

**BILL NO. 32- \_\_\_\_\_**

THIRTY-SECOND LEGISLATURE OF THE VIRGIN ISLANDS  
OF THE UNITED STATES

**To amend Titles 15, 28, and 5, Virgin Islands Code to allow additional protections for trust settlors, beneficiaries, and trustees and other fiduciaries; and for other purposes**

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**PROPOSED BY:**

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SECTION 1. Title 15, Virgin Islands Code is amended by adding a new Chapter 69 thereof to read as follows:

*Chapter 69. Fiduciaries and Trusts*

Subchapter I. Purpose Trusts, Protection from Creditors, and Other Rules

**§ 1501. Definitions.**

As used in this subchapter:

(1) “Beneficial interest” means only a distribution interest or a remainder interest. A beneficial interest specifically excludes a power of appointment or a power reserved by the settlor;

(2) “Distribution beneficiary” means a beneficiary who is an eligible distributee or permissible distributee of trust income or principal;

(3) “Distribution interest” means a distribution interest held by a distribution beneficiary. A distribution interest may be a current distribution interest or a future distribution interest. A distribution interest may be classified as a mandatory interest, a support interest, or a discretionary interest;

(4) “Power of appointment,” except as provided in § 1509, means a power, including a withdrawal power as defined in § 1507, to direct the disposition of trust property, but does not include the authority of a trustee to make a distribution to a beneficiary;

(5) “Reach,” with respect to a distribution interest or power, means to subject the distribution interest or power to a judgment, decree, garnishment, attachment, execution, levy, creditor's bill or other legal, equitable, or administrative process, relief, or control of any court, tribunal, agency, or other entity as provided by law;

(6) “Remainder interest” means an interest where a trust beneficiary receives the property outright at some time during the future;

(7) “Reserved power” means a power held by the settlor.

#### **§ 1502. Objects for which trust may be created.**

Objects of a trust or power may be persons or purposes. A trust may be created for any purpose for which a contract may lawfully be made.

#### **§ 1503. Trusts for noncharitable purposes.**

Subject to the provisions of §1504 and §1505, a trust may be performed if the trust is for a specific lawful noncharitable purpose or for lawful noncharitable purposes to be selected by the trustee. Neither the common law rule against perpetuities nor any common law rule limiting the duration of noncharitable purpose trusts may be in force in the Virgin Islands.

#### **§ 1504. Trust for the care of a designated animal.**

Subject to the provisions of §1505, a trust for the care of a designated animal is valid. The trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this section, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

#### **§ 1505. Provisions governing trusts for specific purposes selected by trustee and for care of animals.**

Any trust provided for by §1503 and §1504 is subject to the following provisions:

(a) Except as expressly provided otherwise in a 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 trust's purposes or for the benefit of a covered animal;

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

(1) As directed in the trust instrument;

(2) If the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, then under the residuary clause in the transferor's will; and

(3) If no beneficiary results from the application of clause (1) or (2) of this subsection, then to the transferor's heirs-at-law according to the applicable laws of intestate succession;

(c) A residuary clause is treated as creating a future interest under the terms of a trust;

(d) The intended use of the principal or income may be enforced by a person designated for that purpose in the trust instrument or, if none, by an individual appointed by a court upon application to it by that person;

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

(f) A court may reasonably reduce the amount of the property transferred if it determines that that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subsection (b) of this section;

(g) If no trustee is designated or no designated trustee is willing or able to serve, a court shall name a trustee. A court may order the transfer of the property to another trustee if required to ensure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. A court may also make such other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of §§ 1503 to 1505, inclusive.

#### **§ 1506. Improper Motive.**

For purposes of this subchapter, improper motive is demonstrated by action such as the following:

(a) A trustee refusing to make or limiting distributions to beneficiaries other than the trustee due to the trustee's self-interest when the trustee also holds a beneficial interest subject to a discretionary interest; or

(b) A trustee making a distribution in excess of an ascertainable standard to himself or herself as beneficiary when the trustee is restricted by an ascertainable standard in the trust.

**§ 1507. Withdrawal power.**

A withdrawal power allows a person a right to withdraw all or some part of the trust property, whether from income or principal. The holder of a withdrawal power is not deemed to be the settlor of the trust by failing to exercise a withdrawal power or letting a withdrawal power lapse.

**§ 1508. Distinction between discretionary trust and support trust; creditor rights; judicial review.**

The common law distinction between a discretionary trust and a support trust and the dual judicial review standards related to this distinction shall be maintained. In the area of creditor rights, the Restatement of Trusts (Third) and the Uniform Trust Code create many new positions of law as well as adopts many minority positions of law. The provisions of this subchapter, affirmatively reject many of these positions. Therefore, the Legislature does not intend the courts to consult the Restatement (Third) of the Law of Trusts § 50, § 56, § 58, § 59, or § 60 as approved by the American Law Institute with respect to subject matters addressed by the provisions of this subchapter.

**§ 1509. Judicial foreclosure of beneficial interests, powers of appointment, and reserved powers prohibited; creditors may not reach powers of appointment or remainder interests.**

Regardless of whether or not a trust contains a spendthrift provision:

- (1) No beneficial interest, power of appointment, or reserved power in a trust may be judicially foreclosed;
- (2) No creditor may reach a power of appointment or a remainder interest at the trust level. The creditor shall wait until the funds are distributed before the creditor may reach the funds; and
- (3) No power of appointment is property or an interest in property.

For purposes of this section, a power of appointment is held by a person to whom a power has been given, not the settlor.

**§ 1510. Certain remainder interests not property interests.**

Although a remainder interest may be an enforceable right, where it is not certain based on the language of the trust that the remainder interest will be distributed within one year, it may not be classified as a property interest.

**§ 1511. Interest of beneficiary or others not reachable by creditors.**

(a) No creditor may reach an interest of a beneficiary or of any other person on the grounds that the beneficiary or other person holds, either alone or in conjunction with another person, either or both of the following:

- (1) An unconditional or conditional power to remove a trustee; or
- (2) An unconditional or conditional power to replace a trustee.

(b) The powers to remove or replace a trustee are personal to the power holder. No court may order, direct, or otherwise compel a power holder to directly or indirectly exercise the power to remove or replace a trustee for the purpose of directly or indirectly satisfying, either in whole or in part, any claim or judgment against the power holder or a beneficiary.

(c) The powers to remove or replace a trustee, whether exercisable alone or in conjunction with another person, are not a property interest.

(d) No creditor may reach an interest of a beneficiary on the grounds that the beneficiary is also a trustee or a co-trustee and no court may foreclose against such an interest. No court may order, direct, or otherwise compel a distribution because the beneficiary is then serving as a trustee or co-trustee.

**§ 1512. Trust property not subject to personal obligations of trustee.**

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

**§ 1513 Distribution and remainder interests not relevant to division of marital property.**

Neither a distribution interest nor a remainder interest are relevant in the equitable division of marital property.

**§ 1514. Resources of settlor's spouse to be considered in making distribution from support trust; other beneficiary's resources need not be considered.**

Unless otherwise provided in the trust, if the settlor's spouse is named as beneficiary, the settlor's spouse is still living, and the trust is classified as a support trust, then the trustee shall consider the resources of the settlor's spouse, including the settlor's obligation of support, prior to making a distribution. In all other cases, unless otherwise provided in the trust, the trustee need not consider the beneficiary's resources in determining whether a distribution should be made.

**§ 1515. Factors which are not dominion and control over trust.**

In the event that a party challenges a settlor or a beneficiary's influence over a trust, none of the following factors, alone or in combination, may be considered dominion and control over a trust:

- (1) The settlor or a beneficiary serving as a trustee or a co-trustee as described in §1518;
- (2) The settlor or a beneficiary holds an unrestricted power to remove or replace a trustee;
- (3) The settlor or a beneficiary is a trust administrator, a general partner of a partnership, a manager of a limited liability company, an officer of a corporation, or any other managerial function of any other type of entity, and part or all of the trust property consists of an interest in the entity;
- (4) A person related by blood or adoption to the settlor or a beneficiary is appointed as trustee;
- (5) The settlor's or a beneficiary's agent, accountant, attorney, financial advisor, or friend is appointed as trustee;
- (6) A business associate is appointed as a trustee;
- (7) A beneficiary holds any power of appointment over any or all of the trust property;
- (8) The settlor holds a power to substitute property of equivalent value;

- (9) The trustee may loan trust property to the settlor for less than a full and adequate rate of interest or without adequate security;
- (10) The distribution language provides any discretion;
- (11) The trust has only one beneficiary eligible for current distributions; or
- (12) The beneficiary serving as a trust advisor for investments under section 1561 of this chapter.

**§ 1516. Factors which are insufficient evidence that settlor controls or is alter ego of trustee.**

Absent clear and convincing evidence, no settlor of an irrevocable trust may be deemed to be the alter ego of a trustee. The following factors by themselves or in combination are not sufficient evidence for a court to conclude that the settlor controls a trustee or is the alter ego of a trustee:

- (1) Any combination of the factors listed in §1515;
- (2) Isolated occurrences where the settlor has signed checks, made disbursements, or executed other documents related to the trust as a trustee, when in fact the settlor was not a trustee;
- (3) Making any requests for distributions on behalf of beneficiaries;
- (4) Making any requests to the trustee to hold, purchase, distribute, or sell any trust property.

**§ 1517. Provision that beneficial interest in trust income or principal may not be transferred before payment to beneficiary permissible.**

A settlor may provide in the terms of the trust that a beneficiary's beneficial interest in a trust's income, principal, or in both, may not be voluntarily or involuntarily transferred before payment or delivery of the beneficial interest to the beneficiary by the trustee.

