

1 **SENATE FLOOR VERSION**

2 April 9, 2024

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL NO. 3962

By: Echols and Kane of the
House

6 and

7 Pugh of the Senate

8
9 An Act relating to trusts; creating the Oklahoma
10 Trust Reform Act of 2024; providing short title;
11 creating the Oklahoma Uniform Directed Trust Act of
12 2024; providing short title; defining terms;
13 providing for applicability; providing for principal
14 place of administration; providing for when common
15 law and principals of equity control; providing for
16 exclusions; providing the powers of a trust director;
17 providing limitations on trust director; providing
18 duties and liabilities of a trust director; providing
19 duties and liabilities of directed trustees;
20 providing a duty to provide certain information to a
21 trust director or trustee; providing that there is no
22 duty to monitor, inform, or advise; providing
23 application to cotrustee; providing limitation of
24 action against a trust director; providing defenses
for a suit against a trust director; providing
jurisdiction over a trust director; providing that
unless the term of a trust provides otherwise, the
rules applicable to a trustee shall apply to a trust
director in certain matters; providing relation to
electronic signature laws; creating the Oklahoma
Qualified Dispositions into Trust Act; providing
short title; 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 cotrustee,
trust advisor, or trust protector; providing who may
serve as an investment trust advisor; providing that

1 a transferor may not serve as a fiduciary; providing
2 for successor qualified person; providing for
3 disposition to more than one trustee; providing that
4 for dispositions to more than one trustee, a
5 qualified disposition may not be treated as other
6 than a qualified disposition solely because not all
7 of the trustees are qualified persons; providing
8 powers and rights of a transferor and its effect on a
9 qualified disposition; limiting actions of creditors
10 to transfers with the intent to defraud; providing
11 requirements for bringing claim for fraudulent
12 transfer of settlor's assets; providing for
13 disposition by transferor who is a trustee;
14 prohibiting certain actions against a trustee,
15 advisor, or trust preparer; prohibiting certain
16 action against trustee, advisor, or preparer of
17 trust; providing court jurisdiction; providing for
18 the collection attorney fees and costs in certain
19 circumstances; providing for when multiple qualified
20 dispositions in same trust instrument; providing
21 certain exceptions to application of this act under
22 certain events and circumstances; providing for
23 avoidance of a qualified disposition; providing for
24 discretionary interest; providing that the rules
against perpetuities shall not apply to trusts;
providing intent to allow trust to have perpetual
durations; providing for nonjudicial settlement
agreements for trusts; providing when nonjudicial
settlement agreements are valid; clarifying what
matters may be solved by a nonjudicial settlement
agreement; providing for court approval of
nonjudicial settlement agreements; amending 60 O.S.
2021, Sections 175.24, 175.47, and 175.57, which
relate to powers of trustee, power of alienation, and
breach of trust; authorizing payment of certain costs
and fees by trustee; providing for creation of
attorney-client relationship under certain
circumstances; providing exception; providing for
confidentiality of certain communications;
authorizing perpetual duration of certain trusts;
defining term; establishing requirements for approval
of certain accountings; providing limitation on
certain action; updating statutory language; making
language gender neutral; providing for
noncodification; providing for codification; and
providing an effective date.

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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".

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

Sections 2 through 18 of this act shall be known and may be cited as the "Oklahoma Uniform Directed Trust Act of 2024".

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

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

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

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

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

1 4. "Person" means an individual, estate, business or nonprofit
2 entity, public corporation, government or governmental subdivision,
3 agency, or instrumentality, or other legal entity;

4 5. "Power of direction" means a power over a trust granted to a
5 person by the terms of the trust to the extent the power is
6 exercisable while the person is not serving as a trustee. The term
7 includes a power over the investment, management, or distribution of
8 trust property or other matters of trust administration. The term
9 excludes the powers described in subsection B of Section 6 of this
10 act;

11 6. "Settlor" means a person, including a testator, that creates
12 or contributes property to a trust. If more than one person creates
13 or contributes property to a trust, each person is a settlor of the
14 portion of the trust property attributable to that person's
15 contribution except to the extent another person has the power to
16 revoke or withdraw that portion;

17 7. "State" means a state of the United States, the District of
18 Columbia, Puerto Rico, the United States Virgin Islands, or any
19 other territory or possession subject to the jurisdiction of the
20 United States;

21 8. "Terms of a trust" means:

22 a. except as otherwise provided in subparagraph b of this
23 paragraph, the manifestation of the settlor's intent
24 regarding a trust's provisions as:

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

4 b. the trust's provisions as established, determined, or
5 amended by:

- 6 (1) a trustee or trust director in accordance with
7 applicable law, or
8 (2) a court order;

9 9. "Trust director" means a person that is granted a power of
10 direction by the terms of a trust to the extent the power is
11 exercisable while the person is not serving as a trustee. The
12 person is a trust director whether or not the terms of the trust
13 refer to the person as a trust director and whether or not the
14 person is a beneficiary or settlor of the trust; and

15 10. "Trustee" means an original, additional, and successor
16 trustee, and a cotrustee.

