

1 ENGROSSED HOUSE
2 BILL NO. 3962

By: Echols and Kane of the
House

3 and

4 Pugh of the Senate
5
6

7 An Act relating to trusts; enacting the Oklahoma Trust
8 Reform Act of 2024; enacting the Oklahoma Uniform
9 Directed Trust Act of 2024; defining terms; providing
10 for applicability; providing for principal place of
11 administration; providing for when common law and
12 principals of equity control; providing for
13 exclusions; providing the powers of a trust director;
14 providing limitations on trust director; providing
15 duties and liabilities of a trust director; providing
16 duties and liabilities of directed trustees; providing
17 a duty to provide certain information to a trust
18 director or trustee; providing that there is no duty
19 to monitor, inform, or advise; providing application
20 to co-trustee; providing limitation of action against
21 a trust director; providing defenses for a suit
22 against a trust director; providing jurisdiction over
23 a trust director; providing that unless the term of a
24 trust provides otherwise, the rules applicable to a
trustee shall apply to a trust director in certain
matters; providing relation to electronic signature
laws; enacting the Oklahoma Qualified Dispositions
into Trust Act; defining terms; defining trust
instrument; defining qualified person; providing
requirements to be considered a qualified person;
providing for persons and entities not to be
considered a qualified person; providing for the
appointment, removal, or replacement of co-trustee,
trust advisor, or trust protector; providing who may
serve as an investment trust advisor; providing that a
transferor may not serve as a fiduciary; providing for
successor qualified person; providing for disposition
to more than one trustee; providing that for
dispositions to more than one trustee, a qualified
disposition may not be treated as other than a
qualified disposition solely because not all of the

1 trustees are qualified persons; providing powers and
2 rights of a transferor and its effect on a qualified
3 disposition; limiting actions of creditors to
4 transfers with the intent to defraud; providing
5 requirements for bringing claim for fraudulent
6 transfer of settlor's assets; providing for
7 disposition by transferor who is a trustee;
8 prohibiting certain actions against a trustee,
9 advisor, or trust preparer; prohibiting an action
10 against trustee, advisor, or preparer of trust
11 prohibited if action by creditor in certain
12 circumstances; providing court jurisdiction; providing
13 for the collection attorney fees and costs in certain
14 circumstances; providing for when multiple qualified
15 dispositions in same trust instrument; providing
16 certain exceptions to application of this act under
17 certain events and circumstances; providing for
18 avoidance of a qualified disposition; providing for
19 discretionary interest; providing that the rules
20 against perpetuities shall not apply to trusts;
21 providing intent to allow trust to have perpetual
22 durations; providing for nonjudicial settlement
23 agreements for trusts; providing when nonjudicial
24 settlement agreements are valid; clarifying what
matters that may be solved by a nonjudicial settlement
agreement; providing for court approval of nonjudicial
settlement agreements; providing for noncodification;
providing for codification; and providing an effective
date.

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

SECTION 1. NEW LAW A new section of law not to be
codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "Oklahoma Trust
Reform Act of 2024".

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1201 of Title 60, unless there
3 is created a duplication in numbering, reads as follows:

4 Sections 2 through 19 of this act shall be known and may be
5 cited as the "Oklahoma Uniform Directed Trust Act of 2024".

6 SECTION 3. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1202 of Title 60, unless there
8 is created a duplication in numbering, reads as follows:

9 As used in the Oklahoma Uniform Directed Trust Act of 2024:

10 1. "Breach of trust" means a violation by a trust director or
11 trustee of a duty imposed on that director or trustee by the terms
12 of the trust, this act, or laws of this state other than this act
13 pertaining to trusts;

14 2. "Directed trust" means a trust for which the terms of the
15 trust grant a power of direction;

16 3. "Directed trustee" means a trustee that is subject to a
17 trust director's power of direction;

18 4. "Person" means an individual, estate, business or nonprofit
19 entity, public corporation, government or governmental subdivision,
20 agency, or instrumentality, or other legal entity;

21 5. "Power of direction" means a power over a trust granted to a
22 person by the terms of the trust to the extent the power is
23 exercisable while the person is not serving as a trustee. The term
24 includes a power over the investment, management, or distribution of

1 trust property or other matters of trust administration. The term
2 excludes the powers described in subsection B of Section 6 of this
3 act;

4 6. "Settlor" means a person, including a testator, that creates
5 or contributes property to a trust. If more than one person creates
6 or contributes property to a trust, each person is a settlor of the
7 portion of the trust property attributable to that person's
8 contribution except to the extent another person has the power to
9 revoke or withdraw that portion;

10 7. "State" means a state of the United States, the District of
11 Columbia, Puerto Rico, the United States Virgin Islands, or any
12 other territory or possession subject to the jurisdiction of the
13 United States;

14 8. "Terms of a trust" means:

15 a. except as otherwise provided in subparagraph b of this
16 paragraph, the manifestation of the settlor's intent
17 regarding a trust's provisions as:

- 18 (1) expressed in the trust instrument, or
19 (2) established by other evidence that would be
20 admissible in a judicial proceeding, or

21 b. the trust's provisions as established, determined, or
22 amended by:

- 23 (1) a trustee or trust director in accordance with
24 applicable law, or

1 (2) a court order;

2 9. "Trust director" means a person that is granted a power of
3 direction by the terms of a trust to the extent the power is
4 exercisable while the person is not serving as a trustee. The
5 person is a trust director whether or not the terms of the trust
6 refer to the person as a trust director and whether or not the
7 person is a beneficiary or settlor of the trust; and

8 10. "Trustee" means an original, additional, and successor
9 trustee, and a co-trustee.

