

ISSUES FACING TRUSTEES UNDER THE MUPC AND MUTC
BOSTON BAR ASSOCIATION
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Jennifer Locke
Goodwin Procter LLP

APPLICABILITY OF MUPC, MUTC

MUPC: CHAPTER 521 of the Acts of 2008:

SECTION 43. Except as provided elsewhere in this act, on the effective date of this act:

1. this act shall apply to pre-existing governing instruments, except that it shall **not apply to governing instruments which became irrevocable prior to the effective date of this act**;
2. this act shall apply to any **proceedings in court then pending or thereafter commenced** regardless of the time of the death of decedent except to the extent that in the opinion of the court the former procedure should be made applicable in a particular case in the interest of justice or because of infeasibility of application of the procedure of this act;
3. every personal representative including a person administering an estate of a minor or incompetent holding an appointment on that date, continues to hold the appointment but has only the powers conferred by this act and is subject to the duties imposed with respect to any act occurring or done thereafter;
4. an act done before the effective date in any proceeding and any accrued right is not impaired by this act. If a right is acquired, extinguished or barred upon the expiration of a prescribed period of time which has commenced to run by the provisions of any statute before the effective date, the provisions shall remain in force with respect to that right;
5. any **rule of construction or presumption provided in this act applies to governing instruments executed before the effective date unless there is a clear indication of a contrary intent, except that it shall not apply to governing instruments which became irrevocable prior to the effective date of this act.**

MUPC TECHNICAL CORRECTIONS BILL, Section 46: Amends Clause 1 of Section 43 (quoted above) to provide that Article VII (trust provisions) shall apply to governing instruments that became irrevocable prior to January 2, 2010

MUTC: SECTION 3. (a) Except as otherwise provided in this act, on the effective date of this act: (1) **this act shall apply to all trusts created before, on, or after the effective date**; (2) this act shall apply to all judicial proceedings concerning trusts commenced on or after the effective date; (3) this chapter shall apply to judicial proceedings concerning trusts commenced before the 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 act shall not apply and the superseded law shall apply; (4) an act done before the effective date shall not be affected by this act. (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 this act, that statute shall continue to apply to the right even if it has been superseded. **SECTION 4.** This act shall take effect on January 2, 2012.

PROVISIONS THAT CAN/CANNOT BE OVERRIDDEN BY TERMS OF TRUST

MUPC: *Section 2-701. [Scope.]* In the absence of a finding of a **contrary intention shown by the terms of the [trust]**, the rules of construction in this part control the construction of a governing instrument.

MUTC: *Section 105. [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 terms and purposes of the trust and the interests of the beneficiaries; (3) the requirement that a trust have a purpose that is lawful and not contrary to public policy; (4) the **power of the court to modify or terminate a trust under sections 410 through 416;** (5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in article 5; (6) the power of the court under section 702 to require, dispense with, or modify or terminate a bond; (7) the **power of the court under section 708(b) to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;** (8) the **effect of an exculpatory term under section 1008;** (9) the rights under sections 1010 through 1013 of a person other than a trustee or beneficiary; and (10) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice.

PRINCIPAL PLACE OF ADMINISTRATION

MUPC: *Section 7-305. [Trustee's Duties; Appropriate Place of Administration; Deviation.]* **A trustee is under a continuing duty to administer the trust at a place appropriate to the purposes of the trust and to its sound, efficient management.** If the principal place of administration becomes inappropriate for any reason, the court may enter any order furthering efficient administration and the interests of beneficiaries, including, if appropriate, removal of the trustee and appointment of a trustee in another state or country. **Trust provisions relating to the place of administration and to changes in the place of administration or of trustee control unless compliance would be contrary to efficient administration or the purposes of the trust.** Views of adult beneficiaries shall be given weight in determining the suitability of the trustee and the place of administration.

