

ENROLLED HOUSE
BILL NO. 1946

By: Weaver of the House

and

Hendrick of the Senate

An Act relating to trusts; creating the Oklahoma Uniform Prudent Investor Act; providing short title; creating definitions; creating the prudent investor rule; establishing standard of care, strategy and objectives; authorizing trustee to invest in and consider certain investments; providing for special investment skills; providing for diversification of investments; establishing certain duties at inception of trusteeship; providing for loyalty and impartiality of trustee; providing for investment costs; determining compliance with prudent investor rule; providing for delegation of certain investment or management functions; providing for certain language invoking certain standard; providing for application of existing trusts; providing for uniformity of application and construction; amending 6 O.S. 1991, Sections 714, as amended by Section 1 of Enrolled House Bill No. 1469 of the 1st Session of the 45th Oklahoma Legislature, 1008 and 1010, which relate to banks and trust companies; providing for application of the Oklahoma Uniform Prudent Investor Act to certain trust powers and duties; permitting certain banks to place trust funds in common trust fund of affiliate bank; amending 12 O.S. 1991, Section 1147.5, which relates to trust in proceeds of sale; providing that certain trust be managed in accordance with the Oklahoma Uniform Prudent Investor Act; amending 30 O.S. 1991, Section 4-709, which relates to the Oklahoma Guardianship and Conservatorship Act; permitting the investment of certain funds pursuant to the Oklahoma Uniform Prudent Investor Act; amending 60 O.S. 1991, Sections 73, 161, 171, 175.23, as amended by Section 14, Chapter 345, O.S.L. 1993, 175.24, as amended by Section 1, Chapter 306, O.S.L. 1994, 175.34, 175.35 and 175.55 (60 O.S. Supp. 1994, Sections 175.23 and 175.24), which relate to the authority of a trustee and the Oklahoma Trust Act; providing that certain investments comply with Oklahoma Uniform Prudent Investor Act; modifying necessary parties to certain actions; deleting certain contingency relating to certain beneficiaries; deleting certain reference to investments in certain obligations; providing that certain powers, duties and responsibilities of Oklahoma Uniform Prudent Investor Act shall not exclude other implied powers and duties; deleting reference to certain duty of

care in changing form of investment under certain trust instruments; repealing 60 O.S. 1991, Section 162, which relates to common trust funds; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.60 of Title 60, unless there is created a duplication in numbering, reads as follows:

Short Title.

Sections 1 through 13 of this act shall be known and may be cited as the "Oklahoma Uniform Prudent Investor Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.61 of Title 60, unless there is created a duplication in numbering, reads as follows:

Prudent Investor Rule.

A. Except as otherwise provided in subsection B of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in the Oklahoma Uniform Prudent Investor Act.

B. The prudent investor rule, a default 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.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.62 of Title 60, unless there is created a duplication in numbering, reads as follows:

Standard of Care; Portfolio Strategy; Risk and Return Objectives.

A. 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 standard, the trustee shall exercise reasonable care, skill, and caution.

B. A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation, but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

C. Among circumstances that a trustee shall consider in investing and managing trust assets are those of the following as are relevant to the trust or its beneficiaries:

1. 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 and intangible 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

8. An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

D. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

E. A trustee may invest in any kind of property or type of investment consistent with the standards of the Oklahoma Uniform Prudent Investor Act.

F. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.63 of Title 60, unless there is created a duplication in numbering, reads as follows:

Diversification.

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

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.64 of Title 60, unless there is created a duplication in numbering, reads as follows:

Duties at Inception of Trusteeship.

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust and with the requirements of the Oklahoma Uniform Prudent Investor Act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.65 of Title 60, unless there is created a duplication in numbering, reads as follows:

Loyalty.

A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.66 of Title 60, unless there is created a duplication in numbering, reads as follows:

Impartiality.

If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.67 of Title 60, unless there is created a duplication in numbering, reads as follows:

Investment Costs.

In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.68 of Title 60, unless there is created a duplication in numbering, reads as follows:

Reviewing Compliance.

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.69 of Title 60, unless there is created a duplication in numbering, reads as follows:

Delegation of Investment and Management Functions.

