

## No. 1982-26

## AN ACT

## SB 635

Amending Title 20 (Decedents, Estates and Fiduciaries) of the Pennsylvania Consolidated Statutes, clarifying certain provisions relating to spouses' elections; providing for payment from a patient's care account to decedent's family; authorizing the payment of proceeds from insurance policies to decedent's family; providing for the apportionment of death taxes; changing certain provisions relating to gifts to minors; clarifying provisions relating to distributions of income and principal made during incompetency; adding provisions concerning powers of attorney; authorizing the termination of certain trusts; clarifying certain provisions relating to compensation to a fiduciary; making technical and editorial changes; and making a repeal.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 2206, 2209 and 2210 of Title 20, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, are amended to read:

§ 2206. Right of election personal to surviving spouse.

The right of election of the surviving spouse may be exercised *in whole or in part* only during his lifetime by him *or by his attorney-in-fact in accordance with section 5603(d) (relating to implementation of power of attorney)*. In the case of a minor [or an incompetent] spouse, the right of election may be exercised in whole or in part only by the spouse's guardian; *in the case of an incompetent spouse, the right of election may be exercised in whole or in part only by the spouse's guardian or by his attorney-in-fact in accordance with section 5603(d) if the power of attorney qualifies as a durable power of attorney under section 5604 (relating to durable powers of attorney); provided, that, in each case, the election shall be exercised only* upon order of the court having jurisdiction of the minor's or the incompetent's estate, after finding that exercise of the right is advisable.

§ 2209. Surviving spouse as witness.

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

§ 2210. Procedure for election; time limit.

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

(b) Time limit.—The election must be filed with the clerk before the expiration of six months after the decedent's death or before the expiration of six months after the date of probate, whichever is later. The court

may extend the time for election for such period and upon such terms and conditions as the court shall deem proper under the circumstances on application of the surviving spouse filed with the clerk within the foregoing time limit. Failure to file an election in the manner and within the time limit set forth in this section shall be deemed a waiver of the right of election.

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

Section 2. Section 3101(c) of Title 20, added July 11, 1980 (P.L.565, No.118), is amended and a subsection is added to read:

§ 3101. Payments to family and funeral directors.

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*(c) [Payments to funeral directors] Patient's care account.—When the decedent was a qualified recipient of medical assistance from the Department of Public Welfare, the facility in which he was a patient may make payment of funds, if any, remaining in the patient's care account, for the decedent's burial expenses to a licensed funeral director in an amount not exceeding \$1,000 whether or not a personal representative has been appointed. After the payment of decedent's burial expenses, the facility may pay the balance of decedent's patient's care account, as long as the payments including the payment for burial expenses does not exceed \$1,500, to the spouse, any child, the father or mother or any sister or brother (preference being given in the order named) of the deceased patient. Any facility making such a payment shall be released to the same extent as if payment had been made to a duly appointed personal representative of the decedent and it shall not be required to see to the application thereof. Any licensed funeral director or other person to whom payment is made shall be answerable therefor to anyone prejudiced by an improper distribution.*

*(d) Life insurance payable to estate.—Any insurance company which upon the death of an individual residing in this Commonwealth owes his estate a total amount of \$11,000 or less under any policy of life, endowment, accident or health insurance, or under any annuity or pure endowment contract, may at any time after 60 days following his death pay all or any part of that amount to the spouse, any child, the father or mother or any sister or brother of the decedent (preference being given in the order named) provided that at the time of the payment no written claim for that money has been received at the office of the company specified in the policy or contract for the receipt of claims from any duly appointed personal representative of the decedent. Any insurance company making any payment in accordance with this section to an adult may rely on the affidavit of any of the persons named in this subsection concerning the existence and relationship of these persons and shall be released to the same extent as if payment had been made to a duly appointed personal representative of the decedent and the insurance company shall not be required to see to the application thereof. Any person to whom payment is made shall be answerable therefor to anyone prejudiced by an improper distribution.*

Section 3. Section 3132.1(b) of Title 20 is amended to read:  
§ 3132.1. Self-proved wills.

\* \* \*

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

Acknowledgment

Commonwealth of Pennsylvania (or state of)  
County of

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

Sworn or affirmed to and acknowledged before me, by \_\_\_\_\_, the testat—\_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
\_\_\_\_\_  
(Official capacity of officer)

Affidavit

Commonwealth of Pennsylvania (or state of)  
County of

We, [\_\_\_\_\_,] \_\_\_\_\_ and \_\_\_\_\_, the witnesses whose names are signed to the attached or foregoing instrument, being duly qualified according to law, do depose and say that we were present and saw testat—\_\_\_\_\_ sign and execute the instrument as his Last Will; that \_\_\_\_\_ signed willingly and that \_\_\_\_\_ executed it as \_\_\_\_\_ free and voluntary act for the purposes therein expressed; that each of us in the hearing and sight of the testat—\_\_\_\_\_ signed the will as witnesses; and that to the best of our knowledge the testat—\_\_\_\_\_ was at that time 18 or more years of age, of sound mind and under no constraint or undue influence.

Sworn or affirmed to and subscribed to before me by [\_\_\_\_\_,] \_\_\_\_\_ and \_\_\_\_\_, witnesses, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_\_.

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 Witness

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 Witness

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 Witness]

(SEAL)

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 (Official capacity of officer)

Section 4. Chapter 37 of Title 20 is repealed and a chapter is added to read:

**CHAPTER 37**  
**APPORTIONMENT OF DEATH TAXES**

Sec.

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

§ 3701. Power of decedent.

A testator, settlor, donor or possessor of any appropriate power of appointment may direct how the Federal estate tax or the Federal generation-skipping tax due because of his death, including interest and penalties, shall be apportioned or may grant a discretionary power to another so to direct but any direction regarding apportionment of the Federal generation-skipping tax must expressly refer to that tax. Any such direction shall take precedence over the provisions of this chapter insofar as the direction provides for the payment of the tax or any part thereof from property the disposition of which can be controlled by the instrument containing the direction or delegating the power to another.

§ 3702. Equitable apportionment of Federal estate tax.

(a) General rule.—Subject to the provisions of section 3701 (relating to power of decedent), the Federal estate tax shall be apportioned equitably among all parties interested in property includible in the gross estate for Federal estate tax purposes in proportion to the value of the interest of each party subject to the rules stated in this section.

(b) Pre-residuary.—

(1) No Federal estate tax shall be apportioned against a beneficiary of any pre-residuary gift made by will. Any Federal estate tax attributable thereto shall be paid entirely from the residue of the estate and charged in the same manner as a general administration expense of the estate except that when a portion of the residue of the estate is allowable as a deduction for Federal estate tax purposes the tax shall be paid

to the extent possible from the portion of the residue which is not so allowable.

(2) No Federal estate tax shall be apportioned against a beneficiary of any pre-residuary gift made by inter vivos trust. Any Federal estate tax attributable thereto shall be paid entirely from the residue of the trust and charged in the same manner as a general administration expense of the trust except that when a portion of the residue of the trust is allowable as a deduction for Federal estate tax purposes the tax shall be paid to the extent possible from the portion of the residue which is not so allowable.

(c) Deductions.—No Federal estate tax shall be apportioned against an interest allowable as a Federal estate tax marital, orphan's or charitable deduction (determined and valued without regard to any Pennsylvania inheritance tax or other state or foreign death taxes apportioned against such interest) except as otherwise provided in subsections (b) and (g).

(d) Credits.—Any Federal estate tax credit for state or foreign death taxes on property includible in the gross estate for Federal estate tax purposes shall inure to the benefit of the parties chargeable with the payment of the state or foreign death taxes in proportion to the amount of the taxes paid by each party but any credit inuring to the benefit of a party shall not exceed the Federal estate tax apportionable to that party. Any unified credit against Federal estate tax, credit for tax on prior transfers (sometimes called the credit for property previously taxed) or credit for gift taxes paid by the decedent or his estate with respect to gifts made by the decedent before January 1, 1977 shall inure to the benefit of all parties liable to apportionment in proportion to the amount of Federal estate tax apportioned against each party under the other provisions of this chapter. Any Federal estate tax credit for gift taxes paid by the donee of a gift made before January 1, 1977 shall inure to the benefit of the donee.

(e) Election by spouse.—Property passing to a spouse who elects to take an elective share under Chapter 22 (relating to elective share of surviving spouse) shall be exempt from apportionment of Federal estate tax only to the extent provided in subsection (c).