MUTC: *Section 108. [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. (b) Without precluding

the right of the court to order, approve, or disapprove a transfer, **the trustee, may, but has no affirmative duty to, transfer the trusts principal place of administration to another state or to a jurisdiction outside of the United States.** (c) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trusts 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. (d) **The authority of a trustee under this section to transfer a trusts 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.**

DUTY TO INFORM AND REPORT TO BENEFICIARIES

MUPC: *Section 7-303. [Duty to Inform and Account to Beneficiaries.]*

The trustee shall keep the **donor of a revocable trust** and the **beneficiaries of an irrevocable trust reasonably informed of the trust and its administration.** In addition, unless the trust is revocable:

- (a) Within 30 days after his acceptance of the trust or the trust becomes irrevocable, whichever is later, the trustee shall inform in writing the current beneficiaries and if possible, 1 or more persons who under section 1-403 may represent beneficiaries with future interests, of the court having jurisdiction over the trust and of the trustee's name and address. The information shall be delivered or sent by ordinary first class mail.
- (b) Upon reasonable request, the trustee shall provide the beneficiary with a copy of the trust and with relevant information about the assets of the trust and the **particulars relating to its administration.**
- (c) Upon reasonable request, a beneficiary is entitled to a statement of the accounts of the trust annually and on termination of the trust or change of the trustee.

MUTC: *Section 813. [Duty to Inform and Report.]* (a) A trustee shall keep **the qualified beneficiaries of the trust reasonably informed about the administration of the trust.** Unless **unreasonable under the circumstances, a trustee shall promptly respond to a qualified beneficiary's request for information** related to the administration of the trust. (b) Within 30 days after acceptance of the trust or the trust becomes irrevocable, whichever is later, the trustee shall inform in writing the qualified beneficiaries of the trustees name and address. The information shall be delivered or sent by ordinary first class mail. (c) A trustee **shall send an account to the distributees and permissible distributees of trust income or principal, and to other qualified beneficiaries who request it, at least annually and at the termination of the trust.** The account may be formal or informal, but shall include information relating to the trust property, liabilities, receipts, and disbursements, including the amount of the trustees

compensation, a listing of the trust assets and, if feasible, their respective market values. (d) A beneficiary may waive the right to a trustee's account or other information otherwise required to be furnished under this section. A beneficiary, with respect to future accounts and other information, may withdraw a waiver previously given. A waiver of a trustee's account or other information does not relieve the trustee from accountability and potential liability for matters that the account or other information would have disclosed.

DEFINITIONS OF BENEFICIARY

MUPC: *Section 1-201. [General Definitions.]*

(3) "Beneficiary", as it relates to a trust beneficiary, includes a **person who has any present or future interest, vested or contingent**, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust;

MUTC: *Section 103. [Definitions.]* In this chapter: (3) **Beneficiary** means a **person who has a present or future beneficial interest in a trust, vested or contingent**. (10) **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**; or (B) **would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date**. *Section 110. [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 has the rights of a qualified beneficiary under this chapter if the charitable organization, on the date the charitable organization's qualification is being determined: (1) is a distributee or permissible distributee of trust income or principal; or (2) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

VIRTUAL REPRESENTATION

MUPC: *Section 1-403. [Pleadings; When Parties Bound by Others; Notice]*

In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the following apply:

(1) Interests to be affected shall be described in pleadings which give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner.

(2) Persons are bound by orders binding others in the following cases:

(i) Orders binding the sole holder or all co-holders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, or a presently exercisable power to appoint among a class of appointees which is broader than

the class of those persons who would take in default of the exercise of such power, bind other persons to the extent their interests as objects, takers in default, or otherwise are subject to the power.

(ii) To the extent there is no conflict of interest between them or among persons represented, orders binding a conservator bind the person whose estate the conservator controls; orders binding a guardian bind the protected person or ward if no conservator has been appointed; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent a minor child.

(iii) An unborn or unascertained person who is not otherwise represented is bound by an order to the extent the person's interest is adequately represented by another party having a substantially identical interest in the proceeding.

(3) Notice is required as follows:

(i) Notice as prescribed by section 1-401 shall be given to every interested person or to one who can bind an interested person as described in (2)(i) or (2)(ii) above. Notice may be given both to a person and to another who may bind such person.

