AN ACT

To adopt the new Trust Act; repeal Sections 834 to 874, inclusive, of the Civil Code of 1930; and for other purposes.

STATEMENT OF MOTIVES

Trusts are regulated under Sections 834 to 874 of the Civil Code of 1930, as amended, specifically in Chapter Three (Constitution of Trusts) of Part Three (Successions) of Subtitle Three (Different Ways of Acquiring Ownership).

Most Sections of the Civil Code were included therein by virtue of Act No. 41 of April 23, 1928. Said Act included the full U.S. definition of “charitable trust,” which in Puerto Rico is known as fideicomiso con fines no pecuniarios. Furthermore, Act No. 211 of May 8, 1952 added or modified some provisions. The remaining sections have remained unaltered for seventy years, which obviously renders the Puerto Rican trust obsolete and ineffective with respect to our current economic and social reality. Seventy two years ago, our Island’s society and economy were very different. It is therefore imperative to draft regulations that are up to the standards of our times. The current development of trusts has been based on case law. Act No. 211 of May 8, 1952, amended Sections 834, 839, 841, 843, 845, 846, 848, and 869 of the Civil Code.
At present, and in practice, the Civil Code’s regulation of trusts has greatly improved. Due to ambiguity, gaps in the law, and a lack of definition that pervades the provisions related to trusts, the Supreme Court has incorporated doctrines from U.S. law and used comparative law in order to solve trust-related issues brought for its consideration.

This proposal has changed the location of this legal concept, whose regulations have been found in the Part on Successions since its incorporation to the Civil Code in 1928, apparently due to the free-of-charge nature of property conveyance carried out through them. However, it is worth noting that its inclusion in the Code has to do with the nature of the law and not to the manner in which it is constituted. This conclusion is supported by the fact that trusts can also be constituted though an act between living persons, which separates such funds from other institutions grouped under Successions.

Comparative law shows that every country has found a way to regulate trusts: some by means of the Civil Code; and others through the Commercial Code or special laws, including banking and housing laws. Still, others have regulated these funds through trust codes, state legislations, or simply by following doctrine and case law. Two options that seemed more fitting in our particular case have been mentioned above. We could have decided to leave it in the Civil Code, and relocated it to the Part on Real Rights as special property. The other option was to establish it through special legislation, for which Luis F. Sánchez-Víllez’s Draft Bill on a Trust Code for Puerto Rico was reviewed. It is rather long, but nonetheless an excellent starting point.

However, recognizing the need to amend Puerto Rican legislation with regards to trusts is what is really important. This reform must be aimed at encouraging the use thereof not only in matters related to family and successions, but also as a mechanism for Puerto Rico’s economic development. Current
standards on trusts must be thoroughly amended to adjust them to the needs of today’s population and economy. To do this, fiscal and tax laws also need to be amended to render the Puerto Rican trust more attractive to investors and to the People. 

As stated above, trust property is the equivalent of the ownership extolled by U.S. law. And following Dr. Alfaro’s line of thought, it must be understood that, if the civil law structure allows for the existence of trust property to be transferred upon someone’s death, there is no reason for which transfers between living persons of certain trust property that is not part of a succession should not be allowed. Just as the Institutes of Justinian and Andrés Bello’s Chilean Civil Code admitted and regulated trust property regarding bequests, so can contemporary law allow and regulate the transfer of all kinds of property by means of trusts so that it may be effective both during the trustor’s lifetime and after his death. Through this reform, the outdated and barren Roman institution can be substituted for a broad, living, flexible, productive, and useful trust that thoroughly reproduces the United States trust concept, without the need to resort to doctrines that lie outside Civil Law (Alfaro, Ricardo J., ob cit, pp. 34-37).

This proposal references the illustrious Panamanian professor, Dr. Ricardo Alfaro, who believes that in order to adapt the U.S. concept of trust to legislations based on Civil Law, it is first necessary to convince oneself that the gap between the two is not unbridgeable.

To achieve this, the Legislative Assembly deems it necessary not to contaminate either system, except regarding institutions that can be adapted from the U.S. to the civil system. Therefore, we hereby propose that trusts are provided for through a special law, separate from the Civil Code.
BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Article 1. – The new Trust Act is hereby adopted, to read as follows:

“TRUST ACT

CHAPTER I – GENERAL PROVISIONS

Section 1. – Definition.

A trust is an autonomous estate resulting from the act whereby a trustor transfers property or rights, to be administered by a trustee in favor of a beneficiary or for a specific purpose, according to the provisions of the trust instrument and, in the absence thereof, to the provisions herein set forth.

Section 2. – Autonomous Estate.

Trust property or rights constitute a fully autonomous estate separate from the personal estate of the trustor, trustee, or beneficiary that is limited to a specific purpose as determined at the time of the constitution thereof.

These assets shall be exempt from any individual or joint action taken by the trustor, trustee, or the beneficiary’s creditors during the existence of the trust, except as provided in Section 6 of this Act.

Section 3. – Ownership.

During the effectiveness of the trust, all trust assets shall constitute the autonomous estate of the Trustee, and the beneficiary shall hold a beneficial interest that is fulfilled upon termination of the trust unless it includes income or assets that may be received periodically before that.

Section 4. – Duties and Powers of the Parties.

The nature and extent of the duties and powers of the parties shall be determined by the trust instrument. If such instrument does not provide therefor, such duties and powers shall be determined by this Act.
Section 5. – Special Trust Registry.

The Special Trust Registry is hereby created, attached to the Notarial Inspection Office of the Judicial Branch, which shall issue regulations with regards to requirements and the manner in which the Registry shall be established.

Every trust constituted in Puerto Rico shall be recorded in the Special Trust Registry under penalty of nullity.