10 SECTION 4. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1203 of Title 60, unless there
12 is created a duplication in numbering, reads as follows:

13 A. This act applies to a trust, whenever created, that has its
14 principal place of administration in this state and is subject to
15 the following rules:

16 1. If the trust was created before the effective date of this
17 act, this act applies only to a decision or action occurring on or
18 after the effective date of this act; and

19 2. If the principal place of administration of the trust is
20 changed to this state on or after the effective date of this act,
21 this act applies only to a decision or action occurring on or after
22 the date of the change.

23 B. Without precluding other means to establish a sufficient
24 connection with the designated jurisdiction in a directed trust, the

1 terms of the trust which designate the principal place of
2 administration of the trust are valid and controlling if:

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

5 2. A trust director's principal place of business is located in
6 or a trust director is a resident of the designated jurisdiction; or

7 3. All or part of the administration occurs in the designated
8 jurisdiction.

9 SECTION 5. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1204 of Title 60, unless there
11 is created a duplication in numbering, reads as follows:

12 The common law and principles of equity supplement this act,
13 except to the extent modified by this act or by other laws of this
14 state other than this act.

15 SECTION 6. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1205 of Title 60, unless there
17 is created a duplication in numbering, reads as follows:

18 A. In this section, "power of appointment" means a power that
19 enables a person acting in a nonfiduciary capacity to designate a
20 recipient of an ownership interest in or another power of
21 appointment over trust property.

22 B. This act does not apply to a:

23 1. Power of appointment;

24 2. Power to appoint or remove a trustee or trust director;

1 3. Power of a settlor over a trust to the extent the settlor
2 has a power to revoke the trust;

3 4. Power of a beneficiary over a trust to the extent the
4 exercise or nonexercise of the power affects the beneficial interest
5 of:

6 a. the beneficiary, or

7 b. another beneficiary represented by the beneficiary
8 with respect to the exercise or nonexercise of the
9 power; or

10 5. Power over a trust, if:

11 a. the terms of the trust provide that the power is held
12 in a nonfiduciary capacity, and

13 b. the power must be held in a nonfiduciary capacity to
14 achieve the settlor's tax objectives under the United
15 States Internal Revenue Code of 1986, as amended, and
16 regulations issued thereunder, as amended.

17 C. Unless the terms of a trust provide otherwise, a power
18 granted to a person to designate a recipient of an ownership
19 interest in or power of appointment over trust property which is
20 exercisable while the person is not serving as a trustee is a power
21 of appointment and not a power of direction.

22 SECTION 7. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1206 of Title 60, unless there
24 is created a duplication in numbering, reads as follows:

1 A. Subject to Section 8 of this act, the terms of a trust may
2 grant a power of direction to a trust director.

3 B. Unless the terms of a trust provide otherwise:

4 1. A trust director may exercise any further power appropriate
5 to the exercise or nonexercise of a power of direction granted to
6 the director under subsection A of this section; and

7 2. Trust directors with joint powers must act by majority
8 decision.

9 SECTION 8. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1207 of Title 60, unless there
11 is created a duplication in numbering, reads as follows:

12 A trust director is subject to the same rules as a trustee in a
13 like position and under similar circumstances in the exercise or
14 nonexercise of a power of direction or further power under paragraph
15 1 of subsection B of Section 7 of this act regarding:

16 1. A payback provision in the terms of a trust necessary to
17 comply with the reimbursement requirements of Medicaid law in
18 Section 1917 of the Social Security Act, 42 U.S.C., Section
19 1396p(d)(4)(A), as amended, and regulations issued thereunder, as
20 amended; and

21 2. A charitable interest in the trust, including providing
22 notice regarding the interest to the Oklahoma Attorney General.

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1 SECTION 9. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1208 of Title 60, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Subject to subsection B of this section, with respect to a
5 power of direction or further power under paragraph 1 of subsection
6 B of Section 7 of this act:

7 1. A trust director has the same fiduciary duty and liability
8 in the exercise or nonexercise of the power:

9 a. if the power is held individually, as a sole trustee
10 in a like position and under similar circumstances, or

11 b. if the power is held jointly with a trustee or another
12 trust director, as a co-trustee in a like position and
13 under similar circumstances; and

14 2. The terms of the trust may vary the director's duty or
15 liability to the same extent the terms of the trust could vary the
16 duty or liability of a trustee in a like position and under similar
17 circumstances.

18 B. Unless the terms of a trust provide otherwise, if a trust
19 director is licensed, certified, or otherwise authorized or
20 permitted by law other than this act to provide health care in the
21 ordinary course of the director's business or practice of a
22 profession, to the extent the director acts in that capacity, the
23 director has no duty or liability under this act.

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1 C. The terms of a trust may impose a duty or liability on a
2 trust director in addition to the duties and liabilities under this
3 section.

4 SECTION 10. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1209 of Title 60, unless there
6 is created a duplication in numbering, reads as follows:

7 A. Subject to subsection B of this section, a directed trustee
8 shall take reasonable action to comply with a trust director's
9 exercise or nonexercise of a power of direction or further power
10 under paragraph 1 of subsection B of Section 7 of this act, and the
11 trustee is not liable for the action.

