

TRUSTS AND FIDUCIARIES

(760 ILCS 5/) Trusts and Trustees Act.

(760 ILCS 5/1) (from Ch. 17, par. 1651)

Sec. 1. Title. This Act shall be known and may be cited as the Trusts and Trustees Act.

(Source: P. A. 78-625.)

(760 ILCS 5/2) (from Ch. 17, par. 1652)

Sec. 2. Definitions. As used in this Act:

(1) "Trust" means a trust created by will, deed, agreement, declaration or other written instrument;

(2) "Trustee" means the trustee or any successor or added trustee of the trust, whether appointed by or pursuant to the instrument creating the trust, by order of court or otherwise, and includes an individual and a corporation qualified to administer trusts in this State under "An Act to provide for and regulate the administration of trusts by trust companies", approved June 15, 1887, as amended, or under "An Act authorizing foreign corporations, including banks, and national banking associations domiciled in other states, to act in a fiduciary capacity in this State upon certain conditions herein set forth", approved July 13, 1953, as amended.

(Source: P.A. 78-625.)

(760 ILCS 5/3) (from Ch. 17, par. 1653)

Sec. 3. Applicability.

(1) A person establishing a trust may specify in the instrument the rights, powers, duties, limitations and immunities applicable to the trustee, beneficiary and others and those provisions where not otherwise contrary to law shall control, notwithstanding this Act. The provisions of this Act apply to the trust to the extent that they are not inconsistent with the provisions of the instrument.

(2) This Act applies to every trust created by will, deed, agreement, declaration or other instrument, except that the provisions of Sections 4.01 through 4.08, Sections 4.10 through 4.12, and Sections 4.14 through 4.24 apply only to trusts executed on or after October 1, 1973 and, with respect to Section 17, to an order entered on or after that date, and provided further that the provisions of this Act do not apply to any: (a) land trust; (b) voting trust; (c) security instrument such as a trust deed or mortgage; (d) liquidation trust; (e) escrow; (f) instrument under which a nominee, custodian for property or paying or receiving agent is appointed; or (g) a trust created by a deposit arrangement in a banking or savings institution, commonly known as a "Totten trust" unless in the governing instrument any of the provisions of this Act are made applicable by specific reference.

(3) This Act does not apply to the Grain Indemnity Trust Account or any other trust created under the Grain Code.

(Source: P.A. 91-357, eff. 7-29-99.)

(760 ILCS 5/4) (from Ch. 17, par. 1654)

Sec. 4. Powers of Trustee. The trustee has the powers specified in the Sections following this Section and preceding Section 5.

(Source: P.A. 95-605, eff. 6-1-08.)

(760 ILCS 5/4.01) (from Ch. 17, par. 1655)

Sec. 4.01. To sell, contract to sell and grant options to purchase any part or all of the trust estate at public or private sale, for cash or on credit, and to exchange any part or all of the trust estate for other property.

(Source: P.A. 86-1475.)

(760 ILCS 5/4.02) (from Ch. 17, par. 1656)

Sec. 4.02. To enter into leases for any period of time, though extending beyond the termination of the trust.

(Source: P.A. 86-1475.)

(760 ILCS 5/4.03) (from Ch. 17, par. 1657)

Sec. 4.03. To borrow money and to mortgage, pledge or otherwise encumber any part or all of the trust estate.

(Source: P.A. 86-1475.)

(760 ILCS 5/4.04) (from Ch. 17, par. 1658)

Sec. 4.04. To grant easements, subdivide, improve, give consents and enter into contracts relating to real estate or its use and to dedicate any interest in real estate.

(Source: P.A. 86-1475.)

(760 ILCS 5/4.05) (from Ch. 17, par. 1659)

Sec. 4.05. To designate or appoint a trustee to act in any other jurisdiction as sole trustee or co-trustee of any part or all of the trust estate located in such other jurisdiction; to confer upon the appointed trustee any or all of the rights, powers and duties of the appointing trustee; and to remove the appointed trustee.

(Source: P.A. 86-1475.)

(760 ILCS 5/4.06) (from Ch. 17, par. 1660)

Sec. 4.06. To enter into agreements for bank or other deposit accounts, safe deposit boxes, custodian, agency or depositary arrangements for all or any part of the trust estate, including agreements for such services provided by a bank operated by or affiliated with the trustee, and to pay reasonable

compensation for those services, including compensation to the bank operated by or affiliated with the trustee, except that nothing in this Section shall be construed as removing any depositary arrangements from the requirements of the prudent person rule.

(Source: P.A. 85-1211; 86-1475.)

(760 ILCS 5/4.07) (from Ch. 17, par. 1661)

Sec. 4.07. (a) To exercise all the rights and powers of an individual owner with respect to shares of stock, bonds or other securities in the trust estate, including, but not by way of limitation, voting, giving proxies, participating in voting trusts, mergers, consolidations, foreclosures, reorganizations or liquidations, and exercising or selling subscription or conversion rights;

(b) If the provisions of the trust instrument direct that the trust estate be invested in obligations issued or guaranteed by the United States or any instrumentality or agency thereof, the trustee, if he does not make such investment directly, may invest the trust estate in interests in any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, as from time to time amended, provided that the portfolio of such investment company or investment trust is limited to obligations of the United States hereinabove described and to agreements to repurchase such obligations, which agreements, with respect to principal and interest, are at least 100% collateralized by such obligations marked to market on a daily basis, if the investment company or investment trust takes delivery of such obligations either directly or through an independent custodian designated in accordance with the Investment Company Act of 1940, as from time to time amended. Nothing in this subsection (b) shall be construed as removing any such investment from the requirements of the prudent man rule.

(Source: P.A. 84-541.)

(760 ILCS 5/4.08) (from Ch. 17, par. 1662)

Sec. 4.08. To pay taxes and reasonable expenses incurred in administering the trust estate.

(Source: P.A. 86-1475.)

(760 ILCS 5/4.09) (from Ch. 17, par. 1663)

Sec. 4.09. To appoint attorneys, auditors, financial advisers and other agents and to pay reasonable compensation to such appointees. If the trustee uses reasonable care, skill, and caution in the selection of the agent, the trustee may rely upon the advice or recommendation of the agent without further investigation and, except as may otherwise be provided in subsection (b) of Section 5.1 with respect to investment agents, shall have no responsibility for actions taken or omitted upon the advice or recommendation of the agent.

(Source: P.A. 89-344, eff. 1-1-96.)

(760 ILCS 5/4.10) (from Ch. 17, par. 1664)

Sec. 4.10. To delegate to a co-trustee for any period of time any or all of the trustee's rights, powers and duties.

(Source: P.A. 86-1475.)

