

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE  
FOR  
HOUSE BILL NO. 2426

By: Carey

COMMITTEE SUBSTITUTE

An Act relating to property; creating the Oklahoma Uniform Trust Code; providing for scope of code; defining terms; defining knowledge; providing for applicability of code; allowing for applicability of common law; stating the governing law; providing for principal place of administration; providing for notice; allowing for nonjudicial settlement agreements; providing for standard rules of construction to interpret trusts; providing for revocation; allowing for court intervention; requiring submission to jurisdiction of this state; providing for subject-matter jurisdiction; requiring venue to be in this state; stating effect of representation; allowing power of appointment; allowing representation by parents and fiduciaries; allowing representation by person having substantial interest; allowing appointment of representative; outlining creation of trust; providing requirements for creation of trust; allowing for creation in other jurisdictions; stating purpose of trusts; allowing for charitable trusts; voiding trusts under certain circumstances; allowing evidence of oral trust; allowing trust for care of animal; allowing for noncharitable trust without beneficiary; providing for termination of noncharitable trusts; providing conditions for termination of trusts; allowing for termination under unanticipated circumstances; providing for applicability of doctrine of cy pres; providing for termination of uneconomic trust; allowing trusts to be reformed; modifying trusts to reach certain tax objectives; providing for combining and dividing of trusts; stating rights of creditor of beneficiary; stating spendthrift provisions; providing exceptions to spendthrift provisions; allowing for discretionary trusts; providing for claims of creditor; allowing for overdue distribution; exemption of trust from certain personal obligations; providing standards for revocable trust; providing conditions for revocation; stating powers of settlor; limiting action contesting validity of trust; providing for acceptance of trusteeship; requiring bond; allowing cotrustees; providing for appointment of successors; providing for resignation of trustee; providing for removal of trustee; requiring delivery by former trustee; providing for compensation to trustee; providing for reimbursement to trustee; stating duties of trustee; requiring duty of loyalty; requiring trustee to be impartial; requiring prudent administration of trust;

allowing for cost of administration; allowing for use of special skills; allowing for delegation by trustee; giving trustee power to direct; requiring trustee to control and protect trust; requiring trustee to keep certain records; providing exceptions to prohibition on maintaining joint deposit accounts; allowing trustee to enforce and defend claims; allowing trustee to collect trust property; mandating trustee inform and report to beneficiaries; providing for discretionary powers; providing for general powers of trustee; providing for specific powers of trustee; requiring distribution upon termination of trust; stating prudent investor rule; providing for standard of care; allowing for diversification; requiring review of assets; allowing for compliance in light of facts at time of investment; providing standard prudent investor language; providing for breach of trust; providing remedies; allowing damages; allowing damages in absence of breach; allowing attorney fees and costs; limiting actions against trustee; providing for reliance on trust instrument; stating events that effect trust; providing exculpation of trustee; allowing for consent of beneficiary, release or ratification; limiting personal liability of trustee; protecting interests of general partners; protecting persons dealing with trustee; providing for certification of trust; requiring uniformity of application and construction; providing for applicability of code to federal law; providing for severability; stating applicability of code to existing relationships; providing for construction of trust under marital deduction; amending 6 O.S. 2001, Section 902, which relates to trustee deposit accounts; modifying method of establishing a Totten Trust; modifying certain term; providing method of establishing deposit accounts after certain date; providing for certificate of trust for deposit accounts; providing status for joint deposit accounts by two or more trusts; providing permitted purposes; amending 18 O.S. 2001, Sections 381.39a and 381.40a, which relate to joint accounts and Totten Trusts; modifying method of payable accounts; modifying method of establishing a Totten Trust; modifying certain term; providing method of establishing deposit accounts after certain date; providing for certificate of trust for deposit accounts; providing status for joint deposit accounts by two or more trusts; repealing 60 O.S. 2001, Sections 131, 136, 137, 140, 143, 175, 175.1, 175.2, 175.3, 175.4, 175.5, 175.6, 175.6a, 175.6b, 175.7, 175.8, 175.9, 175.10, 175.11, 175.12, 175.13, 175.14, 175.15, 175.16, 175.17, 175.18, 175.19, 175.20, 175.21, 175.23, 175.24, 175.25, 175.37, 175.38, 175.39, 175.40, 175.41, 175.42, 175.43, 175.44, 175.45, 175.47, as amended by Section 6, Chapter 217, O.S.L. 2003, 175.48, 175.49, 175.50, 175.51, 175.53, 175.54, 175.55, 175.56, 175.57, 175.60, 175.61, 175.62, 175.63, 175.64, 175.65, 175.66, 175.67, 175.68, 175.69, 175.70, 175.71, 175.72, 181, 601 and 602 (60 O.S. Supp. 2003, Section 175.47), which relate to trusts; providing for codification; providing for recodification; 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 1101 of Title 60, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 100 of this act shall be known and may be cited as the "Oklahoma Uniform Trust Code".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1102 of Title 60, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Uniform Trust Code applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1103 of Title 60, unless there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Uniform Trust Code:

1. "Action", with respect to an act of a trustee, includes a failure to act;

2. "Beneficiary" means a person that:

a. has a present or future beneficial interest in a trust, vested or contingent, or

b. in a capacity other than that of trustee, holds a power of appointment over trust property;

3. "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in subsection A of Section 26 of this act;

4. "Conservator" means a person appointed by the court to administer the estate of an adult individual;

5. "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment;

6. "Guardian" means a person appointed by the court, to make decisions regarding the person or property of a minor or adult, pursuant to the Oklahoma Guardianship and Conservatorship Act. The term does not include a guardian ad litem;

7. "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust;

8. "Jurisdiction", with respect to a geographic area, includes a state or country;

9. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity;

10. "Power of withdrawal" means a presently exercisable general power of appointment other than a power exercisable only upon consent of the trustee or a person holding an adverse interest;

11. "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein;

12. "Qualified beneficiary" means, unless the trust instrument provides otherwise, a beneficiary who, on the date the qualification of the beneficiary is determined:

- a. is a distributee or permissible distributee of a present interest in trust income or principal or has a vested remainder interest in the trust,
- b. is a charitable organization expressly entitled to receive benefits under the terms of a charitable trust or a person appointed to enforce a trust created for

the care of an animal or another noncharitable purpose as provided in Section 29 or 30 of this act, or

c. is the Attorney General of this state with respect to a charitable trust having its principal place of administration in this state;

13. "Revocable", as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest;

14. "Settlor" means a person, including a testator, who creates or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to the contribution of the person except to the extent another person has the power to revoke or withdraw that portion. The term "trustor" shall also mean settlor;

15. "Spendthrift provision" means a term of a trust which restrains both voluntary and involuntary transfer of the interest of the beneficiary;

16. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state;

17. "Terms of a trust" means the manifestation of the intent of the settlor regarding the provisions of a trust as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding;

18. "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto; and

19. "Trustee" includes an original, additional, and successor trustee and a cotrustee.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1104 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Subject to subsection B of this section, a person has knowledge of a fact if the person:

1. Has actual knowledge of it;
2. Has received a notice or notification of it; or
3. From all the facts and circumstances known to the person at the time in question, has reason to know it.

B. An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the attention of the employee if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the regular duties of the individual or the individual knows a matter involving the trust would be materially affected by the information.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1105 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in the terms of the trust, the Oklahoma Uniform Trust Code governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

B. Unless the trust instrument provides otherwise, the trustee shall have a duty under paragraphs 2 and 3 of subsection B of

Section 71 of this act to notify the qualified beneficiaries of an irrevocable trust who have attained twenty-five (25) years of age of the existence of the trust, the identity of the trustee, and their right to request the reports of the trustee.

