

1 ENGROSSED SENATE
2 BILL NO. 1825

By: Ivester of the Senate
and
Braddock of the House

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6
7 [property - Oklahoma Uniform Trust Code -
8 codification - recodification -
9 effective date]

10
11 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

12 SECTION 1. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1101 of Title 60, unless there
14 is created a duplication in numbering, reads as follows:

15 This act shall be known and may be cited as the "Oklahoma
16 Uniform Trust Code".

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

20 SCOPE

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

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

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

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

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

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

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

1 13. "Qualified beneficiary" means, unless the trust instrument
2 provides otherwise, a beneficiary who, on the date the beneficiary's
3 qualification is determined:

4 a. is a distributee or permissible distributee of a
5 present interest in trust income or principal, or has
6 a vested remainder interest in the trust,

7 b. is a charitable organization expressly entitled to
8 receive benefits under the terms of a charitable trust
9 or a person appointed to enforce a trust created for
10 the care of an animal or another noncharitable purpose
11 as provided in Section 29 or 30 of this act, or

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

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

18 15. "Settlor" means a person, including a testator, who
19 creates, or contributes property to, a trust. If more than one
20 person creates or contributes property to a trust, each person is a
21 settlor of the portion of the trust property attributable to that
22 person's contribution except to the extent another person has the
23 power to revoke or withdraw that portion. The term trustor shall
24 also mean settlor;

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

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

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

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

16 20. "Trustee" includes an original, additional, and successor
17 trustee, and a cotrustee.

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

21 KNOWLEDGE

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

24 1. Has actual knowledge of it;

1 trustee, relations among trustees, and the rights and interests of a
2 beneficiary.

3 B. Unless the trust instrument provides otherwise, the trustee
4 shall have a duty under paragraphs 2 and 3 of subsection B of
5 Section 71 of this act to notify the qualified beneficiaries of an
6 irrevocable trust who have attained twenty-five (25) years of age of
7 the existence of the trust, the identity of the trustee, and their
8 right to request trustee reports.

9 C. The terms of a trust prevail over any provision of this act
10 except:

11 1. The requirements for creating a trust;

12 2. The duty of a trustee to act in good faith and in accordance
13 with the purposes of the trust;

14 3. The requirement that a trust and its terms be for the
15 benefit of its beneficiaries, and that the trust have a purpose that
16 is lawful, not contrary to public policy, and possible to achieve;

17 4. The power of the court to modify or terminate a trust under
18 Sections 31 through 38 of this act;

19 5. The effect of a spendthrift provision and the rights of
20 certain creditors and assignees to reach a trust as provided in
21 Article 5 of this act;

22 6. The power of the court under Section 51 of this act to
23 require, dispense with, or modify or terminate a bond;

24

1 7. The power of the court under subsection B of Section 57 of
2 this act to adjust a trustee's compensation specified in the terms
3 of the trust which is unreasonably low or high;

4 8. The duty under subsection A of Section 71 of this act to
5 respond to the request of a qualified beneficiary of an irrevocable
6 trust for trustee's reports and other information reasonably related
7 to the administration of a trust;

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

10 10. The rights under Sections 85 through 88 of this act of a
11 person other than a trustee or beneficiary;

12 11. Periods of limitation for commencing a judicial proceeding;

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

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

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

22 COMMON LAW OF TRUSTS; PRINCIPLES OF EQUITY

23

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

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

7 GOVERNING LAW

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

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

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

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

20 PRINCIPAL PLACE OF ADMINISTRATION

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

1 1. A trustee's principal place of business is located in or a
2 trustee is a resident of the designated jurisdiction; or

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

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

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

13 D. The trustee shall notify the qualified beneficiaries of a
14 proposed transfer of a trust's principal place of administration to
15 a location outside of this state, not less than sixty (60) days
16 before initiating the transfer. The notice of proposed transfer
17 must include:

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

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

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

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

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

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

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

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

16 METHODS AND WAIVER OF NOTICE

17 A. Notice to a person under this act or the sending of a
18 document to a person under this act must be accomplished in a manner
19 reasonably suitable under the circumstances and likely to result in
20 the receipt of the notice or document. Permissible methods of
21 notice or for sending a document include first-class mail, personal
22 delivery, delivery to the person's last-known place of residence or
23 place of business, or a properly directed electronic message.

24

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

5 C. Notice under this act or the sending of a document under
6 this act may be waived by the person to be notified or sent the
7 document.

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

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

13 NONJUDICIAL SETTLEMENT AGREEMENTS

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

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

20 C. A nonjudicial settlement agreement is valid only to the
21 extent it does not violate a material purpose of the trust and
22 includes terms and conditions that could be properly approved by the
23 court under this act or other applicable law.

24

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

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

5 2. The approval of a trustee's report or accounting;

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

9 4. The resignation or appointment of a trustee and the
10 determination of a trustee's compensation;

11 5. Transfer of a trust's principal place of administration; and

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

13 E. Any interested person may request the court to approve a
14 nonjudicial settlement agreement, to determine whether the
15 representation as provided in Article 3 of this act was adequate,
16 and to determine whether the agreement contains terms and conditions
17 the court could have properly approved.

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

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

23 RULES OF CONSTRUCTION

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1 The rules of construction that apply in this state to the
2 interpretation of and disposition of property by will also apply as
3 appropriate to the interpretation of the terms of a trust and the
4 disposition of the trust property.

5 SECTION 12. AMENDATORY 60 O.S. 2001, Section 175, is
6 amended to read as follows:

7 Section 175.

8 TRUST FOR BENEFIT OF SPOUSE REVOKED UPON DEATH OF MAKER;
9 ANNULMENT OR DIVORCE; EXEMPTIONS

10 A. If, after making an ~~express~~ a trust, the ~~trustor~~ settlor is
11 divorced, all provisions in such ~~express~~ trust in favor of the
12 ~~trustor's~~ settlor's former spouse, which are to take effect upon the
13 death of the ~~trustor~~ settlor, are thereby revoked. Annulment of the
14 ~~trustor's~~ settlor's marriage shall have the same effect as a
15 divorce. In the event of either divorce or annulment, the ~~trustor's~~
16 settlor's former spouse shall be treated for all purposes under the
17 ~~express~~ trust, as having predeceased the ~~trustor~~ settlor. For
18 purposes of this section, "~~express~~ trust" shall include a "Totten
19 Trust" as described in Section 902 of Title 6 of the Oklahoma
20 Statutes and shall not include a "business trust".

21 B. Subsection A of this section shall not apply:

22 1. If the decree of divorce or annulment is vacated;

23

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

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

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

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

12 JURISDICTION OVER TRUSTEE AND BENEFICIARY

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

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

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

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

7 SUBJECT-MATTER JURISDICTION

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

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

14 VENUE

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

21 B. If a trust has no trustee, venue for a judicial proceeding
22 for the appointment of a trustee is in a county of this state in
23 which a beneficiary resides, in a county in which any trust property
24

1 is located, and if the trust is created by will, in the county in
2 which the decedent's estate was or is being administered.

3 ARTICLE 3

4 REPRESENTATION

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

8 REPRESENTATION: BASIC EFFECT

9 A. Notice to a person who may represent and bind another person
10 under this article has the same effect as if notice were given
11 directly to the other person.

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

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

20 D. A settlor may not represent and bind a beneficiary under
21 this article with respect to the termination or modification of a
22 trust under Section 32 of this act.