(f) Additional Federal estate tax.—Any additional Federal estate tax due because a qualified heir disposes of qualified real property or ceases to use it for the qualified use shall be apportioned against the qualified heir notwithstanding the provisions of subsection (b).

(g) Present and future interests.—When both a present and a future interest are involved, the Federal estate tax apportioned, including interest and penalties, shall be paid entirely from principal, except as otherwise provided in subsection (h), even if the future interest qualifies for a Federal estate tax charitable deduction or the holder of the present interest also has rights in the principal or the principal is otherwise exempt from apportionment.

(h) Interest and penalties.—Interest and penalties shall be apportioned in the same manner as the principal amount of the Federal estate tax unless the court finds it inequitable to do so by reason of special circumstances in which case the court may direct a different apportionment of interest and penalties.

(i) Values.—The values used in determining the amount of Federal estate tax liability shall be used for Federal estate tax apportionment purposes.

§ 3703. Apportionment of Pennsylvania inheritance tax.

The Pennsylvania inheritance tax shall be apportioned as provided in the act of June 15, 1961 (P.L.373, No.207), known as the "Inheritance and Estate Tax Act of 1961."

§ 3704. Apportionment of Pennsylvania estate tax.

The Pennsylvania estate tax shall be apportioned in the same manner as the Federal estate tax.

§ 3705. Apportionment of Federal generation-skipping tax.

Subject to the provisions of section 3701 (relating to power of decedent), the Federal generation-skipping tax shall be apportioned as provided by Federal law and, to the extent not provided by Federal law, shall be apportioned by analogy to the rules specified in section 3702 (relating to equitable apportionment of Federal estate tax).

§ 3706. Enforcement of contribution or exoneration of Federal estate tax.

(a) Duty to pay.—Parties liable for apportionment of the Federal estate tax, whether residents or nonresidents of this Commonwealth, shall pay the amounts apportioned against them respectively.

(b) Duty of fiduciary.—The fiduciary charged with the duty to pay the Federal estate tax may recover from parties liable to apportionment the amounts of Federal estate tax apportionable to them respectively.

(c) Suspending distribution.—Distribution of property to any party, other than a fiduciary charged with a duty to pay the Federal estate tax, shall not be required of any fiduciary until the Federal estate tax apportionable with respect thereto is paid or, if the Federal estate tax has not been determined and apportionment made, until adequate security for payment is furnished to the fiduciary making the distribution.

(d) Court decrees.—The court, upon petition or at an accounting or in any appropriate action or proceeding, shall make such decrees or orders as it shall deem advisable apportioning the Federal estate tax. The court may direct a fiduciary to collect the apportioned amounts from the property or interests in his possession of any parties against whom apportionment has been made and may direct all other parties against whom the Federal estate tax has been or may be apportioned or from whom any part of the Federal estate tax may be recovered to make payment of the apportioned amounts to the fiduciary. When a fiduciary holds property of a party liable to apportionment insufficient to satisfy the apportioned Federal estate tax, the court may direct that the balance of the apportioned amount of Federal estate tax shall be paid to the fidu-

ciary by the party liable. Should an overpayment of the Federal estate tax be made by any party or on his behalf, the court may direct an appropriate reimbursement for the overpayment. If the court apportions any part of the Federal estate tax against any party interested in nontestamentary property or among the respective interests created by any nontestamentary instrument, the court, in its discretion, may assess against those properties or interests an equitable share of the expenses incurred in connection with the determination and apportionment of the Federal estate tax. If the fiduciary cannot recover the Federal estate tax apportioned against a party benefited, the unrecovered amount shall be charged in such manner as the court may determine.

Section 5. Section 4102(b) of Title 20 is amended to read:

§ 4102. Powers with respect to securities and bank accounts.

\* \* \*

(b) Bank accounts.—When there is no administration in **[the] this Commonwealth, a foreign fiduciary[, upon submission to the financial institution of:] shall have all the powers of a similar local fiduciary with respect to money deposited or invested in a financial institution located in this Commonwealth and shall not be required to comply with the conditions and limitations of section 4101 if he has submitted to the financial institution**

**[(i)] a certificate of his appointment[;] and**

**[(ii)] an affidavit stating that after diligent search and inquiry the estate of which he is fiduciary is not, to his knowledge[, or so far as he has been able to discover, indebted to any person in [the] this Commonwealth and that any taxes owing by such estate to the Commonwealth or any subdivision thereof have been paid or provided for [shall have all the powers of a similar local fiduciary with respect to money deposited or invested in a financial institution located in Pennsylvania and shall not be required to comply with the conditions and limitations of section 4101].**

\* \* \*

Section 6. Sections 5144, 5147(2) and 5153 of Title 20 are amended to read:

§ 5144. Powers, duties and liabilities identical with personal representatives.

The provisions concerning the powers, duties and liabilities of a guardian appointed by the court shall be the same as those set forth in *the following provisions of this title for the administration of a decedent's estate: [ with regard to the following:*

(1) **Liability insurance, as in section 3313 (relating to liability insurance).**

(2) **Continuation of business, as in section 3314 (relating to continuation of business).**

(3) **Incorporation of business, as in section 3315 (relating to incorporation of estate's business).**

(4) Claims against co-guardian, as in section 3317 (relating to claims against co-fiduciary).

(5) Revival of judgment against guardian, as in section 3318 (relating to revival of judgments against personal representative).

(6) Power of attorney and delegation of power over subscription rights and fractional shares, as in section 3319 (relating to power of attorney; delegation of power over subscription rights and fractional shares; authorized delegations).

(7) Voting stock by proxy, as in section 3320 (relating to voting stock by proxy).

(8) Nominee registration; corporate fiduciary as attorney-in-fact, as in section 3321 (relating to nominee registration; corporate fiduciary as attorney-in-fact; deposit of securities in a clearing corporation; book-entry securities).

(9) Acceptance of deed in lieu of foreclosure, as in section 3322 (relating to acceptance of deed in lieu of foreclosure).

(10) Compromise of controversies, as in section 3323 (relating to compromise of controversies).

(11) When guardian dies or becomes incompetent, as in section 3324 (relating to death or incompetency of fiduciary).

(12) Surviving or remaining guardian, as in section 3327 (relating to surviving or remaining personal representatives).

(13) Disagreement of guardians, as in section 3328 (relating to disagreement of personal representatives).

(14) Liability of guardian on contracts, as in section 3331 (relating to liability of personal representative on contracts).

(15) Inherent powers and duties, as in section 3332 (relating to inherent powers and duties).]

*Section 3313 (relating to liability insurance).*

*Section 3314 (relating to continuation of business).*

*Section 3315 (relating to incorporation of estate's business).*

*Section 3317 (relating to claims against co-fiduciary).*

*Section 3318 (relating to revival of judgments against personal representative).*

*Section 3319 (relating to power of attorney; delegation of power over subscription rights and fractional shares; authorized delegations).*

*Section 3320 (relating to voting stock by proxy).*

*Section 3321 (relating to nominee registration; corporate fiduciary as attorney-in-fact; deposit of securities in a clearing corporation; book-entry securities).*

*Section 3322 (relating to acceptance of deed in lieu of foreclosure).*

*Section 3323 (relating to compromise of controversies).*

*Section 3324 (relating to death or incompetency of fiduciary).*

*Section 3327 (relating to surviving or remaining personal representatives).*

*Section 3328 (relating to disagreement of personal representatives).*



*Section 3331 (relating to liability of personal representatives on contracts).*

*Section 3332 (relating to inherent powers and duties).*

§ 5147. Proceedings against guardian.

Any proceeding may be brought against a guardian or the surety on his bond in the court having jurisdiction of the estate, and if he does not reside in the county, process may be served on him personally, or as follows:

\* \* \*

(2) When a nonresident of the Commonwealth.—By the sheriff of the county of the court having jurisdiction of the estate [sending, by registered mail, return receipt requested, a true and attested copy of the process to the Department of State, accompanied by the fee prescribed by law, and to the guardian or surety at his last known address, with an endorsement thereon showing that service has been so made upon the Department of State].

§ 5153. Provisions identical to other estates.

The provisions concerning guardians and minors' estates shall be the same as those set forth in *the following provisions of* this title for personal representatives and for the administration of decedents' estates: [with regard to the following:

(1) (Repealed).

(2) Restraint of sale, as in section 3355 (relating to restraint of sale).

(3) Purchase by guardian, as in section 3356 (relating to purchase by personal representative).

(4) Collateral attack, as in section 3358 (relating to collateral attack).

