Title 3B.
Chapter 31.
"Uniform Trust Code"
§1 –
N.J.S.3B:31-1 to N.J.S.3B:31-84
§3 - Repealer
§4 - Note

P.L.2015, CHAPTER 276, ***approved January 19, 2016***
Assembly, No. 2915 ***(Second Reprint)***

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

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

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

CHAPTER 31
UNIFORM TRUST CODE

TABLE OF CONTENTS

ARTICLE 1
GENERAL PROVISIONS AND DEFINITIONS

3B:31-1. Short Title.
3B:31-2. Scope.
3B:31-3. Definitions.
3B:31-4. Knowledge.
3B:31-5. Default and Mandatory Rules.
3B:31-6. Common Law of Trusts; Principles of Equity.
3B:31-7. Governing Law.
3B:31-8. Principal Place of Administration.
3B:31-9. Methods and Waiver of Notice.
3B:31-10. Others Treated as Qualified Beneficiaries.
3B:31-11. Nonjudicial Settlement Agreements.
3B:31-12. Rules of Construction.

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:
[1]Assembly AJU committee amendments adopted September 22, 2014.
[2]Senate SJU committee amendments adopted December 17, 2015.

ARTICLE 2
REPRESENTATION

3B:31-13. Representation: Basic Effect.
3B:31-14. Representation by Holder of General Testamentary Power of Appointment.
3B:31-15. Representation by Fiduciaries and Parents.
3B:31-16. Representation by Person Having Substantially Identical Interest.
3B:31-17. Appointment of Representative.

ARTICLE 3
CREATION, VALIDITY, MODIFICATION AND TERMINATION OF TRUST

3B:31-18. Methods of Creating Trust.
3B:31-19. Requirements for Creation.
3B:31-20. Written Trusts Created in Other Jurisdictions.
3B:31-21. Trust Purposes.
3B:31-22. Charitable Purposes; Enforcement.
3B:31-23. Creation of Trust Induced by Fraud, Duress or Undue Influence.
3B:31-24. Trust for Care of Animal.
3B:31-25. Noncharitable Trust Without Ascertainable Beneficiary.
3B:31-26. Modification or Termination of Trust; Proceedings for Approval or Disapproval.
3B:31-27. Modification or Termination of Noncharitable Irrevocable Trust by Consent.
3B:31-28. Modification or Termination Because of Unanticipated Circumstances or Inability to Administer Trust Effectively.
3B:31-29. Modification or Termination of Charitable Trust (Cy Pres).
3B:31-30. Modification or Termination of Uneconomic Trust.
3B:31-31. Reformation to Correct Mistakes.
3B:31-32. Construction to Conform Trust Terms to Probable Intent of Settlor.
3B:31-33. Modification to Achieve Settlor's Tax Objectives.
3B:31-34. Combination and Division of Trusts.

ARTICLE 4
CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

3B:31-35. Rights of Beneficiary's Creditor or Assignee.
3B:31-36. Spendthrift Provision.
3B:31-37. [2]⟦Exceptions to Spendthrift Provision⟧ Special Needs Trusts[2].

3B:31-38. Discretionary Trusts; Effect of Standard.
3B:31-39. Creditor's Claim Against Settlor.
3B:31-40. Overdue Distribution.
3B:31-41. Personal Obligations of Trustee

ARTICLE 5
REVOCABLE TRUSTS

3B:31-42. Capacity of Settlor of Revocable Trust.
3B:31-43. Revocation or Amendment of Revocable Trust.
3B:31-44. Settlor's Powers [2][; Powers of Withdrawal]2.
3B:31-45. Limitation on Action Contesting Validity of Revocable Trust; Distribution of Trust Property.

ARTICLE 6
OFFICE OF TRUSTEE

3B:31-46. Accepting or Declining Trusteeship.
3B:31-47. Trustee's Bond.
3B:31-48. [2][Cotrustees] Co-trustees2.
3B:31-49. Vacancy in Trusteeship; Appointment of Successor.
3B:31-50. Resignation of Trustee.
3B:31-51. Removal of Trustee.
3B:31-52. Delivery of Property by Former Trustee.
3B:31-53. Reimbursement of Expenses.

