

[Second Reprint]

**ASSEMBLY, No. 2915**

**STATE OF NEW JERSEY**  
**216th LEGISLATURE**

INTRODUCED MARCH 13, 2014

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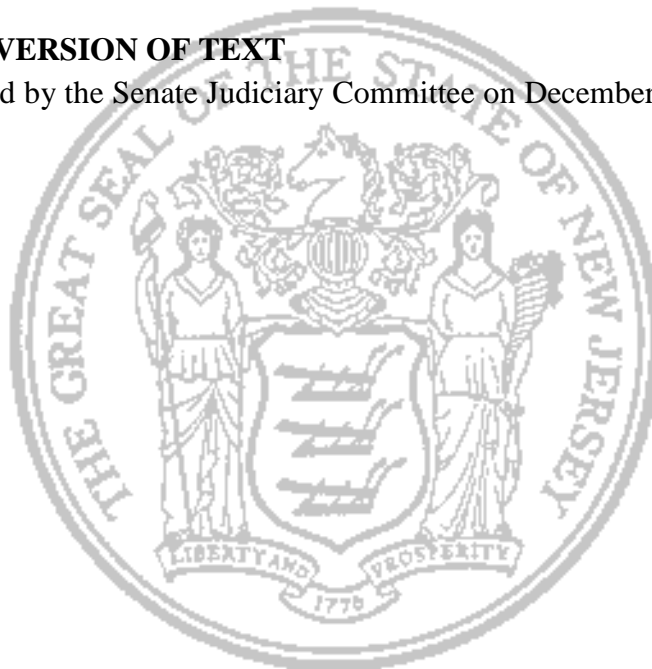
**District 18 (Middlesex)**

**SYNOPSIS**

“Uniform Trust Code.”

**CURRENT VERSION OF TEXT**

As reported by the Senate Judiciary Committee on December 17, 2015, with amendments.



**(Sponsorship Updated As Of: 1/8/2016)**

1 AN ACT concerning trusts, supplementing Title 3B of the New  
2 Jersey Statutes, enacting additional chapter 31, Uniform Trust  
3 Code, amending N.J.S.3B:14-37, and repealing N.J.S.3B:11-5,  
4 N.J.S.3B:11-6, N.J.S.3B:11-7, and P.L.2001, c.144.

5  
6 **BE IT ENACTED** by the Senate and General Assembly of the State  
7 of New Jersey:

8  
9 1. An additional chapter, Chapter 31, is added to Title 3B of the  
10 New Jersey Statutes as follows:

11  
12 CHAPTER 31  
13 UNIFORM TRUST CODE

14  
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41 Identical Interest.  
42 3B:31-17. Appointment of Representative.

**EXPLANATION – Matter enclosed in bold-faced brackets [ thus ] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup>Assembly AJU committee amendments adopted September 22, 2014.

<sup>2</sup>Senate SJU committee amendments adopted December 17, 2015.



1 3B:31-45. Limitation on Action Contesting Validity of Revocable  
2 Trust; Distribution of Trust Property.

3

4

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OFFICE OF TRUSTEE

6

7 3B:31-46. Accepting or Declining Trusteeship.

8 3B:31-47. Trustee's Bond.

9 3B:31-48. <sup>2</sup>**[Cotrustees]** Co-trustees<sup>2</sup>.

10 3B:31-49. Vacancy in Trusteeship; Appointment of Successor.

11 3B:31-50. Resignation of Trustee.

12 3B:31-51. Removal of Trustee.

13 3B:31-52. Delivery of Property by Former Trustee.

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19 3B:31-54. Duty to Administer Trust.

20 3B:31-55. Duty of Loyalty.

21 3B:31-56. Duty of Impartiality.

22 3B:31-57. Duty of Prudent Administration.

23 3B:31-58. Costs of Administration.

24 3B:31-59. Duty to Use Special Skills.

25 3B:31-60. Delegation by Trustee.

26 3B:31-61. Powers to Direct.

27 3B:31-62. <sup>2</sup>Powers to Direct Investment Functions.

28 3B:31-63.<sup>2</sup> Control and Protection of Trust Property.

29 <sup>2</sup>**[3B:31-63]** 3B:31-64<sup>2</sup>. Recordkeeping and Identification of Trust  
30 Property.

31 <sup>2</sup>**[3B:31-64]** 3B:31-65<sup>2</sup>. Duty to Enforce and Defend Claims

32 <sup>2</sup>**[3B:31-65]** 3B:31-66<sup>2</sup>. Duty to Collect Trust Property and  
33 Redress Breaches of Trust.

34 <sup>2</sup>**[3B:31-66]** 3B:31-67<sup>2</sup>. Duty to Disclose and Discretion to  
35 Periodically Report.

36 <sup>2</sup>**[3B:31-67]** 3B:31-68<sup>2</sup>. Discretionary Powers.

37 <sup>2</sup>**[3B:31-68]** 3B:31-69<sup>2</sup>. General Powers of Trustee.

38 <sup>2</sup>**[3B:31-69]** 3B:31-70<sup>2</sup>. Distribution Upon Termination.

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44 <sup>2</sup>**[3B:31-70]** 3B:31-71<sup>2</sup>. Remedies for Breach of Trust.

45 <sup>2</sup>**[3B:31-71]** 3B:31-72<sup>2</sup>. Damages for Breach of Trust.

46 <sup>2</sup>**[3B:31-72]** 3B:31-73<sup>2</sup>. Damages in Absence of Breach.

47 <sup>2</sup>**[3B:31-73]** 3B:31-74<sup>2</sup>. Limitation of Action Against Trustee.

- 1 <sup>2</sup>[3B:31-74] 3B:31-75<sup>2</sup>. Reliance on Trust Instrument.  
2 <sup>2</sup>[3B:31-75] 3B:31-76<sup>2</sup>. Event Affecting Administration or  
3 Distribution.  
4 <sup>2</sup>[3B:31-76] 3B:31-77<sup>2</sup>. Exculpation of Trustee.  
5 <sup>2</sup>[3B:31-77] 3B:31-78<sup>2</sup>. Beneficiary's Consent, Release, or  
6 Ratification.  
7 <sup>2</sup>[3B:31-78] 3B:31-79<sup>2</sup>. Limitation on Personal Liability of Trustee.  
8 <sup>2</sup>[3B:31-79] 3B:31-80<sup>2</sup>. Interest as General Partner.  
9 <sup>2</sup>[3B:31-80] 3B:31-81<sup>2</sup>. Certification of Trust.

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- 14 <sup>2</sup>[3B:31-81] 3B:31-82<sup>2</sup>. Electronic Records and Signatures.  
15 <sup>2</sup>[3B:31-82] 3B:31-83<sup>2</sup>. Severability Clause.  
16 <sup>2</sup>[3B:31-83] 3B:31-84<sup>2</sup>. Application to Existing Relationships.

17

18

ARTICLE 1

19

GENERAL PROVISIONS AND DEFINITIONS

20

21 3B:31-1. Short Title.

22 This act shall be known and may be cited as the "Uniform Trust  
23 Code."

24

25 3B:31-2. Scope.

26 This act applies to express trusts, charitable or noncharitable, and  
27 trusts created pursuant to a statute, judgment, or decree that requires  
28 the trust to be administered in the manner of an express trust.

29

30 3B:31-3. Definitions.

31 As used in this act:

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

34 <sup>2</sup>"Beneficiary," as it relates to trust beneficiaries, includes a  
35 person:

36 (1) who has any present or future interest, vested or contingent;

37 (2) who, in a capacity other than that of trustee, holds a power of  
38 appointment over trust property;

39 (3) who is the owner of an interest by assignment or other transfer;

40 and

41 (4) as it relates to a charitable trust, any person who is entitled to  
42 enforce the trust.<sup>2</sup>

43 "Charitable trust" means a trust, or portion of a trust, created for a  
44 charitable purpose described in subsection a. of N.J.S.3B:31-22.

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

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

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

5 "Power of withdrawal" means a presently exercisable general  
6 power of appointment other than a power exercisable only upon  
7 consent of the trustee or a person holding an adverse interest.

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

10 "Qualified beneficiary" means a beneficiary who, on the date the  
11 beneficiary's qualification is determined:

12 (1) is a distributee or permissible distributee of trust income or  
13 principal;

14 (2) would be a distributee or permissible distributee of trust  
15 income or principal if the interests of the distributees described in  
16 paragraph (1) terminated on that date; or

17 (3) would be a distributee or permissible distributee of trust  
18 income or principal if the trust terminated on that date.

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

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

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

30 "State" means a State of the United States, the District of  
31 Columbia, <sup>2</sup>Commonwealth of<sup>2</sup> Puerto Rico, the United States Virgin  
32 Islands, or any territory or insular possession subject to the jurisdiction  
33 of the United States. The term includes an Indian tribe or band  
34 recognized by federal law or formally acknowledged by a state.

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

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

41 "Trustee<sup>2, 2</sup>" <sup>2</sup>**[includes an original, additional, and successor**  
42 **trustee, and a cotrustee]** in addition to the definition contained in  
43 N.J.S.3B:1-2, includes a corporate entity in its capacity as trustee and a  
44 co-trustee where two or more are appointed<sup>2</sup>.

45

46 3B:31-4. Knowledge.

47 a. Subject to subsection b. of this section, a person has knowledge  
48 of a fact if the person:

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

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

18

19 3B:31-5. Default and Mandatory Rules.