Recordation shall include the following:
(a) name of the trust being constituted;
(b) date and place of constitution;
(c) deed number and name of the notary before whom it was executed, if applicable;
(d) name and address of the trustor;
(e) name and address of the trustee(s) and the substitute(s) thereof, if any;
(f) name and address of the beneficiary or beneficiaries and the substitutes thereof, if any.

The notary before whom the trust instrument was executed shall be required to notify the same to the Notarial Inspection Office not later than the first ten days of the month following the execution thereof.

Section 6. – Effective Term of a Trust.

The effective term of a trust shall not exceed seventy-five (75) years after the constitution thereof, except in the case of persons with disabilities, which trusts shall last ninety (90) years or the length of the life of the beneficiary with disabilities, whichever is greater.

If the trust is constituted for an indefinite or longer term, said trust shall be valid for a term of ninety (90) years. However, if the trustor had expressed an intention for the trust not to be valid for the shorter term, the trust shall be null.

This provision shall not affect charitable trusts, which may be indefinite.
CHAPTER II – PRIVATE TRUSTS

SUBCHAPTER ONE – TRUST INSTRUMENT

Section 7. – Form.

*Inter Vivos* trust shall expressly state the intention to create a trust through a deed.

Testamentary trusts may also be created in accordance with the requirements set forth by Law.

Trusts in Puerto Rico shall be irrevocable.

Section 8. – Content.

The trust instrument shall specify:

(a) the date and the place where a trust is created;
(b) the express statement of the intention to create said trust;
(c) the name of the trust being created;
(d) a description of the trust property, or the portion thereof, subject to the trust. If such description is not possible at the time of constitution, a description of the requirements and characteristics of the property must be included;
(e) the designation of the person who may include other assets in the trust and, in that case, the manner in which such other assets may be included;
(f) the full and clear designation of the trustor, the trustee, and the beneficiary or substitutes thereof, if it applies. In case of future beneficiaries or types of beneficiaries, sufficient circumstances for their designation must be included;
(g) The powers and duties of the trustee and any prohibitions and limitations imposed thereon while administering the trust;
(h) any rights reserved by the trustor;
(i) the term or conditions, as the case may be, to which the trust is subject;
the rules for accumulation, distribution, or disposition of the assets, income and proceeds of the trust assets; and

any other clause that the trustor may wish to include; provided, that it is not contrary to the law, morality, or public order.

**SUBCHAPTER TWO – SUBJECT MATTER AND PURPOSES OF TRUSTS**

**Section 9. – Subject Matter of the Trust.**

A trust is created only upon designation of the assets that shall constitute the trust property.

Any type of assets, whether existing or future, tangible or intangible, real or personal property, or livestock, may be held in a trust. Trusts may be created to hold determined or determinable assets and all or part of an estate.

If a trust is created to hold future assets, an autonomous estate shall not be constituted until such assets are effectively transferred to the trust. Upon the creation of a trust, the trustor or a third party designated by the same may add or substitute trust assets with the consent of the trustee, insofar as it does not hinder the purpose of the trust.

The provisions of the Civil Code and civil law in general on this convention shall govern the application of the provisions of this Section.

**Section 10. – The Legitime in Trust.**

The provisions of Article 741 of the Civil Code notwithstanding, the legitime may be placed in a trust –that is, the legal portion and the extra portion– of an underage or disabled legatee, provided that the latter is designated as sole beneficiary of both income and principal.

If it has not been previously terminated because the legatee has reached legal age or no longer suffers a disability, trusts thus created are terminated when the minor is emancipated, the disability ends, or the legatee dies.
The testator may place in a trust the third of an estate that constitutes the extra portion in favor of one or some of his children or descendants subject to the provisions of Section 6 of this Act.

Section 11. – Trusts on Real Property.

Real property held in a trust shall be recorded in the Property Registry under the name of the trust.

Section 12. – Purpose of the Trust.

A trust may be created for any purpose, insofar as such purpose is contrary to the law, morality, or public order.

**SUBCHAPTER THREE – TRUSTOR**

Section 13. – Who may be a Trustor.

Any natural or juridical person with the capacity to create a trust in favor of a beneficiary or for a specific purpose may be a trustor.

*An inter vivos* trust may have more than one trustor.

Section 14. – Capacity of the Trustor.

A natural person has the capacity to be a trustor to the extent that he has the capacity to transfer property free of trust *inter vivos* or *mortis causa*.

A juridical person has the capacity to be a trustor to the extent that it has the capacity by law to transfer the trust property to a particular trust.

Government entities authorized by law may hold their own assets in a trust and act as trustees thereof in order to further their purposes through a statement made according to the formalities herein established. Government entities may act as trustees if the purposes of the trust are within the objectives of such entity.

Section 15. – Reservation of Right.

In the trust instrument, a trustor may reserve the right to modify such trust, whether in whole or in part, either for himself or to delegate such right to a third-party.
SUBCHAPTER FOUR – TRUSTEE

Section 16. – Trustee.

The trustee is the natural or juridical person designated in the trust instrument to administer the trust property in favor of the beneficiary according to the provisions of such trust instrument.

Section 17. – Capacity of the Trustee.

A natural person has the capacity to be a trustee to the extent that he has the capacity to administer the trust property for his own benefit.

A juridical person has the capacity to be a trustee to the extent that it has the capacity and authority by law to administer the trust property for a particular trust.

The trustor can be a trustee.

The beneficiary can be a trustee, provided he is not the sole beneficiary. If the trust has several beneficiaries, they can all be trustees.

The State can be a trustee, provided that it is expressly empowered by law for a particular trust.

Section 18. – Multiple Trustees.

The trustor may designate multiple trustees to carry out duties jointly or successively by indicating the order and terms under which they must operate jointly or successively, as the case may be.

Section 19. – Successor Trustees.

