

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 975

By: Laster

AS INTRODUCED

An Act relating to property; creating the Uniform Trust Code; providing short title; stating scope of act; defining terms; establishing certain knowledge and reasonable diligence; stating certain duties of trustee; stating validity of certain trust terms; stating exceptions; stating supplementary law; stating law applicable to certain trust terms; stating requirements related to principal place of administration of a trust; establishing procedures for certain notice; authorizing certain agreements; stating applicability of certain rules of construction; amending 60 O.S. 2001, Section 175, which relates to trusts for benefit of spouse; updating language; deleting obsolete language; 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:

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:

SCOPE

This act 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:

DEFINITIONS

For purposes of this act:

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

2. "Ascertainable Standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect or as later amended;

3. "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;

4. "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;

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

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

7. "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;

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

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

10. "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;

11. "Power of withdrawal" means a presently exercisable general power of appointment other than a power exercisable by a trustee which is limited by an ascertainable standard related to a beneficiary-trustee's health, education, maintenance, or support, or which is exercisable by another person only upon consent of the trustee or a person holding an adverse interest;

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

13. "Qualified beneficiary" means, unless the trust instrument provides otherwise, a beneficiary who, on the date the beneficiary's qualification 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.

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

15. "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 that person's contribution except to the extent another person has the power to revoke or withdraw that portion. The term trustor shall also mean settlor;

16. "Spendthrift provision" means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary's interest;

17. "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;

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

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

20. "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:

KNOWLEDGE

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 employee's attention 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 individual's regular duties 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:

DEFAULT AND MANDATORY RULES

A. Except as otherwise provided in the terms of the trust, this act 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 trustee reports.

C. The terms of a trust prevail over any provision of this act 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 38 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 Article 5 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 a trustee's compensation 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 trustee's reports and other information reasonably related to the administration of a trust;

9. The effect of an exculpatory term under Section 83 of this act;

10. The rights under Sections 85 through 88 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:

COMMON LAW OF TRUSTS; PRINCIPLES OF EQUITY

The common law of trusts and principles of equity supplement this act, 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:

GOVERNING LAW

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 that jurisdiction's law 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:

PRINCIPAL PLACE OF ADMINISTRATION

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. A trustee's principal place of business 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 trust's principal place of administration 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 a trust's principal place of administration to a location outside of the State of Oklahoma, not less than sixty (60) days before initiating the transfer. The notice of proposed transfer must 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 must notify the trustee of an objection to the proposed transfer.

E. The authority of a trustee under this section to transfer a trust's principal place of administration to a location outside of the State of Oklahoma, 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 trust's principal place of administration, 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:

METHODS AND WAIVER OF NOTICE

A. Notice to a person under this act or the sending of a document to a person under this act must 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 person's last-known place of residence or place of business, or a properly directed electronic message.

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

C. Notice under this act or the sending of a document under this act 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:

NONJUDICIAL SETTLEMENT AGREEMENTS

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 this act 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 trustee's report or accounting;
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 a trustee's compensation;
5. Transfer of a trust's principal place of administration; 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 Article 3 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:

#### RULES OF CONSTRUCTION

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. AMENDATORY 60 O.S. 2001, Section 175, is amended to read as follows:

Section 175. A. If, after making ~~an express~~ a trust, the ~~trustor~~ settlor is divorced, all provisions in such ~~express~~ trust in favor of the ~~trustor's~~ settlor's former spouse, which are to take effect upon the death of the ~~trustor~~ settlor, are thereby revoked. Annulment of the ~~trustor's~~ settlor's marriage shall have the same effect as a divorce. In the event of either divorce or annulment, the ~~trustor's~~ settlor's former spouse shall be treated for all purposes under the ~~express~~ trust, as having predeceased the ~~trustor~~ settlor. For purposes of this section, "~~express~~ trust" shall include a "Totten Trust" as described in Section 902 of Title 6 of the Oklahoma Statutes 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 trustor had remarried said former spouse and was married to said spouse at the time of the ~~trustor's~~ settlor's death;
3. If the decree of divorce or annulment contains a provision expressing an intention contrary to subsection A of this section;
4. If the ~~trustor~~ 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 contrary to subsection A of this section; or
6. If prior to the death of the ~~trustor~~ settlor and subsequent to the divorce or annulment, the ~~trustor~~ settlor executes an amendment to said ~~express~~ trust which is not revoked or held invalid.

~~C. This section shall apply to any express trust, the trustor of which dies on or after November 1, 1987.~~

SECTION 13. RECODIFICATION 60 O.S. 2001, Section 175, as amended by Section 12 of this act, shall be recodified as Section 1112 of Title 60 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 14. This act shall become effective November 1, 2005.

50-1-129

TEK

6/13/2015 8:59:06 AM