(5) Record of proceedings; county where real estate lies, as in section 3359 (relating to record of proceedings; county where real estate lies).

(6) Contracts, inadequacy of consideration or better offer; brokers' commissions, as in section 3360 (relating to contracts, inadequacy of consideration or better offer; brokers' commissions).]

*Section 3355 (relating to restraint of sale).*

*Section 3356 (relating to purchase by personal representative).*

*Section 3358 (relating to collateral attack).*

*Section 3359 (relating to record of proceedings; county where real estate lies).*

*Section 3360 (relating to contracts, inadequacy of consideration or better offer; brokers' commissions).*

Section 7. Sections 5302, 5303, 5305(e), (f) and (g), 5308(a), (b), (d) and (e) and 5309 of Title 20 are amended to read:

§ 5302. Definitions.

The following words[, terms] and phrases when used in this chapter shall have the meaning [ascribed] given to them in this section[, except where the context clearly indicates a different meaning] unless the context clearly indicates otherwise:

[An "adult" is a person who has attained the age of 21 years.]

[A "bank" is a] "*Bank.*" A bank, bank and trust company, trust company, savings and loan association, building and loan association, national banking association or institution, savings bank, or credit union incorporated under the laws of the United States or under the laws of this Commonwealth.

[A "broker" is a] "*Broker.*" A person engaged in the business of effecting transactions in securities for the account of others. The term includes a bank which effects such transactions. The term also includes a person lawfully engaged in buying and selling securities, for his own account, through a broker or otherwise as a part of a regular business.

["Court" means the] "*Court.*" The orphans' court division having jurisdiction over the minor or the property.

["The custodial property" includes:

(i) all securities, money, life or endowment insurance policies and annuity contracts under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in this chapter;

(ii) the income from the custodial property; and

(iii) the proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment or other disposition of such securities, money, life or endowment insurance policies and annuity contracts and income.]

"*Custodial property.*" Includes:

(1) *Personal property in any form including, without limitation, securities, interests in partnerships, money, life or endowment insurance policies, annuity contracts and tangible personal property, and interests in real property located in this Commonwealth, under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in this chapter.*

(2) *The income from the custodial property.*

(3) *The proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment, surrender or other disposition of custodial property.*

[A "custodian" is a] "*Custodian.*" A person so designated in a manner prescribed in this chapter; the term includes a successor custodian.

[A "guardian"] "*Guardian.*" A guardian of a minor includes the general guardian, guardian, tutor or curator of his property, estate or person.

[An "issuer" is a] "*Issuer.*" A person who places or authorizes the placing of his name on a security (other than as a transfer agent) to evidence that it represents a share, participation or other interest in his property or in an enterprise, or to evidence his duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person.

[A “legal representative”] *“Legal representative.” A legal representative of a person is his executor or the administrator, general guardian, guardian, committee, conservator, tutor or curator of his property or estate.*

*“Life or endowment insurance policies and annuity contracts.” Includes only life or endowment insurance policies and annuity contracts on the life of an individual in whose life the minor has an insurable interest.*

[A “member” of a “minor’s family” means any] *“Member of a minor’s family.” Any of the minor’s parents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption.*

[A “minor” is a] *“Minor.” A person who has not attained the age of 21 years.*

[A “security” includes] *“Security.” Includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease, or in payments out of production under such title or lease, collateral trust certificate, transferable share, voting trust certificate, or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in any temporary or interim certificate, receipt or certificate of deposit for or any warrant or right to subscribe to or purchase any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in “registered form” when it specifies a person entitled to it, or to the rights it evidences, and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer.*

[A “transfer agent” is a] *“Transfer agent.” A person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities.*

[A “trust company” is any] *“Trust company.” Any corporation authorized under the laws of this Commonwealth to act as a fiduciary.*

*“Life or endowment insurance policies and annuity contracts” means only life or endowment insurance policies and annuity contracts on the life of an individual in whose life the minor has an insurable interest.]*

§ 5303. Manner of making gift.

(a) [General rule] *Lifetime gifts.*—[An adult] *A person who has attained the age of 18 years may, during his lifetime, make a gift of [a security, money, a life or endowment insurance policy or an annuity contract] custodial property to a person who is a minor on the date of the gift:*

- (1) If the subject of the gift is a security in registered form, by registering it in the name of the donor, another [adult] person[,], *who has attained the age of 18 years* or a trust company, followed in substance by the words “as custodian for [.....] (*name of minor*) [(name of minor)]

under the Pennsylvania Uniform Gifts to Minors Act.”

(2) If the subject of the gift is a security not in registered form, *or is any other asset (except cash) where title can pass by delivery*, by delivering it to **[a guardian of the minor]** *another person who has attained the age of 18 years* or a trust company, accompanied by a statement of gift in the following form in substance, signed by the donor and the person designated as custodian.

“Gift under the Pennsylvania  
Uniform Gifts to Minors Act

I [.....] *(name of donor)* hereby  
**[(name of donor)]**  
deliver to [.....] *(name of custodian)*  
**[(name of custodian)]**  
as custodian for [.....] *(name of minor)* under the  
**[(name of minor)]**  
Pennsylvania Uniform Gifts to Minors Act, the following security(ies)  
*or asset(s)*: (insert an appropriate description of the security or securi-  
*ties or other assets* delivered sufficient to identify it or them).

.....  
(signature of donor)

I [.....] *(name of custodian)* hereby  
**[(name of custodian)]**  
**[acknowledges]** *acknowledge* receipt of the above described secu-  
rity(ies) *or asset(s)* as custodian for the above minor under the Penn-  
sylvania Uniform Gifts to Minors Act.  
Dated.....

.....  
(signature of custodian).”

*(2.1) If the subject of the gift is an interest in a limited partnership, the donor shall cause the ownership of the interest to be recorded on the books of the limited partnership in the name of the donor, another person who has attained the age of 18 years or a trust company, followed in substance by the words “as custodian for (name of minor) under the Pennsylvania Uniform Gifts to Minors Act” and shall obtain an acknowledgment of the recordation from the limited partnership a copy of which shall be delivered to the person in-whose name it is thus recorded as custodian.*

(3) If the subject of the gift is money, by paying or delivering it to a broker or a bank, for credit to an account in the name of the donor, another **[adult]** person**[, an adult member of the minor’s family, a guardian of the minor,]** *who has attained the age of 18 years* or a **[bank with trust powers]** *trust company*, followed in substance by the words “as custodian for [.....]

**[(name of minor)]**

*(name of minor)* under the Pennsylvania Uniform Gifts to Minors Act.”

(4) If the subject of the gift is a life or endowment insurance policy or an annuity contract the donor shall cause the ownership of such policy or contract to be recorded on a form satisfactory to the insurance company or fraternal benefit society, in the name of the donor, another **[adult] person[, a guardian of the minor,] who has attained the age of 18 years** or a **[bank with trust powers] trust company**, followed in substance by the words[,] “as custodian for [.....] *(name of minor)* under the **[(name of minor)]**

Pennsylvania Uniform Gifts to Minors Act,” and such policy or contract shall be delivered to the person in whose name it is thus registered as custodian.

*(5) If the subject of the gift is an interest in real property, by executing, in a form suitable for recording, a conveyance of the interest to the donor, another person who has attained the age of 18 years or a trust company, followed in substance by the words “as custodian for (name of minor) under the Pennsylvania Uniform Gifts to Minors Act,” and delivering the conveyance to the custodian and, where the donor is the custodian, recording the conveyance.*

*(a.1) Gifts by will or trust.—A person who has attained the age of 18 years may, by will or trust, provide that a gift under the will or trust to a minor shall be paid to a custodian for the minor under this chapter and may name the custodian or may authorize the executor or trustee as the case may be to select and appoint any person or trust company including the executor or trustee as custodian to receive payment of such gift. In such event the executor or trustee shall make distribution by transferring the subject of the gift to the custodian in the form and manner provided in subsection (a). If the testator or settlor directs or authorizes payment to a custodian but fails to designate a custodian or to authorize the executor or trustee to select and appoint a custodian or if the custodian designated by the testator or settlor fails to qualify or ceases to act, the executor or trustee may select and appoint the custodian from among those persons, including the executor or trustee, eligible to become successor custodian for the minor under this chapter. The receipt of the custodian shall constitute a sufficient release or discharge for the custodial property distributed to the custodian.*

*(b) Limitations.—Any gift made in a manner prescribed in [subsection (a) of this section] subsection (a) or (a.1) may be made to only one minor and only one person may be the custodian.*

*(c) Duty of donor.—A donor who makes a gift to a minor in a manner prescribed in subsection (a) [of this section] shall promptly do all things within his power to put the subject of the gift in the possession and control of the custodian, but neither the donor’s failure to comply with this subsection nor his designation of an ineligible person as custodian, nor renunciation by the person designated as custodian [affects] shall affect the consummation of the gift.*

§ 5305. Duties and powers of custodian.