C. The terms of a trust prevail over any provision of the Oklahoma Uniform Trust Code except:

1. The requirements for creating a trust;
2. The duty of a trustee to act in good faith and in accordance with the purposes of the trust;
3. The requirement that a trust and its terms be for the benefit of its beneficiaries and that the trust have a purpose that is lawful, not contrary to public policy, and possible to achieve;
4. The power of the court to modify or terminate a trust under Sections 31 through 37 of this act;
5. The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in Sections 39 through 45 of this act;
6. The power of the court under Section 51 of this act to require, dispense with, or modify or terminate a bond;
7. The power of the court under subsection B of Section 57 of this act to adjust the compensation of a trustee specified in the terms of the trust which is unreasonably low or high;
8. The duty under subsection A of Section 71 of this act to respond to the request of a qualified beneficiary of an irrevocable trust for the reports of a trustee and other information reasonably related to the administration of a trust;
9. The effect of an exculpatory term under Section 90 of this act;
10. The rights under Sections 92 through 94 of this act of a person other than a trustee or beneficiary;
11. Periods of limitation for commencing a judicial proceeding;

12. The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and

13. The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in Sections 15 and 16 of this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1106 of Title 60, unless there is created a duplication in numbering, reads as follows:

The common law of trusts and principles of equity supplement the Oklahoma Uniform Trust Code, except to the extent modified by this act or another statute of this state.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1107 of Title 60, unless there is created a duplication in numbering, reads as follows:

The meaning and effect of the terms of a trust are determined by:

1. The law of the jurisdiction designated in the terms unless the designation of the law of that jurisdiction is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue; or

2. In the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1108 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms of a trust designating the principal place of administration are valid and controlling if:



1. The principal place of business of a trustee is located in or a trustee is a resident of the designated jurisdiction; or

2. All or part of the administration occurs in the designated jurisdiction.

B. A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.

C. Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the duty prescribed by subsection B of this section, may transfer the principal place of administration of the trust to another state or to a jurisdiction outside of the United States.

D. The trustee shall notify the qualified beneficiaries of a proposed transfer of the principal place of administration of the trust to a location outside of the State of Oklahoma, not less than sixty (60) days before initiating the transfer. The notice of the proposed transfer shall include:

1. The name of the jurisdiction to which the principal place of administration is to be transferred;

2. The address and telephone number at the new location at which the trustee can be contacted;

3. An explanation of the reasons for the proposed transfer;

4. The date on which the proposed transfer is anticipated to occur; and

5. The date, not less than sixty (60) days after the giving of the notice, by which the qualified beneficiary shall notify the trustee of an objection to the proposed transfer.

E. The authority of a trustee under this section to transfer the principal place of administration of the trust to a location outside of this state terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

F. In connection with a transfer of the principal place of administration of the trust, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to Section 53 of this act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1109 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Notice to a person under the Oklahoma Uniform Trust Code or the sending of a document to a person under this code shall be accomplished in a manner reasonably suitable under the circumstances and likely to result in the receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the last-known place of residence of the person or place of business, or a properly directed electronic message.

B. Notice otherwise required under the Oklahoma Uniform Trust Code or a document otherwise required to be sent under the Oklahoma Uniform Trust Code need not be provided to a person whose identity or location is unknown to and not reasonably ascertainable by the trustee.

C. Notice under the Oklahoma Uniform Trust Code or the sending of a document under this code may be waived by the person to be notified or sent the document.

D. Notice of a judicial proceeding must be given as provided in the applicable rules of civil procedure.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1110 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. For purposes of this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

B. Except as otherwise provided in subsection C of this section, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

C. A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under the Oklahoma Uniform Trust Code or other applicable law.

D. Matters that may be resolved by a nonjudicial settlement agreement include, but are not limited to:

1. The interpretation or construction of the terms of the trust;

2. The approval of a report or accounting of the trustee;

3. Direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power;

4. The resignation or appointment of a trustee and the determination of the compensation of the trustee;

5. Transfer of a principal place of administration of a trust; and

6. Liability of a trustee for an action relating to the trust.

E. Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in Sections 17 through 21 of this act was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

F. Nonjudicial settlement agreements shall be governed by the laws applicable to contracts.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1111 of Title 60, unless there is created a duplication in numbering, reads as follows:

The rules of construction that apply in this state to the interpretation of and disposition of property by will also apply as

appropriate to the interpretation of the terms of a trust and the disposition of the trust property.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1112 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. If, after making a trust, the settlor is divorced, all provisions in such trust in favor of the former spouse of the settlor, which are to take effect upon the death of the settlor are thereby revoked. Annulment of the marriage of the settlor shall have the same effect as a divorce. In the event of either divorce or annulment, the former spouse of the settlor shall be treated for all purposes under the express trust as having predeceased the settlor. For purposes of this section, "trust" shall include a "Totten Trust" as described in Section 902 of Title 6 of the Oklahoma Statutes and any trust created under the Oklahoma Uniform Trust Code and shall not include a "business trust."

B. Subsection A of this section shall not apply:

1. If the decree of divorce or annulment is vacated;
2. If the settlor had remarried said former spouse and was married to said spouse at the time of the death of the settlor;
3. If the decree of divorce or annulment contains a provision expressing an intention to the contrary to subsection A of this section;
4. If the settlor makes the express trust subsequent to the divorce or annulment;
5. To the extent, if any, the express trust contains a provision expressing an intention to the contrary to subsection A of this section; or
6. If prior to the death of the settlor and subsequent to the divorce or annulment, the settlor executes an amendment to said express trust which is not revoked or held invalid.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1113 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. The court may intervene in the administration of a trust to the extent its jurisdiction is invoked by an interested person or as provided by law.

B. A trust is not subject to continuing judicial supervision unless ordered by the court.

C. A judicial proceeding involving a trust may relate to any matter involving the administration of the trust, including a request for instructions and an action to declare rights.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1114 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. By accepting the trusteeship of a trust having its principal place of administration in this state or by moving the principal place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

B. With respect to their interests in the trust, the beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

C. This section does not preclude other methods of obtaining jurisdiction over a trustee, beneficiary, or other person receiving property from the trust.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1115 of Title 60, unless there is created a duplication in numbering, reads as follows:

The district court has exclusive jurisdiction of proceedings in this state brought by a trustee or beneficiary concerning the administration of a trust.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1116 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in subsection B of this section, venue for a judicial proceeding involving a trust is in the county of this state in which the principal place of administration of the trust is or will be located and, if the trust is created by will and the estate is not yet closed, in the county in which the estate of the decedent is being administered.

B. If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a county of this state in which a beneficiary resides, in a county in which any trust property is located, and if the trust is created by will, in the county in which the estate of the decedent was or is being administered.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1117 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Notice to a person who may represent and bind another person under the Oklahoma Uniform Trust Code has the same effect as if notice were given directly to the other person.

B. The consent of a person who may represent and bind another person under this code is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

C. Except as otherwise provided in Sections 32 and 47 of this act, a person who under this article may represent a settlor who lacks capacity may receive notice and give a binding consent on the behalf of the settlor.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1118 of Title 60, unless there is created a duplication in numbering, reads as follows:

To the extent there is no conflict of interest between the holder of a general testamentary power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests as permissible appointees, takers in default, or otherwise are subject to the power.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1119 of Title 60, unless there is created a duplication in numbering, reads as follows:

To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

1. A conservator or guardian of the property may represent and bind the estate that the conservator or guardian of the property controls;

2. A guardian of the person may represent and bind the ward if a guardian of the property or conservator of the estate of the ward has not been appointed;

3. An agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

4. A trustee may represent and bind the beneficiaries of the trust;

5. A personal representative of the estate of the decedent may represent and bind persons interested in the estate; and

6. A parent may represent and bind the minor of the parent or unborn child if a conservator or guardian for the child has not been appointed.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1120 of Title 60, unless there is created a duplication in numbering, reads as follows:

Unless otherwise represented, a minor, incapacitated, or unborn individual or a person whose identity or location is unknown and not reasonably ascertainable may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1121 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. If the court determines that an interest is not represented under the Oklahoma Uniform Trust Code or that the otherwise available representation might be inadequate, the court may appoint a representative to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor, incapacitated, or unborn individual or a person whose identity or location is unknown. A representative may be appointed to represent several persons or interests.

B. A representative may act on behalf of the individual represented with respect to any matter arising under the Oklahoma Uniform Trust Code, whether or not a judicial proceeding concerning the trust is pending.