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

4 REPRESENTATION BY HOLDER OF GENERAL
5 TESTAMENTARY POWER OF APPOINTMENT

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

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

15 REPRESENTATION BY FIDUCIARIES AND PARENTS

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

- 19 1. A conservator or guardian of the property may represent and
20 bind the estate that the conservator or guardian of the property
21 controls;
- 22 2. A guardian of the person may represent and bind the ward if
23 a guardian of the property or conservator of the ward's estate has
24 not been appointed;

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

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

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

7 6. A parent may represent and bind the parent's minor or unborn
8 child if a conservator or guardian for the child has not been
9 appointed.

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

13 REPRESENTATION BY PERSON HAVING
14 SUBSTANTIALLY IDENTICAL INTEREST

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

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

1 APPOINTMENT OF REPRESENTATIVE

2 A. If the court determines that an interest is not represented
3 under this article, or that the otherwise available representation
4 might be inadequate, the court may appoint a representative to
5 receive notice, give consent, and otherwise represent, bind, and act
6 on behalf of a minor, incapacitated, or unborn individual, or a
7 person whose identity or location is unknown. A representative may
8 be appointed to represent several persons or interests.

9 B. A representative may act on behalf of the individual
10 represented with respect to any matter arising under this act,
11 whether or not a judicial proceeding concerning the trust is
12 pending.

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

15 ARTICLE 4

16 CREATION, VALIDITY, MODIFICATION AND TERMINATION OF TRUST

17 SECTION 22. AMENDATORY 60 O.S. 2001, Section 175.6, is
18 amended to read as follows:

19 Section 175.6

20 METHODS OF CREATING TRUST

21 A trust may be created by:

22 ~~A. A declaration by the owner of property that he holds it as~~
23 ~~trustee for another person, or for himself and another person or~~
24 ~~persons; or~~

1 ~~B. A transfer inter vivos by the owner of property to another~~
2 ~~person as trustee for the transferor or for a third person; or~~

3 ~~C. A transfer by will by the owner of property to another~~
4 ~~person as trustee for a third person; or~~

5 ~~D. An appointment by one person having a power of appointment~~
6 ~~to another person as trustee for the donee of the power or for a~~
7 ~~third person; or~~

8 ~~E. A promise by one person to another person whose rights~~
9 ~~thereunder are to be held in trust for a third person; or~~

10 ~~F. A beneficiary may be a cotrustee and the legal and equitable~~
11 ~~title to the trust estate shall not merge by reason thereof.~~

12 ~~Provided, however, that no trust in relation to real property shall~~
13 ~~be valid, unless created or declared:~~

14 ~~1. By a written instrument subscribed by the trustor or by his~~
15 ~~agent thereto authorized by writing Transfer of property to another~~
16 ~~person as trustee during the settlor's lifetime or by will or other~~
17 ~~disposition taking effect upon the settlor's death;~~

18 ~~2. By the instrument under which the trustee claims the estate~~
19 ~~affected Declaration by the owner of property that the owner holds~~
20 ~~identifiable property as trustee;~~

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

22 ~~4. Agreement between settlor and trustee.~~

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

4 REQUIREMENTS FOR CREATION

5 A. A trust is created only if:

- 6 1. The settlor has capacity to create a trust;
- 7 2. The settlor indicates an intention to create the trust;
- 8 3. The trust has a definite beneficiary or is:

9 a. a charitable trust,

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

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

14 4. The trustee has duties to perform; and

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

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

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

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

4 TRUSTS CREATED IN OTHER JURISDICTIONS

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

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

13 SECTION 25. AMENDATORY 60 O.S. 2001, Section 175.2, is
14 amended to read as follows:

15 Section 175.2

16 TRUST PURPOSES

17 A trust ~~in relation to real and personal property, or either of~~
18 ~~them,~~ may be created ~~for any purpose or purposes for which a~~
19 ~~contract may be made~~ only to the extent its purposes are lawful, not
20 contrary to public policy, and possible to achieve. A trust and its
21 terms shall be for the benefit of its beneficiaries.

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

1 CHARITABLE PURPOSES; ENFORCEMENT

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

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

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

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

17 CREATION OF TRUST INDUCED BY FRAUD, DURESS, OR UNDUE INFLUENCE

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

20 SECTION 28. AMENDATORY 60 O.S. 2001, Section 136, is
21 amended to read as follows:

22 Section 136.

23 EVIDENCE OF ORAL TRUST

1 ~~No~~ A. Except as required by a statute other than this act, a
2 trust need not be evidenced by a trust instrument, but the creation
3 of an oral trust and its terms may be established only by clear and
4 convincing evidence.

5 B. A beneficiary may be a cotrustee and the legal and equitable
6 title to the trust estate shall not merge by reason thereof.

7 Provided, however, that no trust in relation to real property is
8 shall be valid, unless created or declared:

9 1. By a written instrument, subscribed by the ~~grantor~~ trustor
10 or by his or her agent thereto authorized by writing~~;~~ or

11 2. By the instrument under which the trustee claims the estate
12 affected~~;~~ or,

13 ~~3. By operation of law.~~

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

17 TRUST FOR CARE OF ANIMAL

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

23 B. A trust authorized by this section may be enforced by a
24 person appointed in the terms of the trust or, if no person is so

1 appointed, by a person appointed by the court. A person having an
2 interest in the welfare of the animals may request the court to
3 appoint a person to enforce the trust or to remove a person
4 appointed.

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

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

20 NONCHARITABLE TRUST WITHOUT ASCERTAINABLE BENEFICIARY

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

23 1. A trust may be created for a noncharitable purpose without a
24 definite or definitely ascertainable beneficiary or for a

1 noncharitable but otherwise valid purpose to be selected by the
2 trustee. The trust may not be enforced for more than twenty-one
3 (21) years;

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

7 3. Property of a trust authorized by this section may be
8 applied only to its intended use, except to the extent the court
9 determines that the value of the trust property exceeds the amount
10 required for the intended use. Except as otherwise provided in the
11 terms of the trust, property not required for the intended use must
12 be distributed to the settlor, if then living, otherwise to the
13 settlor's successors in interest.

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

17 MODIFICATION OR TERMINATION OF TRUST;

18 PROCEEDINGS FOR APPROVAL OR DISAPPROVAL

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

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

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

12 MODIFICATION OR TERMINATION OF NONCHARITABLE
13 IRREVOCABLE TRUST BY CONSENT

14 A. A noncharitable irrevocable trust may be modified or
15 terminated upon consent of the settlor and all beneficiaries, even
16 if the modification or termination is inconsistent with a material
17 purpose of the trust. If upon petition to the court finds that the
18 settlor and all beneficiaries consent to the modification or
19 termination of an irrevocable trust, the court shall enter an order
20 approving the modification or termination even if the modification
21 or termination is inconsistent with a material purpose of the trust.
22 A settlor's power to consent to a trust's modification or
23 termination may be exercised by an agent under a power of attorney
24 only to the extent expressly authorized by the power of attorney or

1 the terms of the trust; by the settlor's conservator with the
2 approval of the court supervising the conservatorship if an agent is
3 not so authorized; or by the settlor's guardian with the approval of
4 the court supervising the guardianship if an agent is not so
5 authorized and a conservator has not been appointed.

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

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

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

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

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

24

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

4 MODIFICATION OR TERMINATION BECAUSE OF UNANTICIPATED
5 CIRCUMSTANCES OR INABILITY TO ADMINISTER TRUST EFFECTIVELY

6 A. The court may modify the administrative or dispositive terms
7 of a trust or terminate the trust if, because of circumstances not
8 anticipated by the settlor, modification or termination will further
9 the purposes of the trust. To the extent practicable, the
10 modification must be made in accordance with the settlor's probable
11 intention.

