

UNIFORM TRUST ACT

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

This act repeals Title 75, Chapter 7, Trust Administration, and enacts the Utah Uniform Trust Code in its place.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

7-5-7, as last amended by Chapter 196, Laws of Utah 1994

7-5-10, as last amended by Chapter 6, Laws of Utah 1982

7-5-14, as last amended by Chapter 267, Laws of Utah 1989

49-11-303, as renumbered and amended by Chapter 250, Laws of Utah 2002

75-1-403, as last amended by Chapter 116, Laws of Utah 2000

75-3-703, as enacted by Chapter 150, Laws of Utah 1975

75-3-913, as enacted by Chapter 150, Laws of Utah 1975

75-5-417, as last amended by Chapter 119, Laws of Utah 1995

ENACTS:

75-7-102, Utah Code Annotated 1953

75-7-103, Utah Code Annotated 1953

75-7-104, Utah Code Annotated 1953

75-7-105, Utah Code Annotated 1953

75-7-106, Utah Code Annotated 1953

75-7-107, Utah Code Annotated 1953

75-7-108, Utah Code Annotated 1953

75-7-109, Utah Code Annotated 1953

75-7-110, Utah Code Annotated 1953

75-7-111, Utah Code Annotated 1953



28 **75-7-112**, Utah Code Annotated 1953
29 **75-7-113**, Utah Code Annotated 1953
30 **75-7-412**, Utah Code Annotated 1953
31 **75-7-413**, Utah Code Annotated 1953
32 **75-7-414**, Utah Code Annotated 1953
33 **75-7-415**, Utah Code Annotated 1953
34 **75-7-416**, Utah Code Annotated 1953
35 **75-7-417**, Utah Code Annotated 1953
36 **75-7-502**, Utah Code Annotated 1953
37 **75-7-503**, Utah Code Annotated 1953
38 **75-7-504**, Utah Code Annotated 1953
39 **75-7-505**, Utah Code Annotated 1953
40 **75-7-506**, Utah Code Annotated 1953
41 **75-7-507**, Utah Code Annotated 1953
42 **75-7-601**, Utah Code Annotated 1953
43 **75-7-602**, Utah Code Annotated 1953
44 **75-7-603**, Utah Code Annotated 1953
45 **75-7-604**, Utah Code Annotated 1953
46 **75-7-701**, Utah Code Annotated 1953
47 **75-7-702**, Utah Code Annotated 1953
48 **75-7-703**, Utah Code Annotated 1953
49 **75-7-704**, Utah Code Annotated 1953
50 **75-7-705**, Utah Code Annotated 1953
51 **75-7-706**, Utah Code Annotated 1953
52 **75-7-707**, Utah Code Annotated 1953
53 **75-7-708**, Utah Code Annotated 1953
54 **75-7-709**, Utah Code Annotated 1953
55 **75-7-801**, Utah Code Annotated 1953
56 **75-7-802**, Utah Code Annotated 1953
57 **75-7-803**, Utah Code Annotated 1953
58 **75-7-804**, Utah Code Annotated 1953

- 59 **75-7-805**, Utah Code Annotated 1953
- 60 **75-7-806**, Utah Code Annotated 1953
- 61 **75-7-807**, Utah Code Annotated 1953
- 62 **75-7-808**, Utah Code Annotated 1953
- 63 **75-7-809**, Utah Code Annotated 1953
- 64 **75-7-810**, Utah Code Annotated 1953
- 65 **75-7-811**, Utah Code Annotated 1953
- 66 **75-7-812**, Utah Code Annotated 1953
- 67 **75-7-813**, Utah Code Annotated 1953
- 68 **75-7-814**, Utah Code Annotated 1953
- 69 **75-7-815**, Utah Code Annotated 1953
- 70 **75-7-816**, Utah Code Annotated 1953
- 71 **75-7-817**, Utah Code Annotated 1953
- 72 **75-7-818**, Utah Code Annotated 1953
- 73 **75-7-819**, Utah Code Annotated 1953
- 74 **75-7-901**, Utah Code Annotated 1953
- 75 **75-7-902**, Utah Code Annotated 1953
- 76 **75-7-903**, Utah Code Annotated 1953
- 77 **75-7-904**, Utah Code Annotated 1953
- 78 **75-7-905**, Utah Code Annotated 1953
- 79 **75-7-906**, Utah Code Annotated 1953
- 80 **75-7-907**, Utah Code Annotated 1953
- 81 **75-7-1001**, Utah Code Annotated 1953
- 82 **75-7-1002**, Utah Code Annotated 1953
- 83 **75-7-1003**, Utah Code Annotated 1953
- 84 **75-7-1004**, Utah Code Annotated 1953
- 85 **75-7-1005**, Utah Code Annotated 1953
- 86 **75-7-1006**, Utah Code Annotated 1953
- 87 **75-7-1007**, Utah Code Annotated 1953
- 88 **75-7-1008**, Utah Code Annotated 1953
- 89 **75-7-1009**, Utah Code Annotated 1953