12 B. A directed trustee must not comply with a trust director's
13 exercise or nonexercise of a power of direction or further power
14 under paragraph 1 of subsection B of Section 7 of this act to the
15 extent that by complying, the trustee would engage in willful
16 misconduct.

17 C. An exercise of a power of direction under which a trust
18 director may release a trustee or another trust director from
19 liability for breach of trust is not effective if:

- 20 1. The breach involved the trustee's or other director's
21 willful misconduct;
- 22 2. The release was induced by improper conduct of the trustee
23 or other director in procuring the release; or

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1 3. At the time of the release, the trust director did not know
2 the material facts relating to the breach.

3 D. A directed trustee that has reasonable doubt about its duty
4 under this section may petition the district court for instructions.

5 E. The terms of a trust may impose a duty or liability on a
6 directed trustee in addition to the duties and liabilities under
7 this section.

8 SECTION 11. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1210 of Title 60, unless there
10 is created a duplication in numbering, reads as follows:

11 A. Subject to Section 12 of this act, a trustee shall provide
12 information to a trust director to the extent the information is
13 reasonably related both to:

- 14 1. The powers or duties of the trustee; and
- 15 2. The powers or duties of the director.

16 B. Subject to Section 12 of this act, a trust director shall
17 provide information to a trustee or another trust director to the
18 extent the information is reasonably related both to:

- 19 1. The powers or duties of the director; and
- 20 2. The powers or duties of the trustee or other director.

21 C. A trustee that acts in reliance on information provided by a
22 trust director is not liable for a breach of trust to the extent the
23 breach resulted from the reliance, unless by so acting, the trustee
24 engages in willful misconduct.

1 D. A trust director that acts in reliance on information
2 provided by a trustee or another trust director is not liable for a
3 breach of trust to the extent the breach resulted from the reliance,
4 unless by so acting, the trust director engages in willful
5 misconduct.

6 SECTION 12. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1211 of Title 60, unless there
8 is created a duplication in numbering, reads as follows:

9 A. Unless the terms of a trust provide otherwise:

10 1. A trustee does not have a duty to:

11 a. monitor a trust director, or

12 b. inform or give advice to a settlor, beneficiary,
13 trustee, or trust director concerning an instance in
14 which the trustee might have acted differently than
15 the director; and

16 2. By taking an action described in paragraph 1 of this
17 subsection, a trustee does not assume the duty excluded by paragraph
18 1 of this subsection.

19 B. Unless the terms of a trust provide otherwise:

20 1. A trust director does not have a duty to:

21 a. monitor a trustee or another trust director, or

22 b. inform or give advice to a settlor, beneficiary,
23 trustee, or another trust director concerning an
24 instance in which the director might have acted

1 differently than a trustee or another trust director;

2 and

3 2. By taking an action described in paragraph 1 of this
4 subsection, a trust director does not assume the duty excluded by
5 paragraph 1 of this subsection.

6 SECTION 13. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1212 of Title 60, unless there
8 is created a duplication in numbering, reads as follows:

9 The terms of a trust may relieve a co-trustee from duty and
10 liability with respect to another co-trustee's exercise or
11 nonexercise of a power of the other co-trustee to the same extent
12 that in a directed trust a directed trustee is relieved from duty
13 and liability with respect to a trust director's power of direction
14 under Sections 10 through 12 of this act.

15 SECTION 14. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1213 of Title 60, unless there
17 is created a duplication in numbering, reads as follows:

18 A. An action against a trust director for breach of trust must
19 be commenced within the same limitation period for an action for
20 breach of trust against a trustee in a like position and under
21 similar circumstances.

22 B. A report or accounting has the same effect on the limitation
23 period for an action against a trust director for breach of trust
24 that the report or accounting would have in an action for breach of

1 trust against a trustee in a like position and under similar
2 circumstances.

3 SECTION 15. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1214 of Title 60, unless there
5 is created a duplication in numbering, reads as follows:

6 In an action against a trust director for breach of trust, the
7 director may assert the same defenses a trustee in a like position
8 and under similar circumstances could assert in an action for breach
9 of trust against the trustee.

10 SECTION 16. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1215 of Title 60, unless there
12 is created a duplication in numbering, reads as follows:

13 A. By accepting appointment as a trust director of a trust
14 subject to this act, the director submits to personal jurisdiction
15 of the courts of this state regarding any matter related to a power
16 or duty of the director.

17 B. This section does not preclude other methods of obtaining
18 jurisdiction over a trust director.

19 SECTION 17. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1216 of Title 60, unless there
21 is created a duplication in numbering, reads as follows:

22 Unless the terms of a trust provide otherwise, the rules
23 applicable to a trustee apply to a trust director regarding the
24 following matters:

- 1 1. Acceptance;
- 2 2. Giving of bond to secure performance;
- 3 3. Reasonable compensation;
- 4 4. Resignation;
- 5 5. Removal; and
- 6 6. Vacancy and appointment of a successor.

7 SECTION 18. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1217 of Title 60, unless there
9 is created a duplication in numbering, reads as follows:

10 This act modifies, limits, or supersedes the Electronic
11 Signatures in Global and National Commerce Act, 15 U.S.C., Section
12 7001 et seq., but does not modify, limit, or supersede Section
13 101(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 19. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1301 of Title 60, unless there
18 is created a duplication in numbering, reads as follows:

19 Sections 19 through 37 of this act shall be known and may be
20 cited as the "Oklahoma Qualified Dispositions into Trust Act".