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

23 b. The terms of a trust prevail over any provision of this act  
24 except:

- 25 (1) the requirements for creating a trust;
- 26 (2) the duty of a trustee to act in good faith and in accordance with  
27 the purposes of the trust;
- 28 (3) the requirement that a trust and its terms be for the benefit of  
29 its beneficiaries, and that the trust have a purpose that is lawful, not  
30 contrary to public policy, and possible to achieve;
- 31 (4) the power of the court to modify or terminate a trust under  
32 N.J.S.3B:31-26 through <sup>1</sup>N.J.S. 3B:31-33;
- 33 (5) the effect of a spendthrift provision and the rights of certain  
34 creditors and assignees to reach a trust as provided in article 4 of this  
35 act;
- 36 (6) the power of the court under N.J.S.3B:31-47 to require,  
37 dispense with, or modify or terminate a bond;
- 38 (7) the duty under subsections a. and b. of <sup>2</sup>**[N.J.S.3B:31-66]**  
39 N.J.S.3B:31-67<sup>2</sup> to respond to the request of a qualified beneficiary of  
40 an irrevocable trust who has attained the age of 35 years for a copy of  
41 the trust instrument or for other information reasonably related to the  
42 administration of the trust;
- 43 (8) the effect of an exculpatory term under <sup>2</sup>**[N.J.S.3B:31-76]**  
44 N.J.S.3B:31-77<sup>2</sup>;
- 45 (9) the rights under <sup>2</sup>**[N.J.S.3B:31-78]** N.J.S.3B:31-79<sup>2</sup> through  
46 <sup>2</sup>**[N.J.S.3B:31-80]** N.J.S.3B:31-81<sup>2</sup> of a person other than a trustee or  
47 beneficiary;

1 (10) periods of limitation for commencing a judicial proceeding;  
2 and

3 (11) the power of the court to take such action and exercise such  
4 jurisdiction as may be necessary in the interests of justice.

5

6 3B:31-6. Common Law of Trusts; Principles of Equity.

7 The common law of trusts and principles of equity supplement this  
8 act, except to the extent modified by this act or another statute of this  
9 State.

10

11 3B:31-7. Governing Law.

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

13 a. the law of the jurisdiction designated in the terms unless the  
14 designation of that jurisdiction's law is contrary to a strong public  
15 policy of the jurisdiction having the most significant relationship to the  
16 matter at issue; or

17 b. in the absence of a controlling designation in the terms of the  
18 trust, the law of the jurisdiction having the most significant  
19 relationship to the matter at issue.

20

21 3B:31-8. Principal Place of Administration.

22 a. Without precluding other means for establishing a sufficient  
23 connection with the designated jurisdiction, terms of a trust  
24 designating the principal place of administration are valid and  
25 controlling if:

26 (1) a trustee maintains a place of business located in or a trustee is  
27 a resident of the designated jurisdiction; or

28 (2) all or part of the administration occurs in the designated  
29 jurisdiction.

30 In the absence of terms of a trust designating the principal place of  
31 administration, the initial principal place of administration of a  
32 nontestamentary trust shall be this State if the trust is governed by the  
33 law of this State, and the principal place of administration of a  
34 testamentary trust shall be the jurisdiction in which the decedent was  
35 domiciled at the time of death.

36 b. A trustee is under a continuing duty to administer the trust at a  
37 place appropriate to its purposes, its administration, and the interests of  
38 the beneficiaries.

39 c. The trustee, in furtherance of the duty prescribed by subsection  
40 b. of this section, may transfer the trust's principal place of  
41 administration to another State or to a jurisdiction outside of the  
42 United States.

43 d. The trustee shall notify the qualified beneficiaries of a  
44 proposed transfer of a trust's principal place of administration not less  
45 than 60 days before initiating the transfer. The notice of proposed  
46 transfer shall include:

47 (1) the name of the jurisdiction to which the principal place of  
48 administration is to be transferred;



1 (2) the address and telephone number at the new location at which  
2 the trustee can be contacted;

3 (3) the date on which the proposed transfer is anticipated to occur;  
4 and

5 (4) the date, not less than 60 days after the giving of the notice, by  
6 which the qualified beneficiary is required to notify the trustee of an  
7 objection to the proposed transfer.

8 e. The authority of a trustee under this section to transfer a trust's  
9 principal place of administration terminates if a qualified beneficiary  
10 notifies the trustee of an objection to the proposed transfer on or before  
11 the date specified in the notice, unless the trustee secures judicial  
12 approval for the transfer <sup>2</sup>[pursuant to N.J.S.3B:21-2 through  
13 N.J.S.3B:21-4]<sup>2</sup>.

14 f. In connection with a transfer of the trust's principal place of  
15 administration, the trustee may transfer some or all of the trust  
16 property to a successor trustee designated in the terms of the trust or  
17 appointed pursuant to N.J.S.3B:31-49.

18  
19 3B:31-9. Methods and Waiver of Notice.

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

27 b. Notice otherwise required under this act or a document  
28 otherwise required to be sent under this act need not be provided to a  
29 person whose identity or location is unknown to and not reasonably  
30 ascertainable by the trustee.

31 c. Notice under this act or the sending of a document under this  
32 act may be waived by the person to be notified or sent the document.

33 d. Notice of a judicial proceeding shall be given as provided in  
34 the applicable <sup>2</sup>[rules of civil procedure] New Jersey Rules of Court<sup>2</sup>.

35  
36 3B:31-10. Others Treated as Qualified Beneficiaries.

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

40 b. A charitable organization expressly designated to receive  
41 distributions under the terms of a charitable trust or a person appointed  
42 to enforce a trust created for the care of an animal or another  
43 noncharitable purpose as provided in N.J.S.3B:31-24 or N.J.S.3B:31-  
44 25 has the rights of a qualified beneficiary under this act.

45 c. The <sup>2</sup>[attorney general] Attorney General<sup>2</sup> of this State has the  
46 rights of a qualified beneficiary with respect to a charitable trust  
47 having its principal place of administration in this State.

1 3B:31-11. Nonjudicial Settlement Agreements.

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

5 b. Except as otherwise provided in subsection c. of this section or  
6 any other provision of this chapter, interested persons may enter into a  
7 binding nonjudicial settlement agreement with respect to any matter  
8 involving a trust.

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

13 d. Matters that may be resolved by a nonjudicial settlement  
14 agreement include:

15 (1) the interpretation or construction of the terms of the trust;

16 (2) the approval of a trustee's report or accounting;

17 (3) direction to a trustee to refrain from performing a particular act  
18 or the grant to a trustee of any necessary or desirable power;

19 (4) the resignation or appointment of a trustee and the  
20 determination of a trustee's compensation;

21 (5) transfer of a trust's principal place of administration; and

22 (6) liability of a trustee for an action relating to the trust.

23 e. Any interested person may request the court to approve a  
24 nonjudicial settlement agreement, to determine whether the  
25 representation as provided in article 2 was adequate, and to determine  
26 whether the agreement contains terms and conditions the court could  
27 have properly approved.

28 <sup>2</sup>f. A nonjudicial settlement may not be used to produce a result  
29 that is contrary to other sections of Title 3B of the New Jersey  
30 Statutes, including, but not limited to, terminating or modifying a trust  
31 in an impermissible manner.<sup>2</sup>

32

33 3B:31-12. Rules of Construction.

34 The rules of construction that apply in this State to the  
35 interpretation of and disposition of property by will also apply as  
36 appropriate to the interpretation of the terms of a trust and the  
37 disposition of the trust property.

38

39 ARTICLE 2

40 REPRESENTATION

41

42 3B:31-13. Representation: Basic Effect.

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

46 b. The consent of a person who may represent and bind another  
47 person under this article is binding on the person represented unless

1 the person represented objects to the representation before the consent  
2 would otherwise have become effective.

3 c. Except as otherwise provided in <sup>2</sup>N.J.S.3B:31-27 and<sup>2</sup>  
4 N.J.S.3B:31-43, a person who under this article may represent a settlor  
5 who lacks capacity may receive notice and give a binding consent on  
6 the settlor's behalf.

7 <sup>2</sup>d. A settlor may not represent and bind a beneficiary under this  
8 article with respect to the termination or modification of a trust under  
9 subsection a. of N.J.S.3B:31-27.<sup>2</sup>

10

11 3B:31-14. Representation by Holder of General Testamentary  
12 Power of Appointment.

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

18 b. A holder of a general power of appointment in favor of the  
19 holder or holder's estate shall not be deemed to have a conflict with  
20 permissible appointees and takers in default.

21

22 3B:31-15. Representation by Fiduciaries and Parents.

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

26 a. a guardian of the property may represent and bind the estate  
27 that the guardian of the property controls;

28 b. a guardian of the person may represent and bind the ward if  
29 <sup>2</sup>**[a]** no<sup>2</sup> guardian of the property has <sup>2</sup>**[not]**<sup>2</sup> been appointed;

30 c. an agent having authority to act with respect to the particular  
31 question or dispute may represent and bind the principal;

32 d. a trustee may represent and bind the beneficiaries of the trust;

33 e. a personal representative of a decedent's estate may represent  
34 and bind persons interested in the estate; and

35 f. a parent may represent and bind the parent's minor or unborn  
36 child if a guardian for the child has not been appointed.

37

38 3B:31-16. Representation by Person Having Substantially Identical  
39 Interest.

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

1 3B:31-17. Appointment of Representative.

2 a. If the court determines that an interest is not represented under  
3 this article or that the otherwise available representation might be  
4 inadequate, the court may appoint a guardian ad litem or other  
5 representative to receive notice, give consent, and otherwise represent,  
6 bind, and act on behalf of a minor, incapacitated, or unborn individual,  
7 or a person whose identity or location is unknown. A guardian ad  
8 litem or other representative may be appointed to represent several  
9 persons or interests.