ARTICLE 7
DUTIES AND POWERS OF TRUSTEE

3B:31-54. Duty to Administer Trust.
3B:31-55. Duty of Loyalty.
3B:31-56. Duty of Impartiality.
3B:31-57. Duty of Prudent Administration.
3B:31-58. Costs of Administration.
3B:31-59. Duty to Use Special Skills.
3B:31-60. Delegation by Trustee.
3B:31-61. Powers to Direct.
3B:31-62. [2]Powers to Direct Investment Functions.
3B:31-63.[2] Control and Protection of Trust Property.
[2][3B:31-63] 3B:31-64[2]. Recordkeeping and Identification of Trust Property.
[2][3B:31-64] 3B:31-65[2]. Duty to Enforce and Defend Claims
[2][3B:31-65] 3B:31-66[2]. Duty to Collect Trust Property and Redress Breaches of Trust.
[2][3B:31-66] 3B:31-67[2]. Duty to Disclose and Discretion to Periodically Report.
[2][3B:31-67] 3B:31-68[2]. Discretionary Powers.

²[3B:31-68] 3B:31-69². General Powers of Trustee.
²[3B:31-69] 3B:31-70². Distribution Upon Termination.

ARTICLE 8
LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

²[3B:31-70] 3B:31-71². Remedies for Breach of Trust.
²[3B:31-71] 3B:31-72². Damages for Breach of Trust.
²[3B:31-72] 3B:31-73². Damages in Absence of Breach.
²[3B:31-73] 3B:31-74². Limitation of Action Against Trustee.
²[3B:31-74] 3B:31-75². Reliance on Trust Instrument.
²[3B:31-75] 3B:31-76². Event Affecting Administration or Distribution.
²[3B:31-76] 3B:31-77². Exculpation of Trustee.
²[3B:31-77] 3B:31-78². Beneficiary's Consent, Release, or Ratification.
²[3B:31-78] 3B:31-79². Limitation on Personal Liability of Trustee.
²[3B:31-79] 3B:31-80². Interest as General Partner.
²[3B:31-80] 3B:31-81². Certification of Trust.

ARTICLE 9
MISCELLANEOUS PROVISIONS

²[3B:31-81] 3B:31-82². Electronic Records and Signatures.
²[3B:31-82] 3B:31-83². Severability Clause.
²[3B:31-83] 3B:31-84². Application to Existing Relationships.

ARTICLE 1
GENERAL PROVISIONS AND DEFINITIONS

3B:31-1. Short Title.

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

3B:31-2. Scope.

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

3B:31-3. Definitions.

As used in this act:

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

²"Beneficiary," as it relates to trust beneficiaries, includes a person:

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

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

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

(4) as it relates to a charitable trust, any person who is entitled to enforce the trust.[2]

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

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

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

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

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

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

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

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

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

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

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

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

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

"State" means a State of the United States, the District of Columbia, [2]Commonwealth of[2] Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

"Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as

may be established by other evidence that would be admissible in a judicial proceeding.

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

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

3B:31-4. Knowledge.

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

(1) has actual knowledge of it;

(2) has received a notice or notification of it; or

(3) from all the facts and circumstances known to the person at the time in question, has reason to know it.

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

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

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

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

(1) the requirements for creating a trust;

(2) the duty of a trustee to act in good faith and in accordance with the purposes of the trust;

(3) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;

(4) the power of the court to modify or terminate a trust under N.J.S.3B:31-26 through [1]N.J.S.[1]3B:31-33;

(5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in article 4 of this act;

(6) the power of the court under N.J.S.3B:31-47 to require, dispense with, or modify or terminate a bond;

(7) the duty under subsections a. and b. of [2]⟦N.J.S.3B:31-66⟧ N.J.S.3B:31-67[2] to respond to the request of a qualified beneficiary of an irrevocable trust who has attained the age of 35 years for a copy of the trust instrument or for other information reasonably related to the administration of the trust;

(8) the effect of an exculpatory term under [2]⟦N.J.S.3B:31-76⟧ N.J.S.3B:31-77[2];

(9) the rights under [2]⟦N.J.S.3B:31-78⟧ N.J.S.3B:31-79[2] through [2]⟦N.J.S.3B:31-80⟧ N.J.S.3B:31-81[2] of a person other than a trustee or beneficiary;

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

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

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

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

3B:31-7. Governing Law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. The [2]**[**attorney general**]** Attorney General[2] of this State has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this State.

3B:31-11. Nonjudicial Settlement Agreements.

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

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

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

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

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

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

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

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

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

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

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

[2]f. A nonjudicial settlement may not be used to produce a result that is contrary to other sections of Title 3B of the New Jersey Statutes, including, but not limited to, terminating or modifying a trust in an impermissible manner.[2]

3B:31-12. Rules of Construction.

