

1 STATE OF OKLAHOMA

2 2nd Session of the 59th Legislature (2024)

3 HOUSE BILL 3962

By: Echols

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5  
6 AS INTRODUCED

7 An Act relating to trusts; enacting the Oklahoma  
8 Trust Reform Act of 2024; providing for directed  
9 trusts; defining terms; providing that a trust  
10 instrument may provide trust advisor or trust  
11 protector with powers and immunities of trustee;  
12 providing liability limits of excluded fiduciary;  
13 providing relief from obligations for excluded  
14 fiduciary; providing burden of proof in action  
15 against excluded fiduciary; providing for actions of  
16 an excluded fiduciary in the event of the death of a  
17 grantor; providing guideline for a trust advisor as a  
18 fiduciary; providing liability for an excluded  
19 fiduciary for loss if trust protector appointed;  
20 providing powers and discretions of a trust  
21 protector; providing for court and the effect on  
22 trust advisor or trust protector; clarifying powers  
23 of trust protector when incorporated by reference in  
24 will or trust instrument; providing that a trust  
-- instrument may provide for a person to act as an  
investment trust advisor or a distribution trust  
advisor; providing powers and discretions of  
investment trust advisor; providing powers and  
discretions of distribution trust advisor; providing  
powers and discretions of family advisor; providing  
when notice of the existence of trust is required to  
be given to qualified beneficiaries; providing when  
certain notices are required; defining terms for  
qualified dispositions into trust; 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

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 an action  
16 against trustee, advisor, or preparer of trust  
17 prohibited if action by creditor in certain  
18 circumstances; providing court jurisdiction;  
19 providing for the collection attorneys' fees and  
20 costs in certain circumstances; providing for when  
21 multiple qualified dispositions in same trust  
22 instrument; providing certain exceptions to  
23 application of this act under certain events and  
24 circumstances; providing for avoidance of a qualified  
-- disposition; providing for discretionary interest;  
providing that the rules against perpetuities shall  
not apply to trusts; providing intent to allow trust  
to have perpetual durations; providing for  
noncodification; providing for codification; and  
providing an effective date.

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

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

22 This act shall be known and cited as the "Oklahoma Trust Reform  
23 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 A. Sections 2 through 15 of this act create and govern directed  
5 trusts.

6 B. As used in sections 2 through 15 of this act:

7 1. "Custodial account" means an account, established by a party  
8 with a bank as defined in 26 U.S.C. 408(n), as of January 1, 2006,  
9 or with another person approved by the Internal Revenue Service as  
10 satisfying the requirements to be a nonbank trustee or a nonbank  
11 passive trustee set forth in U.S. Treasury Regulations promulgated  
12 under 26 U.S.C. 408, that is governed by an instrument concerning  
13 the establishment or maintenance, or both, of an individual  
14 retirement account, qualified retirement plan, Archer medical  
15 savings account, health savings account, Coverdell education savings  
16 account, or any similar retirement or savings vehicle permitted  
17 under the Internal Revenue Code of 1986, as of January 1, 2006;

18 2. "Custodial account owner" means any party who establishes a  
19 custodial account; or has the power to designate the beneficiaries  
20 or appoint the custodian of the custodial account; or otherwise is  
21 the party who possesses the power to direct the investment,  
22 disposition, or retention of any assets in the custodial account or  
23 name an authorized designee to effect the same;

1           3. "Distribution trust advisor" means a fiduciary, given  
2 authority by the instrument to exercise all or any portions of the  
3 powers and discretions set forth in section 13 of this act;

4           4. "Excluded fiduciary" means any fiduciary excluded from  
5 exercising certain powers under the instrument which powers may be  
6 exercised by the grantor, custodial account owner, trust advisor,  
7 trust protector, trust committee, or other persons designated in the  
8 instrument;

9           5. "Family advisor" means any person whose appointment is  
10 provided for in the governing instrument or by court order who is  
11 authorized to consult with or advise a fiduciary with regard to  
12 fiduciary or nonfiduciary matters and actions, and who may also be  
13 authorized by the governing instrument or court order to otherwise  
14 act in a nonfiduciary capacity.

15           6. "Fiduciary" means a trustee or custodian under any  
16 instrument, an executor, administrator, or personal representative  
17 of a decedent's estate, or any other party, including a trust  
18 advisor, a trust protector, or a trust committee, who is acting in a  
19 fiduciary capacity for any person, trust, or estate;

20           7. "Instrument" means any revocable or irrevocable trust  
21 document created inter vivos or testamentary or any custodial  
22 account agreement whether such document or agreement was created  
23 prior to, on, or after the effective date of this act;

1 8. "Investment trust advisor" means a fiduciary, given  
2 authority by the instrument to exercise all or any portions of the  
3 powers and discretions set forth in section 11 of this act;

4 9. "Trust advisor" means either an investment trust advisor or  
5 a distribution trust advisor or, in the case of a custodial account,  
6 a custodial account owner or the owner's designee;

7 10. "Trust protector" means any person whose appointment as  
8 protector is provided for in the instrument. Such person may not be  
9 considered to be acting in a fiduciary capacity except to the extent  
10 the governing instrument provides otherwise. However, a protector  
11 shall be considered acting in a fiduciary capacity to the extent  
12 that the person exercises the authority of an investment trust  
13 advisor or a distribution trust advisor;

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

17 Any governing instrument providing for a trust advisor or trust  
18 protector may also provide such trust advisor or trust protector  
19 with some, none, or all of the rights, powers, privileges, benefits,  
20 immunities, or authorities available to a trustee under Oklahoma law  
21 or under the governing instrument. Unless the governing instrument  
22 provides otherwise, a trust advisor or trust protector has no  
23 greater liability to any person than would a trustee holding or  
24 benefiting from the rights, powers, privileges, benefits,

1 immunities, or authority provided or allowed by the governing  
2 instrument to such trust advisor or trust protector.