(ii) Notice is given to unborn or unascertained persons, who are not represented under (2)(i) or (2)(ii), by giving notice to all known persons whose interest in the proceedings are substantially identical to those of the unborn or unascertained persons.

MUTC: *Section 301. [Representation: Basic Effect.]* (a) **Notice to a person who may represent and bind another person under this article has the same effect as if notice were given directly to the other person.** (b) The consent of a person who may represent and bind another person under this article is binding on the person represented **unless the person represented objects to the representation** before the consent would otherwise have become effective. (c) Except as otherwise provided in section 602, a person who under this article may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf. (d) A settlor may not represent and bind a beneficiary under this article with respect to the termination or modification of a trust under section 411(a).

MUTC: *Section 109. [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, or delivery to the person's last known place of residence or place of business.

MUTC: *Section 302. [Representation by Holder of General Testamentary Power of Appointment.]* To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular

question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

MUTC: Section 303. [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 or protected person if a conservator 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; and (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.

MUTC: Section 304. [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.

SETTLEMENT AGREEMENTS

MUPC: Section 3-1101. [Effect of Approval of Agreements Involving Trusts, Inalienable Interests, or Interests of Third Persons.]

A compromise of any controversy as to admission to probate of any instrument offered for formal probate as the will of a decedent, as to the administration or distribution of an estate, or as to an accounting therefore, or as to any matter relating to said estate, or as to the construction of a will or trust created by a written instrument, or as to the fiduciary's power and authority thereunder, or as to any controversy growing out of said will or instrument that may arise between the fiduciary and any other person or the guardian or conservator of any person interested under said will or instrument or in said estate, or between claimants or the guardians or conservators of claimants to said estate, to which arbitration or **compromise, in the form of an agreement in writing**, such personal representative, guardian, conservator, receiver, commissioner or other fiduciary officer or **trustee, and all other persons in being and of full age and not under guardianship, and the guardian or conservator, if any, of all other persons who claim a vested interest in said estate**, whose interests will, in the opinion of the court, be affected by the proposed arbitration or compromise, **shall be parties**, if **approved in a formal proceeding in the court** for that purpose, is binding on all the parties thereto including those unborn, unascertained or who could not be located. An approved compromise is binding even though it may affect a trust or an inalienable interest. A compromise does not impair the rights of creditors or of taxing authorities who are not parties to it.

MUPC: Section 3-1102. [Procedure for Securing Court Approval of Compromise.]

The procedure for securing court approval of a compromise is as follows:

(1) The **terms of the compromise shall be set forth in an agreement in writing which shall be executed by all competent persons and parents or guardians acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise.** Execution is not required by any person whose identity cannot be ascertained or whose whereabouts is unknown and cannot reasonably be ascertained.

(2) Any interested person, including the personal representative or a trustee, then may **submit the agreement to the court for its approval and for execution by the personal representative, the trustee of every affected trust, and other fiduciaries and representatives.**

(3) After notice as prescribed by section 1-401 to all interested persons or their representatives, including the personal representative of the estate and all affected trustees of trusts, the court, if it finds that the **contest or controversy is in good faith** and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable, shall make an **order approving the agreement and directing all fiduciaries subject to its jurisdiction to execute the agreement.** Minor children represented only by their parents or guardians may be bound only if their parents or guardians join with other competent persons in execution of the compromise. Upon the making of the order and the execution of the agreement, all further disposition of the estate is in accordance with the terms of the agreement.

MUTC: Section 111. [Non-judicial Settlement Agreements.] (a) For purposes of this section, interested persons means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court. (b) Except as otherwise provided in subsection (c), **interested persons may enter into a binding non-judicial settlement agreement with respect to any matter involving a trust.** (c) A non-judicial 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 non-judicial 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 non-judicial settlement agreement,** to determine whether the representation as provided in article 3 was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