- 90 **75-7-1010**, Utah Code Annotated 1953
- 91 **75-7-1011**, Utah Code Annotated 1953
- 92 **75-7-1012**, Utah Code Annotated 1953
- 93 **75-7-1013**, Utah Code Annotated 1953
- 94 **75-7-1101**, Utah Code Annotated 1953
- 95 **75-7-1102**, Utah Code Annotated 1953
- 96 **75-7-1103**, Utah Code Annotated 1953

97 REPEALS AND REENACTS:

- 98 **75-7-101**, as enacted by Chapter 150, Laws of Utah 1975
- 99 **75-7-201**, as enacted by Chapter 150, Laws of Utah 1975
- 100 **75-7-202**, as last amended by Chapter 119, Laws of Utah 1995
- 101 **75-7-203**, as last amended by Chapter 194, Laws of Utah 1977
- 102 **75-7-204**, as enacted by Chapter 150, Laws of Utah 1975
- 103 **75-7-301**, as enacted by Chapter 150, Laws of Utah 1975
- 104 **75-7-302**, as last amended by Chapter 93, Laws of Utah 2002
- 105 **75-7-303**, as last amended by Chapter 179, Laws of Utah 1992
- 106 **75-7-304**, as enacted by Chapter 150, Laws of Utah 1975
- 107 **75-7-305**, as enacted by Chapter 150, Laws of Utah 1975
- 108 **75-7-401**, as last amended by Chapter 39, Laws of Utah 1998
- 109 **75-7-402**, as last amended by Chapter 179, Laws of Utah 1992
- 110 **75-7-403**, as last amended by Chapter 93, Laws of Utah 2002
- 111 **75-7-404**, as last amended by Chapter 133, Laws of Utah 1991
- 112 **75-7-405**, as enacted by Chapter 150, Laws of Utah 1975
- 113 **75-7-406**, as enacted by Chapter 150, Laws of Utah 1975
- 114 **75-7-407**, as enacted by Chapter 150, Laws of Utah 1975
- 115 **75-7-408**, as enacted by Chapter 150, Laws of Utah 1975
- 116 **75-7-409**, as last amended by Chapter 320, Laws of Utah 2000
- 117 **75-7-410**, as enacted by Chapter 196, Laws of Utah 1999
- 118 **75-7-411**, as enacted by Chapter 196, Laws of Utah 1999
- 119 **75-7-501**, as enacted by Chapter 54, Laws of Utah 1982

120 RENUMBERS AND AMENDS:

121 **75-7-508**, (Renumbered from 75-7-308, as enacted by Chapter 227, Laws of Utah 2002)
122 **75-7-509**, (Renumbered from 75-7-309, as enacted by Chapter 227, Laws of Utah 2002)
123 **75-7-510**, (Renumbered from 75-7-310, as enacted by Chapter 227, Laws of Utah 2002)
124 **75-7-511**, (Renumbered from 75-7-311, as enacted by Chapter 227, Laws of Utah 2002)
125 **75-7-512**, (Renumbered from 75-7-312, as enacted by Chapter 227, Laws of Utah 2002)
126 **75-7-513**, (Renumbered from 75-7-313, as enacted by Chapter 227, Laws of Utah 2002)
127 **75-7-514**, (Renumbered from 75-7-314, as enacted by Chapter 227, Laws of Utah 2002)
128 **75-7-515**, (Renumbered from 75-7-315, as enacted by Chapter 227, Laws of Utah 2002)
129 **75-7-516**, (Renumbered from 75-7-316, as enacted by Chapter 227, Laws of Utah 2002)
130 **75-7-517**, (Renumbered from 75-7-317, as enacted by Chapter 227, Laws of Utah 2002)
131 **75-7-518**, (Renumbered from 75-7-318, as enacted by Chapter 227, Laws of Utah 2002)
132 **75-7-519**, (Renumbered from 75-7-319, as enacted by Chapter 227, Laws of Utah 2002)