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

6 A. An excluded fiduciary is not liable, either individually or  
7 as a fiduciary, for any of the following:

8 1. Any loss that results from compliance with a direction of  
9 the trust advisor, including any loss from the trust advisor  
10 breaching fiduciary responsibilities or acting beyond the trust  
11 advisor's scope of authority;

12 2. Any loss that results from a failure to take any action  
13 proposed by an excluded fiduciary that requires a prior  
14 authorization of the trust advisor if that excluded fiduciary timely  
15 sought but failed to obtain that authorization;

16 3. Any loss that results from any action or inaction, except  
17 for gross negligence or willful misconduct, when an excluded  
18 fiduciary is required, pursuant to the trust agreement or any other  
19 reason, to assume the role of trust advisor or trust protector;

20 4. Any loss that results from relying upon any trust advisor  
21 for valuation of trust assets; or

22 5. Any loss that results from any tax filing made or tax  
23 position taken based on the recommendations or instructions received  
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1 from a tax preparer or professional used by the excluded fiduciary  
2 at the direction of the grantor or of another trust fiduciary.

3 B. Any excluded fiduciary is also relieved from any obligation  
4 to independently value trust assets, to review or evaluate any  
5 direction from a distribution trust advisor, or to perform  
6 investment or suitability reviews, inquiries, or investigations or  
7 to make recommendations or evaluations with respect to any  
8 investments to the extent the trust advisor had authority to direct  
9 the acquisition, disposition, or retention of the investment. If  
10 the excluded fiduciary offers such communication to the trust  
11 advisor, trust protector, or any investment person selected by the  
12 investment trust advisor, such action does not constitute an  
13 undertaking by the excluded fiduciary to monitor or otherwise  
14 participate in actions within the scope of the advisor's authority  
15 or to constitute any duty to do so.

16 C. Any excluded fiduciary is also relieved of any duty to  
17 communicate with or warn or apprise any beneficiary or third party  
18 concerning instances in which the excluded fiduciary would or might  
19 have exercised the excluded fiduciary's own discretion in a manner  
20 different from the manner directed by the trust advisor or trust  
21 protector.

22 D. Absent contrary provisions in the governing instrument, the  
23 actions of the excluded fiduciary (such as any communications with  
24 the trust advisor and others and carrying out, recording, and  
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1 reporting actions taken at the trust advisor's direction) pertaining  
2 to matters within the scope of authority of the trust advisor or  
3 trust protector constitute administrative actions taken by the  
4 excluded fiduciary solely to allow the excluded fiduciary to perform  
5 those duties assigned to the excluded fiduciary under the governing  
6 instrument, and such administrative actions do not constitute an  
7 undertaking by the excluded fiduciary to monitor, participate, or  
8 otherwise take any fiduciary responsibility for actions within the  
9 scope of authority of the trust advisor or trust protector.

10 E. Nothing in paragraph 2 of subsection A of this section  
11 imposes an obligation or liability with respect to a custodian of a  
12 custodial account.

13 F. In an action against an excluded fiduciary pursuant to the  
14 provisions of this section, the burden to prove the matter by clear  
15 and convincing evidence is on the person seeking to hold the  
16 excluded fiduciary liable.

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

20 An excluded fiduciary may continue to follow the direction of  
21 the trust advisor upon the incapacity or death of the grantor if the  
22 instrument so allows.



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           If one or more trust advisors are given authority by the terms  
5 of a governing instrument to direct, consent to, or disapprove a  
6 fiduciary's investment or distribution decisions, or proposed  
7 investment or distribution decisions, such trust advisors shall be  
8 considered to be fiduciaries when exercising such authority. For  
9 investment decisions, so long as there is at least one fiduciary  
10 exercising the authority of the investment advisor pursuant to  
11 section 12 of this act for the investment, except in the cases of  
12 willful misconduct or gross negligence by the fiduciary investment  
13 advisor in the selection or monitoring of the nonfiduciary trust  
14 advisors, the governing instrument may provide that such other trust  
15 advisors acting pursuant to this section are not acting in a  
16 fiduciary capacity. Similarly, for distribution decisions, so long  
17 as there is at least one fiduciary exercising the authority of the  
18 distribution advisor pursuant to section 13 of this act for the  
19 distribution, except in the case of willful misconduct or gross  
20 negligence by the fiduciary distribution advisor in the selection or  
21 monitoring of the nonfiduciary trust advisors, the governing  
22 instrument may provide that such other trust advisors acting  
23 pursuant to this section are not acting in a fiduciary capacity.

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

4 If an instrument appoints a trust protector, the excluded  
5 fiduciary is not liable for any loss resulting from any action taken  
6 upon such trust protector's direction.