**§ 1518. Trust declaration that beneficiary's interest subject to spendthrift trust; payment of beneficiary expenses.**

A declaration in a trust that the interest of a beneficiary shall be held subject to a spendthrift trust is sufficient to restrain voluntary or involuntary alienation of a beneficial interest by a

beneficiary to the maximum extent provided by law. Regardless of whether a beneficiary has any outstanding creditor, a trustee of a spendthrift trust may directly pay any expense on behalf of such beneficiary and may exhaust the income and principal of the trust for the benefit of such beneficiary. No trustee is liable to any creditor for paying the expenses of a beneficiary of a spendthrift trust.

**§ 1519. Satisfaction of claims of settlor's creditors from trust estate if settlor is beneficiary.**

If a settlor is also a beneficiary of the trust, and the transfer is a qualified disposition pursuant to subchapter III, the provisions of §§ 1506 to 1527, inclusive, also apply. Conversely, if the settlor is a beneficiary of the trust and the transfer is not a qualified disposition pursuant to subchapter III, a provision restraining the voluntary or involuntary transfer of the settlor's beneficial interest does not prevent the settlor's creditors from satisfying claims from the settlor's interest in the trust estate.

**§ 1520. Effect on creditor claims of trustee discretionary powers to pay taxes or make reimbursements for taxes.**

Regardless of whether a disposition is a qualified disposition pursuant to subchapter III of this chapter, where a trustee is granted a discretionary power by the terms of the trust instrument, or any provision of law, to pay directly to any taxing authority, or to reimburse the person liable for, any tax imposed by a taxing authority on the person by reason of the person being treated as the owner of all or any portion of the trust property pursuant to §§ 671 to 678, inclusive, of the Internal Revenue Code of 1986, 26 U.S.C. §§ 671 to 678, inclusive, as of January 1, 2016, and the U.S. Treasury Regulations promulgated thereunder, as of January 1, 2016, or pursuant to the applicable law of any other jurisdiction:

(1) A creditor of the person shall not satisfy a claim from the property of the trust solely because of the existence or exercise of the discretionary power; and

(2) The use of trust property to pay the tax shall not be deemed a distribution or transfer of trust property to the person for any purpose, and the amount paid from the trust to the taxing authority or to the person in reimbursement of the person's payment of the tax is not subject to the claims of a creditor of the person solely because of the existence or exercise of the discretionary power.

**§ 1521. Application of spendthrift provision.**

A spendthrift provision applies to both distribution interests and remainder interests. A spendthrift provision is a material provision of a trust.

**§ 1522. Classification of distribution interest.**

A distribution interest can be classified in three ways:

(1) As a mandatory interest, which is a distribution interest, in which the timing of any distribution must occur within one year from the date the right to the distribution arises, and the trustee has no discretion in determining whether a distribution shall be made or the amount of such distribution;

(2) As a support interest, which is not a mandatory interest but still contains mandatory language such as "shall make distributions" and is coupled with a standard capable of judicial interpretation; or

(3) As a discretionary interest, which is any interest where a trustee has any discretion to make or withhold a distribution.

A discretionary interest may be evidenced by permissive language such as "may make distributions" or it may be evidenced by mandatory distribution language that is negated by the discretionary language of the trust, such as "the trustee shall make distributions in the trustee's sole and absolute discretion." An interest that includes mandatory distribution language such as "shall" but is subsequently qualified by discretionary distribution language shall be classified as a discretionary interest and not as a support or a mandatory interest. A discretionary interest is any interest that is not a mandatory or a support interest.

**§ 1523. Bifurcation of trust.**

To the extent a trust contains any combination of a mandatory provision or a support provision or other provisions, the trust shall be bifurcated as follows:

(1) The trust shall be a mandatory interest only to the extent of the mandatory language;

(2) The trust shall be a support interest only to the extent of such support language;

(3) The remaining trust property shall be held as a discretionary interest;

(4) A support interest that includes mandatory language such as "shall" but is subsequently qualified by discretionary language, shall be classified as a discretionary interest and not as a support interest.

**§ 1524. Language resulting in classification of distribution interest.**

Although not the exclusive means to create a distribution interest, absent clear and convincing evidence to the contrary, the following language by itself results in the following classification of distribution interest:

(a) Mandatory interest:

- (i) “All income shall be distributed to (named beneficiary)”; or
- (ii) “One hundred thousand dollars a year shall be distributed to (named beneficiary)”;

(b) Support interest:

“The trustee shall make distributions for health, education, maintenance, and support”;

(b) Discretionary interest:

- (i) “The trustee, may, in the trustee's sole and absolute discretion make distributions for health, education, maintenance, and support”;
- (ii) “The trustee, in the trustee's sole and absolute discretion, shall make distributions for health, education, maintenance, and support”;
- (iii) “The trustee may make distributions for health, education, maintenance, and support”;
- (iv) “The trustee shall make distributions for health, education, maintenance, and support. The trustees may exclude any of the beneficiaries or may make unequal distributions among them”;
- (v) “The trustee may make distributions for health, education, maintenance, support, comfort, and general welfare.”

**§ 1525. Effect of spendthrift provision.**

If the trust contains a spendthrift provision, no creditor may reach present or future mandatory distributions from the trust at the trust level. Moreover, no court may order a trustee to distribute past due mandatory distributions directly to a creditor.

**§ 1526. Mandatory or support interests.**

(a) A beneficiary of a mandatory or a support interest has an enforceable right to a distribution pursuant to a court's review. A trustee's distribution decision may be reviewed for unreasonableness, dishonesty, improper motivation, or failure, if under a duty to do so, to act. This does not, however, raise the beneficiary's support interest to the level of a property interest.

(b) If the trust contains a spendthrift provision, notwithstanding the beneficiary's right to force a distribution with regard to a mandatory or support interest, no creditor may force a distribution with regard to a mandatory or support interest. No creditor may reach present or future support distributions with regard to a mandatory or support interest.

(c) Regardless of whether a beneficiary has any outstanding creditor, a trustee of a mandatory or a support interest may directly pay any expense on behalf of such beneficiary. No trustee is liable to any creditor for paying the expenses of a beneficiary of a mandatory or support interest.

**§ 1527. Discretionary interests.**

The following provisions apply only to discretionary interests:

(a) A discretionary interest is neither a property interest nor an enforceable right. It is a mere expectancy;

(b) No creditor may force a distribution with regard to a discretionary interest. No creditor may require the trustee to exercise the trustee's discretion to make a distribution with regard to a discretionary interest;

(c) A court may review a trustee's distribution discretion only if the trustee:

- (1) Acts dishonestly;
- (2) Acts with an improper motive; or
- (3) Fails, if under a duty to do so, to act.

A reasonableness standard may not be applied to the exercise of discretion by the trustee with regard to a discretionary interest. Other than for the three circumstances listed in this subsection (c), a court has no jurisdiction to review the trustee's discretion or to force a distribution.

Absent express language to the contrary, in the event that the distribution language in a discretionary interest permits unequal distributions between beneficiaries or distributions to the exclusion of other beneficiaries, the trustee may distribute all of the accumulated, accrued, or undistributed income and principal to one beneficiary in the trustee's discretion.

Regardless of whether a beneficiary has any outstanding creditor, a trustee of a discretionary interest may directly pay any expense on behalf of such beneficiary and may exhaust the income and principal of the trust for the benefit of such beneficiary. No trustee is liable to any creditor for paying the expenses of a beneficiary of a discretionary interest.

**§ 1528. Action for fraudulent transfer of settlor's assets.**

Notwithstanding any other provision of law, no action of any kind, including an action to enforce a judgment entered by a court or other body having adjudicative authority, may be brought at law or in equity for an attachment or other provisional remedy against property that is the subject of a Virgin Islands trust or for avoidance of a transfer to a Virgin Islands trust unless the settlor's transfer of property was made with the intent to defraud that specific creditor.

**§ 1529. Limitation of action for fraudulent transfer of settlor's assets.**

A cause of action or claim for relief with respect to a fraudulent transfer of a settlor's assets pursuant to §1528 is extinguished unless the action under §1528 is brought by a creditor of the settlor who meets one of the following requirements:

(a) Is a creditor of the settlor before the settlor's assets are transferred to the trust, and the action under §1528 is brought within the later of:

- (1) Two years after the transfer is made; or
- (2) Six months after the transfer is or reasonably could have been discovered by the creditor if the creditor:
  - (i) Can demonstrate that the creditor asserted a specific claim against the settlor before the transfer; or
  - (ii) Files another action, other than an action under §1528, against the settlor that asserts a claim based on an act or omission of the settlor that occurred before the transfer, and the action described in this subsection is filed within two years after the transfer; or

(b) Becomes a creditor subsequent to the transfer into trust, and the action under §1528 is brought within two years after the transfer is made.

(c) In any action described in §1528, the burden to prove the matter by clear and convincing evidence is upon the creditor.

**§ 1530. No contest clause defined; enforceability.**

For purposes of §§1530 to 1535, inclusive, a no contest clause is a provision or clause in a trust, that penalizes a qualified beneficiary for contesting a trust or instituting other proceedings at law or equity relating to the trust estate, excluding proceedings related to trust administration. Except as provided in §§1530 to 1535, inclusive, a no contest clause shall be enforced unless probable cause exists for instituting the proceeding on the grounds of:

- (1) Fraud;
- (2) Duress;
- (3) Revocation;
- (4) Lack of contractual capacity;
- (5) Undue influence;
- (6) Mistake;
- (7) Forgery; or
- (8) Irregularity in the execution of the trust document.

