

<DateSubmitted>

HOUSE OF REPRESENTATIVES  
CONFERENCE COMMITTEE REPORT

Mr. President:  
Mr. Speaker:

The Conference Committee, to which was referred

**HB3962**

By: Echols of the House and Pugh of the Senate

Title: Trust; Oklahoma Trust Reform Act of 2024; directed trust; qualified dispositions; duration of trust; effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its amendment; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

**SENATE CONFEREES**

Pugh \_\_\_\_\_  
Howard \_\_\_\_\_  
Gollihare \_\_\_\_\_  
Standridge \_\_\_\_\_  
Weaver \_\_\_\_\_  
Floyd \_\_\_\_\_

1 STATE OF OKLAHOMA

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

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

By: Echols and Kane of the  
House

7 and

Pugh of the Senate

8  
9  
10 CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to trusts; creating the Oklahoma  
12 Trust Reform Act of 2024; providing short title;  
13 creating the Oklahoma Uniform Directed Trust Act of  
14 2024; providing short title; defining terms;  
15 providing for applicability; providing for principal  
16 place of administration; providing for when common  
17 law and principals of equity control; providing for  
18 exclusions; providing the powers of a trust director;  
19 providing limitations on trust director; providing  
20 duties and liabilities of a trust director; providing  
21 duties and liabilities of directed trustees;  
22 providing a duty to provide certain information to a  
23 trust director or trustee; providing that there is no  
24 duty to monitor, inform, or advise; providing  
application to cotrustee; providing limitation of  
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

1 considered a qualified person; providing for the  
2 appointment, removal, or replacement of cotrustee,  
3 trust advisor, or trust protector; providing who may  
4 serve as an investment trust advisor; providing that  
5 a transferor may not serve as a fiduciary; providing  
6 for successor qualified person; providing for  
7 disposition to more than one trustee; providing that  
8 for dispositions to more than one trustee, a  
9 qualified disposition may not be treated as other  
10 than a qualified disposition solely because not all  
11 of the trustees are qualified persons; providing  
12 powers and rights of a transferor and its effect on a  
13 qualified disposition; limiting actions of creditors  
14 to transfers with the intent to defraud; providing  
15 requirements for bringing claims with respect to  
16 qualified disposition of a transferor's assets;  
17 providing for disposition by transferor who is a  
18 trustee; prohibiting certain actions against a  
19 trustee, advisor, or trust preparer; prohibiting  
20 certain action against trustee, advisor, or preparer  
21 of trust; providing court jurisdiction; providing for  
22 the collection of attorney fees and costs in certain  
23 circumstances; providing for when multiple qualified  
24 dispositions in same trust instrument; providing  
certain exceptions to application of this act under  
certain events and 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 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

1 language gender neutral; providing for  
2 noncodification; providing for codification; and  
3 providing an effective date.  
4

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23           8. "Terms of a trust" means:  
24

1 a. except as otherwise provided in subparagraph b of this  
2 paragraph, the manifestation of the settlor's intent  
3 regarding a trust's provisions as:

4 (1) expressed in the trust instrument, or

5 (2) established by other evidence that would be  
6 admissible in a judicial proceeding, or

7 b. the trust's provisions as established, determined, or  
8 amended by:

9 (1) a trustee or trust director in accordance with  
10 applicable law, or

11 (2) a court order;

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

18 10. "Trustee" means an original, additional, and successor  
19 trustee, and a cotrustee.

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

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

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

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

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

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

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

19       3. All or part of the administration occurs in the designated  
20 jurisdiction.

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

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1       The common law and principles of equity supplement this act,  
2 except to the extent modified by this act or by other laws of this  
3 state other than this act.