(760 ILCS 5/4.11) (from Ch. 17, par. 1665)

Sec. 4.11. To compromise, contest, prosecute or abandon claims or other charges in favor of or against the trust estate.

(Source: P.A. 86-1475.)

(760 ILCS 5/4.12) (from Ch. 17, par. 1666)

Sec. 4.12. To execute contracts, notes, conveyances and other instruments, whether or not containing covenants and warranties binding upon and creating a charge against the trust estate or excluding personal liability.

(Source: P.A. 86-1475.)

(760 ILCS 5/4.13) (from Ch. 17, par. 1667)

Sec. 4.13. Reception of additional trust property. To receive and administer additional property as part of the trust estate or as a separate trust having terms identical to the terms of the existing trust. The provisions of this amendatory Act of 1993 apply to all trusts created and actions taken before, on, or after the effective date of this amendatory Act of 1993.

(Source: P.A. 88-367.)

(760 ILCS 5/4.14) (from Ch. 17, par. 1668)

Sec. 4.14. To invest in or hold undivided interests in property.

(Source: P.A. 86-1475.)

(760 ILCS 5/4.15) (from Ch. 17, par. 1669)

Sec. 4.15. To deal with the executor, trustee or other representative of any other trust or estate in which a beneficiary of the trust estate has an interest, notwithstanding the fact that the trustee is an executor, trustee or other representative of the other trust or estate.

(Source: P.A. 86-1475.)

(760 ILCS 5/4.16) (from Ch. 17, par. 1670)

Sec. 4.16. To make equitable division or distribution in cash or in kind, or both, and for that purpose to value any property divided or distributed in kind.

(Source: P.A. 86-1475.)

(760 ILCS 5/4.17) (from Ch. 17, par. 1671)

Sec. 4.17. To rely upon an affidavit, certificate, letter or other evidence reasonably believed to be genuine and on the basis of any such evidence to make any payment or distribution in good faith without liability.

(Source: P.A. 86-1475.)

(760 ILCS 5/4.18) (from Ch. 17, par. 1672)

Sec. 4.18. To have all of the rights, powers and duties given to or imposed upon the trustee by law and the provisions of the trust instrument during the period between the termination of the trust and the distribution thereof and during any period in which any litigation is pending which may void or invalidate the trust in whole or in part or affect the rights, powers, duties or discretions of the trustee except as otherwise directed by the court.

(Source: P.A. 86-1475.)

(760 ILCS 5/4.19) (from Ch. 17, par. 1673)

Sec. 4.19. To purchase and keep in force insurance of an appropriate nature and form and in a reasonable amount for the protection of the trust estate or the ownership thereof.

(Source: P.A. 86-1475.)

(760 ILCS 5/4.20) (from Ch. 17, par. 1674)

Sec. 4.20. To distribute income and amounts of principal in such one or more of the following ways as the trustee believes to be for the best interests of any beneficiary who at the time of distribution is under legal disability or in the opinion of the trustee is unable properly to manage his affairs because of illness, physical or mental disability or any other cause:

(a) directly to the beneficiary;

(b) to a duly appointed guardian of the beneficiary;

(c) to a custodian for the beneficiary under the Uniform Transfers to Minors Act;

(d) to an adult relative of the beneficiary;

(e) by expending the money or using the property directly for the benefit of the beneficiary; and the trustee is not required to see to the application of any distribution so made; and

(f) to a trust, created prior to the time the distribution becomes payable, for the sole benefit of the beneficiary and those dependent upon the beneficiary during his or her lifetime, to be administered as a part thereof, except that any amounts distributed to the trust pursuant to this paragraph (f) shall be separately accounted for by the trustee of the trust and shall be indefeasibly vested in the beneficiary so that if the beneficiary dies prior to complete distribution of such amounts, the amounts and the accretions, earnings, and income thereon, if any, shall be paid to the beneficiary's estate; provided, however, that this paragraph (f) shall not apply to the extent that it would cause a trust otherwise

qualifying for the federal estate tax marital deduction not to so qualify.

(Source: P.A. 93-695, eff. 7-9-04.)

(760 ILCS 5/4.21) (from Ch. 17, par. 1674.1)

Sec. 4.21. To plant and harvest crops; to breed, raise, purchase and sell livestock; to lease land, equipment or livestock for cash or on shares, to purchase and sell, exchange or otherwise acquire or dispose of farm equipment and farm produce of all kinds; to make improvements, construct, repair, or demolish and remove any buildings, structures or fences, to engage agents, managers and employees and delegate powers to them; to engage in drainage and conservation programs; to terrace, clear, ditch and drain lands and install irrigation systems; to replace improvements and equipment; to fertilize and improve the soil; to engage in the growing, improvement, and sale of trees and other forest crops; to participate or decline to participate in governmental agricultural or land programs; and to perform such acts as the trustee deems appropriate, using such methods as are commonly employed by other farm owners in the community in which the farm property is located.

(Source: P.A. 82-354.)

(760 ILCS 5/4.22) (from Ch. 17, par. 1674.2)

Sec. 4.22. To drill, mine and otherwise operate for the development of oil, gas and other minerals; to enter into contracts relating to the installation and operation of absorption and repressuring plants; to enter into unitization or pooling agreements for any purpose including primary, secondary or tertiary recovery; to place and maintain pipe lines; to execute oil, gas and mineral leases, division and transfer orders, grants, deeds, releases and assignments and other instruments; to participate in a cooperative coal marketing association or similar entity; and to perform such other acts as the trustee deems appropriate, using such methods as are commonly employed by owners of such interests in the community in which the interests are located.

(Source: P.A. 82-354.)

(760 ILCS 5/4.23) (from Ch. 17, par. 1674.3)

Sec. 4.23. To continue an unincorporated business and participate in its management by having the trustee or one or more agents of the trustee act as a manager with appropriate compensation from the business and to incorporate the business.

(Source: P.A. 82-354.)

(760 ILCS 5/4.24) (from Ch. 17, par. 1674.4)

Sec. 4.24. To continue a business in the partnership form and participate in its management by having the trustee or one or more agents of the trustee act as a partner, limited partner or employee with appropriate compensation from the business; to enter into new partnership agreements; and to incorporate the business; and with respect to the foregoing activities, the trustee or the agent or agents

of the trustee shall not be personally liable to third persons with respect to actions, not sounding in tort, unless he fails to identify the trust estate and reveal that he is acting in a representative capacity. Provided, however, that nothing in this Section shall impair in any way the liability of the trust estate with respect to the foregoing activities to the extent of the assets of the trust estate.

(Source: P.A. 84-518; 84-621.)