**§ 1531. Extrinsic evidence not admissible to establish settlor's intent concerning no contest clause.**

A no contest clause shall be construed to carry out the settlor's intent. Except to the extent the no contest clause in the trust is vague or ambiguous, extrinsic evidence is not admissible to establish the settlor's intent concerning the no contest clause. The provisions of this section do not prohibit such evidence from being admitted for any other purpose authorized by law.

**§ 1532. Circumstances under which no contest clause unenforceable.**

A no contest clause is not enforceable against a beneficiary to the extent the beneficiary, in good faith and based upon probable cause, contests a provision that benefits any of the following persons:

- (1) A person who drafted or transcribed the instrument;
- (2) A person who gave directions to the drafter of the instrument concerning dispositive or other substantive contents of the provisions or who directed the drafter to include the no contest clause in the instrument; however, this section does not apply if the settlor affirmatively instructed the drafter to include the contents of the provision or the no contest clause; or

- (3) A person who acted as a witness to the instrument.

**§ 1533. Contest regarding settlor's signature.**

Notwithstanding anything to the contrary in §§1530 to 1535, inclusive, a no contest clause is enforceable against a beneficiary to the extent the beneficiary elects to contest or otherwise challenge the settlor's signature whereby such a challenge does not in any manner constitute good, probable, or reasonable cause if the settlor's signature was witnessed by nonrelative witnesses or a duly qualified nonrelative notary public or both.

**§ 1534. Attorneys fees and costs.**

The court may award attorneys fees and costs to the prevailing party in an action involving the enforceability of a no contest provision.

**§ 1535. Effective date of §§1530 to 1534.**

Sections 1530 to 1534, inclusive, are effective for all trusts in existence on, created, amended, or restated after the date of enactment of the act that added this chapter.

**§ 1536. Interest on general pecuniary devises.**

General pecuniary devises bear interest at the rate of interest on judgments as provided in title 5, section 426, beginning one year after the event requiring a distribution until payment, unless a contrary intent is indicated by the terms of the trust.

**§ 1537. Expansion, restriction, elimination, or variance of provisions of general application.**

The terms of a governing instrument may expand, restrict, eliminate, or otherwise vary any provisions of general application to trusts and trust administration. Nothing in this section allows the terms of the governing instrument to expand, restrict, eliminate, or otherwise vary the duties, restrictions, and liabilities imposed by the provisions of §1094 and §1095 of this title.

**§ 1538. Arbitration.**

A trustee shall have the power to submit to arbitration a claim in favor of or against a trust or trustee. In addition, a provision in a trust requiring the arbitration of a dispute between or among the beneficiaries, a fiduciary under the will or trust, or any combination of them, is enforceable

in the same manner as an arbitration clause in a contract. Unless otherwise provided in the governing instrument or a court order, the arbitration shall be held in the Virgin Islands. Notwithstanding the foregoing, a challenge to the validity of all or part of the trust is not subject to arbitration. Any proceeding pursuant to this section is subject, upon request by the acting trustee, the settlor, if living, or any beneficiary, to appropriate privacy protections as determined by the arbitrator or a court.

**§ 1539. Trust enforceable although not funded or without res, corpus, or assets.**

A trust is valid and enforceable even though it may not be funded at a given time, or from time to time, or does not initially have any res or corpus or otherwise contain any asset of any nature. A trust is valid and enforceable even though its res is neither ascertainable nor identifiable at the time of the trust's creation. No trustee, trust protector, or trust advisor has any duty prior to the time a trust has a res, corpus, or any asset.

**§ 1540. Notice to qualified beneficiaries of existence of trust; information to be provided to excluded fiduciaries.**

(a) For purposes of this section, the term “qualified beneficiary” means a beneficiary that is an entity then in existence or an individual who is twenty-one years of age or older and who, on the date the beneficiary's qualification is determined:

- (1) Is a distributee or permissible distributee of trust income or principal;
- (2) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees terminated on that date; or
- (3) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

However, if the distributee is then unknown because a person holds a power to change the distributee, the trustee shall give notice only to the holder of the power.

(b) Except as otherwise provided by the terms of a revocable trust, a trustee has no duty to notify the qualified beneficiaries of the trust's existence.

(c) Except as otherwise provided by the terms of an irrevocable trust or otherwise directed in writing by the settlor, trust advisor, or trust protector, the trustee shall, within sixty days after the trustee has accepted trusteeship of the trust, or within sixty days after the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, notify the qualified beneficiaries of the trust's existence and of the right of the beneficiary to request a copy of the trust instrument pertaining to the beneficiary's interest in the trust.

(d) Except as otherwise provided by the terms of an irrevocable trust or otherwise directed in writing by the settlor, trust advisor, or trust protector, a trustee of an irrevocable trust:

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

(2) If notification of the trust has not been accomplished pursuant to this section within sixty days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;

(3) Shall promptly respond to a qualified beneficiary's request for information related to the administration of the trust, unless the request is unreasonable under the circumstances.

(e) The settlor, trust advisor, or trust protector, may, by the terms of the governing instrument, or in writing delivered to the trustee, expand, restrict, eliminate, or otherwise modify the rights of beneficiaries to information relating to a trust.

(f) A beneficiary may waive the right to the notice or information otherwise required to be furnished under this section and, with respect to future reports and other information, may withdraw a waiver previously given.

(g) The change in the identity of a trustee, occurring as the result of a mere name change or a merger, consolidation, combination, or reorganization of a trustee, does not require notice.

(h) If a fiduciary is bound by a duty of confidentiality with respect to a trust or its assets, a fiduciary may require that any beneficiary who is eligible to receive information pursuant to this section be bound by the duty of confidentiality that binds the trustee before receiving such information from the trustee.

(i) A trust advisor, trust protector, or other fiduciary designated by the terms of the trust shall keep each excluded fiduciary designated by the terms of the trust reasonably informed about:

(1) The administration of the trust with respect to any specific duty or function being performed by the trust advisor, trust protector, or other fiduciary to the extent that the duty or function would normally be performed by the excluded fiduciary or to the extent that providing such information to the excluded fiduciary is reasonably necessary for the excluded fiduciary to perform its duties; and

(2) Any other material information that the excluded fiduciary would be required to disclose to the qualified beneficiaries under this section regardless of whether

the terms of the trust relieve the excluded fiduciary from providing such information to qualified beneficiaries. Neither the performance nor the failure to perform of a trust advisor, trust protector, or other fiduciary designated by the terms of the trust as provided in this subdivision shall affect the limitation on the liability of the excluded fiduciary.

(j) The provisions of this section are effective for trusts created after the date of enactment of the act that added this section, except as otherwise directed by the settlor, trust protector, trust advisor, or other fiduciary designated by the terms of the trust. For trusts created prior to such date, a trustee has no duty at common law or otherwise to notify a qualified beneficiary of the trust's existence unless otherwise directed by the settlor.

**§ 1541. Trustee authorized to distribute income or principal from first trust may appoint all or part in favor of trustee of second trust; restrictions; power of appointment to beneficiary of second trust.**

(a) Unless the terms of the governing instrument expressly provide otherwise, if a trustee has discretion under the terms of a governing instrument to make a distribution of income or principal to or for the benefit of one or more beneficiaries of a trust (the “first trust”, as used in this section and in §§ 1542-1548 inclusive), whether or not restricted by any standard, then the trustee, independently or with court approval, may exercise such discretion by appointing part or all of the income or principal subject to the discretion in favor of a trustee of a second trust (the “second trust” as used in this section and in §§ 1542-1548, inclusive) under a governing instrument separate from the governing instrument of the first trust. Before exercising its discretion to appoint and distribute assets to a second trust, the trustee of the first trust shall determine whether the appointment is necessary or desirable after taking into account the purposes of the first trust, the terms and conditions of the second trust, and the consequences of the distribution. For the purposes of this section, a trustee of the first trust is a restricted trustee if either the trustee is a beneficiary of the first trust or if a beneficiary of the first trust has a power to change the trustees within the meaning of § 1543. In addition, the following apply to all appointments made under this section:

(1) The second trust may only have as beneficiaries one or more of the beneficiaries of the first trust:

(i) To or for whom a discretionary distribution of income or principal may be made from the first trust; or

(ii) To or for whom a distribution of income or principal may be made in the future from the first trust at a time or upon the happening of an event specified under the first trust; or

(iii) Both (i) and (ii);

(2) No restricted trustee of the first trust may exercise such authority over the first trust to the extent that doing so could have the effect of:

(i) Benefiting the restricted trustee as a beneficiary of the first trust, unless the exercise of such authority is limited by an ascertainable standard based on or related to health, education, maintenance, or support; or

(ii) Removing restrictions on discretionary distributions to a beneficiary imposed by the governing instrument under which the first trust was created, except that a provision in the second trust which limits distributions by an ascertainable standard based on or related to the health, education, maintenance, or support of any such beneficiary is permitted, or to a trust established pursuant to 42 U.S.C. § 1396(p)(d)(4);

(3) No restricted trustee of the first trust may exercise such authority over the first trust to the extent that doing so would have the effect of increasing the distributions that can be made from the second trust to the restricted trustees of the first trust or to a beneficiary who may change the trustees of the first trust within the meaning of § 1541 compared to the distributions that can be made to such trustee or beneficiary, as the case may be, under the first trust, unless the exercise of such authority is limited by an ascertainable standard based on or related to health, education, maintenance, or support;

(4) The provisions of paragraphs (2) and (3) only apply to restrict the authority of a trustee if either a trustee, or a beneficiary who may change the trustee, is a United States citizen or domiciliary under the Internal Revenue Code, or the trust owns property that would be subject to United States estate or gift taxes if owned directly by such a person;