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

10 The powers and discretions of a trust protector are as provided  
11 in the governing instrument and may be exercised or not exercised,  
12 in the best interests of the trust, in the sole and absolute  
13 discretion of the trust protector and are binding on all other  
14 persons. The powers and discretion may include the following:

15 1. Modify or amend the trust instrument to achieve favorable  
16 tax status or respond to changes in the Internal Revenue Code, state  
17 law, or the rulings and regulations thereunder;

18 2. Increase or decrease the interests of any beneficiaries to  
19 the trust;

20 3. Modify the terms of any power of appointment granted by the  
21 trust. However, a modification or amendment may not grant a  
22 beneficial interest to any individual or class of individuals not  
23 specifically provided for under the trust instrument;

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1 4. Remove and appoint a trustee, a fiduciary provided for in  
2 the governing trust instrument, trust advisor, investment committee  
3 member, or distribution committee member;

4 5. Terminate the trust;

5 6. Veto or direct trust distributions;

6 7. Change situs or governing law of the trust, or both;

7 8. Appoint a successor trust protector;

8 9. Interpret terms of the trust instrument at the request of  
9 the trustee;

10 10. Advise the trustee on matters concerning a beneficiary;

11 11. Amend or modify the trust instrument to take advantage of  
12 laws governing restraints on alienation, distribution of trust  
13 property, or the administration of the trust;

14 12. Add to the trust an individual beneficiary or beneficiaries  
15 from a class of individuals identified in the governing instrument;

16 13. Add to the trust a charitable beneficiary or beneficiaries  
17 from a class of charities identified in the trust instrument;

18 14. Provide other powers and discretions in the governing  
19 instrument;

20 15. Remove a representative;

21 16. Appoint a representative; and

22 17. Act as a representative.

23 B. In addition to the powers and discretions granted to the  
24 trust protector in the governing instrument, the trust protector may  
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1 also exercise any of the powers and discretions granted to a trust  
2 protector under section 14 of this act to the extent such exercise  
3 is not prohibited under the terms of the governing instrument.

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

7 By accepting an appointment to serve as a trust advisor or trust  
8 protector of a trust that is subject to the laws of this State, the  
9 trust advisor or the trust protector submits to the jurisdiction of  
10 the courts of this state even if investment advisory agreements or  
11 other related agreements provide otherwise, and the trust advisor or  
12 trust protector may be made a party to any action or proceeding if  
13 issues relate to a decision or action of the trust advisor or trust  
14 protector.

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

18 Any of the powers enumerated in section 8 of this act as they  
19 exist at the time of the signing of a will by a testator or at the  
20 time of the signing of a trust instrument by a trustor, may be, by  
21 appropriate reference made thereto, incorporated in whole or in part  
22 in such will or trust instrument, by a clearly expressed intention  
23 of a testator of a will or trustor of a trust instrument.

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

4           A trust instrument governed by the laws of Oklahoma may provide  
5 for a person to act as an investment trust advisor or a distribution  
6 trust advisor, respectively, with regard to investment decisions or  
7 discretionary distributions. Unless otherwise provided or  
8 restricted by the terms of the governing instrument, any person may  
9 simultaneously serve as a trust advisor and a trust protector.

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

13          The powers and discretions of an investment trust advisor shall  
14 be as provided in the trust instrument and may be exercised or not  
15 exercised, in the best interests of the trust, in the sole and  
16 absolute discretion of the investment trust advisor and are binding  
17 on any other person and any other interested party, fiduciary, and  
18 excluded fiduciary. In addition to the powers and discretions  
19 granted to the investment trust advisor in the governing instrument,  
20 the investment trust advisor may also exercise any of the following  
21 powers and discretions to the extent such exercise is not prohibited  
22 under the terms of the governing instrument:

23           1. Direct the trustee with respect to the retention, purchase,  
24 sale, exchange, tender, or other transaction affecting the ownership

1 thereof or rights therein of trust investments. These powers  
2 include the pledge or encumbrance of trust property, lending of  
3 trust assets, either secured or unsecured, at terms defined by the  
4 investment trust advisor to any party including beneficiaries of the  
5 trust and the investment and reinvestment of principal and income of  
6 the trust;

7 2. Vote proxies for securities held in trust;

8 3. Select one or more investment advisers, managers, or  
9 counselors, including the trustee, and delegate to them any of its  
10 powers;

11 4. Direct the trustee with respect to any additional powers and  
12 discretions over investment and management of trust assets provided  
13 in the governing instrument; and

14 5. Direct the trustee as to the value of nonpublicly traded  
15 trust investments;

16 6. Direct the trustee as to any investment or management power;

17 7. Exercise the powers granted to an investment trust advisor  
18 by section 15 of this act.

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

22 The powers and discretions of a distribution trust advisor over  
23 any discretionary distributions of income or principal, including  
24 distributions pursuant to an ascertainable standard or other  
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1 criteria and appointments shall be provided in the trust instrument  
2 and may be exercised or not exercised, in the best interests of the  
3 trust, in the sole and absolute discretion of the distribution trust  
4 advisor and are binding on any other person and any other interested  
5 party, fiduciary, and excluded fiduciary. Unless the terms of the  
6 governing instrument provide otherwise, then, in addition to the  
7 powers and discretions granted to the distribution trust advisor in  
8 the trust instrument, the distribution trust advisor shall direct  
9 the trustee with regard to all discretionary distributions to  
10 beneficiaries and may exercise any of the powers and discretions  
11 granted to a distribution trust advisor in Section 15 of this act.

