

## AN ACT

## D.C. ACT 15-281

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA  
DECEMBER 18, 2003*Codification  
District of  
Columbia  
Official Code*

2001 Edition

2004 Winter  
Supp.West Group  
Publisher

To amend, on an emergency basis, section 47-3701(4) of the District of Columbia Official Code to clarify the estate tax filing threshold of \$1 million applies to decedents whose death occurs on or after January 1, 2003.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Estate and Inheritance Tax Clarification Emergency Act of 2003".

Sec. 2. Section 47-3701(4) of the District of Columbia Official Code is amended as follows:

Note,  
§ 47-3701

(a) Subparagraph (B) is amended to read as follows:

"(B) For a decedent whose death occurs on or after January 1, 2002:

"(i) The maximum amount of credit for state death taxes allowed by section 2011 of the Internal Revenue Code;

"(ii) Any scheduled increase in the unified credit provided in section 2010 of the Internal Revenue Code or thereafter shall not apply and the amount of the unified credit shall be \$675,000; and

"(iii) An estate tax return shall not be required to be filed if the decedent's gross estate does not exceed \$675,000."

(b) A new subparagraph (C) is added to read as follows:

"(C) For a decedent whose death occurs on or after January 1, 2003:

"(i) The maximum amount of credit for state death taxes allowed by section 2011 of the Internal Revenue Code;

"(ii) Any scheduled increase in the unified credit provided in section 2010 of the Internal Revenue Code or thereafter shall not apply and the amount of the unified credit shall be \$345,800; and

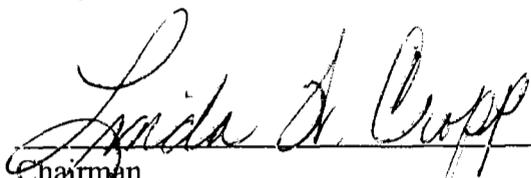
"(iii) An estate tax return shall not be required to be filed if the decedent's gross estate does not exceed \$1 million."

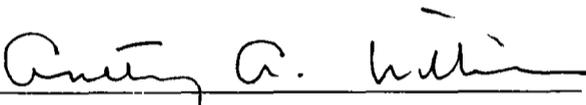
Sec. 3. Fiscal impact statement.

The Council adopts the attached fiscal impact statement as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

  
Chairman  
Council of the District of Columbia

  
Mayor  
District of Columbia  
APPROVED  
December 18, 2003

DISTRICT OF COLUMBIA REGISTER  
 COUNCIL OF THE DISTRICT OF COLUMBIA  
 OFFICE OF THE BUDGET DIRECTOR

JAN 9 - 2004 ENROLLED ORIGINAL  
 FISCAL IMPACT STATEMENT

Bill Number:	Type: Emergency ( X ) Temporary ( ) Permanent ( )	Date Reported: December 1, 2003
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Subject/Short Title: "Estate and Inheritance Tax Clarification Emergency Act of 2003".

Part I. Summary of the Fiscal Estimates of the Bill		
	YES	NO
1. It will impact spending. (If "Yes," complete Section 1 in the Fiscal Estimate Worksheet).	( )	( x )
a) It will affect local expenditures.	( )	( x )
b) It will affect federal expenditures.	( )	( x )
c) It will affect private/other expenditures.	( )	( x )
d) It will affect intra-District expenditures.	( )	( x )
2. It will impact revenue. (If "Yes," complete Section 2 in the Fiscal Estimate Worksheet).	( )	( x )
a) It will impact local revenue.	( )	( x )
b) It will impact federal revenue.	( )	( x )
c) It will impact private/other revenue.	( )	( x )
d) It will impact intra-District revenue.	( )	( )
3. The bill will have NO or minimal fiscal impact. (If "Yes," explain below).	( x )	
The proposed emergency legislation is a clarification of existing law, and as such will have no fiscal impact.		

Part II. Other Impact of the Bill		
	YES	NO
If you check "Yes" for each question, please explain on separate sheet, if necessary.		
1. It will affect an agency and/or agencies in the District.	( )	( x )
2. Are there performance measures/output for this bill?	( )	( x )
3. Will it have results/outcome, i.e., what would happen if this bill is not enacted?	( )	( x )
4. Are funds appropriated for this bill in the Budget and Financial Plan for the current year?	( )	( x )
The proposed emergency legislation is a clarification of existing law, and as such will have no fiscal impact.		

Sources of information: Committee staff and Office of Tax and Revenue.	Councilmember: Evans
	Staff Person & Tel: Jeff Coudriet, 202/724-8058.
	Council Budget Director's Signature: <i>[Signature]</i> 11/1/03

ENROLLED ORIGINAL

AN ACT  
D.C. ACT 15-282

*Codification  
District of  
Columbia  
Official Code*

2001 Edition

2004 Winter  
Supp.

West Group  
Publisher

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 18, 2003

To amend, on an emergency basis due to Congressional review, the Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Act of 1998 and the District of Columbia School Reform Act of 1995 to provide a definition for resident student, to clarify the dates of the pupil counts to which appropriations under the Uniform Per Student Funding Formula apply for District of Columbia public schools versus that for public charter schools, to require the Mayor to establish a committee to adopt a policy governing proof of District residency for school enrollment purposes, to define requirements and responsibility for audits of enrollment at District of Columbia public schools and public charter schools, to provide for quarterly payments to the public charter schools, to define their schedule and basis in enrollment, to clarify the effect the annual enrollment audit is to have upon the schedule and amount of payments, to make conforming amendments regarding the definition of nonresident and quarterly enrollment reporting Funding Formula, to require that the Mayor be responsible for collecting enrollment reports until the State Education Office assumes the role to eliminate redundant or inconsistent audit provisions, to make conforming amendments to the fund transfer provisions for public charter schools, and to clarify the definition of new schools.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Public School Enrollment Integrity Clarification Congressional Review Emergency Amendment Act of 2003".

Sec. 2. The Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Act of 1998, effective March 26, 1999 (D.C. Law 12-207; D.C. Official Code § 38-2901 *et seq.*), is amended as follows:

(a) Section 102 (D.C. Official Code § 38-2901) is amended by adding a new paragraph (10A) to read as follows:

Note,  
§ 38-2901

“(10A) “Resident student” means a minor enrolled in a District of Columbia

## ENROLLED ORIGINAL

public school or public charter school who has a parent, guardian, or custodian residing in the District of Columbia or an adult enrolled in a District of Columbia public school or a public charter school who resides in the District of Columbia.”

(b) Section 107 (D.C. Official Code § 38-2906) is amended to read as follows:

Note,  
§ 38-2906

"(a) Annual appropriations for the DCPS pursuant to the Formula shall be based on the number of resident students enrolled in the DCPS on October 5 in the year preceding the fiscal year for which the appropriation is made. This count shall be verified as provided in subsection (e) of this section.

"(b) Annual appropriations for the public charter schools pursuant to the Formula shall equal the total estimated costs for the following:

"(1) The number of resident students enrolled in all public charter schools combined as of October 5 in the year preceding the fiscal year for which the appropriation is made, and verified as provided in subsection (e) of this section, plus or minus;

"(2) The number of resident students projected to be enrolled in all public charter schools combined during the fiscal year for which the appropriation is made, and calculated as provided in subsection (f) of this section, plus;

"(3) The annual budget of the District of Columbia Public Charter School Board and, beginning in fiscal year 2002, the Public Charter School Office of the Board of Education, plus;

"(4) Five percent of the total amount generated pursuant to paragraphs (1), (2) and (3) of this subsection, to be put into escrow as a reserve for payments to public charter schools in case enrollment, including enrollment in special needs categories, should exceed that of the projections on which costs are based pursuant to paragraph (2) of this subsection. Any amount remaining in the escrow at the end of each fiscal year shall revert to the General Fund.

"(c) The Mayor shall establish a committee to develop and implement, within 90 days of the effective date of the Public School Enrollment Integrity Congressional Review Emergency Amendment Act of 2001, effective November 29, 2001 (D.C. Act 14-19; 48 DCR 11239), a policy governing proof of District residency for the purposes of this section and the District of Columbia Nonresident Tuition Act, approved September 8, 1970 (74 Stat. 853; D.C. Official Code § 38-302 *et seq.*). The committee shall be composed of the Mayor, the Chair of the Council Committee on Education, Libraries and Recreation, the Superintendent of District of Columbia Public Schools, a representative of each of the eligible chartering authorities, and a representative of the D.C. Charter Public School Coalition. Upon establishment of a state education office, the Mayor shall transfer this function to that office.

"(d) The residency policy developed pursuant to subsection (c) of this section shall apply to students in DCPS and the public charter schools.

"(e) The student counts reported for October 5 of each year shall be verified by an independent contractor commissioned by the Mayor. The independent contractor shall perform a census on the student enrollment of each DCPS and of each public charter school. The

## ENROLLED ORIGINAL

verification process shall begin no later than one week following the day on which the count is taken. The verification shall cover the information required by section 2402 of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 257; D.C. Official Code § 38-1804.02) ("School Reform Act"), and shall be transmitted by the Mayor to the Council, the Authority, the Comptroller General of the United States, and the appropriate congressional committees no later than the following December 31. Until the verification is transmitted, the unaudited October count shall serve as the basis for the annual appropriation for the following fiscal year and for quarterly payments.

"(f) Preliminary projections of Public Charter School enrollment shall be made by each chartering authority for the Public Charter Schools under its supervision, and submitted to the Mayor by the date on which the DCPS is required to submit its budget request to the Mayor. The chartering authorities may submit revisions of such projections to the Mayor and Council at any time before the Council committee with oversight responsibilities for the public education budget reports its recommendations on that budget to the Council."

(c) A new section 107a is added to read as follows:

Note,  
§ 38-2906

"Sec. 107a. Payments.