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

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

18 SECTION 34. AMENDATORY 60 O.S. 2001, Section 602, is
19 amended to read as follows:

20 Section 602. ~~If a trust for charity is or becomes illegal or~~
21 ~~impossible or impracticable of fulfillment, or if a devise or~~
22 ~~bequest for charity, at the time it was intended to become~~
23 ~~effective, is illegal or impossible or impracticable of fulfillment~~
24 ~~and if the settlor or the testator manifested a general intention to~~

1 ~~devote the property to charity, any court of this state possessing~~
2 ~~general equitable jurisdiction, on the application of any trustee or~~
3 ~~of any interested party or of the Attorney General, may order an~~
4 ~~administration of the trust, devise, or bequest as nearly as~~
5 ~~possible to fulfill the general charitable intention of the settlor~~
6 ~~or testator~~

7 CY PRES

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

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

12 2. The trust property does not revert to the settlor or the
13 settlor's successors in interest; and

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

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

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

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

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

6 MODIFICATION OR TERMINATION OF UNECONOMIC TRUST

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

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

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

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

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

24 REFORMATION TO CORRECT MISTAKES

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

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

9 MODIFICATION TO ACHIEVE SETTLOR'S TAX OBJECTIVES

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

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

17 COMBINATION AND DIVISION OF TRUSTS

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

23 ARTICLE 5

24 CREDITOR'S CLAIMS; SPENDTHRIFT AND DISCRETIONARY TRUSTS

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

4 RIGHTS OF BENEFICIARY'S CREDITOR OR ASSIGNEE

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

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

14 SPENDTHRIFT PROVISION

15 A. A spendthrift provision is valid only if it restrains both
16 voluntary and involuntary transfer of a beneficiary's interest.

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

21 C. A beneficiary may not transfer an interest in a trust in
22 violation of a valid spendthrift provision and, except as otherwise
23 provided in this article, a creditor or assignee of the beneficiary
24

1 may not reach the interest or a distribution by the trustee before
2 its receipt by the beneficiary.

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

6 EXCEPTIONS TO SPENDTHRIFT PROVISION

7 A. For purposes of section, "child" includes any person for
8 whom an order or judgment for child support has been entered in this
9 or another state.

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

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

23

24

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

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

7 DISCRETIONARY TRUSTS; EFFECT OF STANDARD

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

- 11 1. The discretion is expressed in the form of a standard of
12 distribution; or
- 13 2. The trustee has abused the discretion.

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

17 C. A creditor may not reach the interest of a beneficiary who
18 is also a trustee or cotrustee, or otherwise compel a distribution,
19 if the trustee's discretion to make distributions for the trustee's
20 own benefit is limited by an ascertainable standard.

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

24 CREDITOR'S CLAIM AGAINST SETTLOR

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

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

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

11 B. For purposes of this section:

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

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

23

24

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

4 OVERDUE DISTRIBUTION

5 Whether or not a trust contains a spendthrift provision, a
6 creditor or assignee of a beneficiary may reach a mandatory
7 distribution of income or principal, including a distribution upon
8 termination of the trust, if the trustee has not made the
9 distribution to the beneficiary within a reasonable time after the
10 mandated distribution date.

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

14 PERSONAL OBLIGATIONS OF TRUSTEE

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

17 ARTICLE 6

18 REVOCABLE TRUSTS

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

22 CAPACITY OF SETTLOR OF REVOCABLE TRUST

23 The capacity required to create, amend, revoke or add property
24 to a revocable trust, or to direct the actions of the trustee of a

1 revocable trust, is the same as that required to make a will. This
2 section does not impose the same formalities on the execution of a
3 trust instrument as are imposed on the execution of an attested
4 will.

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

8 REVOCATION OR AMENDMENT OF REVOCABLE TRUST

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

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

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

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

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

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

24

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

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

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

9 E. A settlor's powers with respect to revocation, amendment, or
10 distribution of trust property may be exercised by an agent under a
11 power of attorney only to the extent expressly authorized by the
12 terms of the trust or the power.

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

19 G. A trustee who does not know that a trust has been revoked or
20 amended is not liable to the settlor or settlor's successors in
21 interest for distributions made and other actions taken on the
22 assumption that the trust had not been amended or revoked.

23

24

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

4 SETTLOR'S POWERS; POWERS OF WITHDRAWAL

5 A. While a trust is revocable and the settlor has capacity to
6 revoke the trust, rights of the beneficiaries are subject to the
7 control of, and the duties of the trustee are owed exclusively to,
8 the settlor.

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

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

16 LIMITATION ON ACTION CONTESTING VALIDITY OF REVOCABLE TRUST;

17 DISTRIBUTION OF TRUST PROPERTY

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

- 21 1. One (1) year after the settlor's death; or
- 22 2. One hundred twenty (120) days after the trustee sent the
23 person a copy of the trust instrument and a notice informing the
24

1 person of the trust's existence, of the trustee's name and address,
2 and of the time allowed for commencing a proceeding.

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

7 1. The trustee knows of a pending judicial proceeding
8 contesting the validity of the trust; or

9 2. A potential contestant has notified the trustee of a
10 possible judicial proceeding to contest the trust and a judicial
11 proceeding is commenced within sixty (60) days after the contestant
12 sent the notification.

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

15 ARTICLE 7

16 OFFICE OF TRUSTEE

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

20 ACCEPTING OR DECLINING TRUSTEESHIP

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

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

1 protect the interests of the beneficiaries or is required by the
2 terms of the trust and the court has not dispensed with the
3 requirement.

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

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

10 SECTION 52. AMENDATORY 60 O.S. 2001, Section 175.17, is
11 amended to read as follows:

12 Section 175.17 ~~Unless it is otherwise provided by the trust~~
13 ~~instrument, or an amendment thereof, or by court order:~~

14 ~~A. Any power vested in three or more trustees may be exercised~~
15 ~~by a majority of the trustees; but no trustee who has not joined in~~
16 ~~exercising a power shall be liable to the beneficiaries or to others~~
17 ~~for the consequences of the exercise, nor shall a dissenting trustee~~
18 ~~be liable for the consequences of an act in which the trustee joins~~
19 ~~at the direction of the majority trustees, if the trustee expressed~~
20 ~~his dissent in writing to any of the cotrustees at or before the~~
21 ~~time of the joinder.~~

22 ~~B. Where two or more trustees are appointed by will or a~~
23 ~~voluntary trust to execute a trust and one or more of them die, the~~
24 ~~survivor may execute the trust and may exercise the discretionary~~

1 ~~powers given to the trustees jointly, unless the terms of the will~~
2 ~~or agreement express a contrary opinion.~~

3 ~~C. Any cotrustee may give a power of attorney to another~~
4 ~~trustee or authorize a cotrustee to perform any act in the~~
5 ~~administration of the trust, but the trustee giving a power of~~
6 ~~attorney or authorizing an act to be performed by the cotrustee~~
7 ~~shall have the same liability and responsibility as if the trustee~~
8 ~~had performed the act done pursuant to the authorization.~~

9 ~~D. Nothing in this section shall excuse a cotrustee from~~
10 ~~liability for inactivity in the administration of the trust, nor for~~
11 ~~failure to attempt to prevent a breach of trust.~~

12 ~~E. Where two or more trustees, none of whom is the settlor,~~
13 ~~have the power as trustees to make discretionary distributions of~~
14 ~~either principal or income to or for the benefit of one of them, the~~
15 ~~trustee beneficiary may only make such discretionary distributions~~
16 ~~which provide for the health, education, or maintenance of the~~
17 ~~trustee beneficiary or to support the trustee beneficiary in an~~
18 ~~accustomed manner of living. The provisions of this subsection~~
19 ~~shall apply to any trust created under a document executed on or~~
20 ~~before the effective date of this act unless:~~

21 ~~1. The trust is revocable or amendable and the settlor revokes~~
22 ~~or amends the trust at any time to provide otherwise; or~~

23 ~~2. The trust is irrevocable and all parties in interest elect~~
24 ~~affirmatively not to be subject to this subsection. Such election~~

1 ~~must be made on or before the later of three (3) years after the~~
2 ~~effective date of this act, or three (3) years after the date on~~
3 ~~which the trust becomes irrevocable~~

4 COTRUSTEES

5 A. Cotrustees who are unable to reach a unanimous decision may
6 act by majority decision.

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

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

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

21 E. Any cotrustee may give a power of attorney to another
22 trustee or authorize a cotrustee to perform any act in the
23 administration of the trust, but the trustee giving a power of
24 attorney or authorizing an act to be performed by the cotrustee

1 shall have the same liability and responsibility as if the trustee
2 had performed the act done pursuant to the authorization.