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

15 A. The powers and discretions of a family advisor are as  
16 provided in the governing instrument or by court order and may be  
17 exercised or not exercised, in the best interests of the trust, in  
18 the sole and absolute discretion of the family advisor. The powers  
19 and discretions may only include the following:

- 20 1. Remove and appoint a trustee, a fiduciary provided for in  
21 the governing trust instrument, trust advisor, investment committee  
22 member, or distribution committee member;
- 23 2. Appoint a trust protector, or a family advisor;

1           3. Advise the trustee on matters concerning any beneficiary;  
2 receive trust accountings, investment reports, and other information  
3 from the trustee or to which a beneficiary is entitled; attend  
4 meetings whether in person or by any other means with the trustee,  
5 investment trust advisors, distribution trust advisors, or other  
6 advisors whether in person or by any means, electronic or otherwise;  
7 and to consult with a fiduciary regarding both fiduciary and  
8 nonfiduciary matters or actions, all without any power or discretion  
9 to take any action as a fiduciary; or

10           4. Provide direction regarding notification of qualified  
11 beneficiaries pursuant to Section 15 of this act.

12           B. A family advisor is not required to exercise any powers or  
13 discretions under any circumstances. Every action or inaction by a  
14 family advisor is a nonfiduciary action or inaction and a family  
15 advisor is absolutely excluded from liability to any other person  
16 for an action or inaction as a family advisor. A court may review a  
17 family advisor's exercise of the powers described in paragraphs 1,  
18 2, and 4, of subsection A of this section, only if the family  
19 advisor acts dishonestly or with an improper motive but may not  
20 review a family advisor's failure to exercise any powers. A  
21 reasonableness standard may not be applied to any action or inaction  
22 of a family advisor. Other than for the two circumstances listed  
23 above, a court has no jurisdiction to review a family advisor's  
24 action or inaction.



1 C. A family advisor is entitled to compensation as provided in  
2 the governing instrument. If the governing instrument does not  
3 provide for or establish compensation, a family advisor is entitled  
4 to reasonable compensation for the exercise of the powers and  
5 discretions granted to the family advisor pursuant to this title.

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

9 1. Except as otherwise provided by the terms of a trust  
10 instrument governing a revocable trust a trustee has no duty to  
11 notify the qualified beneficiaries of the trust's existence.

12 2. Except as otherwise provided by the terms of a trust  
13 instrument governing an irrevocable trust or otherwise directed in  
14 writing by the trustor, trust advisor, or trust protector, the  
15 trustee shall:

- 16 a. notify the qualified beneficiaries of the trust's  
17 existence and of the right of the qualified  
18 beneficiary to request a copy of the trust instrument  
19 pertaining to the qualified beneficiary's interest in  
20 the trust within sixty (60) days after the trustee has  
21 accepted trusteeship of the trust, or within sixty  
22 (60) days after the date the trustee acquires  
23 knowledge that a formerly revocable trust has become  
24 irrevocable;

- 1           b. promptly furnish to the qualified beneficiary a copy  
2           of the trust instrument upon request by the qualified  
3           beneficiary; and
- 4           c. promptly respond to a qualified beneficiary's request  
5           for information related to the administration of the  
6           trust, unless the request is unreasonable under the  
7           circumstances.

8           3. The trustor, trust advisor, or trust protector, may, by the  
9 terms of the governing instrument, or by providing written  
10 directions to the trustee, expand, restrict, eliminate, or otherwise  
11 modify the rights of beneficiaries to information relating to a  
12 trust. Unless otherwise stated in the governing instrument, the  
13 direction of the trustor controls in the event of a conflict among  
14 written directions provided to the trustee pursuant to this section.  
15 The trustee incurs no liability for a loss or otherwise for relying  
16 upon the written directions, including an instance when the  
17 governing instrument of an irrevocable trust does not expressly  
18 authorize an expansion, restriction, or other modification of the  
19 rights of beneficiaries to information relating to a trust.

20           The terms of a trust instrument governing an irrevocable trust  
21 or written directions provided pursuant to this section may expand,  
22 restrict, eliminate, or otherwise vary the right of a beneficiary to  
23 be informed of the beneficiary's interest in a trust indefinitely or  
24 for a period of time, for example:

- a. a period of time related to the age of a beneficiary;
- b. a period of time related to the lifetime of either a trustor or spouse of a trustor, or both;
- c. a period of time related to a term of years or specific date; and
- d. a period of time related to a specific event that is certain to occur.

4. The terms of the governing instrument or written directions provided pursuant to this section may authorize either the trustor, trust advisor, or trust protector to appoint a representative for the purpose of being informed, on behalf of the beneficiary, of the beneficiary's interest in a trust for the period of time that the right of a beneficiary to be informed about a beneficiary's interest is restricted or eliminated pursuant to this section.

5. The written directions of the trustor, whether made in the governing instrument or by separate written directions made pursuant to the governing instrument or this section, control and remain in effect upon the death of the trustor until or unless modified or revoked by a trust advisor or trust protector as permitted by the governing instrument or the trustor's written directions in effect at the time of the trustor's death. Subject to paragraph 3 of this section, the written directions of a trust advisor or trust protector remain in effect until or unless a trust advisor or trust

1 protector revokes the written directions by providing a writing to  
2 that effect to the trustee.

