



SPONSOR: Rep. B. Short & Rep. M. Smith & Rep. Walker & Sen. Townsend

HOUSE OF REPRESENTATIVES  
147th GENERAL ASSEMBLY

HOUSE BILL NO. 412

AN ACT TO AMEND TITLES 12 AND 25 OF THE DELAWARE CODE RELATING TO FIDUCIARY RELATIONS AND PROPERTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 101, Title 12 of the Delaware Code by making deletions as shown by strike through and  
2 insertions as shown by underline as follows and redesignating accordingly:

3 § 101 Definitions.

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

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

7 Section 2. Amend § 3303(a), Title 12 of the Delaware Code by making deletions as shown by strike through and  
8 insertions as shown by underline as follows:

9 § 3303 Effect of provisions of instrument.

10 (a) Notwithstanding any other provision of this Code or other law, the terms of a governing instrument may  
11 expand, restrict, eliminate, or otherwise vary any laws of general application to fiduciaries, trusts and trust administration,  
12 including, but not limited to, any such laws pertaining to:

13 (1) The rights and interests of beneficiaries, including, but not limited to, the right to be informed of the  
14 beneficiary's interest for a period of time;

15 (2) The grounds for removal of a fiduciary;

16 (3) The circumstances, if any, in which the fiduciary must diversify investments; and

17 (4) A fiduciary's powers, duties, standard of care, rights of indemnification and liability to persons whose  
18 interests arise from that instrument; ~~and~~

19 ~~(5) Provisions of general application to trusts and trust administration;~~

20

21 provided, however, that nothing contained in this section shall be construed to permit the exculpation or indemnification  
22 of a fiduciary for the fiduciary's own wilful misconduct or preclude a court of competent jurisdiction from removing a  
23 fiduciary on account of the fiduciary's wilful misconduct. The rule that statutes in derogation of the common law are to  
24 be strictly construed shall have no application to this section. It is the policy of this section to give maximum effect to  
25 the principle of freedom of disposition and to the enforceability of governing instruments.

26 Section 3. Amend § 3322(a), Title 12 of the Delaware Code by making deletions as shown by strike through and  
27 insertions as shown by underline as follows:

28 § 3322 Fiduciary agency contracts; delegation.

29 (a) A fiduciary acting under a governing instrument which neither affirmatively permits the fiduciary to hire  
30 agents, nor expressly prohibits the fiduciary from hiring agents, may employ agents and pay them from the fiduciary fund  
31 in accordance with this section. Such agents may be hired to assist in the performance of such fiduciary's administrative  
32 duties, whether discretionary or ministerial, or to render investment advice, if the fiduciary reasonably believes in the  
33 exercise of its discretion that such an arrangement is in the best interests of all interested persons ~~and will improve the~~  
34 ~~investment performance or the efficiency of the administration of the fiduciary fund.~~ The agent must observe the same  
35 standard of care required of the fiduciary with respect to each responsibility so delegated, and neither the establishment of  
36 such agency relationship nor the performance of such agent shall diminish, increase or otherwise affect the standard by  
37 which the performance of the fiduciary is governed. In any suit or proceeding involving an evaluation of fiduciary  
38 performance, the fiduciary shall be liable for abusing its discretion in hiring such agent, for negligently hiring such agent, or  
39 for negligently continuing the agency relationship, but shall not otherwise be liable for the conduct of such agent..

40 Section 4. Amend Chapter 35, Title 12 of the Delaware Code by making insertions as shown by underlining and  
41 deletions as shown by strike through as follows:

42 § 3521 Trustees' accounts; ~~filing; contents; approval in general.~~

43 Except as otherwise provided in §§ 3522 through 3524 of this title, trustees (which term, as used in this  
44 subchapter, includes successor trustees) shall not be required to file any accounts or inventories with respect to a trust.  
45 Trustees required, under §§ 3522 through 3524 of this title, to file accounts or inventories with respect to a trust shall do so  
46 as described in § 3525 of this title, unless later released from such obligation under § 3526 of this title.

47 § 3522 Trustees' accounts for inter vivos trusts.

48 Trustees of an inter vivos trust (whether or not property was bequeathed or devised to such trust by a testamentary  
49 disposition) shall not be required to file any accounts or inventories with respect to such trust, except;

50 (a) to the extent provided in the governing instrument;

51 (b) upon an order of the Court of Chancery, for cause shown, expressly requiring an accounting by such trustees;  
52 or

53 (c) if such trustees were appointed by the Court of Chancery, then as may be otherwise provided in the order of  
54 appointment.

55 § 3523 Trustees' accounts in wills probated prior to April 5, 1909.

56 Trustees named in wills probated prior to April 5, 1909, may file and submit accounts of their trusts at such times  
57 as they deem necessary and they shall be required to file and submit accounts only upon a rule of the Register in Chancery  
58 issued upon them pursuant to the written request of any one beneficially interested in their trusts or upon the order of the  
59 Court of Chancery.

60 § 3524 Trustees' accounts for other testamentary trusts.

61 Trustees of a testamentary trust shall be required to file accounts as described in § 3525 of this title, except that:

62 (a) Trustees subject to § 3523 of this title shall file accounts only in accordance with such section.