(760 ILCS 5/4.25)

Sec. 4.25. Severance and consolidation. To sever any trust estate on a fractional basis into 2 or more separate trusts for any reason; to segregate by allocation to a separate account or trust a specific amount or gift made from any trust to reflect a partial disclaimer, to reflect or result in differences in federal tax attributes, to satisfy any federal tax requirement or election, or to reduce potential generation-skipping transfer tax liability, in a manner consistent with the rules governing disclaimers, such federal tax attributes, such requirements or elections, or any applicable tax rules or regulations, and income earned on a segregated amount or gift after segregation occurs shall pass to the designated take of such amount or gift; and to consolidate 2 or more trusts having substantially similar terms into a single trust. In managing, investing, administering, and distributing the trust property of any separate account or trust and in making applicable tax elections, the trustee may consider the differences in federal tax attributes and all other factors the trustee believes pertinent and may make disproportionate distributions from the separate trusts created. A separate account or trust created by severance or segregation shall be treated as a separate trust for all purposes from and after the date on which the severance or segregation is effective, and shall be held on terms and conditions that are substantially equivalent to the terms of the trust from which it was severed or segregated so that the aggregate interests of each beneficiary in the several trusts are substantially equivalent to the beneficiary's interests in the trust before severance, provided, however, that any terms of the trust before severance that would affect qualification of the trust for any federal tax deduction, exclusion, election, exemption, or other special federal tax status must remain identical in each of the separate trusts created. The provisions of this amendatory Act of 1993 apply to all trusts created, and actions taken before, on, or after the effective date of this amendatory Act of 1993.

(Source: P.A. 88-367.)

(760 ILCS 5/4.26)

Sec. 4.26. Small trust termination. To terminate the trust and distribute the trust estate, including principal and accrued and undistributed income, if the trustee determines, in the trustee's sole discretion with the consent of the recipients, that the market value of a trust is less than \$100,000 and that the costs of continuing the trust will substantially impair accomplishment of the purpose of the trust.

Distribution shall be made to the persons then entitled to receive or eligible to have the benefit of the income from the trust in the proportions in which they are entitled thereto, or if their interests are indefinite, to those persons per stirpes if they have a common ancestor, or if not, then in equal shares. The trustee shall give notice to the persons at least 30 days prior to the effective date of the

termination.

If a particular trustee is an income beneficiary of the trust or is legally obligated to an income beneficiary, then that particular trustee may not participate as a trustee in the exercise of this termination power; provided, however, that if the trust has one or more co-trustees who are not so disqualified from participating, the co-trustee or co-trustees may exercise this power.

This Section shall not apply to the extent that it would cause a trust otherwise qualifying for a federal or State tax benefit or other benefit not to so qualify, nor shall it apply to trusts for domestic or pet animals.

The provisions of this amendatory Act of the 95th General Assembly apply to all trusts created before, on, or after its effective date.

(Source: P.A. 95-605, eff. 6-1-08.)

(760 ILCS 5/5) (from Ch. 17, par. 1675)

Sec. 5. Investments.

(a) Prudent Investor Rule. A trustee administering a trust has a duty to invest and manage the trust assets as follows:

(1) The trustee has a duty to invest and manage

trust assets as a prudent investor would considering the purposes, terms, distribution requirements, and other circumstances of the trust. This standard requires the exercise of reasonable care, skill, and caution and is to be applied to investments not in isolation, but in the context of the trust portfolio as a whole and as a part of an overall investment strategy that should incorporate risk and return objectives reasonably suitable to the trust.

(2) No specific investment or course of action is,

taken alone, prudent or imprudent. The trustee may invest in every kind of property and type of investment, subject to this Section. The trustee's investment decisions and actions are to be judged in terms of the trustee's reasonable business judgment regarding the anticipated effect on the trust portfolio as a whole under the facts and circumstances prevailing at the time of the decision or action. The prudent investor rule is a test of conduct and not of resulting performance.

(3) The trustee has a duty to diversify the

investments of the trust unless, under the circumstances, the trustee reasonably believes it is in the interests of the beneficiaries and furthers the purposes of the trust not to diversify.

(4) The trustee has a duty, within a reasonable time

after the acceptance of the trusteeship, to review trust assets and to make and implement decisions concerning the retention and disposition of original pre-existing investments in order to conform to the provisions of this Section. The trustee's decision to retain or dispose of an asset may properly be influenced by the asset's special relationship or value to the purposes of the trust or to some or all of the beneficiaries, consistent with the trustee's duty of impartiality.

(5) The trustee has a duty to pursue an investment strategy that considers both the reasonable production of income and safety of capital, consistent with the trustee's duty of impartiality and the purposes of the trust. Whether investments are underproductive or overproductive of income shall be judged by the portfolio as a whole and not as to any particular asset.

(6) The circumstances that the trustee may consider in making investment decisions include, without limitation, the general economic conditions, the possible effect of inflation, the expected tax consequences of investment decisions or strategies, the role each investment or course of action plays within the overall portfolio, the expected total return (including both income yield and appreciation of capital), and the duty to incur only reasonable and appropriate costs. The trustee may but need not consider related trusts and the assets of beneficiaries when making investment decisions.

(b) The provisions of this Section may be expanded, restricted, eliminated, or otherwise altered by express provisions of the trust instrument. The trustee is not liable to a beneficiary for the trustee's reasonable and good faith reliance on those express provisions.

(c) Nothing in this Section abrogates or restricts the power of an appropriate court in proper cases (i) to direct or permit the trustee to deviate from the terms of the trust instrument or (ii) to direct or permit the trustee to take, or to restrain the trustee from taking, any action regarding the making or retention of investments.

(d) The following terms or comparable language in the investment powers and related provisions of a trust instrument, unless otherwise limited or modified by that instrument, shall be construed as authorizing any investment or strategy permitted under this Section: "investments permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to the 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", and "prudent person rule".

(e) On and after the effective date of this amendatory Act of 1991, this Section applies to all existing and future trusts, but only as to actions or inactions occurring after that effective date.

(Source: P.A. 87-715.)

(760 ILCS 5/5.1) (from Ch. 17, par. 1675.1)

Sec. 5.1. Duty not to delegate.

(a) The trustee has a duty not to delegate to others the performance of any acts involving the exercise of judgment and discretion, except acts constituting investment functions that a prudent investor of comparable skills might delegate under the circumstances. The trustee may delegate those investment functions to an investment agent as provided in subsection (b).

(b) For a trustee to properly delegate investment functions under subsection (a), all of the following requirements apply:

(1) The trustee must exercise reasonable care, skill, and caution in selecting the investment agent, in establishing the scope and specific terms of any delegation, and in periodically reviewing the agent's actions in order to monitor overall performance and compliance with the scope and specific terms of the delegation.

(2) The trustee must conduct an inquiry into the experience, performance history, professional licensing or registration, if any, and financial stability of the investment agent.