3 6. Any beneficiary may waive the right to the notice or  
4 information otherwise required to be furnished under this section  
5 and, with respect to future reports and other information, may  
6 withdraw a waiver previously given.

7 7. Before providing information to any qualified beneficiary, a  
8 fiduciary may require that any such qualified beneficiary or  
9 beneficiaries be bound by the same duty of confidentiality that  
10 binds the fiduciary. If trust information is sought through service  
11 of a subpoena on a fiduciary, the fiduciary may petition the court  
12 for an order that makes disclosure of trust information contingent  
13 upon the receiving party being bound by reasonable conditions to  
14 ensure the protection of confidentiality of trust information by the  
15 receiving party.

16 8. The change in the identity of a trustee, occurring as the  
17 result of a mere name change or a merger, consolidation,  
18 combination, or reorganization of a trustee, does not require  
19 notice.

20 9. For the purposes of this section, the term, qualified  
21 beneficiary, means a beneficiary that is an entity then in existence  
22 or an individual who is twenty-one (21) years of age or older and  
23 who, on the date the beneficiary's qualification is determined:  
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- 1 a. is a distributee or permissible distributee of trust  
2 income or principal;
- 3 b. would be a distributee or permissible distributee of  
4 trust income or principal if the interests of the  
5 distributees terminated on that date; or
- 6 c. would be a distributee or permissible distributee of  
7 trust income or principal if the trust terminated on  
8 that date.

9 However, if the distributee is then unknown because a person  
10 holds a power to change the distributee, the trustee shall give  
11 notice only to the holder of the power.

12 SECTION 16. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 1301 of Title 60, unless there  
14 is created a duplication in numbering, reads as follows:

15 A. As used in Sections 17 through 33 of this act:

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

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

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

23 4. "Disposition" means a transfer, conveyance, or assignment of  
24 property, including a change in the legal ownership of property

1 occurring upon the substitution of one trustee for another or the  
2 addition of one or more new trustees, or the exercise of a power so  
3 as to cause a transfer of property to a trustee or trustees. The  
4 term does not include the release or relinquishment of an interest  
5 in property that theretofore was the subject of a qualified  
6 disposition;

7 5. "Property" means real property, personal property, and  
8 interests in real or personal property;

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

13 7. "Spouse" and "former spouse" means only persons to whom the  
14 transferor was married at, or before, the time the qualified  
15 disposition is made; and

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

22 B. The terms transferor and beneficiary may be any individual,  
23 corporation, partnership, limited liability company, association,  
24 joint stock company, business trust, trust, unincorporated

1 organization, or two or more persons having a joint or common  
2 interest.

3 SECTION 17. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 1302 of Title 60, unless there  
5 is created a duplication in numbering, reads as follows:

6 A. For the purposes of Sections 16 through 33 of this act, a  
7 trust instrument is an instrument appointing a qualified person or  
8 qualified persons for the property that is the subject of a  
9 disposition, which instrument:

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

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

15 a. a transferor's power to veto a distribution from the  
16 trust,

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

22 c. a testamentary power of appointment,  
23  
24  
--

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



1 protector, or trust advisor, other than a trustee who  
2 is a related or subordinate party with respect to the  
3 transferor within the meaning of Section 672(c) of the  
4 Internal Revenue Code of 1986, 26 U.S.C. Section  
5 672(c), as of January 1, 2009,

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

12 i. a pour back provision that pours back to the  
13 transferor's will or revocable trust all or part of  
14 the trust assets,

15 j. the transferor's potential or actual receipt of income  
16 or principal to pay, in whole or in part, income taxes  
17 due on income of the trust if the potential or actual  
18 receipt of income or principal is pursuant to a  
19 provision in the trust instrument that expressly  
20 provides for the payment of the taxes and if the  
21 potential or actual receipt of income or principal  
22 would be the result of a qualified person's acting in  
23 the qualified person's discretion or pursuant to a  
24 mandatory direction in the trust instrument or acting

1 at the direction of an advisor described in Section 19  
2 of this act,

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

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

18 m. a transferor's enjoyment of a power to reacquire the  
19 trust corpus by substituting other property of an  
20 equivalent value within the meaning of  
21 Section 675(4)(C) of the Internal Revenue Code of 1986,  
22 26 U.S.C. Section 675(4)(C), as of January 1, 2021, and

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

9 B. A disposition by a trustee that is not a qualified person to  
10 a trustee that is a qualified person may not be treated as other  
11 than a qualified disposition solely because the trust instrument  
12 fails to meet the requirements of paragraph 1 of this section.

13 SECTION 18. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 1303 of Title 60, unless there  
15 is created a duplication in numbering, reads as follows:

16 A. For the purposes of Sections 16 through 33 of this act, a  
17 qualified person is:

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

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

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

8           B. Furthermore, a qualified person must meet the requirements  
9 as provided in Section 19 of this act.

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

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

18           1. Some or all of the trust assets are deposited in this state  
19 or physical evidence of such assets is held in this state and the  
20 trust is being administered by a qualified person in this  
21 subdivision, deposited in this state, includes being held in a  
22 checking account, time deposit, certificate of deposit, brokerage  
23 account, trust company fiduciary account, or other similar account  
24  
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1 or deposit that is located in this state including Oklahoma  
2 investments;

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

6 3. The administration, for example, physically maintaining  
7 trust records in this state and preparing or arranging for the  
8 preparation of, on an exclusive basis or a nonexclusive basis, an  
9 income tax return that must be filed by the trust, occurs wholly or  
10 partly in this state.