133 REPEALS:

134 **75-7-205**, as enacted by Chapter 150, Laws of Utah 1975
135 **75-7-206**, as enacted by Chapter 150, Laws of Utah 1975
136 **75-7-207**, as enacted by Chapter 150, Laws of Utah 1975
137 **75-7-306**, as last amended by Chapter 179, Laws of Utah 1992
138 **75-7-307**, as last amended by Chapter 30, Laws of Utah 1992

139 *Be it enacted by the Legislature of the state of Utah:*

140 Section 1. Section **7-5-7** is amended to read:

141 **7-5-7. Management and investment of trust funds.**

142 (1) Funds received or held by any trust company as agent or fiduciary, whether for
143 investment or distribution, shall be invested or distributed as soon as practicable as authorized
144 under the instrument creating the account and shall not be held uninvested any longer than is
145 reasonably necessary.

146 (2) If the instrument creating an agency or fiduciary account contains provisions
147 authorizing the trust company, its officers, or its directors to exercise their discretion in the
148 matter of investments, funds held in the trust account under that instrument may be invested
149 only in those classes of securities which are approved by the directors of the trust company or a
150 committee of directors appointed for that purpose. If a trust company acts in any agency or
151 fiduciary capacity under appointment by a court of competent jurisdiction, it shall make and

152 account for all investments according to the provisions of Title 75, Utah Uniform Probate
153 Code, unless the underlying instrument provides otherwise.

154 (3) (a) Funds received or held as agent or fiduciary by any trust company which is also
155 a depository institution, whether for investment or distribution, may be deposited in the
156 commercial department or savings department of that trust company to the credit of its trust
157 department. Whenever the funds so deposited in a fiduciary or managing agency account
158 exceed the amount of federal deposit insurance applicable to that account, the trust company
159 shall deliver to the trust department or put under its control collateral security as outlined in
160 Regulation 9.10 of the Comptroller of the Currency or in Regulation 550.8 of the Office of
161 Thrift Supervision, as amended. However, if the instrument creating such a fiduciary or
162 managing agency account expressly provides that funds may be deposited to the commercial or
163 savings department of the trust company, then the funds may be so deposited without setting
164 aside collateral securities as required under this section and the deposits in the event of
165 insolvency of any such trust company shall be treated as other general deposits are treated. A
166 trust company which deposits trust funds in its commercial or savings department shall be
167 liable for interest on the deposits only at the rates, if any, paid by the trust company on deposits
168 of like kind not made to the credit of its trust department.

169 (b) Funds received or held as agent or fiduciary by a trust company, whether for
170 investment or distribution, may be deposited in an affiliated depository institution. Whenever
171 the funds so deposited in a fiduciary or managing agency account exceed the amount of federal
172 deposit insurance applicable to that account, the depository institution shall deliver to the trust
173 company or put under its control collateral security as outlined in Regulation 9.10 of the
174 Comptroller of the Currency or in Regulation 550.8 of the Office of Thrift Supervision as
175 amended. However, if the instrument creating the fiduciary or managing agency account
176 expressly permits funds to be deposited in the affiliated depository institution, the funds may be
177 so deposited without setting aside collateral securities as required under this section and
178 deposits in the event of insolvency of the depository institution shall be treated as other general
179 deposits are treated. A trust company which deposits trust funds in an affiliated depository
180 institution is liable for interest on the deposits only at the rates, if any, paid by the depository
181 institution on deposits of like kind.

182 (4) In carrying out all aspects of its trust business, a trust company shall have all the

183 powers, privileges, and duties as set forth in [~~Section 75-7-402~~] Sections 75-7-815 and
184 75-7-816 with respect to trustees, whether or not the trust company is acting as a trustee as
185 defined in Title 75, Utah Uniform Probate Code.

186 (5) Nothing in this section may alter, amend, or limit the powers of a trust company
187 acting in a fiduciary capacity as specified in the particular instrument or order creating the
188 fiduciary relationship.