\* \* \*

(e) Investment and retention of property.—The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property as would a prudent man of discretion and intelligence who is seeking a reasonable income and the preservation of his capital, except that he may, in his discretion and without liability to the minor or his estate, retain **[a security] custodial property** given to the minor in a manner prescribed in this chapter **[or hold money so given in an account in the financial institution to which it was paid or delivered by the donor]**.

(f) Disposal of property and voting securities.—The custodian may sell, exchange, convert, *surrender* or otherwise dispose of custodial property, in the manner, at the time or times, for the price or prices, and upon the terms he deems advisable. *He may borrow money and mortgage or pledge custodial property as security. He may grant options for the sale or lease of custodial property.* He may vote in person, or by general or limited proxy, a security which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer, a security which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to such an issuer, and to any other action by such an issuer. He may execute and deliver any and all instruments in writing, which he deems advisable to carry out any of his powers as custodian.

(g) Registration, deposit and separation of property.—The custodian shall register each security which is custodial property[,] and in **[the]** registered form in the name of the custodian followed in substance by the words “as custodian for [.....] *(name of minor)* under the **[(name of minor)]**

Pennsylvania Uniform Gifts to Minors Act,” provided that a corporate custodian may register securities which are custodial property in the name of its nominee. The custodian shall hold all money which is custodial property in an account with a broker or in a bank in the name of the custodian, followed in substance by the words “as custodian for [.....] *(name of minor)* under the **[(name of minor)]**

Pennsylvania Uniform Gifts to Minors Act.” The custodian shall keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property.

\* \* \*

§ 5308. Resignation, death or removal of custodian; bond; designation of successor custodian.

(a) Eligibility and designation of successor.—Only [an adult] a member of the minor’s family *who has attained the age of 18 years*, a guardian of the minor or a trust company is eligible to become successor custodian. A custodian may designate his successor by executing and dating an instrument of designation before a subscribing witness other than the successor; the instrument of designation may but need not contain the resignation of the custodian. If the custodian does not so designate his successor before he dies or becomes legally incapacitated, and the minor has no guardian and has attained the age of 14 years, the minor may designate a successor custodian by executing an instrument of designation before a subscribing witness other than the successor. A successor custodian has all the rights, powers, duties and immunities of a custodian designated in a manner prescribed by this chapter.

(b) When designation of successor takes effect.—The designation of a successor custodian as provided in subsection (a) [of this section] takes effect as to each item of the custodial property when the custodian resigns, dies or becomes legally incapacitated and the custodian or his legal representative:

(1) causes the item, if it is a security in registered form or a life *or endowment* insurance policy or annuity contract, to be registered, with the issuing insurance company in the case of a life *or endowment* insurance policy or annuity contract, in the name of the successor custodian followed, in substance by the words “as custodian for[.....] (*name of minor*) under the

[(name of minor)]

Pennsylvania Uniform Gifts to Minors Act”; [and]

(1.1) *if the custodial property is an interest in real property, executes a conveyance of the interest to the successor custodian in the form provided in section 5303(a)(5) (relating to manner of making gift); or*

(2) delivers or causes to be delivered to the successor custodian any other item of the custodial property, together with the instrument of designation of the successor custodian or a true copy thereof and any additional instruments required for the transfer thereof to the successor custodian.

\* \* \*

(d) Ineligibility, death or incapacity of custodian.—If a person designated as custodian or as successor custodian by the custodian as provided by subsection (a) [of this section] is not eligible, dies or becomes legally incapacitated before the minor attains the age of 21 years and if the minor has a guardian, the guardian of the minor shall be successor custodian. If the minor has no guardian and if no successor custodian who is eligible and has not died or not become legally incapacitated has been designated as provided in subsection (a) [of this section], a donor, his legal representative, the legal representative of the custodian, or [an

**adult]** a member of the minor's family *who has attained the age of 18 years*, may petition the court for the designation of a successor custodian.

(e) Petition for removal or requiring bond.—A donor, the legal representative of a donor, a successor custodian, **[an adult]** a member of the minor's family *who has attained the age of 18 years*, a guardian of the minor or the minor if he has attained the age of 14 years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated, or, in the alternative, that the custodian be required to give bond for the performance of his duties.

\* \* \*

§ 5309. Accounting by custodian.

(a) Petition for accounting.—The minor if he has attained the age of 14 years, or the legal representative of the minor, **[an adult]** a member of the minor's family *who has attained the age of 18 years* or a donor or his legal representative, may petition the court for an accounting by the custodian or his legal representative.

(b) Order for accounting or delivery of property.—The court in a proceeding under this chapter or otherwise may require or permit the custodian or his legal representative to account and if the custodian is removed, shall so require and order, delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer thereof.

Section 8. Sections 5505, 5515, 5521, 5536 and 5537(a) of Title 20 are amended to read:

§ 5505. Provisions similar to small estates of minors.

The provisions concerning small estates of incompetents shall be the same as are set forth in *the following provisions* of this title relating to minors' estates~~], with regard to the following]~~:

[**(1) When guardian unnecessary, as in section 5101 (relating to when guardian unnecessary).**

**(2) Power of natural guardian, as in section 5102 (relating to power of natural guardian).**

**(3) Sequestered deposit, as in section 5103 (relating to sequestered deposit).]**

*Section 5101 (relating to when guardian unnecessary).*

*Section 5102 (relating to power of natural guardian).*

*Section 5103 (relating to sequestered deposit).*

§ 5515. Provisions similar to other estates.

The provisions relating to a guardian of an incompetent and his surety shall be the same as are set forth in *the following provisions* of this title relating to a personal representative or a guardian of a minor and their sureties~~], with regard to the following]~~:

[**(1) Service of process on nonresident guardian, as in section 5114 (relating to service of process on nonresident guardian).**

**(2) Appointment of guardian in conveyance, as in section 5115 (relating to appointment of guardian in conveyance).**



(3) Necessity of bond; form and amount, as in section 5121 (relating to necessity, form and amount).

(4) When bond not required, as in section 5122 (relating to when bond not required).

(5) Requiring or changing amount of bond, as in section 5123 (relating to requiring or changing amount of bond).

(6) Grounds for removal, as in section 3182 (relating to grounds for removal).

(7) Procedure for and effect of removal, as in section 3183 (relating to procedure for and effect of removal), for which purpose the incompetent shall be deemed a party in interest).

(8) Discharge of personal guardian and surety, as in section 3184 (relating to discharge of personal representative and surety).]

*Section 3182 (relating to grounds for removal).*

*Section 3183 (relating to procedure for and effect of removal).*

*Section 3184 (relating to discharge of personal representative and surety).*

*Section 5115 (relating to appointment of guardian in conveyance).*

*Section 5121 (relating to necessity, form and amount).*

*Section 5122 (relating to when bond not required).*

*Section 5123 (relating to requiring or changing amount of bond).*

§ 5521. Provisions concerning powers, duties and liabilities.

The provisions concerning the powers, duties and liabilities of guardians of incompetents' estates shall be the same as those set forth in *the following provisions* of this title relating to personal representatives of decedents' estates and guardians of minors' estates [with regard to the following]:

(1) Possession of real and personal property, as in section 5141 (relating to possession of real and personal property).

(2) Inventory, as in section 5142 (relating to inventory).

(3) Abandonment of property, as in section 5143 (relating to abandonment of property).

(4) Liability insurance, as in section 3313 (relating to liability insurance).

(5) Continuation of business, as in section 3314 (relating to continuation of business).

(6) Incorporation of business, as in section 3315 (relating to incorporation of estate's business).

(7) Claims against co-guardian, as in section 3317 (relating to claims against co-fiduciary).

(8) Proceedings against guardian, as in section 5147 (relating to proceedings against guardian).

(9) Revival of judgment against guardian, as in section 3318 (relating to revival of judgments against personal representative).

(10) Liability of guardian on contracts, as in section 3331 (relating to liability of personal representative on contracts).