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

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

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

12 SECTION 53. AMENDATORY 60 O.S. 2001, Section 175.37, is
13 amended to read as follows:

14 ~~Section 175.37 Upon the death of a sole or surviving trustee of~~
15 ~~an express trust and in the absence of the trust providing for a~~
16 ~~practical method of appointment, the power to appoint a trustee~~
17 ~~shall vest in the court having jurisdiction thereof, and on petition~~
18 ~~of any person interested such court shall appoint a successor in~~
19 ~~whom the trust shall vest~~

20 VACANCY IN TRUSTEESHIP; APPOINTMENT OF SUCCESSOR

21 Unless the trust instrument provides otherwise:

22 1. A vacancy in a trusteeship occurs if:

23 a. a person designated as trustee rejects the
24 trusteeship,

- b. a person designated as trustee cannot be identified or does not exist,
- c. a trustee resigns,
- d. a trustee is disqualified or removed,
- e. a trustee dies, or
- f. a guardian or conservator is appointed for an individual serving as trustee;

2. 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;

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

- a. by a person designated in the terms of the trust to act as successor trustee,
- b. by a person appointed by unanimous agreement of the qualified beneficiaries, or
- c. by a person appointed by the court;

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

- a. by a person designated in the terms of the trust to act as successor trustee,

1 trustee best serves the interests of the
2 beneficiaries, or

3 c. there has been a substantial change of circumstances
4 or removal is requested by all of the qualified
5 beneficiaries, the court finds that removal of the
6 trustee best serves the interests of all of the
7 beneficiaries and is not inconsistent with a material
8 purpose of the trust, and a suitable cotrustee or
9 successor trustee is available; and

10 3. Pending a final decision on a request to remove a trustee,
11 or in lieu of or in addition to removing a trustee, the court may
12 order such appropriate relief under subsection B of Section 76 of
13 this act as may be necessary to protect the trust property or the
14 interests of the beneficiaries.

15 SECTION 56. AMENDATORY 60 O.S. 2001, Section 173, is
16 amended to read as follows:

17 Section 173. ~~Instruments creating express trusts may provide~~
18 ~~for succession to any trustee, in case of the death, resignation,~~
19 ~~removal, or incapacity of such trustee. In case of any such~~
20 ~~succession, the title to the trust property shall at once vest in~~
21 ~~the succeeding trustee~~

22 DELIVERY OF PROPERTY BY FORMER TRUSTEE

23 A. Unless a cotrustee remains in office or the court otherwise
24 orders, and until the trust property is delivered to a successor

1 trustee or other person entitled to it, a trustee who has resigned
2 or been removed has the duties of a trustee and the powers necessary
3 to protect the property.

4 B. A trustee who has resigned or been removed shall proceed
5 expeditiously to deliver the trust property within the trustee's
6 possession to the cotrustee, successor trustee, or other person
7 entitled to it.

8 SECTION 57. AMENDATORY 60 O.S. 2001, Section 175.48, is
9 amended to read as follows:

10 Section 175.48 ~~A trustee acting in a fiduciary capacity, as~~
11 ~~herein authorized, is entitled to receive such compensation or~~
12 ~~commission as provided for in the trust agreement or other contract.~~
13 ~~If the amount of such compensation or commission is not regulated by~~
14 ~~or stipulated in the trust agreement, the trustee may charge and~~
15 ~~deduct a reasonable compensation or commission for the services~~
16 ~~rendered and the responsibilities assumed. Where the trustee is~~
17 ~~acting under appointment by a court, such compensation or commission~~
18 ~~shall be paid, irrespective of the provisions in the trust~~
19 ~~instrument, as allowed or approved by that court~~

20 COMPENSATION OF TRUSTEE

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

24

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

4 DUTY TO ADMINISTER TRUST

5 Upon acceptance of a trusteeship, the trustee shall administer
6 the trust in good faith, in accordance with its terms and purposes
7 and the interests of the beneficiaries, and in accordance with this
8 act.

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

12 DUTY OF LOYALTY

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

15 B. Subject to the rights of persons dealing with or assisting
16 the trustee as provided in Section 87 of this act, a sale,
17 encumbrance, or other transaction involving the investment or
18 management of trust property entered into by the trustee for the
19 trustee's own personal account or which is otherwise affected by a
20 conflict between the trustee's fiduciary and personal interests is
21 voidable by a beneficiary affected by the transaction unless:

- 22 1. The transaction was authorized by the terms of the trust;
- 23 2. The transaction was approved by the court;

24

1 3. The beneficiary did not commence a judicial proceeding
2 within the time allowed by Section 80 of this act;

3 4. The beneficiary consented to the trustee's conduct, ratified
4 the transaction, or released the trustee in compliance with Section
5 84 of this act; or

6 5. The transaction involves a contract entered into or claim
7 acquired by the trustee before the person became or contemplated
8 becoming trustee.

9 C. A sale, encumbrance, or other transaction involving the
10 investment or management of trust property is presumed to be
11 affected by a conflict between personal and fiduciary interests if
12 it is entered into by the trustee with:

13 1. The trustee's spouse;

14 2. The trustee's descendants, siblings, parents, or their
15 spouses;

16 3. An agent or attorney of the trustee; or

17 4. A corporation or other person or enterprise in which the
18 trustee, or a person that owns a significant interest in the
19 trustee, has an interest that might affect the trustee's best
20 judgment.

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

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

17 F. In voting shares of stock or in exercising powers of control
18 over similar interests in other forms of enterprise, the trustee
19 shall act in the best interests of the beneficiaries. If the trust
20 is the sole owner of a corporation or other form of enterprise, the
21 trustee shall elect or appoint directors or other managers who will
22 manage the corporation or enterprise in the best interests of the
23 beneficiaries.

24

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

3 1. An agreement between a trustee and a beneficiary relating to
4 the appointment or compensation of the trustee;

5 2. Payment of reasonable compensation to the trustee;

6 3. A transaction between a trust and another trust, decedent's
7 estate, guardianship or conservatorship of which the trustee is a
8 fiduciary or in which a beneficiary has an interest;

9 4. A deposit of trust money in a regulated financial-service
10 institution operated by the trustee; or

11 5. An advance by the trustee of money for the protection of the
12 trust.

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

16 SECTION 61. AMENDATORY 60 O.S. 2001, Section 175.66, is
17 amended to read as follows:

18 Section 175.66 ~~Impartiality.~~

19 IMPARTIALITY

20 If a trust has two or more beneficiaries, the trustee shall act
21 impartially in investing, ~~and~~ managing and distributing the trust
22 assets, ~~taking into account any differing interests of the~~
23 beneficiaries property, giving due regard to the beneficiaries'
24 respective interests.

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

4 PRUDENT ADMINISTRATION

5 A trustee shall administer the trust as a prudent person would,
6 by considering the purposes, terms, distributional requirements, and
7 other circumstances of the trust. In satisfying this standard, the
8 trustee shall exercise reasonable care, skill, and caution.