189 Section 2. Section **7-5-10** is amended to read:

190 **7-5-10. Lending trust funds to trust company, officer, director, or employee as**
191 **felony.**

192 Unless expressly permitted in the instrument creating a trust account or by a person
193 authorized to give that permission or by a court order as permitted in Section [~~75-7-404~~]
194 75-7-802, no trust company shall lend to itself or to any officer or director or employee of the
195 trust company any funds held in any trust account under the powers conferred in this chapter.
196 Any officer, director, or employee making such a loan, or to whom such a loan is made, is
197 guilty of a third degree felony.

198 Section 3. Section **7-5-14** is amended to read:

199 **7-5-14. Mergers, consolidations, acquisitions, transfers, or reorganizations**
200 **involving entities engaged in trust business -- Succession of rights and duties -- Petition**
201 **for appointment of another trust company.**

202 (1) Notwithstanding any provision of law to the contrary, a trust company, depository
203 institution, or other corporation authorized under this chapter or under the laws of the United
204 States to engage in the trust business in this state may, subject to the provisions of Sections
205 7-1-702, 7-1-704, and 7-1-705:

206 (a) (i) merge or consolidate with, (ii) acquire control of, acquire all or a portion of the
207 assets and trust business of, or assume all or any portion of the liabilities of, or (iii) transfer
208 control to, transfer all or a portion of its assets and trust business to, or transfer all or a portion
209 of its liabilities to, any other trust company, depository institution, or other corporation, which
210 institution is authorized under this chapter or under the laws of the United States to engage in
211 the trust business in this state; or

212 (b) reorganize.

213 (2) Upon final approval by the commissioner of any merger, consolidation, acquisition

214 of control, acquisition of assets, assumption of liabilities, or reorganization, and upon written
215 notice of this approval to all persons entitled to and then receiving trust accountings from the
216 transferring or reorganizing trust company, the resulting or acquiring trust company shall,
217 without court proceedings or a court order, succeed to all rights, privileges, duties, obligations,
218 and undertakings under all trust instruments, agency and fiduciary relationships and
219 arrangements, and other trust business transferred and acquired in the manner authorized by
220 this section. However, except as provided otherwise in the relevant trust instrument, any
221 interested person may, not more than 30 days after receipt of written notice of the merger,
222 consolidation, acquisition, transfer, or reorganization, petition any court of competent
223 jurisdiction to appoint another or succeeding trust company with respect to any agency or
224 fiduciary relationship affecting that interested person, and until another or succeeding trust
225 company is so appointed, the acquiring or resulting trust company is entitled to act as agent or
226 fiduciary with respect to the agency or fiduciary relationship. ~~[No merger, consolidation,
227 acquisition, assumption, or reorganization pursuant to this section shall be deemed to be a
228 transfer which is prohibited by Section 75-7-403.]~~

229 (3) As used in this section, a "reorganization" includes, but is not limited to:

230 (a) the creation by a trust company of a subsidiary corporation which is wholly-owned
231 by that trust company and which is organized solely for the purpose of conducting all or any
232 portion of the trust business of that trust company; or

233 (b) any merger or other combination between a trust company and: (i) a wholly-owned
234 trust company subsidiary of that trust company; or (ii) a wholly-owned trust company
235 subsidiary of the depository institution holding company which owns or controls that trust
236 company.

237 Section 4. Section **49-11-303** is amended to read:

238 **49-11-303. Fund investment standard -- Prudent investor rule.**

239 The ~~[Utah State Retirement Investment Fund]~~ fund shall be invested in accordance with
240 the prudent ~~[investor]~~ man rule ~~[under Section 75-7-302]~~ established in Title 75, Chapter 7,
241 Part 9, Utah Uniform Prudent Investor Act.

242 Section 5. Section **75-1-403** is amended to read:

243 **75-1-403. Pleadings -- When parties bound by others -- Notice.**

244 In formal proceedings involving inter vivos or testamentary trusts, including

245 proceedings to modify or terminate a trust, estates of decedents, minors, protected persons, or
246 incapacitated persons, and in judicially supervised settlements, the following apply:

247 (1) Interests to be affected shall be described in pleadings which give reasonable
248 information to owners by name or class, by reference to the instrument creating the interests, or
249 in any other appropriate manner.

