

(12 Del. C. 1953, § 1142; 50 Del. Laws, c. 507, § 1; 68 Del. Laws, c. 122, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 298, § 4.)

§ 1143 Sale of personal property by State Escheator.

(a) All abandoned property, other than money, delivered to the State Escheator pursuant to this subchapter may be sold or disposed of at public auction to the highest bidder or in such manner and at such times as the State Escheator, in the Escheator's discretion, shall determine to be in the best interest of the State. In the case of stocks, bonds or other securities, disposition may be made by sale through a registered broker on a recognized securities exchange or over the counter market or, if there is no ready market for such security, by negotiation or public auction.

(b) The proceeds from the sale of any such abandoned property, less all costs incurred in connection with such sale, shall be held in the place of such property and any claimant for abandoned property shall be entitled only to the money so received, less lawful service charges.

(c) The State Escheator shall not be liable in any action for any act made in good faith pursuant to this section.

(12 Del. C. 1953, § 1143; 50 Del. Laws, c. 507, § 1; 59 Del. Laws, c. 16, § 1; 67 Del. Laws, c. 245, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1144 Assumption of liability by the State; return of property erroneously paid to the State Escheator.

(a) The care and custody, subject only to the duty of conversion prescribed in § 1143 of this title, of all abandoned property paid to the State Escheator is assumed for the benefit of those entitled to receive the same and the State shall hold itself responsible for the payment of all claims established thereto pursuant to law, less any lawful deductions, which cannot be paid from the General Fund.

(b) Any person, court, copartnership, unincorporated association or corporation making a payment of abandoned property to the State Escheator shall immediately and thereafter be relieved and held harmless from any or all liability for the property so paid and no action shall be maintained against them or it for:

(1) The recovery of abandoned property paid to the State Escheator pursuant to this subchapter or for interest thereon subsequent to the date of the report of such abandoned property to the State Escheator pursuant to this subchapter; and

(2) Damages alleged to have resulted from any such payment.

(c) Nothing in this section shall be construed to relieve any person, court, copartnership, unincorporated association or corporation from liability for:

(1) Any property not paid to the State Escheator;

(2) Damages for negligence or the mishandling of funds or property prior to the time such funds or property are paid to the State Escheator.

(d) Whenever it appears to the satisfaction of the State Escheator that because of some mistake of fact, error in calculation or erroneous interpretation of a statute any person has paid or delivered to the State Escheator, pursuant to any provision of this subchapter, any moneys or other property not required by this subchapter to be so paid or delivered, the Escheator shall have power, during the 6 years immediately succeeding such erroneous payment or delivery, to refund or redeliver such moneys or other property to such person; provided that such moneys or property shall not have been paid or delivered to a claimant or otherwise disposed of in accordance with this subchapter. Any such cash refund shall be paid from the General Fund without the deduction of any service charge. The State Escheator shall not be liable for any interest or other charge for the money or property so refunded or redelivered.

(e) Whenever, because of some mistake of fact, error in calculation or erroneous interpretation of a statute, any person pays or delivers to the State Escheator any moneys or other property not required by this subchapter to be so paid or delivered, such moneys or other property shall, for the purposes of this subchapter, be deemed to be abandoned property, unless and until refunded or redelivered by the State Escheator to the person who paid or delivered the same.

(12 Del. C. 1953, § 1144; 50 Del. Laws, c. 507, § 1; 60 Del. Laws, c. 598, § 6; 70 Del. Laws, c. 186, § 1.)

§ 1145 Interest not to run after report of abandoned property.

Notwithstanding any other provision of law, no person entitled to or owner of abandoned property shall be entitled to receive interest on account of such abandoned property from and after the date a report of such abandoned property is made to the State Escheator pursuant to this subchapter whether or not the person was entitled to interest on such property prior to such date.

(12 Del. C. 1953, § 1145; 50 Del. Laws, c. 507, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1146 Claims for abandoned property paid to the State; procedure for determination of claims; appeals.

(a) Claim may be filed with the State Escheator for any abandoned property amounting to over $3 paid to the State Escheator pursuant to this subchapter.

(b) The State Escheator shall possess full and complete authority to determine all such claims and shall forthwith send written notice of such determination to the claimant. At any time within 4 months thereafter such claimant may apply for a hearing and determination of claim by the Tax Appeal Board. The procedure before the Tax Appeal Board for such hearings shall be the same as that provided for by § 329 of Title 30 and the Board shall have the same power to compel the attendance of witnesses and the production of evidence as is provided in § 330 of Title 30.

(c) Within 30 days after notice of a decision upon such hearing, the State Escheator or any claimant may appeal such decision to the Court of Chancery upon notice to all parties to the proceeding before the Tax Appeal Board and upon such other notice as the Court of Chancery may order.

(d) The Court of Chancery may make such rules as it may deem proper for the perfection, hearing and determination of such appeals.

(12 Del. C. 1953, § 1146; 50 Del. Laws, c. 507, § 1; 57 Del. Laws, c. 718, § 18; 57 Del. Laws, c. 741, § 48C; 70 Del. Laws, c. 186, § 1.)

§ 1147 Payment by State Escheator.

Any claim which is allowed by, or ordered to be paid by, the State Escheator pursuant to § 1146 of this title, together with such costs and disbursements as may be allowed by the Court or the Tax Appeal Board, shall be paid out of the General Fund and the State Escheator shall not be liable in any action for any claim paid in good faith.

(12 Del. C. 1953, § 1147; 50 Del. Laws, c. 507, § 1; 57 Del. Laws, c. 741, § 48C; 60 Del. Laws, c. 598, §§ 4, 6; 70 Del. Laws, c. 186, § 1.)

§ 1148 Verification.

Any report required to be verified by this subchapter shall be verified if made by a person, by such person, if made by a partnership, by 1 of the members thereof, if made by an unincorporated association or private corporation, by 1 principal officer thereof if made by a public corporation, by the chief fiscal officer thereof and if made by a court, by a judge or the clerk of such court.

(12 Del. C. 1953, § 1148; 50 Del. Laws, c. 507, § 1.)

§ 1149 Payment for publication.

Any amount paid by a person to a newspaper or newspapers for any publication of names as required by this subchapter may be charged equally against all abandoned property held or owing by such person at the time of such publication, except abandoned property of individual amounts of less than $25.

(12 Del. C. 1953, § 1149; 50 Del. Laws, c. 507, § 1.)

§ 1150 Designation of newspapers.

Any notice required by this subchapter shall be published in such newspapers as shall be designated by the State Escheator.

(12 Del. C. 1953, § 1150; 50 Del. Laws, c. 507, § 1.)

§ 1151 Waiver of publication.

The State Escheator may waive the publication of any notice required by this subchapter, except a notice required by § 1142 of this title, whenever in the Escheator's opinion the cost of publishing such notice would be unreasonable in relation to the amount of abandoned property.

(12 Del. C. 1953, § 1151; 50 Del. Laws, c. 507, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1152 Penalties and interest.

Repealed by 73 Del. Laws, c. 417, § 3, effective July 22, 2002, and effective for reports filed or required to be filed on or after July 22, 2002.

§ 1153 Penalty for false oath.

The making of a wilful false oath in any report required under this subchapter shall be perjury and punishable as such according to law.

(12 Del. C. 1953, § 1153; 50 Del. Laws, c. 507, § 1.)

§ 1154 State Escheator to make regulations.

The State Escheator may make such rules and regulations as the Escheator may deem necessary to enforce this subchapter.

(12 Del. C. 1953, § 1154; 50 Del. Laws, c. 507, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1155 Examination of records.

The State Escheator may at reasonable times and upon reasonable notice examine the records of any person or business association or organization to determine whether the person has complied with any provision of this chapter and may by summons require the attendance of any person having knowledge in the premises, and may take testimony and require proof material for the investigation, with the power to administer oaths to such person or persons; provided, however, that the State Bank Commissioner shall act on behalf of the State Escheator with regard to examinations of banking organizations. The State Escheator is authorized to reimburse the State Bank Commissioner for the cost of examinations undertaken on the Commissioner's behalf and may pay for such reimbursement out of custodian accounts held for the State Escheator. The State Escheator may disclose such information as the Escheator possesses to the State Bank Commissioner as may aid in the Commissioner's examination of any banking organization and may disclose any information received from the State Bank Commissioner as may be required:

(1) In conjunction with enforcement proceedings; or

(2) In summary form to the extent necessary for the proper disposition of the property.

Where the records of the holder available for the periods subject to this chapter are insufficient to permit the preparation of a report, the State Escheator may require the holder to report and pay to the State the amount of abandoned or unclaimed property that should have been but was not reported that the State Escheator reasonably estimates to be due and owing on the basis of any available records of the holder or by any other reasonable method of estimation.

(67 Del. Laws, c. 267, § 2; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 417, § 4.)

§ 1156 Internal review procedure; Court of Chancery — Jurisdiction.

(a) If, after examining any report required by this chapter and filed by or on behalf of a holder (as defined in § 1198 of this title) or after the conclusion of an examination of a holder, the Abandoned Property Audit Manager (hereinafter the "Audit Manager") determines that a holder has underreported abandoned or unclaimed property due and owing under this chapter, the Audit Manager shall mail a statement of findings and request for payment to the holder that filed, or on whose behalf the report was filed, or that was the subject of an examination. Sixty days after the date on which the Audit Manager mails a statement of findings and request for payment, it shall

constitute the Audit Manager's final determination of the amount of the holder's liability, including interest and penalties, if any, for the abandoned or unclaimed property specified in the statement of findings and request for payment, excepting only the property types and amounts included in the statement of findings and request for payment as to which the holder files a timely protest with the Audit Manager pursuant to subsection (b) of this section. The State Escheator may thereafter enforce any final determination in accordance with subsection (k) of this section.

(b) Within 60 days after the date of the mailing of a statement of findings and request for payment under subsection (a) of this section the holder may file with the Audit Manager a written protest of the statement of findings and request for payment in which the holder shall set forth the property type or types and amount of abandoned or unclaimed property protested, and the specific grounds upon which the protest is based. The protest is intended to allow the holder to have its objections to the final request for payment reconsidered in the first instance internally within the Department of Finance by the Audit Manager as a means of expediting resolution of any dispute. If the holder elects to file a protest and to have its objections to the final request for payment reconsidered internally within the Department of Finance, as provided by subsections (b) through (k) of this section, the holder shall exhaust these administrative remedies before initiating any proceeding in any Delaware court of competent jurisdiction.

(c) The only matters that the Audit Manager shall reconsider on a protest are those property types, amounts and issues related to the examination that are set out in the written protest of the holder. The holder shall remit with the protest any abandoned or unclaimed property liability attributable to property types for which payment is requested in the statement of findings and request for payment that are not protested and shall also remit with the protest the amount of abandoned or unclaimed property liability, if any, that the holder believes to be due and owing with respect to the property types or liability that are the subject of the protest. The pendency of a protest shall not prevent the accrual of interest on any protested amount finally found to be due and owing. Holders may remit the entire amount in the statement of findings and request for payment in order to prevent the accrual of additional interest without waiving any rights for reconsideration or review of protested amounts under subsections (a) through (j) of this section, and such remittance shall be subject to refund, without interest, to the extent not finally determined to be due and owing. Failure to remit amounts required by this subsection shall result in termination of the protest and the State Escheator may thereafter enforce any final determination in accordance with subsection (k) of this section.

(d) The holder may submit additional documentation and written submissions to the Audit Manager in support of the protest, provided, however, that such additional documentation and written submissions shall be made no later than 30 days following receipt of the holder's protest. The Audit Manager may convene meetings with the holder to facilitate review of the statement of findings and request for payment and the protest thereof.

(e) The Audit Manager shall, within 60 days of the receipt of the holder's protest, or if additional documentation is submitted, no later than 90 days after the receipt of the holder's protest, make a written determination on the protest setting forth the Audit Manager's basis of any determination that is adverse, in whole or in part, to the holder, provided, however, that the time periods set forth in this subsection shall be subject to extension by the Audit Manager for good cause, but in no event shall any extension hereunder exceed 540 days from the day the Audit Manager received the holder's protest. The Audit Manager shall mail the written determination on the protest to the holder by certified or registered mail at the address set forth in the holder's protest.

(f) Thirty days after the date on which it is mailed, the determination by the Audit Manager of a holder's protest shall be final, unless within that time a holder files a notice of appeal with the Secretary of Finance. If the holder does not file a timely notice of appeal with the Secretary of Finance, the State Escheator may enforce any final determination in accordance with subsection (k) of this section. The notice of appeal shall set forth the holder's name, mailing address, telephone number, the name of the person or persons representing the holder, the mailing address and telephone number of such persons and the matters in which the holder asserts that the Audit Manager erred in the determination on the protest of the holder.

(g) After receipt of a holder's written notice of appeal, the Secretary of Finance shall as soon as practicable, but in no event later than 90 days after receipt, appoint a person who is not otherwise currently employed by the Department of Finance to act as an independent reviewer to consider the appeal of the Audit Manager's findings and make a written report to the Secretary of Finance. The independent reviewer shall be a former member of the Delaware judiciary, an individual who has been previously appointed and served as a master of any Delaware court, or an attorney licensed in the State who is qualified by experience or training to serve.

(h) The appeal to the independent reviewer is de novo on the record. The record on the appeal to the independent reviewer shall be based solely upon documents submitted during the course of the examination to the Audit Manager or a person who conducted an examination on the Audit Manager's behalf, other nonprivileged materials prepared by or for the Audit Manager during the conduct of an examination, expert reports submitted to the Audit Manager by the person filing a protest, other nonprivileged materials and expert reports prepared by or for the Audit Manager during the consideration of a protest.

(i) The independent reviewer shall hold an oral hearing on the appeal, which shall be held, absent agreement of the parties, within 90 days after the date on which the Secretary of Finance appoints the independent reviewer pursuant to subsection (g) of this section. At least 5 days prior to the oral hearing date, or at such other time ordered by the independent reviewer, the holder and Audit Manager shall each submit to the independent reviewer and each other a brief containing argument and referencing supporting documentation from the record before the Audit Manager or an explanation as to why such supporting documentation is not available. A decision in writing by the independent reviewer setting forth findings of fact and conclusions of law shall be submitted by the independent reviewer to the Secretary

of Finance within 90 days from the date of the conclusion of the oral hearing or the completion of any post-hearing briefing requested by the independent reviewer, whichever is later. The independent reviewer shall assess costs, including the independent reviewer's fee, against a party or between the parties in the independent reviewer's discretion.

(j) The Secretary of Finance may adopt or reject the independent reviewer's determination in whole or in part. If the Secretary of Finance modifies or rejects, in whole or in part, the determination of the independent reviewer, the Secretary of Finance shall issue a decision in writing setting forth the basis of any rejection or modification of the determination of the independent reviewer. Within 60 days of the receipt by the Secretary of Finance of the independent reviewer's decision, a copy of the Secretary of Finance's determination, if any along with, the independent reviewer's written decision shall be sent to the holder by certified or registered mail at the address set forth in the holder's notice of appeal. The determination of the Secretary of Finance as to those liabilities that are the subject of the appeal shall be final as to the Department of Finance, and amounts determined to be due and owing shall be subject to collection by the State Escheator under subsection (k) of this section below if unpaid after the review. The holder may, within 30 days after the Secretary's written decision was mailed, appeal the Secretary's determination to the Court of Chancery. The Court's review shall be limited to whether the Secretary's determination was supported by substantial evidence on the record. If the Court determines that the record is insufficient for its review, it shall remand the case to the agency for further proceedings on the record.

(k) If any person refuses to pay or deliver property, including penalty or interest thereon, to the State Escheator as required by this chapter, the State Escheator may bring an action in the Court of Chancery in the county wherein the holder resides or has a principal place of business (or if none such exists, in New Castle County) to enforce such payment or delivery.

(l) Whenever a holder disputes whether reasonable cause exists for abating penalty or interest determined by the State Escheator to be due under this chapter, such holder may bring an action in the Court of Chancery for the purpose of showing an abuse of discretion by the State Escheator in making the determination that penalty or interest was due.

(68 Del. Laws, c. 122, § 7; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 417, § 1.)

§ 1157 Presumption of abandonment of personal property held by federal government.

(a) All tangible personal property or intangible personal property, including choses in action in amounts certain, and all debts owed or entrusted funds or other property held by the federal government, or any federal agency, or any officer or appointee thereof, shall be presumed abandoned in this State if the last known address of the owner of the property is in this State and the property has remained unclaimed for 5 years.

(b) This section shall apply to all abandoned property held by the federal government, or any federal agency, or any officer or any appointee thereof, as of July 8, 1991, or at any time thereafter, regardless of when such property became presumptively abandoned.

(68 Del. Laws, c. 122, § 14.)

§ 1158 Limitations.

(a) The State Escheator, as soon as is practicable after receipt of any report required by this chapter, shall examine it to determine if it is correct. If the Escheator finds that the report is not correct, the Escheator shall notify the holder in writing by certified or registered mail of the amount of any underreported abandoned or unclaimed property due and owing. Notice of the proposed deficiency in payment shall be mailed to the holder within 3 years from the date the report was filed. A report filed before the due date shall be deemed to have been filed on the due date for purposes of this section. No suit to enforce the payment of a deficiency in payment of abandoned or unclaimed property shall be brought under § 1156 of this title against a holder unless the notice of deficiency in payment is mailed to the holder within the 3-year period provided in this subsection. In the case of an omission of abandoned or unclaimed property from a report having a value in excess of 25% of the amount of abandoned or unclaimed property disclosed in a report, a notice of deficiency in payment may be mailed to the holder within 6 years from the date the report was filed.

(b) If no report is filed, or if a false or fraudulent report is filed with the intent to evade the obligation to pay over abandoned property, a notice of deficiency in payment may be mailed to the holder at any time.

(c) If the holder shall file an amended report changing or correcting the amount of any abandoned or unclaimed property previously reported, a notice of deficiency in payment may be mailed to the holder at any time within 2 years from the date the amended report is filed.

(d) Where, before the expiration of time prescribed in this section for the mailing of a notice of deficiency in payment, both the Escheator and the holder have consented in writing to the extension of the time within which a notice of deficiency in payment may be mailed, a notice of deficiency may be mailed at any time prior to the expiration of the time agreed upon. The time agreed upon may be extended by subsequent agreements in writing made before the expiration of the time previously agreed upon.

(e) The running of the period of limitations provided for in this section for the mailing of a notice of deficiency in payment shall, in a case under Title 11 of the United States Code, be suspended for the period during which the Escheator is prohibited by reason of such case from mailing a deficiency in payment plus 60 days.

(73 Del. Laws, c. 417, § 1.)

§ 1159 Penalties.

(a) In the case of the failure to file any report required by this chapter on or before the due date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not wilful neglect, there

shall be added to the amount of abandoned or unclaimed property required to be shown on the report the lesser of 5% of the amount thereof if the failure is not for more than 1 month, with an additional 5% for each additional month or fraction thereof during which such failure continues, not to exceed 50% in the aggregate or a civil penalty of $100 for each day the report is withheld or the duty is not performed, but not more than $5,000.

(b) In the case of the failure to pay the amount of abandoned or unclaimed property required to be shown on any report required by this chapter on or before the due date prescribed for the payment of such property (determined with regard to any extension of time for payment), unless it is shown that such failure is due to reasonable cause and not wilful neglect, there shall be added to the amount of such property required to be shown on any report 0.5% of the amount of such property if the failure is for not more than 1 month, with an additional 0.5% for each additional month or fraction thereof during which such failure continues, not to exceed 25% in the aggregate. For purposes of this subsection, the amount of property shown on any report shall be reduced by the amount of any property which is paid on or before the beginning of the month for which a calculation is made under this subsection.

(c) If any part of a deficiency in payment of abandoned or unclaimed property required to be shown on any report is due to fraud, there shall be added to the property required to be shown on the report an amount equal to 75% of the portion of the deficiency in payment which is attributable to fraud. The penalty prescribed by this section shall apply only in cases where a report of abandoned or unclaimed property is filed and only to that part of the deficiency in payment the Escheator establishes is attributable to fraud.

(d) [Repealed.]

(12 Del. C. 1953, § 1207; 58 Del. Laws, c. 426, § 12; 63 Del. Laws, c. 311, § 3; 68 Del. Laws, c. 122, § 6; 73 Del. Laws, c. 417, § 2; 79 Del. Laws, c. 278, § 1.)

§ 1160 Abandoned property defined.

(a) The following property shall be deemed abandoned property:

(1) Any legacy, residue of intestate personal estate, distributive share or trust fund paid into the Court of Chancery by any executor, administrator or trustee because the person entitled thereto was absent from the State, unknown or incompetent to receive the same or because the shares of the persons entitled to receive the same were unknown and as to which no action has been taken in any proceeding in the Court of Chancery to recover the same within a period of 5 years; provided, however, that if the Chancellor or Vice-Chancellor shall be of the opinion that the person entitled to any funds deposited in or held by the Court of Chancery is living and intends to claim such funds when able, but is prevented from doing so by reasons beyond the person's control, the Chancellor or Vice-Chancellor shall so certify to the State Escheator in lieu of the report otherwise required by this subchapter and such funds shall not be deemed abandoned in any year in which such certification is made;

(2) Any money or other property held by the Court of Chancery, on account of the receivership or creditors' composition of any person or organization, for distribution to a creditor, owner or shareholder and as to which no claim or request for payment has been made by the person appearing to be entitled thereto within 5 years after any order discharging the receiver or trustee; provided, however, that if the Chancellor or Vice-Chancellor shall be of the opinion that the person entitled to any funds deposited in or held by the Court of Chancery is living and intends to claim such funds when able, but is prevented from doing so by reasons beyond the person's control, the Chancellor or Vice-Chancellor shall so certify to the State Escheator in lieu of the report otherwise required by this subchapter and such funds shall not be deemed abandoned in any year in which such certification is made.

(b) Any abandoned property held or owing by any court or by the clerk of any court to which or to whom the right to receive the same is established to the satisfaction of such court or clerk shall cease to be abandoned.

(c) Any abandoned property defined by this section which, under this section, would have become abandoned prior to January 1, 1956, shall be deemed abandoned on January 1, 1956.

(12 Del. C. 1953, § 1160; 50 Del. Laws, c. 507, § 1; 68 Del. Laws, c. 122, §§ 8, 9; 70 Del. Laws, c. 186, § 1.)

§ 1161 Publication of list of abandoned property.

(a) On or before February 1 in each year, any court or any clerk of a court having abandoned property in the court's or the clerk's possession shall cause to be published a notice entitled:

"NOTICE OF NAMES OF PERSONS APPEARING AS OWNERS OF CERTAIN UNCLAIMED PROPERTY HELD BY (name of court or title of officer)."

(b) As to all abandoned property payable in New Castle County, such notice shall be published at least once in a daily newspaper published in said County. As to all abandoned property payable in Kent County or Sussex County, such notice shall be published at least once in a newspaper published at least weekly in the County in which said abandoned property is payable.

(c) Such notice shall be classified as the State Escheator shall prescribe and shall set forth:

(1) The names and last known addresses, in alphabetical order, of all persons appearing to be entitled to any such abandoned property as of January 1 next preceding amounting to $25 or more, except the names of persons appearing to be the owners of abandoned property which since such date has ceased to be abandoned. With the consent of the State Escheator, the name and last known address of any person may be omitted from such notice where special circumstances make it desirable that such information be withheld;

(2) Such other information as the State Escheator may require; and

(3) A statement:

a. That a list of the names contained in such notice is on file and open to public inspection at a place designated therein;

b. That such unclaimed moneys or other property will be paid or delivered by the court or officer on or before March 31 to persons establishing to the court's or officer's satisfaction their right to receive the same; and

c. That in the succeeding month of April and on or before April 10, such unclaimed moneys or other property still remaining will be paid or delivered to the State Escheator and that the court or officer shall thereupon cease to be liable therefor.

(12 Del. C. 1953, § 1161; 50 Del. Laws, c. 507, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1162 Payment of abandoned property; presumption as to last known address.

(a) In such succeeding month of April, and on or before April 10, the Court of Chancery shall pay or deliver to the State Escheator all property held by it and which was abandoned as specified in § 1160(a)(1) of this title, as of January 1 next preceding.

(b) In such succeeding month of April, and on or before April 10, the Court of Chancery shall pay or deliver to the State Escheator all abandoned property specified in § 1160(a)(2) of this title, which was so abandoned as of January 1 next preceding.

(c) With respect to items of property of a value of less than $25 deemed abandoned under § 1160 of this title, the last known address of any person appearing to be entitled to such property shall be presumed to be an address within this State. This presumption may be rebutted by filing a claim with the State Escheator pursuant to § 1146 of this title.

(12 Del. C. 1953, § 1162; 50 Del. Laws, c. 507, § 1; 58 Del. Laws, c. 451, § 1.)

§ 1163 Report to accompany payment.

Each such payment of abandoned property, pursuant to § 1162 of this title, shall be accompanied by a verified written report classified as the State Escheator shall prescribe, setting forth:

(1) The names and last known addresses, if any, of the persons appearing to be entitled to receive any such abandoned property of the value of $25 or more;

(2) The title of any proceeding relating to such abandoned property; and

(3) Such other identifying information as the State Escheator may require.

(12 Del. C. 1953, § 1163; 50 Del. Laws, c. 507, § 1; 58 Del. Laws, c. 451, § 2.)

§ 1170 Abandoned property defined.

(a) The following unclaimed property held or owing by banking organizations shall be deemed abandoned property:

(1) Any amounts due on deposits or any amounts to which a shareholder of a savings and loan association, building and loan association or credit union is entitled held or owing by a banking organization which shall have remained unclaimed for 5 years by the person or persons appearing to be entitled thereto, including any interest or dividends credited thereon, excepting:

a. Any such amount which has been reduced or increased, exclusive of dividend or interest payment, within 5 years; or

b. Any such amount which is represented by a passbook not in the possession of the banking organization which has been presented for entry of dividend or interest credit within 5 years; or

c. Any such amount with respect to which the banking organization has on file written evidence received within 5 years that the person or persons appearing to be entitled to such amounts had knowledge thereof; or

d. Any such amount payable only at or by a branch office located in a foreign country or payable in currency other than United States currency; or

e. Any amount held or owing by the banking organization as agent or as trustee of an express trust (active or passive) for the purpose of making payment to holders of or in respect of stocks, bonds or other securities of a governmental or other public issuer or of a corporation, association or joint stock company, other than a corporation, association or joint stock company which shall have discontinued the conduct of its business or the corporate existence of which shall have terminated, without the right to receive such amount having passed to a successor or successors.

(2) Any amount held or owing by a banking organization for the payment of a negotiable instrument or a certified check whether negotiable or not on which such organization is directly liable, which instrument shall have been outstanding for more than 5 years from the date it was payable or from the date of its issuance, if payable on demand; provided, however, that this paragraph shall not apply:

a. To any negotiable instrument payable outside the continental limits of the United States; or

b. To any instrument payable in currency other than United States currency; or

c. To any negotiable instrument issued to pay out any amount held or owing by the banking organization as agent or as trustee of an express trust (active or passive) for the purpose of making payment to holders of or in respect of stocks, bonds or other securities of a governmental or other public issuer or of a corporation, association or joint stock company which shall have discontinued the conduct of its business or the corporate existence of which shall have terminated without the right to receive such amount having passed to a successor or successors.

(3) Any surplus amounts arising from a sale by a banking organization of the contents of a safe or box, pursuant to law.

(4) Any amount representing a dividend or other payment received by a banking organization or its nominee as the record holder of any stock, bond or other security of any corporation, association or joint stock company to which amount an unknown person (except a person entitled to such dividend or other payment upon the surrender of other outstanding securities) is entitled and which shall have remained unclaimed by the person entitled thereto for 5 years after receipt thereof by such banking organization or its nominee.

(5) Any amount which shall have become payable by a banking organization (other than a foreign banking corporation) to a holder or owner of its capital stock and which shall have remained unclaimed for 5 years by the person or persons appearing to be entitled thereto.

(b) Any abandoned property held or owing by a banking organization to which the right to receive the same is established to the satisfaction of such banking organization shall cease to be deemed abandoned.

(c) Any abandoned property defined by this section which, under this section, would have become abandoned prior to June 30, 1956, shall be deemed abandoned on June 30, 1956.

(12 Del. C. 1953, § 1170; 50 Del. Laws, c. 507, § 1; 65 Del. Laws, c. 140, § 1; 66 Del. Laws, c. 379, § 1.)

§ 1171 Annual report of abandoned property.

(a) On or before November 10 in each year every banking organization shall make a verified written report to the State Escheator which shall contain a true and accurate statement, as of June 30 next preceding, of all abandoned property specified in § 1170 of this title, held owing by it.

(b) Such report shall, with respect to amounts specified in § 1170(a)(1) of this title which are abandoned property, set forth:

(1) The name and last known address, if any, of the person or persons appearing from the records of such banking organization to be the owner of any such abandoned property;

(2) The amount appearing from such records to be due such person or persons;

(3) The date of the last transaction with respect to such abandoned property if such date is subsequent to December 31, 1909;

(4) The nature and identifying number, if any, of such abandoned property; and

(5) Such other identifying information as the State Escheator may require.

(c) Such report shall, with respect to amounts specified in § 1170(a)(2) of this title which are abandoned property, set forth:

(1) The name and last known address, if any, of the person or persons appearing from the records of such banking organization to be entitled to receive such abandoned property;

(2) A description of such abandoned property including identifying numbers, if any, and the amount appearing from such records to be due or payable;

(3) The amount of any interest or other increment due thereon;

(4) The date such abandoned property was payable or demandable;

(5) The amount and identifying number of any such instrument where the payee thereof is unknown to the banking organization; and

(6) Such other identifying information as the State Escheator may require.

(d) Such report shall, with respect to amounts specified in § 1170(a)(3) of this title which are abandoned property, set forth:

(1) The name and last known address, if any, of the person or persons appearing from the records of such banking organization to be the owner of any such abandoned property;

(2) The articles sold and price obtained therefor;

(3) Such other information as the State Escheator may require.

(e) Such report shall, with respect to amounts specified in § 1170(a)(4) of this title which are abandoned property, set forth:

(1) The name and last known address, if any, of the person or persons appearing from the records of such banking organization to be the owner of any such abandoned property;

(2) The amount appearing from such records to be due such person or persons;

(3) The date when such property was received by the banking organization and the date when it became payable to the owner;

(4) A description of the stock or security on account of which such property was received;

(5) Such other identifying information as the State Escheator may require.

(f) Such report shall, with respect to amounts specified in § 1170(a)(5) of this title which are abandoned property, set forth:

(1) The name and last known address, if any, of the person or persons appearing from the records of such banking organization to be the owner of any such abandoned property;

(2) The amount appearing from such records to be due such person or persons;

(3) The date when such property became payable to the said owner;

(4) A description of the capital stock on account of which the said property is payable; and

(5) Such other identifying information as the State Escheator may require.

(g) Such report shall be in such form as the State Escheator may prescribe. All names of persons appearing in the section of such report relating to deposits, appearing to be the owners thereof, shall be listed in alphabetical order. Abandoned property other than deposits listed

in such report shall be classified in such manner as the State Escheator may prescribe and names of persons appearing to be entitled to such abandoned property appearing in such report shall be listed alphabetically within each such classification.

(h) In case any banking organization shall on June 30 in any year neither hold nor owe any abandoned property specified in § 1170 of this title, it shall on or before November 10 next succeeding make a verified written report to the State Escheator so stating.

(12 Del. C. 1953, § 1171; 50 Del. Laws, c. 507, § 1; 50 Del. Laws, c. 628, § 1; 77 Del. Laws, c. 417, § 5.)

§ 1172 Publication of list of abandoned property.

(a) A minimum of 60 days prior to making a report of abandoned property and remitting payment pursuant to §§ 1171 and 1173 of this title, such banking organization shall cause to be published a notice entitled:

"NOTICE OF NAMES OF PERSONS APPEARING AS OWNERS OF CERTAIN UNCLAIMED PROPERTY HELD BY (name of banking organization)."

(b) For all abandoned property payable in New Castle County, such notice shall be published at least twice in a daily newspaper published in said County. For all abandoned property payable in Kent County or Sussex County, such notice shall be published at least once in a newspaper published at least weekly in the County in which said abandoned property is payable.

(c) Such notice shall, in accordance with the classification prescribed by the State Escheator for the report pursuant to § 1171 of this title, set forth:

(1) The names and last known addresses, which were in such report, of all persons appearing to be entitled to any such abandoned property amounting to $25 or more; provided, however, that with the consent of the State Escheator the name and last known address of any person may be omitted from such notice where special circumstances make it desirable that such information be withheld. Such names shall be listed in alphabetical order. If, however, such banking organization has reported abandoned property payable in more than 1 county, the names shall be listed alphabetically for each such county and such notice shall include only the names of the persons appearing to be entitled to abandoned property payable in such county;

(2) Such other information as the State Escheator may require; and

(3) A statement:

a. That such unclaimed moneys or other property will be paid or delivered by it on or before the succeeding October 31 to persons establishing to its satisfaction their right to receive the same; and

b. That in the succeeding month of November, and on or before November 10, such unclaimed moneys or other property still remaining will be paid or delivered to the State Escheator and that it shall thereupon cease to be liable therefor.

(12 Del. C. 1953, § 1172; 50 Del. Laws, c. 507, § 1; 77 Del. Laws, c. 417, §§ 6, 7.)

§ 1173 Payment of abandoned property.

(a) In such succeeding month of November, and on or before November 10, every banking organization shall pay or deliver to the State Escheator all abandoned property specified in such report, excepting such abandoned property as since the date of such report shall have ceased to be abandoned.

(b) Such payment shall be accompanied by a statement setting forth such information as the State Escheator may require relative to such abandoned property as shall have ceased to be abandoned.

(12 Del. C. 1953, § 1173; 50 Del. Laws, c. 507, § 1.)

§ 1174 Abandoned property held by the State Bank Commissioner after receivership.

(a) All amounts held by the State Bank Commissioner as receiver of a banking organization, pursuant to § 131 of Title 5, which shall be payable to depositors of such banking organization and which shall not have been claimed and paid within 4 years after receipt by the State Bank Commissioner, shall be deemed abandoned property.

(b) Any such abandoned property held by the State Bank Commissioner to which the right to receive the same is established while in the Commissioner's hands shall cease to be deemed abandoned.

(12 Del. C. 1953, § 1174; 50 Del. Laws, c. 507, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1175 Payment of abandoned property after receivership.

(a) Not later than February 1 in each year the State Bank Commissioner shall pay to the State Escheator all such abandoned property held by the Commissioner which shall have become abandoned property at any time prior to the July 1 next preceding, excepting such abandoned property as since such July 1 shall have ceased to be abandoned.

(b) Such payment shall be accompanied by a statement signed by the State Bank Commissioner setting forth the name and last known address of and the amount owing to each person appearing to be the owner of any such abandoned property or, if the name is unknown, the nature and identifying number of the indebtedness and the name of the banking organization or foreign banking corporation from which such abandoned property was received together with such other identifying information as the State Escheator may require.

(12 Del. C. 1953, § 1175; 50 Del. Laws, c. 507, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1176 Reimbursement for instruments paid.

Any banking organization which has paid to the State Escheator abandoned property held or owing for the payment of a negotiable instrument or a certified check may make payment to the person entitled thereto, upon presentation of the instrument by such person, and shall thereby be entitled to reimbursement of the amount paid to the State Escheator. Any issuer of money orders and traveler's checks who has paid to the State Escheator abandoned property held or owing for the payment of a money order or traveler's check may make payment to the person entitled thereto and shall thereby be entitled to reimbursement of the amount paid to the State Escheator upon proof of such payment in the form of the paid instrument, or in the absence of the paid instrument, the agreement of the issuer to hold harmless and indemnify the State and its State Escheator from any and all claims with regard to such instrument. Such reimbursement shall be made by the State Escheator after audit of a claim of the banking organization without the deduction of any service or other charge.

(12 Del. C. 1953, § 1176; 50 Del. Laws, c. 507, § 1; 58 Del. Laws, c. 275, § 2.)

§ 1177 Abandoned property reporting outreach program [Sunsets on July 1, 2016, by operation of 78 Del. Laws, c. 317, § 3]

(a) Notwithstanding any other provision of this title or Chapter 23 of Title 29, the Secretary of State is authorized to resolve and compromise claims for abandoned property otherwise owing to the State Escheator pursuant to this chapter, provided that such holders must voluntarily disclose to the Secretary of State such abandoned property on or before the dates provided in this section. The Secretary of State shall possess full and complete authority to determine and resolve all such claims consistent with this chapter and exercise such authorities as are granted to the State Escheator pursuant to this chapter except that any unclaimed property disclosure agreement accepted by the Secretary of State shall be deemed as waiving the right of the Secretary of State and the State Escheator to seek payment of any amounts of property pursuant to § 1156 or § 1158 of this title with respect to the abandoned property voluntarily disclosed by the holder in the agreement, except in circumstances where there is evidence of fraud or wilful misrepresentation as to any such voluntary disclosure by the holder or those acting on the holder's behalf. In the event the Secretary is unable to resolve such claims by agreement, the Secretary of State may refer the resolution of such claims to the State Escheator at any time. The care and custody of all property paid pursuant to this section is assumed for the benefit of those entitled to receive the same and the State shall have all the responsibilities, duties, and obligations as if such property were recovered by the State Escheator. The Secretary of State may make such rules and regulations as deemed necessary to enforce this section.

(b) The Secretary of State may not initiate an examination of records or an investigation pursuant to § 1155 of this title, or seek payment of any amounts of property pursuant to § 1156 or § 1158 of this title, as to any calendar year prior to:

(1) 1996, with respect to any holder that has indicated in writing its intent to enter into an unclaimed property voluntary disclosure agreement by completing, executing and delivering, on or before June 30, 2013, to the Secretary of State such form as is acceptable to the Secretary of State, and who enters an unclaimed property voluntary disclosure agreement and makes payment in full or enters into a payment plan no later than June 30, 2015; or

(2) 1993, with respect to any holder that has indicated in writing its intent to enter into an unclaimed property voluntary disclosure agreement by completing, executing and delivering, after June 30, 2013, and on or before September 30, 2014, to the Secretary of State such form as is acceptable to the Secretary of State, and who enters an unclaimed property voluntary disclosure agreement and makes payment in full or enters into a payment plan on or before June 30, 2016.

(c) The Secretary of State shall have no authority to accept a notice in writing of intent to enter into an unclaimed property voluntary disclosure agreement after September 30, 2014, and shall have no authority to enter an unclaimed property voluntary self-disclosure agreement with a holder or otherwise receive or seek payment of any amounts of abandoned property after June 30, 2016.

(d) Notwithstanding any other provision of this section or of this chapter, the Secretary of State shall have no authority to enter an unclaimed property voluntary self-disclosure agreement with or otherwise receive or seek payment of any amounts of abandoned property from:

(1) Those holders that have indicated in writing their intent to enter into an unclaimed property voluntary disclosure agreement by completing, executing and delivering, on or before June 30, 2012, the appropriate form promulgated by the State Escheator;

(2) Those holders that have entered a voluntary self-disclosure agreement with the State Escheator on or before June 30, 2012, provided that the Secretary of State shall be permitted to enter an unclaimed property voluntary disclosure agreement with any holder with respect to property types or periods or both property types and periods that were not included in a voluntary self-disclosure agreement executed prior to June 30, 2012, or with respect to the holder, its subsidiaries or related entities that were not included in a voluntary self-disclosure agreement executed prior to June 30, 2012;

(3) Those holders to which a notice of examination has been mailed by the State Escheator; and

(4) Those holders that the Secretary of State has previously referred to the State Escheator.

(e) Each of the holders described in paragraph (d)(1) or (d)(2) of this section shall be accorded the benefit of the same deadlines established in subsection (b) of this section, but the State Escheator shall retain authority over all voluntary self-disclosure agreements so described.

(f) Unless referred by the Secretary of State pursuant to subsection (a) of this section, the State Escheator shall not conduct, prior to July 1, 2016, any examination of records or an investigation pursuant to § 1155 of this title of any holder who has indicated in writing

its intent to enter into an unclaimed property voluntary disclosure agreement by completing, executing and delivering to the Secretary of State, on or before September 30, 2014, such form as is acceptable to the Secretary of State, unless such holder's participation is prohibited by subsection (d) of this section.

(78 Del. Laws, c. 317, § 1; 79 Del. Laws, c. 2, §§ 2, 3; 79 Del. Laws, c. 278, § 1.)

Subchapter III

Unclaimed Life Insurance Funds

§ 1180 Scope.

(a) This subchapter shall apply to unclaimed funds, as defined in § 1181 of this title, of any life insurance company doing business in this State where the last known address, according to the records of such company, of the person entitled to such funds is within this State; provided that, if a person other than the insured or annuitant be entitled to such funds and no address of such person be known to such company or if it be not definite and certain from the records of such company what person is entitled to such funds, then in either event it shall be presumed for the purposes of this subchapter that the last known address of the person entitled to such funds is the same as the last known address of the insured or annuitant according to the records of such company.

(b) This subchapter shall also apply to unclaimed funds, as defined in § 1181 of this title, of any life insurance company doing business in this State where the last person entitled to any such fund is or was a Delaware corporation and such corporation abandoned, disclaimed or otherwise relinquished all right, title and interest to such funds. This subchapter shall also apply where such corporation terminated or cancelled any life or endowment insurance policy or annuity contract, or permitted any life or endowment insurance policy or annuity contract to be terminated or cancelled, and such funds resulting from any policy or contract to which the corporation would otherwise have been entitled accrued or became due and payable after such cancellation or termination.

(12 Del. C. 1953, § 1180; 50 Del. Laws, c. 568, § 1; 59 Del. Laws, c. 278, §§ 1, 2.)

§ 1181 Definitions.

The term "unclaimed funds" as used in this subchapter means and includes all moneys held and owing by any life insurance company doing business in this State which shall have remained unclaimed and unpaid for 5 years or more after it is established from the records of such company that such moneys became due and payable under any life or endowment insurance policy or annuity contract which has matured or terminated. A life insurance policy not matured by actual proof of the prior death of the insured shall be deemed to be matured and the proceeds thereof shall be deemed to be "due and payable" within the meaning of this subchapter if such policy is in force when the insured shall have attained the limiting age under the mortality table on which the reserve is based. Moneys otherwise admittedly due and payable shall be deemed to be "held and owing" within the meaning of this subchapter although the policy or contract shall not have been surrendered as required.

(12 Del. C. 1953, § 1181; 50 Del. Laws, c. 568, § 1; 66 Del. Laws, c. 379, § 2.)

§ 1182 Annual report of unclaimed funds.

(a) Every such life insurance company shall on or before December 20 of each year make a report in writing to the State Escheator of all unclaimed funds, as defined in § 1181 of this title, held and owing by it on December 31 next preceding; provided, however, such report shall not be required to include amounts of less than $5.00 which on February 29, 1956, shall have been unclaimed and unpaid for more than 10 years or amounts which have been paid to another state or jurisdiction prior to said date.

(b) Such report shall be signed and sworn to by an officer of such company and shall set forth:

(1) In alphabetical order the full name of the insured or annuitant, the last known address according to the company's records and the policy or contract number;

(2) The amount appearing from the company's records to be due on such policy or contract, except that amounts under $50 each may be reported in the aggregate;

(3) The date such unclaimed funds became payable;

(4) The name and last known address of each beneficiary or other person who, according to the company's records, may have an interest in such unclaimed funds; and

(5) Such other identifying information as the State Escheator may require.

(12 Del. C. 1953, § 1182; 50 Del. Laws, c. 568, § 1; 59 Del. Laws, c. 20, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 417, § 8.)

§ 1183 Publication of list of unclaimed funds.

(a) On or before the first day of September prior to the making of such reports under § 1182 of this title, every such life insurance company shall cause to be published notices based on the information contained in such reports and entitled:

"NOTICE OF CERTAIN UNCLAIMED FUNDS HELD AND OWING BY LIFE INSURANCE COMPANIES."

(b) For all unclaimed funds payable to a person appearing to be entitled to such funds whose last known address is located in New Castle County, such notice shall be published at least twice in a daily newspaper published in that County. For all unclaimed funds

payable where such last known address is located in Kent County or Sussex County, such notice shall be published at least once in a newspaper published at least weekly in the County in which unclaimed funds are payable. For all unclaimed funds payable to corporations as provided in § 1180(b) of this title, notice shall be published in the county of the last known address of the corporation's registered agent in the manner provided in this section.

(c) Each such notice shall set forth in alphabetical order the names of the insureds or annuitants under policies or contracts where the last known address of the person appearing to be entitled to such funds is in the county of publication, together with:

(1) The amount reported due and the date it became payable;

(2) The name and last known address of each beneficiary or other person who, according to the company's reports, may have an interest in such unclaimed funds; and

(3) The name and address of the company.

The notice shall also state that such unclaimed funds will be paid by the company to persons establishing to its satisfaction before the following December 1 their right to receive the same and that not later than the following December 20 such unclaimed funds still remaining will be paid to the State Escheator who shall thereafter be liable for the payment thereof.

(d) Publication as required by this section may be waived in the discretion of the State Escheator where the amount involved in a particular policy or contract does not exceed $50.

(12 Del. C. 1953, § 1183; 50 Del. Laws, c. 568, § 1; 59 Del. Laws, c. 278, § 3; 77 Del. Laws, c. 417, § 9.)

§ 1184 Payment for publication.

Any amounts paid by a life insurance company to newspapers for any publication of names as required by this subchapter may be charged against all unclaimed funds held or owing by such life insurance company at the time of such publication.

(12 Del. C. 1953, § 1184; 50 Del. Laws, c. 568, § 1.)

§ 1185 Payment to State Escheator.

(a) All unclaimed funds contained in the report required to be filed by § 1182 of this title, excepting those which have ceased to be unclaimed funds, less the amount paid for publication under § 1184 of this title, shall be paid over to the State Escheator with the annual report on or before December 20.

(b) The State Escheator shall have the power, for cause shown, to extend for a period of not more than 1 year the time within which a life insurance company shall file any report and in such event the time for publication and payment required by this subchapter shall be extended for a like period.

(12 Del. C. 1953, § 1185; 50 Del. Laws, c. 568, § 1; 77 Del. Laws, c. 417, § 10.)

§ 1186 Custody of unclaimed funds in State; insurers indemnified.

Upon the payment of such unclaimed funds to the State Escheator, the State shall assume, for the benefit of those entitled to receive the same and for the safety of the money so paid, the custody of such unclaimed funds, and the life insurance company making such payment shall immediately and thereafter be relieved of and held harmless by the State from any and all liability for any claim or claims which exist at such time with reference to such unclaimed funds or which thereafter may be made or may come into existence on account of or in respect to any such unclaimed funds.

(12 Del. C. 1953, § 1186; 50 Del. Laws, c. 568, § 1.)

§ 1187 Reimbursement for claims paid by insurers.

Any life insurance company which has paid moneys to the State Escheator pursuant to this subchapter may make payment to any person appearing to such company, in accordance with its customary rules and regulations governing the payment of claims, to be entitled thereto and upon proof of such payment the State Escheator shall forthwith reimburse such company for such payment out of the General Fund of the State.

(12 Del. C. 1953, § 1187; 50 Del. Laws, c. 568, § 1; 59 Del. Laws, c. 148, § 1.)

§ 1188 Determination and review of claims.

(a) Any person claiming to be entitled to unclaimed funds paid to the State Escheator may file a claim at any time with such official. The State Escheator shall possess full and complete authority to accept or reject any such claim. If the Escheator rejects such claim or fails to act thereon within 90 days after receipt of such claim, the claimant may within 4 months thereafter apply for a hearing and determination of the claim by the Tax Appeal Board. The procedure before the Tax Appeal Board for such hearing shall be the same as that provided for by § 329 of Title 30 and the Board shall have the same power to compel the attendance of witnesses and the production of evidence as is provided in § 330 of Title 30.

(b) Within 30 days after notice of a decision upon such hearing, the State Escheator or any claimant may appeal such decision to the Court of Chancery, upon notice to all parties to the proceedings before the Tax Appeal Board, and upon such other notice as the Court of Chancery may order.

(c) The Court of Chancery may make such rules as it may deem proper for the perfection, hearing and determination of such appeals.

(12 Del. C. 1953, § 1189; 50 Del. Laws, c. 568, § 1; 57 Del. Laws, c. 718, § 19; 57 Del. Laws, c. 741, § 48C; 70 Del. Laws, c. 186, § 1.)

§ 1189 Payment of allowed claims.

Any claim which is accepted by the State Escheator or ordered to be paid by the Escheator by the Tax Appeal Board or the Court of Chancery shall be paid out of the General Fund.

(12 Del. C. 1953, § 1190; 50 Del. Laws, c. 568, § 1; 57 Del. Laws, c. 741, § 48C; 59 Del. Laws, c. 148, § 3; 70 Del. Laws, c. 186, § 1.)

§ 1190 Records required.

The State Escheator shall keep in the office a public record of each payment of unclaimed funds received by the Escheator from any life insurance company. Such record shall show in alphabetical order the name and last known address of each insured or annuitant and of each beneficiary or other person who, according to the company's reports, may have an interest in such unclaimed funds and with respect to each policy or contract its number, the name of the company and the amount due.

(12 Del. C. 1953, § 1191; 50 Del. Laws, c. 568, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1191 Other acts not applicable.

No other provisions of this Code relating to escheat or abandoned or unclaimed funds shall apply to life insurance companies nor shall any statute enacted after February 29, 1956, so apply unless specifically made applicable by its terms.

(12 Del. C. 1953, § 1192; 50 Del. Laws, c. 568, § 1.)

§ 1192 Penalties and interest.

Repealed by 73 Del. Laws, c. 417, § 3, effective July 22, 2002, and effective for reports filed or required to be filed on or after July 22, 2002.

§ 1193 Penalty for false oath.

The making of a wilful false oath in any report required under this subchapter shall be perjury and punishable as such according to law.

(12 Del. C. 1953, § 1194; 50 Del. Laws, c. 568, § 1.)

§ 1194 Effect of failure to report.

Nothing in this subchapter shall prevent the State Escheator from making claim to any fund, to which the State would otherwise be entitled, because it has not been reported in accordance with this subchapter.

(59 Del. Laws, c. 278, § 4.)

Subchapter IV

Other Unclaimed Property

§ 1197 Other property escheated.

Except as otherwise provided elsewhere in the Delaware Code all property, as hereinafter defined and not otherwise subject to escheat in accordance with this chapter, the title to which has failed and the power of alienation suspended by reason of: (1) The death of the owner thereof, intestate, leaving no known heirs-at-law; (2) the owner thereof having disappeared or being missing from the owner's last known place of residence for a continuous period of 5 years or more, leaving no known heirs-at-law; or (3) the same having been abandoned by the owner thereof, as hereinafter defined, shall descend to the State as an escheat in accordance with the Constitution, the general laws of this State or this subchapter.

(12 Del. C. 1953, § 1197; 58 Del. Laws, c. 275, § 1; 63 Del. Laws, c. 299, § 1; 66 Del. Laws, c. 379, § 5; 70 Del. Laws, c. 186, § 1.)

§ 1198 Definitions.

For purposes of this subchapter, the following definitions shall apply:

(1) "Abandoned property" means property against which a full period of dormancy has run.

(2) "Appropriation" means the act of the State, through its duly constituted officers or agencies, in taking or accepting possession or custody of abandoned, unprotected, unclaimed or lost property as conservator thereof for later disposition by descent to the State as an escheat or redemption by the owner as provided in this subchapter.

(3) "Distributions held by financial intermediaries for unknown owners" means property as generally defined in paragraph (11) of this section, which consists of dividends, interest, stock and other distributions made by issuers of securities which are held by financial intermediaries (including, by way of example and not limitation, banks, transfer agents, brokers and other depositories) for beneficial owners whose identities are unknown.

(4) "Escheat" means the descent or devolution of property to the State under and by virtue of the Constitution of the State, the general laws of this State or this subchapter.

(5) "Escheatable property" means property which is subject to escheat to the State under and by virtue of the Constitution of the State, the general laws of this State or this subchapter.

(6) "Escheated property" means property which has descended to the State as an escheat.

(7) "Holder" means any person having possession, custody or control of the property of another person and includes a post office, a depository, a bailee, a trustee, a receiver or other liquidating officer, a fiduciary, a governmental department, institution or agency, a municipal corporation and the fiscal officers thereof, a public utility, service corporation and every other legal entity incorporated or created under the laws of this State or doing business in this State. For purposes of this subchapter, the issuer of any intangible ownership interest in a corporation, whether or not represented by a stock certificate, which is registered on stock transfer or other like books of the issuer or its agent, shall be deemed a holder of such property. This definition shall be construed as distinguishing the term "holder" of property from the term "owner" of property as hereinbefore defined and as excluding from the term "holder" any person holding or possessing property by virtue of title or ownership.

(8) "Owner," in addition to its commonly accepted meaning, shall be construed to particularly mean and include any person, as hereinbefore defined, having the legal or equitable title to property coming within the purview of this subchapter.

(9)a. "Period of dormancy" means the full and continuous period of 5 years, except a period of 15 years for traveler's checks, during which an owner has ceased, failed or neglected to exercise dominion or control over property or to assert a right of ownership or possession or to make presentment and demand for payment and satisfaction or to do any other act in relation to or concerning such property. Notwithstanding the foregoing, "period of dormancy" means the full and continuous period of 3 years with respect to intangible ownership or indebtedness in a corporation or other entity whether or not represented by a stock certificate or other certificate of membership, bonds and other securities including fractional shares, interest, dividends, cash, coupon interest, liquidation value of stocks and bonds, funds to redeem stocks and bonds, and distributions held by financial intermediaries.

b. A full period of dormancy shall be deemed to have run with respect to any dividends or other distributions held for or owing to an owner at the time a period of dormancy shall have run with respect to the intangible ownership interest in a corporation partnership, statutory or common law trust, limited liability company, or other entity to which such dividend or other distribution attaches. For good cause shown, and upon notice to the State Escheator, the Court of Chancery may, with respect to property over which the Court has otherwise assumed jurisdiction, extend the period of dormancy to a specific date by which an owner may exercise a right, make a demand or file a claim, provided each extension is set forth in a separate order of the court referring specifically to this section, and each extension is no longer than 3 years, provided further there shall be no more than 2 extensions under this subsection. Except as provided in § 1210 of this title, the period of dormancy shall not commence to run with respect to which claims, demands or other property held by a holder pursuant to a written agreement which contemplates that there shall be a specific period of inactivity, until the expiration of the contemplated period of inactivity. This definition shall be construed as excluding any act or doing of a holder of abandoned property not done at the express request or authorization of the owner. Notwithstanding the foregoing, the "period of dormancy" with regard to gift certificates shall be the shorter of:

1. 5 years, or

2. The expiration period, if any, of the gift certificate less 1 day. In the event the period of dormancy is determined by reference to the expiration period of the gift certificate, the rights of the Escheator shall attach at the time provided in this paragraph (9)b.2. of this section, but the issuer may continue to hold the property and may report and pay over such property as if the period of dormancy were 5 years.

A full period of dormancy shall be deemed to have run with respect to any property that is otherwise reportable and payable to this State that a holder in accordance with the laws of the jurisdiction wherein the holder is located, is obligated or required to report and pay over such property to the other jurisdiction because of a shorter period of dormancy or reporting period.

c. Notwithstanding the foregoing, "period of dormancy" means the full and continuous period of 1 year following the last day of the meet with respect to sums held for the payment of outstanding pari-mutuel tickets from the meet.

(10) "Person" includes a natural person, a corporation organized or created under the laws of this State or a corporation doing business or which has been engaged in business in this State, a copartnership, a voluntary association and every or any other association or organization of individuals, but excludes banking organizations and any life insurance company.

(11) "Property" means personal property, including "distributions held by financial intermediaries for unknown owners" as that phrase is defined in paragraph (3) of this section, of every kind or description, tangible or intangible, in the possession or under the control of a holder, as hereinafter defined, and includes, but not by way of limitation, (i) money; (ii) bills of exchange; (iii) intangible ownership interests in corporations, whether or not represented by a stock certificate, bonds and other securities; (iv) credits, including wages and other allowances for services earned or accrued on or after January 1, 1958, money orders and traveler's checks, also amounts received in consideration for gift certificates which are unredeemed, or, in lieu of which the State Escheator may in the Escheator's discretion and upon the specific request of the issuer, accept: (1) Gift certificates reissued at face value on the date on which they are tendered to the Escheator; or (2) where the gift certificates provide that they are redeemable for merchandise only, an amount in

money representing the maximum cost to the issuer of merchandise represented by the certificate. The burden of proof as to the cost of merchandise shall be on the issuer of the certificate; (v) dividends, cash or stock; (vi) certificates of membership in a corporation or association; (vii) security deposits; (viii) funds deposited by holder with fiscal agents of fiduciaries for payment to owner of dividends, coupon interest and liquidation value of stocks and bonds; (ix) funds to redeem stocks and bonds; (x) amounts refundable from excess or increased rates or charges heretofore or hereafter collected by a corporation for utility services lawfully furnished by it which have been or shall hereafter lawfully be ordered refunded to consumers or other persons entitled thereto and any interest due thereon and which have remained unclaimed by the persons entitled thereto for 5 years from the date they became payable in accordance with the final determination or order providing for the refunds; (xi) amounts refundable from customer deposits heretofore or hereafter collected by a public utility and any interest due thereon, and which have remained unclaimed by the persons entitled thereto for 5 years from the date they become payable; (xii) sums held for the payment of outstanding pari-mutuel tickets; and (xiii) all other liquidated choses in action of whatsoever kind or character. For purposes of this subsection, the phrase "amounts received in consideration for gift certificates" shall not include amounts received in consideration for gift certificates having a face value of $5.00 or less and which are issued by a holder whose business is described in § 2906 of Title 30 whether or not such holder conducts such business within this State. The word "property" does not include:

a. Credits or deposits evidenced by cash balances on unclaimed or refused personal property nor any property, except the items specifically enumerated above in paragraph (11) of this section including specifically and without limitation consideration received for unredeemed gift certificates, the right to recover which in a proceeding brought by the owner would be barred by any statute of limitations, state or federal; or

b. Non-escheat capital credits as defined in § 909 of Title 26.

(12 Del. C. 1953, § 1198; 58 Del. Laws, c. 275, § 1; 58 Del. Laws, c. 426, §§ 1-3; 59 Del. Laws, c. 320, §§ 1, 2; 63 Del. Laws, c. 311, § 4; 65 Del. Laws, c. 351, §§ 1-3; 66 Del. Laws, c. 379, §§ 3, 4; 67 Del. Laws, c. 264, §§ 1-3; 68 Del. Laws, c. 122, § 10; 69 Del. Laws, c. 180, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 298, § 2; 71 Del. Laws, c. 448, § 1; 72 Del. Laws, c. 45, § 2; 75 Del. Laws, c. 19, § 3; 76 Del. Laws, c. 276, §§ 1, 2; 76 Del. Laws, c. 277, §§ 1, 2; 77 Del. Laws, c. 417, § 11.)

§ 1199 Report by holders of abandoned property.

(a) Every holder of funds or other property, tangible or intangible, deemed abandoned under this subchapter shall file with the State Escheator, on or before March 1 of each year, as of December 31 next preceding, a report with respect to such property. The report shall be verified and shall include:

(1) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property deemed abandoned under this subchapter;

(2) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under $50 each may be reported in aggregate;

(3) The date when the property became payable, demandable or returnable and the date of the last transaction with the owner with respect to the property; and

(4) Other information which the State Escheator may prescribe.

(b) Upon written request the State Escheator may grant an extension of time with respect to the date for filing the report.

(c) The requirements of this section for filing an annual report shall not apply to municipal corporations or counties and the fiscal officers thereof.

(d) Verification, if made by a partnership, shall be executed by a partner, if made by an unincorporated association or private corporation, by an officer and if made by a public corporation, by its chief fiscal officer.

(e) If the person holding property deemed abandoned is a successor to other persons who previously held the property for the owner or if the holder has changed name while holding the property, the person holding the property shall file with the report all prior known names and addresses of each holder of the property.

(f)(1) With respect to any stock or other certificate of ownership or any dividend, profit, distribution, interest, payment on principal or other sum held owing by a corporation or other business association for or to a shareholder, certificate holder, member, bondholder or other security holder, the initial report filed under this section shall include all such items of property deemed abandoned under this subchapter without limitation as to time.

(2) Except as provided in paragraph (1) of this subsection, the initial report shall include all such items of property which, under this subchapter, would have been deemed abandoned on the effective date of this subchapter had this subchapter been in effect on January 1, 1964.

(g) No reporting shall be required solely by virtue of holding property constituting consideration paid for unredeemed gift certificates which, in the aggregate, for the reporting period have a face value of less than $5,000 or for gift certificates having a face value of $5 or under issued by a holder whose business is described in § 2906 of Title 30 whether or not such firm conducts business in this State.

(12 Del. C. 1953, § 1199; 58 Del. Laws, c. 275, § 1; 58 Del. Laws, c. 426, § 4; 66 Del. Laws, c. 379, § 6; 67 Del. Laws, c. 264, § 5; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 298, § 3; 72 Del. Laws, c. 45, § 1.)

§ 1200 [Reserved.]

§ 1201 Payment or delivery of abandoned property.

(a) On or before the date required for the filing of the report pursuant to § 1199 of this title, every holder of abandoned property shall pay or deliver to the State Escheator all abandoned property specified in the report, except that if it appears the reported abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be deemed abandoned, to the State Escheator, but in lieu thereof shall file a verified written explanation of the proof of claim or other reason. The holder of any intangible ownership interest in a corporation deemed abandoned under this subchapter shall, when making the delivery contemplated by this section:

(1) If such interest is a certificated security as defined in § 8-102(a) of Title 6 deliver either the original stock certificate evidencing the abandoned property, if such is in its possession or a duly issued replacement certificate evidencing such property in a form suitable for transfer; or

(2) If such interest is an uncertificated security as defined in § 8-102(a) of Title 6 cause such uncertificated security to be registered in the name of the State Escheator.

(b) [Deleted.]

(12 Del. C. 1953, § 1201; 58 Del. Laws, c. 275, § 1; 58 Del. Laws, c. 426, § 6; 65 Del. Laws, c. 351, § 4; 68 Del. Laws, c. 122, § 3; 69 Del. Laws, c. 180, §§ 3, 4; 75 Del. Laws, c. 19, §§ 1, 2.)

§ 1202 Periods of limitation not a bar.

The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being deemed abandoned property nor affect any duty to file a report required by this subchapter or to pay or deliver abandoned property to the State Escheator.

(12 Del. C. 1953, § 1202; 58 Del. Laws, c. 275, § 1; 58 Del. Laws, c. 426, § 7.)

§ 1203 Effect of payment and delivery.

(a) Unless otherwise addressed in subsection (b) of this section, the payment or delivery of property to the State Escheator by any holder shall terminate any legal relationship between the holder and the owner and shall release and discharge such holder from any and all liability to the owner, the owner's heirs, personal representatives, successors and assigns by reason of such delivery or payment, regardless of whether such property is in fact and in law abandoned property and such delivery and payment may be pleaded as a bar to recovery and shall be a conclusive defense in any suit or action brought by such owner, the owner's heirs, personal representatives, successors and assigns or any claimant against the holder by reason of such delivery or payment. Application of this subsection (a) is mutually exclusive of subsection (b) of this section and, accordingly, shall not be applied in conjunction with subsection (b) of this section.

(b) Upon the delivery in good faith of a duplicate certificated security to the State Escheator or the registration of an uncertificated security to the State Escheator pursuant to § 1201 of this title, the holder and any transfer agent, registrar or other person acting for or on behalf of the holder in executing or delivering such duplicate certificate or effectuating such registration, is relieved of all liability of every kind to every person, including any person acquiring the original of a certificated security or the duplicate of a certificated security issued to the State Escheator, for any losses or damages resulting to any person by issuance and delivery to the State Escheator of the duplicate certificated security or the registration to the holder's name of an uncertificated security.

(c) If the holder pays or delivers property to the State Escheator in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the State Escheator acting on behalf of the State, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim.

(d) For the purposes of this section, "good faith" means that:

(1) Payment or delivery was made in a reasonable attempt to comply with this subchapter;

(2) The person delivering the property was not a fiduciary then in breach of trust in respect to the property and had a reasonable basis for believing, based on the facts then known to the person, that the property was abandoned for the purposes of this subchapter; and

(3) There is no showing that the records pursuant to which the delivery was made did not meet reasonable commercial standards of practice in the industry.

(e) The State Escheator at the request of a holder and in the State Escheator's sole discretion, may allow a holder to pay over or deliver property otherwise properly payable to the State but against which a full period of dormancy has not yet run. In the event the State Escheator acquiesces to the request and accepts such property, the holder shall be entitled to the protections of this section and the property shall be treated generally as if it had been paid over after a full period of dormancy had run. The provisions of §§ 1145 and 1206(c) of this title shall not apply to property accepted by the State Escheator under this subsection until a full period of dormancy has run against the property.

(12 Del. C. 1953, § 1203; 58 Del. Laws, c. 426, § 8; 65 Del. Laws, c. 351, § 5; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 19, § 4; 78 Del. Laws, c. 81, §§ 1, 2.)

§ 1204 Sale of abandoned property.

(a) All abandoned property, other than money, delivered to the State Escheator under this subchapter shall be sold or disposed of in accordance with § 1143 of this title.

(b) All sales of property made by the State Escheator under this subchapter shall pass absolute title to the purchaser. The State Escheator or the Secretary of State shall execute all documents necessary to complete the transfer of title.

(12 Del. C. 1953, § 1204; 58 Del. Laws, c. 426, § 9.)

§ 1205 Deposit and disbursement of funds.

(a) All funds received by the State Escheator under this subchapter, including the proceeds of sale under § 1204 of this title, shall forthwith be paid and deposited into the General Fund of the State.

(b) All disbursements for expenses, claims, storage, etc., made or authorized by the State Escheator in connection with the administration of this subchapter shall be paid by the Secretary of Finance upon presentation of a signed voucher by the State Escheator.

(12 Del. C. 1953, § 1205; 58 Del. Laws, c. 426, § 10.)

§ 1206 Claims for abandoned property paid or delivered; determination of claims; appeals.

(a) Any person claiming an interest in any property paid or delivered to the State Escheator under this subchapter may file a claim thereto or to the proceeds from the sale thereof with the State Escheator.

(b) The determination of claims and rights of appeal shall be accomplished as prescribed in § 1146(b) of this title.

(c) When property is paid or delivered to the State Escheator under this subchapter, the owner is not entitled to receive income or other increments accruing thereafter.

(12 Del. C. 1953, § 1206; 58 Del. Laws, c. 426, § 11.)

§ 1207 Penalties and interest.

Transferred by 73 Del. Laws, c. 417, § 4, effective July 22, 2002, and effective for reports filed or required to be filed on or after July 22, 2002.

§ 1208 Rules and regulations.

The State Escheator may make such rules and regulations as the Escheator may deem necessary to administer and enforce this subchapter.

(12 Del. C. 1953, § 1208; 58 Del. Laws, c. 426, § 13; 70 Del. Laws, c. 186, § 1.)

§ 1209 [Reserved.]

§ 1210 No private escheats.

Any provision in a certificate of incorporation, by law, trust agreement, contract or any other writing regulating the relationships between an owner and a holder, relating to property with the exception of non-escheat capital credits as defined in § 909 of Title 26, which is or may be subject to the provisions of this chapter, which provides that upon the owner's failure to act or make a claim regarding property in possession of the holder, that such property reverts to or becomes the property of the holder, in contravention of this chapter, shall be void and unenforceable.

(68 Del. Laws, c. 122, § 13; 71 Del. Laws, c. 448, § 2.)

§ 1211 Limited exception, uninvoiced payables not reportable.

(a) Property as defined in § 1198 of this title shall be deemed to exclude uninvoiced payables as more particularly defined in this section.

(b) "Uninvoiced payables" are amounts due between merchants as defined in the Delaware Uniform Commercial Code, § 1-101 et seq. of Title 6, from a holder who is a buyer to a creditor who is the seller of goods ordered by a holder in the ordinary course of business when the goods were received and accepted by the holder, but which for any reason were never invoiced by the seller.

(c) Uninvoiced payables include the value of goods received by a holder from a seller from out of balance transactions where the holder's purchase order for goods and the amount of goods received by the holder do not match.

(d) Uninvoiced payables include unsolicited goods received by a holder from a seller that fall within § 2505 of Title 6.

(e) Uninvoiced payables specifically do not include accounts payable, accounts receivable, or any other type of credit or amount due to the creditor, including uncashed checks of any kind whatsoever whether relating to inventory, goods, or services, and all of these types of property are still reportable as abandoned or unclaimed property.

(f) Nothing in this section shall be construed to create a business-to-business exemption of any kind regardless of whether a current business relationship exists between the holder and the creditor.

(77 Del. Laws, c. 417, § 2.)

§ 1212 No private escheat of gift certificates.

Any provision on or relating to any gift certificate the amount paid in consideration of which is defined as "property" for purposes of this chapter, which provides that, upon the owner's failure to act or make a claim pursuant to such gift certificate within a certain period of time, the owner of the gift certificate shall lose rights with respect to the gift certificate against the issuer, which provision, if applied as against the State Escheator, would have the effect of defeating the escheat of any amount with regard to such gift certificate, shall be unenforceable as against the State Escheator.

(67 Del. Laws, c. 264, § 4.)

Subchapter V

Escheat of Postal Savings System Accounts

§ 1220 Declaration of escheat.

All postal savings system accounts created by the deposits of persons whose last known addresses are in this State which have not been claimed by the persons entitled thereto before June 1, 1971, are presumed to have been abandoned by their owners and are declared to escheat and become the property of the State.

(12 Del. C. 1953, § 1220; 58 Del. Laws, c. 329; 58 Del. Laws, c. 426, § 18.)

§ 1221 Obtaining information on accounts.

The Secretary of State shall request from the Bureau of Accounts of the United States Treasury Department records providing the following information:

(1) The names of depositors at the post offices of this State whose accounts are unclaimed;

(2) The last known addresses of such persons, as shown by the records of the Post Office Department; and

(3) The balance remaining in each account, as shown by the records of the Post Office Department.

The Secretary of State shall agree to return to the Bureau of Accounts, promptly, all account cards showing last addresses in another state.

(12 Del. C. 1953, § 1221; 58 Del. Laws, c. 329; 58 Del. Laws, c. 426, § 18.)

§ 1222 Proceeding to adjudicate escheat.

The Secretary of State may bring proceedings in the United States District Court to escheat unclaimed postal savings system accounts held by the United States Treasury Department. A single proceeding may be used to escheat as many accounts as may be available for escheat at 1 time.

(12 Del. C. 1953, § 1222; 58 Del. Laws, c. 329; 58 Del. Laws, c. 426, § 18.)

§ 1223 Notice.

The Secretary of State shall notify depositors whose accounts are to be escheated, as follows:

(1) A letter advising that a postal savings system account in the name of the addressee is about to be escheated and setting forth the procedure by which a deposit may be claimed shall be mailed by first-class mail to the named depositor at the last address shown on the account records for each account to be escheated having an unpaid principal balance of more than $25;

(2) General notice of intention to escheat postal savings system accounts shall be published once in each of 3 successive weeks in 1 or more newspapers which combine to provide general circulation throughout the State;

(3) Special notice of intention to escheat the unclaimed postal savings system accounts originally deposited in each post office must be published once in each of 3 successive weeks in a newspaper published in the county in which the post office is located. Such notice must list the names of the owners of each unclaimed account to be escheated if the account has a principal balance of $3 or more.

(12 Del. C. 1953, § 1223; 58 Del. Laws, c. 329; 58 Del. Laws, c. 426, § 18.)

§ 1224 Collection and deposit of funds; indemnification of United States.

(a) The Secretary of State shall present a copy of each final judgment of escheat to the United States Treasury Department for payment of the principal due and the interest computed under regulations of the United States Treasury Department. The payment received shall be deposited in the General Fund in the State Treasury.

(b) This State shall indemnify the United States for any losses suffered as a result of the escheat of unclaimed postal savings system accounts. The burden of the indemnification falls upon the fund into which the proceeds of the escheated accounts have been paid.

(12 Del. C. 1953, § 1224; 58 Del. Laws, c. 329; 58 Del. Laws, c. 426, § 18.)

Part IV
Administration of Decedents' Estates
Chapter 13
GENERAL PROVISIONS

§ 1301 Production of will; liability.

(a) Any person, having the custody or possession of any instrument of writing purporting to be a last will and testament and intended to take effect upon the death of the testator therein named, shall produce and deliver the same to the Register of Wills for the county in which the person resides, within 10 days from the time the person receives information of the death of the testator.

(b) Any person who wilfully fails to deliver a will is liable to any person aggrieved for the damages which may be sustained by the failure. Also, any person who wilfully fails to deliver a will after being ordered by the Court of Chancery in a proceeding brought for the purpose of compelling delivery is subject to penalty for civil contempt of Court.

(27 Del. Laws, c. 268, § 2; Code 1915, § 3265; Code 1935, § 3729; 12 Del. C. 1953, § 1301; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1302 Proving will.

(a) A will shall be proved before the Register of Wills of the county in which the testator was domiciled at the time of death. If the testator was not domiciled in this State, it may be proved before the Register of any county in this State wherein there are any goods or chattels, rights or credits, or lands or tenements of the deceased.

(b) To be effective to prove a transfer of any property or to nominate an executor, a will must be declared to be valid by admission to probate.

(Code 1852, §§ 1767, 1768; 18 Del. Laws, c. 674; Code 1915, § 3334; 35 Del. Laws, c. 203, § 1; Code 1935, § 3799; 12 Del. C. 1953, § 1303; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1303 Notice and subpoena to persons interested.

Proof of a will may be taken without notice to persons interested, unless such a person requests it by petition filed with the Court of Chancery. Upon receiving such petition, the Court shall, and in any case it may, appoint a time for taking the proof, and issue subpoena, requiring any person to be present at the taking of such proof. In respect to persons not within the State it may order such service or publication of notice as it deems proper.

(Code 1852, §§ 1767, 1768; 18 Del. Laws, c. 674; Code 1915, § 3334; 35 Del. Laws, c. 203, § 1; Code 1935, § 3799; 12 Del. C. 1953, § 1304; 59 Del. Laws, c. 384, § 1.)

§ 1304 Unavailability of witnesses.

(a) In case any attesting and subscribing witness to a will, at the time the will is presented for probate, is dead, is serving in the armed forces of the United States or is a merchant sailor, or is mentally or physically incapable of testifying or is not within the State, or is otherwise unavailable, proof of the signature of such witness shall be sufficient. Such proof shall be the testimony in person or by deposition of a credible disinterested person that the signature of the witness on the will is in the handwriting of the person whose signature it purports to be, or other sufficient proof of such handwriting.

(b) If a will cannot be proven because the signature of 1 or more of the attesting and subscribing witnesses to it cannot be proven, then proof of the signature of the testator shall be sufficient. Where the signature of 1 witness can be proven, the proof of the signature of the testator shall be the testimony in person or by deposition of a credible disinterested person that the signature of the testator on the will is in the handwriting of the person whose will it purports to be, or other sufficient proof of such handwriting. Where none of the signatures of the witnesses can be proven, the proof of the signature of the testator shall be the testimony in person or by deposition of 2 credible disinterested persons that the signature of the testator on the will is in the handwriting of the person whose will it purports to be, or other sufficient proof of such handwriting.

(c) The foregoing provisions of this section shall not preclude the Register of Wills from requiring, in addition, the testimony in person or by deposition of any subscribing witness, or proof of such other pertinent facts and circumstances as the Register deems necessary to admit the will to probate.

(Code 1852, §§ 1767, 1768; 18 Del. Laws, c. 674; Code 1915, § 3334; 35 Del. Laws, c. 203, § 1; Code 1935, § 3799; 45 Del. Laws, c. 232, § 1; 12 Del. C. 1953, § 1305; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1305 Self-proved will.

An attested will may at the time of its execution or at any subsequent date be made self-proved, by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of this State, and evidenced by the officer's certificate, under official seal, attached or annexed to the will in form and content substantially as follows:

STATE OF

SS

COUNTY OF

Before me, the subscriber, on this day personally appeared, _____ and

Testator

Witness

Witness

Subscribed, sworn and acknowledged before me by _____ , the testator, subscribed and sworn before me by _____ and _____ witnesses, this..... day of _____ , A.D., _____.

(SEAL)

(SIGNED)

(OFFICIAL CAPACITY OF OFFICER)

(59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1306 Choice of law as to execution of wills.

A written will signed by the testator, or by some person subscribing the testator's name in the testator's presence and at the testator's express direction, is valid if executed in compliance with § 202 of this title or if its execution complies with the law at the time of execution of the place where the will is executed, or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode or is a national.

(59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1307 Will of nondomiciliary; admission, recording and evidence.

(a) The written will of a testator who died domiciled outside this State, but who owned real estate or personal property located in this State, may be admitted to probate and recorded in this State. If such will has been admitted to probate in the domiciliary jurisdiction, such admission and recording shall be accomplished by filing a verified copy of the will and a verified copy of the record admitting the same to probate as hereinafter provided. If such will has not been admitted to probate in the domiciliary jurisdiction, but has not been rejected from probate in the domiciliary jurisdiction except for a cause which is not grounds for rejection of a will of a testator who died domiciled in this State, and is valid under the laws of this State, such admission and recording shall be accomplished by proving such will in accordance with §§ 1302-1305 of this title. In either case, such will shall then have the same force and effect as if originally proved and allowed in this State.

(b) A copy, to be duly verified, must be certified by the proper officer under the officer's hand and seal of office, if there be a seal of office, and there must also be a certificate, either under the great seal of such state, territory or country or under the hand of the presiding judge of a court of record of the state, territory or country, that such copy is certified in due form and by the proper officer; and in case of a certificate under the hand of the presiding judge, there must be an attestation of the officer keeping the seal of the court, under the hand of the office and the seal, that the certificate is under the hand of the presiding judge entitled to full faith and credit. If the will shall have been proved in a foreign country, the certificate under the hand of a presiding judge, as hereinbefore required, may be attested by the resident United States Consul-General, or Consul-General's deputy, under the seal of the United States Consulate General.

(c) The will or a verified copy of it, and any verified copy of the record admitting the will to probate, shall be recorded in the office of the Register of Wills of any county where real estate or personal property of the testator is located, and the record, or an office copy thereof, shall be sufficient evidence. When the will or a verified copy of it, or any verified copy of the record admitting the will to probate is given in evidence, the Court of Chancery, on the application of the adverse party, may order it to be deposited and retained in the office of the Register of the county, and in that case an office copy thereof shall be sufficient evidence.

(Code 1852, §§ 1648, 1649, 1767, 1768; 18 Del. Laws, c. 674; 24 Del. Laws, c. 234; Code 1915, §§ 3246, 3247, 3334; 28 Del. Laws, c. 224, § 1; 35 Del. Laws, c. 203, § 1; Code 1935, §§ 3711, 3712, 3799; 12 Del. C. 1953, § 1307; 59 Del. Laws, c. 384, § 1; 65 Del. Laws, c. 422, § 3; 70 Del. Laws, c. 186, § 1.)

§ 1308 Caveat against allowance of instrument as will; procedure.

(a) A caveat against the allowance of an instrument as a will shall be received by the Court of Chancery at any time prior to the entry of an order of probate. The caveat having been received, the Court shall appoint a time for hearing and award citations for the parties interested, and order service or publication of notice to the parties not within the State in accordance with § 1303 of this title. If, when a caveat is received, a time be appointed and process issued, it shall not be necessary to adjourn the taking of the proof and hearing; but an adjournment may be decreed, and other process awarded, or order made.

(b) The Court of Chancery may determine the costs occasioned by such caveat and decree the payment thereof.

(38 Del. Laws, c. 177, § 1; Code 1935, § 3800; 12 Del. C. 1953, § 1309; 57 Del. Laws, c. 402, § 3; 59 Del. Laws, c. 384, § 1; 66 Del. Laws, c. 373, § 1; 75 Del. Laws, c. 97, § 19; 76 Del. Laws, c. 90, § 18.)

§ 1309 Review of proof of will; procedure.

(a) Any person interested who shall not voluntarily appear at the time of taking the proof of a will, or be served with citation or notice as provided in § 1303 of this title, shall, at any time within 6 months after the entry of the order of probate, have a right of review which shall on the person's petition be ordered by the Court of Chancery. Upon such review, there shall be the same proceedings as upon a caveat, and the allowance of the will and granting of letters may be affirmed or the will rejected and the letters revoked.

(b) The Court of Chancery may determine the costs occasioned by such review and decree the payment thereof.

(Code 1852, §§ 1770, 1771; Code 1915, § 3336; 38 Del. Laws, c. 179, § 1; Code 1935, § 3801; 12 Del. C. 1953, § 1310; 49 Del. Laws, c. 117; 57 Del. Laws, c. 402, § 3; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 97, § 1.)

§ 1310 Formal testacy proceedings; contested cases; testimony of attesting witnesses.

If the will is self-proved, compliance with signature requirements for execution is conclusively presumed and other requirements of execution are presumed subject to rebuttal without the testimony of any witness upon filing the will and the acknowledgment and affidavits annexed or attached thereto, and, unless there is proof of fraud or forgery affecting the acknowledgment or affidavit, the will shall be admitted to probate subject to all other provisions of this title.

(59 Del. Laws, c. 384, § 1.)

Part IV
Administration of Decedents' Estates
Chapter 15
LETTERS TESTAMENTARY AND LETTERS OF ADMINISTRATION
Subchapter I
General Provisions

§ 1501 Necessity for letters testamentary or of administration.

No one shall act as the executor or administrator of a domiciliary decedent's estate within this State without letters testamentary or of administration being granted in accordance with this title.

(Code 1852, § 1775; Code 1915, § 3340; Code 1935, § 3805; 12 Del. C. 1953, § 1502; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1502 Grant of letters testamentary.

(a) If a will of a domiciliary or nondomiciliary decedent is admitted to probate in accordance with this title, letters testamentary shall be granted by the Register of Wills of the county in which the decedent was domiciled, or in the case of a nondomiciliary in which the decedent owned real or personal property, to the executor or executors thereof, upon their giving bond in accordance with this title.

(b) If several are named as executors, and any are deceased, or fail to give the necessary bond, or renounce or are incapacitated, letters testamentary shall be granted to the others so named. If all of them, or a sole executor, is deceased, or fails to give the necessary bond, or renounces or is incapacitated, administration with the will annexed, shall be granted in accordance with this title.

(Code 1852, §§ 1773, 1774; Code 1915, § 3339; Code 1935, § 3804; 12 Del. C. 1953, § 1501; 59 Del. Laws, c. 384, § 1; 65 Del. Laws, c. 422, § 4.)

§ 1503 Grant of letters to one under an incapacity.

If a person named executor shall be under an incapacity, either by reason of minority, physical disability or mental disability, letters testamentary shall be granted upon the removal of the incapacity and upon the giving of bond in accordance with this title. In the meantime, letters testamentary shall be granted to the coexecutor or coexecutors of the person under a disability, if there is 1 or more named who qualify in accordance with this title, but if there is none, or if the coexecutor or coexecutors all fail to qualify, letters of administration, with the will annexed, shall be granted in accordance with this title.

(59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1504 Grant of letters of administration.

(a) Letters of administration, with the will annexed, of the estate of a domiciliary decedent for whom a will has been admitted to probate in accordance with this title, and letters of administration of the estate of a domiciliary decedent for whom no will shall have been admitted to probate in accordance with this title, shall be granted by the Register of Wills of the county in which the decedent was domiciled.

(b) Letters of ancillary administration, with the will annexed, of a nondomiciliary decedent for whom a will has been admitted to probate in accordance with this title, and letters of ancillary administration of the estate of a nondomiciliary decedent for whom no will has been admitted to probate in accordance with this title, shall be granted by the Register of Wills for any county. The administration which shall first be lawfully granted in either case shall extend to all the estate of the decedent within Delaware, and shall exclude the jurisdiction of the Register for any other county.

(Code 1852, §§ 1777, 1778; Code 1915, § 3342; Code 1935, § 3807; 12 Del. C. 1953, § 1504; 59 Del. Laws, c. 384, § 1.)

§ 1505 Persons entitled to letters of administration.

(a) Letters of administration with the will annexed, letters of administration, letters of ancillary administration with the will annexed and letters of ancillary administration shall be granted by a Register of Wills to such person or persons as shall be entitled to such letters under this section upon their giving bond in accordance with this title.

(b)(1) The persons entitled to letters of administration shall be those in the first of the following classes of persons which shall have a member of that class living and not under an incapacity: Spouse of the decedent; children of the decedent; parents of the decedent; siblings of the whole blood and half blood of the decedent.

(2) If there shall be more than 1 person living in the first qualifying class mentioned in paragraph (1) of this subsection, letters of administration shall be granted to all of those persons in the class who give the necessary bond, do not renounce or who are not incapacitated.

(3) If all of the persons in the first qualifying class mentioned in paragraph (1) of this subsection shall fail to give the necessary bond, renounce or are incapacitated, a Register of Wills shall grant letters of administration to such person or persons as all of them in that class who are not under an incapacity shall have agreed to in writing.

(c) If all of the persons specified in the first class in paragraph (b)(1) of this section which shall have a member of that class living and not under an incapacity shall fail to give the necessary bond, renounce or are incapacitated, and if all of them who are not under an incapacity fail to agree in writing on a person or persons to whom letters of administration shall be granted as provided in paragraph (b)(3) of this section, then any or all of those who fail to agree may petition the Court of Chancery for the grant of letters of administration to their nominee or nominees, and the Court shall grant letters of administration to such person or persons as it, in its discretion, shall determine.

(d) If there shall be no person living in any of the classes specified in paragraph (b)(1) of this section who is not under an incapacity, or if no petition for administration is filed within 60 days from the date of death, then the Register of Wills shall grant letters of administration to such person or persons as the Register, in the Register's discretion, shall determine.

(e) Any interested person may petition the Register of Wills of a proper county for the appointment of an administrator.

(Code 1852, § 1779; Code 1915, § 3343; Code 1935, § 3808; 47 Del. Laws, c. 352, § 1; 12 Del. C. 1953, § 1505; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1506 Power of attorney by nondomiciliary executor or administrator.

In case of the grant of letters testamentary or of administration, the person designated as an executor or administrator, if a nondomiciliary, or if a corporation not incorporated under the laws of Delaware, shall file in the office of the Register of Wills granting such letters, before the issuance of the letters, an irrevocable power of attorney designating that Register and the Register's successors in office as the person upon whom all notices and process issued by any court in this State may be served, with like effect as personal service in relation to any suit, matter, cause or thing affecting or pertinent to the estate in which the letters are issued. The Register shall forward forthwith, by certified mail, return receipt requested, to the address of such executor or administrator, which shall be stated in the power of attorney, any notices or process served upon the Register.

(Code 1915, § 3343(a); 38 Del. Laws, c. 180, § 1; Code 1935, § 3808; 12 Del. C. 1953, § 1506; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1507 Successor administrator; personal representative of executor or administrator; administration during pendency of litigation.

(a) Upon the removal or resignation from office, or upon the death or incapacity of a sole executor or administrator, or if there are more than 1, all of them, administration shall be granted to a successor administrator or administrators in accordance with this title as though such administration were an original administration.

(b) A personal representative of a deceased executor or administrator shall not represent (unless expressly appointed) and shall have no personal liability or responsibility with respect to the estate being executed or administered by such decedent, other than to notify the Register of Wills of the death of the decedent's executor or administrator.

(c) Administration during the pendency of litigation concerning proof of a will or the right to administer, or during the absence of a personal representative appointed in accordance with the foregoing provisions of this title, may be granted by the Register of Wills of the county in which the decedent was domiciled, in the case of a domiciliary decedent, or by the Register of any county, in the case of a nondomiciliary decedent, as such Register, in the Register 's discretion, may deem appropriate. In the case of a nondomiciliary decedent, the administration which shall first be lawfully granted shall extend to all the estate of the decedent within Delaware, and shall exclude the jurisdiction of the Register for any other county during the pendency of such litigation or during the absence of such a personal representative.