"(a) Except as provided in subsection (b)(2) of this section, following the enactment of an act making appropriations for the District of Columbia each fiscal year, the Mayor shall provide to DCPS the full amount of its appropriation in accordance with standard procedures for independent agencies. The Mayor shall make payments to each public charter school from the escrow account established under section 2403 of the School Reform Act to a bank designated by each school. The annual payment shall be made in the form of four equal quarterly payments calculated in accordance with subsections (b), (c) and (d) of this section, provided; however, that the entire annual payment for facilities pursuant to section 109 shall be included in the first payment of the fiscal year and that any payment for new charter schools pursuant to section 2403 of the School Reform Act shall also be included in the first payment of the fiscal year. The first payment shall be made no later than July 15; subsequent payments shall be made no later than October 15, January 15, and April 15.

"(b)(1) Except as provided in paragraph (2) of this subsection, each payment shall be one-fourth of each public charter school's entitlement based on its October enrollment count. The basis of the July 15 and October 15 payments shall be the unaudited numbers contained in the reports submitted by the eligible chartering authorities under section 2402(a) of the School Reform Act. The basis of the January 15 and April 15 payments shall be the audited October enrollment numbers, provided that these amounts shall be adjusted in accordance with the provisions of subsection (c) of this section.

"(2) The payment of October 15, 2000 shall be 50% of each public charter school's entitlement based on its unaudited October 5 enrollment count.

"(c) Payments shall not be reduced or delayed pending the conduct and results of the audit prescribed by section 107(e). If the audit finds that the number of verified resident

students in enrollment at any public charter school differs from that on which its July 15 and October 15 payments were based, the Mayor shall recalculate the appropriate amount of subsequent payments accordingly, adjusting them by the amount of the discrepancy.

"(d) Payments for special education, limited English proficient students, and other add-on components of the Funding Formula shall be included in the quarterly payments to public charter schools. Payments shall reflect one-quarter of the annual per student amount for each add-on; provided, however, that add-ons for special education and limited English proficient students shall be added on a pro rata basis from the date on which a public charter school begins to provide add-on services for such students.

"(e) Prior to or concurrent with any payment made pursuant to this section, the Chief Financial Officer of the District of Columbia shall provide to each public charter school an accounting indicating what the payment is for and how it was calculated."

Sec. 3. The District of Columbia School Reform Amendment Act of 1995, approved April 26, 1996 (110 Stat. 226; D.C. Official Code § 38-1800.01 *et seq.*), is amended as follows:

(a) Section 2002(25)(A) (D.C. Official Code § 38-1800.02(25)(A)) is amended by striking the word "parent" and inserting the phrase "parent, guardian or custodian" in its place.

Note,  
§ 38-1800.02

(b) Section 2402 (D.C. Official Code § 38-1804.02) is amended as follows:

Note,  
§ 38-1804.02

(1) Subsection (a) is amended to read as follows:

"(a) *Quarterly reporting requirement.* -- On June 30, October 15, December 15, and March 30 of each year the District of Columbia public schools and each eligible chartering authority shall submit a report to the Mayor containing the information described in subsection (b) of this section that is applicable to their schools; provided, however, that in the case of the June 30 report, the information submitted by each eligible chartering authority shall be in the form of estimates of the number of students who will fall into each category on the following October 5."

(2) Subsection (b) is amended by striking the phrase "*Calculation of the number of students.* -- Not later than 30 days after April 26, 1996, and not later than October 15, of each year thereafter, the State Education Office shall calculate the following:" and inserting the phrase "*Information required.* -- The reports described in subsection (a) of this section shall contain the following information:" in its place.

(3) Subsection (c) is amended to read as follows:

"(c) *Annual reports.* -- Not later than October 30 of each year the Mayor shall prepare and submit to the Authority (during a control year), the Council, the Comptroller General of the United States, and the appropriate congressional committees a report containing a summary of the calculations made pursuant to subsection (b) of this subsection, including the four immediately prior reporting periods specified in subsection (a) of this section."

(4) Subsection (d) is repealed.

(c) Section 2403 (D.C. Official Code § 38-1804.03) is amended as follows:

Note,  
§ 38-1804.03

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(1) Subsection (a)(2) is amended as follows:

(A) Subparagraph (A) is amended to read as follows:

“(A) *Initial payment.* --

“(i) *In General.* -- Except as provided in sub-subparagraph (ii) of this subparagraph, no later than July 15, October 15, January 15, and April 15 of each year, the Mayor shall transfer, by electronic funds transfer, the quarterly payments for each public charter school as prescribed in section 107a of the Uniform Per Student Funding Formula for Public Schools and Public Charter Schools Act of 1998, passed by the Council on an emergency basis on September 16, 2003 (Enrolled version of Bill 15-431), to a bank designated by such school.

“(ii) *Reduction in case of a new school.* -- In the case of a public charter school that has received a payment pursuant to subsection (b) of this section in the fiscal year immediately preceding the fiscal year in which a transfer pursuant to sub-subparagraph (i) of this subparagraph is made, the amounts transferred to the school under sub-subparagraph (i) of this subparagraph shall be reduced by an amount equal to 25% of the amount of the payment made pursuant to subsection (b) of this section.”

(B) Subparagraph (B) is repealed.

(2) Subsection (b) is amended as follows:

(A) Paragraph (4) is amended to read as follows:

“(4) *Credits to fund.*— Upon the receipt of each of its payments pursuant to subsection (a)(2)(A) of this section by a public charter school described in paragraph (5) of this subsection, the Chief Financial Officer of the District of Columbia shall credit the New Charter School Fund with 25 % of the amount paid to the school pursuant to paragraph (3) of this subsection.”

(B) Paragraph (5)(B) is amended to read as follows:

“(B) Has had its petition to establish a public charter school approved pursuant to section 2203 and is scheduled to begin operation as a public charter school in the fiscal year for which funds are appropriated to carry out the provisions of this subsection.”

(3) A new subsection (d) is added to read as follows:

“(d) *Additional payment to new schools.* – Until section 441 of the District of Columbia Home Rule Act is amended to establish the first day of the fiscal year for D.C. Public Schools and Public Charter Schools as July 1, the amount of payment to a public charter school described in subsection (b)(5)(B) of this section, shall be increased by 1/12 of the total dollar amount to which the public charter school is entitled for the fiscal year based on its unaudited October 5 enrollment.”

Sec. 4. Repealers.

(a) The Public School Enrollment Integrity Emergency Amendment Act of 2003, effective July 29, 2003 (D.C. Act 15-139; 50 DCR 6866), is repealed.

(b) The Public School Enrollment Integrity Temporary Amendment Act of 2003, passed

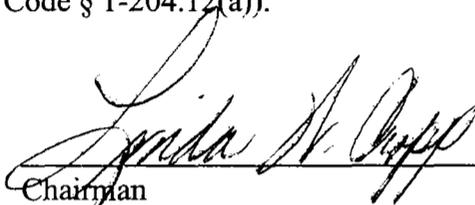
on second reading on September 16, 2003 (Enrolled version of Bill 15-404), is repealed.

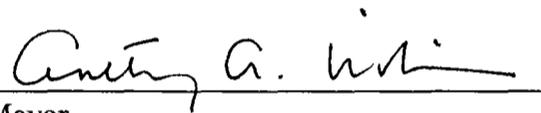
Sec. 5. Fiscal impact statement.

The fiscal impact statement is attached.

Sec. 6. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto) and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

  
\_\_\_\_\_  
Chairman  
Council of the District of Columbia

  
\_\_\_\_\_  
Mayor  
District of Columbia  
APPROVED  
December 18, 2003

COUNCIL OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE BUDGET DIRECTOR FISCAL IMPACT STATEMENT

Bill Number:	Type: Emergency ( <input checked="" type="checkbox"/> ) Temporary ( <input checked="" type="checkbox"/> ) Permanent ( )	Date Reported: Sept. 16, 2003
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Subject/Short Title: "Public School Enrollment Integrity Clarification Act of 2003"

Part I: Summary of the Fiscal Estimates of the Bill		
	YES	NO
1. It will impact spending. (If "Yes," complete Section 1 in the Fiscal Estimate Worksheet).	( )	(x )
a) It will affect local expenditures.	( )	( )
b) It will affect federal expenditures.	( )	( )
c) It will affect private/other expenditures.	( )	( )
d) It will affect intra-District expenditures.	( )	( )
2. It will impact revenue. (If "Yes," complete Section 2 in the Fiscal Estimate Worksheet).	( )	(x )
a) It will impact local revenue.	( )	( )
b) It will impact federal revenue.	( )	( )
c) It will impact private/other revenue.	( )	( )
d) It will impact intra-District revenue.	( )	( )
3. The bill will have NO or minimal fiscal impact. (If "Yes," explain below).	(x )	( )
<p><b>Explanation:</b> This bill no fiscal impact because it does not cause the District to do anything new. It only legalizes the current practices of the OCFO, Public Schools and Public Charter Schools. This bill is need because prior legislation that mandated these practices has expired.</p>		

Part II: Other Impact of the Bill		
If you check "Yes" for each question, please explain on separate sheet, if necessary.		
	YES	NO
1. It will affect an agency and/or agencies in the District.	(x )	( )
2. Are there performance measures/output for this bill?	( )	( )
3. Will it have results/outcome, i.e., what would happen if this bill is not enacted?	(x )	( )
4. Are funds appropriated for this bill in the Budget and Financial Plan for the current year?	(x )	( )

Sources of information: SEO, OCFO, Office of Corporation Council. General Counsel for the Council of D.C.	Councilmember: Kevin P. Chavous
	Staff Person & Tel: Kevin K. Otuome
	Council Budget Director's Signature: <i>[Signature]</i>

9/16/03

## ENROLLED ORIGINAL

## AN ACT

## D.C. ACT 15-283

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 18, 2003

Codification  
District of  
Columbia  
Official Code

2001 Edition

2004 Winter  
Supp.West Group  
Publisher

To amend, on an emergency basis, the District of Columbia Election Code of 1955 to bring the District of Columbia into compliance with the Help America Vote Act of 2002.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Help America Vote Emergency Amendment Act of 2003".