The trustor may designate one or more successor trustees in the trust instrument in the event of unwillingness to act of the person so designated or removal of the trustee for any reason. The trustor may delegate the designation of a successor trustee himself or to a third party.

If the trust instrument fails to set forth the manner in which a vacancy shall be filled, the successor trustee shall be designated by the court.
In modifiable trusts, the trustor, or the person so authorized by the trustor, may replace the trustee or designate new trustees at any time following the same formalities with which the trust instrument was executed.

Section 20. – Acceptance of the Designee in Testamentary Trusts.

A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship, but may not accept part of it and reject the other. A designated trustee who does not accept the trusteeship within a term of sixty (60) days, is deemed to have rejected the trusteeship, unless a competent court rules that a longer term is necessary given the particular circumstances. A person designated as trustee accepts the trusteeship by substantially complying with the method of acceptance provided by the trustor in the terms of the trust. If the terms of the trust do not provide for this method or the method provided in the terms is not expressly made inclusive, the trustee may state such acceptance by executing the trust or a separate instrument.

However, a person designated as trustee, before accepting, may:

(a) act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the trustor or his heirs;

(b) inspect or investigate trust property to determine potential liability.

Section 21. – Lack of Testamentary Trustee.

A testamentary trust shall not become null because the designated trustee rejects such designation or, having accepted the same, ceases to be the trustee for any reason, unless the express intent of the trustor was that only the designated person could be the trustee or that, given the nature of the trust, only the designated person could be the trustee. In such cases, the provisions of Section 19 of this Act shall apply.
Section 22. – Powers of the Trustee.

The trustee may only exercise the powers:

(a) granted by the trustor to him in the trust instrument; and

(b) granted by law, provided they are necessary and convenient to fulfill the purposes of the trust, unless such powers are prohibited by the terms thereof.

If the trustor grants the trustee discretion in the exercise of a particular power, such exercise shall not be subject to judicial review unless it is to prevent abuse of the discretion granted.

Section 23. – Powers of Disposition.

Upon acceptance of the designation, the trustee may dispose of or encumber the trust property when the purposes of the trust so warrant without the need for the consent of the trustor or the beneficiary, unless there was an agreement to the contrary. The trustee is empowered to take any actions as appropriate to defend the trust property against third parties as well as against the beneficiary.

Section 24. – Powers of Administration.

With regards to the administration of the trust, the trustee shall also represent the trust and have the power to:

(a) accept additions to the trust property;

(b) continue the business or other enterprise and incorporate, dissolve, or otherwise changing the form of business organization;

(c) make final and binding decisions regarding what constitutes trust principal and what constitutes trust income;

(d) invest and reinvest the trust money, while ensuring to reduce risk through investment diversification, unless it is not prudent under the circumstances; deposit trust money in any bank, even when the bank selected is operated by the trustee;
(e) administer, develop, improve, exchange, partition, or modify any property of the trust or disclaim any interest therein; make any necessary ordinary or extraordinary improvements in and repairs to the buildings held under the trust, or demolish improvements, and erect new structures or make new improvements;

(f) insure the property of the trust against damage or loss, and insures the trustee against liability from third parties.

(g) enter into leasing contracts, even though these may extend beyond the duration of the trust;

(h) take loans to be paid with the assets of the trust or otherwise; advance his own money for the protection of the trust and to pay for expenses, losses, and liabilities incurred in the administration of the trust, which advance plus the interest thereon shall give rise to a lien against the trust property for which the beneficiary shall be chargeable; credit receipts or charge expenditures to income or principal in accordance with the law; charge the trust for his compensation or expense reimbursements in accordance with Sections 29 and 30;

(i) pay or contest any claim, settle a claim by and against the trust through arbitration, mediation, or otherwise; release, in whole or in part, a claim belonging to the trust, insofar as such claim is uncollectible or has been satisfied, and to pay taxes of any kind;

(j) contract with attorneys, accountants, investment advisors and agents, even when the same are somehow associated to the trustee to provide the trustee with advice and assistance in the discharge of administrative duties and to hire agents to carry out administrative duties rather than acting personally;

(k) prosecute or defend an action, claim, or judicial proceeding to protect the trust and trust property and the trustee and the trustee’s property in the performance of the trustee’s duties; and
Section 25. – Power to Deviate from the Terms of the Trust.

The trustee has the power to deviate from the terms of the trust upon authorization of the court, in the following cases:

(a) if, compliance therewith, because of circumstances not known to or anticipated by the trustor, would defeat or substantially impair accomplishment of trust purposes, in which case, the court may direct or permit the trustee to do acts which are not authorized or are forbidden by the terms of the trust. However, if such circumstances were known to or should have been known to the trustor, the trustor shall be liable if he fails to apply court authorization to deviate;

(b) if compliance with any instruction becomes unlawful;

(c) if compliance with any instruction becomes impossible;

(d) if following the instructions may cause serious damage to the trust property or poses a risk of loss or harm thereto.

The trustee may deviate from the terms of the trust, as provided in subsection (a), without first obtaining the authorization of the court if there is an emergency or if the trustee reasonably believes that there is an emergency and before deviating the trustee had no opportunity to apply to the court for permission to deviate.

Section 26. – Exercise of Powers When There Is More Than One Trustee.

If a trust has more than one trustee, all trustees must exercise the powers conferred, except as otherwise provided in the trust instrument. However, if the co-trustees fail to reach unanimous agreements, co-trustees may act according to the majority.
If one or more of them rejects the designation, or for whatever reason ceases to be a trustee after having accepted the trusteeship, powers shall be exercised by the remaining trustee or trustees until a successor is designated in accordance with Section 19, except as otherwise provided in the terms of the trust.

Section 27. – Duties of the Trustee.