(Code 1852, §§ 1780-1782; Code 1915, § 3344; Code 1935, § 3809; 12 Del. C. 1953, § 1507; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1508 Persons not qualified to receive letters testamentary or of administration.

Letters testamentary, or of administration, shall not be granted to a minor, to a person who is mentally incapacitated or to a person convicted of a crime disqualifying the person from taking an oath.

(Code 1852, § 1783; Code 1915, § 3345; Code 1935, § 3810; 12 Del. C. 1953, § 1508; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1509 Oath of executor or administrator.

Every executor or administrator shall take and subscribe an oath, to be affixed to the bond, to perform the duties of office with fidelity.

(Code 1852, § 1791; Code 1915, § 3347; Code 1935, § 3812; 12 Del. C. 1953, § 1509; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1510 Personal representatives of deceased guardians.

Upon appointment, every executor or administrator of the estate of a guardian who dies in office shall notify the Court of Chancery of the guardian's death, and thereafter perform the duties of the guardian as specified in § 3941 of this title.

(69 Del. Laws, c. 109, § 3.)

Subchapter II
Bond

§ 1521 Requirement.

Prior to receiving letters, a personal representative shall qualify by filing with the Register of Wills any required bond.

(Code 1852, §§ 1792-1798; Code 1915, § 3348; Code 1935, § 3813; 42 Del. Laws, c. 139, § 1; 12 Del. C. 1953, § 1521; 59 Del. Laws, c. 384, § 1; 63 Del. Laws, c. 282, § 1.)

§ 1522 Exception to bond requirement.

No bond shall be required of a personal representative prior to receiving letters, except:

(1) When an executor or other personal representative is appointed to administer an estate under a will containing an express requirement of bond; or

(2) When bond is required by order of the Court of Chancery under § 1524 of this title.

A bond otherwise required by any will may be dispensed with upon determination by the Court of Chancery that it is not necessary or desirable.

(63 Del. Laws, c. 282, § 1.)

§ 1523 Amount; security; execution; excusing requirement.

If bond is required and the provisions of the will or court order do not specify the amount, the amount of the bond shall be fixed by the Register of Wills in an amount which shall not be less than the best estimate that can be made of the decedent's personal estate. The personal representative shall execute and file with the Register a bond with surety, or with other suitable security in an amount not less than the bond. The Register shall determine that the bond is duly executed by a corporate surety, or 1 or more individual sureties whose performance is secured by pledge of personal property, mortgage on real estate or other adequate security. On petition of the personal representative or other interested persons, the Court of Chancery may excuse a requirement of bond, increase or reduce the amount of the bond, release sureties or permit the substitution of another bond with the same or different sureties. In increasing or decreasing the amount of the bond the Court shall take into account, inter alia, whether the will excuses the requirement of bond.

(Code 1852, §§ 1792-1798, 1800; 15 Del. Laws, c. 468; Code 1915, §§ 3348, 3350, 3352; Code 1935, §§ 3813, 3815, 3817; 42 Del. Laws, c. 139, § 1; 12 Del. C. 1953, §§ 1521, 1525, 1527; 59 Del. Laws, c. 384, § 1; 60 Del. Laws, c. 199, §§ 4, 5; 63 Del. Laws, c. 282, § 1.)

§ 1524 Demand that representative be bonded.

Any person apparently having an interest in the estate worth in excess of $2,000, or any creditor having a claim in excess of $2,000, may make a written demand that a personal representative give bond. The demand must be filed with the Court of Chancery and a copy mailed to the personal representative, if appointment and qualification have occurred. Upon finding that bond is necessary or desirable the Court may order bond but the requirement ceases without order of Court if the person demanding bond ceases to be interested in the estate, or if bond is excused as provided in this section or § 1523 of this title. After bond has been ordered and until the filing of the bond or cessation of the requirement of bond, the personal representative shall refrain from exercising any powers of office except as necessary to preserve the estate. Failure of the personal representative to meet the requirement of bond by giving suitable bond within 10 days from notice is cause for removal and appointment of a successor personal representative.

(63 Del. Laws, c. 282, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1525 Conditions.

(a) The following requirements and provisions apply to any bond required by this subchapter:

(1) Bonds shall name the State as obligee for the benefit of the persons interested in the estate including without limitation the legatees, devisees and other beneficiaries thereof, and shall be conditioned upon the faithful discharge by the fiduciary of all duties according to law;

(2) Unless otherwise provided by the terms of the approved bond, sureties are jointly and severally liable with the personal representative and with each other. The address of sureties shall be stated in the bond;

(3) By executing an approved bond of a personal representative, the surety consents to the jurisdiction of the Court of Chancery in any proceedings pertaining to the fiduciary duties of the personal representative and naming the surety as a party. Notice of any proceedings shall be delivered to the surety or mailed to the surety by registered or certified mail at the surety's address as listed with the Register of Wills where the bond is filed;

(4) On petition of a successor personal representative, any other personal representative of the same decedent or any interested person, a proceeding in the Court may be initiated by a surety for breach of the obligation of the bond of the personal representative;

(5) The bond of the personal representative is not void after the first recovery but may be proceeded against from time to time until the whole penalty is exhausted.

(b) No action or proceeding may be commenced against the surety on any matter as to which an action or proceeding against the primary obligator is barred by adjudication or limitation.

(63 Del. Laws, c. 282, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1526 Objection to amount or condition.

If any interested person objects to the amount of the bond as provided in § 1523 of this title or the condition of the bond as provided in § 1525 of this title, such person may petition the Court of Chancery and the Court shall fix the amount and condition of the bond.

(59 Del. Laws, c. 384, § 1; 63 Del. Laws, c. 282, § 1.)

§ 1527 Liability for estate taxes and duties related thereto.

The bond of a personal representative shall be liable for all money received for taxes of this State or the United States or for any penalty assessed against the personal representative for failure to file a tax return of this State or the United States within the period prescribed by law.

(25 Del. Laws, c. 225, § 4; Code 1915, § 149; 37 Del. Laws, c. 8, § 1; 40 Del. Laws, c. 10, § 1; Code 1935, § 140; 42 Del. Laws, c. 58, § 2; 12 Del. C. 1953, § 1523; 59 Del. Laws, c. 384, § 1; 63 Del. Laws, c. 282, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 353, § 4.)

§ 1528 Certificate of approval; preservation.

(a) The execution of the required bond shall be sufficient without any certificate of approval by the Register of Wills.

(b) The Register shall provide safekeeping for every bond.

(Code 1852, §§ 1801, 1802; Code 1915, § 3351; Code 1935, § 3816; 12 Del. C. 1953, § 1526; 59 Del. Laws, c. 384, § 1; 63 Del. Laws, c. 282, § 1.)

Subchapter III

Death, Removal or Discharge of Executor or Administrator

§ 1541 Removal for neglect of duties.

(a) If an executor or administrator neglects official duties, the Court of Chancery may remove the executor or administrator from office.

(b) If any executor or administrator fails to perform any of the duties imposed upon the executor or administrator under Chapter 15 of Title 30, the Court of Chancery may, upon petition of the Division of Revenue, revoke the same, and the executor's or administrator's bond shall be liable, and the same proceedings shall be had as if the executor's or administrator's administration had been revoked for other cause.

(Code 1852, § 1784; 25 Del. Laws, c. 225, § 4; Code 1915, §§ 149, 3346; 37 Del. Laws, c. 8, § 1; 40 Del. Laws, c. 10, § 1; Code 1935, §§ 140, 3811; 12 Del. C. 1953, § 1541; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 353, § 5.)

§ 1542 Removal of executor or administrator upon subsequent probate of will.

If, after the grant of letters testamentary or the grant of letters of administration, a will of the deceased is admitted to probate and letters testamentary or of administration with the will annexed are thereupon granted, the prior executor or administrator shall by such grant be removed from office. All the previous lawful acts of the removed executor or administrator shall be valid as provided in § 1545 of this title.

(Code 1852, § 1785; Code 1915, § 3346; Code 1935, § 3811; 12 Del. C. 1953, § 1542; 59 Del. Laws, c. 384, § 1.)

§ 1543 Rights of coexecutor, coadministrator or successor upon death or removal.

Whenever an executor or administrator is removed or dies before the estate of the deceased is closed, a coexecutor or coadministrator, or if there be none such, a successor, shall be entitled to receive all the unadministered effects, including books and papers, which, at the time of such removal or death, shall be in the executor's or administrator's hands, or for which the executor or administrator is answerable, just allowances being made.

(Code 1852, § 1786; Code 1915, § 3346; Code 1935, § 3811; 12 Del. C. 1953, § 1543; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1544 Commissions; allowance and apportionment.

When part of the effects of the deceased passes from 1 executor or administrator to another under § 1543 of this title, commissions shall not be twice allowed, but may be apportioned or the whole may be allowed to the one who, according to the circumstances, ought to have the same. When commissions have been once allowed, there shall be no more allowed upon the same subject matter, except in cases of apportionment, unless the first allowance is annulled.

(Code 1852, § 1787; Code 1915, § 3346; Code 1935, § 3811; 12 Del. C. 1953, § 1544; 59 Del. Laws, c. 384, § 1.)

§ 1545 Validity of acts of removed or deceased executor or administrator.

Any act done by an executor or administrator in the due course of administration, and any payment made by the executor or administrator on account of a legacy or distributive share shall be valid, until it appears to have been erroneously or unlawfully done or made although the executor or administrator shall be removed from office or shall die before closing the estate.

(Code 1852, § 1788; Code 1915, § 3346; Code 1935, § 3811; 12 Del. C. 1953, § 1545; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1546 Refusal to deliver unadministered assets.

(a) If any executor or administrator who has been removed refuses to deliver to a coexecutor or coadministrator, if there be such, and if not, to a successor, all the unadministered effects belonging to the deceased, which shall be in the executor's or administrator's hands, the Court of Chancery may, in a summary proceeding, upon the petition of such coexecutor, administrator or successor, hear the parties, and make an order for such delivery, and enforce the same by attachment, sequestration or any other process.

(b) The Court of Chancery may also proceed, in like manner, against the personal representative of a deceased executor or administrator, refusing to deliver, according to law, any such effects belonging to the estate of the first testator or intestate which shall come to personal representative's hands.

(Code 1852, §§ 1789, 1790; Code 1915, § 3346; Code 1935, § 3811; 12 Del. C. 1953, § 1546; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1547 Discharge of executor or administrator upon petition; procedure; appeal.

(a) An executor or administrator may, by petition to the Court of Chancery, apply to be discharged from the office of executor or administrator. Upon such petition and upon it appearing to the Court that the discharge of the executor or administrator will be for the benefit of the parties interested in the estate of the deceased, the Court may grant such discharge and revoke the letters testamentary or of administration, upon such terms and conditions as the Court deems necessary for the security of the estate of the decedent. Notice of such application and of the time and place of hearing the same shall be given to parties interested, by citation served on such as reside within this State, and as to nonresident parties by such publication as the Court directs.

(b) The provisions of law relating to the acts of a removed executor or administrator, the delivery of unadministered effects, books and papers, the remedies for enforcing such delivery and the apportionment of commissions and the fees of the Register of Wills in the proceedings for the removal of an executor or administrator, shall apply to the case of an executor or administrator discharged under this section.

(c) The Court of Chancery may make any order upon a discharged executor or administrator which may be necessary to carry into effect this section, and may enforce such order by attachment, sequestration or any other process.

(12 Del. Laws, c. 304, §§ 1-4; Code 1915, § 3403; Code 1935, § 3866; 12 Del. C. 1953, § 1547; 49 Del. Laws, c. 220, § 10; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

Subchapter IV

Life Interest in Personalty Where Will Appoints No Trustee to Administer

§ 1551 Appointment of trustee upon petition of executor or administrator; bond, duties and release of trustee.

(a) When any person, other than the person who during life shall be entitled under the will of any deceased testator to the income on the personal estate of such deceased testator or any part thereof, shall be the executor or administrator with the will annexed of the estate of such deceased testator, such executor or administrator with the will annexed may, if no trustee is named in such will, after having passed a final account of administration on the estate before the Register of Wills, petition the Court of Chancery for the appointment of a trustee to receive from such executor or administrator with the will annexed, the fund to which the person named in the will is entitled during the person's life.

(b) The Court of Chancery, upon petition being presented to it as provided in subsection (a) of this section, shall appoint a trustee to receive, manage and invest the fund, and the trustee shall give bond as the Court may order and direct.

(c) The trustee shall manage and invest the fund, and pay over to the person entitled for life to the fund the profits and income arising thereout; and after the death of the person entitled for life, shall pay the fund to the person entitled absolutely.

(d) The trust shall terminate upon the death of the person entitled during life to the fund, and the release of the person entitled absolutely to the fund shall discharge and release the trustee from all liability for or concerning the same.

(21 Del. Laws, c. 295, § 1; Code 1915, §§ 3357, 3358; Code 1935, §§ 3822, 3823; 12 Del. C. 1953, § 1551; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1552 Receipt of trustee.

The receipt of the trustee, appointed under § 1551 of this title, to the executor or administrator with the will annexed for the fund shall release and discharge the executor or administrator with the will annexed of and from all liability for or concerning the fund.

(21 Del. Laws, c. 295, § 1; Code 1915, § 3359; Code 1935, § 3824; 12 Del. C. 1953, § 1552; 59 Del. Laws, c. 384, § 1.)

§ 1553 Personalty in possession of life tenant; discharge of executor or administrator with will annexed; liability of life tenant.

When the executor or administrator with the will annexed, in cases where the will so provides, leaves in the possession of the person entitled for life, perishable personal property, livestock, household goods, family stores and farming implements, together with the crops

saved for the maintenance of such stock, the receipt of such person entitled for life to such executor or administrator with the will annexed shall discharge the executor or administrator with the will annexed of and from all liability for or concerning the goods and chattels and crops so devised and the appraised value thereof. The Register of Wills shall allow the amount of the appraisement of the goods and chattels in the account of the executor or administrator as a credit upon the production, at the time of passing the account, of the receipt; but such release shall not discharge the person so entitled for life, the person's executor or administrator from liability to the person entitled to such personal property absolutely, after the death of the person entitled thereto for life, or prevent such action at law or in equity as is necessary to secure the delivery of such personal property or payment therefor, at its appraised value, to the person entitled thereto absolutely, after the death of the person entitled to such property for life.

(21 Del. Laws, c. 295, § 1; Code 1915, § 3360; Code 1935, § 3825; 12 Del. C. 1953, § 1553; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

Subchapter V

Foreign Representatives

§ 1561 Definitions.

As used in this subchapter, the following definitions shall apply:

(1) "Local administration" means administration by a personal representative appointed in this State pursuant to appointment proceedings described in this title.

(2) "Local personal representative" includes any personal representative appointed in this State pursuant to appointment proceedings described in this title and excludes foreign personal representatives who acquire the power of a local personal representative pursuant to § 1566 of this title.

(3) "Personal representative" includes executor, administrator, administrator with the will annexed and successor personal representatives and persons who perform substantially the same function under the law governing their status.

(4) "Resident creditor" means a person domiciled in, or doing business in this State, who is, or could be, a claimant against an estate of a nonresident decedent.

(59 Del. Laws, c. 384, § 1.)

§ 1562 Payment of debt and delivery of property to domiciliary foreign personal representative without local administration.

At any time after the expiration of 60 days from the death of a nonresident decedent, any person indebted to the estate of the nonresident decedent or having possession or control of property of such nonresident decedent or having possession or control of an instrument evidencing a debt, obligation, stock or chose in action belonging to the estate of the nonresident decedent may pay the debt, deliver the property or the instrument evidencing the debt, obligation, stock or chose in action to the domiciliary foreign personal representative of the nonresident decedent upon being presented with proof of appointment and an affidavit made by or on behalf of the representative stating:

(1) The date of the death of the nonresident decedent;

(2) That no local ancillary administration, or application or petition therefor, is pending in this State;

(3) That the domiciliary foreign personal representative is entitled to payment or delivery.

(59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1563 Payment or delivery discharges.

Payment or delivery made in good faith on the basis of the proof of authority and affidavit releases the debtor or person having possession of the personal property to the same extent as if payment or delivery had been made to a local personal representative.

(59 Del. Laws, c. 384, § 1.)

§ 1564 Resident creditor notice.

Payment or delivery under § 1562 of this title may not be made if a resident creditor of the nonresident decedent has notified the debtor of the nonresident decedent or the person having possession of the personal property belonging to the nonresident decedent that the debt should not be paid nor the property delivered to the domiciliary foreign personal representative.

(59 Del. Laws, c. 384, § 1.)

§ 1565 Proof of authority and bond.

If no local ancillary administration or application or petition therefor is pending in this State, a domiciliary foreign personal representative may file with the Register of Wills in this State in a county in which property belonging to the decedent is located exemplified copies of the domiciliary foreign personal representative's appointment and of any official bond given.

(59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1566 Powers.

A domiciliary foreign personal representative who has complied with § 1565 of this title may exercise as to assets in this State all powers of a local personal representative and may maintain actions and proceedings in this State subject to any conditions imposed upon nonresident parties generally and provided that such domiciliary foreign personal representative complies with § 1905 of this title governing the filing of an inventory and appraisal of estate assets consisting of tangible personal property and real estate actually situated within this State.

(59 Del. Laws, c. 384, § 1; 75 Del. Laws, c. 97, § 2.)

§ 1567 Power of representatives in transition.

The power of a domiciliary foreign personal representative under § 1562 or § 1565 of this title shall be exercised only if there is no administration or application therefor pending in this State. An application or petition for local administration of the estate terminates the power of the foreign personal representative to act under § 1566 of this title, but the Court of Chancery may allow the foreign personal representative to exercise limited powers to preserve the estate. No person who, before receiving actual notice of a pending local administration, has changed position in reliance upon the powers of a foreign personal representative shall be prejudiced by reason of the application or petition for, or grant of, local administration. The local personal representative is subject to all duties and obligations which have accrued by virtue of the exercise of the powers by the foreign personal representative and may be substituted for the foreign personal representative in any action or proceeding in this State.

(59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1568 Ancillary and other local administrations; provisions governing.

In respect to the local administration of the estate of a nonresident decedent, the provisions of this title govern:

(1) Proceedings, if any, before a Register of Wills or the Court of Chancery in this State, for probate of the will, appointment, removal, supervision and discharge of the local personal representative, and any other order concerning the estate; and

(2) The status, powers, duties and liabilities of any local personal representative and the rights of claimants, purchasers, distributors and others in regard to a local administration.

(59 Del. Laws, c. 384, § 1.)

§ 1569 Jurisdiction by act of foreign personal representative.

A foreign personal representative submits to the jurisdiction of the courts of this State by:

(1) Filing exemplified copies of appointment as provided in § 1565 of this title,

(2) Receiving payment of money or taking delivery of personal property under § 1562 of this title, or

(3) Doing any act as a personal representative in this State which would have given the State jurisdiction over the person as an individual.

Jurisdiction under paragraph (2) of this section is limited to the money or value of personal property collected.

(59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1570 Jurisdiction by act of decedent.

In addition to jurisdiction conferred by § 1569 of this title, a foreign personal representative is subject to the jurisdiction of the courts of this State to the same extent that the decedent was subject to jurisdiction immediately prior to death.

(59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1571 Service on foreign personal representative.

(a) Service of process may be made upon the foreign personal representative by certified mail, addressed to the last reasonably ascertainable address, requesting a return receipt signed by the addressee only. Notice by ordinary first-class mail is sufficient if certified mail service to the addressee is unavailable. Service may be made upon a foreign personal representative in the manner in which service could have been made under other laws of this State on either the foreign personal representative or the decedent immediately prior to death.

(b) If service is made upon a foreign personal representative as provided in subsection (a) of this section, the foreign personal representative shall be allowed at least 30 days within which to appear or respond.

(59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1572 Effect of adjudication for or against personal representative.

In the absence of fraud or collusion, an adjudication rendered in the domiciliary jurisdiction or any ancillary jurisdiction in favor of or against any personal representative of the estate is as binding on the local personal representative as if the representative were a party to the adjudication.

(59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1573 Authentication and recognition of acknowledge ments.

The authentication and recognition of the acknowledgement of a foreign notary public or other officer on an instrument necessary under this chapter shall be in accordance with subchapter II of Chapter 43 of Title 29.

(63 Del. Laws, c. 61, § 1.)

Part IV
Administration of Decedents' Estates
Chapter 17
ABSENTEES; PRESUMED DECEDENTS

§ 1701 Presumption of death.

(a) When the death of a person or the date thereof is in issue, the unexplained absence from the last known place of residence and the fact that the person has been unheard of for 7 years may be a sufficient ground for finding that the person died 7 years after the person was last heard of.

(b) The fact that a person was exposed to a specific peril of death may be sufficient ground for finding that the person died less than 7 years after the person was last heard of.

(c) A written finding of missing in action or presumed death made by the Secretary of the Army, the Secretary of the Navy or other officer or employee of the United States authorized to make such finding pursuant to the Federal Missing Persons Act (37 U.S.C. § 551 et seq.), as now or hereafter amended, or a duly certified copy of such finding shall be received in any court, office or other place in this State as prima facie evidence of the death of the person therein found to be missing in action or dead, and the date, circumstances and place of disappearance.

(59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1702 Petition for adjudication of presumed death; notice of hearing.

(a) Whenever any person is presumed to be dead on account of absence for 7 years or more, exposure to specific peril or pursuant to a finding under Federal Missing Persons Act (37 U.S.C. § 551 et seq.), whether such person was domiciled within this State or in some other state, territory or possession of the United States or in any foreign country, any person entitled under the last will and testament of such presumed decedent or under the intestate laws to any share of the estate within this State, or under any deed, will or other instrument in writing or in any other way, method or manner to any share or interest in any estate held by or for such presumed decedent for years or for the term of natural life, or the Escheator for the State or any creditor of the presumed decedent, may present a petition to the Court of Chancery, setting forth the facts which raise the presumption and praying for an adjudication thereon declaring such person to be presumed to be deceased.

(b) The Court of Chancery, if satisfied as to the interest of the petitioner, shall cause to be advertised in a newspaper of general circulation in the county of the principal residence of the presumed decedent (or if nonresident then in such county as the Court shall direct), once a week for 3 consecutive weeks, together with such other advertisement as the Court, according to the circumstances of the case, deems expedient or advisable, the fact of such application, together with notice that on a day certain, which shall be at least 2 weeks after the last appearance of the advertisement, the Court shall hear evidence concerning the alleged absence of the presumed decedent and the circumstances and duration thereof.

(16 Del. Laws, c. 132, §§ 1, 2; Code 1915, § 3361; Code 1935, § 3826; 42 Del. Laws, c. 140, § 1; 12 Del. C. 1953, § 1701; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1703 Petition for ancillary letters on estate of nondomiciliary presumed decedent; notice of hearing.

(a) Whenever letters of administration or letters testamentary have been granted in any other state, territory or possession of the United States, or in any foreign country, on the estate of a domiciliary thereof, presumed to be dead, the person to whom such letters have been granted may present a petition to the Court of Chancery, accompanied by a complete exemplification of the record of the grant of such letters, praying for the grant of ancillary letters testamentary or of administration upon the estate of such presumed decedent, situate, owing or belonging to the decedent within this State.

(b) The Court of Chancery, if satisfied that the person proposed in such petition would be a fit person to whom such letters might be issued, shall cause publication to be made, in the manner and for the period as provided in § 1702 of this title, of the fact of such application, together with notice that on a day certain, which shall be at least 2 weeks after the last appearance of the advertisement, the Court of Chancery shall hear evidence concerning the alleged absence of the presumed decedent and the circumstances and duration thereof.

(16 Del. Laws, c. 132, §§ 1, 2; Code 1915, § 3361; Code 1935, § 3826; 42 Del. Laws, c. 140, § 1; 12 Del. C. 1953, § 1702; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1704 Hearing; competency of witnesses.

At the hearing in either of the cases provided for in §§ 1702 and 1703 of this title, the Court of Chancery shall take such legal evidence as shall be offered, for the purpose of ascertaining whether the presumption of death is established; or it may appoint a master to take such testimony, and report the findings thereon. No person shall be disqualified to testify by reason of relationship as husband or wife to the presumed decedent, or of interest in the estate of the presumed decedent.

(16 Del. Laws, c. 132, §§ 1, 2; Code 1915, § 3361; Code 1935, § 3826; 42 Del. Laws, c. 140, § 1; 12 Del. C. 1953, § 1703; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1705 Search for absentee.

The Court of Chancery, on its own motion or upon the application of any party in interest, may appoint a master, investigator or appropriate agency to search for the presumed decedent in any manner which the Court shall deem appropriate, and the expenses of such search shall be paid out of the property of the absentee.

(59 Del. Laws, c. 384, § 1.)

§ 1706 Decree of presumed death; admission of will to probate and grant of letters.

(a) If satisfied, upon the hearing, or upon the report of a master, that the death of the presumed decedent has been established, the Court of Chancery shall so decree, and the Court shall determine in such decree the date of such death.

(b) The Register of Wills shall issue letters of administration to the person thereto entitled, or receive for probate the last will and testament of such presumed decedent, and, if duly proved, admit the same to probate and issue letters testamentary thereunder. The letters, until revoked, and all acts done in pursuance thereof and in reliance thereon shall be as valid as if the presumed decedent were actually dead.

(16 Del. Laws, c. 132, §§ 1, 2; Code 1915, § 3361; Code 1935, § 3826; 42 Del. Laws, c. 140, § 1; 12 Del. C. 1953, §§ 1704, 1705; 59 Del. Laws, c. 384, § 1.)

§ 1707 Title to real estate of presumed decedent; recording of decree.

(a) Whenever the Court of Chancery enters a decree that the presumption of death of any person has been established, the real estate of the presumed decedent shall pass and devolve as in the case of actual death, and the person entitled by will or under the intestate laws may enter and take possession. In case the presumption of death is thereafter rebutted by adequate proof that the presumed decedent is in fact alive, and the decree is vacated, the real estate shall revert to the person erroneously presumed decedent as fully as though such decree had never been entered, subject, however, to subsection (b) of this section and to payment of the costs and expenses of the proceedings and advertisement.

(b) The decree may be recorded in the office of the Recorder of Deeds of the proper county, in the deed book, and shall be indexed by the Recorder in the grantors' index under the names of the persons taking the real estate; and if so recorded, and the persons taking the real estate sell or mortgage the same, the purchaser or mortgagee shall take a good title or security interest, free and discharged of any interest or claim of the presumed decedent.

(16 Del. Laws, c. 132, §§ 1, 2; Code 1915, § 3361; Code 1935, § 3826; 42 Del. Laws, c. 140, § 1; 12 Del. C. 1953, § 1706; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1708 Duties of executor or administrator.

The executor or administrator to whom letters have been issued upon the estate of a presumed decedent shall administer the estate in the same manner and with the same effect as the same would be administered under existing laws of this State if the presumed decedent were in fact dead.

(16 Del. Laws, c. 132, §§ 1, 2; Code 1915, § 3361; Code 1935, § 3826; 42 Del. Laws, c. 140, § 1; 12 Del. C. 1953, § 1707; 59 Del. Laws, c. 384, § 1.)

§ 1709 Security given by beneficiaries.

(a) Before any distribution is made of the assets of the estate of the presumed decedent or before the decree is recorded in the office of the Recorder of Deeds as provided in § 1707(b) of this title, the persons, other than creditors, entitled to receive the same, shall, respectively give sufficient real or personal security, to be approved by the Court of Chancery, in such sum and form as the Court directs, with condition that, if the presumed decedent shall in fact be at the time alive, they will respectively refund the assets received by each, on demand.

(b) If any person entitled to receive assets refuses or neglects, or is unable to enter such security, the Court of Chancery may, upon petition of any person interested, and upon due notice to all persons interested, so far as such notice can reasonably be given, appoint a suitable person or corporation as trustee to receive and hold the share of the distributee refusing or neglecting, or being unable to enter security until further order of the Court. Such trustee shall not be an insurer of the trust fund, and shall be liable to the person interested therein only for such care, prudence and diligence in the execution of the trust as trustees are liable for.

(c) If the Court of Chancery shall be satisfied, from the evidence at the hearing to ascertain whether the presumption of death is established, or from the report of the master, that there is no likelihood of the presumed decedent's being still alive, then the Court may accept refunding bonds from the distributees of the presumed decedent's estate without requiring sureties thereon.

(16 Del. Laws, c. 132, §§ 1, 2; Code 1915, § 3361; Code 1935, § 3826; 42 Del. Laws, c. 140, § 1; 12 Del. C. 1953, § 1708; 59 Del. Laws, c. 384, § 1.)

§ 1710 Revocation of letters and vacation of decree of presumed death — Effect generally.

The Court of Chancery may revoke the letters and vacate the decree that the presumption of death has been established, at any time, on due and satisfactory proof that the presumed decedent is in fact alive. After such revocation all the powers of the executor or administrator shall cease, but all receipts or disbursements of assets, and other acts previously done by the executor or administrator, shall remain as

valid as if the letters were unrevoked. The executor or administrator shall settle an account of administration down to the time of such revocation, and shall transfer all assets remaining to the person as whose executor or administrator the executor or administrator acted, or to a duly authorized agent or attorney. Nothing contained in this chapter shall validate the title of any person to any money or property received as surviving spouse, next of kin, heir, legatee or devisee of such presumed decedent, but the same may be recovered from such person in all cases in which such recovery would be had if this chapter had not been passed.

(16 Del. Laws, c. 132, §§ 1, 2; Code 1915, § 3361; Code 1935, § 3826; 42 Del. Laws, c. 140, § 1; 12 Del. C. 1953, § 1709; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1711 Revocation of letters and vacation of decree of presumed death — Effect upon pending actions and upon judgments rendered.

After revocation of the letters, and vacation of the decree that the presumption of death has been established, the person erroneously presumed to be dead may, on the suggestion filed of record of the proper facts, be substituted as plaintiff or petitioner in all actions or proceedings at law or in equity brought by the executor or administrator, whether prosecuted to judgment or decree, or otherwise; the person erroneously presumed to be dead may, in all actions or proceedings previously brought against the executor or administrator, be substituted as defendant or respondent, on proper suggestion filed by the person erroneously presumed to be dead, or by proper service of writ or other process, but shall not be compelled to go to trial in less than 3 months from the time of such suggestion filed or process served. Judgments or decrees recovered against the executor or administrator before revocation and vacation of the letters and decree may be opened on application by the presumed decedent, made within 3 months from the revocation, and supported by affidavit denying specifically, on the knowledge of the affiant, the cause of action, or specifically alleging the existence of facts which would be a valid defense; but, if within 3 months, such application shall not be made, or being made the facts exhibited shall be adjudged an insufficient defense, the judgment or decree shall be conclusive to all intents, saving the defendant's right to have it reviewed as in other cases on appeal. Notwithstanding the substitution of the presumed decedent as defendant in any judgment or decree, it shall continue as a lien upon the presumed decedent's real estate in the county, as other judgments.

(16 Del. Laws, c. 132, §§ 1, 2; Code 1915, § 3361; Code 1935, § 3826; 42 Del. Laws, c. 140, § 1; 12 Del. C. 1953, § 1710; 57 Del. Laws, c. 402, § 3; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1712 Probate of will produced after issuance of letters; effect upon prior administration.

(a) Whenever letters testamentary or of administration shall be issued upon the estate of any person presumed to be dead, in accordance with this chapter, the person having custody of any will which may have been left by such presumed decedent, in case letters of administration have been issued, or of any later will, in case letters testamentary have been issued, or any creditor of any person interested in the estate, may file a petition with the Court of Chancery in which the proceedings to establish the death by presumption have been held, setting forth the facts of the case, a copy of the will or later will, or an averment that such will exists, and the names of all persons interested in the estate of the presumed decedent.

(b) Upon the filing of such petition the Court of Chancery shall issue a citation to the person to whom letters of administration or letters testamentary have been issued, and to all persons interested in the estate of the presumed decedent, to appear upon a day fixed, and to show cause why the alleged will or later will should not be admitted to probate.

(c) Upon the return of the citation, if the Court of Chancery shall be satisfied from all the evidence that may be adduced that the proposed will was, in fact, the last will and testament made by the presumed decedent before the departure or disappearance from the residence, the will shall be admitted to probate as if the testator were in fact dead. If, upon such probate, it appears that an executor is named in the will, the letters of administration previously granted shall be revoked, and letters testamentary shall be issued to the executor, in the same manner and form as if the testator were in fact dead; but, if no executor shall be named in such will, then a certified copy of the will shall be attached to the letters of administration theretofore issued, or to a certified copy of such letters. Thereafter the executor or administrator shall execute the will according to its terms, and all property of the decedent shall be distributed and passed as provided by the will to the several legatees and devisees named therein. In case an earlier will shall have been admitted to probate, the letters testamentary issued thereunder shall be revoked, and letters shall be issued under the last will, or if no executor shall be named in the last will, then letters of administration with the will annexed shall be issued to the person entitled thereto. All the previous lawful acts of the removed executor or administrator shall be valid as provided in § 1545 of this title.

(16 Del. Laws, c. 132, §§ 1, 2; Code 1915, § 3361; Code 1935, § 3826; 42 Del. Laws, c. 140, § 1; 12 Del. C. 1953, § 1711; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1713 Costs.

The costs attending the issuance or revocation of letters shall be paid out of the estate of the presumed decedent, and costs arising upon an application for letters which shall not be granted shall be paid by the applicant.

(16 Del. Laws, c. 132, §§ 1, 2; Code 1915, § 3361; Code 1935, § 3826; 42 Del. Laws, c. 140, § 1; 12 Del. C. 1953, § 1712; 59 Del. Laws, c. 384, § 1.)

Part IV
Administration of Decedents' Estates
Chapter 19
ASSETS OF ESTATES; INVENTORY AND APPRAISAL

§ 1901 Personal property constituting assets of estate; exceptions; employee death benefit plans and insurance policies.

(a) Estates in lands, tenements and hereditaments held by the decedent for the life of another shall be chattels; and such estates, estates by elegit or for years, the crop of the decedent growing or begun (except on lands devised by the decedent), bank and other stock, money (whether in hand or deposited), and all goods and chattels shall be assets and included in the inventory.

(b) The following articles shall not be included in the inventory: The family Bible; clothes of the decedent; and the family stores laid in before the death of the decedent.

(c) If, under the terms of any insurance policy or contract, pension, bonus, stock option or other employee benefit or incentive plan, a person, trust or corporation, other than the decedent or the decedent's estate's personal representative, is designated to receive, upon or after the death of the decedent, any property or other death benefit, such property or death benefit shall not be included in the inventory of the decedent as chargeable to the decedent's personal representative; and such person, trust or corporation shall be entitled to such property or death benefits as against the claim of any personal representative, creditor, legatee or next of kin of the decedent.

(d) Subsection (c) of this section shall apply to designations whether made prior to or subsequent to the enactment of this section with respect to decedents dying after June 30, 1969. This section shall have no effect on the validity of other designations, nor shall it affect the calculations of estate taxes with respect to any decedent.

(Code 1852, § 1804; Code 1915, § 3363; Code 1935, § 3828; 12 Del. C. 1953, § 1901; 57 Del. Laws, c. 76; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 353, § 6.)

§ 1902 Rents and profits of deceased's real estate as estate assets; possession and repair of real estate.

(a) The rents and profits of the real estate of the deceased which shall come into the hands of the executor or administrator shall be assets for the payment of debts, and the executor or administrator shall be chargeable therewith accordingly; and upon a demand of the heir or devisee for such rents and profits it shall be a sufficient answer that the same have been applied to debts against the deceased, or that there are such debts to which they are applicable.

(b) Nothing in this section shall give to the executor or administrator any right of possession of the real estate; but if in possession, the executor or administrator shall, with the rents and profits, keep the premises in tenantable repair.

(Code 1852, § 1831; Code 1915, § 3375; Code 1935, § 3840; 12 Del. C. 1953, § 1902; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1903 Growing crops.

When there is a crop growing or begun, the executor or administrator may finish or sell it as deemed best for the estate. If finishing the crop, the executor's or administrator's account shall comprehend the proceeds and expenses.

(Code 1852, § 1814; Code 1915, § 3368; Code 1935, § 3833; 12 Del. C. 1953, § 1903; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1904 Appraisers; appointment.

The personal representative may employ 1 or more qualified and disinterested appraisers to assist in ascertaining the fair market value as of the date of the decedent's death of any asset the value of which may be subject to reasonable doubt. Different persons may be employed to appraise different kinds of assets included in the estate. The names and addresses of any appraiser shall be indicated on the inventory with the item or items being appraised.

(Code 1852, §§ 1805, 1806; Code 1915, § 3364; Code 1935, § 3829; 12 Del. C. 1953, § 1904; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1905 Inventory and appraisal; filing requirements, form, contents and supporting affidavits; notice of action affecting title.

(a) Every executor or administrator shall, within 3 months after the granting of letters testamentary or of administration, file in the office of the Register of Wills of the county in which the letters have been granted, an inventory and appraisal and shall also file a copy of said inventory and appraisal in the office of the Register of Wills of any county in which the decedent owned real estate, which shall contain an inventory of all goods and chattels of the decedent, a list of all debts and credits due or belonging to the decedent or to the decedent's estate, and a statement setting forth a general description of every parcel of real estate in this State of which the decedent died seized, which description shall include the parcel identification number assigned to said parcel, and the name of each party entitled to any

estate or interest in any part of such real or personal estate and the relationship, if any, of each such party to the decedent. Each item of property included in such inventory, list and statement, shall be separately valued at its fair market value as of the date of death of the decedent and such value shall be stated in the inventory and appraisal.

(b) The inventory and appraisal shall be supported by an affidavit of each executor or administrator.

(c) The executor's or administrator's affidavit shall be as follows:

"..... makes solemn oath (or affirmation) that due inquiry concerning the goods, chattels and money of, and the debts and credits due or belonging to....., deceased has been made, and that this inventory and list contains all the goods, chattels and money of, and debts or credits due or belonging to the said....., which have come to the knowledge of the deponent (or affirmant) and that the information contained in the statement of real estate and the information pertaining to transfers of property, powers of appointment, entireties and jointly owned real and personal property and annuity contracts is true to the best of deponent's (or affirmant's) knowledge and belief."

(d) Every executor or administrator shall, in the event [that] any action affecting title to real estate of the decedent in Delaware is brought in any court, whether by way of caveat, petition for review, petition for instructions or otherwise, within 10 days after such action, file a notice of the pendency of such action in the office of the Register of Wills of any county in which the decedent owned real estate other than the county in which letters had been granted. Nothing in this subsection shall affect any other notice that may be filed concerning such an action.

(e) When no letters testamentary or of administration are required for an estate and real property passes to any person by virtue of joint ownership with right of survivorship or tenancy by the entireties with the decedent, then the personal representative (as defined in § 101 of this title) or the surviving joint tenant shall, within 3 months after the decedent's death, shall complete and file an affidavit in the office of the Register of Wills of the county in which the real property is located with a statement setting forth a general description of the real estate and the name or names of the surviving owner or owners.

(Code 1852, §§ 1807-1812; 25 Del. Laws, c. 225, § 3; 27 Del. Laws, c. 269, § 1; Code 1915, §§ 148, 3365, 3366; 37 Del. Laws, c. 8, § 1; 40 Del. Laws, c. 10, § 1; Code 1935, §§ 139, 3830, 3831; 41 Del. Laws, c. 191, §§ 1, 3; 12 Del. C. 1953, § 1905; 59 Del. Laws, c. 384, § 1; 64 Del. Laws, c. 252, §§ 2, 3; 68 Del. Laws, c. 142, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 342, § 1; 79 Del. Laws, c. 352, § 1.)

§ 1906 Failure to file inventory; civil and criminal penalties.

(a) Any executor or administrator who fails to file the inventory, list and statement with the Register of Wills within 3 months after the granting of letters testamentary or of administration shall be subject, personally and individually, to a penalty of $1 per day for each day delinquent. This penalty shall not apply until 1 month after notice by the Register of Wills of such delinquency.

(b) Any executor or administrator who fails to file the inventory, list and statement as required by § 1905 of this title, after being ordered to do so by the Court of Chancery, shall be subject to penalty for contempt of Court.

(Code 1852, § 1812; 25 Del. Laws, c. 225, § 3; 27 Del. Laws, c. 269, § 1; Code 1915, §§ 148, 3366; 37 Del. Laws, c. 8, § 1; 40 Del. Laws, c. 10, § 1; Code 1935, §§ 139, 3831; 41 Del. Laws, c. 8, § 9; 41 Del. Laws, c. 191, § 3; 42 Del. Laws, c. 59, § 1; 12 Del. C. 1953, § 1906; 59 Del. Laws, c. 384, § 1; 64 Del. Laws, c. 252, § 4.)

§ 1907 Refusal of a coexecutor or coadministrator to file inventory.

Where there are several executors or administrators, if either of them refuses or neglects to join in the inventory or list of debts, the Court of Chancery shall remove the person or persons from office, unless the person or persons shall cause an inventory or list to be made and delivered on the person's own behalf.

(Code 1852, § 1813; Code 1915, § 3367; Code 1935, § 3832; 12 Del. C. 1953, § 1907; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1908 Affidavit of diligent inquiry.

An affidavit, signed by the executor or administrator and declaring upon oath or affirmation that the executor or administrator has diligently inquired and can obtain no knowledge of any goods or chattels of the decedent, shall be a sufficient excuse for not delivering an inventory; and a like affidavit that the executor or administrator has diligently inquired and can obtain no knowledge of any debts or credits due or belonging to the decedent shall be a sufficient excuse for not delivering a list. Such affidavit shall be certified by the Register of Wills and filed with the bond.

(Code 1852, § 1812; Code 1915, § 3366; Code 1935, § 3831; 41 Del. Laws, c. 191, § 3; 12 Del. C. 1953, § 1908; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1909 Executor's debt to decedent.

The making of a person executor shall not extinguish any demand of the decedent against said person, but the same shall be truly inserted in the list of debts.

(Code 1852, §§ 1807-1811; Code 1915, § 3365; Code 1935, § 3830; 12 Del. C. 1953, § 1910; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1910 Additional inventory; after discovered assets.

If, after the return of an inventory or list of debts, personal estate or debts due the decedent, not included therein, shall come to the knowledge of the executor or administrator, the executor or administrator shall cause an additional inventory or list to be made and returned into the Register of Wills' office.

(Code 1852, § 1815; Code 1915, § 3369; Code 1935, § 3834; 12 Del. C. 1953, § 1911; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1911 Power of Court to suppress, reject and order another inventory or list.

The Court of Chancery may order an inventory or list of debts to be suppressed, or adjudge the same imperfect and order another to be made and filed in the office of the Register of Wills. No inventory or list of debts shall be suppressed or adjudged imperfect because of any defect in the affidavit or in any certificate of any oath or affirmation.

(Code 1852, §§ 1816, 1817; Code 1915, § 3370; Code 1935, § 3835; 12 Del. C. 1953, § 1912; 57 Del. Laws, c. 402, § 3; 59 Del. Laws, c. 384, § 1.)

§ 1912 Recording inventory and notation of inheritance tax status in Inheritance and Succession Docket.

(a) Every inventory, list and statement filed pursuant to § 1905 of this title, shall be recorded and indexed by the Register of Wills in the "Inheritance and Succession Docket."

(b) Whenever any parcel of real estate or any estate or interest therein described in the statement of the executor or administrator or affidavit filed pursuant to § 1905(e) of this title shall be subject to estate taxes under Title 30, the Register of Wills shall make an entry in the Inheritance and Succession Docket that the real estate is subject to tax, and in the event of an appeal to the Superior Court from a determination by the State Tax Appeal Board of the amount of estate taxes to be paid, shall further note in said docket the fact of appeal. When any estate tax due this State shall be paid and discharged, the Register shall make a note thereof in the docket, upon notice from the Division of Revenue of payment.

(25 Del. Laws, c. 225, § 3; 27 Del. Laws, c. 269, § 1; Code 1915, § 148; 37 Del. Laws, c. 8, § 1; 40 Del. Laws, c. 10, § 1; Code 1935, § 139; 12 Del. C. 1953, § 1913; 59 Del. Laws, c. 384, § 1; 71 Del. Laws, c. 353, § 7; 72 Del. Laws, c. 342, § 2.)

Part IV
Administration of Decedents' Estates
Chapter 21
DEBTS OF AND CLAIMS AGAINST ESTATE

§ 2101 Notice to creditors to present claims; publication.

(a) The Register of Wills shall give notice as provided in this section of the granting of letters. Said notice shall contain the date of grant of letters, the date of the decedent's death and the name and address of the personal representative and of the personal representative's counsel, if any.

(b) Such notice shall be given in all cases by advertisements to be posted within 40 days from the grant of letters on the designated county website and/or in the county courthouse in the county in which the decedent resided at the time of death, or, in the case of nonresident decedents, in the county in which letters testamentary or of administration shall have been granted; and, such notice shall also be published in any 1 or more newspapers approved by the Register of Wills published in such county at least 3 times within the same period not less frequently than once a week for 3 successive weeks; except that if the Register of Wills at the time of granting of letters shall determine from evidence satisfactory to the Register that the gross personal estate of the decedent does not exceed $30,000 and also that the gross real and personal estate of the decedent does not in the aggregate exceed $35,000, the Register may give such notice solely by the posting of advertisements as aforesaid, and not by publication in a newspaper or newspapers.

(c) The Register of Wills may require that the actual costs and expenses of such posting and publication be advanced to the Register of Wills prior to the grant of letters. The Register shall note or record in the Register's docket the giving of notice and the form of notice given.

(d) The Register of Wills shall send a copy of the notice, described in this section, to the State Treasurer within 40 days from the grant of letters. The State Treasurer, within 40 days from the receipt of notice, and at least monthly, shall send the information included therein in a convenient or summary form to each state agency which requests the information without charge.

(Code 1852, §§ 1855-1858; Code 1915, § 3398; 38 Del. Laws, c. 183, § 1; Code 1935, § 3861; 42 Del. Laws, c. 142, § 1; 12 Del. C. 1953, § 2101; 57 Del. Laws, c. 173; 59 Del. Laws, c. 384, § 1; 64 Del. Laws, c. 319, § 1; 66 Del. Laws, c. 374, § 2; 70 Del. Laws, c. 114, § 3; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 227, § 3; 77 Del. Laws, c. 229, § 1.)

§ 2102 Limitations on claims against estate.

(a) All claims against a decedent's estate which arose before the death of the decedent, including claims of the State and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort or other legal basis, except debts of which notice is presumed pursuant to § 2103 of this title, if not barred earlier by other statute of limitations, are barred against the estate, the personal representative and the heirs and devisees of the decedent unless presented as provided in § 2104 of this title within 8 months of the decedent's death whether or not the notice referred to in § 2101 of this title has been given.

(b) All claims against a decedent's estate which arise at or after the death of the decedent, including claims of the State or any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort or other legal basis, unless presented in accordance with § 2104 of this title, are barred against the estate, the personal representatives and the heirs and devisees of the decedent, as follows:

(1) A claim based on a contract with the personal representative, within 6 months after performance by the personal representative is due;

(2) Any other claim, within 6 months after it arises.

(c) Any claim not barred under subsections (a) and (b) of this section which has been rejected by an executor or administrator shall be barred forever unless an action or suit be commenced thereon within 3 months after the executor or administrator has notified the claimant of such rejection by writing delivered to the claimant in person or mailed to the claimant's last address known to the executor or administrator; provided, however, in the case of a claim which is not presently due or which is contingent or unliquidated, the executor or administrator may consent to an extension of the 3-month period, or to avoid injustice the Court of Chancery, on petition, may order an extension of the 3-month period, but in no event shall the extension run beyond the applicable statute of limitations.

(d) Subsections (a), (b) and (c) of this section shall not apply to claims for legacies or shares of an estate of a decedent.

(e)(1) No claim for a deficiency or otherwise, based on a bond which has been secured by a mortgage on real estate, may be presented against a decedent's estate, the personal representative and the heirs and devisees of a decedent after the expiration of 8 months from the date of the decedent's death.

(2) The failure to present a claim on a bond secured by a mortgage on real estate, in accordance with the foregoing provisions, shall not invalidate the bond so as to prevent the foreclosure of the mortgage on real estate at any time thereafter, but no claim may be asserted against the decedent's estate on or by reason of the bond.

(f) Nothing in this section affects or prevents, to the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which the decedent is protected by liability insurance.

(g) No claim against the estate of any decedent in which letters were granted prior to the effective date of this chapter shall be in any way affected by this section, but as to all such claims this section as it existed prior to the effective date of this chapter shall apply.

(Code 1852, §§ 1855-1858; Code 1915, § 3398; 38 Del. Laws, c. 183, § 1; Code 1935, § 3861; 42 Del. Laws, c. 142, §§ 1, 3, 4; 12 Del. C. 1953, § 2102; 50 Del. Laws, c. 377, §§ 1-3; 58 Del. Laws, c. 493, § 1; 59 Del. Laws, c. 384, § 1; 66 Del. Laws, c. 374, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2103 Debts of which notice is presumed.

An executor or administrator shall be deemed to have notice only to mortgages (but not of the bonds accompanying such mortgages) and of such judgments as would be liens against real estate at the date of death of the decedent, which mortgages and judgments are of record in the county of this State in which letters were granted upon the estate of the decedent, unless there has been a failure to insert them in the general indices of the office wherein it is proper that they be recorded.

(Code 1852, § 1830; Code 1915, § 3374; 38 Del. Laws, c. 181, § 1; Code 1935, § 3839; 47 Del. Laws, c. 116, § 1; 12 Del. C. 1953, § 2103; 59 Del. Laws, c. 384, § 1.)

§ 2104 Manner of presentation of claims.

Claims against a decedent's estate may be presented as follows:

(1) The claimant may deliver or mail to the personal representative a written statement of claim indicating its basis, the name and address of the claimant and the amount claimed, or may file a written statement of claim, in the form prescribed by rule of the Court of Chancery, with the Register of Wills. The claim is deemed presented on the first to occur of the receipt of the written statement of claim by the personal representative, or the filing of the claim with the Register of Wills. If a claim is not yet due, the date when it will become due shall be stated. If the claim is contingent or unliquidated, the nature of the uncertainty shall be stated. If the claim is secured, the security shall be described. Failure to describe correctly the security, the nature of any uncertainty and the due date of a claim not yet due does not invalidate the presentation made.

(2) The claimant may commence a proceeding against the personal representative in any court where the personal representative may be subject to jurisdiction, to obtain payment of the claim against the estate, but the commencement of the proceeding must occur within the time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the decedent which were pending at the time of the decedent's death.

(Code 1852, §§ 1832-1835, 1837; Code 1915, §§ 3376, 3377; Code 1935, §§ 3841, 3842; 48 Del. Laws, c. 232, § 1; 12 Del. C. 1953, § 2104; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2105 Order of preference of claims against estate.

(a) Executors and administrators after payment of all administration expenses, fees and commissions shall pay claims against the decedent in the following order:

(1) Surviving spouse's allowance as provided in § 2308 of this title;

(2) Funeral expenses;

(3) Child support arrears or retroactive support due as of the date of the decedent's death;

(4) The reasonable bills for medicine and medical attendance during the last sickness and for nursing and necessaries for the last sickness of the decedent;

(5) Wages of servants and laborers employed in household affairs or in the cultivation of a farm; but no servant or laborer shall be allowed this preference for more than 1 year's wages;

(6) Taxes imposed by the State;

(7) Rent for not exceeding 1 year; and this, at the election of the party entitled, may be of rent in arrear or rent growing due;

(8) Judgments against the decedent, which shall include judgments before justices of the peace and decrees of a court of equity against the decedent for the payment of money;

(9) Recognizances, mortgages and other obligations of record, for the payment of money;

(10) Obligations and contracts under seal;

(11) Contracts under hand for the payment of money, or delivery of goods, wares or merchandise;

(12) Other demands.

(b) No preference shall be given in the payment of any claims over any other claims of the same class, and a claim due and payable shall not be entitled to a preference over claims not due.

(Code 1852, §§ 1819-1828; 12 Del. Laws, c. 13, § 1; Code 1915, § 3372; 28 Del. Laws, c. 226, § 1; Code 1935, § 3837; 41 Del. Laws, c. 191, § 4; 12 Del. C. 1953, § 2105; 50 Del. Laws, c. 425, § 1; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1; 70 Del. Laws, c. 288, § 6.)

§ 2106 Petition to Court of Chancery to determine order of preference.

Whenever an executor or administrator is unable to determine between 2 or more creditors the order of preference to be given to their respective demands, the executor or administrator may, upon petition to the Court of Chancery, have the parties in interest summoned to

appear in the Court, and upon hearing duly had the Court shall determine the order of preference to be given to the respective demands of the creditors who may have been made parties to the proceeding. Upon compliance with such determination the petitioner and the petitioner's sureties shall be discharged from all further liability in respect to the preference made by the Court.

(Code 1915, § 3410A; 28 Del. Laws, c. 226, § 1; Code 1935, § 3837; 41 Del. Laws, c. 191, § 4; 12 Del. C. 1953, § 2106; 57 Del. Laws, c. 402, § 3; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 2107 Payment of claims after 3 months without notice of claim of higher priority.

If an executor or administrator, after the expiration of 3 months from the grant of letters, pays a claim of lower preference, before presentation pursuant to § 2104 of this title of a claim of a higher preference, such payment shall be allowed.

(Code 1852, § 1829; Code 1915, § 3373; Code 1935, § 3838; 12 Del. C. 1953, § 2107; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 2108 [Reserved.]

§ 2109 Barring of claims against estates when no letters have been granted within 10 years from death.

If no letters have been granted upon the estate of any person within 10 years from the date of the person's death, all claims of creditors and persons otherwise beneficially interested in the estate, except those evidenced by mortgage or judgment which shall be controlled by the law applicable to mortgages and judgments as heretofore, shall be thereafter barred.

(12 Del. C. 1953, § 2109; 52 Del. Laws, c. 333; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

Part IV
Administration of Decedents' Estates
Chapter 23
ACCOUNTING AND DISTRIBUTION
Subchapter I
General Provisions

§ 2301 Rendering of accounts; extension of time; appeal; authority of Register of Wills and Court of Chancery.

(a) Every executor or administrator shall render an account of their administration to the Court of Chancery, in money, every year from the date of their letters until the estate is closed and a final account passed by the Court.

(b) If an executor or administrator fails to perform this duty, the Court of Chancery shall issue process of attachment against the executor or administrator, and may enforce compliance by imprisonment.

(c) The Register of Wills may, for sufficient cause, extend the time for accounting, not to exceed 6 months; and the Register may, upon the affidavit of an executor or administrator, and on its appearing to the Register that there are no transactions or matters for an account in any year, dispense with an account; but from the Register's determination in this respect an appeal may be taken by any interested party to the Court of Chancery.

(d) The Register of Wills shall receive all accountings filed for approval by the Court of Chancery but shall have no power to deny any debt, expense or other item for which allowance is sought. The Court may, however, refuse to allow any item indicative of fraud, illegality or negligent failure to fulfill fiduciary obligations or may further refuse to allow any item representing a debt or expense incurred solely for the purpose of avoiding any tax.

(e) The Register of Wills may forward to the Court of Chancery any estate where there are 2 consecutive years of in activity for judicial action in the Court's discretion, including but not limited to closing the estate or a sua sponte order for a rule to show cause against the executor or administrator.

(Code 1852, §§ 1838, 1839; Code 1915, § 3378; Code 1935, § 3843; 12 Del. C. 1953, § 2301; 57 Del. Laws, c. 402, § 3; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1; 74 Del. Laws, c. 227, § 4.)

§ 2302 Notice of filing of account; waiver; exceptions.

(a) Every account filed by an executor or administrator shall be accompanied by a statement of the names and mailing addresses of each beneficiary entitled to share in the distribution of the estate. In addition, such statement shall indicate the name and address of any beneficiary who is subject to a legal incapacity and the name and address of the guardian or trustee for such beneficiary, if any, and if none, the name and address of a parent, natural or adoptive, of such beneficiary, and the name and address of any beneficiary who has waived the notice to beneficiary as provided in subsection (c) of this section.

(b) Upon the filing of an account with the statement of names and addresses of beneficiaries as provided in subsection (a) of this section, the Register of Wills shall forthwith mail to such beneficiaries or to the guardian, trustee or parent of any legally incapacitated beneficiary, a notice in writing of the filing of the account and that the same shall be open for inspection and exception for 3 months from the mailing of the notice. Such notice need not be mailed to any beneficiary who has waived the notice to beneficiary as provided in subsection (c) of this section. The Register shall certify on the account that the notices required by this subsection were mailed by the Register and the date of such mailing.

(c) Any beneficiary entitled to share in the distribution of an estate may waive in writing any notice of the filing of an account to which such beneficiary is entitled. The beneficiary by such waiver shall consent that the account be approved by the Court. The waiver of a beneficiary subject to a legal incapacity shall be executed by the guardian, trustee or parent, natural or adoptive, of such beneficiary.

(d) Within 3 months of the mailing of such notice, any beneficiary entitled to share in the distribution of the estate who has not waived the notice of the filing of the account pursuant to subsection (c) of this section, may file in the office of the Register of Wills exceptions in writing to the account of an executor or administrator. Exceptions not filed within such 3-month period shall not be considered by the Court. If no exception to the account is filed within such 3-month period, the account shall, subject to the power of the Court to disallow items of the account pursuant to § 2301(d) of this title, be approved.

(59 Del. Laws, c. 384, § 1; 60 Del. Laws, c. 199, § 1; 70 Del Laws, c. 186, § 1.)

§ 2303 Recording of account; fees; evidence.

(a) All accounts and settlements of executors and administrators as the same shall be passed by the Court of Chancery shall be recorded by the Register of Wills of the several counties in uniform books. The Register shall also maintain an alphabetical index of all such settlements and accounts.

(b) The cost of recording and indexing the settlements and accounts shall be paid out of the funds of the estate to which they relate. The Register shall receive for recording and indexing the accounts and settlements the fees provided by this title.

(c) A certified copy of such record of settlement and accounts of executors and administrators shall be received as evidence in the several courts of the State.

(Code 1915, § 3379; Code 1935, § 3844; 12 Del. C. 1953, § 2302; 59 Del. Laws, c. 384, § 1.)

§ 2304 Estate tax returns or affidavits.

(a) Whenever a return required under Chapter 15 of Title 30 has been filed and the correct tax and additions to tax, if any, have been paid, a certificate to that effect shall be filed by the Director of Revenue with the Register of Wills of the counties in which the letters have been granted and in which the decedent owned real property.

(b) When no return is required under Chapter 15 of Title 30, and

(1) Real property passed to any person by virtue of joint ownership with right of survivorship or tenancy by the entireties with the decedent, or

(2) Letters have been granted by the Register of Wills in any county and the decedent owned real property,

then an affidavit in a form approved by the Director of Revenue shall be filed by the personal representative (as defined in § 1501 of Title 30) with the Register of Wills of the counties in which the real property is located. The Director of Revenue may require a copy of said affidavit be filed with the Division of Revenue.

(c) [Repealed.]

(25 Del. Laws, c. 225, § 4; Code 1915, § 149; 37 Del. Laws, c. 8, § 1; 40 Del. Laws, c. 10, § 1; Code 1935, § 140; 12 Del. C. 1953, § 2303; 59 Del. Laws, c. 384, § 1; 60 Del. Laws, c. 199, § 2; 64 Del. Laws, c. 252, § 6; 67 Del. Laws, c. 15, § 4; 70 Del. Laws, c. 71, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 353, § 9; 75 Del. Laws, c. 198, § 3; 77 Del. Laws, c. 85, § 7; 79 Del. Laws, c. 11, § 1.)

§ 2305 Allowance of commissions and attorneys' fees.

(a) Commissions and attorneys' fees shall be allowed as provided by rule of the Court of Chancery.

(b) No commission shall be allowed by the Court of Chancery to any executor or administrator who has not complied with the requirements of Chapter 13 of Title 30. This penalty shall not apply until 1 month after notice by the Division of Revenue of such delinquency.

(c) The Court of Chancery may reduce commissions and attorneys' fees if the accounts required to be filed by this chapter are not filed within the required time period.

(25 Del. Laws, c. 225, § 4; Code 1915, § 149; 37 Del. Laws, c. 8, § 1; 40 Del. Laws, c. 10, § 1; Code 1935, § 140; 41 Del. Laws, c. 8, § 10; 12 Del. C. 1953, § 2304; 59 Del. Laws, c. 384, § 1.)

§ 2306 Distribution of decedent's property without grant of letters where estate assets do not exceed $30,000.

(a) The spouse of a decedent or any person who is a grandparent of the decedent, a lineal descendant of a grandparent of the decedent, the personal representative of any of the foregoing who may be deceased, or the guardian or trustee of any of the foregoing who may be incapacitated, or the trustee of a trust created by the decedent, a funeral director licensed in the State, or the named executor or executors in the decedent's will if the named executor or executors satisfies all qualifications set forth in § 1508 of this title, shall be entitled to the personal estate of the decedent for the purpose of making distribution thereof in accordance with the decedent's will or, if there be no will, with Chapter 5 of this title without awaiting the appointment of a personal representative or probate of a will upon executing an affidavit attesting under oath that:

(1) No petition for the appointment of a personal representative is pending or has been granted;

(2) Thirty days have elapsed since the death of the decedent;

(3) The value of the personal estate of the decedent other than property described in § 1901(b) and (c) of this title and other than jointly owned property, does not exceed $30,000;

(4) All known debts of the decedent are paid or provided for;

(5) The surviving spouse's allowance, pursuant to § 2308 of this title, has been paid, provided for, waived or has expired by lapse of time pursuant to § 2308(b) of this title;

(6) Decedent did not own solely owned real estate located in Delaware; and

(7) There is furnished to any person owing any money, having custody of any property or acting as registrar or transfer agent of any evidence of interest, indebtedness, property or right of the decedent an affidavit showing the existence of the foregoing conditions and the right of the affiant to receive such money or property or to have such evidence transferred for the purpose set forth in this subsection.

(b) Preference for receiving the personal estate of the decedent under this section for the purpose of making distribution thereof shall be given to the named executor in the decedent's will who is not disqualified by the provisions set forth in § 1508 of this title, the spouse, any child, any parent, any sibling, any grandchild or any grandparent of the decedent, or to a funeral director licensed in the State, in that order. There shall be no order of preference among the remaining persons or entities entitled to receive the personal estate pursuant to subsection (a) of this section.

(c) The named executor in the decedent's will who is not disqualified by the provisions set forth in § 1508 of this title and next of kin of a decedent shall have the right upon the death of the decedent:

(1) To take possession of the decedent's motor vehicle or vehicles; and

(2) To enter any premises for the sole and exclusive purpose of removing from the premises clothing belonging to the decedent to be used for the burial or viewing of the decedent; and

(3) To enter the residential rental unit of the decedent, when the decedent is the sole tenant of a residential rental unit for the purpose of removing therefrom and taking possession, but not ownership, of all of the decedent's belongings in that unit. Access and removal shall take place during business hours at mutually agreeable times to the parties with standing unless otherwise agreed to and must be completed within 30 days of the death of the decedent or else the rights granted under this subsection shall expire.

The executor shall have preference over the next of kin to carry out the actions set forth in this subsection. If the decedent did not leave a will that names a qualified executor and no next of kin is available, a funeral director may have access to enter the premises for the aforementioned purpose of securing clothes only. The register of wills shall provide a form limited to facilitating action taken pursuant to this subsection. Such a form must be obtained prior to any person acting pursuant to this subsection.

(d) Nothing in subsection (a) of this section shall preclude the Register of Wills from issuing an affidavit when and where appropriate.

(26 Del. Laws, c. 259, § 1; Code 1915, § 3380; Code 1935, § 3845; 46 Del. Laws, c. 165, § 1; 12 Del. C. 1953, § 2305; 53 Del. Laws, c. 370; 56 Del. Laws, c. 295; 59 Del. Laws, c. 68, § 1; 59 Del. Laws, c. 384, § 1; 63 Del. Laws, c. 281, § 1; 64 Del. Laws, c. 252, § 5; 66 Del. Laws, c. 350, §§ 1, 2; 70 Del. Laws, c. 114, §§ 1, 2; 74 Del. Laws, c. 227, §§ 1, 2; 75 Del. Laws, c. 189, § 1; 77 Del. Laws, c. 302, § 1; 78 Del. Laws, c. 151, §§ 1, 2; 79 Del. Laws, c. 65, § 1.)

§ 2307 Effect of distribution without letters.

(a) The person making payment, delivery, transfer or issuance pursuant to the affidavit described in § 2306 of this title shall be released to the same extent as if made to the personal representative of the decedent and the person shall not be required to see to the application thereof or to inquire into the truth of any statement in the affidavit, but the distributees to whom payment, delivery, transfer or issuance is made shall be answerable therefor to any person having a prior right and be accountable to any intestate distributee or to any personal representative thereafter appointed.

(b) If the person to whom an affidavit is delivered pursuant to § 2306 of this title refuses to pay, deliver, transfer or issue the property, it may be recovered or compelled in an action brought in the Court of Chancery for such purposes by or on behalf of the distributees entitled thereto, upon proof of the facts required to be stated in the affidavit.

(26 Del. Laws, c. 259, § 2; Code 1915, § 3381; 30 Del. Laws, c. 209, § 1; Code 1935, § 3846; 46 Del. Laws, c. 165, § 1; 12 Del. C. 1953, § 2306; 59 Del. Laws, c. 68, § 2; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 2308 Surviving spouse's allowance.

(a) The surviving spouse of any decedent shall be entitled to receive and the executor or administrator shall pay to such spouse as soon as convenient, in the manner provided in this section, cash up to the amount of $7,500 out of the estate of the decedent, which payment shall be made in the order of preference of claims against the estate in § 2105 of this title, as amended. The foregoing provision shall not affect any other rights to which such spouse may be entitled, either under the will of the decedent or the intestacy laws of this State.

(b) The allowance to the surviving spouse of a decedent provided for in subsection (a) of this section shall be of no effect unless and until such spouse shall, within 9 months from the date of death or 6 months from the date of the granting of letters, testamentary or of administration, whichever shall be the shorter period, notify in writing the Register of Wills of the county wherein the letters were granted and the executor or administrator of such spouse's demand that a specific sum, not exceeding $7,500, be so set aside out of the proceeds of the estate of the decedent.

(c) The allowance provided for in subsection (a) of this section shall be considered to be a debt of the estate, and the executor or administrator may sell so much of the property of the decedent as will enable the executor or administrator to pay the allowance in the same manner as the executor or administrator may be enabled to do by law for the payment of other debts of the decedent or of the estate.

(Code 1915, § 3415; 38 Del. Laws, c. 185, § 1; Code 1935, § 3876; 43 Del. Laws, c. 211, § 1; 12 Del. C. 1953, § 2307; 50 Del. Laws, c. 16, § 1; 50 Del. Laws, c. 378, §§ 1-3; 59 Del. Laws, c. 384, § 1; 63 Del. Laws, c. 281, § 2; 70 Del Laws, c. 186, § 1; 75 Del. Laws, c. 189, § 2.)

§ 2309 Recordation of death certificates.

In all cases where there is an interest in real property owned by the decedent at the time of death, a certified copy of the death certificate of the decedent shall be filed in the office of the Registrar of Wills in and for the county wherein the interest in the real property is situated.

(66 Del. Laws, c. 368, § 1.)

Subchapter II

Payment of Legacies or Distributive Shares

§ 2311 Time for settling estate; accounting for interest or earnings pending settlement.

Except where circumstances justify a longer period, an executor or administrator shall have 1 year from the date of letters for settling the estate of the decedent; and until the expiration of that time, the executor or administrator shall not be required to make distribution,

nor be chargeable with interest upon the assets in the executor's or administrator's hands; but if any part of the estate carry interest or be productive the executor or administrator shall account for the interest or produce.

(Code 1852, § 1844; Code 1915, § 3387; Code 1935, § 3852; 12 Del. C. 1953, § 2311; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 2312 Payment of legacies; refusal to pay or deliver; bond; interest.

(a) Any legacy, if no time is appointed, shall be payable 1 year from the date of the first appointment of a personal representative.

(b) Payment or delivery of any legacy may be refused if it is apparent that there are not assets for the purpose; and a personal representative, if the representative knows of any demand, whether outstanding or potential, shall not be obliged to pay or deliver a legacy or distributive share unless the person entitled shall, with sufficient security, become bound to the executor or administrator by a joint and several obligation, in a penalty double the value of the legacy or share, with condition to be void if the person receiving the legacy or share, or the person's executors or administrators, in case of a deficiency of assets of the decedent for the payment of all the just demands and charges against the decedent's estate and all legacies by the decedent duly given, without such share or legacy or part thereof, shall refund and pay to the executor or administrator, or the person's executors, administrators or assigns, the sum or value of the legacy or distributive share, with interest, or such portion thereof as justly and lawfully ought to be contributed on occasion of such deficiency.

(c) Except where circumstances justify a longer period, pecuniary legacies shall bear interest at the rate of 4 percent per annum payable from the estate beginning 13 months after the first appointment of a personal representative until payment unless a contrary intent is indicated by the will.

(d) If a legacy is to be paid before the expiration of the first year from the date of the first appointment of a personal representative, security may be required, although no claim against the estate is known.

(Code 1852, §§ 1845, 1846; Code 1915, § 3388; Code 1935, § 3853; 12 Del. C. 1953, § 2312; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1; 75 Del. Laws, c. 299, § 5.)

§ 2313 Anti-lapse; deceased devisee; class gifts.

(a)(1) If a devisee or legatee who is a grandparent or lineal descendant of a grandparent of the testator is dead at the time of the execution of the will, fails to survive the testator or is treated as if the devisee or legatee predeceased the testator, the issue of the deceased devisee or legatee who survived the testator by 120 hours take in place of the deceased devisee or legatee, per stirpes.

(2) One who would have been a devisee or legatee under a class gift if that person had survived the testator is treated as a devisee or legatee for purposes of this section whether death occurred before or after the execution of the will.

(b) This section shall not apply in the case of wills wherein provisions have been made for distribution of property different from this section.

(36 Del. Laws, c. 259, § 1; Code 1935, § 3854; 12 Del. C. 1953, § 2313; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 2313A Failure of share of residuary.

(a) Except as provided in § 2313 of this title, if the residue is given to 2 or more persons and if a share of a residuary beneficiary fails for any reason, such share shall pass to the other residuary beneficiary or beneficiaries in proportion to the interest of each beneficiary in the remaining part of the residue.

(b) This section shall not apply in the case of wills wherein provisions have been made for distribution of property different from this section.

(75 Del. Laws, c. 303, § 1.)

§ 2314 Legacy to creditor of testator.

A legacy shall not be deemed to be in satisfaction of a debt due from the testator to the legatee, unless the intention of the testator that it shall be so accepted shall appear upon the will expressly or by manifest implication.

(Code 1852, § 1847; Code 1915, § 3390; Code 1935, § 3855; 12 Del. C. 1953, § 2314; 59 Del. Laws, c. 384, § 1.)

§ 2315 Payment of legacies or distributive shares to minors or persons absent from the State.

(a) If an executor or administrator cannot pay over money in the executor's or administrator's hands as such because of the infancy or absence from the State of a person entitled to a legacy or distributive share of personal estate, or any part thereof, the executor or administrator may deposit the same in any state or national bank with its principal office in the State to the credit of the person so entitled; and the executor or administrator shall take from the cashier a certificate of deposit, and deliver the same to the Register of Wills for the county where the deposit is made, to be by the Register of Wills recorded in accordance with § 2320 of this title; and the record of the certificate, or a certified copy thereof, shall be evidence.

(b) Whenever the party entitled to any deposit under subsection (a) of this section is a minor, the executor or administrator shall, in respect to the minor, make a report to the Court of Chancery in the county where the deposit is made of the executor's or administrator's proceedings under subsection (a) of this section, and shall exhibit to and file in the Court, the original certificate of deposit, which shall be recorded in the Court.

(c) A deposit under this section and a compliance with its provisions shall be a sufficient discharge of the executor or administrator, and of the executor's or administrator's sureties, for the money so deposited.

(Code 1852, §§ 1848-1851; Code 1915, § 3391; Code 1935, § 3856; 12 Del. C. 1953, § 2315; 57 Del. Laws, c. 402, § 3; 59 Del. Laws, c. 384, § 1; 63 Del. Laws, c. 142, § 29; 70 Del Laws, c. 186, § 1.)

§ 2316 Payment of legacy, distributive share or trust fund where person entitled is out of State, unknown, etc.; proceedings.

(a) If an executor, administrator or trustee cannot pay over a legacy, residue of intestate personal estate, distributive share or trust fund in the executor's, administrator's or trustee's hands, because the person entitled to the same, or any part thereof, is absent from the State, unknown or incompetent to receive the same or because the shares of the persons entitled to the same are unknown, such executor, administrator or trustee may present to the Court of Chancery a petition setting forth the facts and praying relief. The Court, upon being satisfied that it is a proper case for relief, shall order the petitioner to pay into the Court of Chancery the amount in the petitioner's hands, with the interest which may have accrued thereon, less such costs, expenses and counsel fees as may be allowed by the Court. Upon compliance with such order the petitioner and the petitioner's sureties shall be discharged from all further liability in respect to the money so paid.

(b) Any money so paid into Court may, by order of the Court, be deposited, in the name of the Court, in any state or national bank having its principal office in the State, or in any savings bank in this State, or invested in the name of the State in the funded debt of this State or of the United States, or upon bond or mortgage or both for the benefit of the parties entitled to the same. The costs of such investment shall be payable out of the fund.

(c) The Court may direct such proceedings, issue such writs and make such orders as it deems expedient for ascertaining the parties entitled to the money paid into Court, and for the payment and distribution of the same; and for this purpose the Court may cause notice to parties interested, residing out of this State or whose residences are unknown, to be given by publication or otherwise as it directs and may appoint an auditor to investigate and report to the Court as to any matter necessary to be determined in the premises. Any proceeding, writ or order authorized by this section may be taken, directed, issued, returned or made as well in vacation at chambers as at term time.

(d) Any payment or distribution of money paid into Court and made by order of the Court under this section shall be final and conclusive as to the right of the parties interested therein.

(16 Del. Laws, c. 523, §§ 1-4; Code 1915, § 3392; Code 1935, § 3857; 12 Del. C. 1953, § 2316; 50 Del. Laws, c. 209, §§ 1, 2; 59 Del. Laws, c. 384, § 1; 63 Del. Laws, c. 142, § 30; 70 Del Laws, c. 186, § 1.)

§ 2317 Abatement.

(a) Except as provided in subsection (b) of this section and except as provided in connection with the elective share of the surviving spouse who elects to take an elective share, shares of distributees abate, with personal property to be abated prior to real property within each class, in the following order:

(1) Property not disposed of by the will;

(2) Residuary bequests and devises;

(3) General bequests and devises;

(4) Specific bequests and devises.

For purposes of abatement, a general bequest or devise charged on any specific property or fund is a specific bequest or devise to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general bequest or devise to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the will.

(b) If the will expresses an order of abatement, or if the testamentary plan or the express or implied purpose of the devise would be defeated by the order of abatement stated in subsection (a) of this section, the shares of the distributees abate as may be found necessary to give effect to the intention of the testator.

(c) If the subject of a preferred bequest or devise is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

(Code 1852, § 2594; Code 1915, § 4522; Code 1935, § 4976; 12 Del. C. 1953, § 2317; 59 Del. Laws, c. 384, § 1; 64 Del. Laws, c. 252, § 7.)

§ 2318 Proportional contribution of legatees.

If there are several legacies, and a return of part of a legacy which has been paid becomes necessary, the legatee shall only be required to return a proportional part of the legatee's legacy towards making up the whole sum wanting.

(Code 1852, § 2600; Code 1915, § 4528; Code 1935, § 4982; 12 Del. C. 1953, § 2318; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 2319 Transfer of investments or other property to guardian or trustee in payment of specific legacy or distributive share; receipt.

Whenever an executor or administrator makes an assignment of any investment or transfers or delivers any personal property of any testator or intestate to a guardian or trustee as payment in whole or in part of a specific legacy or of a distributive share, such guardian or trustee shall give to the executor or administrator, for the purpose of accounting by the executor or administrator in the settlement of the estate only, a receipt therefor at the valuation fixed in the appraisement of the estate of such testator or intestate. The receipt, when filed with the Court of Chancery, shall be a sufficient discharge of such executor or administrator and of the executor's or administrator's sureties for any property so transferred or delivered, and such guardian or trustee may take over such property and may, without liability for any loss or depreciation therein, continue to hold the same, until in the exercise of due care it shall become no longer wise so to do. Nothing herein contained shall permit or require a guardian or trustee to take over in settlement of a distributive share of an estate property at a value less than the distributive portion of the estate to which such guardian or trustee would otherwise be entitled. In case a guardian or trustee is acting under authority of an instrument or a court order, the terms and provisions of such instrument or court order shall be controlling as to the powers and duties of such guardian or trustee.

(20 Del. Laws, c. 114, § 3; 20 Del. Laws, c. 115, § 2; Code 1915, § 3394; 37 Del. Laws, c. 245, § 2; Code 1935, § 3858; 42 Del. Laws, c. 141, § 1; 12 Del. C. 1953, § 2319; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 2320 Release, acquittance or receipt to executor or administrator; form, execution, recording and evidence.

Any release, acquittance or receipt, being executed under hand and seal by any legatee, next of kin or interested person, of full age, to an executor or administrator, for any property or sum of money due by virtue of a will or upon a testamentary or administration account passed before the Register of Wills, and acknowledged before any justice or judge, Register of Wills, justice of the peace, notary public of any state or territory of the United States or of the District of Columbia, or before any consul general, consul, vice-consul, consular agent or commercial agent of the United States duly appointed in any foreign country, and certified under the hand of such officer and the seal of such office, shall, upon being filed with the Court of Chancery in and for the county in which such will or account is recorded or filed, be recorded in a book for that purpose, which shall have direct and reversed alphabetical indices. Such record or a duly certified copy thereof under the hand and official seal of the Register of Wills shall be competent evidence in all cases.

(b) The following form of acknowledgment shall be sufficient in all cases:

"State of..... ss.

County of.....

Acknowledged by..... to be a voluntary act and deed, before me (here state the official character of the person before whom the acknowledgment is made) this..... day of.....,.....

Witness my hand and seal."

Justices of the peace of this State need only sign their name, there being no seal of office.

(Code 1852, §§ 1870-1873; 12 Del. Laws, c. 325, §§ 1, 2; 24 Del. Laws, c. 246, § 3; 24 Del. Laws, c. 247, §§ 1, 2; 25 Del. Laws, c. 224, § 1; 26 Del. Laws, c. 257, § 1; Code 1915, §§ 3408, 3410; Code 1935, §§ 3872, 3874; 43 Del. Laws, c. 210, § 1; 12 Del. C. 1953, § 2320; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 2321 Distributions by fiduciaries in satisfaction of pecuniary bequests.

(a) Where a will or a trust agreement authorizes the executor or trustee (hereinafter called the "fiduciary") to satisfy wholly or partly in kind a pecuniary bequest or transfer in trust of a pecuniary amount, unless the will or trust agreement otherwise expressly provides, the assets selected by the fiduciary for that purpose shall be valued at their respective values on the date or dates of their distribution.

(b) Where a will or a trust agreement authorizes the fiduciary to satisfy wholly or partly in kind a pecuniary bequest or a transfer in trust of a pecuniary amount, and the will or trust agreement requires the fiduciary to value the assets selected for such distribution by a formula using a date other than the date or dates of their distribution, unless the will or trust agreement otherwise expressly provides, the assets selected by the fiduciary for distribution, together with any cash to be distributed, shall have an aggregate value on the date or dates of their distribution equal to the amount of such bequest or transfer in trust as determined by the formula stated in the will or trust agreement.

(12 Del. C. 1953, § 2321; 56 Del. Laws, c. 225, § 1; 59 Del. Laws, c. 384, § 1.)

§ 2322 Effect of manslaughter or murder on intestate succession, wills, joint assets, life insurance and beneficiary designations.

(a) *Definitions.* —

(1) "Decedent" shall mean any person whose life is taken by a slayer.

(2) "Property" shall include any real or personal property, tangible or intangible, and any right or interest therein.

(3) "Slayer" shall mean any person who pleads guilty or nolo contendere to or is convicted of the offenses described in § 632, § 635, or § 636 of Title 11, as the same may be amended from time to time, excluding, however, those persons who plead guilty or nolo

contendere or are convicted of manslaughter under § 632 of Title 11 as a result of the mitigating circumstances of extreme emotional distress as described in § 641 of Title 11. "Slayer" shall also mean:

a. Any person who pleads guilty or nolo contendere to or is convicted in a court of competent jurisdiction under the laws of the United States, any state, commonwealth, possession, or territory thereof, or any foreign country that requires that guilt be proven beyond a reasonable doubt of any act that would constitute an offense described in the preceding sentence; or

b. Any person, excluding a person who has been acquitted, found not guilty, or against whom a charge of having committed a homicide against a decedent has been found by a court of competent jurisdiction to be not proved, who is determined beyond a reasonable doubt by a court of competent jurisdiction to have committed a homicide against a decedent.

(b) *Statutory descent and rights.* — The slayer shall be deemed to have predeceased the decedent as to property which would have passed from the estate of the decedent to the slayer under the statutes of descent and distribution or have been acquired by statutory right as surviving spouse.

(c) *Wills and trusts.* — The slayer shall be deemed to have predeceased the decedent as to property which would have passed to the slayer by devise or legacy from the decedent, and as to property which would have passed to the slayer from a trust to the extent that the decedent was the grantor of the trust or was the beneficiary of the trust immediately before the death of the decedent.

(d) *Tenancy by entirety.* — Any property held by the slayer and the decedent as tenants by the entirety shall, upon the death of the decedent, be converted to property held as tenants in common, and 1/2 of the property shall pass to the decedent's heirs, legatees and devisees, and the other half shall pass to the slayer, unless the slayer or the decedent's estate effects a partition of the property.

(e) *Joint tenancy with rights of survivorship.* —

(1) Any property held solely by the slayer and the decedent as joint tenants, joint owners or joint obligees shall, upon the death of the decedent, be converted to property held as tenants in common and 1/2 of the property shall pass to the decedent's heirs, legatees or devisees, and the other half shall pass to the slayer, unless the slayer or the decedent's estate effects a partition of the property.

(2) As to property held jointly by 3 or more persons as joint tenants with right of survivorship, including the slayer and the decedent, the decedent's interest shall be converted to that of a proportional tenant in common, and the decedent's interest shall pass to the decedent's heirs, legatees and devisees, unless the decedent's estate or a surviving joint tenant effects a partition of the property. The interest of the other tenants remains unaffected.

(3) The provisions of this section shall not affect any enforceable agreement between the parties or any trust arising because a greater proportion of the property has been contributed by 1 party than by the other.

(f) *Vested remainder.* — Property in which the slayer holds a reversion or vested remainder and would have obtained the right of present possession upon the death of the decedent shall pass to the heirs, legatees or devisees of the decedent, and be redistributed in accordance with the decedent's will or the laws of intestate distribution, excluding the slayer, during the period of what would have been the life expectancy of the decedent if the decedent had not been slain. If the particular estate is held by a third person, it shall remain in the third person's hands for such period.

(g) *Contingent remainder.* — As to any contingent remainder or executory or other future interest held by the slayer, subject to become vested in the slayer or increased in any way for the slayer upon the condition of the death of the decedent:

(1) If the interest would not have become vested or increased if the slayer had predeceased the decedent, the slayer shall be deemed to have so predeceased the decedent.

(2) In any other case, the interest of the slayer shall be extinguished.

(h) *Proceeds passing by designation.* —

(1) Except when there are conflicting provisions in a contract governing any policy or certificate of insurance on the life of the decedent, or of a joint life policy on the life of the decedent and the slayer, or governing the designee of any other property, the proceeds of such property shall be paid according to the terms of the contract as though the slayer had predeceased the decedent. If the contract does not provide for a beneficiary in the event that the slayer predeceased the decedent, the property shall be paid to the estate of the decedent.

(2) If the decedent is beneficiary or assignee of any policy or certificate of insurance on the life of the slayer, or the designee of any other property, the proceeds shall be paid to the estate of the decedent upon the death of the slayer, unless the policy or certificate names some person other than the slayer or the slayer's estate as secondary beneficiary, or unless the slayer, by naming a new beneficiary or assigning the policy, performs an act which would have deprived the decedent of the interest in the policy if the decedent had been living.

(3) Any insurance or other company making payment according to the terms of its policy or any bank or other person performing an obligation for the slayer as one of several joint obligees shall not be subjected to additional liability by the terms of this section if such payment or performance is made without written notice of the conviction of the slayer.

(i) *Purchasers for value without notice.* — The provisions of this section shall not affect the rights of any person who, before the slayer has been convicted, purchases or has agreed to purchase, from the slayer for value and without notice, property which the slayer would have acquired except for the terms of this section, but all proceeds received by the slayer from such sale shall be held by the slayer in trust for the persons entitled to the property under the provisions of this section, and the slayer shall also be liable both for any portion

of such proceeds which the slayer may have dissipated and for any difference between the actual value of the property and the amount of such proceeds.

(j) *Record of conviction admissible in civil actions.* — The record of the slayer's conviction for participating in or causing the death of the decedent shall be admissible in evidence against a claimant of property in any civil action arising as a consequence of this section.

(k) *Construction.* — This section shall not be considered penal in nature, but shall be construed broadly in order to effect the policy of this State that a person shall not be permitted to profit by that person's own wrong.

(69 Del. Laws, c. 162, § 1; 70 Del. Laws, c. 139, §§ 1-7; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 254, § 1.)

Subchapter III

Decree of Distribution

§ 2331 Jurisdiction of Court of Chancery.

The jurisdiction of the Court of Chancery shall extend to and embrace the distribution of the assets and surplusage of the estates of decedents among the persons entitled thereto in all cases where such jurisdiction is invoked as provided in this subchapter.

(Code 1915, § 3403(a); 38 Del. Laws, c. 184, § 1; Code 1935, § 3867; 42 Del. Laws, c. 143, § 1; 12 Del. C. 1953, § 2331; 57 Del. Laws, c. 402, § 3; 59 Del. Laws, c. 384, § 1.)

§ 2332 Petition for decree of distribution; notice required by Constitution.

(a) An executor or administrator or any person claiming to have an interest in the estate to be distributed may, at any time after any account has been filed by an executor or administrator, apply to the Court of Chancery in the county in which letters testamentary or of administration were granted upon the estate to be distributed, by a written petition filed in the Court for a decree of distribution of the estate among the persons entitled thereto. Such petition shall have attached to it a certified copy of all accounts that have been theretofore filed by the executor or administrator in the office of the Register of Wills for the county. The petition shall contain the names of all persons known to the petitioner who claim or may claim an interest in the estate to be distributed, together with their post-office addresses so far as known, and shall state whether the executor or administrator of the estate has given the notice required to be given by § 32, article IV of the Constitution of this State, and shall be duly verified.

(b) If at the time the petition is filed the executor or administrator of the estate shall not have given the notice required to be given by § 32, article IV of the state Constitution, the Court shall forthwith order such notice to be given by such executor or administrator within such time as shall be fixed by the Court.

(Code 1915, § 3403(a); 38 Del. Laws, c. 184, § 1; Code 1935, § 3867; 42 Del. Laws, c. 143, § 1; 12 Del. C. 1953, § 2332; 57 Del. Laws, c. 402, § 3; 59 Del. Laws, c. 384, § 1.)

§ 2333 Order fixing hearing date and providing for notice.

(a) Upon the filing of the petition provided for under § 2332 of this title, the Court of Chancery, after having satisfied itself of the sufficiency of the petition, shall make an order:

(1) Taking jurisdiction of the proceeding;

(2) Setting the application for a decree of distribution down for a hearing before the Court, at a time fixed in such order;

(3) Providing for written notice and delivery of a copy of the petition by certified mail to each person who is named in the petition as a person who claims or may claim an interest in the estate to be distributed, and each such person of whom the Court otherwise has knowledge, and also to the personal representative of the decedent, if the personal representative is not the petitioner in the proceeding;

(4) Providing for the publication of the notice in a newspaper published in the county, at least once a week for at least 4 weeks before the date of such hearing.