(3) The investment agent shall be subject to the jurisdiction of the courts of the State of Illinois.

(4) The investment agent shall be subject to the same standards that are applicable to the trustee.

(5) The investment agent shall be liable to the beneficiaries of the trust and to the designated trustee to the same extent as if the investment agent were a designated trustee in relation to the exercise or nonexercise of the investment function.

(6) The trustee shall send written notice of its intention to begin delegating investment functions under this Section to the beneficiaries eligible to receive income from the trust on the date of initial delegation at least 30 days before the delegation. This notice shall thereafter, until or unless the beneficiaries eligible to receive income from the trust at the time are notified to the contrary, authorize the trustee to delegate investment functions pursuant to this Section.

(c) If all requirements of subsection (b) are satisfied, the trustee shall not otherwise be responsible for the investment decisions or actions of the investment agent to which the investment functions are delegated.

(d) On and after July 1, 1992, this Section applies to all existing and future trusts, but only as to actions or inactions occurring after that date.

(Source: P.A. 87-715; 87-895.)

(760 ILCS 5/5.2) (from Ch. 17, par. 1675.2)

Sec. 5.2. Investments in mutual funds. A trustee, including a trustee of a common trust fund, may invest and reinvest the trust estate in interests in any open-end or closed-end management type investment company or unit investment trust registered under the Investment Company Act of 1940 or any investment fund exempt from registration under the Investment Company Act of 1940, any of these investment companies, unit investment trusts, or investment funds being a "mutual fund" for purposes of this Section, or may retain, sell, or exchange those interests, provided that the portfolio of the mutual fund, as an entity, is appropriate under the provisions of this Act. A trustee shall not be prohibited from

investing, reinvesting, retaining, or exchanging any interests held by the trust estate in any mutual fund for which the trustee or an affiliate acts as advisor or manager or in any other role solely on the basis that the trustee (or its affiliate) provides services to the mutual fund and receives reasonable remuneration for those services. Neither a trustee nor its affiliate shall be required to reduce or waive its compensation for services provided in connection with the investment, management, and administration of the trust estate because the trustee invests, reinvests, or retains the trust estate in a mutual fund, so long as the total compensation paid by the trust estate as trustee's fees and mutual fund fees, including any advisory or management fees, in connection with the investment of a trust estate in a mutual fund is reasonable; provided, however, that a trustee may receive Rule 12b-1 fees equal to the amount of those fees that would be paid to any other party.

(Source: P.A. 90-297, eff. 8-1-97.)

(760 ILCS 5/5.3)

Sec. 5.3. Total return trusts.

(a) Conversion by trustee. A trustee may convert a trust to a total return trust as described in this Section if all of the following apply:

(1) The trust describes the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines that conversion to a total return trust will enable the trustee to better carry out the purposes of the trust and the conversion is in the best interests of the beneficiaries;

(2) conversion to a total return trust means the trustee will invest and manage trust assets seeking a total return without regard to whether that return is from income or appreciation of principal, and will make distributions in accordance with this Section (such a trust is called a "total return trust" in this Section);

(3) the trustee sends a written notice of the trustee's decision to convert the trust to a total return trust, specifying a prospective effective date for the conversion and including a copy of this Section, to the following beneficiaries, determined as of the date the notice is sent and assuming nonexercise of all powers of appointment:

(A) all of the legally competent beneficiaries who are currently receiving or eligible to receive income from the trust; and

(B) all of the legally competent beneficiaries who would receive or be eligible to receive a distribution of principal or income if the current interests of beneficiaries currently receiving or eligible to receive income ended;

(4) there are one or more legally competent income beneficiaries under subdivision (3)(A) of this subsection (a) and one or more legally competent remainder beneficiaries under subdivision (3)(B) of this subsection (a), determined as of the date of

sending the notice;

(5) no beneficiary objects to the conversion to a total return trust in a writing delivered to the trustee within 60 days after the notice is sent; and

(6) the trustee has signed acknowledgments of receipt confirming that notice was received by each beneficiary required to be sent notice under subdivision (3) of this subsection (a).

(b) Conversion by agreement. Conversion to a total return trust may be made by agreement between a trustee and all the primary beneficiaries of the trust under the virtual representation provisions of Section 16.1 of this Act if those provisions otherwise apply. The agreement may include any actions a court could properly order under subsection (g) of this Section; however, any distribution percentage determined by the agreement may not be less than 3% nor greater than 5%.

(c) Conversion or reconversion by court.

(1) The trustee may for any reason elect to petition the court to order conversion to a total return trust, including without limitation the reason that conversion under subsection (a) is unavailable because:

(A) a beneficiary timely objects to the conversion to a total return trust;

(B) there are no legally competent beneficiaries described in subdivision (3)(A) of subsection (a); or

(C) there are no legally competent beneficiaries described in subdivision (3)(B) of subsection (a).

(2) A beneficiary may request the trustee to convert to a total return trust or adjust the distribution percentage. If the trustee declines or fails to act within 6 months after receiving a written request to do so, the beneficiary may petition the court to order the conversion or adjustment.

(3) The trustee may petition the court prospectively to reconvert from a total return trust or adjust the distribution percentage if the trustee determines that the reconversion or adjustment will enable the trustee to better carry out the purposes of the trust. A beneficiary may request the trustee to petition the court prospectively to reconvert from a total return trust or adjust the distribution percentage. If the trustee declines or fails to act within 6 months after receiving a written request to do so, the beneficiary may petition the court to order the reconversion or adjustment.

(4) In a judicial proceeding under this subsection

(c), the trustee may, but need not, present the trustee's opinions and reasons (A) for supporting or opposing conversion to (or reconversion from or adjustment of the distribution percentage of) a total return trust, including whether the trustee believes conversion (or reconversion or adjustment of the distribution percentage) would enable the trustee to better carry out the purposes of the trust, and (B) about any other matters relevant to the proposed conversion (or reconversion or adjustment of the distribution percentage). A trustee's actions in accordance with this subsection (c) shall not be deemed improper or inconsistent with the trustee's duty of impartiality unless the court finds from all the evidence that the trustee acted in bad faith.

(5) The court shall order conversion to (or reconversion prospectively from or adjustment of the distribution percentage of) a total return trust if the court determines that the conversion (or reconversion or adjustment of the distribution percentage) will enable the trustee to better carry out the purposes of the trust and the conversion (or reconversion or adjustment of the distribution percentage) is in the best interests of the beneficiaries.

(6) Notwithstanding any other provision of this Section, a trustee has no duty to inform beneficiaries about the availability of this Section and has no duty to review the trust to determine whether any action should be taken under this Section unless requested to do so in writing by a beneficiary described in subdivision (3) of subsection (a).