9 SECTION 63. AMENDATORY 60 O.S. 2001, Section 175.67, is
10 amended to read as follows:

11 Section 175.67 ~~Investment costs.~~

12 COSTS OF ADMINISTRATION

13 In ~~investing and managing~~ administering a trust assets, a
14 trustee may only incur costs that are ~~appropriate and~~ reasonable in
15 relation to the ~~assets~~ trust property, the purposes of the trust,
16 and the skills of the trustee.

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

20 TRUSTEE'S SKILLS

21 A trustee who has special skills or expertise, or is named
22 trustee in reliance upon the trustee's representation that the
23 trustee has special skills or expertise, shall use those special
24 skills or expertise.

1 SECTION 65. AMENDATORY 60 O.S. 2001, Section 175.69, is
2 amended to read as follows:

3 Section 175.69 ~~Delegation of investment and management~~
4 ~~functions.~~

5 DELEGATION BY TRUSTEE

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

10 1. Selecting an agent;

11 2. Establishing the scope and terms of the delegation,
12 consistent with the purposes and terms of the trust; and

13 3. Periodically reviewing the agent's actions in order to
14 monitor the agent's performance and compliance with the terms of the
15 delegation.

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

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

23

24

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

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

7 POWERS TO DIRECT

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

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

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

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

23 CONTROL AND PROTECTION OF TRUST PROPERTY

24

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

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

6 RECORDKEEPING AND IDENTIFICATION OF TRUST PROPERTY

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

9 B. A trustee shall keep trust property separate from the
10 trustee's own property.

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

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

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

20 ENFORCEMENT AND DEFENSE OF CLAIMS

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

23

24

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

4 COLLECTING TRUST PROPERTY

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

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

12 DUTY TO INFORM AND REPORT

13 A. A trustee shall keep the qualified beneficiaries of the
14 trust reasonably informed about the administration of the trust and
15 of the material facts necessary for them to protect their interests.
16 Unless unreasonable under the circumstances, a trustee shall
17 promptly respond to a qualified beneficiary's request for
18 information related to the administration of the trust.

19 B. A trustee:

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

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

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

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

11 C. A trustee shall send to the distributees or permissible
12 distributees of current trust income or principal, and to qualified
13 beneficiaries who request it, at least annually and at the
14 termination of the trust, a report of the trust property,
15 liabilities, receipts, and disbursements, including the source and
16 amount of the trustee's compensation, a listing of the trust assets
17 and, if feasible, their respective market values. Upon a vacancy in
18 a trusteeship, unless a cotrustee remains in office, a report must
19 be sent to the qualified beneficiaries by the former trustee. A
20 personal representative, conservator, or guardian may send the
21 qualified beneficiaries a report on behalf of a deceased or
22 incapacitated trustee.

23 D. A beneficiary may waive the right to a trustee's report or
24 other information otherwise required to be furnished under this

1 section. A beneficiary, with respect to future reports and other
2 information, may withdraw a waiver previously given.

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

6 DISCRETIONARY POWERS; TAX SAVINGS

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

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

15 1. A person other than a settlor who is a beneficiary and
16 trustee of a trust that confers on the trustee a power to make
17 discretionary distributions to or for the trustee's personal benefit
18 may exercise the power only in accordance with an ascertainable
19 standard; and

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

23 C. A power whose exercise is limited or prohibited by
24 subsection B of this section may be exercised by a majority of the

1 remaining trustees whose exercise of the power is not so limited or
2 prohibited. If the power of all trustees is so limited or
3 prohibited, the court may appoint a special fiduciary with authority
4 to exercise the power.

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

6 1. A power held by the settlor's spouse who is the trustee of a
7 trust for which a marital deduction, as defined in Section
8 2056(b)(5) or 2523(e) of the Internal Revenue Act of 1986, as in
9 effect on the effective date of this act, or as later amended, was
10 previously allowed;

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

13 3. A trust if contributions to the trust qualify for the annual
14 exclusion under Section 2503(c) of the Internal Revenue Act of 1986,
15 as in effect on the effective date of this act, or as later amended.

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

19 GENERAL POWERS OF TRUSTEE

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

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

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

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

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

4 c. any other powers conferred by this act.

5 B. The exercise of a power is subject to the fiduciary duties
6 prescribed in Sections 59 through 73 of this act.

7 SECTION 74. AMENDATORY 60 O.S. 2001, Section 175.24, is
8 amended to read as follows:

9 Section 175.24 ~~Powers of trustees — Enumeration — Others not~~
10 ~~excluded — Bond of trustee.~~

11 A. ~~In the absence of contrary or limiting provisions in the~~
12 ~~trust agreement or a subsequent order or decree of a court of~~
13 ~~competent jurisdiction, the trustee of an express trust is~~
14 ~~authorized:~~

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

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

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

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

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

18 ~~6. To pay calls, assessments, and any other sums chargeable or~~
19 ~~accruing against, or on account of shares of stock or other~~
20 ~~securities in the hands of the trustee where such payment may be~~
21 ~~legally enforceable against the trustee or any property of the~~
22 ~~trust, or the trustee deems payment expedient and for the best~~
23 ~~interest of the trust. To sell or exercise stock subscription or~~
24 ~~conversion rights, participate in foreclosures, reorganizations,~~

1 ~~consolidations, mergers, liquidations, pooling agreements and voting~~
2 ~~trusts; to assent to corporate sales, leases, and encumbrances, and~~
3 ~~in general, except as limited by the particular trust agreement,~~
4 ~~have and exercise all powers of an absolute owner in respect of such~~
5 ~~securities. In the exercise of the foregoing powers the trustee~~
6 ~~shall be authorized, where he deems such course expedient, to~~
7 ~~deposit stocks, bonds, or other securities with any protective or~~
8 ~~other committee formed by or at the instance of persons holding~~
9 ~~similar securities, under such terms and conditions respecting the~~
10 ~~deposit thereof as the trustee may approve. Any stock or other~~
11 ~~securities obtained by conversion, reorganization, consolidation,~~
12 ~~merger, liquidation, or the exercise of subscription rights shall be~~
13 ~~free, unless the trust agreement provides otherwise, from any~~
14 ~~restrictions on sale or otherwise contained in the trust agreement~~
15 ~~relative to the securities originally held;~~

16 ~~7. To make such investment directly or in the form of~~
17 ~~securities of, or other interests in, any open end or closed end~~
18 ~~management type investment company or investment trust registered~~
19 ~~under the Investment Company Act of 1940, 15 U.S.C.A. Section 80a-1~~
20 ~~et seq.; provided, that the portfolio of such investment company or~~
21 ~~investment trust is limited to United States Government obligations~~
22 ~~and to repurchase agreements fully collateralized by such United~~
23 ~~States Government obligations, and provided further, that any such~~

24

1 ~~investment company or investment trust shall take delivery of such~~
2 ~~collateral, either directly or through an authorized custodian;~~

3 ~~8. To borrow money or create an indebtedness or obligation~~
4 ~~including any bond indebtedness or obligation, except as limited by~~
5 ~~the provisions of the Oklahoma Trust Act; and generally to execute~~
6 ~~any deed or other instrument and to do all things in relation to~~
7 ~~such trust necessary or desirable for carrying out any of the above~~
8 ~~powers or incident to the purposes of such trust; and~~

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

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

23 ~~1. Where a trustee is authorized to sell or dispose of land,~~
24 ~~such authority shall include the right to sell or dispose of part~~

1 ~~thereof, whether the division is horizontal, vertical, or made in~~
2 ~~any other way, or undivided interests therein;~~