Upon acceptance of trusteeship, the trustee is required to:

(a) administer the trust in good faith in accordance with the terms and purposes thereof, the provisions of this Act, and the best interest of the beneficiary, while ensuring that all actions necessary to achieve the purposes of the trust are taken;

(b) within a reasonable timeframe after accepting the trusteeship or receiving the trust property, review trust property and, if necessary, make decisions related to the retention and disposition of assets in order to properly fulfill the purposes, terms, and distribution requirements of the trust, as well as decisions related to other circumstances of the trust, and to the fulfillment of the requirements of this Act.

(c) make an inventory of the trust property and rights thereon before beginning to discharge the trustee duties and before making the restitution to the beneficiary upon termination thereof.

(d) invest and administer the trust property solely in the interests of the beneficiaries;

(e) if a trust has two or more beneficiaries, act impartially in investing and administering the trust property, giving due regard to the beneficiaries’ respective interests;
(f) exercise reasonable care and skill as a prudent and reasonable person would when administering the trustee’s own affairs; and, if the trustee has special skills or expertise; or if the trustee is named trustee in reliance upon the trustee’s representation that the trustee has special skills or expertise, the trustee shall use such special skills or expertise.

(g) in investing and administering the trust property, a trustee incur only in costs that are appropriate and reasonable in relation to such property, the purposes of the trust, and the skills of the trustee;

(h) not delegate to other persons the performance of acts that he could reasonably be required to perform personally;

(i) delegate investment and asset management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee has the duty to exercise reasonable care, skill, and caution in the following:

1. selecting an agent;
2. establishing the scope and terms of the delegation consistent with the purposes and terms of the trust; and
3. periodically reviewing the agent’s actions in order to monitor the agent’s compliance with the terms of the delegation.

In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation. By accepting the delegation of the duties from the trustee of a trust created under this Act, the agent submits to the jurisdiction of the courts of Puerto Rico.

The trustee shall be required to notify in writing the contents of this Section to the agent to whom the trustee is delegating. A trustee who meets the requirements of this Section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the action was delegated.
(j) have the funds or property of the trust in separate accounts, so that they may never be confused or mixed-up with others that are not part of the trust;

(k) administer the interests of the beneficiary of income and the beneficiary of principal with due impartiality;

(l) dispose of the trust property only in the manner set forth in the trust;

(m) provide the beneficiary, upon his request at reasonable times, with the distributions or payments, as well as complete and accurate information as to the nature and amount of the trust property, and allow the beneficiary or a person duly authorized by him to inspect the subject matter of the trust, accounts, vouchers, and other documents relating to the trust;

(n) take reasonable steps to enforce claims of the trust against third parties and to defend claims against the trust when these could result in losses thereto, unless it is reasonable not to under the circumstances;

(o) keep and render clear and accurate accounts regarding the administration of the trust in accordance with the trust instrument. If the document fails to provide therefor, a report on those accounts must be provided to the beneficiary at least once a year and at the termination of the trust, regardless of the reason. If the trustee fails to keep accounts or if the same are not clear and accurate, the trustee shall be liable for any losses or expenses attributable to the trustee’s omission. The trust shall remain in effect until a final account is rendered; and

(p) dispose of all the remaining trust property upon its termination through the appropriate alienation, in accordance with the terms of the trust instrument.

Section 28. – Self-Dealing Prohibition.
The trustee may not lend trust funds to himself or his dependents or partners, nor buy trust property for himself or a third-party, either in private sale or public auction, without prejudice to the trustee’s authorization in the trust instrument.

Section 29 – Compensation.

The trustor may set the trustee’s compensation in the trust instrument. If the terms of the trust do not specify the trustee’s compensation, the court shall set the trustee’s compensation, if the trustor does not prohibit it, taking into account the nature of the trust, the trust property value, and the relevance of the trustee’s duties.

The trustee may withhold trust property for compensation and justify it in the next account, unless otherwise provided in the trust instrument. However, if the trustee fails to comply with his fiduciary duties, the court in its discretion may deny him all compensation, or allow more or less compensation.

Section 30. – Indemnity for Expenses Incurred.

A trustee is entitled to indemnity from the trust property for expenses properly incurred in the administration of the trust. The trustee may also be indemnified as provided by the trustor.

If the trust property is not sufficient to indemnify a trustee for expenses properly incurred by him in the administration of a trust, a beneficiary shall not be personally liable to the trustee, unless otherwise agreed between them.

The beneficiary shall be personally liable to the trustee for expenses duly incurred during the administration of the trust if, being entitled to indemnity, the trustee transfers trust property to the trust without deducting indemnifiable expenses, but only up to the amount of the value of the transferred assets, unless the trustee had expressed his intent to waive indemnity.

Section 31. – Non-reimbursable Expenses.
If an expense is not properly incurred in the administration of a trust, a trustee shall not be entitled to indemnity from the trust property, unless:

(a) the trustee has conferred a benefit upon trust property, in which case the indemnity shall only be made to the extent of the benefit conferred:

(b) the transaction in which the expense is incurred is of such a character that the beneficiary would be in a position either to reject or accept it, and he would have accepted it, in which case the trustee is entitled to indemnity for the full amount of the expense.

The provision in the preceding paragraph shall also apply to any contractual or tort liability in which the trustee may have incurred in the administration of the trust.

Section 32. – Resignation of Trustee.

Upon acceptance of trusteeship, a trustee may resign, upon written notice to the beneficiary and the cotrustees, if any, or with the approval of the court or the consent of all beneficiaries.

The court may authorize such resignation insofar as it does not prove detrimental to the administration of the trust, or if compelling him to carry out such duties could prove unreasonably onerous to the trustee.

Section 33. – Grounds for Removal of the Trustee.