(d) Post conversion. While a trust is a total return trust, all of the following shall apply to the trust:

(1) the trustee shall make income distributions in

accordance with the governing instrument subject to the provisions of this Section;

(2) the term "income" in the governing instrument

means an annual amount (the "distribution amount") equal to a percentage (the "distribution percentage") of the net fair market value of the trust's assets, whether the assets are considered income or principal under the Principal and Income Act, averaged over the lesser of:

(i) the 3 preceding years; or

(ii) the period during which the trust has been in existence;

(3) the distribution percentage for any trust

converted to a total return trust by a trustee in accordance with subsection (a) shall be 4%;

(4) the trustee shall pay to a beneficiary (in the

case of an underpayment) and shall recover from a beneficiary (in the case of an overpayment) an amount equal to the difference between the amount properly payable and the amount actually paid, plus interest compounded annually at a rate per annum equal to the distribution percentage in the year or years while the underpayment or overpayment exists; and

(5) a change in the method of determining a reasonable current return by converting to a total return trust in accordance with this Section and substituting the distribution amount for net trust accounting income is a proper change in the definition of trust income notwithstanding any contrary provision of the Principal and Income Act, and the distribution amount shall be deemed a reasonable current return that fairly apportions the total return of a total return trust.

(e) Administration. The trustee, in the trustee's discretion, may determine any of the following matters in administering a total return trust as the trustee from time to time determines necessary or helpful for the proper functioning of the trust:

(1) the effective date of a conversion to a total return trust;

(2) the manner of prorating the distribution amount for a short year in which a beneficiary's interest commences or ceases;

(3) whether distributions are made in cash or in kind;

(4) the manner of adjusting valuations and calculations of the distribution amount to account for other payments from or contributions to the trust;

(5) whether to value the trust's assets annually or more frequently;

(6) what valuation dates and how many valuation dates to use;

(7) valuation decisions about any asset for which there is no readily available market value, including:

(A) how frequently to value such an asset;

(B) whether and how often to engage a professional appraiser to value such an asset; and

(C) whether to exclude the value of such an asset from the net fair market value of the trust's assets under subdivision (d)(2) for purposes of determining the distribution amount. Any such asset so excluded is referred to as an "excluded asset" in this subsection (e), and the trustee shall distribute any net income received from the excluded asset as provided for in the governing instrument, subject to the following principles:

(i) unless the trustee determines there are

compelling reasons to the contrary considering all relevant factors including the best interests of the beneficiaries, the trustee shall treat each asset for which there is no readily available market value as an excluded asset;

(ii) if tangible personal property or real property is possessed or occupied by a beneficiary, the trustee shall not limit or restrict any right of the beneficiary to use the property in accordance with the governing instrument whether or not the trustee treats the property as an excluded asset;

(iii) examples of assets for which there is a readily available market value include: cash and cash equivalents; stocks, bonds, and other securities and instruments for which there is an established market on a stock exchange, in an over-the-counter market, or otherwise; and any other property that can reasonably be expected to be sold within one week of the decision to sell without extraordinary efforts by the seller;

(iv) examples of assets for which there is no readily available market value include: stocks, bonds, and other securities and instruments for which there is no established market on a stock exchange, in an over-the-counter market, or otherwise; real property; tangible personal property; and artwork and other collectibles; and

(8) any other administrative matters as the trustee determines necessary or helpful for the proper functioning of the total return trust.

(f) Allocations.

(1) Expenses, taxes, and other charges that would be deducted from income if the trust were not a total return trust shall not be deducted from the distribution amount.

(2) Unless otherwise provided by the governing instrument, the trustee shall fund the distribution amount each year from the following sources for that year in the order listed: first from net income (as the term would be determined if the trust were not a total return trust), then from other ordinary income as determined for federal income tax purposes, then from net realized short-term capital gains as determined for federal income tax purposes, then from net realized long-term capital gains as determined for federal income tax purposes, then from trust principal comprised of assets for which there is a readily available market value, and then from other trust principal.

(g) Court orders. The court may order any of the following actions in a proceeding brought by a trustee or a beneficiary in accordance with subdivision (c)(1), (c)(2), or (c)(3):

(1) select a distribution percentage other than 4%;

(2) average the valuation of the trust's net assets over a period other than 3 years;

(3) reconvert prospectively from or adjust the distribution percentage of a total return trust;

(4) direct the distribution of net income (determined as if the trust were not a total return trust) in excess of the distribution amount as to any or all trust assets if the distribution is necessary to preserve a tax benefit; or

(5) change or direct any administrative procedure as the court determines necessary or helpful for the proper functioning of the total return trust.

Nothing in this subsection (g) limits the equitable powers of the court to grant other relief.

(h) Restrictions. Conversion to a total return trust does not affect any provision in the governing instrument:

(1) directing or authorizing the trustee to distribute principal;

(2) directing or authorizing the trustee to distribute a fixed annuity or a fixed fraction of the value of trust assets;

(3) authorizing a beneficiary to withdraw a portion or all of the principal; or

(4) in any manner that would diminish an amount permanently set aside for charitable purposes under the governing instrument unless both income and principal are so set aside.

(i) Tax limitations. If a particular trustee is a beneficiary of the trust and conversion or failure to convert would enhance or diminish the beneficial interest of the trustee, or if possession or exercise of the conversion power by a particular trustee would alone cause any individual to be treated as owner of a part of the trust for income tax purposes or cause a part of the trust to be included in the gross estate of any individual for estate tax purposes, then that particular trustee may not participate as a trustee in the exercise of the conversion power; however:

(1) the trustee may petition the court under subdivision (c)(1) to order conversion in accordance with this Section; and

(2) if the trustee has one or more co-trustees to whom this subsection (i) does not apply, the co-trustee or co-trustees may convert the trust to a total return trust in accordance with this Section.

(j) Releases. A trustee may irrevocably release the power granted by this Section if the trustee reasonably believes the release is in the best interests of the trust and its beneficiaries. The release may

be personal to the releasing trustee or may apply generally to some or all subsequent trustees, and the release may be for any specified period, including a period measured by the life of an individual.

(k) Remedies. A trustee who reasonably and in good faith takes or omits to take any action under this Section is not liable to any person interested in the trust. If a trustee reasonably and in good faith takes or omits to take any action under this Section and a person interested in the trust opposes the act or omission, the person's exclusive remedy is to obtain an order of the court directing the trustee to convert the trust to a total return trust, to reconvert from a total return trust, to change the distribution percentage, or to order any administrative procedures the court determines necessary or helpful for the proper functioning of the trust. An act or omission by a trustee under this Section is presumed taken or omitted reasonably and in good faith unless it is determined by the court to have been an abuse of discretion. Any claim by any person interested in the trust that an act or omission by a trustee under this Section was an abuse of discretion is barred if not asserted in a proceeding commenced by or on behalf of the person within 2 years after the trustee has sent to the person or the person's personal representative a notice or report in writing sufficiently disclosing facts fundamental to the claim such that the person knew or reasonably should have known of the claim. The preceding sentence shall not apply to a person who was under a legal disability at the time the notice or report was sent and who then had no personal representative. For purposes of this subsection (k), a personal representative refers to a court appointed guardian or conservator of the estate of a person.