63 (b) Trustees of a testamentary trust established under the will of a decedent dying after July 31, 2005 shall be  
64 required to file accounts as described in § 3525 of this title only in accordance with the express terms, if any, of any such  
65 trust or upon order of the Court of Chancery with respect to any such trust.

66 § 3525 Filing of trustees' accounts; contents; approval.

67 (a) Trustees required to file accounts as provided in the governing instrument, or in an order of the Court of  
68 Chancery, shall file accounts as described in subsection (c) of this section only in accordance with the express terms, if any,  
69 of such governing instrument or order.

70 (b) Trustees otherwise required to file accounts under §§ 3523 and 3524 of this title shall file accounts as described  
71 in subsection (c) of this section.

72 ~~(a) Except as provided in §§ 3522 and 3523 of this title or otherwise validly waived by the beneficiaries pursuant~~  
73 ~~to subsection (b) of this section below, all trustees named in wills, as well as trustees appointed by the Court of Chancery,~~  
74 ~~shall file with the Register in Chancery in the county in which such wills are~~

75 (c) To the extent required in subsections (a) and (b) above, trustees required to file accounts shall file with the  
76 Register in Chancery, in the county in which a will creating the trust was probated or in which such appointments ~~are~~ were  
77 made, and submit for the approval of the Court of Chancery just and true accounts, showing all receipts and disbursements  
78 of their trusts, as the Court requires, but not oftener than once in 2 years, unless there is special occasion. Such accounts  
79 shall also show the manner in which the principal of the trust is invested. Upon the request of the trustee or of any party in  
80 interest the Court shall, and upon its own motion may, proceed to approve or disapprove the investments, but otherwise the

81 Court shall approve or disapprove the remainder of the account without passing upon the manner in which the principal of  
82 the trust is invested. ~~Notwithstanding the foregoing provisions of this section, the trustee of an inter vivos trust, regardless~~  
83 ~~of whether the trust is one to which property shall have been bequeathed or devised by a will, shall not be required to file~~  
84 ~~any accounts with respect to such property so bequeathed or devised, except upon an order of the Court of Chancery, for~~  
85 ~~cause shown, expressly requiring an accounting by such trustee nor shall a successor trustee of an inter vivos trust~~  
86 ~~appointed by the Court of Chancery be required to file any accounts with respect to the property held in such trust, except~~  
87 ~~as may be otherwise provided in the order of the Court of Chancery appointing such successor trustee or upon an order of~~  
88 ~~the Court of Chancery, for cause shown, expressly requiring an accounting by such successor trustee.~~

89 § 3526 Release of obligation to file accounts.

90 ~~(b)~~ (a) Without the approval of the Court of Chancery, a trustee or trustees (in either case hereafter referred to as  
91 "trustee") who would otherwise be required under ~~subsection (a) of this section~~ §§ 3521 through 3524 of this title to file  
92 with the Register in Chancery just and true accounts for the approval of the Court of Chancery may be released from such  
93 obligation by the interested parties of the trust if the trustee sends a written notice and request for waiver and consent or  
94 non-objection to the interested parties, which notice shall:

95 (1) Describe the obligation of the trustee under ~~subsection (a) of this section~~ §§ 3521 through 3524 of  
96 this title and identify the alternative means by which the trustee will provide the beneficiaries with the information  
97 formerly set forth in the account;

98 (2) Request the interested person waive the obligations under subsection (a) of this section with respect  
99 to the trust and consent, or signify such person's non-objection, to the alternative means described in the notice for  
100 the dissemination of trust information; and

101 ~~(3) Request that a waiver and consent or nonobjection be executed by:~~

102 ~~a. The interested party personally;~~

103 ~~b. The interested party's attorney ad litem;~~

104 ~~e. A (3) Request that a waiver and consent or non-objection be executed by (1) the interested~~  
105 ~~party personally; (2) the interested party's attorney ad litem; (3) a person authorized to represent the~~  
106 ~~interested party under § 3547 of this title or any successor statute; or~~

107 ~~d. A (4) a person authorized by applicable law to represent the interested party in transactions~~  
108 ~~involving the trust (such as, but not limited to, the interested party's attorney-in-fact or the Attorney~~  
109 ~~General in the case of certain charitable beneficiaries);~~

110 In addition, such waiver and consent or ~~nonobjection~~ non-objection shall: (i) be acknowledged by a person  
111 authorized to notarize documents (or a similar official if a document is signed in a foreign jurisdiction) or witnessed by a  
112 person who is not an interested party; and (ii) ~~Affirm~~ affirm that the party executing the waiver and consent or ~~nonobjection~~  
113 non-objection has read, understood, and been provided with an opportunity to consult with counsel regarding the waiver  
114 and consent or ~~nonobjection~~ non-objection and the information provided therein.

115 ~~(e)-(b)~~ For purposes of subsection ~~(b)~~ (a) of this section, the "interested parties" means:

116 (1) The trustor of the trust, if living;

117 (2) All living persons who are currently receiving or eligible to receive distributions of income of the  
118 trust;

119 (3) Without regard to the exercise of any power of appointment, all living persons who would receive  
120 principal of the trust if the trust were to terminate at the time of the giving of such notice and all living persons  
121 who would receive or be eligible to receive distributions of income or principal of the trust if the interests of all of  
122 the beneficiaries currently eligible to receive income under paragraph ~~(e)(b)~~ (2) of this section were to terminate at  
123 the time of the giving of such notice; and

124 (4) All persons acting as adviser or protector of the trust.