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

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

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

4 2. If the principal place of administration of the trust is
5 changed to this state on or after the effective date of this act,
6 this act applies only to a decision or action occurring on or after
7 the date of the change.

8 B. Without precluding other means to establish a sufficient
9 connection with the designated jurisdiction in a directed trust, the
10 terms of the trust which designate the principal place of
11 administration of the trust are valid and controlling if:

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

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

16 3. All or part of the administration occurs in the designated
17 jurisdiction.

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

21 The common law and principles of equity supplement this act,
22 except to the extent modified by this act or by other laws of this
23 state other than this act.

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

4 A. In this section, "power of appointment" means a power that
5 enables a person acting in a nonfiduciary capacity to designate a
6 recipient of an ownership interest in or another power of
7 appointment over trust property.

8 B. This act does not apply to a:

9 1. Power of appointment;

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

11 3. Power of a settlor over a trust to the extent the settlor
12 has a power to revoke the trust;

13 4. Power of a beneficiary over a trust to the extent the
14 exercise or nonexercise of the power affects the beneficial interest
15 of:

16 a. the beneficiary, or

17 b. another beneficiary represented by the beneficiary
18 with respect to the exercise or nonexercise of the
19 power; or

20 5. Power over a trust, if:

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

23 b. the power must be held in a nonfiduciary capacity to
24 achieve the settlor's tax objectives under the United

1 States Internal Revenue Code of 1986, as amended, and
2 regulations issued thereunder, as amended.

3 C. Unless the terms of a trust provide otherwise, a power
4 granted to a person to designate a recipient of an ownership
5 interest in or power of appointment over trust property which is
6 exercisable while the person is not serving as a trustee is a power
7 of appointment and not a power of direction.

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

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

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

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

17 2. Trust directors with joint powers must act by majority
18 decision.

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

22 A trust director is subject to the same rules as a trustee in a
23 like position and under similar circumstances in the exercise or
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1 nonexercise of a power of direction or further power under paragraph
2 1 of subsection B of Section 7 of this act regarding:

3 1. A payback provision in the terms of a trust necessary to
4 comply with the reimbursement requirements of Medicaid law in
5 Section 1917 of the Social Security Act, 42 U.S.C., Section
6 1396p(d)(4)(A), as amended, and regulations issued thereunder, as
7 amended; and

8 2. A charitable interest in the trust, including providing
9 notice regarding the interest to the Attorney General.

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

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

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

18 a. if the power is held individually, as a sole trustee
19 in a like position and under similar circumstances, or
20 b. if the power is held jointly with a trustee or another
21 trust director, as a cotrustee in a like position and
22 under similar circumstances; and

23 2. The terms of the trust may vary the director's duty or
24 liability to the same extent the terms of the trust could vary the

1 duty or liability of a trustee in a like position and under similar
2 circumstances.

3 B. Unless the terms of a trust provide otherwise, if a trust
4 director is licensed, certified, or otherwise authorized or
5 permitted by law other than this act to provide health care in the
6 ordinary course of the director's business or practice of a
7 profession, to the extent the director acts in that capacity, the
8 director has no duty or liability under this act.

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

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

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

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

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

4 1. The breach involved the trustee's or other director's
5 willful misconduct;

6 2. The release was induced by improper conduct of the trustee
7 or other director in procuring the release; or

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

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

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

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

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

21 1. The powers or duties of the trustee; and

22 2. The powers or duties of the director.

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

- 4 1. The powers or duties of the director; and
- 5 2. The powers or duties of the trustee or other director.

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

10 D. A trust director that acts in reliance on information
11 provided by a trustee or another trust director is not liable for a
12 breach of trust to the extent the breach resulted from the reliance,
13 unless by so acting, the trust director engages in willful
14 misconduct.

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

- 18 A. Unless the terms of a trust provide otherwise:
- 19 1. A trustee does not have a duty to:
 - 20 a. monitor a trust director, or
 - 21 b. inform or give advice to a settlor, beneficiary,
22 trustee, or trust director concerning an instance in
23 which the trustee might have acted differently than
24 the director; and

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

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

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

- 6 a. monitor a trustee or another trust director, or
- 7 b. inform or give advice to a settlor, beneficiary,
8 trustee, or another trust director concerning an
9 instance in which the director might have acted
10 differently than a trustee or another trust director;
11 and

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

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

18 The terms of a trust may relieve a cotrustee from duty and
19 liability with respect to another cotrustee's exercise or
20 nonexercise of a power of the other cotrustee to the same extent
21 that in a directed trust a directed trustee is relieved from duty
22 and liability with respect to a trust director's power of direction
23 under Sections 10 through 12 of this act.

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

4 A. An action against a trust director for breach of trust must
5 be commenced within the same limitation period for an action for
6 breach of trust against a trustee in a like position and under
7 similar circumstances.

8 B. A report or accounting has the same effect on the limitation
9 period for an action against a trust director for breach of trust
10 that the report or accounting would have in an action for breach of
11 trust against a trustee in a like position and under similar
12 circumstances.