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

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

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

24

1 ~~C. The powers, duties, and responsibilities stated in the~~
2 ~~Oklahoma Trust Act or the Oklahoma Uniform Prudent Investor Act~~
3 ~~shall not be deemed to exclude other implied powers, duties, or~~
4 ~~responsibilities not inconsistent herewith.~~

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

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

12 SPECIFIC POWERS OF TRUSTEE

13 Without limiting the authority conferred by Section 73 of this
14 act or unless restricted by the trust instrument, a trustee may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 a. inspect or investigate property the trustee holds or
2 has been asked to hold, or property owned or operated
3 by an organization in which the trustee holds or has
4 been asked to hold an interest, for the purpose of
5 determining the application of environmental law with
6 respect to the property,
- 7 b. take action to prevent, abate, or otherwise remedy any
8 actual or potential violation of any environmental law
9 affecting property held directly or indirectly by the
10 trustee, whether taken before or after the assertion
11 of a claim or the initiation of governmental
12 enforcement,
- 13 c. decline to accept property into trust or disclaim any
14 power with respect to property that is or may be
15 burdened with liability for violation of environmental
16 law,
- 17 d. compromise claims against the trust which may be
18 asserted for an alleged violation of environmental
19 law, and
- 20 e. pay the expense of any inspection, review, abatement,
21 or remedial action to comply with environmental law;

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

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

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

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

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

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

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

22 21. Pay an amount distributable to a beneficiary who is under a
23 legal disability or who the trustee reasonably believes is
24

1 incapacitated, by paying it directly to the beneficiary or applying
2 it for the beneficiary's benefit, or by:

3 a. paying it to the beneficiary's conservator or, if the
4 beneficiary does not have a conservator, the
5 beneficiary's guardian,

6 b. paying it to the beneficiary's custodian under the
7 Oklahoma Uniform Transfers to Minors Act and, for that
8 purpose, creating a custodianship,

9 c. if the trustee does not know of a conservator,
10 guardian, custodian, or custodial trustee, paying it
11 to an adult relative or other person having legal or
12 physical care or custody of the beneficiary, to be
13 expended on the beneficiary's behalf, or

14 d. managing it as a separate fund on the beneficiary's
15 behalf, subject to the beneficiary's continuing right
16 to withdraw the distribution;

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

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

1 to the right of the trustee to retain a reasonable reserve for the
2 payment of debts, expenses, and taxes.

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

5 1. It was induced by improper conduct of the trustee; or

6 2. The court finds by clear and convincing evidence that the
7 beneficiary, at the time of the release, did not know or have reason
8 to know of the beneficiary's rights or of the material facts
9 relating to the breach.

10 ARTICLE 10

11 LIABILITY OF TRUSTEES AND

12 RIGHTS OF PERSONS DEALING WITH TRUSTEE

13 SECTION 76. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1183 of Title 60, unless there
15 is created a duplication in numbering, reads as follows:

16 REMEDIES FOR BREACH OF TRUST

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

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

21 1. Compel the trustee to perform the trustee's duties;

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

23 3. Compel the trustee to redress a breach of trust by paying
24 money, restoring property, or other means;

- 1 4. Order a trustee to account;
- 2 5. Appoint a special fiduciary to take possession of the trust
- 3 property and administer the trust;
- 4 6. Suspend the trustee;
- 5 7. Remove the trustee as provided in Section 55 of this act;
- 6 8. Reduce or deny compensation to the trustee;
- 7 9. Subject to Section 87 of this act, void an act of the
- 8 trustee, impose a lien or a constructive trust on trust property, or
- 9 trace trust property wrongfully disposed of and recover the property
- 10 or its proceeds; or
- 11 10. Order any other appropriate relief.

12 SECTION 77. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1184 of Title 60, unless there
14 is created a duplication in numbering, reads as follows:

15 DAMAGES FOR BREACH OF TRUST

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

18 1. The amount required to restore the value of the trust
19 property and trust distributions to what they would have been had
20 the breach not occurred; or

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

22 B. Except as otherwise provided in this subsection, if more
23 than one trustee is liable to the beneficiaries for a breach of
24 trust, a trustee is entitled to contribution from the other trustee

1 or trustees. A trustee is not entitled to contribution if the
2 trustee committed the breach of trust in bad faith or with reckless
3 indifference to the purposes of the trust or the interests of the
4 beneficiaries. A trustee who received a benefit from the breach of
5 trust is not entitled to contribution from another trustee to the
6 extent of the benefit received.

7 SECTION 78. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1185 of Title 60, unless there
9 is created a duplication in numbering, reads as follows:

10 DAMAGES IN ABSENCE OF BREACH

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

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

19 SECTION 79. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1186 of Title 60, unless there
21 is created a duplication in numbering, reads as follows:

22 ATTORNEY FEES AND COSTS

23 In a judicial proceeding involving the administration of a
24 trust, the court, as justice and equity may require, may award costs

1 and expenses, including reasonable attorney fees, to any party, to
2 be paid by another party or from the trust that is the subject of
3 the controversy.

4 SECTION 80. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1187 of Title 60, unless there
6 is created a duplication in numbering, reads as follows:

7 LIMITATION OF ACTION AGAINST TRUSTEE

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

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

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

- 21 1. The removal, resignation, or death of the trustee;
22 2. The termination of the beneficiary's interest in the trust;
23 or
24 3. The termination of the trust.

1 SECTION 81. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1188 of Title 60, unless there
3 is created a duplication in numbering, reads as follows:

4 RELIANCE ON TRUST INSTRUMENT

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

9 SECTION 82. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1189 of Title 60, unless there
11 is created a duplication in numbering, reads as follows:

12 EVENT AFFECTING ADMINISTRATION OR DISTRIBUTION

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

19 SECTION 83. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1190 of Title 60, unless there
21 is created a duplication in numbering, reads as follows:

22 EXCULPATION OF TRUSTEE

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

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

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

6 B. An exculpatory term drafted or caused to be drafted by the
7 trustee is invalid as an abuse of a fiduciary or confidential
8 relationship unless the trustee proves that the exculpatory term is
9 fair under the circumstances and that its existence and contents
10 were adequately communicated to the settlor.

11 C. An exculpatory term drafted, caused to be drafted, or
12 reviewed by an attorney for the settlor is presumed to be fair and
13 reasonable and its existence and contents are presumed to have been
14 adequately communicated to the settlor unless proven otherwise by
15 clear and convincing evidence.

16 SECTION 84. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1191 of Title 60, unless there
18 is created a duplication in numbering, reads as follows:

19 BENEFICIARY'S CONSENT, RELEASE, OR RATIFICATION

20 A trustee is not liable to a beneficiary for breach of trust if
21 the beneficiary consented to the conduct constituting the breach,
22 released the trustee from liability for the breach, or ratified the
23 transaction constituting the breach, unless:

24

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

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

7 SECTION 85. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1192 of Title 60, unless there
9 is created a duplication in numbering, reads as follows:

10 LIMITATION ON PERSONAL LIABILITY OF TRUSTEE

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

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

21 C. A claim based on a contract entered into by a trustee in the
22 trustee's fiduciary capacity, on an obligation arising from
23 ownership or control of trust property, or on a tort committed in
24 the course of administering a trust, may be asserted in a judicial

1 proceeding against the trustee in the trustee's fiduciary capacity,
2 whether or not the trustee is personally liable for the claim.

3 SECTION 86. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1193 of Title 60, unless there
5 is created a duplication in numbering, reads as follows:

6 INTEREST AS GENERAL PARTNER

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

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

21 C. The immunity provided by this section does not apply if an
22 interest in the partnership is held by the trustee in a capacity
23 other than that of trustee or is held by the trustee's spouse or one
24

1 or more of the trustee's descendants, siblings, or parents, or the
2 spouse of any of them.