(5) In the case of any trust contributions which have been treated as gifts qualifying for the exclusion from gift tax described in § 2503(b) of the Internal Revenue Code of 1986, by reason of the application of Internal Revenue Code § 2503(c), the governing instrument for the second trust shall provide that the beneficiary's remainder interest shall vest no later than the date upon which such interest would have vested under the terms of the governing instrument for the first trust;

(6) The exercise of such authority may not reduce any income interest of any income beneficiary of any of the following trusts:

(i) A trust for which a marital deduction has been taken for federal tax purposes under Internal Revenue Code § 2056 or § 2523 or for state tax purposes under any comparable provision of applicable state law;

(ii) A charitable remainder trust under Internal Revenue Code § 664;

or

(iii) A grantor retained annuity or unitrust trust under Internal Revenue Code § 2702;

(7) The exercise of such authority does not apply to trust property subject to a presently exercisable power of withdrawal held by a trust beneficiary to whom, or for the benefit of whom, the trustee has authority to make distributions, unless after the exercise of such authority, the beneficiary's power of withdrawal is unchanged with respect to the trust property;

(8) The exercise of such authority is not prohibited by a spendthrift clause or by a provision in the governing instrument that prohibits amendment or revocation of the trust;

(9) Any appointment made by a trustee shall be considered a distribution by the trustee pursuant to the trustee's distribution powers and authority; and

(10) If the trustee's distribution discretion is not subject to a standard, or if the trustee's distribution discretion is subject to a standard that does not create a support interest, then the court may review the trustee's determination or any related appointment only pursuant to § 1527. Any other court review of the trustee's determination or any related appointment may be made only pursuant to § 1526.

(b) Notwithstanding the foregoing provisions of this section, the governing instrument of the second trust may grant a power of appointment to one or more of the beneficiaries of the second trust who are beneficiaries of the first trust. The power of appointment may include the power to appoint trust property to the holder of the power of appointment, the holder's creditors, the holder's estate, the creditors of the holder's estate, or any other person, whether or not that person is a trust beneficiary.

(c) This section applies to any trust administered under the laws of the Virgin Islands, including a trust whose governing jurisdiction is transferred to the Virgin Islands.

**§ 1542. Action that may not be taken by restricted trustee may be taken by another unrestricted trustee.**

Any action that may not be taken by a trustee of the first trust by reason of the restrictions in section 1541(a)(2) may instead be taken by any other trustee of the first trust who is not so restricted, or, if none, by the next available party who can be a successor trustee and who is not

so restricted. The second trust may be a trust created or administered under the laws of any jurisdiction, within or without the United States.

**§ 1543. Conditions under which beneficiary has power to change trustees.**

For the purposes of § 1541, a beneficiary shall be considered to have the power to “change the trustees” if he or she can, alone or with others, name himself or herself as a trustee or can remove a trustee and replace that trustee with a new trustee who is the beneficiary or who is related or subordinate (as defined in § 672 of the Internal Revenue Code) to the beneficiary.

**§ 1544. Exercise of power to distribute income or principal by written instrument; notice to beneficiaries of first trust.**

The exercise of the power to distribute the income or principal of the trust under § 1541 shall be by an instrument in writing, signed and acknowledged by the trustee and filed with the records of the trust. The trustee of the first trust may notify all beneficiaries of the first trust, in writing, at least twenty days prior to the effective date of the trustee's exercise of the power under § 1541. A copy of the proposed exercise of this authority and the second trust agreement shall satisfy this notice provision. For the purposes of this section, the term “beneficiaries” means those persons who would be entitled to notice and a copy of the first trust instrument under § 1540.

**§ 1545. Exercise of power to distribute income or principal considered exercise of power of appointment.**

The exercise of the power to distribute the income or principal of the trust under § 1541 shall be considered the exercise of a power of appointment (other than a power to appoint to the trustee, the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate).

**§ 1546. Impermissible use of power.**

The power under § 1541 may not be exercised to suspend the power to alienate trust property or extend the first trust beyond the permissible period of any rule against perpetuities applicable to the first trust.

**§ 1547. Trustee's right to distribute income or principal in trust arising under law or terms of first trust not abridged.**

No provision of §§ 1541 to 1546, inclusive, may be construed to abridge the right of any trustee who has power to distribute income or principal in further trust which arises under statute, common law, or the terms of the first trust.

## Subchapter II. Directed Trusts

### § 1551. Definition of terms.

As used in this subchapter:

(1) “Instrument” means any revocable or irrevocable trust document created inter vivos or testamentary or any custodial account agreement;

(2) “Trust protector” means any person whose appointment as protector is provided for in the instrument. Such person may not be considered to be acting in a fiduciary capacity except to the extent the governing instrument provides otherwise. However, a protector shall be considered acting in a fiduciary capacity to the extent that the person exercises the authority of an investment trust advisor or a distribution trust advisor;

(3) “Trust advisor” means either an investment trust advisor or a distribution trust advisor;

(4) “Fiduciary” means a trustee or custodian under any instrument, an executor, administrator, or personal representative of a decedent's estate, or any other party, including a trust advisor, a trust protector, or a trust committee, who is acting in a fiduciary capacity for any person, trust, or estate;

(5) “Excluded fiduciary” means any fiduciary excluded from exercising certain powers under the instrument which powers may be exercised by the settlor, custodial account owner, trust advisor, trust protector, trust committee, or other persons designated in the instrument;

(6) “Investment trust advisor” means a fiduciary, given authority by the instrument to exercise all or any portions of the powers and discretions set forth in § 1561;

(7) “Distribution trust advisor” means a fiduciary, given authority by the instrument to exercise all or any portions of the powers and discretions set forth in § 1562;

(8) “Custodial account” means an account, established by a party with a bank as defined in 26 U.S.C. 408(n), as of January 1, 2006, or with another person approved by the Internal Revenue Service as satisfying the requirements to be a nonbank trustee or a nonbank passive trustee set forth in U.S. Treasury Regulations promulgated under 26 U.S.C. 408, that is governed by an instrument concerning the establishment or maintenance, or both, of an

individual retirement account, qualified retirement plan, Archer medical savings account, health savings account, Coverdell education savings account, or any similar retirement or savings vehicle permitted under the Internal Revenue Code of 1986, as of January 1, 2006;

(9) “Custodial account owner” means any party who establishes a custodial account; or has the power to designate the beneficiaries or appoint the custodian of the custodial account; or otherwise is the party who possesses the power to direct the investment, disposition, or retention of any assets in the custodial account or name an authorized designee to effect the same;

(10) “Family advisor” means any person whose appointment is provided for in the governing instrument or by court order who is authorized to consult with or advise a fiduciary with regard to fiduciary or nonfiduciary matters and actions, and who may also be authorized by the governing instrument or court order to otherwise act in a nonfiduciary capacity.

**§ 1552. Governing instrument may provide trust advisor or trust protector with powers and immunities of trustee.** Any governing instrument providing for a trust advisor or trust protector may also provide such trust advisor or trust protector with some, none, or all of the rights, powers, privileges, benefits, immunities, or authorities available to a trustee under Virgin Islands law or under the governing instrument. Unless the governing instrument provides otherwise, a trust advisor or trust protector has no greater liability to any person than would a trustee holding or benefiting from the rights, powers, privileges, benefits, immunities, or authority provided or allowed by the governing instrument to such trust advisor or trust protector.

**§ 1553. Liability limits of excluded fiduciary.**

(a) An excluded fiduciary is not liable, either individually or as a fiduciary, for any of the following:

(1) Any loss that results from compliance with a direction of the trust advisor, custodial account owner, or authorized designee of a custodial account owner, including any loss from the trust advisor breaching fiduciary responsibilities or acting beyond the trust advisor’s scope of authority;

(2) Any loss that results from a failure to take any action proposed by an excluded fiduciary that requires a prior authorization of the trust advisor if that excluded fiduciary timely sought but failed to obtain that authorization;

(3) Any loss that results from any action or inaction, except for gross negligence or willful misconduct, when an excluded fiduciary is required, pursuant to the trust agreement or any other reason, to assume the role of trust advisor, trust protector, investment trust advisor, or distribution trust advisor.

(b) Any excluded fiduciary is also relieved from any obligation to review or evaluate any direction from a distribution trust advisor or to perform investment or suitability reviews, inquiries, or investigations or to make recommendations or evaluations with respect to any investments to the extent the trust advisor, custodial account owner, or authorized designee of a custodial account owner had authority to direct the acquisition, disposition, or retention of any such investment. If the excluded fiduciary offers such communication to the trust advisor, trust protector, investment trust advisor, or distribution trust advisor or any investment person selected by the investment trust advisor, such action may not be deemed to constitute an undertaking by the excluded fiduciary to monitor or otherwise participate in actions within the scope of the advisor's authority or to constitute any duty to do so.

(c) Any excluded fiduciary is also relieved of any duty to communicate with or warn or apprise any beneficiary or third party concerning instances in which the excluded fiduciary would or might have exercised the excluded fiduciary's own discretion in a manner different from the manner directed by the trust advisor, trust protector, investment trust advisor, or distribution trust advisor.

(d) Absent contrary provisions in the governing instrument, the actions of the excluded fiduciary (such as any communications with the trust advisor and others and carrying out, recording, and reporting actions taken at the trust advisor's direction) pertaining to matters within the scope of authority of the trust advisor, trust protector, investment trust advisor, or distribution trust advisor shall be deemed to be administrative actions taken by the excluded fiduciary solely to allow the excluded fiduciary to perform those duties assigned to the excluded fiduciary under the governing instrument, and such administrative actions may not be deemed to constitute an undertaking by the excluded fiduciary to monitor, participate, or otherwise take any fiduciary responsibility for actions within the scope of authority of the trust advisor, trust protector, investment trust advisor, or distribution trust advisor.