125 ~~(d)-(c)~~ Any release of the obligations under ~~subsection (a) of this section~~ §§ 3521 through 3524 of this title  
126 obtained in accordance with the provisions of subsection (a) ~~(b)~~ of this section shall release the trustee from the reporting  
127 obligations of §§ 3521 through 3524 of this title for the duration of the trust, unless a shorter period of time is specified in  
128 the written notice provided to the interested parties or an order of a court of competent jurisdiction provides otherwise.

129 ~~(e)-(d)~~ Upon being released from the obligations under ~~subsection (a) of this section~~ §§ 3521 through 3524 of this  
130 title in accordance with provisions of subsection (a) ~~(b)~~ of this section, the trustee shall provide notice of such release to the  
131 Register in Chancery in the county in which the trustee would otherwise have filed the accountings required under  
132 ~~subsection (a) of this section~~ §§ 3521 through 3524 of this title, which notice shall include as exhibits copies of the requisite  
133 executed notices and requests for waiver and consent or ~~nonobjection~~ non-objection of the interested parties.

134 § 3528 Trustee's authority to invade principal in trust.

135 (a) Unless the terms of the instrument expressly provide otherwise, a trustee who has authority (whether acting at  
136 such trustee's discretion or at the direction or with the consent of an adviser), under the terms of a testamentary instrument  
137 or irrevocable inter vivos trust agreement, to invade the principal of a trust (the "first trust") to make distributions to, or for  
138 the benefit of, 1 or more proper objects of the exercise of the power, may instead exercise such authority by appointing all  
139 or part of the principal subject to the power in favor of a trustee of a trust (the "second trust") under an instrument other

140 than that under which the power to invade is created or under the same instrument, provided, however, that, except as  
141 otherwise provided in this subsection (a):

142

143 (1) The exercise of such authority is in favor of a second trust having only beneficiaries who are proper  
144 objects of the exercise of the power;

145 (2) In the case of any trust, contributions to which have been treated as gifts qualifying for the exclusion  
146 from gift tax described in § 2503(b) (26 U.S.C. § 2503(b)) of the Internal Revenue Code of 1986 (26 U.S.C. § 1 et  
147 seq.) (hereinafter referred to in this section as the "I.R.C."), by reason of the application of I.R.C. § 2503(c) (26  
148 U.S.C. § 2503(c)), the governing instrument for the second trust shall provide that the beneficiary's remainder  
149 interest shall vest and become distributable no later than the date upon which such interest would have vested and  
150 become distributable under the terms of the governing instrument for the first trust;

151 (3) The exercise of such authority does not reduce any income or unitrust interest of any beneficiary of a  
152 trust for which a marital deduction has been taken for federal tax purposes under I.R.C. § 2056 or § 2523 (26  
153 U.S.C. § 2056 or § 2523) or for state tax purposes under any comparable provision of applicable state law; and

154 (4) The exercise of such authority does not apply to trust property subject to a presently exercisable  
155 power of withdrawal held by a trust beneficiary who is the only trust beneficiary to whom, or for the benefit of  
156 whom, the trustee has authority to make distributions.

157 Notwithstanding the foregoing provisions of this subsection (a) of this section, the governing instrument for the  
158 second trust may grant a power of appointment (including a power to appoint trust property to the powerholder, the  
159 powerholder's creditors, the powerholder's estate, the creditors of the powerholder's estate or any other person, whether or  
160 not such person is a trust beneficiary) to 1 or more of the trust beneficiaries who are proper objects of the exercise of the  
161 power in the first trust. Furthermore, notwithstanding the foregoing provisions of this subsection (a), the governing  
162 instrument of the second trust may provide that, at a time or upon an event specified in the governing instrument, the  
163 remaining trust assets shall thereafter be held for the benefit of the beneficiaries of the first trust upon terms and conditions  
164 concerning the nature and extent of each such beneficiary's interest that are substantially identical to the first trust's terms  
165 and conditions concerning such beneficial interests. The exercise of a trustee's authority granted under this subsection (a)  
166 shall in all respects comply with any standard that limits the trustee's authority to make distributions from the first trust but  
167 may be exercised whether or not the trustee would have been permitted to exercise the power to make a current outright  
168 distribution of all of the trust assets in compliance with any such standard. For purposes of this subsection (a), an open class  
169 of beneficiaries identified in the governing instrument for the first trust (such as, but not limited to, a class comprised of the

170 descendants of a person who is living or who has living descendants) is a proper object of the exercise of a power to make  
171 distributions and the exercise of such a power in favor of a second trust having only beneficiaries, including unborn future  
172 beneficiaries, who are among the members of the open class satisfies the requirement of paragraph (a)(1) of this section  
173 ~~provided that~~ even if, pursuant to the terms of the governing instrument for the second trust ~~permits, the class remains, or~~  
174 might remain, open beyond the time when the class would have closed pursuant to the terms of the governing instrument  
175 for the first trust; provided, however, that the governing instrument for the second trust shall not permit distributions to or  
176 among members of the ~~class only when and to the extent~~ open class sooner than when or in excess of the amounts permitted  
177 by the governing instrument for the first trust. A trustee's power, pursuant to this subsection (a), to appoint principal in  
178 favor of the trustee of a second trust shall include the power to create the second trust.