(l) Application. This Section is available to trusts in existence on the effective date of this amendatory Act of the 92nd General Assembly or created after that date. This Section shall be construed as pertaining to the administration of a trust and shall be available to any trust that is administered in Illinois under Illinois law or that is governed by Illinois law with respect to the meaning and effect of its terms unless:

(1) the trust is a trust described in Internal Revenue Code Section 642(c)(5), 664(d), 2702(a)(3), or 2702(b); or

(2) the governing instrument expressly prohibits use of this Section by specific reference to this Section. A provision in the governing instrument in the form: "Neither the provisions of Section 5.3 of the Trusts and Trustees Act nor any corresponding provision of future law may be used in the administration of this trust" or a similar provision demonstrating that intent is sufficient to preclude the use of this Section.

(m) Application to express trusts.

(1) This subsection (m) does not apply to a charitable remainder unitrust as defined by Section 664(d), Internal Revenue Code of 1986 (26 U.S.C. Section 664), as amended.

(2) In this subsection (m):

(A) "Unitrust" means a trust the terms of which require distribution of a unitrust amount, without regard to whether the trust has been converted to a total return trust in accordance with this Section or whether the trust is established by express terms of the governing instrument.

(B) "Unitrust amount" means an amount equal to a percentage of a trust's assets that may or must be distributed to one or more beneficiaries annually in accordance with the terms of the trust. The unitrust amount may be determined by reference to the net fair market value of the trust's assets as of a particular date or as an average determined on a multiple year basis.

(3) A unitrust changes the definition of income by substituting the unitrust amount for net trust accounting income as the method of determining current return and shall be given effect notwithstanding any contrary provision of the Principal and Income Act. By way of example and not limitation, a unitrust amount determined by a percentage of not less than 3% nor greater than 5% is conclusively presumed a reasonable current return that fairly apportions the total return of a unitrust.

(4) The allocations provision of subdivision (2) of subsection (f) of Section 5.3 applies to a unitrust except to the extent its governing instrument expressly provides otherwise.

(Source: P.A. 92-838, eff. 8-22-02; 93-991, eff. 8-23-04.)

(760 ILCS 5/5.5)

Sec. 5.5. Gift to a deceased beneficiary under an inter vivos trust. Unless the settlor expressly provides otherwise in his or her trust:

(1) if a gift of a present or future interest is to a descendant of the settlor who dies before or after the settlor, the descendants of the deceased beneficiary living when the gift is to take effect in possession or enjoyment take per stirpes the gift so bequeathed;

(2) if a gift of a present or future interest is to a class and any member of the class dies before or after the settlor, the members of the class living when the gift is to take effect in possession or enjoyment take the share or shares that the deceased member would have taken if he or she were then living, except that, if the deceased member of the class is a descendant of the settlor, the descendants of the deceased member then living shall take per stirpes the share or shares that the deceased member would have taken if he or she were then living; and

(3) except as above provided in items (1) and (2), if the gift is not to a descendant of the settlor or is not to a class as provided in items (1) and (2) and if the beneficiary dies either before or after the settlor and before the gift is to take effect in possession or enjoyment, then the gift shall lapse. If the gift lapses by reason of the death of the beneficiary before the gift is to take possession or enjoyment, then the gift so given shall be included in and pass as part of the residue of the trust under the trust. If the gift is or becomes part of the residue, the gift so

bequeathed shall pass to and be taken by the beneficiaries remaining, if any, of the residue in proportions and upon trusts corresponding to their respective interests in the residue of the trust.

The provisions of items (1) and (2) do not apply to a future interest that is or becomes indefeasibly vested at the settlor's death or at any time thereafter before it takes effect in possession or enjoyment.

The provisions of this Section apply on and after January 1, 2005 for any gifts to a deceased beneficiary under an inter vivos trust where the deceased beneficiary dies after January 1, 2005 and before the gift is to take effect in possession or enjoyment.

(Source: P.A. 93-991, eff. 8-23-04.)

(760 ILCS 5/6) (from Ch. 17, par. 1676)

Sec. 6. Nominee Registration. The trustee may cause stocks, bonds, and other property, real or personal, belonging to the trust to be registered and held in the name of a nominee without mention of the trust in any instrument or record constituting or evidencing title thereto. The trustee shall be liable for the acts of the nominee with respect to any investment so registered. The records of the trustee shall show at all times the ownership of the investment by the trustee, and the stocks, bonds and other similar investments shall be in the possession and control of the trustee and be kept separate and apart from assets which are the individual property of the trustee.

(Source: P. A. 78-625.)

(760 ILCS 5/7) (from Ch. 17, par. 1677)

Sec. 7. Compensation. The trustee shall be reimbursed for all proper expenses incurred in the management and protection of the trust and shall be entitled to reasonable compensation for services rendered.

(Source: P. A. 78-625.)

(760 ILCS 5/8) (from Ch. 17, par. 1678)

Sec. 8. Relation with Third Persons. Anyone dealing with the trustee is not obliged to inquire as to the trustee's powers or to see to the application of any money or property delivered to the trustee and may assume that the trust is in full force and effect, that the trustee is authorized to act and that his act is in accordance with the provisions of the trust instrument.

(Source: P. A. 78-625.)

(760 ILCS 5/9) (from Ch. 17, par. 1679)

Sec. 9. Custody of Assets. If a corporation is acting as co-trustee with one or more individuals, the

corporate trustee shall have custody of the trust estate, unless all the trustees otherwise agree.
(Source: P. A. 78-625.)

(760 ILCS 5/10) (from Ch. 17, par. 1680)

Sec. 10. Majority of Trustees to Act. If there are 3 or more trustees of a trust, a majority of the trustees are competent to act in all cases after prior written notice to, or written waiver of notice by, each other trustee, but a dissenting trustee has no liability for the acts of the majority.

(Source: P. A. 78-625.)

(760 ILCS 5/11) (from Ch. 17, par. 1681)

Sec. 11. Accounts.

(a) Every trustee at least annually shall furnish to the beneficiaries then entitled to receive or receiving the income from the trust estate, or if none, then those beneficiaries eligible to have the benefit of the income from the trust estate a current account showing the receipts, disbursements and inventory of the trust estate. A current account shall be binding on the beneficiaries receiving the account and on such beneficiaries' heirs and assigns unless an action against the trustee is instituted by the beneficiary or such beneficiary's heirs and assigns within 3 years from the date the current account is furnished.