(b) The notice shall be mailed and published by and in the name of the Register of Wills of the county in which the proceeding is pending, and shall be in substantially the following form:

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE IN AND FOR _____ COUNTY

TO ALL PERSONS CLAIMING TO HAVE AN INTEREST IN THE DISTRIBUTION OF THE ESTATE OF _____, DECEASED, INCLUDING PERSONS CLAIMING TO BE HEIRS, LEGATEES, BENEFICIARIES OR OTHER DISTRIBUTEES OF SAID ESTATE.

YOU ARE HEREBY NOTIFIED that an application has been made to the Court of Chancery of the State of Delaware, in and for _____ County, for a decree of distribution of the estate of said decedent and that the application has been set down for a hearing before the Court on the _____ day of _____ A.D. _____, at _____ M., in the courtroom of the Court of Chancery in the County Courthouse in the City of _____, Delaware.

You are further notified that if you desire to make any claim to an interest in the distribution of the estate, or to all or any part of the distributable amount of the estate, you must appear before the Court at the time and place aforesaid and present such claim together with any evidence you desire to present to sustain such claim.

Your failure to appear and present your evidence at the time and place aforesaid will be at your peril.

Register of Wills of
County.

(Code 1915, § 3403(a); 38 Del. Laws, c. 184, § 1; Code 1935, § 3867; 42 Del. Laws, c. 143, § 1; 12 Del. C. 1953, § 2333; 57 Del. Laws, c. 402, § 3; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 2334 Hearing and evidence.

At the hearing of the application or any adjournment thereof, the Court of Chancery shall consider the sworn petition of the applicant and any sworn answer or answers that have been filed in the proceeding and shall take and receive any and all pertinent evidence that may be offered by the petitioner or by the personal representative of the decedent or by any person appearing and claiming to have an interest in the estate to be distributed. The evidence so taken shall be recorded stenographically and, if required by the Court, or if an appeal is taken from any decree of distribution that may be made on the application, shall be transcribed.

(Code 1915, § 3403(a); 38 Del. Laws, c. 184, § 1; Code 1935, § 3867; 42 Del. Laws, c. 143, § 1; 12 Del. C. 1953, § 2334; 59 Del. Laws, c. 384, § 1.)

§ 2335 Decree of distribution; reservation for contingent liabilities.

If, upon the hearing, the Court of Chancery shall be satisfied that the estate or any part thereof may then be distributed, the Court shall make a decree determining the distribution of the estate then available for distribution to the person or persons who are by law entitled to the same. If it appears that a portion of the estate may then be distributed and the balance of the estate should be reserved for contingent liabilities against the estate, such decree may, if the Court deems proper, determine the distribution of such balance if and to the extent that the same may thereafter become available for distribution.

(Code 1915, § 3403(a); 38 Del. Laws, c. 184, § 1; Code 1935, § 3867; 42 Del. Laws, c. 143, § 1; 12 Del. C. 1953, § 2335; 59 Del. Laws, c. 384, § 1.)

§ 2336 Distribution of assets in kind.

Whenever it appears in any proceeding under this subchapter that the balance of the estate, after the payment of debts, includes stocks, bonds or other securities, the Court may direct distribution of such assets in kind to and among those lawfully entitled thereto, including fiduciaries. Such distribution in kind shall specify what stocks, bonds or other securities shall be distributed to each distributee separately. Any fiduciary to whom such a distribution in kind has been made may accept the stocks, bonds or other securities so distributed, but, with respect to the retention thereof after such distribution, such fiduciary shall be governed by the general law applicable thereto.

(Code 1915, § 3403(a); 38 Del. Laws, c. 184, § 1; Code 1935, § 3867; 42 Del. Laws, c. 143, § 1; 12 Del. C. 1953, § 2336; 59 Del. Laws, c. 384, § 1.)

§ 2337 Appointment of master; exceptions to master's report.

The Court of Chancery, instead of hearing in the first instance an application for a decree of distribution under this subchapter, may appoint a master to hear the same who shall thereafter proceed in accordance with this subchapter, and thereupon the master shall make a report to the Court recommending the decree to be entered in the proceeding. Such report shall be subject to exceptions by the personal representative of the estate or any person claiming to have an interest therein and such exceptions shall be heard by the Court and thereafter a decree shall be entered by the Court in the proceeding.

(Code 1915, § 3403(a); 38 Del. Laws, c. 184, § 1; Code 1935, § 3867; 42 Del. Laws, c. 143, § 1; 12 Del. C. 1953, § 2337; 57 Del. Laws, c. 402, § 3; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 2338 Finality of decree; appeal to Supreme Court; record on appeal.

(a) Every decree of distribution made by the Court of Chancery in a proceeding initiated under this subchapter shall be a final decree, but the personal representative of the decedent or any person claiming to have an interest in the estate thereby decreed to be distributed shall have the right, at any time within 30 days after the making and entry of such decree, to take an appeal therefrom to the Supreme Court. After the expiration of the period of 30 days such decree of distribution, with respect to all matters contained therein, if no appeal has been taken therefrom, shall become and be conclusive and binding upon the executor or administrator of the estate of the decedent and upon every person claiming to have an interest in the estate thereby distributed.

(b) If an appeal is taken from any such decree, the decree or judgment made and entered by the Supreme Court on such appeal shall likewise be conclusive and binding upon the executor or administrator and every person claiming as aforesaid, from the date of the making and entry of the decree or judgment by the Supreme Court.

(c) Any appeal taken to the Supreme Court shall be heard by that Court upon the record of the proceeding in the Court of Chancery and the procedure on such appeal shall be in accordance with the rules of the Supreme Court.

(Code 1915, § 3403(a); 38 Del. Laws, c. 184, § 1; Code 1935, § 3867; 42 Del. Laws, c. 143, § 1; 12 Del. C. 1953, § 2338; 57 Del. Laws, c. 402, § 3; 59 Del. Laws, c. 384, § 1.)

§ 2339 Rule-making power of Court of Chancery.

The Court of Chancery may make all necessary rules of procedure before the master and other rules governing the proceeding not inconsistent with this subchapter.

(Code 1915, § 3403(a); 38 Del. Laws, c. 184, § 1; Code 1935, § 3867; 42 Del. Laws, c. 143, § 1; 12 Del. C. 1953, § 2339; 57 Del. Laws, c. 402, § 3; 59 Del. Laws, c. 384, § 1.)

Subchapter IV

Nondomiciliary Decedents' Estates

§ 2351 Definitions.

As used in this subchapter:

(1) "Death tax" and "death taxes" include inheritance and estate taxes and any taxes levied against the estate of a decedent upon the occasion of the decedent's death.

(2) "Domiciliary state" means the jurisdiction in which the decedent was domiciled at the time of the decedent's death.

(42 Del. Laws, c. 138, § 1; 12 Del. C. 1953, § 2351; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 2352 Proof of payment of domiciliary death taxes.

At any time before the expiration of 18 months after the qualification before any Register of Wills in this State of any executor of the will or administrator of the estate of any nondomiciliary decedent, such executor or administrator shall file with such Register proof that all death taxes, together with interest or penalties thereon, which are due to the domiciliary state of such decedent, or to any political subdivision thereof, have been paid or secured, or that no such taxes, interest or penalties are due, as the case may be, unless it appears that letters testamentary or of administration have been issued on the estate of such decedent in the domiciliary state. The proof may be in the form of a certificate issued by the official or body charged with the administration of the death tax laws of the domiciliary state.

(42 Del. Laws, c. 138, § 1; 12 Del. C. 1953, § 2352; 59 Del. Laws, c. 384, § 1.)

§ 2353 Notice to domiciliary state.

If the proof required by § 2352 of this title has not been filed within the time prescribed by that section, and if within such time it does not appear that letters testamentary or of administration have been issued in the domiciliary state, the Register of Wills shall forthwith upon the expiration of such time notify by mail the official or body of the domiciliary state charged with the administration of the death tax laws thereof with respect to such estate, and shall state in such notice so far as is known to the Register:

(1) The name, date of death and last domicile of such decedent,

(2) The name and address of each executor or administrator,

(3) A summary of the values of the real estate, tangible personalty and intangible personalty, wherever situated, belonging to such decedent at the time of the decedent's death and

(4) The fact that such executor or administrator has not filed theretofore the proof required by § 2352 of this title.

The Register shall attach to such notice a plain copy of the will and codicils of such decedent, if the decedent died testate, or, if the decedent died intestate, a list of heirs and next of kin so far as is known to such Register.

(42 Del. Laws, c. 138, § 1; 12 Del. C. 1953, § 2353; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 2354 Accounting and decree of Court of Chancery upon petition of domiciliary state.

Within 60 days after the mailing of the notice required by § 2353 of this title, the official or body charged with the administration of the death tax laws of the domiciliary state may file with the Court of Chancery in this State a petition for an accounting in such estate, and such official or body of the domiciliary state shall, for the purposes of this section, be a party interested for the purpose of petitioning the Court for such accounting. If such petition be filed within said period of 60 days, the Court shall decree such accounting and, upon such accounting being filed and approved, shall decree either the payment of any such tax found to be due to the domiciliary state or subdivision thereof or the remission to a fiduciary appointed or to be appointed by the probate court, or other court charged with the administration of estates of decedents, of the domiciliary state, of the balance of the intangible personalty after the payment of creditors and expenses of administration in this State.

(42 Del. Laws, c. 138, § 1; 12 Del. C. 1953, § 2354; 59 Del. Laws, c. 384, § 1.)

§ 2355 Prerequisites of approval of final account.

No final account of an executor or administrator of a nondomiciliary decedent shall be approved unless either:

(1) Proof has been filed as required by § 2352 of this title, or

(2) Notice under § 2353 of this title has been given to the official or body charged with the administration of the death tax laws of the domiciliary state, and such official or body has not petitioned for an accounting under § 2354 of this title within 60 days after the mailing of such notice, or

(3) An accounting has been had under § 2354 of this title, a decree has been made upon such accounting and it appears that the executor or administrator has paid such sums and remitted such securities, if any, as the executor or administrator was required to pay or remit by such decree, or

(4) It appears that letters testamentary or of administration have been issued by the domiciliary state and that no notice has been given under § 2353 of this title.

(42 Del. Laws, c. 138, § 1; 12 Del. C. 1953, § 2355; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 2356 Applicability of subchapter.

This subchapter shall apply to the estate of a nondomiciliary decedent only in case the laws of the domiciliary state contain a provision, of any nature or however expressed, whereby this State is given reasonable assurance, as finally determined by the Division of Revenue, of the collection of its death taxes, interest and penalties from the estates of decedents dying domiciled in this State, when such estates are administered in whole or in part by a probate court, or other court charged with the administration of estates of decedents, in such other state.

(42 Del. Laws, c. 138, § 1; 12 Del. C. 1953, § 2356; 59 Del. Laws, c. 384, § 1.)

§ 2357 Construction of subchapter.

This subchapter shall be liberally construed in order to ensure that the domiciliary state of any nondomiciliary decedent whose estate is administered in this State shall receive any death taxes, together with interest and penalties thereon, due to it from the estate of such decedent.

(42 Del. Laws, c. 138, § 1; 12 Del. C. 1953, § 2357; 59 Del. Laws, c. 384, § 1.)

Part IV
Administration of Decedents' Estates
Chapter 25
REGISTER OF WILLS

§ 2501 Register of Wills is a Clerk of Court of Chancery.

In performing the functions of the office, the Register of Wills of each county shall act only as a Clerk of the Court of Chancery.

(59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 2502 Powers.

(a) The Register of Wills shall have power to take acknowledgements, administer oaths, issue notices, certify and authenticate copies of instruments, documents and records of the Court and perform the usual functions of the Register's office.

(b) If a matter is one with respect to which no notice is required by statute or rule of court to be given to any person then, except as otherwise provided in this title or by rule of court, the Register of Wills may hear and determine it and make all orders, adjudgments and decrees in connection therewith which the Court of Chancery could make, subject to being set aside or modified by the Court at any time within 30 days thereafter; and if not so set aside or modified such orders, adjudgments and decrees shall have the same effect as if made by the Court.

(c) All actions commenced in the Court of Chancery shall be filed with the Register in Chancery, who shall have custody of the records thereof, as provided by the Rules of the Court of Chancery, notwithstanding that such action may be brought upon a cause of action previously within the cognizance of the Register of Wills.

(d) Without limiting the generality of the foregoing, the Register of Wills shall have such further powers and duties as may be specifically conferred upon the Register by statute or by rule of the Court of Chancery.

(59 Del. Laws, c. 384, § 1; 64 Del. Laws, c. 252, § 8; 70 Del Laws, c. 186, § 1.)

§ 2503 Commission to take deposition.

(a) If the attendance of a witness to a will cannot be procured because of the witness' sickness, age, infirmity, imminent departure from the State, being beyond the reach of process or any other reason deemed satisfactory to the Register of Wills, the Register may award a commission to take the deposition of such witness.

(b) The commission may be issued on interrogatories filed, or the Register may make any order deemed proper concerning the issuance or execution of the commission.

(Code 1852, § 1818; Code 1915, § 3371; Code 1935, § 3836; 12 Del. C. 1953, § 2503; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 2504 Compensation.

The Registers of Wills in respective counties shall receive the following annual salaries:

(1) New Castle County, as fixed by the New Castle County government.

(2) In Kent County the Register of Wills of Kent County shall receive a salary in an amount to be set by ordinance of the Kent County Levy Court.

(3) In Sussex County the Register of Wills of Sussex Council shall receive a salary in an amount to be set by ordinance of the Sussex County Council.

(23 Del. Laws, c. 60, § 7; 24 Del. Laws, c. 84, § 1; 24 Del. Laws, c. 87, § 1; 24 Del. Laws, c. 94, § 1; Code 1915, § 1438; 40 Del. Laws, c. 139, § 1; Code 1935, § 1597; 44 Del. Laws, c. 98, § 1; 45 Del. Laws, c. 138, § 1; 46 Del. Laws, c. 298, § 1; 12 Del. C. 1953, § 2505; 49 Del. Laws, c. 283; 49 Del. Laws, c. 292; 50 Del. Laws, c. 488, § 1; 52 Del. Laws, c. 52, § 1; 52 Del. Laws, c. 174, § 1; 53 Del. Laws, c. 222, § 8; 54 Del. Laws, c. 23, § 11; 54 Del. Laws, c. 215, § 8; 56 Del. Laws, c. 204, § 2; 57 Del. Laws, c. 692, § 10; 59 Del. Laws, c. 384, § 1; 59 Del. Laws, c. 514, § 4; 61 Del. Laws, c. 506, § 9; 65 Del. Laws, c. 163, § 9; 65 Del. Laws, c. 216, § 6; 67 Del. Laws, c. 255, § 7; 68 Del. Laws, c. 234, § 5.)

§ 2505 Bond.

The official bond of every Register of Wills of this State shall embrace and include the faithful performance by the Register of all the duties imposed upon the Register by law.

(25 Del. Laws, c. 225, § 7; Code 1915, § 152; 37 Del. Laws, c. 8, § 1; 40 Del. Laws, c. 10, § 1; Code 1935, § 141; 12 Del. C. 1953, § 2504; 59 Del. Laws, c. 384, § 1.)

§ 2506 Deputy register — Powers; recording appointment.

In all cases where, in the administration of the affairs of the office of Register of Wills in the several counties of the State, it is necessary or proper to administer an oath of affirmation, such oath of affirmation may be administered by a deputy register; and, where the Register might have done so, such deputy register may probate wills and grant letters testamentary and of administration. The appointment of each deputy shall be recorded in the office of the Recorder of Deeds of the county for which the deputy shall be appointed.

(24 Del. Laws, c. 77, § 1; Code 1915, § 3338; Code 1935, § 3803; 12 Del. C. 1953, § 2506; 59 Del. Laws, c. 384, § 1.)

§ 2507 Deputy Register — Chief deputy; employment of deputies and clerks.

(a) The Chancellor shall name a chief deputy register of wills for each county who shall perform such duties as shall from time to time be assigned by the Court of Chancery. The annual compensation of such chief deputy shall be as fixed by the New Castle County government, the Sussex County government or the Levy Court of Kent County. A Chief Deputy Register of Wills when appointed and qualified shall not be removed from office except for good and sufficient cause.

(b) The Register of Wills in each county may employ such number of deputies and clerks at such salaries as shall be fixed by the government body of such county. In Kent County, minimum qualifications may be established by the county government for each position, and said minimum qualifications and compensation and any subsequent adjustments thereto shall have the concurrence of the register of wills.

(23 Del. Laws, c. 60, § 8; 24 Del. Laws, c. 83, § 1; 24 Del. Laws, c. 86, § 2; 26 Del. Laws, c. 61, § 1; 27 Del. Laws, c. 73, § 1; 27 Del. Laws, c. 83, § 1; Code 1915, § 1439; 29 Del. Laws, c. 91, § 1; 29 Del. Laws, c. 92, § 1; 31 Del. Laws, c. 13, § 1; 32 Del. Laws, c. 67, § 1; 35 Del. Laws, c. 79, § 1; 40 Del. Laws, c. 139, § 2; Code 1935, §§ 1191, 1598; 43 Del. Laws, c. 120, § 1; 44 Del. Laws, c. 99, § 1; 44 Del. Laws, c. 100, §§ 1, 2; 44 Del. Laws, c. 101, § 1; 45 Del. Laws, c. 109, §§ 1, 2; 45 Del. Laws, c. 140, § 1; 46 Del. Laws, c. 139, § 1; 46 Del. Laws, c. 298, §§ 1, 2; 47 Del. Laws, c. 192; 48 Del. Laws, c. 111, § 1; 12 Del. C. 1953, § 2507; 53 Del. Laws, c. 245; 59 Del. Laws, c. 384, § 1; 60 Del. Laws, c. 218, § 1; 61 Del. Laws, c. 486, § 1; 74 Del. Laws, c. 45, § 6.)

§ 2508 Report of real estate transfers to Board of Assessment.

Each Register of Wills shall furnish to the Board of Assessment of each county a description of each parcel of real estate devised or descending by virtue of will or by operation of law insofar as the records of the Register's office will enable. The Register shall also furnish the date of the transfer, the name of the deceased and the name and the address of the transferee. The Register shall furnish such information promptly after the filing in the Register's office of an inventory and appraisement.

(19 Del. Laws, c. 26, § 27; 19 Del. Laws, c. 562, § 11; 20 Del. Laws, c. 389, § 1; Code 1915, §§ 1126A, 1178; 28 Del. Laws, c. 82, § 28; 29 Del. Laws, c. 72, § 20; 30 Del. Laws, c. 77, § 19; 30 Del. Laws, c. 78, § 7; 31 Del. Laws, c. 14, § 24; 33 Del. Laws, c. 79, § 1; 33 Del. Laws, c. 84, § 23; Code 1935, §§ 1272, 1309, 1328, 1420, 1453; 46 Del. Laws, c. 299, § 1; 12 Del. C. 1953, § 2508; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 2509 Delivery of records; photocopies; evidence.

(a) Each Register of Wills upon the advice and approval of the Court of Chancery may deliver to the Delaware Public Archives any volume of probate records in the Register's official custody, the age and condition of which render its continued use by the public inadvisable, and the Register shall take a receipt for the same and the receipt shall be recorded in the office from which such volume or record is taken.

(b) Within a reasonable time after any such volume or record has been delivered to the Delaware Public Archives, the State Archivist and Records Administrator shall make a photocopy of its contents and shall certify that such contents are complete and correct, and such certificate shall be included in such photocopy. Such photocopy shall be delivered to the Register of Wills from whom the original volume was received, and the Register may issue certified copies of any records photocopied under the provisions of this section, and any such certified copy shall be admissible as evidence in any judicial or administrative proceeding in the same manner and entitled to the same weight and have the same effect as certified copies made from the original volume.

(37 Del. Laws, c. 110, § 1; Code 1935, § 1563; 12 Del. C. 1953, § 2509; 54 Del. Laws, c. 206; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1; 72 Del. Laws, c. 91, §§ 6-8.)

§ 2510 Fees.

The governing body of each county shall determine the fees which shall be charged by the Register of Wills of that county.

(Code 1852, § 2833; Code 1893, c. 125, § 14; 24 Del. Laws, c. 246, § 3; 24 Del. Laws, c. 247, §§ 1, 2; Code 1915, §§ 4859, 4859A, 4860, 4886; 30 Del. Laws, c. 241, § 2; 36 Del. Laws, c. 275, § 1; Code 1935, §§ 5353, 5354, 5355, 5374; 46 Del. Laws, c. 300, § 1; 12 Del. C. 1953, §§ 2321, 2322, 2323; 52 Del. Laws, c. 156; 53 Del. Laws, c. 229, §§ 1, 2; 57 Del. Laws, c. 704; 59 Del. Laws, c. 384, § 1; 60 Del. Laws, c. 199, § 3; 62 Del. Laws, c. 19, § 1; 63 Del. Laws, c. 131, §§ 1, 2; 64 Del. Laws, c. 76, § 1.)

§ 2511 Posting of fee list.

Every Register of Wills shall keep for public inspection in the Register's office a printed or written list of the fees then in effect.

(Code 1852, § 2834; Code 1915, § 4887; Code 1935, § 5375; 12 Del. C. 1953, § 2524; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 2512 Refusal to pay fees; penalty.

Whoever neglects or refuses to pay the fees provided for in this chapter, for any service performed, within 30 days after written demand from the Register of Wills to whom such fees are due, shall be fined $20 besides costs of suit unless the Court of Chancery, upon application within such 30-day period for good cause shown, grants an extension of time for payment of such fees.

(24 Del. Laws, c. 246, § 6; 24 Del. Laws, c. 247, § 4; Code 1915, § 4890; Code 1935, § 5378; 12 Del. C. 1953, § 2526; 59 Del. Laws, c. 384, § 1.)

§ 2513 Deposit of original wills with Register in New Castle County.

(a) An original will may be deposited by any testator, testatrix, attorney-in-fact or attorney-at-law for safekeeping in the office of the Register of Wills for New Castle County upon payment of a fee of $5.

(b) Upon receipt of said will, the Register shall:

(1) Give to such testator, testatrix, attorney-in-fact or attorney-at-law a receipt for such deposit;

(2) Place the will in an envelope and seal it securely in the presence of the testator, testatrix, attorney-in-fact or attorney-at-law;

(3) Number the envelope and indicate thereon the name of the testator or testatrix;

(4) Record the date on which it is lodged;

(5) List the name of the person or persons whom the testator or testatrix wishes to serve as personal representative upon testator's or testatrix's death; and

(6) Index the same alphabetically in a permanent index kept for that purpose.

(c) The Register shall carefully preserve the envelope containing the will unopened unless it is returned to the testator, testatrix, attorney-in-fact or attorney-at-law during the lifetime of the testator or testatrix. The testator or testatrix may examine the contents of the envelope in the Register of Wills' office and return the same for a fee of $1. Should such will be returned to the testator or testatrix during testator's or testatrix's lifetime, removed from the office and then redeposited with the Register, it shall be considered as a new lodging under the provisions of this section.

(d) Upon receipt of notice of the death of the testator or testatrix or by order of the court, the Register shall open the will and place the will in its pending file to await probate. While awaiting probate the will may be reviewed by any person entitled to offer it for probate, authorized by court order or named in the will as a beneficiary, trustee or guardian. Copies of the will shall be given to the executor, executrix, beneficiary, trustee, guardian, at their request or upon court order. The person or party making the request shall be responsible for reasonable copying charges. Except as provided herein, no other person is permitted to receive a copy of a will.

(e) The Register, upon receipt of notice of death and an affidavit of the proposed personal representative which alleges that the decedent was not a resident of New Castle County at the time of the decedent's death, shall deliver the will to the probate officer or Register of Wills for the county or state where the decedent is alleged to have resided at the decedent's death.

(f) Any attorney-at-law, bank or trust company, upon holding a will lodged with the attorney-at-law, bank or trust company for safekeeping by a client for 7 years or more and having no knowledge of whether the said client is alive or dead after such time, may lodge such will with the Register as provided in subsections (a)-(e) of this section for which the Register shall be paid a fee of $5 for such lodging, indexing and preserving.

(g) The filing of a will with the Register shall not create any presumption as to the authenticity of the document, the signatures on the will or its admissibility to probate.

(h) The fee to be paid the Register may be increased or reduced by the New Castle County Council at its election.

(i) The Register of Wills shall not be liable for the loss of any document.

(64 Del. Laws, c. 401, § 1; 70 Del Laws, c. 186, § 1.)

Part IV
Administration of Decedents' Estates
Chapter 27
SALE OF LANDS BY EXECUTORS AND ADMINISTRATORS

§ 2701 Petition for sale of realty to pay decedent's debts; notice.

(a) When the personal estate of a decedent is not sufficient to pay the decedent's debts, the decedent's executor or administrator may present to the Court of Chancery of the county in which there is any real estate of the decedent a petition outlining such facts, and praying for an order for sale of the whole, or such part thereof, if the personal estate is not sufficient for that purpose.

(b) Written notice of intention to present such petition, and of the day and place of doing so, shall be given by the executor or administrator at least 10 days in advance to the parties interested or, if any of the parties be minors and have guardians, to such guardians if such parties and guardians reside in the State, and also to the tenants in possession of the premises intended to be sold. If any of the parties or guardians do not reside in the State, there shall, in such case, be such publication or service of notice in respect to them as shall be prescribed by the Court of Chancery, by general rule, or specially directed in any case.

(c) Where the decedent has real estate in more than 1 of the counties of this State the petition may be presented to the Court of Chancery of any of the counties wherein such real estate is located. The Court may, in such action, make an order in relation to any real estate of the decedent located within this State. The Court shall order the part of the proceedings which relates to real estate in a county, other than that where the petition is presented, to be certified and recorded in the Court of Chancery in that county; and the record shall have all the effect of an original record. The sale of any such real estate shall be conducted only in the county wherein such real estate is located.

(Code 1852, §§ 1877, 1878; Code 1915, § 3417; Code 1935, § 3877; 12 Del. C. 1953, § 2701; 57 Del. Laws, c. 402, § 3; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 2702 Application by creditor to compel sale of realty; procedure.

A creditor of the decedent may apply to the Court of Chancery of the county wherein the letters were granted to issue a citation to an executor or administrator to appear before it, on a day to be therein mentioned, to show cause why the creditor shall not present a petition to the Court for the purpose mentioned in § 2701 of this title. The citation shall be served at least 10 days before its return. If upon a hearing it appears that there is a deficiency of assets for the payment of the decedent's debts, and that the creditor will be remediless without the sale of the real estate, or part thereof, then the Court may order the executor or administrator to present such petition to it on or before such date to be fixed by the Court as will enable the notice required by § 2701 of this title to be given.

(Code 1852, §§ 1812, 1879, 1880; Code 1915, §§ 3366, 3418; Code 1935, §§ 3831, 3878; 12 Del. C. 1953, § 2702; 57 Del. Laws, c. 402, § 3; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 2703 Proof in action to compel sale of realty.

In cases of a petition for an order for sale of realty, the executor or administrator shall exhibit to the Court of Chancery, on oath, a true account of all the personal estate of the decedent, and of all debts outstanding against the estate of the decedent which shall have come to the executor's or administrator's knowledge, stating therein the amount of the inventory and appraisal, the amount of the debts due to the decedent and all other property, rights and credits belonging to the decedent's personal estate of which the executor or administrator has knowledge; and the executor or administrator shall also exhibit the inventory, list and statement filed pursuant to § 1905 of this title, or certified copies thereof.

(Code 1852, §§ 1881, 1882; Code 1915, § 3419; Code 1935, § 3879; 12 Del. C. 1953, § 2703; 59 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2704 Order of sale; realty to be sold.

The Court of Chancery may, if it appears that there is a deficiency of personal estate for the payment of the decedent's debts, order that the executor or administrator shall sell the real estate, or a part thereof to be specified in the order, for the purpose of supplying the deficiency. No more shall be sold than the Court deems sufficient for that purpose, unless the Court considers that the condition of any premises is such that a part thereof, merely sufficient, could not be laid off and sold without injury to the whole, in which case the Court may order the whole or any part of such premises to be sold, as may be deemed best for the parties interested.

(Code 1852, §§ 1881, 1882; Code 1915, § 3419; Code 1935, § 3879; 12 Del. C. 1953, § 2704; 59 Del. Laws, c. 384, § 1.)

§ 2705 Partition no bar to sale.

The fact that partition has been made of the real estate shall be no bar to an order for sale.

(Code 1852, §§ 1881, 1882; Code 1915, § 3419; Code 1935, § 3879; 12 Del. C. 1953, § 2705; 59 Del. Laws, c. 384, § 1.)

§ 2706 Manner of sale; notice and adjournment in case of public auction.

Every sale under this chapter shall be by public auction or by private sale with the approval of the Court of Chancery. If the sale is by public auction, the Court shall direct the executor or administrator to give notice thereof by advertisements made and signed by the

Clerk, describing the land to be sold and appointing the day, hour and place of such sale, posted, at least 10 days before the day of sale, at such places in the county as the order specifies, and also in such other manner as may be deemed proper in a particular case. The executor or administrator may adjourn the sale.

(Code 1852, § 1885; 19 Del. Laws, c. 252, § 1; Code 1915, § 3423; Code 1935, § 3883; 12 Del. C. 1953, § 2711; 59 Del. Laws, c. 384, § 1.)

§ 2707 Effect of contribution in advance of sale to payment of debts; contribution to equalize burden after sale.

If any devisee, or person holding any part of the real estate, contributes so much as the Court of Chancery adjudges to be devisee's or other person's proportionable part towards payment of the outstanding debts, no order shall be made for the sale of the premises owned or held by the devisee or other person. A devisee or other owner of premises which shall be sold pursuant to an order under this chapter may compel contribution to equalize the burden from any other owner if more than devisee's or other person's proportionate share towards payment of the debts is raised by the sale.

(Code 1852, § 1886; Code 1915, § 3424; Code 1935, § 3884; 12 Del. C. 1953, § 2712; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 2708 Return of sale; deed.

(a) An executor or administrator shall return the proceedings to any adjourned or regular term of the Court of Chancery after the making or renewing of an order of sale; and if the return is approved, the executor or administrator shall make a deed to the purchaser for the premises sold.

(b) If an order is made to several executors or administrators, upon the death of any, it shall survive.

(c) A successor administrator may return a sale made by a former executor or administrator and make a deed to the purchaser, if the Court of Chancery approves the sale and orders the successor to make a deed. The successor may, under order of the Court, make a deed pursuant to a sale returned by such former executor or administrator and duly approved.

(d) A deed may also be made, by order of the Court of Chancery, to the heirs or to the assigns of a deceased purchaser.

(e) The Court of Chancery shall not order a deed to be made in any case, unless the purchase money is first paid.

(Code 1915, § 3425; Code 1935, § 3885; 12 Del. C. 1953, § 2713; 57 Del. Laws, c. 402, § 3; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 2709 Title of purchaser.

The grantee in any deed made in pursuance of this chapter shall take all the estate, title and claim which the decedent, at the time of the decedent's death, had to the real estate thereby conveyed, either at law or in equity, with the benefit of all acts and matters done after the decedent's death for perfecting or securing the title, and shall hold the same paramount to all encumbrances created or suffered by, and all right and title of the devisees or heirs of the decedent, and all persons claiming through them, and also discharged from the lien of all judgments against decedent, or the decedent's executors or administrators, and also of all the mortgages and recognizances entered into or executed by the decedent for the payment of money or interest, absolutely and not dependent on a contingency. But neither the sale nor the deed shall impair or affect the lien of any recognizance or obligation entered into or executed by the decedent with condition for the performance of any official duties, or of any recognizance or mortgage entered into or executed by the decedent with any other condition than for the absolute payment of money, or interest.

(Code 1852, § 1892; Code 1915, § 3426; Code 1935, § 3886; 12 Del. C. 1953, § 2714; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 2710 Application of proceeds of sale; order of payment of debts.

The purchase money of a sale, made by authority of this chapter (all just charges to be allowed by the Court of Chancery, being first deducted), shall be applied to outstanding debts against the decedent in the following order:

(1) *First Class.* — To judgments against the decedent, which, before the sale, were liens on the premises sold, and to recognizances and mortgages entered into or executed by the decedent with condition for the payment of money or interest, absolutely, and not dependent on a contingency, and which, before the sale, were liens on the premises sold; such judgments, recognizances and mortgages shall be of equal grade, but shall be preferred in payment according to the legal priority of their lien respectively; and if in an action or proceeding upon a recognizance, obligation or mortgage entered into or executed by the decedent with other condition than for the absolute payment of money or interest (but which was by its own force or legal effect, without judgment thereon, a lien on the premises sold), a sum shall have been assessed or ascertained as payable or recoverable by virtue thereof, and judgment or decree, at the time of the sale, has been thereupon given or pronounced, the sum so assessed or ascertained with the costs shall stand in priority, according to the date of the obligation or recognizance, or of the depositing of the mortgage duly acknowledged or proved in the proper recorder's office to be recorded, and shall be preferred in payment according to such priority; but in no other case shall the proceeds of such sale be applied or retained for the purpose of being applied to any recognizance, obligation or mortgage entered into or executed by

the decedent with other condition than for the absolute payment of money or interest, in preference to, or to the postponement of, any debt outstanding against the decedent.

But no debt shall be regarded as within this class unless it was before the sale a lien on the premises sold; a sum assessed or ascertained, as mentioned, under this class, being here understood to be demandable by virtue of the mortgage, recognizance or obligation upon which the action or proceeding was instituted.

(2) *Second Class.* — To other debts outstanding against the decedent, observing the same rule of priority as prescribed by § 2105 of this title.

(Code 1852, §§ 1893-1897; Code 1915, § 3427; 35 Del. Laws, c. 204, § 1; Code 1935, § 3887; 12 Del. C. 1953, § 2715; 57 Del. Laws, c. 402, § 3; 59 Del. Laws, c. 384, § 1.)

§ 2711 Disposition of surplus after paying debts.

If there is any surplus of the sale, after paying all the debts, it shall belong to the person to whom the premises sold belonged at the time of the sale, who shall have the same proportion, quantity and manner of interest in the surplus, as the person had in the premises sold; and an executor or administrator shall not detain the surplus, or any part of it, on account of any mortgage, obligation or recognizance entered into or executed by the decedent with other condition than for the absolute payment of money or interest and which was a lien on the premises sold.

(Code 1852, § 1898; Code 1915, § 3428; Code 1935, § 3888; 12 Del. C. 1953, § 2716; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 2712 Order for disposition of surplus.

The Court of Chancery, upon the petition of an executor or administrator, shall give direction for the payment or disposal of the surplus.

(Code 1852, § 1899; Code 1915, § 3429; Code 1935, § 3889; 12 Del. C. 1953, § 2717; 57 Del. Laws, c. 402, § 3; 59 Del. Laws, c. 384, § 1.)

§ 2713 Bond to be given by executor or administrator before executing order of sale.

Every executor or administrator before proceeding to execute an order of sale shall, in the Court of Chancery, with 1 or more sufficient sureties to be approved by the Court, enter into bond to the State in a penal sum to be determined by the Court, with condition, in substance to account truly for all money to arise from the sale, and (the just charges to be allowed by the Court being first deducted) to apply all the balance thereof to the payment of the outstanding debts against the decedent, according to their legal priority, and to pay the surplus, if any, according to law, and to perform the executor's or administrator's duty in the premises with fidelity.

(Code 1852, § 1900; Code 1915, § 3430; Code 1935, § 3890; 12 Del. C. 1953, § 2718; 57 Del. Laws, c. 402, § 3; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 2714 Purchase money payable to a successor administrator.

If a sale, made by an executor or former administrator, shall be returned by a successor administrator, the purchase money shall be payable to the latter, but such payment shall not be made nor the sale approved until the successor administrator gives bond in the Court of Chancery as prescribed in § 2713 of this title; and in that case, the Court may discharge the bond of the executor or former administrator upon such terms as may be deemed proper.

(Code 1852, § 1901; Code 1915, § 3431; Code 1935, § 3891; 12 Del. C. 1953, § 2719; 57 Del. Laws, c. 402, § 3; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 2715 Refund of purchase money when sale not returned or not approved.

If the purchase money arising from any sale under this chapter shall be paid to the executor or administrator before the sale is approved, the executor or administrator shall refund the same without delay if such sale is not returned or shall not be approved. If the executor or administrator does not refund the money, it shall be a breach of the condition of the bond prescribed in § 2713 of this title, although the executor or administrator shall have died before the time for returning such sale, for such death shall not excuse the executor or administrator from the strict performance of the executor's or administrator's duty.

(Code 1852, § 1902; Code 1915, § 3431; Code 1935, § 3891; 12 Del. C. 1953, § 2720; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

§ 2716 Charges of sale; taxing and payment.

All the charges of any sale under this chapter, whether under the name of commissions or otherwise, shall be taxed by the Court of Chancery and paid to the Clerk before approving the sale; and no other charges shall be allowed on account of the sale, or of receiving or paying the purchase money, but the account shall be passed before the Register of Wills, as other accounts.

(Code 1852, § 1903; 19 Del. Laws, c. 252, § 3; Code 1915, § 3432; Code 1935, § 3892; 12 Del. C. 1953, § 2721; 57 Del. Laws, c. 402, §§ 3, 5; 59 Del. Laws, c. 384, § 1.)

§ 2717 Power to refuse order for sale or to approve a sale.

The Court of Chancery may refuse an order for sale of real estate or may refuse to approve a sale, if under the circumstances it is considered improper that such sale should be made, although it should sufficiently appear that the personal estate is not sufficient for the payment of the debts, or that the sale was regularly conducted.

(Code 1852, § 1904; Code 1915, § 3433; Code 1935, § 3893; 12 Del. C. 1953, § 2722; 57 Del. Laws, c. 402, § 3; 59 Del. Laws, c. 384, § 1.)

§ 2718 Appeal to Supreme Court.

Any person aggrieved by an order or decree of the Court of Chancery made in any proceeding under this chapter may appeal therefrom to the Supreme Court, and no such order or decree shall be drawn in question except upon appeal.

(Code 1852, § 1905; Code 1915, § 3434; Code 1935, § 3894; 12 Del. C. 1953, § 2723; 57 Del. Laws, c. 402, § 3; 59 Del. Laws, c. 384, § 1.)

§ 2719 Power of sale in will; execution; liability of purchaser for application of purchase money.

(a) If, by any will, authority is given to several executors, or other persons, to sell real estate, and, if 1 or more of them die before the complete execution of the authority, such authority shall survive.

(b) If, by any will, real estate is devised to be sold, and no person is authorized to make the sale, the person, or persons, having the execution of the will, or the survivor or survivors of them, if several, may sell the real estate in execution of the devise.

(c) If, by any will, real estate is devised to a person or persons for life and after the death of such life tenant or life tenants to be sold, and no person is authorized to make the sale, the person or persons who have the execution of said will at the period when such sale is directed to be made, or the survivor or survivors of them, if several, may sell the real estate in execution of the devise.

(d) If, by any will, authority is given to an executor to sell real estate, and the person so named as executor therein dies, or is removed or discharged from the office of executor before the execution of the authority, or refuses or neglects to give bond, or renounces, or is incapable, the person or persons having the execution of the will, or the survivor or survivors of them, if several, may sell the real estate in execution of the devise.

(e) Whenever real estate is sold and conveyed in any such case as mentioned and provided for in this section, the purchaser or purchasers thereof shall take the same free and discharged from any liability as to the application, misapplication or nonapplication of the purchase money or any part thereof. Nothing in this section shall contravene any express direction contained in any will.

(Code 1852, § 1906; 14 Del. Laws, c. 79, § 1; 24 Del. Laws, c. 235, § 1; Code 1915, § 3435; 30 Del. Laws, c. 211, § 1; Code 1935, § 3895; 12 Del. C. 1953, § 2724; 59 Del. Laws, c. 384, § 1; 70 Del Laws, c. 186, § 1.)

Part IV
Administration of Decedents' Estates
Chapter 29
APPORTIONMENT OF ESTATE TAXES [EFFECTIVE UNTIL JAN. 1, 2014, BUT SEE § 2914 OF THIS TITLE FOR FUTURE APPLICABILITY]

§ 2901 Proration of state and federal estate taxes; method [Effective until Jan. 1, 2014, but see § 2914 of this title for future applicability]

(a) Whenever it appears upon any accounting or in any appropriate action or proceeding that an executor, administrator, temporary administrator, trustee or other person acting in a fiduciary capacity (or individually) has, after April 2, 1947, paid an estate tax levied or assessed under Chapter 15 of Title 30 providing for a tax known as "Delaware Estate Tax" or under any law amendatory thereof or supplemental thereto or under any other law hereafter enacted providing for the same or a different estate tax or under any estate tax law of the United States, upon or with respect to any property required to be included in the gross estate of a decedent under any such law, the amount of the tax so paid shall be equitably prorated among the persons interested in the estate to whom such property is or may be transferred or to whom any benefit accrues.

(b) Such proration shall be made in the proportion, as near as may be, that the value of the property, interest or benefit of each such person bears to the total value of the property, interests and benefits received by all such persons interested in the estate except that in making such proration allowances shall be made for any exemptions granted by the law imposing the tax and for any deductions allowed by such law for the purpose of arriving at the value of the net estate and except that in cases where a trust is created or other provision made whereby any person is given an interest in income or an estate for years or for life or other temporary interest in any property or fund, the tax on both such temporary interest and on the remainder thereafter shall be charged against and be paid out of the corpus of such property or fund without apportionment between remainders and temporary estates.

(c) For the purposes of this chapter the term "persons interested in the estate" shall with respect to both state and federal taxes include all persons who may be entitled to receive or who have received any property or interest which is required to be included in the gross estate of a decedent or any benefit whatsoever with respect to any such property or interest, whether under a will or intestacy or by reason of any transfer, trust, estate, interest, right, power or relinquishment of power taxable under any of the aforementioned laws providing for the levy or assessment of estate taxes.

(46 Del. Laws, c. 119, § 1; 47 Del. Laws, c. 405, § 1; 12 Del. C. 1953, § 2901.)

§ 2902 Duty of executor, administrator or other fiduciary to pay tax before distribution [Effective until Jan. 1, 2014, but see § 2914 of this title for future applicability]

The tax shall be paid by the executor, administrator or other fiduciary out of the estate before its distribution.

(46 Del. Laws, c. 119, § 1; 47 Del. Laws, c. 405, § 1; 12 Del. C. 1953, § 2902.)

§ 2903 Recovery of proportionate tax from persons receiving taxable property which did not come into possession of executor or administrator; jurisdiction of Court of Chancery [Effective until Jan. 1, 2014, but see § 2914 of this title for future applicability]

(a) Where any property required to be included in the gross estate does not come into the possession of the executor, administrator or other fiduciary, the executor, administrator or other fiduciary shall recover from whoever is in possession or from the persons interested in the estate the proportionate amount of such tax payable by the persons interested in the estate with which such persons are chargeable under this chapter.

(b) The Court of Chancery of the county in which any such accounting has been made or in which any such appropriate action or proceeding is pending may, by order, direct the payment of such amount of tax by such persons to the executor, administrator or other fiduciary, in accordance with subsection (a) of this section.

(46 Del. Laws, c. 119, § 1; 47 Del. Laws, c. 405, § 1; 12 Del. C. 1953, § 2903; 57 Del. Laws, c. 402, § 3; 70 Del Laws, c. 186, § 1.)

§ 2904 Executor's or administrator's obligation to distribute property before person entitled has paid pro rata tax or furnished security [Effective until Jan. 1, 2014, but see § 2914 of this title for future applicability]

No executor, administrator or other person acting in a fiduciary capacity shall be required to transfer, pay over or distribute any fund or property which may have either a federal or a state tax imposed upon it or which may be liable for the payment of any federal or state tax, until the amount of such tax or taxes due from the devisee, legatee, distributee or other person to whom such property is transferred, is paid or, if the apportionment of tax has not been determined, adequate security is furnished by the transferee for such payment.

(46 Del. Laws, c. 119, § 1; 47 Del. Laws, c. 405, § 1; 12 Del. C. 1953, § 2904.)

§ 2905 Jurisdiction of and proceedings in the Court of Chancery; petition, order, parties, hearings; appointment of guardians [Effective until Jan. 1, 2014, but see § 2914 of this title for future applicability]

(a) The Court of Chancery has jurisdiction and all power necessary to make the prorations and the orders directing the payment of amounts of tax contemplated by this chapter.

(b) Such jurisdiction may be invoked by petition filed in the Court of Chancery by an executor, administrator, temporary administrator, trustee or other person acting in a fiduciary capacity or any other person having such an interest as may in the judgment of the Court entitle such person to file such a petition.

(c) The Court of Chancery, upon making a determination as provided in § 2901 of this title, shall make a decree or order directing the executor, administrator or other fiduciary to charge the prorated amounts against the persons against whom the tax has been so prorated, insofar as such person is in possession of property or interests of such persons against whom such charge has been made, and summarily directing all other persons against whom the tax has been so prorated or who are in possession of property or interests of such persons to make payment of such prorated amounts to such executor, administrator or other fiduciary or to another person who has paid such tax.

(d) Every petition under subsection (b) of this section shall make all living interested persons parties defendant to the proceeding and they shall be summoned or otherwise notified as provided by the rules of the Court of Chancery relating to partition causes.

(e) The Court may appoint a guardian or guardians ad litem to represent the interests of persons who by reason of their minority or other cause are incompetent or of unborn or unascertainable persons who may have an interest in the estate.

(f) The Court may hear the cause upon oral testimony of witnesses or otherwise.

(46 Del. Laws, c. 119, § 1; 47 Del. Laws, c. 405, § 1; 12 Del. C. 1953, § 2905; 57 Del. Laws, c. 402, § 3; 70 Del Laws, c. 186, § 1.)

§ 2906 Limitation on application of chapter [Effective until Jan. 1, 2014, but see § 2914 of this title for future applicability]

The foregoing provisions of this chapter shall not apply where and to the extent that a testator provides in the testator's will for another method of apportionment or allocation of the taxes referred to in § 2901 of this title or where and to the extent that the written terms of an inter vivos transfer provide for another method of apportionment or allocation of such taxes which may be imposed with respect to the specific fund so transferred. Such provision in a will or in the terms of an inter vivos transfer may be in the form of a direction or of a grant of discretion to an executor or trustee to apportion or allocate such taxes or to pay such taxes out of the residuary estate under a will or from any other portion or portions of the estate passing under the will or out of the property transferred inter vivos.

(46 Del. Laws, c. 119, § 1; 47 Del. Laws, c. 405, § 1; 12 Del. C. 1953, § 2906; 70 Del Laws, c. 186, § 1.)

§ 2901 Short title [Effective Jan. 1, 2014, but see § 2914 of this title for future applicability]

This chapter may be cited as the "Estate Tax Apportionment Act of Delaware."

(79 Del. Laws, c. 159, § 1.)

§ 2902 Definitions [Effective Jan. 1, 2014, but see § 2914 of this title for future applicability]

In this chapter:

(1) "Apportionable estate" means the value of the gross estate as finally determined for purposes of the estate tax to be apportioned reduced by:

a. Any claim or expense allowable as a deduction for purposes of the tax;

b. The value of any interest in property that, for purposes of the tax, qualifies for a marital or charitable deduction or otherwise is deductible or is exempt; and

c. Any amount added to the decedent's gross estate because of a gift tax on transfers made before death.

(2) "Estate tax" means a federal, state, or foreign tax imposed because of the death of an individual and interest and penalties associated with the tax. The term does not include an inheritance tax, income tax, or generation-skipping transfer tax other than a generation-skipping transfer tax incurred on a direct skip taking effect at death.

(3) "Gross estate" means, with respect to an estate tax, all interests in property subject to the tax.

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

(5) "Ratable" means apportioned or allocated pro rata according to the relative values of interests to which the term is to be applied. "Ratably" has a corresponding meaning.

(6) "Time-limited interest" means an interest in property which terminates on a lapse of time or on the occurrence or nonoccurrence of an event or which is subject to the exercise of discretion that could transfer a beneficial interest to another person. The term does not include:

a. A cotenancy unless the cotenancy itself is a time-limited interest; or

b. An interest in property to the extent outright distribution to the beneficiary is within the sole power of the beneficiary.

(7) "Value" means, with respect to an interest in property, fair market value as finally determined for purposes of the estate tax that is to be apportioned, reduced by any outstanding debt secured by the interest without reduction for taxes paid or required to be paid or for any special valuation adjustment.

(79 Del. Laws, c. 159, § 1.)

§ 2903 Apportionment by will or other dispositive instrument [Effective Jan. 1, 2017, but see § 2914 of this title for future applicability]

(a) Except as otherwise provided in subsection (c) of this section, the following rules apply:

(1) To the extent that a provision of a decedent's will specifically indicates an intent to direct the apportionment of an estate tax, the tax must be apportioned accordingly.

(2) Any portion of an estate tax not apportioned pursuant to paragraph (a)(1) of this section must be apportioned in accordance with any provision of a revocable trust of which the decedent was the settlor which specifically indicates an intent to direct the apportionment of an estate tax. If conflicting apportionment provisions appear in 2 or more revocable trust instruments, the provision in the most recently dated instrument prevails. For purposes of this paragraph:

a. A trust is revocable if it was revocable immediately after the trust instrument was executed, even if the trust subsequently becomes irrevocable; and

b. The date of an amendment to a revocable trust instrument is the date of the amended instrument only if the amendment contains an apportionment provision.

(3) If any portion of an estate tax is not apportioned pursuant to paragraph (a)(1) or (2) of this section, and a provision in any other dispositive instrument specifically directs that any interest in the property disposed of by the instrument is or is not to be applied to the payment of the estate tax attributable to the interest disposed of by the instrument, the provision controls the apportionment of the tax to that interest.

(b) Subject to subsection (c) of this section, and unless the decedent in a will or revocable trust specifically indicates an intent to waive the application of this statute, the following rules apply:

(1) If an apportionment provision directs that a person receiving an interest in property under an instrument is to be exonerated from the responsibility to pay an estate tax that would otherwise be apportioned to the interest,

a. The tax attributable to the exonerated interest must be apportioned among the other persons receiving interests passing under the instrument, or

b. If the values of the other interests are less than the tax attributable to the exonerated interest, the deficiency must be apportioned ratably among the other persons receiving interests in the apportionable estate that are not exonerated from apportionment of the tax.

(2) If an apportionment provision directs that an estate tax is to be apportioned to an interest in property a portion of which qualifies for a marital or charitable deduction, the estate tax must first be apportioned ratably among the holders of the portion that does not qualify for a marital or charitable deduction and then apportioned ratably among the holders of the deductible portion to the extent that the value of the nondeductible portion is insufficient.

(3) Except as otherwise provided in paragraph (b)(4) of this section, if an apportionment provision directs that an estate tax be apportioned to property in which 1 or more time-limited interests exist, other than interests in specified property under § 2907 of this title, the tax must be apportioned to the principal of that property, regardless of the deductibility of some of the interests in that property.

(4) If an apportionment provision directs that an estate tax is to be apportioned to the holders of interests in property in which 1 or more time-limited interests exist and a charity has an interest that otherwise qualifies for an estate tax charitable deduction, the tax must first be apportioned, to the extent feasible, to interests in property that have not been distributed to the persons entitled to receive the interests. No tax shall be paid from a charitable remainder annuity trust or a charitable remainder unitrust described in § 664 of the Internal Revenue Code [26 U.S.C. § 664] and created during the decedent's life.

(c) A provision that apportions an estate tax is ineffective to the extent that it increases the tax apportioned to a person having an interest in the gross estate over which the decedent had no power to transfer immediately before the decedent executed the instrument in which the apportionment direction was made. For purposes of this subsection, a testamentary power of appointment is a power to transfer the property that is subject to the power.

(79 Del. Laws, c. 159, § 1.)

§ 2904 Statutory apportionment of estate taxes [Effective Jan. 1, 2017, but see § 2914 of this title for future applicability]

To the extent that apportionment of an estate tax is not controlled by an instrument described in § 2903 of this title and except as otherwise provided in §§ 2906 and 2907 of this title, the following rules apply:

(1) Subject to paragraphs (2), (3), and (4) of this section, the estate tax is apportioned ratably to each person that has an interest in the apportionable estate.

(2) A generation-skipping transfer tax incurred on a direct skip taking effect at death is charged to the person to which the interest in property is transferred.

(3) If property is included in the decedent's gross estate because of § 2044 of the Internal Revenue Code of 1986 [26 U.S.C. § 2044] or any similar estate tax provision, the difference between the total estate tax for which the decedent's estate is liable and the amount of estate tax for which the decedent's estate would have been liable if the property had not been included in the decedent's gross estate is apportioned ratably among the holders of interests in the property. The balance of the tax, if any, is apportioned ratably to each other person having an interest in the apportionable estate.

(4) Except as otherwise provided in § 2903(b)(4) of this title and except as to property to which § 2907 of this title applies, an estate tax apportioned to persons holding interests in property subject to a time-limited interest must be apportioned, without further apportionment, to the principal of that property.

(79 Del. Laws, c. 159, § 1.)

§ 2905 Credits and deferrals [Effective Jan. 1, 2017, but see § 2914 of this title for future applicability]

Except as otherwise provided in §§ 2906 and 2907 of this title, the following rules apply to credits and deferrals of estate taxes:

(1) A credit resulting from the payment of gift taxes or from estate taxes paid on property previously taxed inures ratably to the benefit of all persons to which the estate tax is apportioned.

(2) A credit for state or foreign estate taxes inures ratably to the benefit of all persons to which the estate tax is apportioned, except that the amount of a credit for a state or foreign tax paid by a beneficiary of the property on which the state or foreign tax was imposed, directly or by a charge against the property, inures to the benefit of the beneficiary.

(3) If payment of a portion of an estate tax is deferred because of the inclusion in the gross estate of a particular interest in property, the benefit of the deferral inures ratably to the persons to which the estate tax attributable to the interest is apportioned. The burden of any interest charges incurred on a deferral of taxes and the benefit of any tax deduction associated with the accrual or payment of the interest charge is allocated ratably among the persons receiving an interest in the property.

(79 Del. Laws, c. 159, § 1.)

§ 2906 Insulated property: advancement of tax [Effective Jan. 1, 2017, but see § 2914 of this title for future applicability]

(a) In this section:

(1) "Advanced fraction" means a fraction that has as its numerator the amount of the advanced tax and as its denominator the value of the interests in insulated property to which that tax is attributable.

(2) "Advanced tax" means the aggregate amount of estate tax attributable to interests in insulated property which is required to be advanced by uninsulated holders under subsection (c) of this section.

(3) "Insulated property" means property subject to a time-limited interest which is included in the apportionable estate but is unavailable for payment of an estate tax because of impossibility or impracticability.

(4) "Uninsulated holder" means a person who has an interest in uninsulated property.

(5) "Uninsulated property" means property included in the apportionable estate other than insulated property.

(b) If an estate tax is to be advanced pursuant to subsection (c) of this section by persons holding interests in uninsulated property subject to a time-limited interest other than property to which § 2907 of this title applies, the tax must be advanced, without further apportionment, from the principal of the uninsulated property.

(c) Subject to § 2909(b) and (d) of this title, an estate tax attributable to interests in insulated property must be advanced ratably by uninsulated holders. If the value of an interest in uninsulated property is less than the amount of estate taxes otherwise required to be advanced by the holder of that interest, the deficiency must be advanced ratably by the persons holding interests in properties that are excluded from the apportionable estate under § 2902(1)b. of this title as if those interests were in uninsulated property.

(d) A court having jurisdiction to determine the apportionment of an estate tax may require a beneficiary of an interest in insulated property to pay all or part of the estate tax otherwise apportioned to the interest if the court finds that it would be substantially more equitable for that beneficiary to bear the tax liability personally than for that part of the tax to be advanced by uninsulated holders.

(e) When a distribution of insulated property is made, each uninsulated holder may recover from the distributee a ratable portion of the advanced fraction of the property distributed. To the extent that undistributed insulated property ceases to be insulated, each uninsulated holder may recover from the property a ratable portion of the advanced fraction of the total undistributed property.

(f) Upon a distribution of insulated property for which, pursuant to subsection (e) of this section, the distributee becomes obligated to make a payment to uninsulated holders, a court may award an uninsulated holder a recordable lien on the distributee's property to secure the distributee's obligation to that uninsulated holder.

(79 Del. Laws, c. 159, § 1.)

§ 2907 Apportionment and recapture of special elective benefits [Effective Jan. 1, 2017, but see § 2914 of this title for future applicability]

(a) In this section:

(1) "Special elective benefit" means a reduction in an estate tax obtained by an election for:

a. A reduced valuation of specified property that is included in the gross estate;

b. A deduction from the gross estate, other than a marital or charitable deduction, allowed for specified property; or

c. An exclusion from the gross estate of specified property.

(2) "Specified property" means property for which an election has been made for a special elective benefit.

(b) If an election is made for 1 or more special elective benefits, an initial apportionment of a hypothetical estate tax must be computed as if no election for any of those benefits had been made. The aggregate reduction in estate tax resulting from all elections made must be allocated among holders of interests in the specified property in the proportion that the amount of deduction, reduced valuation, or exclusion attributable to each holder's interest bears to the aggregate amount of deductions, reduced valuations, and exclusions obtained by the decedent's estate from the elections. If the estate tax initially apportioned to the holder of an interest in specified property is reduced to zero, any excess amount of reduction reduces ratably the estate tax apportioned to other persons that receive interests in the apportionable estate.

(c) An additional estate tax imposed to recapture all or part of a special elective benefit must be charged to the persons that are liable for the additional tax under the law providing for the recapture.

(79 Del. Laws, c. 159, § 1.)

§ 2908 Securing payment of estate tax from property in possession of fiduciary [Effective Jan. 1, 2014, but see § 2914 of this title for future applicability]

(a) A fiduciary may defer a distribution of property until the fiduciary is satisfied that adequate provision for payment of the estate tax has been made.

(b) A fiduciary may withhold from a distributee an amount equal to the amount of estate tax apportioned to an interest of the distributee and the estate tax required to be advanced by the distributee.

(c) As a condition to a distribution, a fiduciary may require the distributee to provide a bond or other security for the portion of the estate tax apportioned to the distributee and also for the estate tax required to be advanced by the distributee.

(79 Del. Laws, c. 159, § 1.)

§ 2909 Collection of estate tax by fiduciary [Effective Jan. 1, 2014, but see § 2914 of this title for future applicability]

(a) A fiduciary responsible for payment of an estate tax may collect from any person the tax apportioned to and the tax required to be advanced by the person.

(b) Except as otherwise provided in § 2906 of this title, any estate tax due from a person that cannot be collected from the person may be collected by the fiduciary from other persons in the following order of priority:

(1) Any person having an interest in the apportionable estate which is not exonerated from the tax;

(2) Any other person having an interest in the apportionable estate;

(3) Any person having an interest in the gross estate.

(c) A domiciliary fiduciary may recover from an ancillary personal representative the estate tax apportioned to the property controlled by the ancillary personal representative.

(d) The total tax collected from a person pursuant to this chapter may not exceed the value of the person's interest.

(79 Del. Laws, c. 159, § 1.)

§ 2910 Right of reimbursement [Effective Jan. 1, 2014, but see § 2914 of this title for future applicability]

(a) A person required under § 2909 of this title to pay an estate tax greater than the amount due from the person under § 2903 or § 2904 of this title has a right to reimbursement from another person to the extent that the other person has not paid the tax required by § 2903 or § 2904 of this title and a right to reimbursement ratably from other persons to the extent that each has not contributed a portion of the amount collected under § 2909(b) of this title.

(b) A fiduciary may enforce the right of reimbursement under subsection (a) of this section on behalf of the person that is entitled to the reimbursement and shall take reasonable steps to do so if requested by the person.

(79 Del. Laws, c. 159, § 1.)

§ 2911 Jurisdiction of Court of Chancery; action to determine or enforce chapter [Effective Jan. 1, 2014, but see § 2914 of this title for future applicability]

(a) The Court of Chancery has jurisdiction and all power necessary to make the prorations and the orders directing the payment of amounts of tax contemplated by this chapter.

(b) Such jurisdiction may be invoked by petition filed in the Court of Chancery by an executor, administrator, temporary administrator, trustee or other person acting in a fiduciary capacity, transferee, beneficiary of the gross estate, or any other person having such an interest as may in the judgment of the Court entitle such person to file such a petition.

(c) The Court of Chancery, upon making a determination as provided in this chapter, shall make a decree or order directing the executor, administrator or other fiduciary to charge the prorated amounts against the persons against whom the tax has been so prorated, insofar as such person is in possession of property or interests of such persons against whom such charge has been made, and summarily directing all other persons against whom the tax has been so prorated or who are in possession of property or interests of such persons to make payment of such prorated amounts to such executor, administrator or other fiduciary or to another person who has paid such tax.

(79 Del. Laws, c. 159, § 1.)

§ 2912 Uniformity of application and construction [Effective Jan. 1, 2014, but see § 2914 of this title for future applicability]

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

(79 Del. Laws, c. 159, § 1.)

§ 2913 Severability [Effective Jan. 1, 2014, but see § 2914 of this title for future applicability]

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

(79 Del. Laws, c. 159, § 1.)

§ 2914 Delayed application [Effective Jan. 1, 2014, but see § 2914 of this title for future applicability]

(a) Sections 2903 through 2907 of this title do not apply to the estate of a decedent who dies on or within 3 years after the effective date of this chapter, nor to the estate of a decedent who dies more than 3 years after the effective date of this chapter if the decedent continuously lacked testamentary capacity from the expiration of the 3-year period until the date of death.

(b) For the estate of a decedent who dies on or after January 1, 2014, to which §§ 2903-2907 do not apply, estate taxes must be apportioned pursuant to the law in effect immediately before January 1, 2014.

(79 Del. Laws, c. 159, § 1.)

§ 2915 Effective date [Effective Jan. 1, 2014, but see § 2914 of this title for future applicability]

This chapter takes effect for decedents dying on or after January 1, 2014.

(79 Del. Laws, c. 159, § 1.)

Part IV
Administration of Decedents' Estates
Chapter 31
SUITS AGAINST EXECUTORS AND ADMINISTRATORS
Subchapter I
Suit for Legacy or Distributive Share

§ 3101 Action at law.

(a) An action at law may be maintained against an executor or administrator for a legacy or distributive share that is due. Assets in the executor's or administrator's hands to pay a legacy shall create a legal liability and raise a consequent promise to pay it. If there are not sufficient assets to pay the whole legacy, a part may be recovered. If the delivery of a specific legacy has been refused, the value of it may be recovered by an action at law. There shall be a legal liability to pay a distributive share and a consequent implied promise.

(b) An action at law shall not lie for a legacy which is either directly or by implication the subject of a trust.

(Code 1852, §§ 1852-1854, 2591, 2592; Code 1915, §§ 3397, 4520; Code 1935, §§ 3860, 4974; 12 Del. C. 1953, § 3101.)

§ 3102 Action by infant legatee.

An infant legatee may sue for the legacy by guardian or next friend, as in other cases.

(Code 1852, § 2593; Code 1915, § 4521; Code 1935, § 4975; 12 Del. C. 1953, § 3102; 70 Del Laws, c. 186, § 1.)

§ 3103 Appointment of auditors; duties.

If the defense to an action for a legacy is insufficient assets to pay all the debts and legacies, the court shall appoint auditors to examine the accounts of the executor or administrator with the will annexed. The auditors, after full hearing of the parties upon notice to them respectively of the times and places of such hearing, shall report the condition of the accounts, what assets will remain after payment of the debts and what proportion of such residue is properly applicable to the plaintiff's legacy, having regard to all such settlements of the accounts as may have been made before any court or officer having authority to settle the same.

(Code 1852, § 2595; Code 1915, § 4523; Code 1935, § 4977; 12 Del. C. 1953, § 3103.)

§ 3104 Exceptions to auditors' report.

Exceptions may be taken by either of the parties to the report of auditors and thereupon the court, upon hearing the exceptions, may correct any errors in such report.

(Code 1852, § 2596; Code 1915, § 4524; Code 1935, § 4978; 12 Del. C. 1953, § 3104.)

§ 3105 Judgment and execution.

If, upon proceedings under this subchapter, the assets are found insufficient to pay all the debts and legacies of the testator, execution shall be awarded only for such proportion of the assets as may be properly applicable to the plaintiff's legacy, but judgment for the whole legacy shall be entered and shall stand as a security for the payment of the residue of the legacy, when sufficient assets for such payment shall come to the hands of the executor or administrator. A scire facias shall lie for further execution, suggesting that other assets have come to the hands of the executor or administrator.

(Code 1852, § 2597; Code 1915, § 4525; Code 1935, § 4979; 12 Del. C. 1953, § 3105.)

§ 3106 Costs; liability of personal representative therefor.

The court shall exercise equitable powers in respect to costs. In case of inexcusable neglect or delay on the part of the executor or administrator to pay the legacy demanded or a proportional part thereof the court may order that the costs be paid by the executor or administrator. No costs shall be recovered in an action brought for a legacy without a reasonable demand for the same first made upon the executor or administrator who ought to pay the same.

(Code 1852, § 2598; Code 1915, § 4526; Code 1935, § 4980; 12 Del. C. 1953, § 3106; 70 Del Laws, c. 186, § 1.)

§ 3107 Security to refund legacy.

The court shall exercise equitable powers in requiring the plaintiff to give security to refund the legacy or any part thereof and also in respect to the delivery and acceptance of a specific legacy.

(Code 1852, § 2599; Code 1915, § 4527; Code 1935, § 4981; 12 Del. C. 1953, § 3107.)

Subchapter II
General

§ 3121 Consequences of instituting suit without presenting claim.

If in an action against an executor or administrator for a debt against the decedent the affidavit required by § 2104 of this title is not produced by the plaintiff, the action shall, upon motion, be dismissed and if such action has been brought, without previously exhibiting

to the defendant an affidavit in due form, the plaintiff shall not recover any costs, unless the action has been controverted. The question of disallowance of costs shall be decided by the court on a rule to show cause, which shall not be granted unless the exhibiting of an affidavit be denied on oath or affirmation.

(Code 1852, § 1836; Code 1915, § 3376; Code 1935, § 3841; 12 Del. C. 1953, § 3121.)

§ 3122 Process; default judgment and proceedings thereon.

In an action against an executor or administrator the first process shall be a summons. If the defendant, being summoned, does not appear, judgment by default shall be entered against the defendant and upon such judgment the Superior Court may, upon motion, order the Prothonotary to ascertain the amount in which case, at least 5 days' written notice shall be given to the defendant of the time when the Prothonotary will consider the case and execution may be issued as soon as the amount is ascertained or, upon such judgment by default, a rule of reference may be entered as prescribed in Chapter 47 of Title 10 or a writ of inquiry awarded if it be a case proper for the writ.

(Code 1852, § 1863; Code 1915, § 3400; Code 1935, § 3863; 12 Del. C. 1953, § 3122; 70 Del Laws, c. 186, § 1.)

§ 3123 Effect of judgment against executor or administrator.

(a) The effect of judgments against executors or administrators, on the report of referees, as to the question of assets and the lien of such judgments on the real estate of the deceased shall be as provided by Chapter 47 of Title 10.

(b) Judgments before justices of the peace against executors and administrators shall be judgments of assets. Writs of scire facias upon a suggestion of waste may be sued out and tried. Judgment and execution shall be awarded, as provided by § 9542 of Title 10.

(Code 1852, § 1864; Code 1915, § 3401; Code 1935, § 3864; 12 Del. C. 1953, § 3123.)

§ 3124 Costs; allowance in account.

Costs shall be awarded to and against executors and administrators in like manner as other parties, but costs awarded against them shall not be allowed in their accounts, unless the court shall certify the propriety of such allowance or there is other good evidence that they were properly incurred.

(Code 1852, § 1865; Code 1915, § 3402; Code 1935, § 3865; 12 Del. C. 1953, § 3124.)

§ 3125 Suit for specific performance of decedent's contract for sale of real estate; proof and recording of contract; effect of deed.

(a) Before suit shall be brought against an executor or administrator upon a written contract of the decedent under seal or under hand and attested by 1 or more witnesses for the conveyance of any real estate within the State, the person with whom such contract was made or who is entitled to the benefit thereof, either as heir, devisee, assignee or otherwise, shall cause the contract to be proved in the Court of Chancery in the county where the premises are situated and recorded in the recorder's office therein and shall thereupon apply to the executor or administrator for the fulfillment of the contract. Thereupon, the executor or administrator, if the consideration of the premises has been paid or upon payment thereof, may exhibit to such Court a petition stating the facts and praying authority to convey the premises in execution of the contract. The Court may inquire into the case and order specific performance of the contract, according to equity and good conscience. A deed made pursuant to such order shall be as effectual as if executed by the decedent in the decedent's lifetime.

(b) If the premises lie partly in 2 counties, the proof may be taken and the order made in either, but the contract must be recorded in each.

(c) If it is evident that the executor or administrator cannot fulfill the contract specifically or if it is a case in which a specific execution ought not to be accepted, proceedings under this section shall not be necessary.

(d) If a suit is brought against the true intent of this section, the Court may dismiss the action.

(Code 1852, §§ 1859-1862; Code 1915, § 3399; Code 1935, § 3862; 12 Del. C. 1953, § 3125; 70 Del Laws, c. 186, § 1.)

Part V
Fiduciary Relations
Chapter 33
ADMINISTRATIVE PROVISIONS

§ 3301 Application of chapter; definitions [For application of this section, see 79 Del. Laws, c. 172, § 6]

(a) This chapter shall govern fiduciaries, as well as agents in certain instances, now or hereafter acting under governing instruments.

(b) The term "agents" shall mean custodians (other than those acting under the Uniform Transfers to Minors Act, Chapter 45 of this title), escrow agents, managing agents and other persons holding, other than in the capacity of a fiduciary as defined in this section, property belonging to another person whether that other person is a fiduciary or a nonfiduciary.

(c) The term "clearing corporation" shall refer to a "clearing corporation" as defined in § 8-102 of Title 6.

(d) The term "fiduciary" shall mean trustees, personal representatives, guardians, custodians under the Uniform Transfers to Minors Act (Chapter 45 of this title) agents to the extent delegated duties by another fiduciary and other fiduciaries.

(e) The term "governing instrument" shall mean a will, trust agreement or declaration, court order or other instrument that creates or defines the duties and powers of a fiduciary and shall include any instrument that modifies a governing instrument or, in effect, alters the duties and powers of a fiduciary or other terms of a governing instrument.

(f) The terms "legal investment" or "authorized investment" or words of similar import, as used in any governing instrument, shall mean any investment which is permitted by the terms of § 3302 of this title.

(g) The term "wilful misconduct" shall mean intentional wrongdoing, not mere negligence, gross negligence or recklessness and "wrongdoing" means malicious conduct or conduct designed to defraud or seek an unconscionable advantage.

(h) For purposes of construing a governing instrument, unless a contrary statement appears in such governing instrument:

(1) The term "fiduciary fund" means the trust, estate, guardianship account, or account established under a Uniform Transfers to Minors Act [Chapter 45 of this title] that is being administered by a fiduciary.

(2) The term "interested person" means any living person who:

a. Is an income beneficiary or remainder beneficiary of a trust;

b. Has a vested interest in a decedent's estate;

c. Receives benefits as a ward from a guardianship account; or

d. Is the minor with respect to an account established under a Uniform Transfers to Minors Act [Chapter 45 of this title].

(3) The term "issue" shall denote a distribution per stirpes, such that the children of the person whose issue is referred to shall be taken to be the heads of the respective stocks of issue and a person legally adopted, whether under or over the age of 18 years at adoption, shall thereafter be considered to be a child and issue of the adopting person and an issue of the ascendants of the adopting person, and the issue of the person so adopted shall be considered to be issue of the adopting person and the adopting person's ascendants.

(4) The term "wilful misconduct" means intentional wrongdoing, not mere negligence, gross negligence or recklessness and "wrongdoing" means malicious conduct or conduct designed to defraud or seek an unconscionable advantage.

(25 Del. Laws, c. 226, § 3; Code 1915, § 3875; 37 Del. Laws, c. 259, § 1; 40 Del. Laws, c. 230, § 1; Code 1935, § 4401; 43 Del. Laws, c. 224, § 1; 44 Del. Laws, c. 171, § 1; 12 Del. C. 1953, § 3301; 59 Del. Laws, c. 271, § 2; 76 Del. Laws, c. 254, § 2; 77 Del. Laws, c. 98, §§ 3-5; 77 Del. Laws, c. 330, §§ 1, 2; 78 Del. Laws, c. 117, § 2; 79 Del. Laws, c. 172, § 2.)

§ 3302 Degree of care; authorized investments [For application of this section, see 79 Del. Laws, c. 172, § 6]

(a) When investing, reinvesting, purchasing, acquiring, exchanging, retaining, selling and managing property for the benefit of another, a fiduciary shall act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use to attain the purposes of the account. In making investment decisions, a fiduciary may consider the general economic conditions, the anticipated tax consequences of the investment and the anticipated duration of the account and the needs of its beneficiaries.

(b) Within the limitations of the foregoing standard and considering individual investments as part of an overall investment strategy, a fiduciary is authorized to acquire every kind of property, real, personal or mixed, and every kind of investment, wherever located, whether within or without the United States, including, but not by way of limitation, bonds, debentures and other corporate obligations, stocks, preferred or common, shares or interests in common funds or common trust funds, securities of any open-end or closed-end management type investment company or investment trust registered under the Federal Investment Company Act of 1940 (15 U.S.C. § 80a-1 et seq.), options, futures, warrants, limited partnership interests and life insurance. No investment made by a fiduciary shall be deemed imprudent solely because the investment is not specifically mentioned in this subsection.

(c) The propriety of an investment decision is to be determined by what the fiduciary knew or should have known at the time of the decision about:

(1) The inherent nature and expected performance of the investment portfolio;

(2) The limitations of the standard set forth in subsection (a) of this section; and

(3) The nature and extent of other investments and resources, whether held in trust or otherwise, available to the beneficiaries as they existed at the time of the decision; provided however, that the fiduciary shall have no duty to inquire as to the nature and extent of any such other investments and resources not held by the fiduciary or held by the fiduciary in a trust or trust account subject to the direction of an adviser authorized to direct the fiduciary with respect to investment decisions, within the meaning of § 3313(d) of this title, concerning the assets held in the trust or trust account.

Any determination of liability for investment performance shall consider the performance of the entire portfolio and such other factors as the fiduciary considered when the investment decision was made.

(d) Notwithstanding the foregoing provisions of this section, a trustee who discloses the application of this subsection and the limitation of the trustee's duties thereunder either in the governing instrument or in a separate writing delivered to each insured at the inception of a contract of life insurance or thereafter if prior to an event giving rise to a claim thereunder, may acquire or retain a contract of life insurance upon the life of the trustor or the trustor's spouse, or both, without liability for a loss arising from the trustee's failure to:

(1) Determine whether the contract is or remains a proper investment;

(2) Investigate the financial strength or changes in the financial strength of the life insurance company;

(3) Make a determination of whether to exercise any policy option available under the contract;

(4) Make a determination of whether to diversify such contracts relative to 1 another or to other assets, if any, administered by the trustee; or

(5) Inquire about changes in the health or financial condition of the insured or insureds relative to any such contract.

(e) Any fiduciary acting under a governing instrument shall not be liable to anyone whose interests arise from that instrument for breach of fiduciary duty for the fiduciary's good faith reliance on the express provisions of such instrument. The standards set forth in this section may be expanded, restricted or eliminated by express provisions in a governing instrument.

(f) Where a bank or trust company acting in a fiduciary capacity invests trust funds in, or otherwise acquires an interest in, a common trust fund which it or 1 of its affiliates manages, as defined in § 23A of the Federal Reserve Act (12 U.S.C. § 371c), the plan for such common trust fund shall be filed and recorded in the office of the Register in Chancery of the county in which is located the main office in Delaware of the bank or trust company which is the fiduciary for such trust funds.

(g) Fees may be charged for making an investment through a computerized or automated process, such as sweeping otherwise uninvested cash into a cash management vehicle, provided that the amount of such fees is disclosed on a continuing basis as a separate item on the regular periodic statements furnished to the beneficiaries of the account.

(h) A fiduciary is authorized, in the absence of an express provision to the contrary, whenever a law, regulation, governing instrument or order directs, requires, authorizes or permits investment in United States government obligations, to invest in those obligations, either directly or in the form of securities of, or other interests in, any open-end or closed-end management investment company or investment trust registered under the Investment Company Act of 1940 (54 Stat. 847, 15 U.S.C. § 80a-1 et seq.), if the portfolio of that investment company or investment trust is limited to United States government obligations and to repurchase agreements fully collateralized by United States government obligations, which collateral shall be delivered to or held by the investment company or investment trust, either directly or through an authorized custodian.

(i) Except in the case of United States government obligations, which are treated in subsection (h) of this section above, the authority to invest in specified types of investments includes authorization to invest in any open-end or closed-end management investment company or investment trust registered under the Investment Company Act of 1940 (54 Stat. 847, 15 U.S.C. § 80a-1 et seq.), or in any common or collective trust fund established and maintained by a corporate fiduciary, if the portfolio of the investment company or investment trust, or of the common or collective trust fund, consists substantially of the specified types of investments and is otherwise in conformity with the laws of the State.

(25 Del. Laws, c. 226, § 3; Code 1915, § 3875; 37 Del. Laws, c. 259, § 1; 40 Del. Laws, c. 230, § 1; Code 1935, § 4401; 44 Del. Laws, c. 171, § 1; 12 Del. C. 1953, § 3302; 64 Del. Laws, c. 141, § 3; 65 Del. Laws, c. 422, § 5; 72 Del. Laws, c. 55; 74 Del. Laws, c. 81, §§ 1, 2; 75 Del. Laws, c. 97, § 18; 79 Del. Laws, c. 172, § 2.)

§ 3303 Effect of provisions of instrument [For application of this section, see 79 Del. Laws, c. 172, § 6; 79 Del. Laws, c. 352, § 6]

(a) Notwithstanding any other provision of this Code or other law, the terms of a governing instrument may expand, restrict, eliminate, or otherwise vary any laws of general application to fiduciaries, trusts and trust administration, including, but not limited to, any such laws pertaining to:

(1) The rights and interests of beneficiaries, including, but not limited to, the right to be informed of the beneficiary's interest for a period of time;

(2) The grounds for removal of a fiduciary;

(3) The circumstances, if any, in which the fiduciary must diversify investments; and

(4) A fiduciary's powers, duties, standard of care, rights of indemnification and liability to persons whose interests arise from that instrument.

(5) [Repealed.]

provided, however, that nothing contained in this section shall be construed to permit the exculpation or indemnification of a fiduciary for the fiduciary's own wilful misconduct or preclude a court of competent jurisdiction from removing a fiduciary on account of the fiduciary's wilful misconduct. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this section. It is the policy of this section to give maximum effect to the principle of freedom of disposition and to the enforceability of governing instruments.

(b) In furtherance of and not in limitation of the provisions of subsection (a) of this section, the terms of a governing instrument of a trust established and existing for religious, charitable, scientific, literary, or educational purposes or for noncharitable purposes shall not be modified by the court to change the trust's purposes unless the purposes of the trust have become unlawful under the Constitution of this State or the United States or the trust would otherwise no longer serve any religious, charitable, scientific, literary, educational, or noncharitable purpose, in which case the court shall proceed in the manner directed by § 3541 of this title. A settlor may maintain an action to enforce a charitable or noncharitable trust under this section and may designate a person or persons, whether or not born at the time of such designation, to enforce a charitable or noncharitable trust under this section. For purposes of this subsection, a "noncharitable purpose" is a purpose within the meaning of § 3555 or § 3556 of this title.

(25 Del. Laws, c. 226, § 3; Code 1915, § 3875; 37 Del. Laws, c. 259, § 1; 40 Del. Laws, c. 230, § 1; Code 1935, § 4401; 44 Del. Laws, c. 171, § 1; 47 Del. Laws, c. 19, § 1; 48 Del. Laws, c. 41, § 1; 12 Del. C. 1953, § 3303; 59 Del. Laws, c. 271, § 3; 72 Del. Laws, c. 388, § 9; 74 Del. Laws, c. 82, § 1; 75 Del. Laws, c. 97, § 3; 76 Del. Laws, c. 90, § 1; 76 Del. Laws, c. 254, § 3; 79 Del. Laws, c. 172, § 2; 79 Del. Laws, c. 352, § 2.)

§ 3304 Retention by fiduciary of decedent's or settlor's investments.

Unless expressly provided otherwise in any instrument specified in § 3303 of this title, any provisions in any such instrument prescribing, defining or limiting the kind of property in which the funds of the trust to which such instrument relates shall be invested shall not apply to any property owned by a testator at the time of the testator's death and delivered to the fiduciary by the personal representative of such testator who has created a trust by the testator's will or delivered by the settlor to the fiduciary of a trust created in a trust agreement or delivered to the fiduciary pursuant to a court order or other instrument creating or defining the fiduciary's duties and powers and such fiduciary may retain all such property so acquired, subject to the limitations of the standards set forth in § 3302 of this title. Furthermore, a provision in any such instrument directing the retention of any such property as a trust investment shall be deemed to waive any duty of diversification otherwise applicable to the fiduciary with respect to such property and shall exonerate the fiduciary from liability for retaining the property except in the case of wilful misconduct proven by clear and convincing evidence in the Court of Chancery.

(25 Del. Laws, c. 226, § 3; Code 1915, § 3875; 37 Del. Laws, c. 259, § 1; 40 Del. Laws, c. 230, § 1; Code 1935, § 4401; 44 Del. Laws, c. 171, § 1; 48 Del. Laws, c. 41, § 1; 12 Del. C. 1953, § 3304; 70 Del Laws, c. 186, § 1; 77 Del. Laws, c. 330, § 3.)

§ 3305 Retention by bank or trust company acting as a fiduciary of its own stock.

Unless expressly provided otherwise in any instrument specified in § 3303 of this title, a bank or trust company acting as a fiduciary and authorized so to act may retain in a trust estate shares of its own capital stock acquired in any manner referred to in § 3304 of this title, as effectively as though the instrument creating or defining the fiduciary's duties and powers expressly so provided, subject to the limitations of the standards set forth in § 3302 of this title.

(25 Del. Laws, c. 226, § 3; Code 1915, § 3875; 37 Del. Laws, c. 259, § 1; 40 Del. Laws, c. 230, § 1; Code 1935, § 4401; 44 Del. Laws, c. 171, § 1; 47 Del. Laws, c. 19, § 1; 48 Del. Laws, c. 41, § 1; 12 Del. C. 1953, § 3305.)

§ 3306 Deviation from terms of instrument.

Subject to the provisions of § 3303 of this title, nothing contained in this chapter shall be construed as restricting the power of a court of proper jurisdiction to permit fiduciaries to deviate from the terms of any will, agreement or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale or management of fiduciary property.

(25 Del. Laws, c. 226, § 3; Code 1915, § 3875; 37 Del. Laws, c. 259, § 1; 40 Del. Laws, c. 230, § 1; Code 1935, § 4401; 44 Del. Laws, c. 171, § 1; 12 Del. C. 1953, § 3306; 76 Del. Laws, c. 254, § 4.)

§ 3307 Common fund investments by bank or trust company; regulations.

(a) A bank or trust company authorized to act in a fiduciary capacity or in the capacity of agent with investment discretion, and acting in such capacity, may invest funds held by it for investment in fractional undivided interests in a common fund composed exclusively of property permitted for investment by the terms of § 3302 of this title and of cash, if such common fund shall have been created and is managed by any bank or trust company authorized to act in a fiduciary capacity, as trustee under a written plan, an original copy of which, executed by such bank or trust company, has been filed and is recorded in the Office of the Register in Chancery of the county in which the main office of such bank or trust company is located. Under such plan it shall not be permitted that any such fractional interests shall at any time be owned by other than a bank or trust company as fiduciary under will, under agreement or for a person with a mental

condition or as guardian of a minor or of the property of a person who is elderly or impaired or a person with a mental condition or physical disability or as executor or administrator or as custodian pursuant to Chapter 45 of this title or as agent with investment discretion.

(b) At least once each 3 months, as of a predetermined date, a bank or trust company administering a common fund shall determine the fair value of the assets in the common fund. No fractional interest in the common fund shall be acquired or redeemed except on the basis of such valuation and as of such valuation date. A fractional interest in such common fund may only be acquired by payment:

(1) In cash; or

(2) In property other than cash, provided that such property other than cash is a permissible investment under the terms of § 3302 of this title and under the terms of the plan of a common fund.

If a fractional interest is acquired with property other than cash, such property shall be valued for the purposes of the acquisition in the same manner as assets are valued when held in the common fund and the purchaser shall bear all costs of the transfer to the common fund of title to such property. A fractional interest in such common fund may be redeemed by payment of an amount in cash, or ratably in kind, or partly in cash and partly in kind, equal to its proportionate part of the fair value of the common fund.

A reasonable period following each such predetermined date may be used to make the computations necessary to determine the value of the common fund and of the participations therein.

(c) Unless a bank or trust company making an investment for an account in a common fund shall find that the investments of the common fund as a whole are ones in which the funds of such account might not properly be invested at the time, the investment in such common fund shall not be improper.

(d) The bank or trust company may charge a fee or commission to the common fund for its management and receive fees or commissions from participating accounts which may be invested in a common fund in addition to those it would be entitled to receive if such accounts were otherwise invested.

(25 Del. Laws, c. 226, § 3; Code 1915, § 3875; 37 Del. Laws, c. 259, § 1; 40 Del. Laws, c. 230, § 1; Code 1935, § 4401; 43 Del. Laws, c. 224, § 1; 44 Del. Laws, c. 171, § 1; 46 Del. Laws, c. 268, § 1; 12 Del. C. 1953, § 3307; 55 Del. Laws, c. 209; 63 Del. Laws, c. 207, § 1; 63 Del. Laws, c. 280, § 1; 78 Del. Laws, c. 179, §§ 78, 79.)

§ 3308 Power of bank or trust company acting as a fiduciary to purchase property held by its commercial or banking department.

(a) A bank or trust company shall not purchase, with funds held by it as a fiduciary, any property held by its commercial or banking department, but this prohibition shall not apply to mortgages and their accompanying bonds designated by its commercial or banking department for future trust investment at the time of acquisition by the commercial or banking department and purchased within 1 year from such time of acquisition with funds held by it in its trust department; provided the interest and taxes are current at the time of purchase by the trust department and an appraisal certificate on the real estate covered by the mortgages being purchased from at least 1 person competent and qualified to appraise real estate is obtained by the trust department at any time within 10 days prior to the purchase by and transfer to the trust department. This exception shall apply to all types of mortgages held by the commercial or banking department, including mortgages covering properties constructed during the 1-year period from the time the mortgages were acquired by the commercial or banking department; provided, with respect to the latter type of mortgages, that an appraisal certificate on the completed property from at least 1 person competent and qualified to appraise such property and a certificate from the owner of the property and/or the registered architect who planned the construction of the property certifying that the construction is complete and satisfactory in every respect, are obtained by the trust department at any time within 10 days prior to the purchase by and transfer to said department.

(b) The commercial or banking department shall make a report monthly to the board of directors of the bank or trust company listing all mortgages designated for trust investment and covering all transactions relating thereto and such report shall be noted in the minutes of the meeting of the board.

(c) The purchase of mortgages and their accompanying bonds permitted by this section shall be made subject to the limitations of the standard set forth in § 3302 of this title.

(25 Del. Laws, c. 226, § 3; Code 1915, § 3875; 37 Del. Laws, c. 259, § 1; 40 Del. Laws, c. 230, § 1; Code 1935, § 4401; 48 Del. Laws, c. 226, § 1; 12 Del. C. 1953, § 3308.)

§ 3309 Identification of securities.

(a) Except as otherwise provided by the terms of the governing instrument, all securities in a fiduciary estate, whether held by the fiduciary or an agent for the fiduciary, shall be held in such manner that the fiduciary's name and the fiduciary capacity in which the securities are held are fully disclosed, except as provided hereafter in this section or in § 3311 of this title.