179 (b) The exercise of the power to invade the principal of the trust under subsection (a) of this section shall be by an  
180 instrument in writing, signed and acknowledged by the trustee and filed with the records of the trust.

181 (c) The exercise of the power to invade the principal of the trust under subsection (a) of this section shall be  
182 considered the exercise of a power of appointment (other than a power to appoint to the trustee, the trustee's creditors, the  
183 trustee's estate, or the creditors of the trustee's estate) and shall be subject to the provisions of Chapter 5 of Title 25  
184 covering the time at which the permissible period of the rule against perpetuities begins and the law which determines the  
185 permissible period of the rule against perpetuities. Consequently, a second trust may have a term that is longer than the term  
186 set forth in the governing instrument for the first trust, including, but not limited to, a term measured by the lifetime of a  
187 current beneficiary.

188 (d) The provisions of this section shall not be construed to abridge the right of any trustee who has a power of  
189 invasion to appoint property in further trust which arises under any other section of this chapter or under another statute or  
190 under common law.

191 (e) When exercising the authority granted under subsection (a) of this section, the trustee and any adviser  
192 directing or consenting to the trustee's exercise of such authority shall be held to the standard of care and the standard of  
193 liability applicable to the trustee and any such adviser when making outright distributions, free from trust, to or for the  
194 benefit of 1 or more permissible distributees. No trustee or adviser shall have a duty to exercise such authority nor, absent  
195 wilful misconduct, any liability to any person for failure to exercise such authority or failure to consider whether to exercise  
196 such authority.

197 (f) This section shall be available to any trust that is administered in this State.

198 § 3536 Rights of creditors and assignees of beneficiary of trust.

199 (a) Except as expressly provided in subsections (c) and (d) of this section, a creditor of a beneficiary of a trust  
200 shall have only such rights against or with respect to such beneficiary's interest in the trust or the property of the trust as  
201 shall be expressly granted to such creditor by the terms of the instrument that creates or defines the trust or by the laws of  
202 this State. The provisions of this subsection shall be effective regardless of the nature or extent of the beneficiary's interest,  
203 whether or not such interest is subject to an exercise of discretion by the trustee or other fiduciary, and shall be effective  
204 regardless of any action taken or that might be taken by the beneficiary. Every interest in a trust or in trust property or the  
205 income therefrom that shall not be subject to the rights of creditors of such beneficiary as expressly provided in this section  
206 shall be exempt from execution, attachment, distress for rent, foreclosure, garnishment and from all other legal or equitable  
207 process or remedies instituted by or on behalf of any creditor, including, without limitation, actions at law or in equity  
208 against a trustee or beneficiary that seeks a remedy that directly or indirectly affects a beneficiary's interest such as, by way  
209 of illustration and not of limitation, an order, whether such order be at the request of a creditor or on the court's own motion  
210 or other action, that would:

211 (1) Compel the trustee or any other fiduciary or any beneficiary to notify the creditor of a distribution  
212 made or to be made from the trust;

213 (2) Compel the trustee or beneficiary to make a distribution from the trust whether or not distributions  
214 from the trust are subject to the exercise of discretion by a trustee or other fiduciary;

215 (3) Prohibit a trustee from making a distribution from the trust to or for the benefit of the beneficiary  
216 whether or not distributions from the trust are subject to the exercise of discretion by a trustee or other fiduciary;

217 or

218 (4) Compel the beneficiary to exercise a power of appointment or power of revocation over the trust.

219 Every direct or indirect assignment, or act having the effect of an assignment, whether voluntary or involuntary, by a  
220 beneficiary of a trust of the beneficiary's interest in the trust or the trust property or the income or other distribution  
221 therefrom that is unassignable by the terms of the instrument that creates or defines the trust is void. No beneficiary  
222 may waive the application of this subsection (a). For purposes of this subsection (a), the creditors of a beneficiary shall  
223 include, but not be limited to, any person that has a claim against the beneficiary, the beneficiary's estate, or the  
224 beneficiary's property by reason of any forced heirship, legitime, marital elective share, or similar rights. The provisions  
225 of this subsection shall apply to the interest of a trust beneficiary until the actual distribution of trust property to the  
226 beneficiary. Regardless of whether a beneficiary has any outstanding creditor, a trustee may make direct payment of  
227 any expense on behalf of such beneficiary to the extent permitted by the instrument that creates or defines the trust and



228 may exhaust the income and principal of the trust for the benefit of such beneficiary. A trustee shall not be liable to any  
229 creditor of a beneficiary for paying the expenses of a beneficiary.