STATUTE OF LIMITATION ON CONTESTING TRUST VALIDITY

MUTC: Section 604. [Limitation on Action Contesting Validity of Revocable Trust; Distribution of Trust Property.] (a) A person may commence a judicial proceeding to **contest the validity of a trust** that was revocable at the settlor's death within the earlier of: (1) **one year**

after the settlors death; or (2) 60 days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trusts existence, of the trustees name and address, and of the time allowed for commencing a proceeding. (b) Upon the death of the settlor of a trust that was revocable at the settlors 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 contestant sent the notification. (c) A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

STATUTES OF LIMITATION ON ACTIONS AGAINST TRUSTEE

MUPC: *Section 7-307. [Limitations on Proceedings Against Trustees After Final Account.]*

Unless previously barred by adjudication, consent or limitation, **any claim against a trustee for breach of trust is barred as to any beneficiary who has received a final account** or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary **unless a proceeding to assert the claim is commenced within 6 months after receipt of the final account** or statement. In any event and notwithstanding lack of full disclosure **a trustee who has issued a final account or statement received by the beneficiary and has informed the beneficiary of the location and availability of records for examination by the beneficiary is protected after 3 years.** A beneficiary is deemed to have received a final account or statement if, being an adult, it is **received by the beneficiary personally** or if, being a minor or disabled person, it is received by the beneficiary's representative as described in section 1-403(1) and (2).

MUTC: *Section 1005. [Limitation of Action Against Trustee.]* (a) Unless previously barred by adjudication, consent or limitation, **any claim against a trustee for breach of trust is barred as to any beneficiary who has received a final account** or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a **proceeding to assert the claim is commenced within six months after receipt of the final account** or statement. **In any event and notwithstanding lack of full disclosure a trustee who has issued a final account or statement received by the beneficiary and has informed the beneficiary of the location and availability of records for examination by the beneficiary is protected after three years.** A beneficiary is **deemed to have received a final account or statement if, being an adult, it is received by the beneficiary personally** or if, being a minor or disabled person, it is received by the beneficiary's representative as described in article 3. (b) Where a claim is not barred by the provisions of subsection (a), **a beneficiary may not commence a proceeding against a trustee for breach of trust more than three years after the date the beneficiary or a representative of the beneficiary knew or reasonably should have known of the existence of a potential claim** for breach of trust. (c) If subsections (a) and (b) **do not apply, a judicial proceeding against a trustee for breach of trust must be commenced within five years** after the first to occur of: (1) the removal, resignation, or death of the trustee; (2) the termination of the beneficiary's interest in the trust; or (3) the termination of the trust.

MUTC: *Section 817. [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 (i) informed the beneficiary of the right to object and of the time allowed for objection and (ii) provided the beneficiary with sufficient material facts to enable the beneficiary to evaluate the proposal.

RESIGNATION, APPOINTMENT AND ACCEPTANCE OF TRUSTEE

MUPC: *Section 7-308. [Resignation or Removal of Trustee; Appointment to Fill Vacancy.]*

(a) A trustee may resign the office or be removed as provided by the terms of the will or other instrument creating the trust. Any vacancy caused by such resignation, removal or otherwise may be filled as so provided.

(b) A trustee may resign the office by filing a written statement of resignation with a petition for permission to resign with the court having jurisdiction of the trust.

(c) A trustee or any person interested in a trust may at any time petition for removal of a trustee on the ground that removal would be in the best interest of the beneficiaries of the trust or for cause. Cause for removal exists if it is shown that the trustee has disregarded an order of the court, has become incapacitated or otherwise incapable of discharging the duties of the office, or has mismanaged the property or failed to perform any duty pertaining to the office.

(d) A trustee or any person interested in a trust may at any time petition for the appointment of a trustee to fill a vacancy which is not filled as provided by the terms of the will or other instrument creating the trust.

(e) Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the trustees, the beneficiaries and to other persons as the court may order. After notice and hearing, the court may terminate the appointment of a trustee by ordering removal or by accepting the resignation and, if the petition contains a prayer therefor, may appoint a successor trustee to fill the vacancy caused by such resignation, removal or otherwise.