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

16 In an action against a trust director for breach of trust, the
17 director may assert the same defenses a trustee in a like position
18 and under similar circumstances could assert in an action for breach
19 of trust against the trustee.

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

23 A. By accepting appointment as a trust director of a trust
24 subject to this act, the director submits to personal jurisdiction

1 of the courts of this state regarding any matter related to a power
2 or duty of the director.

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

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

8 Unless the terms of a trust provide otherwise, the rules
9 applicable to a trustee apply to a trust director regarding the
10 following matters:

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

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

20 This act modifies, limits, or supersedes the Electronic
21 Signatures in Global and National Commerce Act, 15 U.S.C., Section
22 7001 et seq., but does not modify, limit, or supersede Section
23 101(c) of that act, 15 U.S.C., Section 7001(c), or authorize

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1 electronic delivery of any of the notices described in Section
2 103(b) of that act, 15 U.S.C., Section 7003(b).

3 SECTION 19. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1301 of Title 60, unless there
5 is created a duplication in numbering, reads as follows:

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

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

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

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

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

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

19 4. "Disposition" means a transfer, conveyance, or assignment of
20 property, including a change in the legal ownership of property
21 occurring upon the substitution of one trustee for another or the
22 addition of one or more new trustees, or the exercise of a power so
23 as to cause a transfer of property to a trustee or trustees. The
24 term does not include the release or relinquishment of an interest

1 in property that theretofore was the subject of a qualified
2 disposition;

3 5. "Property" means real property, personal property, and
4 interests in real or personal property;

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

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

12 8. "Transferor" means any person as an owner of property or as
13 a holder of a power of appointment which authorizes the holder to
14 appoint in favor of the holder, the holder's creditors, the holder's
15 estate, or the creditors of the holder's estate or as a trustee,
16 directly or indirectly, who makes a disposition or causes a
17 disposition to be made.

18 B. The terms transferor and beneficiary may be any individual,
19 corporation, partnership, limited liability company, association,
20 joint stock company, business trust, trust, unincorporated
21 organization, or two or more persons having a joint or common
22 interest.

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

4 A. For the purposes of the Oklahoma Qualified Dispositions into
5 Trust Act, a trust instrument is an instrument appointing a
6 qualified person or qualified persons for the property that is the
7 subject of a disposition, which instrument:

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

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

13 a. a transferor's power to veto a distribution from the
14 trust,

15 b. an inter vivos power of appointment, other than an
16 inter vivos power exercisable solely by the transferor
17 in favor of the transferor, the transferor's
18 creditors, the transferor's estate, or the creditors
19 of the transferor's estate,

20 c. a testamentary power of appointment,

21 d. the transferor's potential or actual receipt of
22 income, including rights to such income retained in
23 the trust instrument,

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- 1 e. the transferor's potential or actual receipt of income
2 or principal from a charitable remainder unitrust or
3 charitable remainder annuity trust as such terms are
4 defined in Section 664 of the Internal Revenue Code of
5 1986, 26 U.S.C., Section 664, as of January 1, 2009,
- 6 f. the transferor's receipt each year of a percentage of
7 the value as determined from time to time pursuant to
8 the trust instrument, but not exceeding the amount
9 that may be defined as income under Section 643(b) of
10 the Internal Revenue Code of 1986, 26 U.S.C., Section
11 643(b), as of January 1, 2009,
- 12 g. the transferor's receipt each year of a percentage of
13 the value as determined from time to time pursuant to
14 the trust instrument, but not exceeding the amount
15 that may be defined as income under Section 664 of the
16 Internal Revenue Code of 1986, 26 U.S.C., Section
17 643(b), as of January 1, 2009,
- 18 h. the transferor's potential or actual receipt or use of
19 principal if the potential or actual receipt or use of
20 principal would be the result of a qualified person,
21 including a qualified person acting at the direction
22 of a trust advisor described in this act, acting
23 either in the qualified person's sole discretion or
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1 pursuant to an ascertainable standard contained in the
2 trust instrument,

3 i. the transferor's right to remove a trustee, protector,
4 or trust advisor and to appoint a new trustee,
5 protector, or trust advisor, other than a trustee who
6 is a related or subordinate party with respect to the
7 transferor within the meaning of Section 672(c) of the
8 Internal Revenue Code of 1986, 26 U.S.C., Section
9 672(c), as of January 1, 2009,

10 j. the transferor's potential or actual use of real
11 property held under a qualified personal residence
12 trust within the meaning of such term as described in
13 the regulations promulgated under Section 2702(c) of
14 the Internal Revenue Code of 1986, 26 U.S.C., Section
15 2702(c), as of January 1, 2009,

16 k. a pour-back provision that pours back to the
17 transferor's will or revocable trust all or part of
18 the trust assets,

19 l. the transferor's potential or actual receipt of income
20 or principal to pay, in whole or in part, income taxes
21 due on income of the trust if the potential or actual
22 receipt of income or principal is pursuant to a
23 provision in the trust instrument that expressly
24 provides for the payment of the taxes and if the