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

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

11       B. This act does not apply to a:

12       1. Power of appointment;

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

14       3. Power of a settlor over a trust to the extent the settlor  
15 has a power to revoke the trust;

16       4. Power of a beneficiary over a trust to the extent the  
17 exercise or nonexercise of the power affects the beneficial interest  
18 of:

19           a. the beneficiary, or

20           b. another beneficiary represented by the beneficiary  
21 with respect to the exercise or nonexercise of the  
22 power; or

23       5. Power over a trust, if:

24

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

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

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

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

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

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

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

21 2. Trust directors with joint powers must act by majority  
22 decision.

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

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

8 1. A payback provision in the terms of a trust necessary to  
9 comply with the reimbursement requirements of Medicaid law in  
10 Section 1917 of the Social Security Act, 42 U.S.C., Section  
11 1396p(d) (4) (A), as amended, and regulations issued thereunder, as  
12 amended; and

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

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

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

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

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

1           b.    if the power is held jointly with a trustee or another  
2                   trust director, as a cotrustee in a like position and  
3                   under similar circumstances; and

4           2.   The terms of the trust may vary the director's duty or  
5 liability to the same extent the terms of the trust could vary the  
6 duty or liability of a trustee in a like position and under similar  
7 circumstances.

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

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

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

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

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

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

9 1. The breach involved the trustee's or other director's  
10 willful misconduct;

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

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

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

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

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

23  
24

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

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

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

- 9       1. The powers or duties of the director; and
- 10      2. The powers or duties of the trustee or other director.

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

15      D. A trust director that acts in reliance on information  
16 provided by a trustee or another trust director is not liable for a  
17 breach of trust to the extent the breach resulted from the reliance,  
18 unless by so acting, the trust director engages in willful  
19 misconduct.

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

- 23      A. Unless the terms of a trust provide otherwise:
  - 24      1. A trustee does not have a duty to:

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

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

B. Unless the terms of a trust provide otherwise:

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

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

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

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

The terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee's exercise or

1 nonexercise of a power of the other cotrustee to the same extent  
2 that in a directed trust a directed trustee is relieved from duty  
3 and liability with respect to a trust director's power of direction  
4 under Sections 10 through 12 of this act.

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

8 A. An action against a trust director for breach of trust must  
9 be commenced within the same limitation period for an action for  
10 breach of trust against a trustee in a like position and under  
11 similar circumstances.

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

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

20 In an action against a trust director for breach of trust, the  
21 director may assert the same defenses a trustee in a like position  
22 and under similar circumstances could assert in an action for breach  
23 of trust against the trustee.

24



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

4 A. By accepting appointment as a trust director of a trust  
5 subject to this act, the director submits to personal jurisdiction  
6 of the courts of this state regarding any matter related to a power  
7 or duty of the director.

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

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

13 Unless the terms of a trust provide otherwise, the rules  
14 applicable to a trustee apply to a trust director regarding the  
15 following matters:

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

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

1 This act modifies, limits, or supersedes the Electronic  
2 Signatures in Global and National Commerce Act, 15 U.S.C., Section  
3 7001 et seq., but does not modify, limit, or supersede Section  
4 101(c) of that act, 15 U.S.C., Section 7001(c), or authorize  
5 electronic delivery of any of the notices described in Section  
6 103(b) of that act, 15 U.S.C., Section 7003(b).

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

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

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

15 A. As used in the Oklahoma Qualified Dispositions into Trust  
16 Act:

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

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

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

24

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

9 5. "Property" means real property, personal property, and  
10 interests in real or personal property;

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

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

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

1 B. The terms transferor and beneficiary may be any individual,  
2 corporation, partnership, limited liability company, association,  
3 joint stock company, business trust, trust, unincorporated  
4 organization, or two or more persons having a joint or common  
5 interest.