10 b. A guardian ad litem or other representative may act on behalf  
11 of the individual or person represented with respect to any matter  
12 arising under this act, whether or not a judicial proceeding concerning  
13 the trust is pending.

14 c. A guardian ad litem or other representative may consider the  
15 benefit accruing to the living members of the individual's family.

16

17 ARTICLE 3  
18 CREATION, VALIDITY, MODIFICATION AND TERMINATION  
19 OF TRUST  
20

21 3B:31-18. Methods of Creating Trust.

22 A trust may be created by:

23 a. transfer of property under a written instrument to another  
24 person as trustee during the settlor's lifetime or by will or other written  
25 disposition taking effect upon the settlor's death;

26 b. written declaration by the owner of property that the owner  
27 holds identifiable property as trustee; or

28 c. written exercise of a power of appointment in favor of a  
29 trustee.

30

31 3B:31-19. Requirements for Creation.

32 a. A trust is created only if:

33 (1) the settlor has capacity to create a trust;

34 (2) the settlor indicates an intention to create the trust;

35 (3) the trust has a definite beneficiary or is:

36 (a) a charitable trust;

37 (b) a trust for the care of an animal, as provided in N.J.S.3B:31-24;

38 or

39 (c) a trust for a noncharitable purpose, as provided in N.J.S.3B:31-  
40 25;

41 (4) the trustee has duties to perform; and

42 (5) the same person is not the sole trustee and sole beneficiary of  
43 all beneficial interests.

44 b. A beneficiary is definite if the beneficiary can be ascertained  
45 now or in the future, subject to <sup>2</sup>the provisions of section 14 of  
46 P.L.1999, c.159 (C.46:2F-10) or<sup>2</sup> any <sup>2</sup>other<sup>2</sup> applicable rule against  
47 perpetuities.

1 c. A power in a trustee to select a beneficiary from an indefinite  
2 class is valid <sup>2</sup>【. If the power is not】 if<sup>2</sup> exercised within a reasonable  
3 time <sup>2</sup>and is not void as provided in section 14 of P.L.1999, c.159  
4 (C.46:2F-10) or any other applicable rule against perpetuities or  
5 restraint on alienation. If invalid<sup>2</sup>, the power fails and the property  
6 subject to the power passes to the persons who would have taken the  
7 property had the power not been conferred.

8 <sup>2</sup>d. A written instrument which creates a trust or transfers property  
9 to a trust shall not be invalid or ineffective because the transferee is  
10 identified as the trust rather than the trustee thereof.<sup>2</sup>

11  
12 3B:31-20. Written Trusts Created in Other Jurisdictions.

13 A written trust not created by will is validly created if its creation  
14 complies with the law of the jurisdiction in which:

- 15 a. the trust instrument was executed;  
16 b. at the time the trust was created, the settlor was domiciled, had  
17 a place of abode, or was a national;  
18 c. at the time the trust was created, a trustee was domiciled or had  
19 a place of business; or  
20 d. at the time the trust was created, any trust property was located.

21  
22 3B:31-21. Trust Purposes.

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

26  
27 3B:31-22. Charitable Purposes; Enforcement.

28 a. A charitable trust is one that is created for the relief of poverty,  
29 the advancement of education or religion, the promotion of health,  
30 governmental or municipal purposes, or other purpose the achievement  
31 of which is beneficial to the community.

32 b. If the terms of a charitable trust do not state a particular  
33 charitable purpose or beneficiary, and the trustee or other person  
34 authorized to state a particular charitable purpose or name a particular  
35 charitable beneficiary fails to make a selection, the court may select  
36 one or more charitable purposes or beneficiaries. The selection shall  
37 be consistent with the settlor's intention to the extent it can be  
38 ascertained.

39 c. A proceeding to enforce a charitable trust may be brought by  
40 the settlor, by the Attorney General, by the trust's beneficiaries or by  
41 other persons who have standing.

42  
43 3B:31-23. Creation of Trust Induced by Fraud, Duress, or Undue  
44 Influence.

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

1           3B:31-24. Trust for Care of Animal.

2           a. A trust may be created to provide for the care of an animal alive  
3 during the settlor's lifetime. The trust terminates upon the death of the  
4 animal or, if the trust was created to provide for the care of more than  
5 one animal alive during the settlor's lifetime, upon the death of the last  
6 surviving animal.

7           b. A trust authorized by this section may be enforced by the settlor  
8 or by a person appointed in the terms of the trust or, if no person is so  
9 appointed, by a person appointed by the court. A person having an  
10 interest in the welfare of the animal may request the court to appoint a  
11 person to enforce the trust or to remove a person appointed.

12           c. Property of a trust authorized by this section may be applied  
13 only to its intended use, except to the extent the court determines that  
14 the value of the trust property exceeds the amount required for the  
15 intended use. Except as otherwise provided in the terms of the trust,  
16 property not required for the intended use shall be distributed to the  
17 settlor, if then living, otherwise to the settlor's estate.

18

19           3B:31-25. Noncharitable Trust Without Ascertainable Beneficiary.

20           Except as otherwise provided in N.J.S.3B:31-24 or by another  
21 statute, the following rules apply:

22           a. A trust may be created for a noncharitable but otherwise valid  
23 purpose without a definite or definitely ascertainable beneficiary or for  
24 a noncharitable but otherwise valid purpose to be selected by the  
25 trustee.

26           b. A trust authorized by this section may be enforced by the  
27 settlor or by a person appointed in the terms of the trust or, if no  
28 person is so appointed, by a person appointed by the court.

29           c. Property of a trust authorized by this section may be applied  
30 only to its intended use, except to the extent the court determines that  
31 the value of the trust property exceeds the amount required for the  
32 intended use. Except as otherwise provided in the terms of the trust,  
33 property not required for the intended use shall be distributed to the  
34 settlor, if then living, otherwise to the settlor's estate.

35

36           3B:31-26. Modification or Termination of Trust; Proceedings for  
37 Approval or Disapproval.

38           a. In addition to the methods of termination prescribed by  
39 N.J.S.3B:31-27 through N.J.S.3B:31-33, a trust terminates to the  
40 extent the trust is revoked or expires pursuant to its terms, no purpose  
41 of the trust remains to be achieved, or the purposes of the trust have  
42 become unlawful, contrary to public policy of this State, or impossible  
43 to achieve.

44           b. A proceeding to approve or disapprove a proposed  
45 modification or termination under N.J.S.3B:31-27 through  
46 N.J.S.3B:31-33, or trust combination or division under N.J.S.3B:31-  
47 34, may be commenced by a trustee or beneficiary <sup>2</sup>[], and a  
48 proceeding to approve or disapprove a proposed modification or

1 termination under N.J.S.3B:31-27 may be commenced by the settlor<sup>2</sup>.  
2 The settlor of a charitable trust may maintain a proceeding to modify  
3 the trust under N.J.S.3B:31-29.

4 3B:31-27. Modification or Termination of Noncharitable  
5 Irrevocable Trust by Consent.

6 a. A noncharitable irrevocable trust may be modified or  
7 terminated upon consent of the <sup>2</sup>[settlor] trustee<sup>2</sup> and all beneficiaries,  
8 <sup>2</sup>[even]<sup>2</sup> if the modification or termination is <sup>2</sup>not<sup>2</sup> inconsistent with a  
9 material purpose of the trust. <sup>2</sup>[A settlor's power to consent to a trust's  
10 modification or termination may be exercised by an agent under a  
11 power of attorney only to the extent expressly authorized by the power  
12 of attorney or the terms of the trust; or by the settlor's guardian with  
13 the approval of the court supervising the guardianship if an agent is not  
14 so authorized.]<sup>2</sup>

15 b. A noncharitable irrevocable trust may be terminated upon  
16 consent of all of the beneficiaries if the court concludes that  
17 continuance of the trust is not necessary to achieve any material  
18 purpose of the trust. A noncharitable irrevocable trust may be  
19 modified upon consent of all of the beneficiaries if the court concludes  
20 that modification is not inconsistent with a material purpose of the  
21 trust.

22 c. A spendthrift provision in the terms of the trust is not presumed  
23 to constitute a material purpose of the trust.

24 d. Upon termination of a trust under subsection a. or b. of this  
25 section, the trustee shall distribute the trust property as agreed by the  
26 beneficiaries.

27 e. If not all of the beneficiaries consent to a proposed  
28 modification or termination of the trust under subsection a. or b. of this  
29 section, the modification or termination may be approved by the court  
30 if the court is satisfied that:

31 (1) if all of the beneficiaries had consented, the trust could have  
32 been modified or terminated under this section; and

33 (2) the interests of a beneficiary who does not consent will be  
34 adequately protected.

35

36 3B:31-28. Modification or Termination Because of Unanticipated  
37 Circumstances or Inability to Administer Trust Effectively.

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

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

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

4  
5 3B:31-29. Modification or Termination of Charitable Trust (Cy  
6 Pres).

7 a. Except as otherwise provided in subsection b. of this section, if  
8 a particular charitable purpose becomes unlawful, impracticable,  
9 impossible to achieve, or wasteful:

10 (1) the trust does not fail, in whole or in part;

11 (2) the trust property does not revert to the settlor or the settlor's  
12 estate; and

13 (3) the court may modify or terminate the trust by directing that the  
14 trust property be applied or distributed, in whole or in part, in a  
15 manner consistent with the settlor's charitable purposes.

16 b. A provision in the terms of a charitable trust that would result  
17 in distribution of the trust property to a noncharitable beneficiary  
18 prevails over the power of the court under subsection a. of this section.

19  
20 3B:31-30. Modification or Termination of Uneconomic Trust.