1 potential or actual receipt of income or principal
2 would be the result of a qualified person's acting in
3 the qualified person's discretion or pursuant to a
4 mandatory direction in the trust instrument or acting
5 at the direction of a trust advisor described in
6 Section 24 of this act,

7 m. the ability, whether pursuant to discretion,
8 direction, or the grantor's exercise of a testamentary
9 power of appointment, of a qualified person to pay,
10 after the death of the transferor, all or any part of
11 the debts of the transferor outstanding at the time of
12 the transferor's death, the expenses of administering
13 the transferor's estate, or any estate or inheritance
14 tax imposed on or with respect to the transferor's
15 estate,

16 n. a transferor's service as a noncontrolling member of a
17 distribution committee that functions as a
18 distribution trust advisor, which is a fiduciary given
19 authority by the instrument to exercise all or any
20 portions of the powers and discretions over any
21 discretionary distributions of income or principal, or

22 o. a transferor's enjoyment of a power to reacquire the
23 trust corpus by substituting other property of an
24 equivalent value within the meaning of Section

1 675(4) (C) of the Internal Revenue Code of 1986, 26

2 U.S.C., Section 675(4) (C), as of January 1, 2021, and

3 3. Provides that the interest of the transferor or other
4 beneficiary in the trust property or the income from the trust
5 property may not be transferred, assigned, pledged, or mortgaged,
6 whether voluntarily or involuntarily, before the qualified person
7 distributes the property or income from the property to the
8 beneficiary, and such provision of the trust instrument constitutes
9 a restriction on the transfer of the transferor's beneficial
10 interest in the trust that is enforceable under applicable
11 nonbankruptcy law within the meaning of Section 541(c) (2) of the
12 Bankruptcy Code, 11 U.S.C., Section 541(c) (2), as of January 1,
13 2009.

14 B. A disposition by a trustee that is not a qualified person to
15 a trustee that is a qualified person may not be treated as other
16 than a qualified disposition solely because the trust instrument
17 fails to meet the requirements of paragraph 1 of subsection A of
18 this section.

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

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

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

7 2. A trust company that is organized under state law or under
8 federal law and that has its principal place of business in this
9 state; or

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

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

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

19 A. Except as expressly provided by the terms of a governing
20 instrument or by a court order, a general law or a state
21 jurisdiction provision stating that the laws of this state govern is
22 valid, effective, and conclusive for the trust if all of the
23 following are true:

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1 1. Some or all of the trust assets are deposited in this state
2 or physical evidence of such assets is held in this state and the
3 trust is being administered by a qualified person. "Deposited in
4 this state" includes being held in a checking account, time deposit,
5 certificate of deposit, brokerage account, trust company fiduciary
6 account, or other similar account or deposit that is located in this
7 state, including Oklahoma investments;

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

11 3. The administration, including physically maintaining trust
12 records in this state, and preparing or arranging for the
13 preparation of, on an exclusive basis or a nonexclusive basis, an
14 income tax return that must be filed by the trust, occurs wholly or
15 partly in this state.

16 B. The courts of this state have jurisdiction over a trust
17 created in a foreign jurisdiction if the administration of the trust
18 meets the criteria of paragraphs 1 through 3 of subsection A of this
19 section.

20 C. Nothing in this section may be construed to be the exclusive
21 means of providing a valid effective and conclusive state
22 jurisdiction provision.

23

24

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

4 Neither the transferor nor any other natural person who is a
5 nonresident of this state nor an entity that is not authorized by
6 the laws of this state to act as a trustee or whose activities are
7 not subject to supervision as provided in Section 22 of this act may
8 be considered a qualified person. However, nothing in this act
9 precludes a transferor from appointing, removing, or replacing one
10 or more cotrustees, trust advisors, or trust protectors, regardless
11 of whether or not such trust advisor or trust protector is a
12 fiduciary.

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

16 Any person may serve as an investment trust advisor,
17 notwithstanding that the person is the transferor of the qualified
18 disposition, but a transferor may not otherwise serve as a fiduciary
19 under a trust instrument except as stated in paragraph 2 of
20 subsection A of Section 21 of this act. While serving as an
21 investment trust advisor of the trust, the person may have all
22 powers authorized by statute or by the trust instrument, including
23 the power to vote by proxy any stock owned by the trust.

24

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

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

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

16 In the case of a disposition to more than one trustee, a
17 disposition that is otherwise a qualified disposition may not be
18 treated as other than a qualified disposition solely because not all
19 of the trustees are qualified persons.

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

23 A qualified disposition is subject to Sections 29 through 34 of
24 this act, notwithstanding a transferor's retention of any or all of

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

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

13 Notwithstanding any other provision of law, no action of any
14 kind, including an action to enforce a judgment entered by a court
15 or other body having adjudicative authority, may be brought at law
16 or in equity for an attachment or other provisional remedy against
17 property that is the subject of a qualified disposition or for
18 avoidance of a qualified disposition unless the settlor's transfer
19 of property was made with the intent to defraud that specific
20 creditor. This protection, however, only applies to qualified
21 dispositions up to, but not exceeding, Ten Million Dollars
22 (\$10,000,000.00) and shall not apply to assets disclosed on a
23 financial statement to a bank or financial institution for the

24

1 purpose of guaranteeing a loan prior to the assets being subject to
2 a qualified disposition.