Sec. 2. The District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 699; D.C. Official Code § 1-1001.01 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 1-1001.02) is amended by adding a new paragraph (22) to read as follows:

Note,  
§ 1-1001.02

"(22) The term "voting system" means:

"(A) The total combination of mechanical, electromechanical, or electronic equipment (including the software, firmware, and documentation required to program, control, and support the equipment) that is used to:

- "(i) Define ballots;
- "(ii) Cast and count votes;
- "(iii) Report or display elections results; and
- "(iv) Maintain and produce a permanent record; and

"(B) The practices and associated documentation used to:

"(i) Identify system components and versions of such components;

"(ii) Test the system during its development and maintenance;

"(iii) Maintain records of system errors and defects;

"(iv) Determine specific system changes to be made to a system after the initial qualification of the system; and

"(v) Make available any materials to the voter such as notices, instructions, forms, or paper ballots.

(b) Section 5 (D.C. Official Code § 1-1001.05) is amended as follows:

Note,  
§ 1-1001.05

(1) Subsection (a) is amended as follows:

(A) Paragraph (1) is amended to read as follows:

"(a)(1) Accurately maintain a single, uniform, official, interactive computerized voter registration list, which shall:

"(A) Serve as the official voter registration list for the conduct of all elections in the District;

"(B) Contain the name and registration information of every duly

## ENROLLED ORIGINAL

registered voter in the District and assign a unique identifier to each duly registered voter in the District;

“(C) Be defined and administered in accordance with the Help America Vote Act of 2002, approved October 29, 2002 (116 Stat 1666; 42 U.S.C § 15301 *et seq.*), and pertinent federal and local law;

“(D) Be coordinated with other agency databases within the District;”.

(B) Paragraph (10) is amended to read as follows:

“(10) Be responsible for:

“(A) Providing information regarding voter registration procedures and absentee ballot procedures to be used by absent uniformed services voters and overseas voters with respect to elections for federal office (including procedures relating to the use of the federal write-in absentee ballot) to all absent uniformed services voters and overseas voters who wish to register to vote or vote in the District;

“(B) Accepting valid voter registration applications, absentee ballot applications, and absentee ballots, including federal write-in absentee ballots, from all such individuals; and

“(C) Otherwise complying with the Uniformed and Overseas Citizens Absentee Voting Act of 1986, approved August 28, 1966 (112 Stat. 2681-877; 42 U.S.C. § 1873ff *et seq.*)”.

(C) Paragraph (13) is repealed.

(2) New subsections (i) and (j) are added to read as follows:

“(i) The Board shall cause the following voting information to be publicly posted at each polling place on the day of each election for federal office:

“(1) A sample version of the ballot that will be used for the election;

“(2) The date of the election and the hours during which polling places will be open;

“(3) Instructions on the proper manner of completing a ballot, including a special ballot;

“(4) Instructions for mail-in registrants and first-time voters under section 303(b) of the Help America Vote Act of 2002, approved October 29, 2002 (116 Stat. 1708; 42 U.S.C § 15483).

“(5) General information on voting rights under applicable federal and District laws, including the right of individual to cast a special ballot and instructions on how to contact the appropriate officials if these rights are alleged to have been violated; and

“(6) General information on federal and District law regarding prohibitions on acts of fraud and misrepresentation.

“(j) Not later than 90 days after the date of each regularly scheduled general election for federal office, the Board shall submit to the Mayor a report, in the format established by the Election Assistance Commission, on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of such ballots which were returned by such voters and cast in the election. The report shall be transmitted by the Mayor to the Election Assistance Commission and shall be made available to the public.”.

(c) Section 7 (D.C. Official Code § 1-1001.07) is amended as follows:

(1) A new subsection (a-1) is added to read as follows:

“(a-1)(1) No application for voter registration may be accepted or processed by the Board unless it includes:

Note,  
§ 1-1001.07

## ENROLLED ORIGINAL

“(A) The applicant’s driver’s license number in the case of an applicant who has been issued a current and valid driver’s license; or

“(B) The last 4 digits of the applicant’s social security number in the case of an applicant who has not been issued a current and valid driver’s license.

“(2) If an applicant for voter registration has not been issued a current and valid driver’s license or a social security number, the Board shall assign the applicant a unique identifier which shall serve to identify the applicant for voter registration purposes and which shall be the same unique identifier provided for in section 5(a)(1).”

(2) Subsection (b)(1) and (2) is amended as follows:

“(1) The Board shall prepare and use a registration application form that meets the requirements of the National Voter Registration Act of 1993, approved May 20, 1993 (107 Stat. 77; 42 U.S.C. § 1973gg *et seq.*), and the Help America Vote Act of 2002, approved October 29, 2002 (116 Stat. 1666; 42 U.S.C. § 15301 *et seq.*), and in which each request for information is readily understandable and can be satisfied by a concise answer or mark.

“(2) Mail-in voter registration application forms approved by the Board shall meet the requirements of the National Voter Registration Act of 1993, approved May 20, 1993 (107 Stat. 77; 42 U.S.C. § 1973gg *et seq.*), and the Help America Vote Act of 2002, approved October 29, 2002 (116 Stat. 1666; 42 U.S.C. § 15301 *et seq.*), shall be designed to provide an easily understood method of registering to vote by mail and shall be mailed to the Board with postage prepaid. These forms shall have printed on them, in bold face type, the penalties for fraudulently attempting to register to vote pursuant to section 14(a) and the National Voter Registration Act of 1993, approved May 20, 1993 (107 Stat. 7); 42 U.S.C. § 1973gg *et seq.*). If an applicant for voter registration fails to properly complete the mail voter registration form, the Board’s registrar shall notify the applicant of the failure and provide the applicant with an opportunity to complete the form in a timely manner to allow for the completion of the registration form prior to the next election.”

(3) Subsection (c)(1) is amended by adding a new subparagraph (K) to read as follows:

“(K) The Board and the Bureau of Motor Vehicle Services shall match information in their respective databases to the extent required to enable each agency to verify the accuracy of the information provided on applications for voter registration.”

(4) Subsection (g) is amended by adding a new paragraph (2A) to read as follows:

“(2A) The Board shall process faxed federal postcard applications from those persons eligible to vote absentee in federal elections held in the District of Columbia pursuant to the Uniformed and Overseas Citizens Absentee Voting Act of 1986, approved August 28, 1966 (112 Stat. 2681-877; 42 U.S.C. § 1873ff *et seq.*), which are faxed not later than the 30th day preceding any election.”

(5) Subsection (i) is amended by adding a new paragraph (6) to read as follows:

“(6) Each individual who has not previously voted in a federal election in the District and who registers to vote by mail shall present, at the time of registration, at the polling place, or when voting by mail, either a copy of a current and valid government-issued photo identification or a copy of a current utility bill, bank statement, government check, or pay check that shows the name and address of the voter. Individuals who fail to present any such forms of identification shall vote by special ballot. This paragraph shall not apply to individuals:

“(A)(i) Whose registration application includes either a driver’s license number or at least the last 4 digits of his or her social security number; and

## ENROLLED ORIGINAL

“(ii) Whom the Board has been able to match the provided information with an existing identification record bearing the same number, name, and date of birth as provided in the registration application; or

“(B) Entitled to vote otherwise than in person under federal law.”.

(d) Section 9 (D.C. Official Code § 1-1001.09) is amended as follows:

Note,  
§ 1-1001.09

(1) A new subsection (d-2) is added to read as follows:

“(d-2) An individual who votes in an election for federal office as a result of a federal or local court order or any other order extending the time established for closing the polls by a District law in effect 10 days before the date of the election shall vote in the election by casting a special ballot. A ballot cast under the preceding sentence shall be separated and held apart from other special ballots cast by those not affected by the order.”.

(2) Subsection (e) is amended as follows:

(A) Paragraph (2) is amended to read as follows:

“(2) Not later than the Tuesday following the election, during regular business hours, the Board shall maintain a toll-free telephone service by which any voter who has voted a challenged or special ballot may learn of the Board's preliminary decision to count or reject his or her ballot along with the reason for each decision.”.

(B) Paragraph (3) is amended to read as follows:

“(3) If the Board has made a preliminary determination that a challenged ballot shall not be counted, it shall afford the challenged voter an opportunity to contest that determination in a hearing before the Board. The hearing authorized pursuant to this paragraph shall occur not earlier than 8 days, and not later than 10 days, after any election held pursuant to this act. The Board shall inform the voter of the date scheduled for the hearing and the manner by which he or she may learn of the Board's final decision to count or reject the voter's challenged ballot. The notice shall be in writing and shall be provided to the voter at the time of voting. At the hearing, the voter may appear and testify. The Board shall make a final determination within 2 days after the date of the hearing. The voter may appeal the decision of the Board to the Superior Court of the District of Columbia within 3 days after the date of the Board's decision. The decision of the court shall be final and not appealable.”.

(3) A new subsection (k) is added to read as follows:

“(k) Each voting system used in an election in the District shall meet or exceed the voting system standards set forth in the Help America Vote Act of 2002, approved October 29, 2002 (116 Stat. 1666; 42 U.S.C § 15301 *et seq.*). The Board may implement additional standards if they do not conflict with those set forth in the Help America Vote Act of 2002, approved October 29, 2002 (116 Stat. 1606; 42 U.S.C. § 15301 *et seq.*).