A. A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

1. Selecting an agent;
2. Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
3. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

B. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

C. A trustee who complies with the requirements of subsection A of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

D. By accepting the delegation of a trust function from the trustee of a trust that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.70 of Title 60, unless there is created a duplication in numbering, reads as follows:

Language Invoking Standard of the Oklahoma Uniform Prudent Investor Act.

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under the Oklahoma Uniform Prudent Investor Act: "Investments permissible by law for investment of trust funds", "legal investments", "authorized investments", "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital", "prudent man rule", "prudent trustee rule", "prudent person rule", and "prudent investor rule".

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.71 of Title 60, unless there is created a duplication in numbering, reads as follows:

Application to Existing Trusts.

The Oklahoma Uniform Prudent Investor Act applies to trusts existing on and created after its effective date. As applied to trusts existing on its effective date, this act governs only decisions or actions occurring after that date.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 175.72 of Title 60, unless there is created a duplication in numbering, reads as follows:

Uniformity of Application and Construction.

The Oklahoma Uniform Prudent Investor Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among the states enacting it.

SECTION 14. AMENDATORY 6 O.S. 1991, Section 714, as amended by Section 1 of Enrolled House Bill No. 1469 of the 1st Session of the 45th Oklahoma Legislature, is amended to read as follows:

Section 714. A. Monthly meeting - Special meeting - Minutes. The board of directors of a bank shall meet at least once every

month and the board of directors of a trust company shall meet at least once every quarter. The Commissioner, a director or an executive officer may call a special meeting. A majority of the board of directors shall constitute a quorum. The board shall keep minutes of each meeting, including a record of attendance and a record of all votes of the directors that would be pertinent to the business of the bank, to any officer, or to any stockholder. A copy of the minutes of each meeting of the board of directors shall be furnished to the Commissioner.

B. Transactions to be reviewed by bank and trust company board of directors - Minutes to be signed. The board of directors of each bank shall review at least monthly and the board of directors of each trust company shall review at least quarterly written reports prepared by the president or other officer of the corporation setting forth such transactions occurring during the calendar month or quarter, as appropriate, preceding the meeting as the Commissioner shall require by appropriate regulations.

C. Annual examination - Banks and trust companies. The board of directors of every bank and trust company shall examine, at least once in each calendar year at intervals of not more than fifteen (15) months, all the affairs of the corporation including the character and value of investments and loans, the efficiency of operating procedures and such other matters as the Commissioner prescribes. A report of the examination shall be submitted promptly to the Commissioner and shall embody such information as the Commissioner requires. The board of directors may provide that such examination shall be conducted by a committee of not less than three (3) directors, by certified public accountants, or by independent auditors responsible only to the board of directors. Such examination shall be made when practicable without the assistance of the executive officers of the bank or trust company. Such report of examination shall be reviewed by the directors at the next meeting of the board of directors.

D. Board of directors - Bank having trust powers. A bank authorized to exercise trust powers shall not accept or voluntarily relinquish a fiduciary account without approval or ratification of the board of directors or of a committee of officers or directors designated by the board to perform this function, but the board of directors or the committee may prescribe general rules governing acceptance or relinquishment of fiduciary accounts, and action taken by an officer in accordance with these rules is sufficient approval. Any committee so designated shall keep minutes of its meetings and report at each monthly meeting of the board of directors all action taken since the previous meeting of the board. The board of directors shall designate one or more committees of not less than three qualified officers or directors to supervise the investment of fiduciary funds. No ~~such~~ investment shall be made, retained or disposed of without the approval of a committee to which the bank has delegated investment or review responsibility. ~~At least once in every calendar year at intervals of not more than twelve (12) months, the committee shall review all the assets of each fiduciary account as to which the bank has investment or review responsibility and shall determine their current value, safety and suitability and whether the investments should be modified or retained~~ The committee, in making investment decisions, shall be subject to the provisions of the Oklahoma Uniform Prudent Investor Act. The committee shall keep minutes of its meetings and shall report at each monthly meeting of the board of directors its conclusions on all questions.