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

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

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

31 d. This section does not apply to an easement for conservation or  
32 preservation.

33  
34 3B:31-31. Reformation to Correct Mistakes.

35 The court may reform the terms of a trust, even if unambiguous, to  
36 conform the terms to the settlor's probable intent if it is proved by clear  
37 and convincing evidence that there was a mistake of fact or law,  
38 whether in expression or inducement.

39  
40 3B:31-32. Construction to Conform Trust Terms to Probable  
41 Intent of Settlor.

42 <sup>2</sup>~~【The】~~ Nothing in this act shall prevent the<sup>2</sup> court <sup>2</sup>~~【may~~  
43 ~~construe】~~ from construing<sup>2</sup> the terms of a trust, even if unambiguous,  
44 to conform to the settlor's probable intent.

45  
46 3B:31-33. Modification to Achieve Settlor's Tax Objectives.

47 To achieve the settlor's tax objectives, the court may modify the  
48 terms of a trust in a manner that is not contrary to the settlor's probable



1 intent. The court may provide that the modification has retroactive  
2 effect.

3

4 3B:31-34. Combination and Division of Trusts.

5 a. Subject to subsection b. of this section,

6 (1) the trustees of two or more trusts or parts of trusts may  
7 combine the trusts or parts thereof into a single trust, even if such  
8 trusts or parts thereof are created by different settlors or under  
9 different instruments, and even if the trusts have different trustees; and

10 (2) the trustees of a single trust may divide the trust into two or  
11 more separate trusts, in which case distributions provided by the  
12 governing instrument may be made from one or more of the separate  
13 trusts.

14 b. A combination or division under this section may be effected  
15 only if the result does not impair rights of any beneficiary or adversely  
16 affect the achievement of the purposes of the trust.

17

18

ARTICLE 4

19

CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY  
20 TRUSTS

21

22 3B:31-35. Rights of Beneficiary's Creditor or Assignee.

23 Except as otherwise provided by law, to the extent a beneficiary's  
24 interest is not protected by a spendthrift provision, a creditor or  
25 assignee of the beneficiary may reach the beneficiary's interest by  
26 attachment of present or future distributions to or for the benefit of the  
27 beneficiary, subject to <sup>2</sup>[N.J.S.2A:17-51 et seq.] N.J.S.2A:17-50  
28 through N.J.S.2A:17-56 and sections 3 and 4 of P.L.1981, c.203  
29 (C.2A:17-56.1a and C.2A:17-56.6)<sup>2</sup> or other applicable law. The court  
30 may limit the award to such relief as is appropriate under the  
31 circumstances.

32

33 3B:31-36. Spendthrift Provision.

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

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

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

45 d. A spendthrift provision is valid even though a beneficiary is  
46 named as the sole trustee or as a co-trustee of the trust.

47 <sup>2</sup>e. A valid spendthrift provision does not prevent the appointment  
48 of interests through the exercise of a power of appointment.<sup>2</sup>

- 1       3B:31-37. <sup>2</sup>**[Exceptions to Spendthrift Provision]** Special Needs  
2 Trusts<sup>2</sup>.
- 3       Even if a trust contains a spendthrift provision, the following shall  
4 apply:
- 5       a. Special Needs
- 6       (1) “Protected person” means a person who is:
- 7       (a) an aged, blind, or disabled individual as defined at 42 U.S.C.  
8 s.1382c;
- 9       (b) developmentally disabled as defined in section 2 of P.L.1979,  
10 c.105 (C.30:1AA-2); or
- 11       (c) under age 18, or over age 18 and a full-time student, with  
12 serious disabilities that reasonably may prevent the individual from  
13 being self sufficient as an adult.
- 14       (2) “Special needs trust” means an OBRA '93 trust, as defined in  
15 subsection a. of section 3 of P.L.2000, c.96 (C.3B:11-37), or trust  
16 governed by a written instrument which:
- 17       (a) grants a trustee <sup>2</sup>**[full]** broad<sup>2</sup> discretion to determine whether  
18 and when to distribute;
- 19       (b) limits distributions during the trust term to distributions to  
20 benefit one or more protected persons, although <sup>2</sup>**[others may realize**  
21 **incidental benefits]** the trust shall have at least one protected person as  
22 beneficiary<sup>2</sup>;
- 23       (c) provides that the trustee does not have any obligation to pay  
24 the protected person’s obligations or fund <sup>2</sup>**[their]** his<sup>2</sup> support;
- 25       (d) does not give the protected person any right to require the  
26 trustee to distribute at a specific time or for a particular purpose or to  
27 assign or encumber interests in the trust; and
- 28       (e) evidences the grantor's intent to supplement rather than replace  
29 or impair government assistance that the protected person receives or  
30 for which <sup>2</sup>**[they]** he<sup>2</sup> otherwise may be eligible.
- 31       b. Notwithstanding any other provision of this act or other law
- 32       (1) trustees of a special needs trust <sup>2</sup>**[are not required to distribute**  
33 **for any particular purpose or at any particular time during the trust**  
34 **term]** have broad discretion over distributions<sup>2</sup>;
- 35       (2) <sup>2</sup>**[all creditors, including, but not limited to, spendthrift**  
36 **exception creditors,]** no creditor<sup>2</sup> of a protected person may <sup>2</sup>**[not]**<sup>2</sup>  
37 reach or attach a protected person's interest in a special needs trust and  
38 <sup>2</sup>**[neither creditors nor a court]** no creditor<sup>2</sup> may require the trustees to  
39 distribute to satisfy a protected person's creditor's claim; <sup>2</sup>**and**<sup>2</sup>
- 40       (3) <sup>2</sup>**[a special needs trust shall not be required to repay**  
41 **government aid provided to a protected person unless the aid was**  
42 **provided on the basis that the special needs trust would repay the aid**  
43 **when the protected person dies, or the special needs trust sooner**  
44 **terminates, and the special needs trust instrument expressly calls for**  
45 **such repayment; and**

1 (4)]<sup>2</sup> a special needs trust shall terminate at such time as provided  
2 in its governing instrument.

3 c. <sup>2</sup>A special needs trust shall not be required to repay  
4 government aid provided to a protected person unless the aid was  
5 provided on the basis that the special needs trust would repay the aid  
6 when the protected person dies, or the special needs trust terminates  
7 sooner and the special needs trust instrument expressly calls for such  
8 repayment. This provision does not apply to a first-party, self-settled  
9 OBRA '93 trust as defined in subsection a. of section 3 of P.L.2000,  
10 c.96 (C.3B:11-37).

11 d.<sup>2</sup> Notwithstanding N.J.S.3B:31-35 and N.J.S.3B:31-36, trustees  
12 of a special needs trust shall exercise their discretion in good faith to  
13 further trust purposes and courts may exercise their equity authority to  
14 remedy trustee abuses of discretion.

15  
16 3B:31-38. Discretionary Trusts; Effect of Standard.

17 a. Whether or not a trust contains a spendthrift provision, a  
18 creditor of a beneficiary may not compel a distribution that is subject  
19 to the trustee's discretion, even if:

20 (1) The discretion is expressed in the form of a standard of  
21 distribution; or

22 (2) The trustee has abused the discretion.

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

26 c. With respect to the powers set forth in section 1 of P.L.1996,  
27 c.41 (C.3B:11-4.1), the provisions of this section shall apply even  
28 though the beneficiary is the sole trustee or a co-trustee of the trust.

29  
30 3B:31-39. Creditor's Claim Against Settlor.

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

33 (1) During the lifetime of the settlor, the property of a revocable  
34 trust is subject to claims of the settlor's creditors.

35 (2) With respect to an irrevocable trust, a creditor or assignee of  
36 the settlor may reach the maximum amount that can be distributed to  
37 or for the settlor's benefit. If a trust has more than one settlor, the  
38 amount the creditor or assignee of a particular settlor may reach may  
39 not exceed the settlor's interest in the portion of the trust attributable to  
40 that settlor's contribution. <sup>2</sup>[Provided, however, the assets of an  
41 irrevocable trust are not subject to the claims of a creditor of the settlor  
42 solely because of the existence of the trustee's discretionary power to  
43 pay directly to the taxing authorities or to reimburse the settlor for any  
44 income tax payable by the settlor on trust income or principal.]<sup>2</sup>

45 (3) After the death of a settlor, and subject to the settlor's right to  
46 direct the source from which liabilities will be paid, the property of a  
47 trust that was revocable at the settlor's death is subject to claims of the

1 settlor's creditors, costs of administration of the settlor's estate, the  
2 expenses of the settlor's funeral and disposal of remains, and to a  
3 surviving spouse <sup>1</sup>or partner in a civil union<sup>1</sup> and children to the extent  
4 the settlor's probate estate is inadequate to satisfy those claims, costs,  
5 expenses.

6 b. For purposes of this section:

7 (1) during the period the power may be exercised, the holder of a  
8 power of withdrawal is treated in the same manner as the settlor of a  
9 revocable trust to the extent of the property subject to the power; and

10 (2) upon the lapse, release, or waiver of the power, the holder is  
11 treated as the settlor of the trust only to the extent the value of the  
12 property affected by the lapse, release, or waiver exceeds the greater of  
13 the amount specified in section 2041(b)(2) or 2514(e) of the federal  
14 Internal Revenue Code of 1986 (26 U.S.C. s.2041(b)(2) or 26 U.S.C.  
15 s.2514(e)), or section 2503(b) of the federal Internal Revenue Code of  
16 1986 (26 U.S.C. s.2503(b)), in each case as in effect on the effective  
17 date of this act, or as later amended.

18  
19 3B:31-40. Overdue Distribution.