21 SECTION 20. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1302 of Title 60, unless there
23 is created a duplication in numbering, reads as follows:

24 A. As used in Oklahoma Qualified Dispositions into Trust Act:

1 1. "Claim" means a right to payment, whether or not the right
2 is reduced to judgment liquidated, unliquidated, fixed, contingent,
3 matured, unmatured, disputed, undisputed, legal, equitable, secured,
4 or unsecured;

5 2. "Creditor" means, with respect to a transferor, a person who
6 has a claim;

7 3. "Debt" means liability on a claim;

8 4. "Disposition" means a transfer, conveyance, or assignment of
9 property, including a change in the legal ownership of property
10 occurring upon the substitution of one trustee for another or the
11 addition of one or more new trustees, or the exercise of a power so
12 as to cause a transfer of property to a trustee or trustees. The
13 term does not include the release or relinquishment of an interest
14 in property that theretofore was the subject of a qualified
15 disposition;

16 5. "Property" means real property, personal property, and
17 interests in real or personal property;

18 6. "Qualified disposition" means a disposition by or from a
19 transferor to a qualified person or qualified persons, without
20 consideration or for less than fair market value, by means of a
21 trust instrument;

22 7. "Spouse" and "former spouse" mean only persons to whom the
23 transferor was married at, or before, the time the qualified
24 disposition was made; and

1 8. "Transferor" means any person as an owner of property as a
2 holder of a power of appointment which authorizes the holder to
3 appoint in favor of the holder, the holder's creditors, the holder's
4 estate, or the creditors of the holder's estate or as a trustee,
5 directly or indirectly, makes a disposition or causes a disposition
6 to be made.

7 B. The terms transferor and beneficiary may be any individual,
8 corporation, partnership, limited liability company, association,
9 joint stock company, business trust, trust, unincorporated
10 organization, or two or more persons having a joint or common
11 interest.

12 SECTION 21. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1303 of Title 60, unless there
14 is created a duplication in numbering, reads as follows:

15 A. For the purposes of the Oklahoma Qualified Dispositions into
16 Trust Act, a trust instrument is an instrument appointing a
17 qualified person or qualified persons for the property that is the
18 subject of a disposition, which instrument:

19 1. Expressly incorporates the law of this state to govern the
20 validity, construction, and administration of the trust;

21 2. Is irrevocable, but a trust instrument may not be deemed
22 revocable on account of its inclusion of one or more of the
23 following:

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- 1 a. a transferor's power to veto a distribution from the
2 trust,
- 3 b. an inter vivos power of appointment, other than an
4 inter vivos power exercisable solely by the transferor
5 in favor of the transferor, the transferor's
6 creditors, the transferor's estate, or the creditors
7 of the transferor's estate,
- 8 c. a testamentary power of appointment,
- 9 d. the transferor's potential or actual receipt of
10 income, including rights to such income retained in
11 the trust instrument,
- 12 e. the transferor's potential or actual receipt of income
13 or principal from a charitable remainder unitrust or
14 charitable remainder annuity trust as such terms are
15 defined in Section 664 of the Internal Revenue Code of
16 1986, 26 U.S.C. Section 664, as of January 1, 2009;
17 the transferor's receipt each year of a percentage of
18 the value as determined from time to time pursuant to
19 the trust instrument, but not exceeding the amount
20 that may be defined as income under Section 643(b) of
21 the Internal Revenue Code of 1986, 26 U.S.C. Section
22 643(b), as of January 1, 2009,
- 23 f. the transferor's receipt each year of a percentage of
24 the value as determined from time to time pursuant to

1 the trust instrument, but not exceeding the amount
2 that may be defined as income under Section 664 of the
3 Internal Revenue Code of 1986, 26 U.S.C., Section
4 643(b), as of January 1, 2009,

5 g. the transferor's potential or actual receipt or use of
6 principal if the potential or actual receipt or use of
7 principal would be the result of a qualified person,
8 including a qualified person acting at the direction
9 of a trust advisor described in this act, acting
10 either in the qualified person's sole discretion or
11 pursuant to an ascertainable standard contained in the
12 trust instrument,

13 h. the transferor's right to remove a trustee, protector,
14 or trust advisor and to appoint a new trustee,
15 protector, or trust advisor, other than a trustee who
16 is a related or subordinate party with respect to the
17 transferor within the meaning of Section 672(c) of the
18 Internal Revenue Code of 1986, 26 U.S.C. Section
19 672(c), as of January 1, 2009,

20 i. the transferor's potential or actual use of real
21 property held under a qualified personal residence
22 trust within the meaning of such term as described in
23 the regulations promulgated under Section 2702(c) of
24

1 the Internal Revenue Code of 1986, 26 U.S.C. Section
2 2702(c), as of January 1, 2009,

3 j. a pour-back provision that pours back to the
4 transferor's will or revocable trust all or part of
5 the trust assets,

6 k. the transferor's potential or actual receipt of income
7 or principal to pay, in whole or in part, income taxes
8 due on income of the trust if the potential or actual
9 receipt of income or principal is pursuant to a
10 provision in the trust instrument that expressly
11 provides for the payment of the taxes and if the
12 potential or actual receipt of income or principal
13 would be the result of a qualified person's acting in
14 the qualified person's discretion or pursuant to a
15 mandatory direction in the trust instrument or acting
16 at the direction of a trust advisor described in
17 Section 24 of this act,