E. Official communications from banking department; submission to directors. Every official communication directed by the Commissioner or any examiner to any bank or trust company or to any officer thereof, relating to an investigation or examination conducted by the State Banking Department or containing suggestions or recommendations as to the conduct of the business of the bank or trust company, shall be submitted by the officer receiving it to the board of directors at the next meeting of the board and duly noted in the minutes of the meeting of the board in such form and in such manner as may be prescribed and directed by the Commissioner. No officer of any bank or trust company shall fail to comply with this subsection.

SECTION 15. AMENDATORY 6 O.S. 1991, Section 1008, is amended to read as follows:

Section 1008. A. Securities authorized by Oklahoma Trust Act and Oklahoma Uniform Prudent Investor Act. Banks having trust powers and trust companies shall have the power of investing the moneys placed in their charge through various trust accounts in such loans and securities as are authorized by the Oklahoma Trust Act ~~for the investment of trust funds~~ and the Oklahoma Uniform Prudent Investor Act.

B. Investments in notes, bonds, or debentures secured, insured or guaranteed by United States - Acceptance by public officials. It shall be lawful for banks having trust powers and trust companies subject to the laws of ~~the State of Oklahoma~~ this state, under ~~such regulations or limitations as may be prescribed by rule~~ by the Bank Commissioner, to invest their funds and trust funds in their custody and possession, eligible for investment, in notes or bonds secured by mortgages or in debentures the payment of which is insured or guaranteed by the United States of America or by any of its departments or agencies, and without regard to the limitation on the appraised value of the real estate securing ~~said~~ the notes or obligations and without regard to limitation on the aggregate amount of such notes, bonds or obligations that may be owned or held by any such bank or trust company.

C. Any ~~such~~ notes, bonds, mortgages, or debentures ~~so~~ insured or guaranteed pursuant to subsection B of this section shall be eligible for deposit with any public official of ~~the State of Oklahoma~~ this state whenever deposits of assets of such banks or trust companies shall be required under any law of ~~the State of Oklahoma~~ this state.

SECTION 16. AMENDATORY 6 O.S. 1991, Section 1010, is amended to read as follows:

Section 1010. A. Establishment. Any bank or trust company qualified to act as a fiduciary in this state may establish:

1. Establish one or more common trust funds for the exclusive purpose of furnishing investments to itself as fiduciary, including to itself and others as cofiduciaries, or to another bank or trust company which is a subsidiary of the same bank holding company as fiduciary or cofiduciary for estates, guardianships, and all other fiduciary relationships, now in existence or hereafter created, requiring or authorizing which require or authorize investment of trust funds, or to itself and others, as cofiduciaries; and may, as such fiduciary or cofiduciary, invest; and

2. Invest funds which it lawfully holds for investment in interests in such common trust funds, if such unless:

a. the investment is not prohibited by the instrument, judgment, decree, or order creating such the fiduciary relationship, and if,

- b. in the case of cofiduciaries, the bank or trust company ~~procures~~ fails to procure the consent of its cofiduciary or cofiduciaries to such investment, ~~which consent such cofiduciary is hereby authorized to grant; but the full management of the fund shall at all times be in full charge of such~~
- c. the bank and or trust company is not at all times in full charge of the full management of the fund, and any or
- d. a cofiduciary or co-trustee shall not have any has the right to interfere in the management of such the common trust funds.

B. Common trust fund investments. 1. The bank or trust company shall not mingle its own funds with common trust funds. Each trust, estate or account owning an interest in such common trust fund shall be deemed to own a proportionate share of each asset of the fund. In determining whether the investment by the trust, estate, or account in such common trust fund is a proper investment for assets held in a fiduciary account, the bank or trust company may consider the common trust fund as a whole and shall not, for example, be prohibited from making such the investment if any one or more of the assets of such the common trust fund is nonincome producing or might not otherwise be considered a proper investment for a fiduciary account. ~~Provided, however, that nothing~~

2. When making investment decisions pursuant to this subsection, the bank or trust company shall be bound by the provisions of the Oklahoma Trust Act and the Oklahoma Uniform Prudent Investor Act, unless otherwise provided by law.

3. Nothing in this subsection shall in any fashion diminish the responsibility of the bank or trust company to carry out its responsibilities and duties pursuant to the standard of care of a fiduciary in handling ~~such~~ trust funds.