- (11) Investments, as in section 5145 (relating to investments).
- (12) Power of attorney and delegation of power over subscription rights and fractional shares, as in section 3319 (relating to power of attorney; delegation of power over subscription rights and fractional shares; authorized delegations).
- (13) Voting stock by proxy, as in section 3320 (relating to voting stock by proxy).
- (14) Nominee registration; corporate fiduciary as attorney-in-fact, as in section 3321 (relating to nominee registration; corporate fiduciary as attorney-in-fact; deposit of securities in a clearing corporation; book-entry securities).
- (15) Acceptance of deed in lieu of foreclosure, as in section 3322 (relating to acceptance of deed in lieu of foreclosure).
- (16) Compromise of controversies, as in section 3323 (relating to compromise of controversies).
- (17) When guardian dies or becomes incompetent, as in section 3324 (relating to death or incompetency of fiduciary).
- (18) Surviving or remaining guardian, as in section 3327 (relating to surviving or remaining personal representatives).
- (19) Disagreement of guardians, as in section 3328 (relating to disagreement of personal representatives).
- (20) Inherent powers and duties, as in section 3332 (relating to inherent powers and duties).
- (21) Guardian named in conveyance, as in section 5146 (relating to guardian named in conveyance).
- (22) Power to sell personal property, as in section 5151 (relating to power to sell personal property).
- (23) Order of court, as in section 5155 (relating to order of court).
- (24) Restraint of sale, as in section 3355 (relating to restraint of sale).
- (25) Purchase by guardian, as in section 3356 (relating to purchase by personal representative).
- (26) Title of purchaser, as in section 5154 (relating to title of purchaser).
- (27) Record of proceedings; county where real estate lies, as in section 3359 (relating to record of proceedings; county where real estate lies).
- (28) Substitution of guardian in pending action or proceedings, as in section 3372 (relating to substitution of personal representative in pending action or proceedings).
- (29) Death or removal of guardian, as in section 3374 (relating to death or removal of fiduciary).
- (30) Specific performance of contracts, as in section 3390 (relating to specific performance of contracts).
- (31) Contracts, inadequacy of consideration or better offer; brokers' commissions, as in section 3360 (relating to contracts, inadequacy of consideration or better offer; brokers' commissions).]

*Section 3313 (relating to liability insurance).*

*Section 3314 (relating to continuation of business).*

*Section 3315 (relating to incorporation of estate's business).*

*Section 3317 (relating to claims against co-fiduciary).*

*Section 3318 (relating to revival of judgments against personal representative).*

*Section 3319 (relating to power of attorney; delegation of power over subscription rights and fractional shares; authorized delegations).*

*Section 3320 (relating to voting stock by proxy).*

*Section 3321 (relating to nominee registration; corporate fiduciary as attorney-in-fact; deposit of securities in a clearing corporation; book-entry securities).*

*Section 3322 (relating to acceptance of deed in lieu of foreclosure).*

*Section 3323 (relating to compromise of controversies).*

*Section 3324 (relating to death or incompetency of fiduciary).*

*Section 3327 (relating to surviving or remaining personal representatives).*

*Section 3328 (relating to disagreement of personal representatives).*

*Section 3331 (relating to liability of personal representative on contracts).*

*Section 3332 (relating to inherent powers and duties).*

*Section 3355 (relating to restraint of sale).*

*Section 3356 (relating to purchase by personal representative).*

*Section 3359 (relating to record of proceedings; county where real estate lies).*

*Section 3360 (relating to contracts, inadequacy of consideration or better offer; brokers' commissions).*

*Section 3372 (relating to substitution of personal representative in pending action or proceedings).*

*Section 3374 (relating to death or removal of fiduciary).*

*Section 3390 (relating to specific performance of contracts).*

*Section 5141 (relating to possession of real and personal property).*

*Section 5142 (relating to inventory).*

*Section 5143 (relating to abandonment of property).*

*Section 5145 (relating to investments).*

*Section 5146 (relating to guardian named in conveyance).*

*Section 5147 (relating to proceedings against guardian).*

*Section 5151 (relating to power to sell personal property).*

*Section 5154 (relating to title of purchaser).*

*Section 5155 (relating to order of court).*

§ 5536. Distributions of income and principal during incompetency.

(a) In general.—All income received by a guardian of the estate of an incompetent, *including (subject to the requirements of Federal law relating thereto) all funds received from the Veterans' Administration, Social Security Administration and other periodic retirement or disability payments under private or governmental plans*, in the exercise of a reasonable discretion, may be expended in the care and maintenance of the

incompetent, without the necessity of court approval. The court, for cause shown *and with only such notice as it considers appropriate in the circumstances*, may authorize or direct the payment or application of any or all of the income or principal of the estate of an incompetent for the care, maintenance or education of the incompetent, his spouse, children or those for whom he was making such provision before his incompetency, or for the reasonable funeral expenses of the incompetent's spouse, child or indigent parent. In proper cases, the court may order payment of amounts directly to the incompetent for his maintenance or for incidental expenses and may ratify payments made for these purposes.

(b) Estate plan.—The court, upon petition and with notice to all parties in interest, shall have the power to substitute its judgment for that of the incompetent with respect to the estate and affairs of the incompetent for the benefit of the incompetent, his family, members of his household, his friends and charities in which he was interested. This power shall include, but is not limited to, the power to:

- (1) **[make]** *Make* gifts, outright or in trust[;].
- (2) **[convey or]** *Convey*, release *or disclaim* his contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety[;].
- (3) **[release]** *Release or disclaim* his powers as trustee, personal representative, custodian for minors, or guardian[;].
- (4) **[exercise or]** *Exercise*, release *or disclaim* his powers as donee of a power of appointment[;].
- (5) **[enter]** *Enter* into contracts[;].
- (6) **[create]** *Create* for the benefit of the incompetent or others, revocable or irrevocable trusts of his property which may extend beyond his disability or life[;].
- (7) **[exercise]** *Exercise* options of the incompetent to purchase or exchange securities or other property[;].
- (8) **[exercise]** *Exercise* his rights to elect options and change beneficiaries under insurance and annuity policies or surrender the policies for their cash value[;].
- (9) **[exercise]** *Exercise* his right to claim or disclaim an elective share in the estate of his deceased spouse and renounce any interest by testate or intestate succession or by inter vivos transfer[; and].
- (10) **[change]** *Change* the incompetent's residence or domicile.

In the exercise of its judgment for that of the incompetent, the court first being satisfied that assets exist which are not required for the maintenance, support and well-being of the incompetent, may adopt a plan of gifts which **[result]** *results* in minimizing current or prospective income, estate or inheritance taxes, or which carries out a lifetime giving pattern. The court in exercising its judgment may consider the testamentary and inter vivos intentions of the incompetent insofar as they can be ascertained.

§ 5537. Reserve for funeral.

(a) In general.—The court may authorize the guardian to retain such assets not exceeding ~~[\$600]~~ \$1,200 in value as are deemed appropriate for the anticipated expense of the incompetent's funeral, including the cost of a burial lot or other resting place, which shall be exempt from all claims including claims of the Commonwealth. The court with notice thereof to the institution or person having custody of the incompetent may also authorize the guardian or another person to set aside such assets in the form of a savings account in a financial institution which account shall not be subject to escheat during the lifetime of the incompetent. Such assets may be disbursed by the guardian or person who set aside such assets or by the financial institution for such funeral expenses without further authorization or accounting. Any part of such assets not so disbursed shall constitute a part of the deceased incompetent's estate. Should the incompetent become competent or should such assets become excessive, the court, upon petition of any party in interest, may make such order as the circumstances shall require.

\* \* \*

Section 9. Chapter 56 of Title 20 is repealed and a chapter is added to read:

CHAPTER 56  
POWERS OF ATTORNEY

Sec.

- 5601. General provision.
- 5602. Form of power of attorney.
- 5603. Implementation of power of attorney.
- 5604. Durable powers of attorney.
- 5605. Power of attorney not revoked until notice.
- 5606. Proof of continuance of durable or other powers of attorney by affidavit.
- 5607. Corporate attorney-in-fact.

§ 5601. General provision.

In addition to all other powers that may be delegated to an attorney-in-fact, any or all of the powers referred to in section 5602(a) (relating to form of power of attorney) may lawfully be granted in writing and, unless the power of attorney expressly directs to the contrary, shall be construed in accordance with the provisions of this chapter.

§ 5602. Form of power of attorney.