C. In making decisions, a representative may consider general benefit accruing to the living members of the family of the individual.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1122 of Title 60, unless there is created a duplication in numbering, reads as follows:

A trust may be created by:



1. Transfer of property to another person as trustee during the lifetime of the settlor or by will or other disposition taking effect upon the death of the settlor;

2. Declaration by the owner of property that the owner holds identifiable property as trustee;

3. Exercise of a power of appointment in favor of a trustee; or

4. Agreement between settlor and trustee.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1123 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A trust is created only if:

1. The settlor has capacity to create a trust;

2. The settlor indicates an intention to create the trust;

3. The trust has a definite beneficiary or is:

a. a charitable trust,

b. a trust for the care of an animal, as provided in Section 29 of this act, or

c. a trust for a noncharitable purpose, as provided in Section 30 of this act;

4. The trustee has duties to perform; and

5. The same person is not the sole trustee and sole beneficiary.

B. A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

C. A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1124 of Title 60, unless there is created a duplication in numbering, reads as follows:

A trust not created by will is validly created if its creation complies with the law of jurisdiction in which the trust instrument was executed or the law of the jurisdiction in which, at the time of creation:

1. The settlor was domiciled, had a place of abode, or was a national;
2. A trustee was domiciled or had a place of business; or
3. Any trust property was located.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1125 of Title 60, unless there is created a duplication in numbering, reads as follows:

A trust may be created only to the extent its purposes are lawful, not contrary to public policy, and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1126 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A charitable trust may be created for any eleemosynary purposes, the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.

B. If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the intention of the settlor to the extent it can be ascertained.

C. The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust.

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1127 of Title 60, unless there is created a duplication in numbering, reads as follows:

A trust is void to the extent its creation was induced by fraud, duress, or undue influence.

SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1128 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Except as required by a statute other than the Oklahoma Uniform Trust Code, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms may be established only by clear and convincing evidence.

B. A beneficiary may be a cotrustee and the legal and equitable title to the trust estate shall not merge by reason thereof. Provided, however, that no trust in relation to real property shall be valid, unless created or declared:

1. By a written instrument subscribed by the trustor or agent of the trustor authorized by writing; or

2. By the instrument under which the trustee claims the estate affected.

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1129 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A trust may be created to provide for the care of an animal alive during the lifetime of the settlor. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the lifetime of the settlor, upon the death of the last surviving animal.

B. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animals may request the court to

appoint a person to enforce the trust or to remove a person appointed.

C. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use, considering the current and future needs of the animals. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the successors of the settlor in interest. Notwithstanding the foregoing, the settlor may specifically override this provision by specific reference and prevent the distribution of property in excess of the intended use until all the animals are deceased or as otherwise provided for by the terms of the trust.

SECTION 30. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1130 of Title 60, unless there is created a duplication in numbering, reads as follows:

Except as otherwise provided in Section 29 of this act or by another statute, the following rules apply:

1. A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee. The trust may not be enforced for more than twenty-one (21) years;

2. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court; and

3. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use shall

be distributed to the settlor, if then living, otherwise to the successors of the settlor in interest.

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1131 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. In addition to the methods of termination prescribed by Sections 32 through 35 of this act, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

B. A proceeding to approve or disapprove a proposed modification or termination under Sections 32 through 37 of this act, or trust combination or division under Section 38 of this act, may be commenced by a trustee or beneficiary, and a proceeding to approve or disapprove a proposed modification or termination under Section 32 of this act may be commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to modify the trust under Section 34 of this act.

SECTION 32. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1132 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. A power to consent of the settlor to the modification or termination of a trust may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the conservator of the settlor with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the guardian of the settlor with the approval of the court supervising the

guardianship if an agent is not so authorized and a conservator has not been appointed.

B. A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

C. A spendthrift provision in the terms of the trust is not presumed to constitute a material purpose of the trust.

D. Upon termination of a trust under subsection A or B of this section, the trustee shall distribute the trust property as agreed by the beneficiaries.

E. If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection A or B of this section, the modification or termination may be approved by the court if the court is satisfied that:

1. If all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

2. The interests of a beneficiary who does not consent will be adequately protected.

SECTION 33. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1133 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification shall be made in accordance with the probable intention of the settlor.

B. The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the administration of the trust.

C. Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

SECTION 34. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1134 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in subsection B of this section, if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:

1. The trust does not fail, in whole or in part;

2. The trust property does not revert to the settlor or the successors in interest of the settlor; and

3. The court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the charitable purposes of the settlor.

B. A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection A of this section to apply cy pres to modify or terminate the trust only if, when the provision takes effect:

1. The trust property is to revert to the settlor and the settlor is still living; or

2. Fewer than twenty-one (21) years have elapsed since the date of the creation of the trust.

SECTION 35. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1135 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than Fifty Thousand Dollars (\$50,000.00) may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

B. The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.

C. Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

D. This section does not apply to an easement for conservation or preservation.

SECTION 36. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1136 of Title 60, unless there is created a duplication in numbering, reads as follows:

The court may reform the terms of a trust, even if unambiguous, to conform the terms to the intention of the settlor if it is proved by clear and convincing evidence that both the intent of the settlor and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

SECTION 37. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1137 of Title 60, unless there is created a duplication in numbering, reads as follows:

To achieve the tax objectives of the settlor, the court may modify the terms of a trust in a manner that is not contrary to the probable intention of the settlor. The court may provide that the modification has retroactive effect.

SECTION 38. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1138 of Title 60, unless there is created a duplication in numbering, reads as follows:



After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.

SECTION 39. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1139 of Title 60, unless there is created a duplication in numbering, reads as follows:

To the extent the interest of a beneficiary is not protected by a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the interest of the beneficiary by attachment of present or future distributions to or for the benefit of the beneficiary or by other means. The court may limit the award to such relief as is appropriate under the circumstances.

SECTION 40. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1140 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A spendthrift provision is valid only if it restrains both voluntary and involuntary transfer of the interest of a beneficiary.

B. A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust", or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the interest of the beneficiary.

C. A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision and, except as otherwise provided in the Oklahoma Uniform Trust Code, a creditor or assignee of the beneficiary may not reach the interest or a distribution by the trustee before its receipt by the beneficiary.

SECTION 41. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1141 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. In this section, "child" includes any person for whom an order or judgment for child support has been entered in this or another state.

B. 1. Even if a trust contains a spendthrift provision, a child of the beneficiary, spouse, or a person who has provided necessary services to the beneficiary, who has a judgment or court order against the beneficiary for support or maintenance, or a judgment creditor who has provided services for the protection of an interest of the beneficiary in the trust, may obtain from a court an order attaching present or future distributions of all income due or to accrue in the future to the beneficiary.

2. In all cases not mentioned in paragraph 1 of this subsection, all income due or to accrue in the future to the beneficiary in excess of Twenty-five Thousand Dollars (\$25,000.00) per calendar year shall be subject to garnishment by creditors of the beneficiary and shall be fully alienable by the beneficiary.

C. A spendthrift provision is unenforceable against a claim of this state or the United States to the extent a statute of this state or federal law so provides.

SECTION 42. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1142 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the discretion of the trustee, even if:

1. The discretion is expressed in the form of a standard of distribution; or

2. The trustee has abused the discretion.

B. This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

SECTION 43. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1143 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

1. During the lifetime of the settlor, the property of a revocable trust is subject to claims of the creditors of the settlor; and

2. With respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the benefit of the settlor. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the interest of the settlor in the portion of the trust attributable to the contribution of the settlor.

B. For purposes of this section:

1. During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and

2. Upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in Section 2041(b)(2) or 2514(e) of the Internal Revenue Act of 1986, or Section 2503(b) of the Internal Revenue Act of 1986, in each case as in effect on the effective date of this act, or as later amended.

SECTION 44. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1144 of Title 60, unless there is created a duplication in numbering, reads as follows:

Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon

termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the mandated distribution date.

SECTION 45. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1145 of Title 60, unless there is created a duplication in numbering, reads as follows:

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

SECTION 46. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1146 of Title 60, unless there is created a duplication in numbering, reads as follows:

The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will. This section does not impose the same formalities on the execution of a trust instrument as are imposed on the execution of an attested will.

SECTION 47. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1147 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust.

B. If a revocable trust is created or funded by more than one settlor:

1. To the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses;

2. To the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that contribution of the settlor; and

3. Upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

C. The settlor may revoke or amend a revocable trust:

1. By substantial compliance with a method provided in the terms of the trust; or

2. If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by any method manifesting clear and convincing evidence of the intent of the settlor.

D. Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

E. The powers of the settlor with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power. Provided, however, if the settlor of a revocable trust, acting in his or her individual capacity, has granted to an agent a power of attorney that gives the agent general unlimited powers to perform any action the individual could do personally, or words to that effect, the agent may use that power of attorney, during the lifetime of the settlor to appoint a corporate or individual successor trustee, as required or permitted by the trust agreement, in the event the office of trustee becomes vacant.