Note,  
§ 1-1001.10

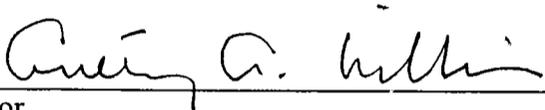
(e) Section 10(b)(1) (D.C. Official Code § 1-1001.10(b)(1)) is amended by striking the phrase “7:00 a.m. to 8:00 p.m.” and inserting the phrase “7:00 a.m. to 8:00 p.m., except in instances when the time established for closing the polls is extended pursuant to a federal or District court order or any other order.” in its place.

Sec. 3. This act shall have no fiscal impact.

Sec. 4. This act shall take effect upon its approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia

in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

  
Chairman  
Council of the District of Columbia

  
Mayor  
District of Columbia  
APPROVED  
December 18, 2003

## AN ACT

## D.C. ACT 15-284

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 18, 2003*Codification  
District of  
Columbia  
Official Code*

2001 Edition

2004 Winter  
Supp.West Group  
Publisher

To amend, on an emergency basis, Initiative Measure No. 62, the Treatment Instead of Jail for Certain Non-Violent Offenders Initiative of 2002, to require that implementation of the initiative is subject to the inclusion of sufficient additional federal or non-local funds in an approved budget and multi-year financial plan that do not adversely affect any existing allocations in the approved budget and multiyear financial plan.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this bill may be cited as the "Initiative Measure No. 62 Applicability and Fiscal Impact Emergency Amendment Act of 2002".

Sec. 2. Initiative Measure No. 62, the Treatment Instead of Jail for Certain Non-Violent Offenders Initiative of 2002, effective June 5, 2003 (D.C. Law 14-308; D.C. Official Code § 24-751.01 *et seq.*) ("Initiative Measure No. 62"), is amended by adding a new section 12a to read as follows:

"Sec. 12a. Applicability and fiscal impact statement.

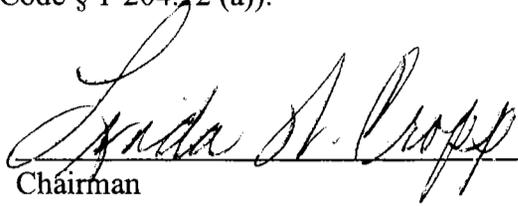
"This act shall not apply until the Chief Financial Officer certifies that sufficient additional federal or non-local funds have been included in an approved budget and multiyear financial plan that do not adversely affect any existing allocations in the budget and multiyear financial plan."

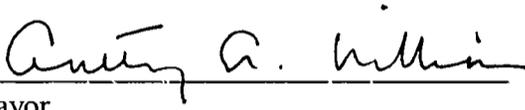
Sec. 3. This act is necessary to ensure that Initiative Measure No. 62 has no adverse impact upon the approved budget and multi-year financial plan.

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;  
D.C. Official Code § 1-204.12 (a)).

  
\_\_\_\_\_  
Chairman  
Council of the District of Columbia

  
\_\_\_\_\_  
Mayor  
District of Columbia  
APPROVED  
December 18, 2003

## ENROLLED ORIGINAL

## AN ACT

## D.C. ACT 15-285

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 18, 2003

Codification  
District of  
Columbia  
Official Code

2001 Edition

2004 Winter  
Supp.West Group  
Publisher

To amend, on an emergency basis, the District of Columbia Theft and White Collar Crimes Act of 1982 to establish the crime of identity theft, to provide penalties for the crime, to provide enhanced penalties for persons committing identity theft against persons 65 years of age or older, to authorize the court to provide restitution to the victim and to order the correction of public records containing false information as a result of the identify theft, and to require the Metropolitan Police Department to take reports of identity theft and provide the complainant with a copy of the report.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Identity Theft Emergency Amendment Act of 2003".

Sec. 2. The District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-3201 *et seq.*), is amended as follows:

(a) The table of contents is amended by adding the following after the phrase "Sec. 126o. General disclosures.":

"Subtitle 3C. Identity Theft.

"Sec. 127a. Definitions.  
"Sec. 127b. Identity theft.  
"Sec. 127c. Penalties for identity theft.  
"Sec. 127d. Restitution.  
"Sec. 127e. Correction of public records.  
"Sec. 127f. Jurisdiction.  
"Sec. 127g. Limitations.  
"Sec. 127h. Police reports."

(b) Section 103 (D.C. Official Code § 22-3203) is amended as follows:

(1) Paragraph (2) is amended by striking the word "or" at the end.

(2) Paragraph (3) is amended by striking the period at the end and inserting a semicolon in its place.

(3) New paragraphs (4) and (5) are added to read as follows:

"(4) Identity theft and theft; or

"(5) Identity theft and fraud."

(c) A new subtitle 3C is added to read as follows:

"Subtitle 3C. Identity Theft.

"Sec. 127a. Definitions.

"For the purposes of this subtitle, the term:

Note,  
§ 22-3203

## ENROLLED ORIGINAL

“(1) “Financial injury” means all monetary costs, debts, or obligations incurred by a person as a result of another person obtaining, creating, possessing, or using that person’s personal identifying information in violation of this subtitle, including, but not limited to:

“(A) The costs of clearing the person’s credit rating, credit history, criminal record, or any other official record, including attorney fees;

“(B) The expenses related to any civil or administrative proceeding to satisfy or contest a debt, lien, judgment, or other obligation of the person that arose as a result of the violation of this subtitle, including attorney fees;

“(C) The costs of repairing or replacing damaged or stolen property; and

“(D) Lost time or wages, or any similar monetary benefit forgone while the person is seeking redress for damages resulting from a violation of this subtitle.

“(2) “Person” means an individual, whether living or dead.

“(3) “Personal identifying information” includes, but is not limited to, the following:

“(A) Name, address, telephone number, date of birth, or mother’s maiden name;

“(B) Driver’s license or driver’s license number, or non-driver’s license or non-driver’s license number;

“(C) Savings, checking, or other financial account number;

“(D) Social security number or tax identification number;

“(E) Passport or passport number;

“(F) Citizenship status, visa, or alien registration card or number;

“(G) Birth certificate or a facsimile of a birth certificate;

“(H) Credit or debit card, or credit or debit card number;

“(I) Credit history or credit;

“(J) Signature;

“(K) Personal identification number, electronic identification number, password, access code or device, electronic address, electronic identification number, routing information or code, digital signature, or telecommunication identifying information;

“(L) Biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

“(M) Place of employment, employment history, or employee identification number; and

“(N) Any other numbers or information that can be used to access a person’s financial resources, access medical information, obtain identification, act as identification, or obtain property.

“(4) “Property” shall have the same meaning as provided in section 101(3) and shall include credit.

“Sec. 127b. Identity theft.

“A person commits the offense of identity theft if that person knowingly:

“(1) Uses personal identifying information belonging to or pertaining to another person to obtain, or attempt to obtain, property fraudulently and without that person’s consent; or

“(2) Obtains, creates, or possesses personal identifying information belonging to or pertaining to another person with the intent to:

“(A) Use the information to obtain, or attempt to obtain, property

fraudulently and without that person's consent; or

"(B) Give, sell, transmit, or transfer the information to a third person to facilitate the use of the information by that third person to obtain, or attempt to obtain, property fraudulently and without that person's consent.

"Sec. 127c. Penalties for identity theft.

"(a) *Identity theft in the first degree* -- Any person convicted of identity theft shall be fined not more than (1) \$10,000, (2) 3 times the value of the property obtained, or (3) 3 times the amount of the financial injury, whichever is greatest, or imprisoned for not more than 10 years, or both, if the property obtained or the amount of the financial injury is \$250 or more.

"(b) *Identity theft in the second degree* -- Any person convicted of identity theft shall be fined not more than \$1,000 or imprisoned for not more than 180 days, or both, if the value of the property obtained or the amount of the financial injury, whichever is greater, is less than \$250.

"(c) *Enhanced penalty* -- Any person who commits the offense of identity theft against an individual who is 65 years of age or older, at the time of the offense, may be punished by a fine of up to 1 ½ times the maximum fine otherwise authorized for the offense and may be imprisoned for a term of up to 1 ½ times the maximum term of imprisonment otherwise authorized for the offense, or both. It is an affirmative defense that the accused:

"(1) Reasonably believed that the victim was not 65 years of age or older at the time of the offense; or

"(2) Could not have determined the age of the victim because of the manner in which the offense was committed.

"Sec. 127d. Restitution.

"When a person is convicted of identity theft, the court may, in addition to any other applicable penalty, order restitution for the full amount of financial injury.

"Sec. 127e. Correction of public records.

"(a) When a person is convicted, adjudicated delinquent, or found not guilty by reason of insanity of identity theft, the court may issue such orders as are necessary to correct any District of Columbia public record that contains false information as a result of a violation of this subtitle.

"(b) In all other cases, a person who alleges that he or she is a victim of identity theft may petition the court for an expedited judicial determination that a District of Columbia public record contains false information as a result of a violation of this subtitle. Upon a finding of clear and convincing evidence that the person was a victim of identity theft, the court may issue such orders as are necessary to correct any District of Columbia public record that contains false information as a result of a violation of this subtitle.

"(c) Notwithstanding any other provision of law, District of Columbia agencies shall comply with orders issued under subsection (a) of this section within 30 days of issuance of the order.

"(d) For the purposes of this section, the term "District of Columbia public record" means any document, book, photographic image, electronic data recording, paper, sound recording, or other material, regardless of physical form or characteristic, made or received pursuant to law or in connection with the transaction of public business by any officer or employee of the District of Columbia.

"Sec. 127f. Jurisdiction.

"The offense of identity theft shall be deemed to be committed in the District of Columbia, regardless of whether the offender is physically present in the District of Columbia,

if:

“(1) The person whose personal identifying information is improperly obtained, created, possessed, or used is a resident of the District of Columbia; or

“(2) Any part of the offense takes place in the District of Columbia.

“Sec. 127g. Limitations.

“Obtaining, creating, possessing, and using a person’s personal identifying information in violation of this subtitle shall constitute a single scheme or course of conduct, and the applicable period of limitation under § 23-113 shall not begin to run until after the scheme or course of conduct has been completed or terminated.