11 B. The State of Oklahoma and its courts have jurisdiction over  
12 a trust created in a foreign jurisdiction if the administration of  
13 the trust meets the three requirements set forth in this section.

14 C. Nothing in this section may be construed to be the exclusive  
15 means of providing a valid effective and conclusive state  
16 jurisdiction provision.

17 SECTION 20. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 1305 of Title 60, unless there  
19 is created a duplication in numbering, reads as follows:

20 Neither the transferor nor any other natural person who is a  
21 nonresident of this state nor an entity that is not authorized by  
22 the law of this state to act as a trustee or whose activities are  
23 not subject to supervision as provided in Section 18 of this act may  
24 be considered a qualified person. However, nothing in this chapter

1 precludes a transferor from appointing, removing, or replacing one  
2 or more co-trustees, trust advisors, or trust protectors, regardless  
3 of whether or not such trust advisor or trust protector is a  
4 fiduciary.

5 SECTION 21. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section 1306 of Title 60, unless there  
7 is created a duplication in numbering, reads as follows:

8 Any person may serve as an investment trust advisor,  
9 notwithstanding that the person is the transferor of the qualified  
10 disposition, but a transferor may not otherwise serve as a fiduciary  
11 under a trust instrument except as stated in paragraph 2 of  
12 subsection A of Section 17 of this act. While serving as an  
13 investment trust advisor of the trust, the person may have all  
14 powers authorized by statute or by the trust instrument, including  
15 the power to vote by proxy any stock owned by the trust.

16 SECTION 22. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 1307 of Title 60, unless there  
18 is created a duplication in numbering, reads as follows:

19 If a qualified person of a trust ceases to meet the requirements  
20 of Section 18 of this act, and there remains no trustee that meets  
21 such requirements, such qualified person shall be deemed to have  
22 resigned as of the time of such cessation, and thereupon the  
23 successor qualified person provided for in the trust instrument  
24 shall become a qualified person of the trust, or in the absence of

1 any successor qualified person provided for in the trust instrument,  
2 the circuit court shall, upon application of any interested party,  
3 appoint a successor qualified person.

4 SECTION 23. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 1308 of Title 60, unless there  
6 is created a duplication in numbering, reads as follows:

7 In the case of a disposition to more than one trustee, a  
8 disposition that is otherwise a qualified disposition may not be  
9 treated as other than a qualified disposition solely because not all  
10 of the trustees are qualified persons.

11 SECTION 24. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 1309 of Title 60, unless there  
13 is created a duplication in numbering, reads as follows:

14 A qualified disposition is subject to Section 25 through Section  
15 30 of this act, notwithstanding a transferor's retention of any or  
16 all of the powers and rights described in paragraph 2 of Section 17  
17 of this act and the transferor's service as trust advisor pursuant  
18 to Section 21 of this act. The transferor has only such powers and  
19 rights as are conferred by the trust instrument. Except as  
20 permitted by Section 17 and Section 21 of this act, a transferor has  
21 no rights or authority with respect to the property that is the  
22 subject of a qualified disposition or the income therefrom, and any  
23 agreement or understanding purporting to grant or permit the  
24 retention of any greater rights or authority is void.

1 SECTION 25. 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 Notwithstanding any other provision of law, no action of any  
5 kind, including an action to enforce a judgment entered by a court  
6 or other body having adjudicative authority, may be brought at law  
7 or in equity for an attachment or other provisional remedy against  
8 property that is the subject of a qualified disposition or for  
9 avoidance of a qualified disposition unless the settlor's transfer  
10 of property was made with the intent to defraud that specific  
11 creditor. This protection, however, only applies to qualified  
12 dispositions totaling up to, but not exceeding, Ten Million Dollars  
13 (\$10,000,000.00).

14 SECTION 26. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 1311 of Title 60, unless there  
16 is created a duplication in numbering, reads as follows:

17 A. A cause of action or claim for relief with respect to a  
18 fraudulent transfer of a settlor's assets under Section 25 of this  
19 act is extinguished unless the action under Section 25 of this act  
20 is brought by a creditor of the settlor who meets one of the  
21 following requirements:

22 1. Is a creditor of the settlor before the settlor's assets are  
23 transferred to the trust, and the action under Section 25 of this  
24 act is brought within the later of:



- 1 a. two (2) years after the transfer is made, or  
2 b. six (6) months after the transfer is or reasonably  
3 could have been discovered by the creditor if the  
4 creditor:

5 (1) can demonstrate that the creditor asserted a  
6 specific claim against the settlor before the  
7 transfer, or

8 (2) files another action, other than an action under  
9 Section 25 of this act, against the settlor that  
10 asserts a claim based on an act or omission of  
11 the settlor that occurred before the transfer,  
12 and the action described in this subparagraph is  
13 filed within two (2) years after the transfer;

14 2. Becomes a creditor subsequent to the transfer into trust,  
15 and the action under Section 25 of this act is brought within two  
16 (2) years after the transfer is made;