F. A conservator or guardian of the property of the settlor or, if no conservator or guardian of the property has been appointed, a guardian of the person of the settlor may exercise the powers of the settlor with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

G. A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or successors of the settlor in

interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

SECTION 48. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1148 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. While a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

B. During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

SECTION 49. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1149 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the death of the settlor within the earlier of:

1. One (1) year after the death of the settlor; or
2. One hundred twenty (120) days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the existence of the trust, of the name and address of the trustee, and of the time allowed for commencing a proceeding.

B. Upon the death of the settlor of a trust that was revocable at the death of the settlor, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee is not subject to liability for doing so unless:

1. The trustee knows of a pending judicial proceeding contesting the validity of the trust; or
2. A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial

proceeding is commenced within sixty (60) days after the contestant sent the notification.

C. A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.

SECTION 50. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1150 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in subsection C of this section, a person designated as trustee accepts the trusteeship:

1. By substantially complying with a method of acceptance provided in the terms of the trust; or

2. If the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

B. A person designated as trustee who has not yet accepted the trusteeship may reject the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have rejected the trusteeship.

C. A person designated as trustee, without accepting the trusteeship, may:

1. Act to preserve the trust property if, within a reasonable time after acting, the person sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary; and

2. Inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

SECTION 51. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1151 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A trustee shall give bond to secure performance of the duties of the trustee only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.

B. The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.

C. A regulated financial service institution qualified to do trust business in this state need not give bond, even if required by the terms of the trust.

SECTION 52. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1152 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Cotrustees may act by majority decision.

B. If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

C. A cotrustee must participate in the performance of a function of the trustee unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

D. If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

E. Any cotrustee may give a power of attorney to another trustee or authorize a cotrustee to perform any act in the administration of the trust, but the trustee giving a power of



attorney or authorizing an act to be performed by the cotrustee shall have the same liability and responsibility as if the trustee had performed the act done pursuant to the authorization.

F. Except as otherwise provided in subsection G of this section, a trustee who does not join in an action of another trustee is not liable for the action.

G. Each trustee shall exercise reasonable care to prevent a cotrustee from committing a serious breach of trust.

H. A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

SECTION 53. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1153 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A vacancy in a trusteeship occurs if:

1. A person designated as trustee rejects the trusteeship;

2. A person designated as trustee cannot be identified or does not exist;

3. A trustee resigns;

4. A trustee is disqualified or removed;

5. A trustee dies; or

6. A guardian or conservator is appointed for an individual serving as trustee.

B. If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

C. A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

1. By a person designated in the terms of the trust to act as successor trustee;

2. By a person appointed by unanimous agreement of the qualified beneficiaries; or

3. By a person appointed by the court.

D. A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

1. By a person designated in the terms of the trust to act as successor trustee;

2. By a person selected by the charitable organizations and qualified beneficiaries expressly designated to receive distributions under the terms of the trust if the Attorney General concurs in the selection; or

3. By a person appointed by the court.

E. Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

SECTION 54. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1154 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A trustee may resign:

1. Upon at least thirty (30) days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or

2. With the approval of the court.

B. In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

C. Any liability of a resigning trustee or of any sureties on the bond of a trustee for acts or omissions of the trustee is not discharged or affected by the resignation of the trustee.

SECTION 55. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1155 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.

B. The court may remove a trustee if:

1. The trustee has committed a serious breach of trust;

2. Because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or

3. There has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

C. Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under subsection B of Section 82 of this act as may be necessary to protect the trust property or the interests of the beneficiaries.

SECTION 56. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1156 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the property.

B. A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the possession of the trustee to the cotrustee, successor trustee, or other person entitled to it.

SECTION 57. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1157 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. If the terms of a trust do not specify the compensation of the trustee, a trustee is entitled to compensation that is reasonable under the circumstances.

B. If the terms of a trust specify the compensation of the trustee, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if:

1. The duties of the trustee are substantially different from those contemplated when the trust was created; or

2. The compensation specified by the terms of the trust would be unreasonably low or high.

SECTION 58. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1158 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for:

1. Expenses that were properly incurred in the administration of the trust; and

2. To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

B. An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest.

SECTION 59. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1159 of Title 60, unless there is created a duplication in numbering, reads as follows:

Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with the Oklahoma Uniform Trust Code.

SECTION 60. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1160 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A trustee shall administer the trust solely in the interests of the beneficiaries.

B. Subject to the rights of persons dealing with or assisting the trustee as provided in Section 94 of this act, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the personal account of the trustee or which is otherwise affected by a conflict between the fiduciary of the trustee and personal interests of the trustee is voidable by a beneficiary affected by the transaction unless:

1. The transaction was authorized by the terms of the trust;
2. The transaction was approved by the court;
3. The beneficiary did not commence a judicial proceeding within the time allowed by Section 87 of this act;
4. The beneficiary consented to the conduct of the trustee, ratified the transaction, or released the trustee in compliance with Section 91 of this act; or
5. The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

C. A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be

affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

1. The spouse of the trustee;
2. The descendants, siblings, or parents of the trustee, or their spouses;
3. An agent or attorney of the trustee; or
4. A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the best judgment of the trustee.

D. A transaction not concerning trust property in which the trustee engages in the individual capacity of the trustee involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

E. An investment by a trustee in securities of an investment company, investment trust or insurance products of an insurance company, to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment or insurance product complies with the prudent investor rule of the Oklahoma Uniform Trust Code. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust or insurance company for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee at least annually shall notify the persons entitled under Section 71 of this act to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined.

F. In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee

shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

G. This section does not preclude the following transactions, if fair to the beneficiaries:

1. An agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;
2. Payment of reasonable compensation to the trustee;
3. A transaction between a trust and another trust, estate of the decedent, guardianship or conservatorship of which the trustee is a fiduciary or in which a beneficiary has an interest;
4. A deposit of trust money in a regulated financial-service institution operated by the trustee; or
5. An advance by the trustee of money for the protection of the trust.

H. The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

SECTION 61. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1161 of Title 60, unless there is created a duplication in numbering, reads as follows:

If a trust has two or more beneficiaries, the trustee shall act impartially in investing, managing, and distributing the trust property, giving due regard to the respective interests of the beneficiaries.

SECTION 62. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1162 of Title 60, unless there is created a duplication in numbering, reads as follows:

A trustee shall administer the trust as a prudent person would, by considering the purposes, terms, distributional requirements, and

other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

SECTION 63. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1163 of Title 60, unless there is created a duplication in numbering, reads as follows:

In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust, and the skills of the trustee.

SECTION 64. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1164 of Title 60, unless there is created a duplication in numbering, reads as follows:

A trustee who has special skills or expertise, or is named trustee in reliance upon the representation of the trustee that the trustee has special skills or expertise, shall use those special skills or expertise.

SECTION 65. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1165 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A trustee may delegate duties and powers 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 actions of the agent in order to monitor the performance of the agent 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. Every agent established as an authorized signer on



a deposit account or brokerage account of the trust owes a fiduciary duty to the trust regarding transactions on that account.

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

D. By accepting a delegation of powers or duties from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

SECTION 66. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1166 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

B. If the terms of a trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

C. The terms of a trust may confer upon a trustee or other person a power to direct the modification or termination of the trust.

SECTION 67. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1167 of Title 60, unless there is created a duplication in numbering, reads as follows:

A trustee shall take reasonable steps to take control of and protect the trust property.

SECTION 68. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1168 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A trustee shall keep adequate records of the administration of the trust.

B. A trustee shall keep trust property separate from the own property of the trustee.

C. A trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

D. If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

E. Two or more trusts may not maintain a joint deposit account at a financial institution in this state unless the account meets the requirements for a joint account set out in Section 902 of Title 6 of the Oklahoma Statutes or in subsection C of Section 381.40a of Title 18 of the Oklahoma Statutes.

SECTION 69. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1169 of Title 60, unless there is created a duplication in numbering, reads as follows:

A trustee shall take reasonable steps to enforce claims of the trust and to defend claims against the trust.

SECTION 70. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1170 of Title 60, unless there is created a duplication in numbering, reads as follows:

A trustee shall take reasonable steps to compel a former trustee or other person to deliver trust property to the trustee and to redress a breach of trust known to the trustee to have been committed by a former trustee.