“Sec. 127h. Police reports

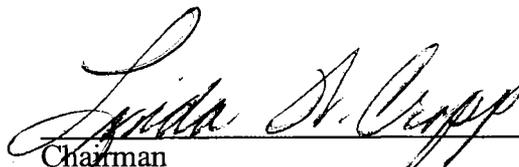
“The Metropolitan Police Department shall make a report of each complaint of identity theft and provide the complainant with a copy of the report.”.

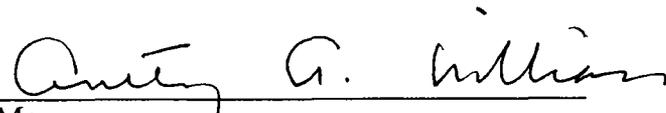
Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report of the Identity Theft Amendment Act of 2003, signed by the Mayor on October 27, 2003 (D.C. Act 15-196), as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

  
\_\_\_\_\_  
Chairman  
Council of the District of Columbia

  
\_\_\_\_\_  
Mayor  
District of Columbia  
APPROVED  
December 18, 2003

ENROLLED ORIGINAL

AN ACT

D.C. ACT 15-286

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 18, 2003

Codification  
District of  
Columbia  
Official Code

2001 Edition

2004 Winter  
Supp.

West Group  
Publisher

To amend Title 19 of the District of Columbia Official Code to enact the Uniform Trust Code in the District of Columbia.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Uniform Trust Act of 2003".

Sec. 2. Title 19 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended as follows:

(1) The heading is amended by striking the word "DISTRIBUTION" and inserting the phrase "DISTRIBUTION, AND TRUSTS" in its place.

(2) Add at the end the phrase "13. Uniform Trust Code . . . 19-1301.01".

(b) A new chapter 13 is added to read as follows:

"CHAPTER 13

"UNIFORM TRUST CODE.

"SUBCHAPTER I. GENERAL PROVISIONS AND DEFINITIONS.

"Section

"19-1301.01. Short title.

"19-1301.02. Scope.

"19-1301.03. Definitions.

"19-1301.04. Knowledge.

"19-1301.05. Default and mandatory rules.

"19-1301.06. Common law of trusts; principles of equity.

"19-1301.07. Governing law.

"19-1301.08. Principal place of administration.

"19-1301.09. Methods and waiver of notice.

"19-1301.10. Others treated as qualified beneficiaries.

"19-1301.11. Nonjudicial settlement agreements.

"SUBCHAPTER II. JUDICIAL PROCEEDINGS.

"19-1302.01. Role of court in administration of trust.

"19-1302.02. Jurisdiction over trustee and beneficiary.

"SUBCHAPTER III. REPRESENTATION.

"19-1303.01. Representation: basic effect.

"19-1303.02. Representation by holder of general testamentary power of appointment.

"19-1303.03. Representation by fiduciaries and parents.

"19-1303.04. Representation by person having substantially identical interest.

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- "19-1303.05. Appointment of representative.  
"SUBCHAPTER IV. CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST.
- "19-1304.01. Methods of creating trust.  
"19-1304.02. Requirements for creation.  
"19-1304.03. Trusts created in other jurisdictions  
"19-1304.04. Trust purposes.  
"19-1304.05. Charitable purposes; enforcement.  
"19-1304.06. Creation of trust induced by fraud, duress, or undue influence.  
"19-1304.07. Evidence of oral trust.  
"19-1304.08. Trust for care of animal.  
"19-1304.09. Noncharitable trust without ascertainable beneficiary.  
"19-1304.10. Modification or termination of trust; proceedings for approval or disapproval.  
"19-1304.11. Modification or termination of noncharitable irrevocable trust by consent.  
"19-1304.12. Modification or termination because of unanticipated circumstances or inability to administer trust effectively.  
"19-1304.13. Cy pres.  
"19-1304.14. Termination of uneconomic trust.  
"19-1304.15. Reformation to correct mistakes.  
"19-1304.16. Modification to achieve settlor's tax objectives.  
"19-1304.17. Combination and division of trusts.  
"19-1304.18. Title of trust property.  
"SUBCHAPTER V. CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS.
- "19-1305.01. Rights of beneficiary's creditor or assignee.  
"19-1305.02. Spendthrift provision.  
"19-1305.03. Exceptions to spendthrift provision.  
"19-1305.04. Discretionary trusts; effect of standard.  
"19-1305.05. Creditor's claim against settlor.  
"19-1305.06. Overdue distribution.  
"19-1305.07. Personal obligations of trustee.  
"SUBCHAPTER VI. REVOCABLE TRUSTS.
- "19-1306.01. Capacity of settlor of revocable trust.  
"19-1306.02. Revocation or amendment of revocable trust.  
"19-1306.03. Settlor's powers; powers of withdrawal.  
"19-1306.04. Limitation on action contesting validity of revocable trust; distribution of trust property.  
"SUBCHAPTER VII. OFFICE OF TRUSTEE.
- "19-1307.01. Accepting or declining trusteeship.  
"19-1307.02. Trustee's bond.  
"19-1307.03. Cotrustees.  
"19-1307.04. Vacancy in trusteeship; appointment of successor.  
"19-1307.05. Resignation of trustee.  
"19-1307.06. Removal of trustee.  
"19-1307.07. Delivery of property by former trustee.  
"19-1307.08. Compensation of trustee.  
"19-1307.09. Reimbursement of expenses.

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## "SUBCHAPTER VIII. DUTIES AND POWERS OF TRUSTEE.

- "19-1308.01. Duty to administer trust.
- "19-1308.02. Duty of loyalty.
- "19-1308.03. Impartiality.
- "19-1308.04. Prudent administration.
- "19-1308.05. Costs of administration.
- "19-1308.06. Trustee's skills.
- "19-1308.07. Delegation by trustee.
- "19-1308.08. Powers to direct.
- "19-1308.09. Control and protection of trust property.
- "19-1308.10. Recordkeeping and identification of trust property.
- "19-1308.11. Enforcement and defense of claims.
- "19-1308.12. Collecting trust property.
- "19-1308.13. Duty to inform and report.
- "19-1308.14. Discretionary powers; tax savings.
- "19-1308.15. General powers of trustee.
- "19-1308.16. Specific powers of trustee.
- "19-1308.17. Distribution upon termination.

## "SUBCHAPTER IX. UNIFORM PRUDENT INVESTOR ACT.

- "§ 19-1309.01. Prudent investor rule.
- "§ 19-1309.02. Standard of care; portfolio strategy; risk and return objectives.
- "§ 19-1309.03. Diversification.
- "§ 19-1309.04. Duties at inception of trusteeship.

## "SUBCHAPTER X. LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE.

- "19-1310.01. Remedies for breach of trust.
- "19-1310.02. Damages for breach of trust.
- "19-1310.03. Damages in absence of breach.
- "19-1310.04. Attorney's fees and costs.
- "19-1310.05. Limitation of action against trustee.
- "19-1310.06. Reliance on trust instrument.
- "19-1310.07. Event affecting administration or distribution.
- "19-1310.08. Exculpation of trustee.
- "19-1310.09. Beneficiary's consent, release, or ratification.
- "19-1310.10. Limitation on personal liability of trustee.
- "19-1310.11. Interest as general partner.
- "19-1310.12. Protection of person dealing with trustee.
- "19-1310.13. Certification of trust.

## "SUBCHAPTER XI. MISCELLANEOUS PROVISIONS.

- "19-1311.01. Uniformity of application and construction.
- "19-1311.02. Electronic records and signatures.
- "19-1311.03. Application to existing relationships.

## "SUBCHAPTER I. GENERAL PROVISIONS AND DEFINITIONS.

- "§ 19-1301.01. Short title.  
"This chapter may be cited as the "Uniform Trust Code".
- "§ 19-1301.02. Scope.  
"This chapter applies to express trusts, charitable or noncharitable, and trusts created

## ENROLLED ORIGINAL

pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust.

"§ 19-1301.03. Definitions.

"For the purposes of this chapter, the term:

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

"(2) "Beneficiary" means a person that:

"(A) Has a present or future beneficial interest in a trust, vested or contingent; or

"(B) In a capacity other than that of trustee, holds a power of appointment over trust property.

"(3) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in section 19-1304.05(a).

"(4) "Conservator" means a person appointed by the court to administer the estate of a minor or adult individual.

"(5) "Distributee" means a beneficiary who is currently entitled to receive a distribution from a trust.

"(6) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

"(7) "Guardian" means a person appointed by the court, a parent, or a spouse to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual. The term "guardian" does not include a guardian ad litem.

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

"(9) "Jurisdiction," with respect to a geographic area, includes a State or country.

"(10) "Permissible distributee" means a beneficiary who is currently eligible to receive a distribution from a trust.

"(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

"(12) "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.

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

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

"(A) Is a distributee or permissible distributee of trust income or principal;

"(B) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subparagraph (A) of this paragraph terminated on that date; or

"(C) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

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

"(16) "Settlor" means a person, including a testator, who creates, or contributes

## ENROLLED ORIGINAL

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.

"(17) "Settlor's successors in interest" means the residuary beneficiaries under the settlor's will, or if none, the settlor's heirs.

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

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

"(20) "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.

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

"(22) "Trustee" includes an original, additional, and successor trustee, and a cotrustee.

"§ 19-1301.04. 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.

"§ 19-1301.05. Default and mandatory rules.

