STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1063 By: Benson of the House

and

Haney of the Senate

COMMITTEE SUBSTITUTE

An Act relating to property; amending Section 4, Chapter 115, O.S.L. 1998, as amended by Section 36, Chapter 422, O.S.L. 1998 (60 O.S. Supp. 1998, Section 175.104), which relates to the Oklahoma Uniform Principal and Income Act; modifying powers of trustees to make adjustments under certain circumstances; authorizing adjustments for trustees having certain designation pursuant to the Internal Revenue Code; and providing an effective date.

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

SECTION 1. AMENDATORY Section 4, Chapter 115, O.S.L. 1998, as amended by Section 36, Chapter 422, O.S.L. 1998 (60 O.S. Supp. 1998, Section 175.104), is amended to read as follows:

Section 175.104

TRUSTEE'S POWER TO ADJUST

A. A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in subsection A of Section 175.103 of Title 60 of the Oklahoma Statutes, that the trustee is unable to comply with subsection B of Section 175.103 of Title 60 of the Oklahoma Statutes.

B. In deciding whether and to what extent to exercise the power conferred by subsection A of this section, a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

1. The nature, purpose, and expected duration of the trust;

2. The intent of the settlor;

3. The identity and circumstances of the beneficiaries;

4. The needs for liquidity, regularity of income, and preservation and appreciation of capital;

5. The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;

6. The net amount allocated to income under the other sections of this act and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;

7. Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;

8. The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and

9. The anticipated tax consequences of an adjustment.

C. A trustee may not make an adjustment:

1. That diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;

2. That reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;

3. That changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;

4. From any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;

5. If possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;

6. If possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

7. If the trustee is a beneficiary of the trust <u>(except where the trustee is a charitable, religious or educational organization recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code and as a beneficiary will hold the beneficial interest as an institutional endowment fund as that term is defined in the Oklahoma Uniform Management of Institutional Endowment Funds Act solely for the benefit of one or more other charitable, religious or educational organizations recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code)</u>; or

8. If the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.

D. If paragraph 5, 6, 7, or 8 of subsection C of this section applies to a trustee and there is more than one trustee, a cotrustee

to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.

E. A trustee may release the entire power conferred by subsection A of this section or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in paragraphs 1 through 6 or 8 of subsection C of this section or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection C of this section. The release may be permanent or for a specified period, including a period measured by the life of an individual.

F. Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection A of this section.

SECTION 2. This act shall become effective November 1, 1999.

47-1-6241 MAH 6/11/15