(a) Specification of powers.—A principal may, by inclusion of the language quoted in any of the following paragraphs or by inclusion of other language showing a similar intent on the part of the principal, empower his attorney-in-fact to do any or all of the following, each of which is defined in section 5603 (relating to implementation of power of attorney):

(1) Either:

- (i) "to make gifts"; or
- (ii) "to make limited gifts."

(2) "To create a trust for my benefit."

(3) "To make additions to an existing trust for my benefit."

(4) "To claim an elective share of the estate of my deceased spouse."

(5) "To disclaim any interest in property."

(6) "To renounce fiduciary positions."

(7) "To withdraw and receive the income or corpus of a trust."

(8) "To authorize my admission to a medical, nursing, residential or similar facility and to enter into agreements for my care."

(9) "To authorize medical and surgical procedures."

(b) Appointment of attorney-in-fact and successor attorney.—A principal may provide for:

(1) The appointment of more than one attorney-in-fact, who shall act jointly, severally or in any other combination that the principal may designate, but if there is no such designation, such attorneys-in-fact shall only act jointly.

(2) The appointment of one or more successor attorneys-in-fact who shall serve in the order named in the power of attorney, unless the principal expressly directs to the contrary.

(3) The delegation to an original or successor attorney-in-fact of the power to appoint his successor or successors.

(c) Filing of power of attorney.—An executed copy of the power of attorney may be filed with the clerk of the orphans' court division of the court of common pleas in the county in which the principal resides, and if it is acknowledged, it may be recorded in the office for the recording of deeds of the county of the principal's residence and of each county in which real property to be affected by an exercise of the power is located. The clerk of the orphans' court division or any office for the recording of deeds with whom the power has been filed, may, upon request, issue certified copies of the power of attorney. Each such certified copy shall have the same validity and the same force and effect as if it were the original, and it may be filed of record in any other office of this Commonwealth (including, without limitation, the clerk of the orphans' court division or the office for the recording of deeds) as if it were the original.

§ 5603. Implementation of power of attorney.

(a) Power to make gifts and power to make limited gifts.

(1) A power "to make gifts" shall mean that the attorney-in-fact may make gifts for and on behalf of the principal to any donees (including the attorney-in-fact) and in such amounts as the attorney-in-fact may decide.

(2) A power "to make limited gifts" shall mean that the attorney-in-fact may make only gifts for or on behalf of the principal which are limited as follows:

(i) The class of permissible donees shall consist solely of the principal's spouse and issue (including the attorney-in-fact if he is a member of such class), or any of them.

(ii) During each calendar year, the gifts made to each donee, pursuant to such power, shall have an aggregate value not in excess of, and shall be made in such manner as to qualify in their entirety for, the principal's annual exclusion from the Federal gift tax permitted under section 2503(b) of the Internal Revenue Code, determined without regard to section 2513(a) thereof (or any successor provision to the code).

(iii) The attorney-in-fact shall be responsible as equity and justice may require to the extent that any gift made pursuant to a power "to make limited gifts" exceeds the limitations imposed by subparagraph (i) or (ii).

(3) A power to make gifts, whether or not limited as aforesaid, shall be construed to empower the attorney-in-fact to make gifts to each donee either outright or in trust; in the case of a gift to a minor, such gifts may be made in trust or in accordance with Chapter 53 (relating to Pennsylvania Uniform Gifts to Minors Act) or section 5155 (relating to order of court). In the case of a gift made in trust, the attorney-in-fact may execute a deed of trust for such purpose, designating one or more persons (including the attorney-in-fact) as original or successor trustees, or may make additions to an existing trust. In making any gifts, the attorney-in-fact need not treat the donees equally or proportionately and may entirely exclude one or more permissible donees, and the pattern followed on the occasion of any gift or gifts need not be followed on the occasion of any other gift or gifts.

(4) An attorney-in-fact and the donee of a gift shall be responsible as equity and justice may require to the extent that a gift made by the attorney-in-fact is inconsistent with prudent estate planning or financial management for the principal or with the known or probable intent of the principal with respect to disposition of his estate.

(5) No transfer agent, depository or other third party acting in good faith shall have any responsibility to see to the proper discharge by the attorney-in-fact of his duties hereunder.

(b) Power to create a trust.—A power "to create a trust for my benefit" shall mean that the attorney-in-fact may execute a deed of trust, designating one or more persons (including the attorney-in-fact) as original or successor trustees and transfer to the trust any or all property owned by the principal as the attorney-in-fact may decide, subject to the following conditions:

(1) The income and corpus of the trust shall either be distributable to the principal or to the guardian of his estate, or be applied for the principal's benefit, and upon the principal's death, any remaining balance of corpus and unexpended income of the trust shall be distributed to the deceased principal's estate.

(2) The deed of trust may be amended or revoked at any time and from time to time, in whole or in part, by the principal or the attorney-in-fact, provided that any such amendment by the attorney-in-fact shall not include any provision which could not be included in the original deed.

(c) Power to make additions to an existing trust.—A power “to make additions to an existing trust for my benefit” shall mean that the attorney-in-fact, at any time or times, may add any or all of the property owned by the principal to any trust in existence when the power was created, provided that the terms of such trust relating to the disposition of the income and corpus during the lifetime of the principal are the same as those set forth in subsection (b). The attorney-in-fact and the trust and its beneficiaries shall be answerable as equity and justice may require to the extent that an addition to a trust is inconsistent with prudent estate planning or financial management for the principal or with the known or probable intent of the principal with respect to disposition of his estate.

(d) Power to claim an elective share.—A power “to claim an elective share of the estate of my deceased spouse” shall mean that the attorney-in-fact may elect to take against the will and conveyances of the principal’s deceased spouse, disclaim any interest in property which the principal is required to disclaim as a result of such election, retain any property which the principal has the right to elect to retain, file petitions pertaining to the election, including petitions to extend the time for electing and petitions for orders, decrees and judgments in accordance with section 2211(c) and (d) (relating to determination of effect of election; enforcement), and take all other actions which the attorney-in-fact deems appropriate in order to effectuate the election: Provided, however, That the election shall be made only upon the approval of the court having jurisdiction of the principal’s estate in accordance with section 2206 (relating to right of election personal to surviving spouse) in the case of a principal who has been adjudicated an incompetent, or upon the approval of the court having jurisdiction of the deceased spouse’s estate in the case of a principal who has not been adjudicated an incompetent.

(e) Power to disclaim any interest in property.—A power “to disclaim any interest in property” shall mean that the attorney-in-fact may release or disclaim any interest in property on behalf of the principal in accordance with Chapter 62 (relating to disclaimers) or section 6103 (relating to release or disclaimer of powers or interests), provided that any disclaimer under Chapter 62 shall be in accordance with the provisions of section 6202 (relating to disclaimers by fiduciaries) in the case of a principal who shall have been adjudicated an incompetent at the time of the execution of the disclaimer.

(f) Power to renounce fiduciary position.—

(1) A power “to renounce fiduciary positions” shall mean that the attorney-in-fact may:



(i) renounce any fiduciary position to which the principal has been appointed; and

(ii) resign any fiduciary position in which the principal is then serving, and either file an accounting with a court of competent jurisdiction or settle on receipt and release or other informal method as the attorney-in-fact deems advisable.

(2) The term "fiduciary" shall be deemed to include, without limitation, an executor, administrator, trustee, guardian, attorney-in-fact or officer or director of a corporation.

(g) Power to withdraw and receive.—A power "to withdraw and receive the income or corpus of a trust" shall mean that the attorney-in-fact may:

(1) demand, withdraw and receive the income or corpus of any trust over which the principal has the power to make withdrawals;

(2) request and receive the income or corpus of any trust with respect to which the trustee thereof has the discretionary power to make distribution to or on behalf of the principal; and

(3) execute a receipt and release or similar document for the property received under paragraphs (1) and (2).

(h) Power to authorize admission to medical facility and power to authorize medical procedures.—

(1) A power "to authorize my admission to a medical, nursing, residential or similar facility, and to enter into agreements for my care" shall mean that the attorney-in-fact may apply for the admission of the principal to a medical, nursing, residential or other similar facility, execute any consent or admission forms required by such facility which are consistent with this paragraph, and enter into agreements for the care of the principal by such facility or elsewhere during his lifetime or for such lesser period of time as the attorney-in-fact may designate, including the retention of nurses for the principal.

(2) A power "to authorize medical and surgical procedures" shall mean that the attorney-in-fact may arrange for and consent to medical, therapeutical and surgical procedures for the principal, including the administration of drugs.

§ 5604. Durable powers of attorney.