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

7 SECTION 87. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1194 of Title 60, unless there
9 is created a duplication in numbering, reads as follows:

10 PROTECTION OF PERSON DEALING WITH TRUSTEE

11 A. A person other than a beneficiary who in good faith assists
12 a trustee, or who in good faith and for value deals with a trustee,
13 without knowledge that the trustee is exceeding or improperly
14 exercising the trustee's powers is protected from liability as if
15 the trustee properly exercised the power.

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

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

21 D. A person other than a beneficiary who in good faith assists
22 a former trustee, or who in good faith and for value deals with a
23 former trustee, without knowledge that the trusteeship has
24

1 terminated is protected from liability as if the former trustee were
2 still a trustee.

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

6 SECTION 88. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1195 of Title 60, unless there
8 is created a duplication in numbering, reads as follows:

9 CERTIFICATION OF TRUST

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

- 15 1. That the trust exists and the date the trust instrument was
16 executed;
- 17 2. The identity of the settlor;
- 18 3. The identity and address of the currently acting trustee;
- 19 4. The powers of the trustee relevant to the transaction or
20 transactions;
- 21 5. The revocability or irrevocability of the trust and the
22 identity of any person holding a power to revoke the trust;

23

24

1 6. The authority of cotrustees to sign or otherwise
2 authenticate and whether all or less than all are required in order
3 to exercise powers of the trustee; and

4 7. The manner of taking title to trust property.

5 B. A certification of trust may be signed or otherwise
6 authenticated by any trustee.

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

11 D. A certification of trust need not contain the dispositive
12 terms of a trust.

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

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

1 G. A person who in good faith enters into a transaction in
2 reliance upon a certification of trust may enforce the transaction
3 against the trust property as if the representations contained in
4 the certification were correct.

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

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

12 J. Any recipient of a certificate of trust who is also in need
13 of the trust's taxpayer identification number may request it, but
14 only in a separate document which shall not be recorded publicly.

15 K. When the trustee is an individual, not a corporation, the
16 recipient of a certificate of trust may also require supplemental
17 information identifying the name and address of the successor
18 trustees.

19 ARTICLE 11

20 MISCELLANEOUS PROVISIONS

21 SECTION 89. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1196 of Title 60, unless there
23 is created a duplication in numbering, reads as follows:

24 UNIFORMITY OF APPLICATION AND CONSTRUCTION

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

5 SECTION 90. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1197 of Title 60, unless there
7 is created a duplication in numbering, reads as follows:

8 RELATION TO ELECTRONIC SIGNATURES IN
9 GLOBAL AND NATIONAL COMMERCE ACT

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

16 SECTION 91. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1198 of Title 60, unless there
18 is created a duplication in numbering, reads as follows:

19 APPLICATION TO EXISTING RELATIONSHIPS

20 A. Except as otherwise provided in this act, on November 1,
21 2005:

22 1. This act applies to all trusts created before, on, or after
23 November 1, 2005, but no provision of this act shall make invalid a
24 trust created before November 1, 2005, prejudice the interests of

1 the beneficiaries of a trust created before November 1, 2005, or
2 contravene the terms of a trust created before November 1, 2005;

3 2. This act applies to all judicial proceedings concerning
4 trusts commenced on or after November 1, 2005;

5 3. This act applies to judicial proceedings concerning trusts
6 commenced before November 1, 2005 unless the court finds that
7 application of a particular provision of this act would
8 substantially interfere with the effective conduct of the judicial
9 proceedings or prejudice the rights of the parties, in which case
10 the particular provision of this act does not apply and the
11 superseded law applies;

12 4. Any rule of construction or presumption provided in this act
13 applies to trust instruments executed before November 1, 2005 unless
14 there is a clear indication of a contrary intent in the terms of the
15 trust; and

16 5. An act done before November 1, 2005 is not affected by this
17 act.

18 B. If a right is acquired, extinguished, or barred upon the
19 expiration of a prescribed period that has commenced to run under
20 any other statute before November 1, 2005, that statute continues to
21 apply to the right even if it has been repealed or superseded.

22 SECTION 92. AMENDATORY 60 O.S. 2001, Section 181, is
23 amended to read as follows:

24 Section 181.

1 UNLIMITED MARITAL DEDUCTION; CONSTRUCTION OF TRUST

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

10 SECTION 93. RECODIFICATION 60 O.S. 2001, Section 175, as
11 amended by Section 12 of this act, shall be recodified as Section
12 1112 of Title 60 of the Oklahoma Statutes, unless there is created a
13 duplication in numbering;

14 60 O.S. 2001, Section 175.6, as amended by Section 22 of this
15 act, shall be recodified as Section 1122 of Title 60 of the Oklahoma
16 Statutes, unless there is created a duplication in numbering;

17 60 O.S. 2001, Section 175.2, as amended by Section 25 of this
18 act, shall be recodified as Section 1125 of Title 60 of the Oklahoma
19 Statutes, unless there is created a duplication in numbering;

20 60 O.S. 2001, Section 136, as amended by Section 28 of this act,
21 shall be recodified as Section 1128 of Title 60 of the Oklahoma
22 Statutes, unless there is created a duplication in numbering;

1 60 O.S. 2001, Section 602, as amended by Section 34 of this act,
2 shall be recodified as Section 1134 of Title 60 of the Oklahoma
3 Statutes, unless there is created a duplication in numbering;

4 60 O.S. 2001, Section 175.17, as amended by Section 52 of this
5 act, shall be recodified as Section 1152 of Title 60 of the Oklahoma
6 Statutes, unless there is created a duplication in numbering;

7 60 O.S. 2001, Section 175.37, as amended by Section 53 of this
8 act, shall be recodified as Section 1153 of Title 60 of the Oklahoma
9 Statutes, unless there is created a duplication in numbering;

10 60 O.S. 2001, Section 175.38, as amended by Section 54 of this
11 act, shall be recodified as Section 1154 of Title 60 of the Oklahoma
12 Statutes, unless there is created a duplication in numbering;

13 60 O.S. 2001, Section 175.39, as amended by Section 55 of this
14 act, shall be recodified as Section 1155 of Title 60 of the Oklahoma
15 Statutes, unless there is created a duplication in numbering;

16 60 O.S. 2001, Section 173, as amended by Section 56 of this act,
17 shall be recodified as Section 1156 of Title 60 of the Oklahoma
18 Statutes, unless there is created a duplication in numbering;

19 60 O.S. 2001, Section 175.48, as amended by Section 57 of this
20 act, shall be recodified as Section 1157 of Title 60 of the Oklahoma
21 Statutes, unless there is created a duplication in numbering;

22 60 O.S. 2001, Section 175.66, as amended by Section 61 of this
23 act, shall be recodified as Section 1161 of Title 60 of the Oklahoma
24 Statutes, unless there is created a duplication in numbering;

1 60 O.S. 2001, Section 175.67, as amended by Section 63 of this
2 act, shall be recodified as Section 1163 of Title 60 of the Oklahoma
3 Statutes, unless there is created a duplication in numbering;

4 60 O.S. 2001, Section 175.69, as amended by Section 65 of this
5 act, shall be recodified as Section 1165 of Title 60 of the Oklahoma
6 Statutes, unless there is created a duplication in numbering;

7 60 O.S. 2001, Section 175.24, as amended by Section 74 of this
8 act, shall be recodified as Section 1174 of Title 60 of the Oklahoma
9 Statutes, unless there is created a duplication in numbering;

10 60 O.S. 2001, Section 175.60, shall be recodified as Section
11 1176 of Title 60 of the Oklahoma Statutes, unless there is created a
12 duplication in numbering;