"(a) Except as otherwise provided in the terms of the trust, this chapter 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 chapter 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 sections 19-

## ENROLLED ORIGINAL

1304.10 through 19-1304.16;

"(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Subchapter V of this chapter;

"(6) The power of the court under section 19-1307.02 to require, dispense with, or modify or terminate a bond;

"(7) The power of the court under section 19-1307.08(b) to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

"(8) Subject to subsection (c) of this section, the duty under section 19-1308.13(b)(2) and (3) to notify qualified beneficiaries of an irrevocable trust who have attained 25 years of age of the existence of the trust, the identity of the trustee, and their right to request the trustee's reports;

"(9) Subject to subsection (c) of this section, the duty under section 19-1308.13(a) to respond to the request of a beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust;

"(10) The effect of an exculpatory term under section 19-1310.08;

"(11) The rights under sections 19-1310.10 through 19-1310.13 of a person other than a trustee or beneficiary;

"(12) Periods of limitation for commencing a judicial proceeding; and

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

"(c) The settlor, in the trust instrument or in another writing delivered to the trustee, may waive or modify the duties of a trustee under section 19-1308.13 to give notice, information, and reports to beneficiaries by:

"(1) Waiving or modifying such duties during the lifetime of the settlor or the lifetime of the settlor's surviving spouse;

"(2) Specifying a different age at which a beneficiary or class of beneficiaries must be notified under section 19-1308.13(b)(2) and (3); or

"(3) Designating a person or persons to act in good faith to protect the interests of beneficiaries, to receive any notice, information, or reports required under section 19-1308.13 in lieu of providing such notice, information, or reports to the beneficiaries.

"§ 19-1301.06. Common law of trusts; principles of equity.

"The common law of trusts and principles of equity supplement this chapter, except to the extent modified by this chapter or another statute of the District of Columbia.

"§ 19-1301.07. Governing law.

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

"(1) 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

"(2) 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.

"§ 19-1301.08. 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's principal place of business is 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.

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"(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) Without precluding the right of the court to order, approve, or disapprove a transfer, 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 must 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) An explanation of the reasons for the proposed transfer;

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

"(5) The date, not less than 60 days after the giving of the notice, by which the qualified beneficiary must 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.

"(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 section 19-1307.04.

"§ 19-1301.09. Methods and waiver of notice.

"(a) Notice to a person under this chapter or the sending of a document to a person under this chapter must 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 electronic message.

"(b) Notice otherwise required under this chapter or a document otherwise required to be sent under this chapter 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 chapter or the sending of a document under this chapter may be waived by the person to be notified or sent the document.

"(d) Notice of a judicial proceeding must be given as provided in the applicable rules of civil procedure.

"§ 19-1301.10. Others treated as qualified beneficiaries.

"(a) Whenever notice to qualified beneficiaries of a trust is required under this chapter, the trustee must 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 section 19-1304.08 or section 19-1304.09 has the rights of a qualified beneficiary under this chapter.

"(c) The Corporation Counsel of the District of Columbia has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in the

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District of Columbia.

"§ 19-1301.11. Nonjudicial settlement agreements.

"(a) For the purposes of this section, the term "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, 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 chapter 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 Subchapter III of this chapter was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

"SUBCHAPTER II. JUDICIAL PROCEEDINGS.

"§ 19-1302.01. Role of court in administration of trust.

"(a) The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

"(b) A trust is not subject to continuing judicial supervision unless ordered by the court.

"(c) A judicial proceeding involving a trust may relate to any matter involving the trust's administration, including a request for instructions and an action to declare rights.

"§ 19-1302.02. Jurisdiction over trustee and beneficiary.

"(a) By accepting the trusteeship of a trust having its principal place of administration in the District of Columbia or by moving the principal place of administration to the District of Columbia, the trustee submits personally to the jurisdiction of the courts of the District of Columbia regarding any matter involving the trust.

"(b) With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in the District of Columbia are subject to the jurisdiction of the courts of the District of Columbia regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of the District of Columbia regarding any matter involving the trust.

"(c) This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.

"SUBCHAPTER III. REPRESENTATION.

"§ 19-1303.01. Representation: basic effect.

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

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"(b) The consent of a person who may represent and bind another person under this subchapter is binding on the person represented unless the person represented objects to the representation by notifying the trustee or the representative before the consent would otherwise have become effective.

"(c) Except as otherwise provided in sections 19-1304.11 and 19-1306.02, a person who under this subchapter may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

"§ 19-1303.02. Representation by holder of general testamentary power of appointment.

"The holder of a power of appointment may represent and bind persons whose interests as permissible appointees or takers in default are subject to the power. A qualified power of appointment is a power exercisable in favor of:

"(1) The power holder, the power holder's estate, the power holder's creditors and the creditors of the power holder's estate; or

"(2) All persons other than the power holder, the power holder's estate, the power holder's creditors, and the creditors of the power holder's estate.

"§ 19-1303.03. 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:

"(1) A conservator may represent and bind the estate that the conservator controls;

"(2) A guardian may represent and bind the ward if a conservator of the ward's estate has not been appointed;

"(3) An agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

"(4) A trustee may represent and bind the beneficiaries of the trust;

"(5) A personal representative of a decedent's estate may represent and bind persons interested in the estate;

"(6) A parent may represent and bind the parent's minor or unborn child if a conservator or guardian for the child has not been appointed;

"(7) An individual may represent a grandchild or a more remote descendent, whether born or unborn, whom a parent may not represent and bind under paragraph (6) of this subsection; and

"(8) A qualified beneficiary may represent and bind any beneficiary who may succeed to the qualified beneficiary's interest under the terms of the trust or pursuant to the exercise of a power of appointment.

"§ 19-1303.04. 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 with respect to the particular question or dispute.

"§ 19-1303.05. Appointment of representative.

"(a) If the court determines that an interest is not represented under this subchapter, or that the otherwise available representation might be inadequate, the court may appoint a 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 representative may be appointed to represent several persons or interests.

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"(b) A representative may act on behalf of the individual represented with respect to any matter arising under this chapter, whether or not a judicial proceeding concerning the trust is pending.

"(c) In making decisions, a representative may consider general benefit accruing to the living members of the individual's family.

"SUBCHAPTER IV. CREATION, VALIDITY, MODIFICATION, AND  
TERMINATION OF TRUST.

"§ 19-1304.01. Methods of creating trust.

"A trust may be created by:

"(1) Transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;

"(2) Declaration by the owner of property that the owner holds identifiable property as trustee;

"(3) Exercise of a power of appointment in favor of a trustee; or

"(4) A court for the benefit of an individual in lieu of a transfer of property to a conservatorship or guardianship pursuant to Chapter 1 or Subchapter VI of Chapter 20 of Title 21 of the District of Columbia Official Code.

"§ 19-1304.02. 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 section 19-1304.08;

or

"(C) A trust for a noncharitable purpose, as provided in section 19-1304.09;

"(4) The trustee has duties to perform; and

"(5) The same person is not the sole trustee and sole beneficiary.

"(b) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

"(c) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, 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.

"§ 19-1304.03. Trusts created in other jurisdictions.

"A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which, at the time of creation:

"(1) The settlor was domiciled, had a place of abode, or was a national;

"(2) A trustee was domiciled or had a place of business; or

"(3) Any trust property was located.

"§ 19-1304.04. Trust purposes.

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

"§ 19-1304.05. Charitable purposes; enforcement.

"(a) A charitable trust may be created for the relief of poverty, the advancement of

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education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.

"(b) If the terms of a charitable trust do not indicate or otherwise provide for the selection of a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.

"(c) The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust.

"§ 19-1304.06. 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.

"§ 19-1304.07. Evidence of oral trust.

"Except as required by a statute other than this chapter, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

"§ 19-1304.08. 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 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 must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

"§ 19-1304.09. Noncharitable trust without ascertainable beneficiary.

"Except as otherwise provided in section 19-1304.08 or by D.C. Official Code § 43-113, the following rules apply:

"(1) A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than 21 years.

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

"(3) 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 must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

"§ 19-1304.10. Modification or termination of trust; proceedings for approval or disapproval.

"(a) In addition to the methods of termination prescribed by section 19-1304.11 through section 19-1304.14, 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, or impossible to achieve.

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"(b) A proceeding to approve or disapprove a proposed modification or termination under sections 19-1304.11 through 19-1304.16, or trust combination or division under section 19-1304.17, may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under section 19-1304.11 may be commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to modify the trust under section 19-1304.13.

"§ 19-1304.11. Modification or termination of noncharitable irrevocable trust by consent.

"(a) A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's modification or termination may be exercised by:

(1) An agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust;

(2) The settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or

(3) The settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.

"(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.

"§ 19-1304.12. 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 must be made in accordance with the settlor's probable intention.

"(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.

"§ 19-1304.13. Cy pres.

"Except as otherwise provided in the terms of the trust, if a particular charitable purpose is or becomes unlawful, impracticable, impossible to achieve, or wasteful:

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

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"(2) The trust property does not revert to the settlor or the settlor's successors in interest; and

"(3) The court may apply *cy pres* to 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.

"§ 19-1304.14. 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 \$50,000 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.

"§ 19-1304.15. Reformation to correct mistakes.

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

"§ 19-1304.16. 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 intention. The court may provide that the modification has retroactive effect.

"§ 19-1304.17. Combination and division of trusts.

"After notice to the qualified beneficiaries, a trustee may combine 2 or more trusts into a single trust or divide a trust into 2 or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

"§ 19-1304.18. Title of trust property.

"Real or personal property that is transferred to a trust may be titled in the name of:

"(1) The trust by reference to the instrument creating the trust;

"(2) The current trustee as the trustee of such trust; or

"(3) "The trustee" as the trustee of such trust.

"SUBCHAPTER V. CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS.

"§ 19-1305.01. Rights of beneficiary's creditor or assignee.

"To the extent a beneficiary's interest is not protected by a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances. Whether or not a trust contains a spendthrift provision, the creditor of a beneficiary cannot exercise or compel the exercise of the beneficiary's right to commerce, approve, or disapprove a proposed trust termination or modification under sections 19-1304.11 through 19-1304.16, or trust combination or division under section 19-1304.17.

