

**New York Code
Estate, Powers and Trust
Article 7 - Trust**

ARTICLE 7

TRUSTS

PART 1. RULES GOVERNING TRUSTS

- Section 7-1.1 When trust interests not to merge.
7-1.2 Trustee of passive trust not to take.
7-1.3 Purchase-money resulting trust abolished.
7-1.4 Purposes for which trust may be created.
7-1.5 When trust interest inalienable; exception.
7-1.6 Application of principal to income beneficiary.
7-1.7 Interest remaining in creator of trust.
7-1.8 Duration of trust for benefit of creditors.
7-1.9 Revocation of trusts.
7-1.10 Provision by non-domiciliary creator as to law to govern trust.
7-1.11 Application of principal to creator of trust as reimbursement for taxes.
7-1.12 Supplemental needs trusts established for persons with severe and chronic or persistent disabilities.
7-1.13 Division of trusts and establishment of separate trusts.
7-1.14 Who may make a lifetime trust.
7-1.15 What property may be disposed of by lifetime trust.
7-1.16 Revocation of lifetime trust by will.
7-1.17 Execution, amendment and revocation of lifetime trusts.
7-1.18 Funding of lifetime trust.
7-1.19 Application for termination of uneconomical trust.

PART 2. RULES GOVERNING TRUSTEES

- Section 7-2.1 Extent of trustee's estate.
7-2.2 When estate of trustee ceases.
7-2.3 Trust estate not to descend on death of trustee; appointment, duties and rights of successor trustee.
7-2.4 Act of trustee in contravention of trust.
7-2.5 Suspension of powers of trustee in war service.
7-2.6 Resignation, suspension or removal of trustee.
7-2.7 Accounting by trustee in supreme court.
7-2.8 Commissions of trustee to sell real property for benefit

of creditors.

PART 3. RIGHTS OF PURCHASERS, CREDITORS AND OTHER PERSONS

Section 7-3.1 Disposition in trust for creator void as against

creditors.

7-3.2 Bona fide purchasers and creditors protected.

7-3.3 Person paying money to the trustee protected.

7-3.4 Excess income from trust property subject to creditors'

claims.

7-3.5 Rights of creditors to obtain information concerning

beneficiaries.

PART 5. BANK ACCOUNTS IN TRUST FORM

Section 7-5.1 Definitions.

7-5.2 Terms of a trust account.

7-5.3 Payment to beneficiary.

7-5.4 Effect of payment.

7-5.5 Rights not affected.

7-5.6 Joint depositors.

7-5.7 Multiple beneficiaries.

7-5.8 Application.

PART 6.

UNIFORM TRANSFERS TO MINORS ACT.

Section

7-6.1 Definitions.

7-6.2 Scope and jurisdiction.

7-6.3 Nomination of custodian.

7-6.4 Transfer by gift or exercise of power of appointment.

7-6.5 Transfer authorized by will or trust.

7-6.6 Other transfer by fiduciary.

7-6.7 Transfer by obligor.

7-6.8 Receipt for custodial property.

7-6.9 Manner of creating custodial property and effecting transfer;

designation of initial custodian; control.

7-6.10 Single custodianship.

7-6.11 Validity and effect of transfer.

7-6.12 Care of custodial property.

7-6.13 Powers of custodian.

7-6.14 Use of custodial property.

7-6.15 Custodian's expenses, compensation and bond.

7-6.16 Exemption of third person from liability.

7-6.17 Liability to third persons.

7-6.18 Renunciation, resignation, death or removal of custodian; designation of successor custodian.

7-6.19 Accounting by and determination of liability of custodian.

7-6.20 Termination of custodianship.

7-6.21 Age eighteen election.

- 7-6.22 Effect on existing custodianships.
- 7-6.23 Applicability.
- 7-6.24 Uniformity of application and construction.
- 7-6.25 Short title.
- 7-6.26 Severability.

PART 7. CHILD PERFORMER TRUST ACCOUNT

Section 7-7.1 Child performer trust account

PART 8. HONORARY TRUSTS FOR PETS

Section 7-8.1 Honorary trusts for pets

(7-1.1 - 7-1.19) Rules Governing Trusts

§ 7-1.1 When trust interests not to merge

A trust is not merged or invalid because a person, including but not limited to the creator of the trust, is or may become the sole trustee and the sole holder of the present beneficial interest therein, provided that one or more other persons hold a beneficial interest therein, whether such interest be vested or contingent, present or future, and whether created by express provision of the instrument or as a result of reversion to the creator's estate.

§ 7-1.2 Trustee of passive trust not to take

Every disposition of property shall be made directly to the person in whom the right to possession and income is intended to be vested and not to another in trust for such person, and if made to any person in trust for another, no estate, legal or equitable, vests in the trustee. But neither this section nor 7-1.1 shall apply to trusts arising or resulting by implication of law.

§ 7-1.3 Purchase-money resulting trust abolished

(a) A disposition of property to one person for a valuable consideration paid, in whole or in part, by another is presumed fraudulent as against the creditors of the payor at the time of such

disposition and, unless the presumption is rebutted, a trust results in favor of such creditors to the extent necessary to satisfy their claims;

but title to the property vests in the transferee and no trust results

to the payor unless the transferee either:

(1) Takes such property, in his own name, as an absolute transfer

without the consent or knowledge of the payor; or

(2) In violation of some trust, purchases the property so transferred

with money or property belonging to another.

7-1.4 Purposes for which trust may be created

An express trust may be created for any lawful purpose.

§ 7-1.5 When trust interest inalienable; exception

(a) The interest of the beneficiary of any trust may be assigned or

otherwise transferred, except that:

(1) The right of a beneficiary of an express trust to receive the

income from property and apply it to the use of or pay it to any person

may not be transferred by assignment or otherwise unless a power to

transfer such right, or any part thereof, is conferred upon such

beneficiary by the instrument creating or declaring the trust.

(2) The proceeds of a life insurance policy which, under a trust or

other agreement, are upon the death of the insured left with the

insurance company may not be (A) transferred, (B) subject to commutation

or encumbrance or (C) subject to legal process except in an action for

necessaries, if provisions to such effect were incorporated in such

trust or other agreement.

(b) Notwithstanding subparagraph (a) (1):

(1) The beneficiary of an express trust to receive income from

property and apply it to the use of or pay it to any person may, unless

otherwise provided in the instrument creating or declaring such trust,

transfer any amount in excess of ten thousand dollars of the annual

income to which the beneficiary is entitled from such trust to the

spouse, issue, ancestors, brothers, sisters, uncles, aunts, nephews or nieces of the beneficiary, or to a trustee, committee, conservator, curator, custodian, guardian of the property of a minor, or the donee of a power during minority for the benefit only of any such person bearing such relationship to the beneficiary, provided that such transfer is evidenced by a written instrument signed and acknowledged by the beneficiary and delivered to the trustee of the trust, together with an affidavit by the beneficiary that such transfer and any like transfer concurrently in effect are for all or part of the excess over ten thousand dollars of the annual income from such trust to which such beneficiary is entitled, and that he has not received and is not to receive any consideration in money or money's worth for the transfer.

(2) Any such transfer shall be effective in any year only as to income from such trust in excess of ten thousand dollars, and for this purpose all previous like transfers applicable to a given year shall be taken into account. In the event that two or more transfers are made in or for any year in a total amount exceeding the income from such trust properly transferable hereunder, transferees shall be preferred in the order in which the instruments of transfer were delivered to the trustee.

(3) A trustee shall be exonerated and fully discharged for any payment made to a transferee in reliance on the affidavit of a beneficiary described in subparagraph (1).

(4) The provisions of this paragraph do not apply to subparagraph (a)

(2):

(c) A transferee of income may, if he has not received or is not to receive any consideration in money or money's worth therefor, make a

further transfer of such income only to one or more of the permissible

transferees referred to in subparagraph (b) (1), other than a prior

transferor; provided, however, that upon the death of a transferee any income not so transferred by him shall be an asset of his estate, subject to his testamentary disposition or passing to his distributees under the statutes of descent and distribution.

(d) The beneficiary of an express trust to receive the income from property and apply it to the use of or pay it to any person is not precluded by anything contained in this section from transferring or assigning any part or all of such income to or for the benefit of persons whom the beneficiary is legally obligated to support.

§ 7-1.6 Application of principal to income beneficiary

(a) Notwithstanding any contrary provision of law, the court having jurisdiction of an express trust, heretofore created or declared, to receive the income from property and apply it to the use of or pay it to any person, unless otherwise provided in the disposing instrument, may in its discretion make an allowance from principal to any income beneficiary whose support or education is not sufficiently provided for, to the extent that such beneficiary is indefeasibly entitled to the principal of the trust or any part thereof or, in case the income beneficiary is not entitled to the principal of the trust or any part thereof, to the extent that all persons beneficially interested in the trust are adult and competent and consent thereto in writing; provided that the court, after a hearing on notice to all those beneficially interested in the trust in such manner as the court may direct, is satisfied that the original purpose of the creator of the trust cannot be carried out and that such allowance effectuates the intention of the creator.

(b) Notwithstanding any contrary provision of law, the court having jurisdiction of an express trust, hereafter created or declared, to

receive income from property and apply it to the use of or pay it to any

person, unless otherwise provided in the disposing instrument, may in

its discretion make an allowance from principal to any income

beneficiary whose support or education is not sufficiently provided for,

whether or not such person is entitled to the principal of the trust or

any part thereof; provided that the court, after a hearing on notice to

all those beneficially interested in the trust in such manner as the

court may direct, is satisfied that the original purpose of the creator

of the trust cannot be carried out and that such allowance effectuates

the intention of the creator.

(c) In the event that an income beneficiary to whom an allowance is

made, as provided in this section, is or becomes entitled to a share of

the principal of the trust, such allowance, without interest thereon,

shall be a charge upon such share.

(d) If the application or the possibility of the application of this

section to any trust would reduce or eliminate a charitable deduction

otherwise available to any person or entity under the income tax, gift

tax or estate tax provisions of the internal revenue code, the

provisions of this section shall not apply to such trust.

(e) A supplemental needs trust which conforms to the provisions of

7-1.12 of this article shall be construed in accordance with the

provisions of that section.

§ 7-1.7 Interest remaining in creator of trust

Every legal estate and interest not embraced in an express trust and

not otherwise disposed of remains in the creator.

§ 7-1.8 Duration of trust for benefit of creditors

(a) Where an estate in real property has heretofore vested or shall

hereafter vest in an assignee or other trustee for the benefit of

creditors, it shall cease at the expiration of ten years from the time

the trust was created, except where a different limitation is contained in the instrument creating the trust or is otherwise prescribed by law.

Such estate shall thereupon revert to the assignor.

(b) This section does not apply to a trust of personal property or to a trust of real property created in connection with the salvaging of mortgage participation certificates. Nor does this section affect any rights to the proceeds of a sale of real property made by the assignee or other trustee for the benefit of creditors.

§ 7-1.9 Revocation of trusts

(a) Upon the written consent, acknowledged or proved in the manner

required by the laws of this state for the recording of a conveyance of

real property, of all the persons beneficially interested in a trust of

property, heretofore or hereafter created, the creator of such trust may

revoke or amend the whole or any part thereof by an instrument in

writing acknowledged or proved in like manner, and thereupon the estate

of the trustees ceases with respect to any part of such trust property,

the disposition of which has been revoked. If the conveyance or other

instrument creating a trust of property was recorded in the office of

the clerk or register of any county of this state, the instrument

revoking or amending such trust, together with the consents thereto,

shall be recorded in the same office of every county in which the

conveyance or other instrument creating such trust was recorded.

(b) For the purposes of this section, a disposition, contained in a

trust created on or after September first, nineteen hundred fifty-one,

in favor of a class of persons described only as the heirs, next of kin

or distributees (or by any term of like import) of the creator of the

trust does not create a beneficial interest in such persons.

(c) A testamentary or lifetime trust wholly benefitting one or more

charitable beneficiaries may be terminated as provided for by

subparagraph two of paragraph (c) of section 8-1.1 of this chapter.

§ 7-1.10 Provision by non-domiciliary creator as to law to govern trust

(a) Whenever a person, not domiciled in this state, creates a trust which provides that it shall be governed by the laws of this state, such provision shall be given effect in determining the validity, effect and

interpretation of the disposition in such trust of:

(1) Any trust property situated in this state at the time the trust is created.

(2) Personal property, wherever situated, if the trustee of the trust is a person residing, incorporated or authorized to do business in this state or a national bank having an office in this state.

§ 7-1.11 Application of principal to creator of trust as reimbursement

for taxes

(a) Notwithstanding any contrary provision of law, the trustee of an express trust, unless otherwise provided in the disposing instrument,

may, from time to time, pay from principal to the creator of such trust an amount equal to any income taxes on any portion of the trust principal with which he is charged.

(b) The provisions of this section do not apply to any trust by which

a future estate is indefeasibly vested in the United States or a

political subdivision for exclusively public purposes; a corporation

organized exclusively for religious, charitable, scientific, literary or

educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net

earnings of which inures to the benefit of any private shareholder or

individual, and no substantial part of the activities of which is

carrying on propaganda or otherwise attempting to influence legislation;

a trustee, or a fraternal society, order or association operating under

the lodge system, provided the principal or income of such trust is to be used by such trustee or by such fraternal society, order or association exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals, and no substantial part of the activities of such trustee or of such fraternal society, order or association is carrying on propaganda or otherwise attempting to influence legislation; or any veteran's organization incorporated by Act of Congress, or of its department or local chapters or posts, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

§ 7-1.12 Supplemental needs trusts established for persons with severe

and chronic or persistent disabilities

(a) Definitions: When used in this section, unless otherwise expressly

stated or unless the context otherwise requires:

(1) "Developmental disability" means developmental disability as defined in subdivision twenty-two of section 1.03 of the mental hygiene law.