(b) A bank or trust company acting as fiduciary or as agent for a fiduciary or nonfiduciary may hold securities in the name of its nominee without disclosing the capacity in which they are held, provided the records maintained with respect to those securities disclose the capacity in which they are held and provided there is no written objection from either a cofiduciary or the person for whom it is acting as agent.

(59 Del. Laws, c. 271, § 4.)

§ 3310 Storage of securities.

(a) Except as otherwise provided by the terms of the governing instrument, all securities in a fiduciary estate, whether held by the fiduciary or an agent for the fiduciary, shall be stored separately from any other securities, except as provided hereafter in this section or in § 3311 of this title.

(b) A bank or trust company may store together securities of the same class of the same issuer held by it as fiduciary or as agent for a fiduciary or nonfiduciary (but not its own securities) and may combine the securities so stored together into 1 or more securities of the same class of the same issuer, provided the records maintained with respect to those securities disclose the capacity in which they are held and provided there is no written objection from either a cofiduciary or the person for whom it is acting as agent.

(59 Del. Laws, c. 271, § 5.)

§ 3311 Deposit of securities in clearing corporation.

(a) Except as otherwise provided by the terms of the governing instrument, a bank or trust company may deposit or arrange for the deposit of in a clearing corporation securities held by it as fiduciary or as agent for a fiduciary or nonfiduciary, provided the records maintained with respect to those securities by such bank or trust company disclose the capacity in which they are held and provided there is no written objection from either a cofiduciary or the person for whom it is acting as agent.

(b) Securities deposited in a clearing corporation may be registered in the name of either the clearing corporation or its nominee without disclosing the capacity in which they are held.

(c) Securities deposited in a clearing corporation may be stored together with other securities of the same class of the same issuer also stored in the clearing corporation (but not the securities of the clearing corporation) and may be combined with such other securities into 1 or more securities of the same class of the same issuer.

(59 Del. Laws, c. 271, § 6; 61 Del. Laws, c. 489, § 1.)

§ 3312 Investments in affiliated investments; transactions with affiliates.

(a) As used in this section:

(1) "Affiliate" means any corporation or other entity that directly or indirectly through 1 or more intermediaries controls, is controlled by or is under common control with the fiduciary.

(2) "Affiliated investment" means an investment for which the fiduciary or an affiliate of the fiduciary acts as adviser, administrator, distributor, placement agent, underwriter, broker or in any other capacity for which it receives or has received a fee or commission from such investment or an investment acquired or disposed of in a transaction for which the fiduciary or an affiliate of the fiduciary receives or has received a fee or commission.

(3) "Fee or commission" means compensation paid to a fiduciary or an affiliate thereof on account of its services to or on behalf of an investment.

(4) "Fiduciary" means any person, including a bank or trust company, acting as a fiduciary as defined in § 3301(d) of this title, and includes an agent with investment discretion.

(5) "Investment" shall mean any security as defined in § 2(a)(1) of the Securities Act of 1933, any contract of sale of a commodity for future delivery within the meaning of § 2(i) of the Commodity Exchange Act, or any other asset permitted for fiduciary accounts pursuant to the terms of § 3302 of this title or by the terms of the governing instrument, including by way of illustration and not limitation, shares or interests in a private investment fund (including a private investment fund organized as a limited partnership, limited liability company, a statutory or common law business trust, or a real estate investment trust), joint venture or other general or limited partnership, or an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940.

(b) Subject to the investment standards stated in § 3302 of this title, a fiduciary may purchase, sell, hold or otherwise deal with an affiliate or an interest in an affiliated investment and, upon satisfaction of the conditions stated in subsection (c) of this section, such fiduciary may receive fiduciary compensation from such account at the same rate as the fiduciary would otherwise be entitled to be compensated.

(c) A fiduciary seeking compensation pursuant to subsection (b) of this section shall disclose to each principal in an agency relationship, and to all current recipients of account statements of any other fiduciary account, all fees or commissions paid or to be paid by the account, or received or to be received by an affiliate arising from such affiliated investment or such other dealing with an affiliate. The disclosure required under this subsection may be given either in a copy of the prospectus or any other disclosure document prepared for the affiliated investment under federal or state securities laws or in a written summary that includes all fees or commissions received or to be received by the fiduciary or any affiliate of the fiduciary and an explanation of the manner in which such fees or commissions are calculated (either as a percentage of the assets invested or by some other method). Such disclosure shall be made at least annually unless there has been no increase in the rate at which such fees or commissions are calculated since the most recent disclosure. Notwithstanding the foregoing provisions of this subsection, no such disclosure is required if the governing instrument or a court order expressly authorizes the fiduciary to invest the fiduciary account in affiliated investments or otherwise deal with an affiliate or an interest in an affiliated investment.

(d) A fiduciary that has complied with subsection (c) of this section (whether by making the applicable disclosure or by relying on the terms of a governing instrument or court order) shall have full authority to administer an affiliated investment (including the authority to vote proxies thereon) without regard to the affiliation between the fiduciary and the investment.

(65 Del. Laws, c. 422, § 5; 72 Del. Laws, c. 33, § 1; 73 Del. Laws, c. 329, § 54; 74 Del. Laws, c. 82, § 2; 74 Del. Laws, c. 268, §§ 1, 2, 3, 4, 5; 77 Del. Laws, c. 330, § 4.)

§ 3313 Advisers [For application of this section, see 79 Del. Laws, c. 197, § 3]

(a) Where 1 or more persons are given authority by the terms of a governing instrument to direct, consent to or disapprove a fiduciary's actual or proposed investment decisions, distribution decisions or other decision of the fiduciary, such persons shall be considered to be advisers and fiduciaries when exercising such authority provided, however, that the governing instrument may provide that any such adviser (including a protector) shall act in a nonfiduciary capacity.

(b) If a governing instrument provides that a fiduciary is to follow the direction of an adviser, and the fiduciary acts in accordance with such a direction, then except in cases of wilful misconduct on the part of the fiduciary so directed, the fiduciary shall not be liable for any loss resulting directly or indirectly from any such act.

(c) If a governing instrument provides that a fiduciary is to make decisions with the consent of an adviser, then except in cases of wilful misconduct or gross negligence on the part of the fiduciary, the fiduciary shall not be liable for any loss resulting directly or indirectly from any act taken or omitted as a result of such adviser's failure to provide such consent after having been requested to do so by the fiduciary.

(d) For purposes of this section, "investment decision" means with respect to any investment, the retention, purchase, sale, exchange, tender or other transaction affecting the ownership thereof or rights therein and with respect to nonpublicly traded investments, the valuation thereof, and an adviser with authority with respect to such decisions is an investment adviser.

(e) Whenever a governing instrument provides that a fiduciary is to follow the direction of an adviser with respect to investment decisions, distribution decisions, or other decisions of the fiduciary, then, except to the extent that the governing instrument provides otherwise, the fiduciary shall have no duty to:

(1) Monitor the conduct of the adviser;

(2) Provide advice to the adviser or consult with the adviser; or

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

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

(f) For purposes of this section, the term "adviser" shall include a "protector" who shall have all of the power and authority granted to the protector by the terms of the governing instrument, which may include but shall not be limited to:

(1) The power to remove and appoint trustees, advisers, trust committee members, and other protectors;

(2) The power to modify or amend the governing instrument to achieve favorable tax status or to facilitate the efficient administration of the trust; and

(3) The power to modify, expand, or restrict the terms of a power of appointment granted to a beneficiary by the governing instrument.

(65 Del. Laws, c. 422, § 5; 69 Del. Laws, c. 279, § 1; 74 Del. Laws, c. 82, § 3; 76 Del. Laws, c. 90, § 2; 76 Del. Laws, c. 254, § 5; 78 Del. Laws, c. 117, § 3; 79 Del. Laws, c. 197, § 1.)

§ 3314 Limitation on certain fiduciary powers.

(a) This section shall apply to:

(1) Any trust created under a governing instrument that, but for this section, would permit any of the powers described in subsection (c) of this section to be exercised by the fiduciary unless the governing instrument expressly provides that this section does not apply.

(2) For purposes of this section, the term "fiduciary" means any trustee or trust adviser or the personal representative of an estate except to the extent the governing instrument expressly states that such person is not serving in a fiduciary capacity.

(b) This section shall not apply to:

(1) Any trust during the time that the trust is revocable or amendable by its trustor.

(2) A spouse of a decedent or trustor where the spouse is a fiduciary of a testamentary or inter vivos trust for which a marital deduction has been allowed.

(3) A fiduciary who possesses in such fiduciary's individual, nonfiduciary, capacity an unlimited right to appoint all or part of the property held in trust to the fiduciary, the fiduciary's estate, the fiduciary's creditors, or the creditors of the fiduciary's estate.

(4) A trust under a governing instrument that by specific reference expressly rejects the application of this section.

(5) A trust created under a governing instrument executed on or before August 1, 2008, if, in the case of a fiduciary's possessing a power described in subsection (c) of this section and dying at any time on or after August 1, 2008, no part of the property of the trust would be included in the gross estate of the fiduciary for federal estate-tax purposes or, notwithstanding that all or some part of the property held in trust would be so included, no federal estate tax would be payable by such estate.

(6) A trust created under a governing instrument executed on or before August 1, 2008, if, in the case of a beneficiary's possessing a power to appoint a trustee and dying at any time on or after August 1, 2008, no part of the property of the trust would be included in the gross estate of the beneficiary for federal estate-tax purposes or, notwithstanding that all or some part of the property held in trust would be so included, no federal estate tax would be payable by such estate.

(c) The following powers conferred by a governing instrument upon a fiduciary in that fiduciary's capacity as a fiduciary shall not be exercised by that fiduciary:

(1) The power to make discretionary distributions of either principal or income to or for the benefit of the fiduciary, the fiduciary's estate, the creditors of the fiduciary, or the creditors of the fiduciary's estate unless the power is either:

a. Limited by an ascertainable standard relating to the fiduciary's health, education, support, or maintenance within the meaning of 26 U.S.C. §§ 2041 (relating to powers of appointment) and 2514 (relating to powers of appointment); or

b. Exercisable by the fiduciary only in conjunction with another person having a substantial interest in the property subject to the power which is adverse to the interest of the fiduciary within the meaning of 26 U.S.C. § 2041(b)(1)(C)(ii).

(2) The power to make discretionary distributions of either principal or income to satisfy any of the fiduciary's personal legal obligations for support or other purposes.

(3) The power to make discretionary allocations in the fiduciary's personal favor of receipts or expenses as between income and principal unless the fiduciary has no power to enlarge or shift any beneficial interest except as an incidental consequence of the discharge of the fiduciary's duties.

(4) The power to exercise any of the powers proscribed in this subsection with regard to an individual other than the fiduciary to the extent that the individual could exercise a similar prohibited power in connection with a trust that benefits the fiduciary.

(5) The power to make an election, other than an election under 26 U.S.C. §§ 2056(b)(7) and 2523(f) (relating to the federal estate-tax and gift-tax marital deductions), in a fiduciary capacity that would cause the property over which the election could be made to be included in the gross estate of the fiduciary for federal estate-tax purposes.

(d) Notwithstanding the foregoing provisions:

(1) If a fiduciary is prohibited by this section from exercising a power conferred upon the fiduciary, the fiduciary nevertheless may exercise that power but shall be limited to distributions for the fiduciary's health, education, support, or maintenance to the extent otherwise permitted by the terms of the trust.

(2) Unless otherwise prohibited by the provisions of this section, a fiduciary may exercise a power described herein in favor of someone other than the fiduciary, the fiduciary's estate, the creditors of the fiduciary, or the creditors of the fiduciary's estate.

(3) Subject to the preceding paragraphs of this subsection, any purported exercise of a power proscribed by subsection (c) of this section shall be void and of no effect.

(e) If a governing instrument creates a power proscribed by this section:

(1) If the power is conferred on 2 or more fiduciaries, it may be exercised by the fiduciary or fiduciaries who are not so prohibited as if they were the only fiduciary or fiduciaries.

(2) If there is no fiduciary in office who can exercise the power as provided in paragraph (e)(1) of this section, the court, upon petition and hearing after such notice as it may direct, shall appoint a fiduciary who is not disqualified and whose term in office shall be as the court directs for the sole purpose of exercising the power that the other fiduciary or fiduciaries cannot exercise.

(3) The court may, upon petition by any fiduciary or beneficiary of the trust subject to the power, appoint an additional fiduciary or fiduciaries.

(f) No beneficiary of a trust in an individual, fiduciary, or other capacity may appoint, or remove and appoint, a fiduciary who is related or subordinate to the beneficiary within the meaning of 26 U.S.C. § 672(c) unless:

(1) The fiduciary's discretionary power to make distributions to or for the beneficiary is limited by an ascertainable standard relating to the beneficiary's health, education, support, or maintenance within the meaning of 26 U.S.C. §§ 2041 and 2514;

(2) The fiduciary's discretionary power may not be exercised to satisfy any of the beneficiary's legal obligations for support or other purposes; and

(3) The fiduciary's discretionary power may not be exercised to grant to the beneficiary a general power to appoint property of the trust to the beneficiary, the beneficiary's estate, or the creditors thereof within the meaning of 26 U.S.C. § 2041.

(4) This subsection shall not apply if the appointment of the fiduciary by the beneficiary may be made only in conjunction with another person having a substantial interest in the property of the trust subject to the power which is adverse to the exercise of the power in favor of the beneficiary within the meaning of 26 U.S.C. § 2041(b)(1)(C)(ii).

(76 Del. Laws, c. 254, § 6; 70 Del. Laws, c. 186, § 1.)

§ 3315 Trustee's exercise of discretion; review by court; discretionary interests.

(a) Where discretion is conferred upon the fiduciary with respect to the exercise of a power, its exercise by the fiduciary shall be considered to be proper unless the court determines that the discretion has been abused within the meaning of § 187 of the Restatement (Second) of Trusts, not §§ 50 and 60 of the Restatement (Third) of Trusts.

(b) A beneficiary eligible to receive distributions from a trust in the trustee's discretion has a discretionary interest in the trust. A creditor may not directly or indirectly compel the distribution of a discretionary interest except to the extent expressly granted by the terms of a governing instrument in accordance with § 3536(a) of this title.

(76 Del. Laws, c. 254, § 7.)

§ 3316 Substituted property; equivalent value; fiduciary duty [For application of this section, see 79 Del. Laws, c. 197, § 3]

Except as otherwise expressly provided by the terms of a governing instrument, if a trustor has a power to substitute property of equivalent value, the fiduciary responsible for investment decisions has a fiduciary duty to determine that the substituted property is of equivalent value prior to allowing the substitution.

(77 Del. Laws, c. 330, § 5; 79 Del. Laws, c. 197, § 1.)

§ 3317 Co-fiduciaries; duty to keep informed.

Except as otherwise provided in a governing instrument, each trust fiduciary (including trustees, advisers, protectors, and other fiduciaries) has a fiduciary duty upon request to keep all of the other fiduciaries for the trust reasonably informed about the administration of the trust with respect to any specific duty or function being performed by such fiduciary to the extent that providing such information to the other fiduciaries is reasonably necessary for the other fiduciaries to perform their duties; provided, however, that a fiduciary requesting and receiving any such information shall have no duty to: monitor the conduct of the fiduciary providing the information; provide advice to or consult with the fiduciary providing the information; or communicate with or warn or apprise any beneficiary or third party concerning instances in which the fiduciary receiving the information would or might have exercised the fiduciary's own discretion in a manner different from the manner in which such discretion was actually exercised by the fiduciary providing the information.

(77 Del. Laws, c. 330, § 6.)

§§ 3318 -3320. [Reserved.]

§ 3321 Applicability of chapter; definitions.

Repealed 76 Del. Laws, c. 254, § 8.

§ 3322 Fiduciary agency contracts; delegation [For application of this section, see 79 Del. Laws, c. 352, § 6]

(a) A fiduciary acting under a governing instrument which neither affirmatively permits the fiduciary to hire agents, nor expressly prohibits the fiduciary from hiring agents, may employ agents and pay them from the fiduciary fund in accordance with this section. Such agents may be hired to assist in the performance of such fiduciary's administrative duties, whether discretionary or ministerial, or to render investment advice, if the fiduciary reasonably believes in the exercise of its discretion that such an arrangement is in the best interests of all interested persons. The agent must observe the same standard of care required of the fiduciary with respect to each responsibility so delegated, and neither the establishment of such agency relationship nor the performance of such agent shall diminish, increase or otherwise affect the standard by which the performance of the fiduciary is governed. In any suit or proceeding involving an evaluation of fiduciary performance, the fiduciary shall be liable for abusing its discretion in hiring such agent, for negligently hiring such agent, or for negligently continuing the agency relationship, but shall not otherwise be liable for the conduct of such agent.

(b) A fiduciary may delegate investment functions to any person including a cofiduciary subject to the standard of care required of the fiduciary in making investment decisions of the type so delegated with respect to the fiduciary fund. A fiduciary may delegate management functions to any person including a cofiduciary subject to the standard of care required of the fiduciary in making management decisions of the type so delegated with respect to the fiduciary fund.

(c) A fiduciary shall not be responsible for the decisions or actions of any agent to which functions are delegated pursuant to this section if the fiduciary exercises the standard of care required of the fiduciary in making such decisions when selecting the agent, when establishing the scope and specific terms of the delegation and when reviewing periodically the agent's actions in order to monitor the agent's performance and compliance with the scope and specific terms of the delegation.

(d) The agent shall comply with the scope and terms of the delegation and shall exercise the delegated function subject to the standard of care required of the fiduciary and shall be liable to the trust for failure to do so.

(e) An agent who accepts the delegation of a fiduciary's function from a fiduciary who is subject to the jurisdiction of a court of this State shall be deemed to have submitted to the jurisdiction of that court even if the delegation agreement provides for a different jurisdiction or venue.

(65 Del. Laws, c. 422, § 6; 73 Del. Laws, c. 47, § 1; 74 Del. Laws, c. 82, § 7; 75 Del. Laws, c. 300, § 1; 79 Del. Laws, c. 352, § 3.)

§ 3323 Cofiduciaries.

(a) Unless provided otherwise by the governing instrument, any power vested in 3 or more fiduciaries may be exercised by a majority of such fiduciaries and a majority of fiduciaries named in a governing instrument may designate 1 of such fiduciaries to perform ministerial functions on behalf of all such fiduciaries. A fiduciary who dissents from the action of the majority is not liable to anyone having an interest in the fiduciary fund, or to the other fiduciaries, if such dissent is evidenced by a writing delivered to the majority of the fiduciaries.

(b) This section does not excuse a cofiduciary from liability for failure to participate in the administration of the fiduciary fund or for failure to attempt to prevent a breach of trust, or for failure to seek advice and guidance from the court in a recurring situation, unless otherwise expressly provided by the governing instrument.

(65 Del. Laws, c. 422, § 6; 74 Del. Laws, c. 82, § 7.)

§ 3324 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, any other powers conferred by this chapter.

(b) Except as modified by the terms of a trust, the exercise of a power is subject to the fiduciary duties otherwise prescribed by law.

(72 Del. Laws, c. 388, § 4; 74 Del. Laws, c. 82, § 7.)

§ 3325 Specific powers of trustee [For application of this section, see 79 Del. Laws, c. 172, § 6]

Without limiting the authority conferred by § 3324 of this title, a trustee may:

(1) Collect trust property and accept or decline additions to the trust property from a trustor 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 funds in an account in a regulated financial services institution, including an institution operated by or affiliated with the trustee;

(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) Advance money for the protection of the trust, where the trustee has a lien on the trust property as against a beneficiary for reimbursement of those advances, with reasonable interest;

(7) With respect to an interest in a proprietorship, partnership, limited liability company, statutory trust, 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;

(8) With respect to stocks or other securities, to 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 securities depository or other regulated financial services institution;

(9) With respect to an interest in real property, construct, make ordinary or extraordinary repairs, alterations 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;

(10) 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 the duration of the trust;

(11) Grant an option involving a sale, lease or other disposition of trust property or take an option for the acquisition of property, excluding an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(12) 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;

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

(14) With respect to possible liability for environmental conditions:

a. Inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an entity 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 initiation of a claim or governmental enforcement action;

c. Decline to accept property into trust or to disclaim any power with respect to property that has or may have environmental liability attached;

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

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

(15) 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:

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

(17) Exercise elections with respect to federal, state and local taxes;

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

(19) Make loans out of or guarantees based on trust property, including loans to or guarantees for the benefit of a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and subject to § 3536 of this title, the trustee has a lien on future distributions for repayment of those loans and for the repayment of an amount equal to any payment made or that might be made on account of such guarantee; provided further that any such loans or guarantees shall be permitted to the extent the same are either:

a. Made for investment purposes;

b. Made in lieu of a distribution amount that could have been made currently to or for such beneficiary under the terms of the governing instrument, not made in excess of such amount, and the fiduciary creates a reserve for the potential liability; or

c. Made to or for the benefit of another trust of which such beneficiary is also a beneficiary, provided the requirements of paragraph (19)b. of this section are satisfied.

(20) Appoint a trustee to act in another state or country as 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 guardian;

b. Paying it to the beneficiary's custodian under the Uniform Transfers to Minors Act [Chapter 45 of this title], and for such purpose, to create a custodianship;

c. If there is no custodian 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;

d. Depositing it in a regulated financial services institution in an interest bearing account or certificate in the sole name of the beneficiary and by giving notice of the deposit to the beneficiary; or

e. The trustee 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) Decide, in accordance with § 61-103(b) of this title, how and in what proportions any receipts or disbursements are credited, charged or apportioned as between principal and income, including the ability to create reserves out of income for depreciation, depletion, amortization or obsolescence;

(24) If all interested beneficiaries also consent, consent to the resolution of a dispute concerning the interpretation of the trust or its administration by mediation, arbitration or other procedure for alternative dispute resolution;

(25) 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;

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

(27) 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;

(28) Sever any trust estate on a fractional basis into 2 or more separate trusts for any reason; and segregate by allocation to a separate account or trust a specific amount or specific assets included in the trust property or gift made from any trust to reflect a partial disclaimer, to reflect or result in differences in federal tax attributes, to satisfy any federal tax requirement or election, to reduce

potential generation-skipping transfer tax liability, or for any other reason, in a manner consistent with the rules governing disclaimers, such federal tax attributes, such requirements or elections, or any applicable tax rules or regulations, and income earned on a segregated amount, specific assets, or gift after segregation occurs shall pass to the designated taker of such amount, specific assets, or gift. In managing, investing, administering, and distributing the trust property of any separate account or trust and in making applicable tax elections, the trustee may consider the differences in federal tax attributes and all other factors the trustee believes pertinent and may make disproportionate distributions from the separate trusts created. A separate account or trust created by severance or segregation shall be treated as a separate trust for all purposes from and after the date on which the severance or segregation is effective, and shall be held on terms and conditions that are substantially equivalent to the terms of the trust from which it was severed or segregated so that the aggregate interests of each beneficiary in the several trusts are substantially equivalent to the beneficiary's interests in the trust before severance or segregation; provided, however, that any terms of the trust before severance or segregation that, if altered, would adversely affect qualification of the trust for any federal tax deduction, exclusion, election, exemption, or other special federal tax status must remain identical in each of the separate trusts created;

(29) Merge any 2 or more trusts, whether or not created by the same trustor, to be held and administered as a single trust if such a merger would not result in a material change in the beneficial interests of the trust beneficiaries, or any of them, in the trust;

(30) Take such actions as are necessary to cause gains from the sale or exchange of trust assets, as determined for federal income-tax purposes, to be taxed for federal income-tax purposes as part of a distribution of income (including income which has been increased by an adjustment from principal to income under § 61-104 of this title), a unitrust distribution, or a distribution of principal to a beneficiary; and

(31) Exercise all rights and powers granted to a fiduciary under the Fiduciary Access to Digital Assets and Accounts Act, Chapter 50 of this title.

(72 Del. Laws, c. 388, § 5; 73 Del. Laws, c. 329, § 55; 74 Del. Laws, c. 82, § 7; 75 Del. Laws, c. 97, § 4; 76 Del. Laws, c. 90, § 13; 77 Del. Laws, c. 98, § 6; 77 Del. Laws, c. 330, §§ 7, 8; 79 Del. Laws, c. 172, § 2; 79 Del. Laws, c. 416, § 4.)

§ 3326 Resignation of trustee.

(a) A trustee may resign:

(1) If the trust instrument expressly permits the trustee to resign, in accordance with the terms of the trust instrument;

(2) If the trust instrument neither expressly permits nor prohibits the trustee's resignation, but establishes a procedure for the appointment of a successor trustee who shall be willing and able to serve as such, upon 30 days written notice to the beneficiaries and any co-trustees; or

(3) In all other cases, with the approval of the Court of Chancery.

(b) A beneficiary or co-trustee may waive the notice otherwise required by this section.

(c) In approving a resignation, the Court of Chancery may impose orders and conditions reasonably necessary for the protection of the trust property, including the appointment of a special fiduciary.

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

(72 Del. Laws, c. 388, § 6; 74 Del. Laws, c. 82, § 7.)

§ 3327 Removal of trustee.

A trustee may be removed by the Court of Chancery on its own initiative or on petition of a trustor, co-trustee, or beneficiary if:

(1) The trustee has committed a breach of trust; or

(2) A lack of cooperation among co-trustees substantially impairs the administration of the trust; or

(3) The court, having due regard for the expressed intention of the trustor and the best interests of the beneficiaries, determines that notwithstanding the absence of a breach of trust, there exists:

a. A substantial change in circumstances;

b. Unfitness, unwillingness or inability of the trustee to administer the trust properly; or

c. Hostility between the trustee and beneficiaries that threatens the efficient administration of the trust.

(72 Del. Laws, c. 388, § 6; 74 Del. Laws, c. 82, § 7.)

§ 3328 Limitation on personal liability of fiduciary.

(a) Except as otherwise provided in the contract, a fiduciary is not personally liable on a contract properly entered into in a fiduciary capacity if the fiduciary in the contract discloses the fiduciary capacity.

(b) The debts, obligations and liabilities incurred by a fiduciary by reason of the ownership or control of property held in a fiduciary capacity, including but not limited to liability incurred as a general or limited partner or for violation of environmental law, shall be enforceable solely against the fiduciary fund and no fiduciary shall be obligated personally for any such debt, obligation or liability solely by reason of owning or controlling the fiduciary fund.

(c) A fiduciary is personally liable for torts committed in the course of administering a fiduciary fund only if the fiduciary is personally at fault on account of the fiduciary's own wilful misconduct proven by clear and convincing evidence in the court then having primary jurisdiction over the fiduciary.

(d) A claim based on a contract entered into by a fiduciary in the fiduciary's fiduciary capacity on an obligation arising from ownership or control of the fiduciary fund or on a tort committed in the course of administering a fiduciary fund may be asserted in a judicial proceeding against the fiduciary in the fiduciary's fiduciary capacity whether or not the fiduciary is personally liable on the claim.

(e) This section shall have no application to any action brought by or on behalf of a beneficiary for violation of a fiduciary's fiduciary duties.

(f) Notwithstanding the provisions of this chapter or any other Delaware law, the term "fiduciary" shall mean a fiduciary as defined in § 3301 of this title and an adviser, including but not limited to an investment adviser or distribution adviser serving in conjunction with such a fiduciary.

(73 Del. Laws, c. 409, § 1; 74 Del. Laws, c. 82, § 7; 77 Del. Laws, c. 98, § 7.)

§ 3329 Effect of no-contest provision.

(a) A provision of a will or trust that if given effect would reduce or eliminate the interest of any beneficiary of such will or trust who initiates or participates in an action to contest the validity of such will or trust or to set aside or vary the terms of such will or trust shall be enforceable.

(b) The provisions of subsection (a) of this section shall have no application to:

(1) Any action brought by the trustee of a trust or the personal representative under a will;

(2) Any action in which the beneficiary is determined by the court to have prevailed substantially;

(3) Any agreement among beneficiaries of the will or trust in settlement of a dispute relating to such will or trust;

(4) Any action to determine whether a proposed or pending motion, petition, or other proceeding constitutes a contest within the meaning of a no-contest provision described in subsection (a) of this section; or

(5) Any action brought by a beneficiary under a will or trust instrument for a construction or interpretation of such will or trust instrument."

(74 Del. Laws, c. 82, §§ 4, 7.)

§ 3330 Effect of survivorship requirement.

If, in the construction or interpretation of any will or trust instrument, the vesting in ownership, possession, or enjoyment of an interest in property of any person is dependent, whether as a matter of expression, implication or inference, in whole or in part upon:

(1) That person's survival of or for a period of time after the life of some other person, including but not limited to the transferor, who has interest in such property, whether vested or contingent, and

(2) That person fails to so survive the life of such other person or for a period of time thereafter,

Then the probable or perceived intention of the transferor with respect to any person who would otherwise be entitled to the interest because of a gift, bequest, or devise made by the person who failed to so survive shall not be considered and shall not be admissible in any proceeding involving the construction or interpretation of such will or trust.

(74 Del. Laws, c. 82, §§ 5, 7.)

§ 3331 Preference for early vesting.

In the construction or interpretation of any will or trust instrument, if a determination is to be made whether the beneficiaries entitled to receive a distribution from an estate or trust are to be determined at an earlier or later time, such beneficiaries are to be determined at the earlier time unless the will or trust instrument expressly provides that the determination shall be made at the later time.

(74 Del. Laws, c. 82, §§ 6, 7.)

§ 3332 Governing law; change of situs.

(a) The duration of a trust and time of vesting of interests in the trust property shall not change merely because the place of administration of the trust is changed from some other jurisdiction to this State.

(b) Except as otherwise expressly provided by the terms of a governing instrument or by court order, the laws of this State shall govern the administration of a trust while the trust is administered in this State.

(75 Del. Laws, c. 300, § 3.)

§ 3333 Retention of counsel by fiduciary [For application of this section, see 79 Del. Laws, c. 172, § 6]

Except as provided in the governing instrument, a fiduciary may retain counsel in connection with any claim that has been or might be asserted against the fiduciary, and the payment of counsel fees and related expenses from the fund with respect to which the fiduciary acts as such shall not cause the fiduciary to waive or to be deemed to have waived any right or privilege including, without limitation,

the attorney-client privilege. However, in the event that the fiduciary is found to have breached some fiduciary duty, the court may, in its discretion, deny such fiduciary the right to have some part or all of such fees and expenses paid from such fund and may require the fiduciary to reimburse any such fees and expenses that have previously been paid.

(76 Del. Laws, c. 90, § 19; 79 Del. Laws, c. 172, § 2.)

§ 3334 Contributions to revocable trusts [For application of this section, see 79 Del. Laws, c. 172, § 6]

Where spouses make a contribution of property to 1 or more trusts, each of which is revocable by either or both of them, and, immediately before such contribution, such property or any part thereof or any accumulation thereto was, pursuant to applicable law, owned by them as tenants by the entireties, in any action concerning whether a creditor of either or both spouses may recover the debt from the trust, the sole remedy available to the creditor with respect to such trust property shall be an order directing the trustee to transfer the property to both spouses as tenants by the entireties.

(77 Del. Laws, c. 330, § 9; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 117, § 4; 79 Del. Laws, c. 172, § 2.)

§ 3335 Effect of formula clauses in certain wills and trusts.

(a) A governing instrument, such as a will or trust of a decedent, who dies after December 31, 2009, and before January 1, 2011, that contains a formula referring to the "unified credit," "estate tax exemption," "applicable exemption amount," "applicable credit amount," "applicable exclusion amount," "generation-skipping transfer tax exemption," "GST exemption," "marital deduction," "maximum marital deduction," or "unlimited marital deduction," or that measures a share of an estate or trust based on the amount that can pass free of federal estate taxes or the amount that can pass free of federal generation-skipping transfer taxes, or that is otherwise based on a similar provision of federal estate tax or generation-skipping transfer tax law, shall be presumed to refer to the federal estate tax and generation-skipping transfer tax laws as they applied to estates of decedents dying on December 31, 2009. This provision shall not apply to a will or trust that is executed or amended after December 31, 2009, or that manifests an intent that a contrary rule shall apply. Furthermore, this provision shall not apply in cases where the application of this provision would cause: (i) a decrease in the amount passing to 1 trust and a substantially equal increase in the amount passing to another trust if the terms of both trusts concerning beneficial interests are substantially similar; (ii) a decrease in the amount passing to a trust and a substantially equal increase in the amount passing to an individual if the individual is eligible to receive unlimited discretionary principal distributions from the trust or (iii) a decrease in the amount passing to 1 trust and a substantially equal combined total increase in the amount passing to another trust or trusts and individuals described in clauses (i) and (ii). For purposes of determining whether the terms of 2 trusts concerning beneficial interests are substantially the same:

(1) Any provision of the will or trust requiring, or expressing a preference for, distributions from 1 trust rather than from the other trust shall be disregarded;

(2)a. A trust intended to be a general power of appointment marital trust under § 2056(b)(5) of the Internal Revenue Code [26 U.S.C. § 2056(b)(5)]; or

b. Which, would, if an election could have been made under § 2056(b)(7) of the Internal Revenue Code [26 U.S.C. § 2056(b)(7)] as in effect for decedents dying on December 31, 2009, qualify as qualified terminable interest property under § 2056(b)(7) [26 U.S.C. § 2056(b)(7)],

shall be considered to be substantially the same as any other trust which requires that all income be distributed currently to the surviving spouse, regardless of whether the other trust may have current beneficiaries of principal who are persons other than the surviving spouse; and

(3) Any provision of the will or trust which may have different provisions concerning the identity, selection or nomination of current or future trustees shall be disregarded.

(b) This section shall apply only to a governing instrument of a decedent whose executor elects to apply the Internal Revenue Code as though subtitle A and E of title V of the Economic Growth and Tax Relief Reconciliation Act of 2001 [P.L. 107-16] applies with respect to Chapter 11 of the Internal Revenue Code [26 U.S.C. Chapter 11].

(c) Any person interested under a will or trust may bring a proceeding under § 6504 of Title 10 to determine whether the decedent intended that the references under subsection (a) of this section be construed with respect to the law as it existed after December 31, 2009. Such a proceeding must be commenced prior to January 1, 2012.

(d) The presumption described in subsection (a) of this section shall not apply if fiduciaries such as personal representatives or trustees serving under the governing instrument, who are not interested fiduciaries, elect to opt out of the application of subsection (a) of this section as to all or any part of the governing instrument and no beneficiary under the governing instrument objects to the election within 30 days following receipt of written notice of the election. A fiduciary is interested if: (i) the fiduciary is a beneficiary under the governing instrument whose beneficial interest would or might change in value by reason of the election; (ii) the fiduciary may be removed and replaced by a beneficiary described in clause (i) of this subsection above; or (iii) the fiduciary is an individual legally obligated to support a beneficiary described in clause (i) of this subsection above. If all of the fiduciaries are interested, this subsection shall have no application.

(e) Whenever the term "pass" or "passing" is used in this section, the term shall relate to an amount distributable or allocable under the governing instrument as result of the decedent's death.

(77 Del. Laws, c. 379, § 1; 78 Del. Laws, c. 117, § 5.)

§ 3336 Appointment of successor trustee [For application of this section, see 79 Del. Laws, c. 172, § 6]

If a trust has no serving trustee because of the death, incapacity or resignation of the last serving trustee of the trust, and if the provisions of the governing instrument do not include any provisions which can be effectively used to appoint a successor trustee, and if the only remaining dispositive provisions of the trust then require distribution of the remaining property of the trust to 1 or more beneficiaries (whether outright, or to 1 or more other trusts which do have a serving trustee), then the taking beneficiaries of the trust, by unanimous vote, may name a successor trustee of the trust without the approval of the Court of Chancery. For purposes of the preceding sentence, the person entitled to vote with respect to a beneficiary which is another trust which has a serving trustee is the trustee or trustees of such trust.

(79 Del. Laws, c. 172, § 2.)

§ 3337 Claims against revocable trusts [For application of this section, see 79 Del. Laws, c. 172, § 6]

Following the death of the trustor of a trust that was revocable immediately prior to the trustor's death, all claims against the trust that, but for any applicable period of limitations, could have been brought against the trustor's estate, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort or other legal basis, if not barred earlier by other statute of limitations, are barred against the trust when and to the same extent barred against the trustor's estate by any applicable statute of limitations or statute of repose on claims against the estate including any such statute of limitations or repose enacted by jurisdictions other than this State.

(79 Del. Laws, c. 172, § 2.)

§ 3338 Nonjudicial settlements agreements [For application of this section, see 79 Del. Laws, c. 172, § 6]

(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 of Chancery.

(b) Except as otherwise provided in subsection (c) of this section, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust (other than a trust described in § 3541 of this title).

(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 of Chancery under this title 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) The 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) The transfer of a trust's principal place of administration; and

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

(e) Any interested person may bring a proceeding in the Court of Chancery to interpret, apply, enforce, or determine the validity of a nonjudicial settlement agreement adopted under this section, including but not limited to determining whether the representation as provided in § 3547 of this title was adequate.

(79 Del. Laws, c. 172, § 2.)

Part V
Fiduciary Relations
Chapter 34
ADMINISTRATIVE PROVISIONS

§§ 3401 -3411. Applicability of chapter; definitions; fiduciary agency contracts; cofiduciaries; general powers of trustee; specific powers of trustee; resignation of trustee; removal of trustee; limitation on personal liability of fiduciary; effect of no-contest provision; effect of survivorship requirement; preference for early vesting.

Transferred to §§ 3321 through 3331 of this title by 74 Del. Laws, c. 82, § 7, effective June 30, 2003.

Part V
Fiduciary Relations
Chapter 35
TRUSTS
Subchapter I
Appointment of Trustee by Court; Title of Appointee to Trust Property

§ 3501 Appointment authorized; effect of execution of power by appointee.

When any person or persons or any of such persons as may be the donee or donees of any power or powers under any trust are out of the jurisdiction of or not amenable to the process of the Court of Chancery or are mentally ill or it is uncertain whether such person or persons or any of such persons are living or dead, the Court of Chancery may, when in its discretion it may deem the objects and purposes of any such trust are in danger of not being performed or effectuated, appoint a person or persons to execute the power or powers under any such trust and such execution shall be made, by such person or persons so appointed, in the same manner and by the same method as shall be pointed out by the trust, whereby such power or powers were created. Such execution of any such power or powers by any person or persons so appointed shall be as effectual, to all intents and purposes, and with the same force and effect as if the same had been executed by such donee or donees. The Court of Chancery shall be satisfied that the beneficial interests of the donees or other beneficiaries under such trust are not by such action impaired.

(21 Del. Laws, c. 122, § 1; Code 1915, § 3863; Code 1935, § 4387; 12 Del. C. 1953, § 3501; 49 Del. Laws, c. 57, § 1.)

§ 3502 Procedure for appointment of trustee.

The Court of Chancery may make any appointment or direction under § 3501 of this title, by an order made in any cause pending in that Court or upon petition of 1 or more of those interested in the trust or by the remaining or surviving donee or donees of any such power or powers. The Court of Chancery may, upon presentation of any such petition, take such testimony as it deems necessary to satisfy the Court that the granting of such petition will not impair the beneficial interest of any of the donees and other beneficiaries under such trust. Such testimony may be taken orally, at the bar of the Court, or by depositions.

(21 Del. Laws, c. 122, § 2; Code 1915, § 3864; Code 1935, § 4388; 12 Del. C. 1953, § 3502.)

§ 3503 Appointment of trustee to convey realty; effect of conveyance by appointee.

When any person seised of lands, tenements or hereditaments upon any trust is out of the jurisdiction of or not amenable to the process of the Court of Chancery or is mentally ill or it is uncertain where there were several trustees which of them was the survivor or it is uncertain whether the trustee last known to have been seised as aforesaid is living or dead or, if known to be dead, it is not known who are the trustee's heirs at law or if any trustee seised as aforesaid or the heirs at law of any such trustee neglect or refuse to convey such lands, tenements or hereditaments to the person entitled to receive such conveyance, for 20 days next after a proper deed for making such conveyance has been tendered for such person or their execution, by the person so entitled or the person's agent or attorney, the Court of Chancery for the county wherein such lands, tenements or hereditaments are situated may appoint a person to convey the same to such person and in such manner as the Court directs. Any conveyance so made shall be as effectual, to all intents and purposes, as if the same had been executed by the trustee or the trustee's heirs at law.

(11 Del. Laws, c. 90, § 1; Code 1915, § 3865; Code 1935, § 4389; 12 Del. C. 1953, § 3503; 49 Del. Laws, c. 57, § 1; 70 Del Laws, c. 186, § 1.)

§ 3504 Appointment of trustee to assign term of years; effect of assignment by appointee.

When any person possessed of lands, tenements or hereditaments for a term of years upon trust is out of the jurisdiction or not amenable to the process of the Court of Chancery or it is uncertain whether the trustee last known to have possessed as aforesaid is living or dead or if any trustee or the executor of any such trustee neglects or refuses to assign such term to the person entitled to receive such assignment, for 20 days next after a proper legal instrument for making such assignment has been tendered for such person's execution by the person so entitled or such person's agent or attorney, the Court of Chancery for the county wherein such lands, tenements or hereditaments are situated may appoint a person to make such assignment to such person and in such manner as the Court directs. Any assignment so made shall be as effectual to all intents and purposes as if the same had been made by the trustee or the trustee's executor.

(11 Del. Laws, c. 90, § 2; Code 1915, § 3866; Code 1935, § 4390; 12 Del. C. 1953, § 3504; 70 Del Laws, c. 186, § 1.)

§ 3505 Appointment of trustee to transfer stock or collect and pay over dividends; effect of appointee's acts.

When any person in whose name as trustee or executor (either alone or together with the name of any other person) or in the name of whose testator (whether as trustee or beneficiary) any stock shall be standing or any other person who otherwise has power to transfer or join with any person in transferring any stock to which some other person is beneficially entitled is out of the jurisdiction or not amenable to the process of the Court of Chancery or it is uncertain whether such person is living or dead or if any such trustee or executor or other person neglects or refuses to transfer such stock or receive and pay over the dividends thereof to the person entitled to such stock or dividends, for 20 days next after request in writing by such person so entitled, the Court of Chancery may appoint a person to transfer

such stock or to receive and pay over such dividends to the person entitled to the same. Such transfer, receipt or payment shall be as effectual to all intents and purposes as if made by such trustee, executor or other person.

(11 Del. Laws, c. 90, § 3; Code 1915, § 3867; Code 1935, § 4391; 12 Del. C. 1953, § 3505.)

§ 3506 Appointment of trustee to convey, assign or transfer trust property from discharged or removed trustee to successor.

When any person who, having been discharged or removed from any trust by an order or decree of the Court of Chancery, neglects or refuses to convey, assign or transfer the subject matter of such trust to the person who has been appointed by such Court to be the trustee in lieu of the person so discharged or removed, the Court may, upon petition of the person appointed, order a conveyance, assignment or transfer of the subject matter of such trust to be made by a person by such order appointed for that purpose. Any conveyance, assignment or transfer so made shall be as effectual, to all intents and purposes, as if the same were made by the trustee so discharged or the trustee's heirs or executors.

(11 Del. Laws, c. 90, § 5; Code 1915, § 3869; Code 1935, § 4393; 12 Del. C. 1953, § 3506; 70 Del Laws, c. 186, § 1.)

§ 3507 Order of appointment.

The Court of Chancery shall make any appointment or direction under §§ 3503-3506 of this title by an order made in any case pending in that Court or upon petition of the person entitled to such conveyance, assignment, transfer or payment. When the title of the person claiming such conveyance, assignment, transfer or payment may require investigation or it otherwise appears improper to make an order for the same on petition, the Court may direct a complaint to be filed to establish the right.

(11 Del. Laws, c. 90, § 4; Code 1915, § 3868; Code 1935, § 4392; 12 Del. C. 1953, § 3507.)

§ 3508 Appointment of fiduciary to receive benefits payable by the United States.

(a) Whenever any military or administrative body or agency of the government of the United States of America is authorized or directed to pay monetary benefits to any person and the said body or agency requires that a trustee or guardian be appointed by a court to receive such benefits, the Court of Chancery, upon the presentation of a petition drawn and executed in conformity with the rules of the Court, upon evidence satisfactory to the Court, shall appoint a trustee or guardian with authority to receive said moneys and all other property, and to disburse and account for the same in accordance with the rules and orders of the Court.

(b) There shall be no charge made by any public officer nor any costs taxed or allowed by the Court in any proceeding brought under this section or in subsequent proceedings brought by a fiduciary appointed under this section.

(c) A trustee or guardian appointed under this section shall be entitled to such reasonable expenses and compensation as the Court allows.

(Code 1915, § 3869A; 31 Del. Laws, c. 64, § 1; 34 Del. Laws, c. 217, § 1; Code 1935, § 4394; 12 Del. C. 1953, § 3508; 54 Del. Laws, c. 245.)

§ 3509 Vesting of title to trust property in successor trustee.

Whenever the sole or surviving trustee dies or is removed or a trustee renounces a trust or a trust is created and no person is appointed by name or description to execute the same and whenever in such or any case a trustee shall be appointed by the Court of Chancery, then upon the giving by said trustee of the security required to be given by the trustee, all the trust property, estate and effects, of every kind whatsoever and wheresoever situate and being, shall forthwith and without any act or deed pass to and be vested in such new or succeeding trustee.

(23 Del. Laws, c. 197, § 1; Code 1915, § 3870; Code 1935, § 4395; 12 Del. C. 1953, § 3509; 70 Del Laws, c. 186, § 1.)

§ 3510 Vesting of title to trust realty in successor trustee appointed pursuant to trust instrument; deed of appointment.

Whenever any trust of real estate has been or shall hereafter be created by deed or will duly recorded or proved within this State and such deed or will contains provisions for the appointment by deed or instrument of writing of new trustees, either by a surviving trustee or trustees or by any other person or persons designated in and by such deed or will, upon the due execution and acknowledgment of a deed of appointment by the proper party or parties, and its being filed for record in the office of the recorder of deeds in and for the county in which the land which is the subject of the trust is situated, the legal title to the lands so held in trust shall thereupon vest in such new trustee or trustees in the same manner and with the same effect, to all intents and purposes, as if such trustees had been originally appointed by the deed or will creating the trust and no conveyance shall be necessary to vest such title.

(19 Del. Laws, c. 250, § 1; Code 1915, § 3871; Code 1935, § 4396; 12 Del. C. 1953, § 3510.)

Subchapter II

Accounting and Distribution of Trust Funds

§ 3521 Trustees' accounts in general [For application of this section, see 79 Del. Laws, c. 352, § 6]

Except as otherwise provided in §§ 3522-3524 of this title, trustees (which term, as used in this subchapter, includes successor trustees) shall not be required to file any accounts or inventories with respect to a trust. Trustees required, under §§ 3522-3524 of this title, to file

accounts or inventories with respect to a trust shall do so as described in § 3525 of this title, unless later released from such obligation under § 3526 of this title.

(79 Del. Laws, c. 352, § 4.)

§ 3522 Trustees' accounts for inter vivos trusts [For application of this section, see 79 Del. Laws, c. 352, § 6]

Trustees of an inter vivos trust (whether or not property was bequeathed or devised to such trust by a testamentary disposition) shall not be required to file any accounts or inventories with respect to such trust, except:

(1) To the extent provided in the governing instrument;

(2) Upon an order of the Court of Chancery, for cause shown, expressly requiring an accounting by such trustees; or

(3) If such trustees were appointed by the Court of Chancery, then as may be otherwise provided in the order of appointment.

(79 Del. Laws, c. 352, § 4.)

§ 3523 Trustees' accounts in wills probated prior to April 5, 1909 [For application of this section, see 79 Del. Laws, c. 352, § 6]

Trustees named in wills probated prior to April 5, 1909, may file and submit accounts of their trusts at such times as they deem necessary and they shall be required to file and submit accounts only upon a rule of the Register in Chancery issued upon them pursuant to the written request of any one beneficially interested in their trusts or upon the order of the Court of Chancery.

(25 Del. Laws, c. 226, § 2; 26 Del. Laws, c. 258, § 1; Code 1915, § 3874; 40 Del. Laws, c. 232, § 1; Code 1935, § 4400; 12 Del. C. 1953, § 3523; 79 Del. Laws, c. 352, § 4.)

§ 3524 Trustees' accounts for other testamentary trusts [For application of this section, see 79 Del. Laws, c. 352, § 6]

Trustees of a testamentary trust shall be required to file accounts as described in § 3525 of this title, except that:

(1) Trustees subject to § 3523 of this title shall file accounts only in accordance with such section.

(2) Trustees of a testamentary trust established under the will of a decedent dying after July 31, 2005, shall be required to file accounts as described in § 3525 of this title only in accordance with the express terms, if any, of any such trust or upon order of the Court of Chancery with respect to any such trust.

(79 Del. Laws, c. 352, § 4.)

§ 3525 Filing of trustees' accounts; contents; approval [For application of this section, see 79 Del. Laws, c. 352, § 6]

(a) Trustees required to file accounts as provided in the governing instrument, or in an order of the Court of Chancery, shall file accounts as described in subsection (c) of this section only in accordance with the express terms, if any, of such governing instrument or order.

(b) Trustees otherwise required to file accounts under §§ 3523 and 3524 of this title shall file accounts as described in subsection (c) of this section.

(c) To the extent required in subsections (a) and (b) of this section above, trustees required to file accounts shall file with the Register in Chancery, in the county in which a will creating the trust was probated or in which such appointments were made, and submit for the approval of the Court of Chancery just and true accounts, showing all receipts and disbursements of their trusts, as the Court requires, but not oftener than once in 2 years, unless there is special occasion. Such accounts shall also show the manner in which the principal of the trust is invested. Upon the request of the trustee or of any party in interest the Court shall, and upon its own motion may, proceed to approve or disapprove the investments, but otherwise the Court shall approve or disapprove the remainder of the account without passing upon the manner in which the principal of the trust is invested.

(25 Del. Laws, c. 226, § 2; 26 Del. Laws, c. 258, § 1; Code 1915, § 3874; 40 Del. Laws, c. 232, § 1; Code 1935, § 4400; 12 Del. C. 1953, § 3521; 51 Del. Laws, c. 326; 79 Del. Laws, c. 197, § 2; 79 Del. Laws, c. 352, § 4.)

§ 3526 Release of obligation to file accounts.

(a) Without the approval of the Court of Chancery, a trustee or trustees (in either case hereafter referred to as "trustee") who would otherwise be required under §§ 3521-3524 of this title to file with the Register in Chancery just and true accounts for the approval of the Court of Chancery may be released from such obligation by the interested parties of the trust if the trustee sends a written notice and request for waiver and consent or nonobjection to the interested parties, which notice shall:

(1) Describe the obligation of the trustee under §§ 3521-3524 of this title and identify the alternative means by which the trustee will provide the beneficiaries with the information formerly set forth in the account;

(2) Request the interested person waive the obligations under subsection (a) of this section with respect to the trust and consent, or signify such person's nonobjection, to the alternative means described in the notice for the dissemination of trust information; and

(3) Request that a waiver and consent or nonobjection be executed by:

a. The interested party personally;

b. The interested party's attorney ad litem;

c. A person authorized to represent the interested party under § 3547 of this title or any successor statute; or

(4) A person authorized by applicable law to represent the interested party in transactions involving the trust (such as, but not limited to, the interested party's attorney-in-fact or the Attorney General in the case of certain charitable beneficiaries).

In addition, such waiver and consent or nonobjection shall: (i) be acknowledged by a person authorized to notarize documents (or a similar official if a document is signed in a foreign jurisdiction) or witnessed by a person who is not an interested party; and (ii) affirm that the party executing the waiver and consent or nonobjection has read, understood, and been provided with an opportunity to consult with counsel regarding the waiver and consent or nonobjection and the information provided therein.

(b) For purposes of subsection (a) of this section, the "interested parties" means:

(1) The trustor of the trust, if living;

(2) All living persons who are currently receiving or eligible to receive distributions of income of the trust;

(3) Without regard to the exercise of any power of appointment, all living persons who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice and all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the interests of all of the beneficiaries currently eligible to receive income under paragraph (b)(2) of this section were to terminate at the time of the giving of such notice; and

(4) All persons acting as adviser or protector of the trust.

(c) Any release of the obligations under §§ 3521-3524 of this title obtained in accordance with the provisions of subsection (a) of this section shall release the trustee from the reporting obligations of §§ 3521-3524 of this title for the duration of the trust, unless a shorter period of time is specified in the written notice provided to the interested parties or an order of a court of competent jurisdiction provides otherwise.

(d) Upon being released from the obligations under §§ 3521-3524 of this title in accordance with provisions of subsection (a) of this section, the trustee shall provide notice of such release to the Register in Chancery in the county in which the trustee would otherwise have filed the accountings required under §§ 3521-3524 of this title, which notice shall include as exhibits copies of the requisite executed notices and requests for waiver and consent or nonobjection of the interested parties.

(25 Del. Laws, c. 226, § 2; 26 Del. Laws, c. 258, § 1; Code 1915, § 3874; 40 Del. Laws, c. 232, § 1; Code 1935, § 4400; 12 Del. C. 1953, § 3521; 51 Del. Laws, c. 326; 79 Del. Laws, c. 197, § 2; 79 Del. Laws, c. 352, § 4.)

§§ 3527 , 3527A. Total return unitrusts; express total return unitrusts.

Transferred by 77 Del. Laws, c. 330, § 10, effective Aug. 1, 2010, to §§ 61-106 and 61-107 of this title.

§ 3528 Trustee's authority to invade principal in trust [For application of this section, see 79 Del. Laws, c. 172, § 6; 79 Del. Laws, c. 352, § 6]

(a) Unless the terms of the instrument expressly provide otherwise, a trustee who has authority (whether acting at such trustee's discretion or at the direction or with the consent of an adviser), under the terms of a testamentary instrument or irrevocable inter vivos trust agreement, to invade the principal of a trust (the "first trust") to make distributions to, or for the benefit of, 1 or more proper objects of the exercise of the power, may instead exercise such authority by appointing all or part of the principal subject to the power in favor of a trustee of a trust (the "second trust") under an instrument other than that under which the power to invade is created or under the same instrument, provided, however, that, except as otherwise provided in this subsection (a):

(1) The exercise of such authority is in favor of a second trust having only beneficiaries who are proper objects of the exercise of the power;

(2) In the case of any trust, contributions to which have been treated as gifts qualifying for the exclusion from gift tax described in § 2503(b) (26 U.S.C. § 2503(b)) of the Internal Revenue Code of 1986 (26 U.S.C. § 1 et seq.) (hereinafter referred to in this section as the "I.R.C."), by reason of the application of I.R.C. § 2503(c) (26 U.S.C. § 2503(c)), the governing instrument for the second trust shall provide that the beneficiary's remainder interest shall vest and become distributable no later than the date upon which such interest would have vested and become distributable under the terms of the governing instrument for the first trust;

(3) The exercise of such authority does not reduce any income or unitrust interest of any beneficiary of a trust for which a marital deduction has been taken for federal tax purposes under I.R.C. § 2056 or § 2523 (26 U.S.C. § 2056 or § 2523) or for state tax purposes under any comparable provision of applicable state law; and

(4) The exercise of such authority does not apply to trust property subject to a presently exercisable power of withdrawal held by a trust beneficiary who is the only trust beneficiary to whom, or for the benefit of whom, the trustee has authority to make distributions.

Notwithstanding the foregoing provisions of this subsection (a), the governing instrument for the second trust may grant a power of appointment (including a power to appoint trust property to the powerholder, the powerholder's creditors, the powerholder's estate, the creditors of the powerholder's estate or any other person, whether or not such person is a trust beneficiary) to 1 or more of the trust beneficiaries who are proper objects of the exercise of the power in the first trust. Furthermore, notwithstanding the foregoing provisions of this subsection (a), the governing instrument of the second trust may provide that, at a time or upon an event specified

in the governing instrument, the remaining trust assets shall thereafter be held for the benefit of the beneficiaries of the first trust upon terms and conditions concerning the nature and extent of each such beneficiary's interest that are substantially identical to the first trust's terms and conditions concerning such beneficial interests. The exercise of a trustee's authority granted under this subsection (a) shall in all respects comply with any standard that limits the trustee's authority to make distributions from the first trust but may be exercised whether or not the trustee would have been permitted to exercise the power to make a current outright distribution of all of the trust assets in compliance with any such standard. For purposes of this subsection (a), an open class of beneficiaries identified in the governing instrument for the first trust (such as, but not limited to, a class comprised of the descendants of a person who is living or who has living descendants) is a proper object of the exercise of a power to make distributions and the exercise of such a power in favor of a second trust having only beneficiaries, including unborn future beneficiaries, who are among the members of the open class satisfies the requirement of paragraph (a)(1) of this section even if, pursuant to the terms of the governing instrument for the second trust, the class remains, or might remain, open beyond the time when the class would have closed pursuant to the terms of the governing instrument for the first trust; provided, however, that the governing instrument for the second trust shall not permit distributions to or among members of the open class sooner than when or in excess of the amounts permitted by the governing instrument for the first trust. A trustee's power, pursuant to this subsection (a), to appoint principal in favor of the trustee of a second trust shall include the power to create the second trust.

(b) The exercise of the power to invade the principal of the trust under subsection (a) of this section shall be by an instrument in writing, signed and acknowledged by the trustee and filed with the records of the trust.

(c) The exercise of the power to invade the principal of the trust under subsection (a) of this section shall be considered the exercise of a power of appointment (other than a power to appoint to the trustee, the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate) and shall be subject to the provisions of Chapter 5 of Title 25 covering the time at which the permissible period of the rule against perpetuities begins and the law which determines the permissible period of the rule against perpetuities. Consequently, a second trust may have a term that is longer than the term set forth in the governing instrument for the first trust, including, but not limited to, a term measured by the lifetime of a current beneficiary.

(d) The provisions of this section shall not be construed to abridge the right of any trustee who has a power of invasion to appoint property in further trust which arises under any other section of this chapter or under another statute or under common law.

(e) When exercising the authority granted under subsection (a) of this section, the trustee and any adviser directing or consenting to the trustee's exercise of such authority shall be held to the standard of care and the standard of liability applicable to the trustee and any such adviser when making outright distributions, free from trust, to or for the benefit of 1 or more permissible distributees. No trustee or adviser shall have a duty to exercise such authority nor, absent wilful misconduct, any liability to any person for failure to exercise such authority or failure to consider whether to exercise such authority.

(f) This section shall be available to any trust that is administered in this State.

(74 Del. Laws, c. 81, § 3; 74 Del. Laws, c. 271, § 2; 75 Del. Laws, c. 300, § 2; 76 Del. Laws, c. 90, § 3; 77 Del. Laws, c. 98, § 13; 78 Del. Laws, c. 117, §§ 6, 7; 79 Del. Laws, c. 172, § 3; 79 Del. Laws, c. 352, § 4.)

Subchapter III

General Provisions

§ 3531 Renunciation by trustee named in trust instrument; filing and recording.

Whenever, by any will, deed or other instrument, a trustee is named and before the acceptance of the trust the person named as such trustee renounces and declines to perform the duties imposed thereby, the trustee may make and file in the office of the Register in Chancery of the county where such will, deed or instrument may be probated or recorded a written renunciation setting forth in general terms the instrument of appointment and that trustee has not accepted the trust or exercised any powers or performed any duties thereunder and trustee declines to act under such appointment. The Register in Chancery shall record and index such renunciation in the Chancery docket.

(Code 1915, § 3871; 33 Del. Laws, c. 230, § 1; Code 1935, § 4397; 12 Del. C. 1953, § 3531; 70 Del Laws, c. 186, § 1; 77 Del. Laws, c. 98, § 14.)

§ 3532 Transfer of stocks, bonds or other corporate securities by trustee; certificate of Register in Chancery.

Upon the transfer by trustees of the stocks, bonds or other securities of any corporation, the certificate of the Register of the Court of Chancery in which such trustee was appointed or other proper public official, according to the form and provisions of § 1572 of this title, shall be sufficient authority to the officers of such corporation to transfer or reissue such stocks, bonds or other securities to such person as such trustee in writing directs.

(20 Del. Laws, c. 115, § 5; Code 1915, § 3878; Code 1935, § 4402; 12 Del. C. 1953, § 3532.)

§ 3533 Sale of trust property free from trust; procedure.

Upon petition of any trustee having the legal title to any property, real, personal or mixed, setting forth that the sale and conversion thereof would be for the best interests of the trust estate and the persons beneficially interested in the trust, the Court of Chancery may, by order made thereon in its discretion, except where such sale or conversion has been prohibited by the instrument creating the trust,

authorize and direct such trustee to sell the whole or so much as may be proper of such trust property and to transfer and convey the same to the purchaser thereof, absolutely and in fee simple, freed from any trust and without liability on the part of such purchaser as to the application of the purchase money. In cases where the sale or conversion of trust property has not been expressly prohibited by the instrument creating the trust, but the instrument provides that the trustee shall sell or convert only with the consent of 1 or more persons or makes the trustee's power of sale contingent on 1 or more persons joining in its exercise, the Court of Chancery may confer upon the trustee power to make the sale or conversion without such consent or without any 1 or more of such persons joining in the exercise of such power of sale if any 1 or more of the persons required to consent or to join in such exercise of the trustee's power of sale shall be a minor, non compos mentis, have died, unreasonably withhold consent or be absent and unheard of and in the opinion of the Court the sale or conversion is for the best interests of the trust estate and the persons beneficially interested therein. The proceeds of all sales made under the authority of this section shall be held under and subject to the same trusts as those to which the property sold was subject and, in cases where real property is to be sold, the trustee thereof shall first give sufficient bond, with surety to be approved by the Court, for the preservation and protection of the proceeds of such sales for the purposes of the trust and subject to the orders and decrees of the Court in the premises.

(20 Del. Laws, c. 115, § 4; Code 1915, § 3879; Code 1935, § 4403; 47 Del. Laws, c. 382, § 1; 12 Del. C. 1953, § 3533.)

§ 3534 Notice procedure.

Except as may be expressly provided in the trust instrument to the contrary, the following shall apply to any trust the administration of which is governed by this title:

(1) Except for service or notice pursuant to a judicial proceeding whereby such matters are covered by an applicable court rule, any notice of, or communication pertaining to, a trust by a fiduciary of such trust to a beneficiary, other fiduciary or other person having an interest in the trust pursuant to the express terms of the trust instrument or by any such person to a fiduciary, including without limitation notice required under § 3312 of this title, may be given to such person or such person's representative under § 3547 of this title:

a. By regular U.S. mail or commercial carrier to the mailing address reasonably determined to be such person's address;

b. By facsimile telecommunication to a number at which such person last consented to receive notice;

c. By electronic mail to an electronic mail address at which such person last consented to receive notice;

d. By a posting on an electronic network, provided notice of such posting is delivered to such person;

e. By any other form of electronic transmission as to which such person last consented to receive notice;

f. By regular U.S. mail or commercial carrier to the address at which such person last consented to receive notice; or

g. By such other manner reasonably suitable under the circumstances and likely to result in receipt.

(2) Notwithstanding any other provision of this Code or other law, a trustee shall have no duty to confirm the reliability of an approved address, and, without creating such a duty, a trustee may withhold notice, including to an approved address, while it exercises reasonable diligence to obtain confirmation that it has a reliable address for such person.

(3) Any person may waive in writing the right to receive notice of a trust or other communications pertaining to a trust, and may thereafter rescind such waiver in writing delivered to the trustee. A trustee without actual notice to the contrary may rely on the representation of a predecessor trustee or a co-trustee pertaining to a waiver or rescission.

(4) For purposes of this section:

a. A "commercial carrier" shall mean a carrier authorized by the United States Department of the Treasury to deliver notices or returns for purposes of satisfying delivery under the Internal Revenue Code.

b. The term "electronic transmission" shall mean any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

(78 Del. Laws, c. 117, § 8.)

§ 3535 Powers of appointment, rule against perpetuities and restraints on alienation.

The validity of an estate or interest in property created through the exercise of a power of appointment shall, for the purposes of any rule or law against perpetuities, remoteness of vesting, restraint upon the power of alienation or accumulations, be governed by Chapter 5 of Title 25.

(12 Del. C. 1953, § 3535; 77 Del. Laws, c. 330, § 11.)

§ 3536 Rights of creditors and assignees of beneficiary of trust [For application of this section, see 79 Del. Laws, c. 172, § 6; 79 Del. Laws, c. 352, § 6]

(a) Except as expressly provided in subsections (c) and (d) of this section, a creditor of a beneficiary of a trust shall have only such rights against or with respect to such beneficiary's interest in the trust or the property of the trust as shall be expressly granted to such creditor by the terms of the instrument that creates or defines the trust or by the laws of this State. The provisions of this subsection shall be effective regardless of the nature or extent of the beneficiary's interest, whether or not such interest is subject to an exercise of discretion by the trustee or other fiduciary, and shall be effective regardless of any action taken or that might be taken by the beneficiary. Every interest

in a trust or in trust property or the income therefrom that shall not be subject to the rights of creditors of such beneficiary as expressly provided in this section shall be exempt from execution, attachment, distress for rent, foreclosure, garnishment and from all other legal or equitable process or remedies instituted by or on behalf of any creditor, including, without limitation, actions at law or in equity against a trustee or beneficiary that seeks a remedy that directly or indirectly affects a beneficiary's interest such as, by way of illustration and not of limitation, an order, whether such order be at the request of a creditor or on the court's own motion or other action, that would:

(1) Compel the trustee or any other fiduciary or any beneficiary to notify the creditor of a distribution made or to be made from the trust;

(2) Compel the trustee or beneficiary to make a distribution from the trust whether or not distributions from the trust are subject to the exercise of discretion by a trustee or other fiduciary;

(3) Prohibit a trustee from making a distribution from the trust to or for the benefit of the beneficiary whether or not distributions from the trust are subject to the exercise of discretion by a trustee or other fiduciary; or

(4) Compel the beneficiary to exercise a power of appointment or power of revocation over the trust.

Every direct or indirect assignment, or act having the effect of an assignment, whether voluntary or involuntary, by a beneficiary of a trust of the beneficiary's interest in the trust or the trust property or the income or other distribution therefrom that is unassignable by the terms of the instrument that creates or defines the trust is void. No beneficiary may waive the application of this subsection (a). For purposes of this subsection (a), the creditors of a beneficiary shall include, but not be limited to, any person that has a claim against the beneficiary, the beneficiary's estate, or the beneficiary's property by reason of any forced heirship, legitime, marital elective share, or similar rights. The provisions of this subsection shall apply to the interest of a trust beneficiary until the actual distribution of trust property to the beneficiary. Regardless of whether a beneficiary has any outstanding creditor, a trustee may make direct payment of any expense on behalf of such beneficiary to the extent permitted by the instrument that creates or defines the trust and may exhaust the income and principal of the trust for the benefit of such beneficiary. A trustee shall not be liable to any creditor of a beneficiary for paying the expenses of a beneficiary.

(b) Notwithstanding subsection (a) of this section, a beneficiary entitled to receive all or a part of the income of a trust shall have the right to assign gratuitously in writing, at any time or from time to time, a stated fraction or percentage of the beneficiary's entire remaining income interest in such trust to the State or to any corporation, church, community chest, fund, or foundation authorized as a deduction pursuant to §§ 1107, 1108, and 1109 of Title 30 and such assignment shall be valid and binding on all parties irrespective of any restrictions on assignment contained in the instrument creating or defining the trust; provided, however, that this subsection shall not authorize a beneficiary of such a trust to reduce any part of the beneficiary's income interest which is subject to such restrictions on assignment below 50% of what such interest would be if no assignments were made under this subsection. Any interest assigned under this subsection, together with a corresponding portion of the corpus of the trust, shall be treated as a separate share and thereafter no provision of the trust permitting invasion of corpus for the benefit of the assignor shall be exercisable with respect to such share.

(c) Except as provided in subchapter VI of this Chapter 35, if the trustor is also a beneficiary of a trust, a provision that restrains the voluntary or involuntary transfer of the trustor's beneficial interest shall not prevent such trustor's creditors from satisfying their respective claims from the trustor's interest in the trust to the extent that such interest is attributable to the trustor's contributions to the trust; provided, however, that the trustor shall not be considered a beneficiary for purposes of this section merely because the trustor may be named as an additional trust beneficiary or is a proper object of the exercise of a power of appointment over trust property held by someone other than the trustor. A trustor's creditors may satisfy their respective claims from the trustor's interest in the trust to the extent provided in the preceding sentence except where the trustor has not retained any beneficial interest in the trust other than either or both:

(1) A beneficial interest that is contingent upon surviving the trustor's spouse such as, but not limited to, an interest in an inter vivos marital deduction trust in which the interest of the trustor's spouse is treated as qualified terminable interest property under § 2523(f) of the Internal Revenue Code of 1986 (26 U.S.C. § 2523(f)), as amended, an interest in an inter vivos marital deduction trust that is treated as a general power of appointment trust for which a marital deduction would be allowed under § 2523(a) and (e) of the Internal Revenue Code of 1986 (26 U.S.C. § 2523(a) and (e), as amended, and an interest in an inter vivos trust commonly known as a "credit shelter trust" that used all or a portion of the trustor's unified credit under § 2505 of the Internal Revenue Code (26 U.S.C. § 2505), as amended; and

(2) A right to receive discretionary distributions to reimburse the trustor's income tax liability attributable to the trust.

Further, a beneficiary of a trust shall not be considered a trustor of the trust merely because of a lapse, waiver, or release of the beneficiary's right to withdraw all or a part of the trust property.

(d) For purposes of subsection (a) of this section, a creditor shall have no right against the interest of a beneficiary of a trust or against the beneficiary or trustee of the trust with respect to such interest unless:

(1) The beneficiary has a power to appoint all or part of the trust property to the beneficiary, the beneficiary's estate, the beneficiary's creditors, or the creditors of the beneficiary's estate by will or other instrument such that the appointment would take effect only upon the beneficiary's death and the beneficiary actually exercises such power in favor of the beneficiary, the beneficiary's creditors, the beneficiary's estate, or the creditors of the beneficiary's estate but then only to the extent of such exercise.

(2) The beneficiary has a power to appoint all or part of the trust property to the beneficiary, the beneficiary's creditors, the beneficiary's estate, or the creditors of the beneficiary's estate during the beneficiary's lifetime and the beneficiary actually exercises

such power in favor of the beneficiary, the beneficiary's creditors, the beneficiary's estate, or the creditors of the beneficiary's estate but then only to the extent of such exercise.

(3) The beneficiary has the power to revoke the trust in whole or in part during the beneficiary's lifetime and, upon such revocation, the trust or the part thereof so revoked would be possessed by the beneficiary. This paragraph shall have no application to any part of the trust that may not be so revoked by the beneficiary.

(e) Notwithstanding subsection (a) of this section, a beneficiary of a charitable-remainder unitrust or charitable-remainder annuity trust as such terms are defined in § 664 of the Internal Revenue Code of 1986 (26 U.S.C. § 664) and any successor provision thereto, shall have the right, at any time and from time to time, by written instrument delivered to trustee, to release such beneficiary's retained interest in such a trust, in whole or in part, to a charitable organization that has or charitable organizations that have a succeeding beneficial interest in such trust. Notwithstanding subsection (a) of this section, a beneficiary may also disclaim an interest in a trust pursuant to Chapter 6 of this title.

(Code 1915, § 3907(b); 38 Del. Laws, c. 186, § 1; Code 1935, § 4415; 12 Del. C. 1953, § 3536; 52 Del. Laws, c. 199, § 1; 70 Del Laws, c. 186, § 1; 73 Del. Laws, c. 71, § 1; 74 Del. Laws, c. 81, § 4; 75 Del. Laws, c. 97, § 6; 75 Del. Laws, c. 301, § 7; 76 Del. Laws, c. 90, §§ 4, 5; 76 Del. Laws, c. 254, § 9; 77 Del. Laws, c. 98, §§ 15, 16; 77 Del. Laws, c. 330, § 12; 79 Del. Laws, c. 172, § 3; 79 Del. Laws, c. 352, § 4.)

§ 3537 Conveyance of realty by infant trustee.

Any person under the age of 18 years, having real estate in trust for others, may, by direction of the Court of Chancery given upon hearing all parties concerned on the petition of those for whom such infant is trustee or of the guardian of such infant, convey and assure such real estate, in such manner as the Court directs, to any other person. Such conveyance shall be as good and effectual in law as if the infant was of full age. Such infant may be compelled to execute such order, in like manner as trustees of full age are compellable to convey or assure trust estates.

(Code 1852, § 1947; Code 1915, § 3862; Code 1935, § 4386; 12 Del. C. 1953, § 3537; 58 Del. Laws, c. 511, § 16.)

§ 3538 Testamentary trusts; certification of by Register of Wills to Register in Chancery; record.

(a) When a will that has been probated before the Register of Wills for any of the counties of the State contains a bequest or devise in trust to pay the income arising from any part of the estate of the testator to or for the benefit of a person other than the person named as trustee and the will requires the filing of accounts with 1 of the Registers in Chancery, the Register of Wills before whom the probate is made shall, within 10 days after the closing of the estate, deliver to the Register in Chancery for that county a certificate setting forth the name and last address of the testator, the date of the probate of the testator's will, the name and address of the trustee appointed thereby and the provisions of the will relating to said trust or trusts. This section shall apply only in those instances:

(1) Where the documents closing the estate show a balance in the hands of the personal representative that can be distributed to the trust in order to fund it; and

(2) That terms exist, as stated in the will, for the creation of the trust.

In those instances where it is clear that no notice of the trust need be given to the Register in Chancery, the Register of Wills shall note on its files that no notice of the trust was given to it and state why.

(b) The Register in Chancery for the several counties shall keep a record in which shall be entered the names of the testators, the names and post-office addresses of the trustees, the dates of their appointment or the dates upon which their trusts become operative and the dates on which their accounts are passed and shall file the certificates delivered to them by the Register of Wills among the records of their offices.

(25 Del. Laws, c. 226, § 1; Code 1915, § 3873; Code 1935, § 4399; 12 Del. C. 1953, § 3538; 70 Del Laws, c. 186, § 1; 75 Del. Laws, c. 189, § 3; 77 Del. Laws, c. 98, § 17.)

§ 3539 Charitable trust; sale of timber on lands; application of proceeds.

The Court of Chancery may, when in its judgment the exercise thereof will promote the interests of the charity, direct wood or timber growing on land conveyed or devised for charitable uses to be cut and sold and the proceeds applied to repairs or the purchase of lime or other manures and making other improvements of such real estate. This section shall apply only to cases where the whole interest in the land is the subject of charitable uses.

(Code 1852, § 1948; Code 1915, § 3881; Code 1935, § 4405; 12 Del. C. 1953, § 3539.)

§ 3540 Powers and duties of certain trustees.

All trustees of any trust governed by the laws of this State whose governing instrument or instruments do not expressly provide that this section shall not apply to such trust are required to act or to refrain from acting so as not to subject the trust to the taxes imposed by §§ 4941 (relating to taxes on self-dealing), 4942 (relating to taxes on failure to distribute income), 4943 (relating to taxes on excess business holdings), 4944 (relating to taxes on investments which jeopardize charitable purpose) or 4945 (relating to taxable expenditures) of the Internal Revenue Code of 1954 [26 U.S.C. §§ 4941-4945], or corresponding provisions of any subsequent United States internal revenue law.

(12 Del. C. 1953, § 3540; 58 Del. Laws, c. 88.)

§ 3541 Administration of charitable trusts or noncharitable purpose trusts; cy pres rule.

(a) Subject to subsection (b) of this section, if a particular charitable purpose or noncharitable purpose becomes unlawful under the Constitution of this State or the United States or the trust would otherwise no longer serve any religious, charitable, scientific, literary, educational, or noncharitable purpose:

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

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

(3) The Court of Chancery shall modify or terminate the trust and direct that the trust property be applied or distributed, in whole or in part, in a manner consistent with the trustor's charitable or noncharitable purposes, whether or not such purposes be specific or general.

(b) The power of the Court of Chancery to modify or terminate a charitable or noncharitable purpose trust, as provided in subsection (a) of this section, is in all cases subject to a contrary provision in the terms of the trust instrument, whether such contrary provision directs that the trust property be distributed to a charitable or noncharitable beneficiary.

(c) For purposes of this section, a "noncharitable purpose" is a purpose within the meaning of § 3555 or § 3556 of this title.

(62 Del. Laws, c. 131, § 1; 70 Del Laws, c. 186, § 1; 72 Del. Laws, c. 388, § 8; 76 Del. Laws, c. 90, § 6; 76 Del. Laws, c. 254, § 10.)

§ 3542 Termination of small trusts.

(a) Unless otherwise provided by the terms of the trust instrument, and subject to the other subsections of this section, a corporate trustee of a trust who finds that the costs of administration thereof are such that the continuance of the trust would defeat or substantially impair the purpose of the trust, may, after written notice to all interested persons, or their legal or natural guardians, terminate the trust and distribute the trust property to 1 or more of the beneficiaries in the trustee's discretion. No court proceedings or approval is required to effect such a termination.

(b) Any interested person shall have 30 days after receiving written notice in accordance with this section to object to the termination or plan of distribution in writing to such trustee. If the trustee has received no written objection to the proposed termination or plan of distribution within such 30-day period, it may proceed to terminate the trust.

(c) A trustee which receives a written objection to the proposed plan of distribution of a trust within 30 days of the last day on which any interested person received written notice may reformulate the proposed plan of distribution and renotify all interested persons of its intentions. Such renotification shall begin again the 30-day period referred to in subsection (b) of this section.

(d) A trustee which receives a written objection to the termination or plan of distribution of a trust within 30 days of the last day on which any interested person received written notice may proceed to terminate the trust in accordance with the plan of distribution, without court proceeding or approval, notwithstanding the objection, provided that all interested persons have been further notified in writing of such objection, of the trustee's intention to proceed to terminate such trust notwithstanding such objection, and of their right to petition the Court to prevent the termination or modify the plan of distribution within 6 months from the mailing of such further notice, and provided that at least 6 months have elapsed since such further notice was sent by the trustee, or the trustee has received a written waiver of the right to petition the Court from all interested persons.

(e) Any interested person, within 6 months of the mailing of such further notice of the trustee's intention to proceed with termination, notwithstanding an objection, may petition the Court to prevent such termination or modify the plan of distribution, or may send to the trustee a written waiver of such right to petition.

(f) The written notice required by this section shall state:

(1) That the trustee intends to terminate the trust in accordance with this section;

(2) The plan of distribution;

(3) That any interested person may object to such termination or plan of distribution in a writing received by the trustee within 30 days of receipt of such notice by such interested person; and

(4) That the trustee may proceed to terminate the trust, notwithstanding any objection to such termination or plan of distribution, 6 months after the trustee further notifies all interested persons of such objection and its intention to proceed with the termination notwithstanding such objection;

provided, that such notice shall inform interested persons that application may be made to the Court of Chancery to prevent the proposed termination.

(g) For purposes of this section, the term "interested person" means any living person or existing organization who is a current income beneficiary, or who would be a vested remainderman of the trust if the trust were to terminate at the time of the notification, and the Delaware Attorney General in the case of a charitable trust.

(h) The existence of spendthrift or similar protective provisions in a trust shall not make this section inapplicable.

(65 Del. Laws, c. 422, § 7; 70 Del. Laws, c. 186, § 1.)

§ 3543 Distribution of estate or trust assets without creation of trust.

If the terms of a will or a writing creating a trust, including, but not limited to an inter vivos trust agreement, provide for the establishment of a trust all the assets of which, due to the circumstances existing at the time the trust is to be established, are required to be distributed to the trust's beneficiary or beneficiaries immediately, the executor, trustee, or other party having possession of the property with which

such trust will be established, is authorized to make direct distribution to the beneficiary or beneficiaries of the trust, rather than to the trustee, without the necessity of a Court petition. The receipts of such beneficiaries shall protect the executor, trustee, or other party having possession of the property with which such trust would be established, to the same extent as the receipt of the trustee.

(65 Del. Laws, c. 422, § 7; 76 Del. Laws, c. 90, § 7.)

§ 3544 Successor trustee [For application of this section, see 79 Del. Laws, c. 352, § 6]

Unless provided otherwise by the terms of the governing instrument or by order of court, in the absence of actual knowledge of a breach of trust, or information concerning a possible breach of trust that would cause a reasonable person to inquire, a successor trustee appointed in accordance with the terms of the governing instrument, by the court, or by nonjudicial settlement agreement, is under no duty to examine the accounts and records of its predecessor trustee or to inquire into the acts or omissions of its predecessor, is not liable for any failure to seek redress for any act or omission of any predecessor trustee, shall have responsibility only for property which is actually delivered to it by its predecessor and shall have all of the powers and discretions conferred in the governing instrument upon the original trustee.

(65 Del. Laws, c. 422, § 7; 66 Del. Laws, c. 376, § 1; 79 Del. Laws, c. 352, § 4.)

§ 3545 Limitations on oral trusts; execution requirements for written trusts.

(a) Except as otherwise required by this Code, the creation, modification or revocation of a trust whereby a person other than the trustor acquires or is divested of an interest in the trust the possession or enjoyment of which is contingent upon surviving the trustor shall be void unless such creation, modification or revocation be:

(1) In a writing executed by the trustor and witnessed by at least 1 disinterested person or 2 credible persons, or

(2) In a writing executed by a trustee who is a disinterested person.

For purposes of this section, a disinterested person is one who has no beneficial interest in the trust that would be materially increased or decreased as a result of the creation, modification or revocation of the trust.

(b) A trust created by a writing shall not be void merely because of the application of subsection (a) of this section if such writing was validly executed in compliance with the law, at the time of execution, of the place which serves as the initial place of administration of the trust, or, if the trust is not yet actively administered, the initial situs of the trust.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, a trust instrument that by its express terms is revocable by the trustor during the trustor's lifetime may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the trust instrument, other than money, evidences of indebtedness, documents of title, and securities, and property used in trade or business. To be enforceable under this section, as though part of the trust, the writing:

(1) Must either be in the handwriting of the trustor or be signed by the trustor and must identify the items and the legatees with reasonable certainty;

(2) Must not be inconsistent with the terms of the trust instrument; and

(3) Must not be inconsistent with any other writing permitted by this subsection unless the writing is dated in which case the writing with the latest date will control.

Notwithstanding the foregoing, in the case of a writing that includes both provisions for dispositions that are consistent with the terms of the trust or any other writing permitted by this section and provisions for dispositions that are inconsistent with the terms of the trust or any other writing permitted by this section, such writing shall be admissible under this section as evidence of the intended disposition of those items of tangible personal property that would be disposed of by the provisions of the writing that are not inconsistent with the terms of the trust or any other writing permitted by this section. The writing may be referred to as one in existence at the time of the trustor's death; it may be prepared before or after the execution of the trust instrument; it may be altered by the trustor after its preparation; and it may be a writing which has no significance apart from its effect upon the dispositions made by the trust instrument. This subsection (c) shall apply only with respect to dispositions intended to take effect upon the death of the trustor, although such a writing may direct that an item or items of tangible personal property shall be administered as part of a trust or trusts created under the trust pursuant to terms of the trust instrument that were executed pursuant to the provisions of subsections (a) and (b) of this section.

(72 Del. Laws, c. 388, § 1; 74 Del. Laws, c. 271, § 3; 77 Del. Laws, c. 98, § 18.)

§ 3546 Limitation on action contesting validity of trusts [For application of this section, see 79 Del. Laws, c. 197, § 3]

(a) A judicial proceeding to contest whether a revocable trust or any amendment thereto, or an irrevocable trust was validly created may not be initiated later than the first to occur of:

(1) One hundred twenty days after the date that the trustee notified in writing the person who is contesting the trust of the trust's existence, of the trustee's name and address, of whether such person is a beneficiary, and of the time allowed under this section for initiating a judicial proceeding to contest the trust provided, however, that no trustee shall have any liability under the governing instrument or to any third party or otherwise for failure to provide any such written notice. For purposes of this paragraph, notice shall have been given when received by the person to whom the notice was given and, absent evidence to the contrary, it shall be presumed that delivery to the last known address of such person constitutes receipt by such person.

(2) Two years after the trustor's death;

(3) If the trust was revocable at the trustor's death and the trust was specifically referred to in the trustor's last will, the time in which a petition for review of a will could be filed under this title; or

(4) The date the person's right to contest was precluded by adjudication, consent or other limitation.

(b) Upon the death of the trustor of a trust that was revocable at the time of the trustor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. This distribution may be made without liability unless the trustee has actual knowledge of a pending judicial proceeding to contest the validity of the trust, or is notified by a potential contestant of a possible contest, followed by its initiation within 30 days of such notice.

(c) Until a contest is barred under subsection (a) of this section, a beneficiary of what later turns out to have been an invalid trust is liable to return any distribution received.

(d) For purposes of paragraph (a)(1) of this section, a person is deemed to have been given any notice that has been given to any other person who under § 3547 of this title may represent and bind such person.

(72 Del. Laws, c. 388, § 2; 74 Del. Laws, c. 81, § 5; 75 Del. Laws, c. 97, § 7; 78 Del. Laws, c. 117, § 9; 79 Del. Laws, c. 197, § 2.)

§ 3547 Representation by person with a substantially identical interest [For application of this section, see 79 Del. Laws, c. 172, § 6]

(a) Unless otherwise represented, a minor, person who is incapacitated, or unborn person, or a person whose identity or location is unknown and not reasonably ascertainable (hereinafter referred to as an "unascertainable person"), may for all purposes be represented by and bound by another who has a substantially identical interest with respect to the particular question or dispute but only to the extent that there is no material conflict of interest between the representative and the person represented with respect to the particular question or dispute.

(b) A presumptive remainder beneficiary or the person or persons authorized to represent the presumptive remainder beneficiary under any other subsection of this section may represent and bind contingent successor remainder beneficiaries for the same purposes, in the same circumstances, and to the same extent as an ascertainable competent beneficiary may represent and bind a minor or person who is incapacitated, unborn or unascertainable. As used in this subsection (b), a "presumptive remainder beneficiary" means as of any date, a beneficiary who, as of any date and but for the exercise of any power of appointment, would receive income or principal of the trust if the trust were to terminate as of that date (without regard to the exercise of any power of appointment) or, if the trust does not provide for its termination, a beneficiary who would receive or be eligible to receive distributions of income or principal of the trust if all of the beneficiaries currently receiving or eligible to receive distributions of income or principal were deceased.

(c) In the case of a trust having a beneficiary who is a minor or incapacitated who may not be represented by another pursuant to subsection (a) or subsection (b) of this section, the surviving and competent parent or parents or custodial parent (in cases where 1 parent has sole custody of the beneficiary), or guardian of the property of the beneficiary may represent and bind the beneficiary for purposes of any judicial proceeding or nonjudicial matter pertaining to the trust; provided that, in the case of a beneficiary represented by 1 or both parents, there is no material conflict of interest between the beneficiary who is a minor or incapacitated and either of such beneficiary's parents with respect to the particular question or dispute. Furthermore, such representative may, for all purposes, represent and bind an unborn person or unascertainable person who has an interest, with respect to the particular question or dispute, that is substantially identical to the interest of the beneficiary who is a minor or incapacitated represented by the representative, but only to the extent that there is no material conflict of interest between the beneficiary who is a minor or incapacitated represented by the representative and the unborn or unascertainable person with respect to the particular question or dispute.

(d) Unless otherwise provided in the governing instrument, the provisions of this section shall apply for purposes of any judicial proceeding and for purposes of any nonjudicial matter. For purposes of this section, judicial proceedings shall include any proceeding before a court or administrative tribunal of this State, including a proceeding that involves a trust whether or not the administration of the trust is governed by the laws of this State, and nonjudicial matters include, but are not limited to, the grant of consents, releases or ratifications pursuant to § 3588 of this title and the measurement of the limitation period described in § 3585 of this title.