C. Common trust fund of bank having trust powers to be audited annually. A bank or trust company administering a common trust fund shall keep proper records, which in addition to all other necessary and proper matters shall show at all times the proportionate interest of each trust in the common trust fund, and, at least once during each period of twelve (12) months, cause an audit to be made of the common trust fund by auditors responsible only to the board of directors of the bank or trust company. The report of such audit shall include a list of the investments comprising the common trust fund at the time of the audit, which shall show the valuation placed on each item on such list by the bank or trust company as of the date of the audit, a statement of purchases, sales and any other investment changes, and of income and disbursements since the last audit, and appropriate comments as to any investment in default as to payment of principal or interest. The reasonable expenses of any such audit made by independent public accountants may be charged to the common trust fund. The bank or trust company may charge a fee for the management of the common trust fund provided that the fractional part of such fee proportionate to the interest of each participant shall not, when added to any other compensations charged by the bank or trust company to a participant, exceed the total of compensation which would have been charged to said participant if no assets of said participant had been invested in participations in the fund. The bank or trust company shall absorb the costs of establishing or reorganizing a common trust fund. The bank or trust company shall send a copy of the latest report of such audit annually to each person to whom a regular periodic accounting of the trusts participating in the common trust fund ordinarily would be

rendered, or shall send advice to each such person annually that the report is available and that a copy will be furnished without charge upon request.

D. Common trust fund court proceedings. Unless ordered by a court of competent jurisdiction, the bank or trust company operating such common trust funds is not required to render a court accounting with regard to such funds; but it may, by application to the district court, secure approval of such an accounting after such notice, and on such conditions as the court may establish.

SECTION 17. AMENDATORY 12 O.S. 1991, Section 1147.5, is amended to read as follows:

Section 1147.5 Upon confirming the sale of real estate under the provisions of ~~the preceding~~ Section 4 1147.4 of this title, the court shall direct that the proceeds of the sale, ~~(including any purchase money mortgage which may be accepted as a part of the purchase price)~~, less any costs chargeable against the same, constitute a trust to be managed and invested under the continuing jurisdiction of the court and, except as may be otherwise directed by the court, in accordance with the provisions of the Oklahoma Trust Act ~~(60 O.S. 1951, Sections 175.1 to 175.53)~~ and the Oklahoma Uniform Prudent Investor Act. The trustee appointed to make said sale may be continued as trustee for the administration of the trust or the court may appoint a different trustee for the purpose of administering the trust. In the order of confirmation of sale and the appointment of the trustee to administer the trust, the court shall make appropriate provisions with respect to the term during which the trust shall be administered and how the income and principal thereof shall be distributed.

SECTION 18. AMENDATORY 30 O.S. 1991, Section 4-709, is amended to read as follows:

Section 4-709. Except as may be provided by law otherwise, the money belonging to estates of minors and incapacitated or partially incapacitated persons, subject to the jurisdiction of the court, can only be invested in real estate and first mortgages upon real property which do not exceed fifty percent (50%) of the actual value of the property, United States bonds, or any other type of security certificate, or evidence of indebtedness which is guaranteed by the United States Government, or any authorized agency thereof, state bonds, bonds of municipal corporations, in accounts in savings and loan associations and credit unions located in ~~the State of Oklahoma~~ this state, and all types of interest-bearing time deposits and certificates of banks, savings and loan associations and credit unions located in ~~the State of Oklahoma~~ this state, not to exceed the amount insured by the United States Government. ~~Provided, however, that, upon~~ Upon application to the court by the guardian of the estate of the incapacitated or partially incapacitated person, showing to the satisfaction of the court:

(a) That ~~such~~ the incapacitated or partially incapacitated person is vitally in need of a home; and

(b) That ~~he~~ the incapacitated or partially incapacitated person owns no suitable homestead; and

(c) That ~~he~~ the incapacitated or partially incapacitated person has sufficient monthly, semi-annual, or annual fixed income to retire an incurred indebtedness for the remaining unpaid cost of such homestead; and