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

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

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

14 a. two (2) years after the transfer is made, or
15 b. six (6) months after the transfer is or reasonably
16 could have been discovered by the creditor if the
17 creditor:

18 (1) can demonstrate that the creditor asserted a
19 specific claim against the settlor before the
20 transfer, or

21 (2) files another action, other than an action under
22 Section 29 of this act, against the settlor that
23 asserts a claim based on an act or omission of
24 the settlor that occurred before the transfer and

1 the action described in this subparagraph is
2 filed within two (2) years after the transfer; or

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

6 B. In any action described in Section 29 of this act, the
7 burden to prove the matter by clear and convincing evidence is upon
8 the creditor.

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

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

19 1. If the transferor is a natural person and is a resident of
20 this state, the personal property transfer instrument shall be
21 recorded in the county in this state where the transferor maintains
22 the transferor's principal residence; and

23 2. In all other cases, the personal property transfer
24 instrument shall be recorded in the county in this state where the

1 trustee of the trust maintains a principal residence or principal
2 place of business.

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

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

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

22 If property transferred to a spendthrift trust is conveyed to
23 the settlor or to a beneficiary for the purpose of obtaining a loan
24 secured by a mortgage or deed of trust on the property and then

1 reconveyed to the trust within one hundred eighty (180) days of
2 recording the mortgage or deed of trust, the transfer is disregarded
3 and the reconveyance relates back to the date the property was
4 originally transferred to the trust. The mortgage or deed of trust
5 on the property is enforceable against the trust.

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

9 Notwithstanding any law to the contrary, a creditor, including a
10 creditor whose claim arose before or after a qualified disposition,
11 or any other person has only such rights with respect to a qualified
12 disposition as are provided in Sections 29 through 36 of this act,
13 and no such creditor nor any other person has any claim or cause of
14 action against the trustee or advisor, described in Section 24 of
15 this act, of a trust that is the subject of a qualified disposition,
16 or against any person involved in the counseling, drafting,
17 preparation, execution, or funding of a trust that is the subject of
18 a qualified disposition. In addition to the provisions of Section
19 37 of this act, at no time is a qualified person personally liable
20 to a creditor of a transferor or any other person for distributions
21 made by the qualified person, before the creditor or person notified
22 the qualified person, in writing, that a claim or cause of action
23 existed. This applies regardless of whether the distributions are
24 made to or for the benefit of the transferor or a beneficiary during

1 the period in which a creditor or other person could make a claim as
2 provided in Section 30 of this act.

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

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

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

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

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

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

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

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

24

1 B. If the transferor is married at the time of the transfer,
2 the provisions of Sections 29 through 34 of this act, apply to:

3 1. Any of the transferor's separate property transferred to the
4 trust; and

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

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

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

1 TIME PERIOD, YOU WILL HAVE CONSENTED TO THE TRANSFER OF PROPERTY
2 INTO THIS TRUST;

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

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

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

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

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

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

22 A qualified disposition is avoided only to the extent necessary
23 to satisfy the transferor's debt to the creditor at whose insistence
24 the disposition had been avoided, together with such costs,

1 including attorney fees, as the court may allow. If any qualified
2 disposition is avoided as provided in this section, then:

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

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

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

19 2. If the court is satisfied that a beneficiary of a trust has
20 not acted in bad faith, the avoidance of the qualified disposition
21 is subject to the right of such beneficiary to retain any
22 distribution made upon the exercise of a trust power or discretion
23 vested in the qualified person or qualified persons of such trust,
24 which power or discretion was properly exercised prior to the

1 creditor's commencement of an action to avoid the qualified
2 disposition. It is presumed that the beneficiary, including a
3 beneficiary who is also a transferor of the trust, did not act in
4 bad faith merely by creating the trust or by accepting a
5 distribution made in accordance with the terms of the trust.

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

9 A. The following provisions apply only to discretionary
10 interests:

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

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

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

19 a. acts dishonestly,

20 b. acts with an improper motive, or

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

22 B. A reasonableness standard may not be applied to the exercise
23 of discretion by the trustee with regard to a discretionary
24 interest. Other than for the circumstances listed in this section,

1 a court has no jurisdiction to review the trustee's discretion or to
2 force a distribution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 8. The governing law of the trust;

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

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

3 11. The approval of an investment decision, delegation, policy,
4 plan, or program.