(a) Definition.—A durable power of attorney is a power of attorney by which a principal designates another his attorney-in-fact in writing and the writing contains the words "this power of attorney shall not be affected by my subsequent disability or incapacity" or "this power of attorney shall become effective upon my disability or incapacity" or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity.

(b) Durable power of attorney not affected by disability.—All acts done by an attorney-in-fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were competent and not disabled.

(c) Relation of attorney-in-fact to court-appointed guardian.—

(1) If, following execution of a durable power of attorney, the principal is adjudicated an incompetent person and a guardian is appointed for his estate, the attorney-in-fact is accountable to the guardian as well as to the principal. The guardian shall have the same power to revoke or amend the power of attorney that the principal would have had if he were not incompetent.

(2) A principal may nominate, by a durable power of attorney, the guardian of his estate or of his person for consideration by the court if incompetency proceedings for the principal's estate or person are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

§ 5605. Power of attorney not revoked until notice.

(a) Death of principal.—The death of a principal who has executed a written power of attorney, durable or otherwise, shall not revoke or terminate the agency as to the attorney-in-fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, shall bind successors in interest of the principal.

(b) Disability or incapacity of principal.—The disability or incapacity of a principal who has previously executed a written power of attorney which is not a durable power shall not revoke or terminate the agency as to the attorney-in-fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, shall bind the principal and his successors in interest.

§ 5606. Proof of continuance of durable or other powers of attorney by affidavit.

As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney-in-fact under a power of attorney, durable or otherwise, stating that he 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 which is recordable, the affidavit when authenticated for record is likewise recordable. This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

§ 5607. Corporate attorney-in-fact.

A bank and trust company or a trust company incorporated in this Commonwealth, or a National bank with trust powers having its principal office in this Commonwealth, acting as an attorney-in-fact pursuant to a power of attorney, or appointed by another who possesses such a power, shall have the powers, duties and liabilities set forth in

section 3321 (relating to nominee registration; corporate fiduciary as attorney-in-fact; deposit of securities in a clearing corporation; book-entry securities).

Section 10. Sections 6102(a), 6110 and 6202 of Title 20, section 6102(a) amended July 11, 1980 (P.L.565, No.118), are amended to read: § 6102. Termination of trusts.

(a) Failure of original purpose.—The court having jurisdiction of a trust heretofore or hereafter created, regardless of any spendthrift or similar provision therein, in its discretion may terminate such trust in whole or in part, or make an allowance from principal to **[a conveyer, his spouse, issue, parents, or any of them, who is an income beneficiary,] one or more beneficiaries** provided the court after hearing is satisfied that the original purpose of the conveyer cannot be carried out or is impractical of fulfillment and that the termination, partial termination, or allowance more nearly approximates the intention of the conveyer, and notice is given to all parties in interest or to their duly appointed fiduciaries. **[But, distributions of principal under this section, whether by termination, partial termination, or allowance, shall not exceed an aggregate value of \$100,000 from all trusts created by the same conveyer.]**

\* \* \*

§ 6110. Administration of charitable estates.

(a) *General rule.*—Except as otherwise provided by the conveyer, if the charitable purpose for which an interest shall be conveyed shall be or become indefinite or impossible or impractical of fulfillment, or if it shall not have been carried out for want of a trustee or because of the failure of a trustee to designate such purpose, the court may, on application of the trustee or of any interested person or of the Attorney General **[of the Commonwealth]**, after proof of notice to the Attorney General **[of the Commonwealth]** when he is not the petitioner, order an administration or distribution of the estate for a charitable purpose in a manner as nearly as possible to fulfill the intention of the conveyer, whether his charitable intent be general or specific.

(b) *Administrative termination of small charitable trusts.*—*A trust held solely for charitable purposes with assets not exceeding \$10,000, whether heretofore or hereafter created, may be terminated by the trustee at its inception or at any time thereafter with the consent of the Attorney General and all charitable organizations which are designated by name in the conveyance as beneficiaries. Upon such termination the assets, subject to the approval of the Attorney General, shall be delivered to the organizations, if any, designated in the trust instrument or, if none, to organizations selected by the trustee, in either case to be held and applied for such general or specific charitable purposes and on such terms as will, in the trustee's discretion, fulfill as nearly as possible the conveyer's intention.*

(c) *Judicial termination of charitable trusts.*—*If the separate existence of a trust solely for charitable purposes, whether heretofore or hereafter created, results or will result in administrative expense or other*

*burdens unreasonably out of proportion to the charitable benefits, the court may, upon application of the trustee or any interested person and after notice to the Attorney General, terminate the trust, either at its inception or at any time thereafter, and award the assets outright, free of the trust, to the charitable organizations, if any, designated in the conveyance or, if none, to charitable organizations selected by the court, in either case for such purposes and on such terms as the court may direct to fulfill as nearly as possible the conveyor's intentions other than any intent to continue the trust, if the court is satisfied that the charitable organizations will properly use or administer the assets.*

§ 6202. Disclaimers by fiduciaries *or attorneys-in-fact*.

A disclaimer on behalf of a decedent, a minor or an incompetent may be made by his personal representative, [or] the guardian of his estate [if] *or in the case of an incompetent who executed a power of attorney which confers the authority to disclaim upon his attorney-in-fact and which qualifies as a durable power of attorney under section 5604 (relating to durable powers of attorney) by such attorney-in-fact, if, in each case,* the court having jurisdiction of the estate authorizes the disclaimer after finding that it is advisable and will not materially prejudice the rights of creditors, heirs or beneficiaries of the decedent, the minor or his creditors, or the incompetent or his creditors, as the case may be.

Section 11. Sections 7121, 7133, 7143, 7183, 7185(b) and 7186 of Title 20, section 7183 amended July 11, 1980 (P.L.565, No.118), are amended to read:

§ 7121. Grounds and procedure.

The grounds and the procedure for the removal or discharge of a trustee and his surety and the effect of such removal or discharge shall be the same as are set forth in *the following provisions of this title relating to the removal and discharge of a personal representative and his surety*[, with regard to the following]:

**[(1) Grounds for removal, as in section 3182 (relating to grounds for removal).**

**(2) Procedure for and effect of removal, as in section 3183 (relating to procedure for and effect of removal).**

**(3) Discharge of trustee and surety, as in section 3184 (relating to discharge of personal representative and surety).]**

*Section 3182 (relating to grounds for removal).*

*Section 3183 (relating to procedure for and effect of removal).*

*Section 3184 (relating to discharge of personal representative and surety).*

§ 7133. Powers, duties and liabilities identical with personal representatives.

The provisions concerning the powers, duties and liabilities of a trustee shall be the same as those set forth in *the following provisions of this title for the administration of a decedent's or a minor's estate [with regard to the following]:*

**(1) Liability insurance, as in section 3313 (relating to liability insurance).**

**(2) Continuation of business, as in section 3314 (relating to continuation of business).**

**(3) Incorporation of business, as in section 3315 (relating to incorporation of estate's business).**

**(4) Claims against co-trustee, as in section 3317 (relating to claims against co-fiduciary).**

**(5) Revival of judgments against trustee, as in section 3318 (relating to revival of judgments against personal representative).**

**(6) Power of attorney, as in section 3319 (relating to power of attorney; delegation of power over subscription rights and fractional shares; authorized delegations).**

**(7) Voting stock by proxy, as in section 3320 (relating to voting stock by proxy).**

**(8) Nominee registration, deposit of securities in a clearing corporation and holding of securities in book-entry form, as in section 3321 (relating to nominee registration; corporate fiduciary as attorney-in-fact; deposit of securities in a clearing corporation; book-entry securities).**

**(9) Acceptance of deed in lieu of foreclosure, as in section 3322 (relating to acceptance of deed in lieu of foreclosure).**

**(10) Compromise of controversies, as in section 3323 (relating to compromise of controversies).**

**(11) Death or incompetency of trustee, as in section 3324 (relating to death or incompetency of fiduciary).**

**(12) Surviving or remaining trustee, as in section 3327 (relating to surviving or remaining personal representatives).**

**(13) Disagreement of trustees, as in section 3328 (relating to disagreement of personal representatives).**

**(14) Liability of trustee on contracts, as in section 3331 (relating to liability of personal representative on contracts).**