The rules of construction that apply in this State to the interpretation of and disposition of property by will also apply as

appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

ARTICLE 2
REPRESENTATION

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

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

b. The consent of a person who may represent and bind another person under this article is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

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

[2]d. A settlor may not represent and bind a beneficiary under this article with respect to the termination or modification of a trust under subsection a. of N.J.S.3B:31-27.[2]

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

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

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

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

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

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

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

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

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

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

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

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

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

3B:31-17. Appointment of Representative.

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

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

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

ARTICLE 3
CREATION, VALIDITY, MODIFICATION AND TERMINATION OF TRUST

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

A trust may be created by:

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

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

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

3B:31-19. Requirements for Creation.

a. A trust is created only if:

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

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

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

(a) a charitable trust;

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

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

(4) the trustee has duties to perform; and

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

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

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

[2]d. A written instrument which creates a trust or transfers property to a trust shall not be invalid or ineffective because the transferee is identified as the trust rather than the trustee thereof.[2]

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

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

a. the trust instrument was executed;

b. at the time the trust was created, the settlor was domiciled, had a place of abode, or was a national;

c. at the time the trust was created, a trustee was domiciled or had a place of business; or

d. at the time the trust was created, any trust property was located.

3B:31-21. Trust Purposes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. In addition to the methods of termination prescribed by N.J.S.3B:31-27 through N.J.S.3B:31-33, a trust terminates to the

extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy of this State, or impossible to achieve.

b. A proceeding to approve or disapprove a proposed modification or termination under N.J.S.3B:31-27 through N.J.S.3B:31-33, or trust combination or division under N.J.S.3B:31-34, may be commenced by a trustee or beneficiary [2][, and a proceeding to approve or disapprove a proposed modification or termination under N.J.S.3B:31-27 may be commenced by the settlor]2. The settlor of a charitable trust may maintain a proceeding to modify the trust under N.J.S.3B:31-29.

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

a. A noncharitable irrevocable trust may be modified or terminated upon consent of the [2][settlor] trustee2 and all beneficiaries, [2][even]2 if the modification or termination is 2not2 inconsistent with a material purpose of the trust. [2][A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized.]2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²[The] Nothing in this act shall prevent the² court ²[may construe] from construing² the terms of a trust, even if unambiguous, to conform to the settlor's probable intent.

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

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

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

a. Subject to subsection b. of this section,

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

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

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

ARTICLE 4
CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

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

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

3B:31-36. Spendthrift Provision.

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

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

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

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

²e. A valid spendthrift provision does not prevent the appointment of interests through the exercise of a power of appointment.²

3B:31-37. ²[Exceptions to Spendthrift Provision] Special Needs Trusts².

Even if a trust contains a spendthrift provision, the following shall apply:

a. Special Needs

(1) "Protected person" means a person who is:

(a) an aged, blind, or disabled individual as defined at 42 U.S.C. s.1382c;

(b) developmentally disabled as defined in section 2 of P.L.1979, c.105 (C.30:1AA-2); or

(c) under age 18, or over age 18 and a full-time student, with serious disabilities that reasonably may prevent the individual from being self sufficient as an adult.

(2) "Special needs trust" means an OBRA '93 trust, as defined in subsection a. of section 3 of P.L.2000, c.96 (C.3B:11-37), or trust governed by a written instrument which:

(a) grants a trustee ²[full] broad² discretion to determine whether and when to distribute;

(b) limits distributions during the trust term to distributions to benefit one or more protected persons, although ²[others may realize incidental benefits] the trust shall have at least one protected person as beneficiary²;

(c) provides that the trustee does not have any obligation to pay the protected person's obligations or fund ²[their] his² support;

(d) does not give the protected person any right to require the trustee to distribute at a specific time or for a particular purpose or to assign or encumber interests in the trust; and

(e) evidences the grantor's intent to supplement rather than replace or impair government assistance that the protected person receives or for which ²[they] he² otherwise may be eligible.

b. Notwithstanding any other provision of this act or other law

(1) trustees of a special needs trust ²[are not required to distribute for any particular purpose or at any particular time during the trust term] have broad discretion over distributions²;

(2) ²[all creditors, including, but not limited to, spendthrift exception creditors,] no creditor² of a protected person may ²[not]² reach or attach a protected person's interest in a special needs trust and

[2]**[**neither creditors nor a court**]** no creditor[2] may require the trustees to distribute to satisfy a protected person's creditor's claim; [2]and[2]

(3) [2]**[**a special needs trust shall not be required to repay government aid provided to a protected person unless the aid was provided on the basis that the special needs trust would repay the aid when the protected person dies, or the special needs trust sooner terminates, and the special needs trust instrument expressly calls for such repayment; and

(4)**]**[2] a special needs trust shall terminate at such time as provided in its governing instrument.