(d) That it would be to the best interest of the incapacitated or partially incapacitated person that a suitable homestead be purchased for ~~him~~ such person on that basis, ~~such~~ the court may enter an order authorizing the guardian to execute and deliver a note and mortgage, under such tenor and terms as the court will

approve, for the purpose of securing payment of any remaining cost of such a homestead. Any ~~such~~ note and mortgage given by a guardian under the provisions of this section shall, if authorized by the court as provided for ~~herein in this section~~, be endorsed "approved" by the judge. When so authorized and endorsed, ~~such the~~ note and mortgage shall be a binding obligation against the ward and ~~his the~~ estate of the ward until fully paid. The ward, if subsequently restored to competency to transact ~~his own~~ business, shall be held firmly bound by ~~such the~~ note and mortgage in the same manner and to the same extent as though ~~he himself the ward~~ had given the homestead purchase-money note and mortgage.

~~Provided, however, that when~~ When the guardian is a bank or trust company qualified and acting under the supervision of the State Banking Board ~~of the State of Oklahoma~~, or of the Comptroller of the Currency of the United States of America, ~~such the~~ guardian may, upon application to the court, invest funds coming into its hands as guardian in any property, real, personal or mixed, in which an individual may invest ~~his the individual's~~ own funds pursuant to the provisions of the Oklahoma Uniform Prudent Investor Act, unless otherwise provided by law.

SECTION 19. AMENDATORY 60 O.S. 1991, Section 73, is amended to read as follows:

Section 73. Under proper court order the trustee shall be authorized to invest income from royalties ~~in like manner as funds of guardianships may be invested~~ pursuant to the provisions of the Oklahoma Uniform Prudent Investor Act, unless otherwise provided by law, which investments shall remain intact until the ultimate taker is determined and shall then be paid over to ~~such the~~ ultimate taker and the trust closed. Income from investments shall be paid to the life tenant or other person entitled thereto.

SECTION 20. AMENDATORY 60 O.S. 1991, Section 161, is amended to read as follows:

Section 161. Unless otherwise authorized, directed or restricted by order of court or by the will, trust agreement, or other document which is the source of the trust, the trustee may invest trust funds in any property, real, personal or mixed, in which an individual may invest ~~his the individual's~~ own funds. In making investments, the trustee shall ~~exercise the judgment and care in the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital~~ comply with the provisions of the Oklahoma Uniform Prudent Investor Act. The provisions of this section shall not be construed to authorize a trustee to buy or sell property and investments from or to ~~himself the trustee~~ personally or to comingle trust funds with ~~his the~~ individual funds of the trustee.

SECTION 21. AMENDATORY 60 O.S. 1991, Section 171, is amended to read as follows:

Section 171. Express trusts may be created in real or personal property or both, with power in the trustee, or a majority of the trustees, if there be more than one, to receive title to, hold, buy, sell, exchange, transfer and convey real and personal property for the use of such trust; to take, receive, invest or disburse the receipts, earnings, rents, profits or returns from the trust estate; to carry on and conduct any lawful business designated in the instrument of trust, ~~and~~ generally to do any lawful act in relation to ~~such the~~ trust property which any individual owning the same

absolutely might do and to comply with the provisions of the Oklahoma Uniform Prudent Investor Act.

SECTION 22. AMENDATORY 60 O.S. 1991, Section 175.23, as amended by Section 14, Chapter 345, O.S.L. 1993 (60 O.S. Supp. 1994, Section 175.23), is amended to read as follows:

Section 175.23 A. The district court shall have original jurisdiction to construe the provisions of any trust instrument; to determine the law applicable thereto; the powers, duties, and liability of trustee; the existence or nonexistence of facts affecting the administration of the trust estate; to require accounting by trustees; to surcharge trustee; and in its discretion to supervise the administration of trusts; and all actions hereunder are declared to be proceedings in rem.

B. The venue of such actions shall be in the county where the trustees or any cotrustee resides. Upon obtaining jurisdiction the same shall not be divested by the removal of the trustee from the county where ~~such~~ the action is commenced.