(2) "Government benefits or assistance" means any program of benefits or assistance which is intended to provide or pay for support, maintenance or health care and which is established or administered, in whole or in part, by any federal, state, county, city or other governmental entity.

(3) "Mental illness" means mental illness as defined in subdivision twenty of section 1.03 of the mental hygiene law.

(4) "Person with a severe and chronic or persistent disability" means

a person (i) with mental illness, developmental disability, or other physical or mental impairment;

(ii) whose disability is expected to, or does, give rise to a

long-term need for specialized health, mental health, developmental

disabilities, social or other related services; and

(iii) who may need to rely on government benefits or assistance.

(5) "Supplemental needs trust" means a discretionary trust established for the benefit of a person with a severe and chronic or persistent disability (the "beneficiary") which conforms to all of the following criteria:

- (i) The trust document clearly evidences the creator's intent to supplement, not supplant, impair or diminish, government benefits or assistance for which the beneficiary may otherwise be eligible or which the beneficiary may be receiving, except as provided in clause (ii) of this subparagraph;
- (ii) The trust document prohibits the trustee from expending or distributing trust assets in any way which may supplant, impair or diminish government benefits or assistance for which the beneficiary may otherwise be eligible or which the beneficiary may be receiving; provided, however, that the trustee may be authorized to make such distributions to third parties to meet the beneficiary's needs for food, clothing, shelter or health care but only if the trustee determines (A) that the beneficiary's basic needs will be better met if such distribution is made, and (B) that it is in the beneficiary's best interests to suffer the consequent effect, if any, on the beneficiary's eligibility for or receipt of government benefits or assistance;
- (iii) The beneficiary does not have the power to assign, encumber, direct, distribute or authorize distributions from the trust;
- (iv) If an inter vivos trust, the creator of the trust is a person or entity other than the beneficiary or the beneficiary's spouse; and
- (v) Notwithstanding subparagraph (iv) of this paragraph, the beneficiary of a supplemental needs trust may be the creator of the trust if such trust meets the requirements of subparagraph two of paragraph (b) of subdivision two of section three hundred sixty-six of the social services law and of the regulations implementing such

clauses. Provided, however, that if the trust is funded with the proceeds of retroactive payments made as a result of a court action and due the beneficiary under the federal supplemental security income program, as established under title XVI of the federal social security act, the creation of a supplemental needs trust by the beneficiary under this subparagraph shall not impair nor limit any right under applicable law of a representative payee to receive reimbursement out of such proceeds for expenses incurred on behalf of the beneficiary pending the determination of the beneficiary's eligibility for such federal supplemental security income program, nor any right under applicable law of any state or local governmental entity which provided the beneficiary with interim assistance pending the determination of the beneficiary's eligibility for such federal supplemental security income program to be repaid out of such proceeds for the amount of such interim assistance.

(6) A "beneficiary" means a person with a severe and chronic or persistent disability who is a beneficiary of a supplemental needs trust.

(b) A supplemental needs trust shall be construed in accordance with the following:

(1) It shall be presumed that the creator of the trust intended that neither principal nor income be used to pay for any expense which would otherwise be paid by government benefits or assistance for which the beneficiary might otherwise be eligible or which the beneficiary might be receiving, notwithstanding any authority the trustee may have to make distributions for food, clothing, shelter or health care as provided in

clause (ii) of subparagraph five of paragraph (a) of this section;

(2) Section 7-1.6 of this article shall not be applicable to the extent that the application or possible application of that section

would reduce or eliminate the beneficiary's entitlement to government

benefits or assistance;

(3) Neither principal nor income held in trust shall be deemed an

available resource to the beneficiary under any program of government

benefits or assistance; however, actual distributions from the trust may

be considered to be income or resources of the beneficiary to the extent

provided by the terms of any such program;

(4) The trustee of the trust shall not be deemed to be holding assets

for the benefit of the beneficiary for purposes of section 43.03 of the

mental hygiene law or section one hundred four of the social services

law; and

(5) If the trust provides the trustee with the authority to make

distributions for food, clothing, shelter or health care as provided in

clause (ii) of subparagraph five of paragraph (a) of this section, and

if the mere existence of that authority would, under the terms of any

program of government benefits or assistance, result in the

beneficiary's loss of government benefits or assistance, regardless of

whether such authority were actually exercised, then:

(i) if the trust instrument expressly provides, such provision shall

be null and void and the trustee's authority to make such distributions

shall cease and shall be limited as otherwise provided; or

(ii) the trust shall no longer be treated as a supplemental needs

trust under this section and the trust shall be construed, and the trust

assets considered, without regard to the provisions of this section.

(c) (1) Paragraph (b) of this section shall not apply to the extent

that the trust is funded, directly or indirectly, by the beneficiary,

except as provided in clause (v) of subparagraph five of paragraph (a)

of this section, by someone with a legal obligation of support to the

beneficiary, or by someone with another financial obligation to the

beneficiary to the extent of such obligation, at the time the

beneficiary is receiving or applying to receive:

(i) Government benefits or assistance for which an income and resource calculation is made; or

(ii) Services, care or assistance for which payment or reimbursement

is or may be sought under section 43.03 of the mental hygiene law or

section one hundred four of the social services law.

(2) To the extent that said paragraph (b) does not apply, the trust

shall not be treated as a supplemental needs trust under this section,

and the trust shall be construed, and the trust assets considered,

without regard to the provisions of this section.

(d) The provisions of paragraph (b) of this section shall not apply to

bar claims by government against persons with an interest in or under

the trust other than the beneficiary.

(e) (1) The following language may be used as part of a trust

instrument, but is not required, to qualify a trust as a supplemental needs trust:

1. The property shall be held, IN TRUST, for the benefit of

(hereinafter the "beneficiary") and shall be held, managed, invested and

reinvested by the trustee, who shall collect the income therefrom and,

after deducting all charges and expenses properly attributable thereto,

shall, at any time and from time to time, apply for the benefit of the

beneficiary, so much (even to the extent of the whole) of the net income

and/or principal of this trust as the trustee shall deem advisable, in

his or her sole and absolute discretion, subject to the limitations set

forth below. The trustee shall add to the principal of such trust the

balance of net income not so paid or applied.

2. It is the grantor's intent to create a supplemental needs trust

which conforms to the provisions of section 7-1.12 of the New York

estates, powers and trusts law. The grantor intends that the trust

assets be used to supplement, not supplant, impair or diminish, any benefits or assistance of any federal, state, county, city, or other governmental entity for which the beneficiary may otherwise be eligible or which the beneficiary may be receiving. Consistent with that intent, it is the grantor's desire that, before expending any amounts from the net income and/or principal of this trust, the trustee consider the availability of all benefits from government or private assistance programs for which the beneficiary may be eligible and that, where appropriate and to the extent possible, the trustee endeavor to maximize the collection of such benefits and to facilitate the distribution of such benefits for the benefit of the beneficiary.

3. None of the income or principal of this trust shall be applied in such a manner as to supplant, impair or diminish benefits or assistance of any federal, state, county, city, or other governmental entity for which the beneficiary may otherwise be eligible or which the beneficiary may be receiving.

4. The beneficiary does not have the power to assign, encumber, direct, distribute or authorize distributions from this trust.

(2) (i) If the creator elects, the following additional language may be used:

5. Notwithstanding the provisions of paragraphs two and three above, the trustee may make distributions to meet the beneficiary's need for food, clothing, shelter or health care even if such distributions may result in an impairment or diminution of the beneficiary's receipt or eligibility for government benefits or assistance but only if the trustee determines that (i) the beneficiary's needs will be better met if such distribution is made, and (ii) it is in the beneficiary's best interests to suffer the consequent effect, if any, on the beneficiary's eligibility for or receipt of government benefits or assistance.

(ii) If the trustee is provided with the authority to make the

distributions as described in subparagraph (2) (i), the creator may

elect to add the following clause:

; provided, however, that if the mere existence of the trustee's

authority to make distributions pursuant to this paragraph shall result

in the beneficiary's loss of government benefits or assistance,

regardless of whether such authority is actually exercised, this

paragraph shall be null and void and the trustee's authority to make

such distributions shall cease and shall be limited as provided in

paragraphs two and three above, without exception.

(f) Nothing in this section shall affect the establishment,

interpretation or construction of trust instruments which do not conform

with the provisions of this section, nor shall this section impair the

state's authority to be paid from or seek reimbursement from any trust

which does not conform with the provisions of this section or to deem

the principal or income of such trust an available resource under any

program of government benefits or assistance.

§ 7-1.13 Division of trusts and establishment of separate trusts

(a) Notwithstanding any contrary provision of law, unless expressly

prohibited by the terms of the disposing instrument:

(1) the trustee of an express trust (which term as defined in

paragraph (g) of this section may mean the executor or administrator) is

authorized without prior court approval or the consent of the persons

interested to establish two or more separate trusts in order to

segregate for any of the following purposes:

(A) property held in trust in which a spouse or surviving spouse has a

qualifying income interest with respect to which an election has been or

will be made in whole or in part under section 2056(b)(7), 2056A or

2523(f) of the United States Internal Revenue Code of 1986 from property

with respect to which no election has been or will be made;

(B) property held in trust with respect to which a marital deduction under section 2056 or 2523 of the United States Internal Revenue Code would be available, by election or otherwise, from property held in trust for persons other than the spouse or surviving spouse, so that one or more of such separate trusts qualify for the deduction under said sections;

(C) property held in trust with respect to which a charitable deduction under section 2055 or 2522 of the United States Internal Revenue Code would be available from property held in trust for persons not described in said sections, so that one or more of such separate trusts qualify for the deduction under said sections;

(D) property held in trust which is or would be excepted, excluded or exempt from or under Chapter 13 (tax on generation-skipping transfers) of the United States Internal Revenue Code from such property which is not so excepted, excluded or exempt, so that one or more of such separate trusts will have an inclusion ratio of zero, or so that one or more of such separate trusts qualify for the grandchild exception under section 1433(b)-(d) of the Tax Reform Act of 1986, as amended;

(E) property held in trust for one (of two or more beneficiaries) from property held in trust for such other beneficiaries, so that one or more of such separate trusts shall be a qualified subchapter S trust under section 1361(d) of the United States Internal Revenue Code;

(F) property transferred in trust by a creator (including but not limited to a transfer treated as made by a spouse by reason of section 2513 of the United States Internal Revenue Code) from property transferred in trust by one or more different creators; and

(G) property transferred in trust by a creator (including but not limited to a transfer treated as made by a spouse by reason of section 2513 of the United States Internal Revenue Code) pursuant to a disposing

instrument from property transferred by the same creator pursuant to

another disposing instrument;

(2) the trustee of an express trust may divide such trust into two or more separate trusts, with the consent of all persons interested in the trust but without prior court approval, for any reason which is not

directly contrary to the primary purpose of the trust; and

(3) the court having jurisdiction of an express trust, upon the

petition of the trustee or of any person interested in the trust and

upon notice to all such persons, may direct the establishment of two or

more separate trusts for any reason not directly contrary to the primary

purpose of the trust.

(b) Unless the court otherwise directs, the trusts established under

this section shall be deemed to have been established as of the

effective date of the disposing instrument; provided that the

establishment of separate trusts under subparagraph two of paragraph (a)

of this section may become effective upon the date or dates provided in

the instrument filed under paragraph (e) of this section.

(c) Except as implicit in the establishment of separate trusts

authorized by this section, the terms of the disposing instrument,

subject to modifications approved by the court, shall govern each

separate trust established hereunder, except that separate trusts for

one or more members of a class of beneficiaries may be established under

subparagraph two of paragraph (a) of this section without modification

by the court if the property held in trust is distributed to such

separate trusts for one or more members of such class on the basis of

share per stirpes, per capita, or by representation, whichever is

consistent with the terms of the disposing instrument.

(d) Unless the court otherwise directs, and except in the case of the

establishment of separate trusts under clauses (F) and (G) of

subparagraph one of paragraph (a) of this section where the original assets remain or can be traced, the property distributed to the separate trust shall be fairly representative of appreciation or depreciation and shall be based upon the fair market value of the assets on the date or dates of the distributions of such assets to the separate trusts.

(e) Separate trusts shall be established under subparagraphs one and

two of paragraph (a) of this section by an instrument or instruments in writing, signed and acknowledged by the trustee and if under

subparagraph two of paragraph (a) of this section shall also be signed

and acknowledged by all the persons interested in the trust (or the

guardian of the property, committee, conservator, adult guardian, or

personal representative of such persons each of whom is hereby empowered

to consent thereto without prior court approval). Such instruments shall

be filed in the office of the clerk of the court having jurisdiction

over the trust; and a copy thereof shall be served on all persons

interested in the trusts (or the guardian of the property, committee,

conservator, adult guardian, or personal representative of such

persons), by registered or certified mail, return receipt requested, or

by personal delivery or upon application of the trustee in any other

manner directed by the court.

(f) The term "disposing instrument" shall mean the will, trust

agreement, instrument exercising a power of appointment or other

instrument creating such a trust or transferring property to such trust;

provided that in the case of an instrument exercising a limited or

testamentary power of appointment, the term "disposing instrument" may

also refer to the instrument creating such power (if applicable under

the circumstances).

(g) In any case where the United States Internal Revenue Code requires

that an election or other action be made or taken by the executor or if no trustee of a trust under a will has qualified, the term "trustee" as used in this section shall mean the executor or administrator of an estate. In any such case, the trustee shall comply with any action taken by the executor or administrator under this section.

(h) For the purposes of this section, the phrase "all persons interested in the trust" shall mean all the persons upon whom service of process would be required in a proceeding for the judicial settlement of the account of the trustee, taking into account section three hundred fifteen of the surrogate's court procedure act.

(i) References to sections of the United States Internal Revenue Code shall refer to the United States Internal Revenue Code of 1986 as amended from time to time, or to corresponding provisions of subsequent internal revenue laws, and shall also refer to corresponding provisions of state law.