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

d.[2] Notwithstanding N.J.S.3B:31-35 and N.J.S.3B:31-36, trustees of a special needs trust shall exercise their discretion in good faith to further trust purposes and courts may exercise their equity authority to remedy trustee abuses of discretion.

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

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

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

(2) The trustee has abused the discretion.

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

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

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

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

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

(2) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to

that settlor's contribution. [2][Provided, however, the assets of an irrevocable trust are not subject to the claims of a creditor of the settlor solely because of the existence of the trustee's discretionary power to pay directly to the taxing authorities or to reimburse the settlor for any income tax payable by the settlor on trust income or principal.][2]

(3) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and to a surviving spouse [1]or partner in a civil union[1] and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses.

b. For purposes of this section:

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

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

3B:31-40. Overdue Distribution.

a. For the purposes of this section, "mandatory distribution" means a distribution of income or principal that the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. The term excludes a distribution subject to the exercise of the trustee's discretion, regardless of whether the terms of the trust (1) include a support or other standard to guide the trustee in making distribution decisions, or

(2) provide that the trustee "may" or "shall" make discretionary distributions, including distributions pursuant to a support or other standard.

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

3B:31-41. Personal Obligations of Trustee

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

ARTICLE 5
REVOCABLE TRUSTS

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

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

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

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

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

(1) to the extent the trust consists of community property, the trust may be revoked by either spouse [1]or partner in a civil union[1] acting alone but may be amended only by joint action of both spouses [1]or partners[1]; and

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

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

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

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

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

(b) any other [2]**[**method**]** writing[2] manifesting clear and convincing evidence of the settlor's intent.

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

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

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

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

3B:31-44. Settlor's Powers [2]⟦; Powers of Withdrawal⟧[2].

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

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

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

(1) [1]⟦3⟧ Three[1] years after the settlor's death; or

(2) [1]⟦4⟧ Four[1] months, in the case of a resident, or [1]⟦6⟧ six[1] months, in the case of a nonresident, after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

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

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

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

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

ARTICLE 6
OFFICE OF TRUSTEE

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

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

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

(2) in the case of any other trustee,

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

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

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

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

(1) act to preserve the trust property if, within a reasonable time after acting, the person sends a renunciation of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to the qualified beneficiaries and to any designated successor trustee; and

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

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

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

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

3B:31-48. [2][Cotrustees] Co-trustees2.

a. [2][Cotrustees] Co-trustees2 who are unable to reach a unanimous decision may act by majority decision. A dissenting trustee who joins in carrying out a decision of the majority but expresses his dissent in writing promptly to his [2][cotrustees] co-trustees2 shall not be liable for the act of the majority.

b. If a vacancy occurs in a [2][cotrusteeship] co-trusteeship2, the remaining [2][cotrustees] co-trustees2 shall act for the trust unless the trust instrument provides otherwise.

c. A [2][cotrustee] co-trustee2 shall participate in the performance of a trustee's function unless the [2][cotrustee] co-trustee2 is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the [2][cotrustee] co-trustee2 has properly delegated the performance of the function to another trustee.

d. If a [2][cotrustee] co-trustee2 is unavailable to perform duties because of absence, illness, disqualification under other law, other temporary incapacity, or a vacancy remains unfilled and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining [2][cotrustee] co-trustee2 or a majority of the remaining [2][cotrustees] co-trustees2 shall act for the trust.

e. A trustee may not delegate to a [2][cotrustee] co-trustee2 the performance of a function the settlor reasonably expected the trustees to perform jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

f. A trustee who does not join in an action of a [2][cotrustee] co-trustee2 or [2][cotrustees] co-trustees2 because of absence, illness,

disqualification or other temporary incapacity shall not be liable for that action.

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

(1) prevent a [2]**[**cotrustee**]** co-trustee[2] from committing a breach of trust; and

(2) compel a [2]**[**cotrustee**]** co-trustee[2] to redress a breach of trust.