SECTION 71. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1171 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and

of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a qualified request of a beneficiary for information related to the administration of the trust.

B. A trustee:

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

2. Within sixty (60) days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the name, address, and telephone number of the trustee;

3. Within sixty (60) days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the existence of the trust, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a report of the trustee as provided in subsection C of this section; and

4. Shall notify the qualified beneficiaries in advance of any change in the method or rate of the compensation of the trustee.

C. A trustee shall send to the distributees or permissible distributees of current trust income or principal, and to qualified beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the compensation of the trustee, a listing of the trust assets and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative, conservator, or guardian may

send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

D. A beneficiary may waive the right to a report of the trustee or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

SECTION 72. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1172 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

B. Subject to subsection D of this section, and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

1. A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the personal benefit of the trustee may exercise the power only in accordance with an ascertainable standard relating to the individual health, education, support, or maintenance of the trustee within the meaning of Section 2041(b)(I)(A) or 2514(c)(1) of the Internal Revenue Act of 1986, as in effect on the effective date of the Oklahoma Uniform Trust Code, or as later amended; and

2. A trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

C. A power whose exercise is limited or prohibited by subsection B of this section may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or

prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

D. Subsection B of this section does not apply to:

1. A power held by the spouse of the settlor who is the trustee of a trust for which a marital deduction, as defined in Section 2056(b) (5) or 2523(e) of the Internal Revenue Act of 1986, as in effect on the effective date of the Oklahoma Uniform Trust Code, or as later amended, was previously allowed;

2. Any trust during any period that the trust may be revoked or amended by its settlor; or

3. A trust if contributions to the trust qualify for the annual exclusion under Section 2503(c) of the Internal Revenue Act of 1986, as in effect on the effective date of the Oklahoma Uniform Trust Code, or as later amended.

SECTION 73. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1173 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A trustee, without authorization by the court, may exercise:

1. Powers conferred by the terms of the trust; and

2. Except as limited by the terms of the trust:

a. all powers over the trust property which an unmarried owner has over individually owned property,

b. any other powers appropriate to achieve the proper investment, management, and distribution of the trust property, and

c. any other powers conferred by this act.

B. The exercise of a power is subject to the fiduciary duties prescribed by the Oklahoma Uniform Trust Code.

SECTION 74. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1174 of Title 60, unless there is created a duplication in numbering, reads as follows:

Without limiting the authority conferred by Section 73 of this act, a trustee may:

1. Collect trust property and accept or reject additions to the trust property from a settlor or any other person;

2. Acquire or sell property, for cash or on credit, at a public or private sale;

3. Exchange, partition, or otherwise change the character of trust property;

4. Deposit trust money in an account in a regulated financial-service institution;

5. Borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

6. With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

7. With respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

a. vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement,

b. hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery,

c. pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights, and

d. deposit the securities with a depository or other regulated financial-service institution;

8. With respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

9. Enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

10. Grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

11. Insure the property of the trust against damage or loss and insure the trustee, the agents of the trustee, and beneficiaries against liability arising from the administration of the trust;

12. Abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

13. With respect to possible liability for violation of environmental law:

a. inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property,

- b. take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement,
- c. decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law,
- d. compromise claims against the trust which may be asserted for an alleged violation of environmental law, and
- e. pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

14. Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

15. Pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

16. Exercise elections with respect to federal, state, and local taxes;

17. Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

18. Make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;



19. Pledge trust property to guarantee loans made by others to a qualified beneficiary;

20. Appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction; confer upon the appointed trustee all of the powers and duties of the appointing trustee; require that the appointed trustee furnish security; and remove any trustee so appointed;

21. Pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the benefit of the beneficiary, or by:

- a. paying it to the conservator of the beneficiary or, if the beneficiary does not have a conservator, the guardian of the beneficiary,
- b. paying it to the custodian of the beneficiary under the Oklahoma Uniform Transfers to Minors Act and, for that purpose, creating a custodianship,
- c. if the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the behalf of the beneficiary, or
- d. managing it as a separate fund on the behalf of the beneficiary, subject to the continuing right to withdraw the distribution of the beneficiary;

22. On distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests; allocate particular assets in proportionate or disproportionate shares; value the trust property for those purposes; and adjust for resulting differences in valuation;

23. Resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

24. Prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the duties of the trustee;

25. Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the powers of the trustee; and

26. On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it.

SECTION 75. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1175 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed distribution terminates if the beneficiary does not notify the trustee of an objection within thirty (30) days after the proposal was sent but only if the proposal informed the beneficiary of the right to object and of the time allowed for objection.

B. Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes.

C. A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:

1. It was induced by improper conduct of the trustee; or
2. The court finds by clear and convincing evidence that the beneficiary, at the time of the release, did not know or have reason

to know of the rights of the beneficiary or of the material facts relating to the breach.

SECTION 76. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1176 of Title 60, unless there is created a duplication in numbering, reads as follows:

This section and Sections 77 through 82 of this act shall be known and may be cited as the "Oklahoma Uniform Prudent Investor Act".

SECTION 77. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1177 of Title 60, unless there is created a duplication in numbering, reads as follows:

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 78. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1178 of Title 60, unless there is created a duplication in numbering, reads as follows:

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. Investment and management decisions of the trustee 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. The special relationship or special value of an asset, 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 Sections 76 through 82 of this act.

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

SECTION 79. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1179 of Title 60, unless there is created a duplication in numbering, reads as follows:

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 80. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1180 of Title 60, unless there is created a duplication in numbering, reads as follows:

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 81. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1181 of Title 60, unless there is created a duplication in numbering, reads as follows:

Compliance with Sections 76 through 82 of this act is determined in light of the facts and circumstances existing at the time of a decision of the trustee or action and not by hindsight.

SECTION 82. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1182 of Title 60, unless there is created a duplication in numbering, reads as follows:

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under Sections 76 through this section of this act:

1. Investments permissible by law for investment of trust funds;

2. Legal investments;
3. Authorized investments;

4. 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;

5. Prudent man rule;
6. Prudent trustee rule;
7. Prudent person rule; and
8. Prudent investor rule.

SECTION 83. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1183 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 to 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 duties of the trustee;
2. Enjoin the trustee from committing a breach of trust;
3. Compel the trustee to redress a breach of trust by paying money, restoring property, or other means;
4. Order a trustee to account;
5. Appoint a special fiduciary to take possession of the trust property and administer the trust;
6. Suspend the trustee;
7. Remove the trustee as provided in Section 55 of this act;
8. Reduce or deny compensation to the trustee;
9. Subject to Section 94 of this act, void an act of the trustee, impose a lien or a constructive trust on trust property, or

trace trust property wrongfully disposed of and recover the property or its proceeds; or

10. Order any other appropriate relief.

SECTION 84. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1184 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of:

1. 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

2. The profit the trustee made by reason of the breach.

B. Except as otherwise provided in this subsection, if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

SECTION 85. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1185 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust. This subsection does not limit the payment of compensation to a trustee as provided in Section 57 of this act.

B. Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

SECTION 86. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1186 of Title 60, unless there is created a duplication in numbering, reads as follows:

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

SECTION 87. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1187 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A beneficiary may not commence a proceeding against a trustee for breach of trust more than one (1) year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

B. A report adequately discloses the existence of a potential claim for breach of trust if it provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence.

C. If subsection A of this section does not apply, a judicial proceeding by a beneficiary against a trustee for breach of trust must be commenced within two (2) years after the first to occur of:

1. The removal, resignation, or death of the trustee;
2. The termination of the interest of the beneficiary in the trust; or
3. The termination of the trust.

SECTION 88. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1188 of Title 60, unless there is created a duplication in numbering, reads as follows:



A trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance.

SECTION 89. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1189 of Title 60, unless there is created a duplication in numbering, reads as follows:

If the happening of an event, including marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of a trust, a trustee who has exercised reasonable care to ascertain the happening of the event is not liable for a loss resulting from the lack of knowledge of the trustee.

SECTION 90. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1190 of Title 60, unless there is created a duplication in numbering, reads as follows:

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

1. Relieves the trustee of liability for breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

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

B. An exculpatory term drafted or caused to be drafted by the trustee is invalid as 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.