(j) Unless otherwise provided for in the disposing instrument, the commissions allowed to a trustee as determined under article twenty-three of the surrogate's court procedure act, as amended from time to time, shall not be increased by reason of the establishment of separate trusts pursuant to subparagraph one of paragraph (a) of this section unless the court otherwise permits an increase, provided, however, that such trustee shall be entitled to charge the trust for any additional reasonable and necessary expenses incurred in the administration of such separate trusts.

(k) For purposes of subparagraphs (a)(2) and (3) of this section, a division of a trust into two or more separate trusts to permit one or more such trusts to be governed by article 11-A and another one or more such trusts to be governed by 11-2.4 shall be deemed to be for a reason which is not directly contrary to the primary purpose of the trust

unless such division is expressly prohibited by the terms of the disposing instrument.

§ 7-1.14 Who may make a lifetime trust

Any person, as defined in 1-2.12, may by lifetime trust dispose of real and personal property. A natural person who creates a lifetime trust shall be eighteen years of age or older.

§ 7-1.15 What property may be disposed of by lifetime trust

Every estate in property may be disposed of by lifetime trust.

§ 7-1.16 Revocation of lifetime trust by will

A lifetime trust shall be irrevocable unless it expressly provides that it is revocable. In addition to the method set forth in 7-1.17, a revocable lifetime trust can be revoked or amended by an express direction in the creator's will which specifically refers to such lifetime trust or a particular provision thereof.

§ 7-1.17 Execution, amendment and revocation of lifetime trusts

(a) Every lifetime trust shall be in writing and shall be executed and acknowledged by the initial creator and, unless such creator is the sole trustee, by at least one trustee thereof, in the manner required by the laws of this state for the recording of a conveyance of real property or, in lieu thereof, executed in the presence of two witnesses who shall affix their signatures to the trust instrument.

(b) Any amendment or revocation authorized by the trust shall be in writing and executed by the person authorized to amend or revoke the trust, and except as otherwise provided in the governing instrument,

shall be acknowledged or witnessed in the manner required by paragraph

(a) of this section, and shall take effect as of the date of such

execution. Written notice of such amendment or revocation shall be

delivered to at least one other trustee within a reasonable time if the

person executing such amendment or revocation is not the sole trustee,

but failure to give such notice shall not affect the validity of the amendment or revocation or the date upon which same shall take effect.

No trustee shall be liable for any act reasonably taken in reliance on an existing trust instrument prior to actual receipt of notice of amendment or revocation thereof.

§ 7-1.18 Funding of lifetime trust

A lifetime trust shall be valid as to any assets therein to the extent the assets have been transferred to the trust. For purposes of this section, (a) transfer is not accomplished by recital of assignment, holding or receipt in the trust instrument, and (b) in the case of a trust of which the creator is the sole trustee, transfer shall mean in the case of assets capable of registration such as real estate, stocks, bonds, bank and brokerage accounts and the like, the recording of the deed or the completion of registration of the asset in the name of the trust or trustee, and in the case of other assets a written assignment describing the asset with particularity.

§ 7-1.19 Application for termination of uneconomical trust

(a) Notwithstanding sections 7-1.5 and 7-2.4 of this article or any other contrary provision of law:

(1) Any trustee or beneficiary of a lifetime or testamentary express trust (other than a wholly charitable trust) may, by application to the surrogate's court having jurisdiction over the trust, seek a termination of such trust when the expense of administering the trust is uneconomical.

(2) If, upon such application, the court finds that continuation of the trust is economically impracticable, that the express terms of the disposing instrument do not prohibit its early termination, and that such termination would not defeat the specified purpose of the trust and would be in the best interests of the beneficiaries, the court may make

an order or decree terminating the trust and directing the distribution of the trust assets to and among those beneficiaries who at the time are entitled (or entitled in the discretion of the trustee) to the income and/or principal of the trust and those beneficiaries who would be entitled (or entitled in the discretion of the trustee) to the income and/or principal of the trust if it were to terminate immediately before such order or decree. The distribution of the trust assets shall be made in such manner, proportions and shares as in the judgment of the court will effectuate the intention of the creator.

(b) Notice of the application shall be given to such persons and at such time and in such manner as the court, in its discretion, may direct.

(c) If the application or the possibility of the application of this section to any trust would reduce or eliminate a charitable deduction otherwise available to any person under the income tax, gift tax, estate tax or generation-skipping transfer tax provisions of the United States Internal Revenue Code, or the laws of any state of the United States or of the District of Columbia, this section shall not apply to such trust.

(d) This section shall not apply to a supplemental needs trust which conforms to the provisions of section 7-1.12 of this part.

(7-2.1 - 7-2.8) Rules Governing Trustees

§ 7-2.1 Extent of trustee's estate

(a) Except as otherwise provided in this article, an express trust vests in the trustee the legal estate, subject only to the execution of the trust, and the beneficiary does not take any legal estate in the property but may enforce the trust.

(b) This section does not prevent the creator of a trust from providing to whom the property shall belong in the event of the failure or termination of the trust or from disposing of the property subject to

the execution of the trust. Such a transferee shall have a legal estate in the property as against all persons except the trustee and those

lawfully claiming under him.

(c) A trust as described in sections 9-1.5, 9-1.6 and 9-1.7 of the

estates, powers and trusts law, including a business trust as defined in

subdivision two of section two of the general associations law, may

acquire property in the name of the trust as such name is designated in

the instrument creating said trust. Any property, so acquired can be

conveyed, encumbered or otherwise disposed of only in such name by a

conveyance, encumbrance or other instrument executed by:

(1) the person or persons authorized by the instrument creating said

trust; or

(2) the person or persons authorized by a resolution duly adopted by

the trustees; or

(3) a majority of the trustees unless the instrument creating said

trust otherwise provides.

Any instrument of conveyance, encumbrance or disposition delivered

prior to the effective date of this section to or by a trust to which

this section applies, in its trust name is hereby validated provided

that no action or proceeding to cancel or disaffirm it shall be

instituted within one year from the effective date hereof, but nothing

herein contained shall affect any such pending action or proceeding.

§ 7-2.2 When estate of trustee ceases

When the purpose for which an express trust is created ceases, the

estate of the trustee also ceases.

§ 7-2.3 Trust estate not to descend on death of trustee; appointment,

duties and rights of successor trustee

(a) On the death of the sole surviving trustee of an express trust,

the trust estate does not vest in his personal representative or pass to

his distributees or devisees, but, in the absence of a contrary direction by the creator, if the trust has not been executed, the trust estate vests in the supreme court or the surrogate's court, as the case may be, and the trust shall be executed by a person appointed by the court.

(b) Upon such notice to the beneficiaries of the trust as the court may direct of an application for the appointment of a successor trustee, unless the creator has directed otherwise, the court may appoint a successor trustee, even though the trust has terminated, whenever in the opinion of the court such appointment is necessary for the effective administration and distribution of the trust estate, subject to the following:

(1) A successor trustee shall give security in such amount as the court may direct.

(2) A successor trustee shall be subject to the same duties, as to accounting and trust administration, as are imposed by law on trustees and, in addition to the reasonable expenses incurred in the course of trust administration, shall be entitled to such commissions as may be fixed by any court having jurisdiction to pass upon such trustee's final account, which shall in no case exceed the commissions allowable by law to trustees.

§ 7-2.4 Act of trustee in contravention of trust

If the trust is expressed in the instrument creating the estate of the trustee, every sale, conveyance or other act of the trustee in contravention of the trust, except as authorized by this article and by any other provision of law, is void.

§ 7-2.5 Suspension of powers of trustee in war service

(a) Whenever a trustee of an express trust is engaged in war service, as defined in this section, such trustee or any other person interested

in the trust estate may present a petition to the supreme court or the surrogate's court, as the case may be, to suspend the powers of such trustee while he is so engaged and until the further order of the court, and if the suspension of such trustee will leave no person acting as trustee or leave a beneficiary of such trust as the only acting trustee thereof, the petition must pray for the appointment of a successor trustee, unless a successor has been named in the trust instrument and is not engaged in war service or is not for any other reason unable or unwilling to act as such trustee.

(b) For the purposes of this section, a trustee is engaged in war service in any of the following cases:

(1) If he is a member of the armed forces of the United States or of any of its allies, or if he has been accepted for such service and is awaiting induction.

(2) If he is engaged in any work abroad in connection with a governmental agency of the United States or with the American Red Cross Society or any other body with similar objectives.

(3) If he is interned in any enemy country or is in a foreign country or a possession or dependency of the United States and is unable to return to this state.

(4) If he is a member of the Merchant Marine or similar service.

(c) Where the application is made by a trustee engaged in war service, notice shall be given to such persons and in such manner as the court may direct. Where the application is made by any other person interested in the trust estate and the trustee is in the armed forces of the United States, notice shall be given to such trustee in such manner as the court may direct. In every other case, where the application is made by a person other than the trustee, notice thereof shall be given to such persons and in such manner as the court may direct.

(d) Upon the filing of the petition and proof of service of notice

prescribed in paragraph (c), the court may, notwithstanding any other provision of law, suspend the trustee engaged in war service from the exercise of all of his powers and duties while engaged in such service and until the further order of the court. The order may further provide that the remaining trustee or, if there is none, the successor named in the trust instrument or appointed by the court may exercise all of the powers and be subject to all of the duties of the original trustee.

(e) The successor trustee shall be limited to commissions as computed under SCPA 2308 or 2309, whichever is applicable, upon income received and disbursed and upon principal disbursed. Commissions may also be allowed under 2308 or 2309 upon rents if he is authorized or required to collect the rents of and manage real property. In case of the resignation or removal of the suspended trustee, or in the event of such trustee's death, the foregoing basis for computing the commissions shall not apply and his commissions shall be computed in the same manner as those of any other trustee.

(f) When the suspended trustee ceases to be engaged in war service he may, upon application to the court and upon such notice as the court may direct, be reinstated as trustee if any of the duties of such office remain unexecuted. If the suspended trustee is reinstated the court shall thereupon remove his successor and make such other order as justice requires, but such removal shall not bar the successor from subsequently qualifying as a trustee if for any reason it thereafter becomes necessary to appoint a trustee.

§ 7-2.6 Resignation, suspension or removal of trustee

(a) Subject to the relevant provisions of the civil practice law and rules, the supreme court has power:

(1) On the application of a trustee, to accept his resignation and to discharge him on such terms as it deems proper.

(2) On the application of any person interested in the trust estate,
to suspend or remove a trustee who has violated or threatens to violate
his trust, who is insolvent or whose insolvency is imminent or
apprehended or who for any reason is a person unsuitable to execute the
trust.

(3) In case of the resignation or removal of a trustee, to appoint a
successor trustee and, if there is no acting trustee, to cause the trust
to be executed by a receiver or other officer under its direction. This
section does not apply to a trust arising or resulting by implication of
law, nor where other provision is made by law for the resignation,
suspension or removal of a trustee or the appointment of a successor
trustee.

§ 7-2.7 Accounting by trustee in supreme court

(a) Any proceeding for an accounting or other relief brought by a
trustee or by a substituted or successor trustee may be commenced by
such notice to the beneficiaries of the trust as the supreme court may
direct.

(b) In case of the resignation, suspension or removal, pursuant to
this article, of any trustee of a trust which includes real property and
mortgage participation certificates held by more than one person and
secured by a mortgage on real property or any estate therein, payment of
which certificates is not guaranteed by the trustee or by any title or
mortgage guaranty or investment company, the court in its discretion may
dispense with a formal accounting by such trustee; but the trustee shall
file with the court a statement of the condition of the trust and of the
security underlying such certificates as of the date of his resignation,
suspension or removal and shall assign, transfer or convey all of the
assets of the trust to the successor trustee or to the receiver or other
officer appointed by the court, as the case may be.

§ 7-2.8 Commissions of trustee to sell real property for benefit of

creditors

A trustee of a trust to sell real property for the benefit of

creditors is entitled to the same commissions as an assignee for the benefit of creditors.

(7-3.1 - 7-3.5) Rights Of Purchasers, Creditors And Other Persons

§ 7-3.1 Disposition in trust for creator void as against creditors

(a) A disposition in trust for the use of the creator is void as

against the existing or subsequent creditors of the creator.

(b) (1) For purposes of paragraph (a) of this section, all trusts,

custodial accounts, annuities, insurance contracts, monies, assets or

interests established as part of, and all payments from, either an

individual retirement account plan which is qualified under section 408

or section 408A of the United States Internal Revenue Code of 1986, as

amended, or a Keogh (HR-10), retirement or other plan established by a

corporation, which is qualified under section 401 of the United States

Internal Revenue Code of 1986, as amended, shall not be considered a

disposition in trust for the use of the creator, even though the creator

is (i) in the case of an individual retirement account plan, an

individual who is the settlor of and depositor to such account plan, or

(ii) a self-employed individual, or (iii) a partner of the entity

sponsoring the Keogh (HR-10) plan, or (iv) a shareholder of the

corporation sponsoring the retirement or other plan.

(2) All trusts, custodial accounts, annuities, insurance contracts,

monies, assets, or interests described in subparagraph one of this

paragraph shall be conclusively presumed to be spendthrift trusts under

this section and the common law of the state of New York for all

purposes, including, but not limited to, all cases arising under or

related to a case arising under sections one hundred one to thirteen

hundred thirty of title eleven of the United States Bankruptcy Code, as amended.

(3) This section shall not impair any rights an individual has under a

qualified domestic relations order as that term is defined in section

414(p) of the United States Internal Revenue Code of 1986, as amended.

(4) Additions to an asset described in subparagraph one of this

paragraph shall not be exempt from application to the satisfaction of a

money judgment if (i) made after the date that is ninety days before the

interposition of the claim on which such judgment was entered, or (ii)

deemed to be fraudulent conveyances under article ten of the debtor and

creditor law.