18 l. the ability, whether pursuant to discretion,
19 direction, or the grantor's exercise of a testamentary
20 power of appointment, of a qualified person to pay,
21 after the death of the transferor, all or any part of
22 the debts of the transferor outstanding at the time of
23 the transferor's death, the expenses of administering
24 the transferor's estate, or any estate or inheritance

1 tax imposed on or with respect to the transferor's
2 estate,

3 m. a transferor's service as a noncontrolling member of a
4 distribution committee that functions as a
5 distribution trust advisor, which is a fiduciary given
6 authority by the instrument to exercise all or any
7 portions of the powers and discretions over any
8 discretionary distributions of income or principal, or

9 n. a transferor's enjoyment of a power to reacquire the
10 trust corpus by substituting other property of an
11 equivalent value within the meaning of Section
12 675(4) (C) of the Internal Revenue Code of 1986, 26
13 U.S.C., Section 675(4) (C), as of January 1, 2021, and

14 3. Provides that the interest of the transferor or other
15 beneficiary in the trust property or the income from the trust
16 property may not be transferred, assigned, pledged, or mortgaged,
17 whether voluntarily or involuntarily, before the qualified person
18 distributes the property or income from the property to the
19 beneficiary, and such provision of the trust instrument constitutes
20 a restriction on the transfer of the transferor's beneficial
21 interest in the trust that is enforceable under applicable
22 nonbankruptcy law within the meaning of Section 541(c) (2) of the
23 Bankruptcy Code, 11 U.S.C., Section 541(c) (2), as of January 1,
24 2009.

1 B. A disposition by a trustee that is not a qualified person to
2 a trustee that is a qualified person may not be treated as other
3 than a qualified disposition solely because the trust instrument
4 fails to meet the requirements of paragraph 1 of subsection A of
5 this section.

6 SECTION 22. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1304 of Title 60, unless there
8 is created a duplication in numbering, reads as follows:

9 A. For the purposes of the Oklahoma Qualified Dispositions into
10 Trust Act, a qualified person is:

11 1. An individual who, except for brief intervals, military
12 service, attendance at an educational or training institution, or
13 for absences for good cause shown, resides in this state, whose true
14 and permanent home is in this state, who does not have a present
15 intention of moving from this state, and who has the intention of
16 returning to this state when away;

17 2. A trust company that is organized under Oklahoma state law
18 or under federal law and that has its principal place of business in
19 this state; or

20 3. A bank or savings association that possesses and exercises
21 trust powers, has its principal place of business in this state, and
22 the deposits of which are insured by the Federal Deposit Insurance
23 Corporation.

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1 B. A qualified person must meet the requirements as provided in
2 Section 23 of this act.

3 SECTION 23. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1305 of Title 60, unless there
5 is created a duplication in numbering, reads as follows:

6 A. Except as expressly provided by the terms of a governing
7 instrument or by a court order, or a state law stating that the laws
8 of this state govern is valid, effective, and conclusive for the
9 trust if all of the following are true:

10 1. Some or all of the trust assets are deposited in this state
11 or physical evidence of such assets is held in this state and the
12 trust is being administered by a qualified person. Deposited in
13 this state includes being held in a checking account, time deposit,
14 certificate of deposit, brokerage account, trust company fiduciary
15 account, or other similar account or deposit that is located in this
16 state, including Oklahoma investments;

17 2. A trustee is a qualified person who is designated as a
18 trustee under the governing instrument or a successor trusteeship,
19 or designated by a court having jurisdiction over the trust; and

20 3. The administration, including physically maintaining trust
21 records in the State of Oklahoma, and preparing or arranging for the
22 preparation of, on an exclusive basis or a nonexclusive basis, an
23 income tax return that must be filed by the trust, occurs wholly or
24 partly in this state.

1 B. The state courts of Oklahoma have jurisdiction over a trust
2 created in a foreign jurisdiction if the administration of the trust
3 meets paragraphs 1 through 3 of subsection A of this section.

4 C. Nothing in this section may be construed to be the exclusive
5 means of providing a valid effective and conclusive state
6 jurisdiction provision.

7 SECTION 24. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1306 of Title 60, unless there
9 is created a duplication in numbering, reads as follows:

10 Neither the transferor nor any other natural person who is a
11 nonresident of this state nor an entity that is not authorized by
12 the laws of this state to act as a trustee or whose activities are
13 not subject to supervision as provided in Section 22 of this act may
14 be considered a qualified person. However, nothing in this act
15 precludes a transferor from appointing, removing, or replacing one
16 or more co-trustees, trust advisors, or trust protectors, regardless
17 of whether or not such trust advisor or trust protector is a
18 fiduciary.

19 SECTION 25. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1307 of Title 60, unless there
21 is created a duplication in numbering, reads as follows:

22 Any person may serve as an investment trust advisor,
23 notwithstanding that the person is the transferor of the qualified
24 disposition, but a transferor may not otherwise serve as a fiduciary

1 under a trust instrument except as stated in paragraph 2 of
2 subsection A of Section 21 of this act. While serving as an
3 investment trust advisor of the trust, the person may have all
4 powers authorized by statute or by the trust instrument, including
5 the power to vote by proxy any stock owned by the trust.

6 SECTION 26. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1308 of Title 60, unless there
8 is created a duplication in numbering, reads as follows:

9 If a qualified person of a trust ceases to meet the requirements
10 of Section 22 of this act and there remains no trustee that meets
11 such requirements, such qualified person shall be deemed to have
12 resigned as of the time of such cessation, and thereupon the
13 successor qualified person provided for in the trust instrument
14 shall become a qualified person of the trust, or in the absence of
15 any successor qualified person provided for in the trust instrument,
16 the circuit court shall, upon application of any interested party,
17 appoint a successor qualified person.