C. Actions hereunder may be brought by a trustee, beneficiary, or any person affected by the administration of the trust estate. If the action is predicated upon any act or obligation of any beneficiary, ~~such~~ the beneficiary shall be a necessary party to the proceedings. The only necessary parties to such actions shall be those persons designated as beneficiaries by name or class in the instrument creating the trust and who have a ~~current~~ vested interest in the trust which is the subject of the action, those persons currently serving as trustees of ~~said~~ the trust, and any persons who may be actually receiving distributions from the trust estate at the time the action is filed; ~~contingent.~~ Contingent beneficiaries designated ~~as a~~ by name or class shall not be necessary parties ~~if their interests in the subject trust are contingent upon another named person's predeceasing the grantor of the trust.~~

D. The provisions of the statutes governing civil procedure, commencement of action, process, process by publication, appointment of guardians ad litem, supersedeas and appeal, shall govern all actions and proceedings brought under provisions of this act.

E. A court of competent jurisdiction may, for cause shown and upon notice to the beneficiaries, relieve a trustee from any or all of the duties and restrictions which would otherwise be placed upon ~~him~~ the trustee by this act, or wholly or partly excuse a trustee who has acted honestly and reasonably from liability for violations of the provisions of this act.

SECTION 23. AMENDATORY 60 O.S. 1991, Section 175.24, as amended by Section 1, Chapter 306, O.S.L. 1994 (60 O.S. Supp. 1994, Section 175.24), is amended to read as follows:

Section 175.24 A. In the absence of contrary or limiting provisions in the trust agreement or a subsequent order or decree of a court of competent jurisdiction, the trustee of an express trust is authorized:

~~A. 1.~~ 1. To exchange, reexchange, subdivide, develop, improve, dedicate to public use, make or vacate public plats, adjust boundaries, ~~and/or~~ partition real property, and to adjust differences in valuation by giving or receiving money or money's worth. Easements may be dedicated to public use without consideration if deemed by the trustee to be for the best interest of the trust; i

~~B. 2.~~ 2. To grant options and to sell real or personal property at public auction or at private sale for cash, or upon credit secured by lien upon the property sold or upon such property or a part thereof ~~and/or~~ other property; i

~~C.~~ 3. To grant or take leases of real property and of all rights and privileges above or below the surface of real property for any term or terms, including exploration for and removal of oil, gas, and other minerals, with or without options of purchase, and with or without covenants as to erection of buildings or as to renewals thereof, though the term of the lease or renewals thereof, or of such options extend beyond the term of the trust-;

~~D.~~ 4. To raze existing party walls or buildings and/or erect new party walls or buildings alone or jointly with owners of adjacent property. To make ordinary repairs and in addition thereto such extraordinary alterations in buildings or other structures which are necessary to make the property productive. To effect and keep in force, fire, rent, title, liability, casualty, or other insurance of any nature, in any form and in any amount-;

~~E.~~ 5. To compromise, contest, arbitrate, or settle any and all claims of or against the trust estate or the trustee as such. To abandon property deemed by the trustee burdensome or valueless-;

~~F.~~ 6. To pay calls, assessments, and any other sums chargeable or accruing against, or on account of shares of stock or other securities in the hands of the trustee where such payment may be legally enforceable against the trustee or any property of the trust, or the trustee deems payment expedient and for the best interest of the trust. To sell or exercise stock subscription or conversion rights, participate in foreclosures, reorganizations, consolidations, mergers, liquidations, pooling agreements and voting trusts; to assent to corporate sales, leases, and encumbrances, and in general, except as limited by the particular trust agreement, have and exercise all powers of an absolute owner in respect of such securities. In the exercise of the foregoing powers the trustee shall be authorized, where he deems such course expedient, to deposit stocks, bonds, or other securities with any protective or other committee formed by or at the instance of persons holding similar securities, under such terms and conditions respecting the deposit thereof as the trustee may approve. Any stock or other securities obtained by conversion, reorganization, consolidation, merger, liquidation, or the exercise of subscription rights shall be free, unless the trust agreement provides otherwise, from any restrictions on sale or otherwise contained in the trust agreement relative to the securities originally held-;

~~G. Whenever the trust agreement directs, authorizes, requires or permits investment of the trust estate in obligations issued or guaranteed by the United States, or any instrumentality or agency thereof, the trustee may~~

7. To make such investment directly or in the form of securities of, or other interests in, any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C.A. Section 80a-1 et seq.; provided, that the portfolio of such investment company or investment trust is limited to United States Government obligations and to repurchase agreements fully collateralized by such United States Government obligations, and provided further, that any such investment company or investment trust shall take delivery of such collateral, either directly or through an authorized custodian-;