(c) A provision in any trust, other than a testamentary trust or a

trust which meets the requirements of subparagraph two of paragraph (b)

of subdivision two of section three hundred sixty-six of the social

services law and of the regulations implementing such clauses, which

provides directly or indirectly for the suspension, termination or

diversion of the principal, income or beneficial interest of either the

creator or the creator's spouse in the event that the creator or

creator's spouse should apply for medical assistance or require medical,

hospital or nursing care or long term custodial, nursing or medical care

shall be void as against the public policy of the state of New York,

without regard to the irrevocability of the trust or the purpose for

which the trust was created.

(d) A disposition in trust shall not be considered to be for the use

of the creator under paragraph (a) of this section by reason of the

trustee's authority to pay trust principal to the creator pursuant to

section 7-1.11 of this article. Nor shall a disposition in trust be

considered to be for the use of the creator under paragraph (a) of this section where the trustee is authorized under the trust instrument or any other provision of law to pay or reimburse the creator for any tax on trust income or trust principal that is payable by the creator under the law imposing such tax or to pay any such tax directly to the taxing authorities. No creditor of a trust creator shall be entitled to reach any trust property based on the discretionary powers described in this paragraph.

§ 7-3.2 Bona fide purchasers and creditors protected

An express trust not declared in the disposition to the trustee or an implied or resulting trust does not defeat the title of a purchaser from the trustee for value and without notice of the trust, or the rights of a creditor who extended credit to the trustee in reliance upon his apparent ownership of the trust property.

§ 7-3.3 Person paying money to the trustee protected

A person who in good faith transfers money or property to a trustee is not responsible for the proper application of such money or property; and any right or title derived by him from the trustee in consideration of such transfer is not affected by the trustee's misapplication of such money or property.

§ 7-3.4 Excess income from trust property subject to creditors' claims

Where a trust is created to receive the income from property and no valid direction for accumulation is given, the income in excess of the sum necessary for the education and support of the beneficiary is subject to the claims of his creditors in the same manner as other property which cannot be reached by execution.

§ 7-3.5 Rights of creditors to obtain information concerning beneficiaries

(a) Any person who has furnished necessaries to a beneficiary of any trust may apply to the court having jurisdiction of the trust for an order directing the trustee thereof to furnish to the applicant the true and full name and residence address of any such beneficiary. As used in this section, the term "necessaries" means goods furnished and services performed suitable to the condition in life of the person to whom they are furnished or for whose benefit they are performed, and which meet his actual needs at the time such necessaries are provided.

(b) The application shall be made by a verified petition which states (1) the name and address of petitioner, (2) the nature and extent of the necessaries provided, (3) the person by whom and the circumstances under which they were provided, (4) the amount of the indebtedness claimed to exist, (5) the name of the person to whom or for whose benefit such necessaries were provided, (6) a description of the trust of which the person to whom such necessaries were provided is a beneficiary and (7) the name of the trustee administering such trust.

(c) Such petition shall also show the efforts made by the petitioner to locate the beneficiary and that more than ten days have elapsed since petitioner requested in writing that the trustee furnish the address of any such beneficiary. The petition may contain such other information as is relevant to the inquiry.

(d) The proceeding may be initiated by citation or order to show cause served on the trustee personally or in such manner and at such time as the court may direct. A copy of the petition shall be served with the process.

(e) Upon the return of the process the court, if satisfied that the allegations of the petition are true and that the petitioner is entitled to the relief sought, may make an order directing the trustee to furnish to petitioner the true and full name and residence address of any

beneficiary to whom necessities were provided. The order may fix the time within which such name and address shall be furnished. Failure to comply with an order so made shall be punishable as a contempt of court.

(7-5.1 - 7-5.8) Bank Accounts In Trust Form

§ 7-5.1 Definitions

(a) A "beneficiary" is a person who is described by a depositor as a

person for whom a trust account is established or maintained.

(b) A "depositor" is a person in whose name a trust account subject to

this part is established or maintained.

(c) A "financial institution" is a bank, trust company, national

banking association, savings bank, industrial bank, private banker,

foreign banking corporation, federal savings and loan association, a

savings institution chartered and supervised as a savings and loan or

similar institution under federal law or the laws of a state, a federal

credit union, or a credit union chartered and supervised under the laws

of a state.

(d) A "trust account" includes a savings, share, certificate or

deposit account in a financial institution established by a depositor

describing himself as trustee for another, other than a depositor

describing himself as acting under a will, trust instrument or other

instrument, court order or decree.

§ 7-5.2 Terms of a trust account

The funds in a trust account, which shall include any dividends or

interest thereon, shall be trust funds subject to the following terms:

(1) The trust can be revoked, terminated or modified by the depositor

during his lifetime only by means of, and to the extent of, withdrawals

from or charges against the trust account made or authorized by the

depositor or by a writing which specifically names the beneficiary and

the financial institution. The writing shall be acknowledged or proved

in the manner required to entitle conveyances of real property to be

recorded, and shall be filed with the financial institution wherein the

account is maintained.

(2) A trust can be revoked, terminated or modified by the depositor's

will only by means of, and to the extent of, an express direction

concerning such trust account, which must be described in the will as

being in trust for a named beneficiary in a named financial institution.

Where the depositor has more than one trust account for a particular

beneficiary in a particular financial institution, such a direction will

affect all such accounts, unless the direction is limited to one or more

accounts specifically identified by account number in addition to the

foregoing requirements. A testamentary revocation, termination or

modification under this paragraph can be effected by express words of

revocation, termination or modification, or by a specific bequest of the

trust account, or any part of it, to someone other than the beneficiary.

A bequest of part of a trust account shall operate as a pro tanto

revocation to the extent of the bequest.

(3) If the depositor survives the beneficiary, the trust shall

terminate and title to the funds shall continue in the depositor free

and clear of the trust.

(4) If the beneficiary survives the depositor, and the depositor's

will contains no provision revoking, terminating or modifying the trust

account under paragraph (2), the trust shall terminate and title to the

funds shall vest in the beneficiary free and clear of the trust.

(5) If the beneficiary survives the depositor and the depositor's will

contains language sufficient under paragraph two of this section, to

revoke, terminate or modify the trust, in whole or in part, that part of

the trust which is affected shall terminate and title to the funds shall

be subject to disposition by the depositor's will, free and clear of the trust.

§ 7-5.3 Payment to beneficiary

(a) If the beneficiary survives the depositor under the circumstances provided in paragraph four of section 7-5.2, the funds shall be paid to the beneficiary upon his order, if, at the time of his demand for payment of all or part of the funds, he is eighteen or more years of age.

(b) If the beneficiary survives the depositor under the circumstances provided in paragraph four of section 7-5.2, and if the beneficiary is under eighteen years of age at the time demand for payment of any part or all of the funds is made, the funds may be paid to the order of the parent or parents of the beneficiary to be held for the use and benefit of such infant beneficiary or to the order of the duly appointed guardian of the property of the beneficiary, if the funds are equal to or are less than ten thousand dollars; but if the funds are more than ten thousand dollars, the funds may be paid only to the order of the duly appointed guardian of the property of the beneficiary.

§ 7-5.4 Effect of payment

A financial institution which, upon the death of a depositor and prior to service upon it of a restraining order, injunction or other appropriate process from a court of competent jurisdiction prohibiting payment, makes payment to a beneficiary or if the beneficiary is under eighteen years of age, to the guardian of the property or to the parent or parents of the infant beneficiary pursuant to section 7-5.3, shall, to the extent of such payment, be released from liability to any person claiming a right to the funds and the receipt or acquittance of the person to whom payment is made shall be a valid and sufficient release and discharge of the financial institution.

§ 7-5.5 Rights not affected

This part does not affect:

- (1) The rights of creditors of the depositor or his estate,
- (2) The rights of fiduciaries of the estate of the depositor, or
- (3) The rights of the surviving spouse of the depositor.

§ 7-5.6 Joint depositors

If a trust account is established in the names of more than one

depositor, in form to be paid or delivered to any, or the survivor of

them, in trust for another, such account shall be subject to the terms

of this part, except that the title to the funds on deposit, as between

the depositors, shall be governed by article XIII-E of the banking law.

§ 7-5.7 Multiple beneficiaries

(a) Whenever any proceeds of a trust account would pass pursuant to

section 7-5.2 to two or more beneficiaries, such proceeds shall pass to

such beneficiaries in equal proportions, unless the terms of the trust

provide otherwise.

(b) Whenever any proceeds of a trust account would pass pursuant to

section 7-5.2 to two or more beneficiaries, and one or more of the

beneficiaries predeceases the depositor, such proceeds shall pass to the

surviving beneficiary or beneficiaries in equal proportions, unless the

terms of the trust provide otherwise.

§ 7-5.8 Application

This part shall apply to all funds in trust accounts, as defined in

paragraph (d) of section 7-5.1, which are in existence on its effective

date, except that its provisions shall not impair or defeat any rights

which have accrued prior to such date.

Part 6 - UNIFORM TRANSFERS TO MINORS ACT

(7-6.1 - 7-6.26) Uniform Transfers To Minors Act

§ 7-6.1 Definitions

In this part:

(a) "Adult" means an individual who has attained the age of twenty-one years.

(b) "Benefit plan" means an employer's plan for the benefit of an employee or partner or an individual retirement account.

(c) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

(d) "Court" means the supreme court or the surrogate's court having jurisdiction over the minor.

(e) "Custodial property" means (i) any interest in property transferred to a custodian under this part and (ii) the income from and proceeds of that interest in property.

(f) "Custodian" means a person so designated under 7-6.9 or a successor or substitute custodian designated under 7-6.18.

(g) "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.

(h) "Guardian" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

(i) "Legal representative" means an individual's personal representative or guardian.

(j) "Member of the minor's family" means any of the minor's parents, stepparents, spouse, grandparents, brothers, sisters, uncles, and aunts, whether of the whole blood or half blood or by or through legal adoption.

(k) "Minor" means an individual who has not attained the age of twenty-one years.

(l) "Person" means an individual, corporation, organization, or other legal entity.

(m) "Personal representative" means a person who has received letters to administer the estate of a decedent or a person legally authorized to perform substantially the same functions.

(n) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(o) "Transfer" means a transaction that creates custodial property under 7-6.9.

(p) "Transferor" means a person who makes a transfer under this part.

(q) "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers in this state.

§ 7-6.2 Scope and jurisdiction

(a) This part applies to a transfer that refers to this part in the designation under paragraph (a) of 7-6.9 by which the transfer is made

if at the time of the transfer, the transferor, the minor, or the

custodian is a resident of this state or the custodial property is

located in this state. The custodianship so created remains subject to

this part despite a subsequent change in residence of a transferor, the

minor, or the custodian, or the removal of custodial property from this state.

(b) A person designated as custodian under this part is subject to

personal jurisdiction in this state with respect to any matter relating to the custodianship.

(c) A transfer that purports to be made and which is valid under the

Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act, or a

substantially similar act, of another state is governed by the law of

the designated state and may be executed and is enforceable in this

state if at the time of the transfer, the transferor, the minor, or the

custodian is a resident of the designated state or the custodial

property is located in the designated state.

§ 7-6.3 Nomination of custodian

(a) A person having the right to designate the recipient of property

transferable upon the occurrence of a future event may
revocably
nominate a custodian to receive the property for a minor
beneficiary
upon the occurrence of the event by naming the custodian
followed in
substance by the words "as custodian for _____
(name of
minor) under the New York Uniform Transfers to Minors Act."
The
nomination may name one or more persons as substitute custodians to
whom
the property must be transferred, in the order named, if the
first
nominated custodian dies before the transfer or is unable,
declines, or
is ineligible to serve. The nomination may be made in a will, a
trust, a
deed, an instrument exercising a power of appointment, or in a
writing
designating a beneficiary of contractual rights which is registered
with
or delivered to the payor, issuer, or other obligor of the
contractual
rights.

(b) A custodian nominated under this section must be a person to
whom
a transfer of property of that kind may be made under paragraph
(a) of
7-6.9.

(c) The nomination of a custodian under this section does not
create
custodial property until the nominating instrument becomes
irrevocable
or a transfer to the nominated custodian is completed under
7-6.9.

Unless the nomination of a custodian has been revoked, upon
the
occurrence of the future event the custodianship becomes
effective and
the custodian shall enforce a transfer of the custodial
property
pursuant to 7-6.9.

§ 7-6.4 Transfer by gift or exercise of power of appointment

A person may make a transfer by irrevocable gift to, or
the
irrevocable exercise of a power of appointment in favor of, a
custodian
for the benefit of a minor pursuant to 7-6.9.

§ 7-6.5 Transfer authorized by will or trust

(a) A personal representative or trustee may make an irrevocable

transfer pursuant to 7-6.9 to a custodian for the benefit of a minor as

authorized in the governing will or trust.

(b) If the testator or settler has nominated a custodian under 7-6.3

to receive the custodial property, the transfer must be made to that

person.

(c) If the testator or settler has not nominated a custodian under

7-6.3, or all persons so nominated as custodian die before the transfer

or are unable, decline, or are ineligible to serve, the personal

representative or the trustee, as the case may be, shall designate the

custodian from among those eligible to serve as custodian for property

of that kind under paragraph (a) of 7-6.9.

§ 7-6.6 Other transfer by fiduciary

(a) Subject to paragraph (c), a personal representative or trustee may

make an irrevocable transfer to another adult or trust company as

custodian for the benefit of a minor pursuant to 7-6.9, in the absence

of a will or under a will or trust that does not contain an

authorization to do so.

(b) Subject to paragraph (c), a guardian may make an irrevocable

transfer to another adult or trust company as custodian for the benefit

of the minor pursuant to 7-6.9.

(c) A transfer under paragraph (a) or (b) may be made only if (i) the

personal representative, trustee, or guardian considers the transfer to

be in the best interest of the minor, (ii) the transfer is not

prohibited by or inconsistent with provisions of the applicable will,

trust agreement, or other governing instrument, and (iii) if the

personal representative is acting in the absence of a will, the transfer

is authorized by the court if it exceeds fifty thousand dollars in

value.