MUTC: *Section 701. [Accepting or Declining Trusteeship.]* (a) Except as otherwise provided in subsection (c), 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, but need not: (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 a qualified beneficiary; and (2) inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

MUTC: *Section 704. [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 co-trustees 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 trustees. (c) A vacancy in a trusteeship that is required to be filled must be filled in the following order of priority: (1) by a person designated by 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) 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.

MUTC: *Section 705. [Resignation of Trustee.]* (a) A trustee may resign: (1) upon at least 30 days notice to: (i) in the case of a revocable trust, the settlor and all co-trustees of the trust, and (ii) in the case of any other trust, the qualified beneficiaries and all co-trustees of the trust; 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 trustees bond for acts or omissions of the trustee is not discharged or affected by the trustees resignation.

REMOVAL OF TRUSTEE

MUPC: *Section 7-308. [Resignation or Removal of Trustee; Appointment to Fill Vacancy.]*

(a) A trustee may resign the office or be removed as provided by the terms of the will or other instrument creating the trust. Any vacancy caused by such resignation, removal or otherwise may be filled as so provided.

(b) A trustee may resign the office by filing a written statement of resignation with a petition for permission to resign with the court having jurisdiction of the trust.

(c) A trustee or **any person interested in a trust may at any time petition for removal of a trustee on the ground that removal would be in the best interest of the beneficiaries of the trust** or for cause. Cause for removal exists if it is shown that the trustee has disregarded an order of the court, has become incapacitated or otherwise incapable of discharging the duties of the office, or has mismanaged the property or failed to perform any duty pertaining to the office.

(d) A trustee or any person interested in a trust may at any time petition for the appointment of a trustee to fill a vacancy which is not filled as provided by the terms of the will or other instrument creating the trust.

(e) Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the trustees, the beneficiaries and to other persons as the court may order. After notice and hearing, the court may terminate the appointment of a trustee by ordering removal or by accepting the resignation and, if the petition contains a prayer therefor, may appoint a successor trustee to fill the vacancy caused by such resignation, removal or otherwise.

MUTC: Section 706. [Removal of Trustee.] (a) The settlor, a co-trustee, or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative. (b) The court may remove a trustee if: (1) the trustee has committed a serious breach of trust; (2) lack of cooperation among co-trustees 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 co-trustee 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 1001(b) as may be necessary to protect the trust property or the interests of the beneficiaries.

ACTION BY MAJORITY OF TRUSTEES

UTC: Section 703. [Co-Trustees.] (a) **Co-trustees who are unable to reach a unanimous decision may act by majority decision.** (b) If a vacancy occurs in a co-trusteeship, the remaining co-trustees may act for the trust. (c) **A co-trustee must participate in the performance of a trustee's function** unless the co-trustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the co-trustee has properly delegated the performance of the function to another trustee. (d) If a co-trustee 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 co-trustee or a majority of the remaining co-trustees may act for the trust. (e) Except as otherwise provided in subsection (f), **a trustee who does not join in an action of another trustee is not liable** for the action. (f) **Each trustee shall exercise reasonable care to: (1) prevent a co-trustee from committing a breach of trust; and (2) compel a co-trustee to redress a breach of trust.** (g) The provisions of this section permitting trustees to act in certain circumstances by **majority rather than unanimity shall not apply with respect to trusts established under instruments executed before the effective date of this act.**

TRUSTEE/AGENT/EMPLOYEE COMPENSATION

MUPC: Section 7-205. [Proceedings for Review of Employment of Agents and Review of Compensation of Trustee and Employees of Trust.]

On petition of an interested person, after notice to all interested persons, the **court may review the propriety of employment of any person by a trustee including any attorney, auditor, investment advisor or other specialized agent or assistant**, and the **reasonableness of the compensation of any person so employed**, and the **reasonableness of the compensation determined by the trustee** for the trustee's own services. **Any person who has received excessive compensation from a trust may be ordered to make appropriate refunds.**

MUTC: Section 708. [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.