(e) For purposes of this section, there is a presumption that a material conflict of interest exists between the representative and each trust beneficiary in any judicial proceeding or nonjudicial matter:

(1) In which the representative would, as a result of the judicial proceeding or nonjudicial matter, be appointed to a fiduciary or nonfiduciary office or role relating to the trust unless the representative presently serves in a fiduciary or nonfiduciary office or role relating to the trust and will not receive greater authority, broader discretion, or increased protection by reason of the new appointment;

(2) In which the representative currently holds a fiduciary or nonfiduciary office or role relating to the trust and, as a result of the judicial proceeding or nonjudicial matter, will receive greater authority, broader discretion, or increased protection, including but not limited to any limitation on exculpation from, or indemnification for any existing or potential future liability; or

(3) In which the representative has any other actual or potential conflict of interest with the represented beneficiaries with respect to the particular question or dispute, including but not limited to a conflict resulting from a differing investment horizon or an interest in present income over capital growth.

(72 Del. Laws, c. 388, § 3; 76 Del. Laws, c. 90, § 8; 77 Del. Laws, c. 98, § 19; 78 Del. Laws, c. 117, § 10; 78 Del. Laws, c. 179, §§ 80-82; 79 Del. Laws, c. 172, § 3.)

§ 3548 Limited purpose trust companies; general powers of appointment.

(a) Any power conferred upon a limited purpose trust company formed under Chapter 7 of Title 5 in its capacity as a fiduciary which would, except for this section, constitute in whole or in part a general power of appointment if such power were held by any officer, director or shareholder of the limited purpose trust company may only be exercised in the manner provided in subsection (b) of this section.

(b) A power described in subsection (a) of this section may, to the extent permissible under such power, be exercised as follows:

(1) The limited purpose trust company may exercise the power in favor of a person other than any officer, director or shareholder of the limited purpose trust company.

(2) The limited purpose trust company may only exercise the power in favor of, or for the benefit of (including in discharge of a support obligation), an officer, director or shareholder of the limited purpose trust company to provide for that person's health, education, support or maintenance as described under Internal Revenue Code §§ 2041 and 2514 [26 U.S.C. § 2041 or § 2514].

(3) If the power described in subsection (a) of this section is conferred upon 2 or more fiduciaries, it may be exercised by the fiduciary or fiduciaries who are not disqualified from exercising the power as if such fiduciary or fiduciaries were the only fiduciary or fiduciaries.

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

(5) Subsection (a) of this section shall not apply to any power to the extent that it is exercisable in favor of:

a. The settlor of a trust that is revocable or amendable by the settlor;

b. A decedent's or settlor's spouse who is a beneficiary of a trust for which a marital deduction has been allowed; or

c. The settlor of a trust holding property that is the subject of a qualified disposition within the meaning of § 3570(7) of this title, unless the settlor has retained a special power of appointment described in § 3570(11)b.2. of this title.

(c) Any power conferred upon a limited purpose trust company in its capacity as a fiduciary to allocate receipts and expenses as between income and principal in favor of an officer, director or shareholder of the limited purpose trust company must be exercised in accordance with Chapter 61 of this title.

(d) "General power of appointment" means any power that would cause income to be taxed to a taxpayer in that taxpayer's individual capacity under § 678 [26 U.S.C. § 678] of the Internal Revenue Code, and any power that would be a general power of appointment, in whole or in part, under § 2041(b)(1) or § 2514(c) of the Internal Revenue Code [26 U.S.C. § 2041(b)(1) or § 2514(c)].

(e) "Internal Revenue Code" means the Internal Revenue Code of 1986 [26 U.S.C. § 1, et seq.], as amended.

(f) "Fiduciary" has the meaning set forth in § 3301 of Title 12.

(g) This section applies to all fiduciary relationships in existence on May 14, 2001 and to all other fiduciary relationships that come into existence after that date. The provisions of this section are declaratory of existing law, and neither modify nor amend existing fiduciary relationships.

(73 Del. Laws, c. 37, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3549 Marital deduction gift; compliance with Internal Revenue Code; fiduciary powers.

(a) If a governing instrument contains a marital deduction gift, the governing instrument shall be construed to comply with the marital deduction provisions of the Internal Revenue Code in every respect.

(b) If a governing instrument contains a marital deduction gift, any fiduciary operating under the governing instrument has all the powers, duties, and discretionary authority necessary to comply with the marital deduction provisions of the Internal Revenue Code. The fiduciary shall not take any action or have any power that may impair that deduction, but this does not require the fiduciary to make the election under § 2056(b)(7) or § 2523(f) of the Internal Revenue Code [26 U.S.C. § 2056(b)(7) or § 2523(f)].

(c) For purposes of this section, "marital deduction gift" means a gift intended to qualify for the marital deduction as indicated by a preponderance of the evidence including the governing instrument and extrinsic evidence whether or not the governing instrument is found to be ambiguous.

(d) For purposes of this section, "Internal Revenue Code" means the Internal Revenue Code of 1986 (26 U.S.C. § 1 et seq.), as amended, or any corresponding federal tax statute enacted hereafter.

(76 Del. Laws, c. 90, § 9.)

Subchapter IV

Trusts for Cemeteries and Other Noncharitable Purposes

§ 3551 Burial lots; perpetuities.

(a) Any owner of any burial lot or plot in any cemetery in this State, whether or not there shall then have been an interment in the lot or plot, may convey it in trust to the corporation owning or maintaining the cemetery or to any trust company, bank or banking company of this State or to any bank or banking company organized under the laws of the United States and doing business in this State and such

corporation, trust company, bank or banking company may hold the title thereto in perpetuity or for any shorter time for the use and benefit of the owner of the lot or plot and for the protection of the bodies theretofore interred therein or which may thereafter be interred therein, pursuant to the terms of the deed of trust. Before any such conveyance shall be made the corporation owning or conducting the cemetery in which the lot or plot is located shall, by a resolution of its board of directors or managers passed at a regular meeting of the board, authorize the conveyance.

(b) A trust for the care and maintenance of any burial lot or cemetery plot, or for the construction or maintenance of any monument, marker or other additions thereto, is valid.

(40 Del. Laws, c. 223, § 1; Code 1935, § 3964; 12 Del. C. 1953, § 3551; 75 Del. Laws, c. 301, § 2.)

§ 3552 Powers of cemetery corporation as to trust funds.

Any corporation created and existing under the laws of this State and owning 1 or more cemeteries in this State may take and hold, in perpetuity or for any shorter time, any real or personal property which shall be given, granted, devised or bequeathed to the corporation upon the trust to invest and reinvest the property and to use and apply the income thereof for:

(1) The care, improvement or embellishment of such cemetery or cemeteries or of any 1 or more lot or lots therein; or

(2) The erection or preservation of any buildings, structures or fences erected or to be erected upon any 1 or more of the lot or lots in the cemetery or cemeteries; or

(3) The erection, repair, preservation or renewal of any tomb, tombstone, monument, gravestone, mausoleum, fence, railing or other erection in, on or around any lot or lots; or

(4) Planting and cultivating trees, shrubs, flowers or plants in, on or around any such lot or lots; or

(5) Any and all of such purposes, in accordance with the terms and provisions of such gift, grant, devise or bequest, which terms and provisions may restrict the use and application of the income of the trust fund to any 1 lot whether owned by the donor of the trust fund or by any other person or persons.

(40 Del. Laws, c. 222, § 1; Code 1935, § 3964; 12 Del. C. 1953, § 3552.)

§ 3553 Sale of real estate and proceeds.

Any real estate given, granted or devised to a cemetery corporation in trust, in accordance with § 3552 of this title, other than a lot or lots in the cemetery or cemeteries, may be sold and conveyed by the cemetery corporation at its discretion and the proceeds thereof shall be held under the same uses and trusts and subject to the same limitations as applied to the real estate before the sale thereof, but the donor of the real estate may provide otherwise in the trust instrument.

(40 Del. Laws, c. 222, § 2; Code 1935, § 3964; 12 Del. C. 1953, § 3553.)

§ 3554 Perpetual care burial lots.

(a) Whenever a person, partnership or corporation engaged in the business of selling burial lots with perpetual care for profit shall sell any burial lot with perpetual care, it shall deposit in a bank and trust company, trust company or national banking association having fiduciary powers, a sum equal to at least one tenth of the gross sales price of such lot as a permanent lot care fund for the maintenance of burial lots sold with perpetual care and shall designate such banking institution as trustee of such fund. The permanent lot care fund so established shall be invested in compliance with Chapter 33 of this title and the trustee shall pay at least semiannually the net income from the fund to the person, partnership or corporation for the perpetual care and preservation of the burial lots sold with perpetual care.

(b) Any person, partnership or corporation engaged in the business of selling burial lots shall keep a record of all sales of burial lots showing the name of the purchaser or lessee, whether such lot was sold with perpetual care and the gross sales price. Such records shall be made available to the Attorney General of this State for inspection.

(12 Del. C. 1953, § 3554; 55 Del. Laws, c. 397; 65 Del. Laws, c. 341, § 1.)

§ 3555 Trust for care of an animal.

(a) A trust for the care of 1 or more specific animals living at the trustor's death is valid. The trust terminates upon the death of all animals living at the trustor's death and covered by the terms of the trust.

(b) A trust authorized by subsection (a) of this section shall not be invalid because it lacks an identifiable person as beneficiary.

(c) A trust authorized by subsection (a) of this section may be enforced by a person appointed in the terms of the trust or, if there is no such person or if the last such person no longer is willing and able to serve, by a person appointed by the Court of Chancery. A person who has an interest in the welfare of the animal or animals other than a general public interest may petition the Court of Chancery for an order that appoints a person to enforce the terms of the trust or to remove that person.

(d) Property of a trust authorized by this section may be applied only to its intended use. Upon the termination of the trust, any property of the trust remaining shall be distributed in accordance with the terms of the trust or, in the absence of such terms, as provided in § 3592 of this title.

(e) In the case of a trust created in accordance with subsection (a) of this section, a trustor or other owner of an animal for whose benefit the trust was created may transfer ownership of the animal to the trustee at or subsequent to the creation of the trust. Subject to

any contrary provision in the trust or other instrument by which ownership of the animal is given or bequeathed, if the person to whom ownership of the animal is given or bequeathed disclaims or releases such ownership, ownership of the animal shall pass to the trustee upon such disclaimer or release.

(f) The trustee of a trust created in accordance with subsection (a) of this section shall provide care for the benefit of the animal in accordance with the terms of the trust or, in the absence of any such terms, shall provide care that is reasonable under the circumstances. The trustee may employ agents or contractors to provide any such care and pay for such care from the assets of the trust.

(g) For purposes of this section, the term "animal" shall include any nonhuman member of the animal kingdom but shall exclude plants and inanimate objects.

(75 Del. Laws, c. 301, § 3; 76 Del. Laws, c. 254, § 11.)

§ 3556 Trust for other noncharitable purposes.

(a) In addition to the provisions of § 3555 of this title, a trust for a declared purpose that is not impossible of attainment is valid notwithstanding that the trust might not be deemed to be for charitable purposes.

(b) A trust authorized by subsection (a) of this section shall not be invalid because it lacks an identifiable person as beneficiary.

(c) A trust authorized by subsection (a) of this section may be enforced by a person appointed in the terms of the trust or, if there is no such person or if the last such person no longer is willing and able to serve, by a person appointed by the Court of Chancery. A person who has an interest in the declared purpose of the trust other than a general public interest may petition the Court of Chancery for an order that appoints a person to enforce the terms of the trust or to remove that person.

(d) Property of a trust authorized by this section may be applied only to its intended use. Upon the termination of the trust, any property of the trust remaining shall be distributed in accordance with the terms of the trust or, in the absence of such terms, as provided in § 3592 of this title.

(76 Del. Laws, c. 254, § 12.)

Subchapter V

Compensation of Trustees

§ 3560 Trustees entitled to compensation in accordance with instrument.

(a) Trustees under wills, trustees under inter vivos deeds of trust, both revocable and irrevocable, and successors to such trustees, are entitled to reasonable compensation for their services in accordance with the instrument creating the trust. Subject to other provisions of this subsection, if a trust instrument fixes the reasonable compensation of a trustee, the trustee is entitled to compensation as so determined. Upon proper showing, the Court of Chancery may fix or allow greater or lesser compensation than could be allowed under the terms of such trust in any of the following circumstances:

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

(2) Where the compensation in accordance with the terms of the trust would be unreasonably low or high;

(3) In extraordinary circumstances calling for equitable relief.

(b) An order under this section allowing greater or lesser compensation applies to such actions taken in the administration of a trust as the order shall specify.

(67 Del. Laws, c. 56, § 2.)

§ 3561 Reasonable compensation when trust instrument does not determine.

(a) As used in this section, the term "qualified trustee" means any person authorized by the law of this State or of the United States to act as a trustee whose activities are subject to supervision by the Bank Commissioner of the State, the Federal Deposit Insurance Corporation or the Comptroller of the Currency of the United States.

(b) Unless a trust instrument specifically provides that the trustee shall serve without compensation, when a trust instrument does not fix the compensation of the trustee, reasonable compensation shall be allowed. Subject to the provisions of § 3562 of this title, such compensation shall be determined as follows:

(1) For qualified trustees:

a. Each qualified trustee shall file with the Register in Chancery for every county in this State, a copy of a schedule or formula by which its allowance as compensation shall be computed. Such schedule or formula may be based upon or reflect the following factors:

1. The time spent or likely to be spent in administering a trust of the type contemplated;
2. The risks and responsibilities involved;
3. The novelty and difficulty of the tasks required of the trustee;
4. The skill and experience of the trustee;
5. Comparable charges for similar services;

6. The character of the trust assets;

7. The time constraints imposed upon the trustee in administering the trust;

b. Each qualified trustee shall provide a copy of its current trustee fee schedule or formula as filed upon any filing pursuant to paragraph (b)(1)a. of this section to the settlor of any revocable trust and to each current income beneficiary of every other trust from which it will seek to be allowed compensation to be calculated in accordance with such schedule or formula;

c. Each qualified trustee shall be allowed as reasonable compensation for services with respect to each trust from which it is entitled to compensation under this section, an amount determined by application of the schedule or formula so filed to trusts of that size and type.

(2) For other trustees, the Court of Chancery shall from time to time promulgate a rule fixing the method by which trustees other than qualified trustees may be allowed compensation for their services.

(3) There shall be no presumption that a fee schedule filed under paragraph (b)(1) of this section is any more or less reasonable than the schedule promulgated under paragraph (b)(2) of this section.

(67 Del. Laws, c. 56, § 2.)

§ 3562 Judicial review of trustees' allowances.

(a) The provisions of § 3561(b)(1)c. of this title notwithstanding, the settlor or any current income beneficiary of a trust, or any other person having an equitable interest in a trust from which a fee for trustee compensation is taken or is proposed to be taken pursuant to § 3561(b) of this title, who objects to a schedule or formula filed thereunder as being unreasonable, or who objects to the fee fixed by such schedule or formula as being unreasonable in the particular circumstances, may petition the Court of Chancery for judicial review of the reasonableness of the schedule or formula, or of its application, as the case may be.

(b) Upon the filing of any such petition, the Court of Chancery may appoint a disinterested third person to act as master to hear and determine the matters raised by such petition and any answer thereto. Proceedings before such master shall be in conformance with the Rules of the Court of Chancery. The final report of the master shall be in the form of findings of fact, conclusions of law and recommended decree, and shall be filed with the Register in Chancery. Findings of fact made by the master, if supported by substantial evidence, shall be conclusive. The Court of Chancery shall thereafter enter its decree determining the matter in issue. Costs of the proceeding, including the reasonable fee of the master, shall be assessed against the trust in question if the petition is denied in its entirety and shall be assessed against the trustee in its individual capacity if it is granted in whole. In other instances, costs shall be apportioned equitably.

(67 Del. Laws, c. 56, § 2.)

Subchapter VI

Qualified Dispositions in Trust

§ 3570 Definitions [For application of this section, see 79 Del. Laws, c. 198, § 2]

As used in this subchapter:

(1) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

(2) "Creditor" means, with respect to a transferor, a person who has a claim.

(3) "Debt" means liability on a claim.

(4) "Disposition" means a transfer, conveyance or assignment of property (including a change in the legal ownership of property occurring upon the substitution of 1 trustee for another or the addition of 1 or more new trustees), or the exercise of a power so as to cause a transfer of property, to a trustee or trustees, but shall not include the release or relinquishment of an interest in property that theretofore was the subject of a qualified disposition.

(5) "Person" has the meaning ascribed to it in § 302(15) of Title 1.

(6) "Property" includes real property, personal property, and interests in real or personal property.

(7) "Qualified disposition" means a disposition by or from a transferor (or multiple transferors in the case of property in which each such transferor owns an undivided interest) to 1 or more trustees, at least 1 of which is a qualified trustee, with or without consideration, by means of a trust instrument.

(8) "Qualified trustee" means a person who meets the requirements of the following paragraphs (8)a. and b. of this section:

a. In the case of a natural person, is a resident of this State other than the transferor or, in all other cases, is authorized by the law of this State to act as a trustee and whose activities are subject to supervision by the Bank Commissioner of the State, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, or the Office of Thrift Supervision or any successor thereto; and

b. Maintains or arranges for custody in this State of some or all of the property that is the subject of the qualified disposition, maintains records for the trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation of fiduciary income tax returns for the trust, or otherwise materially participates in the administration of the trust.

c. For purposes of this subchapter, neither the transferor nor any other natural person who is a nonresident of this State nor an entity that is not authorized by the law of this State to act as a trustee or whose activities are not subject to supervision as provided in paragraph (8)a. of this section shall be considered a qualified trustee; however, nothing in this subchapter shall preclude a transferor from appointing one or more advisers, including but not limited to:

1. Advisers who have authority under the terms of the trust instrument to remove and appoint qualified trustees or trust advisers;

2. Advisers who have authority under the terms of the trust instrument to direct, consent to or disapprove distributions from the trust; and

3. Advisers described in § 3313 of this title, whether or not such advisers would meet the requirements imposed by paragraphs a. and b. of this subsection.

For purposes of this subsection, the term "adviser" includes a trust "protector" or any other person who, in addition to a qualified trustee, holds 1 or more trust powers.

d. A person may serve as an investment adviser described in § 3313 of this title, notwithstanding that such person is the transferor of the qualified disposition, but such a person may not serve as trustee or otherwise serve as adviser of a trust that is a qualified disposition although such person may retain any of the powers and rights described in paragraph (11)b. of this section.

e. In the event that a qualified trustee of a trust ceases to meet the requirements of paragraph (8)a. of this section, and there remains no trustee that meets such requirements, such qualified trustee shall be deemed to have resigned as of the time of such cessation, and thereupon the successor qualified trustee provided for in the trust instrument shall become a qualified trustee of the trust, or in the absence of any successor qualified trustee provided for in the trust instrument, the Court of Chancery shall, upon application of any interested party, appoint a successor qualified trustee.

f. In the case of a disposition to more than 1 trustee, a disposition that is otherwise a qualified disposition shall not be treated as other than a qualified disposition solely because not all of the trustees are qualified trustees.

(9) "Spouse" and "former spouse" means only persons to whom the transferor was married at, or before, the time the qualified disposition is made.

(10) "Transferor" means a person who, as an owner of property, as a holder of a power of appointment which authorizes the holder to appoint in favor of the holder, the holder's creditors, the holder's estate or the creditors of the holder's estate, or as a trustee, directly or indirectly makes a disposition or causes a disposition to be made.

(11) "Trust instrument" means an instrument appointing a qualified trustee or qualified trustees for the property that is the subject of a disposition, which instrument:

a. Expressly incorporates the law of this State to govern the validity, construction and administration of the trust;

b. Is irrevocable, but a trust instrument shall not be deemed revocable on account of its inclusion of 1 or more of the following:

1. A transferor's power to veto a distribution from the trust;

2. Except as otherwise provided in paragraph (11)b.9. or 10. of this section, a lifetime or testamentary power of appointment (other than a lifetime or testamentary power to appoint to the transferor, the transferor's creditors, the transferor's estate or the creditors of the transferor's estate) exercisable by will or other written instrument of the transferor;

3. The transferor's potential or actual receipt of income, including rights to such income retained in the trust instrument;

4. The transferor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust as such terms are defined in § 664 of the Internal Revenue Code of 1986 [26 U.S.C. § 664] and any successor provision thereto; and the transferor's right, at any time and from time to time by written instrument delivered to the trustee, to release such transferor's retained interest in such a trust, in whole or in part, in favor of a charitable organization that has or charitable organizations that have a succeeding beneficial interest in such trust;

5. The transferor's potential or actual receipt of income or principal from a grantor-retained annuity trust or grantor-retained unitrust as such terms are defined in § 2702 of the Internal Revenue Code of 1986 (26 U.S.C. § 2702) and any successor provision thereto or the transferor's receipt each year of a percentage (not to exceed 5 percent) specified in the governing instrument of the initial value of the trust assets (which may be described either as a percentage or a fixed amount) or their value determined from time to time pursuant to the governing instrument.

6. The transferor's potential or actual receipt or use of principal (including real property or tangible personal property) if such potential or actual receipt or use of principal would be the result of a trustee acting:

A. In such trustee's discretion;

B. Pursuant to a standard that governs the distribution of principal and does not confer upon the transferor a substantially unfettered right to the receipt or use of the principal; or

C. At the direction of an adviser described in paragraph (8)c. of this section who is acting: I. In such adviser's discretion; or II. Pursuant to a standard that governs the distribution of principal and does not confer upon the transferor a substantially unfettered right to the receipt of or use of principal;

For purposes of this paragraph, a trustee is presumed to have discretion with respect to the distribution of principal unless such discretion is expressly denied to such trustee by the terms of the trust instrument.

7. The transferor's right to remove a trustee or adviser and to appoint a new or additional trustee or adviser;

8. The transferor's possession and enjoyment of an interest in a qualified personal residence trust within the meaning of such term as described in Treasury Regulation § 25.2702-5(c) (26 C.F.R. 25.2702-5(c)) and any successor provision thereto or the transferor's possession and enjoyment of a qualified annuity interest within the meaning of such term as described in Treasury Regulation § 25.2702-5(c)(8) (26 C.F.R. 25.2702-5(c)(8)) and any successor provision thereto;

9. The transferor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on income of the trust if such potential or actual receipt of income or principal is pursuant to a provision in the trust instrument that expressly provides for the payment of such taxes and if such potential or actual receipt of income or principal would be the result of a qualified trustee's or qualified trustees' acting:

A. In such qualified trustee's or qualified trustees' discretion or pursuant to a mandatory direction in the trust instrument; or

B. Pursuant to the transferor's exercise of a lifetime power of appointment or at the direction of an adviser described in paragraph (8)c. of this section who is acting in such adviser's discretion; and

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

c. Provides that the interest of the transferor or other beneficiary in the trust property or the income therefrom may not be transferred, assigned, pledged or mortgaged, whether voluntarily or involuntarily, before the trustee or trustees actually distribute the property or income therefrom to the beneficiary, and such provision of the trust instrument shall be deemed to be a restriction on the transfer of the transferor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of § 541(c)(2) of the Bankruptcy Code (11 U.S.C. § 541(c)(2)) or any successor provision thereto.

d. [Repealed.]

A disposition by a trustee that is not a qualified trustee to a trustee that is a qualified trustee shall not be treated as other than a qualified disposition solely because the trust instrument fails to meet the requirements of paragraph (11)a. of this section. Distributions to pay income taxes made under a discretionary or mandatory provision included in a governing instrument pursuant to paragraph (11)b.3., paragraph (11)b.6., or paragraph (11)b.9. of this section may be made by direct payment to the taxing authorities.

(71 Del. Laws, c. 159, § 1; 71 Del. Laws, c. 343, §§ 1-5; 72 Del. Laws, c. 59, §§ 1, 2; 72 Del. Laws, c. 341, §§ 1-4; 73 Del. Laws, c. 378, §§ 1-3; 74 Del. Laws, c. 100, §§ 2, 4; 75 Del. Laws, c. 97, §§ 10-12; 75 Del. Laws, c. 301, § 6; 76 Del. Laws, c. 90, § 14; 76 Del. Laws, c. 254, §§ 13, 14; 77 Del. Laws, c. 98, § 20; 77 Del. Laws, c. 330, §§ 13-16; 78 Del. Laws, c. 117, § 11; 78 Del. Laws, c. 179, § 1; 79 Del. Laws, c. 198, § 1.)

§ 3571 Retained interests of transferor.

A qualified disposition shall be subject to § 3572 of this title notwithstanding a transferor's retention of any or all of the powers and rights described in § 3570(11)b. of this title and the transferor's service as investment adviser pursuant to § 3570(8)d. of this title. The transferor shall have only such powers and rights as are conferred by the trust instrument. Except as permitted by §§ 3570(8)d. and 3570(11)b. of this title, a transferor shall have no rights or authority with respect to the property that is the subject of a qualified disposition or the income therefrom, and any agreement or understanding purporting to grant or permit the retention of any greater rights or authority shall be void.

(71 Del. Laws, c. 159, § 1; 71 Del. Laws, c. 343, § 6; 72 Del. Laws, c. 59, § 2; 72 Del. Laws, c. 341, § 5.)

§ 3572 Avoidance of qualified dispositions.

(a) Notwithstanding any other provision of this Code, no action of any kind, including, without limitation, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity for an attachment or other provisional remedy against property that is the subject of a qualified disposition or for avoidance of a qualified disposition unless such action shall be brought pursuant to the provisions of § 1304 or § 1305 of Title 6 and, in the case of a creditor whose claim arose after a qualified disposition, unless the qualified disposition was made with actual intent to defraud such creditor. The Court of Chancery shall have exclusive jurisdiction over any action brought with respect to a qualified disposition.

(b) A creditor's claim under subsection (a) of this section shall be extinguished unless:

(1) The creditor's claim arose before the qualified disposition was made, and the action is brought within the limitations of § 1309 of Title 6 in effect on the later of the date of the qualified disposition or August 1, 2000; or

(2) Notwithstanding the provisions of § 1309 of Title 6, the creditor's claim arose concurrent with or subsequent to the qualified disposition and the action is brought within 4 years after the qualified disposition is made.

In any action described in subsection (a) of this section, the burden to prove the matter by clear and convincing evidence shall be upon the creditor.

(c) For purposes of this subchapter, a qualified disposition that is made by means of a disposition by a transferor who is a trustee shall be deemed to have been made as of the time (whether before, on or after July 1, 1997) the property that is the subject of the qualified

disposition was originally transferred to the transferor (or any predecessor trustee) making the qualified disposition in a form that meets the requirements of § 3570(11)b. and c. of this title. If a trustee of an existing trust proposes to make a qualified disposition pursuant to the provisions of this subsection (c) of this section but the trust would not conform to the requirements of § 3570(11)b.2. of this title as a result of the original transferor's nonconforming powers of appointment, then, upon the trustee's delivery to the qualified trustee of an irrevocable written election to have this subsection apply to the trust, the nonconforming powers of appointment shall be deemed modified to the extent necessary to conform with § 3570(11)b.2. of this title. For purposes of this subchapter, the irrevocable written election shall include a description of the original transferor's powers of appointment as modified together with the original transferor's written consent thereto, but no such consent of the original transferor shall be considered a disposition within the meaning of § 3570(4) of this title.

(d) Notwithstanding any law to the contrary, a creditor, including a creditor whose claim arose before or after a qualified disposition, or any other person shall have only such rights with respect to a qualified disposition as are provided in this section and §§ 3573 and 3574 of this title, and no such creditor nor any other person shall have any claim or cause of action against the trustee, or advisor described in § 3570(8)c. of this title, of a trust that is the subject of a qualified disposition, or against any person involved in the counseling, drafting, preparation, execution or funding of a trust that is the subject of a qualified disposition.

(e) Notwithstanding any other provision of law, no action of any kind, including, without limitation, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity against the trustee, or advisor described in § 3570(8)c. of this title, of a trust that is the subject of a qualified disposition, or against any person involved in the counseling, drafting, preparation, execution or funding of a trust that is the subject of a qualified disposition, if, as of the date such action is brought, an action by a creditor with respect to such qualified disposition would be barred under this section.

(f) In circumstances where more than 1 qualified disposition is made by means of the same trust instrument, then:

(1) The making of a subsequent qualified disposition shall be disregarded in determining whether a creditor's claim with respect to a prior qualified disposition is extinguished as provided in subsection (b) of this section; and

(2) Any distribution to a beneficiary shall be deemed to have been made from the latest such qualified disposition.

(g) If, in any action brought against a trustee of a trust that is the result of a qualified disposition, a court takes any action whereby such court declines to apply the law of this State in determining the validity, construction or administration of such trust, or the effect of a spendthrift provision thereof, such trustee shall immediately upon such court's action and without the further order of any court, cease in all respects to be trustee of such trust and a successor trustee shall thereupon succeed as trustee in accordance with the terms of the trust instrument or, if the trust instrument does not provide for a successor trustee and the trust would otherwise be without a trustee, the Court of Chancery, upon the application of any beneficiary of such trust, shall appoint a successor trustee upon such terms and conditions as it determines to be consistent with the purposes of such trust and this statute. Upon such trustee's ceasing to be trustee, such trustee shall have no power or authority other than to convey the trust property to the successor trustee named in the trust instrument or appointed by the Court of Chancery in accordance with this section.

(71 Del. Laws, c. 159, § 1; 71 Del. Laws, c. 343, § 7; 72 Del. Laws, c. 59, § 2; 72 Del. Laws, c. 195, § 1; 72 Del. Laws, c. 341, §§ 6-8; 73 Del. Laws, c. 378, § 4; 74 Del. Laws, c. 100, §§ 3, 5; 75 Del. Laws, c. 97, §§ 13, 14; 76 Del. Laws, c. 90, § 10.)

§ 3573 Limitations on qualified dispositions [For application of this section, see 79 Del. Laws, c. 198, § 2]

With respect to the limitations imposed by § 3572 of this title, those limitations on actions by creditors to avoid a qualified disposition shall not apply:

(1) To any person to whom the transferor is indebted on account of an agreement or order of court for the payment of support or alimony in favor of such transferor's spouse, former spouse or children, or for a division or distribution of property incident to a judicial proceeding with respect to a separation or divorce in favor of such transferor's spouse or former spouse, but only to the extent of such debt; or

(2) To any person who suffers death, personal injury or property damage on or before the date of a qualified disposition by a transferor, which death, personal injury or property damage is at any time determined to have been caused in whole or in part by the tortious act or omission of either such transferor or by another person for whom such transferor is or was vicariously liable but only to the extent of such claim against such transferor or other person for whom such transferor is or was vicariously liable.

Paragraph (1) of this section shall not apply to any claim for forced heirship, legitime or elective share.

(71 Del. Laws, c. 159, § 1; 71 Del. Laws, c. 254, § 36; 71 Del. Laws, c. 343, § 8; 72 Del. Laws, c. 341, § 9; 74 Del. Laws, c. 100, § 1; 75 Del. Laws, c. 97, § 15; 78 Del. Laws, c. 117, § 12; 79 Del. Laws, c. 198, § 1.)

§ 3574 Effect of avoidance of qualified dispositions [For application of this section, see 79 Del. Laws, c. 198, § 2]

(a) After making any payments from the trust required under subsection (b) of this section, a qualified disposition shall be avoided only to the extent necessary to satisfy the transferor's debt to the creditor at whose instance the disposition had been avoided, together with such costs, including attorneys' fees, as the court may allow.

(b) In the event any qualified disposition shall be avoided as provided in subsection (a) of this section, then:

(1) If the court is satisfied that a trustee has not acted in bad faith in accepting or administering the property that is the subject of the qualified disposition:

a. Such trustee shall have a first and paramount lien against the property that is the subject of the qualified disposition in an amount equal to the entire cost, including attorneys' fees, properly incurred by such trustee in the defense of the action or proceedings to avoid the qualified disposition;

b. The qualified disposition shall be avoided subject to the proper fees, costs, preexisting rights, claims and interests of such trustee (and of any predecessor trustee that has not acted in bad faith); and

c. For purposes of this paragraph (1) of this subsection, it shall be presumed that such trustee did not act in bad faith merely by accepting such property; and

(2) If the court is satisfied that a beneficiary of a trust has not acted in bad faith, the avoidance of the qualified disposition shall be subject to the right of such beneficiary to retain any distribution made prior to the creditor's commencement of an action to avoid the qualified disposition. For purposes of this subdivision, it shall be presumed that the beneficiary, including a beneficiary who is also a transferor of the trust, did not act in bad faith merely by creating the trust or by accepting a distribution made in accordance with the terms of the trust.

(c) A creditor shall have the burden of proving that a trustee or beneficiary acted in bad faith as required under subsection (b) of this section by clear and convincing evidence except that, in the case of a beneficiary who is also the transferor, the burden on the creditor shall be to prove that the transferor-beneficiary acted in bad faith by a preponderance of the evidence. The preceding sentence provides substantive not procedural rights under Delaware law.

(d) For purposes of this subchapter, attachment, garnishment, sequestration, or other legal or equitable process shall be permitted only in those circumstances permitted by the express terms of this subchapter.

(e) Notwithstanding any other provision of this subchapter, a creditor shall have no right against the interest of a beneficiary in a trust solely because such beneficiary has the right to authorize or direct the trustee to pay all or part of the trust property in satisfaction of estate or inheritance taxes imposed upon or with respect to the beneficiary's estate, or the debts of the beneficiary's estate, or the expenses of administering the beneficiary's estate unless such beneficiary actually directs the payment of such taxes, debts or expenses and then only to the extent of such direction.

(f) Where spouses make a qualified disposition of property to 1 or more trusts and, immediately before such qualified disposition, such property or any part thereof or any accumulation thereto was, pursuant to applicable law, owned by them as tenants by the entireties, in any action concerning whether a creditor of either or both spouses may recover the debt from the trust, upon avoidance of the qualified disposition, the sole remedy available to the creditor with respect to such trust property shall be an order directing the trustee to transfer the property to both spouses as tenants by the entireties.

(g) Subject to all of the foregoing provisions of this section, and except as otherwise expressly provided in subsection (f) of this section, upon avoidance of a qualified disposition to the extent permitted under subsection (a) of this section, the sole remedy available to the creditor shall be an order directing the trustee to transfer to the transferor such amount as is necessary to satisfy the transferor's debt to the creditor at whose instance the disposition has been avoided.

(71 Del. Laws, c. 159, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 343, § 9; 72 Del. Laws, c. 195, § 2; 75 Del. Laws, c. 97, § 16; 76 Del. Laws, c. 90, § 15; 77 Del. Laws, c. 330, § 17; 78 Del. Laws, c. 117, § 13; 79 Del. Laws, c. 198, § 1.)

§ 3575 Application of subchapter.

This subchapter shall apply to qualified dispositions and dispositions by transferors who are trustees made on or after July 1, 1997.

(71 Del. Laws, c. 159, § 1; 71 Del. Laws, c. 343, § 10.)

§ 3576 Short title.

This subchapter may be cited as the "Qualified Dispositions in Trust Act."

(71 Del. Laws, c. 159, § 1.)

Subchapter VII

Liability of Trustees and Rights of Persons Dealing With Trustee

§ 3580 Definition [For application of this section, see 79 Del. Laws, c. 172, § 6; 79 Del. Laws, c. 352, § 6]

In this subchapter, the term "trustee" includes fiduciaries and other persons exercising, or directing the exercise of, trust powers.

(72 Del. Laws, c. 388, § 7; 79 Del. Laws, c. 172, § 3; 79 Del. Laws, c. 352, § 4.)

§ 3581 Breach of trust; equitable remedies.

(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 order any equitable remedy, including:

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

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

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

(4) Ordering a trustee to account;

(5) Appointing a special fiduciary to take possession of the trust property and administer the trust;

(6) Suspending or removing the trustee;

(7) Reducing or denying compensation to the trustee;

(8) Subject to § 3590 of this title, voiding an act of the trustee, imposing a lien or a constructive trust on trust property or tracing trust property wrongfully disposed of and recover the property or its proceeds; or

(9) Granting any other appropriate relief.

(72 Del. Laws, c. 388, § 7; 73 Del. Laws, c. 409, § 4.)

§ 3582 Damages against trustee for breach of trust.

A beneficiary may charge a trustee who commits a breach of trust with:

(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;

(2) The profit that the trustee made by reason of the breach; or

(3) Such other relief as may be fashioned by the court.

(72 Del. Laws, c. 388, § 7.)

§ 3583 Liability of trustee in absence of breach.

(a) Except to the extent a trustee realizes a profit from conduct expressly permitted by law or the terms of the trust, a trustee is accountable to a 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 the failure to make a profit.

(72 Del. Laws, c. 388, § 7; 77 Del. Laws, c. 330, § 18.)

§ 3584 Attorneys' fees and costs.

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

(72 Del. Laws, c. 388, § 7.)

§ 3585 Limitation of action against trustee following trustee's report.

(a) A beneficiary may initiate a proceeding against a trustee for breach of trust until the first to occur of:

(1) Two years after the date the beneficiary was sent a report that adequately disclosed the facts constituting a claim; or

(2) The date the proceeding was otherwise precluded by adjudication, release, consent or limitation.

(b) A report adequately discloses the facts constituting a claim if it provides sufficient information so that the beneficiary knows of the claim or reasonably should have inquired into its existence.

(c) For the purpose of subsection (a) of this section, a beneficiary is deemed to have been sent a report if:

(1) In the case of a beneficiary having capacity, it is sent to the beneficiary; or

(2) In the case of a beneficiary who under § 3547 of this title may be represented and bound by another person, it is sent to the other person.

(d) If subsection (a) of this section does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within 5 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.

(e) This section does not preclude an action to recover for fraud or misrepresentation related to the report.

(72 Del. Laws, c. 388, § 7; 76 Del. Laws, c. 254, § 15.)

§ 3586 Reliance on trust instrument.

A trustee who acted in good faith reliance on the terms of a written trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

(72 Del. Laws, c. 388, § 7.)

§ 3587 Events affecting administration or distribution.

Whenever the happening of an event, including marriage, divorce, performance of education 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.

(72 Del. Laws, c. 388, § 7.)

§ 3588 Beneficiary's consent, release, or ratification.

Whether or not the consent, release, or ratification is supported by consideration, a beneficiary may not hold a trustee liable for a 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:

a. The beneficiary's rights; or

b. Material facts the trustee knew or should have known with the exercise of reasonable inquiry.

(72 Del. Laws, c. 388, § 7; 75 Del. Laws, c. 300, § 4; 78 Del. Laws, c. 117, § 14.)

§ 3589 Limitation on personal liability of trustee.

Repealed by 73 Del. Laws, c. 409, § 3, effective July 10, 2002.

§ 3590 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 another person knowing that the other person is 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 for value and in good faith 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) The protection provided by this section to persons assisting or dealing with a trustee is superseded by comparable protective provisions of other laws relating to commercial transactions or to the transfer of securities by fiduciaries.

(72 Del. Laws, c. 388, § 7; 73 Del. Laws, c. 409, § 3.)

§ 3591 Certification of trust.

(a) Instead of providing a person other than a beneficiary with a copy of the trust instrument, a trustee may provide the person with a certification of trust containing statements concerning, but not limited to, the following matters:

(1) The existence of the trust and the date of execution of the trust instrument;

(2) The identity of the trustor or trustors and of the currently acting trustee or trustees of the trust;

(3) The powers of the trustee;

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

(5) The authority of co-trustees to sign and whether all or less than all are required to sign in order to exercise powers of the trustee;

(6) The trust's taxpayer identification number; and

(7) The manner in which title to trust property may be taken.

(b) A certification of trust must be in the form of an acknowledged writing and may be signed by any trustee.

(c) A certification of trust must contain a statement 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 provide copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction.

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

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

(h) A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages, including attorney's fees, if the court determines that the person did not act in good faith in requesting 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.

(72 Del. Laws, c. 388, § 7; 73 Del. Laws, c. 409, § 3.)

§ 3592 Failure of trust to dispose of all assets [For application of this section, see 79 Del. Laws, c. 198, § 2]

In the event that the terms of an inter vivos trust do not effectively dispose of a portion of or all of the principal and income of such inter vivos trust:

(1) If such failure occurs simultaneously with the death of the trustor, the trust principal not effectively disposed of shall be treated as though it were an additional part of the trustor's estate, and shall be disposed of in accordance with the provisions of the trustor's will, or if the trustor has no valid will, then the provisions of § 501 et seq. of this title shall govern the disposition of such principal; provided, however, that if any disposition to the trust would be treated as a qualified disposition, within the meaning of § 3570(7) of this title, if paragraph (2) of this section, rather than this paragraph (1), were applicable to the trust, then the principal of the trust shall be disposed of in accordance with paragraph (2) of this section.

(2) If such failure occurs at any time other than simultaneously with the death of the trustor, the trust income and principal not effectively disposed of shall be distributed as though the trustor had died on the date on which such failure occurred, a resident of the state of Delaware, owning the property so distributable, as though the provisions of § 501 et seq. of this title applied, but provided that if the provisions of § 502(2) or (3) of this title would apply for purposes of determining the share of a surviving spouse, the share of such surviving spouse shall be half of the personal property of the trust plus a life estate in the real estate of the trust.

(75 Del. Laws, c. 299, § 1; 76 Del. Laws, c. 90, § 17; 79 Del. Laws, c. 198, § 1.)

§ 3593 Interest on pecuniary gifts in trust [For application of this section, see 79 Del. Laws, c. 172, § 6]

Except where circumstances justify a longer period, pecuniary gifts from an inter vivos trust which are payable as of the death of the trustor or another person, shall bear interest at the rate of 4 percent per annum payable from the trust beginning 13 months after such death, or, if there is a change of trustee as a result of such death, 13 months after the trustee first takes office as trustee following such death, until payment, unless a contrary intent is indicated by the governing instrument.

(75 Del. Laws, c. 299, § 2; 79 Del. Laws, c. 172, § 3.)

§ 3594 Legacy to creditor of trustor.

A gift to a beneficiary of an inter vivos trust which is made effective as of the death of the trustor shall not be deemed to be in satisfaction of a debt due from the trustor to the donee, unless the intention of the trustor that it shall be so accepted shall appear in the trust expressly or by manifest implication.

(75 Del. Laws, c. 299, § 3.)

§ 3595 Abatement of gifts in trust.

(a) Except as provided in subsection (b) of this section, shares of distributees of an inter vivos trust, who are entitled to distributions from the trust as of the date of the death of the trustor, abate, with personal property to be abated prior to real property within each class, in the following order:

(1) Property owned by the trust not disposed of by the trust instrument.

(2) Residuary gifts under the trust instrument.

(3) General gifts under the trust instrument.

(4) Specific gifts under the trust instrument.

For purposes of abatement, a general gift charged on any specific property or fund is a specific gift to the extent of the value of the property on which it is charged, and upon the failure or insufficiency of the property on which it is charged, a general gift to the extent of the failure or insufficiency. Abatement within each classification is in proportion to the amounts of property that each of the beneficiaries would have received if full distribution of the property had been made in accordance with the terms of the trust instrument.

(b) If the trust instrument expresses an order of abatement, or if the overall plan of distribution at the trustor's death or the express or implied purpose of the gift would be defeated by the order of abatement stated in subsection (a) of this section, the shares of the distributees abate as may be found necessary to give effect to the intention of the trustor.

(c) If the subject of a preferred gift is sold or used incident to administration of the trust, abatement shall be achieved by appropriate adjustments in, or contributions from, other interests in the remaining assets.

(75 Del. Laws, c. 299, § 4.)

Part V
Fiduciary Relations
Chapter 38
TREATMENT OF DELAWARE STATUTORY TRUSTS
Subchapter I
Domestic Statutory Trusts

§ 3801 Definitions.

(a) "Beneficial owner" means any owner of a beneficial interest in a statutory trust, the fact of ownership to be determined and evidenced (whether by means of registration, the issuance of certificates or otherwise) in conformity to the applicable provisions of the governing instrument of the statutory trust.

(b) "Foreign statutory trust" means a business trust or statutory trust formed under the laws of any state or under the laws of any foreign country or other foreign jurisdiction and denominated as such under the laws of such state or foreign country or other foreign jurisdiction.

(c) "Governing instrument" means any written instrument (whether referred to as a trust agreement, declaration of trust or otherwise) which creates a statutory trust or provides for the governance of the affairs of the statutory trust and the conduct of its business. A governing instrument:

(1) May provide that a person shall become a beneficial owner or a trustee if such person (or, in the case of a beneficial owner, a representative authorized by such person orally, in writing or by other action such as payment for a beneficial interest) complies with the conditions for becoming a beneficial owner or a trustee set forth in the governing instrument or any other writing and, in the case of a beneficial owner, acquires a beneficial interest;

(2) May consist of 1 or more agreements, instruments or other writings and may include or incorporate bylaws containing provisions relating to the business of the statutory trust, the conduct of its affairs and its rights or powers or the rights or powers of its trustees, beneficial owners, agents or employees; and

(3) May contain any provision that is not inconsistent with law or with the information contained in the certificate of trust.

A statutory trust is not required to execute its governing instrument. A statutory trust is bound by its governing instrument whether or not the statutory trust executes the governing instrument. A beneficial owner or a trustee is bound by the governing instrument whether or not such beneficial owner or trustee executes the governing instrument. A governing instrument is not subject to any statute of frauds (including § 2714 of Title 6).

(d) "Independent trustee" means, solely with respect to a statutory trust that is registered as an investment company under the Investment Company Act of 1940, as amended (15 U.S.C. § 80a-1 et seq.), or any successor statute thereto (the "1940 Act"), any trustee who is not an "interested person" (as such term is defined below) of the statutory trust; provided that the receipt of compensation for service as an independent trustee of the statutory trust and also for service as an independent trustee of 1 or more other investment companies managed by a single investment adviser (or an "affiliated person" (as such term is defined below) of such investment adviser) shall not affect the status of a trustee as an independent trustee under this chapter. An independent trustee as defined hereunder shall be deemed to be independent and disinterested for all purposes. For purposes of this definition, the terms "affiliated person" and "interested person" have the meanings set forth in the 1940 Act or any rule adopted thereunder.

(e) "Other business entity" means a corporation, a partnership (whether general or limited), a limited liability company, a common-law trust, a foreign statutory trust or any other unincorporated business or entity, excluding a statutory trust.

(f) "Person" means a natural person, partnership (whether general or limited), limited liability company, trust, (including a common law trust, business trust, statutory trust, voting trust or any other form of trust) estate, association (including any group, organization, co-tenancy, plan, board, council or committee), corporation, government (including a country, state, county or any other governmental subdivision, agency or instrumentality), custodian, nominee or any other individual or entity (or series thereof) in its own or any representative capacity, in each case, whether domestic or foreign, and a statutory trust or foreign statutory trust.

(g) "Statutory trust" means an unincorporated association which:

(1) Is created by a governing instrument under which property is or will be held, managed, administered, controlled, invested, reinvested and/or operated, or business or professional activities for profit are carried on or will be carried on, by a trustee or trustees or as otherwise provided in the governing instrument for the benefit of such person or persons as are or may become beneficial owners or as otherwise provided in the governing instrument, including but not limited to a trust of the type known at common law as a "business trust," or "Massachusetts trust," or a trust qualifying as a real estate investment trust under § 856 et seq. of the United States Internal Revenue Code of 1986 [26 U.S.C. § 856 et seq.], as amended, or under any successor provision, or a trust qualifying as a real estate mortgage investment conduit under § 860D of the United States Internal Revenue Code of 1986 [26 U.S.C. § 860D], as amended, or under any successor provision; and

(2) Files a certificate of trust pursuant to § 3810 of this title.

Any such association heretofore or hereafter organized shall be a statutory trust and a separate legal entity. The term "statutory trust" shall be deemed to include each trust formed under this chapter prior to September 1, 2002, as a "business trust" (as such term was then defined in this subsection). A statutory trust may be organized to carry on any lawful business or activity, whether or not conducted for profit, and/or for any of the purposes referred to in paragraph (g)(1) of this section (including, without limitation, for the purpose of holding or otherwise taking title to property, whether in an active or custodial capacity). Unless otherwise provided in a governing instrument, a statutory trust has the power and authority to grant, hold or exercise a power of attorney, including an irrevocable power of attorney. Neither use of the designation "business trust" nor a statement in a certificate of trust or governing instrument executed prior to September 1, 2002, to the effect that the trust formed thereby is or will qualify as a Delaware business trust within the meaning of or pursuant to this chapter, shall create a presumption or an inference that the trust so formed is a "business trust" for purposes of Title 11 of the United States Code.

(h) "Trustee" means the person or persons appointed as a trustee in accordance with the governing instrument of a statutory trust, and may include the beneficial owners or any of them.

(66 Del. Laws, c. 279, § 1; 67 Del. Laws, c. 297, §§ 3, 9, 16; 68 Del. Laws, c. 106, § 1; 68 Del. Laws, c. 404, §§ 2, 3; 70 Del. Laws, c. 548, §§ 1, 2; 71 Del. Laws, c. 335, § 1; 72 Del. Laws, c. 387, §§ 1-3; 73 Del. Laws, c. 328, §§ 1, 2, 3, 4, 5; 73 Del. Laws, c. 329, §§ 1, 2; 75 Del. Laws, c. 418, §§ 1-3; 77 Del. Laws, c. 403, §§ 1, 2; 78 Del. Laws, c. 280, §§ 1, 2.)

§ 3802 Contributions by beneficial owners.

(a) A contribution of a beneficial owner to the statutory trust may be in cash, property or services rendered, or a promissory note or other obligation to contribute cash or property or to perform services; provided however, that a person may become a beneficial owner of a statutory trust and may receive a beneficial interest in a statutory trust without making a contribution or being obligated to make a contribution to the statutory trust.

(b) Except as provided in the governing instrument, a beneficial owner is obligated to the statutory trust to perform any promise to contribute cash, property or to perform services, even if the beneficial owner is unable to perform because of death, disability or any other reason. If a beneficial owner does not make the required contribution of property or services, the beneficial owner is obligated at the option of the statutory trust to contribute cash equal to that portion of the agreed value (as stated in the records of the statutory trust) of the contribution that has not been made. The foregoing option shall be in addition to, and not in lieu of, any other rights, including the right to specific performance, that the statutory trust may have against such beneficial owner under the governing instrument of applicable law.

(c) A governing instrument may provide that the interest of any beneficial owner who fails to make any contribution that the beneficial owner is obligated to make shall be subject to specific penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting beneficial owner's proportionate interest in the statutory trust, subordinating the beneficial interest to that of nondefaulting beneficial owners, a forced sale of the beneficial interest, forfeiture of the beneficial interest, the lending by other beneficial owners of the amount necessary to meet the beneficiary's commitment, a fixing of the value of the defaulting beneficial owner's beneficial interest by appraisal or by formula and redemption or sale of the beneficial interest at such value, or any other penalty or consequence.

(68 Del. Laws, c. 404, § 4; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 329, § 1.)

§ 3803 Liability of beneficial owners and trustees.

(a) Except to the extent otherwise provided in the governing instrument of the statutory trust, the beneficial owners shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the general corporation law of the State.

(b) Except to the extent otherwise provided in the governing instrument of a statutory trust, a trustee, when acting in such capacity, shall not be personally liable to any person other than the statutory trust or a beneficial owner for any act, omission or obligation of the statutory trust or any trustee thereof.

(c) Except to the extent otherwise provided in the governing instrument of a statutory trust, an officer, employee, manager or other person acting pursuant to § 3806(b)(7) of this title, when acting in such capacity, shall not be personally liable to any person other than the statutory trust or a beneficial owner for any act, omission or obligation of the statutory trust or any trustee thereof.

(d) No obligation of a beneficial owner or trustee of a statutory trust to the statutory trust, or to a beneficial owner or trustee of the statutory trust, arising under the governing instrument or a separate agreement in writing, and no note, instrument or other writing evidencing any such obligation of a beneficial owner or trustee, shall be subject to the defense of usury, and no beneficial owner or trustee shall interpose the defense of usury with respect to any such obligation in any action.

(66 Del. Laws, c. 279, § 1; 67 Del. Laws, c. 297, §§ 1, 2; 68 Del. Laws, c. 404, § 5; 69 Del. Laws, c. 265, § 1; 70 Del. Laws, c. 548, § 3; 73 Del. Laws, c. 329, § 1; 79 Del. Laws, c. 355, § 1.)

§ 3804 Legal proceedings.

(a) A statutory trust may sue and be sued, and service of process upon 1 of the trustees shall be sufficient. In furtherance of the foregoing, a statutory trust may be sued for debts and other obligations or liabilities contracted or incurred by the trustees or other authorized persons, or by the duly authorized agents of such trustees or other authorized persons, in the performance of their respective duties under the

governing instrument of the statutory trust. The property of a statutory trust shall be subject to attachment and execution as if it were a corporation, subject to § 3502 of Title 10. Notwithstanding the foregoing provisions of this § 3804, in the event that the governing instrument of a statutory trust, including a statutory trust which is a registered investment company under the Investment Company Act of 1940, as amended (15 U.S.C. § 80a-1 et seq.), creates 1 or more series as provided in § 3806(b)(2) of this title, and if separate and distinct records are maintained for any such series and the assets associated with any such series are held in such separate and distinct records (directly or indirectly, including through a nominee or otherwise) and accounted for in such separate and distinct records separately from the other assets of the statutory trust, or any other series thereof, and if the governing instrument so provides, and notice of the limitation on liabilities of a series as referenced in this sentence is set forth in the certificate of trust of the statutory trust, then the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to a particular series shall be enforceable against the assets of such series only, and not against the assets of the statutory trust generally or any other series thereof, and, unless otherwise provided in the governing instrument, none of the debts, liabilities, obligations and expenses incurred, contracted for otherwise existing with respect to the statutory trust generally or any other series thereof shall be enforceable against the assets of such series.

(b) A trustee of a statutory trust may be served with process in the manner prescribed in subsection (c) of this section in all civil actions or proceedings brought in the State involving or relating to the activities of the statutory trust or a violation by a trustee of a duty to the statutory trust, or any beneficial owner, whether or not the trustee is a trustee at the time suit is commenced. Every resident or nonresident of the State who accepts election or appointment or serves as a trustee of a statutory trust shall, by such acceptance or service, be deemed thereby to have consented to the appointment of the Delaware trustee or registered agent of such statutory trust required by § 3807 of this title (or, if there is none, the Secretary of State) as such person's agent upon whom service of process may be made as provided in this section. Such acceptance or service shall signify the consent of such trustee that any process when so served shall be of the same legal force and validity as if served upon such trustee within the State and such appointment of such Delaware trustee or registered agent (or, if there is none, the Secretary of State) shall be irrevocable.

(c) Service of process shall be effected by serving the Delaware trustee or registered agent of such statutory trust required by § 3807 of this title (or, if there is none, the Secretary of State) with 1 copy of such process in the manner provided by law for service of writs of summons. In the event service is made under this subsection upon the Secretary of State, the plaintiff shall pay to the Secretary of State the sum of $50 for the use of the State, which sum shall be taxed as part of the costs of the proceeding if the plaintiff shall prevail therein. In addition, the Prothonotary or the Register in Chancery of the court in which the civil action or proceeding is pending shall, within 7 days of such service, deposit in the United States mails, by registered mail, postage prepaid, true and attested copies of the process, together with a statement that service is being made pursuant to this section, addressed to the defendant at the defendant's address last known to and furnished by the party desiring to make such service.

(d) In any action in which any such trustee has been served with process as hereinafter provided, the time in which a defendant shall be required to appear and file a responsive pleading shall be computed from the date of mailing by the Prothonotary or the Register in Chancery as provided in subsection (c) of this section; provided however, the court in which such action has been commenced may order such continuance or continuances as may be necessary to afford such trustee reasonable opportunity to defend the action.

(e) In the governing instrument of the statutory trust or other writing, a trustee or beneficial owner or other person may consent to be subject to the nonexclusive jurisdiction of the courts of, or arbitration in, a specified jurisdiction, or the exclusive jurisdiction of the courts of the State, or the exclusivity of arbitration in a specified jurisdiction or the State, and to be served with legal process in the manner prescribed in such governing instrument of the statutory trust or other writing. Except by agreeing to arbitrate any arbitrable matter in a specified jurisdiction or in the State, a beneficial owner who is not a trustee may not waive its right to maintain a legal action or proceeding in the courts of the State with respect to matters relating to the organization or internal affairs of a statutory trust.

(f) Nothing herein contained limits or affects the right to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

(g) The Court of Chancery and the Superior Court may make all necessary rules respecting the form of process, the manner of issuance and return thereof and such other rules which may be necessary to implement this section and are not inconsistent with this section. The Court of Chancery shall have jurisdiction over statutory trusts to the same extent as it has jurisdiction over common law trusts formed under the laws of the State.

(h) [Repealed.]

(66 Del. Laws, c. 279, § 1; 67 Del. Laws, c. 297, § 18; 68 Del. Laws, c. 106, § 2; 68 Del. Laws, c. 404, § 6; 69 Del. Laws, c. 265, § 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 548, § 4; 71 Del. Laws, c. 335, §§ 2, 3; 73 Del. Laws, c. 328, § 6; 73 Del. Laws, c. 329, § 1; 74 Del. Laws, c. 353, § 1; 75 Del. Laws, c. 418, § 4; 78 Del. Laws, c. 280, § 3.)

§ 3805 Rights of beneficial owners and trustees in trust property.

(a) Except to the extent otherwise provided in the governing instrument of the statutory trust, a beneficial owner shall have an undivided beneficial interest in the property of the statutory trust and shall share in the profits and losses of the statutory trust in the proportion (expressed as a percentage) of the entire undivided beneficial interest in the statutory trust owned by such beneficial owner. The governing instrument of a statutory trust may provide that the statutory trust or the trustees, acting for and on behalf of the statutory trust, shall be deemed to hold beneficial ownership of any income earned on securities of the statutory trust issued by any business entities formed, organized, or existing under the laws of any jurisdiction, including the laws of any foreign country.

(b) No creditor of the beneficial owner shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the statutory trust.

(c) A beneficial owner's beneficial interest in the statutory trust is personal property notwithstanding the nature of the property of the trust. Except to the extent otherwise provided in the governing instrument of a statutory trust, a beneficial owner has no interest in specific statutory trust property.

(d) A beneficial owner's beneficial interest in the statutory trust is freely transferable except to the extent otherwise provided in the governing instrument of the statutory trust.

(e) Except to the extent otherwise provided in the governing instrument of a statutory trust, at the time a beneficial owner becomes entitled to receive a distribution, the beneficial owner has the status of, and is entitled to all remedies available to, a creditor of the statutory trust with respect to the distribution. A governing instrument may provide for the establishment of record dates with respect to allocations and distributions by a statutory trust.

(f) Except to the extent otherwise provided in the governing instrument of the statutory trust, legal title to the property of the statutory trust or any part thereof may be held in the name of any trustee of the statutory trust, in its capacity as such, with the same effect as if such property were held in the name of the statutory trust.

(g) No creditor of the trustee shall have any right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the statutory trust with respect to any claim against, or obligation of, such trustee in its individual capacity and not related to the statutory trust.

(h) Except to the extent otherwise provided in the governing instrument of the statutory trust, where the statutory trust is a registered investment company under the Investment Company Act of 1940, as amended (15 U.S.C. § 80a-1 et seq.), any class, group or series of beneficial interests established by the governing instrument with respect to such statutory trust shall be a class, group or series preferred as to distribution of assets or payment of dividends over all other classes, groups or series in respect to assets specifically allocated to the class, group or series as contemplated by § 18 (or any amendment or successor provision) of the Investment Company Act of 1940 [15 U.S.C. § 80a-18], as amended, and any regulations issued thereunder, provided that this section is not intended to affect in any respect the provisions of § 3804(a) of this title.

(i) Unless otherwise provided in the governing instrument of a statutory trust or another agreement, a beneficial owner shall have no preemptive right to subscribe to any additional issue of beneficial interests or another interest in a statutory trust.

(66 Del. Laws, c. 279, § 1; 67 Del. Laws, c. 297, §§ 6, 10, 17; 68 Del. Laws, c. 404, §§ 7, 8; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 387, § 4; 73 Del. Laws, c. 328, §§ 7, 8; 73 Del. Laws, c. 329, § 1.)

§ 3806 Management of statutory trust.

(a) Except to the extent otherwise provided in the governing instrument of a statutory trust, the business and affairs of a statutory trust shall be managed by or under the direction of its trustees. To the extent provided in the governing instrument of a statutory trust, any person (including a beneficial owner) shall be entitled to direct the trustees or other persons in the management of the statutory trust. Except to the extent otherwise provided in the governing instrument of a statutory trust, neither the power to give direction to a trustee or other persons nor the exercise thereof by any person (including a beneficial owner) shall cause such person to be a trustee. To the extent provided in the governing instrument of a statutory trust, neither the power to give direction to a trustee or other persons nor the exercise thereof by any person (including a beneficial owner) shall cause such person to have duties (including fiduciary duties) or liabilities relating thereto to the statutory trust or to a beneficial owner thereof.

(b) A governing instrument may contain any provision relating to the management of the business and affairs of the statutory trust, and the rights, duties and obligations of the trustees, beneficial owners and other persons, which is not contrary to any provision or requirement of this subchapter and, without limitation:

(1) May provide for classes, groups or series of trustees or beneficial owners, or classes, groups or series of beneficial interests, having such relative rights, powers and duties as the governing instrument may provide, and may make provision for the future creation in the manner provided in the governing instrument of additional classes, groups or series of trustees, beneficial owners or beneficial interests, having such relative rights, powers and duties as may from time to time be established, including rights, powers and duties senior or subordinate to existing classes, groups or series of trustees, beneficial owners or beneficial interests;

(2) May establish or provide for the establishment of designated series of trustees, beneficial owners, assets or beneficial interests having separate rights, powers or duties with respect to specified property or obligations of the statutory trust or profits and losses associated with specified property or obligations, and, to the extent provided in the governing instrument, any such series may have a separate business purpose or investment objective;

(3) May provide for the taking of any action, including the amendment of the governing instrument, the accomplishment of a merger, conversion or consolidation, the appointment of one or more trustees, the sale, lease, exchange, transfer, pledge or other disposition of all or any part of the assets of the statutory trust or the assets of any series, or the dissolution of the statutory trust, or may provide for the taking of any action to create under the provisions of the governing instrument a class, group or series of beneficial interests that was not previously outstanding, in any such case without the vote or approval of any particular trustee or beneficial owner, or class, group or series of trustees or beneficial owners;

(4) May grant to (or withhold from) all or certain trustees or beneficial owners, or a specified class, group or series of trustees or beneficial owners, the right to vote, separately or with any or all other classes, groups or series of the trustees or beneficial owners, on any matter, such voting being on a per capita, number, financial interest, class, group, series or any other basis;

(5) May, if and to the extent that voting rights are granted under the governing instrument, set forth provisions relating to notice of the time, place or purpose of any meeting at which any matter is to be voted on, waiver of any such notice, action by consent without a meeting, the establishment of record dates, quorum requirements, voting in person, by proxy or in any other manner, or any other matter with respect to the exercise of any such right to vote;

(6) May provide for the present or future creation of more than 1 statutory trust, including the creation of a future statutory trust to which all or any part of the assets, liabilities, profits or losses of any existing statutory trust will be transferred, and for the conversion of beneficial interests in an existing statutory trust, or series thereof, into beneficial interests in the separate statutory trust, or series thereof;

(7) May provide for the appointment, election or engagement, either as agents or independent contractors of the statutory trust or as delegatees of the trustees, of officers, employees, managers or other persons who may manage the business and affairs of the statutory trust and may have such titles and such relative rights, powers and duties as the governing instrument shall provide. Except to the extent otherwise provided in the governing instrument of a statutory trust, the trustees shall choose and supervise such officers, managers, employees and other persons;

(8) May provide rights to any person, including a person who is not a party to the governing instrument, to the extent set forth therein;

(9) May provide for the manner in which it may be amended, including by requiring the approval of a person who is not a party to the governing instrument or the satisfaction of conditions, and to the extent the governing instrument provides for the manner in which it may be amended such governing instrument may be amended only in that manner or as otherwise permitted by law, including as permitted by § 3815(f) of this title (provided that the approval of any person may be waived by such person and that any such conditions may be waived by all persons for whose benefit such conditions were intended). Unless otherwise provided in a governing instrument, a supermajority amendment provision shall only apply to provisions of the governing instrument that are expressly included in the governing instrument. As used in this section, "supermajority amendment provision" means any amendment provision set forth in a governing instrument requiring that an amendment to a provision of the governing instrument be adopted by no less than the vote or consent required to take action under such latter provision. If a governing instrument does not provide for the manner in which it may be amended, the governing instrument may be amended with the approval of all of the beneficial owners and trustees or as otherwise permitted by law, including as permitted by § 3815(f) of this title; or

(10) May provide for specific trustees, a certain number of trustees or a threshold percentage of trustees required to vote in favor of any action in order for such action to be considered approved by the trustees; except that, if the governing instrument is silent as to the specific trustees, number of trustees or threshold percentage of trustees so required, then unless otherwise provided in this chapter or in the governing instrument, the vote of a majority of the trustees (or, in the event that such action requires the approval of a particular class, group, or series of trustees, then a majority of such class, group, or series) shall be sufficient to approve such action.

(c) To the extent that, at law or in equity, a trustee or beneficial owner or other person has duties (including fiduciary duties) to a statutory trust or to another trustee or beneficial owner or to another person that is a party to or is otherwise bound by a governing instrument, the trustee's or beneficial owner's or other person's duties may be expanded or restricted or eliminated by provisions in the governing instrument; provided, that the governing instrument may not eliminate the implied contractual covenant of good faith and fair dealing.

(d) Unless otherwise provided in a governing instrument, a trustee or beneficial owner or other person shall not be liable to a statutory trust or to another trustee or beneficial owner or to another person that is a party to or is otherwise bound by a governing instrument for breach of fiduciary duty for the trustee's or beneficial owner's or other person's good faith reliance on the provisions of the governing instrument.

(e) A governing instrument may provide for the limitation or elimination of any and all liabilities for breach of contract and breach of duties (including fiduciary duties) of a trustee, beneficial owner or other person to a statutory trust or to another trustee or beneficial owner or to another person that is a party to or is otherwise bound by a governing instrument; provided, that a governing instrument may not limit or eliminate liability for any act or omission that constitutes a bad faith violation of the implied contractual covenant of good faith and fair dealing.

(f) Unless otherwise provided in the governing instrument of a statutory trust, meetings of beneficial owners may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting. Unless otherwise provided in the governing instrument of a statutory trust, on any matter that is to be voted on by the beneficial owners:

(1) The beneficial owners may take such action without a meeting, without a prior notice and without a vote if consented to, in writing, or by electronic transmission by beneficial owners having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all interests in the statutory trust entitled to vote thereon were present and voted; and

(2) The beneficial owners may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission; or as otherwise permitted by applicable law.

Unless otherwise provided in a governing instrument, a consent transmitted by electronic transmission by a beneficial owner or by a person or persons authorized to act for a beneficial owner shall be deemed to be written and signed for purposes of this subsection. For purposes of this subsection, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process. Unless otherwise provided in a governing instrument, if a person (whether or not then a beneficial owner) consenting as a beneficial owner to any matter provides that such consent will be effective at a future time (including a time determined upon the happening of an event), then such person shall be deemed to have consented as a beneficial owner at such future time so long as such person is then a beneficial owner.

(g) Unless otherwise provided in the governing instrument of a statutory trust, meetings of trustees may be held by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at the meeting. Unless otherwise provided in the governing instrument of a statutory trust, on any matter that is to be voted on by the trustees:

(1) The trustees may take such action without a meeting, without a prior notice and without a vote if consented to, in writing, or by electronic transmission, by trustees having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all trustees entitled to vote thereon were present and voted; and

(2) The trustee may vote in person or by proxy, and such proxy may be granted in writing, by means of electronic transmission, or as otherwise permitted by applicable law.

Unless otherwise provided in a governing instrument, a consent transmitted by electronic transmission by a trustee or by a person or persons authorized to act for a trustee shall be deemed to be written and signed for purposes of this subsection. For purposes of this subsection, the term "electronic transmission" means any form of communication not directly involving the physical transmission of paper that creates a record that may be retained, retrieved and reviewed by a recipient thereof and that may be directly reproduced in paper form by such a recipient through an automated process. Unless otherwise provided in a governing instrument, if a person (whether or not then a trustee) consenting as a trustee to any matter provides that such consent will be effective at a future time (including a time determined upon the happening of an event), then such person shall be deemed to have consented as a trustee at such future time so long as such person is then a trustee.

(h) Except to the extent otherwise provided in the governing instrument of a statutory trust, a beneficial owner, trustee, officer, employee or manager may lend money to, borrow money from, act as a surety, guarantor or endorser for, guarantee or assume 1 or more obligations of, provide collateral for, and transact other business with a statutory trust and, subject to other applicable law, has the same rights and obligations with respect to any such matter as a person who is not a beneficial owner, trustee, officer, employee or manager.

(i) Except to the extent otherwise provided in the governing instrument of a statutory trust, a trustee of a statutory trust has the power and authority to delegate to 1 or more other persons the trustee's rights and powers to manage and control the business and affairs of the statutory trust, including to delegate to agents, officers and employees of the trustee or the statutory trust, and to delegate by management agreement or other agreement with, or otherwise to, other persons. Except to the extent otherwise provided in the governing instrument of a statutory trust, such delegation by a trustee of a statutory trust shall not cause the trustee to cease to be a trustee of the statutory trust or cause the person to whom any such rights and powers have been delegated to be a trustee of the statutory trust.

(j) The governing instrument of a statutory trust may provide that:

(1) A beneficial owner who fails to perform in accordance with, or to comply with the terms and conditions of, the governing instrument shall be subject to specified penalties or specified consequences;

(2) At the time or upon the happening of events specified in the governing instrument, a beneficial owner shall be subject to specified penalties or specified consequences; and

(3) The specified penalties or specified consequences under paragraphs (j)(1) and (j)(2) of this section may include and take the form of any penalty or consequence set forth in § 3802(c) of this title.

(k) A trustee, beneficial owner or an officer, employee, manager or other person designated in accordance with paragraph (b)(7) of this section shall be fully protected in relying in good faith upon the records of the statutory trust and upon information, opinions, reports or statements presented by another trustee, beneficial owner or officer, employee, manager or other person designated in accordance with paragraph (b)(7) of this section, or by any other person as to matters the trustee, beneficial owner or officer, employee, manager or other person designated in accordance with paragraph (b)(7) of this section reasonably believes are within such other person's professional or expert competence, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits or losses of the statutory trust, or the value and amount of assets or reserves or contracts, agreements or other undertakings that would be sufficient to pay claims and obligations of the statutory trust or to make reasonable provision to pay such claims and obligations, or any other facts pertinent to the existence and amount of assets from which distributions to beneficial owners or creditors might properly be paid.

(66 Del. Laws, c. 279, § 1; 67 Del. Laws, c. 297, § 4; 68 Del. Laws, c. 404, § 9; 69 Del. Laws, c. 265, §§ 3-5; 71 Del. Laws, c. 335, § 5; 72 Del. Laws, c. 387, § 5; 73 Del. Laws, c. 328, §§ 9-12; 73 Del. Laws, c. 329, § 1; 74 Del. Laws, c. 353, §§ 2-4; 75 Del. Laws, c. 418, §§ 5-10; 77 Del. Laws, c. 403, §§ 3, 4; 78 Del. Laws, c. 280, §§ 4-6; 79 Del. Laws, c. 355, §§ 2-4.)

§ 3807 Trustee in State; registered agent.

(a) Every statutory trust shall at all times have at least 1 trustee which, in the case of a natural person, shall be a person who is a resident of this State or which, in all other cases, has its principal place of business in this State.

(b) Notwithstanding the provisions of subsection (a) of this section, if a statutory trust is, becomes, or will become prior to or within 180 days following the first issuance of beneficial interests, a registered investment company under the Investment Company Act of 1940, as amended (15 U.S.C. § 80a-1 et seq.), such statutory trust shall not be required to have a trustee who is a resident of this State or who has a principal place of business in this State if notice that the statutory trust is or will become an investment company as referenced in this sentence is set forth in the certificate of trust of the statutory trust and if and for so long as such statutory trust shall have and maintain in this State:

(1) A registered office, which may but need not be a place of business in this State; and

(2) A registered agent for service of process on the statutory trust, which agent may be either an individual resident in this State whose business office is identical with such statutory trust's registered office, or a domestic corporation, limited partnership, limited liability company or statutory trust, or a foreign corporation, limited partnership, limited liability company or statutory trust authorized to transact business in this State, having a business office identical with such registered office.

(c) Any statutory trust maintaining a registered office and registered agent in this State under subsection (b) of this section may change the location of its registered office in this State to any other place in this State, or may change the registered agent to any other person or corporation (meeting the requirements contained in subsection (b) of this section), by filing an amendment to its certificate of trust in accordance with the applicable provisions of this subchapter. If a statutory trust which is an investment company registered as aforesaid maintains a registered office and a registered agent in this State as herein provided, then the reference in § 3810(a)(1)b. of this title to the "name and address in this State of at least 1 of the trustees meeting the requirements of § 3807 of this title" shall be deemed a reference to the name and address in this State of the registered agent and registered office maintained under this section, and the certificate of trust filed under § 3810 of this title shall reflect such information in lieu of the information otherwise required by § 3810(a)(1)b. of this title.

(d) Service of process upon a registered agent maintained by a statutory trust pursuant to subsection (b) of this section shall be as effective as if served upon one of the trustees of the statutory trust pursuant to § 3804 of this title.

(e) A trustee or registered agent of a statutory trust whose address, as set forth in a certificate of trust pursuant to § 3810(a)(1)b. of this title, has changed may change such address in the certificates of trust of all statutory trusts for which such trustee or registered agent is appointed to another address in the State by paying a fee as set forth in § 3813(a)(5) of this title and filing with the Secretary of State a certificate, executed by such trustee or registered agent, setting forth the address of such trustee or registered agent before it was changed, and further certifying as to the new address of such trustee or registered agent for each of the statutory trusts for which it is trustee or registered agent. Upon the filing of such certificate, the Secretary of State shall furnish to the trustee or registered agent a certified copy of the same under the Secretary's hand and seal of office, and thereafter, or until further change of address, as authorized by law, the address of such trustee or registered agent in the State for each of the statutory trusts for which it is trustee or registered agent shall be located at the new address of the trustee or registered agent thereof as given in the certificate. A trustee or registered agent of a statutory trust whose name, as set forth in a certificate of trust pursuant to § 3810(a)(1)b. of this title, has changed may change such name in the certificates of trust of all statutory trusts for which such trustee or registered agent is appointed to its new name by paying a fee as set forth in § 3813(a)(5) of this title and filing with the Secretary of State a certificate, executed by such trustee or registered agent, setting forth the name of such trustee or registered agent before it was changed and further certifying as to the new name of such trustee or registered agent for each of the statutory trusts for which it is a trustee or registered agent. Upon the filing of such certificate and payment of such fee, the Secretary of State shall furnish to the trustee or registered agent a certified copy of the certificate under the Secretary's hand and seal of office. A change of name of any person acting as a trustee or registered agent of a statutory trust as a result of a merger or consolidation of the trustee or registered agent with another person who succeeds to its assets and liabilities by operation of law shall be deemed a change of name for purposes of this section. Filing a certificate under this section shall be deemed to be an amendment of the certificate of trust of each statutory trust affected thereby, and no further action with respect thereto to amend its certificate of trust under § 3810 of this title shall be required. Any trustee or registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each statutory trust affected thereby.

(f) The registered agent of 1 or more statutory trusts may resign and appoint a successor registered agent by paying a fee as set forth in § 3813(a)(5) of this title and filing a certificate with the Secretary of State stating that it resigns and providing the name and address of the successor registered agent. There shall be attached to such certificate a statement of each affected statutory trust ratifying and approving such change of registered agent. Upon such filing, or upon the future effective date or time of such certificate if it is not to be effective upon filing, the successor registered agent shall become the registered agent of such statutory trusts as have ratified and approved such succession, and the successor registered agent's address, as stated in such certificate, shall become the address of each such statutory trust's registered office in the State of Delaware. The Secretary of State shall then issue a certificate that the successor registered agent has become the registered agent of the statutory trusts so ratifying and approving such change and setting out the names of such statutory trusts. Filing of such certificate of resignation shall be deemed to be an amendment to the certificate of trust of each statutory trust affected thereby, and no further action with respect thereto to amend its certificate of trust under § 3810 of this title shall be required.

(g) The registered agent of 1 or more statutory trusts may resign without appointing a successor registered agent by paying a fee as set forth in § 3813(a)(5) of this title and filing a certificate of resignation with the Secretary of State, but such resignation shall not become effective until 30 days after the certificate is filed. The certificate shall contain a statement that written notice of resignation was given to each affected statutory trust at least 30 days prior to the filing of the certificate by mailing or delivering such notice to each statutory trust

at its address last known to the registered agent and shall set forth the date of such notice. After receipt of the notice of the resignation of its registered agent, each statutory trust for which such registered agent was maintaining a registered office and registered agent in this State under subsection (b) of this section shall obtain and designate a new registered agent, to take the place of the registered agent so resigning, or shall appoint a trustee meeting the requirements of subsection (a) of this section. After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against each statutory trust for which the resigned registered agent had been acting shall thereafter be upon the Secretary of State in accordance with § 3804 of this title.

(h) As contained in any certificate of trust, application for registration as a foreign statutory trust, or other document filed in the office of the Secretary of State under this chapter, the address of a trustee and a registered agent or registered office shall include the street, number, city and postal code.

(66 Del. Laws, c. 279, § 1; 67 Del. Laws, c. 297, § 5; 68 Del. Laws, c. 106, § 3; 68 Del. Laws, c. 404, § 10; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 335, § 6; 72 Del. Laws, c. 387, § 6; 73 Del. Laws, c. 328, § 13; 73 Del. Laws, c. 329, § 1; 75 Del. Laws, c. 418, § 11; 78 Del. Laws, c. 114, § 1; 79 Del. Laws, c. 355, § 5.)

§ 3808 Existence of statutory trust.

(a) Except to the extent otherwise provided in the governing instrument of the statutory trust, a statutory trust shall have perpetual existence, and a statutory trust may not be terminated or revoked by a beneficial owner or other person except in accordance with the terms of its governing instrument.

(b) Except to the extent otherwise provided in the governing instrument of a statutory trust, the death, incapacity, dissolution, termination or bankruptcy of a beneficial owner or a trustee shall not result in the termination or dissolution of a statutory trust.

(c) In the event that a statutory trust does not have perpetual existence, a statutory trust is dissolved and its affairs shall be wound up at the time or upon the happening of events specified in the governing instrument. Notwithstanding the happening of events specified in the governing instrument, the statutory trust shall not be dissolved and its affairs shall not be wound up if, prior to the filing of a certificate of cancellation as provided in § 3810 of this title, the statutory trust is continued, effective as of the happening of such event, pursuant to the affirmative vote or written consent of all remaining beneficial owners of the statutory trust (and any other person whose approval is required under the governing instrument to revoke a dissolution pursuant to this section), provided, however, if the dissolution was caused by a vote or written consent, the dissolution shall not be revoked unless each beneficial owner and other person (or their respective personal representatives) who voted in favor of, or consented to, the dissolution has voted or consented in writing to continue the statutory trust.

(d) Upon dissolution of a statutory trust and until the filing of a certificate of cancellation as provided in § 3810 of this title, the persons who, under the governing instrument of the statutory trust, are responsible for winding up the statutory trust's affairs may, in the name of and for and on behalf of the statutory trust, prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the statutory trust business, dispose of and convey the statutory trust property, discharge or make reasonable provision for the statutory trust liabilities and distribute to the beneficial owners any remaining assets of the statutory trust.

(e) A statutory trust which has dissolved shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional or unmatured claims and obligations, known to the statutory trust and all claims and obligations which are known to the statutory trust but for which the identity of the claimant is unknown and claims and obligations that have not been made known to the statutory trust or that have not arisen but that, based on the facts known to the statutory trust, are likely to arise or to become known to the statutory trust within 10 years after the date of dissolution. If there are sufficient assets, such claims and obligations shall be paid in full and any such provision for payment shall be made in full. If there are insufficient assets, such claims and obligations shall be paid or provided for according to their priority and, among claims and obligations of equal priority, ratably to the extent of assets available therefor. Unless otherwise provided in the governing instrument of a statutory trust, any remaining assets shall be distributed to the beneficial owners. Any person, including any trustee, who under the governing instrument of the statutory trust is responsible for winding up a statutory trust's affairs who has complied with this subsection shall not be personally liable to the claimants of the dissolved statutory trust by reason of such person's actions in winding up the statutory trust.

(f) Except to the extent otherwise provided in the governing instrument of the statutory trust, a series established in accordance with § 3804(a) of this title may be dissolved and its affairs wound up without causing the dissolution of the statutory trust or any other series thereof. Unless otherwise provided in the governing instrument of the statutory trust, the dissolution, winding up, liquidation or termination of the statutory trust or any series thereof shall not affect the limitation of liability with respect to a series established in accordance with § 3804(a) of this title. A series established in accordance with § 3804(a) of this title is dissolved and its affairs shall be wound up at the time or upon the happening of events specified in the governing instrument of the statutory trust. Except to the extent otherwise provided in the governing instrument of a statutory trust, the death, incapacity, dissolution, termination or bankruptcy of a beneficial owner or a trustee of such series shall not result in the termination or dissolution of such series and such series may not be terminated or revoked by a beneficial owner of such series or other person except in accordance with the terms of the governing instrument of the statutory trust.

(g) Upon dissolution of a series of a statutory trust, the persons who under the governing instrument of the statutory trust are responsible for winding up such series" affairs may, in the name of the statutory trust and for and on behalf of the statutory trust and such series, take all actions with respect to the series as are permitted under subsection (d) of this section and shall provide for the claims and obligations

of the series and distribute the assets of the series as provided under subsection (e) of this section. Any person, including any trustee, who under the governing instrument is responsible for winding up such series" affairs who has complied with subsection (e) of this section shall not be personally liable to the claimants of the dissolved series by reason of such person's actions in winding up the series.

(66 Del. Laws, c. 279, § 1; 67 Del. Laws, c. 297, § 7; 69 Del. Laws, c. 265, § 6; 70 Del. Laws, c. 548, § 5; 71 Del. Laws, c. 335, § 7; 73 Del. Laws, c. 329, § 1; 75 Del. Laws, c. 418, §§ 12, 13; 77 Del. Laws, c. 403, § 5; 78 Del. Laws, c. 280, § 7.)

§ 3809 Applicability of trust law.

Except to the extent otherwise provided in the governing instrument of a statutory trust or in this subchapter, the laws of this State pertaining to trusts are hereby made applicable to statutory trusts; provided however, that for purposes of any tax imposed by this State or any instrumentality, agency or political subdivision of this State a statutory trust shall be classified as a corporation, an association, a partnership, a trust or otherwise, as shall be determined under the United States Internal Revenue Code of 1986 [26 U.S. Code § 1 et seq.], as amended, or under any successor provision.

(66 Del. Laws, c. 279, § 1; 67 Del. Laws, c. 297, § 11; 70 Del. Laws, c. 548, § 7; 73 Del. Laws, c. 329, § 1.)

§ 3810 Certificate of trust; amendment; restatement; cancellation.

(a)(1) Every statutory trust shall file a certificate of trust in the office of the Secretary of State. The certificate of trust shall set forth:

a. The name of the statutory trust;

b. The name and address in this State of at least 1 of the trustees meeting the requirements of § 3807 of this title;

c. The future effective date or time (which shall be a date or time certain) of effectiveness of the certificate if it is not to be effective upon the filing of the certificate; and

d. Any other information the trustees determine to include therein.

(2) A statutory trust is formed at the time of the filing of the initial certificate of trust in the office of the Secretary of State or at any later date or time specified in the certificate of trust if, in either case, there has been substantial compliance with the requirements of this section. A statutory trust formed under this chapter shall be a separate legal entity, the existence of which as a separate legal entity shall continue until cancellation of the statutory trust's certificate of trust.

(3) The filing of a certificate of trust in the office of the Secretary of State shall make it unnecessary to file any other documents under Chapter 31 of Title 6.

(b)(1) A certificate of trust may be amended by filing a certificate of amendment thereto in the office of the Secretary of State. The certificate of amendment shall set forth:

a. The name of the statutory trust;

b. The amendment to the certificate; and

c. The future effective date or time (which shall be a date or time certain) of effectiveness of the certificate if it is not to be effective upon the filing of the certificate.

(2) Except to the extent otherwise provided in the certificate of trust or in the governing instrument of a statutory trust, a certificate of trust may be amended at any time for any purpose as the trustees may determine. A trustee who becomes aware that any statement in a certificate of trust was false when made or that any matter described has changed making the certificate false in any material respect shall promptly file a certificate of amendment.

(c)(1) A certificate of trust may be restated by integrating into a single instrument all of the provisions of the certificate of trust which are then in effect and operative as a result of there having been theretofore filed 1 or more certificates of amendment pursuant to subsection (b) of this section, and the certificate of trust may be amended or further amended by the filing of a restated certificate of trust. The restated certificate of trust shall be specifically designated as such in its heading and shall set forth:

a. The present name of the statutory trust, and if it has been changed, the name under which the statutory trust was originally formed;

b. The date of filing of the original certificate of trust with the Secretary of State;

c. The information required to be included pursuant to subsection (a) of this section; and

d. Any other information the trustees determine to include therein.

(2) A certificate of trust may be restated at any time for any purpose as the trustees may determine. A trustee who becomes aware that any statement in a restated certificate of trust was false when made or that any matter described has changed making the restated certificate false in any material respect shall promptly file a certificate of amendment or a restated certificate of trust.

(d) A certificate of trust shall be cancelled upon the dissolution and the completion of winding up of a statutory trust, or upon the filing of a certificate of merger or consolidation if the statutory trust is not the surviving or resulting entity in a merger or consolidation, or upon the future effective date or time of a certificate of merger or consolidation if the trust is not the surviving or resulting entity in a merger or consolidation, or upon the filing of a certificate of transfer, or upon the future effective date or time of a certificate of transfer, or upon the filing of a certificate of conversion to non-Delaware other business entity or upon the future effective date or time of a certificate of conversion to non-Delaware entity. A certificate of cancellation shall be filed in the office of the Secretary of State and set forth:

(1) The name of the statutory trust;

(2) The date of filing of its certificate of trust;

(3) The future effective date or time (which shall be a date or time certain) of cancellation if it is not to be effective upon the filing of the certificate; and

(4) Any other information the trustee determines to include therein.

A certificate of cancellation that is filed in the office of the Secretary of State prior to the dissolution or the completion of winding up of a statutory trust may be corrected as an erroneously executed certificate of cancellation by filing with the office of the Secretary of State a certificate of correction of such certificate of cancellation in accordance with subsection (e) of this section. The Secretary of State shall not issue a certificate of good standing with respect to a statutory trust if its certificate of trust is cancelled.

(e) Whenever any certificate authorized to be filed with the office of the Secretary of State under this subchapter has been so filed and is an inaccurate record of the action therein referred to or was defectively or erroneously executed, such certificate may be corrected by filing with the office of the Secretary of State a certificate of correction of such certificate. The certificate of correction shall specify the inaccuracy or defect to be corrected, shall set forth the portion of the certificate in corrected form and shall be executed and filed as required by this subchapter. The certificate of correction shall be effective as of the date the original certificate was filed, except as to those persons who are substantially and adversely affected by the correction, and as to those persons the certificate of correction shall be effective from the filing date. In lieu of filing a certificate of correction, the certificate may be corrected by filing with the office of the Secretary of State a corrected certificate which shall be executed and filed in accordance with this subchapter. The corrected certificate shall be specifically designated as such in its heading, shall specify the inaccuracy or defect to be corrected and shall set forth the entire certificate in corrected form. The corrected certificate shall be effective as of the date the original certificate was filed, except as to those persons who are substantially and adversely affected by the corrections, and as to those persons the corrected certificate shall be effective from the filing date.

(f) If any certificate filed in accordance with this subchapter provides for a future effective date or time and if the transaction is terminated or amended to change the future effective date or time prior to the future effective date or time, the certificate shall be terminated or amended by the filing, prior to the future effective date or time set forth in such original certificate, of a certificate of termination or amendment of the original certificate, executed and filed in accordance with this subchapter, which shall identify the original certificate which has been terminated or amended and shall state that the original certificate has been terminated or amended.