§ 7-6.7 Transfer by obligor

(a) Subject to paragraphs (b) and (c), a person not subject to 7-6.5

or 7-6.6 who holds property of or owes a liquidated debt to a minor not

having a guardian may make an irrevocable transfer to a custodian for

the benefit of the minor pursuant to 7-6.9.

(b) If a person having the right to do so under 7-6.3 has nominated a

custodian under that section to receive the custodial property, the

transfer must be made to that person.

(c) If no custodian has been nominated under 7-6.3, or all persons so

nominated as custodian die before the transfer or are unable, decline,

or are ineligible to serve, a transfer under this section may be made to

an adult member of the minor's family, unless the property exceeds fifty

thousand dollars in value, or to a trust company.

§ 7-6.8 Receipt for custodial property

A written acknowledgement of delivery by a custodian constitutes a

sufficient receipt and discharge for custodial property transferred to a

custodian pursuant to this part.

§ 7-6.9 Manner of creating custodial property and effecting transfer;

designation of initial custodian; control

(a) Custodial property is created and a transfer is made whenever:

(1) an uncertificated security or certificated security in registered

form is either:

(i) registered in the name of the transferor, an adult other than the

transferor, or a trust company, followed in substance by the words: "as

custodian for _____ (name of minor) under the New York

Uniform Transfers to Minors Act"; or

(ii) delivered, if in certificated form, or any document necessary for

the transfer of an uncertificated security is delivered, together with

any necessary endorsement, to an adult other than the transferor or to a

trust company, as custodian, accompanied by an instrument in

substantially the form set forth in paragraph (b);

(2) money is paid or delivered, or a security held in the name of a

broker, financial institution, or its nominee is transferred, to a

broker or financial institution for credit to an account in the name of

the transferor, an adult other than the transferor, or a trust company,

followed in substance by the words: "as custodian for

_____ (name of minor) under the New York Uniform

Transfers to Minors Act";

(3) the ownership of a life or endowment insurance policy or annuity

contract is either:

(i) registered with the issuer in the name of the transferor, an adult

other than the transferor, or a trust company, followed in substance by

the words: "as custodian for _____ (name of minor)

under the New York Uniform Transfers to Minors Act"; or

(ii) assigned in a writing delivered to an adult other than the

transferor, or to a trust company whose name in the assignment is

followed in substance by the words: "as custodian for

_____ (name of minor) under the New York Uniform Transfers to Minors Act";

(4) an irrevocable exercise of a power of appointment or an

irrevocable present right to future payment under a contract is the

subject of a written notification delivered to the payor, issuer, or

other obligor that the right is transferred to the transferor, an adult

other than the transferor, or a trust company, whose name in the

notification is followed in substance by the words: "as custodian for

_____ (name of minor) under the New York Uniform

Transfers to Minors Act";

(5) an interest in real property is recorded in the name of the

transferor, an adult other than the transferor, or a trust company,

followed in substance by the words: "as custodian for

_____ (name of minor) under the New York Uniform

Transfers to Minors Act";

(6) a certificate of title issued by a department or agency of a state

or of the United States which evidences title to tangible personal

property is either:

(i) issued in the name of the transferor, an adult other than the

transferor, or a trust company, followed in substance by the words: "as

custodian for _____ (name of minor) under the New York

Uniform Transfers to Minors Act"; or

(ii) delivered to an adult other than the transferor or to a trust

company, endorsed to that person followed in substance by the words: "as

custodian for _____ (name of minor) under the New

York Uniform Transfers to Minors Act"; or

(7) an interest in any property not described in subparagraphs (1)

through (6) is transferred to an adult other than the transferor or to a

trust company by a written instrument in substantially the form set

forth in paragraph (b).

(b) An instrument in the following form satisfies the requirements of

clause (ii) of subparagraph (1) and subparagraph (7) of paragraph (a):

"TRANSFER UNDER THE NEW YORK UNIFORM
TRANSFERS TO MINORS ACT

I, _____ (name of transferor or name and representative

capacity if a fiduciary) hereby transfer to _____

(name of custodian), as custodian for _____ (name of minor) under the

New York Uniform Transfers to Minors Act, the following:

(insert a description of the custodial property sufficient to identify it).

Dated: _____

(Signature)

_____ (name of custodian) acknowledges receipt of

the property described above as custodian for the minor named above

under the New York Uniform Transfers to Minors Act.

Dated: _____

_____ "

(Signature of Custodian)

(c) A transferor shall place the custodian in control of the custodial property as soon as practicable.

§ 7-6.10 Single custodianship

A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this part by the same custodian for the benefit of the same minor constitutes a single custodianship.

§ 7-6.11 Validity and effect of transfer

(a) The validity of a transfer made in a manner prescribed in this

part is not affected by:

(1) The failure of the transferor to comply with paragraph (c) of

7-6.9 concerning possession and control;

(2) designation of an ineligible custodian, except designation of the

transferor in the case of property for which the transferor is

ineligible to serve as custodian under paragraph (a) of 7-6.9; or

(3) death or incapacity of a person nominated under 7-6.3 or

designated under 7-6.9 as custodian or the disclaimer of the office by

that person.

(b) A transfer made pursuant to 7-6.9 is irrevocable, and the

custodial property is indefeasibly vested in the minor, but the

custodian has all the rights, powers, duties, and authority provided in

this part, and neither the minor nor the minor's legal representative

has any right, power, duty, or authority with respect to the custodial

property except as provided in this part.

(c) By making a transfer, the transferor incorporates in the

disposition all the provisions of this part and grants to the custodian,

and to any third person dealing with a person designated as custodian,

the respective powers, rights, and immunities provided in this part.

§ 7-6.12 Care of custodial property

(a) A custodian shall:

(1) take control of custodial property;
(2) register or record title to custodial property if appropriate; and
(3) collect, hold, manage, invest, and reinvest custodial property.

(b) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries and is specifically authorized to delegate investment and management functions in the manner of a trustee as provided in section 11-2.3. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

(c) A custodian may invest in or pay premiums on life insurance or endowment policies on (1) the life of the minor only if the minor or the minor's estate is the sole beneficiary, or (2) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian, is the irrevocable beneficiary.

(d) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of certificated securities may be held on deposit at a stock brokerage firm or a financial institution registered in a street name or nominee name. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if

it is recorded, and custodial property subject to registration is so

identified if it is either registered, or held in an account designated,

in the name of the custodian, followed in substance by the words: "as a

custodian for _____ (name of minor) under the New York Uniform

Transfers to Minors Act."

(e) A custodian shall keep records of all transactions with respect to

custodial property, including information necessary for the preparation

of the minor's tax returns, and shall make them available for inspection

at reasonable intervals by a parent or legal representative of the minor

or by the minor if the minor has attained the age of fourteen years.

§ 7-6.13 Powers of custodian

(a) A custodian, acting in a custodial capacity, has all the rights,

powers, and authority over custodial property that unmarried adult

owners have over their own property, but a custodian may exercise those

rights, powers, and authority in that capacity only.

(b) This section does not relieve a custodian from liability for

breach of 7-6.12.

§ 7-6.14 Use of custodial property

(a) A custodian may deliver or pay to the minor or expend for the

minor's benefit so much of the custodial property as the custodian

considers advisable for the use and benefit of the minor, without court

order and without regard to (1) the duty or ability of the custodian

personally or of any other person to support the minor, or (2) any other

income or property of the minor which may be applicable or available for

the support of the minor.

(b) On petition of an interested person or the minor if the minor has

attained the age of fourteen years, the court may order the custodian to

deliver or pay to the minor or expend for the minor's benefit so much of

the custodial property as the court considers advisable for the use and benefit of the minor.

(c) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

§ 7-6.15 Custodian's expenses, compensation, and bond

(a) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(b) Except for one who is a transferor under 7-6.4, a custodian has an election during each calendar year to charge reasonable compensation for services performed during that year. A custodian's election to charge reasonable compensation for a calendar year must be exercised during the calendar year.

(c) Except as provided in paragraph (f) of 7-6.18, a custodian shall not be required to give a bond.

§ 7-6.16 Exemption of third person from liability

A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

(a) the validity of the purported custodian's designation;
(b) the propriety of, or the authority under this part for, any act of

the purported custodian;
(c) the validity or propriety under this part of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

(d) the propriety of the application of any property of the minor delivered to the purported custodian.

§ 7-6.17 Liability to third persons

(a) A claim based on (1) a contract entered into by a custodian acting

in a custodial capacity, (2) an obligation arising from the ownership or control of custodial property, or (3) a tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor.

(b) A custodian is not personally liable:

(1) on a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or

(2) for an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(c) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

§ 7-6.18 Renunciation, resignation, death, or removal of custodian;

designation of successor custodian

(a) A person nominated under 7-6.3 or designated under 7-6.9 as

custodian may decline to serve by delivering a valid disclaimer to the

person who made the nomination or to the transferor or the transferor's

legal representative. If the event giving rise to a transfer has not

occurred and no substitute custodian able, willing, and eligible to

serve was nominated under 7-6.3, the person who made the nomination may

nominate a substitute custodian under 7-6.3; otherwise the transferor or

the transferor's legal representative shall designate a substitute

custodian at the time of the transfer, in either case from among the

persons eligible to serve as custodian for that kind of property under

paragraph (a) of 7-6.9. The custodian so designated has the rights of a

successor custodian.

(b) A custodian at any time may designate a trust company or an adult

other than a transferor under 7-6.4 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, become incapacitated, or is removed. The transferor may designate one or more persons as successor custodian to serve in the designated order of priority, in case the custodian originally designated or a prior successor custodian is unable, declines, or is ineligible to serve or resigns, dies, becomes incapacitated, or is removed. The designation either (1) shall be made in the same transaction and by the same document by which the transfer is made, or (2) shall be made by executing and dating a separate instrument of designation before a subscribing witness other than a successor as a part of the same transaction and contemporaneously with the execution of the document by which the transfer is made. The designation is made by setting forth the successor custodian's name, followed in substance by the words: "is designated successor custodian." A successor custodian designated by the transferor may be a trust company or an adult other than the transferor. A successor custodian effectively designated by the transferor has priority over a successor custodian designated by a custodian.

(c) A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of fourteen years and to the successor custodian and by delivering the custodial property to the successor custodian.

(d) If the transferor has not effectively designated one or more successor custodians and a custodian is ineligible, dies, or becomes

incapacitated without having effectively designated a successor and the

minor has attained the age of fourteen years, the minor may designate as

successor custodian, in the manner prescribed in paragraph (b), an adult

member of the minor's family, a guardian of the minor, or a trust

company. If the minor has not attained the age of fourteen years or

fails to act within sixty days after the ineligibility, death, or

incapacity, the guardian of the minor becomes successor custodian. If

the minor has no guardian or the guardian declines to act, the

transferor, the legal representative of the transferor or of the

custodian, an adult member of the minor's family, or any other

interested person may petition the court to designate a successor

custodian.

(e) A custodian who declines to serve under paragraph (a) or resigns

under paragraph (c), or the legal representative of a deceased or

incapacitated custodian, as soon as practicable, shall put the custodial

property and records in the possession and control of the successor

custodian. The successor custodian by action may enforce the obligation

to deliver custodial property and records and becomes responsible for

each item as received.

(f) A transferor, the legal representative of a transferor, an adult

member of the minor's family, a guardian of the minor, or the minor if

the minor has attained the age of fourteen years may petition the court

to remove the custodian for cause and to designate a successor custodian

other than a transferor under 7-6.4 or to require the custodian to give

appropriate bond.

§ 7-6.19 Accounting by and determination of liability of custodian

(a) A minor who has attained the age of fourteen years, the minor's

guardian or legal representative, an adult member of the minor's family,

a transferor, or a transferor's legal representative may petition the

court (1) for an accounting by the custodian or the custodian's legal

representative; or (2) for a determination of responsibility, as between

the custodial property and the custodian personally, for claims against

the custodial property unless the responsibility has been adjudicated in

an action under 7-6.17 to which the minor or the minor's legal

representative was a party.

(b) A successor custodian may petition the court for an accounting by

the predecessor custodian.

(c) The court, in a proceeding under this part or in any other

proceeding, may require or permit the custodian or the custodian's legal

representative to account.

(d) If a custodian is removed under paragraph (f) of 7-6.18, the court

shall require an accounting and order delivery of the custodial property

and records to the successor custodian and the execution of all

instruments required for transfer of the custodial property.

§ 7-6.20 Termination of custodianship

The custodian shall transfer in an appropriate manner the custodial

property to the minor or to the minor's estate upon the earlier of:

(a) the minor's attainment of twenty-one years of age with respect to

custodial property transferred under 7-6.4 or 7-6.5;

(b) the minor's attainment of age eighteen or other statutory age of

majority of New York with respect to custodial property transferred

under 7-6.6 or 7-6.7; or

(c) the minor's death.

§ 7-6.21 Age eighteen election

Notwithstanding the foregoing sections of this part, if with respect

to any gift made pursuant to 7-6.9, the designations of the custodian

contains, in substance, the phrase, "until age eighteen", then all

records of the custodian with respect to such gift shall contain such

phrase, and the gift shall be administered under this part as if the word "eighteen" were substituted for the word "twenty-one" wherever such word appears in paragraphs (a) and (k) of section 7-6.1 and in section 7-6.20.

§ 7-6.22 Effect on existing custodianships

(a) Any transfer of custodial property made before January first, nineteen hundred ninety-seven is validated notwithstanding that there was no specific authority in part 4 of this article for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(b) All accounts established under part 4 of this article and in existence on January first, nineteen hundred ninety-seven shall be governed by the provisions of this part except insofar as such application impairs constitutionally vested rights. Notwithstanding the provisions of this paragraph, the age of termination in effect prior to January first, nineteen hundred ninety-seven shall remain in effect with respect to such accounts, including any additions made after December thirty-first, nineteen hundred ninety-six.