17 3. In any action described in Section 25 of this act, the  
18 burden to prove the matter by clear and convincing evidence is upon  
19 the creditor;

20 4. A person is deemed to have discovered a transfer at the time  
21 a public record of the transfer is made, including the conveyance of  
22 an interest in real property that is recorded in the appropriate  
23 public filing office where the property is located, the filing of a  
24

1 financing statement, or the filing of a bill of sale or other  
2 transfer instrument regarding personal property; or

3 5. The filing of a bill of sale or other transfer instrument  
4 which conveys personal property to a trust which is governed by this  
5 chapter shall be filed in the applicable public filing office  
6 determined as follows:

7 a. if the transferor is a natural person and is a  
8 resident of this state, the personal property transfer  
9 instrument shall be recorded in the county in this  
10 state where the transferor maintains the transferor's  
11 principal residence, and

12 b. in all other cases, the personal property transfer  
13 instrument shall be recorded in the county in this  
14 state where the trustee of the trust maintains a  
15 principal residence or principal place of business.

16 B. This section and Section 25, Section 27, Section 28, and  
17 Section 29 are inseparably interwoven with substantive rights that a  
18 deprivation of legal rights would result if another jurisdiction's  
19 laws and regulations to the contrary are applied to a claim or cause  
20 of action described therein.

21 SECTION 27. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 1312 of Title 60, unless there  
23 is created a duplication in numbering, reads as follows:  
24  
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1 A qualified disposition that is made by means of a disposition  
2 by a transferor who is a trustee is deemed to have been made as of  
3 the time, whether before, on, or after the effective date of this  
4 act, the property that is the subject of the qualified disposition  
5 was originally transferred to the transferor, or any predecessor  
6 trustee, making the qualified disposition in a form that meets the  
7 requirements of paragraphs 2 and 3 of Section 17 of this act.  
8 Further, the provisions of this section apply to determine the date  
9 the transfer is deemed to have been made, notwithstanding that the  
10 original transfer was to a trust originally within or outside of the  
11 jurisdiction of Oklahoma.

12 If property transferred to a spendthrift trust is conveyed to  
13 the settlor or to a beneficiary for the purpose of obtaining a loan  
14 secured by a mortgage or deed of trust on the property and then  
15 reconveyed to the trust within one hundred eighty (180) days of  
16 recording the mortgage or deed of trust, for purposes of paragraph 1  
17 of subsection A of Section 26 of this act, the transfer is  
18 disregarded and the reconveyance relates back to the date the  
19 property was originally transferred to the trust. The mortgage or  
20 deed of trust on the property is enforceable against the trust.

21 SECTION 28. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 1313 of Title 60, unless there  
23 is created a duplication in numbering, reads as follows:  
24  
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1           Notwithstanding any law to the contrary, a creditor, including a  
2 creditor whose claim arose before or after a qualified disposition,  
3 or any other person has only such rights with respect to a qualified  
4 disposition as are provided in Section 25 through Section 32 of this  
5 act, and no such creditor nor any other person has any claim or  
6 cause of action against the trustee or advisor, described in Section  
7 20 of this act, of a trust that is the subject of a qualified  
8 disposition, or against any person involved in the counseling,  
9 drafting, preparation, execution, or funding of a trust that is the  
10 subject of a qualified disposition. In addition to the provisions  
11 of Section 33 of this act, at no time is a qualified person  
12 personally liable to a creditor of a transferor or any other person  
13 for distributions made by the qualified person, before the creditor  
14 or person notified the qualified person, in writing, that a claim or  
15 cause of action existed. This applies regardless of whether the  
16 distributions are made to or for the benefit of the transferor or a  
17 beneficiary during the period in which a creditor or other person  
18 could make a claim as provided in Section 26 of this act.

19           SECTION 29.       NEW LAW       A new section of law to be codified  
20 in the Oklahoma Statutes as Section 1314 of Title 60, unless there  
21 is created a duplication in numbering, reads as follows:

22           Notwithstanding any other provision of law, no action of any  
23 kind, including an action to enforce a judgment entered by a court  
24 or other body having adjudicative authority, may be brought at law

1 or in equity against the trustee or advisor described in Section 20  
2 of this act, of a trust that is the subject of a qualified  
3 disposition, or against any person involved in the counseling,  
4 drafting, preparation, execution, or funding of a trust that is the  
5 subject of a qualified disposition, if, as of the date such action  
6 is brought, an action by a creditor with respect to such qualified  
7 disposition would be barred under Section 25 through Section 28 of  
8 this act. A court of this state has exclusive jurisdiction over an  
9 action brought under a claim for relief that is based on a transfer  
10 of property to a trust that is the subject of this section. A court  
11 of this state may award attorney fees and costs to the prevailing  
12 party in such an action. In any action described in this section,  
13 the burden to prove the matter by clear and convincing evidence is  
14 upon the creditor.

15 SECTION 30. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 1315 of Title 60, unless there  
17 is created a duplication in numbering, reads as follows:

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

20 1. The making of a subsequent qualified disposition shall be  
21 disregarded in determining whether a creditor's claim with respect  
22 to a prior qualified disposition is extinguished as provided in  
23 Section 26 of this act; and  
24  
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1           2. Any distribution to a beneficiary is deemed to have been  
2 made from the latest such qualified disposition.