(b) Every trustee shall on termination of the trust furnish to the beneficiaries then entitled to distribution of the trust estate a final account for the period from the date of the last current account to the date of distribution showing the inventory of the trust estate, the receipts, disbursements and distributions and shall make available to such beneficiaries copies of prior accounts not theretofore furnished. Such final accounting shall be binding on the beneficiaries receiving the same and all persons claiming by or through them, unless an action against the trustee is instituted by the beneficiary or person claiming by or through him or her within 3 years from the date the final account is furnished.

(c) With respect to trust estates which terminated and were distributed 10 years or less prior to January 1, 1988, the final account furnished to the beneficiaries entitled to distribution of the trust estate shall be binding on the beneficiaries receiving the same and all persons claiming by or through them, unless an action against the trustee is instituted by the beneficiary or person claiming by or through him or her within 5 years from January 1, 1988 or within 10 years from the date the final account was furnished, whichever is longer.

(d) With respect to trust estates which terminated and were distributed more than 10 years prior to January 1, 1988, the final account furnished to the beneficiaries entitled to distribution of the trust estate shall be binding on the beneficiaries receiving the same and all persons claiming by or through them, unless an action against the trustee is instituted by the beneficiary or person claiming by or through him or her within 2 years from January 1, 1988.

(e) If a beneficiary is under a legal disability, the account shall be provided to the representative of the estate of the beneficiary and shall be binding on the beneficiary and the beneficiary's estate unless an action against the trustee is instituted by the representative within 3 years from the date the account is furnished. If no representative for the estate of a beneficiary under legal disability has been appointed, the account shall be provided to a spouse, parent, adult child, or guardian of the person of the

beneficiary and shall be binding on the beneficiary unless an action is instituted against the trustee by the spouse, parent, adult child, or guardian of the person to whom the account is furnished within 3 years from the date it is furnished.

(f) If the trustee is guilty of fraudulent concealment, notwithstanding subsection (a), (b), (c), (d) or (e), the beneficiary may bring the action within the time limit set forth in Section 13-215 of the Code of Civil Procedure.

(g) Receipt of an account by a beneficiary (or other person, as provided) is presumed if the trustee has procedures in place requiring the mailing or delivery of an account to the beneficiary (or other person, as provided). This presumption shall apply to the mailing or delivery of an account by electronic means or the provision of access to an account by electronic means so long as the beneficiary has agreed to receive such electronic delivery or access.

(Source: P.A. 92-222, eff. 8-2-01.)

(760 ILCS 5/12) (from Ch. 17, par. 1682)

Sec. 12. Resignation. A trustee may resign at any time by written notice of the resignation to the settlor, if living, to a co-trustee, if any, and to the beneficiaries then entitled to receive or eligible to have the benefit of the income from the trust estate.

(Source: P. A. 78-625.)

(760 ILCS 5/13) (from Ch. 17, par. 1683)

Sec. 13. Vacancy - Successor Trustee. In the event of the death, resignation, refusal or inability to act of any trustee:

(1) the remaining trustee, if any, shall continue to act, with all the rights, powers and duties, of all of the trustees; or

(2) if there is no remaining trustee, a successor trustee may be appointed by a majority in interest of the beneficiaries then entitled to receive the income from the trust estate or, if the interests of the income beneficiaries are indefinite, by a majority in number of the beneficiaries then eligible to have the benefit of the income of the trust estate, by an instrument in writing delivered to the successor, who shall become a successor trustee upon written acceptance of the appointment, but no beneficiary who is appointed as a successor trustee shall have any discretion to determine the propriety or amount of any distribution of income or principal to himself or to any person to whom he is legally obligated.

(Source: P. A. 78-625.)

(760 ILCS 5/14) (from Ch. 17, par. 1684)

Sec. 14. Powers and Duties of Successor - Liability for Acts of Predecessor - Approval of Accounts. (1) A successor trustee shall have all the rights, powers and duties, which are granted to or imposed on the predecessor. (2) A successor trustee shall be under no duty to inquire into the acts or doings of a predecessor trustee, and is not liable for any act or failure to act of a predecessor trustee. (3) With the approval of a majority in interest of the beneficiaries then entitled to receive or eligible to have the

benefit of the income from the trust, a successor trustee may accept the account rendered and the property received as a full and complete discharge to the predecessor trustee without incurring any liability for so doing.

(Source: P. A. 78-625.)

(760 ILCS 5/15) (from Ch. 17, par. 1685)

Sec. 15. Minor or disabled person-Authority of Representative. The representative of the estate of a beneficiary under legal disability or a spouse, parent, adult child, or guardian of the person of a beneficiary for whose estate no representative has been appointed, may act for the beneficiary in receiving and approving any account of the trustee appointing a successor trustee and executing any receipt and receiving any notice from the trustee.

(Source: P.A. 82-354.)

(760 ILCS 5/15.1) (from Ch. 17, par. 1685.1)

Sec. 15.1. Trust for disabled beneficiary. A discretionary trust for the benefit of an individual who has a disability that substantially impairs the individual's ability to provide for his or her own care or custody and constitutes a substantial handicap shall not be liable to pay or reimburse the State or any public agency for financial aid or services to the individual except to the extent the trust was created by the individual or trust property has been distributed directly to or is otherwise under the control of the individual, provided that such exception shall not apply to a trust created with the disabled individual's own property or property within his or her control if the trust complies with Medicaid reimbursement requirements of federal law. Notwithstanding any other provisions to the contrary, a trust created with the disabled individual's own property or property within his or her control shall be liable, after reimbursement of Medicaid expenditures, to the State for reimbursement of any other service charges outstanding at the death of the disabled individual. Property, goods and services purchased or owned by a trust for and used or consumed by a disabled beneficiary shall not be considered trust property distributed to or under the control of the beneficiary. A discretionary trust is one in which the trustee has discretionary power to determine distributions to be made under the trust.

(Source: P.A. 89-205, eff. 1-1-96.)

(760 ILCS 5/15.2)

Sec. 15.2. Trusts for domestic or pet animals.

(a) A trust for the care of one or more designated domestic or pet animals is valid. The trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this Section, to presume against a merely precatory or honorary nature of its disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

(b) A trust for the care of one or more designated domestic or pet animals is subject to the following provisions:

(1) Except as expressly provided otherwise in the instrument creating the trust, no portion of the principal or income of the trust may be converted to the use of the trustee or to a use other than for the trust's purposes or for the benefit of a covered animal.