18 SECTION 27. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1309 of Title 60, unless there
20 is created a duplication in numbering, reads as follows:

21 In the case of a disposition to more than one trustee, a
22 disposition that is otherwise a qualified disposition may not be
23 treated as other than a qualified disposition solely because not all
24 of the trustees are qualified persons.

1 SECTION 28. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1310 of Title 60, unless there
3 is created a duplication in numbering, reads as follows:

4 A qualified disposition is subject to Sections 29 through 34 of
5 this act, notwithstanding a transferor's retention of any or all of
6 the powers and rights described in paragraph 2 of subsection A of
7 Section 21 of this act and the transferor's service as a trust
8 advisor pursuant to Section 25 of this act. The transferor has only
9 such powers and rights as are conferred by the trust instrument.
10 Except as permitted by Section 21 and Section 25 of this act, a
11 transferor has no rights or authority with respect to the property
12 that is the subject of a qualified disposition or the income
13 therefrom, and any agreement or understanding purporting to grant or
14 permit the retention of any greater rights or authority is void.

15 SECTION 29. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1311 of Title 60, unless there
17 is created a duplication in numbering, reads as follows:

18 Notwithstanding any other provision of law, no action of any
19 kind, including an action to enforce a judgment entered by a court
20 or other body having adjudicative authority, may be brought at law
21 or in equity for an attachment or other provisional remedy against
22 property that is the subject of a qualified disposition or for
23 avoidance of a qualified disposition unless the settlor's transfer
24 of property was made with the intent to defraud that specific

1 creditor. This protection, however, only applies to qualified
2 dispositions up to, but not exceeding, Ten Million Dollars
3 (\$10,000,000.00) and shall not apply to assets disclosed on a
4 financial statement to a bank or financial institution for the
5 purpose of guaranteeing a loan prior to the assets being subject to
6 a qualified disposition.

7 SECTION 30. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1312 of Title 60, unless there
9 is created a duplication in numbering, reads as follows:

10 A. A cause of action or claim for relief with respect to a
11 fraudulent transfer of a settlor's assets under Section 29 of this
12 act is extinguished unless the action under Section 29 of this act
13 is brought by a creditor of the settlor who meets one of the
14 following requirements:

15 1. Is a creditor of the settlor before the settlor's assets are
16 transferred to the trust and the action under Section 29 of this act
17 is brought within the later of:

18 a. two (2) years after the transfer is made, or
19 b. six (6) months after the transfer is or reasonably
20 could have been discovered by the creditor if the
21 creditor:

22 (1) can demonstrate that the creditor asserted a
23 specific claim against the settlor before the
24 transfer, or

1 (2) files another action, other than an action under
2 Section 29 of this act, against the settlor that
3 asserts a claim based on an act or omission of
4 the settlor that occurred before the transfer and
5 the action described in this subparagraph is
6 filed within two (2) years after the transfer;

7 2. Becomes a creditor subsequent to the transfer into trust,
8 and the action under Section 29 of this act is brought within two
9 (2) years after the transfer is made.

10 B. In any action described in Section 29 of this act, the
11 burden to prove the matter by clear and convincing evidence is upon
12 the creditor;

13 C. A person is deemed to have discovered a transfer at the time
14 a public record of the transfer is made, including the conveyance of
15 an interest in real property that is recorded in the appropriate
16 public filing office where the property is located, the filing of a
17 financing statement, or the filing of a bill of sale or other
18 transfer instrument regarding personal property; or

19 D. The filing of a bill of sale or other transfer instrument
20 which conveys personal property to a trust which is governed by this
21 act shall be filed in the applicable public filing office determined
22 as follows:

23 1. If the transferor is a natural person and is a resident of
24 this state, the personal property transfer instrument shall be

1 recorded in the county in this state where the transferor maintains
2 the transferor's principal residence; and

3 2. In all other cases, the personal property transfer
4 instrument shall be recorded in the county in this state where the
5 trustee of the trust maintains a principal residence or principal
6 place of business.

7 E. This section and Section 29, Section 31, Section 32, and
8 Section 33 of this act are inseparably interwoven with substantive
9 rights that a deprivation of legal rights would result if another
10 jurisdiction's laws and regulations to the contrary are applied to a
11 claim or cause of action described therein.

12 SECTION 31. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1313 of Title 60, unless there
14 is created a duplication in numbering, reads as follows:

15 A qualified disposition that is made by means of a disposition
16 by a transferor who is a trustee is deemed to have been made as of
17 the time, whether before, on, or after the effective date of this
18 act, the property that is the subject of the qualified disposition
19 was originally transferred to the transferor, or any predecessor
20 trustee, making the qualified disposition in a form that meets the
21 requirements of paragraphs 2 and 3 of subsection A of Section 21 of
22 this act. Further, the provisions of this section shall apply to
23 determine the date the transfer is deemed to have been made,

24

1 notwithstanding that the original transfer was to a trust originally
2 within or outside of the jurisdiction of Oklahoma.

3 If property transferred to a spendthrift trust is conveyed to
4 the settlor or to a beneficiary for the purpose of obtaining a loan
5 secured by a mortgage or deed of trust on the property and then
6 reconveyed to the trust within one hundred eighty (180) days of
7 recording the mortgage or deed of trust, the transfer is disregarded
8 and the reconveyance relates back to the date the property was
9 originally transferred to the trust. The mortgage or deed of trust
10 on the property is enforceable against the trust.