230 (b) Notwithstanding subsection (a) of this section, a beneficiary entitled to receive all or a part of the income of a trust  
231 shall have the right to assign gratuitously in writing, at any time or from time to time, a stated fraction or percentage of  
232 the beneficiary's entire remaining income interest in such trust to the State or to any corporation, church, community  
233 chest, fund, or foundation authorized as a deduction pursuant to §§ 1107, 1108, and 1109 of Title 30 and such  
234 assignment shall be valid and binding on all parties irrespective of any restrictions on assignment contained in the  
235 instrument creating or defining the trust; provided, however, that this subsection shall not authorize a beneficiary of  
236 such a trust to reduce any part of the beneficiary's income interest which is subject to such restrictions on assignment  
237 below 50% of what such interest would be if no assignments were made under this subsection. Any interest assigned  
238 under this subsection, together with a corresponding portion of the corpus of the trust, shall be treated as a separate  
239 share and thereafter no provision of the trust permitting invasion of corpus for the benefit of the assignor shall be  
240 exercisable with respect to such share.

241 (c)(4) Except as provided in subchapter VI of this Chapter 35 of this title, if the trustor is also a beneficiary of a  
242 trust, a provision that restrains the voluntary or involuntary transfer of the trustor's beneficial interest shall not prevent such  
243 trustor's creditors from satisfying their respective claims from the trustor's interest in the trust to the extent that such interest  
244 is attributable to the trustor's contributions to the trust. ~~The preceding sentence shall have no application to a trustor if such~~  
245 ~~trustor's sole retained beneficial interest is a right to receive discretionary distributions to reimburse the trustor's income tax~~  
246 ~~liability attributable to the trust. Further, a beneficiary of a trust shall not be considered a trustor of a trust merely because~~  
247 ~~of a lapse, waiver, or release of the beneficiary's right to withdraw a part of the trust property if the value of the property~~  
248 ~~that could have been withdrawn by exercising the right of withdrawal in any calendar year does not exceed at the time of~~  
249 ~~the lapse, waiver, or release the greater of the amount specified in:~~ provided, however, that the trustor shall not be  
250 considered a beneficiary for purposes of this section merely because the trustor may be named as an additional trust  
251 beneficiary or is a proper object of the exercise of a power of appointment over trust property held by someone other than  
252 the trustor. A trustor's creditors may satisfy their respective claims from the trustor's interest in the trust to the extent  
253 provided in the preceding sentence except where the trustor has not retained any beneficial interest in the trust other than  
254 either or both (1) a beneficial interest that is contingent upon surviving the trustor's spouse such as, but not limited to, an  
255 interest in an inter vivos marital deduction trust in which the interest of the trustor's spouse is treated as qualified  
256 terminable interest property under § 2523(f) of the Internal Revenue Code of 1986 [26 U.S.C. § 2523(f)], as amended, an  
257 interest in an inter vivos marital deduction trust that is treated as a general power of appointment trust for which a marital

258 deduction would be allowed under § 2523(a) and (e) of the Internal Revenue Code of 1986 [26 U.S.C. § 2523(a) and (e)],  
259 as amended, and an interest in an inter vivos trust commonly known as a “credit shelter trust” that used all or a portion of  
260 the trustor’s unified credit under § 2505 of the Internal Revenue Code [26 U.S.C. § 2505], as amended, and (2) a right to  
261 receive discretionary distributions to reimburse the trustor’s income tax liability attributable to the trust. Further, a  
262 beneficiary of a trust shall not be considered a trustor of the trust merely because of a lapse, waiver, or release of the  
263 beneficiary’s right to withdraw all or a part of the trust property.

264 ~~a. Section 2041(b)(2) or § 2514(e) of the Internal Revenue Code of 1986 (26 U.S.C. § 2041(b)(2) or §~~  
265 ~~2514(e)), or any successor provision thereto; or~~

266 ~~b. Section 2503(b) of the Internal Revenue Code of 1986 (26 U.S.C. § 2503(b)), or any successor~~  
267 ~~provision thereto.~~

268 ~~(2) For the purposes of this section, property contributed to an inter vivos marital trust that is treated as qualified~~  
269 ~~terminable interest property under § 2523(f) of the Internal Revenue Code of 1986 [26 U.S.C. § 2523(f)], as amended, or to~~  
270 ~~an inter vivos marital trust that is treated as a general power of appointment trust for which a marital deduction would be~~  
271 ~~allowed under § 2523(a) and (e) of the Internal Revenue Code of 1986 [26 U.S.C. § 2523(a) and (e)], as amended, over~~  
272 ~~which the settlor's spouse holds either a general power of appointment exercisable in favor of the settlor's spouse's estate or~~  
273 ~~a limited power of appointment, or both, shall not be deemed to have been contributed by the settlor even if the settlor~~  
274 ~~would be a beneficiary of the trust subsequent to the death of the settlor's spouse.~~

275 (d) For purposes of subsection (a) of this section, a creditor shall have no right against the interest of a beneficiary  
276 of a trust or against the beneficiary or trustee of the trust with respect to such interest unless:

277 (1) The beneficiary has a power to appoint all or part of the trust property to the beneficiary, the  
278 beneficiary's estate, the beneficiary's creditors, or the creditors of the beneficiary's estate by will or other  
279 instrument such that the appointment would take effect only upon the beneficiary's death and the beneficiary  
280 actually exercises such power in favor of the beneficiary, the beneficiary's creditors, the beneficiary's estate, or the  
281 creditors of the beneficiary's estate but then only to the extent of such exercise.