(e) Nothing in paragraph (2) of subsection (a) imposes an obligation or liability with respect to a custodian of a custodial account.

(f) In an action against an excluded fiduciary pursuant to the provisions of this section, the burden to prove the matter by clear and convincing evidence is on the person seeking to hold the excluded fiduciary liable.

**§ 1554. Death of settlor.**

An excluded fiduciary may continue to follow the direction of the trust advisor upon the incapacity or death of the settlor if the instrument so allows.

**§ 1555. When trust advisor considered as fiduciary.**

If one or more trust advisors are given authority by the terms of a governing instrument to direct, consent to, or disapprove a fiduciary's investment decisions, or proposed investment decisions, such trust advisors shall be considered to be fiduciaries when exercising such authority unless the governing instrument provides otherwise.

**§ 1556. Excluded fiduciary's liability for loss if trust protector appointed.**

If an instrument appoints a trust protector, the excluded fiduciary is not liable for any loss resulting from any action taken upon such trust protector's direction.

**§ 1557. Powers and discretions of trust protector.**

The powers and discretions of a trust protector are as provided in the governing instrument and may be exercised or not exercised, in the best interests of the trust, in the sole and absolute discretion of the trust protector and are binding on all other persons. The powers and discretion may include the following:

- (1) Modify or amend the trust instrument to achieve favorable tax status or respond to changes in the Internal Revenue Code, state law, the rulings and regulations thereunder, or the law of any relevant jurisdiction;
- (2) Increase or decrease the interests of any beneficiaries to the trust;
- (3) Modify the terms of any power of appointment granted by the trust. However, a modification or amendment may not grant a beneficial interest to any individual or class of individuals not specifically provided for under the trust instrument;
- (4) Remove and appoint a trustee, a fiduciary provided for in the governing trust instrument, trust advisor, investment committee member, or distribution committee member;
- (5) Terminate the trust;
- (6) Veto or direct trust distributions;
- (7) Change situs or governing law of the trust, or both;
- (8) Appoint a successor trust protector;
- (9) Interpret terms of the trust instrument at the request of the trustee;
- (10) Advise the trustee on matters concerning a beneficiary;
- (11) Amend or modify the trust instrument to take advantage of laws governing restraints on alienation, distribution of trust property, or the administration of the trust;

(12) Provide direction regarding notification of qualified beneficiaries pursuant to § 1540;

(13) Add to the trust an individual beneficiary or beneficiaries from a class of individuals identified in the governing instrument;

(14) Add to the trust a charitable beneficiary or beneficiaries from a class of charities identified in the trust instrument; and

(15) Provide other powers and discretions in the governing instrument.

**§ 1558. Submission to court jurisdiction; effect on trust advisor or trust protector.**

By accepting an appointment to serve as a trust advisor or trust protector of a trust that is subject to the laws of the Virgin Islands, the trust advisor or the trust protector submits to the jurisdiction of the courts of the Virgin Islands even if investment advisory agreements or other related agreements provide otherwise, and the trust advisor or trust protector may be made a party to any action or proceeding if issues relate to a decision or action of the trust advisor or trust protector.

**§ 1559. Powers of trust protector incorporated by reference in will or trust instrument.**

Any of the powers enumerated in § 1557, as they exist at the time of the signing of a will by a testator or at the time of the signing of a trust instrument by a settlor, may be, by appropriate reference made thereto, incorporated in whole or in part in such will or trust instrument, by a clearly expressed intention of a testator of a will or settlor of a trust instrument.

**§ 1560. Investment trust advisor or distribution trust advisor provided for in trust instrument.**

A trust instrument governed by the laws of the Virgin Islands may provide for a person to act as an investment trust advisor or a distribution trust advisor, respectively, with regard to investment decisions or discretionary distributions.

**§ 1561. Powers and discretions of investment trust advisor.**

The powers and discretions of an investment trust advisor shall be provided in the trust instrument and may be exercised or not exercised, in the best interests of the trust, in the sole and absolute discretion of the investment trust advisor and are binding on any other person and any other interested party, fiduciary, and excluded fiduciary. Unless the terms of the governing instrument provide otherwise, the investment trust advisor has the power to perform the following:

(1) Direct the trustee with respect to the retention, purchase, sale, exchange, tender, or other transaction affecting the ownership thereof or rights therein of trust investments. These

powers include the pledge or encumbrance of trust property, lending of trust assets, either secured or unsecured, at terms defined by the investment trust advisor to any party including beneficiaries of the trust and the investment and reinvestment of principal and income of the trust;

- (2) Vote proxies for securities held in trust;
- (3) Select one or more investment advisers, managers, or counselors, including the trustee, and delegate to them any of its powers;
- (4) Direct the trustee with respect to any additional powers and discretions over investment and management of trust assets provided in the governing instrument;
- (5) Direct the trustee as to the value of nonpublicly traded trust investments; and
- (6) Direct the trustee as to any investment or management power existing under the law of the Virgin Islands.

**§ 1562. Powers and discretions of distribution trust advisor.**

The powers and discretions of a distribution trust advisor over any discretionary distributions of income or principal, including distributions pursuant to an ascertainable standard or other criteria and appointments, shall be provided in the trust instrument and may be exercised or not exercised, in the best interests of the trust, in the sole and absolute discretion of the distribution trust advisor and are binding on any other person and any other interested party, fiduciary, and excluded fiduciary. Unless the terms of the document provide otherwise, the distribution trust advisor shall direct the trustee with regard to all discretionary distributions to beneficiaries. The distribution trust advisor may also provide direction regarding notification of qualified beneficiaries pursuant to § 1540.

**§ 1563. Powers and discretions of family advisor.**

(a) The powers and discretions of a family advisor are as provided in the governing instrument or by court order and may be exercised or not exercised, in the best interests of the trust, in the sole and absolute discretion of the family advisor. The powers and discretions may only include the following:

- (1) Remove and appoint a trustee, a fiduciary provided for in the governing trust instrument, trust advisor, investment committee member, or distribution committee member;
- (2) Appoint a successor trust protector or a successor family advisor;
- (3) Advise the trustee on matters concerning any beneficiary; receive trust accountings, investment reports, and other information from the trustee or to which a beneficiary is entitled; attend meetings whether in person or by any other means with the trustee, investment trust advisors, distribution trust advisors, or other advisors whether in person or by any means, electronic or otherwise; and to consult with a fiduciary regarding both fiduciary and nonfiduciary matters or actions, all without any power or discretion to take any action as a fiduciary; or

(4) Provide direction regarding notification of qualified beneficiaries pursuant to § 1540.

(b) A family advisor is not required to exercise any powers or discretions under any circumstances. Every action or inaction by a family advisor is a nonfiduciary action or inaction and a family advisor is absolutely excluded from liability to any other person for an action or inaction as a family advisor. A court may review a family advisor's exercise of the powers described in subdivisions (1), (2), and (4) only if the family advisor acts dishonestly or with an improper motive but may not review a family advisor's failure to exercise any powers. A reasonableness standard may not be applied to any action or inaction of a family advisor. Other than for the two circumstances listed above, a court has no jurisdiction to review a family advisor's action or inaction.

(c) A family advisor is entitled to compensation as provided in the governing instrument. If the governing instrument does not provide for or establish compensation, a family advisor is entitled to reasonable compensation for the exercise of the powers and discretions granted to the family advisor pursuant to this chapter.

### Subchapter III. Qualified Dispositions in Trust

#### **§ 1571. Definitions.**

As used in this subchapter:

(1) "Claim" means a right to payment, whether or not the right is reduced to judgment liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured;

(2) "Creditor," with respect to a transferor, means a person who has a claim;

(4) "Debt" means liability on a claim;

(5) "Disposition" means a transfer, conveyance, or assignment of property, including a change in the legal ownership of property occurring upon the substitution of one trustee for another or the addition of one or more new trustees, or the exercise of a power so as to cause a transfer of property to a trustee or trustees. The term does not include the release or relinquishment of an interest in property that theretofore was the subject of a qualified disposition;

(6) "Person" an individual, a corporation, a partnership, a limited liability company, an association, a joint stock company, a business trust, a trust, an unincorporated organization, or two or more persons having a joint or common interest.

(7) "Property" means real property, personal property, and interests in real or personal property;

(8) "Qualified disposition" means a disposition by or from a transferor to a qualified person or qualified persons, with or without consideration, by means of a trust instrument;

(9) "Spouse" and "former spouse" mean only persons to whom the transferor was married at, or before, the time the qualified disposition is made;

(10) "Transferor" means any person as an owner of property; as a holder of a power of appointment which authorizes the holder to appoint in favor of the holder, the holder's creditors, the holder's estate, or the creditors of the holder's estate; or as a trustee, directly or indirectly, makes a disposition or causes a disposition to be made.

The terms, transferor and beneficiary, may be any "person" as defined herein.