3           SECTION 31.           NEW LAW           A new section of law to be codified  
4 in the Oklahoma Statutes as Section 1316 of Title 60, unless there  
5 is created a duplication in numbering, reads as follows:

6           1. Notwithstanding the provisions of Section 25 through Section  
7 30 of this act, but subject to paragraph 2 of this section, Sections  
8 16 through 33 of this act do not apply in any respect to any person  
9 to whom at the time of transfer the transferor is indebted on  
10 account of an agreement or order of court for the payment of support  
11 or alimony in favor of the transferor's spouse, former spouse, or  
12 children, or for a division or distribution of property in favor of  
13 the transferor's spouse or former spouse, to the extent of the debt.

14           2. If the transferor is married at the time of the transfer,  
15 the provisions of Section 25 through Section 30 of this act, apply  
16 to:

- 17           a. any of the transferor's separate property transferred  
18           to the trust, and
- 19           b. any marital property transferred to the trust if the  
20           spouse or former spouse was provided with notice in  
21           the form set forth in paragraph 3 of this section, or  
22           executed a written consent to the transfer after being  
23           provided the information set forth in the notice.

1           3. For purposes of the application of this section, a notice of  
2 transfer of property to a trust subject to Sections 16 through 33 of  
3 this act:

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

20           b. shall contain a description of the property being  
21 transferred to the trust and the name of the trust,

22           c. may require that any person who is eligible to receive  
23 information pursuant to this section be bound by the  
24

1 duty of confidentiality that binds the trustee before  
2 receiving such information from the trustee, and

3 d. shall be provided by the transferor, the transferor's  
4 agent, the trustee, or other fiduciary of the trust.

5 4. If a notice is provided under this section before the  
6 property is transferred, the period to commence an action under  
7 Section 26 of this act shall commence running on the date of the  
8 transfer. If a notice is provided after the date the property is  
9 transferred, the period to commence an action pursuant to Section 26  
10 of this act commences running on the date the notice is provided.

11 5. The exception contained in paragraph 1 of this section does  
12 not apply to any claim for forced heirship or legitime.

13 SECTION 32. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 1317 of Title 60, unless there  
15 is created a duplication in numbering, reads as follows:

16 A qualified disposition is avoided only to the extent necessary  
17 to satisfy the transferor's debt to the creditor at whose instance  
18 the disposition had been avoided, together with such costs,  
19 including attorney fees, as the court may allow. If any qualified  
20 disposition is avoided as provided in this section, then:

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



- 1 a. such qualified person has a first and paramount lien  
2 against the property that is the subject of the  
3 qualified disposition in an amount equal to the entire  
4 cost, including attorney fees, properly incurred by  
5 such qualified person in the defense of the action or  
6 proceedings to avoid the qualified disposition. It is  
7 presumed that such qualified person did not act in bad  
8 faith merely by accepting such property, and  
9 b. the qualified disposition is avoided subject to the  
10 proper fees, costs, preexisting rights, claims, and  
11 interests of such qualified person, and of any  
12 predecessor qualified person that has not acted in bad  
13 faith, and

14 2. If the court is satisfied that a beneficiary of a trust has  
15 not acted in bad faith, the avoidance of the qualified disposition  
16 is subject to the right of such beneficiary to retain any  
17 distribution made upon the exercise of a trust power or discretion  
18 vested in the qualified person or qualified persons of such trust,  
19 which power or discretion was properly exercised prior to the  
20 creditor's commencement of an action to avoid the qualified  
21 disposition. It is presumed that the beneficiary, including a  
22 beneficiary who is also a transferor of the trust, did not act in  
23 bad faith merely by creating the trust or by accepting a  
24 distribution made in accordance with the terms of the trust.

1 SECTION 33. NEW LAW A new section of law to be codified

2 in the Oklahoma Statutes as Section 1318 of Title 60, unless there  
3 is created a duplication in numbering, reads as follows:

4 A. The following provisions apply only to discretionary  
5 interests:

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

8 2. No creditor may force a distribution with regard to a  
9 discretionary interest. No creditor may require the trustee to  
10 exercise the trustee's discretion to make a distribution with regard  
11 to a discretionary interest;

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

14 a. acts dishonestly,

15 b. acts with an improper motive, or

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

17 B. A reasonableness standard may not be applied to the exercise  
18 of discretion by the trustee with regard to a discretionary  
19 interest. Other than for the three circumstances listed in this  
20 subdivision, a court has no jurisdiction to review the trustee's  
21 discretion or to force a distribution.

22 C. Absent express language to the contrary, in the event that  
23 the distribution language in a discretionary interest permits  
24 unequal distributions between beneficiaries or distributions to the

1 exclusion of other beneficiaries, the trustee may distribute all of  
2 the accumulated, accrued, or undistributed income and principal to  
3 one beneficiary in the trustee's discretion.

4 D. Regardless of whether a beneficiary has any outstanding  
5 creditor, a trustee of a discretionary interest may directly pay any  
6 expense on behalf of such beneficiary and may exhaust the income and  
7 principal of the trust for the benefit of such beneficiary. No  
8 trustee is liable to any creditor for paying the expenses of a  
9 beneficiary of a discretionary interest.

10 SECTION 34. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 1401 of Title 60, unless there  
12 is created a duplication in numbering, reads as follows:

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

17 SECTION 35. This act shall become effective November 1, 2024.

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