282 (2) The beneficiary has a power to appoint all or part of the trust property to the beneficiary, the  
283 beneficiary's creditors, the beneficiary's estate, or the creditors of the beneficiary's estate during the beneficiary's  
284 lifetime and the beneficiary actually exercises such power in favor of the beneficiary, the beneficiary's creditors,  
285 the beneficiary's estate, or the creditors of the beneficiary's estate but then only to the extent of such exercise.

286 (3) The beneficiary has the power to revoke the trust in whole or in part during the beneficiary's lifetime  
287 and, upon such revocation, the trust or the part thereof so revoked would be possessed by the beneficiary. This  
288 paragraph shall have no application to any part of the trust that may not be so revoked by the beneficiary.

289 (e) Notwithstanding subsection (a) of this section, a beneficiary of a charitable-remainder unitrust or charitable-  
290 remainder annuity trust as such terms are defined in § 664 of the Internal Revenue Code of 1986 (26 U.S.C. § 664) and any  
291 successor provision thereto, shall have the right, at any time and from time to time, by written instrument delivered to  
292 trustee, to release such beneficiary's retained interest in such a trust, in whole or in part, to a charitable organization that has  
293 or charitable organizations that have a succeeding beneficial interest in such trust. Notwithstanding subsection (a) of this  
294 section, a beneficiary may also disclaim an interest in a trust pursuant to Chapter 6 of this title.

295 § 3544 Successor trustee.

296 Unless provided otherwise by the terms of the governing instrument or by order of Court, in the absence of actual  
297 knowledge of a breach of trust, or information concerning a possible breach of trust that would cause a reasonable person to  
298 inquire, a successor trustee appointed in accordance with the terms of the governing instrument ~~or~~, by the Court, or by  
299 nonjudicial settlement agreement, is under no duty to examine the accounts and records of its predecessor trustee or to  
300 inquire into the acts or omissions of its predecessor, is not liable for any failure to seek redress for any act or omission of  
301 any predecessor trustee, shall have responsibility only for property which is actually delivered to it by its predecessor and  
302 shall have all of the powers and discretions conferred in the governing instrument upon the original trustee.

303 § 3580 Definition.

304 ~~In this title, "good faith" means honesty in fact and the observance of reasonable standards of fair dealing.~~ In this  
305 subchapter, the term "trustee" includes fiduciaries and other persons exercising, or directing the exercise of, trust powers.

306 Section 5. Amend Chapter 5, Title 25 of the Delaware Code by making deletions as shown by strike through and  
307 insertions as shown by underline as follows:

308 § 501 Powers of appointment; effect of rule against perpetuities.

309 Every estate or interest in property, real or personal, created through the exercise, by will, deed or other  
310 instrument, of a power of appointment, irrespective of:

311 (1) Whether such power is ~~limited or unlimited~~ nongeneral or general as to appointees;

312 (2) The manner in which such power was created or may be exercised;

313 (3) Whether such power was created before or after the passage of this section,

314 shall, for the purpose of any rule of law against perpetuities, remoteness in vesting, restraint upon the power of  
315 alienation or accumulations now in effect or hereafter enacted be deemed to have been created at the time of the

316 exercise and not at the time of the creation of such power of appointment. No such estate or interest shall be void on  
317 account of any such rule unless the estate or interest would have been void had it been created at the date of the exercise  
318 of such power of appointment otherwise than through the exercise of a power of appointment.

319

320 § 502 Release of powers of appointment.

321 (a) Any power which is exercisable by deed, by will, by deed or will, or otherwise, whether general or ~~special~~  
322 nongeneral, other than a power in trust which is imperative, is releasable, either with or without consideration, by written  
323 instrument signed by the grantee and delivered as provided in this section.

324 (b) A power which is releasable may be released with respect to the whole or any part of the property subject to  
325 such power and may also be released in such manner as to reduce or limit the persons or objects, or classes of persons or  
326 objects, in whose favor such power would otherwise be exercisable. No release of a power shall be deemed to make  
327 imperative a power which was not imperative prior to such release, unless the instrument of release expressly so provides.

328 (c) A release of a power of appointment shall be effective upon delivery to any 1 of the following:

329 (1) Any person specified for such purpose in the instrument creating the power;

330 (2) Any trustee of the property to which the power relates;

331 (3) Any person, other than the grantee, who could be adversely affected by an exercise of the power;

332 (4) The recorder in any county and when so filed the recorder shall record the release in a separate  
333 docket, but any such release, recorded in any county record prior to April 7, 1947, shall be deemed to be sufficient  
334 delivery within the provisions of this section.

335 (d) This section shall apply to releases heretofore and hereafter executed, but nothing herein contained shall be  
336 deemed to affect the validity of any release heretofore executed.

337 § 503 Rule against perpetuities.

338 (a) No interest created in real property held in trust shall be void by reason of the common-law rule against  
339 perpetuities or any common-law rule limiting the duration of noncharitable purpose trusts, and no interest created in  
340 personal property held in trust shall be void by reason of any rule, whether the common-law rule against perpetuities, any  
341 common-law rule limiting the duration of noncharitable purpose trusts, or otherwise.