(c) To the extent that this part, by virtue of paragraph (b) of this section, does not apply to transfers made in a manner prescribed in part 4 of this article or to the powers, duties, and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of part 4 of this article shall not affect those transfers or those powers, duties, and immunities.

§ 7-6.23 Applicability

This part applies to a transfer within the scope of 7-6.2 made on or

after January first, nineteen hundred ninety-seven if:

(a) the transfer purports to have been made under the New York Uniform Gifts to Minor Act; or

(b) the instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of this part is necessary to validate the transfer.

§ 7-6.24 Uniformity of application and construction

This part shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part among states enacting it.

§ 7-6.25 Short title

This part may be cited as "The New York Uniform Transfers to Minors Act."

§ 7-6.26 Severability

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

(7-7.1) Child Performer Trust Account

PART 7. CHILD PERFORMER TRUST ACCOUNT

Section 7-7.1 Child performer trust account.

§ 7-7.1 Child performer trust account

1. Scope. This section applies to contracts pursuant to which a child performer:

(a) is employed or agrees to render artistic or creative services for a fee, either directly or through a third-party individual or personal services corporation (loan-out company), or through an agency or service

that provides artistic or creative services (casting agency); and
(b) agrees to purchase, or otherwise secure, sell, lease, or otherwise

dispose of literary, musical, or dramatic properties, or use of a

person's likeness, voice recording, performance, or story of or

incidents in his or her life, either tangible or intangible, or any

other rights therein for use in motion pictures, television, the

production of sound recordings in any format now known or hereafter

devised, the legitimate or living stage, or otherwise in the

entertainment field.

2. Establishment of child performer trust account. (a) Employer.

Within thirty days following the final day of employment, except when

the performance contract is a period longer than thirty days, a child

performer's employer is required to transfer fifteen percent of gross

earnings to the custodian of the child performer's child performer trust

account. When the employment is longer than thirty days, the employer

shall make the required transfer every payroll period. Transfers must

conform with part six of this article. The use of an instrument to make

the transfer which substantially conforms with section 7-6.9 is

sufficient. If the child performer's employer has not been notified

within fifteen days of the commencement of employment of the existence

of a child performer trust account, or no such account has been

established, then the child performer's employer shall transfer such

monies together with the child performer's name and last known address

to the state comptroller for placement into the child performer's

holding fund established in section ninety-nine-k of the state finance

law and such monies shall be administered by the state comptroller. Once

transfers have been made to the child performer's trust account or the

child performer's holding fund, as required by this subdivision, the

child performer's employer has no further duty under this section.

(b) Custodian and guardian. Within fifteen days of the commencement of employment the child performer's guardian or custodian must establish a child performer trust account in accordance with part six of this article, unless an account has previously been established. Once the child performer trust account has been established the child performer's guardian or custodian shall notify the child performer's employer of the existence of the account and any additional information required to make transfers. The custodian of the account shall promptly notify the child performer's employer of any change in facts which affect the employer's obligation to set aside funds under this section. Upon request of the parent, legal guardian or the child performer's guardian ad litem, the custodian may require the child performer's employer to transfer more than fifteen percent of the gross earnings to the child performer trust account. The child performer's parent or legal guardian may serve as custodian. Once the child performer trust account balance reaches two hundred fifty thousand dollars or more a trust company shall be appointed as custodian of the account.

(c) Termination of child performer trust account. The child performer may terminate the child performer trust account upon reaching the age of eighteen.

3. Standard for child performer trust accounts. Custodian management of funds which are required to be placed into a child performer trust account shall be subject to part six of this article, in all respects except as provided in this section.

(7-8.1) Honorary Trusts For Pets

§ 7-8.1 Honorary trusts for pets

(a) A trust for the care of a designated domestic or pet animal is

valid. 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 upon application to it by an individual, or by a trustee. Such trust shall terminate when no living animal is covered by the trust, or at the end of twenty-one years, whichever occurs earlier.

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

(c) Upon termination, the trustee shall transfer the unexpended trust property as directed in the trust instrument or, if there are no such directions in the trust instrument, the property shall pass to the estate of the grantor.

(d) A court may reduce the amount of the property transferred if it determines that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property pursuant to paragraph (c) of this section.

(e) If no trustee is designated or no designated trustee is willing or able to serve, a court shall appoint a trustee and may make such other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section.

Article 8 - CHARITABLE TRUSTS

(8-1.1 - 8-1.8) Rules Governing Charitable Trusts

§ 8-1.1 Disposition of property for charitable purposes

(a) No disposition of property for religious, charitable, educational or benevolent purposes, otherwise valid under the laws of this state, is invalid by reason of the indefiniteness or uncertainty of the persons designated as beneficiaries. If a trustee is named in the disposing instrument, legal title to the property transferred for such a purpose

vests in such trustee; if no person is named as trustee, title vests in

the court having jurisdiction over the trust.

(b) No disposition of property made in a will, executed and attested

as prescribed by law, is invalid by reason of the incorporation by

reference in the will of any existing written resolution, declaration or

deed of trust, identified in such will and made or adopted by any

corporation authorized by law to execute or accept trusts, to assist,

encourage and promote the well-being and well-doing of mankind in

general or the inhabitants of any community in particular; provided that

a copy of such resolution, declaration or deed of trust, certified,

under its corporate seal, by the secretary or assistant secretary or the

cashier or assistant cashier of such corporation, is filed for record in

the office of the secretary of state and in the office of the clerk or

register of the county of the corporation's principal place of business,

in which the conveyances of real property are required by law to be

filed for record, the secretary of state and the officer in charge of

such record office being hereby authorized and directed to receive and

record such resolution, declaration or deed of trust upon payment of the

fees provided by law. Any such testamentary disposition to a corporation

for the religious, charitable, educational or benevolent purposes set

forth in such resolution, declaration or deed of trust is effective

although the terms, conditions and purposes of such disposition are

established only through such reference in the will.

(c) (1) The supreme court and, where the disposition is made by will,

the surrogate's court in which such will is probated have jurisdiction

over dispositions referred to and authorized by paragraphs (a) and (b),

and whenever it appears to such court that circumstances have so changed

since the execution of an instrument making a disposition for religious,

charitable, educational or benevolent purposes as to render impracticable or impossible a literal compliance with the terms of such disposition, the court may, on application of the trustee or of the person having custody of the property subject to the disposition and on such notice as the court may direct, make an order or decree directing that such disposition be administered and applied in such manner as in the judgment of the court will most effectively accomplish its general purposes, free from any specific restriction, limitation or direction contained therein; provided, however, that any such order or decree is effective only with the consent of the creator of the disposition if he is living.

(2) (i) The attorney general or any trustee or beneficiary of a testamentary or lifetime trust wholly benefitting one or more charitable beneficiaries may petition a court of competent jurisdiction, on notice to the attorney general and all parties interested in the trust, seeking a termination of such trust when the trust is comprised of assets, the market value of which is one hundred thousand dollars or less and the expense of administering the trust is uneconomic when considered relative to income. When the court finds upon such application that continuation of the trust is economically impracticable or is not in the best interests of the beneficiaries, the court shall make an order or decree terminating the trust and directing the distribution of the trust assets to accomplish its charitable purposes, provided, however, that if the trust is one for the benefit of a particular charitable beneficiary or beneficiaries named therein, the court shall direct the distribution of the trust assets to such named charitable beneficiary or beneficiaries, and provided further that no such proceeding may be

instituted without the consent of the creator of the disposition if he is living.

(ii) For purposes of this paragraph, the term "charitable beneficiary" shall mean the beneficiary of a disposition for a religious, charitable, educational or benevolent purpose.

(d) The power of the supreme court or the surrogate's court, as provided in paragraph (c), to prevent the failure of, and to give effect to dispositions for religious, charitable, educational or benevolent purposes is not defeated by the circumstance that the beneficiary of any such disposition does not exist or, if in existence, lacks capacity to take such disposition at the time it would otherwise become effective, whether or not the disposition creates an express trust to effectuate its purposes.

(e) Any accumulation of income from property subject to a disposition in trust for a religious, charitable, educational or benevolent purpose, or otherwise acquired by such trust, shall in all respects, including its reasonableness, amount and duration, be within the jurisdiction of the supreme court or the surrogate's court, as the case may be. In exercising such jurisdiction, (1) any accumulation of income which might otherwise be applied for the purposes of the trust may be prohibited or limited, despite a valid direction therefor in the trust instrument or authority therefor under 8-1.7 and (2) such an accumulation may be authorized by order of the court despite the absence of a direction therefor in the trust instrument.

(f) The attorney general shall represent the beneficiaries of such dispositions for religious, charitable, educational or benevolent purposes and it shall be his duty to enforce the rights of such beneficiaries by appropriate proceedings in the courts.

(g) The supreme court or the surrogate's court, as the case may be,

may authorize the trustee or any person holding title thereto to sell, mortgage or lease any real property which is the subject of a disposition for a religious, charitable, educational or benevolent purpose, whenever it appears to the satisfaction of the court that such real property, or any part thereof, has become or is likely to become unproductive, has depreciated or is likely to depreciate in value, that it is advisable to raise money to improve or erect buildings upon property so held or that it is expedient for any other reason that such real property be sold, mortgaged or leased. This paragraph shall not restrict in any manner the powers or rights any trustee may have by law or by the terms of any disposition of such real property. The provisions of this paragraph shall not apply to any corporation which is subject to sections 509 through 511 of the not-for-profit corporation law.

(h) The supreme court or the surrogate's court shall not make an order or decree under paragraph (g) unless it appears that eight days written notice, stating the time and place of the application for such order or decree, has been served upon the attorney general, who shall represent the state, the beneficiaries of any trust and the persons who might benefit from the religious, charitable, educational or benevolent purpose for which the real property, which is the subject of the application, is held. A like eight days notice of such application shall be given to any adult within the state who has a vested or contingent future estate in such real property and to any minor, incompetent, conservatee or absentee who is interested in such property, in such manner as the court may direct. Before making a final order or decree, the court shall appoint a guardian ad litem for any minor who is not

represented by a guardian or parent, for any incompetent who is not

represented by a committee, and for any absentee.

(i) A sale, mortgage or lease made, as required by law, in accordance

with an order or decree of a court under this section is effective

against the state as representative of the beneficiaries of such trust

and persons who might benefit from the purposes for which such real

property is held, and against persons with a vested or contingent future

interest in such property and minors, incompetents, conservatees,

absentees and persons not in being who have an interest in such

property, as well as all other persons who, having been made parties to

such proceeding, consent to such order or decree. The purchaser,

mortgagee or lessee, or any person claiming under them, shall not be

responsible for the disposition of the proceeds of any such sale,

mortgage or lease.

(j) Whenever a voluntary association or committee has received, by

public subscription, a fund for a charitable or benevolent purpose from

more than one thousand contributors, a portion of which remains

unexpended after the expiration of five years from the time of its

receipt, and it appears that a literal compliance with the terms of the

subscription is impracticable, the supreme court may make an order

directing that such unexpended balance be transferred for administration

and application to such domestic corporation as in the judgment of the

court will most effectively accomplish the general purpose for which

such fund was collected, free from any restriction, limitation or

direction upon which the subscription was made; and on the transfer of

such fund to the corporation designated in the order, such voluntary

association, its officers and trustees, or such committee and its

officers shall be fully exonerated and discharged from all liability to

account for such fund.

(k) An order shall be made under paragraph (j) on the application of the association or the treasurer of the committee, having custody of the unexpended balance, on twenty days personal notice to the attorney general and notice by publication once a week for four consecutive weeks in a newspaper of general circulation published in the county in which the treasurer of such association or committee resides. If such treasurer resides outside of the state, such notice shall be published in the county in which at least ten per cent of the contributors of such fund resided at the time of its receipt or in such other manner as the court may direct to the contributors as a class, to ten members of such class and to the trustees of such association or the surviving members of such committee.

(l) Where public subscriptions for charitable or benevolent purposes were made or begun prior to the year nineteen hundred twenty and the total number of subscribers exceeded five hundred but were less than one thousand, any unexpended balance of a fund obtained for such purpose which, at the time this section takes effect, is in the custody of a surviving member of a committee may be transferred for administration, on the application of such surviving member, in accordance with the procedure and with the effect set forth in paragraphs (j) and (k).

§ 8-1.2 Certain charitable trusts authorized

(a) Property may be disposed of to any incorporated educational or literary institution in this state, to be held in trust for any one or more of the following purposes:

- (1) To establish and maintain an observatory;
- (2) To found and maintain professorships and scholarships;
- (3) To provide and keep in repair a place for the burial of the dead.
- (4) For any other specific purpose comprehended in the general objects authorized by its charter.

(b) The trust may be made subject to such conditions as may be

prescribed by the creator and agreed to by the trustee, and all property

which is hereafter disposed of to any incorporated educational or

literary institution in trust for any of the foregoing purposes, may be

held by such institution under such trust, subject to such conditions as

may be prescribed.

(c) Property may be disposed of to any incorporated city or village of

this state to be held in trust for any educational purpose, the

diffusion of knowledge, or for the relief of distress, or for parks,

gardens, other ornamental grounds or grounds for military parades,

exercise, health and recreation, within or near such incorporated city

or village, upon such conditions as may be prescribed by the creator and

agreed to by such corporation; and all property so transferred to such

corporation may be held by it, under such trust, subject to such

conditions as may be prescribed.

(d) Property may be disposed of to commissioners of common schools of

any town and to trustees of any school district, in trust for the

benefit of such common schools or the schools of such district.

(e) The trusts authorized by this section may continue for such time

as may be necessary to accomplish the purposes for which they are

created.

§ 8-1.3 Certain charitable trusts regulated

(a) Any person desiring in his lifetime to promote the public welfare

by founding, endowing and maintaining, within this state, a public

library, museum or other educational institution, a chapel, crematory or

a board of trade or chamber of commerce may, by a disposition for such

purpose, transfer property to a trustee named in such disposition or to

his successor.