(g) When the certificate of trust of any statutory trust formed under this chapter shall be cancelled by the filing of a certificate of cancellation pursuant to this section, the Court of Chancery, on application of any creditor, beneficial owner or trustee of the statutory trust, or any other person who shows good cause therefor, at any time, may either appoint 1 or more persons to be trustees, or appoint 1 or more persons to be receivers, of and for the statutory trust, to take charge of the statutory trust's property, and to collect the debts and property due and belonging to the statutory trust, with the power to prosecute and defend, in the name of the statutory trust, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by the statutory trust, if in being, that may be necessary for the final settlement of the unfinished business of the statutory trust. The powers of the trustees or receivers may be continued as long as the Court of Chancery shall think necessary for the purposes aforesaid.

(66 Del. Laws, c. 279, § 1; 67 Del. Laws, c. 297, § 12; 69 Del. Laws, c. 265, §§ 7, 8; 70 Del. Laws, c. 548, §§ 6, 8, 9; 73 Del. Laws, c. 329, § 1; 74 Del. Laws, c. 353, § 5; 75 Del. Laws, c. 418, § 14; 77 Del. Laws, c. 403, §§ 6-8; 78 Del. Laws, c. 280, §§ 8, 9.)

§ 3811 Execution.

(a) Each certificate required by this subchapter to be filed in the office of the Secretary of State shall be executed in the following manner:

(1) A certificate of trust must be signed by all of the trustees;

(2) A certificate of amendment, a certificate of correction, a corrected certificate, a certificate of termination or amendment, and a restated certificate of trust must be signed by at least one of the trustees;

(3) A certificate of cancellation must be signed by all of the trustees or as otherwise provided in the governing instrument of the statutory trust; and

(4) If a statutory trust is filing a certificate of merger or consolidation, certificate of conversion, certificate of transfer, certificate of transfer and continuance, certificate of statutory trust domestication or certificate of termination or amendment to any such certificate, the certificate of merger or consolidation, certificate of conversion, certificate of transfer, certificate of transfer and continuance, certificate of statutory trust domestication or certificate of termination or amendment to any such certificate must be signed by all of the trustees or as otherwise provided in the governing instrument of the statutory trust, or if the certificate of merger or consolidation, certificate of conversion, certificate of statutory trust domestication or certificate of termination or amendment to any such certificate is being filed by an other business entity or non-United States entity (as such term is defined in § 3822 of this title thereof), the certificate of merger or consolidation, certificate of conversion, certificate of statutory trust domestication or certificate of termination or amendment to any such certificate must be signed by a person authorized to execute the certificate on behalf of the other business entity or non-United States entity (as such term is defined in § 3822 of this title hereof).

(b) Unless otherwise provided in the governing instrument, any person may sign any certificate or amendment thereof or enter into a governing instrument or amendment thereof by any agent, including any attorney-in-fact. An authorization, including a power of attorney, to sign any certificate or amendment thereof or to enter into a governing instrument or amendment thereof need not be in writing, need not be sworn to, verified or acknowledged and need not be filed in the office of the Secretary of State, but if in writing, must be retained by the statutory trust or a trustee or other person authorized to manage the business and affairs of the statutory trust.

(c) The execution of a certificate by a trustee, or other person authorized pursuant to subsection (a) of this section above, constitutes an oath or affirmation, under the penalties of perjury in the third degree, that, to the best of the trustee's, or other person authorized pursuant to subsection (a) of this section above, knowledge and belief, the facts stated therein are true.

(d) For all purposes of the laws of the State of Delaware, a power of attorney with respect to matters relating to the organization, internal affairs or termination of a statutory trust or granted by a person as a beneficial owner or by a person seeking to become a beneficial owner shall be irrevocable if it states that it is irrevocable and it is coupled with an interest sufficient in law to support an irrevocable power. Such irrevocable power of attorney, unless otherwise provided therein, shall not be affected by subsequent death, disability, incapacity, dissolution, termination of existence or bankruptcy of, or any other event concerning, the principal. A power of attorney with respect to matters relating to the organization, internal affairs or termination of a statutory trust or granted by a person as a beneficial owner or by a person seeking to become a beneficial owner and, in either case, granted to the statutory trust, a trustee or beneficial owner thereof, or any of their respective officers, directors, managers, members, partners, trustees, employees or agents shall be deemed coupled with an interest sufficient in law to support an irrevocable power.

(66 Del. Laws, c. 279, § 1; 67 Del. Laws, c. 297, § 13; 70 Del. Laws, c. 548, §§ 10-12; 71 Del. Laws, c. 335, § 8; 73 Del. Laws, c. 329, § 1; 74 Del. Laws, c. 353, §§ 6-8; 77 Del. Laws, c. 403, §§ 9, 10; 78 Del. Laws, c. 280, §§ 10, 11.)

§ 3812 Filing of certificate.

(a) Any certificate authorized to be filed with the office of the Secretary of State under this subchapter (or any judicial decree of amendment or cancellation) shall be delivered to the office of the Secretary of State for filing. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of the person's authority as a prerequisite to filing. Unless the Secretary of State finds that any certificate does not conform to law, upon receipt of all filing fees required by law the Secretary of State shall:

(1) Certify that the certificate (or any judicial decree of amendment or cancellation) has been filed in the Secretary of State's office by endorsing upon the filed certificate (or judicial decree) the word "filed," and the date and hour of the filing. This endorsement is conclusive of the date and time of its filing in the absence of actual fraud;

(2) File and index the endorsed certificate (or judicial decree);

(3) Prepare and return to the person who filed it or the person's representative a copy of the filed certificate (or judicial decree), similarly endorsed, and shall certify such copy as a true copy of the filed certificate (or judicial decree); and

(4) Enter such information from the certificate as the Secretary of State deems appropriate into the Delaware Corporation Information System or any system which is a successor thereto in the office of the Secretary of State, and such information shall be permanently maintained as a public record. A copy of each certificate shall be permanently maintained on optical disk or by other suitable medium.

(b) Notwithstanding any other provision of this chapter, any certificate filed in the office of the Secretary of State under this chapter shall be effective at the time of its filing with the Secretary of State or at any later date or time (not later than a time on the one hundred and eightieth day after the date of its filing if such date of filing is on or after January 1, 2012) specified in the certificate. Upon the effective time of a certificate of amendment (or judicial decree of amendment), certificate of correction, corrected certificate, or restated certificate, the certificate of trust shall be amended or restated as set forth therein. Upon the effective time of a certificate of cancellation (or a judicial decree thereof) or a certificate of merger or consolidation which acts as a certificate of cancellation or a certificate of transfer or a certificate of conversion to a non-Delaware entity, as provided for therein, the certificate of trust shall be canceled. Upon the effective time of a certificate of termination or amendment, the original certificate identified in the certificate of termination or amendment shall be terminated or amended, as the case may be.

(c) A fee as set forth in § 3813(a)(2) of this title shall be paid at the time of the filing of a certificate of trust, a certificate of amendment, a certificate of correction, a corrected certificate, a certificate of termination or amendment, a certificate of cancellation, a certificate of merger or consolidation, a certificate of conversion, a certificate of transfer, a certificate of transfer and continuance, a certificate of statutory trust domestication or a restated certificate.

(d) A fee as set forth in § 3813(a)(3) of this title shall be paid for a certified copy of any certificate on file as provided for by this subchapter and a fee as set forth in § 3813(a)(4) of this title shall be paid for each page copied.

(e) Any signature on any certificate authorized to be filed with the Secretary of State under any provision of this subchapter may be a facsimile, a conformed signature or an electronically transmitted signature. Any such certificate may be filed by telecopy, fax or similar electronic transmission; provided, however, that the Secretary of State shall have no obligation to accept such filing if such certificate is illegible or otherwise unsuitable for processing.

(f) The fact that a certificate of trust is on file in the office of the Secretary of State is notice that the entity formed in connection with the filing of the certificate of trust is a statutory trust formed under the laws of the State and is notice of all other facts set forth therein which are required to be set forth in a certificate of trust by § 3810(a)(1) of this title and is notice of the limitation on liability of a series of a statutory trust which is permitted to be set forth in a certificate of trust by § 3804(a) of this title.

(g) Notwithstanding any other provision of this chapter, it shall not be necessary for any statutory trust or foreign statutory trust to amend its certificate of trust, its application for registration as a foreign statutory trust, or any other document that has been filed in the office of the Secretary of State prior to August 1, 2011, to comply with § 3807(h) of this title; notwithstanding the foregoing, any certificate or other document filed under this chapter on or after August 1, 2011, and changing the address of a trustee or registered agent or registered office shall comply with § 3807(h) of this title.

(66 Del. Laws, c. 279, § 1; 67 Del. Laws, c. 297, § 14; 68 Del. Laws, c. 404, § 11; 70 Del Laws, c. 186, § 1; 70 Del. Laws, c. 548, § 13; 73 Del. Laws, c. 328, § 14; 73 Del. Laws, c. 329, § 1; 74 Del. Laws, c. 353, §§ 9, 10; 78 Del. Laws, c. 114, §§ 2, 3.)

§ 3813 Fees.

(a) No documents required to be filed under this subchapter shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to and collected by the Secretary of State for the use of this State:

(1) Upon the receipt for filing of an application for reservation of name, and application for renewal of reservation, or notice of transfer or cancellation of reservation pursuant to § 3814 of this title, a fee in the amount of $75.

(2) Upon the receipt for filing of a certificate of trust, a certificate of amendment, a certificate of cancellation or a certificate of merger or consolidation, a certificate of correction, a corrected certificate, a certificate of conversion, a certificate of transfer, a certificate of transfer and continuance, a certificate of statutory trust domestication, a certificate of termination or amendment or a restated certificate, a fee in the amount of up to $300.

(3) For certifying copies of any paper on file as provided for by this subchapter, a fee in the amount of $50 for each copy certified.

(4) For issuing further copies of instruments on file, whether certified or not, a fee in the amount of $10 for the first page and $2 for each additional page.

(5) Upon the receipt for filing of a certificate under § 3807(e) of this title, a fee in the amount of $200, upon the receipt for filing of a certificate under § 3807(f) of this title, a fee in the amount of $200, and upon the receipt for filing of a certificate under § 3807(g) of this title, a fee in the amount of $2.00 for each statutory trust whose registered agent has resigned by such certificate.

(6) For issuing any certificate of the Secretary of State, including but not limited to a certificate of good standing, other than a certification of a copy under paragraph (a)(3) of this section, a fee in the amount of $50, except that for issuing any certificate of the Secretary of State that recites all of a statutory trust's filings with the Secretary of State, a fee of $175 shall be paid for each such certificate.

(b) In addition to those fees charged under subsection (a) of this section, there shall be collected by and paid to the Secretary of State the following:

(1) For all services described in subsection (a) of this section that are requested to be completed within 30 minutes on the same day as the day of the request, an additional sum of up to $7,500 and for all services described in subsection (a) of this section that are requested to completed within 1 hour on the same day as the day of the request, an additional sum of up to $1,000 and for all services described in subsection (a) of this section that are requested to be completed within 2 hours on the same day as the day of the request, an additional sum of up to $500; and

(2) For all services described in subsection (a) of this section that are requested to be completed within the same day as the day of the request, an additional sum of up to $300; and

(3) For all services described in subsection (a) of this section that are requested to be completed within a 24-hour period from the time of the request, an additional sum of up to $150.

The Secretary of State shall establish (and may from time to time alter or amend) a schedule of specific fees payable pursuant to this subsection.

(c) Except as provided by this section, all other fees for the Secretary of State shall be as provided for in § 2315 of Title 29.

(66 Del. Laws, c. 279, § 1; 67 Del. Laws, c. 297, § 15; 68 Del. Laws, c. 246, § 6; 70 Del. Laws, c. 548, § 14; 72 Del. Laws, c. 387, § 7; 74 Del. Laws, c. 52, §§ 32-37; 74 Del. Laws, c. 353, § 11; 75 Del. Laws, c. 218, § 2; 77 Del. Laws, c. 78, §§ 59-64; 78 Del. Laws, c. 114, § 4.)

§ 3814 Use of names regulated.

(a) The name of each statutory trust as set forth in its certificate of trust must be such as to distinguish it upon the records of the office of the Secretary of State from the name of any corporation, partnership, limited partnership, statutory trust or limited liability company reserved, registered, formed or organized under the laws of this State or qualified to do business or registered as a foreign corporation, foreign partnership, foreign limited partnership, foreign statutory trust or foreign limited liability company in this State; provided however, that a statutory trust may register under any name which is not such as to distinguish it upon the records of the office of the Secretary of State from the name of any domestic or foreign corporation, partnership, limited partnership, or foreign statutory trust or limited liability company reserved, registered, formed or organized under the laws of this State with the written consent of the other corporation, partnership, limited partnership, foreign statutory trust or limited liability company, which written consent shall be filed with the Secretary of State; provided further, that, if on July 31, 2011, a statutory trust is registered (with the consent of another statutory trust) under a name

which is not such as to distinguish it upon the records in the office of the Secretary of State from the name on such records of such other domestic statutory trust, it shall not be necessary for any such statutory trust to amend its certificate of trust to comply with this subsection.

(b) The name of each statutory trust as set forth in its certificate of trust may contain the name of a beneficial owner, a trustee or any other person.

(c) The name of each statutory trust, as set forth in its certificate of trust, may contain the following words: "company," "association," "club," "foundation," "fund," "institute," "society," "union," "syndicate," "limited," or "trust" (or abbreviations of like import) but shall not contain the word "bank," or any variation thereof, except for the name of a bank reporting to and under the supervision of the State Bank Commissioner of this State or a subsidiary of a bank or savings association (as those terms are defined in the Federal Deposit Insurance Act, as amended, at 12 U.S.C. § 1813), or a statutory trust regulated under the Bank Holding Company Act of 1956, as amended, 12 U.S.C. § 1841 et seq., or the Home Owners' Loan Act, as amended, 12 U.S.C. § 1461 et seq.; provided, however, that this section shall not be construed to prevent the use of the word "bank," or any variation thereof, in a context clearly not purporting to refer to a banking business or otherwise likely to mislead the public about the nature of the business of the statutory trust or to lead to a pattern and practice of abuse that might cause harm to the interests of the public or the State as determined by the Division of Corporations in the Department of State.

(d) The exclusive right to the use of a name may be reserved by:

(1) Any person intending to form a statutory trust and to adopt that name; and

(2) Any statutory trust registered in this State which proposes to change its name.

(e) The reservation of a specified name shall be made by filing with the Secretary of State an application, executed by the applicant, together with a duplicate copy, which may either be a signed or conformed copy, specifying the name to be reserved and the name and address of the applicant. If the Secretary of State finds that the name is available for use by a statutory trust, the Secretary shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having so reserved a name, the same applicant may again reserve the same name for successive 120-day periods. The right to the exclusive use of a reserved name may be transferred to any other person by filing in the office of the Secretary of State a notice of the transfer, executed by the applicant for whom the name was reserved, together with a duplicate copy, which may be either a signed or conformed copy, specifying the name to be transferred and the name and address of the transferee. The reservation of a specified name may be cancelled by filing with the Secretary of State a notice of cancellation, executed by the applicant or transferee, together with a duplicate copy, which may be either a signed or conformed copy, specifying the name reservation to be cancelled and the name and address of the applicant or transferee. Any duplicate copy filed with the Secretary of State, as required by this subsection, shall be returned by the Secretary of State to the person who filed it or that person's representative with a notation thereon of the action taken with respect to the original copy thereof by the Secretary of State.

(f) Fees as set forth in § 3813 of this title shall be paid at the time of the initial reservation of any name, at the time of the renewal of any such reservation and at the time of the filing of a notice of the transfer or cancellation of any such reservation.

(66 Del. Laws, c. 279, § 1; 69 Del. Laws, c. 265, § 9; 70 Del Laws, c. 186, § 1; 71 Del. Laws, c. 335, § 9; 73 Del. Laws, c. 328, § 15; 73 Del. Laws, c. 329, § 1; 78 Del. Laws, c. 114, § 5; 79 Del. Laws, c. 355, § 6.)

§ 3815 Merger and consolidation.

(a) Pursuant to an agreement of merger or consolidation, a statutory trust may merge or consolidate with or into 1 or more statutory trusts or other business entities formed or organized or existing under the laws of the State of Delaware or any other state or the United States or any foreign country or other foreign jurisdiction, with such statutory trust or other business entity as the agreement shall provide being the surviving or resulting statutory trust or other business entity. Unless otherwise provided in the governing instrument of a statutory trust, an agreement of merger or consolidation shall be approved by each statutory trust which is to merge or consolidate by all of the trustees and the beneficial owners of such statutory trust. In connection with a merger or consolidation hereunder, rights or securities of, or interests in, a statutory trust or other business entity which is a constituent party to the merger or consolidation may be exchanged for or converted into cash, property, rights or securities of, or interests in, the surviving or resulting statutory trust or other business entity or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, a statutory trust or other business entity which is not the surviving or resulting statutory trust or other business entity in the merger or consolidation, may remain outstanding or may be cancelled. Notwithstanding prior approval, an agreement of merger or consolidation may be terminated or amended pursuant to a provision for such termination or amendment contained in the agreement of merger or consolidation.

(b) If a statutory trust is merging or consolidating under this section, the statutory trust or other business entity surviving or resulting in or from the merger or consolidation shall file a certificate of merger or consolidation in the office of the Secretary of State. The certificate of merger or consolidation shall state:

(1) The name, jurisdiction of formation or organization and type of entity of each of the statutory trusts or other business entities which is to merge or consolidate;

(2) That an agreement of merger or consolidation has been approved and executed by each of the statutory trusts or other business entities which is to merge or consolidate;

(3) The name of the surviving or resulting statutory trust or other business entity;

(4) In the case of a merger in which a statutory trust is the surviving entity, such amendments, if any, to the certificate of trust of the surviving statutory trust to change its name, registered office or registered agent as are desired to be effected by the merger;

(5) The future effective date or time (which shall be a date or time certain) of the merger or consolidation if it is not to be effective upon the filing of the certificate of merger or consolidation;

(6) That the executed agreement of merger or consolidation is on file at the principal place of business of the surviving or resulting statutory trust or other business entity, and shall state the address thereof;

(7) That a copy of the agreement of merger or consolidation will be furnished by the surviving or resulting statutory trust or other business entity, on request and without cost, to any beneficial owner of any statutory trust or any person holding an interest in any other business entity which is to merge or consolidate; and

(8) If the surviving or resulting entity is not a statutory trust or other business entity formed or organized or existing under the laws of the State of Delaware, a statement that such surviving or resulting other business entity agrees that it may be served with process in the State in any action, suit or proceeding for the enforcement of any obligation of any statutory trust which is to merge or consolidate, irrevocably appointing the Secretary of State as its agent to accept service of process in any such action, suit or proceeding and specifying the address to which a copy of such process shall be mailed to it by the Secretary of State. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of service hereunder upon the Secretary of State, the plaintiff in any such action, suit or proceeding shall furnish the Secretary of State with the address specified in the certificate of merger or consolidation provided for in this section and any other address which the plaintiff may elect to furnish, together with copies of such process as required by the Secretary of State, and the Secretary of State shall notify such surviving or resulting other business entity thereof at all such addresses furnished by the plaintiff by letter. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served upon the Secretary of State. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being made pursuant to this subsection, and to pay the Secretary of State the sum of $50 for use of the State, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such process setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceedings in which process has been served upon the Secretary, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than 5 years from the Secretary's receipt of the service of process.

(c) Any failure to file a certificate of merger or consolidation in connection with a merger or consolidation which was effective prior to July 5, 1990, shall not affect the validity or effectiveness of any such merger or consolidation.

(d) Unless a future effective date or time is provided in a certificate of merger or consolidation, in which event a merger or consolidation shall be effective at any such future effective date or time, a merger or consolidation shall be effective upon the filing in the office of the Secretary of State of a certificate of merger or consolidation.

(e) A certificate of merger or consolidation shall act as a certificate of cancellation for a statutory trust which is not the surviving or resulting entity in the merger or consolidation. A certificate of merger that sets forth any amendment in accordance with paragraph (b)(4) of this section shall be deemed to be an amendment to the certificate of trust of the statutory trust, and the statutory trust shall not be required to take any further action to amend its certificate of trust under § 3810 of this title with respect to such amendments set forth in the certificate of merger. Whenever this section requires the filing of a certificate of merger or consolidation, such requirement shall be deemed satisfied by the filing of an agreement of merger or consolidation containing the information required by this section to be set forth in the certificate of merger or consolidation.

(f) An agreement of merger or consolidation approved in accordance with subsection (a) of this section may:

(1) Effect any amendment to the governing instrument of the statutory trust; or

(2) Effect the adoption of a new governing instrument of the statutory trust if it is the surviving or resulting statutory trust in the merger or consolidation.

Any amendment to the governing instrument of a statutory trust or adoption of a new governing instrument of the statutory trust made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger or consolidation and shall be effective notwithstanding any provision of the governing instrument relating to amendment or adoption of a new governing instrument, other than a provision that by its terms applies to an amendment to the governing instrument or the adoption of a new governing instrument, in either case, in connection with a merger or consolidation. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or consolidation or of any of the matters referred to herein by any other means provided for in the governing instrument of a statutory trust or other agreement or as otherwise permitted by law, including that the governing instrument of any constituent statutory trust to the merger or consolidation (including a statutory trust formed for the purpose of consummating a merger or consolidation) shall be the governing instrument of the surviving or resulting statutory trust. Unless otherwise provided in a governing instrument, a statutory trust whose original certificate of trust was filed with the Secretary of State and effective on or prior to July 31, 2010, shall continue to be governed by this subsection as in effect on July 31, 2010.

(g) When any merger or consolidation shall have become effective under this section, for all purposes of the laws of the State, all of the rights, privileges and powers of each of the statutory trusts and other business entities that have merged or consolidated, and all property,

real, personal and mixed, and all debts due to any of said statutory trusts and other business entities, as well as all other things and causes of action belonging to each of such statutory trusts and other business entities, shall be vested in the surviving or resulting statutory trust or other business entity, and shall thereafter be the property of the surviving or resulting statutory trust or other business entity as they were of each of the statutory trusts and other business entities that have merged or consolidated, and the title to any real property vested by deed or otherwise, under the laws of the State, in any of such statutory trusts and other business entities, shall not revert or be in any way impaired by reason of this subchapter; but all rights of creditors and all liens upon any property of any of said statutory trusts and other business entities shall be preserved unimpaired, and all debts, liabilities and duties of each of the said statutory trusts and other business entities that have merged or consolidated shall thenceforth attach to the surviving or resulting statutory trust or other business entity, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it. Unless otherwise agreed, a merger or consolidation of a statutory trust, including a statutory trust which is not the surviving or resulting entity in the merger or consolidation, shall not require such statutory trust to wind up its affairs under § 3808(d) of this title or pay any of its liabilities and distribute its assets under § 3808(e) of this title, and the merger or consolidation shall not constitute the dissolution of such statutory trust.

(h) A governing instrument or an agreement of merger or consolidation may provide that contractual appraisal rights with respect to a beneficial interest or another interest in a statutory trust shall be available for any class, group or series of beneficial owners or beneficial interests in connection with any amendment of a governing instrument, any merger or consolidation in which the statutory trust is a constituent party to the merger or consolidation or the sale of all or substantially all of the statutory trust's assets. The Court of Chancery shall have jurisdiction to hear and determine any matter relating to any such appraisal rights.

(i) A governing instrument may provide that a statutory trust shall not have the power to merge or consolidate as set forth in this section.

(67 Del. Laws, c. 297, § 8; 70 Del Laws, c. 186, § 1; 70 Del. Laws, c. 548, § 15; 73 Del. Laws, c. 329, § 1; 74 Del. Laws, c. 353, §§ 12-14; 77 Del. Laws, c. 403, §§ 11-16; 78 Del. Laws, c. 114, § 6; 78 Del. Laws, c. 280, §§ 12-14; 79 Del. Laws, c. 355, § 7.)

§ 3816 Derivative actions.

(a) A beneficial owner may bring an action in the Court of Chancery in the right of a statutory trust to recover a judgment in its favor if persons with authority to do so have refused to bring the action or if an effort to cause those persons to bring the action is not likely to succeed.

(b) In a derivative action, the plaintiff must be a beneficial owner at the time of bringing the action and:

(1) At the time of the transaction of which the plaintiff complains; or

(2) Plaintiff's status as a beneficial owner had devolved upon plaintiff by operation of law or pursuant to the terms of the governing instrument of the statutory trust from a person who was a beneficial owner at the time of the transaction.

(c) In a derivative action, the complaint shall set forth with particularity the effort, if any, of the plaintiff to secure initiation of the action by the persons with authority to do so, or the reasons for not making the effort.

(d) If a derivative action is successful, in whole or in part, or if anything is received by a statutory trust as a result of a judgment, compromise or settlement of any such action, the Court may award the plaintiff reasonable expenses, including reasonable attorney's fees. If anything is so received by the plaintiff, the Court shall make such award of plaintiff's expenses payable out of those proceeds and direct plaintiff to remit to the statutory trust the remainder thereof, and if those proceeds are insufficient to reimburse plaintiff's reasonable expenses, the Court may direct that any such award of plaintiff's expenses or a portion thereof be paid by the statutory trust.

(e) A beneficial owner's right to bring a derivative action may be subject to such additional standards and restrictions, if any, as are set forth in the governing instrument of the statutory trust, including, without limitation, the requirement that beneficial owners owning a specified beneficial interest in the statutory trust join in the bringing of the derivative action.

(67 Del. Laws, c. 297, § 8; 68 Del. Laws, c. 404, §§ 12, 13, 14; 70 Del Laws, c. 186, § 1; 73 Del. Laws, c. 329, § 1; 78 Del. Laws, c. 280, §§ 15, 16.)

§ 3817 Indemnification.

(a) Subject to such standards and restrictions, if any, as are set forth in the governing instrument of a statutory trust, a statutory trust shall have the power to indemnify and hold harmless any trustee or beneficial owner or other person from and against any and all claims and demands whatsoever.

(b) The absence of a provision for indemnity in the governing instrument of a statutory trust shall not be construed to deprive any trustee or beneficial owner or other person of any right to indemnity which is otherwise available to such person under the laws of this State.

(67 Del. Laws, c. 297, § 8; 73 Del. Laws, c. 329, § 1.)

§ 3818 Treasury interests.

Except to the extent otherwise provided in the governing instrument of a statutory trust, a statutory trust may acquire, by purchase, redemption or otherwise, any beneficial interest in the statutory trust held by a beneficial owner of the statutory trust. Except to the extent otherwise provided in the governing instrument of a statutory trust, any such interest so acquired by a statutory trust shall be deemed canceled.

(70 Del. Laws, c. 548, § 16; 73 Del. Laws, c. 329, § 1.)

§ 3819 Access to and confidentiality of information; records.

(a) Except to the extent otherwise provided in the governing instrument of a statutory trust, each beneficial owner of a statutory trust has the right, subject to such reasonable standards (including standards governing what information and documents are to be furnished at what time and location and at whose expense) as may be established by the trustees or other persons who have authority to manage the business and affairs of the statutory trust, to obtain from the statutory trust from time to time upon reasonable demand for any purpose reasonably related to the beneficial owner's interest as a beneficial owner of the statutory trust:

(1) A copy of the governing instrument and certificate of trust and all amendments thereto, together with copies of any written powers of attorney pursuant to which the governing instrument and any certificate and any amendments thereto have been executed;

(2) A current list of the name and last known business, residence or mailing address of each beneficial owner and trustee;

(3) Information regarding the business and financial condition of the statutory trust; and

(4) Other information regarding the affairs of the statutory trust as is just and reasonable.

(b) Except to the extent otherwise provided in the governing instrument of a statutory trust, each trustee shall have the right to examine all the information described in subsection (a) of this section for any purpose reasonably related to the trustee's position as a trustee.

(c) Except to the extent otherwise provided in the governing instrument of a statutory trust, the trustees or other persons who have authority to manage the business and affairs of the statutory trust shall have the right to keep confidential from the beneficial owners, for such period of time as such persons deem reasonable, any information that such persons reasonably believe to be in the nature of trade secrets or other information the disclosure of which such persons in good faith believe is not in the best interest of the statutory trust or could damage the statutory trust or its business or which the statutory trust is required by law or by agreement with a third party to keep confidential.

(d) A statutory trust may maintain its records in other than a written form if such form is capable of conversion into a written form within a reasonable time.

(e) Any demand by a beneficial owner or trustee under this section shall be in writing and shall state the purpose of such demand.

(70 Del. Laws, c. 548, § 16; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 329, § 1; 78 Del. Laws, c. 280, §§ 17, 18.)

§ 3820 Conversion of other business entities to a statutory trust.

(a) Any other business entity formed or organized or existing under the laws of the State or any other state or the United States or any foreign country or other foreign jurisdiction may convert to a statutory trust by complying with subsection (g) of this section and filing in the Office of the Secretary of State in accordance with § 3812 of this title:

(1) A certificate of conversion to statutory trust that has been executed in accordance with § 3811 of this title; and

(2) A certificate of trust that complies with § 3810 of this title and has been executed by the trustees in accordance with § 3811 of this title.

Each of the certificates required by this subsection (a) shall be filed simultaneously in the office of the Secretary of State and, if such certificates are not to become effective upon their filing as permitted by § 3812(b) of this title, then each such certificate shall provide for the same effective date or time in accordance with § 3812(b) of this title.

(b) The certificate of conversion to statutory trust shall state:

(1) The date on which and jurisdiction where the other business entity was first formed or organized or otherwise came into being and, if it has changed, its jurisdiction immediately prior to its conversion to a statutory trust;

(2) The name and type of entity of the other business entity immediately prior to the filing of the certificate of conversion to statutory trust;

(3) The name of the statutory trust as set forth in its certificate of trust filed in accordance with subsection (a) of this section; and

(4) The future effective date or time (which shall be a date or time certain) of the conversion to a statutory trust if it is not to be effective upon the filing of the certificate of conversion to statutory trust and the certificate of trust.

(c) Upon the filing in the Office of the Secretary of State of the certificate of conversion to statutory trust and the certificate of trust or upon the future effective date or time of the certificate of conversion to statutory trust and the certificate of trust, the other business entity shall be converted into a statutory trust and the statutory trust shall thereafter be subject to all of the provisions of this chapter, except that notwithstanding § 3810(a)(2) of this title, the existence of the statutory trust shall be deemed to have commenced on the date the other business entity commenced its existence in the jurisdiction in which the other business entity was first formed or organized or otherwise came into being.

(d) The conversion of any other business entity into a statutory trust shall not be deemed to affect any obligations or liabilities of the other business entity incurred prior to its conversion to a statutory trust, or the personal liability of any person incurred prior to such conversion.

(e) When any conversion shall have become effective under this section, for all purposes of the laws of the State, all of the rights, privileges and powers of the other business entity that has converted, and all property, real, personal and mixed, and all debts due to such other business entity, as well as all other things and causes of action belonging to such other business entity, shall remain vested in the statutory trust to which such other business entity has converted and shall be the property of such statutory trust, and the title to any real

property vested by deed or otherwise in such other business entity shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such other business entity shall be preserved unimpaired, and all debts, liabilities and duties of the other business entity that has converted shall remain attached to the statutory trust to which such other business entity has converted, and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it in its capacity as a statutory trust. The rights, privileges, powers and interests in property of the other business entity, as well as the debts, liabilities and duties of the other business entity, shall not be deemed, as a consequence of the conversion, to have been transferred to the statutory trust to which such other business entity has converted for any purpose of the laws of the State.

(f) Unless otherwise agreed, for all purposes of the laws of the State of Delaware, the converting other business entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion shall not be deemed to constitute a dissolution of such other business entity and shall constitute a continuation of the existence of the converting other business entity in the form of a statutory trust. When the other business entity has been converted to a statutory trust pursuant to this section, the statutory trust shall, for all purposes of the laws of the State, be deemed to be the same entity as the converting other business entity.

(g) Prior to filing a certificate of conversion to statutory trust with the Office of the Secretary of State, the conversion shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the other business entity and the conduct of its business or by applicable law, as appropriate, and a governing instrument shall be approved by the same authorization required to approve the conversion.

(h) This section shall not be construed to limit the accomplishment of a change in the law governing, or the domicile of, any other business entity to the State by any other means provided for in an agreement governing the internal affairs of the other business entity or as otherwise permitted by law, including by the amendment of an agreement governing the internal affairs of the other business entity.

(i) In connection with a conversion hereunder, rights or securities of or interests in the other business entity which is to be converted to a statutory trust may be exchanged for or converted into cash, property, rights or securities of, or interests in, such statutory trust or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, another statutory trust or other business entity, may remain outstanding or may be cancelled.

(71 Del. Laws, c. 335, § 10; 72 Del. Laws, c. 387, § 8; 73 Del. Laws, c. 329, § 1; 74 Del. Laws, c. 353, § 15; 75 Del. Laws, c. 418, §§ 15, 16; 77 Del. Laws, c. 403, § 17; 78 Del. Laws, c. 114, § 7; 78 Del. Laws, c. 280, § 19; 79 Del. Laws, c. 355, § 8.)

§ 3821 Conversion of a statutory trust.

(a) Upon compliance with this section, a statutory trust may convert to an other business entity.

(b) If the governing instrument specifies the manner of authorizing a conversion of the statutory trust, the conversion shall be authorized as specified in the governing instrument. If the governing instrument does not specify the manner of authorizing a conversion of the statutory trust and does not prohibit a conversion of the statutory trust, the conversion shall be authorized in the same manner as is specified in the governing instrument for authorizing a merger or consolidation that involves the statutory trust as a constituent party to the merger or consolidation. If the governing instrument does not specify the manner of authorizing a conversion of the statutory trust or a merger or consolidation that involves the statutory trust as a constituent party and does not prohibit a conversion of the statutory trust, the conversion shall be authorized by the approval by all of the beneficial owners and all of the trustees.

(c) Unless otherwise agreed, the conversion of a statutory trust to an other business entity pursuant to this section shall not require such statutory trust to wind up its affairs under § 3808 of this title or pay its liabilities and distribute its assets under § 3808 of this title.

(d) In connection with a conversion of a statutory trust to an other business entity pursuant to this section, rights or securities of, or interests in, the statutory trust which is to be converted may be exchanged for or converted into cash, property, rights or securities of, or interests in, the other business entity into which the statutory trust is being converted or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, any other business entity, may remain outstanding or may be cancelled.

(e) If a statutory trust shall convert in accordance with this section to an other business entity organized, formed or created under the laws of a jurisdiction other than the State of Delaware, a certificate of conversion to a non-Delaware entity executed in accordance with § 3811 of this title, shall be filed in the Office of the Secretary of State in accordance with § 3812 of this title. The certificate of conversion to a non-Delaware entity shall state:

(1) The name of the statutory trust and, if it has been changed, the name under which its certificate of trust was originally filed;

(2) The date of filing of its original certificate of trust with the Secretary of State;

(3) The jurisdiction in which the other business entity, to which the statutory trust shall be converted, is organized, formed or created;

(4) The future effective date or time (which shall be a date or time certain) of the conversion if it is not to be effective upon the filing of the certificate of conversion to a non-Delaware entity;

(5) That the conversion has been approved in accordance with this section;

(6) The agreement of the statutory trust that it may be served with process in the State of Delaware in any action, suit or proceeding for enforcement of any obligation of the statutory trust arising while it was a statutory trust of the State of Delaware, and that it irrevocably appoints the Secretary of State as its agent to accept service of process in any such action, suit or proceeding;

(7) The address to which a copy of the process referred to in subsection (e)(6) of this section shall be mailed to it by the Secretary of State. Process may be served upon the Secretary of State under paragraph (e)(6) of this section by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of service under this section upon the Secretary of State, the procedures set forth in § 3861(c) of this title shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Secretary of State with the address specified in this subsection and any other address that the plaintiff may elect to furnish, together with copies of such process as required by the Secretary of State, and the Secretary of State shall notify the statutory trust that has converted out of the State of Delaware at all such addresses furnished by the plaintiff in accordance with the procedures set forth in § 3861(c) of this title.

(f) Upon the filing in the Office of the Secretary of State of the certificate of conversion to a non-Delaware entity or upon the future effective date or time of the certificate of conversion to a non-Delaware entity and payment to the Secretary of State of all fees prescribed in this chapter, the Secretary of State shall certify that the statutory trust has filed all documents and paid all fees required by this chapter, and thereupon the statutory trust shall cease to exist as a statutory trust of the State of Delaware. Such certificate of the Secretary of State shall be prima facie evidence of the conversion by such statutory trust out of the State of Delaware.

(g) The conversion of a statutory trust out of the State of Delaware in accordance with this section and the resulting cessation of its existence as a statutory trust of the State of Delaware pursuant to a certificate of conversion to a non-Delaware entity shall not be deemed to affect any obligations or liabilities of the statutory trust incurred prior to such conversion or the personal liability of any person incurred prior to such conversion, nor shall it be deemed to affect the choice of law applicable to the statutory trust with respect to matters arising prior to such conversion.

(h) When a statutory trust has been converted to an other business entity pursuant to this section, the other business entity shall, for all purposes of the laws of the State of Delaware, be deemed to be the same entity as the statutory trust. When any conversion becomes effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the statutory trust that has converted, and all property, real, personal and mixed, and all debts due to such statutory trust, as well as all other things and causes of action belonging to such statutory trust, shall remain vested in the other business entity to which such statutory trust has converted and shall be the property of such other business entity, and the title to any real property vested by deed or otherwise in such statutory trust shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such statutory trust shall be preserved unimpaired, and all debts, liabilities and duties of the statutory trust that has converted shall remain attached to the other business entity to which such statutory trust has converted, and may been forced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as such other business entity. The rights, privileges, powers and interests in property of the statutory trust that has converted, as well as the debts, liabilities and duties of such statutory trust, shall not be deemed, as a consequence of the conversion, to have been transferred to the other business entity to which such statutory trust has converted for any purpose of the laws of the State of Delaware.

(i) A governing instrument may provide that a statutory trust shall not have the power to convert as set forth in this section.

(71 Del. Laws, c. 335, § 10; 72 Del. Laws, c. 387, § 9; 73 Del. Laws, c. 328, § 16; 73 Del. Laws, c. 329, § 1; 74 Del. Laws, c. 353, § 16; 77 Del. Laws, c. 403, §§ 18, 19; 79 Del. Laws, c. 355, § 9.)

§ 3822 Domestication of non-United States entities.

(a) As used in this section, "non-United States entity" means a foreign statutory trust (other than one formed under the laws of a state), or a corporation, a limited liability company, a business trust or association, a real estate investment trust, a common-law trust, or any other unincorporated business, including a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), formed, incorporated, created or that otherwise came into being under the laws of any foreign country or other foreign jurisdiction (other than any state).

(b) Any non-United States entity may become domesticated as a statutory trust in the State of Delaware by complying with subsection (g) of this section and filing in the Office of the Secretary of State in accordance with § 3812 of this title:

(1) A certificate of statutory trust domestication that has been executed in accordance with § 3811 of this title; and

(2) A certificate of trust that complies with § 3810 of this title and has been executed in accordance with § 3811 of this title.

Each of the certificates required by this subsection (b) shall be filed simultaneously in the office of the Secretary of State and, if such certificates are not to become effective upon their filing as permitted by § 3812(b) of this title, then each such certificate shall provide for the same effective date or time in accordance with § 3812(b) of this title.

(c) The certificate of statutory trust domestication shall state:

(1) The date on which and jurisdiction where the non-United States entity was first formed, incorporated, created or otherwise came into being;

(2) The name of the non-United States entity immediately prior to the filing of the certificate of statutory trust domestication;

(3) The name of the statutory trust as set forth in the certificate of trust filed in accordance with subsection (b) of this section;

(4) The future effective date or time (which shall be a date or time certain) of the domestication as a statutory trust if it is not to be effective upon the filing of the certificate of statutory trust domestication and the certificate of trust; and

(5) The jurisdiction that constituted the seat, siege social, or principal place of business or central administration of the non-United States entity, or any other equivalent thereto under applicable law, immediately prior to the filing of the certificate of statutory trust domestication.

(d) Upon the filing in the Office of the Secretary of State of the certificate of statutory trust domestication and the certificate of trust or upon the future effective date or time of the certificate of statutory trust domestication and the certificate of trust, the non-United States entity shall be domesticated as a statutory trust in the State of Delaware and the statutory trust shall thereafter be subject to all of the provisions of this chapter, except that notwithstanding § 3810(a)(2) of this title, the existence of the statutory trust shall be deemed to have commenced on the date the non-United States entity commenced its existence in the jurisdiction in which the non-United States entity was first formed, incorporated, created or otherwise came into being.

(e) The domestication of any non-United States entity as a statutory trust in the State of Delaware shall not be deemed to affect any obligations or liabilities of the non-United States entity incurred prior to its domestication as a statutory trust in the State of Delaware, or the personal liability of any person therefor.

(f) The filing of a certificate of statutory trust domestication shall not affect the choice of law applicable to the non-United States entity, except that from the effective date or time of the domestication, the law of the State of Delaware, including the provisions of this chapter, shall apply to the non-United States entity to the same extent as if the non-United States entity had been formed as a statutory trust on that date.

(g) Prior to filing a certificate of statutory trust domestication with the Office of the Secretary of State, the domestication shall be approved in the manner provided for by the document, instrument, agreement or other writing, as the case may be, governing the internal affairs of the non-United States entity and the conduct of its business or by applicable non-Delaware law, as appropriate, and a governing instrument shall be approved by the same authorization required to approve the domestication.

(h) When any domestication shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the non-United States entity that has been domesticated, and all property, real, personal and mixed, and all debts due to such non-United States entity, as well as all other things and causes of action belonging to such non-United States entity, shall remain vested in the domestic statutory trust to which such non-United States entity has been domesticated and shall be the property of such domestic statutory trust, and the title to any real property vested by deed or otherwise in such non-United States entity shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such non-United States entity shall be preserved unimpaired, and all debts, liabilities and duties of the non-United States entity that has been domesticated shall remain attached to the domestic statutory trust to which such non-United States entity has been domesticated, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as a domestic statutory trust. The rights, privileges, powers and interests in property of the non-United States entity, as well as the debts, liabilities and duties of the non-United States entity, shall not be deemed, as a consequence of the domestication, to have been transferred to the domestic statutory trust to which such non-United States entity has domesticated for any purpose of the laws of the State of Delaware.

(i) When a non-United States entity has become domesticated as a statutory trust pursuant to this section, the statutory trust shall, for all purposes of the laws of the State of Delaware, be deemed to be the same entity as the domesticating non-United States entity. Unless otherwise agreed, for all purposes of the laws of the State of Delaware, the domesticating non-United States entity shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the domestication shall not be deemed to constitute a dissolution of such non-United States entity and shall constitute a continuation of the existence of the domesticating non-United States entity in the form of a domestic statutory trust. If, following domestication, a non-United States entity that has become domesticated as a statutory trust continues its existence in the foreign country or other foreign jurisdiction in which it was existing immediately prior to domestication, the statutory trust and such non-United States entity shall, for all purposes of the laws of the State of Delaware, constitute a single entity formed, incorporated, created or otherwise having come into being, as applicable, and existing under the laws of the State of Delaware and the laws of such foreign country or other foreign jurisdiction.

(j) In connection with a domestication hereunder, rights or securities of, or interests in, the non-United States entity that is to be domesticated as a domestic statutory trust may be exchanged for or converted into cash, property, rights or securities of, or interests in, such domestic statutory trust or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, another domestic statutory trust or other entity, may remain outstanding or may be cancelled.

(74 Del. Laws, c. 353, § 17; 75 Del. Laws, c. 418, § 17; 78 Del. Laws, c. 114, § 8; 79 Del. Laws, c. 355, § 10.)

§ 3823 Transfer or continuance of domestic statutory trusts.

(a) Upon compliance with the provisions of this section, any statutory trust may transfer to or domesticate in any jurisdiction, other than any state, and, in connection therewith, may elect to continue its existence as a statutory trust in the State of Delaware.

(b) If the governing instrument specifies the manner of authorizing a transfer or domestication or continuance described in subsection (a) of this section, the transfer or domestication or continuance shall be authorized as specified in the governing instrument. If the governing instrument does not specify the manner of authorizing a transfer or domestication or continuance described in subsection (a) of this section and does not prohibit such a transfer or domestication or continuance, the transfer or domestication or continuance shall be authorized

in the same manner as is specified in the governing instrument for authorizing a merger or consolidation that involves the statutory trust as a constituent party to the merger or consolidation. If the governing instrument does not specify the manner of authorizing a transfer or domestication or continuance described in subsection (a) of this section or a merger or consolidation that involves the statutory trust as a constituent party and does not prohibit such a transfer or domestication or continuance, the transfer or domestication or continuance shall be authorized by the approval by all of the beneficial owners and all of the trustees. If a transfer or domestication or continuance described in subsection (a) of this section shall be approved as provided in this subsection (b) of this section, a certificate of transfer if the statutory trust's existence as a statutory trust of the State of Delaware is to cease, or a certificate of transfer and continuance if the statutory trust's existence as a statutory trust in the State of Delaware is to continue, executed in accordance with § 3811 of this title, shall be filed in the Office of the Secretary of State in accordance with § 3812 of this title. The certificate of transfer or the certificate of transfer and continuance shall state:

(1) The name of the statutory trust and, if it has been changed, the name under which its certificate of trust was originally filed;

(2) The date of the filing of its original certificate of trust with the Secretary of State;

(3) The jurisdiction to which the statutory trust shall be transferred or in which it shall be domesticated;

(4) The future effective date or time (which shall be a date or time certain) of the transfer or domestication to the jurisdiction specified in paragraph (b)(3) of this section if it is not to be effective upon the filing of the certificate of transfer or the certificate of transfer and continuance;

(5) That the transfer or domestication or continuance of the statutory trust has been approved in accordance with the provisions of this section;

(6) In the case of a certificate of transfer:

a. That the existence of the statutory trust as a statutory trust of the State of Delaware shall cease when the certificate of transfer becomes effective; and

b. The agreement of the statutory trust that it may be served with process in the State of Delaware in any action, suit or proceeding for enforcement of any obligation of the statutory trust arising while it was a statutory trust of the State of Delaware, and that it irrevocably appoints the Secretary of State as its agent to accept service of process in any such action, suit or proceeding;

(7) The address (which may not be that of the statutory trust's registered agent, as applicable, without the written consent of the statutory trust's registered agent, such consent to be filed with the certificate of transfer) to which a copy of the process referred to in paragraph (b)(6) of this section shall be mailed to it by the Secretary of State. Process may be served upon the Secretary of State under paragraph (b)(6) of this section by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event of service under this section upon the Secretary of State, the procedures set forth in § 3861(c) of this title shall be applicable, except that the plaintiff in any such action, suit or proceeding shall furnish the Secretary of State with the address specified in this subsection and any other address that the plaintiff may elect to furnish, together with copies of such process as required by the Secretary of State, and the Secretary of State shall notify the statutory trust that has transferred or domesticated out of the State of Delaware at all such addresses furnished by the plaintiff in accordance with the procedures set forth in § 3861(c) of this title; and

(8) In the case of a certificate of transfer and continuance, that the statutory trust will continue to exist as a statutory trust of the State of Delaware after the certificate of transfer and continuance becomes effective.

(c) Upon the filing in the Office of the Secretary of State of the certificate of transfer or upon the future effective date or time of the certificate of transfer and payment to the Secretary of State of all fees prescribed in this chapter, the Secretary of State shall certify that the statutory trust has filed all documents and paid all fees required by this chapter, and thereupon the statutory trust shall cease to exist as a statutory trust of the State of Delaware. Such certificate of the Secretary of State shall be prima facie evidence of the transfer or domestication by such statutory trust out of the State of Delaware.

(d) The transfer or domestication of a statutory trust out of the State of Delaware in accordance with this section and the resulting cessation of its existence as a statutory trust of the State of Delaware pursuant to a certificate of transfer shall not be deemed to affect any obligations or liabilities of the statutory trust incurred prior to such transfer or domestication or the personal liability of any person incurred prior to such transfer or domestication, nor shall it be deemed to affect the choice of law applicable to the statutory trust with respect to matters arising prior to such transfer or domestication. Unless otherwise agreed, the transfer or domestication of a statutory trust out of the State of Delaware in accordance with this section shall not require such statutory trust to wind up its affairs or pay its liabilities and distribute its assets under § 3808 of this title.

(e) If a statutory trust files a certificate of transfer and continuance, after the time the certificate of transfer and continuance becomes effective, the statutory trust shall continue to exist as a statutory trust of the State of Delaware, and the laws of the State of Delaware, including the provisions of this chapter, shall apply to the statutory trust, to the same extent as prior to such time. So long as a statutory trust continues to exist as a statutory trust of the State of Delaware following the filing of a certificate of transfer and continuance, the continuing statutory trust and the other business entity formed, incorporated, created or that otherwise came into being as a consequence of the transfer of the statutory trust to, or its domestication in, a foreign country or other foreign jurisdiction shall, for all purposes of the laws of the State of Delaware, constitute a single entity formed, incorporated, created or otherwise having come into being, as applicable, and existing under the laws of the State of Delaware and the laws of such foreign country or other foreign jurisdiction.

(f) In connection with a transfer or domestication of a statutory trust to or in another jurisdiction pursuant to subsection (a) of this section, rights or securities of, or interests in, such statutory trust may be exchanged for or converted into cash, property, rights or securities of, or interests in, the other business entity in which the statutory trust will exist in such other jurisdiction as a consequence of the transfer or domestication or, in addition to or in lieu thereof, may be exchanged for or converted into cash, property, rights or securities of, or interests in, any other business entity, may remain outstanding or may be cancelled.

(g) When a statutory trust has transferred or domesticated out of the State of Delaware pursuant to this section, the transferred or domesticated other business entity shall, for all purposes of the laws of the State of Delaware, be deemed to be the same entity as the statutory trust. When any transfer or domestication of a statutory trust out of the State of Delaware shall have become effective under this section, for all purposes of the laws of the State of Delaware, all of the rights, privileges and powers of the statutory trust that has transferred or domesticated, and all property, real, personal and mixed, and all debts due to such statutory trust, as well as all other things and causes of action belonging to such statutory trust, shall remain vested in the transferred or domesticated other business entity and shall be the property of such transferred or domesticated other business entity, and the title to any real property vested by deed or otherwise in such statutory trust shall not revert or be in any way impaired by reason of this chapter; but all rights of creditors and all liens upon any property of such statutory trust shall be preserved unimpaired, and all debts, liabilities and duties of the statutory trust that has transferred or domesticated shall remain attached to the transferred or domesticated other business entity, and may be enforced against it to the same extent as if said debts, liabilities and duties had originally been incurred or contracted by it in its capacity as the transferred or domesticated other business entity. The rights, privileges, powers and interests in property of the statutory trust that has transferred or domesticated, as well as the debts, liabilities and duties of such statutory trust, shall not be deemed, as a consequence of the transfer or domestication out of the State of Delaware, to have been transferred to the transferred or domesticated other business entity for any purpose of the laws of the State of Delaware.

(h) A governing instrument may provide that a statutory trust shall not have the power to transfer, domesticate or continue as set forth in this section.

(74 Del. Laws, c. 353, § 17; 75 Del. Laws, c. 418, § 18; 77 Del. Laws, c. 403, §§ 20, 21; 78 Del. Laws, c. 280, § 20; 79 Del. Laws, c. 355, § 11.)

§ 3824 Reserved power of State to amend or repeal chapter.

All provisions of this subchapter may be altered from time to time or repealed and all rights of statutory trusts, trustees, beneficial owners and other persons are subject to this reservation. Unless expressly stated to the contrary in this chapter, all amendments of this chapter shall apply to statutory trusts, trustees, beneficial owners and other persons whether or not existing as at the time of the enactment of any such amendment.

(67 Del. Laws, c. 297, § 8; 70 Del. Laws, c. 548, § 16; 71 Del. Laws, c. 335, § 10; 73 Del. Laws, c. 328, § 17; 73 Del. Laws, c. 329, § 1; 74 Del. Laws, c. 353, § 17.)

§ 3825 Construction and application of chapter and governing instrument.

(a) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this subchapter.

(b) It is the policy of this subchapter to give maximum effect to the principle of freedom of contract and to the enforceability of governing instruments.

(c) Action validly taken pursuant to 1 provision of this chapter shall not be deemed invalid solely because it is identical or similar in substance to an action that could have been taken pursuant to some other provision of this chapter but fails to satisfy 1 or more requirements prescribed by such other provision.

(d) A governing instrument that provides for the application of Delaware law shall be governed by and construed under the laws of the State of Delaware in accordance with its terms.

(68 Del. Laws, c. 404, § 15; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 548, § 16; 71 Del. Laws, c. 335, § 10; 74 Del. Laws, c. 353, § 17; 77 Del. Laws, c. 403, § 22; 78 Del. Laws, c. 280, § 21.)

§ 3826 Short title.

This subchapter may be cited as the "Delaware Statutory Trust Act."

(67 Del. Laws, c. 297, § 8; 68 Del. Laws, c. 404, § 15; 70 Del. Laws, c. 548, § 16; 71 Del. Laws, c. 335, § 10; 73 Del. Laws, c. 329, § 1; 74 Del. Laws, c. 353, § 17.)

Subchapter II

Foreign Statutory Trusts

§ 3851 Law governing.

Subject to the Constitution of the State:

(1) The laws of the state, territory, possession or other jurisdiction or country under which a foreign statutory trust is organized govern its organization and internal affairs and the liability of its beneficial owners and trustees; and

(2) A foreign statutory trust may not be denied registration by reason of any difference between those laws and the laws of the State.

(71 Del. Laws, c. 335, § 11; 73 Del. Laws, c. 329, § 1.)

§ 3852 Registration required; application.

(a) Before doing business in the State, a foreign statutory trust shall register with the Secretary of State. In order to register, a foreign statutory trust shall submit to the Secretary of State:

(1) A copy executed by a trustee or other authorized person of an application for registration as a foreign statutory trust, setting forth:

a. The name of the foreign statutory trust and, if different, the name under which it proposes to register and do business in the State;

b. The state, territory, possession or other jurisdiction or country where formed, the date of its formation and a statement from a trustee or other authorized person that, as of the date of filing, the foreign statutory trust validly exists as a statutory trust under the laws of the jurisdiction of its formation;

c. The nature of the business or purposes to be conducted or promoted in the State;

d. The address of the registered office and the name and address of the registered agent for service of process required to be maintained by § 3854(b) of this title;

e. A statement that the Secretary of State is appointed the agent of the trust for service of process under the circumstances set forth in § 3860(b) of this title; and

f. The date on which the foreign statutory trust first did, or intends to do, business in the State.

(2) A certificate, as of a date not earlier than 6 months prior to the filing date, issued by an authorized officer of the jurisdiction of its formation evidencing its existence. If such certificate is in a foreign language, a translation thereof, under oath of the translator, shall be attached thereto.

(3) A fee as set forth in § 3862 of this title shall be paid.

(b) If a foreign statutory trust that is registering to do business in the State of Delaware in accordance with subsection (a) of this section is governed by a governing instrument that establishes or provides for the establishment of designated series of trustees, beneficial owners, beneficial interests or assets having separate rights, powers or duties with respect to specified property or obligations of the foreign statutory trust or profits and losses associated with specified property or obligations, that fact shall be so stated on the application for registration as a foreign statutory trust. In addition, the foreign statutory trust shall state on such application whether the debts, liabilities and obligations incurred, contracted for or otherwise existing with respect to a particular series, if any, shall be enforceable against the assets of such series only, and not against the assets of the foreign statutory trust generally or any other series thereof, and whether any of the debts, liabilities, obligations and expenses incurred, contracted for or otherwise existing with respect to the foreign statutory trust generally or any series thereof shall be enforceable against the assets of such series.

(71 Del. Laws, c. 335, § 11; 73 Del. Laws, c. 329, § 1; 75 Del. Laws, c. 418, § 19; 77 Del. Laws, c. 403, §§ 23, 24.)

§ 3853 Issuance of registration.

(a) If the Secretary of State finds that an application for registration conforms to law and all requisite fees have been paid, the Secretary of State shall:

(1) Certify that the application has been filed in the Secretary of State's office by endorsing upon the original application the word "Filed," and the date and hour of the filing. This endorsement is conclusive of the date and time of its filing in the absence of actual fraud;

(2) File and index the endorsed application.

(b) The Secretary of State shall prepare and return to the person who filed the application or the person's representative a copy of the original signed application, similarly endorsed, and shall certify such copy as a true copy of the original signed application.

(c) The filing of the application with the Secretary of State shall make it unnecessary to file any other documents under Chapter 31 of Title 6.

(71 Del. Laws, c. 335, § 11; 70 Del. Laws, c. 186, § 1.)

§ 3854 Name; registered office; registered agent.

(a) A foreign statutory trust may register with the Secretary of State under any name (whether or not it is the name under which it is registered in the jurisdiction of its formation) that could be registered by a domestic statutory trust; provided however, that a foreign statutory trust may register under any name which is not such as to distinguish it upon the records in the Office of the Secretary of State from the name on such records of any domestic or foreign corporation, partnership, statutory trust, limited liability company or limited partnership reserved, registered, formed or organized under the laws of the State with the written consent of the other corporation, partnership, statutory trust, limited liability company or limited partnership, which written consent shall be filed with the Secretary of State.

(b) Each foreign statutory trust shall have and maintain in the State:

(1) A registered office which may but need not be a place of its business in the State; and

(2) A registered agent for service of process on the foreign statutory trust, having a business office identical with such registered office which agent may be any of:

a. An individual resident of the State of Delaware;

b. A domestic limited liability company, a domestic corporation, a domestic partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), or a domestic statutory trust; or

c. A foreign corporation, a foreign partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)), a foreign limited liability company or a foreign statutory trust (other than the foreign statutory trust itself).

(c) A registered agent may change the address of the registered office of the foreign statutory trust or trusts for which the agent is registered agent to another address in the State by paying a fee as set forth in § 3862 of this title and filing with the Secretary of State a certificate, executed by such registered agent, setting forth the address at which such registered agent has maintained the registered office for each of the foreign statutory trusts for which it is a registered agent and further certifying to the new address to which each such registered office will be changed on a given day and at which new address such registered agent will thereafter maintain the registered office for each of the foreign statutory trusts for which it is registered agent. Upon the filing of such certificate, the Secretary of State shall furnish to the registered agent a certified copy of the same under the Secretary's hand and seal of office, and thereafter, or until further change of address, as authorized by law the registered offices in the State each of the foreign statutory trusts for which the agent is registered agent shall be located at the new address of the registered agent thereof as given in the certificate. In the event of a change of name of any person acting as a registered agent of a foreign statutory trust, such registered agent shall file with the Secretary of State a certificate, executed by such registered agent, setting forth the new name of such registered agent, the name of such registered agent before it was changed, and the address at which such registered agent has maintained the registered office for each of the foreign statutory trusts for which it is registered agent, and shall pay a fee as set forth in § 3862 of this title. Upon the filing of such certificate, the Secretary of State shall furnish to the registered agent a certified copy of the same under the Secretary's hand and seal of office. A change of name of any person acting as a registered agent of a foreign statutory trust as a result of the merger or consolidation of the registered agent, with or into another person which succeeds to its assets and liabilities by operation of law, shall be deemed a change of name for purposes of this section. Filing a certificate under this section shall be deemed to be an amendment of the application of each foreign statutory trust affected thereby, and each foreign statutory trust shall not be required to take any further action with respect thereto to amend its application under § 3855 of this title. Any registered agent filing a certificate under this section shall promptly, upon such filing, deliver a copy of any such certificate to each foreign statutory trust affected thereby.

(d) The registered agent of 1 or more foreign statutory trusts may resign and appoint a successor registered agent by paying a fee as set forth in § 3862 of this title and filing a certificate with the Secretary of State stating that it resigns and the name and address of the successor registered agent. There shall be attached to such certificate a statement of each affected foreign statutory trust ratifying and approving such change of registered agent. Upon such filing, the successor registered agent shall become the registered agent of such foreign statutory trust as has ratified and approved such substitution and the successor registered agent's address, as stated in such certificate, shall become the address of each such foreign statutory trust's registered office in the State. The Secretary of State shall then issue a certificate that the successor registered agent has become the registered agent of the foreign statutory trusts so ratifying and approving such change and setting out the names of such foreign statutory trusts. Filing of such certificate of resignation shall be deemed to be an amendment of the application of each foreign statutory trust affected thereby, and each such foreign statutory trust shall not be required to take any further action with respect thereto to amend its application under § 3855 of this title.

(e) The registered agent of 1 or more foreign statutory trusts may resign without appointing a successor registered agent by paying a fee as set forth in § 3862 of this title and filing a certificate of resignation with the Secretary of State, but such resignation shall not become effective until 30 days after the certificate is filed. The certificate shall contain a statement that written notice of resignation was given to each affected foreign statutory trust at least 30 days prior to the filing of the certificate by mailing or delivering such notice to the foreign statutory trust at its address last known to the registered agent and shall set forth the date of such notice. After receipt of the notice of the resignation of its registered agent, the foreign statutory trust for which such registered agent was acting shall obtain and designate a new registered agent to take the place of the registered agent so resigning. If such foreign statutory trust fails to obtain and designate a new registered agent as aforesaid prior to the expiration of the period of 30 days after the filing by the registered agent of the certificate of resignation, such foreign statutory trust shall not be permitted to do business in the State and its registration shall be canceled. After the resignation of the registered agent shall have become effective as provided in this section and if no new registered agent shall have been obtained and designated in the time and manner aforesaid, service of legal process against the foreign statutory trust for which the resigned registered agent had been acting shall thereafter be upon the Secretary of State in accordance with § 3861 of this title.

(71 Del. Laws, c. 335, § 11; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 328, §§ 18, 19; 73 Del. Laws, c. 329, § 1; 77 Del. Laws, c. 403, §§ 25-27.)

§ 3855 Amendments to application.

If any statement in the application for registration of a foreign statutory trust was false when made or any arrangements or other facts described have changed, making the application false in any respect, the foreign statutory trust shall promptly file in the Office of the Secretary of State a certificate, executed by a trustee or other authorized person, correcting such statement, together with a fee as set forth in § 3862 of this title.

(71 Del. Laws, c. 335, § 11; 73 Del. Laws, c. 329, § 1.)

§ 3856 Cancellation of registration.

A foreign statutory trust may cancel its registration by filing with the Secretary of State a certificate of cancellation, executed by a trustee or other authorized person, together with a fee as set forth in § 3862 of this title. A cancellation does not terminate the authority of the Secretary of State to accept service of process on the foreign statutory trust with respect to causes of action arising out of the doing of business in the State.

(71 Del. Laws, c. 335, § 11; 73 Del. Laws, c. 329, § 1.)

§ 3857 Doing business without registration.

(a) A foreign statutory trust doing business in the State may not maintain any action, suit or proceeding in the State until it has registered in the State, and has paid to the State all fees and penalties for the years or parts thereof, during which it did business in the State without having registered.

(b) The failure of a foreign statutory trust to register in the State does not:

(1) Impair the validity of any contract or act of the foreign statutory trust;

(2) Impair the right of any other party to the contract to maintain any action, suit or proceeding on the contract; or

(3) Prevent the foreign statutory trust from defending any action, suit or proceeding in any court of the State.

(c) A beneficial owner or a trustee of a foreign statutory trust is not liable for the obligations of the foreign statutory trust solely by reason of the statutory trust's having done business in the State without registration.

(d) Any foreign statutory trust doing business in the State without first having registered shall be fined and shall pay to the Secretary of State $200 for each year or part thereof during which the foreign statutory trust failed to register in the State.

(71 Del. Laws, c. 335, § 11; 73 Del. Laws, c. 329, § 1.)

§ 3858 Foreign statutory trusts doing business without having qualified; injunctions.

The Court of Chancery shall have jurisdiction to enjoin any foreign statutory trust, or any agent thereof, from doing any business in the State if such foreign statutory trust has failed to register under this subchapter or if such foreign statutory trust has secured a certificate of the Secretary of State under § 3853 of this title on the basis of false or misleading representations. The Attorney General shall, upon the Attorney General's own motion or upon the relation of proper parties, proceed for this purpose by complaint in any county in which such foreign statutory trust is doing or has done business.

(71 Del. Laws, c. 335, § 11; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 329, § 1.)

§ 3859 Execution — liability.

Section 3811(c) of this title shall be applicable to foreign statutory trusts as if they were domestic statutory trusts.

(71 Del. Laws, c. 335, § 11; 73 Del. Laws, c. 329, § 1.)

§ 3860 Service of process on registered foreign statutory trusts.

(a) Service of legal process upon any foreign statutory trust shall be made by delivering a copy personally to any trustee of the foreign statutory trust in the State or the registered agent of the foreign statutory trust in the State, or by leaving it at the dwelling house or usual place of abode in the State of any such trustee or registered agent (if the registered agent be an individual), or at the registered office or other place of business of the foreign statutory trust in the State. If the registered agent be a corporation, service of process upon it as such may be made by serving, in the State, a copy thereof on the president, vice-president, secretary, assistant secretary or any director of the corporate registered agent. Service by copy left at the dwelling house or usual place of abode of any trustee or registered agent, or at the registered office or other place of business of the foreign statutory trust in the State, to be effective must be delivered thereat at least 6 days before the return date of the process, and in the presence of an adult person, and the officer serving the process shall distinctly state the manner of service in the officer's return thereto. Process returnable forthwith must be delivered personally to the trustee or registered agent.

(b) In case the officer whose duty it is to serve legal process cannot by due diligence serve the process in any manner provided for by subsection (a) of this section, it shall be lawful to serve the process against the foreign statutory trust upon the Secretary of State, and such service shall be as effectual for all intents and purposes as if made in any of the ways provided for in subsection (a) of this section. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate. In the event that service is effected through the Secretary of State in accordance with this subsection, the Secretary of State shall forthwith notify the foreign statutory trust by letter, directed to the foreign statutory trust at its last registered office. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served on the Secretary of State pursuant to this subsection. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being effected pursuant to this subsection, and to pay to the Secretary of State the sum of $50 for the use of the State, which sum shall be taxed as a part of the costs in the proceeding if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such service setting forth the name of the plaintiff and

defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary of State, the fact that service has been effected pursuant to this subsection, the return date thereof and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than 5 years from receipt of the service of process.

(71 Del. Laws, c. 335, § 11; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 329, § 1; 77 Del. Laws, c. 403, § 28.)

§ 3861 Service of process on unregistered foreign statutory trusts.

(a) Any foreign statutory trust which shall do business in the State without having registered under § 3852 of this title shall be deemed to have thereby appointed and constituted the Secretary of State of the State its agent for the acceptance of legal process in any civil action, suit or proceeding against it in any state or federal court in the State arising or growing out of any business done by it within the State. The doing of business in the State by such foreign statutory trust shall be a signification of the agreement of such foreign statutory trust that any such process when so served shall be of the same legal force and validity as if served upon an authorized manager or agent personally within the State. Process may be served upon the Secretary of State under this subsection by means of electronic transmission but only as prescribed by the Secretary of State. The Secretary of State is authorized to issue such rules and regulations with respect to such service as the Secretary of State deems necessary or appropriate.

(b) Whenever the words "doing business," "the doing of business" or "business done in this State" by any such foreign statutory trust are used in this section, they shall mean the course or practice of carrying on any business activities in the State, including, without limiting the generality of the foregoing, the solicitation of business or orders in the State; provided, however such words shall be deemed to have the same meaning as similar words of like import in § 371 of Title 8, but the requirement of such foreign statutory trust to register under § 3852 of this title shall be subject to the same exceptions as are set forth in § 373 of Title 8.

(c) In the event of service upon the Secretary of State in accordance with subsection (a) of this section, the Secretary of State shall forthwith notify the foreign statutory trust thereof by letter, directed to the foreign statutory trust at the address furnished to the Secretary of State by the plaintiff in such action, suit or proceeding. Such letter shall be sent by a mail or courier service that includes a record of mailing or deposit with the courier and a record of delivery evidenced by the signature of the recipient. Such letter shall enclose a copy of the process and any other papers served upon the Secretary of State. It shall be the duty of the plaintiff in the event of such service to serve process and any other papers in duplicate, to notify the Secretary of State that service is being made pursuant to this subsection, and to pay to the Secretary of State the sum of $50 for the use of the State, which sum shall be taxed as part of the costs in the proceeding, if the plaintiff shall prevail therein. The Secretary of State shall maintain an alphabetical record of any such process setting forth the name of the plaintiff and defendant, the title, docket number and nature of the proceeding in which process has been served upon the Secretary of State, the return date thereof, and the day and hour when the service was made. The Secretary of State shall not be required to retain such information for a period longer than 5 years from receipt of the service of process.

(71 Del. Laws, c. 335, § 11; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 329, § 1; 77 Del. Laws, c. 403, §§ 29, 30.)

§ 3862 Fees.

No document required to be filed under this subchapter shall be effective until the applicable fee required by this section is paid. The following fees shall be paid to and collected by the Secretary of State for the use of the State:

(1) Upon receipt for filing of an application for registration as a foreign statutory trust under § 3852 of this title, a certificate under § 3855 of this title or a certificate of cancellation under § 3856 of this title, a fee in amount of up to $300 together with such fees for services as may be authorized pursuant to § 3813(b) of this title.

(2) Upon the receipt for filing of a certificate under § 3854(c) of this title, a fee in the amount of $200, upon the receipt for filing of a certificate under § 3854(d) of this title, a fee in the amount of $200, and upon the receipt for filing of a certificate under § 3854(e) of this title, a fee in the amount of $2.00 for each statutory trust whose registered agent has resigned by such certificate.

(71 Del. Laws, c. 335, § 11; 73 Del. Laws, c. 329, § 1; 74 Del. Laws, c. 52, § 38; 75 Del. Laws, c. 218, § 3; 78 Del. Laws, c. 114, § 9.)

§ 3863 Activities not constituting doing business.

(a) Activities of a foreign statutory trust in the State of Delaware that do not constitute doing business for the purpose of this chapter include:

(1) Maintaining, defending or settling an action or proceeding;

(2) Holding meetings of its beneficial owners or trustees or carrying on any other activity concerning its internal affairs;

(3) Maintaining bank accounts;

(4) Maintaining offices or agencies for the transfer, exchange or registration of the statutory trust's own securities or maintaining trustees or depositories with respect to those securities;

(5) Selling through independent contractors;

(6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside the State of Delaware before they become contracts;

(7) Selling, by contract consummated outside the State of Delaware, and agreeing, by the contract, to deliver into the State of Delaware, machinery, plants or equipment, the construction, erection or installation of which within the State of Delaware requires the supervision of technical engineers or skilled employees performing services not generally available, and as part of the contract of sale agreeing to furnish such services, and such services only, to the vendee at the time of construction, erection or installation;

(8) Creating, as borrower or lender, or acquiring indebtedness with or without a mortgage or other security interest in property;

(9) Collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting and maintaining property so acquired;

(10) Conducting an isolated transaction that is not one in the course of similar transactions;

(11) Doing business in interstate commerce; and

(12) Doing business in the State of Delaware as an insurance company.

(b) A person shall not be deemed to be doing business in the State of Delaware solely by reason of being a beneficial owner or trustee of a domestic statutory trust or a foreign statutory trust.

(c) This section does not apply in determining whether a foreign statutory trust is subject to service or process, taxation or regulation under any other law of the State of Delaware.

(75 Del. Laws, c. 418, § 20.)

Part V
Fiduciary Relations
Chapter 39
GUARDIANSHIP
Subchapter I
Appointment, Bond and Tenure of Guardian

§ 3901 Appointment of guardians for persons with disabilities.

(a) The Court of Chancery shall have the power to appoint guardians for the person or property, or both, of any person with a disability pursuant to this chapter and Chapter 39A of this title. "Person with a disability" means any person who:

(1) By reason of being under the age of 18 is legally unable to manage their own property or make decisions concerning the care of their own person; or

(2) By reason of mental or physical incapacity is unable properly to manage or care for their own person or property, or both, and, in consequence thereof, is in danger of dissipating or losing such property or of becoming the victim of designing persons or, in the case where a guardian of the person is sought, such person is in danger of substantially endangering person's own health, or of becoming subject to abuse by other persons or of becoming the victim of designing persons; or

(3) By reason of § 5703(1) or (2) of Title 16 is deemed legally incapable of giving informed consent to sterilization.

(b) The Court of Chancery shall establish rules concerning the filing of petitions for appointment of guardians. The monetary thresholds referenced in subsections (k) and (l) of this section shall be established by rule, with the concurrence of the Court of Chancery and the Superior Court and the approval of the Supreme Court.

(c) Upon the filing of such petition, the Court shall enter an order fixing a time and place for a hearing thereon. The Court shall by rule provide for reasonable notice to the person with an alleged disability and to such others, if any, as the Court may deem desirable; provided that, in all cases where a guardian of the person or guardian of the property of an adult with a disability is sought, the person with an alleged disability shall be entitled to representation by counsel.

(d) If, upon the filing of a petition, the Court finds the person with an alleged disability is in danger of incurring imminent serious physical harm or substantial economic loss or expense the Court may without notice and hearing appoint an interim guardian of the person or property to serve for a period of up to 30 days; provided, that a hearing shall be held within 30 days of such appointment in accordance with subsection (c) of this section. The guardian so appointed shall have all of the powers and duties granted to guardians in subchapter II of this chapter.

(e) After determining at a hearing (or, for a period of up to 30 days, after determining without a hearing in the case of a person with a disability who is in danger of incurring imminent serious economic loss or expense) that an individual is a person with a disability within the meaning of this section, the Court shall have the same powers of control over the estate of the person with a disability which the person with a disability could exercise, if not incapacitated, except the power to make a will. In exercising these powers the Court shall substitute its judgment for that of the person with a disability to order relief from the incapacity or incapacities which the Court has found. In substituting its judgment, the Court shall act toward the property of the person with a disability as it believes to be in the best interest of the person with a disability and the estate of the person with a disability. The powers of the Court over the property of the person with a disability are plenary and include, but are not limited to, powers to make gifts and charitable contributions; to convey or release any contingent or expectant interest in property including marital property rights and any right of survivorship incident to joint tenancy or tenants by the entirety; to exercise or release the power of the person with a disability as trustee, personal representative, custodian for minor, conservator or as donee of a power of appointment; to enter into contracts; to create revocable or irrevocable trusts of property of the estate, which may extend beyond the incapacity or life of the person with a disability; to exercise or grant options of the person who is incapacitated to purchase securities or other property; to exercise right of the person who is incapacitated to select options; to cause estate of the person who is incapacitated to become the beneficiary under insurance and annuity policies or to surrender such policies for their cash value; to exercise right of the person who is incapacitated to an elective share in the estate of deceased spouse of the person who is incapacitated and to renounce or disclaim any interest receivable by testate or intestate succession or by inter vivos transfer.

(f) After hearing or, for a period of up to 30 days, after determining without a hearing in the case of a person with a disability who is in danger of incurring imminent serious physical harm and upon determining that a basis for appointment of a guardian of the person exists, the Court shall have the same powers, rights and duties respecting the person with a disability that parents have respecting their child, including the right to approve or reject medical treatment. In exercising these powers, the Court shall act in the best interest of the person with a disability.

(g) The Court shall have the power to grant certificates of guardianship of the property and certified copies of orders terminating the guardianship, both of which may be filed or recorded to give record notice of the authority of the guardian, subject to general statutory requirements governing the filing or recording of documents of title to land or other property.

(h) From the time of the Court's decree appointing a guardian of the property, the person with a disability shall be under disability to contract with regard to the property forming the subject matter of the guardianship during the pendency thereof.

(i) Whenever there is no Chancellor or Vice Chancellor available to exercise the powers conferred by subsection (d) of this section, any judge of the Superior Court may exercise such powers.

(j) Nothing in this section shall be construed to mean an adult is infirm or incapacitated or in need of a guardian for the sole reason an adult relies upon, or is being furnished with, treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, nor shall anything in this section be construed to authorize or require any medical care or treatment over the implied or express objections of said person.

(k)(1) The Superior Court or Court of Common Pleas shall have the power to appoint a guardian for the property and approve settlement in connection with a single-transaction matter arising out of a tort claim of a person with a disability, except that no guardian need be appointed for a person under the age of 18:

a. In matters involving settlement of a tort claim of an amount equal to or less than the monetary threshold established by rule pursuant to subsection (b) of this section, provided that the net settlement funds are deposited in a Uniform Transfer to Minor Act ("UTMA") account for the benefit of the minor;

b. In matters involving settlement of a tort claim of a gross amount in excess of the monetary threshold established by rule pursuant to subsection (b) of this section, provided that:

1. The net settlement funds are placed in a court-approved annuity or structured financial instrument for the benefit of the minor; or

2. No greater than the monetary threshold established by rule pursuant to subsection (b) of this section of the net settlement funds are deposited in a UTMA account, with the balance of the settlement funds placed in a court approved annuity or structured financial instrument for the benefit of the minor.

(2) However, for good cause shown, the Court, in the best interests of the minor, may appoint a guardian and transfer the matter to the Court of Chancery for the purpose of administering the estate of the minor so as to protect the estate and maximize benefits available to the minor, including public benefits.

(l)(1) The Court of Chancery may appoint a guardian with limited authority in cases where a person under the age of 18 holds or receives property and may establish rules regarding when such limited guardianship will terminate. In cases where the minor has or will receive personal property with a value equal to or less than the monetary threshold established by rule pursuant to subsection (b) of this section, a guardian need not be appointed if:

a. The funds are placed in an annuity or structured financial instrument for the benefit of the minor;

b. The funds are deposited into a UTMA account for the benefit of the minor; or

c. The personal property is registered or titled in the name of an adult followed in substance by the words "As custodian for [name of minor] under the Delaware Uniform Transfers to Minors Act."

(2) Nothing in paragraph (l)(1) of this section shall limit the Court's power to appoint a guardian of the property of a minor if, for good cause shown, the Court determines that a guardian is necessary to protect the minor's estate and maximize benefits available to the minor, including public benefits.

(Code 1852, §§ 1959, 1960; 15 Del. Laws, c. 470, § 1; 19 Del. Laws, c. 257, § 1; 22 Del. Laws, c. 451, § 1; Code 1915, §§ 3914, 3915; Code 1935, §§ 4422, 4423; 43 Del. Laws, c. 228, § 1; 48 Del. Laws, c. 234, § 1; 12 Del. C. 1953, § 3901; 57 Del. Laws, c. 402, § 3; 69 Del. Laws, c. 109, § 2; 70 Del. Laws, c. 83, § 1; 70 Del Laws, c. 186, § 1; 72 Del. Laws, c. 117, § 1; 76 Del. Laws, c. 380, §§ 1, 2; 78 Del. Laws, c. 179, §§ 83-91; 79 Del. Laws, c. 226, § 1.)

§ 3902 Appointment of guardian; choice by minor over 14 years of age; guardian ad litem.

(a) Except in accordance with § 925(15) of Title 10 and § 3904 of this title, no person shall have any right or authority as guardian of a person with a disability unless the person has been duly appointed by the Court of Chancery or admitted by a court of law or equity to defend a suit as guardian ad litem.

(b) The sole surviving parent of a minor child may, by written declaration or last will, name a guardian of the person or property or both of the parent's child, who shall be appointed if there is no just cause to the contrary. Any parent may by written declaration or will name a guardian as to the property which the parent's child may inherit from any person, who shall be appointed if there is no just cause to the contrary.

(c) When there is no designation of guardian by written declaration or last will of the minor's sole surviving parent, or there is just cause for not appointing the guardian so designated, a minor 14 years of age or over and resident in this State may choose a guardian and the Court, if there is no just cause to the contrary, shall appoint the person chosen.

(d) When there is no designation of guardian by written declaration or last will of the minor's sole surviving parent, or there is just cause for not appointing the guardian so designated, and a minor is under the age of 14 years, or is resident out of the State or neglects to choose a proper guardian, the Court may appoint a guardian according to its discretion.

(e) When a guardian is appointed for a minor under 14 years of age, unless such appointment is according to a written declaration or the last will of a minor's sole surviving parent, if the minor, after arriving at the age of 14 years, chooses another person for a guardian,

the Court shall appoint the person so chosen, if there is no just cause to the contrary and the preceding guardianship shall be thereby superseded.

(Code 1852, §§ 1489-1491, 1959-1963; 19 Del. Laws, c. 257, § 1; 22 Del. Laws, c. 452, § 1; Code 1915, §§ 3089, 3914, 3916; 33 Del. Laws, c. 231, § 1; Code 1935, §§ 3579, 4422, 4422B, 4424; 48 Del. Laws, c. 222, § 1; 48 Del. Laws, c. 365, § 1; 12 Del. C. 1953, §§ 3902, 3914; 50 Del. Laws, c. 191, § 1; 51 Del. Laws, c. 179, § 1; 57 Del. Laws, c. 402, § 3; 59 Del. Laws, c. 579, §§ 1-8; 60 Del. Laws, c. 570, §§ 1-8; 63 Del. Laws, c. 89, § 1; 64 Del. Laws, c. 245, § 1; 64 Del. Laws, c. 351, § 1; 66 Del. Laws, c. 112; 69 Del. Laws, c. 109, § 2; 70 Del Laws, c. 186, § 1; 78 Del. Laws, c. 179, § 92.)

§ 3903 Separate guardian of the person and property.

The Court of Chancery may appoint 2 or more persons as guardians of the person with a disability, 1 or more to have the care of the person of the person with a disability and the other or others to have possession and management of the property of the person with a disability with all the rights and powers and subject to all the duties respecting the property of the person with a disability, or the Court may appoint 1 person guardian with all the rights and powers and subject to all the duties respecting both the person and property of the person with a disability.

(Code 1852, §§ 1492-1494; Code 1915, § 3090; 30 Del. Laws, c. 202, § 1; Code 1935, § 3580; 43 Del. Laws, c. 208, § 1; 12 Del. C. 1953, § 3903; 57 Del. Laws, c. 402, § 3; 69 Del. Laws, c. 109, § 2; 78 Del. Laws, c. 179, § 93.)

§ 3904 Foreign guardians of nonresidents.

(a) A guardian, conservator, committee or other similar fiduciary, appointed by an appropriate court of another jurisdiction to manage the property of a person with a disability may, subject to the provisions of subsection (c) of this section, exercise in this State all powers of office, including the power to sell, purchase or mortgage real estate in the State; collect, receipt for and take possession of money due, tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action located in this State and remove it to the other jurisdiction.

(b) A guardian of the person, or other like fiduciary, appointed by an appropriate court of another jurisdiction to care for the person of a person with a disability, whenever such person with a disability is brought into the State for care and maintenance, such foreign fiduciary may, subject to the provisions of subsection (c) of this section, exercise all powers granted by the other jurisdiction for the care and protection of the person of such nonresident person with a disability.

(c) A foreign guardian shall not be entitled to exercise the powers set forth in subsections (a) and (b) of this section until the foreign guardian has filed for record in the Office of the Register in Chancery in any county of this State a certificate of the guardian's appointment from the other jurisdiction. Upon filing the certificate of appointment, the guardian will be authorized to petition the Court of Chancery of this State pursuant to court Rule 178 to exercise powers not granted by subchapter II of this chapter upon the giving of such security as the Court of Chancery of this State may order. Upon authorization, such foreign fiduciary shall account to the Court at such times as would a fiduciary for a resident of this State appointed under this chapter, and in the case of guardians of the property shall be issued a certificate in accordance with § 3901 of this title.

(d) Whenever it appears to the satisfaction of the Court of Chancery of this State that the person with a disability is then a nonresident and the property in this State belonging to any such nonresident person with a disability has been removed to the state wherein such fiduciary was duly appointed and has been accounted for by the fiduciary according to the laws of the state wherein such fiduciary was duly appointed, the Court of Chancery may relieve such fiduciary from further accounting before the Court.

(Code 1852, §§ 1489-1491; Code 1915, § 3089; Code 1935, § 3579; 48 Del. Laws, c. 222, § 1; 12 Del. C. 1953, § 3912; 57 Del. Laws, c. 402, §§ 3, 5; 69 Del. Laws, c. 109, § 2; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 380, §§ 3, 4; 78 Del. Laws, c. 179, § 94.)

§ 3905 Guardian's bond; requirement; form and entry.

(a) Every person appointed guardian shall, unless bond and/or surety is dispensed with by the Court, become bound, with surety, to the person with a disability in a penal sum to be fixed by the Court, by a joint and several obligation, to be, with the security, approved by the Court, with condition that if the guardian or the guardian's executors or administrators duly renders according to law just and true accounts of the guardianship and if the guardian, or the guardian's executors or administrators, upon the termination of the guardianship, shall deliver and pay to the person with a disability, or the executors or administrators of the person with a disability all the property belonging to the person with a disability in the possession of the guardian and all that shall be due to the person with a disability from the guardian and, if the guardian shall have in all things faithfully performed and fulfilled the guardian's duties as guardian, then the obligation shall be void.

(b) Unless bond shall be dispensed with by the Court, no certificate of guardianship shall be issued by the Register in Chancery until such bond conforming to the order of court is given and added to the guardianship docket.

(c) The Court may, at any time for good cause, waive the requirements of bond and/or surety, or reduce surety in any case where bond is required.

(d) In all cases where a public agency is the petitioner and where, in the opinion of the Court of Chancery, the resources and estate of the person for whose property a guardian is sought are insufficient to warrant the payment of costs and fees, the Court of Chancery

may by order provide that the guardian so appointed need not give bond either with or without surety as otherwise required by law and may further provide that in such cases all costs and fees shall be waived.

(Code 1852, §§ 1964, 1965; Code 1915, § 3917; Code 1935, § 4425; 43 Del. Laws, c. 228, § 2; 12 Del. C. 1953, § 3907; 57 Del. Laws, c. 402, § 5; 69 Del. Laws, c. 109, § 2; 70 Del Laws, c. 186, § 1; 78 Del. Laws, c. 179, § 95.)

§ 3906 Guardian's bond; additional security; removal for noncompliance.

If it appears in any case that the guardian's bond is insufficient, the Court of Chancery shall order the guardian to give further security and, if such order is not complied with, shall remove the guardian from office. Further security shall be taken in the same form as original security.

(Code 1852, §§ 1966, 1967; Code 1915, § 3918; Code 1935, § 4426; 12 Del. C. 1953, § 3908; 57 Del. Laws, c. 402, § 3; 69 Del. Laws, c. 109, § 2; 70 Del Laws, c. 186, § 1.)

§ 3907 Counter security upon petition of surety.

The Court of Chancery shall, on the petition of the surety of an executor, administrator or guardian, and proof that the executor, administrator or guardian is in danger of suffering injury or loss from such suretyship, order such executor, administrator or guardian to give the petitioner sufficient counter security to be approved by the Court and if neglecting to obey such order, the Court may remove the executor, administrator or guardian from office and order the executor, administrator or guardian to pay and deliver all the money, effects and estate in the executor's, administrator's, or guardian's hands as such executor, administrator or guardian to another guardian or to a receiver appointed by the Court and may enforce obedience to such order.

(Code 1852, § 1969; Code 1915, § 3920; Code 1935, § 4428; 12 Del. C. 1953, § 3909; 57 Del. Laws, c. 402, § 3; 69 Del. Laws, c. 109, § 2; 70 Del Laws, c. 186, § 1.)

§ 3908 Removal, resignation or death of guardian.

(a) The Court of Chancery may remove a guardian for any sufficient cause. A guardian may, on petition, be allowed to resign when it appears to the Court proper to allow the same. On every such removal or resignation and also on the death of any guardian the Court may appoint a successor guardian.

(b) The Court shall direct the guardian so resigning or removed to render a full account of the guardianship before the Court and may order the guardian to pay and deliver all the money, effects and estate in the guardian's hands as such guardian to the guardian's successor or to a receiver appointed by the Court, to the former person with a disability, or to the guardian's personal representative and may enforce such orders. The Court may also order suit to be brought on the guardian's bond, which suit may be prosecuted in the name of the person with a disability by next friend or guardian and it shall in no way affect or impair the right of excepting to the guardian's accounts.