The court may remove a trustee on its own initiative or at the request of any person authorized therefor under the terms of the trust:

(a) if the trustee’s own interests are incompatible with the purposes of the trust;

(b) if the trustee misappropriated funds, committed fraud, or was negligent in the administration of trust property; or

(c) because of disability or unfitness of the trustee.
SUBCHAPTER FIVE – BENEFICIARY

Section 34. – Beneficiary.

The beneficiary is a natural or juridical person, government entity, or partnership that benefits from the income, the principal, or both. It may also be a person who does not exist at the time the trust was created, but is expected to exist within the term established in Section 6 of this Act.

Section 35. – Types of Beneficiary.

The beneficiary of income is a distributee of periodical income or the person in the interest of whom such income is accumulated.

The beneficiary of principal is the person who, upon the termination of the trust, shall receive the principal.

Section 36. – Capacity of the Beneficiary.

A beneficiary may be a natural or juridical person, government entity, or partnership that may or may not exist when the trust was created; in this last case, sufficient circumstances must be provided to ascertain the beneficiary.

The trustor may be a beneficiary of the trust, even if the trustor is the sole beneficiary.

The trustee may be a beneficiary; provided, that the trustee is not the sole beneficiary or, if the trustee is the sole beneficiary, the trust shall have at least one more designated trustee.

The members of a defined class of persons may be trust beneficiaries.

Section 37. – Multiple Beneficiaries. Successors.

In a single trust, the trustor may designate one or more beneficiaries and such successors as the trustor may wish in case that the beneficiary cannot or does not accept the trust, or having accepted it, dies before the same is executed.

If two or more beneficiaries have been designated, they shall receive equal benefits, unless otherwise provided in the trust instrument.
Section 38. – Remedies Available to the Beneficiary.

The beneficiary, or the legal counsel thereof, may seek in court the appropriate remedies to:

(a) compel the trustee to perform the trustee’s duties or enjoin the trustee from committing a breach of trust;

(b) compel the trustee to redress the trust for damages caused for breach of trust;

(c) request the appointment of a special fiduciary to take possession of the trust property and administer the trust;

(d) request the removal of the trustee; and

(e) require the trustee to pay any amount of money or to immediately and unconditionally restore trust property to which the beneficiary is entitled under the terms of the trust.

If the trust has multiple beneficiaries, any of them may seek the remedies set forth herein. However, if any of the beneficiaries is incapacitated, or if the beneficiaries are unable to reach an agreement as to the remedy, the court shall grant the remedy deemed more appropriate to achieve the purposes of the trust.

Section 39. – Death of a Beneficiary.

If a trust has several beneficiaries and one of them dies, the trust instrument shall provide the manner in which to dispose of said interest.

If the trust has several income beneficiaries and one or several beneficiaries of principal who must receive said income upon the death of the last income beneficiary, in the event of death of one of the income beneficiaries, the other income beneficiaries shall accumulate said interest until the last income beneficiary dies, except as otherwise provided in the trust instrument.
Section 40. – Trust Income and Principal.

Trust income is the proceeds, in money or in kind, from the use of the principal.

The trust principal is composed of the trust property allocated by the trustor, or another person with the power to do so, to be delivered to the beneficiary of principal provided that, until they are to be delivered, any income generated by such property is delivered to or accumulated for the income beneficiary.

Section 41. – Credit or Charge to Trust Income or Principal.

Trust receipts shall be credited and expenditures charged to income or principal, in whole or in part, in the terms of the trust. If the trust does not provide the item to which such receipts and expenditures shall be charged or credited, respectively, it shall be done according to what is just and reasonable to the interest of both beneficiaries and to what an average prudent person would do while administering his own affairs.

However, if the terms of the trust empower the trustee to credit a receipt or charge an expenditure to trust income or principal, or partially to each, failure of the trustee to act in accordance with this Act shall not entail imprudence or prejudice.

Section 42. – Rights of the Income Beneficiary.

Income beneficiaries are entitled to such income as of the date set by the trustor in the trust instrument or, if such a date has not been set, as of the date in which the property becomes part of the trust principal.

Upon termination of his right to trust income, such beneficiary or his heirs shall be entitled to:

(a) undistributed income as of the date of termination;
(b) income owed but not paid to the trustee as of the date of termination; and
(c) income in periodic payments, other than corporate distributions, such as rent, interests, and annuities not yet due as of the date of termination and earned on a day-to-day basis.

SUBCHAPTER SIX - EFFECTS

Section 43. – Trust Advisor – Definition and Duties

A trust advisor shall be any person other than a trustee who, under the terms of the trust or through a court order, has a power with respect to a trust, including, but not limited to one or more of the following:

(a) To modify or amend the terms of the trust to achieve favorable tax status or respond to changes in any applicable federal or Puerto Rico laws affecting the trust, including, but not limited to any regulations, guidelines, administrative decisions, or rulings implementing such laws;

(b) To amend or modify the terms of the trust to take advantage of or respond to changes in any applicable federal or Puerto Rico laws affecting, benefitting, or restricting the terms of the trust and administration thereof, including regulations, guidelines, administrative decisions, or rulings implementing such laws;

(c) To appoint a successor trust advisor or successor trustee absent an express or appropriate mechanism, or for the reasons provided in the terms of the trust;

(d) To review and approve a trustee’s trust reports or accountings;

(e) To remove or replace any trust protector on the grounds stated in the trust instrument;

(f) To consent to the actions of a trustee or cotrustee when making distributions in a trust;

(g) To consent to the actions of a trustee or cotrustee regarding investments, property, or other trust assets.
Section 44. – Rights of Creditors.

Creditors shall have the following rights with regards to the trust’s property, subject matter, or principal:

(a) Except as expressly provided in subsections (b) and (c) of this Section, a creditor of the beneficiary of a trust shall have over or with regards to such beneficiary’s interest or the property under said trust those rights that have been expressly granted thereto by the terms of the instrument that creates or defines the trust or by the laws of Puerto Rico.