342 (b) In this State, the rule against perpetuities for real property held in trust is that at the expiration of 110 years  
343 from the later of the date on which a parcel of real property or an interest in real property is added to or purchased by a trust  
344 or the date the trust became irrevocable, such parcel or interest, if still held in such trust, shall be distributed in accordance  
345 with the trust instrument regarding distribution of such property upon termination of the trust as though termination

346 occurred at that time, or if no such provisions exist, to the persons then entitled to receive the income of the trust in  
347 proportion to the amount of the income so receivable by such beneficiaries, or in equal shares if specific proportions are not  
348 specified in the trust instrument. In the event that the trust instrument does not provide for distribution upon termination and  
349 there are no income beneficiaries of the trust, such parcel or interest shall be distributed to such then living persons who are  
350 then determined to be the trustor's or testator's distributees by the application of the intestacy laws of this State then in  
351 effect governing the distribution of intestate real property as though the trustor or testator had died at that particular time,  
352 intestate, a resident of this State, and owning the property so distributable.

353 This rule shall not apply to the following trusts, all of which may be perpetual:

354 (1) A trust for the benefit of 1 or more charitable organizations as described in §§ 170(c), 2055(a) and  
355 2522(a) of the United States Internal Revenue Code of 1986 (Title 26 of the United States Code) [26 U.S.C. §§  
356 170(c), 2055(a) and 2522(a)], or under any similar statute;

357 (2) A trust created by an employer as part of a stock bonus plan, pension plan, disability or death benefit  
358 plan or profit sharing plan for the exclusive benefit of some or all of its employees, to which contributions are  
359 made by such employer or employees, or both, for the purpose of distributing to such employees the earnings or  
360 the principal, or both earnings and principal, of the fund held in trust;

361 (3) A statutory trust formed under Chapter 38 of Title 12 for which a certificate of statutory trust is on  
362 file in the office of the Secretary of State; or

363 (4) A trust of real or personal property created for the perpetual care of cemeteries pursuant to the  
364 provisions of subchapter IV of Chapter 35 of Title 12.

365 (c) For purposes of this rule against perpetuities, trusts created by the exercise of a power of appointment, whether  
366 ~~limited nongeneral~~ or general, and whether by will, deed or other instrument, shall be deemed to have become irrevocable  
367 by the trustor or testator on the date on which such exercise became irrevocable. Donors, not donees, of ~~limited nongeneral~~  
368 powers of appointment and donees exercising, not donors of, general powers of appointment, shall be deemed the trustors  
369 or testators for purposes of distributions to the trustor's or testator's distributees pursuant to subsection (b) of this section.  
370 Notwithstanding the foregoing, in the case of a power of appointment described in § 504 of this title as a "first power," and  
371 subject to § 504(a), trusts created by the exercise of the power of appointment, whether by will, deed or other instrument,  
372 shall be deemed to have become irrevocable by the trustor or testator on the date on which the first power was created.

373 (d) The rule contained in this section is subject to §§ 501 and 502 of this title concerning powers of appointment.

374 (e) For purposes of this section, real property does not include any intangible personal property such as an interest  
375 in a corporation, limited liability company, partnership, statutory trust, business trust or other entity, regardless of whether

376 such entity is the owner of real property or any interest therein. If a trust owns an interest in an entity described in the  
377 preceding sentence and the entity is the owner of real property, but the entity ceases to exist so that the trust becomes the  
378 owner of any interest in such real property, the trust shall not become void or subject to termination by reason of the  
379 common-law rule against perpetuities or other similar rule, and except as otherwise provided in the governing instrument,  
380 the trustee may either distribute the interest in real property in accordance with subsection (b) of this section or convey the  
381 interest in real property to another such entity in exchange for an interest in the entity to be held as before.

382 § 504 Certain powers of appointment.

383 (a) Notwithstanding any other provision of this chapter, and except as otherwise provided in subsection (b) of this  
384 section, in the case of a power of appointment over property held in trust (the “first power”), if the trust is not subject to, or  
385 has an inclusion ratio of zero for purposes of, the tax on generation-skipping transfers imposed pursuant to Chapter 13 of  
386 the Internal Revenue Code [26 U.S.C. Ch. 13] or any successor provision thereto and the first power may not be exercised  
387 in favor of the donee, the donee’s creditors, the donee’s estate or the creditors of the donee’s estate, then every estate or  
388 interest in property, real or personal, created through the exercise, by will, deed or other instrument, of the first power,  
389 irrespective of:

390 (1) The manner in which the first power was created or may be exercised, or

391 (2) Whether the first power was created before or after the passage of this section, shall, for the purpose  
392 of any rule of law against perpetuities, remoteness in vesting, restraint upon the power of alienation or  
393 accumulations now in effect or hereafter enacted, be deemed to have been created at the time of the creation of,  
394 and not at the time of the exercise of, the first power. For purposes of applying the foregoing rule, if any part of an  
395 estate or interest in property created through the exercise of the first power includes another power of appointment  
396 (the “second power”), then the second power of appointment and any estate or interest in property (including  
397 additional powers of appointment) created through the exercise of the second power shall be deemed to have been  
398 created at the time of the creation of the first power.