11 SECTION 32. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1314 of Title 60, unless there
13 is created a duplication in numbering, reads as follows:

14 Notwithstanding any law to the contrary, a creditor, including a
15 creditor whose claim arose before or after a qualified disposition,
16 or any other person has only such rights with respect to a qualified
17 disposition as are provided in Sections 29 through Section 36 of
18 this act, and no such creditor nor any other person has any claim or
19 cause of action against the trustee or advisor, described in Section
20 24 of this act, of a trust that is the subject of a qualified
21 disposition, or against any person involved in the counseling,
22 drafting, preparation, execution, or funding of a trust that is the
23 subject of a qualified disposition. In addition to the provisions
24 of Section 37 of this act, at no time is a qualified person

1 personally liable to a creditor of a transferor or any other person
2 for distributions made by the qualified person, before the creditor
3 or person notified the qualified person, in writing, that a claim or
4 cause of action existed. This applies regardless of whether the
5 distributions are made to or for the benefit of the transferor or a
6 beneficiary during the period in which a creditor or other person
7 could make a claim as provided in Section 30 of this act.

8 SECTION 33. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1315 of Title 60, unless there
10 is created a duplication in numbering, reads as follows:

11 Notwithstanding any other provision of law, no action of any
12 kind, including an action to enforce a judgment entered by a court
13 or other body having adjudicative authority, may be brought at law
14 or in equity against the trustee or advisor, described in Section 24
15 of this act, of a trust that is the subject of a qualified
16 disposition, or against any person involved in the counseling,
17 drafting, preparation, execution, or funding of a trust that is the
18 subject of a qualified disposition, if, as of the date such action
19 is brought, an action by a creditor with respect to such qualified
20 disposition would be barred under Sections 29 through 32 of this
21 act. A court of this state has exclusive jurisdiction over an
22 action brought under a claim for relief that is based on a transfer
23 of property to a trust that is the subject of this section. A court
24 of this state may award attorney fees and costs to the prevailing

1 party in such an action. In any action described in this section,
2 the burden to prove the matter by clear and convincing evidence is
3 upon the creditor.

4 SECTION 34. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1316 of Title 60, unless there
6 is created a duplication in numbering, reads as follows:

7 If more than one qualified disposition is made by means of the
8 same trust instrument:

9 1. The making of a subsequent qualified disposition shall be
10 disregarded in determining whether a creditor's claim with respect
11 to a prior qualified disposition is extinguished as provided in
12 Section 30 of this act; and

13 2. Any distribution to a beneficiary is deemed to have been
14 made from the latest such qualified disposition.

15 SECTION 35. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1317 of Title 60, unless there
17 is created a duplication in numbering, reads as follows:

18 A. Notwithstanding the provisions of Sections 29 through 34 of
19 this act, but subject to subsection B of this section, the Oklahoma
20 Qualified Dispositions into Trust Act does not apply in any respect
21 to any person to whom at the time of transfer the transferor is
22 indebted on account of an agreement or order of court for the
23 payment of support or alimony in favor of the transferor's spouse,
24 former spouse, or children, or for a division or distribution of

1 property in favor of the transferor's spouse or former spouse, to
2 the extent of the debt.

3 B. If the transferor is married at the time of the transfer,
4 the provisions of Sections 29 through Section 34 of this act, apply
5 to:

6 1. Any of the transferor's separate property transferred to the
7 trust; and

8 2. Any marital property transferred to the trust if the spouse
9 or former spouse was provided with notice in the form set forth in
10 subsection C of this section, or executed a written consent to the
11 transfer after being provided the information set forth in the
12 notice.

13 C. For purposes of the application of this section, a notice of
14 transfer of property to a trust pursuant to the Oklahoma Qualified
15 Dispositions into Trust Act:

16 1. Shall also contain the following language in capital
17 letters, at or near the top of the notice: YOUR SPOUSE IS CREATING
18 A PERMANENT TRUST INTO WHICH PROPERTY IS BEING TRANSFERRED. YOUR
19 RIGHTS TO THIS PROPERTY MAY BE AFFECTED DURING YOUR MARRIAGE, UPON
20 DIVORCE (INCLUDING THE PAYMENT OF CHILD SUPPORT OR ALIMONY OR A
21 DIVISION OR DISTRIBUTION OF PROPERTY IN A DIVORCE), OR AT THE DEATH
22 OF YOUR SPOUSE. YOU HAVE A VERY LIMITED PERIOD OF TIME TO OBJECT TO
23 THE TRANSFER OF PROPERTY INTO THIS TRUST. YOU MAY, UPON REQUEST TO
24 THE TRUSTEE AT THE ADDRESS BELOW, BE FURNISHED A COPY OF THE TRUST

1 DOCUMENT. IF YOU HAVE ANY QUESTIONS, YOU SHOULD IMMEDIATELY SEEK
2 INDEPENDENT LEGAL ADVICE. IF YOU FAIL TO OBJECT WITHIN THE REQUIRED
3 TIME PERIOD, YOU WILL HAVE CONSENTED TO THE TRANSFER OF PROPERTY
4 INTO THIS TRUST;

5 2. Shall contain a description of the property being
6 transferred to the trust and the name of the trust;

7 3. May require that any person who is eligible to receive
8 information pursuant to this section be bound by the duty of
9 confidentiality that binds the trustee before receiving such
10 information from the trustee; and

11 4. Shall be provided by the transferor, the transferor's agent,
12 the trustee, or other fiduciary of the trust.