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

9 A. For the purposes of the Oklahoma Qualified Dispositions into  
10 Trust Act, a trust instrument is an instrument appointing a  
11 qualified person or qualified persons for the property that is the  
12 subject of a disposition, which instrument:

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

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

- 18 a. a transferor's power to veto a distribution from the  
19 trust,  
20 b. an inter vivos power of appointment, other than an  
21 inter vivos power exercisable solely by the transferor  
22 in favor of the transferor, the transferor's  
23 creditors, the transferor's estate, or the creditors  
24 of the transferor's estate,

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

1 including a qualified person acting at the direction  
2 of a trust advisor described in this act, acting  
3 either in the qualified person's sole discretion or  
4 pursuant to an ascertainable standard contained in the  
5 trust instrument,

6 i. the transferor's right to remove a trustee, protector,  
7 or trust advisor and to appoint a new trustee,  
8 protector, or trust advisor, other than a trustee who  
9 is a related or subordinate party with respect to the  
10 transferor within the meaning of Section 672(c) of the  
11 Internal Revenue Code of 1986, 26 U.S.C., Section  
12 672(c), as of January 1, 2009,

13 j. the transferor's potential or actual use of real  
14 property held under a qualified personal residence  
15 trust within the meaning of such term as described in  
16 the regulations promulgated under Section 2702(c) of  
17 the Internal Revenue Code of 1986, 26 U.S.C., Section  
18 2702(c), as of January 1, 2009,

19 k. a pour-back provision that pours back to the  
20 transferor's will or revocable trust all or part of  
21 the trust assets,

22 l. the transferor's potential or actual receipt of income  
23 or principal to pay, in whole or in part, income taxes  
24 due on income of the trust if the potential or actual

1 receipt of income or principal is pursuant to a  
2 provision in the trust instrument that expressly  
3 provides for the payment of the taxes and if the  
4 potential or actual receipt of income or principal  
5 would be the result of a qualified person's acting in  
6 the qualified person's discretion or pursuant to a  
7 mandatory direction in the trust instrument or acting  
8 at the direction of a trust advisor described in  
9 Section 24 of this act,

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

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

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

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

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

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



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

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

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

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

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

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

21       A. Except as expressly provided by the terms of a governing  
22 instrument or by a court order, a general law or a state  
23 jurisdiction provision stating that the laws of this state govern is  
24

1 valid, effective, and conclusive for the trust if all of the  
2 following are true:

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

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

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

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

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

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, except as set forth  
14 in Section 30 of this act, no action of any kind, including an  
15 action to enforce a judgment entered by a court or other body having  
16 adjudicative authority, may be brought at law or in equity for an  
17 attachment or other provisional remedy against property that is the  
18 subject of a qualified disposition or for avoidance of a qualified  
19 disposition unless the settlor's transfer of property was made with  
20 the intent to defraud that specific creditor. This protection,  
21 however, only applies to qualified dispositions up to, but not  
22 exceeding, Ten Million Dollars (\$10,000,000.00).

23  
24

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

4 A. A cause of action or claim for relief with respect to a  
5 qualified disposition of a transferor's assets under Section 29 of  
6 this act is extinguished unless the action under Section 29 of this  
7 act may only be brought by a creditor of the transferor who meets  
8 one of the following requirements:

9 1. Is a creditor of the settlor before the settlor's assets are  
10 transferred to the trust; or

11 2. Becomes a creditor subsequent to the transfer into trust,  
12 and the asset was listed on a financial statement provided to a bank  
13 or financial institution by or on behalf of the transferor for the  
14 purpose of obtaining credit as a borrower, guarantor, surety,  
15 pledgor, or otherwise.

16 B. Any action under Section 29 of this act may be filed at any  
17 time, but in any event not later than 5 years after the creditor has  
18 obtained a final, unappealable judgment against the transferor. In  
19 such action, the creditor may proceed against the transferred  
20 property or recover the value thereof in an amount up to the amount  
21 of such judgment against the transferor.

22 C. This section and Sections 29, 31, 32, and 33 of this act are  
23 inseparably interwoven with substantive rights that a deprivation of  
24 legal rights would result if another jurisdiction's laws and

1 regulations to the contrary are applied to a claim or cause of  
2 action described therein.