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

a. A vacancy in a trusteeship occurs if:

(1) a person designated as trustee renounces the trusteeship;

(2) a person designated as trustee cannot be identified or does not exist;

(3) a trustee resigns or is discharged;

(4) a trustee is disqualified or removed;

(5) a trustee dies; or

(6) a guardian or conservator is appointed for an individual serving as trustee.

b. If one or more [2]**[**cotrustees**]** co-trustees[2] remain in office, a vacancy in a trusteeship need not be filled unless the trust instrument provides otherwise. A vacancy in a trusteeship shall be filled if the trust has no remaining trustee.

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

(1) by a person designated pursuant to the terms of the trust to act as successor trustee;

(2) by a [2]procedure established pursuant to the terms of the trust to appoint a successor trustee;

(3) by a[2] person appointed by unanimous agreement of the qualified beneficiaries; or

[2]**[**(3)**]** (4)[2] by a person appointed by the court.

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

(1) by a person designated pursuant to the terms of the trust to act as successor trustee; or

(2) by a person appointed by the court.

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

f. A person appointed to fill a vacancy in a trusteeship shall have all the powers and discretions of the original trustee.

3B:31-50. Resignation of Trustee.

a. A trustee may resign:

(1) upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, all [2]**[**cotrustees**]** co-trustees[2], and the trustee or

trustees, if any, designated pursuant to the terms of the trust to succeed the resigning trustee; or

(2) with the approval of the court.

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

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

3B:31-51. Removal of Trustee.

a. The settlor, a [2]⟦cotrustee⟧ co-trustee[2], or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

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

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

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

a. Unless a [2]⟦cotrustee⟧ co-trustee[2] remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

b. A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the [2]⟦cotrustee⟧ co-trustee[2], successor trustee, or other person entitled to it, but a resigning trustee may retain a reasonable reserve for the costs of finalizing that trustee’s administration of the trust.

3B:31-53. Reimbursement of Expenses.

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

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

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

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

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 [2]⟦N.J.S.3B:31-73⟧ N.J.S.3B:31-74[2];

(4) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with [2]⟦N.J.S.3B:31-77⟧ N.J.S.3B:31-78[2]; 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.

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

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

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

(2) payment of reasonable compensation to the trustee;

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

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

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

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

3B:31-56. Duty of Impartiality.

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

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

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

3B:31-58. Costs of Administration.

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

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

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

3B:31-60. Delegation by Trustee.

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

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

(1) selecting an agent;

(2) establishing in writing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

c. A trustee shall provide reasonable written notice to the qualified beneficiaries on each occasion upon which the trustee delegates duties pursuant to this section, including the identity of the agent.

d. A trustee who complies with subsections b. and c. of this section is not liable to the beneficiaries or to the trust for an action of the agent to whom the function was delegated.

e. In performing a delegated function, the agent shall owe to the trustee and the beneficiaries the same duties as the fiduciary and shall be held to the same standards as the fiduciary.

f. By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this State, an agent submits to the jurisdiction of the courts of this State, even if the delegation agreement provides otherwise.

3B:31-61. Powers to Direct.

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

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

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

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

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

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

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

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

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

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

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

(1) Monitor the conduct of the investment adviser;

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

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

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

3B:31-63.[2] Control and Protection of Trust Property.

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

[2]**[**3B:31-63**]** 3B:31-64[2]. Recordkeeping and Identification of Trust Property.

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

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

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

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

[2][3B:31-64] 3B:31-65[2]. Duty to Enforce and Defend Claims.

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

[2][3B:31-65] 3B:31-66[2]. Duty to Collect Trust Property and Redress Breaches of Trust.

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

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

[2][3B:31-66] 3B:31-67[2]. Duty to Disclose and Discretion to Periodically Report.

a. [2]A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests.[2] Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of a trust.

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

c. A trustee seeking the protection of [2][N.J.S.3B:31-73] N.J.S.3B:31-74[2] may provide the beneficiaries with a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets, and, if feasible, their respective market values.

[2][3B:31-67] 3B:31-68[2]. Discretionary Powers.

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

[2][3B:31-68] 3B:31-69[2]. General Powers of Trustee.

a. Except as limited by section 1 of P.L.1996, c.41 (C.3B:11-4.1) and other express statutory restrictions, a trustee, without authorization by the court, may exercise:

(1) powers conferred by the terms of the trust; or

(2) except as limited by the terms of the trust:

(a) all powers over the trust property which an unmarried competent owner has over individually owned property;

(b) any other powers appropriate to achieve the proper investment, management, and distribution of the trust property; and

(c) any other powers conferred by this act and by Title 3B [1]of the New Jersey Statutes[1].

b. The exercise of a power is subject to the fiduciary duties prescribed by this act and by Title 3B [1]of the New Jersey Statutes[1].