13 60 O.S. 2001, Section 175.61, shall be recodified as Section
14 1177 of Title 60 of the Oklahoma Statutes, unless there is created a
15 duplication in numbering;

16 60 O.S. 2001, Section 175.62, shall be recodified as Section
17 1178 of Title 60 of the Oklahoma Statutes, unless there is created a
18 duplication in numbering;

19 60 O.S. 2001, Section 175.63, shall be recodified as Section
20 1179 of Title 60 of the Oklahoma Statutes, unless there is created a
21 duplication in numbering;

22 60 O.S. 2001, Section 175.64, shall be recodified as Section
23 1180 of Title 60 of the Oklahoma Statutes, unless there is created a
24 duplication in numbering;

1 60 O.S. 2001, Section 175.69, shall be recodified as Section
2 1181 of Title 60 of the Oklahoma Statutes, unless there is created a
3 duplication in numbering;

4 60 O.S. 2001, Section 175.70, shall be recodified as Section
5 1182 of Title 60 of the Oklahoma Statutes, unless there is created a
6 duplication in numbering; and

7 60 O.S. 2001, Section 181, as amended by Section 92 of this act,
8 shall be recodified as Section 1199 of Title 60 of the Oklahoma
9 Statutes, unless there is created a duplication in numbering;

10 60 O.S. 2001, Section 175.101, shall be recodified as Section
11 1301 of Title 60 of the Oklahoma Statutes, unless there is created a
12 duplication in numbering;

13 60 O.S. 2001, Section 175.102, shall be recodified as Section
14 1302 of Title 60 of the Oklahoma Statutes, unless there is created a
15 duplication in numbering;

16 60 O.S. 2001, Section 175.103, shall be recodified as Section
17 1303 of Title 60 of the Oklahoma Statutes, unless there is created a
18 duplication in numbering;

19 60 O.S. 2001, Section 175.104, shall be recodified as Section
20 1304 of Title 60 of the Oklahoma Statutes, unless there is created a
21 duplication in numbering;

22 60 O.S. 2001, Section 175.201, shall be recodified as Section
23 1305 of Title 60 of the Oklahoma Statutes, unless there is created a
24 duplication in numbering;

1 60 O.S. 2001, Section 175.202, shall be recodified as Section
2 1306 of Title 60 of the Oklahoma Statutes, unless there is created a
3 duplication in numbering;

4 60 O.S. 2001, Section 175.301, shall be recodified as Section
5 1307 of Title 60 of the Oklahoma Statutes, unless there is created a
6 duplication in numbering;

7 60 O.S. 2001, Section 175.302, shall be recodified as Section
8 1308 of Title 60 of the Oklahoma Statutes, unless there is created a
9 duplication in numbering;

10 60 O.S. 2001, Section 175.303, shall be recodified as Section
11 1309 of Title 60 of the Oklahoma Statutes, unless there is created a
12 duplication in numbering;

13 60 O.S. 2001, Section 175.401, shall be recodified as Section
14 1310 of Title 60 of the Oklahoma Statutes, unless there is created a
15 duplication in numbering;

16 60 O.S. 2001, Section 175.402, shall be recodified as Section
17 1311 of Title 60 of the Oklahoma Statutes, unless there is created a
18 duplication in numbering;

19 60 O.S. 2001, Section 175.403, shall be recodified as Section
20 1312 of Title 60 of the Oklahoma Statutes, unless there is created a
21 duplication in numbering;

22 60 O.S. 2001, Section 175.404, shall be recodified as Section
23 1313 of Title 60 of the Oklahoma Statutes, unless there is created a
24 duplication in numbering;

1 60 O.S. 2001, Section 175.405, shall be recodified as Section
2 1314 of Title 60 of the Oklahoma Statutes, unless there is created a
3 duplication in numbering;

4 60 O.S. 2001, Section 175.406, shall be recodified as Section
5 1315 of Title 60 of the Oklahoma Statutes, unless there is created a
6 duplication in numbering;

7 60 O.S. 2001, Section 175.407, shall be recodified as Section
8 1316 of Title 60 of the Oklahoma Statutes, unless there is created a
9 duplication in numbering;

10 60 O.S. 2001, Section 175.408, shall be recodified as Section
11 1317 of Title 60 of the Oklahoma Statutes, unless there is created a
12 duplication in numbering;

13 60 O.S. 2001, Section 175.409, shall be recodified as Section
14 1318 of Title 60 of the Oklahoma Statutes, unless there is created a
15 duplication in numbering;

16 60 O.S. 2001, Section 175.410, shall be recodified as Section
17 1319 of Title 60 of the Oklahoma Statutes, unless there is created a
18 duplication in numbering;

19 60 O.S. 2001, Section 175.411, shall be recodified as Section
20 1320 of Title 60 of the Oklahoma Statutes, unless there is created a
21 duplication in numbering;

22 60 O.S. 2001, Section 175.412, shall be recodified as Section
23 1321 of Title 60 of the Oklahoma Statutes, unless there is created a
24 duplication in numbering;

1 60 O.S. 2001, Section 175.413, shall be recodified as Section
2 1322 of Title 60 of the Oklahoma Statutes, unless there is created a
3 duplication in numbering;

4 60 O.S. 2001, Section 175.414, shall be recodified as Section
5 1323 of Title 60 of the Oklahoma Statutes, unless there is created a
6 duplication in numbering;

7 60 O.S. 2001, Section 175.415, shall be recodified as Section
8 1324 of Title 60 of the Oklahoma Statutes, unless there is created a
9 duplication in numbering;

10 60 O.S. 2001, Section 175.501, shall be recodified as Section
11 1325 of Title 60 of the Oklahoma Statutes, unless there is created a
12 duplication in numbering;

13 60 O.S. 2001, Section 175.502, shall be recodified as Section
14 1326 of Title 60 of the Oklahoma Statutes, unless there is created a
15 duplication in numbering;

16 60 O.S. 2001, Section 175.503, shall be recodified as Section
17 1327 of Title 60 of the Oklahoma Statutes, unless there is created a
18 duplication in numbering;

19 60 O.S. 2001, Section 175.504, shall be recodified as Section
20 1328 of Title 60 of the Oklahoma Statutes, unless there is created a
21 duplication in numbering;

22 60 O.S. 2001, Section 175.505, shall be recodified as Section
23 1329 of Title 60 of the Oklahoma Statutes, unless there is created a
24 duplication in numbering;

1 60 O.S. 2001, Section 175.506, shall be recodified as Section
2 1330 of Title 60 of the Oklahoma Statutes, unless there is created a
3 duplication in numbering;

4 60 O.S. 2001, Section 175.601, shall be recodified as Section
5 1331 of Title 60 of the Oklahoma Statutes, unless there is created a
6 duplication in numbering; and

7 60 O.S. 2001, Section 175.602, shall be recodified as Section
8 1332 of Title 60 of the Oklahoma Statutes, unless there is created a
9 duplication in numbering.

10 SECTION 94. REPEALER 60 O.S. 2001, Sections 140, 175.1,
11 175.3, 175.9, 175.10, 175.11, 175.12, 175.13, 175.14, 175.15,
12 175.18, 175.21, 175.23, 175.25, 175.40, 175.41, 175.42, 175.49,
13 175.50, 175.53, 175.54, 175.55, 175.57, 175.65, 175.71, 175.72 and
14 601, are hereby repealed.

15 SECTION 95. This act shall become effective November 1, 2008.

16 Passed the Senate the 12th day of March, 2008.

17

18

Presiding Officer of the Senate

19

20 Passed the House of Representatives the ____ day of _____,
21 2008.

22

23

Presiding Officer of the House
of Representatives

24