250 ~~[(2) Persons are bound by orders binding others in the following cases:]~~

251 ~~[(a) To the extent there is no conflict of interest between the holder of a general
252 testamentary power of appointment and the persons represented with respect to a particular
253 question or dispute, the holder may represent and bind persons whose interests, as permissible
254 appointees, takers in default, or otherwise, are subject to the power:]~~

255 ~~[(b) To the extent there is no conflict of interest between the representative and the
256 person represented with respect to a particular question or dispute:]~~

257 ~~[(i) a conservator may represent and bind the person whose estate he controls;]~~

258 ~~[(ii) a guardian may represent and bind the ward if no conservator of the ward's estate
259 has been appointed;]~~

260 ~~[(iii) an agent having authority to do so may represent and bind the principal;]~~

261 ~~[(iv) a trustee may represent and bind the beneficiaries of the trust;]~~

262 ~~[(v) a personal representative of a decedent's estate may represent and bind persons
263 interested in the estate; and]~~

264 ~~[(vi) if no conservator or guardian has been appointed, a parent may represent and bind
265 the parent's minor or unborn child.]~~

266 ~~[(c) Unless otherwise represented, a minor, incapacitated or unborn person, or a person
267 whose identity or location is unknown and not reasonably ascertainable, may be represented
268 and bound by another person having a substantially identical interest with respect to the
269 particular question or dispute, but only to the extent there is no conflict of interest between the
270 representative and the person represented.]~~

271 ~~[(3) Notice is required as follows:]~~

272 ~~[(a)]~~ (2) Notice as prescribed by Section 75-1-401 shall be given to every interested
273 person. Notice may be given both to a person and to another who may bind him.

274 ~~[(b) Whenever notice to a person is required or permitted under this chapter, notice to
275 another person who may represent and bind the person represented under this section~~

276 constitutes notice to the person represented.]

277 ~~[(4) Even if there is representation under this section, if the court determines that~~
278 ~~representation of the interest might otherwise be inadequate, the court may appoint a guardian~~
279 ~~ad litem to represent the interest of, and approve an agreement on behalf of, a minor,~~
280 ~~incapacitated or unborn person, or a person whose identity or location is unknown.]~~

281 ~~[(5) If not precluded by conflict of interest, a guardian ad litem may be appointed to~~
282 ~~represent several persons or interests. In approving an agreement, a guardian ad litem may~~
283 ~~consider general family benefit accruing to the living members of the family of the person~~
284 ~~represented.]~~

285 ~~[(6) Whenever consent may be given by a person pursuant to this chapter, the consent~~
286 ~~of a person who may represent and bind the person represented under this section is the consent~~
287 ~~of, and is binding on, the person represented unless the person represented objects to the~~
288 ~~representation before the consent would otherwise become effective.]~~

289 Section 6. Section **75-3-703** is amended to read:

290 **75-3-703. General duties -- Relation and liability to persons interested in estate --**
291 **Standing to sue.**

292 (1) A personal representative is a fiduciary who shall observe the standard of care
293 applicable to trustees as described by Section ~~[75-7-302]~~ 75-7-902. A personal representative is
294 under a duty to settle and distribute the estate of the decedent in accordance with the terms of
295 any probated and effective will and this code and as expeditiously and efficiently as is
296 consistent with the best interests of the estate. He shall use the authority conferred upon him by
297 this code, the terms of the will, if any, and any order in proceedings to which he is party for the
298 best interests of successors to the estate.

299 (2) A personal representative shall not be surcharged for acts of administration or
300 distribution if the conduct in question was authorized at the time. Subject to other obligations
301 of administration, an informally probated will is authority to administer and distribute the
302 estate according to its terms. An order of appointment of a personal representative, whether
303 issued in informal or formal proceedings, is authority to distribute apparently intestate assets to
304 the heirs of the decedent if, at the time of distribution, the personal representative is not aware
305 of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy
306 proceeding, a formal proceeding questioning his appointment or fitness to continue, or a

307 supervised administration proceeding. Nothing in this section affects the duty of the personal
308 representative to administer and distribute the estate in accordance with the rights of claimants,
309 the surviving spouse, any minor and dependent children, and any pretermitted child of the
310 decedent as described elsewhere in this code.