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

10 SECTION 40. AMENDATORY 60 O.S. 2021, Section 175.24, is
11 amended to read as follows:

12 Section 175.24. A. In the absence of contrary or limiting
13 provisions in the trust agreement or a subsequent order or decree of
14 a court of competent jurisdiction, the trustee of an express trust
15 is authorized:

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

22 2. To grant options and to sell real or personal property at
23 public auction or at private sale for cash, or upon credit secured
24

1 by lien upon the property sold or upon such property or a part
2 thereof or other property;

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

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

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

20 6. To pay calls, assessments, and any other sums chargeable or
21 accruing against, or on account of shares of stock or other
22 securities in the hands of the trustee where such payment may be
23 legally enforceable against the trustee or any property of the
24 trust, or the trustee deems payment expedient and for the best

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

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

1 such United States ~~Government~~ government obligations, and provided
2 further, that any such investment company or investment trust shall
3 take delivery of such collateral, either directly or through an
4 authorized custodian;

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

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

22 B. 1. In the exercise of its authority under paragraph 9 of
23 subsection A of this section, a trustee may pay, from the assets of
24 the trust, reasonable compensation and costs incurred in connection

1 with employment of attorneys, accountants, agents, and brokers
2 reasonably necessary in the administration of the trust estate.

3 2. In the event of any legal proceeding regarding the trust, a
4 trustee may pay the costs or attorney fees incurred in any
5 proceeding from the assets of the trust without the approval of any
6 person and without court authorization unless otherwise ordered by
7 the court in such legal proceeding.

8 3. Unless expressly provided otherwise in a written employment
9 agreement, the creation of an attorney-client relationship between
10 an attorney and a person serving as a fiduciary shall not impose
11 upon the attorney any duties or obligations to other persons
12 interested in the estate, trust estate, or other fiduciary property,
13 even though fiduciary funds may be used to compensate the attorney
14 for legal services rendered to the fiduciary. This paragraph is
15 intended to be declaratory of the common law and governs
16 relationships in existence between attorneys and persons serving as
17 fiduciaries and any such relationship hereafter created.

18 4. Whenever an attorney-client relationship exists between an
19 attorney and a fiduciary, communications between the attorney and
20 the fiduciary shall be subject to attorney-client privilege unless
21 waived by the fiduciary, even though fiduciary funds may be used to
22 compensate the attorney for legal services rendered to the
23 fiduciary. The existence of a fiduciary relationship between a
24 fiduciary and a beneficiary does not constitute or give rise to any

1 waiver of the privilege for communications between the attorney and
2 the fiduciary.

3 C. The following rules of administration shall be applicable to
4 all express trusts but such rules shall not be exclusive of those
5 otherwise imposed by law unless contrary to these rules:

6 1. Where a trustee is authorized to sell or dispose of land,
7 such authority shall include the right to sell or dispose of part
8 thereof, whether the division is horizontal, vertical, or made in
9 any other way, or undivided interests therein;

10 2. Where a trustee is authorized by the trust agreement
11 creating the trust or by law to pay or apply capital money subject
12 to the trust for any purpose or in any manner, the trustee shall
13 have and shall be deemed always to have had power to raise the money
14 required by selling, converting, calling in, or mortgaging or
15 otherwise encumbering all or any part of the trust property for the
16 time being in possession;

17 3. A trustee shall have a lien and may be reimbursed with
18 interest for, or pay or discharge out of the trust property, either
19 principal or income or both, all advances made for the benefit or
20 protection of the trust or its property and all expenses, losses,
21 and liabilities, not resulting from the negligence of the trustee,
22 incurred in or about the execution or protection of the trust or
23 because of the trustee holding or ownership of any property subject
24 thereto; and

1 4. When the happening of any event, including marriage,
2 divorce, attainment of a certain age, performance of educational
3 requirements, death, or any other event, affects distribution of
4 income or principal of trust estates, the trustees shall not be
5 liable for mistakes of fact prior to the actual knowledge or written
6 notice of such fact.

7 ~~C.~~ D. The powers, duties, and responsibilities stated in the
8 Oklahoma Trust Act or the Oklahoma Uniform Prudent Investor Act
9 shall not be deemed to exclude other implied powers, duties, or
10 responsibilities not inconsistent herewith.

11 ~~D.~~ E. The trustee shall pay all taxes and assessments levied or
12 assessed against the trust estate or the trustee by governmental
13 taxing or assessing agencies.

14 ~~E.~~ F. No trustee shall be required to give bond unless the
15 instrument creating the trust, or a court of competent jurisdiction
16 in its discretion upon the application of an interested party,
17 requires a bond to be given.

18 SECTION 41. AMENDATORY 60 O.S. 2021, Section 175.47, is
19 amended to read as follows:

20 Section 175.47. A. Except as otherwise provided in subsection
21 B of this section, the absolute power of alienation of real and
22 personal property, or either of them, shall not be suspended by any
23 limitations or conditions ~~whatever~~ for a longer period than during
24 the continuance of a life or lives of the beneficiaries in being at

1 the creation of the estate and twenty-one (21) years thereafter.
2 The absolute power of alienation is not suspended if there is any
3 person in being who, alone or in combination with one or more
4 others, has the power to sell, exchange, or otherwise convey the
5 real or personal property. If the terms of a trust do not suspend
6 the absolute power of alienation of any trust property beyond the
7 term permitted in this subsection, the trust may exist in
8 perpetuity.