#### **§ 1572. Trust instrument defined.**

For the purposes of this chapter, a trust instrument is an instrument appointing a qualified person or qualified persons for the property that is the subject of a disposition, which instrument:

(1) Expressly incorporates the law of the Virgin Islands to govern the validity, construction, and administration of the trust;

(2) Is irrevocable, but a trust instrument may not be deemed revocable on account of its inclusion of one or more of the following:

(i) A transferor's power to veto a distribution from the trust;

(ii) An inter vivos power of appointment, other than an inter vivos power to appoint to the transferor, the transferor's creditors, the transferor's estate, or the creditors of the transferor's estate;

(iii) A testamentary power of appointment;

(iv) The transferor's potential or actual receipt of income, including rights to such income retained in the trust instrument;

(v) The transferor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust as such terms are defined in § 664 of the Internal Revenue Code of 1986, as amended;

(vi) The transferor's receipt each year of a percentage of the value as determined from time to time pursuant to the trust instrument, but not exceeding the amount that may be defined as income under § 643(b) of the Internal Revenue Code of 1986, as amended;

(vii) The transferor's potential or actual receipt or use of principal if the potential or actual receipt or use of principal would be the result of a qualified person, including a qualified person acting at the direction of a trust advisor described in this section, acting either in the qualified person's sole discretion or pursuant to an ascertainable standard contained in the trust instrument;

(viii) The transferor's right to remove a trustee, protector, or trust advisor and to appoint a new trustee, protector, or trust advisor, other than a trustee who is a related or subordinate party with respect to the transferor within the meaning of § 672(c) of the Internal Revenue Code of 1986, as amended;

(ix) The transferor's potential or actual use of real property held under a qualified personal residence trust within the meaning of such term as described in the regulations promulgated under § 2702(c) of the Internal Revenue Code of 1986, as amended;

(x) A pour back provision that pours back to the transferor's will or revocable trust all or part of the trust assets;

(xi) The transferor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on income of the trust if the potential or actual receipt of income or principal is pursuant to a provision in the trust instrument that expressly provides for the payment of the taxes and if the potential or actual receipt of income or principal would be the result of a qualified person's acting in the qualified person's discretion or pursuant to a mandatory direction in the trust instrument or acting at the direction of an advisor described in § 1574; or

(xii) The ability, whether pursuant to discretion, direction, or the settlor's exercise of a testamentary power of appointment, of a qualified person to pay, after the death of the transferor, all or any part of the debts of the transferor outstanding at the time of the transferor's death, the expenses of administering the transferor's estate, or any estate or inheritance tax imposed on or with respect to the transferor's estate; and

(3) Provides that the interest of the transferor or other beneficiary in the trust property or the income from the trust property may not be transferred, assigned, pledged, or mortgaged, whether voluntarily or involuntarily, before the qualified person actually distributes the property or income from the property to the beneficiary, and such provision of the trust instrument shall be deemed to be a restriction on the transfer of the transferor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of § 541(c)(2) of the Bankruptcy Code, 11 U.S.C. § 541(c)(2), as amended.

A disposition by a trustee that is not a qualified person to a trustee that is a qualified person may not be treated as other than a qualified disposition solely because the trust instrument fails to meet the requirements of paragraph (1) of this section.

**§ 1573. Qualified person defined.**

For the purposes of this chapter the term “qualified person” means:

(1) An individual who, except for brief intervals, military service, attendance at an educational or training institution, or for absences for good cause shown, resides in the Virgin Islands, whose true and permanent home is in the Virgin Islands, who does not have a present intention of moving from the Virgin Islands, and who has the intention of returning to the Virgin Islands when away;

(2) A person (as defined in § 1571) which is not an individual, is organized under the laws of the Virgin Islands, and is licensed under the laws of the Virgin Islands as a provider of fiduciary services; or

(3) A bank or foreign bank that is organized or authorized to do business in the Virgin Islands under Title 9, and which possesses and exercises trust powers, and the deposits of which are insured by the Federal Deposit Insurance Corporation.

**§ 1574. Persons and entities not to be considered qualified person; appointment, removal, or replacement of co-trustee, trust advisor, or trust protector.**

Neither the transferor nor any other natural person who is a nonresident of the Virgin Islands nor an entity that is not licensed under the laws of the Virgin Islands as a provider of fiduciary services or is not a bank or foreign bank organized or authorized to do business in the Virgin Islands may be considered a qualified person. However, nothing in this chapter precludes a transferor from appointing, removing, or replacing one or more co-trustees, trust advisors, or trust protectors, regardless of whether or not such trust advisor or trust protector is a fiduciary.

**§ 1575. Service as investment trust advisor.**

Any individual may serve as an investment trust advisor described in § 1561 of this chapter, notwithstanding that such individual is the transferor of the qualified disposition, but such an individual may not otherwise serve as a fiduciary of a trust that is a qualified disposition except with respect to the retention of the veto right permitted by § 1572(2). While serving as an advisor of the trust, the individual may have all powers authorized by statute or by the trust instrument, including the power to vote by proxy any stock owned by the trust.

**§ 1576. Successor qualified person.**

If a qualified person of a trust ceases to meet the requirements of § 1573, and there remains no trustee that meets such requirements, such qualified person shall be deemed to have resigned as of the time of such cessation, and thereupon the successor qualified person provided for in the trust instrument shall become a qualified person of the trust, or in the absence of any successor qualified person provided for in the trust instrument, the Superior Court shall, upon application of any interested party, appoint a successor qualified person.

**§ 1577. Disposition to more than one trustee; qualified disposition even if all trustees are not for qualified persons.**

In the case of a disposition to more than one trustee, a disposition that is otherwise a qualified disposition may not be treated as other than a qualified disposition solely because not all of the trustees are qualified persons.

**§ 1578. Powers and rights of transferor; effect on qualified disposition.**

A qualified disposition is subject to §§ 1579 to 1584, inclusive, notwithstanding a transferor's retention of any or all of the powers and rights described in § 1572(2) and the transferor's service as trust advisor pursuant to § 1575. The transferor has only such powers and rights as are conferred by the trust instrument. Except as permitted by §§ 1572 and 1575, a transferor has no rights or authority with respect to the property that is the subject of a qualified disposition or the income therefrom, and any agreement or understanding purporting to grant or permit the retention of any greater rights or authority is void.

**§ 1579. Creditors' actions limited to transfers with intent to defraud.**

Notwithstanding any other provision of law, including Title 28, chapter 9, no action of any kind, including an action to enforce a judgment entered by a court or other body having adjudicative authority, may be brought at law or in equity for an attachment or other provisional remedy against property that is the subject of a qualified disposition or for avoidance of a qualified disposition unless the settlor's transfer of property was made with the intent to defraud that specific creditor. In the event of any conflict between any provision of this chapter and any provision of Title 28, chapter 9 or any other provision of law similar to any provision of Title 28, chapter 9, the provisions of this chapter control and prevail.

**§ 1580. Requirements for bringing claim for fraudulent transfer of settlor's assets.**

A cause of action or claim for relief with respect to a fraudulent transfer of a settlor's assets under § 1579 is extinguished unless the action under § 1579 is brought by a creditor of the settlor who meets one of the following requirements:

(1) Is a creditor of the settlor before the settlor's assets are transferred to the trust, and the action under § 1579 is brought within the later of:

- (i) Two years after the transfer is made; or
- (ii) Six months after the transfer is or reasonably could have been discovered

by the creditor if the creditor:

(A) Can demonstrate that the creditor asserted a specific claim against the settlor before the transfer; or

(B) Files another action, other than an action under § 1579 against the settlor that asserts a claim based on an act or omission of the settlor that occurred before the transfer, and the action described in this clause is filed within two years after the transfer;

(2) Becomes a creditor subsequent to the transfer into trust, and the action under § 1579 is brought within two years after the transfer is made;

(3) In any action described in § 1579, the burden to prove the matter by clear and convincing evidence is upon the creditor;

(4) A person is deemed to have discovered a transfer at the time a public record of the transfer is made, including the conveyance of an interest in real property that is recorded in the appropriate public filing office where the property is located, the filing of a financing statement pursuant to Title 11A, article 9, or the filing of a bill of sale or other transfer instrument regarding personal property pursuant to the law of the relevant jurisdiction; or

(5) The filing of a bill of sale or other transfer instrument which conveys personal property to a trust which is governed by this chapter shall be filed with the Recorder of Deeds in the applicable Division determined as follows:

(i) If the transferor is a natural person and is a resident of the Virgin Islands, the personal property transfer instrument shall be recorded in the judicial division where the transferor maintains the transferor's principal residence; and

(ii) In all other cases, the personal property transfer instrument shall be recorded in the judicial division where the trustee of the trust maintains a principal residence or principal place of business.

**§ 1581. Disposition by transferor who is a trustee; time of disposition.**

(a) A qualified disposition that is made by means of a disposition by a transferor who is a trustee is deemed to have been made as of the time, whether before on, or after the effective date of the act which added this subchapter, the property that is the subject of the qualified disposition was originally transferred to the transferor, or any predecessor trustee, making the qualified disposition in a form that meets the requirements of subsection (2) and (3) of § 1572. Further, the provisions of this section apply to determine the date the transfer is deemed to have been made, notwithstanding that the original transfer was to a trust originally within or outside of the jurisdiction of the Virgin Islands.

(b) If property transferred to a spendthrift trust is conveyed to the settlor or to a beneficiary for the purpose of obtaining a loan secured by a mortgage or deed of trust on the property and then reconveyed to the trust within one hundred eighty days of recording the mortgage or deed of trust, for purposes of paragraph (1) of § 1580 the transfer is disregarded and the reconveyance relates back to the date the property was originally transferred to the trust. The mortgage or deed of trust on the property is enforceable against the trust.

**§ 1582. Creditor or other person; rights with respect to a qualified disposition; action against trustee, advisor, or trust preparer prohibited.**

Notwithstanding any law to the contrary, a creditor, including a creditor whose claim arose before or after a qualified disposition, or any other person has only such rights with respect to a qualified disposition as are provided in §§ 1579 to 1586, inclusive, and no such creditor nor any other person has any claim or cause of action against the trustee, or advisor, described in § 1575, of a trust that is the subject of a qualified disposition, or against any person involved in the counseling, drafting, preparation, execution, or funding of a trust that is the subject of a qualified disposition. In addition to the provisions of § 1527, at no time is a qualified person, as defined in § 1573, personally liable to a creditor of a transferor or any other person for distributions made by the qualified person, before the creditor or person notified the qualified person, in writing, that a claim or cause of action existed. This applies regardless of whether the distributions are made to or for the benefit of the transferor or a beneficiary during the period in which a creditor or other person could make a claim as provided in § 1580.