311 (3) Except as to proceedings which do not survive the death of the decedent, a personal
312 representative of a decedent domiciled in this state at his death has the same standing to sue
313 and be sued in the courts of this state and courts of any other jurisdiction as his decedent had
314 immediately prior to death.

315 Section 7. Section **75-3-913** is amended to read:

316 **75-3-913. Distributions to trustee.**

317 (1) Before distributing to a trustee, the personal representative may require that the trust
318 be registered if the state in which it is to be administered provides for registration and that the
319 trustee inform the beneficiaries as provided in Section [~~75-7-303~~] 75-7-813.

320 (2) If the trust instrument does not excuse the trustee from giving bond, the personal
321 representative may petition the appropriate court to require that the trustee post bond if he
322 [~~apprehends~~] comprehends that distribution might jeopardize the interests of persons who are
323 not able to protect themselves; and he may withhold distribution until the court has acted.

324 (3) No inference of negligence on the part of the personal representative shall be drawn
325 from his failure to exercise the authority conferred by Subsections (1) and (2).

326 Section 8. Section **75-5-417** is amended to read:

327 **75-5-417. General duty of conservator.**

328 (1) A conservator shall act as a fiduciary and shall observe the standards of care as set
329 forth in Section [~~75-7-302~~] 75-7-902.

330 (2) The conservator shall, for all estates in excess of \$50,000, excluding the residence
331 owned by the ward, send a report with a full accounting to the court on an annual basis. For
332 estates less than \$50,000, excluding the residence owned by the ward, the conservator shall fill
333 out an informal annual report and mail the report to the court. The report shall include the
334 following: a statement of assets at the beginning and end of the reporting year, income received
335 during the year, disbursements for the support of the ward, and other expenses incurred by the
336 estate. The court may require additional information. The forms for both the informal report
337 for estates under \$50,000, excluding the residence owned by the ward, and the full accounting

338 report for larger estates shall be approved by the judicial council. This annual report shall be
339 examined and approved by the court.

340 (3) Corporate fiduciaries are not required to fully petition the court, but shall submit
341 their internal report annually to the court. The report shall be examined and approved by the
342 court.

343 (4) If a conservator or corporate fiduciary: (a) makes a substantial misstatement on
344 filings of any required annual reports; (b) is guilty of gross impropriety in handling the property
345 of the ward; or (c) willfully fails to file the report required by this section, after receiving
346 written notice of the failure to file and after a grace period of two months have elapsed; then
347 the court may impose a fine in an amount not to exceed \$5,000. The court may also order
348 restitution of funds misappropriated from the estate of a ward. The penalty shall be paid by the
349 conservator or corporate fiduciary and may not be paid by the estate.

350 (5) These provisions and penalties governing annual reports do not apply if the
351 conservator is the parent of the ward.

352 Section 9. Section **75-7-101** is repealed and reenacted to read:

353 **Part 1. General Provisions**

354 **75-7-101. Short title.**

355 This chapter may be cited as the "Utah Uniform Trust Code."

356 Section 10. Section **75-7-102** is enacted to read:

357 **75-7-102. Scope.**

358 (1) This chapter applies to express trusts, charitable or noncharitable, and trusts created
359 pursuant to a statute, judgment, or decree that requires the trust to be administered in the
360 manner of an express trust.

361 (2) This chapter does not apply to a trust that is used primarily for business,
362 employment, investment, or commercial transactions.

363 Section 11. Section **75-7-103** is enacted to read:

364 **75-7-103. Definitions.**

365 In this chapter:

366 (1) "Action," with respect to an act of a trustee, includes a failure to act.

367 (2) "Beneficiary" means a person that:

368 (a) has a present or future beneficial interest in a trust, vested or contingent; or

369 (b) in a capacity other than that of trustee, holds a power of appointment over trust
370 property.

371 (3) "Charitable trust" means a trust, or portion of a trust, created for a charitable
372 purpose described in Subsection 75-7-405(1).

373 (4) "Environmental law" means a federal, state, or local law, rule, regulation, or
374 ordinance relating to protection of the environment.

375 (5) "Interests of the beneficiaries" means the beneficial interests provided in the terms
376 of the trust.

377 (6) "Jurisdiction," with respect to a geographic area, includes a state or country.