20 a. For the purposes of this section, "mandatory distribution"  
21 means a distribution of income or principal that the trustee is required  
22 to make to a beneficiary under the terms of the trust, including a  
23 distribution upon termination of the trust. The term excludes a  
24 distribution subject to the exercise of the trustee's discretion,  
25 regardless of whether the terms of the trust (1) include a support or  
26 other standard to guide the trustee in making distribution decisions, or  
27 (2) provide that the trustee "may" or "shall" make discretionary  
28 distributions, including distributions pursuant to a support or other  
29 standard.

30 b. Except as otherwise provided in section 1 of P.L.1996, c.41  
31 (C.3B:11-4.1), whether or not a trust contains a spendthrift provision, a  
32 creditor or assignee of a beneficiary may reach a mandatory  
33 distribution of income or principal, including a distribution upon  
34 termination of the trust, if the trustee has not made the distribution to  
35 the beneficiary within a reasonable time after the mandated  
36 distribution date.

37  
38 3B:31-41. Personal Obligations of Trustee

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

41  
42 ARTICLE 5  
43 REVOCABLE TRUSTS  
44

45 3B:31-42. Capacity of Settlor of Revocable Trust.

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

1 3B:31-43. Revocation or Amendment of Revocable Trust.

2 a. Unless the terms of a trust expressly provide that the trust is  
3 irrevocable, or that it is proved by clear and convincing evidence that  
4 the settlor intended for it to be irrevocable, the settlor may revoke or  
5 amend the trust. This subsection does not apply to a trust created  
6 under an instrument executed before the effective date of this act.

7 b. If a revocable trust is created or funded by more than one  
8 settlor:

9 (1) to the extent the trust consists of community property, the trust  
10 may be revoked by either spouse <sup>1</sup>or partner in a civil union<sup>1</sup> acting  
11 alone but may be amended only by joint action of both spouses <sup>1</sup>or  
12 partners<sup>1</sup>; and

13 (2) to the extent the trust consists of property other than  
14 community property, each settlor may revoke or amend the trust with  
15 regard to the portion of the trust property attributable to that settlor's  
16 contribution.

17 c. The settlor may revoke or amend a revocable trust:

18 (1) by substantial compliance with a method provided in the terms  
19 of the trust; or

20 (2) if the terms of the trust do not provide a method or the method  
21 provided in the terms is not expressly made exclusive, by:

22 (a) executing a later will or codicil that expressly refers to the trust  
23 or specifically devises property that would otherwise have passed  
24 according to the terms of the trust; or

25 (b) any other <sup>2</sup>**[method]** writing<sup>2</sup> manifesting clear and convincing  
26 evidence of the settlor's intent.

27 d. Upon revocation of a revocable trust, the trustee shall deliver  
28 the trust property to the settlor as the settlor directs.

29 e. A settlor's powers with respect to revocation, amendment, or  
30 distribution of trust property may be exercised by an agent under a  
31 power of attorney only to the extent expressly authorized by the terms  
32 of the trust and the power.

33 f. A guardian of the <sup>2</sup>property of the<sup>2</sup> settlor <sup>2</sup>**[or]**<sup>2</sup> may exercise  
34 a settlor's powers with respect to revocation, amendment, or  
35 distribution of trust property only with the approval of the court  
36 supervising the guardianship.

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

41

42 3B:31-44. Settlor's Powers <sup>2</sup>**[; Powers of Withdrawal]**<sup>2</sup>.

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

1 3B:31-45. Limitation on Action Contesting Validity of Revocable  
2 Trust; Distribution of Trust Property.

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

6 (1) ~~1[3] Three~~<sup>1</sup> years after the settlor's death; or

7 (2) ~~1[4] Four~~<sup>1</sup> months, in the case of a resident, or ~~1[6] six~~<sup>1</sup>  
8 months, in the case of a nonresident, after the trustee sent the person a  
9 copy of the trust instrument and a notice informing the person of the  
10 trust's existence, of the trustee's name and address, and of the time  
11 allowed for commencing a proceeding.

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

16 (1) the trustee knows of a pending judicial proceeding contesting  
17 the validity of the trust; or

18 (2) a potential contestant has notified the trustee in writing of a  
19 possible judicial proceeding to contest the validity of the trust and the  
20 trustee has received written notice of a judicial proceeding commenced  
21 within 90 days after the contestant sent the notification.

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

24

25

ARTICLE 6

26

OFFICE OF TRUSTEE

27

28 3B:31-46. Accepting or Declining Trusteeship.

29 a. Except as otherwise provided in subsection c. of this section, a  
30 person designated as trustee accepts the trusteeship:

31 (1) in the case of a testamentary trustee or substituted testamentary  
32 trustee, as provided in N.J.S.3B:11-2, and

33 (2) in the case of any other trustee,

34 (a) by substantially complying with a method of acceptance  
35 provided in the terms of the trust; or

36 (b) if the terms of the trust do not provide a method or the method  
37 provided in the terms is not expressly made exclusive, by accepting  
38 delivery of the trust property, exercising powers or performing duties  
39 as trustee, or otherwise indicating acceptance of the trusteeship.

40 b. A person designated as trustee who has not yet accepted the  
41 trusteeship may renounce the trusteeship. A designated trustee who  
42 does not accept the trusteeship within a reasonable time after knowing  
43 of the designation is deemed to have renounced the trusteeship.

44 c. A person designated as trustee, without accepting the  
45 trusteeship, may:

46 (1) act to preserve the trust property if, within a reasonable time  
47 after acting, the person sends a renunciation of the trusteeship to the

1 settlor or, if the settlor is dead or lacks capacity, to the qualified  
2 beneficiaries and to any designated successor trustee; and

3 (2) inspect or investigate trust property to determine potential  
4 liability under environmental or other law or for any other purpose.

5

6 3B:31-47. Trustee's Bond.

7 a. A trustee shall give bond to secure performance of the trustee's  
8 duties as prescribed by N.J.S.3B:15-1 et seq. if the court <sup>2</sup>[or  
9 surrogate]<sup>2</sup> finds that a bond is needed to protect the interests of the  
10 beneficiaries or is required by the terms of the trust and the court has  
11 not dispensed with that requirement.

12 b. Unless otherwise directed by the court, the cost of the bond is  
13 an expense of the trust.

14

15 3B:31-48. <sup>2</sup>[Cotrustees] Co-trustees<sup>2</sup>.

16 a. <sup>2</sup>[Cotrustees] Co-trustees<sup>2</sup> who are unable to reach a  
17 unanimous decision may act by majority decision. A dissenting  
18 trustee who joins in carrying out a decision of the majority but  
19 expresses his dissent in writing promptly to his <sup>2</sup>[cotrustees] co-  
20 trustees<sup>2</sup> shall not be liable for the act of the majority.

21 b. If a vacancy occurs in a <sup>2</sup>[cotrusteeship] co-trusteeship<sup>2</sup>, the  
22 remaining <sup>2</sup>[cotrustees] co-trustees<sup>2</sup> shall act for the trust unless the  
23 trust instrument provides otherwise.

24 c. A <sup>2</sup>[cotrustee] co-trustee<sup>2</sup> shall participate in the performance  
25 of a trustee's function unless the <sup>2</sup>[cotrustee] co-trustee<sup>2</sup> is unavailable  
26 to perform the function because of absence, illness, disqualification  
27 under other law, or other temporary incapacity or the <sup>2</sup>[cotrustee] co-  
28 trustee<sup>2</sup> has properly delegated the performance of the function to  
29 another trustee.

30 d. If a <sup>2</sup>[cotrustee] co-trustee<sup>2</sup> is unavailable to perform duties  
31 because of absence, illness, disqualification under other law, other  
32 temporary incapacity, or a vacancy remains unfilled and prompt action  
33 is necessary to achieve the purposes of the trust or to avoid injury to  
34 the trust property, the remaining <sup>2</sup>[cotrustee] co-trustee<sup>2</sup> or a majority  
35 of the remaining <sup>2</sup>[cotrustees] co-trustees<sup>2</sup> shall act for the trust.

36 e. A trustee may not delegate to a <sup>2</sup>[cotrustee] co-trustee<sup>2</sup> the  
37 performance of a function the settlor reasonably expected the trustees  
38 to perform jointly. Unless a delegation was irrevocable, a trustee may  
39 revoke a delegation previously made.

40 f. A trustee who does not join in an action of a <sup>2</sup>[cotrustee] co-  
41 trustee<sup>2</sup> or <sup>2</sup>[cotrustees] co-trustees<sup>2</sup> because of absence, illness,  
42 disqualification or other temporary incapacity shall not be liable for  
43 that action.