9 B. The provisions of this section shall not apply when property
10 is given, granted, bequeathed, or devised to:

11 1. A charitable use;

12 2. Literary, educational, scientific, religious, or charitable
13 corporations for their sole use and benefit;

14 3. Any cemetery corporation, society or association;

15 4. The Department of Mental Health and Substance Abuse Services
16 as provided in Section 2-111 of Title 43A of the Oklahoma Statutes;
17 or

18 5. Gifts absolute, limited, or in trust, for the advancement of
19 medical science to an incorporated state society of physicians and
20 surgeons.

21 C. Except as provided in this section, the common law rule
22 against perpetuities shall not apply to a trust subject to the trust
23 laws of this state. A trust created in this state or subject to the
24

1 trust laws of this state may have a perpetual duration if a timing
2 provision or limit is not specified in the trust document.

3 SECTION 42. AMENDATORY 60 O.S. 2021, Section 175.57, is
4 amended to read as follows:

5 Section 175.57. A. A violation by a trustee of a duty the
6 trustee owes a beneficiary is a breach of trust.

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

- 9 1. Compel the trustee to perform the trustee's duties;
 - 10 2. Enjoin the trustee from committing a breach of trust;
 - 11 3. Compel the trustee to redress a breach of trust by payment
12 of money or otherwise;
 - 13 4. Order a trustee to account;
 - 14 5. Appoint a receiver or temporary trustee to take possession
15 of the trust property and administer the trust;
 - 16 6. Suspend or remove the trustee;
 - 17 7. Reduce or deny compensation to the trustee;
 - 18 8. Subject to subsection I of this section, void an act of the
19 trustee, impose an equitable lien or a constructive trust on trust
20 property, or trace trust property wrongfully disposed of and recover
21 the property or its proceeds; or
 - 22 9. Grant any other appropriate remedy.
- 23 C. A beneficiary may charge a trustee who commits a breach of
24 trust with the amount required to restore the value of the trust

1 property and trust distributions to what they would have been had
2 the breach not occurred, or, if greater, the profit that the trustee
3 made by reason of the breach.

4 D. In a judicial proceeding involving a trust, the court may in
5 its discretion, as justice and equity may require, award costs and
6 expenses, including reasonable ~~attorney's~~ attorney fees, to any
7 party, to be paid by another party or from the trust which is the
8 subject of the controversy.

9 E. 1. ~~Unless previously barred by adjudication, consent, or~~
10 ~~other limitation, a claim against a trustee for breach of trust is~~
11 ~~barred as to a beneficiary who has received from the trustee a~~
12 ~~report or other statement adequately disclosing the existence of the~~
13 ~~claim unless:~~

14 a. ~~a judicial proceeding to assert the claim is commenced~~
15 ~~within two (2) years after receipt of the report or~~
16 ~~statement or, if no report or statement is received,~~
17 ~~within two (2) years after the termination of the~~
18 ~~trust relationship between the beneficiary and that~~
19 ~~particular trustee, and~~

20 b. ~~the report or other statement informs the beneficiary~~
21 ~~of this time limitation.~~

22 ~~A report or statement adequately discloses the existence of a~~
23 ~~claim if it provides sufficient information so that the beneficiary~~
24 ~~knows of the claim or reasonably should have inquired into its~~

1 ~~existence. A claim this barred does not include an action to~~
2 ~~recover for fraud or misrepresentation related to the report or~~
3 ~~other statement~~ For purposes of this subsection, "accounting" means
4 any interim or final report or other statement provided by a trustee
5 reflecting all transactions, receipts, and disbursements during the
6 reporting period and a list of assets as of the end of the period
7 covered by the report or statement.

8 2. For any trust that is before a district court under
9 subsection A of Section 175.23 of this title, the trustee may submit
10 an accounting and seek approval of the accounting by the court.
11 Such accounting and the final approval by a district court, whether
12 or not such accounting is contested, shall be conclusive against all
13 persons interested in the trust, and the trustee, absent fraud,
14 intentional misrepresentation, or material omission, shall be
15 released and discharged from any and all liability as to all matters
16 set forth in the accounting.

17 3. If a trust is not before a district court under subsection A
18 of Section 175.23 of this title and if no objection has been made by
19 a beneficiary who is an eligible distributee or permissible
20 distributee of the trust's income or principal within one hundred
21 eighty (180) days after a copy of the trustee's accounting has been
22 provided to such beneficiaries together with written notice of the
23 provisions of this section, the distribution beneficiary is deemed
24 to have approved such accounting of the trustee, and the trustee,

1 absent fraud, intentional misrepresentation, or material omission,
2 shall be released and discharged from any and all liability to all
3 beneficiaries of the trust as to all matters set forth in such
4 accounting.

5 4. If paragraphs 2 and 3 of this subsection do not apply,
6 absent fraud, intentional misrepresentation, or material omission,
7 an action to recover for breach of trust against a trustee who is a
8 resident of this state or who has its principal place of business in
9 this state, or an officer, director, or employee of such trustee may
10 be commenced only within two (2) years of a trustee's accounting for
11 the period of the breach. In the case of fraud, intentional
12 misrepresentation, or material omission, the limitation period shall
13 not commence until discovery of the breach of trust.

