ENROLLED SENATE
BILL NO. 672

By: Taylor and Henry of the Senate

and

Benson, Kinnamon and Toure of the House

An Act relating to property; amending Sections 20 and 21, Chapter 115, O.S.L. 1998 (60 O.S. Supp. 1998, Sections 175.411 and 175.412), which relate to receipts normally apportioned during administration of trust; declaring violation by trustee of certain duties to beneficiary to be a breach of trust; stating remedies for breach of trust; stating measure of certain damages; providing for costs, expenses, and attorney fees; limiting time for certain actions; stating required notice for receipt of certain report or statement; stating to whom certain duties are owed and determining holders of certain rights; allowing trustee to follow certain direction of settlor; making certain exculpatory provisions unenforceable and stating presumption; prohibiting beneficiary from holding trustee liable for breach of trust under certain circumstances; determining trustees' personal liability for certain contracts and obligations; limiting liability of certain persons assisting or dealing with trustee under certain circumstances; modifying allocation of certain receipts from an interest in minerals; deleting language relating to application of act; determining application of act to allocation of receipts of certain interest by trusts existing on and created after effective date of act and providing exception; providing for estimation of certain rate of growth; making certain deduction and transfer to principal discretionary; conforming language; repealing 60 O.S. 1991, Section 175.22, which relates to beneficiary's power to relieve trustee of duties, restrictions, and liabilities; providing for codification; and declaring an emergency.

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 175.57 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A violation by a trustee of a duty the trustee owes a beneficiary is a breach of trust.

B. To remedy a breach of trust that has occurred or may occur, the court may:

1. Compel the trustee to perform the trustee’s duties;

2. Enjoin the trustee from committing a breach of trust;

3. Compel the trustee to redress a breach of trust by payment of money or otherwise;

4. Order a trustee to account;

5. Appoint a receiver or temporary trustee to take possession of the trust property and administer the trust;

6. Suspend or remove the trustee;

7. Reduce or deny compensation to the trustee;

8. Subject to subsection I of this section, void an act of the trustee, impose an equitable lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or

9. Grant any other appropriate remedy.

C. A beneficiary may charge a trustee who commits a breach of trust with the amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred, or, if greater, the profit that the trustee made by reason of the breach.

D. In a judicial proceeding involving a trust, the court may in its discretion, as justice and equity may require, award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust which is the subject of the controversy.

E. 1. Unless previously barred by adjudication, consent, or other limitation, a claim against a trustee for breach of trust is barred as to a beneficiary who has received from the trustee a report or other statement adequately disclosing the existence of the claim unless:

a. a judicial proceeding to assert the claim is commenced within two (2) years after receipt of the report or statement or, if no report or statement is received, within two (2) years after the termination of the trust relationship between the beneficiary and that particular trustee, and

b. the report or other statement informs the beneficiary of this time limitation.

A report or statement adequately discloses the existence of a claim if it provides sufficient information so that the beneficiary knows of the claim or reasonably should have inquired into its existence. A claim this barred does not include an action to recover for fraud or misrepresentation related to the report or other statement.

2. For the purpose of paragraph 1 of this subsection, a beneficiary is deemed to have received a report or other statement:

a. in the case of an adult, if it is received by the adult personally, or if the adult lacks capacity, if it is received by the adult's conservator, guardian, or agent with authority, or

b. in the case of a minor, if it is received by the minor's guardian or conservator or, if the minor does not have a guardian or conservator, if it is received by a parent of the minor who does not have a conflict of interest.

3. Except as otherwise provided by the terms of a trust, while the trust is revocable and the settlor has capacity to revoke, the rights of the beneficiaries are held by, and the duties of the trustee are owed exclusively to the settlor; the rights to be held by and owed to the beneficiaries arise only upon the settlor's death or incapacity. The trustee may follow a written direction of the settlor, even if contrary to the terms of the trust. The holder of a presently exercisable power of withdrawal or a testamentary general power of appointment has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

F. 1. A term of the trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

a. relieves a trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interest of the beneficiaries, or

b. was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

2. An exculpatory term drafted by or on behalf of the trustee is presumed to have been inserted as a result of an abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory term is fair under the circumstances and that its existence and contents were adequately communicated to the settlor.

G. A beneficiary may not hold a trustee liable for a breach of trust if the beneficiary, while having capacity, consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

1. The beneficiary at the time of the consent, release, or ratification did not know of the beneficiary's rights and of the material facts that the trustee knew, or with the exercise of reasonable inquiry, the beneficiary should have known, and that the trustee did not reasonably believe that the beneficiary knew; or

2. The consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee.

H. 1. Except as otherwise agreed, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administration of the trust if the trustee in the contract discloses the fiduciary capacity.

2. A trustee is personally liable for obligations arising from ownership or control of trust property, or for torts committed in the course of administering a trust, only if the trustee is personally at fault, whether negligently or intentionally.