(b) The creator of such disposition may describe:

(1) The nature, object and purpose of the institution to be founded,

endowed and maintained or of the corporation to be benefited thereby.

(2) In case of the founding of an institution, the name by which it

shall be known.

(3) The powers and duties of the trustee and, if accounting is

required, the manner in which and to whom he shall account; but the

powers conferred shall not be exclusive of other powers which may be

necessary to enable such trustee to execute fully the object of such

disposition.

(4) Such rules for the management of the property as the creator may

prescribe; but, unless otherwise provided, such rules shall be advisory

only and shall not preclude the trustee from making such changes as new

circumstances may from time to time require.

(5) The manner and by whom the successor to the trustee named in the

disposition is to be appointed.

(6) The place where, and the time when, the buildings necessary and

proper for the institution shall be erected, and the character and

extent of such buildings. The creator may provide for all matters

necessary and proper to carry out the purposes of the institution, and

may provide for such lectures, exhibitions, instruction or amusement in

connection therewith as he may consider desirable.

(c) The trustee named in the disposition or his successor may sue and

defend, in the name of an institution established by such disposition,

with respect to all matters affecting such institution.

(d) The creator of the disposition may provide for the right, during

his lifetime, to personally perform the duties and exercise the powers

which the disposition imposes and confers upon the trustee, and may

further provide that his surviving spouse may, during her lifetime,

perform such duties and exercise such powers. In all cases in which such

duties and powers are performed and exercised by the creator or his

spouse, during his or her lifetime, upon his death or the death of his

spouse such duties and powers devolve upon and shall be performed and

exercised by the trustee or his successor.

(e) The creator may reserve the right to alter, amend or modify his

disposition with respect to any of the matters described in

subparagraphs (1) to (6). He may also reserve the right, during his

lifetime, to exercise complete control over the property subject to his

disposition, without obligation to account therefor in any manner

whatever, and may further provide that his surviving spouse shall,

during her lifetime, have like control over such property, without

obligation to account therefor in any manner whatever.

(f) A disposition described in this section may be executed,

acknowledged and recorded in the manner provided by the law of this

state for the execution, acknowledgment and recording of conveyances of

real property.

(g) No action or proceeding shall be maintained by any person to

affect, impair, or defeat a disposition described in this section or to

affect the title to property subject to such disposition or the right to

the possession of such property or the income therefrom, unless such

action or proceeding is commenced within two years from the time such

disposition is recorded. Nor shall any defense be made to any action or

proceeding maintained by a trustee or his successor which involves the

legality of such disposition or affects the title to property subject

thereto or the right to the possession of such property or the income

therefrom, unless such defense is made in an action or proceeding

commenced within two years from the time such disposition is recorded.

§ 8-1.4 Supervision of trustees for charitable purposes

(a) For the purposes of this section, "trustee" means

(1) any

individual, group of individuals, executor, trustee, corporation or

other legal entity holding and administering property for charitable purposes, whether pursuant to any will, trust, other instrument or agreement, court appointment, or otherwise pursuant to law, over which the attorney general has enforcement or supervisory powers, (2) any non-profit corporation organized under the laws of this state for charitable purposes and (3) any non-profit foreign corporation organized for charitable purposes, doing business or holding property in this state. Neither a foreign corporation nor a trustee acting under the will of, or an agreement executed by, a non-resident of this state shall become subject to the provisions of this section merely by reason of maintaining a bank, custody, investment or similar account in this state.

(b) The registration and reporting provisions of this section do not apply to (1) the United States, any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico or to any of their agencies or governmental subdivisions, (2) any trustee which is required by any other provision of law to render a full, complete and itemized annual financial report to the congress of the United States or to the legislature of this state, provided that such report contains the information required of trustees pursuant to this article, (3) corporations organized under the religious corporations law and other religious agencies and organizations, and charities, agencies and organizations operated, supervised or controlled by or in connection with a religious organization, (4) educational institutions incorporated under the education law or by special act, (5) any hospital, (6) fraternal, patriotic, veterans, volunteer firefighters, volunteer ambulance workers, social, student or alumni

organizations and historical societies chartered by the New York state board of regents, (7) a trust for which there is a corporate trustee acting as sole trustee or co-trustee under the terms of a will of a decedent who died domiciled in a state other than New York or a trust instrument executed by a non-resident of the state of New York, (8) any trust in which and so long as the charitable interest is deferred or contingent, (9) any person who, in his or her capacity as an officer, director or trustee of any corporation or organization mentioned in this paragraph, holds property for the religious, educational or charitable purposes of such corporation or organization so long as such corporation or organization is registered with the attorney general pursuant to this section, (10) any cemetery corporation subject to the provisions of article fifteen of the not-for-profit corporation law, (11) the state parent teachers association and any parent teachers association affiliated with an educational institution that is subject to the jurisdiction of the state education department, (12) any corporation organized under article forty-three of the insurance law. The provisions of this subdivision shall apply only to the registration and reporting requirements of this section and shall not limit, impair, change or alter any other provision of this article, the not-for-profit corporation law or any other provision of law.

(c) The attorney general shall establish and maintain a register of all trustees containing such information as the attorney general deems appropriate, and to that end may conduct such investigations as he or she deems necessary and shall obtain from public records, court officers, taxing authorities, trustees and other sources without the payment of any fee or charge, whatever information, copies of

instruments, reports and records are needed for the establishment and maintenance of the register.

(d) Every trustee shall file with the attorney general, within six months after any property held by him or her or any income therefrom is required to be applied to charitable purposes, a copy of the instrument providing for his or her title, powers and duties; provided, however, that any trustee currently registered with the department of law pursuant to article 7-A of the executive law shall be deemed to have complied with this paragraph. If any property held by a trustee or any income therefrom is required to be applied to charitable purposes at the time this section becomes effective, the filing shall be made within six months thereafter.

(e) (1) Whenever any trustee or other person, holding property or any income therefrom, which may be required at any time to be devoted to charitable purposes, shall file in any court in this state (A) any petition for instructions relating to the administration or use of such property or income, (B) any petition for the construction of the instrument under which such property or income is held, (C) any petition respecting the disposition or distribution of such property or income or (D) any accounting, due notice of the action or proceeding shall be served by the petitioner upon the attorney general together with a copy of any petition, accounting, will or trust instrument.

(2) Whenever any instrument of a testamentary nature which provides for a disposition for charitable purposes is the subject of (A) an application for denial of probate, (B) objections to probate or (C) an application for approval of a compromise agreement in respect of probate, due notice of the action or proceeding shall be served by the petitioner upon the attorney general together with a copy of the instrument and of any such application, objections or agreement.

(f) (1) Every trustee shall, in addition to filing copies of any instrument required under paragraph (d) of this section, file with the attorney general and all identified current charitable beneficiaries written annual financial reports, under penalties for perjury, on forms prescribed by the attorney general, setting forth information as to the nature of the assets held for charitable purposes and the administration thereof by the trustee, and shall, file with the attorney general and all identified current charitable beneficiaries a notice of the termination of the interest of any party in a trust that would cause all or part of the trust assets to be applied to charitable purposes or to have the income therefrom so applied, in accordance with rules and regulations of the attorney general.

(2) Trustees required to report to the attorney general under article 7-A of the executive law shall comply with this paragraph by filing with the attorney general in addition to any other reports required herein, copies of the financial reports required by section 172-b of the executive law unless such reports have been filed previously.

(g) Unless the filing of reports is suspended as herein provided, the first report of any trustee shall be filed no later than six months after the end of the fiscal year of the trustee during which he or she becomes subject to this section.

(h) The attorney general shall make rules and regulations necessary for the administration of this section, including rules and regulations as to the time for filing reports, the contents thereof, and the manner of executing and filing them. He or she may classify trusts, estates, corporations and other trustees as to purpose, nature of assets, duration, amount of assets, amounts to be devoted to charitable purposes, or otherwise, and may establish different rules for different

classes as to time and nature of the reports required, to the ends that

he or she shall receive current financial reports as to all such trusts,

estates, corporations or other trustees which will enable him or her to

ascertain whether they are being properly administered. The attorney

general may suspend the filing of financial reports as to a particular

trustee for a reasonable, specifically designated time upon written

application of the trustee, signed under penalties for perjury, and

filed with the attorney general and after the attorney general has filed

in the register of trustees a written statement that the interests of

the beneficiaries will not be prejudiced thereby and that periodic

reports during the term of such suspension are not required for proper

supervision by his or her office. The filing of the financial reports

required by this section, or the exemption from such filing or the

suspension therefrom, shall not have the effect of absolving trustees

from any responsibility for accounting for property or income held by

them for charitable purposes. A copy of an account or other financial

report filed by a trustee in any court in this state, if the account or

other financial report substantially complies with the rules and

regulations of the attorney general, may be filed as a financial report

under this section.

(i) The attorney general may investigate transactions and

relationships of trustees for the purpose of determining whether or not

property held for charitable purposes has been and is being properly

administered. The attorney general, his or her assistants, deputies or

such other officers as may be designated by him or her, are empowered to

subpoena any trustee, agent, fiduciary, beneficiary, institution,

association or corporation or other witness, examine any such witness

under oath and, for this purpose, administer the necessary oaths, and

require the production of any books or papers which they deem relevant

to the inquiry.

(j) No person shall be excused from attending such inquiry pursuant to

the mandate of a subpoena, or from producing a paper or book, or from

being examined or required to answer a question on the ground of failure

of tender or payment of a witness fee or mileage, unless at the time of

such appearance or production, as the case may be, such witness makes a

demand for such payment as a condition precedent to the offering of the

testimony or production required by the subpoena and such payment is not

thereupon made. The provisions for payment of a witness fee or mileage

do not apply to any trustee or other person holding funds for charitable

purposes, or to any person in the employ of any such person, whose

conduct or practices are being investigated.

(k) If a person subpoenaed to attend such inquiry fails to obey the

mandate of a subpoena without reasonable cause, or if a person in

attendance upon such inquiry shall without reasonable cause refuse to be

sworn or to be examined or to answer a question or to produce a paper or

book when ordered so to do by the officer conducting such inquiry, he or

she shall be subject to proceedings under subdivision (b) of section

2308 of the civil practice law and rules.

(l) The register, copies of the instruments and the reports filed with

the attorney general shall be open to public inspection, subject to

reasonable rules and regulations adopted by the attorney general, which

may include such limitations as to type of information subject to

inspection or purpose of inspection as the attorney general shall deem

to be in the public interest. The attorney general shall withhold from

public inspection copies of any report filed with any other governmental

agency of this state or of the United States and required by law to be kept confidential by such agency, and shall, upon request of the trustee, withhold from public inspection that portion of any instrument filed which does not relate to charitable purposes and which is not otherwise of public record.

(m) The attorney general may institute appropriate proceedings to secure compliance with this section and to secure the proper administration of any trust, corporation or other relationship to which this section applies. The powers and duties of the attorney general provided in this section are in addition to all other powers and duties he or she may have. No court shall modify or terminate the powers and responsibilities of any trust, corporation or other trustee unless the attorney general is a party to the proceeding, but nothing in this section shall otherwise impair or restrict the jurisdiction of any court with respect to the matters covered by it. The failure of any trustee to register or to file reports as required by this section may be ground for judicial removal of any person responsible for such failure.

(n) This section shall apply regardless of any contrary provisions of any instrument and shall be liberally construed so as to effectuate its general purpose of protecting the public interest in charitable uses, purposes and dispositions.

(o) Every officer, agency, board or commission of this state or political subdivisions of this state or agencies thereof receiving applications for exemption from taxation of any trustee subject to this section shall annually file with the attorney general a list of all applications received during the year and shall notify the attorney general of any suspension or revocation of a tax exempt status previously granted.

(p) The attorney general shall collect from each trustee at the time

of filing of the periodic reports required by this section a fee for the

filing of such reports as follows:

(1) Twenty-five dollars, if the net worth of the property held by such

trustee for charitable purposes is less than fifty thousand dollars,

(2) Fifty dollars if such net worth is fifty thousand dollars or more

but less than two hundred and fifty thousand dollars,

(3) One hundred dollars if such net worth is two hundred and fifty

thousand dollars or more but less than one million dollars,

(4) Two hundred fifty dollars if such net worth is one million dollars

or more but less than ten million dollars,

(5) Seven hundred and fifty dollars if such net worth is ten million

dollars or more but less than fifty million dollars, and

(6) One thousand five hundred dollars if such net worth is fifty

million dollars or more.

(q) Any trustee shall be exempt from the annual reporting requirements

of this section by filing each year with the attorney general a verified

statement executed by such trustee attesting that during the annual

reporting period (1) the gross receipts received by said trustee during

such annual reporting period were less than twenty-five thousand dollars

and that (2) the total assets held by such trustee at no time during

such annual reporting period exceeded twenty-five thousand dollars. For

the purposes of this paragraph, gross receipts mean the total received

during the financial reporting period of (A) gifts, grants, and

contributions; (B) gross income and revenue from all sources; and (C)

gross amounts from sales of assets, other than inventory; and total

assets mean the total principal and the accumulated income, if any, held

by such trustee for purposes of charitable distribution on any day

during such annual reporting period.

(r) A trustee who fails to comply with paragraph (d), (f) or (g) of

this section shall, after notice of said failure served upon him or her

by the attorney general by certified mail, return receipt requested, be liable to the state of New York for a fine of ten dollars a day not to exceed one thousand dollars for each failure to comply after the expiration of the thirty day period following the receipt of the notice from the attorney general, except that the time to comply may be extended by the attorney general. Where the attorney general, after such thirty day period has expired, finds that the failure to comply with paragraph (d), (f) or (g) of this section is due to excusable ignorance or inadvertence or other reasonable cause, the attorney general shall waive the fine imposed by this paragraph.