14 ~~2.~~ 5. For the purpose of ~~paragraph 1~~ of this subsection, a
15 beneficiary is deemed to have received a report or other statement:

- 16 a. in the case of an adult, if it is received by the
17 adult personally, or if the adult lacks capacity, if
18 it is received by the adult's conservator, guardian,
19 or agent with authority, or
20 b. in the case of a minor, if it is received by the
21 minor's guardian or conservator or, if the minor does
22 not have a guardian or conservator, if it is received
23 by a parent of the minor who does not have a conflict
24 of interest.

1 ~~3.~~ 6. Except as otherwise provided by the terms of a trust,
2 while the trust is revocable and the settlor has capacity to revoke,
3 the rights of the beneficiaries are held by, and the duties of the
4 trustee are owed exclusively to, the settlor; the rights to be held
5 by and owed to the beneficiaries arise only upon the settlor's death
6 or incapacity. The trustee may follow a written direction of the
7 settlor, even if contrary to the terms of the trust. The holder of
8 a presently exercisable power of withdrawal or a testamentary
9 general power of appointment has the rights of a settlor of a
10 revocable trust under this section to the extent of the property
11 subject to the power.

12 F. 1. A term of the trust relieving a trustee of liability for
13 breach of trust is unenforceable to the extent that it:

14 a. relieves a trustee of liability for breach of trust
15 committed in bad faith or with reckless indifference
16 to the purposes of the trust or the interest of the
17 beneficiaries, or

18 b. was inserted as the result of an abuse by the trustee
19 of a fiduciary or confidential relationship to the
20 settlor.

21 2. An exculpatory term drafted by or on behalf of the trustee
22 is presumed to have been inserted as a result of an abuse of a
23 fiduciary or confidential relationship unless the trustee proves
24 that the exculpatory term is fair under the circumstances and that

1 its existence and contents were adequately communicated to the
2 settlor.

3 G. A beneficiary may not hold a trustee liable for a breach of
4 trust if the beneficiary, while having capacity, consented to the
5 conduct constituting the breach, released the trustee from liability
6 for the breach, or ratified the transaction constituting the breach,
7 unless:

8 1. The beneficiary at the time of the consent, release, or
9 ratification did not know of the beneficiary's rights and of the
10 material facts that the trustee knew, or with the exercise of
11 reasonable inquiry, the beneficiary should have known, and that the
12 trustee did not reasonably believe that the beneficiary knew; or

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

15 H. 1. Except as otherwise agreed, a trustee is not personally
16 liable on a contract properly entered into in the trustee's
17 fiduciary capacity in the course of administration of the trust if
18 the trustee in the contract discloses the fiduciary capacity.

19 2. A trustee is personally liable for obligations arising from
20 ownership or control of trust property, or for torts committed in
21 the course of administering a trust, only if the trustee is
22 personally at fault, whether negligently or intentionally.

23 3. A trustee who does not join in exercising a power held by
24 three or more trustees is not liable to third persons for the

1 consequences of the exercise of the power. A dissenting trustee who
2 joins in an action at the direction of the majority cotrustees is
3 not liable to third persons for the action if the dissenting trustee
4 expressed the dissent in writing to any other cotrustee at or before
5 the time the action was taken.

6 4. A claim based on a contract entered into by a trustee in the
7 trustee's fiduciary capacity, on an obligation arising from
8 ownership or control of trust property, or on a tort committed in
9 the course of administering a trust, may be asserted against the
10 trust in a judicial proceeding against the trustee in the trustee's
11 fiduciary capacity, whether or not the trustee is personally liable
12 on the claim.

13 I. 1. A person who in good faith assists a trustee or who in
14 good faith and for value deals with a trustee without knowledge that
15 the trustee is exceeding or improperly exercising the trustee's
16 powers is protected from liability as if the trustee properly
17 exercised the power.

18 2. Dealing in good faith with another person with knowledge
19 that the other person is a trustee does not place a third person on
20 notice to inquire into the extent of the trustee's powers or the
21 propriety of ~~their~~ his or her exercise.

22 3. A person who in good faith deals with another person with
23 knowledge that the other person is a trustee is not solely on that
24 account placed on notice to inquire into the extent of the trustee's

1 powers or the propriety of ~~their~~ his or her exercise or to see to
2 the proper application of assets of the trust paid or delivered to a
3 trustee.

4 4. A person who in good faith assists a former trustee or who
5 for value and in good faith deals with a former trustee without
6 knowledge that the person is no longer a trustee is protected from
7 liability as if the former trustee were still a trustee.

8 5. The protection provided by this section to persons assisting
9 or dealing with a trustee is secondary to that provided under
10 comparable provisions of other laws relating to commercial
11 transactions or to the transfer of securities by fiduciaries.

12 SECTION 43. This act shall become effective November 1, 2024.

13 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
14 April 9, 2024 - DO PASS AS AMENDED BY CS

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