44 g. Notwithstanding subsection a. or f. of this section, every trustee  
45 shall exercise reasonable care to:

- 1 (1) prevent a <sup>2</sup>**[cotrustee]** co-trustee<sup>2</sup> from committing a breach of  
2 trust; and
- 3 (2) compel a <sup>2</sup>**[cotrustee]** co-trustee<sup>2</sup> to redress a breach of trust.
- 4 3B:31-49. Vacancy in Trusteeship; Appointment of Successor.
- 5 a. A vacancy in a trusteeship occurs if:
- 6 (1) a person designated as trustee renounces the trusteeship;
- 7 (2) a person designated as trustee cannot be identified or does not  
8 exist;
- 9 (3) a trustee resigns or is discharged;
- 10 (4) a trustee is disqualified or removed;
- 11 (5) a trustee dies; or
- 12 (6) a guardian or conservator is appointed for an individual serving  
13 as trustee.
- 14 b. If one or more <sup>2</sup>**[cotrustees]** co-trustees<sup>2</sup> remain in office, a  
15 vacancy in a trusteeship need not be filled unless the trust instrument  
16 provides otherwise. A vacancy in a trusteeship shall be filled if the  
17 trust has no remaining trustee.
- 18 c. A vacancy in a trusteeship of a noncharitable trust that is  
19 required to be filled shall be filled in the following order of priority:
- 20 (1) by a person designated pursuant to the terms of the trust to act  
21 as successor trustee;
- 22 (2) by a <sup>2</sup>procedure established pursuant to the terms of the trust to  
23 appoint a successor trustee;
- 24 (3) by a<sup>2</sup> person appointed by unanimous agreement of the  
25 qualified beneficiaries; or
- 26 <sup>2</sup>**[(3)]** (4)<sup>2</sup> by a person appointed by the court.
- 27 d. A vacancy in a trusteeship of a charitable trust that is required  
28 to be filled shall be filled in the following order of priority:
- 29 (1) by a person designated pursuant to the terms of the trust to act  
30 as successor trustee; or
- 31 (2) by a person appointed by the court.
- 32 e. Whether or not a vacancy in a trusteeship exists or is required  
33 to be filled, the court may appoint an additional trustee or special  
34 fiduciary whenever the court considers the appointment desirable for  
35 the administration of the trust.
- 36 f. A person appointed to fill a vacancy in a trusteeship shall have  
37 all the powers and discretions of the original trustee.
- 38
- 39 3B:31-50. Resignation of Trustee.
- 40 a. A trustee may resign:
- 41 (1) upon at least 30 days' notice to the qualified beneficiaries, the  
42 settlor, if living, all <sup>2</sup>**[cotrustees]** co-trustees<sup>2</sup>, and the trustee or  
43 trustees, if any, designated pursuant to the terms of the trust to succeed  
44 the resigning trustee; or
- 45 (2) with the approval of the court.



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

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

7  
8       3B:31-51. Removal of Trustee.

9       a. The settlor, a <sup>2</sup>**[cotrustee]** co-trustee<sup>2</sup>, or a beneficiary may  
10 request the court to remove a trustee, or a trustee may be removed by  
11 the court on its own initiative.

12       b. The court may remove a trustee for any of the reasons stated in  
13 N.J.S.3B:14-21.

14       c. Pending a final decision on a request to remove a trustee, or in  
15 lieu of or in addition to removing a trustee, the court may order such  
16 appropriate relief as may be necessary to protect the trust property or  
17 the interests of the beneficiaries.

18  
19       3B:31-52. Delivery of Property by Former Trustee.

20       a. Unless a <sup>2</sup>**[cotrustee]** co-trustee<sup>2</sup> remains in office or the court  
21 otherwise orders, and until the trust property is delivered to a successor  
22 trustee or other person entitled to it, a trustee who has resigned or been  
23 removed has the duties of a trustee and the powers necessary to protect  
24 the trust property.

25       b. A trustee who has resigned or been removed shall proceed  
26 expeditiously to deliver the trust property within the trustee's  
27 possession to the <sup>2</sup>**[cotrustee]** co-trustee<sup>2</sup>, successor trustee, or other  
28 person entitled to it, but a resigning trustee may retain a reasonable  
29 reserve for the costs of finalizing that trustee's administration of the  
30 trust.

31  
32       3B:31-53. Reimbursement of Expenses.

33       a. In addition to the compensation allowed by N.J.S.3B:18-2 et  
34 seq., a trustee is entitled to be reimbursed out of the trust property for:

35       (1) expenses that were properly incurred in the administration of  
36 the trust; and

37       (2) to the extent necessary to prevent unjust enrichment of the  
38 trust, expenses that were not properly incurred in the administration of  
39 the trust.

40       b. An advance by a trustee of money or other property for the  
41 protection of the trust gives rise to a lien against trust property to  
42 secure reimbursement.

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ARTICLE 7  
DUTIES AND POWERS OF TRUSTEE

3B:31-54. Duty to Administer Trust.

Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this act and other applicable law.

3B:31-55. Duty of Loyalty.

a. A trustee shall administer the trust with undivided loyalty to and solely in the best interests of the beneficiaries.

b. Subject to the rights of persons dealing with or assisting the trustee as provided in N.J.S.3B:14-37, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

- (1) the transaction was authorized by the terms of the trust;
- (2) the transaction was approved by the court;
- (3) the beneficiary did not commence a judicial proceeding within the time allowed by <sup>2</sup>~~【N.J.S.3B:31-73】~~ N.J.S.3B:31-74<sup>2</sup>;
- (4) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with <sup>2</sup>~~【N.J.S.3B:31-77】~~ N.J.S.3B:31-78<sup>2</sup>; or
- (5) the transaction involves a contract entered into or a claim acquired by the trustee before the person became a trustee.

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

- (1) the trustee's spouse or partner in a civil union;
- (2) the trustee's parents, parents' descendants, or the spouse or partner in a civil union of any of the foregoing;
- (3) an agent, accountant, or attorney of the trustee; or
- (4) a corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's judgment.

d. A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage attributable to the existence of the trust is voidable by the beneficiary if the beneficiary establishes that the transaction was unfair to the beneficiary.

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

1 f. In voting shares of stock of a corporation or in exercising  
2 powers of control over similar interests in other forms of enterprise,  
3 the trustee shall act in the best interests of the beneficiaries and shall  
4 vote to elect or appoint directors or other managers who will manage  
5 the corporation or enterprise in the best interests of the beneficiaries.

6 g. This section does not preclude the following transactions, if  
7 fair to the beneficiaries:

8 (1) an agreement between a trustee and a beneficiary relating to  
9 the appointment or compensation of the trustee;

10 (2) payment of reasonable compensation to the trustee;

11 (3) a transaction between the trust and another trust, decedent's  
12 estate, guardianship, conservatorship, or other fiduciary relationship of  
13 which the trustee is a fiduciary or in which a beneficiary has an  
14 interest;

15 (4) a deposit of trust money in a regulated financial-service  
16 institution operated by or affiliated with the trustee; or

17 (5) an advance by the trustee of money for the protection of the  
18 trust.

19 h. The court may appoint a special fiduciary to make decisions  
20 with respect to any proposed transaction that might violate this section  
21 if entered into by the trustee.

22  
23 3B:31-56. Duty of Impartiality.

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

27  
28 3B:31-57. Duty of Prudent Administration.

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

33  
34 3B:31-58. Costs of Administration.

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

38  
39 3B:31-59. Duty to Use Special Skills.

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

43  
44 3B:31-60. Delegation by Trustee.

45 a. A trustee may delegate ministerial, administrative and  
46 management duties and powers that a prudent trustee of comparable  
47 skills could properly delegate under the circumstances.

48 b. The trustee shall exercise reasonable care, skill, and caution in:

- 1 (1) selecting an agent;
- 2 (2) establishing in writing the scope and terms of the delegation,  
3 consistent with the purposes and terms of the trust; and
- 4 (3) periodically reviewing the agent's actions in order to monitor  
5 the agent's performance and compliance with the terms of the  
6 delegation.
- 7 c. A trustee shall provide reasonable written notice to the  
8 qualified beneficiaries on each occasion upon which the trustee  
9 delegates duties pursuant to this section, including the identity of the  
10 agent.
- 11 d. A trustee who complies with subsections b. and c. of this  
12 section is not liable to the beneficiaries or to the trust for an action of  
13 the agent to whom the function was delegated.
- 14 e. In performing a delegated function, the agent shall owe to the  
15 trustee and the beneficiaries the same duties as the fiduciary and shall  
16 be held to the same standards as the fiduciary.
- 17 f. By accepting a delegation of powers or duties from the trustee  
18 of a trust that is subject to the law of this State, an agent submits to the  
19 jurisdiction of the courts of this State, even if the delegation agreement  
20 provides otherwise.

21

22 3B:31-61. Powers to Direct.

23

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

25

b. If the terms of a trust confer upon a person other than the  
26 settlor of a revocable trust the power to direct certain actions of the  
27 trustee, the trustee shall act in accordance with a written exercise of  
28 the power unless the attempted exercise is contrary to the terms of the  
29 trust or the trustee knows the attempted exercise would constitute a  
30 breach of a fiduciary duty that the person holding the power owes to  
31 the beneficiaries of the trust.

32

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

34

d. A person, other than a beneficiary, who holds a power to direct  
35 is required to act in good faith with regard to the purposes of the trust  
36 and the interests of the beneficiaries. The holder of a power to direct  
37 is liable for any loss that results from the holder's failure to act in good  
38 faith.

39

40 3B:31-62. 2Powers to Direct Investment Functions.

41

a. When one or more persons are given authority by the terms of a  
42 governing instrument to direct, consent to or disapprove a fiduciary's  
43 actual or proposed investment decisions, such persons shall be  
44 considered to be investment advisers and fiduciaries when exercising  
45 such authority unless the governing instrument otherwise provides.

46

b. If a governing instrument provides that a fiduciary is to follow  
47 the direction of an investment adviser, and the fiduciary acts in  
48 accordance with such a direction, then except in cases of willful

1 misconduct or gross negligence on the part of the fiduciary so directed,  
2 the fiduciary shall not be liable for any loss resulting directly or  
3 indirectly from any such act.

4 c. If a governing instrument provides that a fiduciary is to make  
5 decisions with the consent of an investment adviser, then except in  
6 cases of willful misconduct or gross negligence on the part of the  
7 fiduciary, the fiduciary shall not be liable for any loss resulting directly  
8 or indirectly from any act taken or omitted as a result of such  
9 investment adviser's failure to provide such consent after having been  
10 requested to do so by the fiduciary.