The provisions of this subsection shall take effect and in no way be limited by the nature or extent of the beneficiary’s interest, whether or not such interest is subject to the discretion of one or more trustees, and even if the beneficiary has taken or is about to take any action.

(b) Any interest in a trust, in trust property, or in income of any of these that is not subject to the rights of a beneficiary’s creditors pursuant to this Section shall be exempt from foreclosure, attachment, eviction, auction, and any other remedy or legal proceedings filed by or on behalf of any creditor, including, without any limitation, legal actions or claims against one or more trustees or other beneficiaries seeking a remedy that directly or indirectly affect the beneficiary’s interest, such as, for example and without limitation, an order issued at the request of a creditor or the court itself that could:

(i) Compel the trustee or a beneficiary to notify a creditor about any distribution made or to be made.

(ii) Compel the trustee or beneficiary to make a distribution despite the fact that such distributions may or may not be subject to the trustee’s discretion; or
(iii) Forbid the trustee or beneficiary from making a distribution despite the fact that such distributions may or may not be subject to the trustee’s discretion.

Except as provided in this Act or the terms of the trust, no trustee shall be liable to any beneficiary’s creditor for payments, expenses, debts or obligations of such beneficiary.

Section 45. – Liability for Breach of Trust.

A trustee who commits a breach of trust shall be liable for any loss or depreciation of trust property resulting from such breach. The trustee shall also be liable for any profit made by him through breach of trust, of for any profit that would have accrued to the trust property if there had been no breach of trust.

However, a trustee is not liable to a beneficiary for breach of trust if the beneficiary consented to the action or omission constituting the breach, held the trustee harmless, or ratified such action or omission.

Section 46. – Joint Liability of Trustees.

If there is more than one trustee and all trustees commit breach of trust, they shall be held jointly liable to the trust.

Section 47. – Prudent Investor Rule.

With regards to trusts, the Prudent Investor Rule sets forth that:

(a) General Rule

(i) Except as otherwise provided in subsection (b) of this Section, a trustee who invests and manages trust property owes a duty to the trust’s beneficiaries to comply with the prudent investor rule set forth herein.

(ii) The prudent investor rule may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.
(b) Standard of Care; Portfolio Strategy; Risk and Return Objectives

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

(ii) A trustee’s investment and management decisions regarding individual assets shall not be evaluated in isolation, but in the context of the trust portfolio and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

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

1. the general economic conditions;
2. the possible effect of inflation or deflation;
3. the expected tax consequences of investment decisions or strategies;
4. the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible personal property, and real property;
5. the expected total return from income and the appreciation of capital;
6. other resources of the beneficiaries;
7. needs for liquidity, regularity of income, and preservation or appreciation of capital; and

An asset’s special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.
(iv) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(v) A trustee may invest in any kind of property or type of investment that is consistent with the standards of this Act.

(vi) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee’s representation that he/she has special skills or expertise, has a duty to use those special skills or expertise.

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

(d) Compliance with the prudent investor rule shall be determined in light of the facts and circumstances existing at the time of a trustee’s decision or action and not by hindsight.

Section 48. – Immunity of Successor Trustee.

Except as otherwise provided in the terms of the trust or a court order, a successor trustee appointed under the terms and conditions of the trust or by the court shall not be required or have the duty to review the records, accounts, accounting, or reports of a predecessor trustee, or to inquire about the actions or omissions of the predecessor trustee. Nor shall the trustee be liable for any fault or failure to request or obtain any remedy or redress for any action or omission of a predecessor trustee. The successor trustee shall only be liable for the property, assets, or investments handed over to him by the predecessor trustee, the trustor or trustees, or the beneficiary or beneficiaries. The successor trustee shall have all the powers and discretion granted to predecessor trustees under the terms of the trust.
Section 49. – Reimbursement and Repayment between Cotrustees.

If two trustees are liable to the beneficiary due to breach of trust, a trustee is entitled to a proportional contribution from the other trustee unless:

(a) one trustee was substantially more at fault than the other, in which case the former shall not be entitled to contribution from the other trustee;

(b) one trustee received personal benefit from the breach of trust, in which case such trustee shall reimburse the other trustee to the extent of the benefit received.

If a trustee committed the breach of trust in bad faith, such trustee shall not be entitled to a proportional contribution or reimbursement from cotrustees.

A trustee who acts in bad faith shall not be entitled to a contribution or reimbursement.

Section 50. – Attachment or Execution of the Beneficiary’s Interest

The beneficiary’s creditors may attach or execute the beneficiary’s interest to satisfy claims against the beneficiary, unless:

(a) the trust property is non-attachable according to the law;

(b) the trustor provided for the prohibition of voluntary or involuntary alienation of the interest of a beneficiary who is entitled to receive the principal at a future date;

(c) the trust determines that the interest of the income beneficiary shall end if the beneficiary’s creditors attach or execute such interest or if the same is adjudicated in bankruptcy proceedings;

(d) the trust was created for a group of people as beneficiaries and the interest of each one is non-severable from the others;

(e) the terms of the trust provide that the trustee shall allocate portions of income or principal as are necessary for the education or support of the beneficiary;
(f) the interest of the beneficiary is a highly personal interest; or

(g) the trust has a spendthrift provision setting forth that the income beneficiary’s interest shall not be subject to voluntary or involuntary transfer, except in those circumstances and to the extent set forth in Section 51 (Ineffectiveness of the Provision).

Section 51. – Ineffectiveness of Spendthrift Provision with Respect to the Income Beneficiary.

Notwithstanding a spendthrift provision included in a trust as provided in subsection (g) of the preceding Section, an income beneficiary’s creditor or assignee may reach the beneficiary’s income interest by means of attachment or execution in the following circumstances and extension:

(a) Income earned or to be earned in the future in excess of $36,000 annually shall be subject to attachment or execution by an income beneficiary’s creditor or assignee.