C. An exculpatory term drafted, caused to be drafted, or reviewed by an attorney for the settlor is presumed to be fair and reasonable and its existence and contents are presumed to have been

adequately communicated to the settlor unless proven otherwise by clear and convincing evidence.

SECTION 91. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1191 of Title 60, unless there is created a duplication in numbering, reads as follows:

A trustee is not liable to a beneficiary for breach of trust if the beneficiary 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 consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or

2. The court finds by clear and convincing evidence that at the time of the consent, release, or ratification, the beneficiary did not know or have reason to know of the rights of the beneficiary or of the material facts relating to the breach.

SECTION 92. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1192 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in the contract, a trustee is not personally liable on a contract properly entered into in the fiduciary capacity of the trustee in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity.

B. A trustee is personally liable for torts committed in the course of administering a trust, or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.

C. A claim based on a contract entered into by a trustee in the fiduciary capacity of the trustee, 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 in a judicial

proceeding against the trustee in the fiduciary capacity of the trustee, whether or not the trustee is personally liable for the claim.

SECTION 93. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1193 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in subsection C of this section or unless personal liability is imposed in the contract, a trustee who holds an interest as a general partner in a general or limited partnership is not personally liable on a contract entered into by the partnership after the acquisition of the interest by the trust if the fiduciary capacity was disclosed in the contract or in a statement previously filed pursuant to the Oklahoma Revised Uniform Partnership Act, the Oklahoma Uniform Limited Partnership Act, or the partnership law of another state.

B. Except as otherwise provided in subsection C of this section, a trustee who holds an interest as a general partner is not personally liable for torts committed by the partnership or for obligations arising from ownership or control of the interest unless the trustee is personally at fault.

C. The immunity provided by this section does not apply if an interest in the partnership is held by the trustee in a capacity other than that of trustee or is held by the spouse of the trustee or one or more of the descendants, siblings, or parents of the trustee, or the spouse of any of them.

D. If the trustee of a revocable trust holds an interest as a general partner, the settlor is personally liable for contracts and other obligations of the partnership as if the settlor were a general partner.

SECTION 94. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1194 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. A person other than a beneficiary 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 powers of the trustee is protected from liability as if the trustee properly exercised the power.

B. A person other than a beneficiary who in good faith deals with a trustee is not required to inquire into the extent of the powers of the trustee or the propriety of their exercise.

C. A person who in good faith delivers assets to a trustee need not ensure their proper application.

D. A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee without knowledge that the trusteeship has terminated, is protected from liability as if the former trustee were still a trustee.

E. Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

SECTION 95. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1195 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust, which may vary depending on its purpose and whether the trustee is an individual or a corporation, but must contain at least the following information:

1. That the trust exists and the date the trust instrument was executed;
2. The identity and address of the currently acting trustee;
3. The powers of the trustee relevant to the transaction or transactions;

4. The revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust; and

5. The authority of cotrustees to sign or otherwise authenticate and whether all or less than all are required in order to exercise powers of the trustee.

B. The recipient of a certificate of trust may also require that it contain the following information when necessary for the action requested to be effective:

1. The identity of the settlor; and

2. The manner of taking title to trust property.

C. Any trustee may provide a certification of trust which must be signed or otherwise authenticated by that trustee.

D. A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification of trust to be incorrect.

E. A certification of trust need not contain the dispositive terms of a trust.

F. A recipient of a certification of trust may require the trustee to furnish copies of those excerpts from the original trust instrument and later amendments which designate the trustee and confer upon the trustee the power to act in the pending transaction.

G. A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

H. A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction

against the trust property as if the representations contained in the certification were correct.

I. A person making a demand for the trust instrument in addition to a certification of trust or excerpts is liable for damages if the court determines that the person did not act in good faith in demanding the trust instrument.

J. This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

K. Any recipient of a certificate of trust who is also in need of the taxpayer identification number of the trust may require that the trustee furnish it, but only in a separate document which shall not be recorded publicly.

L. When the trustee is an individual, not a corporation, the recipient of a certificate of trust may also require that the trustee furnish supplemental information identifying the name and address of all the successor trustees who are named in the trust instrument and living.

M. When the trustee is an individual, not a corporation, and no successor trustee is living, the recipient of a certificate of trust may also require that the trustee furnish a separate document that shall not be recorded publicly which identifies the name and address of each person who would be a qualified beneficiary immediately after the death of the trustee.

SECTION 96. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1196 of Title 60, unless there is created a duplication in numbering, reads as follows:

In applying and construing this Oklahoma Uniform Trust Code, consideration may be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

SECTION 97. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1197 of Title 60, unless there is created a duplication in numbering, reads as follows:

This article modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C., Section 7001 et seq., but does not modify, limit or supersede Section 101(c) of that Act, 15 U.S.C., Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C., Section 7003(b).

SECTION 98. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1198 of Title 60, unless there is created a duplication in numbering, reads as follows:

If any provision of this act or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications in the Oklahoma Uniform Trust Code which can be given effect without the invalid provision or application and to this end the provisions of the Oklahoma Uniform Trust Code are severable.

SECTION 99. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1199 of Title 60, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in this act, on November 1, 2004:

1. The Oklahoma Uniform Trust Code applies to all trusts created before, on, or after November 1, 2004;

2. The Oklahoma Uniform Trust Code applies to all judicial proceedings concerning trusts commenced on or after November 1, 2004;

3. The Oklahoma Uniform Trust Code applies to judicial proceedings concerning trusts commenced before November 1, 2004, unless the court finds that application of a particular provision of the Oklahoma Uniform Trust Code would substantially interfere with

the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of the Oklahoma Uniform Trust Code does not apply and the superseded law applies;

4. Any rule of construction or presumption provided in the Oklahoma Uniform Trust Code applies to trust instruments executed before November 1, 2004, unless there is a clear indication of a contrary intent in the terms of the trust;

5. Any Memoranda of Trust which is in existence prior to the enactment of the Oklahoma Uniform Trust Code shall remain effective as to the information contained therein; and

6. An act done before November 1, 2004, is not affected by the Oklahoma Uniform Trust Code.

B. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before November 1, 2004, that statute continues to apply to the right even if it has been repealed or superseded.

SECTION 100. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1200 of Title 60, unless there is created a duplication in numbering, reads as follows:

Any trust or trustor dying after December 31, 1981, which contains a marital deduction formula expressly providing that the spouse of the trustor is to receive the maximum amount of property qualifying for the marital deduction allowable by federal law shall be construed as referring to the unlimited marital deduction provided by the Economic Recovery Tax Act of 1981, Public Law 97-34. This provision shall apply retrospectively to trusts of trustors dying after December 31, 1981.

SECTION 101. AMENDATORY 6 O.S. 2001, Section 902, is amended to read as follows:

Section 902. A. 1. Before November 1, 2004, a deposit account in this state may be established as a Totten Trust, as follows:



Whenever any deposit shall be made in ~~a bank~~ an insured depository institution or a credit union in Oklahoma by any ~~person~~ individual which is in form in trust for another individual, and no other or further notice of the existence and terms of a legal and valid trust or other required fiduciary relationship shall have been given in writing to the ~~bank~~ institution, in the event of the death of the trustee, the same, or any part thereof, together with the interest thereon, may be paid to the person or persons for whom the deposit was made. A deposit held in this form shall be deemed to constitute a Totten Trust. A revocation of such trust may only be made in writing to the ~~bank and the bank~~ insured depository institution or credit union, which shall not suffer any liability for payment of funds pursuant to the trust unless and until it receives written notice of revocation.

2. On or after November 1, 2004, deposit accounts in this state shall no longer be established as Totten Trusts, but instead shall be opened as P.O.D. accounts or other appropriately styled deposit accounts. Effective November 1, 2004, any existing deposit account in Oklahoma previously established as a Totten Trust shall automatically be deemed a "payable on death" account as provided in subsection B of Section 901 of this title, with the named individual trustee or trustees on the account being deemed thereafter to be the owner or owners of the account as joint tenants with right of survivorship, if there be more than one owner, and any named individual beneficiary or beneficiaries of the Totten Trust being deemed to be a P.O.D. beneficiary or beneficiaries with rights that arise only upon the death of the last-named owner of the account, as provided in subsection B of Section 901 of this title. If any trustee of a Totten Trust asserts in an affidavit delivered to the insured depository institution or credit union that the trustee or trustees has or have no beneficial ownership in the deposit account, that institution shall have no liability for restyling the account

in a manner that the trustee by affidavit asserts would reflect the true ownership relationship with respect to the deposit account.