11 d. For purposes of this section, "investment decision" means with  
12 respect to any investment, the retention, purchase, sale, exchange,  
13 tender or other transaction affecting the ownership thereof or rights  
14 therein and with respect to nonpublicly traded investments, the  
15 valuation thereof, and an adviser with authority with respect to such  
16 decisions is an investment adviser.

17 e. Whenever a governing instrument provides that a fiduciary is to  
18 follow the direction of an investment adviser with respect to  
19 investment decisions, then, except to the extent that the governing  
20 instrument provides otherwise, the fiduciary shall have no duty to:

21 (1) Monitor the conduct of the investment adviser;

22 (2) Provide advice to the investment adviser or consult with the  
23 investment adviser; or

24 (3) Communicate with or warn or apprise any beneficiary or third  
25 party concerning instances in which the fiduciary would or might have  
26 exercised the fiduciary's own discretion in a manner different from the  
27 manner directed by the investment adviser.

28 Absent clear and convincing evidence to the contrary, the actions  
29 of the fiduciary pertaining to matters within the scope of the  
30 investment adviser's authority, such as confirming that the investment  
31 adviser's directions have been carried out and recording and reporting  
32 actions taken at the investment adviser's direction, shall be presumed  
33 to be administrative actions taken by the fiduciary solely to allow the  
34 fiduciary to perform those duties assigned to the fiduciary under the  
35 governing instrument. Such administrative actions shall not be deemed  
36 to constitute an undertaking by the fiduciary to monitor the investment  
37 adviser or otherwise participate in actions within the scope of the  
38 investment adviser's authority.

39

40 3B:31-63.<sup>2</sup> Control and Protection of Trust Property.

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

43

44 <sup>2</sup>[3B:31-63] 3B:31-64<sup>2</sup>. Recordkeeping and Identification of Trust  
45 Property.

46 a. A trustee shall keep adequate records of the administration of  
47 the trust.

1       b. A trustee shall keep trust property separate from the trustee's  
2 own property.

3       c. Except as otherwise provided in subsection d. of this section, a  
4 trustee shall cause the trust property to be designated so that the  
5 interest of the trust, to the extent feasible, appears in records  
6 maintained by a party other than a trustee or beneficiary.

7       d. If the trustee maintains records clearly indicating the respective  
8 interests, a trustee may invest as a whole the property of the trust with  
9 other fiduciary accounts maintained by the trustee.

10

11       <sup>2</sup>~~3B:31-64~~ 3B:31-65<sup>2</sup>. Duty to Enforce and Defend Claims.

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

14

15       <sup>2</sup>~~3B:31-65~~ 3B:31-66<sup>2</sup>. Duty to Collect Trust Property and  
16 Redress Breaches of Trust.

17       a. A trustee shall take reasonable steps to compel a former trustee  
18 or other person to deliver trust property to the trustee.

19       b. A trustee shall take reasonable steps to redress a breach of trust  
20 known to the trustee to have been committed by a former trustee.

21

22       <sup>2</sup>~~3B:31-66~~ 3B:31-67<sup>2</sup>. Duty to Disclose and Discretion to  
23 Periodically Report.

24       a. <sup>2</sup>A trustee shall keep the qualified beneficiaries of the trust  
25 reasonably informed about the administration of the trust and of the  
26 material facts necessary for them to protect their interests.<sup>2</sup> Unless  
27 unreasonable under the circumstances, a trustee shall promptly  
28 respond to a beneficiary's request for information related to the  
29 administration of a trust.

30       b. A trustee, upon request of a beneficiary, shall promptly furnish  
31 to the beneficiary a copy of the trust instrument.

32       c. A trustee seeking the protection of <sup>2</sup>~~N.J.S.3B:31-73~~  
33 N.J.S.3B:31-74<sup>2</sup> may provide the beneficiaries with a report of the  
34 trust property, liabilities, receipts, and disbursements, including the  
35 source and amount of the trustee's compensation, a listing of the trust  
36 assets, and, if feasible, their respective market values.

37

38       <sup>2</sup>~~3B:31-67~~ 3B:31-68<sup>2</sup>. Discretionary Powers.

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



1 (5) appoint a special fiduciary to take possession of the trust  
2 property and administer the trust;

3 (6) suspend the trustee;

4 (7) remove the trustee as provided in N.J.S.3B:31-51;

5 (8) reduce or deny compensation to the trustee;

6 (9) subject to N.J.S.3B:14-37, void an act of the trustee, impose a  
7 lien or a constructive trust on trust property, or trace trust property  
8 wrongfully disposed of and recover the property or its proceeds; or

9 (10) order any other appropriate relief.

10

11 <sup>2</sup>**[3B:31-71]** 3B:31-72<sup>2</sup>. Damages for Breach of Trust.

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

14 (1) the amount required to restore the value of the trust property  
15 and trust distributions to what they would have been had the breach  
16 not occurred; or

17 (2) the profit the trustee made by reason of the breach.

18 b. Except as otherwise provided in this subsection, if more than  
19 one trustee is liable to the beneficiaries for a breach of trust, a trustee  
20 is entitled to contribution from the other trustee or trustees based on  
21 the comparative degree of culpability for the breach. However, a  
22 trustee who committed the breach in bad faith or with reckless  
23 indifference to the purposes of the trust or the interests of the  
24 beneficiaries is not entitled to contribution from a trustee who was not  
25 guilty of such conduct. A trustee who received a benefit from the  
26 breach of trust is not entitled to contribution from another trustee to the  
27 extent of the benefit received.

28

29 <sup>2</sup>**[3B:31-72]** 3B:31-73<sup>2</sup>. Damages in Absence of Breach.

30 a. A trustee is accountable to an affected beneficiary for any  
31 profit made by the trustee arising from the administration of the trust,  
32 even absent a breach of trust, except where the interest in the  
33 transaction involved is fully disclosed to the beneficiary and consent is  
34 freely given.

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

38

39 <sup>2</sup>**[3B:31-73]** 3B:31-74<sup>2</sup>. Limitation of Action Against Trustee.

40 a. A beneficiary may not commence a proceeding against a  
41 trustee for breach of trust more than six months after the date the  
42 beneficiary or a representative of the beneficiary was sent a report that  
43 adequately disclosed the existence of a potential claim for breach of  
44 trust and informed the beneficiary of the time allowed for commencing  
45 a proceeding.

46 b. A report adequately discloses the existence of a potential claim  
47 for breach of trust if it provides sufficient information so that the



1 beneficiary or representative knows of the potential claim or should  
2 have inquired into its existence.

3 c. If subsection a. of this section does not apply, a judicial  
4 proceeding by a beneficiary against a trustee for breach of trust may be  
5 commenced only within five years after the first to occur of:

6 (1) the removal, resignation, or death of the trustee;

7 (2) the termination of the beneficiary's interest in the trust; or

8 (3) the termination of the trust.

9 <sup>2</sup>Notwithstanding the foregoing, this subsection shall not operate to  
10 bar any proceeding by a beneficiary until five years after such  
11 beneficiary: (a) has attained majority; (b) has knowledge of the  
12 existence of the trust; and (c) has knowledge that such beneficiary is or  
13 was a beneficiary of the trust.<sup>2</sup>

14 d. For purposes of subsection a. of this section, a beneficiary is  
15 deemed to have been sent a report if:

16 (1) in the case of a beneficiary having capacity, it is sent to the  
17 beneficiary; or

18 (2) in the case of a beneficiary who under article 2 of this act may  
19 be represented and bound by another person, if it is received by his  
20 representative.

21 e. This section does not preclude an action to recover for fraud or  
22 misrepresentation related to the report.

23

24 <sup>2</sup>**[3B:31-74]** 3B:31-75<sup>2</sup>. Reliance on Trust Instrument.

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

28

29 <sup>2</sup>**[3B:31-75]** 3B:31-76<sup>2</sup>. Event Affecting Administration or  
30 Distribution.

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

36

37 <sup>2</sup>**[3B:31-76]** 3B:31-77<sup>2</sup>. Exculpation of Trustee.

38 a. A term of a trust relieving a trustee of liability for breach of  
39 trust is unenforceable to the extent that it:

40 (1) relieves the trustee of liability for breach of trust committed in  
41 bad faith or with reckless indifference to the purposes of the trust or  
42 the interests of the beneficiaries; or

43 (2) was inserted as the result of an abuse by the trustee of a  
44 fiduciary or confidential relationship to the settlor.

45 b. An exculpatory term drafted or caused to be drafted by the  
46 trustee is invalid as an abuse of a fiduciary or confidential relationship  
47 unless the trustee proves that the exculpatory term is fair under the

1 circumstances and that its existence and contents were adequately  
2 communicated to the settlor.

3

4 <sup>2</sup>**[3B:31-77]** 3B:31-78<sup>2</sup>. Beneficiary's Consent, Release, or  
5 Ratification.

6 A trustee is not liable to a beneficiary for breach of trust if the  
7 beneficiary, while having capacity, consented to the conduct  
8 constituting the breach, released the trustee from liability for the  
9 breach, or ratified the transaction constituting the breach, unless:

10 a. the consent, release, or ratification of the beneficiary was  
11 induced by improper conduct of the trustee; or

12 b. at the time of the consent, release, or ratification, the beneficiary  
13 did not know of the beneficiary's rights or of the material facts relating  
14 to the breach.

15

16 <sup>2</sup>**[3B:31-78]** 3B:31-79<sup>2</sup>. Limitation on Personal Liability of  
17 Trustee.

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

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

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

32

33 <sup>2</sup>**[3B:31-79]** 3B:31-80<sup>2</sup>. Interest as General Partner.