(b) When the creditor’s claim to his assignee is for: (i) the support of the beneficiary’s spouse or child; (ii) the payment of alimony or child support ordered by court for a beneficiary’s former spouse or child; (iii) the payment of essential services or goods rendered or delivered to the beneficiary; (iv) the payment of a judgment against the beneficiary involving tort liability, the court may order the trustee to satisfy the claim in question, or part thereof, against the amount exempt in subsection (a) when, in his judgment, justice so warrants, taking into account all the circumstances, including the trustor’s express intention.

Section 52. – Debt of the Beneficiary.

The beneficiary’s interest shall be reached to fulfill his obligations when:

(a) the beneficiary has an outstanding debt with the trustor-testator, unless the testator had cancelled the debt or expressed his intention to allow the beneficiary to enjoy his interest in the trust despite not having satisfied the debt;
(b) the beneficiary has an outstanding debt with the trustee in his capacity as such. In case of a debt with the trustee in the latter’s personal capacity but resulting from the administration of the trust, the beneficiary’s interest shall not be reached unless otherwise agreed on with the trustee; or

(b) one of the beneficiaries has an obligation to the others for misappropriation or any other kind of intervention with the trust property resulting in loss.

Section 53. – Actions of Trustee against Third-Parties.

The trustee may initiate actions against third parties on his own motion if the trustee holds the trust property. However, if the trustee unduly fails to initiate an action, the beneficiary may do so joining the trustee as a co-defendant.

Section 54. – Acquisition of Trust Property Title.

Whenever a trustee transfers or alienates trust property without committing breach of trust, the third party gains clear title from the trust and is not held liable to the beneficiary.

If the trustee, in breach of trust, transfers or alienates trust property to a third party for valuable consideration, the latter shall hold clear title from the trust and shall not be liable to the beneficiary; provided, that such third party was unaware of the trustee’s breach of trust or the unlawfulness of the transaction whereby such assets were acquired.

If the trustee, in breach of trust, transfers or alienates trust property to a third party who did not acquire such property in good faith, in accordance with the provisions of the previous paragraph, and such third party later transfers his interest to a purchaser in good faith, the latter shall hold clear title from the trust.
Section 55. – Liability of a Third-Party Acquirer in Bad Faith who has not Disposed of the Assets.

If the trustee, in a breach of trust, transfers or alienates trust property to a third-party acquirer in bad faith who has not subsequently disposed thereof, said acquirer may be compelled to:

(a) return such assets to the trust along with the income earned therefrom;
(b) pay the value the assets had upon receipt thereof; or
(c) in the event that said third party refused to return the assets to the trust, pay the value thereof as of the time of such refusal, plus interest.

The beneficiary shall encumber the assets, or the proceeds of their disposition, to guarantee they can be reclaimed.

Section 56. - Liability of a Third-Party Acquirer in Bad Faith who has Disposed of the Assets.

If, under the same circumstances of the previous Section, the third-party acquirer in bad faith has disposed of the assets, said acquirer may be compelled to:

(a) return the proceeds of their sale and the income received from such assets and the product of their sale;
(b) return the proceeds of their sale with interest, plus the income received before the sale thereof;
(c) pay the value of the assets as of the time the judgment was entered, plus the income generated therefrom; or
(d) pay the value of the assets as of the time of disposability thereof, plus interest.

The beneficiary shall encumber the assets, or the proceeds of their disposition, to guarantee they can be reclaimed.
Section 57. – Rights of the Third-Party Acquirer in Bad Faith.

A third-party acquirer in bad faith may claim payment for:

(a) the amount paid to the trustee for the assets insofar as the trust would have received benefit or such third-party acquirer would have satisfied any lien on such assets; and

(b) expenses incurred by such acquirer for the repair of such assets and the improvements that may have increased their value, insofar as such acquirer was unaware of the trustee’s breach of trust.

The beneficiary shall encumber the assets, or the proceeds of their disposition, to guarantee they can be reclaimed.

Section 58. – Causes for Ineffectiveness of Private Trusts.

A private trust may be ineffective on the same grounds that any other legal transaction may be according to general rules.

Section 59. – Nullity of a Provision.

If a provision of the trust instrument is null for any reason the remaining provisions thereof shall only become null if the null provision is not severable from them without undermining the purposes for which the trust was created.

Section 60. – Effects of Nullity.

Unless the trustor has expressly manifested an intention to the contrary, the trust property shall be reverted to the trustor or his heirs, free from trust, if:

(a) the purposes of the trust are fulfilled without exhausting the assets, unless it was constituted for valuable consideration and paid by a third-party, in which case said third-party shall hold the assets;

(b) the trust was created for a term greater than that allowed by this Code, except as provided in the second paragraph of Section 6 of this Act;
(c) the trustee holds the title or use of the trust property in a manner contrary to the terms of the trust, or derives a personal gain or benefit as a result of the confidence placed on him;

(d) the *inter vivos* trust does not meet the formal requirements of Article 1232 of the Civil Code, and neither the trustor nor the trustee or the beneficiary invoke the rights granted thereto by Article 1231 of the Civil Code; or

(e) a charitable trust created gratuitously becomes null because its purposes cannot be fulfilled or are fulfilled without exhausting the assets, unless the rule set forth in Article 68 can be applied (Cy Pres rule);

(f) a charitable trust may be null because it is unlawful.

Section 61. – Termination of Trust.