**§ 1583. Action against trustee, advisor, or preparer of trust prohibited if action by creditor would be barred; jurisdiction; attorneys' fees and costs.**

Notwithstanding any other provision of law, no action of any kind, including an action to enforce a judgment entered by a court or other body having adjudicative authority, may be brought at law or in equity against the trustee, or advisor described in § 1575, of a trust that is the subject of a

qualified disposition, or against any person involved in the counseling, drafting, preparation, execution, or funding of a trust that is the subject of a qualified disposition, if, as of the date such action is brought, an action by a creditor with respect to such qualified disposition would be barred under §§ 1579 to 1582, inclusive. The Superior Court has exclusive jurisdiction over an action brought under a claim for relief that is based on a transfer of property to a trust that is the subject of this section. The Superior Court may award attorneys' fees and costs to the prevailing party in such an action. In any action described in this section, the burden to prove the matter by clear and convincing evidence is upon the creditor.

**§ 1584. Multiple qualified dispositions in same trust instrument.**

If more than one qualified disposition is made by means of the same trust instrument:

(1) The making of a subsequent qualified disposition shall be disregarded in determining whether a creditor's claim with respect to a prior qualified disposition is extinguished as provided in § 1580; and

(2) Any distribution to a beneficiary is deemed to have been made from the latest such qualified disposition.

**§ 1585. Application of chapter.**

(a) Notwithstanding the provisions of §§ 1579 to 1584, inclusive, but subject to subsection (b) of this section, this subchapter does not apply in any respect to any person to whom at the time of transfer the transferor is indebted on account of an agreement or order of court for the payment of support or alimony in favor of the transferor's spouse, former spouse, or children, or for a division or distribution of property in favor of the transferor's spouse or former spouse, to the extent of the debt.

(b) If the transferor is married at the time of the transfer, the provisions of §§ 1579 to 1584, inclusive, and this chapter apply to:

(1) Any of the transferor's separate property transferred to the trust; and

(2) Any marital property transferred to the trust if the spouse or former spouse was provided with notice in the form set forth in subsection (c) of this section, or executed a written consent to the transfer after being provided the information set forth in the notice.

(c) For purposes of the application of this section, a notice of transfer of property to a trust subject to this chapter:

(1) Shall also contain the following language, in capital letters in a font of at least 14 points, at or near the top of the notice:

YOUR SPOUSE IS CREATING A PERMANENT TRUST INTO WHICH PROPERTY IS BEING TRANSFERRED. YOUR RIGHTS TO THIS PROPERTY MAY BE AFFECTED DURING YOUR MARRIAGE, UPON DIVORCE (INCLUDING THE PAYMENT OF CHILD SUPPORT OR ALIMONY OR A DIVISION OR DISTRIBUTION OF PROPERTY IN A DIVORCE), OR AT THE DEATH OF YOUR SPOUSE. YOU HAVE A VERY LIMITED PERIOD OF TIME TO OBJECT TO THE TRANSFER OF PROPERTY INTO THIS TRUST. YOU MAY, UPON REQUEST TO THE TRUSTEE AT THE ADDRESS BELOW, BE FURNISHED A COPY OF THE TRUST DOCUMENT. IF YOU HAVE ANY QUESTIONS, YOU SHOULD IMMEDIATELY SEEK INDEPENDENT LEGAL ADVICE. IF YOU FAIL TO OBJECT WITHIN THE REQUIRED TIME PERIOD, YOU WILL HAVE CONSENTED TO THE TRANSFER OF PROPERTY INTO THIS TRUST.

(2) Shall contain a description of the property being transferred to the trust and the name of the trust;

(3) May require that any person who is eligible to receive information pursuant to this section be bound by the duty of confidentiality that binds the trustee before receiving such information from the trustee; and

(4) Shall be provided by the transferor, the transferor's agent, the trustee, or other fiduciary of the trust.

(d) If a notice is provided under this section before the property is transferred, the period to commence an action under § 1580 shall commence running on the date of the transfer. If a notice is provided after the date the property is transferred, the period to commence an action pursuant to § 1580 commences running on the date the notice is provided. In no event may the period to commence an action to challenge a transfer under this section and § 1580 exceed the period set forth in Title 28, section 179.

(e) The exception contained in subdivision (a) of this section does not apply to any claim for forced heirship or legitime.

**§ 1586. Avoidance of qualified disposition.**

A qualified disposition is avoided only to the extent necessary to satisfy the transferor's debt to the creditor at whose instance the disposition had been avoided, together with such costs, including attorney's fees, as the court may allow. If any qualified disposition is avoided as provided in this section, then:

(1) If the court is satisfied that a qualified person has not acted in bad faith in accepting or administering the property that is the subject of the qualified disposition:

(i) Such qualified person has a first and paramount lien against the property that is the subject of the qualified disposition in an amount equal to the entire cost, including attorney's fees, properly incurred by such qualified person in the defense of the action or proceedings to avoid the qualified disposition. It is presumed that such qualified person did not act in bad faith merely by accepting such property; and

(ii) The qualified disposition is avoided subject to the proper fees, costs, preexisting rights, claims, and interests of such qualified person, and of any predecessor qualified person that has not acted in bad faith; and

(2) If the court is satisfied that a beneficiary of a trust has not acted in bad faith, the avoidance of the qualified disposition is subject to the right of such beneficiary to retain any distribution made upon the exercise of a trust power or discretion vested in the qualified person or qualified persons of such trust, which power or discretion was properly exercised prior to the creditor's commencement of an action to avoid the qualified disposition. It is presumed that the beneficiary, including a beneficiary who is also a transferor of the trust, did not act in bad faith merely by creating the trust or by accepting a distribution made in accordance with the terms of the trust.

Subchapter IV. Applicability of Virgin Islands Law and Jurisdiction

**§ 1591. Definitions.** For the purposes of this subchapter:

(a) The term "Virgin Islands jurisdiction provision" means a provision within the trust instrument or a will that the laws of the Virgin Islands govern the validity, construction, or administration of a trust or that the trust is subject to the jurisdiction of the Virgin Islands.

(b) The term “Virgin Islands investments” means real property located in the Virgin Islands, any equity or debt securities of a corporation, partnership, limited liability company, or other entity organized under the laws of the Virgin Islands or having its headquarters in the Virgin Islands, and debt securities of the Virgin Islands government or any of its instrumentalities.

(c) The terms “settlor” mean a person who transfers property in trust, and includes a person who furnishes the property transferred to a trust even if the trust is created by another person.

(d) The term “accounting” means any interim or final report or other statement provided by a trustee reflecting all transactions, receipts, and disbursements during the reporting period and a list of assets as of the end of the period covered by the report or statement, and including written notice to the distribution beneficiary of the provisions of this section.

(e) The term “foreign jurisdiction” means any foreign country, or the United States, or any state or territory of the United States other than the Virgin Islands.

(f) The term “non-Virgin Islands decedent” means a testator or other decedent who, at the time of death, is not domiciled in the Virgin Islands.

**§ 1592. When Virgin Island law or jurisdiction provision valid, effective, and conclusive.**

Except as expressly provided by the terms of a will, a governing instrument, or by a court order, a general law or a Virgin Islands jurisdiction provision stating that the laws of the Virgin Islands govern the will or trust, is valid, effective, and conclusive for the will or trust if all of the following are true:

(1) Some or all of the trust assets are deposited in the Virgin Islands or physical evidence of such assets is held in the Virgin Islands and the trust or will is being administered by a qualified person; in this subsection, “deposited in the Virgin Islands,” includes being held in a checking account, time deposit, certificate of deposit, brokerage account, trust company or law firm fiduciary account, or in the name of a Virgin Islands corporation, limited liability company, partnership, or other entity formed in the Virgin Islands, or other similar account or deposit that is located in the Virgin Islands including Virgin Islands investments, or in the name of a Virgin Islands corporation, limited liability company, partnership, or other entity formed in the Virgin Islands wherever the accounts or deposits thereof are located;

(2) A trustee or executor is a qualified person who is designated as a trustee under the governing instrument or a successor trusteeship, who is appointed executor under a will, or is designated as a trustee or executor by a court having jurisdiction over the trust or will; and

(3) The administration, for example, physically maintaining trust or estate records in the Virgin Islands and preparing or arranging for the preparation of, on an exclusive basis or a nonexclusive basis, an income tax return that must be filed by the trust or estate, occurs wholly or partly in the Virgin Islands.

The Virgin Islands, and the courts located there, have jurisdiction over a trust created in a foreign jurisdiction, or a will executed therein, including a jurisdiction located elsewhere in the United States, if the administration of the trust or estate meets the three requirements set forth in this section. Nothing in this section may be construed to be the exclusive means of providing a valid effective and conclusive Virgin Islands jurisdiction provision.

**§ 1593. Validity, construction, and administration of trust with Virgin Islands jurisdiction provision.**

The validity, construction, and administration of a trust or will with a Virgin Islands jurisdiction provision are determined by the laws of the Virgin Islands, including the:

- (1) Capacity of the settlor or testator;
- (2) Powers, obligations, liabilities, and rights of the trustees or executors and the appointment and removal of the trustees or executors; and
- (3) Existence and extent of powers, conferred or retained, including a trustee's or executor's discretionary powers, and the validity of the exercise of a power.