~~H.~~ 8. To borrow money or create an indebtedness or obligation including any bond indebtedness or obligation, except as limited by the provisions of ~~Section 175.1 et seq. of this title~~ the Oklahoma Trust Act; and generally to execute any deed or other instrument and to do all things in relation to such trust necessary or desirable for carrying out any of the above powers or incident to the purposes of such trust-; and

~~I. Employ~~ 9. To employ attorneys, accountants, agents, and brokers reasonably necessary in the administration of the trust estate; permit real estate held in trust to be occupied by a surviving spouse or minor child of the trustor and, where reasonably necessary for the maintenance of the surviving wife or minor child, invest trust funds in real property to be used for a home by such beneficiary; make any contracts pertaining to oil, gas, or other natural resources as are customary in the community where the real property held in trust is situated; in the trustee's discretion pay funeral expenses of any beneficiary actually receiving benefits from the trust estate at the time of ~~his or her~~ the death of the beneficiary.

~~J. B.~~ The following rules of administration shall be applicable to all express trusts but such rules shall not be exclusive of those otherwise imposed by law unless contrary to these rules:

1. Where a trustee is authorized to sell or dispose of land, such authority shall include the right to sell or dispose of part thereof, whether the division is horizontal, vertical, or made in any other way, or undivided interests therein;

2. Where a trustee is authorized by the trust agreement creating the trust or by law to pay or apply capital money subject to the trust for any purpose or in any manner, ~~he the trustee~~ shall have and shall be deemed always to have had power to raise the money required by selling, converting, calling in, or mortgaging or otherwise encumbering all or any part of the trust property for the time being in possession;

3. A trustee shall have a lien and may ~~reimburse himself~~ be reimbursed with interest for, or pay or discharge out of the trust property, either principal or income or both, all advances made for the benefit or protection of the trust or its property and all expenses, losses, and liabilities, not resulting from the negligence of the trustee, incurred in or about the execution or protection of the trust or because of ~~his~~ the trustee holding or ownership of any property subject thereto; and

4. When the happening of any event, including marriage, divorce, attainment of a certain age, performance of educational requirements, death, or any other event, affects distribution of income or principal of trust estates, the trustees shall not be liable for mistakes of fact prior to the actual knowledge or written notice of such fact.

~~K. C.~~ The powers, duties, and responsibilities stated in ~~Section 175.1 et seq. of this title~~ the Oklahoma Trust Act or the Oklahoma Uniform Prudent Investor Act shall not be deemed to exclude other implied powers, duties, or responsibilities not inconsistent herewith.

~~L. Pay~~ D. The trustee shall pay all taxes and assessments levied or assessed against the trust estate or the trustee by governmental taxing or assessing agencies.

~~M. E.~~ No trustee shall be required to give bond unless the instrument creating the trust, or a court of competent jurisdiction in its discretion upon the application of an interested party requires a bond to be given.

SECTION 24. AMENDATORY 60 O.S. 1991, Section 175.34, is amended to read as follows:

Section 175.34 A. Where any part of the principal consists of property other than natural resources and subject to depletion, such as leaseholds, patents, copyrights, and royalty rights, and the trustee or tenant in possession is not under a duty to change the form of the investment of the principal, the full amount of rents, royalties, or return from the property shall be income to the

tenant; but where the trustee or tenant is under a duty, arising either by law or by the terms of the transaction by which the principal was established, to change the form of the investment, either at once or as soon as it may be done without loss, then the return from such property not in excess of five percent (5%) per annum of its fair inventory value or in default thereof its market value at the time the principal was established, or at its cost where purchased later, shall be deemed income and the remainder principal.

B. When a trustee is authorized to change the form of the investment, the trustee shall comply with the provisions of the Oklahoma Uniform Prudent Investor Act.