399 (b) Subsection (a) of this section shall not apply to the exercise of a first power or second power over property held  
400 in a trust that is not subject to, or has an inclusion ratio of zero for purposes of, the tax on generation-skipping transfers  
401 imposed pursuant to Chapter 13 of the Internal Revenue Code [26 U.S.C. Ch. 13] or any successor provision thereto if the  
402 instrument of exercise of any such power makes express reference to subsection (a) of this section and expressly states that  
403 subsection (a) of this section shall not apply to the exercise of the power or makes express reference to § 501 of this title  
404 and expressly states that § 501 of this title shall apply to the exercise of the power.

405 § 505 Exercise of powers of appointment.

406 If (a) Unless the instrument creating a nongeneral power of appointment whether limited or general, does not  
407 expressly manifest manifests a contrary intent of the donor, the donee of such a power, in addition to exercising the power  
408 in any other manner permitted by law and the instrument creating the power, may effectively appoint all or a portion of the  
409 assets subject to such power to a trustee or trustees for the benefit of 1 or more objects of the power and may, in addition,  
410 create in an object of the power a general power of appointment, exercisable during life or at death, over assets subject to  
411 the original power or a limited nongeneral power of appointment, exercisable during life or at death, to appoint such assets  
412 among objects all of whom are objects of the original power.

413 (b) Even if the instrument creating a general power of appointment that is exercisable in favor of the donee or the  
414 donee's estate expressly manifests a contrary intent of the donor, the donee of such a power may make any appointment of  
415 all or a portion of the assets subject to such power, including one in trust and one that creates a power of appointment in  
416 another, that the donee could make by appointing to the donee or the donee's estate and then disposing of the appointive  
417 assets as owned property.

418 (c) The donee of a general power of appointment that is exercisable only in favor of the donee's creditors or the  
419 creditors of the donee's estate may effectively appoint all or a portion of the assets subject to such power only to those  
420 creditors.

421 (d) For purposes of this section 505, the donee of a general power of appointment that is exercisable in favor of the  
422 donee's creditors or the creditors of the donee's estate and is also exercisable in favor of other objects of the power not  
423 including the donee or the donee's estate shall be treated as having two powers of appointment including (1) a general  
424 power of appointment described in subsection (c) above and (2) a nongeneral power of appointment described in subsection  
425 (a) above.

426 Section 6. The provisions of this Act shall become effective on August 1, 2014 and shall apply to trusts and  
427 powers of appointment whenever created.

#### SYNOPSIS

Section 1 of the Act moves the definition of "good faith", applicable throughout Title 12, from Section 3580 to Section 101 of Title 12.

Sections 2 and 3 of the Act is intended to (i) reorganize and clarify section 3303 but not substantively alter the current statute; and (ii) eliminate the requirement in section 3322 that a fiduciary appointing an agent pursuant to the statute may only do so when the fiduciary reasonably believes the appointment would improve investment performance or administrative efficiency but retain the requirement that the fiduciary must reasonably believe the appointment is in the best interest of all interested persons.

Section 4 of the Act is intended to (i) clarify but not substantively alter the provisions of sections 3521 through 3523, as amended in January, 2014, by reorganizing the substantive provisions of those sections as new sections 3521 through 3526; (ii) revise section 3528 to clarify that an appointment in further trust made pursuant to that section may be

made to a further trust for the benefit of an open class of beneficiaries even if the class remains open beyond the time when the class would have closed pursuant to the terms of the governing instrument for the initial trust, as might happen, for example, if the initial trust were of limited duration and the further trust were of unlimited duration; (iii) revise section 3536 to clarify existing law regarding when a trust is considered self-settled for purposes of determining creditor rights and broaden the statutory protection from creditor claims afforded to trustors to include all trusts in which the trustor holds an interest that is contingent upon surviving the trustor's spouse; (iv) revise section 3544 to take into account recently enacted section 3338 permitting the appointment of successor trustees in certain circumstances; and (v) revise section 3580 to clarify that the various provisions of subchapter VII of Chapter 35 of Title 12 making reference to trustees shall be deemed to refer also to fiduciaries and nonfiduciaries, such as direction advisers described in section 3313 of Title 12, not technically designated as trustees but nevertheless performing, or directing others in the performance of, some or all of the duties customarily performed by trustees.

Section 5 of the Act is intended to revise Chapter 5 of Title 25 to (i) employ uniform terminology to describe general and nongeneral powers of appointment; (ii) revise section 505 to (1) make the language of current section 505, regarding the exercise of powers of appointment in favor of trusts, applicable to nongeneral powers; (2) create a new rule for general powers exercisable in favor of the powerholder or the powerholder's estate patterned upon § 19.13(a) of the Restatement of Property (Third) Wills and Other Donative Transfers (the "Restatement"); and (3) create a new rule for general powers exercisable only in favor of the powerholder's creditors or the creditors of the powerholder's estate patterned upon § 19.13(b) of the Restatement; and (iii) allow powerholders, having a nongeneral power of appointment over property of a trust exempt from generation-skipping transfer tax, the option of exercising the power in a manner designed to trigger estate inclusion under § 2041(a)(3) of the Internal Revenue Code.

Section 6 of the Act provides for the effective date of the Act.