**§ 1594. Beneficiary approval of trustee's accounting; accounting defined.**

If a trust is not subject to court supervision pursuant to law or by order of a court, and if no objection has been made by a distribution beneficiary, as defined in this title, of a trust within one hundred eighty days after a copy of the trustee's accounting has been mailed, postage prepaid, to the last known address of such distribution beneficiary, the distribution beneficiary is deemed to have approved such accounting of the trustee, and the trustee, absent fraud, intentional misrepresentation, or material omission, shall be released and discharged from any and all liability to all beneficiaries of the trust as to all matters set forth in such accounting.

**§ 1595. Effect of the laws, rules, or orders of foreign jurisdiction on trust or disposition of property.**

(a) No trust with Virgin Islands situs, no trust, will or estate governed by the laws of the Virgin Islands, and no disposition of property to be held or disposed of upon the terms of such trust or will, is void, voidable, liable to be set aside, or defective in any manner nor is the capacity of any settlor or testator to be questioned, nor is the trustee, executor or other fiduciary, any beneficiary or any other person to be subjected to any liability or deprived of any right, by reason that:

(1) The law of any foreign jurisdiction prohibits or does not recognize the concept of a trust; or

(2) The trust, will or disposition:

- (i) Avoids or defeats any right, claim, or interest conferred by the law of a foreign jurisdiction upon any person by reason of a personal relationship to the settlor or by way of heirship or forced heirship rights; or
- (ii) Contravenes any rule or law of a foreign jurisdiction or any foreign jurisdiction's judicial or administrative order or action intended to recognize, protect, enforce, or give effect to such a right, claim, or interest.

(b) The disposition by a non-Virgin Islands decedent of the stock, membership interest, or other ownership interest of any Virgin Islands corporation, limited liability company, partnership, or other entity formed in the Virgin Islands may not be found to be void, voidable, liable to be set aside, or defective in any manner, whether such disposition is made in trust, or by will, or in another manner, by reason that the disposition:

- (i) Avoids or defeats any right, claim, or interest conferred by the law of a foreign jurisdiction upon any person by reason of a personal relationship to the decedent or by way of heirship or forced heirship rights; or
- (ii) Contravenes any rule or law of a foreign jurisdiction or any foreign jurisdiction's judicial or administrative order or action intended to recognize, protect, enforce, or give effect to such a right, claim, or interest.

(a) An heirship right conferred by foreign law in relation to the property of a living person shall not be recognized as:

- (i) affecting the ownership of real property in the Virgin Islands or personal property wherever situate for the purposes of this subchapter or for any other purpose; or
- (ii) constituting an obligation or liability for the purposes of any fraudulent conveyance or fraudulent transfer provision of the Virgin Islands Code or for any other purpose.

(d) A foreign judgment shall not be recognized, enforced or give rise to any estoppel insofar as it is inconsistent with this subchapter.

(e) This Section does not render any person liable for anything done before the effective date of the act which added this subchapter.

(f) The provisions of this section apply to every trust, will, estate, and every disposition of property in trust or by will made before, on, or after, the effective date of this section and whether the property may be located.

(g) Anything to the contrary notwithstanding, a disposition described in subsection (b) shall not be subject to the rules set forth in §10 of this title, or any other statute or rule in respect of the right of a surviving spouse or other heir to elect a share of the estate of the decedent or to enjoy any right to property of a decedent that is held in trust.

**§ 1596. Cessation of trustee upon action of foreign court--Successor trustee.**

If, in any action brought against a trustee of a trust, a court of a foreign jurisdiction takes any action whereby such court declines to apply the law of the Virgin Islands in determining the validity, construction, or administration of such trust, or the effect of a spendthrift provision thereof, the trustee shall immediately upon the foreign jurisdiction's court's action and without the further order of any court of the Virgin Islands, cease in all respects to be trustee of the trust and a successor trustee shall thereupon succeed as trustee in accordance with the terms of the trust instrument or, if the trust instrument does not provide for a successor trustee and the trust would otherwise be without a trustee, the court, upon the application of any beneficiary of the trust, shall appoint a successor trustee upon such terms and conditions as it determines to be consistent with the purposes of the trust and this section. Upon the trustee's ceasing to be trustee, the trustee has no power or authority other than to convey the trust property to the successor trustee named in the trust instrument in accordance with this section.

**§ 1597. Virgin Islands law governs administration of trust.**

Unless the governing instrument or a court order expressly prohibits the change of the law of another jurisdiction to govern the administration of the trust, the laws of Virgin Islands shall govern the administration of a trust while the trust is administered in the Virgin Islands.

SECTION 2. Title 28, Virgin Islands Code is amended in the following instances:

(a) A new section 13 shall be added to chapter 1 thereof to read as follows:

**§ 13. Rule against perpetuities.**

No interest created in property held in trust shall be void by reason of any rule, whether the common-law rule against perpetuities, any common-law rule limiting the duration of noncharitable or charitable purpose trusts, or otherwise.

(b) § 121 of chapter 7 thereof shall be amended by designating the present language as subsection (a) thereof and by adding a new subsection (b) to read as follows:

(b) Documents affecting personal property, including a bill of sale or a deed of gift, but excluding a financing statement as defined in Article 9 of Title 11A, required or permitted to be recorded, shall be recorded in the office of the recorder of deeds in the judicial division where the transferor or transferee reside, or in the case of a transferee or transferor that is a trust, where the trustee's principal place of business is located. For the purposes of this chapter, as "conveyance" shall be deemed to include such documents.

(c) A new section 122a shall be added to chapter 7 thereof to read as follows:

**§ 122a. Recording of documents affecting personal property.**

Deeds of gift of personal property, bills of sale, and any other document purporting to convey title to personal property may be recorded in the office of recorder of deeds if acknowledged or proved; but such instrument, if not acknowledged or proved shall not be recorded by the recorder of deeds. No stamp taxes shall be payable with respect to such documents, but a recording fee shall be collected with respect to the recording of such documents as set forth in §133.

(d) The existing language of subsection (b) of § 133 thereof shall be designated as

paragraph (1) and a new paragraph (2) shall be added to § 133 to read as follows:

(2) For deeds of gift of gift of personal property, bills of sale, and any other document purporting to convey title to personal property as described in §122a, the recording fee shall be \$100.

SECTION 3. Title 5, Chapter 3, Virgin Islands Code is amended by adding a new paragraph (C) to subsection (5) thereof to read as follows:

**§ 31 Time for Commencement of various actions**

\* \* \* \* \*

*(5) Two years-*

\* \* \* \* \*

(C) A cause of action with respect to fraudulent conveyance, whether brought pursuant to Title 28, chapter 9 or otherwise, shall be brought within two years of the date of the conveyance, or, if later, within six months after the conveyance was or could reasonably have been discovered.

SECTION 4. Section 1091 of Title 15, Chapter 57, Virgin Islands Code is amended by adding the words "limited liability company," after the word "corporation," in the definition of "person."

## EXPLANATION

Section 1 of the bill enacts a new subchapter of Title 15, Virgin Islands Code relating to trusts designed for estate planning purposes and to provide protections for trust settlors, beneficiaries, and trustees. Its provisions are primarily based on the laws of Delaware and South Dakota and are designed to promote the use of common law and/or statutory trusts in the Virgin Islands and to promote the use of Virgin Islands trustees for such trusts. Establishment of trusts in the Virgin Islands is expected to generate new business opportunities in the financial services sector and new sources of government revenue. The subchapter contains numerous provisions in this regard which expand on common law trust concepts, including the following:

- (a) Allowing the creation of trusts for a particular purpose, rather than for the benefit of a particular individual or other beneficiary;
- (b) Allowing the creation of trusts for both charitable and non-charitable purposes;
- (c) Defining what types of interests in trusts and control over trusts are, or are not reachable by creditors or subject to creditors' demands;
- (d) Clarifying and defining certain powers of trustees;
- (e) Allowing trustees the power to "decant" one trust into another trust under certain circumstances;
- (f) Defining the mechanisms by which "spendthrift" provisions of trusts may be utilized to prohibit creditors and beneficiaries from accessing distributions without trustee approval;
- (g) Prohibiting the use of fraudulent conveyance concepts and statutes to attach trust's assets unless there is shown to be an intent to defraud a specific creditor;
- (h) Limiting the time within which an action for fraudulent conveyance may be commenced;
- (i) Establishing "directed trusts" which are designed to provide certain persons who are not trustees, such as financial advisors and "protectors" with powers to direct the investment and distribution of trust assets and to protect trustees in this regard;
- (j) Establishing a regime known as "qualified dispositions in trust" which provides certain asset protection benefits in cases where transfers are made in trust to a qualified person, which generally means a Virgin Islands based trustee; and
- (k) Establishing provisions recognizing the primacy of Virgin Islands law with respect to trusts and transfers to trusts so as to, among other things, avoid the unwanted consequences of "forced heirship" provisions common in many jurisdictions in locations such as Latin America and Europe which require that estates be distributed only to certain classes of relatives.

Section 2 of the bill amends Title 28, Virgin Islands Code in several instances that are designed to dovetail with the new trust provisions enacted by section. Subsection (a) repeals the rule against perpetuities, an outmoded common law rule designed to end the existence of trusts, and limit certain conveyances, after a certain period of time. Subsection (b) authorizes the recording, at the Office of Recorder of Deeds, of transfers of personal property into trust, including by bill of sale or deed of gift, subsection (c) clarifies that stamp taxes need not be paid on such transfers even when recorded, and subsection (d) establishes the recording fee to be paid for the recording of such transfers.

Section 3 of the bill amends Title 5 of the Code to shorten the statute of limitations for bringing a fraudulent conveyance action to two years, which dovetails with several of the asset protection related provisions of Section 1.

Section 4 of the bill updates the Uniform Trust Law of the Virgin Islands to provide that “persons” as used in that law include not only individuals and corporations, but limited liability companies as well.