13 D. If a notice is provided under this section before the
14 property is transferred, the period to commence an action under
15 Section 30 of this act shall commence running on the date of the
16 transfer. If a notice is provided after the date the property is
17 transferred, the period to commence an action pursuant to Section 30
18 of this act commences running on the date the notice is provided.

19 E. The exception contained in subsection A of this section does
20 not apply to any claim for forced heirship or legitime.

21 SECTION 36. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 1318 of Title 60, unless there
23 is created a duplication in numbering, reads as follows:

24

1 A qualified disposition is avoided only to the extent necessary
2 to satisfy the transferor's debt to the creditor at whose insistence
3 the disposition had been avoided, together with such costs,
4 including attorney fees, as the court may allow. If any qualified
5 disposition is avoided as provided in this section, then:

6 1. If the court is satisfied that a qualified person has not
7 acted in bad faith in accepting or administering the property that
8 is the subject of the qualified disposition:

9 a. such qualified person has a first and paramount lien
10 against the property that is the subject of the
11 qualified disposition in an amount equal to the entire
12 cost, including attorney fees, properly incurred by
13 such qualified person in the defense of the action or
14 proceedings to avoid the qualified disposition. It is
15 presumed that such qualified person did not act in bad
16 faith merely by accepting such property, and

17 b. the qualified disposition is avoided subject to the
18 proper fees, costs, preexisting rights, claims, and
19 interests of such qualified person, and of any
20 predecessor qualified person that has not acted in bad
21 faith; and

22 2. If the court is satisfied that a beneficiary of a trust has
23 not acted in bad faith, the avoidance of the qualified disposition
24 is subject to the right of such beneficiary to retain any

1 distribution made upon the exercise of a trust power or discretion
2 vested in the qualified person or qualified persons of such trust,
3 which power or discretion was properly exercised prior to the
4 creditor's commencement of an action to avoid the qualified
5 disposition. It is presumed that the beneficiary, including a
6 beneficiary who is also a transferor of the trust, did not act in
7 bad faith merely by creating the trust or by accepting a
8 distribution made in accordance with the terms of the trust.

9 SECTION 37. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1319 of Title 60, unless there
11 is created a duplication in numbering, reads as follows:

12 A. The following provisions apply only to discretionary
13 interests:

14 1. A discretionary interest is neither a property interest nor
15 an enforceable right. It is a mere expectancy;

16 2. No creditor may force a distribution with regard to a
17 discretionary interest. No creditor may require the trustee to
18 exercise the trustee's discretion to make a distribution with regard
19 to a discretionary interest; and

20 3. A court may review a trustee's distribution discretion only
21 if the trustee:

22 a. acts dishonestly,

23 b. acts with an improper motive, or

24 c. fails, if under a duty to do so, to act.

1 B. A reasonableness standard may not be applied to the exercise
2 of discretion by the trustee with regard to a discretionary
3 interest. Other than for the circumstances listed in this section,
4 a court has no jurisdiction to review the trustee's discretion or to
5 force a distribution.

6 C. Absent express language to the contrary, in the event that
7 the distribution language in a discretionary interest permits
8 unequal distributions between beneficiaries or distributions to the
9 exclusion of other beneficiaries, the trustee may distribute all of
10 the accumulated, accrued, or undistributed income and principal to
11 one beneficiary in the trustee's discretion.

12 D. Regardless of whether a beneficiary has any outstanding
13 creditors, a trustee of a discretionary interest may directly pay
14 any expense on behalf of such beneficiary and may exhaust the income
15 and principal of the trust for the benefit of such beneficiary. No
16 trustee is liable to any creditor for paying the expenses of a
17 beneficiary of a discretionary interest.

18 SECTION 38. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 1401 of Title 60, unless there
20 is created a duplication in numbering, reads as follows:

21 For all trusts created under this title, the rules against
22 perpetuities shall not apply, it being the intent that trusts
23 created in Oklahoma may have perpetual duration if a timing
24 provision or limit is not specified in the trust document.

1 SECTION 39. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1402 of Title 60, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Except as otherwise provided in subsection B of this
5 section, the trustee and the qualified beneficiaries may enter into
6 a binding nonjudicial settlement agreement with respect to any
7 matter involving a trust.

8 B. A nonjudicial settlement agreement is valid only to the
9 extent it does not violate a material purpose of the trust and
10 includes terms and conditions that could be properly approved by the
11 court under this act or other applicable law.

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

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

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

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

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

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

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

24 7. The extent or waiver of bond of a trustee;

1 8. The governing law of the trust;

2 9. The criteria for distribution to a beneficiary where the
3 trustee is given discretion;

4 10. The resignation, appointment, and establishment of the
5 powers and duties of trust protectors or trust advisors; and

6 11. The approval of an investment decision, delegation, policy,
7 plan, or program.

8 D. Any qualified beneficiary or trustee may request the court
9 to approve a nonjudicial settlement agreement, to determine whether
10 the representation was adequate, and to determine whether the
11 agreement contains terms and conditions the court could have
12 properly approved.

13 SECTION 40. This act shall become effective November 1, 2024.

14 Passed the House of Representatives the 14th day of March, 2024.

15

16

Presiding Officer of the House
of Representatives

17

18

19 Passed the Senate the ___ day of _____, 2024.

20

21

Presiding Officer of the Senate

22

23

24