(Code 1852, § 1968; 22 Del. Laws, c. 451, § 2; Code 1915, § 3919; Code 1935, § 4427; 12 Del. C. 1953, § 3910; 57 Del. Laws, c. 402, § 3; 69 Del. Laws, c. 109, § 2; 78 Del. Laws, c. 179, §§ 96, 97.)

§ 3909 Term of guardianship.

(a) If the only allegation of disability in the petition for appointment of a guardian was that the person was a minor, unless terminated earlier by the Court upon application of the guardian, the minor or other interested party, or by the death of the minor, the guardianship of such minor shall terminate automatically when the minor attains the age of 18 years.

(b) The automatic termination of the guardianship of the property of any minor shall not relieve the guardian of any duty to account. The guardian may be released by the Court of Chancery upon application of the guardian or the former minor.

(c) The guardianship of the person or property, or both, of any person with a disability for reasons other than minority shall continue until the death of the person with a disability or until terminated by the Court of Chancery upon application of the guardian, the person with a disability, or any other interested party.

(Code 1852, §§ 1959, 1960; 19 Del. Laws, c. 257, § 1; 22 Del. Laws, c. 451, § 1; Code 1915, § 3914; Code 1935, § 4422; 12 Del. C. 1953, § 3911; 58 Del. Laws, c. 511, § 67; 64 Del. Laws, c. 185, § 1; 65 Del. Laws, c. 337, § 1; 69 Del. Laws, c. 109, § 2; 78 Del. Laws, c. 179, §§ 98, 99.)

§ 3910 Receiver for property of minor; appointment, powers, accounting and bond.

(a) If a minor has real or personal property and no guardian, the Court of Chancery may appoint a receiver to take charge of such property during its pleasure and may make such regulations touching this matter, as are deemed proper. The Court may enforce any order made upon a receiver.

(b) The receiver shall be required to account annually or oftener and shall deposit any balance, appearing in the receiver's hands, to be invested or otherwise disposed of for the minor's benefit.

(c) A receiver, appointed under this section, shall become bound, with sufficient surety, to the State in a joint and several obligation, to be approved by the Court, with condition, in substance, to account for all money, effects and estate which shall come to the receiver's hands pursuant to the receiver's appointment and to pay and deliver the same as the Court orders and to well and faithfully execute the trusts and duties of the office of receiver.

(Code 1852, §§ 1970, 1986, 1987; Code 1915, §§ 3921, 3933; Code 1935, §§ 4429, 4440; 12 Del. C. 1953, § 3913; 57 Del. Laws, c. 402, § 3; 69 Del. Laws, c. 109, § 2; 70 Del Laws, c. 186, § 1.)

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Subchapter II
Powers and Duties of Guardian

§ 3921 Powers and duties of guardian; general.

(a) A guardian shall have either the care of the person or the possession and management of all the property of the person with a disability or both the care of the person and the possession and management of the property, except to the extent the Court of Chancery may otherwise direct.

(b) Every guardian of the property shall file with the Court within 30 days after appointment a verified inventory of the property of the person with a disability with respect to which the guardian acts. Said inventory shall include the fair market value of all property of which the guardian has knowledge after diligent inquiry. If, after filing an inventory, a guardian shall acquire or discover other such property not described therein, except property received from the executor to be paid by a trustee pursuant to § 3525 [repealed] of this title, the guardian shall file a verified supplemental inventory describing such property within 30 days after acquiring or discovering such property.

(c) The guardian of the property shall, in the name of the person with a disability, do whatever is necessary for the care, preservation and increase of the property of the person with a disability, and shall invest the property in accordance with Chapter 33 of this title, unless investments are restricted by the Court.

(d) The guardian may petition the Court for instructions concerning the guardian's fiduciary responsibility.

(e) The guardian may employ, retain or consult accountants, investment counsel, attorneys-at-law and other professional advisers and pay their reasonable fees and expenses.

(Code 1852, §§ 1492-1494; Code 1915, § 3090; 30 Del. Laws, c. 202, § 1; Code 1935, § 80; 43 Del. Laws, c. 208, § 1; 12 Del. C. 1953, § 3921; 56 Del. Laws, c. 321; 57 Del. Laws, c. 402, § 3; 69 Del. Laws, c. 109, § 2; 70 Del Laws, c. 186, § 1; 78 Del. Laws, c. 179, § 100.)

§ 3922 General powers and duties of the guardian of the person.

(a) The Court shall grant to the guardian of the person such powers, rights and duties which are necessary to protect, manage and care for the person with a disability. The Court may at any time change the powers of the guardian of the person.

(b) The guardian of the person may exercise the same powers, rights and duties respecting the care, maintenance and treatment of the person with a disability that a parent has respecting the parent's own unemancipated minor child, except that the guardian of the person is not liable to third persons for acts of the person with a disability solely by reason of the guardianship relationship. Except as modified by the order of guardianship and without qualifying the foregoing, a guardian of the person has the following powers and duties:

(1) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the person with a disability, the guardian is entitled to custody of the person with a disability and may establish the place of abode for the person with a disability within or without this State. The guardian may not waive any right of the person with a disability respecting involuntary commitment to any facility for the treatment of mental illness or deficiency.

(2) If entitled to custody of the person with a disability, the guardian shall make provision for the care, comfort and maintenance of the person with a disability and, if appropriate, arrange for the training and education of the person with the disability. Without regard to custodial rights of the person with a disability, the guardian shall take reasonable care of the clothing, furniture, vehicle and other personal effects in the immediate possession of the person with a disability and commence guardianship of the property proceedings if other property of the person with a disability is in need of protection.

(3) The guardian may give such consent or approval as may be necessary to enable the person with a disability to receive medical or other professional care, counsel, treatment or service and shall have power to authorize release of medical records. The guardian shall not unreasonably withhold such consent or approval nor withhold such consent or approval on account of personal beliefs held by the guardian or the person with a disability, but shall take such action as the guardian objectively believes to be in the best interest of the person with a disability.

(c) A guardian of the person of a person with a disability for whom a guardian of the property also has been appointed shall control the custody and care of the person with a disability and is entitled to receive reasonable compensation for the guardian's services and for room and board furnished to the person with a disability as approved by the Court. Compensation of the public guardian shall be governed by § 3984 of this title. The guardian of the person may request the guardian of the property to make payment to third parties or institutions for the care and maintenance of the person with a disability.

(d) The guardian of the person shall not be required to expend the guardian's own money for the support or care of the person with a disability.

(69 Del. Laws, c. 109, § 2; 70 Del Laws, c. 186, § 1; 78 Del. Laws, c. 40, § 1; 79 Del. Laws, c. 371, § 11.)

§ 3923 Powers of the guardian of the property.

(a) The Court may limit the power of the guardian of the property as conferred on the guardian herein, or may confer any additional power which the Court itself could exercise under § 3901 of this title.

(b) The Court may, at the time of the appointment of the guardian of the property, or later, transfer custodial control over all the estate of the person with a disability to such guardian or the Court may transfer only certain specified assets of the estate of the person with a disability to the guardian of the property for protection.

(c) Unless restricted by the Court, a guardian of the property has power without Court authority or confirmation to invest and reinvest personal property of the estate as provided by Chapter 33 of this title governing fiduciary relationships.

(d) Except as modified by the order of guardianship, the guardian of the property may act without Court authorization or confirmation to reasonably accomplish the purpose for which the guardian is appointed to:

(1) Collect, hold and retain assets in the estate until, in the guardian's judgment, disposition of the assets should be made. Assets may be retained even though they include an asset in which the guardian is personally interested;

(2) Receive additions to the estate;

(3) Invest and reinvest estate assets in accordance with subsection (c) of this section;

(4) Deposit estate funds in a bank, including a bank operated by the guardian of the property;

(5) Sell or exercise stock, subscription or conversion rights or consent directly or through a committee or other agent to the reorganization, consolidation, merger, dissolution or liquidation of a corporation or other business enterprise;

(6) Vote directly or by proxy in any election or stockholder's meeting any share of stock in the estate including power to vote shares issued by the guardian of the property;

(7) Insure the assets of the estate against damage or loss and the guardian against liability with respect to third persons;

(8) Pay taxes, assessments, compensation of the guardian and other expenses incurred in the collection, care, administration and protection of the estate;

(9) Make payment for ordinary repairs to a dwelling owned by the person with a disability and to the furniture and appliances therein;

(10) Allocate items of income or expenses to either estate income or principal as provided by law;

(11) Prosecute, defend, compromise or settle actions, claims or proceedings in any jurisdiction for the protection of estate assets;

(12) Execute and deliver all instruments which will accomplish or facilitate the exercise of powers vested in the guardian;

(13) Hold a security in the name of the nominee or other forms without disclosure of guardianships so that title to the security may pass by delivery, but the guardian is liable for any acts of the nominee in connection with the stock so held; and

(14) Exercise all rights and powers granted to a fiduciary under the Fiduciary Access to Digital Assets and Accounts Act, Chapter 50 of this title.

(e) The guardian of the property may, without court authorization or confirmation, pay or apply income or principal from the estate as needed for the clothing, support, care, protection, welfare and rehabilitation of the person with a disability, as requested by the person with a disability or the guardian of the person, if any. In exercising this power, the guardian of the property shall consider the cost of support and care of the person with a disability for the expected life of the person with a disability and the needs of any persons dependent upon the person with a disability as may be reasonably anticipated.

(f) The guardian of the property shall not be required to expend the guardian's own money for the support or care of the property or person.

(Code 1852, §§ 1499, 1500, 1976, 1977; Code 1915, §§ 3099, 3100, 3925; Code 1935, §§ 3589, 3590, 4433; 45 Del. Laws, c. 243, § 1; 12 Del. C. 1953, §§ 3923, 3927, 3928; 56 Del. Laws, c. 320; 57 Del. Laws, c. 402, § 3; 69 Del. Laws, c. 109, § 2; 70 Del Laws, c. 186, § 1; 78 Del. Laws, c. 179, § 101; 79 Del. Laws, c. 416, § 3.)

§ 3924 Estoppel to dispute the right to property of a person with a disability.

Neither a guardian nor the representatives of the guardian shall dispute the right to property of a person with a disability which comes to the guardian's possession, unless such property has been recovered from the guardian or there is a personal action pending on account of it.

(Code 1852, §§ 1492-1494; Code 1915, § 3090; 30 Del. Laws, c. 202, § 1; Code 1935, § 3580; 43 Del. Laws, c. 208, § 1; 12 Del. C. 1953, § 3922; 69 Del. Laws, c. 109, § 2; 70 Del Laws, c. 186, § 1; 78 Del. Laws, c. 179, §§ 102, 103.)

§ 3925 Transfer by guardian of corporate securities.

Upon the transfer by a guardian of a person with a disability of the stocks, bonds or other securities of any corporation, the certificate of the Register in Chancery in which such guardian was appointed, or other proper public official, shall be sufficient authority to the officers of such corporation to transfer or reissue such stocks, bonds or other securities to such person as such guardian may in writing direct.

(20 Del. Laws, c. 115, § 5; Code 1915, § 3098; Code 1935, § 3588; 12 Del. C. 1953, § 3926; 57 Del. Laws, c. 402, § 5; 69 Del. Laws, c. 109, § 2; 78 Del. Laws, c. 179, § 104.)

§ 3926 Exercise of rights belonging to a person with a disability.

No person dealing with the receiver of a minor or with a guardian of a person with a disability shall be entitled to rely on the authority of such receiver or guardian to:

(1) Release claims;

(2) Settle tort claims; or

(3) Convey title to real property without prior court approval of such act.

(69 Del. Laws, c. 109, § 2; 78 Del. Laws, c. 179, §§ 105, 106.)

§ 3927 Compensation of guardian of the property.

(a) As used in this section, the term "qualified guardian" means any person who is a "qualified trustee" as defined in § 3561 of this title.

(b) All persons who serve as guardian of the property of a person with a disability shall be entitled to reasonable compensation for their services.

(c) Each qualified guardian shall file with the Register in Chancery for every county in this State, a copy of a schedule or a formula by which its allowance as compensation for serving as guardian of the property of a person with a disability shall be computed. Such schedule or formula may be based upon or reflect the following factors:

(1) The time spent or likely to be spent in administering a guardianship of the property.

(2) The risks and responsibilities involved.

(3) The novelty and difficulty of the tasks required of the guardian.

(4) The skill and experience of the guardian.

(5) Comparable charges for similar services.

(6) The character of the guardianship assets.

(7) The time constraints imposed upon the guardian in administering the trust.

The schedule or formula pursuant to this subsection (c) shall result in a fee no greater than that filed by the qualified guardian pursuant to § 3561 of this title with respect to its fees as trustee, for a trust of comparable size.

(d) Each qualified guardian shall provide a copy of its current guardianship fee schedule or formula as filed or upon any filing pursuant to subsection (c) of this section to such persons as the Court of Chancery may require by rule of the court or by the order of the Court of Chancery appointing the qualified guardian.

(e) For other persons serving as guardian of the property of a person with a disability, the Court of Chancery shall from time to time promulgate a rule fixing the method by which guardians of the property other than qualified guardians may be allowed compensation for their services.

(f) Upon proper showing, the Court of Chancery may fix or allow greater compensation than that set forth in the fee schedule of a qualified guardian or that allowed by rule of the Court of Chancery, whichever is applicable, where the compensation provided in the fee schedule of a qualified guardian or that allowed by rule of the Court of Chancery, whichever is applicable, is inadequate because the duties of the guardianship are substantially greater than those for a typical guardianship of its size or under extraordinary circumstances.

(76 Del. Laws, c. 90, § 11; 78 Del. Laws, c. 179, § 107.)

§ 3928 .

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Subchapter III
Accounting and Settlement

§ 3941 Guardian's duty to account.

(a) A guardian of the property shall fully account, in accordance with this subchapter, for all the money, effects and property of the person with a disability which the guardian has received, but a guardian of the person shall have no duty to account or otherwise report to the Court, except as provided by order of the Court.

(b) The personal representative of a guardian who dies in office shall, upon appointment as personal representative, advise the Court of Chancery and the next of kin of the person with a disability of the death of the guardian and thereafter assume the duties of the guardian until a successor guardian is appointed. The personal representative shall file a petition for the appointment of an appropriate successor guardian within 60 days of being appointed personal representative if no other interested party has filed such a petition. The personal representative shall render to the Court an account of the decedent's guardianship (including such period of time the personal representative performed the duties of the guardian prior to appointment of a successor guardian) within 3 months of the grant of letters testamentary or letters of administration.

(Code 1852, § 1496; 21 Del. Laws, c. 293, §§ 1-3; Code 1915, § 3092; Code 1935, § 3582; 12 Del. C. 1953, § 3941; 69 Del. Laws, c. 109, § 2; 70 Del Laws, c. 186, § 1; 78 Del. Laws, c. 179, § 108.)

§ 3942 Filing, adjusting and settling guardian's accounts.

All guardians' accounts shall be filed with and be adjusted and settled by the Court of Chancery by which such guardians were appointed.

(22 Del. Laws, c. 444, § 1; Code 1915, § 3091; Code 1935, § 3581; 12 Del. C. 1953, § 3942; 57 Del. Laws, c. 402, § 3; 69 Del. Laws, c. 109, § 2.)

§ 3943 Time of filing guardian's accounts.

Every guardian of the property shall render an account of the guardianship at the end of 1 year from the guardian's appointment and afterwards as the Court of Chancery in which such guardian was appointed requires, but not more often than once in 2 years, unless there is a special occasion.

(Code 1852, § 1495; 21 Del. Laws, c. 293, §§ 1-3; Code 1915, § 3092; Code 1935, § 3582; 12 Del. C. 1953, § 3943; 57 Del. Laws, c. 402, § 3; 69 Del. Laws, c. 109, § 2.; 70 Del Laws, c. 186, § 1)

§ 3944 Failure to file account; extension of time for filing.

(a) The Court may excuse the filing of an account or accounts required under § 3941 of this title for cause shown or if waived by:

(1) If the person with a disability has a will, all of those persons who would be entitled to the residue of the estate of the person with a disability if the person with a disability died at the time any such accounting would otherwise be required or was required to be filed; or

(2) If the person with a disability has no will, all of those persons who would be entitled to the real and personal property of the person with a disability if the person with a disability died at the time any such accounting would otherwise be required or was required to be filed, intestate and a resident of the State.

The Court may also, for cause shown, extend the time for the guardian to file an account or accounts. If no account is required of the guardian pursuant to this subsection, no inventory of the guardianship estate need be filed by the guardian.

(b) If a guardian fails to account when due, the Court shall cite such guardian therefore and may compel the filing of the account by process of attachment or by imprisonment.

(Code 1852, §§ 1497, 1498; 21 Del. Laws, c. 293, §§ 1-3; Code 1915, § 3092; Code 1935, § 3582; 12 Del. C. 1953, § 3944; 69 Del. Laws, c. 109, § 2; 70 Del Laws, c. 186, § 1; 76 Del. Laws, c. 90, § 16; 78 Del. Laws, c. 179, § 109.)

§ 3945 Appeals from orders adjusting and settling guardian's accounts.

Appeals from orders of the Court of Chancery adjusting or settling guardian's accounts shall be received, heard and determined by the Supreme Court.

(22 Del. Laws, c. 441, § 4; Code 1915, § 3095; Code 1935, § 3585; 12 Del. C. 1953, § 3945; 57 Del. Laws, c. 402, § 3; 69 Del. Laws, c. 109, § 2.)

§ 3946 Settlement with ward at termination of guardianship.

The Court of Chancery may order that any property in the guardian's possession, as such, at the close of the guardianship, shall be delivered to the former person with a disability or the representatives of the person with a disability and enforce obedience to such order.

(Code 1852, § 1975; Code 1915, § 3924; Code 1935, § 4432; 12 Del. C. 1953, § 3946; 57 Del. Laws, c. 402, § 3; 69 Del. Laws, c. 109, § 2; 70 Del Laws, c. 186, § 1; 78 Del. Laws, c. 179, §§ 110-112.)

§ 3947 Absence of person with a disability from State; settlement of account.

(a) If in any case a guardian of the property shall not be able to settle with and pay to the person with a disability, on the termination of the guardianship, the money due from the guardian to the person with a disability, in consequence of the absence of the person with a disability from this State and the place of residence of the person with a disability being unknown to the guardian, the guardian may settle and pay the money into the Court of Chancery for the county in which the guardian was appointed.

(b) The Court in which such settlement and payment shall be made shall invest the money for the use and benefit of the person with a disability.

(c) Upon payment of the money into Court the guardian and the guardian's surety or sureties shall be discharged from all liability for or on account of the money so paid into Court and of any interest thereon from the date of the payment into Court.

(11 Del. Laws, c. 200, § 1; Code 1915, § 3927; Code 1935, § 4434; 12 Del. C. 1953, § 3947; 57 Del. Laws, c. 402, § 3; 69 Del. Laws, c. 109, § 2; 70 Del Laws, c. 186, § 1; 78 Del. Laws, c. 179, § 113.)

Subchapter IV

Sale of Real Estate of Person with a Disability

§ 3951 Sale of real estate of person with a disability.

(a) If it appears to the Court of Chancery that it is proper to sell any real estate of a person with a disability, whether the real estate is held in severalty, joint tenancy, coparcenary or in common or in possession, reversion or remainder or any part of it, the Court may order it to be sold by the guardian of the property or by a trustee to be appointed for that purpose.

(b) Whenever application for such a sale is made by a guardian, the Court shall appoint an appraiser of real estate, licensed and certified pursuant to Delaware law, to perform an appraisal of the real property to be sold. The appraiser appointed shall be independent of the parties to the sale and disinterested in the transaction. The appraised value shall be used by the Court as a guideline, in a manner set forth

more fully in the rules of the Court, when considering an application for the sale of real estate by a guardian of a person with a disability and the Court shall determine in its discretion, based on the appraisal and all other relevant circumstances, whether the requested sale is in the best interest of the person with a disability.

(c) Upon any such sale, the guardian or trustee shall make a deed to the purchaser which shall convey as full a title to the land as the person with a disability had at the time of sale.

(d) The Court may order that the real estate be sold clear and discharged of any lien or incumbrance thereon at the time of sale created by or recovered against the person with a disability and in such case the Court shall direct in the order of sale that reasonable notice of the sale be given to the holders of such lien or incumbrance by newspaper advertisement or otherwise. The lien or incumbrance shall, without change of priority, be transferred to the proceeds of sale.

(Code 1852, §§ 1988-1992; Code 1915, § 3934; Code 1935, § 4441; 12 Del. C. 1953, § 3951; 57 Del. Laws, c. 402, § 3; 69 Del. Laws, c. 109, § 2; 74 Del. Laws, c. 410, § 1; 78 Del. Laws, c. 119, § 1; 78 Del. Laws, c. 179, §§ 115, 116.)

§ 3952 Trustee's bond.

If a trustee is appointed to sell real estate of the person with a disability, the trustee may be required to give security in such sum as the Court directs.

(Code 1852, § 1995; Code 1915, § 3937; Code 1935, § 4444; 12 Del. C. 1953, § 3952; 69 Del. Laws, c. 109, § 2; 78 Del. Laws, c. 179, § 117.)

§ 3953 Sale on credit; security for purchase price.

In any order granted by the Court of Chancery for the sale of real estate owned by a person with a disability, the Court may direct such sale to be made upon credit, either as to the whole or part of the purchase money, the payment of the purchase money to be at such time or times and to be secured in such manner as the Court by the order of sale or otherwise prescribes. The Court may order and direct all such acts and proceedings touching the premises as it deems necessary to better effectuate the object of this section.

(13 Del. Laws, c. 458, § 1; Code 1915, § 3935; Code 1935, § 4442; 12 Del. C. 1953, § 3953; 57 Del. Laws, c. 402, § 3; 69 Del. Laws, c. 109, § 2; 78 Del. Laws, c. 179, § 118.)

§ 3954 Proceeds of sale; payment.

The proceeds of the sale shall be personal property. Such proceeds, after deducting all expenses allowed by the Court, may be ordered to be paid to the guardian of the property to be accounted for as personal property of the person with a disability in the regular course of the guardianship or such proceeds may be ordered to be deposited in a bank to the credit of the person with a disability, to be invested, loaned or disposed of for the benefit of the person with a disability.

(Code 1852, §§ 1988-1992; Code 1915, § 3934; Code 1935, § 4441; 12 Del. C. 1953, § 3955; 69 Del. Laws, c. 109, § 2; 78 Del. Laws, c. 179, § 119.)

§ 3955 Guardian's bond.

(a) When the proceeds shall be ordered to be paid to or shall otherwise come to the hands of a guardian they shall be within the condition of the guardian's bond and the guardian and the guardian's sureties, both in the original bond and in any additional bond which may be taken, shall be liable for the proceeds in the same manner as for other property of the person with a disability.

(b) In every case of the sale of the real estate of a person with a disability and in every case where the guardian's liability is or may be increased, the Court of Chancery may require the guardian to give such additional security as may be deemed necessary, by obligation, with surety or sureties, in the same manner and form as original security.

(Code 1852, §§ 1988-1993; Code 1915, §§ 3934-3936; Code 1935, §§ 4441, 4443; 12 Del. C. 1953, § 3956; 57 Del. Laws, c. 402, § 3; 69 Del. Laws, c. 109, § 2; 70 Del Laws, c. 186, § 1; 78 Del. Laws, c. 179, § 120.)

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Subchapter V

Investment by Court of Chancery of Fund of Minors

§ 3971 Investment power of Court of Chancery; general requirements.

(a) The Court of Chancery shall have control of money paid into the Court to the credit of any minor who cannot be located, and may invest such money in bank deposits as the Court shall approve, and may change, renew, extend, call in or collect any such investment.

(b) The investment shall be in the name of the minor or minors entitled to the money, either personally or by designation as children, legatees, heirs or representatives of another and the Court may, at any time, apportion and divide the same among them.

(c) At such time as the minor for whom money is held or invested under this subchapter is located, the Court may direct the evidence of such investments to be delivered to the former minor, the guardian of the property of the minor, or in case of death of the minor, to the minor's executors or administrators and may by order direct the bank to pay to the person entitled or to the person's agent or representative

the evidences of ownership of the money. Such order shall vest in such person full power over such investment or all unpaid interest which may have accrued thereon.

(Code 1852, §§ 1980-1984; 16 Del. Laws, c. 136, § 1; Code 1915, § 3928; Code 1935, § 4435; 12 Del. C. 1953, § 3971; 57 Del. Laws, c. 402, §§ 3, 5; 69 Del. Laws, c. 109, § 2; 70 Del Laws, c. 186, § 1.)

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Subchapter VI
Public Guardian

§ 3981 Office established; appointment.

There is established an Office of the Public Guardian, with a Public Guardian who shall serve as the guardian of last resort for the citizens of Delaware who have been determined to lack capacity to make decisions regarding their persons, their property, or both.

The Public Guardian shall advocate and provide guardianship services for individuals who are incapacitated, work with advocacy groups and state agencies to promote systemic reform and recommend changes in the law, procedure and policy necessary to enhance the provision of guardianship services, and act as an informational resource for the public. The Public Guardian shall serve as Executive Director of the Delaware Guardianship Commission and promote the purposes of the Commission, and shall represent the Office of the Public Guardian in matters in which the appointment of the Public Guardian is sought.

To bring about these goals, the Public Guardian must be an attorney duly licensed to practice law in Delaware, selected by the Governor, and shall serve for a term of 6 years from the date of appointment.

(59 Del. Laws, c. 579, § 9; 60 Del. Laws, c. 511, § 50; 60 Del. Laws, c. 570, § 9; 60 Del. Laws, c. 722, § 3; 69 Del. Laws, c. 109, § 2; 70 Del Laws, c. 186, § 1; 78 Del. Laws, c. 40, § 1; 78 Del. Laws, c. 179, §§ 121-123.)

§ 3982 Definitions.

For the purposes of this chapter:

(1) "Court" means the Court of Chancery or the court which has jurisdiction for the appointment of guardians for the person, or property, or both, pursuant to this chapter.

(2) "Guardian" means a court-appointed guardian.

(3) "Guardianship Commission" means the Delaware Guardianship Commission.

(4) The term "last resort" includes:

a. Circumstances in which there is no other suitable person related to the individual willing or able to serve as surrogate decision maker or guardian; or

b. Circumstances in which a person willing or able to serve, or already serving, as a validly appointed agent of a durable power of attorney, a surrogate decision maker, or a guardian, is available but sufficient cause has been found by the court that the individual available or so acting is not suitable to serve and that the appointment of the Public Guardian is in the best interest of the person who is incapacitated.

c. Exceptional circumstances have been found by the court to establish that appointment of the Public Guardian is in the best interest of the person who is incapacitated.

(5) "Person who is incapacitated" shall mean a "person with a disability" as that term is defined in § 3901(a)(2) of this title.

(78 Del. Laws, c. 40, § 1; 78 Del. Laws, c. 179, §§ 121-123.)

§ 3983 Duties of the Public Guardian.

The Public Guardian:

(1) Shall establish case acceptance priorities and other administrative policies and procedures in consultation with the Guardianship Commission.

(2) Shall receive referrals and recommendations regarding individuals who may be in need of a guardian and independently evaluate the referral to make a determination as to the physical, social, and financial conditions of the individual, whether there are alternatives to public guardianship, and whether the individual is at risk of abuse, neglect, or exploitation.

(3) After evaluation of the conditions of the individual and in consideration of the established case acceptance priorities, may:

a. Make a recommendation as to a suitable individual who is available and willing to serve as guardian or surrogate decision maker or refer to an appropriate private, nonprofit, or other entity willing to serve as guardian; or

b. File a petition for its own appointment, or file for the appointment of any other individual as guardian where it is determined that the filing of a petition on behalf of another may avoid the need for public guardianship; or

c. Consent to serve as guardian where another entity or individual files a petition for the appointment of the Public Guardian.

(4) When appointed as guardian by court order, shall serve as guardian of last resort, either plenary or limited; temporary guardian; or successor guardian; of the person or property, or both, of persons who are determined to be incapacitated for reasons other than

minority. The Public Guardian shall have the same powers and duties as a private guardian as set out by this chapter and as defined by the court upon appointment.

(5) Shall acquire recognized certification as a guardian where available in a timely manner upon appointment and maintain certification while acting as Public Guardian, and promote and act in accordance with nationally recognized standards of guardianship and those developed in cooperation with the Delaware Guardianship Commission.

(6) May offer advice and guidance, without court appointment as guardian, to persons who request assistance or to those on whose behalf such assistance is requested for the purpose of encouraging maximum self-reliance and independence and avoiding the need for appointment of a guardian.

May take all necessary action, including programs of public education and legislative advocacy, to secure and ensure the legal, civil, and special rights of those determined by the court to be incapacitated.

(7) Shall submit an annual report on the efforts of the office that shall be provided to the Guardianship Commission and included in the annual report of the Guardianship Commission.

(8) May coordinate volunteer legal representation for wards of the office to assist with needed representation before administrative agencies and courts to pursue the legal rights and remedies of the ward and a volunteer legal community outreach program to assist the Office of the Public Guardian in educating the community about guardianship and alternatives to guardianship.

(9) May apply for and accept grants, gifts and bequests of funds from other state, federal and interstate agencies, as well as private firms, individuals and foundations, for the purpose of carrying out the lawful responsibilities of the Office of the Public Guardian and the Guardianship Commission. The funds must be deposited with the State Treasurer in a restricted receipt account established to permit funds to be expended in accordance with the provision of the grant, gift, or bequest.

(10) Shall take whatever actions are necessary to help the Guardianship Commission accomplish its goals.

(59 Del. Laws, c. 579, § 9; 60 Del. Laws, c. 511, § 50; 60 Del. Laws, c. 570, § 9; 60 Del. Laws, c. 722, § 3; 69 Del. Laws, c. 109, § 2; 78 Del. Laws, c. 40, § 1.)

§ 3984 Staff; budgeting; finance.

The Public Guardian may appoint subordinates and delegate the appointed authority to subordinates to assist in carrying out the purposes of this subchapter. Subordinates may include such nonprofit organizations as the Public Guardian shall deem to be qualified in carrying out the duties as a subordinate guardian. The Public Guardian shall prepare an annual fiscal budget for the operation of the Office of the Public Guardian.

The General Assembly may annually appropriate such sums as it may deem necessary for the payment of the salary of the Public Guardian, the staff, and for the payment of actual expenses incurred by the Office of the Public Guardian. The Office of the Public Guardian shall be operated within limitation of the annual appropriation and any other funds appropriated by the General Assembly or designated for that purpose from the estate of the person with a disability by the court.

Special funds may be used in accordance with approved programs, grants, and appropriations.

(59 Del. Laws, c. 579, § 9; 60 Del. Laws, c. 511, § 50; 60 Del. Laws, c. 570, § 9; 60 Del. Laws, c. 722, § 3; 69 Del. Laws, c. 109, § 2; 78 Del. Laws, c. 40, § 1; 78 Del. Laws, c. 179, §§ 121-123.)

§ 3985 Court costs and allocation of costs.

In any proceeding for appointment of the Office of the Public Guardian, or in any proceeding involving the estate of a person with a disability for whom the Public Guardian has been appointed guardian of the person or of the property, the court may waive any court costs or filing fees.

If the Public Guardian has been appointed guardian of the person or of the property, administrative costs and all costs incurred in the appointment procedure shall not be charged against the income or estate of the person. If at any time the court determines that the income or the estate of the person can support the payment of any part of these costs, the court may enter an order charging that part of the payment of cost against the income or estate.

(59 Del. Laws, c. 579, § 9; 60 Del. Laws, c. 511, § 50; 60 Del. Laws, c. 570, § 9; 60 Del. Laws, c. 722, § 3; 69 Del. Laws, c. 109, § 2; 78 Del. Laws, c. 40, § 1; 78 Del. Laws, c. 179, §§ 121-123.)

§ 3986 [Reserved]

§ 3987 Indemnification from liability.

No attorney, director, investigator, social worker, or other person employed by, contracted by, or volunteering for the Office of the Public Guardian shall be subject to suit directly, derivatively, or by way of contribution or indemnification for any civil damages under the laws of Delaware resulting from any act or omission performed during or in connection with the discharge of his or her duties with the Office within the scope of his or her appointment or employment, unless the act or omission was done with gross or wanton negligence, or maliciously, or in bad faith.

(78 Del. Laws, c. 40, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3988 Bond.

The Public Guardian shall post bond as required by the court upon the appointment of the office. The Office of the Public Guardian shall apply for and maintain bond sufficient to insure the assets managed by the office.

(59 Del. Laws, c. 579, § 9; 60 Del. Laws, c. 511, § 50; 60 Del. Laws, c. 570, § 9; 60 Del. Laws, c. 722, § 3; 69 Del. Laws, c. 109, § 2; 70 Del Laws, c. 186, § 1; 78 Del. Laws, c. 40, § 1.)

§ 3989 [Reserved]

Subchapter VII

Delaware Guardianship Commission

§ 3991 The Guardianship Commission.

(a) The Delaware Guardianship Commission is hereby established, and shall be known as the "Guardianship Commission." The Commission shall consist of 12 members and shall be staffed by the Office of the Public Guardian. The Guardianship Commission shall be comprised of the following:

(1) One member from the Court of Chancery, designated by the Chancellor;

(2) A representative from the Department of Justice, designated by the Attorney General;

(3) The Director of the Guardianship Monitoring Program, or the Director's designee;

(4) One member of the House of Representatives, designated by the Speaker of the House;

(5) One member of the Senate, designated by the President Pro Tempore of the Senate;

(6) The Director of the Division of Services for Aging and Adults with Physical Disabilities, or the Director's designee,

(7) The Director of the Division of Substance Abuse and Mental Health, or the Director's designee;

(8) The Director of the Division of Developmental Disabilities Services, or the Director's designee;

(9) The Secretary of the Department of Health and Social Services, or the Secretary's designee.

(10) A representative from the Disability Community, designated by the Secretary of Health and Social Services;

(11) A representative from the Senior Citizen Community, designated by the Secretary of Health and Social Services;

(12) A representative from the hospital community, designated by the Delaware Healthcare Association.

(b) The Public Guardian shall serve as the Executive Director of the Commission to effectuate its purposes. The Public Guardian may, with the concurrence of the members, invite other individuals to participate in the Commission to advance its work.

(78 Del. Laws, c. 40, § 2.)

§ 3992 Duties of the Commission.

The Commission shall advocate for the welfare of individuals who are incapacitated; shall work with advocacy groups and state agencies to promote systemic reform; recommend changes in the law, procedure and policy necessary to enhance the provision of guardianship services and the protection of those unable to protect themselves; and act as an informational resource for the public. To that end, the Commission shall meet on a quarterly basis and shall:

(1) Act in an advisory capacity to the Office of the Public Guardian, providing assistance to the Public Guardian in establishing administrative policies and procedures in the Office of the Public Guardian, and assistance in developing case acceptance priorities for the Office of the Public Guardian;

(2) Examine and evaluate the policies, procedures and effectiveness of the guardianship system, and make recommendations for changes therein, including establishing statewide standards and regulation of public and private guardianships;

(3) Conduct an annual statewide needs assessment relating to the number of individuals currently and predicted to be in need of a decision maker due to incapacity, the resources available or needed to meet that need, and to the processes utilized to meet the need;

(4) Advocate for legislation and make legislative recommendations to the Governor and the General Assembly;

(5) Develop public and professional education programs on issues relating to guardianship, alternatives to guardianship, and concerns relating to the abuse, neglect, and exploitation of individuals who are incapacitated; and

(6) Provide an annual summary of the work and recommendations of the Guardianship Commission, including the work of the Office of the Public Guardian to the Governor, the General Assembly, and the court.

(78 Del. Laws, c. 40, § 2; 78 Del. Laws, c. 179, §§ 121-123.)

§ 3993 Compensation.

Members of the Commission shall serve without compensation; however, they may be reimbursed, upon request, for reasonable and necessary expenses incident to their duties as members of the Commission to the extent funds are available through the Office of the Public Guardian. Members may be removed at the discretion of their appointing authority.

(78 Del. Laws, c. 40, § 2.)

Part V
Fiduciary Relations
Chapter 39A
UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

§ 39A-101 Definitions.

For purposes of this chapter:

(1) "Adult" means an individual who has attained 18 years of age.

(2) "Conservator" is a "guardian of the property" as that term is used in this title.

(3) "Court" means the Court of Chancery.

(4) "Emergency" means the respondent is in danger of incurring imminent serious physical harm or substantial economic loss or expense.

(5) "Guardian" is a "guardian of the person" as that term is used in this title.

(6) "Guardianship order" means an order appointing a guardian.

(7) "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

(8) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least 6 consecutive months ending within the 6 months prior to the filing of the petition.

(9) "Party" means the respondent, petitioner, guardian, conservator, or any other person allowed by the Court to participate in a guardianship or protective proceeding.

(10) "Person," except in the term "person who is incapacitated" or "protected person," means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(11) "Person who is incapacitated" shall mean a "person with a disability" as that term is defined in § 3901(a)(2) of this title.

(12) "Protected person" means an adult for whom a protective order has been issued.

(13) "Protective order" means an order appointing a "guardian of the property" as that term is used in this title.

(14) "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.

(15) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(16) "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought.

(17) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available. In determining under §§ 39A-201 and 39A-301(e) of this title whether a respondent has a significant connection with a particular state, the Court shall consider:

a. The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

b. The length of time the respondent at any time was physically present in the state and the duration of any absence;

c. The location of the respondent's property; and

d. The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

(18) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

(76 Del. Laws, c. 380, § 5; 78 Del. Laws, c. 179, §§ 124, 125.)

§ 39A-102 International application of Act.

The Court may treat a foreign country as if it were a state for the purpose of applying this chapter.

(76 Del. Laws, c. 380, § 5.)

§ 39A-103 Communication between courts.

(a) The Court may communicate with a court in another state concerning a proceeding arising under this chapter. The Court may allow the parties to participate in the communication. Except as otherwise provided in subsection (b) of this section, the Court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(b) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

(76 Del. Laws, c. 380, § 5.)

§ 39A-104 Cooperation between courts.

(a) In a guardianship or protective proceeding in this State, the Court may request the appropriate court of another state to do any of the following:

(1) Hold an evidentiary hearing;

(2) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

(3) Order that an evaluation or assessment be made of the respondent;

(4) Order any appropriate investigation of a person involved in a proceeding;

(5) Forward to the Court a certified copy of the transcript or other record of a hearing under paragraph (a)(1) of this section or any other proceeding, any evidence otherwise produced under paragraph (a)(2) of this section, and any evaluation or assessment prepared in compliance with an order under paragraph (a)(3) or (a)(4) of this section;

(6) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the Court to make a determination, including the respondent or the person who is incapacitated or a protected person;

(7) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. § 164.504.

(b) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (a) of this section, the Court has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

(76 Del. Laws, c. 380, § 5; 78 Del. Laws, c. 179, § 126.)

§ 39A-105 Taking testimony in another state.

(a) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this State for testimony taken in another state. The Court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(b) In a guardianship or protective proceeding, a court in this State may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. The Court shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this State by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

(76 Del. Laws, c. 380, § 5.)

§ 39A-201 Jurisdiction.

The Court has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

1. This State is the respondent's home state;

2. On the date the petition is filed, this State is a significant-connection state and:

(A) The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this State is a more appropriate forum; or

(B) The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the Court makes the appointment or issues the order:

(i) A petition for an appointment or order is not filed in the respondent's home state;

(ii) An objection to the Court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(iii) The Court concludes that it is an appropriate forum under the factors set forth in § 39A-204 of this title;

3. This State does not have jurisdiction under either paragraph 1. or 2. of this section, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this State is the more appropriate forum, and jurisdiction in this State is consistent with the constitutions of this State and the United States; or

4. The requirements for special jurisdiction under § 39A-202 of this title are met.

(76 Del. Laws, c. 380, § 5.)

§ 39A-202 Special jurisdiction.

(a) The Court lacking jurisdiction under § 39A-201 of this title has special jurisdiction to do any of the following:

(1) Appoint a guardian in an emergency pursuant to § 3901 of this title for a term not exceeding 30 days for a respondent who is physically present in this State;

(2) Issue a protective order with respect to real or tangible personal property located in this State;

(3) Appoint a guardian or conservator for a person who is incapacitated or a protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to § 39A-301 of this title.

(b) If a petition for the appointment of a guardian in an emergency is brought in this State pursuant to § 3901 of this title and this State was not the respondent's home state on the date the petition was filed, the Court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

(76 Del. Laws, c. 380, § 5; 78 Del. Laws, c. 179, § 127.)

§ 39A-203 Exclusive and continuing jurisdiction.

Except as otherwise provided in § 39A-202 of this title, a court that has appointed a guardian or issued a protective order consistent with this Act has exclusive and continuing jurisdiction over the proceeding until it is terminated by the Court or the appointment or order expires by its own terms.

(76 Del. Laws, c. 380, § 5.)

§ 39A-204 Appropriate forum.

(a) The Court having jurisdiction under § 39A-201 of this title to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(b) If the Court declines to exercise its jurisdiction under subsection (a) of this section, it shall either dismiss or stay the proceeding. The Court may impose any condition the Court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(c) In determining whether it is an appropriate forum, the Court shall consider all relevant factors, including:

(1) Any expressed preference of the respondent;

(2) Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;

(3) The length of time the respondent was physically present in or was a legal resident of this or another state;

(4) The distance of the respondent from the court in each state;

(5) The financial circumstances of the respondent's estate;

(6) The nature and location of the evidence;

(7) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

(8) The familiarity of the court of each state with the facts and issues in the proceeding; and

(9) If an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

(76 Del. Laws, c. 380, § 5.)

§ 39A-205 Jurisdiction declined by reason of conduct.

(a) If at any time the Court determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the Court may:

(1) Decline to exercise jurisdiction;

(2) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

(3) Continue to exercise jurisdiction after considering:

A. The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the Court's jurisdiction;

B. Whether it is a more appropriate forum than the court of any other state under the factors set forth in § 39A-204(c) of this title; and

C. Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of § 39A-202 of this title.

(b) If the Court determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorneys' fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The Court may not assess fees, costs, or expenses of any kind against this State or a governmental subdivision, agency, or instrumentality of this State unless authorized by law other than this chapter.

(76 Del. Laws, c. 380, § 5.)

§ 39A-206 Notice of proceeding.

If a petition for the appointment of a guardian or issuance of a protective order is brought in this State and this State was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this State, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this State.

(76 Del. Laws, c. 380, § 5.)

§ 39A-207 Proceedings in more than 1 state.

Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this State under § 39A-202(a)(1) or (a)(2) of this title, if a petition for the appointment of a guardian or issuance of a protective order is filed in this State and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the Court has jurisdiction under § 39A-201 of this title, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to § 39A-201 of this title before the appointment or issuance of the order.

(2) If the Court does not have jurisdiction under § 39A-201 of this title, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the Court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this State shall dismiss the petition unless the court in the other state determines that the court in this State is a more appropriate forum.

(76 Del. Laws, c. 380, § 5.)

§ 39A-301 Transfer of guardianship or conservatorship to another state.

(a) A guardian or conservator appointed in this State may petition the Court to transfer the guardianship or conservatorship to another state.

(b) Notice of a petition under subsection (a) of this section must be given to the persons that would be entitled to notice of a petition in this State for the appointment of a guardian or conservator.

(c) On the Court's own motion or on request of the guardian or conservator, the person who is incapacitated or a protected person, or other person required to be notified of the petition, the Court shall hold a hearing on a petition filed pursuant to subsection (a) of this section.

(d) The Court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the Court is satisfied that the guardianship will be accepted by the court in the other state and the Court finds that:

(1) The person who is incapacitated is physically present in or is reasonably expected to move permanently to the other state;

(2) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the person who is incapacitated; and

(3) Plans for care and services for the person who is incapacitated in the other state are reasonable and sufficient.

(e) The Court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the Court is satisfied that the conservatorship will be accepted by the court of the other state and the Court finds that:

(1) The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in § 39A-201(b) of this title;

(2) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(3) Adequate arrangements will be made for management of the protected person's property.

(f) The Court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(1) A provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to § 39A-302 of this title; and

(2) The documents required to terminate a guardianship or conservatorship in this State.

(76 Del. Laws, c. 380, § 5; 78 Del. Laws, c. 179, §§ 128, 129.)

§ 39A-302 Accepting guardianship or conservatorship transferred from another state.

(a) To confirm transfer of a guardianship or conservatorship transferred to this State under provisions similar to § 39A-301 of this title, the guardian or conservator must petition the court in this State to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

(b) Notice of a petition under subsection (a) of this section must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this State. The notice must be given in the same manner as notice is required to be given in this State.

(c) On the Court's own motion or on request of the guardian or conservator, the person who is incapacitated or a protected person, or other person required to be notified of the proceeding, the Court shall hold a hearing on a petition filed pursuant to subsection (a) of this section.

(d) The Court shall issue an order provisionally granting a petition filed under subsection (a) of this section unless:

(1) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the person who is incapacitated or a protected person; or

(2) The guardian or conservator is ineligible for appointment in this State.

(e) The Court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this State upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to § 39A-301 of this title transferring the proceeding to this State.

(f) Not later than 90 days after issuance of a final order accepting transfer of a guardianship or conservatorship, the Court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this State.

(g) In granting a petition under this section, the Court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacity of the person who is incapacitated or protected and the appointment of the guardian or conservator.

(h) The denial by the Court of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this State under Chapters 39 and 41 of this title if the Court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

(76 Del. Laws, c. 380, § 5; 78 Del. Laws, c. 179, § 130.)

§ 39A-401 Foreign guardians.

The authority of a guardian or conservator appointed in another state to act in this state is governed by § 3904 of this title.

(76 Del. Laws, c. 380, § 5.)

§ 39A-402 Effective date.

This chapter applies to guardianship and protective proceedings begun on or after January 1, 2009.

(76 Del. Laws, c. 380, § 5.)

Part V
Fiduciary Relations
Chapter 40
DELAWARE CAREPLAN TRUST ACT

§ 4001 Definitions.

In this chapter:

(1) "Comprehensive care plan" means those services offered by the Delaware CarePlan Trust that are designed to ensure that the needs of each participant are being met for as long as may be required and may include periodic visits to the participant and to the places where the participant receives services, participation in the development of individualized plans for the participant, and other similar services consistent with the purposes of this chapter.

(2) "Delaware CarePlan Trust" means a nonprofit nongovernmental organization that offers the following services:

a. Administration of trust funds for persons with disabilities;

b. Comprehensive care planning;

c. Guardianship for persons with disabilities who are incompetent; and

d. Advice and counsel to persons who have been appointed as individual guardians of the person or property of persons with disabilities.

(3) "Participant" shall mean any person with a disability who is accepted as a participant in and has the right to receive services from the Delaware CarePlan Trust.

(4) "Person with a disability" means a person with a physical or mental impairment with a long-term need for specialized health, social or other services.

(5) "Surplus trust funds" means funds accumulated in the trust from contributions made by or on behalf of a participant which, after the participant's death or withdrawal from the plan, are determined by the Board to be in excess of the actual cost of providing services during the participant's lifetime, including the participant's share of administrative costs.

(6) "Trustee" means the Board formed for the purpose of managing the community trust.

(71 Del. Laws, c. 360, § 1.)

§ 4002 Purpose, scope and organization.

(a) The Delaware CarePlan Trust is intended to encourage supplementation and augmentation of those services provided by local, state and federal government agencies for persons with disabilities. It will provide a method to assure ongoing individualized support for a person with a disability. Assets contributed by or on behalf of a person with a disability will be available for the use and benefit of such participant. Assets of participants may be pooled to provide efficient management.

(b) This chapter shall be liberally construed and applied to promote its underlying purposes and policies, including, but not limited, to:

(1) Encourage the orderly establishment of the Delaware CarePlan Trust for the benefit of persons with disabilities;

(2) Ensure that the Delaware CarePlan Trust is administered properly and that its Board is free from conflicts of interest;

(3) Facilitate the sound administration of contributions on behalf of persons with disabilities by allowing family members and other interested persons to obtain professional investment management, which may entail pooling of contributions;

(4) Provide families and other interested persons peace of mind in knowing that a means exists to support and assist persons with disabilities and provide efficient management of assets;

(5) Make guardians available for persons with disabilities as needed;

(6) Encourage the availability of resources for the supplemental needs of persons with disabilities that are not available through any governmental or charitable program;

(7) Encourage the inclusion of indigent persons with disabilities as beneficiaries of the Delaware CarePlan Trust if and when funds are available for such persons; and

(8) Encourage families and other interested persons to set aside funds for the future protection of persons with disabilities by ensuring that the interest of persons with disabilities in the Delaware CarePlan Trust are not considered assets or income that would disqualify them from any governmental program with an economic means test.

(c) The Delaware CarePlan Trust shall be organized as a nongovernmental nonprofit organization pursuant to Delaware law.

(71 Del. Laws, c. 360, § 1.)

§ 4003 Administration; powers and duties.

(a) The Delaware CarePlan Trust shall be administered by a Board, the members of which shall include, but shall not be limited to, family members, interested persons, public representatives, persons with disabilities who are not participants, legal advisers, trust advisers,

financial advisers and professionals in the disabilities field. No Board member with voting power shall be a provider of nonincidental habilitative, health, social or education services to persons with disabilities or an employee of such a service provider. The Board may allow service providers to serve on a separate advisory board. Board members shall be selected from the geographic areas served by the Delaware CarePlan Trust.

(b) Notwithstanding any other provision of law to the contrary, no member of the Board may receive fees or commissions for services provided as a member of the Board.

(c) The Delaware CarePlan Trust shall be considered the trustee of any funds administered by it. No individual Board member shall be considered to be a trustee.

(d) The Board shall adopt appropriate policies and bylaws in accordance with this chapter.

(e) The Board may retain paid staff as it considers necessary to provide comprehensive care plan services to the extent required by each participant. The Delaware CarePlan Trust may authorize the expenditure of funds for any goods or services which, in its sole discretion, it determines will promote the well-being of any participant, including recreational services. The Delaware CarePlan Trust may pay for the burial of any participant. The Delaware CarePlan Trust, however, may not expend funds for any goods or services available to any particular participant through any governmental or charitable program, insurance or other sources available to the participant. The Delaware CarePlan Trust may expend funds to meet the reasonable costs of administration.

(f) The Delaware CarePlan Trust may accept appointment as guardian of the person, guardian of the property or guardian of both on behalf of any participant. If the Delaware CarePlan Trust accepts appointment as guardian, it shall assign a staff member to carry out its responsibilities as guardian. The Delaware CarePlan Trust may, on request, offer consultative and professional assistance to the guardian of any of its participants.

(71 Del. Laws, c. 360, § 1.)

§ 4004 Eligibility for participation and services.

(a) A person with a disability may be eligible to be a participant in the Delaware CarePlan Trust:

(1) Upon a contribution of assets into the Delaware CarePlan Trust, or the Board's waiver of such contribution, by or on behalf of the person; and

(2) Acceptance into the Delaware CarePlan Trust by the Board.

(b) The Board is directed to develop standards of eligibility for participants.

(1) The extent and character of the services and acceptance of participants are at the discretion of the Delaware CarePlan Trust.

(2) The Delaware CarePlan Trust may accept contributions, bequests, payee services and/or property passing by beneficiary designation by or on behalf of persons with disabilities.

(c) Upon the acceptance of a person with a disability as a participant, the Delaware CarePlan Trust shall develop a comprehensive care plan for the participant, and shall provide such plan to the donor and to the participant or the participant's representative. The comprehensive care plan shall include:

(1) A starting date for the delivery of services or the condition for commencing delivery of services;

(2) The nature and duration of the services to be provided; and

(3) The criteria or procedures for modifying the program of services from time to time.

(d) The Delaware CarePlan Trust is not required to provide services to a participant who is a competent adult and who has refused to accept services, or who, in the Board's determination in accordance with this chapter, is no longer eligible to be a participant. Further, the Delaware CarePlan Trust shall not provide services of a nature or in a manner that would be contrary to the public policy of the State at the time such services are to be provided. In either case, the Delaware CarePlan Trust may offer alternate services that are consistent with the purposes of this chapter and in keeping with the best interest of the participant.

(71 Del. Laws, c. 360, § 1.)

§ 4005 Special requests on behalf of participant.

(a) The Delaware CarePlan Trust may agree to fulfill any special requests made by or on behalf of a participant as long as the requests are consistent with this chapter and provided that adequate funds are available for such purpose.

(b) The Delaware CarePlan Trust may agree to serve as trustee or as trust advisor for any individual trust created by or on behalf of a participant, regardless of whether the trust is revocable or irrevocable, has one or more remaindermen or contingent beneficiaries, or any other condition, so long as the individual trust is consistent with the purposes of this chapter.

(71 Del. Laws, c. 360, § 1.)

§ 4006 Accountability.

(a) The Delaware CarePlan Trust shall prepare a report annually itemizing all funds collected for the year, income earned, salaries, other expenses incurred and the opening and final trust balances. Such report shall be available to the public.

(b) The Delaware CarePlan Trust shall, upon request, provide a copy of the report required under subsection (a) of this section to the participant or the participant's representative.

(c) Each year, the Delaware CarePlan Trust shall prepare on behalf of each participant:

(1) A detailed individual statement of the services provided to each participant during the previous 12 months, and the services planned for such participant during the following 12 months; and

(2) An accounting of expenditures made on behalf of the participant and the investments remaining in such participant's account.

(d) The Delaware CarePlan Trust shall provide the statement required under subsection (c) of this section to the participant or the participant's representative, and, consistent with standards adopted by the Board to protect the participant's privacy rights, shall upon request provide such statement to each donor for the participant.

(e) The Delaware CarePlan Trust shall provide the statement required under subsection (c) of this section as a final statement upon the withdrawal of a participant.

(71 Del. Laws, c. 360, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4007 Withdrawal of a participant; surplus trust funds.

(a) The Board is directed to develop standards and procedures for the withdrawal of a participant from the Delaware CarePlan Trust.

(1) A participant may withdraw from the Delaware CarePlan Trust. The death of a participant shall constitute a withdrawal from the Delaware CarePlan Trust.

(2) The Board may determine that a participant must withdraw from the Delaware CarePlan Trust.

(b) Upon the withdrawal of a participant from the Delaware CarePlan Trust, the Board may release from the Delaware CarePlan Trust all or any portion of the participant's surplus trust assets.

(c) The Delaware CarePlan Trust may use surplus trust funds for purposes including, but not limited to, qualifying a person with a disability as a participant, reducing the charges for the cost of administration and for any other purpose that is consistent with this chapter.

(d) The Delaware CarePlan Trust may not use a participant's surplus trust funds to make any charitable contribution on behalf of any participant or class of participants.

(71 Del. Laws, c. 360, § 1.)

§ 4008 Charitable contributions.

The Delaware CarePlan Trust may accept contributions not designated for a particular participant, and use such contributions, in its discretion, for purposes including, but not limited to, qualifying a person with a disability as a participant, meeting start-up costs, reducing the charges to the trust for the cost of administration, and for any other purpose that is consistent with this chapter.

(71 Del. Laws, c. 360, § 1.)

§ 4009 Effect on participation in government programs.

Notwithstanding any other provision of law, a participant's interest in the Delaware CarePlan Trust shall be disregarded in assessing financial eligibility and liability under any program of government benefits or assistance. No government agency shall reduce the benefits or services available to any individual because that person is a participant.

(71 Del. Laws, c. 360, § 1.)

§ 4010 Exemption from creditors.

No participant shall have the power to assign, convey, alienate, or otherwise encumber any interest in the Delaware CarePlan Trust; nor shall such interest or any trust disbursement be subject to any creditor's claim, attachment, encumbrance or execution under any writ or proceeding in law or equity.

(71 Del. Laws, c. 360, § 1.)

§ 4011 Trust not subject to law against perpetuities, restraints on alienation.

The Delaware CarePlan Trust shall not be subject to or held to be in violation of any principle of law against perpetuities or restraints on alienation or perpetual accumulations of trusts.

(71 Del. Laws, c. 360, § 1.)

§ 4012 Short title.

This chapter may be cited as the "Delaware CarePlan Trust Act."

(71 Del. Laws, c. 360, § 1.)

Part V
Fiduciary Relations
Chapter 41
CONSERVATOR OF PROPERTY FOR PERSONS REPORTED MISSING OR CAPTURED WHILE SERVING IN ARMED FORCES OR AS A MERCHANT SAILOR

§ 4101 Appointment of conservator.

Whenever a person, hereinafter referred to as an absentee, serving in or with the armed forces of the United States or a person serving as a merchant sailor has been reported or listed as missing or missing in action or interned in a neutral country or beleaguered, besieged or captured by an enemy has an interest in any form of property in this State or is a legal resident of this State and has not provided an adequate power of attorney authorizing another to act in the person's behalf in regard to such property or interest, then, the Register of Wills of the county of such absentee's legal domicile or of the county where such property is situated, upon petition alleging the foregoing facts and showing the necessity for providing care of the property of such absentee, made by any person who would have an interest in the property of the absentee were such absentee deceased, or on the Register's own motion, after notice to or on receipt of proper waivers from the heirs and next of kin of the absentee as provided by law for the administration of an estate and upon good cause being shown, may, after finding the facts to be as aforesaid, appoint a conservator to take charge of the absentee's estate, under the supervision and subject to the further orders of the Register.

(45 Del. Laws, c. 231, § 1; 12 Del. C. 1953, § 4101; 70 Del Laws, c. 186, § 1.)

§ 4102 Bond and powers of conservator.

The Register of Wills may appoint any suitable person as conservator and may require such conservator to post an adequate surety bond and to make such reports as the Register deems necessary. The conservator shall have the same powers and authority as the guardian of the property of an infant or incompetent and shall be considered as an officer or arm of the court.

(45 Del. Laws, c. 231, § 2; 12 Del. C. 1953, § 4102.)

§ 4103 Termination of conservatorship.

At any time upon petition signed by the absentee or on petition of an attorney-in-fact acting under an adequate power of attorney granted by the absentee the Register shall direct the termination of the conservatorship and the transfer of all property held thereunder to the absentee or to the designated attorney-in-fact. Likewise, if at any time subsequent to the appointment of a conservator it appears that the absentee has died and an executor or administrator has been appointed for the absentee's estate, the Register shall direct the termination of the conservatorship and the transfer of all property of the deceased absentee held thereunder to such executor or administrator.

(45 Del. Laws, c. 231, § 3; 12 Del. C. 1953, § 4103; 70 Del Laws, c. 186, § 1.)

Part V
Fiduciary Relations
Chapter 43
UNIFORM ACT FOR SIMPLIFICATION OF FIDUCIARY SECURITY TRANSFERS

§ 4301 Definitions.

In this chapter, unless the context otherwise requires:

(1) "Assignment" includes any written stock power, bond power, bill of sale, deed, declaration of trust or other instrument of transfer.

(2) "Claim of beneficial interest" includes a claim of any interest by a decedent's legatee, distributee, heirs or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee or a minor owner of a security registered in the name of a custodian or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person on the claimant's behalf and includes a claim that the transfer would be in breach of fiduciary duties.

(3) "Corporation" means a private or public corporation, association or trust issuing a security.

(4) "Fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian or nominee.

(5) "Person" includes an individual, a corporation, government or governmental subdivision or agency, statutory trust, business trust, estate, trust, partnership or association, 2 or more persons having a joint or common interest or any other legal or commercial entity.

(6) "Security" includes any share of stock, bond, debenture, note or other security issued by a corporation which is registered as to ownership on the books of the corporation.

(7) "Transfer" means a change on the books of a corporation in the registered ownership of a security.

(8) "Transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation.

(12 Del. C. 1953, § 4301; 54 Del. Laws, c. 141; 70 Del Laws, c. 186, § 1; 73 Del. Laws, c. 329, § 56.)

§ 4302 Registration in the name of a fiduciary.

A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent or correct description of the fiduciary relationship and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent receives written notice that the fiduciary is no longer acting as such with respect to the particular security.

(12 Del. C. 1953, § 4302; 54 Del. Laws, c. 141.)

§ 4303 Assignment by a fiduciary.

Except as otherwise provided in this chapter, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary:

(1) May assume without inquiry that the assignment, even though to the fiduciary or to the fiduciary's nominee, is within the fiduciary's authority and capacity and is not in breach of the fiduciary duties;

(2) May assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

(3) Is not charged with notice of and is not bound to obtain or examine any court record or any recorded or unrecorded document relating to the fiduciary relationship or the assignment, even though the record or document is in its possession.

(12 Del. C. 1953, § 4303; 54 Del. Laws, c. 141; 70 Del Laws, c. 186, § 1.)

§ 4304 Evidence of appointment or incumbency.

A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of appointment or incumbency:

(1) In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within 60 days before the transfer; or

(2) In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate. Corporations and transfer agents may adopt standards with respect to evidence of appointment or incumbency under this subdivision provided such standards are not manifestly unreasonable. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this subsection except to the extent that the contents relate directly to the appointment or incumbency.

(12 Del. C. 1953, § 4304; 54 Del. Laws, c. 141.)

§ 4305 Adverse claims.

(a) A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim. The corporation or transfer agent is not put on notice unless the written

notice identifies the claimant, the registered owner and the issue of which the security is a part, provides an address for communications directed to the claimant and is received before the transfer. Nothing in this chapter relieves making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized in subsection (b) of this section.

(b) As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by the claimant. If the corporation or transfer agent so mails such a notice, it shall withhold the transfer for 30 days after the mailing and shall then make the transfer unless restrained by a court order.

(12 Del. C. 1953, § 4305; 54 Del. Laws, c. 141; 70 Del Laws, c. 186, § 1.)

§ 4306 Nonliability of corporation and transfer agent.

A corporation or transfer agent incurs no liability to any person by making a transfer or otherwise acting in a manner authorized by this chapter.

(12 Del. C. 1953, § 4306; 54 Del. Laws, c. 141.)

§ 4307 Nonliability of third persons.

(a) No person who participates in the acquisition, disposition, assignment or transfer of a security by or to a fiduciary including a person who guarantees the signature of the fiduciary is liable for participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves such a breach unless it is shown that the person acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in breach of duty.

(b) If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of this chapter incurs no liability.

(c) This section does not impose any liability upon the corporation or its transfer agent.

(12 Del. C. 1953, § 4307; 54 Del. Laws, c. 141.)

§ 4308 Territorial application.

(a) The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary or in making a transfer of a security pursuant to an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the corporation is organized.

(b) This chapter applies to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in this State in connection with the acquisition, disposition, assignment or transfer of a security by or to a fiduciary and of a person who guarantees in this State the signature of a fiduciary in connection with such a transaction.

(12 Del. C. 1953, § 4308; 54 Del. Laws, c. 141.)

§ 4309 Tax obligations.

This chapter does not affect any obligation of a corporation or transfer agent with respect to estate, inheritance, succession or other taxes imposed by the laws of this State.

(12 Del. C. 1953, § 4309; 54 Del. Laws, c. 141.)

§ 4310 Uniformity of interpretation.

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(12 Del. C. 1953, § 4310; 54 Del. Laws, c. 141.)

§ 4311 Short title.

This chapter may be cited as the "Uniform Act for Simplification of Fiduciary Security Transfers."

(12 Del. C. 1953, § 4311; 54 Del. Laws, c. 141.)

Part V
Fiduciary Relations
Chapter 45
DELAWARE UNIFORM TRANSFERS TO MINORS ACT

§ 4501 Definitions.

In this chapter:

(1) "Adult" means an individual who has attained the age of 21 years.

(2) "Benefit plan" means an employer's plan for the benefit of an employee or partner.

(3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

(4) "Court" means Court of Chancery.

(5) "Custodial property" means (i) any interest in property transferred to a custodian under this chapter and (ii) the income from and proceeds of that interest in property.

(6) "Custodian" means a person so designated under § 4509 of this title or a successor or substitute custodian designated under § 4518 of this title.

(7) "Financial institution" means a bank, trust company, savings institution or credit union, chartered and supervised under state or federal law.

(8) "Guardian" means a person appointed or qualified by a court to act as general, limited or temporary guardian or conservator of a minor's property.

(9) "Legal representative" means an individual's personal representative or conservator.

(10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle or aunt, whether of whole or half-blood or by adoption.

(11) "Minor" means an individual who has not attained the age of 21 years.

(12) "Person" means an individual, corporation, organization or other legal entity.

(13) "Personal representative" means an executor, administrator, successor personal representative or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(14) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession subject to the legislative authority of the United States.

(15) "Transfer" means a transaction that creates custodial property under § 4509 of this title.

(16) "Transferor" means a person who makes a transfer under this chapter.

(17) "Trust company" means a financial institution, corporation or other legal entity authorized to exercise general trust powers.

(70 Del. Laws, c. 393, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 196, § 1; 74 Del. Laws, c. 269, § 1.)

§ 4502 Scope and jurisdiction.

(a) This chapter applies to a transfer that refers to this chapter in the designation under § 4509(a) of this title by which the transfer is made if at the time of the transfer, the transferor, the minor or the custodian is a resident of this State or the custodial property is located in this State. The custodianship so created remains subject to this chapter despite a subsequent change in residence of a transferor, the minor or the custodian or the removal of custodial property from this State.

(b) A person designated as custodian under this chapter is subject to personal jurisdiction in this State with respect to any matter relating to the custodianship.

(c) A transfer that purports to be made and which is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act or a substantially similar act of another state is governed by the law of the designated state and may be executed and is enforceable in this State if at the time of the transfer, the transferor, the minor or the custodian is a resident of the designated state or the custodial property is located in the designated state.

(70 Del. Laws, c. 393, § 1.)

§ 4503 Nomination of custodian.

(a) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: "as custodian for _____ (name of minor) under the Delaware Uniform Transfers to Minors Act." The nomination may name 1 or more persons as substitute custodians to whom the property must be transferred, in the order named, if the 1st nominated custodian dies before the transfer or is unable, declines or is ineligible to serve. The nomination may be made in a

will, a trust, a deed, an instrument exercising a power of appointment or in writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer or other obligor of the contractual rights.

(b) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under § 4509(a) of this title.

(c) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under § 4509 of this title. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to § 4509 of this title.

(70 Del. Laws, c. 393, § 1.)

§ 4504 Transfer by gift or exercise of power of appointment.

A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to § 4509 of this title.

(70 Del. Laws, c. 393, § 1.)

§ 4505 Transfer authorized by will or trust.

(a) A personal representative or trustee may make an irrevocable transfer pursuant to § 4509 of this title to a custodian for the benefit of a minor as authorized in the governing will or trust.

(b) If the testator or settlor has nominated a custodian under § 4503 of this title to receive the custodial property, the transfer must be made to that person.

(c) If the testator or settlor has not nominated a custodian under § 4503 of this title, or all persons so nominated as custodian die before the transfer or are unable, decline or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under § 4509(a) of this title.

(70 Del. Laws, c. 393, § 1; 71 Del. Laws, c. 196, § 2.)

§ 4506 Other transfer by fiduciary.

(a) Subject to subsection (c) of this section, a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to § 4509 of this title in the absence of a will or under a will or trust that does not contain an authorization to do so.

(b) Subject to subsection (c) of this section, a guardian may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to § 4509 of this title.

(c) A transfer under subsection (a) or (b) of this section may be made if:

(1) The personal representative, trustee or guardian considers the transfer to be in the best interest of the minor, which shall be presumed in the absence of contrary facts actually known to the personal representative, trustee or guardian;

(2) The transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement or other governing instrument; and

(3) If the property exceeds $50,000 in value, the custodian designated by the personal representative, trustee or guardian is approved by the Court.

(d) If a transfer is made in conformity with the preceding provisions of this section and § 4509 of this title, the personal representative, trustee or guardian making the transfer shall have no liability to the minor therefor, including any obligation to see to the application of the proceeds of such transfer.

(70 Del. Laws, c. 393, § 1; 71 Del. Laws, c. 196, §§ 3-5.)

§ 4507 Transfer by obligor.

(a) Subject to subsections (b) and (c) of this section, a person not subject to § 4505 or § 4506 of this title who holds property of or owes a liquidated debt to a minor not having a guardian may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to § 4509 of this title.

(b) If a person having the right to do so under § 4503 of this title has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(c) If no custodian has been nominated under § 4503 of this title, or all persons so nominated as custodian die before the transfer or are unable, decline or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds $50,000 in value or, if the property exceeds $50,000 in value, the custodian designated by the transferor is approved by the Court.

(d) A transfer under subsection (a) may be made:

(1) If the transferor considers the transfer to be in the best interest of the minor, which shall be presumed in the absence of contrary facts actually known to the transferor; and

(2) If the property exceeds $50,000 in value, the custodian designated by the transferor is approved by the Court.

If a transfer is made in conformity with the preceding provisions of this section and § 4509 of this title, the transferor shall have no liability to the minor therefor, including any obligation to see to the application of the proceeds of such transfer.

(70 Del. Laws, c. 393, § 1; 71 Del. Laws, c. 196, §§ 6-8; 74 Del. Laws, c. 269, § 2.)

§ 4508 Receipt for custodial property.

A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this chapter.

(70 Del. Laws, c. 393, § 1.)

§ 4509 Manner of creating custodial property and effecting transfer; designation of initial custodian; control.

(a) Custodial property is created and a transfer is made whenever:

(1) An uncertificated security or a certificated security in registered form is either:

a. Registered in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "as custodian for _____ (name of minor) under the Delaware Uniform Transfers to Minors Act"; or

b. Delivered if in certificated form or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (b) of this section;

(2) Money is paid or delivered or a security held in the name of a broker, financial institution or its nominee is transferred to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "as custodian for _____ (name of minor) under the Delaware Uniform Transfers to Minors Act";

(3) The ownership of a life or endowment insurance policy or annuity contract is either:

a. Registered with the issuer in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "as custodian for _____ (name of minor) under the Delaware Uniform Transfers to Minors Act"; or

b. Assigned in writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodian for _____ (name of minor) under the Delaware Uniform Transfers to Minors Act";

(4) An irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer or other obligor that the right is transferred to the transferor, an adult other than the transferor or a trust company, whose name in the notification is followed in substance by the words: "as custodian for _____ (name of minor) under the Delaware Uniform Transfers to Minors Act";

(5) An interest in real property is recorded in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "as custodian for _____ (name of minor) under the Delaware Uniform Transfers to Minors Act";

(6) A certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

a. Issued in the name of the transferor, an adult other than the transferor or a trust company, followed in substance by the words: "as custodian for _____ (name of minor) under the Delaware Uniform Transfers to Minors Act"; or

b. Delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: "as custodian for _____ (name of minor) under the Delaware Uniform Transfers to Minors Act"; or

(7) An interest in any property not described in paragraphs (1) through (6) of this subsection is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (b) of this section.

(b) An instrument in the following form satisfies the requirements of paragraphs (a)(1)b. and (a)(7) of this section:

"TRANSFER UNDER THE DELAWARE UNIFORM TRANSFERS TO MINORS ACT

I, _____ (name of transferor or name and representative capacity if a fiduciary), hereby transfer to _____ (name of custodian), as custodian for _____ (name of minor) under the Delaware Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Date: _____

_____

(Signature)

_____ (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Delaware Uniform Transfers to Minors Act.

Dated: _____

_____

(Signature of Custodian)"

(c) A transferor shall place the custodian in control of the custodial property as soon as practicable.

(70 Del. Laws, c. 393, § 1.)

§ 4510 Single custodianship.

A transfer may be made only for 1 minor and only 1 person may be the custodian. All custodial property held under this chapter by the same custodian for the benefit of the same minor constitutes a single custodianship.

(70 Del. Laws, c. 393, § 1.)

§ 4511 Validity and effect of transfer.

(a) The validity of a transfer made in a manner prescribed in this chapter is not affected by:

(1) Failure of the transferor to comply with § 4509(c) of this title concerning possession and control;

(2) Designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under § 4509(a) of this title; or

(3) Death or incapacity of a person nominated under § 4503 of this title or designated under § 4509 of this title as custodian or the disclaimer of the office by that person.

(b) A transfer made pursuant to § 4509 of this title is irrevocable and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties and authority provided in this chapter, and neither the minor nor the minor's legal representative has any right, power, duty or authority with respect to the custodial property except as provided in this chapter.

(c) By making a transfer, the transferor incorporates in the disposition all the provisions of this chapter and grants to the custodian and to any third person dealing with a person designated as custodian the respective powers, rights and immunities provided in this chapter.

(70 Del. Laws, c. 393, § 1.)

§ 4512 Care of custodial property.

(a) A custodian shall:

(1) Take control of custodial property;

(2) Register or record title to custodial property if appropriate; and

(3) Collect, hold, manage, invest and reinvest custodial property.

(b) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another in accordance with the standard of care set forth in § 3302 of this title and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

(c) A custodian may invest in or pay premiums on life insurance or endowment policies on:

(1) The life of the minor only if the minor or the minor's estate is the sole beneficiary, or

(2) The life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate or the custodian in the capacity of custodian is the irrevocable beneficiary.

(d) A custodian at all times, shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded and custodial property subject to registration is so identified if it is either registered or held in an account designated in the name of the custodian, followed in substance by the words: "as a custodian for _____ (name of minor) under the Delaware Uniform Transfers to Minors Act."

(e) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained the age of 14 years.

(70 Del. Laws, c. 393, § 1.)

§ 4513 Powers of custodian.

(a) A custodian acting in a custodial capacity has all the rights, powers and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers and authority in that capacity only.

(b) This section does not relieve a custodian from liability for breach of § 4512 of this title.

(70 Del. Laws, c. 393, § 1.)

§ 4514 Use of custodial property.

(a) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to:

(1) The duty or ability of the custodian personally or of any other person to support the minor, or

(2) Any other income or property of the minor which may be applicable or available for that purpose.

(b) On petition of an interested person or the minor, if the minor has attained the age of 14 years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(c) A delivery, payment or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

(70 Del. Laws, c. 393, § 1.)

§ 4515 Custodian's expenses, compensation and bond.

(a) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(b) Except for one who is a transferor under § 4504 of this title, a custodian has a noncumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(c) Except as provided in § 4518(f) of this title, a custodian need not give a bond.

(70 Del. Laws, c. 393, § 1.)

§ 4516 Exemption of third person from liability.

A third person, in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

(1) The validity of the purported custodian's designation;

(2) The propriety of or the authority under this chapter for any act of the purported custodian;

(3) The validity of propriety under this chapter of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

(4) The propriety of the application of any property of the minor delivered to the purported custodian.

(70 Del. Laws, c. 393, § 1.)

§ 4517 Liability to third persons.

(a) A claim based on:

(1) A contract entered into by a custodian acting in a custodial capacity;

(2) An obligation arising from the ownership or control of custodial property; or

(3) A tort committed during the custodianship

may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor.

(b) A custodian is not personally liable:

(1) On a contract properly entered into in the custodial capacity, unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or

(2) For an obligation arising from control of custodial property or for a tort committed during the custodianship, unless the custodian is personally at fault.

(c) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship, unless the minor is personally at fault.

(70 Del. Laws, c. 393, § 1.)

§ 4518 Renunciation, resignation, death or removal of custodian; designation of successor custodian.

(a) A person nominated under § 4503 of this title or designated under § 4509 of this title as custodian may decline to serve by delivering a written disclaimer to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing and eligible to serve was nominated under § 4503 of this title, the person who made the nomination may nominate a substitute custodian under § 4503 of this title; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under § 4509(a) of this title. The custodian so designated has the rights of a successor custodian.

(b) A custodian at any time may designate a trust company or an adult other than a transferor under § 4504 of this title as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated or is removed.

(c) A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of 14 years and to the successor custodian and by delivering the custodial property to the successor custodian.

(d) If a custodian is ineligible, dies or becomes incapacitated without having effectively designated a successor and the minor has attained the age of 14 years, the minor may designate as successor custodian, in the manner prescribed in subsection (b) of this section, an adult member of the minor's family, a guardian of the minor or a trust company. If the minor has not attained the age of 14 years or fails to act within 60 days after the ineligibility, death or incapacity, the guardian of the minor becomes successor custodian. If the minor has no guardian or the guardian declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family or any other interested person may petition the court to designate a successor custodian.

(e) A custodian who declines to serve under subsection (a) of this section or resigns under subsection (c) of this section or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(f) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the guardian of the minor or the minor if the minor has attained the age of 14 years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under § 4504 of this title or to require the custodian to give appropriate bond.

(70 Del. Laws, c. 393, § 1; 71 Del. Laws, c. 196, §§ 9, 10.)

§ 4519 Accounting by and determination of liability of custodian.

(a) A minor who has attained the age of 14 years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor or a transferor's legal representative may petition the Court:

(1) For an accounting by the custodian or the custodian's legal representative; or

(2) For a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under § 4517 of this title to which the minor or the minor's legal representative was a party.

(b) A successor custodian may petition the court for an accounting by the predecessor custodian.

(c) The Court, in a proceeding under this chapter or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(d) If a custodian is removed under § 4518(f) of this title, the Court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

(70 Del. Laws, c. 393, § 1.)

§ 4520 Termination of custodianship.

The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

(1) The minor's attainment of 21 years of age with respect to custodial property transferred under § 4504 or § 4505 of this title;

(2) The minor's attainment of 18 years of age with respect to custodial property transferred under § 4506 or § 4507 of this title; or

(3) The minor's death.

(70 Del. Laws, c. 393, § 1.)

§ 4521 Applicability.

This chapter applies to a transfer within the scope of § 4502 of this title made after June 26, 1996, if:

(1) The transfer purports to have been made under the Delaware Uniform Gifts to Minors Act; or

(2) The instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of this chapter is necessary to validate the transfer.

(70 Del. Laws, c. 393, § 1.)

§ 4522 Effect on existing custodianships.

(a) Any transfer of custodial property, as now defined in this chapter, made before June 26, 1996, is validated notwithstanding that there was no specific authority in the Delaware Uniform Gifts to Minors Act for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(b) This chapter applies to all transfers made before June 26, 1996, in a manner and form prescribed in the Delaware Uniform Gifts to Minors Act, except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on June 26, 1996.

(c) Sections 4501 and 4520 of this title with respect to the age of a minor for whom custodial property is held under this chapter do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of 18 after January 1, 1975, and before June 26, 1996.

(70 Del. Laws, c. 393, § 1.)

§ 4523 Short title.

This chapter may be cited as the "Delaware Uniform Transfers to Minors Act."

(70 Del. Laws, c. 393, § 1.)

Part V
Fiduciary Relations
Chapter 47
UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT

§ 4701 Short title.

This chapter may be cited as the "Uniform Prudent Management of Institutional Funds Act."

(59 Del. Laws, c. 572, § 1; 76 Del. Laws, c. 159, § 1.)

§ 4702 Definitions.

In this chapter:

(1) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.

(2) "Endowment fund" means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.

(3) "Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.

(4) "Institution" means:

a. A person, other than an individual, organized and operated exclusively for charitable purposes;

b. A government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; and

c. A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

(5) "Institutional fund" means a fund held by an institution exclusively for charitable purposes. The term does not include:

a. Program-related assets;

b. A fund held for an institution by a trustee that is not an institution; or

c. A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

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

(7) "Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(59 Del. Laws, c. 572, § 1; 76 Del. Laws, c. 159, § 1.)

§ 4703 Standard of conduct in managing and investing institutional fund.

(a) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(b) In addition to complying with the duty of loyalty imposed by law other than this chapter, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(c) In managing and investing an institutional fund, an institution:

(1) May incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(2) Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

a. An institution may pool 2 or more institutional funds for purposes of management and investment.

b. Except as otherwise provided by a gift instrument, the following rules apply:

1. In managing and investing an institutional fund, the following factors, if relevant, must be considered:

A. General economic conditions;

B. The possible effect of inflation or deflation;

C. Expected tax consequences, if any, of investment decisions or strategies;

D. The role that each investment or course of action plays within the overall investment portfolio of the fund;

E. The expected total return from income and the appreciation of investments;

F. Other resources of the institution;

G. The needs of the institution and the fund to make distributions and to preserve capital; and

H. An asset's special relationship or special value, if any, to the charitable purposes of the institution.

2. Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.

3. Except as otherwise provided by law other than this chapter, an institution may invest in any kind of property or type of investment consistent with this section.

4. An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

5. Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this Chapter.

6. A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.

(59 Del. Laws, c. 572, § 1; 76 Del. Laws, c. 159, § 1.)

§ 4704 Appropriation for expenditure or accumulation of endowment fund; rules of construction.

(a) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

(1) The duration and preservation of the endowment fund;

(2) The purposes of the institution and the endowment fund;

(3) General economic conditions;

(4) The possible effect of inflation or deflation;

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

(6) Other resources of the institution; and

(7) The investment policy of the institution.

(b) To limit the authority to appropriate for expenditure or accumulate under subsection (a), a gift instrument must specifically state the limitation.

(c) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income", "interest", "dividends", or "rents, issues, or profits", or "to preserve the principal intact", or words of similar import:

(1) Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(2) Do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (a) of this section.

(59 Del. Laws, c. 572, § 1; 76 Del. Laws, c. 159, § 1.)

§ 4705 Delegation of management and investment functions.

(a) Subject to any specific limitation set forth in a gift instrument or in law other than this chapter, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

(1) Selecting an agent;

(2) Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and

(3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

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

(c) An institution that complies with subsection (a) of this section is not liable for the decisions or actions of an agent to which the function was delegated.

(d) By accepting delegation of a management or investment function from an institution that is subject to the laws of this State, an agent submits to the jurisdiction of the courts of this State in all proceedings arising from or related to the delegation or the performance of the delegated function.

(e) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of this State other than this chapter.

(59 Del. Laws, c. 572, § 1; 76 Del. Laws, c. 159, § 1.)

§ 4706 Release or modification of restrictions on management, investment, or purpose.

(a) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(b) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the fund. The institution shall notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(c) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the Attorney General of the application, and the Attorney General must be given an opportunity to be heard.

(d) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, 60 days after notification to the Attorney General, may release or modify the restriction, in whole or part, if:

(1) The institutional fund subject to the restriction has a total value of less than $25,000;

(2) More than 20 years have elapsed since the fund was established; and

(3) The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.

(59 Del. Laws, c. 572, § 1; 76 Del. Laws, c. 159, § 1.)

§ 4707 Reviewing compliance.

Compliance with this chapter is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

(59 Del. Laws, c. 572, § 1; 70 Del Laws, c. 186, § 1; 76 Del. Laws, c. 159, § 1.)

§ 4708 Application to existing institutional funds.

This chapter applies to institutional funds existing on or established after July 31, 2007. As applied to institutional funds existing on July 31, 2007, this chapter governs only decisions made or actions taken on or after that date.

(76 Del. Laws, c. 159, § 1.)

§ 4709 Relation to Electronic Signatures In Global and National Commerce Act.

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede Section 101 of that act, 15 U.S.C. § 7001(a), or authorize electronic delivery of any of the notices described in § 103 of that act, 15 U.S.C. § 7003(b).

(76 Del. Laws, c. 159, § 1.)

§ 4710 Applicability and construction.

This chapter shall apply solely to trusts and estates included within the meaning of the terms "institution", "institutional fund" and "person" as used under this chapter and no part of this chapter shall apply to, or affect, the validity, construction, interpretation, effect, administration or management of any other trust or estate or the governing instrument thereof.

(76 Del. Laws, c. 159, § 1.)

Part V
Fiduciary Relations
Chapter 49
DURABLE POWERS OF ATTORNEY

§ 4901 Defined.

A durable power of attorney is a power of attorney by which a principal designates another agent in writing, and the writing contains the words: "This power of attorney shall not be affected by subsequent disability or incapacity of the principal," or "This power of attorney shall become effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity.

(63 Del. Laws, c. 267, § 1; 77 Del. Laws, c. 467, § 1.)

§ 4902 Power not affected by disability.

All acts done by an agent pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and by the principal, and the principal's successors in interest, as if the principal did not have a disability or incapacity.

(63 Del. Laws, c. 267, § 1; 70 Del Laws, c. 186, § 1; 77 Del. Laws, c. 467, § 1; 78 Del. Laws, c. 179, § 131.)

§ 4903 Relation of agent to court-appointed fiduciary.

(a) The appointment of a guardian or other fiduciary charged with the management of the principal's property or the care of the principal's person shall terminate all powers of attorney created pursuant to this chapter to the extent the powers held by the agent prior to the appointment of a guardian or other fiduciary are granted to the guardian or other fiduciary.

(b) After the appointment of a guardian or other fiduciary charged with the management of the principal's property or the care of the principal's person, the agent is accountable to such guardian or other fiduciary as well as to principal as to any powers which the agent continues to hold. A guardian or other fiduciary shall only have such powers to revoke or amend the powers of the agent as shall be given to such guardian or other fiduciary by the court.

(63 Del. Laws, c. 267, § 1; 70 Del Laws, c. 186, § 1; 77 Del. Laws, c. 467, § 1.)

§ 4904 Death, disability or incapacity of principal.

(a) The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke nor terminate the agency as to the agent, or other person who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the successors in interest of the principal.

(b) The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power does not revoke nor terminate the agency as to the agent, or other person who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(63 Del. Laws, c. 267, § 1; 70 Del Laws, c. 186, § 1; 77 Del. Laws, c. 467, § 1.)

§ 4905 Exercise of power after revocation.

As to acts undertaken in good faith reliance thereon, an affidavit executed by the agent under a power of attorney, durable or otherwise, stating that the agent did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation or of the principal's death, disability or incapacity is conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable. This section does not affect any provision in a power of attorney for its termination by expiration of time, the occurrence of an event other than an expressed revocation or a change in the principal's capacity.

(63 Del. Laws, c. 267, § 1; 70 Del Laws, c. 186, § 1; 77 Del. Laws, c. 467, § 1.)

§ 4906 Relation of this chapter to Chapter 49A of this title.

The provisions of this chapter shall not apply to any personal power of attorney governed by Chapter 49A of this title.

(77 Del. Laws, c. 467, § 3.)

Part V
Fiduciary Relations
Chapter 49A
DURABLE PERSONAL POWERS OF ATTORNEY ACT
Subchapter I
General Provisions

§ 49A-101 Short title.

This chapter may be cited as the "Durable Personal Powers of Attorney Act".

(77 Del. Laws, c. 467, § 4.)

§ 49A-102 Definitions.

In this chapter:

(1) "Agent" means a person granted authority to act for the benefit of a principal under a durable power of attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term includes an original agent, concurrent agent, joint agent, successor agent, and a person to which an agent's authority is delegated.

(2) "Durable," with respect to a power of attorney, means not terminated by the principal's incapacity, and satisfying the requirements set forth in § 49A-104 of this title.

(3) "Durable power of attorney" means a power of attorney that is durable, meeting the requirements of § 49A-104 of this title.

(4) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(5) "Good faith" means honesty in fact.

(6) "Incapacity" means inability of an individual to manage his or her property or business affairs.

(7) "Internal Revenue Code" refers to the Internal Revenue Code of 1986, as amended, or any corresponding federal tax statute enacted after October 1, 2010.

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

(9) "Personal power of attorney" means any durable power of attorney executed in this State or, if executed other than in this State, specifying that the laws of this State shall govern such power of attorney, other than those powers of attorney to which this chapter is not applicable as set forth in § 49A-103(a) of this title.

(10) "Power of attorney" means a grant of authority to an agent to act in the place of the principal, whether or not the term power of attorney is used, authorizing the agent to convey rights in property of the principal to the agent or any other person.

(11) "Presently exercisable general power of appointment," with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors, or the creditors of the principal's estate. The term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period. The term does not include a power exercisable in a fiduciary capacity, only by will, or only by an instrument determining the disposition of property upon the death of the principal.

(12) "Principal" means an individual who grants authority to an agent in a power of attorney acting for himself or herself and not as a fiduciary, officer, employee, representative, agent or official of any legal, governmental, or commercial entity or association,.

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

(14) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) "Sign" means, with present intent to authenticate or adopt a record:

a. To execute or adopt a tangible symbol; or

b. To attach to or logically associate with the record an electronic sound, symbol, or process.

(16) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(17) "Stocks and bonds" means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner. The term does not include commodity futures contracts and call or put options on stocks or stock indexes.

(77 Del. Laws, c. 467, § 4; 70 Del. Laws, c. 186, § 1.)