**(15) Inherent powers and duties, as in section 3332 (relating to inherent powers and duties).**

**(16) Order of court, as in section 3353 (relating to order of court).**

**(17) Power given in the trust instrument, as in section 3354 (relating to power given in governing instrument).**

**(18) Restraint of sale, as in section 3355 (relating to restraint of sale).**

**(19) Purchase by trustee, as in section 3356 (relating to purchase by personal representative).**

**(20) Collateral attack, as in section 3358 (relating to collateral attack).**

**(21) Record of proceedings; county where real estate lies, as in section 3359 (relating to record of proceedings; county where real estate lies).**

**(21.1) Contracts, inadequacy of consideration or better offer; brokers' commissions, as in section 3360 (relating to contracts, inadequacy of consideration or better offer; brokers' commissions).**

**(22) Proceedings against trustee, as in section 5147 (relating to proceedings against guardian).]**

*Section 3313 (relating to liability insurance).*

*Section 3314 (relating to continuation of business).*

*Section 3315 (relating to incorporation of estate's business).*

*Section 3317 (relating to claims against co-fiduciary).*

*Section 3318 (relating to revival of judgments against personal representative).*

*Section 3319 (relating to power of attorney; delegation of power over subscription rights and fractional shares; authorized delegations).*

*Section 3320 (relating to voting stock by proxy).*

*Section 3321 (relating to nominee registration; corporate fiduciary as attorney-in-fact; deposit of securities in a clearing corporation; book-entry securities).*

*Section 3322 (relating to acceptance of deed in lieu of foreclosure).*

*Section 3323 (relating to compromise of controversies).*

*Section 3324 (relating to death or incompetency of fiduciary).*

*Section 3327 (relating to surviving or remaining personal representatives).*

*Section 3328 (relating to disagreement of personal representatives).*

*Section 3331 (relating to liability of personal representative on contracts).*

*Section 3332 (relating to inherent powers and duties).*

*Section 3353 (relating to order of court).*

*Section 3354 (relating to power given in governing instrument).*

*Section 3355 (relating to restraint of sale).*

*Section 3356 (relating to purchase by personal representative).*

*Section 3358 (relating to collateral attack).*

*Section 3359 (relating to record of proceedings; county where real estate lies).*

*Section 3360 (relating to contracts, inadequacy of consideration or better offer; brokers' commissions).*

*Section 5147 (relating to proceedings against guardian).*

§ 7143. Title of purchaser.

If the trustee has given such bond, if any, as shall be required in accordance with this title, any sale, pledge, mortgage, or exchange by a trustee, whether pursuant to a decree or to the exercise of a power conferred by the trust instrument or of a power under this title, shall pass the full title of the trust therein, unless otherwise specified. Persons dealing with the trustee shall have no obligation to see to the proper application of the cash or other assets given in exchange for the property of the trust. Any sale or exchange by a trustee pursuant to a decree under section [7133(16)] 3353 (relating to order of court) shall have the effect of a judicial sale as to the discharge of liens, but the court may decree a sale or

exchange freed and discharged from the lien of any mortgage otherwise preserved from discharge by existing law, if the holder of such mortgage shall consent by writing filed in the proceeding. No such sale, mortgage, exchange, or conveyance shall be prejudiced by the subsequent dismissal of the trustee nor shall any such sale, mortgage, exchange, or conveyance by a testamentary trustee be prejudiced by the terms of any will or codicil thereafter probated, if the person dealing with the trustee did so in good faith.

§ 7183. Notice, audits, reviews, and distribution.

The provisions concerning accounts, audits, reviews, distributions and rights of distributees in trust estates shall be the same as those set forth in *the following provisions* of this title for the administration of a decedent's estate[, with regard to the following]:

(1) Notice to parties in interest, as in section 3503 (relating to notice to parties in interest).

(2) Representation of parties in interest, as in section 3504 (relating to representation of parties in interest).

(3) Audits in counties having a separate orphans' court division, as in section 3511 (relating to audits in counties having separate orphans' court division).

(4) Audits in counties having no separate orphans' court division, as in section 3512 (relating to audits in counties having no separate orphans' court division).

(5) Statement of proposed distribution, as in section 3513 (relating to statement of proposed distribution).

(6) Confirmation of accounts and approval of proposed distribution, as in section 3514 (relating to confirmation of account and approval of proposed distribution).

(7) Rehearing; relief granted, as in section 3521 (relating to rehearing; relief granted).

(8) Award upon final confirmation of account, as in section 3533 (relating to award upon final confirmation of account).

(9) Distribution in kind, as in section 3534 (relating to distribution in kind).

(10) Recording and registering decrees awarding real estate, as in section 3536 (relating to recording and registering decrees awarding real estate).

(11) Liability for interest, as in section 3544 (relating to liability of personal representative for interest).

(12) Transcripts of balances due, as in section 3545 (relating to transcripts of balances due by personal representative).

(13) Record of risk distributions as provided in section 3532(c) (relating to at risk of personal representative).

(14) Distributions involving persons born out of wedlock, as in section 3538 (relating to distributions involving persons born out of wedlock).

(15) **Absentee and additional distributees as in section 3540 (relating to absentee and additional distributees).]**

*Section 3503 (relating to notice to parties in interest).*

*Section 3504 (relating to representation of parties in interest).*

*Section 3511 (relating to audits in counties having separate orphans' court division).*

*Section 3512 (relating to audits in counties having no separate orphans' court division).*

*Section 3513 (relating to statement of proposed distribution).*

*Section 3514 (relating to confirmation of account and approval of proposed distribution).*

*Section 3521 (relating to rehearing; relief granted).*

*Section 3532(c) (relating to at risk of personal representative).*

*Section 3533 (relating to award upon final confirmation of account).*

*Section 3534 (relating to distribution in kind).*

*Section 3536 (relating to recording and registering decrees awarding real estate).*

*Section 3538 (relating to distributions involving persons born out of wedlock).*

*Section 3540 (relating to absentee and additional distributees).*

*Section 3544 (relating to liability of personal representative for interest).*

*Section 3545 (relating to transcripts of balances due by personal representative).*

§ 7185. Compensation.

\* \* \*

(b) Allowed out of principal or income.—[Neither the] *The* fact that a fiduciary's service has not ended [nor] *or* the fact that the trust has not ended *or the fact that the trust is perpetual* shall *not* be a bar to the fiduciary's receiving compensation for his services out of the principal of the trust. Whenever it shall appear either during the continuance of a trust or at its end, that a fiduciary has rendered services for which he has not been fully compensated, the court having jurisdiction over his accounts, shall allow him such original or additional compensation out of the trust income or the trust principal or both, as may be necessary to compensate him for the services theretofore rendered by him. The provisions of this section shall apply to ordinary and extraordinary services alike.

\* \* \*

§ 7186. Failure to present claim at audit.

(a) *General rule.*—Any person who at the audit of a trustee's account has a claim which arose out of the administration of trust property, or arises out of the distribution of such property upon any interim or final accounting of the trust, and which is not reported to the court as an admitted claim, and who shall fail to present his claim at the call for audit or confirmation, shall be forever barred, against:



(1) any trust property distributed pursuant to such audit or confirmation;

(2) any distributee of trust property distributed pursuant to such audit or confirmation; and

(3) except as otherwise provided in section [7183(7)] 3521 (relating to rehearing; relief granted), any trust property awarded back upon further trust pursuant to such audit or confirmation.

**(b) Liens and charges unimpaired.**—Nothing in this section shall be construed as impairing any lien or charge on real or personal estate of the trust existing at the time of the audit.

Section 12. The act of March 14, 1777 (1 Sm.L. 443, Ch.737), entitled “An act for establishing in the city of Philadelphia, and in each county of this state, an office for the probate and registering of wills, and granting letters of administration, and an office for the recording of deeds,” is repealed.

Section 13. This act shall take effect immediately and shall apply to the estates of all decedents dying on or after the effective date and, as to the termination of trusts under 20 Pa.C.S. § 6110 (relating to administration of charitable estates), it shall apply to all trusts regardless of the date the trust was created and, as to 20 Pa.C.S. § 2209 (relating to surviving spouse as witness), it shall be effective as of June 17, 1978 and shall apply to the estates of all decedents dying on or after that date; and, as to powers of attorney, it shall apply to all powers of attorney executed on or after the date of enactment of this act, provided nothing in this act shall be construed to limit the effectiveness of powers of attorney in effect prior to the date of enactment of this act, and provided further that all such powers of attorney which qualified under the provisions of 20 Pa.C.S. § 5601 (relating to when power of attorney not affected by disability) prior to its repeal shall continue to be governed by the provisions of the said section as if no repeal occurred.

APPROVED—The 18th day of February, A. D. 1982.

DICK THORNBURGH