SECTION 25. AMENDATORY 60 O.S. 1991, Section 175.35, is amended to read as follows:

Section 175.35 Upon conversion of any unproductive property, allocation between principal and income shall be as follows:

~~A.~~ 1. Where any part of a principal in the possession of a trustee consists of realty or personalty, whether tangible or intangible property, which for more than a year and until disposed of as hereinafter stated has not produced an average net income, not considering depreciation or obsolescence, of at least one percent (1%) per annum of its fair inventory value or in default thereof its market value at the time the principal was established or of its cost where purchased later, and the trustee is under a duty to change the form of the investment as soon as it may be done without sacrifice of value and such change is delayed, but is made before the principal is finally distributed, then the tenant, or in case of ~~his~~ the death of the tenant, his the personal representative, shall be entitled to share in the net proceeds received from the property as delayed income to the extent hereinafter stated. The basis under this section for establishing value of property acquired through foreclosure of a mortgage held by the trust, shall be the net investment in the property up to the date of resale by the trust and not the price bid at the foreclosure sale. Net investment shall consist of all monies invested and advanced.

~~B.~~ 2. Such income shall be the difference between the net proceeds received from the property and the amount which, had it been placed at simple interest at the rate of five percent (5%) per annum for the period during which the change was delayed, would have produced the net proceeds at the time of change, but in no event shall such income be more than the amount by which the net proceeds exceed the fair inventory value of the property or in default thereof its market value at the time the principal was established or its cost where purchased later. The net proceeds shall consist of the gross proceeds received from the property less any expenses incurred in disposing of it and less all carrying charges which have been paid out of principal during the period while it has been unproductive. No allocation to income shall be made when the net proceeds from any sale are less than the value of the property as determined by ~~subsection A~~ paragraph 1 of this section.

~~C.~~ 3. The change shall be taken to have been delayed from the time when the duty to make it first arose, which shall be presumed, in the absence of evidence to the contrary, to be one (1) year after the trustee first received the property if then unproductive, otherwise one (1) year after it became unproductive.

~~D.~~ 4. If the tenant has received any income from the property or has had any beneficial use thereof during the period while the change has been delayed ~~his~~ the tenant's share of the delayed income shall be reduced by the amount of such income received or the value of the use had.

~~E. 5.~~ In case of successive tenants the delayed income shall be divided among them or their representatives according to the length of the period for which each was entitled to income.

~~F. Where a trustee is required to change the form of investment under the provisions of the instrument by which the trust is created or under the existing law, he shall use reasonable care in determining the necessity for such change and the time and manner of changing said form of investment. Provided that the provisions in this section shall not be construed to require a trustee to change the form of investment.~~

SECTION 26. AMENDATORY 60 O.S. 1991, Section 175.55, is amended to read as follows:

Section 175.55 A. A bank, trust company, or affiliate of a bank or trust company which serves as a fiduciary, trustee, custodian, managing agent, personal representative, or otherwise may invest and reinvest assets that it maintains in its trust department or trust company in the securities of any open-end or closed-end management investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C., Section 80a-1 through 80a-64, as amended.

B. Any investment or reinvestment made pursuant to subsection A of this section shall ~~be subject to the standards of prudence, discretion and intelligence set forth in Section 161 of Title 60 of the Oklahoma Statutes~~ comply with the provisions of the Oklahoma Uniform Prudent Investor Act.

C. A bank, trust company or an affiliate of a bank or trust company which is providing services to an investment company or investment trust as investment adviser, sponsor, distributor, custodian, transfer agent, administrator, registrar, or otherwise and who is receiving reasonable remuneration for such services, may make investments and reinvestments pursuant to subsections A and B of this section in said investment company or investment trust.

D. Any bank, trust company or affiliate of a bank or trust company which makes investments or reinvestments pursuant to subsection C of this section shall not receive any fee or charge for identical services as an investment adviser, sponsor, distributor, custodian, transfer agent, administrator, registrar, or otherwise if it receives any fee or charge for identical services for making investments and reinvestments of the funds when serving as a fiduciary, trustee, custodian, managing agent, personal representative or otherwise.

SECTION 27. REPEALER 60 O.S. 1991, Section 162, is hereby repealed.

SECTION 28. This act shall become effective November 1, 1995.

Passed the House of Representatives the 22nd day of May, 1995.

Speaker of the House of
Representatives

Passed the Senate the 25th day of May, 1995.

President of the Senate