(2) Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(A) as directed in the trust instrument;

(B) if there is no such direction in the trust instrument and if the trust was created in a non-residuary clause in the transferor's will, then under the residuary clause in the transferor's will; or

(C) if no taker is produced by the application of subparagraph (A) or (B), then to the transferor's heirs, determined according to Section 2-1 of the Probate Act of 1975.

(3) The intended use of the principal or income may be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by a court having jurisdiction of the matter and parties, upon petition to it by an individual.

(4) Except as ordered by the court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(5) The court may reduce the amount of the property transferred if it determines that the amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under paragraph (2).

(6) If a trustee is not designated or no designated trustee is willing and able to serve, the court shall name a trustee. The court may order the transfer of the property to another trustee if the transfer is necessary to ensure that the intended use is carried out, and if a successor trustee is not designated in the trust instrument or if no designated successor trustee agrees to serve and is able to serve. The court may also make other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this Section.

(7) The trust is exempt from the operation of the common law rule against perpetuities.

(Source: P.A. 93-668, eff. 1-1-05.)

(760 ILCS 5/16.1)

Sec. 16.1. Virtual representation.

(a) If all primary beneficiaries of a trust are adults and not incapacitated, except as provided in subsection (c), any written agreement; including, without limitation, an agreement construing any provision of the trust or an agreement regarding any duty, power, responsibility, or action of the trustee, between a trustee and all of the primary beneficiaries of a trust shall be final and binding on the trustee and all beneficiaries of the trust, both current and future, as if ordered by a court with competent jurisdiction over all parties in interest, if all other persons who have a contingent, future, or other interest in the trust would become primary beneficiaries only by reason of surviving a primary beneficiary.

(b) For purposes of this Section, "primary beneficiary" means a beneficiary who is either: (1) currently entitled or eligible to receive any portion of the trust income or principal, or (2) assuming nonexercise of all powers of appointment, will receive, or be entitled to withdraw, all or a portion of the principal of the trust, if the beneficiary survives to the final date of distribution with respect to the beneficiary's share.

(c) This Section shall not apply to an agreement that accelerates the termination of a trust, in whole or in part.

(d) In the trustee's sole discretion, the trustee may obtain opinion of counsel that any agreement proposed to be made under this Section is not clearly contrary to the express terms of the trust instrument. The trustee may, but is not required to, enter into an agreement under this Section. On and after its effective date, this Section applies to all existing and future trusts, but only as to agreements entered into on or after the effective date.

(Source: P.A. 88-367.)

(760 ILCS 5/17) (from Ch. 17, par. 1687)

Sec. 17. Proceeds of Eminent Domain or Partition. If a trustee is appointed by a court of this State to receive money under eminent domain or partition proceedings and to invest it for the benefit of the person who would be entitled to the real estate or income therefrom if it had not been taken or sold, on petition of any interested person describing the real estate to be purchased, the price to be paid, the probable income to be derived and the state of the title, the court may authorize the trustee to invest all or any part of the money in other real estate in this State. Title to the real estate so purchased shall be taken in the name of the trustee. If the interest of the beneficiary in the real estate taken or sold was a legal interest, the court shall direct the trustee to convey to the beneficiary a legal estate upon the same conditions and limitations of title, but the conveyance by the trustee shall preserve any right of entry for condition broken, possibility of reverter created by the instrument of title or any reversion or other vested interest which arose by operation of law at the time the instrument took effect. The court shall not direct the conveyance by the trustee unless there is a person or class of persons in being who would have a vested interest in the real estate taken or sold under the instrument of title to the real estate and who would be entitled to possession of the real estate if it had not been taken or sold.

(Source: P. A. 78-625.)

(760 ILCS 5/17.1) (from Ch. 17, par. 1687.1)

Sec. 17.1. Where lands or any estate therein are subject to any legal or equitable future interest of any kind or to any power of appointment, whether a trust is involved or not, and it is made to appear that such lands or estate are liable to waste or depreciation in value, or that the sale thereof and the safe and proper investment of the proceeds will inure to the benefit and advantage of the persons entitled thereto, or that it is otherwise necessary for the conservation, preservation or protection of the property or estate or of any present or future interest therein that such lands or estate be sold, mortgaged, leased, converted, exchanged, improved, managed or otherwise dealt with, the court may, pending the happening of the contingency, if any, and the vesting in possession of such future interest, declare a trust, and appoint a trustee or trustees for such lands or estate and vest in a trustee or trustees title to the property, and authorize and direct the sale of such property, either at a public sale or at private sale, and upon such terms and conditions as the court may direct, and in such case may authorize the trustee or trustees to make such sale and to receive, hold and invest the proceeds thereof under the direction of the court for the benefit of the persons entitled or who may become entitled thereto according to their respective rights and interests, authorize and direct that all or any portion of the property, or the proceeds thereof, so subject to such future interests or powers of appointment, be leased, mortgaged, converted, exchanged, improved, managed, invested, re-invested, or otherwise dealt with, as the rights and interests of the parties and the equities of the case may require, and to that end may confer all necessary powers on the trustee or trustees.

All orders of every court entered pursuant to this Section subsequent to June 30, 1982 and prior to September 16, 1985 vesting title to property in a trustee are hereby validated and such title is vested in such trustee effective the day the court entered such order.

(Source: P.A. 84-1308.)

(760 ILCS 5/18) (from Ch. 17, par. 1688)

Sec. 18. Liberal Construction - Partial Invalidity. This Act shall be liberally construed and the rule that statutes in derogation of the common law shall be strictly construed does not apply. The invalidity of any provision of this Act shall not affect the remainder of the Act.

(Source: P. A. 78-625.)

(760 ILCS 5/19) (from Ch. 17, par. 1689)

Sec. 19. Saving Clause. The provisions for repeal contained in this Act do not in any way: (1) apply to any trust created by will, deed, agreement, declaration or other instrument executed prior to October 1, 1973; (2) invalidate any act done by a trustee or any order entered by a court prior to October 1, 1973; or (3) affect a claim, right, power or remedy accrued prior to October 1, 1973; under any Act repealed by this Act.

(Source: P. A. 78-625.)

(760 ILCS 5/20) (from Ch. 17, par. 1690)

Sec. 20. Repeal. The following Acts are repealed:

(1) "An Act concerning compensation of trustees", approved June 17, 1891, as amended.

(2) "An Act concerning powers of trustees", filed May 18, 1905, as amended.

(Source: P.A. 78-625.)

(760 ILCS 5/21)

Sec. 21. Reliance on Commissioner of Banks and Real Estate. No trustee or other person shall be liable under this Act for any act done or omitted in good faith in conformity with any rule, interpretation, or opinion issued by the Commissioner of Banks and Real Estate, notwithstanding that after the act or omission has occurred, the rule, opinion, or interpretation upon which reliance is placed is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(Source: P.A. 90-161, eff. 7-23-97.)