[2][3B:31-69] 3B:31-70[2]. Distribution Upon Termination.

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

b. Upon termination or partial termination of a trust, the trustee may mail or deliver a proposal for distribution to all persons who have a right to object to the proposed distribution. The proposal shall notify all persons who have a right to object to the proposal of their right to object and that their objection is required to be in writing and received by the trustee within 30 days after the mailing or delivery of the proposal. The right of any person to object to the proposed distribution on the basis of the kind or value of asset he [2][or she][2] or another beneficiary is to receive, if not waived earlier in writing, terminates if he [2][or she][2] fails to object in writing received by the trustee within 30 days after mailing or delivery of the proposal.

ARTICLE 8
LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE

[2][3B:31-70] 3B:31-71[2]. Remedies for Breach of Trust.

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

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

(1) compel the trustee to perform the trustee's duties;

(2) enjoin the trustee from committing a breach of trust;

(3) compel the trustee to redress a breach of trust by paying money, restoring property, or other means;

(4) order a trustee to account;

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

(6) suspend the trustee;

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

(8) reduce or deny compensation to the trustee;

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

(10) order any other appropriate relief.

[2][3B:31-71]**]** 3B:31-72**[2]**. Damages for Breach of Trust.

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

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

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

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

[2][3B:31-72]**]** 3B:31-73**[2]**. Damages in Absence of Breach.

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

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

[2][3B:31-73]**]** 3B:31-74**[2]**. Limitation of Action Against Trustee.

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

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

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

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

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

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

(3) the termination of the trust.

[2]Notwithstanding the foregoing, this subsection shall not operate to bar any proceeding by a beneficiary until five years after such beneficiary: (a) has attained majority; (b) has knowledge of the existence of the trust; and (c) has knowledge that such beneficiary is or was a beneficiary of the trust.[2]

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

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

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

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

[2][3B:31-74] 3B:31-75[2]. Reliance on Trust Instrument.

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

[2][3B:31-75] 3B:31-76[2]. Event Affecting Administration or Distribution.

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

[2][3B:31-76] 3B:31-77[2]. Exculpation of Trustee.

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

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

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

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

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

²[3B:31-77] 3B:31-78². Beneficiary's Consent, Release, or Ratification.

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

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

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

²[3B:31-78] 3B:31-79². Limitation on Personal Liability of Trustee.

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

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

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

²[3B:31-79] 3B:31-80². Interest as General Partner.

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

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

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

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

[2][3B:31-80] 3B:31-81[2]. Certification of Trust.

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

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

(2) the identity of the settlor;

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

(4) the powers of the trustee;

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

(6) the authority of [2][cotrustees] co-trustees[2] to sign and whether all or less than all are required in order to exercise powers of the trustee; and

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

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

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

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

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

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

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

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

ARTICLE 9
MISCELLANEOUS PROVISIONS

[2][3B:31-81]**[2]** 3B:31-82. Electronic Records and Signatures.

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

[2][3B:31-82]**[2]** 3B:31-83. Severability Clause.

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

[2][3B:31-83]**[2]** 3B:31-84. Application to Existing Relationships.

a. Except as otherwise provided in this act:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[2][1]3. (New section) Powers to Direct Investment Functions.

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

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

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

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

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

(1) Monitor the conduct of the investment adviser;

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

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

Absent clear and convincing evidence to the contrary, the actions of the fiduciary pertaining to matters within the scope of the investment adviser's authority, such as confirming that the investment adviser's directions have been carried out and recording and reporting actions taken at the investment adviser's direction, shall be presumed to be administrative actions taken by the fiduciary solely to allow the fiduciary to perform those duties assigned to the fiduciary under the governing instrument. Such administrative actions shall not be deemed to constitute an undertaking by the fiduciary to monitor the investment adviser or otherwise participate in actions within the scope of the investment adviser's authority.[1]**]**[2]

[1]**[**3.**]** [2]**[**4.[1]**]** 3.[2] The following sections are repealed:

N.J.S.3B:11-5;

N.J.S.3B:11-6;

N.J.S.3B:11-7; and

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

[1]**[**4.**]** [2]**[**5.[1]**]** 4.[2] This act shall take effect on the 180th day following enactment.

"Uniform Trust Code."