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

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

17 If property transferred to a spendthrift trust is conveyed to  
18 the settlor or to a beneficiary for the purpose of obtaining a loan  
19 secured by a mortgage or deed of trust on the property and then  
20 reconveyed to the trust within one hundred eighty (180) days of  
21 recording the mortgage or deed of trust, the transfer is disregarded  
22 and the reconveyance relates back to the date the property was  
23 originally transferred to the trust. The mortgage or deed of trust  
24 on the property is enforceable against the trust.

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

4           Notwithstanding any law to the contrary, a creditor, including a  
5 creditor whose claim arose before or after a qualified disposition,  
6 or any other person has only such rights with respect to a qualified  
7 disposition as are provided in Sections 29 through 36 of this act,  
8 and no such creditor nor any other person has any claim or cause of  
9 action against the trustee or advisor, described in Section 24 of  
10 this act, of a trust that is the subject of a qualified disposition,  
11 or against any person involved in the counseling, drafting,  
12 preparation, execution, or funding of a trust that is the subject of  
13 a qualified disposition. In addition to the provisions of Section  
14 37 of this act, at no time is a qualified person personally liable  
15 to a creditor of a transferor or any other person for distributions  
16 made by the qualified person, before the creditor or person notified  
17 the qualified person, in writing, that a claim or cause of action  
18 existed. This applies regardless of whether the distributions are  
19 made to or for the benefit of the transferor or a beneficiary during  
20 the period in which a creditor or other person could make a claim as  
21 provided in Section 30 of this act.

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



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

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

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

23       1. The making of a subsequent qualified disposition shall be  
24 disregarded in determining whether a creditor's claim with respect

1 to a prior qualified disposition is extinguished as provided in  
2 Section 30 of this act; and

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

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

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

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

19 1. Any of the transferor's separate property transferred to the  
20 trust; and

21 2. Any marital property transferred to the trust if the spouse  
22 or former spouse was provided with notice in the form set forth in  
23 subsection C of this section, or executed a written consent to the  
24

1 transfer after being provided the information set forth in the  
2 notice.

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

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

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

21 3. May require that any person who is eligible to receive  
22 information pursuant to this section be bound by the duty of  
23 confidentiality that binds the trustee before receiving such  
24 information from the trustee; and

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

3 D. If a notice is provided under this section before the  
4 property is transferred, the period to commence an action under  
5 Section 30 of this act shall commence running on the date of the  
6 transfer. If a notice is provided after the date the property is  
7 transferred, the period to commence an action pursuant to Section 30  
8 of this act commences running on the date the notice is provided.

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

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

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

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

- 22 a. such qualified person has a first and paramount lien  
23 against the property that is the subject of the  
24 qualified disposition in an amount equal to the entire

1 cost, including attorney fees, properly incurred by  
2 such qualified person in the defense of the action or  
3 proceedings to avoid the qualified disposition. It is  
4 presumed that such qualified person did not act in bad  
5 faith merely by accepting such property, and

6 b. the qualified disposition is avoided subject to the  
7 proper fees, costs, preexisting rights, claims, and  
8 interests of such qualified person, and of any  
9 predecessor qualified person that has not acted in bad  
10 faith; and

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

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

1       A. The following provisions apply only to discretionary  
2 interests:

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

5       2. No creditor may force a distribution with regard to a  
6 discretionary interest. No creditor may require the trustee to  
7 exercise the trustee's discretion to make a distribution with regard  
8 to a discretionary interest; and

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

11           a. acts dishonestly,

12           b. acts with an improper motive, or

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

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

19       C. Absent express language to the contrary, in the event that  
20 the distribution language in a discretionary interest permits  
21 unequal distributions between beneficiaries or distributions to the  
22 exclusion of other beneficiaries, the trustee may distribute all of  
23 the accumulated, accrued, or undistributed income and principal to  
24 one beneficiary in the trustee's discretion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 8. The governing law of the trust;

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

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

19 11. The approval of an investment decision, delegation, policy,  
20 plan, or program.