"§ 19-1305.02. Spendthrift provision.

"(a) A spendthrift provision is valid only if it restrains both voluntary and involuntary

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transfer of a beneficiary's interest.

"(b) A term of a 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 subchapter, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

"§ 19-1305.03. Exceptions to spendthrift provision.

"(a) For the purposes of this section, the term "child" includes any person for whom an order or judgment for child support has been entered in this or another State.

"(b) Whether or not a trust contains a spendthrift provision, a beneficiary's child, who has a judgment or court order against the beneficiary for support or maintenance, may obtain from a court an order attaching present or future distributions when payable under the terms of the trust to or for the benefit of the beneficiary.

"(c) A spendthrift provision is unenforceable against a claim of the District of Columbia or the United States to the extent a statute of the District of Columbia or federal law so provides.

"§ 19-1305.04. Discretionary trusts; effect of standard. [Reserved]

"§ 19-1305.05. 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.

"(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 statutory allowances to a surviving spouse and children under sections 19-101.02, 19-101.03, and 19-101.04, to the extent the settlor's residuary probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

"(b) For the 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 Internal Revenue Code of 1986, or section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on the effective date of this chapter, or as later amended.

"(c) If a proceeding other than a small estate proceeding is commenced in the District of Columbia to administer the estate of a deceased settlor as provided in Title 20, property of the

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trust of which the decedent was a settlor is not liable for payment of claims against the settlor that were not properly presented in the estate proceeding.

"(d) If a proceeding as described in subsection (c) of this section has not been commenced, the trustee of the trust of which the decedent was a settlor may publish a notice substantially similar to, and in the same manner as provided for the notice described in section 20-704, and thereby obtain for the trust the same protection from claims afforded to a decedent's estate under section 20-903. Claims against a deceased settlor are barred as against the trustees and the trust property unless presented to the trustee at the address provided in the notice within 6 months after the date of the first publication of the notice. Except to the extent inconsistent with this subsection, Chapter 9 of Title 20 applies to the trustee and trust created by a deceased settlor in the same manner as it applies to a personal representative and decedent's estate.

"(e) If a notice under subsection (d) of this section is published and a proceeding to administer the settlor's estate is later commenced, claims against a deceased settlor are barred as against the trustee and trust property as of the date provided in subsection (d) of this section, and not the date provided in section 20-903.

"§ 19-1305.06. Overdue distribution.

"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 designated distribution date.

"§ 19-1305.07. Personal obligations of trustee.

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

"SUBCHAPTER VI. REVOCABLE TRUSTS.

"§ 19-1306.01. 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.

"§ 19-1306.02. Revocation or amendment of revocable trust.

"(a) Unless the terms of a trust expressly provide that the trust is 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 chapter.

"(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 acting alone but may be amended only by joint action of both spouses;

(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; and

(3) Upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

"(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) 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

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"(B) Any other method manifesting clear and convincing evidence of the settlor's intent.

"(d) Upon revocation of a revocable trust, the trustee shall deliver the trust property 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 or the power.

"(f) A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor 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 conservatorship or 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.

"§ 19-1306.03. Settlor's powers; powers of withdrawal.

"(a) 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.

"(b) While a trust is not revocable, for so long as a person has a currently exercisable power of withdrawal over the entire principal of the trust, the duties of a trustee are owed exclusively to such person.

"(c) While a trust is revocable and a settlor does not have the capacity to revoke the trust, a beneficiary shall have the right to enforce the settlor's intent to benefit the beneficiary during the settlor's incapacity.

"§ 19-1306.04. 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 earliest of:

"(1) One year after the settlor's death;

"(2) Ninety days 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; or

"(3) Six months after the date of the first publication of notice of the trust's existence, the name and address of each trustee and of the settlor, and the time allowed for commencing a proceeding, in the same manner as required for publication of notice of appointment of a personal representative, if the trustee sends a copy of the text of such notice, not later than 15 days after the date of its first publication, to each qualified beneficiary of the trust, heir of the decedent, and other person who would be an interested person within the meaning of section 20-101(d) if the trust were a will and who would have been required to be sent notice of the appointment of a personal representative under section 20-704 if a personal representative had been appointed.

"(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 of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within 60 days after the

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contestant sent the notification.

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

"SUBCHAPTER VII. OFFICE OF TRUSTEE.

"§ 19-1307.01. Accepting or declining trusteeship.

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

"(1) By substantially complying with a method of acceptance 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 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 reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected 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 rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to the designated cotrustee, or, if none, to the successor trustee, or, if none, to a distributee or permissible distributee; and

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

"§ 19-1307.02. Trustee's bond.

"(a) A trustee shall give bond to secure performance of the trustee's duties only if the court 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 the requirement.

"(b) The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.

"(c) A regulated financial-service institution qualified to do trust business in the District of Columbia need not give bond, even if required by the terms of the trust.

"§ 19-1307.03. Cotrustees.

"(a) Cotrustees who are unable to reach a unanimous decision may act by majority decision.

"(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

"(c) A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

"(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

"(e) A trustee may delegate to a cotrustee the performance of a function relating to management, investment, or trust administration, but may not delegate a decision to make a distribution. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

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"(f) Except as otherwise provided in subsection (g) of this section, a trustee who does not join in an action of another trustee is not liable for the action.

"(g) Each trustee shall exercise reasonable care to:

- "(1) Prevent a cotrustee from committing a serious breach of trust; and
- "(2) Compel a cotrustee to redress a serious breach of trust.

"(h) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

"§ 19-1307.04. Vacancy in trusteeship; appointment of successor.

"(a) A vacancy in a trusteeship occurs if:

- "(1) A person designated as trustee rejects the trusteeship;
- "(2) A person designated as trustee cannot be identified or does not exist;
- "(3) A trustee resigns;
- "(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 cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must 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 must 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 person appointed by unanimous agreement of the qualified beneficiaries; or

"(3) By a person appointed by the court.

"(d) A vacancy in a trusteeship of a charitable trust that is required to be filled must 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 person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust if the Corporation Counsel of the District of Columbia concurs in the selection; or

"(3) 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 necessary for the administration of the trust.

"§ 19-1307.05. Resignation of trustee.

"(a) A trustee may resign:

"(1) Upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees or, if there is no cotrustee, to the next designated successor 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.

"§ 19-1307.06. Removal of trustee.

"(a) The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee,

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or a trustee may be removed by the court on its own initiative.

"(b) The court may remove a trustee if:

"(1) The trustee has committed a serious breach of trust;

"(2) Lack of cooperation among cotrustees substantially impairs the administration of the trust;

"(3) Because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or

"(4) There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

"(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 under section 19-1310.01(b) as may be necessary to protect the trust property or the interests of the beneficiaries.

"§ 19-1307.07. Delivery of property by former trustee.

"(a) Unless a cotrustee 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 cotrustee, successor trustee, or other person entitled to it.

"§ 19-1307.08. Compensation of trustee.

"(a) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

"(b) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if:

"(1) The duties of the trustee are substantially different from those contemplated when the trust was created; or

"(2) The compensation specified by the terms of the trust would be unreasonably low or high.

"§ 19-1307.09. Reimbursement of expenses.

"(a) A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, 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 the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

"SUBCHAPTER VIII. DUTIES AND POWERS OF TRUSTEE.

"§ 19-1308.01. 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 chapter.

"§ 19-1308.02. Duty of loyalty.

"(a) A trustee shall administer the trust solely in the interests of the beneficiaries.

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"(b) Subject to the rights of persons dealing with or assisting the trustee as provided in section 19-1310.12, 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 section 19-1310.05;

"(4) The beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with section 19-1310.9; or

"(5) The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming 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;

"(2) The trustee's descendants, siblings, parents, or their spouses;

"(3) An agent 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 best 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 is voidable by the beneficiary unless the trustee establishes that the transaction was fair 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) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor rule of Subchapter IX of this chapter. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee at least annually shall notify the persons entitled under section 19-1308.13 to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined.

"(g) In voting shares of stock 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. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

"(h) 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

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appointment or compensation of the trustee;

"(2) Payment of reasonable compensation to the trustee;

"(3) A transaction between a trust and another trust, decedent's estate, or conservatorship 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 the trustee; or

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

"(i) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

"§ 19-1308.03. Impartiality.

"If a trust has 2 or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the beneficiaries' respective interests.

"§ 19-1308.04. 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.

"§ 19-1308.05. Costs of administration.

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

"§ 19-1308.06. Trustee's 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, shall use those special skills or expertise.

"§ 19-1308.07. Delegation by trustee.

"(a) A trustee may delegate duties and powers that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

"(1) Selecting an agent;

"(2) Establishing 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.

"(b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

"(c) A trustee who complies with subsection (a) 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.

"(d) By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of the District of Columbia, an agent submits to the jurisdiction of the courts of the District of Columbia.

"§ 19-1308.08. 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 power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that

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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 presumptively a fiduciary who, as such, 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 breach of a fiduciary duty.

"§ 19-1308.09. Control and protection of trust property.

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

"§ 19-1308.10. 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 2 or more separate trusts.

"§ 19-1308.11. Enforcement and defense of claims.

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

"§ 19-1308.12. Collecting trust property.

"A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have been committed by a former trustee.

"§ 19-1308.13. Duty to inform and report.

"(a) 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. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.

"(b) Subject to subsection (e) of this section, a trustee:

"(1) Upon request of a beneficiary, shall promptly furnish to the beneficiary a copy of the trust instrument;

"(2) Within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;

"(3) Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in subsection (c) of this section; and

"(4) Shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.

"(c)(1) A trustee shall, annually and at the termination of the trust, send a report to the distributees and permissible distributees.

"(2) A trustee shall, at the termination of the trust, send a report to other qualified beneficiaries who request it.

"(3) Upon a vacancy in a trusteeship, unless a cotrustee remains in office, the

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former trustee shall send a report to the qualified beneficiaries.