B. 1. If a deposit account is requested to be opened ~~with a bank~~ by one or more ~~persons~~ individuals expressly as a trustee for one or more other named ~~persons~~ individuals and further notice of the existence and terms of a legal and valid trust or other required fiduciary relationship is not given in writing to the ~~bank, the bank institution,~~ it may accept and administer the account as set forth in paragraph 1 or 2 of subsection A of this section, as applicable.

2. a. If a deposit account is opened with ~~a bank~~ an insured depository institution or a credit union by one or more persons expressly as a trustee for one or more other named persons pursuant to or purporting to be pursuant to a written trust agreement, the trustee may provide the ~~bank~~ institution with a certificate of trust complying with the following provisions to evidence the trust relationship. ~~The:~~

(1) Before November 1, 2004, the certificate of trust provided to open the deposit account shall be an affidavit of the trustee and must include the effective date of the trust, the name of the trustee, the name or method for choosing successor trustees, the name and address of each beneficiary, the authority granted to the trustee, the disposition of the account on the death of the trustee or the survivor of two or more trustees, other information required by the ~~bank~~ insured depository institution or credit union, and an indemnification of the ~~bank~~ institution.

(2) On or after November 1, 2004, the certificate of trust provided to open the deposit account shall

be a certificate of trust complying with the requirements of Section 95 of this act, including any additional information that the section allows the institution to request as part of the certificate, and which the institution does request. As a further prerequisite for opening or for continuing to administer the deposit account, an institution may require supplemental information, as permitted by that section, to be included in a separate document signed by a trustee.

- b. The ~~bank~~ insured depository institution or credit union may accept and ~~administer~~ the account, subject to the provisions of Title 58 of the Oklahoma Statutes, in accordance with the certificate of trust, as specified in subparagraph a of this paragraph, without requiring or reviewing a copy of the trust agreement. The institution may administer the account, subject to provisions of Title 58 of the Oklahoma Statutes, in accordance with a certificate of trust complying with Oklahoma law as to form and contents on the date when the certificate is provided to the institution, together with any permitted supplemental information that the institution obtains from the trustee or trustees in writing. If a later-dated certificate of trust is presented to the institution at any time on or after November 1, 2004, and that certificate complies with requirements of Section 95 of this act, that certificate shall supersede any earlier-dated certificate of trust provided to the institution with respect to the same trust. The ~~bank~~ institution is not liable for

administering the account as provided by the certificate of trust and other permitted supplemental information, even if the certificate of trust or supplemental information is contrary to the terms of the trust agreement, unless the ~~bank~~ institution has actual knowledge of the terms of the trust agreement.

3. a. On the death of the sole trustee or the survivor of two or more trustees, ~~the bank~~ and if no successor trustee has been named in the most recent certificate of trust that has been provided, the insured depository institution or credit union may pay all or part of the withdrawal value of the account with interest ~~as provided by,~~ in accordance with dispositive provisions, if any, summarized in the certificate of trust. ~~If the trustee did not deliver a certificate of trust, the bank's right to treat the account as owned by a trustee ceases on the death of the trustee. On the death of the trustee or the survivor of two or more trustees, the bank shall, unless the certificate of trust provides otherwise, pay the withdrawal value of the account, with interest, in equal shares to the persons who survived the trustee, are named as beneficiaries in the certificate of trust, and can be located by the bank from its own records,~~ which take effect upon the death of the trustee or trustees. If multiple beneficiaries are named in the certificate of trust, but their respective shares are not specified, the institution may assume for the purpose of any payment to the named beneficiaries that they are entitled to equal shares.
- b. If ~~there is~~ the insured depository institution or credit union has not been presented with a certificate

of trust or a copy of the trust agreement, payment of the withdrawal value and interest shall be made as provided by Title 58 of the Oklahoma Statutes.

c. Any payment made under this section for all or part of the withdrawal value and interest discharges any liability of the ~~bank~~ insured depository institution or credit union to the extent of the payment. The ~~bank~~ institution may pay all or part of the withdrawal value and interest in the manner provided by this section, regardless of whether it has knowledge of a competing claim, unless the ~~bank~~ institution receives actual knowledge that payment has been restrained by order of a court of competent jurisdiction.

4. This section does not obligate a ~~bank to accept a deposit account from a trustee who does not furnish a copy of the trust agreement or~~ an insured depository institution or credit union to search beyond its own records for the location of a named beneficiary.

5. This section does not affect a contractual provision to the contrary that otherwise complies with the laws of this state.

C. Any joint deposit account maintained in this state by two or more trusts shall be a "tenants in common" account and not a "joint tenancy with right of survivorship," notwithstanding documentation to the contrary. Two or more trusts may jointly maintain a "tenants in common" deposit account in this state if the insured depository institution or credit union is provided reasonable written evidence that the grantor or grantors of each trust have consented in writing to placing trust funds in such an account, and the trustee or trustees of each trust make written representation to the institution that:

1. The funds of each trust, deposited to such account, shall be spent only for the permitted purposes of that particular trust; and

2. Clear records will be maintained at all times to show how much of the remaining funds in the deposit account belong to each of the trusts. Notwithstanding any other provision of law, an insured depository institution or credit union that obtains written evidence and representations will not be liable in any respect for allowing the "tenants in common" relationship to exist between trusts, nor for the manner in which the funds in the deposit account are spent or otherwise transferred by any trustee or authorized agent.

SECTION 102. AMENDATORY 18 O.S. 2001, Section 381.39a, is amended to read as follows:

Section 381.39a A. When a deposit has been made or shall hereafter be made in any association in the names of two or more persons, payable to any of them or payable to any of them or their survivor, such deposit, or any part thereof, or any interest thereon, may be paid to either of the persons, whether one of such persons shall be a minor or not, and whether the other be living or not. The receipt or acquittance of the person so paid shall be valid and sufficient release and discharge to the association for any payment so made.

B. 1. When a deposit has been made or shall hereafter be made in any association using the terms "Payable on Death" or "P.O.D.", such deposits shall be payable on the ~~designated person's~~ death of the account owner to a trust designated in the deposit account agreement as the P.O.D. beneficiary, or to an individual or individuals named beneficiary, if living, and if not living, to the named beneficiary's estate, notwithstanding any provision to the contrary contained in Sections 41 through 57 of Title 84 of the Oklahoma Statutes. Such deposit shall constitute a contract between the ~~depositor~~ account owner or owners and the association that upon the death of the ~~named~~ last surviving owner of the account, and payment of account proceeds to any secured party with a valid security interest in the account, the association will hold the

funds for or pay them to the named beneficiary or the estate of the named beneficiary.

2. In order to designate multiple payable-on-death beneficiaries for a deposit account, the account should be styled as follows: "(Name of Account Owner), payable on death (or P.O.D.) to (Name of Beneficiary), (Name of Beneficiary), and (Name of Beneficiary), in equal shares".

3. Adjustments may be made in the styling, depending upon the number of beneficiaries. It is to be understood that each beneficiary is entitled to a proportionate share of the account proceeds upon the owner's death. In the event of the death of a beneficiary prior to the death of the owner, the beneficiary's share shall go to the beneficiary's estate. It is not permissible for an account to designate unequal shares for different payable-on-death beneficiaries.

4. An association may require the owner of an account to provide an address for any payable-on-death beneficiary. If the P.O.D. account is an interest-bearing account and the funds are not claimed by the payable-on-death beneficiary or beneficiaries within sixty (60) days after the death of the account holder, or after the association has notice of the account holder's death, whichever is later, the association has the right to convert the account to a noninterest-bearing account.

5. No change in the designation of a named beneficiary shall be valid unless executed by the owner of the fund and in the form and manner prescribed by the association; however, this section shall be subject to the provisions of Section 178 of Title 15 of the Oklahoma Statutes.

6. The receipt or acquittance of the named beneficiary so paid or the legal representative of such named beneficiary's estate, if deceased, shall be valid and sufficient release and discharge to the association for any payment so made, unless, prior to such payment,

the association receives notice in the form and manner required in Section 905 of Title 6 of the Oklahoma Statutes.