3. A trustee who does not join in exercising a power held by three or more trustees is not liable to third persons for the consequences of the exercise of the power. A dissenting trustee who joins in an action at the direction of the majority cotrustees is not liable to third persons for the action if the dissenting trustee expressed the dissent in writing to any other cotrustee at or before the time the action was taken.

4. A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust, may be asserted against the trust in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable on the claim.

I. 1. A person who in good faith assists a trustee or who in good faith and for value deals with a trustee without knowledge that the trustee is exceeding or improperly exercising the trustee's powers is protected from liability as if the trustee properly exercised the power.

2. Dealing in good faith with another person with knowledge that the other person is a trustee does not place a third person on notice to inquire into the extent of the trustee's powers or the propriety of their exercise.

3. A person who in good faith deals with another person with knowledge that the other person is a trustee is not solely on that account placed on notice to inquire into the extent of the trustee's powers or the propriety of their exercise or to see to the proper application of assets of the trust paid or delivered to a trustee.

4. A person who in good faith assists a former trustee or who for value and in good faith deals with a former trustee without knowledge that the person is no longer a trustee is protected from liability as if the former trustee were still a trustee.

5. The protection provided by this section to persons assisting or dealing with a trustee is secondary to that provided under comparable provisions of other laws relating to commercial transactions or to the transfer of securities by fiduciaries.

SECTION 2. AMENDATORY Section 20, Chapter 115, O.S.L. 1998 (60 O.S. Supp. 1998, Section 175.411), is amended to read as follows:

Section 175.411

MINERALS, WATER, AND OTHER NATURAL RESOURCES

A. To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:

1. If received as ~~nominal~~ a bonus, delay rental or ~~nominal~~ annual rent on a lease, a receipt of less than One Thousand Dollars ($1,000.00) must be allocated to income and a receipt of One Thousand Dollars ($1,000.00) or more must be allocated fifteen percent (15%) to principal and eighty-five percent (85%) to income;

2. If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal;

3. If ~~an amount~~ received as a royalty, shut-in-well payment, or take-or-pay payment, ~~bonus, or delay rental is more than nominal, ninety percent (90%)~~ a receipt must be allocated fifteen percent (15%) to principal and ~~the balance~~ eighty-five percent (85%) to income;

4. If an amount is received from a working interest or any other interest not provided for in paragraph 1, 2, or 3 of this subsection, ~~ninety percent (90%) of the net amount received~~ a receipt must be allocated fifteen percent (15%) to principal and ~~the balance~~ eighty-five percent (85%) to income.

B. An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, ninety percent (90%) of the amount must be allocated to principal and the balance to income.

C. This act applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

D. ~~If a trust owns an interest in minerals, water, or other natural resources on the effective date of this act, the trustee may allocate receipts from the interest as provided in this act or in the manner used by the trustee before the effective date of this act. If the trust acquires an interest in minerals, water, or other natural resources after the effective date of this act, the trustee shall allocate receipts from the interest as provided in this act.~~ If a trust exists on the effective date of this act, the trustee may

allocate receipts from an interest in minerals, water, or other natural resources as provided in this act or in the manner used by the trustee before the effective date of this act. For every trust created after the effective date of this act, the trustee shall allocate receipts from an interest in minerals, water, or other natural resources as provided in this act. If and to the extent that the terms of a trust expressly provide for a different allocation of receipts or grants the trustee discretionary authority to determine the amount of the allocation, this act shall not apply to those receipts.

SECTION 3. AMENDATORY Section 21, Chapter 115, O.S.L. 1998 (60 O.S. Supp. 1998, Section 175.412, is amended to read as follows:

Section 175.412

TIMBER

A. To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:

1. To income to the extent that the amount of timber removed from the land does not exceed the estimated rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;

2. To principal to the extent that the amount of timber removed from the land exceeds the estimated rate of growth of the timber or the net receipts are from the sale of standing timber;

3. To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in paragraphs 1 and 2 of this subsection; or

4. To principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to paragraph 1, 2, or 3 of this subsection.

B. In determining net receipts to be allocated pursuant to subsection A of this section, a trustee ~~shall~~ may deduct and transfer to principal a reasonable amount for depletion.

C. This act applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.

D. ~~If a trust owns an interest in timberland on the effective date of this act, the trustee may allocate net receipts from the sale of timber and related products as provided in this act or in the manner used by the trustee before the effective date of this act. If the trust acquires an interest in timberland after the effective date of this act, the trustee shall allocate net receipts from the sale of timber and related products as provided in this~~

~~act.~~ If a trust exists on the effective date of this act, the trustee may allocate receipts from an interest in timber as provided in this act or in the manner used by the trustee before the effective date of this act. For every trust created after the effective date of this act, the trustee shall allocate receipts from an interest in timber as provided in this act. If and to the extent that the terms of a trust expressly provide for a different allocation of receipts or grants the trustee discretionary authority to determine the amount of the allocation, this act shall not apply to those receipts.

SECTION 4. REPEALER 60 O.S. 1991, Section 175.22, is hereby repealed.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 27th day of May, 1999.

President of the Senate

Passed the House of Representatives the 27th day of May, 1999.

Speaker of the House of Representatives