34 a. Except as otherwise provided in subsection c. of this section or  
35 unless personal liability is imposed in the contract, a trustee who  
36 holds an interest as a general partner in a general or limited  
37 partnership is not personally liable on a contract entered into by the  
38 partnership after the trust's acquisition of the interest if the fiduciary  
39 capacity was disclosed in the contract or in a statement previously  
40 filed pursuant to the "Uniform Partnership Act (1996)," P.L.2000,  
41 c.161 (C.42:1A-1 et seq.) or the "Uniform Limited Partnership Law  
42 (1976)," P.L.1983, c.489 (C.42:2A-1 et seq.).

43 b. Except as otherwise provided in subsection c. of this section, a  
44 trustee who holds an interest as a general partner is not personally  
45 liable for torts committed by the partnership or for obligations arising  
46 from ownership or control of the interest unless the trustee is  
47 personally at fault.

1 c. The immunity provided by this section does not apply if an  
2 interest in the partnership is held by the trustee in a capacity other than  
3 that of trustee or is held by the trustee's spouse <sup>1</sup>or partner in a civil  
4 union<sup>1</sup> or one or more of the trustee's descendants, siblings, or parents,  
5 or the spouse <sup>1</sup>or partner in a civil union<sup>1</sup> of any of them.

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

9  
10 <sup>2</sup>**[3B:31-80]** 3B:31-81<sup>2</sup>. Certification of Trust.

11 a. Instead of furnishing a copy of the trust instrument to a person  
12 other than a beneficiary, the trustee may furnish to the person a  
13 certification of trust containing the following information:

14 (1) that the trust exists and the date the trust instrument was  
15 executed;

16 (2) the identity of the settlor;

17 (3) the identity and address of the currently acting trustee;

18 (4) the powers of the trustee;

19 (5) the revocability or irrevocability of the trust and the identity of  
20 any person holding a power to revoke the trust;

21 (6) the authority of <sup>2</sup>**[cotrustees]** co-trustees<sup>2</sup> to sign and whether  
22 all or less than all are required in order to exercise powers of the  
23 trustee; and

24 (7) the name in which title to trust property may be taken.

25 b. A certification of trust shall be signed by all persons identified  
26 as currently acting as trustee.

27 c. A certification of trust shall state that the trust has not been  
28 revoked, modified, or amended in any manner that would cause the  
29 representations contained in the certification of trust to be incorrect.

30 d. A certification of trust need not contain the dispositive terms of  
31 a trust.

32 e. A recipient of a certification of trust may require the trustee to  
33 furnish copies of those excerpts from the original trust instrument and  
34 later amendments which designate the trustee and confer upon the  
35 trustee the power to act in the pending transaction.

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

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

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

4  
5 ARTICLE 9  
6 MISCELLANEOUS PROVISIONS  
7

8 <sup>2</sup>~~[3B:31-81]~~ 3B:31-82<sup>2</sup>. Electronic Records and Signatures.

9 The provisions of this act governing the legal effect, validity, or  
10 enforceability of electronic records or electronic signatures, and of  
11 contracts formed or performed with the use of such records or  
12 signatures, conform to the requirements of section 102 of the  
13 “Electronic Signatures in Global and National Commerce Act” (15  
14 U.S.C. s.7002), and supersede, modify, and limit the requirements of  
15 that act.

16  
17 <sup>2</sup>~~[3B:31-82]~~ 3B:31-83<sup>2</sup>. Severability Clause.

18 If any provision of this act or its application to any person or  
19 circumstances is held invalid, the invalidity does not affect other  
20 provisions or applications of this act which can be given effect without  
21 the invalid provision or application, and to this end the provisions of  
22 this act are severable.

23  
24 <sup>2</sup>~~[3B:31-83]~~ 3B:31-84<sup>2</sup>. Application to Existing Relationships.

25 a. Except as otherwise provided in this act:

26 (1) this act applies to all trusts created before, on, or after its  
27 effective date;

28 (2) this act applies to all judicial proceedings concerning trusts  
29 commenced on or after its effective date;

30 (3) this act applies to judicial proceedings concerning trusts  
31 commenced before its effective date unless the court finds that  
32 application of a particular provision of this act would substantially  
33 interfere with the effective conduct of the judicial proceedings or  
34 prejudice the rights of the parties, in which case the particular  
35 provision of this act does not apply and the superseded law applies;

36 (4) any rule of construction or presumption provided in this act  
37 applies to trust instruments executed before the effective date of the  
38 act unless there is clear indication of a contrary intent in the terms of  
39 the trust; and

40 (5) an act done before the effective date is not affected by this act.

41 b. If a right is acquired, extinguished, or barred upon expiration of  
42 a prescribed period that has commenced to run under any other statute  
43 before the effective date of the act, that statute continues to apply to  
44 the right even if that statute has been repealed or superseded by this  
45 act.

1 2. N.J.S.3B:14-37 is amended to read as follows:

2 3B:14-37. Protection of persons assisting or dealing with  
3 fiduciary.

4 a. A person other than a beneficiary who in good faith either  
5 assists a fiduciary or deals with him for value is protected as if the  
6 fiduciary properly exercised his power.

7 b. The fact that a person knowingly deals with a fiduciary does  
8 not alone require the person to inquire into the existence of a power  
9 or the propriety of its exercise.

10 c. Except as to real property specifically devised by will, no  
11 provision in any will, trust or order of court purporting to limit the  
12 power of a fiduciary is effective except as to persons with actual  
13 knowledge thereof.

14 d. A person who in good faith pays, transfers or delivers to a  
15 fiduciary money or other property is not responsible for the proper  
16 application thereof by the fiduciary; and any right or title acquired  
17 from the fiduciary in consideration of the payment, transfer or  
18 delivery is not invalid in consequence of a misapplication by the  
19 fiduciary.

20 e. A person other than a beneficiary who in good faith assists a  
21 former trustee, or who in good faith and for value deals with a  
22 former trustee, without knowledge that the trusteeship has  
23 terminated is protected from liability as if the former trustee were  
24 still a trustee.

25 f. The protection here expressed extends to instances in which  
26 some procedural irregularity or jurisdictional defect occurred in  
27 proceedings leading to the issuance of letters, including a case in  
28 which the alleged decedent is found to be alive.

29 g. The protection here expressed is in addition to that provided  
30 by comparable provisions of the laws relating to commercial  
31 transactions and laws simplifying transfers of securities by  
32 fiduciaries.

33 (cf: N.J.S.3B:14-37)

34

35 <sup>2</sup>[<sup>1</sup>3. (New section) Powers to Direct Investment Functions.

36 a. Where one or more persons are given authority by the terms  
37 of a governing instrument to direct, consent to or disapprove a  
38 fiduciary's actual or proposed investment decisions, such persons  
39 shall be considered to be investment advisers and fiduciaries when  
40 exercising such authority unless the governing instrument otherwise  
41 provides.

42 b. If a governing instrument provides that a fiduciary is to  
43 follow the direction of an investment adviser, and the fiduciary acts  
44 in accordance with such a direction, then except in cases of wilful  
45 misconduct or gross negligence on the part of the fiduciary so  
46 directed, the fiduciary shall not be liable for any loss resulting  
47 directly or indirectly from any such act.

1     c. If a governing instrument provides that a fiduciary is to  
2 make decisions with the consent of an investment adviser, then  
3 except in cases of wilful misconduct or gross negligence on the part  
4 of the fiduciary, the fiduciary shall not be liable for any loss  
5 resulting directly or indirectly from any act taken or omitted as a  
6 result of such investment adviser's failure to provide such consent  
7 after having been requested to do so by the fiduciary.

8     d. For purposes of this section, "investment decision" means  
9 with respect to any investment, the retention, purchase, sale,  
10 exchange, tender or other transaction affecting the ownership  
11 thereof or rights therein and with respect to nonpublicly traded  
12 investments, the valuation thereof, and an adviser with authority  
13 with respect to such decisions is an investment adviser.

14     e. Whenever a governing instrument provides that a fiduciary  
15 is to follow the direction of an investment adviser with respect to  
16 investment decisions, then, except to the extent that the governing  
17 instrument provides otherwise, the fiduciary shall have no duty to:

18         (1) Monitor the conduct of the investment adviser;

19         (2) Provide advice to the investment adviser or consult with the  
20 investment adviser; or

21         (3) Communicate with or warn or apprise any beneficiary or  
22 third party concerning instances in which the fiduciary would or  
23 might have exercised the fiduciary's own discretion in a manner  
24 different from the manner directed by the investment adviser.

25     Absent clear and convincing evidence to the contrary, the actions  
26 of the fiduciary pertaining to matters within the scope of the  
27 investment adviser's authority, such as confirming that the  
28 investment adviser's directions have been carried out and recording  
29 and reporting actions taken at the investment adviser's direction,  
30 shall be presumed to be administrative actions taken by the  
31 fiduciary solely to allow the fiduciary to perform those duties  
32 assigned to the fiduciary under the governing instrument. Such  
33 administrative actions shall not be deemed to constitute an  
34 undertaking by the fiduciary to monitor the investment adviser or  
35 otherwise participate in actions within the scope of the investment  
36 adviser's authority.<sup>1</sup><sup>2</sup>

37  
38     <sup>1</sup>[3.]<sup>2</sup>[4.1] 3.<sup>2</sup> The following sections are repealed:

39     N.J.S.3B:11-5;

40     N.J.S.3B:11-6;

41     N.J.S.3B:11-7; and

42     Section 1 of P.L.2001, c.144 (C.3B:11-38).

43  
44     <sup>1</sup>[4.]<sup>2</sup>[5.1] 4.<sup>2</sup> This act shall take effect on the 180th day  
45 following enactment.