A trust shall terminate when:

(a) the trust purpose is fulfilled;

(b) the term of the trust has expired or the event that causes the trust termination has occurred;

(c) there is an absolute lack of the necessary conditions for its execution, or the condition for its execution is not met within the term stipulated;

(d) the trust purposes become unlawful or impossible to fulfill, unless it is a charitable trust to which the provisions of Section 68 may be applied (Cy Pres rule);

(e) ordered or authorized by the court if, because of circumstances not known to or anticipated by the trustor, the accomplishment of trust purposes would be defeated;

(f) all the beneficiaries agree thereto if they are all determined and capable, unless continuation of the trust is necessary to fulfill an essential purpose thereof. However, if any of the beneficiaries is not determined or is unfit, or if any of them does not consent to the premature termination of the trust, the remaining
beneficiaries may partially terminate the trust with the consent of the trustor insofar as those remaining beneficiaries do not incur damages;

(g) the beneficiary resigns, becomes incapacitated, is removed or rejected, or dies, provided that the clear intention of the trustor was that only such person could be the trustee;

(h) the object upon which it was constituted is destroyed. However, if the destruction of the object of the trust is the fault of the trustee or a third party, the trust shall not terminate and its estate shall be cause of action against the trustee for breach of trust or against the third party under tort liability;

(i) a resolution of the right of the trustor over the trust property; or

(j) there is a confusion between the capacity as sole beneficiary and that of sole trustee;

Regardless of the existence of a cause for termination, the trust shall subsist until the entirety of the trust property has been distributed to whom it rightfully belongs, the purposes for which it was constituted have been fulfilled, inventory has been taken and the final accounts have been deemed correct, and the trustee is relieved of his trustee duties and responsibilities as such.

(k) the parties that created the trust have expressly and personally agreed to its termination.

CHAPTER III – CHARITABLE TRUST

Section 62. – Concept and Term.

A charitable trust is a trust created for the benefit of society in general or a considerable sector thereof. Its term may be indefinite or perpetual.

Section 63. – Beneficiary of Charitable Trusts.

A charitable trust may be created even if no particular or clearly identifiable beneficiaries are designated.
If the charitable trust has multiple trustees, the powers granted thereto by this Act may be exercised by a majority vote unless the terms of the trust provide otherwise.

Section 64. – Constitution and Administration.

The provisions set forth in the third paragraph of Section 6, and the provisions of Sections 7, 9, 10, 11, 12, 14, 15, 17, 19, 21, 22, 23, 24, 25, 27, 29, 30, 31, 32, 33, 34, 38, 44, 46, 47, 48, 49, 50, 54, 55, 56, 57, 58, and 62 of this Act shall apply to the creation and administration of charitable trusts.

Any reference to trustees made in such Sections shall be construed to include those of charitable trusts or persons empowered to enforce a charitable trust in accordance with the provisions of Section 69.

Section 65. – Charitable Purposes.

There shall be understood as charitable purposes:

(a) the relief of poverty;
(b) the advancement of education or religion, and the promotion of health;
(c) governmental or municipal purposes, such as building and maintaining monuments, statues, public parks, and similar sites;
(d) any other purpose the achievement of which is beneficial to the community in general, particularly if they are philanthropic, cultural, religious, or scientific in nature.

Section 66. – Validity or Nullity of Charitable Trust.

A charitable trust shall fail if:

(a) the trustor does not identify the purpose for which the trust property is set aside;
(b) the trust property or the income generated thereby may be devoted to private use. However, if the terms of the trust indicate that the trustee shall allocate the assets partly for private and partly for public use, but fail to indicate a beneficiary, the trust shall fail with respect to such Section, but be valid for charitable purposes with respect to the rest.

A charitable trust shall be valid even if, under the terms thereof, it is the trustee who shall select which charities to support insofar as the trustee is fit to make such selection.

Section 67. – Modification of Charitable Trust (Cy Pres Rule).

If a trust is created and its assets are intended for a particular charitable purpose that becomes unlawful, impracticable, or impossible to achieve, the trust shall not fail. In that case, the court shall instruct the trustee to apply the assets to another charity that falls within the general intention of the trustor.

However, if the trustor has provided in the trust instrument that, upon the trust’s termination, the assets shall revert to him or his heirs, such provision shall prevail over any power of the court to apply the aforementioned cy pres rule.

Section 68. – Standing to Enforce a Charitable Trust.

The Secretary of Justice, a cotrustee, or a person with a special interest in the fulfillment of the trust’s purposes may enforce such charitable trust by exercising the remedies provided for in this Act.

An entity with purposes similar to those of the trust shall have standing to request the removal of a trustee for substantial breach of trust, and its own appointment as successor trustee.
CHAPTER FOUR – FINAL PROVISIONS

Section 69. – Default Rule.

Should there be any issue that this Act fails to provide for, or if any of its provisions require interpretation, U.S. doctrines and case law regarding trusts shall govern unless something else is necessarily inferred from any of the provisions of this Act or if there is an express referral to Puerto Rico legislation.

Section 70. – Other Statutes of Limitation.

Except as provided in Sections 6 and 64, the limitation set forth in the laws of Puerto Rico and the standards for the application thereof that are currently in effect shall govern the actions resulting from the provision of this Act.

Section 71. – Repeal.

Articles 834 to 874 of the Civil Code of 1930, as amended, are hereby repealed.

Section 72. – Severability Clause.

If any section or provision of this Act were held to be null or unconstitutional by a competent court with jurisdiction, the holding to such effect shall not affect or invalidate the remaining provisions of this Act and the effect thereof shall be limited to the paragraph, section, part, or provisions thus held to be null or unconstitutional.

Section 73. – Effectiveness.

This Act shall take effect immediately after its approval.
CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 219-2012 (H. B. 3712) (Conference) of the 7th Regular Session of the 16th Legislative Assembly of Puerto Rico:

AN ACT to adopt the new Trust Act; repeal Sections 834 to 874, inclusive, of the Civil Code of 1930; and for other purposes.

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, on this 21st day of December, 2016.

Juan Luis Martínez Martínez
Director