C. The provisions of this section shall apply to all forms of deposit accounts, including, but not limited to, transaction accounts, savings accounts, certificates of deposits, negotiable order of withdrawal (N.O.W.) accounts, and money market deposit accounts (M.M.D.A.).

SECTION 103. AMENDATORY 18 O.S. 2001, Section 381.40a, is amended to read as follows:

Section 381.40a A. 1. Before November 1, 2004, a deposit account in an association in this state may be established as a Totten Trust, as follows: Whenever any deposit shall be made in an association by any ~~person~~ individual which is in the form of a trust for another individual, and no other or further notice of the existence and terms of a legal and valid trust or other fiduciary relationship shall have been given in writing to the association, in the event of the death of the trustee, the same, or any part thereof, together with the interest thereon, may be paid to the person or persons for whom the deposit was made. A deposit held in this form shall be deemed to constitute a Totten Trust. A revocation of such trust may only be made in writing to the association, and the association shall not suffer any liability for payment of funds pursuant to the trust unless and until it receives written notice of revocation.

2. On or after November 1, 2004, deposit accounts in an association in this state shall no longer be established as Totten Trusts, but instead shall be opened as P.O.D. accounts or other appropriately styled deposit accounts. Effective November 1, 2004, any existing deposit account in an association in this state previously established as a Totten Trust shall automatically be deemed a "payable on death" account as provided in subsection B of Section 381.39a of this title, with the named individual trustee or



trustees of the account being deemed thereafter to be owner or owners of the account as joint tenants with right of survivorship, if there be more than one owner, and any named individual beneficiary or beneficiaries of the Totten Trust being deemed to be a P.O.D. beneficiary or beneficiaries with rights that arise only upon the death of the last named owner of the account, as provided in subsection B of Section 381.39a of this title. If any trustee of a Totten Trust asserts in an affidavit delivered to the association that the trustee or trustees has or have no beneficial ownership in the deposit account, that association shall have no liability for restyling the account in a manner that the trustee by affidavit asserts would reflect the true ownership relationship with respect to the deposit account.

B. 1. If a deposit account is requested to be opened with an association by one or more ~~persons~~ individuals expressly as a trustee for one or more other named ~~persons~~ individuals and further notice of the existence and terms of a legal and valid trust or other required fiduciary relationship is not given in writing to the association, the association may accept and administer the account as set forth in paragraph 1 or 2 of subsection A of this section, as applicable.

2. a. If a deposit account is opened with an association by one or more persons expressly as a trustee for one or more other named persons pursuant to or purporting to be pursuant to a written trust agreement, the trustee may provide the association with a certificate of trust complying with the following provisions to evidence the trust relationship.—~~The:~~

(1) Before November 1, 2004, the certificate of trust provided to open the deposit account shall be an affidavit of the trustee and must include the effective date of the trust, the name of the

trustee, the name or method for choosing successor trustees, the name and address of each beneficiary, the authority granted to the trustee, the disposition of the account on the death of the trustee or the survivor of two or more trustees, other information required by the association, and an indemnification of the association.

(2) On or after November 1, 2004, the certificate of trust provided to open the deposit account shall be a certificate of trust complying with the requirements of Section 95 of this act, including any additional information that the section allows the association to request as part of the certificate, and which the association does request. As a further prerequisite for opening or for continuing to administer the deposit account, the association may require supplemental information as permitted by that section, to be included in a separate document signed by a trustee.

b. The association may accept ~~and administer~~ the account, subject to the provisions of Title 58 of the Oklahoma Statutes, in accordance with the certificate of trust, as specified in subparagraph a of this paragraph, without requiring or reviewing a copy of the trust agreement. The association may administer the account, subject to provisions of Title 58 of the Oklahoma Statutes, in accordance with a certificate of trust complying with Oklahoma law as to form and contents on the date when the certificate of trust is provided to the association, together with any

permitted supplemental information that the association obtains from the trustee or trustees in writing. If a later-dated certificate of trust is presented to the association at any time on or after November 1, 2004, and that certificate complies with requirements of Section 95 of this act, that certificate shall supersede any earlier-dated certificate of trust provided to the association with respect to the same trust. The association is not liable for administering the account as provided by the certificate of trust and other permitted supplemental information, even if the certificate of trust or supplemental information is contrary to the terms of the trust agreement, unless the association has actual knowledge of the terms of the trust agreement.

3. a. On the death of the sole trustee or the survivor of two or more trustees, and if no successor trustee has been named in the most recent certificate of trust that has been provided, the association may pay all or part of the withdrawal value of the account with interest ~~as provided by~~, in accordance with dispositive provisions, if any, summarized in the certificate of trust. ~~If the trustee did not deliver a certificate of trust, the association's right to treat the account as owned by a trustee ceases on the death of the trustee. On the death of the trustee or the survivor of two or more trustees, the association shall, unless the certificate of trust provides otherwise, pay the withdrawal value of the account, with interest, in equal shares to the persons who survived the trustee, are named as beneficiaries in~~

~~the certificate of trust, and can be located by the association from its own records which take effect upon the death of the trustee or trustees. If multiple beneficiaries are named in the certificate of trust, but their respective shares are not specified therein, the association may assume for the purpose of any payment to the named beneficiaries that they are entitled to equal shares.~~

b. ~~If there is~~ the association has not been presented with a certificate of trust or a copy of the trust agreement, payment of the withdrawal value and interest shall be made as provided by Title 58 of the Oklahoma Statutes.

c. Any payment made under this section for all or part of the withdrawal value and interest discharges any liability of the association to the extent of the payment. The association may pay all or part of the withdrawal value and interest in the manner provided by this section, regardless of whether it has knowledge of a competing claim, unless the association receives actual knowledge that payment has been restrained by order of a court of competent jurisdiction.

4. This section does not obligate an association to accept a deposit account from a trustee who does not furnish a copy of the trust agreement or to search beyond its own records for the location of a named beneficiary.

5. This section does not affect a contractual provision to the contrary that otherwise complies with the laws of this state.

C. Any joint deposit account maintained in this state by two or more trusts shall be a "tenants in common" account, and not a "joint tenancy with right of survivorship," notwithstanding documentation

to the contrary. Two or more trusts may jointly maintain a "tenants in common" deposit account in Oklahoma if the association is provided reasonable written evidence that the grantor or grantors of each trust have consented in writing to placing trust funds in the account, and the trustee or trustees of each trust make written representation to the association that:

1. The funds of each trust, deposited to such account, shall be spent only for the permitted purposes of that particular trust; and

2. Clear records will be maintained at all times to show how much of the remaining funds in the deposit account belong to each of the trusts. Notwithstanding any other provision of law, an association that obtains the written evidence and representations will not be liable in any respect for allowing the "tenants in common" relationship to exist between trusts, nor for the manner in which the funds in the deposit account are spent or otherwise transferred by any trustee or authorized agent.

SECTION 104. REPEALER 60 O.S. 2001, Sections 131, 136, 137, 140, 143, 175, 175.1, 175.2, 175.3, 175.4, 175.5, 175.6, 175.6a, 175.6b, 175.7, 175.8, 175.9, 175.10, 175.11, 175.12, 175.13, 175.14, 175.15, 175.16, 175.17, 175.18, 175.19, 175.20, 175.21, 175.23, 175.24, 175.25, 175.37, 175.38, 175.39, 175.40, 175.41, 175.42, 175.43, 175.44, 175.45, 175.47, as amended by Section 6, Chapter 217, O.S.L. 2003, 175.48, 175.49, 175.50, 175.51, 175.53, 175.54, 175.55, 175.56, 175.57, 175.60, 175.61, 175.62, 175.63, 175.64, 175.65, 175.66, 175.67, 175.68, 175.69, 175.70, 175.71, 175.72, 181, 601 and 602 (60 O.S. Supp. 2003, Section 175.47), are hereby repealed.

SECTION 105. RECODIFICATION 60 O.S. 2001, Sections 175.101, 175.102, 175.103, 175.104, 175.201, 175.202, 175.301, 175.302, 175.303, 175.401, 175.402, 175.403, 175.404, 175.405, 175.406, 175.407, 175.408, 175.409, 175.410, 175.411, 175.412, 175.413, 175.414, 175.415, 175.501, 175.502, 175.503, 175.504,

175.505, 175.506, 175.601 and 175.602 shall be recodified as Sections 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331 and 1332 of Title 60 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 106. This act shall become effective November 1, 2004.

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