§ 49A-103 Applicability.

(a) This chapter shall not apply to any of the following powers of attorney which, if durable, shall be governed by Chapter 49 of this title, to the extent applicable, or by another applicable chapter or by the common law of this State:

(1) A power of attorney given primarily for a business or commercial purpose;

(2) A power of attorney to the extent it is coupled with an interest in the subject of the power;

(3) A power of attorney given to or for the benefit of a creditor in connection with a loan or other credit transaction or a secured party in connection with a secured transaction;

(4) A power of attorney to make health-care decisions;

(5) A proxy or other delegation to exercise voting rights or management rights with respect to a corporation, partnership (general or limited), limited liability company, condominium or other legal or commercial entity or association;

(6) A power of attorney created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose;

(7) A power of attorney given to facilitate a specified transfer or disposition of one or more identified stocks, bonds or other assets, whether real, personal, tangible or intangible;

(8) A power of attorney authorizing a third party to prepare, execute, deliver, submit and/or file a document or instrument with a government or governmental subdivision, agency or instrumentality or other third party;

(9) A power of attorney authorizing a financial institution or employee of a financial institution to take action relating to an account in which the financial institution holds cash, securities, commodities or other financial assets on behalf of the person giving the power;

(10) A power of attorney given by an individual who is, or is seeking to become, a director, officer, stockholder, employee, partner (general or limited), member, unit owner, equity owner, trustee, manager or agent of a corporation, partnership (general or limited), limited liability company, condominium or other legal or commercial entity or association, in that individual's capacity as such, including a power of attorney contained in a subscription agreement;

(11) A power of attorney contained in a certificate of incorporation, bylaws, general or limited partnership agreement, limited liability company agreement, declaration of trust, declaration of condominium, condominium bylaws or offering plan or other agreement or instrument governing the internal affairs of an entity or association, authorizing a director, officer, shareholder, employee, partner (general or limited), member, unit owner, equity owner, trustee, manager or other person to take lawful action relating to such entity or association;

(12) A power of attorney given to a condominium managing agent to take action in connection with the use, management and operation of a condominium unit;

(13) A power of attorney given to an agent within the scope of the agent's business to the extent such business is subject to the regulatory authority of any Delaware governmental agency, including, without limitation, a power of attorney given to a licensed real estate broker to take action in connection with a listing of real property, mortgage loan, lease or management agreement;

(14) A power of attorney authorizing acceptance of service of process on behalf of the principal; and

(15) A power of attorney created pursuant to authorization provided by a federal or state statute, other than this chapter, that specifically contemplates creation of the power.

(b) If for any reason a durable personal power of attorney given in compliance with the requirements of this chapter and referencing this chapter is determined to be given primarily for a business or commercial purpose or otherwise excepted from this chapter under subsection (a) of this section, such power of attorney shall be valid if it complies with Chapter 49 of this title, to the extent applicable, or with another applicable chapter of this Code or with the common law of this State.

(c) A power of attorney excepted from this chapter pursuant to subsection (a) of this section that was granted in compliance with the laws of the jurisdiction governing such power of attorney will be recognized and enforceable under the laws of the State of Delaware in accordance with its terms.

(77 Del. Laws, c. 467, § 4; 70 Del. Laws, c. 186, § 1.)

§ 49A-104 Power of attorney is durable.

A power of attorney is durable if it contains the words: "This power of attorney shall not be affected by the subsequent incapacity of the principal," or "This power of attorney shall become effective upon the incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent incapacity.

(77 Del. Laws, c. 467, § 4.)

§ 49A-105 Execution of personal power of attorney.

(a) A personal power of attorney must be:

(1) In writing;

(2) Signed by the principal or by another person subscribing the principal's name in the principal's presence and at the principal's express direction;

(3) Dated;

(4) Signed in the presence of a notarial officer; and

(5) Signed in the presence of one adult witness who is neither:

a. Related to the principal by blood, marriage, or adoption; nor

b. Entitled to any portion of the estate of the principal under the principal's then existing will or codicil or amendment thereto or trust instrument.

(b) A personal power of attorney may be accompanied by a notice in the following form, signed by the principal and placed at the beginning of the personal power of attorney. In the absence of a signed notice, upon a challenge to the authority of an agent to act under the personal power of attorney, the agent shall have the burden of demonstrating that the personal power of attorney is valid.

NOTICE

As the person signing this durable power of attorney you are the Principal.

The purpose of this power of attorney is to give the person you designate (your "Agent") broad powers to handle your property, which may include powers to sell, dispose of, or encumber any real or personal property without advance notice to you or approval by you.

This power of attorney does not authorize your Agent to make health-care decisions for you.

Unless you specify otherwise, your Agent's authority will continue even if you become incapacitated, or until you die or revoke the power of attorney, or until your Agent resigns or is unable to act for you. You should select someone you trust to serve as your Agent.

This power of attorney does not impose a duty on your Agent to exercise granted powers, but when powers are exercised, your Agent must use due care to act for your benefit and in accordance with this power of attorney.

Your Agent must keep your funds and other property separate from your Agent's funds and other property.

A court can take away the powers of your Agent if it finds your Agent is not acting properly.

The powers and duties of an Agent under a durable power of attorney are explained more fully in Delaware Code, Title 12, Chapter 49A, § 49A-114 and §§ 49A-201 through 49A-217.

If there is anything about this form that you do not understand, you should ask a lawyer of your own choosing to explain it to you.

I have read or had explained to me this notice and I understand its contents.

_____ _____

Principal Date

(c) Regardless of the method by which a person accepts appointment as an agent under a personal power of attorney (pursuant to § 49A-113 of this title), such agent shall have no authority to act as agent under the personal power of attorney unless the agent has first executed and affixed to the personal power of attorney a certification in substantially the following form:

AGENT'S CERTIFICATION

I, (Name of Agent), have read the attached durable personal power of attorney and I am the person identified as the Agent or identified as the Agent for the Principal. To the best of my knowledge this power has not been revoked. I hereby acknowledge that, when I act as Agent, I shall:

Act in accordance with the principal's reasonable expectations to the extent actually known to me and, otherwise, in the Principal's best interest;

Act in good faith;

Act only within the scope of authority granted in the personal power of attorney; and

To the extent reasonably practicable under the circumstances, keep in regular contact with the principal and communicate with the principal.

In addition, in the absence of a specific provision to the contrary in the durable personal power of attorney, when I act as Agent, I shall:

Keep the assets of the Principal separate from my assets;

Exercise reasonable caution and prudence; and

Keep a full and accurate record of all actions, receipts and disbursements on behalf of the Principal.

_____ _____

Agent Date

(77 Del. Laws, c. 467, § 4; 78 Del. Laws, c. 369, §§ 1, 2.)

§ 49A-106 Execution of personal power of attorney.

(a) A personal power of attorney executed on or after October 1, 2010, is validly executed if it complies with § 49A-105 of this title, unless such personal power of attorney provides that it is governed by the laws of another jurisdiction, in which case, such personal power of attorney is validly executed if such execution complies with the laws of such other jurisdiction.

(b) A personal power of attorney executed before October 1, 2010, is validly executed if it complied with the laws of this State as they existed at the time of execution, unless such personal power of attorney provides that it is governed by the laws of another jurisdiction, in which case, such personal power of attorney is validly executed if such execution complied with the laws of such other jurisdiction.

(c) A durable power of attorney (other than a personal power of attorney) will be deemed to be validly executed under the laws of this State if, when the power of attorney was executed, the execution complied with:

(1) The law of the jurisdiction that determines the meaning and effect of the power of attorney; or

(2) The requirements for a military power of attorney pursuant to 10 U.S.C. § 1044b, as amended.

(d) Except as otherwise provided by statute other than this chapter, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

(77 Del. Laws, c. 467, § 4.)

§ 49A-107 [Reserved.]

§ 49A-108 Nomination of guardian of person or property; relation of agent to court-appointed fiduciary.

(a) The appointment by a court of a guardian or other fiduciary charged with the management of the principal's property or the care of the principal's person shall terminate all personal powers of attorney to the extent the powers held by the agent prior to the appointment of a guardian or other fiduciary are granted by such court to the guardian or other fiduciary. The person serving as an agent of the principal pursuant to this chapter shall, upon the request of the agent and absent cause to the contrary, be appointed the guardian or other fiduciary in a proceeding under Chapter 39 of this title.

(b) After the appointment of a guardian or other fiduciary charged with the management of the principal's property or the care of the principal's person, the agent is accountable to such guardian or other fiduciary as well as to the principal as to any personal powers of attorney which the agent continues to hold. A guardian or other fiduciary shall only have such powers to revoke or amend the powers of the agent as shall be given to such guardian or other fiduciary by the court.

(77 Del. Laws, c. 467, § 4.)

§ 49A-109 When personal power of attorney effective.

(a) A personal power of attorney is effective when executed unless the principal provides in the personal power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.

(b) If a personal power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the personal power of attorney, may authorize 1 or more persons to determine in a writing or other record that the event or contingency has occurred.

(c) If a personal power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person or persons to determine whether the principal is incapacitated, or the person or persons authorized is or are unable or unwilling to make the determination, the personal power of attorney becomes effective upon a determination in a writing or other record by a physician or by the Court of Chancery or other court of competent jurisdiction that the principal is incapacitated.

(d) A person authorized by the principal in the personal power of attorney to determine that the principal is incapacitated may act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act [P.L. 104-191], §§ 1171 through 1179 of the Social Security Act, 42 U.S.C. § 1320d et seq., as amended, and applicable regulations, to obtain access to the principal's health-care information and communicate with the principal's health-care provider.

(77 Del. Laws, c. 467, § 4.)

§ 49A-110 Termination of personal power of attorney or agent's authority.

(a) A personal power of attorney terminates when:

(1) The principal dies;

(2) The principal revokes the personal power of attorney;

(3) A terminating event set forth in the personal power of attorney occurs;

(4) The purpose of the personal power of attorney is accomplished;

(5) The principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the personal power of attorney does not provide for another agent to act; or

(6) The personal power of attorney is revoked by order of the Court of Chancery pursuant to § 49A-116 of this title or otherwise.

(b) An agent's authority terminates when:

(1) The principal revokes the authority;

(2) The agent dies, becomes incapacitated, or resigns;

(3) An action is filed for the dissolution or annulment of the agent's marriage to the principal, unless the personal power of attorney otherwise provides; or

(4) The personal power of attorney terminates.

(c) Unless the personal power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under subsection (b) of this section, notwithstanding a lapse of time since the execution of the personal power of attorney.

(d) Termination of an agent's authority or of a personal power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the personal power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(e) The execution of a personal power of attorney does not revoke a personal power of attorney previously executed by the principal unless the subsequent personal power of attorney provides that the previous personal power of attorney is revoked or that all other personal powers of attorney are revoked.

(77 Del. Laws, c. 467, § 4; 78 Del. Laws, c. 369, § 3.)

§ 49A-111 Concurrent agents, joint agents, and successor agents.

(a) A principal may designate 2 or more persons to act as concurrent agents. Each concurrent agent may exercise its authority independently.

(b) A principal may designate 2 or more persons to act as joint agents. No joint agent shall have the power to act without the agreement of all other joint agents and shall have no power to act independent of the other agent.

(c) If the principal designates more than 1 agent and does not specify that they are concurrent agents or joint agents, such agents shall be considered concurrent agents.

(d) A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. Unless the personal power of attorney otherwise provides, a successor agent:

(1) Has the same authority as that granted to the original agent; and

(2) May not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.

(e) A principal may give an appointed agent or another person designated by name, office or function the authority to designate by a writing executed by such person, 1 or more concurrent, joint, or successor agents in addition to those designated in the personal power of attorney. Unless the personal power of attorney authorizing the appointment of such further agents otherwise provides, a concurrent, joint, or successor agent appointed by this method:

(1) Has the same authority as that granted to the original agent; and

(2) May not act until the predecessor designee has resigned, died, become incapacitated, is no longer qualified to serve, or has declined to serve.

(f) Except as otherwise provided in the personal power of attorney and subsection (g) of this section, an acting agent that does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

(g) An acting agent that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's best interest. An agent that fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken such action.

(77 Del. Laws, c. 467, § 4.)

§ 49A-112 Reimbursement and compensation of agent.

(a) An agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal.

(b) An agent shall not be entitled to compensation unless:

(1) The personal power of attorney so provides; and

(2) The compensation is reasonable under the circumstances.

(77 Del. Laws, c. 467, § 4.)

§ 49A-113 Agent's acceptance.

Except as otherwise provided in the personal power of attorney, a person accepts appointment as an agent under a personal power of attorney by signing the agent's certification (pursuant to § 49A-105(c) of this title) or by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.

(77 Del. Laws, c. 467, § 4.)

§ 49A-114 Agent's duties.

(a) Notwithstanding provisions in the personal power of attorney, an agent that has accepted appointment pursuant to a personal power of attorney shall, in connection with exercising the authority granted to such agent therein:

(1) Act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest;

(2) Act in good faith;

(3) Act only within the scope of authority granted in the personal power of attorney; and

(4) To the extent reasonably practicable under the circumstances, keep in regular contact with the principal and communicate with the principal.

(b) Except as otherwise provided in the personal power of attorney, an agent that has accepted appointment shall:

(1) Act loyally for the principal's benefit;

(2) Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;

(3) Act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances;

(4) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;

(5) Cooperate with a person that has authority to make health-care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, if not known, to act in the principal's best interest; and

(6) Not act in a manner inconsistent with the principal's testamentary plan.

(c) An agent that acts in good faith is not liable to any beneficiary of the principal's testamentary plan for failure to act in a manner consistent with the testamentary plan.

(d) An agent that acts with care, competence, and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

(e) If an agent has special skills or expertise the special skills or expertise must be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.

(f) An agent that engages another person on behalf of the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person.

(g) Except as otherwise provided in the personal power of attorney and by § 49A-108(b) of this title, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested the agent shall comply with the request within a reasonable period of time.

(77 Del. Laws, c. 467, § 4.)

§ 49A-115 Exoneration of agent.

A provision in a personal power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent the provision:

(1) Relieves the agent of liability for breach of duty committed in bad faith or with reckless indifference to the purposes of the personal power of attorney or the best interest of the principal; or

(2) Was inserted as a result of undue influence upon the principal.

(77 Del. Laws, c. 467, § 4.)

§ 49A-116 Judicial relief.

(a) A person designated in subsection (b) of this section may petition the Court of Chancery requesting that the Court:

(1) Determine whether the personal power of attorney or the authority of an agent is in effect or has terminated pursuant to § 49A-110 of this title or otherwise;

(2) Compel the agent to exercise or refrain from exercising authority in a particular manner or for a particular purpose;

(3) Compel the agent to account for transactions conducted on the principal's behalf pursuant to § 49A-114(g) of this title;

(4) Modify, suspend, or revoke the powers of the agent to act under a personal power of attorney, and, if the principal has not designated another agent or successor agent in the personal power of attorney, appoint another agent to act in place of the agent whose powers are modified, suspended, or revoked;

(5) Determine an agent's liability for violation of his or her duties pursuant to § 49A-114 of this title; or

(6) Compel a person to accept a personal power of attorney if required to by § 49A-120 of this title.

(b) Any of the following persons may file a petition seeking appropriate relief under this section:

(1) The principal or the agent;

(2) The spouse, child, or parent of the principal;

(2) A guardian, trustee, or other fiduciary acting for the principal;

(3) The personal representative, trustee, or a beneficiary of the principal's estate;

(4) Any other interested person, as long as the person demonstrates to the Court's satisfaction that the person is interested in the welfare of the principal and has a good faith belief that:

a. The Court's intervention is necessary; and

b. The principal is incapacitated at the time of filing the petition or otherwise unable to protect that principal's own interests; or

(5) A person asked to accept a personal power of attorney.

(c) Upon motion by the principal, who shall be presumed to have legal capacity, the Court shall dismiss a petition filed under this section, unless the Court finds that the principal lacks capacity to revoke the agent's authority or the personal power of attorney.

(d) Nothing in this section shall preclude or diminish the Court's authority to appoint a guardian or other fiduciary pursuant to Chapter 39 of this title, or to order other judicial relief, in order to grant appropriate relief upon review of a personal power of attorney or an agent's conduct with respect to a personal power of attorney.

(e) Nothing in this section shall preclude the Department of Health and Social Services, the Public Guardian, or other governmental agency having authority to protect the welfare of the principal from petitioning the Court for access to the principal or to records necessary to determine, or terminate, possible abuse, neglect, exploitation or abandonment of the principal.

(77 Del. Laws, c. 467, § 4; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 369, § 4.)

§ 49A-117 [Reserved.]

§ 49A-118 Agent's resignation; notice.

Unless the personal power of attorney provides a different method for an agent's resignation, an agent may resign by giving written notice to the principal and, if the principal is incapacitated:

(1) To the guardian, if one has been appointed for the principal, and a concurrent agent or successor agent; or

(2) If there is no person described in paragraph (1) of this section, to:

a. The principal's primary caregiver;

b. Another person reasonably believed by the agent to have sufficient interest in the principal's welfare; or

c. A governmental agency having authority to protect the welfare of the principal.

(77 Del. Laws, c. 467, § 4; 78 Del. Laws, c. 369, § 5.)

§ 49A-119 Acceptance of and reliance upon acknowledged personal power of attorney.

(a) For purposes of this section and § 49A-120 of this title, "acknowledged" means purportedly verified before a notarial officer.

(b) A person that in good faith accepts an acknowledged personal power of attorney without actual knowledge that the signature is not genuine may rely upon a presumption that the signature is genuine.

(c) A person that in good faith accepts an acknowledged personal power of attorney without actual knowledge that the personal power of attorney is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely upon the personal power of attorney as if the personal power of attorney were genuine, valid and still in effect, the agent's authority were genuine, valid and still in effect, and the agent had not exceeded and had properly exercised the authority.

(d) A person that is asked to accept an acknowledged personal power of attorney may request, and rely upon, without further investigation, an English translation, under oath of the translator, of the personal power of attorney if it contains, in whole or in part, language other than English.

(e) For purposes of this section and § 49A-120 of this title, a person that conducts activities through employees is without actual knowledge of a fact relating to a personal power of attorney, a principal, or an agent if the employee conducting the transaction involving the personal power of attorney is without actual knowledge of the fact. Notification of revocation of a personal power of attorney by a principal or agent to an officer of a bank or other financial institution shall constitute actual notice to all employees.

(77 Del. Laws, c. 467, § 4; 78 Del. Laws, c. 369, §§ 6, 7.)

§ 49A-120 Liability for refusal to accept acknowledged personal power of attorney.

(a) Except as otherwise provided in subsection (b) of this section:

(1) A person shall accept an acknowledged personal power of attorney that is originally written in English or is translated into English, under oath of the translator;

(2) A person may not require an additional or different form of personal power of attorney for authority granted in the personal power of attorney presented; and

(3) A person may not refuse to accept an acknowledged personal power of attorney solely upon the basis that the form of such acknowledged personal power of attorney varies from the form set forth in § 49A-301 of this title.

(b) A person is not required to accept an acknowledged personal power of attorney if:

(1) The person is not otherwise required to engage in a transaction with the principal in the same circumstances;

(2) Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with state or federal law;

(3) The person has actual knowledge of the termination of the agent's authority or of the personal power of attorney before exercise of the power;

(4) The person has actual knowledge that the personal power of attorney has been terminated or revoked, or is void or invalid, or that the agent does not have the authority to perform the act requested; or

(5) The person promptly makes, has made, or has actual knowledge that another person has made, a report to the appropriate law-enforcement or social service agency stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

(c) A person that refuses in violation of this section to accept an acknowledged personal power of attorney is subject to:

(1) A court order compelling acceptance of the personal power of attorney; and

(2) Liability for damages, including reasonable attorney's fees and costs, incurred in any action or proceeding that confirms the validity of the personal power of attorney or authority of the agent to act, or compels acceptance of the personal power of attorney.

(77 Del. Laws, c. 467, § 4; 78 Del. Laws, c. 369, § 8; 79 Del. Laws, c. 152, § 1.)

Subchapter II

Authority

§ 49A-201 Grant of general authority; authority that requires specific grant.

(a) Subject to subsections (b), (c), and (d) of this section, if a personal power of attorney grants to an agent authority to do all acts that a principal could do, and refers to general authority with respect to the descriptive term for the subjects stated in §§ 49A-204 through 49A-217 of this title or cites the section in which the authority is described, the agent has that general authority.

(b) An agent under a personal power of attorney may do the following on behalf of the principal or with the principal's property only if the personal power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

(1) Create, amend, revoke, or terminate an inter vivos trust, to the extent the principal has the authority to do so;

(2) Make a gift;

(3) Create or change rights of survivorship;

(4) Create or change a beneficiary designation;

(5) Delegate authority granted under the personal power of attorney when all successor agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve;

(6) Exercise fiduciary powers that the principal has authority to delegate;

(7) Reject, renounce, disclaim, release, or consent to a reduction in or modification of a share in or payment from an estate, trust, or other beneficial interest; or

(8) Exercise all rights and powers granted to a fiduciary under the Fiduciary Access to Digital Assets and Digital Accounts Act, Chapter 50 of this title.

(c) Unless the personal power of attorney otherwise provides, a grant of authority to make a gift is subject to § 49A-217 of this title.

(d) Subject to subsections (b) and (c) of this section, if the subjects over which authority is granted in a personal power of attorney are similar or overlap, the broadest authority controls.

(e) Authority granted in a personal power of attorney is exercisable with respect to property that the principal has when the personal power of attorney is executed or is acquired later, whether or not the property is located in this State and whether or not the authority is exercised or the personal power of attorney is executed in this State.

(f) An act performed by an agent pursuant to a personal power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

(77 Del. Laws, c. 467, § 4; 79 Del. Laws, c. 416, § 2.)

§ 49A-202 Incorporation of authority.

(a) A reference in a personal power of attorney to the short descriptive term used for a subject in §§ 49A-204 through 49A-217 of this title or a citation to a section of §§ 49A-204 through 49A-217 of this title granting general authority over that subject incorporates the entire section as if it were set out in full in the personal power of attorney.

(b) A principal may modify authority incorporated by reference.

(77 Del. Laws, c. 467, § 4; 78 Del. Laws, c. 369, § 9.)

§ 49A-203 Construction of authority generally.

Except as otherwise provided in the personal power of attorney, by executing a personal power of attorney that incorporates by reference a subject described in §§ 49A-204 through 49A-217 of this title or that grants to an agent authority to do all acts that a principal could do pursuant to § 49A-201(a) of this title, a principal authorizes the agent, with respect to that subject, to:

(1) Demand, receive, and obtain by litigation or otherwise, money or another thing of value to which the principal is, may become, or claims to be entitled, and conserve, invest, disburse, or use anything so received or obtained for the purposes intended;

(2) Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate, release, or modify the contract or another contract made by or on behalf of the principal;

(3) Execute, acknowledge, seal, deliver, file, or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction;

(4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to a claim existing in favor of or against the principal, or intervene in litigation relating to the claim;

(5) Seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized in the personal power of attorney;

(6) Engage, compensate, and discharge an attorney, accountant, discretionary investment manager, expert witness, advisor, service provider, or other professional;

(7) Prepare, execute, and file a record, report, or other document to safeguard or promote the principal's interest under a statute or regulation;

(8) Communicate with any representative or employee of a government or governmental subdivision, agency, or instrumentality, on behalf of the principal;

(9) Access communications intended for, and communicate on behalf of the principal, whether by mail, electronic transmission, telephone, or other means; and

(10) Do any lawful act with respect to the subject and all property related to the subject.

(77 Del. Laws, c. 467, § 4; 78 Del. Laws, c. 369, § 10.)

§ 49A-204 Real property.

Unless the personal power of attorney otherwise provides, language in a personal power of attorney granting general authority with respect to real property authorizes the agent to:

(1) Demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property;

(2) Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property;

(3) Pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(4) Release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien, or other claim to real property which exists or is asserted;

(5) Manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including:

a. Insuring against liability or casualty or other loss;

b. Obtaining or regaining possession of or protecting the interest or right by litigation or otherwise;

c. Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with them; and

d. Purchasing supplies, hiring assistance or labor, and making repairs or alterations to the real property;

(6) Use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;

(7) Participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, and hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including:

a. Selling or otherwise disposing of them;

b. Exercising or selling an option, right of conversion, or similar right with respect to them; and

c. Exercising any voting rights in person or by proxy;

(8) Change the form of title of an interest in or right incident to real property; and

(9) Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

(77 Del. Laws, c. 467, § 4.)

§ 49A-205 Tangible personal property.

Unless the personal power of attorney otherwise provides, language in a personal power of attorney granting general authority with respect to tangible personal property authorizes the agent to:

(1) Demand, buy, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property;

(2) Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; create a security interest in; grant options concerning; lease; sublease; or, otherwise dispose of tangible personal property or an interest in tangible personal property;

(3) Grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(4) Release, assign, satisfy, or enforce by litigation or otherwise, a security interest, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property;

(5) Manage or conserve tangible personal property or an interest in tangible personal property on behalf of the principal, including:

a. Insuring against liability or casualty or other loss;

b. Obtaining or regaining possession of or protecting the property or interest, by litigation or otherwise;

c. Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;

d. Moving the property from place to place;

e. Storing the property for hire or on a gratuitous bailment; and

f. Using and making repairs, alterations, or improvements to the property; and

(6) Change the form of title of an interest in tangible personal property.

(77 Del. Laws, c. 467, § 4.)

§ 49A-206 Stocks and bonds.

Unless the personal power of attorney otherwise provides, language in a personal power of attorney granting general authority with respect to stocks and bonds authorizes the agent to:

(1) Buy, sell, and exchange stocks and bonds;

(2) Establish, continue, modify, or terminate an account with respect to stocks and bonds;

(3) Pledge stocks and bonds as security to borrow, pay, renew, or extend the time of payment of a debt of the principal;

(4) Receive certificates and other evidences of ownership with respect to stocks and bonds; and

(5) Exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

(77 Del. Laws, c. 467, § 4.)

§ 49A-207 Commodities and options.

Unless the personal power of attorney otherwise provides, language in a personal power of attorney granting general authority with respect to commodities and options authorizes the agent to:

(1) Buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange; and

(2) Establish, continue, modify, and terminate option accounts.

(77 Del. Laws, c. 467, § 4.)

§ 49A-208 Banks and other financial institutions.

Unless the personal power of attorney otherwise provides, language in a personal power of attorney granting general authority with respect to banks and other financial institutions authorizes the agent to:

(1) Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;

(2) Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;

(3) Contract for services available from a financial institution, including renting a safe deposit box or space in a vault;

(4) Withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;

(5) Receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them;

(6) Enter a safe deposit box or vault and withdraw or add to the contents;

(7) Borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(8) Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order, transfer money, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due;

(9) Receive for the principal and act upon a sight draft, warehouse receipt, or other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument;

(10) Apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and

(11) Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

(77 Del. Laws, c. 467, § 4.)

§ 49A-209 Operation of entity or business.

Subject to the terms of a document or an agreement governing an entity or an entity ownership interest (a "governing document") and to applicable laws governing such entity or entity ownership interest, and unless the personal power of attorney otherwise provides, language in a personal power of attorney granting general authority with respect to operation of an entity or business authorizes the agent to:

(1) Operate, buy, sell, enlarge, reduce, or terminate an ownership interest;

(2) Perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege, or option that the principal has, may have, or claims to have;

(3) Enforce the terms of, and exercise rights of the principal pursuant to, the governing document;

(4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party because of an ownership interest;

(5) Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of stocks and bonds;

(6) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds or other entity ownership interests;

(7) With respect to an entity or business owned solely by the principal:

a. Continue, modify, renegotiate, extend, and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the personal power of attorney;

b. Determine:

1. The location of its operation;

2. The nature and extent of its business;

3. The methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation;

4. The amount and types of insurance carried; and

5. The mode of engaging, compensating, and dealing with its employees and accountants, attorneys, or other advisors;

c. Change the name or form of organization under which the entity or business is operated and enter into a governing document with other persons to take over all or part of the operation of the entity or business; and

d. Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business;

(8) Put additional capital into an entity or business in which the principal has an interest;

(9) Join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity or business;

(10) Sell or liquidate all or part of an entity or business;

(11) Establish the value of an entity or business under a buy-out agreement to which the principal is a party;

(12) Prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to an entity or business and make related payments; and

(13) Pay, compromise, or contest taxes, assessments, fines, or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines, or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the personal power of attorney.

(77 Del. Laws, c. 467, § 4.)

§ 49A-210 Insurance and annuities.

Unless the personal power of attorney otherwise provides, language in a personal power of attorney granting general authority with respect to insurance and annuities authorizes the agent to:

(1) Continue, pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract procured by or on behalf of the principal which insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

(2) Procure new, different, and additional contracts of insurance and annuities for the principal and select the amount, type of insurance or annuity, and mode of payment;

(3) Pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract of insurance or annuity procured by the agent;

(4) Apply for and receive a loan secured by a contract of insurance or annuity;

(5) Surrender and receive the cash surrender value on a contract of insurance or annuity;

(6) Exercise an election;

(7) Exercise investment powers available under a contract of insurance or annuity;

(8) Change the manner of paying premiums on a contract of insurance or annuity;

(9) Change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this section;

(10) Apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;

(11) Collect, sell, assign, hypothecate, borrow against, or pledge the interest of the principal in a contract of insurance or annuity;

(12) Select the form and timing of the payment of proceeds from a contract of insurance or annuity; and

(13) Pay, from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

(77 Del. Laws, c. 467, § 4.)

§ 49A-211 Estates, trusts, and other beneficial interests.

(a) In this section, "estate, trust, or other beneficial interest" means a trust, probate estate, guardianship, conservatorship, escrow, or custodianship or a fund from which the principal is, may become, or claims to be, entitled to a share or payment.

(b) Unless the personal power of attorney otherwise provides, language in a personal power of attorney granting general authority with respect to estates, trusts, and other beneficial interests authorizes the agent to:

(1) Accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment from an estate, trust, or other beneficial interest;

(2) Demand or obtain money or another thing of value to which the principal is, may become, or claims to be, entitled by reason of an estate, trust, or other beneficial interest, by litigation or otherwise;

(3) Exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal;

(4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;

(5) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary;

(6) Conserve, invest, disburse, or use anything received for an authorized purpose;

(7) Transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of an existing trust created by the principal as settlor for the benefit of the principal; and

(8) Renounce or resign from any fiduciary position held by the principal.

(77 Del. Laws, c. 467, § 4.)

§ 49A-212 Claims and litigation.

Unless the personal power of attorney otherwise provides, language in a personal power of attorney granting general authority with respect to claims and litigation authorizes the agent to:

(1) Assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment, or defense, including an action to recover property or other thing of value, recover damages sustained by the principal, eliminate or modify tax liability, or seek an injunction, specific performance, or other relief;

(2) Bring an action to determine adverse claims or intervene or otherwise participate in litigation;

(3) Seek an attachment, garnishment, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree;

(4) Make or accept a tender, offer of judgment, or admission of facts, submit a controversy on an agreed statement of facts, consent to examination, and bind the principal in litigation;

(5) Submit to alternative dispute resolution, settle, and propose or accept a compromise;

(6) Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon which process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive, execute, and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation;

(7) Act for the principal with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization, receivership, or application for the appointment of a receiver or trustee which affects an interest of the principal in property or other thing of value;

(8) Pay a judgment, award, or order against the principal or a settlement made in connection with a claim or litigation; and

(9) Receive money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

(77 Del. Laws, c. 467, § 4.)

§ 49A-213 Personal and family maintenance.

(a) Unless the personal power of attorney otherwise provides, and after taking into consideration the principal's resources, language in a personal power of attorney granting general authority with respect to personal and family maintenance authorizes the agent to:

(1) Perform the acts necessary to maintain the usual and customary standard of living of the principal, the principal's spouse, minor children, disabled adult children, children who are full time students under the age of 25, and dependents as defined under Internal Revenue Code § 152 [26 U.S.C. § 152];

(2) Provide living quarters for the individuals described in paragraph (a)(1) of this section by:

a. Purchase, lease, or other contract; or

b. Paying the operating costs, including interest, amortization payments, repairs, improvements, and taxes, for premises owned by the principal or occupied by those individuals;

(3) Provide funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described in paragraph (a)(1) of this section;

(4) Pay expenses for necessary health care and custodial care on behalf of the individuals described in paragraph (a)(1) of this section;

(5) Act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act [P.L. 104-191], §§ 1171 through 1179 of the Social Security Act, 42 U.S.C. § 1320d et seq., as amended, and applicable regulations, to obtain information to make decisions relating to the past, present, or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this State to consent to health care on behalf of the principal;

(6) Continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them, for the individuals described in paragraph (a)(1) of this section;

(7) Maintain credit and debit accounts for the convenience of the individuals described in paragraph (a)(1) of this section and open new accounts;

(8) Continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order, or other organization or to continue contributions to those organizations; and

(9) Continue usual and existing payments for domestic help, usual vacations and travel expenses.

(b) The agent shall make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party.

(c) Authority with respect to personal and family maintenance is neither dependent upon, nor limited by, authority that an agent may or may not have with respect to gifts under this chapter.

(77 Del. Laws, c. 467, § 4; 78 Del. Laws, c. 369, § 11.)

§ 49A-214 Benefits from governmental programs or civil or military service.

(a) In this section, "benefits from governmental programs or civil or military service" means any benefit, program or assistance provided under a statute or regulation of the United States or any state or territory thereof (including the District of Columbia)(hereinafter collectively referred to as a "statute or regulation") including, but not limited to, Social Security, Medicare, and Medicaid.

(b) Unless the personal power of attorney otherwise provides, language in a personal power of attorney granting general authority with respect to benefits from governmental programs or civil or military service authorizes the agent to:

(1) Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in § 49A-213(a)(1) of this title, and for shipment of their household effects;

(2) Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;

(3) Enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's behalf, a benefit or program;

(4) Prepare, file, and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled under a statute or regulation;

(5) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute or regulation; and

(6) Receive the financial proceeds of a claim described in paragraph (b)(4) of this section and conserve, invest, disburse, or use for a lawful purpose anything so received.

(77 Del. Laws, c. 467, § 4; 78 Del. Laws, c. 369, § 12.)

§ 49A-215 Retirement plans.

(a) In this section, "retirement plan" means a plan or account created by an employer, the principal, or another individual to provide qualified or nonqualified retirement benefits or deferred compensation of which the principal is a participant, beneficiary, or owner, including, but not limited to, a plan or account under the following sections of the Internal Revenue Code:

(1) An individual retirement account under Internal Revenue Code § 408, 26 U.S.C. § 408, as amended;

(2) A Roth individual retirement account under Internal Revenue Code § 408A, 26 U.S.C. § 408A, as amended;

(3) A deemed individual retirement account under Internal Revenue Code § 408(q), 26 U.S.C. § 408(q), as amended;

(4) An annuity or mutual fund custodial account under Internal Revenue Code § 403(b), 26 U.S.C. § 403(b), as amended;

(5) A pension, profit-sharing, stock bonus, or other retirement plan qualified under Internal Revenue Code § 401(a), 26 U.S.C. § 401(a), as amended;

(6) A plan under Internal Revenue Code § 457(b), 26 U.S.C. § 457(b), as amended;

(7) A nonqualified deferred compensation plan under Internal Revenue Code § 409A, 26 U.S.C. § 409A, as amended; and

(8) A plan under an Internal Revenue Code section which did not exist at the time the personal power of attorney was executed.

(b) Unless the personal power of attorney otherwise provides, language in a personal power of attorney granting general authority with respect to retirement plans authorizes the agent to:

(1) Select the form and timing of payments under a retirement plan and withdraw benefits from a plan;

(2) Make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another;

(3) Establish a retirement plan in the principal's name;

(4) Make contributions to a retirement plan;

(5) Exercise investment powers available under a retirement plan; and

(6) Borrow from, sell assets to, or purchase assets from a retirement plan.

(77 Del. Laws, c. 467, § 4.)

§ 49A-216 Taxes.

Unless the personal power of attorney otherwise provides, language in a personal power of attorney granting general authority with respect to taxes authorizes the agent to:

(1) Prepare, sign, and file federal, state, local, and foreign income, gift, generation skipping transfer, payroll, property, Federal Insurance Contributions Act [26 U.S.C. § 3101 et seq.], and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under Internal Revenue Code § 2032A, 26 U.S.C. § 2032A, as amended, closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years;

(2) Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority;

(3) Exercise any election available to the principal under federal, state, local, or foreign tax law; and

(4) Act for the principal in all tax matters for all periods before the Internal Revenue Service, or other taxing authority.

(77 Del. Laws, c. 467, § 4.)

§ 49A-217 Gifts.

(a) In this section, a gift "for the benefit of" a person includes a gift to a trust, an account or an interest in property held under the Delaware Uniform Transfers to Minors Act [Chapter 45 of this title] or similar statute of any other state or jurisdiction, and a tuition savings account or prepaid tuition plan as defined under Internal Revenue Code § 529, 26 U.S.C. § 529, as amended, or similar plan.

(b) Unless the personal power of attorney otherwise provides, language in a personal power of attorney granting general authority with respect to gifts authorizes the agent only to:

(1) Make outright to, or for the benefit of, a person, a gift of any of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under Internal Revenue Code§ 2503(b), 26 U.S.C. § 2503(b), as amended, without regard to whether the federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to consent to a split gift pursuant to Internal Revenue Code § 2513, 26 U.S.C. § 2513, as amended, in an amount per donee not to exceed twice the annual federal gift tax exclusion limit; and

(2) Consent, pursuant to Internal Revenue Code § 2513, 26 U.S.C. § 2513, as amended, to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

(c) An agent may make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including:

(1) The value and nature of the principal's property;

(2) The principal's foreseeable obligations and need for maintenance;

(3) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;

(4) Eligibility for a benefit, a program, or assistance under a statute or regulation; and

(5) The principal's personal history of making or joining in making gifts.

(77 Del. Laws, c. 467, § 4.)

Subchapter III

Statutory Forms

§ 49A-301 Statutory form durable personal power of attorney; agent's certification.

DURABLE PERSONAL POWER OF ATTORNEY FORM NOTICE

DURABLE PERSONAL POWER OF ATTORNEY FORM NOTICE

As the person signing this durable power of attorney you are the Principal.

The purpose of this power of attorney is to give the person you designate (your "Agent") broad powers to handle your property, which may include powers to sell, dispose of, or encumber any real or personal property without advance notice to you or approval by you.

This power of attorney does notauthorize your Agent to make health-care decisions for you.

Unless you specify otherwise, your Agent's authority will continue even if you become incapacitated, or until you die or revoke the power of attorney, or until your Agent resigns or is unable to act for you. You should select someone you trust to serve as your Agent.

This power of attorney does not impose a duty on your Agent to exercise granted powers, but when powers are exercised, your Agent must use due care to act for your benefit and in accordance with this power of attorney.

Your Agent must keep your funds and other property separate from your Agent's funds and other property.

A court can take away the powers of your Agent if it finds your Agent is not acting properly.

The powers and duties of an Agent under a durable power of attorney are explained more fully in Delaware Code, Title 12, Chapter 49A, Section 49A-114 and Sections 49A-201 through 49A-217.

If there is anything about this form that you do not understand, you should ask a lawyer of your own choosing to explain it to you.

I have read or had explained to me this notice and I understand its contents.

_____ _____

Principal Date

DURABLE PERSONAL POWER OF ATTORNEY FORM INSTRUCTIONS

As the person completing this form, you are the Principal. This form gives another person the power to act on your behalf. The other person is your Agent.

This form allows you to designate: (1) one Agent at a time and up to two Agents in succession; (2) two or more Agents who may act independently of each other (Concurrent Agents); or (3) two or more Agents who must act together (Joint Agents).

If your Agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor Agent(s).

IF YOU HAVE QUESTIONS ABOUT THIS POWER OF ATTORNEY OR THE AUTHORITY YOU ARE GRANTING TO YOUR AGENT(S), YOU SHOULD SEEK LEGAL ADVICE BEFORE COMPLETING AND SIGNING THIS FORM.

The following form may, but need not, be used to create a durable personal power of attorney. The other sections of this chapter govern the effect of this or any other writing used to create a durable personal power of attorney. A durable personal power of attorney that varies from the following form shall not be deemed to be invalid based solely upon such variance.

DESIGNATION OF AGENT

I, _____, name the following person(s) as my

(Name of Principal)

Agent(s):

Name of Agent: ___

Agent's Address: ___

Agent's Telephone Number: ___

DESIGNATION OF ADDITIONAL OR SUCCESSOR AGENTS (OPTIONAL)

Name of Agent: ___

Agent's Address: ___

Agent's Telephone Number: ___

Name of Agent: ___

Agent's Address: ___

Agent's Telephone Number: ___

If I have named more than one Agent above, I intend for those Agents to:

_____ Act successively, one after the other

_____ Act concurrently, independent of each other

_____ Act jointly, not independent of each other

EFFECTIVE DATE

You must sign ONE of these two choices:

_____ This power of attorney

(Sign here if this is your choice)

is effective immediately, and shall not be effected by my subsequent incapacity.

_____ This power of attorney

(Sign here if this is your choice)

is effective only if and while I am incapacitated as determined under 12 Del. C. § 49A-109(c).

GRANT OF GENERAL AUTHORITY

I grant my Agent and any successor Agent general authority to act for me with respect to the following powers described in more detail as defined in the Durable Personal Power of Attorney Act, Delaware Code, Title 12, Chapter 49A.

You should READ the terms of each category of power or authority before granting any of them to your Agent. A full explanation of each power or authority is in the Delaware Code. The Delaware Code is available online. Search: Delaware Code, Title 12, Chapter 49A, and then go to the number next to the category. Example: Real Property, Section (§) 49A-204. The Delaware Code may also be available at your local library.

INITIAL each category you want to include in the Agent's general authority.

CROSS OUT each category you do not want to include in the Agent's general authority.

If you do not initial a category listed below, powers associated with that category will NOT be included as part of your Agent's general authority.

_____ Real Property § 49A-204

_____ Tangible Personal Property § 49A-205

_____ Stocks and Bonds § 49A-206

_____ Commodities and Options § 49A-207

_____ Banks and Other Financial Institutions § 49A-208

_____ Operation of Entity or Business § 49A-209

_____ Insurance and Annuities § 49A-210

_____ Estates, Trusts, and Other Beneficial Interests § 49A-211

_____ Claims and Litigation § 49A-212

_____ Personal and Family Maintenance § 49A-213

_____ Benefits from Governmental Programs or Civil or Military Service § 49A-214

_____ Retirement Plans § 49A-215

_____ Taxes § 49A-216

GRANT OF SPECIFIC AUTHORITY (OPTIONAL) PROCEED WITH CAUTION

Giving your Agent any of the following powers will give your Agent the authority to take actions that could significantly reduce your property or change how and to whom your property is distributed at your death.

You should READ the terms describing each power before granting any of them to your Agent.

INITIAL each power you want to include in the Agent's authority.

CROSS OUT each power you do not want to include in the Agent's authority.

If you do not initial a power listed below, it will NOT be included as part of your Agent's specific authority.

_____ Create, amend, revoke, or terminate an inter vivos trust

_____ Make a gift in excess of the limitations in the Durable Personal Power of Attorney Act, 12 Del. C. § 49A-217

_____ Create or change rights of survivorship

_____ Create or change a beneficiary designation

_____ Delegate authority granted under the power of attorney when all successor Agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve

_____ Exercise fiduciary powers that the Principal has authority to delegate

_____ Reject, renounce, disclaim, release, or consent to a reduction in or modification of a share in or payment from estate, trust, or other beneficial interest

RELIANCE ON THIS POWER OF ATTORNEY

Any person, including my Agent, may rely upon this power of attorney or a copy of it unless that person knows it has terminated or is invalid.

SIGNATURE AND ACKNOWLEDGMENT

IF YOU HAVE QUESTIONS ABOUT THIS POWER OF ATTORNEY OR THE AUTHORITY YOU ARE GRANTING TO YOUR AGENT(S), YOU SHOULD SEEK LEGAL ADVICE BEFORE SIGNING THIS FORM.

IN WITNESS WHEREOF, I have hereunto set my Hand and Seal this _____ day of _____, 20_____ .

_____ _____ (SEAL)

Witness Signature Your Signature

_____ _____

Print Your Name Print Your Name

I, the witness, swear that I am not related to the Principal by blood, marriage, or adoption; and that I am not entitled to any portion of the estate of the Principal under the Principal's current will or codicil, or under any current trust instrument of the Principal

STATE OF DELAWARE :

: SS.

COUNTY OF _____ :

This Durable Power of Attorney was acknowledged before me by _____ this

_____

Notarial Office

IMPORTANT INFORMATION FOR AGENT

Agent's Duties

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the Principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. You must:

(1) do what you know the Principal reasonably expects you to do with the Principal's property or, if you do not know the Principal's expectations, act in the Principal's best interest;

(2) act in good faith;

(3) do nothing beyond the authority granted in this power of attorney; and

(4) disclose your identity as an Agent whenever you act for the Principal by writing or printing the name of the Principal and signing your own name as "Agent" in the following manner:

_____ _____

(Principal's Name) by (Your Signature) as Agent

Except as otherwise provided in the power of attorney, you must also:

(1) not act for your own benefit;

(2) avoid conflicts that would impair your ability to act in the Principal's best interest;

(3) act with care, competence, and diligence;

(4) keep a record of all receipts, disbursements, and transactions made on behalf of the Principal;

(5) cooperate with any person who has authority to make health-care decisions for the Principal; and

(6) not act in a manner inconsistent with the Principal's testamentary plan.

Termination of Agent's Authority

You must stop acting on behalf of the Principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate this power of attorney or your authority to act under it include:

(1) death of the Principal;

(2) the Principal's revocation of the power of attorney or your authority;

(3) the occurrence of a termination event stated in the power of attorney;

(4) the purpose of the power of attorney is fully accomplished; or

(5) an action is filed with a court for your separation, annulment, or divorce from the Principal, unless the Principal otherwise provided in the power of attorney that such action will not terminate your authority.

Liability of Agent

The meaning of the authority granted to you is defined in the Durable Personal Power of Attorney Act, Delaware Code, Title 12, Chapter 49A. If you violate the Durable Personal Power of Attorney Act, Delaware Code, Title 12, Chapter 49A, or act outside the authority granted, you may be liable for any damages caused by your violation.

If there is anything about this document or your powers, authority, or duties as Agent that you do not understand, you should seek legal advice.

AGENT'S CERTIFICATION

I, (Name of Agent), have read the attached durable personal power of attorney and I am the person identified as the Agent or identified as the Agent for the Principal. To the best of my knowledge this power has not been revoked. I hereby acknowledge that, when I act as Agent, I shall:

Act in accordance with the principal's reasonable expectations to the extent actually known to me and, otherwise, in the Principal's best interest;

Act in good faith;

Act only within the scope of authority granted in the personal power of attorney; and

To the extent reasonably practicable under the circumstances, keep in regular contact with the principal and communicate with the principal.

In addition, in the absence of a specific provision to the contrary in the durable personal power of attorney, when I act as Agent, I shall:

Keep the assets of the Principal separate from my assets;

Exercise reasonable caution and prudence; and

Keep a full and accurate record of all actions, receipts and disbursements on behalf of the Principal.

_____ _____

Agent Date

(77 Del. Laws, c. 467, § 4; 78 Del. Laws, c. 369, § 13; 79 Del. Laws, c. 152, § 1.)

Part V
Fiduciary Relations
Chapter 50
FIDUCIARY ACCESS TO DIGITAL ASSETS AND DIGITAL ACCOUNTS

§ 5001 Short title.

This chapter may be cited as the "Fiduciary Access to Digital Assets and Digital Accounts Act."
(79 Del. Laws, c. 416, § 1.)

§ 5002 Definitions.

As used in this chapter:

(1) "Account holder" means a decedent, a disabled person pursuant to Chapter 39 of this title, a principal of a durable personal power of attorney pursuant to Chapter 49A of this title, a settlor of a trust which was revocable until the time of the settlor's death or incapacity, or a trust, whether or not revocable, that invokes this chapter.

(2) "Catalogue of electronic communications" means information that identifies each person with which an account holder has had an electronic communication, the time and date of the communication, and the electronic address of the person.

(3) "Content of an electronic communication" means information not readily accessible to the public concerning the substance or meaning of an electronic communication.

(4) "Court" means the Court of Chancery for the State.

(5) "Custodian" means a person that electronically stores digital assets or digital accounts of an account holder or otherwise has control over digital assets or digital accounts of the account holder. "Custodian" includes an electronic communication service, as the term is defined by the Electronic Communications Privacy Act, 18 U.S.C. § 2510, and a remote computing service, as the term is defined by the Stored Communications Act, 18 U.S.C. § 2711.

(6) "Digital account" means an electronic system for creating, generating, sending, sharing, communicating, receiving, storing, displaying, or processing information which provides access to a digital asset which currently exist or may exist as technology develops or such comparable items as technology develops, stored on any type of digital device, regardless of the ownership of the digital device upon which the digital asset is stored, including but not in any way limited to, email accounts, social network accounts, social media accounts, file sharing accounts, health insurance accounts, health-care accounts, financial management accounts, domain registration accounts, domain name service accounts, web hosting accounts, tax preparation service accounts, online store accounts and affiliate programs thereto, and other online accounts which currently exist or may exist as technology develops or such comparable items as technology develops.

(7) "Digital asset" means data, text, emails, documents, audio, video, images, sounds, social media content, social networking content, codes, health care records, health insurance records, computer source codes, computer programs, software, software licenses, databases, or the like, including the usernames and passwords, created, generated, sent, communicated, shared, received, or stored by electronic means on a digital device. "Digital asset" does not include an underlying asset or liability that is governed under other provisions of this title.

(8) "Digital device" means an electronic device that can create, generate, send, share, communicate, receive, store, display, or process information, and such electronic devices shall include, but not limited to, desktops, laptops, tablets, peripherals, servers, mobile telephones, smartphones, and any similar storage device which currently exists or may exist as technology develops or such comparable items as technology develops.

(9) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(10) "End user license agreement" means an agreement between an account holder and a custodian establishing the rights and responsibilities of each. The term includes a terms-of-use agreement, terms-of-service agreement, privacy policy, terms and conditions, and license agreement.

(11) "Fiduciary" includes a personal representative appointed by the Register of Wills, a guardian appointed pursuant to Chapter 39 of this title, an agent under a durable personal power of attorney pursuant to Chapter 49A of this title, a trustee, or an adviser pursuant to § 3313 of this title.

(12) "Good faith" means honesty in fact.

(13) "Governing instrument" means a will, trust, a durable personal power of attorney pursuant to Chapter 49 or Chapter 49A of this title, order appointing a guardian over the property of the account holder, or other dispositive, appointive, or nominative instrument of any similar type.

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

(15) "Valid written request" means a request made by a fiduciary with authority over the digital assets or digital accounts of another person that complies on its face with the requirements of § 5005 of this title.

(79 Del. Laws, c. 416, § 1.)

§ 5003 Applicability.

This chapter applies to a grant of authority to a fiduciary over a digital account or a digital asset. Digital assets and digital accounts of an employer regularly used by an employee or contractor in the usual course of business are not subject to the provisions of this chapter.

(79 Del. Laws, c. 416, § 1.)

§ 5004 Control of digital accounts and digital assets by a fiduciary.

(a) Except as otherwise provided by a governing instrument or court order, a fiduciary may exercise control over any and all rights in digital assets and digital accounts of an account holder, to the extent permitted under applicable state or federal law, including copyright law, or regulations or any end user license agreement.

(b) If a provision in an end user license agreement limits a fiduciary's access to or control over a digital asset or digital account of an account holder, the provision is void as against the strong public policy of this State, unless the account holder has agreed to the provision by an affirmative act separate from the account holder's assent to other provisions of the end user license agreement.

(c) A choice-of-law provision in an end user license agreement is unenforceable against a fiduciary action under this chapter to the extent the provision designates law that enforces or would enforce a limitation on a fiduciary's access to or control over digital assets or digital accounts that is void under subsection (b) of this section.

(79 Del. Laws, c. 416, § 1.)

§ 5005 Recovery of digital assets and digital accounts from a custodian.

(a) A fiduciary with authority over digital assets or digital accounts of an account holder under this chapter shall have the same access as the account holder, and is deemed to:

(1) Have the lawful consent of the account holder; and

(2) Be an authorized agent or user under all applicable state and federal law and regulations and any end user license agreement.

(b) Upon receipt of a valid written request sent pursuant to the requirements of subsection (c) of this section, from a fiduciary seeking access to, transfer of, copy of, or destruction of a digital asset or digital account, a custodian shall provide the fiduciary the applicable access, transfer, copy, or destruction of the digital asset or digital account, unless it would be technologically impracticable to provide access to, transfer of, copy of, or destruction of the digital asset or digital account to the fiduciary or to the account holder. Unless otherwise provided by a governing instrument or a court order, a fiduciary may access:

(1) The content of an electronic communication, as the term is defined by the Electronic Communications Privacy Act, 18 U.S.C. § 2510, sent or received by the account holder only if the custodian is permitted to disclose the content under the Electronic Communications Privacy Act, 18 U.S.C. § 2702(b);

(2) The catalogue of electronic communications sent or received by the account holder; and

(3) Any other digital account or digital asset of the account holder.

(c) A valid written request under subsection (b) of this section must:

(1) If by a personal representative, be accompanied by a certified copy of the letters testamentary or letters of administration which grant authority to the personal representative to administer the estate of the deceased account holder;

(2) If by a guardian, be accompanied by a certified copy of the court order that gives the guardian authority over the property of the disabled person;

(3) If by an agent, be accompanied by a certified copy of the power of attorney that authorizes the agent to exercise authority over the affairs of the principal and which includes an authorization regarding the principal's digital assets or digital accounts and, if the power of attorney provides that the agent's power to access a digital account or digital asset is conditioned upon the account holder being incapacitated, be accompanied by a certification from a licensed physician or an order of the Court stating the account holder is incapacitated;

(4) If by a trustee, be accompanied by a certified copy of the trust instrument, or a certification of trust pursuant to § 3591 of this title, and, if the trustee's power to access a digital account or digital asset is conditioned upon the account holder being incapacitated, be accompanied by a certification from a licensed physician or an order of the Court stating the account holder is incapacitated; or

(5) If by a fiduciary not otherwise specified herein, be accompanied by a certified copy of the governing instrument that authorizes the fiduciary to exercise authority over digital assets or digital accounts, or in the case of a fiduciary whose authority is granted in a trust instrument, a certification of trust pursuant to § 3591 of this title.

(d) A custodian shall comply with a valid written request not later than 60 days after receipt of the valid written request. If the custodian fails to comply, the fiduciary may apply to the court for an order directing compliance.

(e) For purposes of this section, a "certified copy" of a trust, power of attorney, certification of trust, or governing instrument means a copy accompanied by an affidavit attesting that the copy is a true, exact, complete and unaltered photocopy of the original, and that to the best of the affiant's knowledge, said document remains in full force and effect.

(79 Del. Laws, c. 416, § 1.)

§ 5006 Custodian immunity.

(a) Except as otherwise provided in subsection (b) of this section:

(1) A custodian shall accept a valid written request that complies on its face with the requirements of § 5005 of this title;

(2) A custodian shall accept a valid written request that is originally written in English or is translated into English, under oath of the translator.

(b) A custodian is not required to accept a valid written request if:

(1) The custodian is not otherwise required to engage in a transaction with the account holder in the same circumstances;

(2) Engaging in a transaction with the fiduciary or the account holder in the same circumstances would be inconsistent with applicable state or federal law, including copyright law, or regulations or any end user license agreement; or

(3) The custodian has actual knowledge that the fiduciary does not have the authority to perform the act requested.

(c) A custodian that in good faith accepts a valid written request without actual knowledge that it is void, invalid, or terminated, that the purported fiduciary's authority is void, invalid, or terminated, or that the fiduciary is exceeding or improperly exercising the fiduciary's authority may rely upon such valid written request as if it were genuine, valid and still in effect, the fiduciary's authority were genuine, valid and still in effect, and the fiduciary had not exceeded and had properly exercised the authority.

(d) For purposes of this section, a custodian that conducts activities through employees is without actual knowledge of a fact relating to a valid written request, an account holder, or a fiduciary if the employee conducting the transaction involving the valid written request is without actual knowledge of the fact. Notification of revocation of a valid written request by an account holder or fiduciary to an officer of any custodian shall constitute actual notice to all employees.

(e) A custodian that refuses in violation of this section to accept a valid written request from a fiduciary that complies with § 5005(c) of this title is subject to:

(1) A court order compelling compliance with the valid written request; and

(2) Liability for damages, including reasonable attorney's fees and costs, incurred in any action or proceeding that confirms the validity or authority of a fiduciary to act, or compels acceptance of the fiduciary's valid written request under § 5005(c) of this title.

(f) A custodian acting in good faith is immune from liability for an action done in compliance with this chapter.

(g) A custodian acting in good faith is immune from civil liability for the custodian's accidental destruction of any digital asset or digital account subject to this chapter.

(79 Del. Laws, c. 416, § 1.)

§ 5007 Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001, et seq., but does not modify, limit, or supersede § 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in § 103(b) of that act, 15 U.S.C. § 7003(b).

(79 Del. Laws, c. 416, § 1.)

Part VI
Allocation of Principal and Income
Chapter 61
DELAWARE UNIFORM PRINCIPAL AND INCOME ACT
Subchapter I
Definitions and General Principles

§ 61-101 Short title.

Subchapters I through VI of this chapter may be cited as the "Delaware Uniform Principal and Income Act."

(77 Del. Laws, c. 99, § 1.)

§ 61-102 Definitions.

In this chapter:

(1) "Accounting period" means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.

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

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

(4) "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in subchapter IV of this chapter.

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

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

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

(8) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this chapter to or from income during the period.

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

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

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

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

(13) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court, and an adviser described in § 3313 of this title.

(77 Del. Laws, c. 99, § 1; 77 Del. Laws, c. 330, § 19.)

§ 61-103 Fiduciary duties; general principles.

(a) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of subchapters II and III of this chapter, a fiduciary:

(1) Shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter;

(2) May administer a trust or estate by the exercise of a discretionary power of administration, which shall include a power to allocate between principal and income, given to the fiduciary by the terms of the trust or the will or by local law including, but not limited to, § 3325(23) of this title, even if the exercise of the power produces a result different from a result required or permitted by this chapter;

(3) Shall administer a trust or estate in accordance with this chapter if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(4) Shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(b) In exercising the power to adjust under § 61-104(a) of this title or a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, or this chapter, a fiduciary shall administer a trust or estate

impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor 1 or more of the beneficiaries. A determination in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

(77 Del. Laws, c. 99, § 1; 77 Del. Laws, c. 330, § 20.)

§ 61-104 Trustee's power to adjust.

(a) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in § 61-103(a) of this title, that the trustee is otherwise unable to comply with § 61-103(b) of this title.

(b) In deciding whether and to what extent to exercise the power conferred by subsection (a) of this section, a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

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

(2) The intent of the settlor;

(3) The identity and circumstances of the beneficiaries;

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

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

(6) The net amount allocated to income under the other sections of this chapter, and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

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

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

(9) The anticipated tax consequences of an adjustment.

(c) A trustee may not make an adjustment:

(1) That diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

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

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

(4) If the adjustment is from any amount that is permanently set aside for charitable purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken unless both income and principal are so set aside;

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

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

(7) If the trustee is a beneficiary of the trust; or

(8) If the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.

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

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

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

(g) This section shall have no application to trusts governed by §§ 61-106 and 61-107 of this title. This section shall be construed as pertaining to the administration of a trust.

(h) Following the exercise of the power conferred by subsection (a) of this section to adjust principal to income, the trustee:

(1) Shall consider as ordinary income the amount so adjusted that is not capital gain net income described in paragraph (h)(2) of this section as paid from trust accounting income;

(2) After calculating the trust's capital gain net income described in § 1222(9) (26 U.S.C. § 1222(9)) of the Internal Revenue Code of 1986, as amended, may consider the amount so adjusted as paid from net short-term capital gain described in § 1222(5) (26 U.S.C. § 1222(5)) of the Internal Revenue Code of 1986, as amended, and then from net long-term capital gain described in § 1222(7) (26 U.S.C. § 1222(7)) of the Internal Revenue Code of 1986, as amended; and

(3) Shall then consider any remaining amount so adjusted as paid from the principal of the trust.

(77 Del. Laws, c. 99, § 1; 77 Del. Laws, c. 330, § 21.)

§ 61-105 Judicial control of discretionary power.

(a) In any proceeding that involves a fiduciary's decision to exercise or refrain from the exercise of a discretionary power conferred upon the fiduciary by this chapter, the fiduciary's decision shall be changed by the court only if the court determines that the decision was an abuse of the fiduciary's discretion. A fiduciary's decision is not an abuse of discretion merely because the court would have exercised the power in a different manner or would not have exercised the power.

(b) The decisions to which subsection (a) of this section applies include:

(1) A decision under § 61-104(a) of this title as to whether and to what extent an amount should be transferred from principal to income or from income to principal.

(2) A decision regarding the factors that are relevant to the trust and its beneficiaries, the extent to which the factors are relevant, and the weight, if any, to be given to those factors, in deciding whether and to what extent to exercise the discretionary power conferred by § 61-104(a) of this title.

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

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

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

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

(d) In a proceeding brought by a fiduciary under this section, the court is to determine in accordance with the provisions of this section whether a proposed exercise or nonexercise by the fiduciary of a discretionary power conferred by this chapter will result in an abuse of the fiduciary's discretion. If the petition or other pleading to the court describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the fiduciary relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion.

(77 Del. Laws, c. 99, § 1.)

§ 61-106 Total return unitrusts.

(a) In this section:

(1) "Disinterested person" means a person who is not a "related or subordinate party" (as defined in § 672(c) of the Internal Revenue Code [26 U.S.C. § 672(c)] or any successor provision thereof (hereinafter referred to in this section as the "I.R.C.")) with respect to the person then acting as trustee of the trust and excludes the trustor of the trust and any interested trustee.

(2) "Income trust" means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to 1 or more persons, either in fixed proportions or in amounts or proportions determined by the trustee and regardless of whether the trust directs or permits the trustee to distribute the principal of the trust to 1 or more such persons.

(3) "Interested distributee" means a person to whom distributions of income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a "related or subordinate party" (as defined in I.R.C. § 672(c) [26 U.S.C. § 672(c)]) with respect to such distributee.

(4) "Interested trustee" means:

a. An individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed,

b. Any trustee who may be removed and replaced by an interested distributee and/or

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

(5) "Total return unitrust" means an income trust that has been converted under this section or the laws of any other jurisdiction that permits an income trust to be converted to a trust in which a unitrust amount is treated as the net income of the trust.

(6) "Trustee" means all persons acting as trustee of the trust (except where expressly noted otherwise), whether acting in their discretion or on the direction of 1 or more persons acting in a fiduciary capacity.

(7) "Trustor" means an individual who created an inter vivos or a testamentary trust.

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

(b) A trustee, other than an interested trustee, or where 2 or more persons are acting as trustee, a majority of the trustees who are not an interested trustee (in either case hereafter "trustee"), may, in its sole discretion and without the approval of the Court of Chancery:

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

(2) In the case of a total return unitrust converted under this section or the laws of any other jurisdiction, reconvert a total return unitrust to an income trust; or

(3) In the case of a total return unitrust converted under this section or the laws of any other jurisdiction, change the percentage used to calculate the unitrust amount and/or the method used to determine the fair market value of the trust if:

a. The trustee adopts a written policy for the trust providing:

1. In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income;

2. In the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or

3. That the percentage used to calculate the unitrust amount and/or the method used to determine the fair market value of the trust will be changed as stated in the policy;

b. The trustee sends written notice of its intention to take such action, along with copies of such written policy and this section, to:

1. The trustor of the trust, if living;

2. All living persons who are currently receiving or eligible to receive distributions of income of the trust;

3. Without regard to the exercise of any power of appointment, all living persons who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice and all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the interests of all of the beneficiaries currently eligible to receive income under paragraph (b)(3)b.2. of this section were to terminate at the time of the giving of such notice; and

4. All persons acting as adviser or protector of the trust;

c. At least 1 person receiving notice under each of paragraphs (b)(3)b.2. and (b)(3)b.3. of this section above is legally competent; and

d. No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action of the trustee within 30 days of receipt of such notice.

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

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

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

(3) Change the percentage used to calculate the unitrust amount and/or the method used to determine the fair market value of the trust if:

a. The trustee adopts a written policy for the trust providing:

1. In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income;

2. In the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or

3. That the percentage used to calculate the unitrust amount and/or the method used to determine the fair market value of the trust will be changed as stated in the policy;

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

1. The percentage to be used to calculate the unitrust amount;

2. The method to be used in determining the fair market value of the trust; and

3. Which assets, if any, are to be excluded in determining the unitrust amount;

c. The trustee sends written notice of its intention to take such action, along with copies of such written policy and this section, and the determinations of the disinterested person to:

1. The trustor of the trust, if living;

2. All living persons who are currently receiving or eligible to receive distributions of income of the trust;

3. Without regard to the exercise of any power of appointment, all living persons who would receive principal of the trust if the trust were to terminate at the time of the giving of such notice and all living persons who would receive or be eligible to receive distributions of income or principal of the trust if the interests of all of the beneficiaries currently eligible to receive income under paragraph (c)(3)c.2. of this section were to terminate at the time of the giving of such notice; and

4. All persons acting as adviser or protector of the trust;

d. At least 1 person receiving notice under each of paragraphs (c)(3)c.2. and (c)(3)c.3. of this section is legally competent; and

e. No person receiving such notice objects, by written instrument delivered to the trustee, to the proposed action or the determinations of the disinterested person within 30 days of receipt of such notice.

(d) If any trustee desires to (i) convert an income trust to a total return unitrust, (ii) reconvert a total return unitrust to an income trust, or (iii) change the percentage used to calculate the unitrust amount and/or the method used to determine the fair market value of the trust but does not have the ability to or elects not to do it under the provisions of subsection (b) or (c) of this section above, the trustee may petition the Court of Chancery for such order as the trustee deems appropriate. In the event, however, there is only 1 trustee of such trust and such trustee is an interested trustee or in the event there are 2 or more trustees of such trust and a majority of them are interested trustees, the Court, in its own discretion or on the petition of such trustee or trustees or any person interested in the trust, may appoint a disinterested person who, acting in a fiduciary capacity, shall present such information to the Court as shall be necessary to enable the Court to make its determinations hereunder.

(e) The fair market value of the trust shall be determined at least annually, using such valuation date or dates or averages of valuation dates as are deemed appropriate. Assets for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate. Assets used by a trust beneficiary, such as a residence property or tangible personal property, may be excluded from fair market value for computing the unitrust amount.

(f) The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event not less than 3 percent nor more than 5 percent, taking into account the intentions of the trustor of the trust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings and appreciation for the trust, and projected inflation and its impact on the trust.

(g) A trustee may act pursuant to subsection (b) or subsection (c) of this section with respect to a trust for which both income and principal have been permanently set aside for charitable purposes under the governing instrument and for which a federal estate or gift tax deduction has been taken, provided, that:

(1) Instead of sending written notice to the persons described in paragraphs (b)(3)b.2. and (b)(3)b.3. of this section or paragraphs (c)(3)c.2. and (c)(3)c.3. of this section, as the case may be, the trustee shall send such written notice to the named charity or charities then entitled to receive income of the trust and, if no named charity or charities are entitled to receive all of such income, to the Attorney General of this State;

(2) Paragraph (b)(3)c. of this section or paragraph (c)(3)d. of this section, as the case may be, shall not apply to such action; and

(3) In each taxable year, the trustee shall distribute the greater of the unitrust amount and the amount required by I.R.C. § 4942 [26 U.S.C. § 4942].

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

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

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

(3) After calculating the trust's capital gain net income described in I.R.C. § 1222(9) [26 U.S.C. § 1222(9)], may consider the unitrust amount as paid from net short-term capital gain described in I.R.C. § 1222(5) [26 U.S.C. § 1222(5)] and then from net long-term capital gain described in I.R.C. § 1222(7) [26 U.S.C. § 1222(7)]; and

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

(i) In administering a total return unitrust, the trustee may, in its sole discretion but subject to the provisions of the governing instrument, determine:

(1) The effective date of the conversion;

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

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

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

(5) Such other administrative issues as may be necessary or appropriate to carry out the purposes of this section.

(j) Conversion to a total return unitrust under the provisions of this section shall not affect any other provision of the governing instrument, if any, regarding distributions of principal.

(k) In the case of a trust for which a marital deduction has been taken for federal tax purposes under I.R.C. § 2056 or § 2523 [26 U.S.C. § 2056 or § 2523], the spouse otherwise entitled to receive the net income of the trust shall have the right, by written instrument delivered to the trustee, to compel the reconversion during that spouse's lifetime of the trust from a total return unitrust to an income trust, notwithstanding anything in this section to the contrary.

(l) This section shall be construed as pertaining to the administration of a trust and shall be available to any trust including a trust initially converted to a total return unitrust under the laws of another jurisdiction that is administered in Delaware under Delaware law or to any trust, regardless of its place of administration, whose governing instrument provides that Delaware law governs matters of construction or administration unless:

(1) The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;

(2) The trust is a pooled income fund described in I.R.C. § 642(c)(5) (26 U.S.C. § 642(c)(5)) or a charitable-remainder trust described in I.R.C. § 664(d) (26 U.S.C. § 664(d));

(3) The governing instrument expressly prohibits use of this section by specific reference to the section or expressly states the trustor's intent that net income not be calculated as a unitrust amount. A provision in the governing instrument that "The provisions of 12 Del. C. § 61-106, as amended, or any corresponding provision of future law, shall not be used in the administration of this trust." or "My trustee shall not determine the distributions to the income beneficiary as a unitrust amount." or similar words reflecting such intent shall be sufficient to preclude the use of this section.

(4) [Deleted.]

(m) Any trustee or disinterested person who in good faith takes or fails to take any action under this section shall not be liable to any person affected by such action or inaction, regardless of whether such person received written notice as provided in this section and regardless of whether such person was under a legal disability at the time of the delivery of such notice. Such person's exclusive remedy shall be to obtain an order of the Court directing the trustee to convert an income trust to a total return unitrust, to reconvert from a total return unitrust to an income trust or to change the percentage used to calculate the unitrust amount.

(n) This section shall be effective June 21, 2001, and shall be available to trusts in existence June 21, 2001, or created thereafter.

(73 Del. Laws, c. 48, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 270, §§ 1-12; 75 Del. Laws, c. 97, § 17; 77 Del. Laws, c. 98, §§ 8-11; 77 Del. Laws, c. 330, § 10.)

§ 61-107 Express total return unitrusts.

(a) The following provisions shall apply to a trust that, by its governing instrument, requires or permits the distribution, at least annually, of a unitrust amount equal to a fixed percentage of not less than 3 nor more than 5 percent per year of the fair market value of the trust's assets, valued at least annually, such trust to be referred to in this section as an "express total return unitrust."

(b) The unitrust amount for an express total return unitrust may be determined by reference to the fair market value of the trust's assets in 1 year or more than 1 year.

(c) Distribution of such a fixed percentage unitrust amount is considered a distribution of all of the income of the express total return unitrust.

(d) An express total return unitrust may or may not provide a mechanism for changing the unitrust percentage similar to the mechanism provided under § 61-106 of this title, based upon the factors noted therein, and may or may not provide for a conversion from a unitrust to an income trust and/or a reconversion of an income trust to a unitrust similar to the mechanism under § 61-106 of this title.

(e) If an express total return unitrust does not specifically or by reference to § 61-106 of this title deny a power to change the unitrust percentage or to convert to an income trust, then the trustee shall have such power and the express total return unitrust shall be deemed to be a "total return unitrust" within the meaning of § 61-106 of this title for purposes of applying § 61-106 of this title to the trust.

(f) The distribution of a fixed percentage of not less than 3 percent nor more than 5 percent reasonably apportions the total return of an express total return unitrust.

(g) The trust instrument may grant discretion to the trustee to adopt a consistent practice of treating capital gains as part of the unitrust distribution, to the extent that the unitrust distribution exceeds the net accounting income, or it may specify the ordering of such classes of income.

(h) Unless the terms of the trust specifically provide otherwise, a distribution of the unitrust amount from an express total return unitrust shall be considered to have been made from the following sources in order of priority:

(1) From net accounting income determined as if the trust were not a unitrust;

(2) From ordinary income not allocable to net accounting income;

(3) After calculating the trust's capital gain net income as described in Internal Revenue Code ("I.R.C.") § 1222(9) [26 U.S.C. § 1222(9)], from net realized short-term capital gain as described in I.R.C. § 1222(5) [26 U.S.C. § 1222(5)] and then from net realized long-term capital gain described in I.R.C. § 1222(7) [26 U.S.C. § 1222(7)]; and

(4) From the principal of the trust.

(i) The trust instrument may provide that:

(1) Assets for which a fair market value cannot be readily ascertained shall be valued using such valuation methods as are deemed reasonable and appropriate; and

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

(74 Del. Laws, c. 270, § 13; 77 Del. Laws, c. 98, § 12; 77 Del. Laws, c. 330, § 10.)

Subchapter II

Decedent's Estate or Terminating Income Interest

§ 61-201 Determination and distribution of net income.

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

(1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in subchapters III through V of this chapter which apply to trustees and the rules in paragraph (5) of this section. The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in subchapters III through V of this chapter that apply to trustees and by:

(A) Including in net income all income from property used to discharge liabilities;

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

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

(3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust, or applicable law from net income determined under paragraph (2) of this section or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(4) A fiduciary shall distribute the net income remaining after distributions required by paragraph (3) of this section in the manner described in § 61-202 of this title to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary may not reduce principal or income receipts from property described in paragraph (1) of this section because of a payment described in § 61-501 or § 61-502 of this title to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

(77 Del. Laws, c. 99, § 1.)

§ 61-202 Distribution to residuary and remainder beneficiaries.

(a) Each beneficiary described in § 61-201(4) of this title is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(b) In determining a beneficiary's share of net income, the following rules apply:

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

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

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

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

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

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

(77 Del. Laws, c. 99, § 1.)

Subchapter III

Apportionment at Beginning and End of Income Interest

§ 61-301 When right to income begins and ends.

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

(b) An asset becomes subject to a trust:

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

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

(3) On the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

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

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

(77 Del. Laws, c. 99, § 1.)

§ 61-302 Apportionment of receipts and disbursements when decedent dies or income interest begins.

(a) A trustee shall allocate an income receipt or disbursement other than 1 to which § 61-201(1) of this title applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

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

(c) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which § 61-401 of this title applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

(77 Del. Laws, c. 99, § 1.)

§ 61-303 Apportionment when income interest ends.

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

(b) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary's share of the undistributed

income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than 5 percent of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.

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

(77 Del. Laws, c. 99, § 1.)

Subchapter IV

Allocation of Receipts During Administration of Trust

§ 61-401 Character of receipts.

(a) In this section, "entity" means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, statutory trust or any other organization in which a trustee has an interest other than a trust or estate to which § 61-402 of this title applies, a business or activity to which § 61-403 of this title applies, or an asset-backed security to which § 61-415 of this title applies.

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

(c) Subject to subsection (f) of this section, a trustee shall allocate the following receipts from an entity to principal:

(1) Property other than money; provided that if a trustee receives an option to receive a distribution in the form of money or in the form of property and elects to receive the distribution in the form of property, such distribution shall be deemed to be a distribution of money;

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

(3) Money received in total or partial liquidation of the entity; and

(4) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(d) Money is received in partial liquidation:

(1) Subject to subsection (f) of this section, to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(2) If the total amount of money and property received in a distribution or series of related distributions is greater than 20 percent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

(e) Money is not received in partial liquidation, nor may it be taken into account under paragraph (d)(2) of this section, to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

(f) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors or by a person authorized by such board of directors or comparable person or group of persons to make such a statement.

(77 Del. Laws, c. 99, § 1; 78 Del. Laws, c. 117, § 15.)

§ 61-402 Distribution from trust or estate.

A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, § 61-401 or § 61-415 of this title applies to a receipt from the trust.

(77 Del. Laws, c. 99, § 1.)

§ 61-403 Business and other activities conducted by an estate.

(a) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(b) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(c) Activities for which a trustee may maintain separate accounting records include:

(1) Retail, manufacturing, service, and other traditional business activities;

(2) Farming;

(3) Raising and selling livestock and other animals;

(4) Management of rental properties;

(5) Extraction of minerals and other natural resources;

(6) Timber operations; and

(7) Activities to which § 61-414 of this title applies.

(77 Del. Laws, c. 99, § 1.)

§ 61-404 Principal receipts.

A trustee shall allocate to principal:

(1) To the extent not allocated to income under this chapter, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;

(2) Money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this subchapter;

(3) Amounts recovered from third parties to reimburse the trust because of disbursements described in § 61-502(a)(7) of this title or for other reasons to the extent not based on the loss of income;

(4) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;

(5) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and

(6) Other receipts as provided in subchapter III of this chapter.

(77 Del. Laws, c. 99, § 1.)

§ 61-405 Rental property.

To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

(77 Del. Laws, c. 99, § 1.)

§ 61-406 Obligation to pay money.

(a) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.

(b) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than 1 year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within 1 year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

(c) This section does not apply to an obligation to which § 61-409, § 61-410, § 61-411, § 61-412, § 61-414 or § 61-415 of this title applies.

(77 Del. Laws, c. 99, § 1.)

§ 61-407 Insurance policies and similar contracts.

(a) Except as otherwise provided in subsection (b) of this section, a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.

(b) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to § 61-403 of this title, loss of profits from a business.

(c) This section does not apply to a contract to which § 61-409 of this title applies.

(77 Del. Laws, c. 99, § 1.)

§ 61-408 Insubstantial allocations not required.

If a trustee determines that an allocation between principal and income required by § 61-409, § 61-410, § 61-411, § 61-412 or § 61-415 of this title is insubstantial, the trustee may allocate the entire amount to principal unless 1 of the circumstances described in § 61-104(c) of this title applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in § 61-104(d) of this title and may be released for the reasons and in the manner described in § 61-104(e) of this title. An allocation is presumed to be insubstantial if:

(1) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than 10 percent; or

(2) The value of the asset producing the receipt for which the allocation would be made is less than 10 percent of the total value of the trust's assets at the beginning of the accounting period.

(77 Del. Laws, c. 99, § 1.)

§ 61-409 Deferred compensation, annuities, and similar payments.

(a) In this section:

(1) "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of 1 or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer. For purposes of subsections (d), (e), (f) and (g) of this section, the term also includes any payment from any separate fund, regardless of the reason for the payment.

(2) "Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(b) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income 5 percent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.

(d) Except as otherwise provided in subsection (c) of this section, subsections (f) and (g) of this section apply, and subsections (b) and (c) of this section do not apply, in determining the allocation of a payment from a separate fund to:

(1) A trust to which an election to qualify for a marital deduction under § 2056(b)(7) of the Internal Revenue Code of 1986 [26 U.S.C. § 2056(b)(7)], as amended, has been made, or

(2) A trust that qualifies for the marital deduction under § 2056(b)(5) of the Internal Revenue Code of 1986 [26 U.S.C. § 2056(b)(5)], as amended.

(e) Subsections (d), (f) and (g) of this section do not apply if and to the extent that the series of payments would, without the application of subsection (d) of this section, qualify for the marital deduction under § 2056(b)(7)(C) of the Internal Revenue Code of 1986 [26 U.S.C. § 2056(b)(7)(C)], as amended.

(f) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this chapter. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent that the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(g) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal 4 percent of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under § 7520 of the Internal Revenue Code of 1986 [26 U.S.C. § 7520], as amended, for the month preceding the accounting period for which the computation is made.

(h) This section does not apply to a payment to which § 61-410 of this title applies.

(77 Del. Laws, c. 99, § 1.)

§ 61-410 Liquidating asset.

(a) In this section, "liquidating asset" means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than 1 year under an arrangement that does not provide for the payment of interest on the unpaid balance. The

term does not include a payment subject to § 61-409 of this title, resources subject to § 61-411 of this title, timber subject to § 61-412 of this title, an activity subject to § 61-414 of this title, an asset subject to § 61-415 of this title, or any asset for which the trustee establishes a reserve for depreciation under § 61-503 of this title.

(b) A trustee shall allocate to income 5 percent of the receipts from a liquidating asset and the balance to principal.

(77 Del. Laws, c. 99, § 1.)

§ 61-411 Minerals, water and other natural resources.

(a) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

(1) If received as nominal delay rental or nominal annual rent on a lease, a receipt must be allocated to income.

(2) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.

(3) If an amount received as a royalty, shut-in-well payment, take-or-pay payment, bonus, or delay rental is more than nominal, 95 percent must be allocated to principal and the balance to income.

(4) If an amount is received from a working interest or any other interest not provided for in paragraph (a)(1), (2), or (3) of this section, 95 percent of the net amount received must be allocated to principal and the balance to income.

(b) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, 95 percent of the amount must be allocated to principal and the balance to income.

(c) This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(d) If a trust owns an interest in minerals, water, or other natural resources on August 1, 2009, the trustee may allocate receipts from the interest as provided in this chapter or in the manner used by the trustee before August 1, 2009. If the trust acquires an interest in minerals, water, or other natural resources after August 1, 2009, the trustee shall allocate receipts from the interest as provided in the provisions of this chapter.

(77 Del. Laws, c. 99, § 1.)

§ 61-412 Timber.

(a) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

(1) To income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

(2) To principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;

(3) To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in paragraphs (a)(1) and (2) of this section; or

(4) to principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to paragraph (a)(1), (2), or (3) of this section.

(b) In determining net receipts to be allocated pursuant to subsection (a) of this section, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(c) This chapter applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(d) If a trust owns an interest in timberland on August 1, 2009, the trustee may allocate net receipts from the sale of timber and related products as provided in this chapter or in the manner used by the trustee before August 1, 2009. If the trust acquires an interest in timberland after August 1, 2009, the trustee shall allocate net receipts from the sale of timber and related products as provided in the provisions of this chapter.

(77 Del. Laws, c. 99, § 1.)

§ 61-413 Property not productive of income.

Upon request of the income beneficiary, if the trustee determines that the assets of a trust consist substantially of property that does not provide the income beneficiary with a reasonable income from or use of the trust assets, and that the amounts that the trustee transfers from principal to income under § 61-104 of this title and distributes to the income beneficiary from principal pursuant to the terms of the trust are insufficient to provide the income beneficiary with the beneficial enjoyment of the income interest, the trustee shall make such property productive of income, convert such property within a reasonable time, or exercise the power conferred by § 61-104(a) of this title, as such action or combination of actions are deemed appropriate in the trustee's discretion.

(77 Del. Laws, c. 99, § 1; 78 Del. Laws, c. 117, § 16.)

§ 61-414 Derivatives and options.

(a) In this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(b) To the extent that a trustee does not account under § 61-403 of this title for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.

(c) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

(77 Del. Laws, c. 99, § 1.)

§ 61-415 Asset-backed securities.

(a) In this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which § 61-401 or § 61-409 of this title applies.

(b) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.

(c) If a trust receives 1 or more payments in exchange for the trust's entire interest in an asset-backed security in 1 accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate 5 percent of the payment to income and the balance to principal.

(77 Del. Laws, c. 99, § 1.)

Subchapter V

Allocation of Disbursements During Administration of Trust

§ 61-501 Disbursements from income.

A trustee shall make the following disbursements from income to the extent that they are not disbursements to which § 61-201(2)(B) or (C) of this title applies:

(1) One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;

(2) One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;

(3) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and

(4) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

(77 Del. Laws, c. 99, § 1.)

§ 61-502 Disbursements from principal.

(a) A trustee shall make the following disbursements from principal:

(1) The remaining 1/2 of the disbursements described in § 61-501(1) and (2) of this title;

(2) All of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;

(3) Payments on the principal of a trust debt;

(4) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;

(5) Premiums paid on a policy of insurance not described in § 61-501(4) of this title of which the trust is the owner and beneficiary;

(6) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and

(7) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

(b) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

(77 Del. Laws, c. 99, § 1.)

§ 61-503 Transfers from income to principal for depreciation.

(a) In this section, "depreciation" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than 1 year.

(b) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:

(1) Of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;

(2) During the administration of a decedent's estate; or

(3) Under this section if the trustee is accounting under § 61-403 of this title for the business or activity in which the asset is used.

(c) An amount transferred to principal need not be held as a separate fund.

(77 Del. Laws, c. 99, § 1.)

§ 61-504 Transfers from income to reimburse principal.

(a) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in 1 or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(b) Principal disbursements to which subsection (a) of this section applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(1) An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(2) A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

(3) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;

(4) Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

(5) Disbursements described in § 61-502(a)(7) of this title.

(c) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (a) of this section.

(77 Del. Laws, c. 99, § 1.)

§ 61-505 Income taxes.

(a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid:

(1) From income to the extent that receipts from the entity are allocated only to income;

(2) From principal to the extent that receipts from the entity are allocated only to principal;

(3) Proportionately from principal and income to the extent that receipts from the entity are allocated to both income and principal; and

(4) From principal to the extent that the tax exceeds the total receipts from the entity.

(d) After applying subsections (a) through (c) of this section, the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

(77 Del. Laws, c. 99, § 1.)

§ 61-506 Adjustments between principal and income because of taxes.

(a) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:

(1) Elections and decisions, other than those described in subsection (b) of this section, that the fiduciary makes from time to time regarding tax matters;

(2) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

(3) The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(b) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

(77 Del. Laws, c. 99, § 1.)

Subchapter VI

Miscellaneous Provisions

§ 61-601 Uniformity of application and construction.

In applying and construing subchapters I through V of this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact the Uniform Principal and Income Act.

(77 Del. Laws, c. 99, § 1.)

§ 61-602 Applicability of § 61-409 of this title.

Section 61-409 of this title applies to a trust described in § 61-409(d) of this title on and after the following dates:

(1) If the trust is not funded as of the effective date of this chapter, that is, August 1, 2009, the date of decedent's death.

(2) If the trust is initially funded in the calendar year beginning January 1, 2009, the date of the decedent's death.

(3) If the trust is not described in paragraph (1) or (2) of this section, January 1, 2009.

(77 Del. Laws, c. 99, § 1.)

§ 61-603 Accounts with register of wills not affected.

Nothing in this chapter shall be construed to effect or change the form of accounting required under § 2301 of this title.

(77 Del. Laws, c. 99, § 1.)

§ 61-604 Certain charitable remainder unitrusts.

(a) Notwithstanding any contrary provision of the chapter, if the trust instrument adopts the provisions of this section by reference, an increase in the value of the following investments owned by a charitable remainder unitrust of the type authorized in § 664(d)(3) of the Internal Revenue Code (26 U.S.C. § 664(d)(3)) or any successor provision thereof, is distributable as income when it becomes available for distribution:

(1) A zero coupon bond:

(2) An annuity contract before annuitization;

(3) A life insurance contract before the death of the insured;

(4) An interest in a common trust fund (as defined in § 584 of the Internal Revenue Code (26 U.S.C. § 584) or any successor provision thereof);

(5) An interest in partnership (as defined in § 7701 of the Internal Revenue Code (26 U.S.C § 7701) or any successor provision thereof); or

(6) Any other obligation for the payment of money that is payable at a future time in accordance with the a fixed, variable or discretionary schedule of appreciation in excess of the price at which it was issued.

(b) For purposes of this section the increase in value of an investment described in subsection (a) of this section is available for distribution only when the trustee receives cash on account of the investment. Any trust instrument executed prior to June 30, 1997, that

incorporates by reference the provisions of former subsection (c) of this section, which existed prior to amendment effective June 30, 1997, shall be deemed to have incorporated by reference this subsection.

(77 Del. Laws, c. 99, § 1.)

§ 61-605 Trusts governed by this act.

This chapter shall apply to any trust that is administered in Delaware under Delaware law or to any trust, wherever administered, whose governing instrument provides that the construction or administration of the trust be governed by Delaware law.

(77 Del. Laws, c. 99, § 1.)