TERMINATION OF TRUST

MUTC: Section 411. [Modification or Termination of Non-charitable Irrevocable Trust by Consent.] (a) If, upon petition, the court finds that the **settlor and all beneficiaries consent** to the modification or termination of a non-charitable irrevocable trust, the court may approve the modification or termination **even if the modification or termination is inconsistent with a material purpose of the trust**. (b) A non-charitable 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 non-charitable 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) If **not all of the beneficiaries consent to a proposed modification or termination** of the trust under subsection (a) or (b), **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.

UTC: Section 414. [Modification or Termination of Uneconomic Trust.] (a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than **\$200,000** 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.

ACTION BY MAJORITY OF TRUSTEES

UTC: *Section 703. [Co-Trustees.]* (a) **Co-trustees who are unable to reach a unanimous decision may act by majority decision.** (b) If a vacancy occurs in a co-trusteeship, the remaining co-trustees may act for the trust. (c) **A co-trustee must participate in the performance of a trustees function** unless the co-trustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the co-trustee has properly delegated the performance of the function to another trustee. (d) If a co-trustee 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 co-trustee or a majority of the remaining co-trustees may act for the trust. (e) Except as otherwise provided in subsection (f), **a trustee who does not join in an action of another trustee is not liable** for the action. (f) **Each trustee shall exercise reasonable care to: (1) prevent a co-trustee from committing a breach of trust; and (2) compel a co-trustee to redress a breach of trust.** (g) The provisions of this section permitting trustees to act in certain circumstances by **majority rather than unanimity shall not apply with respect to trusts established under instruments executed before the effective date of this act.**

RESIGNATION, APPOINTMENT AND ACCEPTANCE OF TRUSTEE

MUPC: *Section 7-308. [Resignation or Removal of Trustee; Appointment to Fill Vacancy.]*

(a) A trustee may resign the office or be removed as provided by the terms of the will or other instrument creating the trust. Any vacancy caused by such resignation, removal or otherwise may be filled as so provided.

(b) A trustee may resign the office by filing a written statement of resignation with a petition for permission to resign with the court having jurisdiction of the trust.

(c) A trustee or any person interested in a trust may at any time petition for removal of a trustee on the ground that removal would be in the best interest of the beneficiaries of the trust or for cause. Cause for removal exists if it is shown that the trustee has disregarded an order of the court, has become incapacitated or otherwise incapable of discharging the duties of the office, or has mismanaged the property or failed to perform any duty pertaining to the office.

(d) A trustee or any person interested in a trust may at any time petition for the appointment of a trustee to fill a vacancy which is not filled as provided by the terms of the will or other instrument creating the trust.

(e) Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the trustees, the beneficiaries and to other persons as the court may order. After notice and hearing, the court may terminate the appointment of a trustee by ordering removal or by accepting the resignation and, if the petition

contains a prayer therefor, may appoint a successor trustee to fill the vacancy caused by such resignation, removal or otherwise.

MUTC: Section 701. [Accepting or Declining Trusteeship.] (a) Except as otherwise provided in subsection (c), 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, but need not: (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 a qualified beneficiary; and (2) inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

MUTC: Section 704. [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 co-trustees 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 trustees. (c) A vacancy in a trusteeship that is required to be filled must be filled in the following order of priority: (1) by a person designated by 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) 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.

MUTC: Section 705. [Resignation of Trustee.] (a) A trustee may resign: (1) upon at least 30 days notice to: (i) in the case of a revocable trust, the settlor and all co-trustees of the trust, and (ii) in the case of any other trust, the qualified beneficiaries and all co-trustees of the trust; 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 trustees bond for acts or omissions of the trustee is not discharged or affected by the trustees resignation.

PRUDENT ADMINISTRATION

MUTC: Section 807. [Delegation by Trustee.] (a) A trustee may delegate **duties and powers** if it is prudent to do so. 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 agents actions in order to monitor the agents 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) 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 commonwealth, an agent submits to the jurisdiction of the courts of the commonwealth. *See MGL c. 203C §10* [“A trustee may delegate **investment and management functions** if it is prudent to do so.”]

TRUST ADVISERS AND PROTECTORS

MUTC: *Section 808. [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 the person holding the power owes to the beneficiaries of the trust. (c) A person 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.**

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