21 D. Any qualified beneficiary or trustee may request the court  
22 to approve a nonjudicial settlement agreement, to determine whether  
23 the representation was adequate, and to determine whether the  
24



1 agreement contains terms and conditions the court could have  
2 properly approved.

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

5 Section 175.24. A. In the absence of contrary or limiting  
6 provisions in the trust agreement or a subsequent order or decree of  
7 a court of competent jurisdiction, the trustee of an express trust  
8 is authorized:

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

15 2. To grant options and to sell real or personal property at  
16 public auction or at private sale for cash, or upon credit secured  
17 by lien upon the property sold or upon such property or a part  
18 thereof or other property;

19 3. To grant or take leases of real property and of all rights  
20 and privileges above or below the surface of real property for any  
21 term or terms, including exploration for and removal of oil, gas,  
22 and other minerals, with or without options of purchase, and with or  
23 without covenants as to erection of buildings or as to renewals  
24

1 thereof, ~~though~~ through the term of the lease or renewals thereof,  
2 or of such options extend beyond the term of the trust;

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

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

13 6. To pay calls, assessments, and any other sums chargeable or  
14 accruing against, or on account of shares of stock or other  
15 securities in the hands of the trustee where such payment may be  
16 legally enforceable against the trustee or any property of the  
17 trust, or the trustee deems payment expedient and for the best  
18 interest of the trust. To sell or exercise stock subscription or  
19 conversion rights, participate in foreclosures, reorganizations,  
20 consolidations, mergers, liquidations, pooling agreements and voting  
21 trusts; to assent to corporate sales, leases, and encumbrances, and  
22 in general, except as limited by the particular trust agreement,  
23 have and exercise all powers of an absolute owner in respect of such  
24 securities. In the exercise of the foregoing powers the trustee

1 shall be authorized, where he or she deems such course expedient, to  
2 deposit stocks, bonds, or other securities with any protective or  
3 other committee formed by or at the instance of persons holding  
4 similar securities, under such terms and conditions respecting the  
5 deposit thereof as the trustee may approve. Any stock or other  
6 securities obtained by conversion, reorganization, consolidation,  
7 merger, liquidation, or the exercise of subscription rights shall be  
8 free, unless the trust agreement provides otherwise, from any  
9 restrictions on sale or otherwise contained in the trust agreement  
10 relative to the securities originally held;

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

22 8. To borrow money or create an indebtedness or obligation  
23 including any bond indebtedness or obligation, except as limited by  
24 the provisions of the Oklahoma Trust Act, ~~7,~~ and generally to execute

1 any deed or other instrument and to do all things in relation to  
2 such trust necessary or desirable for carrying out any of the above  
3 powers or incident to the purposes of such trust; and

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

15 B. 1. In the exercise of its authority under paragraph 9 of  
16 subsection A of this section, a trustee may pay, from the assets of  
17 the trust, reasonable compensation and costs incurred in connection  
18 with employment of attorneys, accountants, agents, and brokers  
19 reasonably necessary in the administration of the trust estate.

20 2. In the event of any legal proceeding regarding the trust, a  
21 trustee may pay the costs or attorney fees incurred in any  
22 proceeding from the assets of the trust without the approval of any  
23 person and without court authorization unless otherwise ordered by  
24 the court in such legal proceeding.

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

11       4. Whenever an attorney-client relationship exists between an  
12 attorney and a fiduciary, communications between the attorney and  
13 the fiduciary shall be subject to attorney-client privilege unless  
14 waived by the fiduciary, even though fiduciary funds may be used to  
15 compensate the attorney for legal services rendered to the  
16 fiduciary. The existence of a fiduciary relationship between a  
17 fiduciary and a beneficiary does not constitute or give rise to any  
18 waiver of the privilege for communications between the attorney and  
19 the fiduciary.