(s) A trustee shall not be qualified to make application for funds or grants or to receive such funds from any department or agency of the state without certifying compliance with paragraphs (d), (f) and (g) of this section and all applicable registration and reporting requirements of article seven-A of the executive law.

§ 8-1.5 Trusts for cemetery purposes

Dispositions of property in trust for the purpose of the perpetual care, maintenance, improvement or embellishment of cemeteries or private burial lots in cemeteries, and the roadways, lawns, hedges, walks, fences, monuments, structures and tombs in such cemeteries or on such private burial lots are permitted and shall be deemed to be for charitable and benevolent purposes. Such dispositions are not invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries, nor shall they be invalid as violating any existing rule against perpetuities. Nothing herein contained shall affect any existing authority of the courts to determine the reasonableness of the amount of such disposition. Any cemetery association may act as trustee of and execute any such trust with respect to lots, roadways, lawns, hedges,

walks, fences, monuments, structures and tombs both within its own cemetery limits and outside of any cemetery under its control but within the county where such cemetery is located, whether or not such power is included among its corporate powers.

§ 8-1.6 Deposit of money in trust by owner of lots in private

unincorporated cemetery

The owner of lots in any private unincorporated cemetery may deposit

in trust for the care of such lots a sum not exceeding four hundred

dollars for each lot so owned with any bank or banking institution

located in a city, town or village conveniently near such private

unincorporated cemetery, provided such bank or banking institution is

willing to accept such money in trust and agrees to apply the proceeds

of the interest thereon to the care and upkeep of such lots. Such banks

or banking institutions are hereby authorized to accept such money for

the purpose described herein and to apply the proceeds of the interest

thereon to the care and upkeep of any such lots. The provisions of this

section do not apply to savings banks.

§ 8-1.7 Authority of trustee to accumulate income

(a) Where property has been transferred in trust for any religious,

charitable, educational or benevolent purpose, or acquired by the

trustee of a trust for such purpose, the trustee is authorized in his

discretion, notwithstanding the absence of any direction therefor in the

disposition creating the trust, to accumulate the income therefrom to

the extent necessary to carry out the purposes of the trust. The

authority herein granted is subject:

(1) To any express or implied prohibition by the terms of the

disposition creating the trust, by any statute in force at the time of

the accumulation or by the charter of a corporate trustee or other

document or regulation controlling the trustee in the administration of the trust.

(2) To the supervision of the supreme court or the surrogate's court, as provided in 8-1.1, and to any contrary direction by order of the court in an action or proceeding thereunder.

§ 8-1.8 Private foundations: administration of certain trusts as defined

in the United States internal revenue code of 1954

(a) For purposes of this section, a "trust" means a private foundation

as defined in section 509 of the United States Internal Revenue Code of

1986 ("code") including a private foundation charitable trust as defined

in section 4947(a)(1) of the code, or a split-interest trust as defined

in section 4947(a)(2) of the code, whether heretofore or hereafter

created which is administered by a trustee described in subparagraph

(a)(1) of section 8-1.4. The administration of a trust, as herein

defined, is subject to the following provisions:

(1) The trust shall distribute for each taxable year such amounts at

such time and in such manner as sufficient for such trust to avoid

liability for any tax imposed on undistributed income under section 4942

of the code.

(2) The trust shall not engage in any act of self-dealing which would

result in the taxation of any amount involved with respect to any such

act of self-dealing under section 4941 of the code.

(3) The trust shall not retain any excess business holdings which

would result in the taxation of any such excess business holdings under

section 4943 of the code unless the trust is exempt from section 4943 of

the code pursuant to section 4947(b)(3)(A) or (B) of the code.

(4) The trust shall not make any investments in such a manner as to

jeopardize the carrying out of any such trust's exempt purposes which

would result in the taxation of any such investments under section 4944

of the code unless the trust is exempt from section 4944 of the code

pursuant to section 4947(b)(3)(A) or (B) of the code.

(5) The trust shall not make any taxable expenditures which would result in the liability of the trust for any tax imposed on any such taxable expenditures under section 4945 of the code.

Except as provided in paragraph (b), this paragraph applies notwithstanding any provision of the governing instrument of a trust.

(b) Paragraph (a) shall not apply with respect to assets transferred in trust prior to the effective date of this section to the extent that it conflicts with any mandatory direction in the governing instrument of the trust unless such conflicting direction is removed as impracticable under this article or in any other manner provided by law. The absence of a specific provision in the governing instrument of the trust for the current use of the principal of the fund, or the presence in such an instrument of a provision, as to the principal of a fund, limited to the principal's being held, invested and reinvested, is not such a conflicting mandatory direction.

* (b-1) A trust, as defined in paragraph (a) of this section, required by section 6104(d) of the code to make available for public inspection its annual return shall publish notice of the availability of such return for inspection. Such notice shall be published, not later than the day prescribed for filing such annual return (determined with regard to any extension of time for filing), in a newspaper designated by the clerk of the county in which the principal office of the trust is located, having general circulation in that county. The notice shall state that the annual return of the trust is available at its principal office for inspection during regular business hours by any citizen who requests it within one hundred eighty days after the date of such publication, and shall state the address and the telephone number of the trust's principal office and the name of its principal manager.

* NB Effective until June 1, 2006

* (b-1) A trust, as defined in paragraph (a) of this section, required by section 6104(d) of the code to make available for public inspection its annual return shall publish notice of the availability of such return for inspection. Such notice shall be published, not later than the day prescribed for filing such annual return (determined with regard to any extension of time for filing), in a newspaper designated by the clerk of the county in which the principal office of the trust is located, having general circulation in that county, as though the notice were a notice or advertisement of judicial proceedings. The notice shall state that the annual return of the trust is available at its principal office for inspection during regular business hours by any citizen who requests it within one hundred eighty days after the date of such publication, and shall state the address and the telephone number of the trust's principal office and the name of its principal manager. A copy or notice published in a newspaper other than the newspapers designated by the county clerk shall not be deemed to be one of the publications required by this paragraph.

* NB Effective June 1, 2006

(c) All references in this section to sections of the code shall be to such sections as amended from time to time, or to corresponding provisions of subsequent internal revenue laws.
(d) Nothing in this act shall impair the rights and powers of the courts or the attorney-general of this state.

Article 9 - PERPETUITIES AND ACCUMULATIONS

(9-1.1 - 9-1.8) Perpetuities

§ 9-1.1 Rule against perpetuities

(a) (1) The absolute power of alienation is suspended when there are

no persons in being by whom an absolute fee or estate in possession can

be conveyed or transferred.

(2) Every present or future estate shall be void in its creation which

shall suspend the absolute power of alienation by any limitation or

condition for a longer period than lives in being at the creation of the

estate and a term of not more than twenty-one years. Lives in being

shall include a child conceived before the creation of the estate but

born thereafter. In no case shall the lives measuring the permissible

period be so designated or so numerous as to make proof of their end

unreasonably difficult.

(b) No estate in property shall be valid unless it must vest, if at

all, not later than twenty-one years after one or more lives in being at

the creation of the estate and any period of gestation involved.

In no

case shall lives measuring the permissible period of vesting be so

designated or so numerous as to make proof of their end unreasonably

difficult.

§ 9-1.2 Reduction of age contingency

Where an estate would, except for this section, be invalid because

made to depend, for its vesting or its duration, upon any person

attaining or failing to attain an age in excess of twenty-one years, the

age contingency shall be reduced to twenty-one years as to any or all

persons subject to such contingency.

§ 9-1.3 Rules of construction

(a) Unless a contrary intention appears, the rules of construction

provided in this section govern with respect to any matter affecting the

rule against perpetuities.

(b) It shall be presumed that the creator intended the estate to be

valid.

(c) Where an estate would, except for this paragraph, be invalid

because of the possibility that the person to whom it is given or limited may be a person not in being at the time of the creation of the estate, and such person is referred to in the instrument creating such estate as the spouse of another without other identification, it shall be presumed that such reference is to a person in being on the effective date of the instrument.

(d) Where the duration or vesting of an estate is contingent upon the probate of a will, the appointment of a fiduciary, the location of a distributee, the payment of debts, the sale of assets, the settlement of an estate, the determination of questions relating to an estate or transfer tax or the occurrence of any specified contingency, it shall be presumed that the creator of such estate intended such contingency to occur, if at all, within twenty-one years from the effective date of the instrument creating such estate.

(e) (1) Where the validity of a disposition depends upon the ability of a person to have a child at some future time, it shall be presumed, subject to subparagraph (2), that a male can have a child at fourteen years of age or over, but not under that age, and that a female can have a child at twelve years of age or over, but not under that age or the age of fifty-five years.

(2) In the case of a living person, evidence may be given to establish whether he or she is able to have a child at the time in question.

(3) Where the validity of a disposition depends upon the ability of a person to have a child at some future time, the possibility that such person may have a child by adoption shall be disregarded.

(4) The provisions of subparagraphs (1), (2) and (3) shall not apply for any purpose other than that of determining the validity of a disposition under the rule against perpetuities where such validity depends on the ability of a person to have a child at some future time.

A determination of validity or invalidity of a disposition under the rule against perpetuities by the application of subparagraph (1) or (2) or (3) shall not be affected by the later occurrence of facts in contradiction to the facts presumed or determined or the possibility of adoption disregarded under subparagraphs (1) or (2) or (3).

§ 9-1.4 Acquisition of real property by foreign trust

Where real property situated in this state is acquired by a trust validly created under the law of another jurisdiction, whether there is a violation of the rule against perpetuities and whether a direction for the accumulation of rents and profits is valid are determined by the law of this state in effect at the time of the acquisition of such property.

§ 9-1.5 Trust with transferable certificates

A trust with transferable certificates, heretofore or hereafter created, is not invalid as violating the rule against perpetuities; but such trust may continue for such time as may be necessary to accomplish the purposes for which it is created if the instrument creating such trust provides that it may be terminated at any time by action of the trustees or by affirmative vote of the beneficiaries having a specified percentage of interest therein. This section applies to an investment trust, which is an unincorporated trust or association managed by trustees not holding any property for sale to customers in the ordinary course of its trade or business, the beneficial ownership of which is evidenced by transferable shares or by transferable certificates of beneficial interest offered for sale to the public.

§ 9-1.6 Trust for employees

A trust created by an employer, as part of a stock bonus, pension, disability or death benefit or profit-sharing plan, for the exclusive

benefit of some or all of his employees, to which contributions are made by such employer or employees, or both, for the purpose of distributing to such employees the income or principal, or both, of the fund so held in trust, is not invalid as violating the rule against perpetuities; but such trust may continue for such time as may be necessary to accomplish the purposes for which it is created.

§ 9-1.7 Trust for self-employed individuals and others

No trust created under a retirement plan, which is exempt from federal income taxation under the laws of the United States, is invalid as violating the rule against perpetuities or the rules governing the accumulation of income. Such a trust may continue for such time as may be necessary to accomplish the purposes for which it is created; may permit the accumulation of income until such time as the income is distributed to the beneficiaries under the terms of the trust; and may, according to its terms, be made irrevocable and the interest of its beneficiaries nontransferable by assignment or otherwise. A trust so made irrevocable is not subject to revocation upon the written consent of its beneficiaries as provided in 7-1.9.

§ 9-1.8 Trust created by national securities exchange to assist

customers of members, member firms or member corporations
(a) A trust created by a national securities exchange for the purpose of enabling the trustees, in their discretion, to provide direct or indirect assistance to customers of a member, member firm or member corporation of such exchange, threatened with loss of their money or securities because such member, member firm or member corporation, in the opinion of the trustees, is insolvent or may be unable without assistance to meet its obligations to such customers, is not invalid as

violating the rule against perpetuities or the rules governing the accumulation of income. Such a trust may continue and may accumulate the income from the property held therein for such time as may be necessary to accomplish the purposes for which it is created.

(b) As used in this section, the term "national securities exchange" means any exchange registered as a national securities exchange under the federal securities exchange act of nineteen hundred thirty-four, as the same may be amended from time to time.

(9-2.1 - 9-2.3) Accumulations

§ 9-2.1 Rules governing accumulations

(a) All directions for the accumulation of income are void unless authorized by statute.

(b) A direction for the accumulation of income is valid if such accumulation is to begin and terminate within the time allowed by the rule against perpetuities. An accumulation directed to continue for a period extending beyond the expiration of such time terminates upon such expiration.

(c) Where property is disposed of in trust for any religious, charitable, educational or benevolent purpose and no valid future estate, except for a similar purpose, is created by such disposition, a direction for the accumulation by the trustee of income received for such purpose is valid without regard to the time at which the accumulation is to begin or to terminate, but the accumulation is subject to the supervision and control of the supreme court or the surrogate's court as provided in 8-1.1.

(d) The income from a trust created by an employer, as part of a stock bonus, a pension, disability or death benefit or profit-sharing plan, for the exclusive benefit of some or all of his employees, to which

contributions are made by such employer or employees or both, for the purpose of distributing to such employees the income or principal, or both, of the trust, may be accumulated until the funds are sufficient, in the opinion of the employer, to accomplish the purposes of such plan.

§ 9-2.2 Anticipation of directed accumulation

(a) When a valid accumulation is directed for the benefit of a person without other sufficient means to support or educate himself, the supreme court or, if such accumulation was directed by will, the surrogate's court of the county in which such will is admitted to probate, on the application of such person, his guardian, committee, or conservator may direct that a suitable sum from the income accumulated or to be accumulated be applied for the support or education of such person.

(b) When the proceeds of a life insurance policy issued or delivered in this state are being retained under an agreement by the insurer to credit interest thereon for the benefit of a person without other sufficient means to support or educate himself, the supreme court, on the application of such person, his guardian, committee, or conservator may direct that a suitable sum from the interest credited or agreed to be credited be applied for the support or education of such person.

§ 9-2.3 Undistributed income

When income is not disposed of and no valid direction is given for its accumulation it passes to the persons presumptively entitled to the next eventual estate.