"(4) Upon a vacancy in a trusteeship or upon termination of the trust, the trustee shall send a report to a nonqualified beneficiary who requests it unless the preparation of the report was waived by the qualified beneficiaries.

"(5) A personal representative, conservator, or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

"(6) For the purposes of this subsection, the term "report" means a report of the trust property, liabilities, receipts, disbursement, and distributions, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market value.

"(d) A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

"(e) Subsections (a), (b), and (c) of this section do not apply to a trust created under an instrument executed before the effective date of this chapter.

"§ 19-1308.14. Discretionary powers; tax savings.

"(a) 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.

"(b) Section 21-1722 applies to a trust governed by this chapter.

"§ 19-1308.15. General powers of trustee.

"(a) A trustee, without authorization by the court, may exercise:

"(1) Powers conferred by the terms of the trust; and

"(2) Except as limited by the terms of the trust:

"(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 chapter.

"(b) The exercise of a power is subject to the fiduciary duties prescribed by this subchapter.

"§ 19-1308.16. Specific powers of trustee.

"Without limiting the authority conferred by section 19-1308.15, a trustee may:

"(1) Collect trust property and accept or reject additions to the trust property from a settlor or any other person;

"(2) Acquire or sell property, for cash or on credit, at public or private sale;

"(3) Exchange, partition, or otherwise change the character of trust property;

"(4) Deposit trust money in an account in a regulated financial-service institution;

"(5) Borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

"(6) With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

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"(7) With respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

"(A) Vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

"(B) Hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

"(C) Pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights;

"(D) Exercise stock options and other rights; and

"(E) Deposit the securities with a depository or other regulated financial-service institution;

"(8) With respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

"(9) Enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

"(10) Grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

"(11) Insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

"(12) Abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

"(13) With respect to possible liability for violation of environmental law:

"(A) Inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

"(B) Take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

"(C) Decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

"(D) Compromise claims against the trust which may be asserted for an alleged violation of environmental law; and

"(E) Pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

"(14) Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

"(15) Pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

"(16) Exercise elections with respect to federal, state, and local taxes;

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"(17) Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

"(18) Make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

"(19) Pledge trust property to guarantee loans made by others to the beneficiary;

"(20) Appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

"(21) Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

"(A) Paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, to an agent of the beneficiary authorized to receive payment, or if there is no such agent, to the beneficiary's guardian;

"(B) Paying it to the beneficiary's custodian under Chapter 3 of Title 21 or under the uniform gifts to minors act or uniform transfers to minors act of another state or custodial trustee under Chapter 13 of Title 19, or under the uniform custodial trusts act of another state;

"(C) If the trustee does not know of a conservator, agent authorized to receive payment, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

"(D) Managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

"(22) On distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

"(23) Resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

"(24) Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

"(25) Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers;

"(26) On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it; and

"(27) Purchase and pay premiums on life insurance on the life of any beneficiary.

"§ 19-1308.17. Distribution upon termination.

"(a) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within 30 days after the proposal was sent but only if the proposal informed the beneficiary of the right to

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object and of the time allowed for objection.

"(b) 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, and to secure a right of reimbursement if the reserve is inadequate.

"(c) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

"(1) It was induced by improper conduct of the trustee; or

"(2) The beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.

"SUBCHAPTER IX. UNIFORM PRUDENT INVESTOR ACT.

"§ 19-1309.01. Prudent investor rule.

"(a) Except as provided in subsection (b) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule as set forth in sections 19-1309.02 through 19-1309.09.

"(b) The prudent investor rule is a default rule that may be expanded, restricted, eliminated, or otherwise altered by provisions of the trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on provisions of the trust.

"§ 19-1309.02. Standard of care; portfolio strategy; risk and return objectives.

"(a) A trustee shall invest and manage trust assets as a prudent investor would by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

"(b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation, but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

"(c) Among the circumstances relevant to the trust or its beneficiaries that a trustee shall consider in investing and managing the trust assets are the following:

"(1) General economic conditions;

"(2) The possible effect of inflation or deflation;

"(3) The expected tax consequences of investment decisions or strategies;

"(4) The role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

"(5) The expected total return from income and the appreciation of capital;

"(6) Other resources of the beneficiaries;

"(7) Needs for liquidity, for regularity of income, and for preservation or appreciation of capital; and

"(8) An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

"(d) A trustee shall take reasonable steps to verify facts relevant to the investment and management of trust assets.

"(e) Subject to the standards of this subchapter, a trustee may invest in any kind of property or type of investment.

"§ 19-1309.03. Diversification.

"A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

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"§ 19-1309.04. Duties at inception of trusteeship.

"Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this subchapter.

"§ 19-1309.05. Reviewing compliance.

"The prudent investor rule expresses a standard of conduct, not a particular outcome. Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action.

"§ 19-1309.06. Language invoking standard of subchapter.

"The following terms or comparable language in a trust instrument, unless otherwise limited or modified by the instrument, authorizes any investment or strategy permitted under this subchapter: "investments permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent investor rule".

"SUBCHAPTER X. LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS  
DEALING WITH TRUSTEE.

"§ 19-1310.01. 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 section 19-1307.06;

"(8) Reduce or deny compensation to the trustee;

"(9) Subject to section 19-1310.12, 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.

"§ 19-1310.02. 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

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the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. 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.

"§ 19-1310.03. 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.

"(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.

"§ 19-1310.04. Attorney's fees and costs.

"In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

"§ 19-1310.05. Limitation of action against trustee.

"(a) A beneficiary may not commence a proceeding against a trustee for breach of trust more than one year 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 must be commenced within 3 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.

"§ 19-1310.06. 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.

"§ 19-1310.07. Event affecting administration or distribution.

"If the happening of an event, including marriage, divorce, performance of educational requirements, the attainment of a specified age, 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.

"§ 19-1310.08. 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

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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.

"§ 19-1310.09. Beneficiary's consent, release, or ratification.

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

"(1) The consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

"(2) At the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

"§ 19-1310.10. 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.

"§ 19-1310.11. Interest as general partner.

"(a) 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 D.C. Official Code §§ 33-101.01 through 33-112.04 (Uniform Partnership Act of 1996), or D.C. Official Code §§ 33-201.01 through 33-211.07 (Uniform Limited Partnership Act of 1987).

"(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) 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.

"§ 19-1310.12. Protection of person dealing with trustee.

"(a) A person other than a beneficiary who in good faith assists a trustee, or who in good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

"(b) A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the trustee's powers or the propriety of their exercise.

"(c) A person who in good faith delivers assets to a trustee need not ensure their proper application.

"(d) A person other than a beneficiary who in good faith assists a former trustee, or who

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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.

"(e) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

"§ 19-1310.13. 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 cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee;

"(7) The trust's taxpayer identification number; and

"(8) The manner of taking title to trust property.

"(b) A certification of trust may be signed or otherwise authenticated by any trustee.

"(c) A certification of trust must 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 who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

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

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

"SUBCHAPTER XI. MISCELLANEOUS PROVISIONS.

"§ 19-1311.01. Uniformity of application and construction.

"In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

"§ 19-1311.02. Electronic records and signatures.

"The provisions of this chapter 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

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Signatures in Global and National Commerce Act, approved June 30, 2000 (114 Stat. 467; 15 U.S.C. § 7002), and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

"§ 19-1311.03. Application to existing relationships.

"(a) Except as otherwise provided in this chapter, on the effective date of this chapter:

"(1) This chapter applies to all trusts created before, on, or after its effective date;

"(2) This chapter applies to all judicial proceedings concerning trusts commenced on or after its effective date;

"(3) This chapter applies to judicial proceedings concerning trusts commenced before its effective date unless the court finds that application of a particular provision of this chapter 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 chapter does not apply and the superseded law applies;

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

"(5) An act done before the effective date of the chapter is not affected by this chapter.

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

Sec. 3. Title 21 of the District of Columbia Official Code is amended as follows:

(a) Chapter 17 is amended as follows:

(1) The table of contents is amended by striking the phrase "21-1721. Investment of trust assets." and inserting the phrase "21-1721. Investment of trust assets. [Repealed]" in its place.

(2) Section 21-1721 is repealed.

(b) Section 21-2070 is amended by adding a new subsection (d) to read as follows:

"(d) A conservator or a guardian who exercises a settlor's power to consent to the modification or termination of a noncharitable irrevocable trust under section 19-1304.11(a), or who exercises a settlor's powers with respect to revocation, amendment, or distribution of trust property under section 19-1306.02(f), may do so only with the approval of the court supervising the conservatorship or guardianship upon a finding by the court that the action is not inconsistent with the trust purposes."

Repeal  
§ 21-1721  
Amend  
§ 21-2070

Sec. 4. Title 28 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by striking the phrase "Chapter 47. Uniform Prudent Investor Act. . . . . 28-4701" and inserting the phrase "Chapter 47. Uniform Prudent Investor Act. [Repealed] . . . . . 28-4701" in its place.

(b) Chapter 47 is repealed.

Repeal  
§§ 28-4701 -  
28-4712

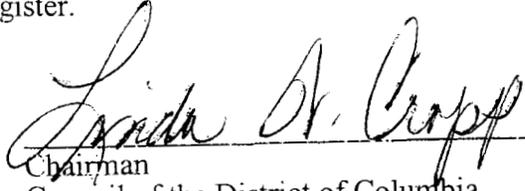
Sec. 5. Fiscal impact statement.

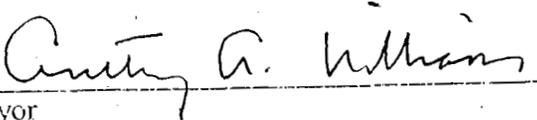
The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

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Sec. 6. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

  
Chairman  
Council of the District of Columbia

  
Mayor  
District of Columbia  
APPROVED  
December 18, 2003