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

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

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

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

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

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

24

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

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

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

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

14       Section 175.47. A. Except as otherwise provided in subsection  
15 B of this section, the absolute power of alienation of real and  
16 personal property, or either of them, shall not be suspended by any  
17 limitations or conditions ~~whatever~~ for a longer period than during  
18 the continuance of a life or lives of the beneficiaries in being at  
19 the creation of the estate and twenty-one (21) years thereafter.  
20 The absolute power of alienation is not suspended if there is any  
21 person in being who, alone or in combination with one or more  
22 others, has the power to sell, exchange, or otherwise convey the  
23 real or personal property. If the terms of a trust do not suspend  
24 the absolute power of alienation of any trust property beyond the

1 term permitted in this subsection, the trust may exist in  
2 perpetuity.

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

5 1. A charitable use;

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

8 3. Any cemetery corporation, society or association;

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

12 5. Gifts absolute, limited, or in trust, for the advancement of  
13 medical science to an incorporated state society of physicians and  
14 surgeons.

15 C. Except as provided in this section, the common law rule  
16 against perpetuities shall not apply to a trust subject to the trust  
17 laws of this state. A trust created in this state or subject to the  
18 trust laws of this state may have a perpetual duration if a timing  
19 provision or limit is not specified in the trust document.

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

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

24



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

3 1. Compel the trustee to perform the trustee's duties;  
4 2. Enjoin the trustee from committing a breach of trust;  
5 3. Compel the trustee to redress a breach of trust by payment  
6 of money or otherwise;

7 4. Order a trustee to account;

8 5. Appoint a receiver or temporary trustee to take possession  
9 of the trust property and administer the trust;

10 6. Suspend or remove the trustee;

11 7. Reduce or deny compensation to the trustee;

12 8. Subject to subsection I of this section, void an act of the  
13 trustee, impose an equitable lien or a constructive trust on trust  
14 property, or trace trust property wrongfully disposed of and recover  
15 the property or its proceeds; or

16 9. Grant any other appropriate remedy.

17 C. A beneficiary may charge a trustee who commits a breach of  
18 trust with the amount required to restore the value of the trust  
19 property and trust distributions to what they would have been had  
20 the breach not occurred, or, if greater, the profit that the trustee  
21 made by reason of the breach.

22 D. In a judicial proceeding involving a trust, the court may in  
23 its discretion, as justice and equity may require, award costs and  
24 expenses, including reasonable ~~attorney's~~ attorney fees, to any

1 party, to be paid by another party or from the trust which is the  
2 subject of the controversy.

3 E. 1. ~~Unless previously barred by adjudication, consent, or~~  
4 ~~other limitation, a claim against a trustee for breach of trust is~~  
5 ~~barred as to a beneficiary who has received from the trustee a~~  
6 ~~report or other statement adequately disclosing the existence of the~~  
7 ~~claim unless:~~

8 a. ~~a judicial proceeding to assert the claim is commenced~~  
9 ~~within two (2) years after receipt of the report or~~  
10 ~~statement or, if no report or statement is received,~~  
11 ~~within two (2) years after the termination of the~~  
12 ~~trust relationship between the beneficiary and that~~  
13 ~~particular trustee, and~~

14 b. ~~the report or other statement informs the beneficiary~~  
15 ~~of this time limitation.~~

16 ~~A report or statement adequately discloses the existence of a~~  
17 ~~claim if it provides sufficient information so that the beneficiary~~  
18 ~~knows of the claim or reasonably should have inquired into its~~  
19 ~~existence. A claim this barred does not include an action to~~  
20 ~~recover for fraud or misrepresentation related to the report or~~  
21 ~~other statement~~ For purposes of this subsection, "accounting" means  
22 any interim or final report or other statement provided by a trustee  
23 reflecting all transactions, receipts, and disbursements during the  
24

1 reporting period and a list of assets as of the end of the period  
2 covered by the report or statement.

3 2. For any trust that is before a district court under  
4 subsection A of Section 175.23 of this title, the trustee may submit  
5 an accounting and seek approval of the accounting by the court.

6 Such accounting and the final approval by a district court, whether  
7 or not such accounting is contested, shall be conclusive against all  
8 persons interested in the trust, and the trustee, absent fraud,  
9 intentional misrepresentation, or material omission, shall be  
10 released and discharged from any and all liability as to all matters  
11 set forth in the accounting.

12 3. If a trust is not before a district court under subsection A  
13 of Section 175.23 of this title and if no objection has been made by  
14 a beneficiary who is an eligible distributee or permissible  
15 distributee of the trust's income or principal within one hundred  
16 eighty (180) days after a copy of the trustee's accounting has been  
17 provided to such beneficiaries together with written notice of the  
18 provisions of this section, the distribution beneficiary is deemed  
19 to have approved such accounting of the trustee, and the trustee,  
20 absent fraud, intentional misrepresentation, or material omission,  
21 shall be released and discharged from any and all liability to all  
22 beneficiaries of the trust as to all matters set forth in such  
23 accounting.

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

10        ~~2.~~ 5. For the purpose of ~~paragraph 1~~ of this subsection, a  
11 beneficiary is deemed to have received a report or other statement:

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

21        ~~3.~~ 6. Except as otherwise provided by the terms of a trust,  
22 while the trust is revocable and the settlor has capacity to revoke,  
23 the rights of the beneficiaries are held by, and the duties of the  
24 trustee are owed exclusively to, the settlor; the rights to be held

1 by and owed to the beneficiaries arise only upon the settlor's death  
2 or incapacity. The trustee may follow a written direction of the  
3 settlor, even if contrary to the terms of the trust. The holder of  
4 a presently exercisable power of withdrawal or a testamentary  
5 general power of appointment has the rights of a settlor of a  
6 revocable trust under this section to the extent of the property  
7 subject to the power.

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

10 a. relieves a trustee of liability for breach of trust  
11 committed in bad faith or with reckless indifference  
12 to the purposes of the trust or the interest of the  
13 beneficiaries, or

14 b. was inserted as the result of an abuse by the trustee  
15 of a fiduciary or confidential relationship to the  
16 settlor.

17 2. An exculpatory term drafted by or on behalf of the trustee  
18 is presumed to have been inserted as a result of an abuse of a  
19 fiduciary or confidential relationship unless the trustee proves  
20 that the exculpatory term is fair under the circumstances and that  
21 its existence and contents were adequately communicated to the  
22 settlor.

23 G. A beneficiary may not hold a trustee liable for a breach of  
24 trust if the beneficiary, while having capacity, consented to the

1 conduct constituting the breach, released the trustee from liability  
2 for the breach, or ratified the transaction constituting the breach,  
3 unless:

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

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

11 H. 1. Except as otherwise agreed, a trustee is not personally  
12 liable on a contract properly entered into in the trustee's  
13 fiduciary capacity in the course of administration of the trust if  
14 the trustee in the contract discloses the fiduciary capacity.

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

19 3. A trustee who does not join in exercising a power held by  
20 three or more trustees is not liable to third persons for the  
21 consequences of the exercise of the power. A dissenting trustee who  
22 joins in an action at the direction of the majority cotrustees is  
23 not liable to third persons for the action if the dissenting trustee  
24

1 expressed the dissent in writing to any other cotrustee at or before  
2 the time the action was taken.

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

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

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

19 3. A person who in good faith deals with another person with  
20 knowledge that the other person is a trustee is not solely on that  
21 account placed on notice to inquire into the extent of the trustee's  
22 powers or the propriety of ~~their~~ his or her exercise or to see to  
23 the proper application of assets of the trust paid or delivered to a  
24 trustee.

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

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

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

10  
11           59-2-11102           JL           05/10/24

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