378 (7) "Person" means an individual, corporation, business trust, estate, trust, partnership,
379 limited liability company, association, joint venture, government, governmental subdivision,
380 governmental agency or instrumentality, public corporation, or any other legal or commercial
381 entity.

382 (8) "Power of withdrawal" means a presently exercisable general power of appointment
383 other than a power exercisable only upon consent of the trustee or a person holding an adverse
384 interest.

385 (9) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's
386 qualification is determined:

387 (a) is a distributee or permissible distributee of trust income or principal;

388 (b) would be a distributee or permissible distributee of trust income or principal if the
389 interests of the distributees described in Subsection (9)(a) terminated on that date; or

390 (c) would be a distributee or permissible distributee of trust income or principal if the
391 trust terminated on that date.

392 (10) "Revocable," as applied to a trust, means revocable by the settlor without the
393 consent of the trustee or a person holding an adverse interest.

394 (11) "Settlor" means a person, including a testator, who creates, or contributes property
395 to, a trust. If more than one person creates or contributes property to a trust, each person is a
396 settlor of the portion of the trust property attributable to that person's contribution except to the
397 extent another person has the power to revoke or withdraw that portion.

398 (12) "Spendthrift provision" means a term of a trust which restrains both voluntary and
399 involuntary transfer of a beneficiary's interest.

400 (13) "State" means a state of the United States, the District of Columbia, Puerto Rico,
401 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
402 of the United States. The term includes an Indian tribe or band recognized by federal law or
403 formally acknowledged by a state.

404 (14) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's
405 provisions as expressed in the trust instrument or as may be established by other evidence that
406 would be admissible in a judicial proceeding.

407 (15) "Trust instrument" means an instrument executed by the settlor that contains terms
408 of the trust, including any amendments thereto.

409 Section 12. Section **75-7-104** is enacted to read:

410 **75-7-104. Knowledge.**

411 (1) Subject to Subsection (2), a person has knowledge of a fact if the person:

412 (a) has actual knowledge of it;

413 (b) has received a notice or notification of it; or

414 (c) from all the facts and circumstances known to the person at the time in question,
415 has reason to know it.

416 (2) An organization that conducts activities through employees has notice or
417 knowledge of a fact involving a trust only from the time the information was received by an
418 employee having responsibility to act for the trust, or would have been brought to the
419 employee's attention if the organization had exercised reasonable diligence. An organization
420 exercises reasonable diligence if it maintains reasonable routines for communicating significant
421 information to the employee having responsibility to act for the trust and there is reasonable
422 compliance with the routines. Reasonable diligence does not require an employee of the
423 organization to communicate information unless the communication is part of the individual's
424 regular duties or the individual knows a matter involving the trust would be materially affected
425 by the information.

426 Section 13. Section **75-7-105** is enacted to read:

427 **75-7-105. Default and mandatory rules.**

428 (1) Except as otherwise provided in the terms of the trust, this chapter governs the
429 duties and powers of a trustee, relations among trustees, and the rights and interests of a
430 beneficiary.

- 431 (2) The terms of a trust prevail over any provision of this chapter except:
432 (a) the requirements for creating a trust;
433 (b) the duty of a trustee to act in good faith and in accordance with the purposes of the
434 trust;
435 (c) the requirement that a trust and its terms be for the benefit of its beneficiaries;
436 (d) the power of the court to modify or terminate a trust under Sections 75-7-410
437 through 75-7-416;
438 (e) the effect of a spendthrift provision and the rights of certain creditors and assignees
439 to reach a trust as provided in Part 5;
440 (f) the power of the court under Section 75-7-702 to require, dispense with, or modify
441 or terminate a bond;
442 (g) the power of the court under Subsection 75-7-708(2) to adjust a trustee's
443 compensation specified in the terms of the trust which is unreasonably low or high;
444 (h) the effect of an exculpatory term under Section 75-7-1008;
445 (i) the rights under Sections 75-7-1010 through 75-7-1013 of a person other than a
446 trustee or beneficiary;
447 (j) periods of limitation for commencing a judicial proceeding;
448 (k) the power of the court to take such action and exercise such jurisdiction as may be
449 necessary in the interests of justice; and
450 (l) the subject-matter jurisdiction of the court and venue for commencing a proceeding
451 as provided in Sections 75-7-203 and 75-7-204.

452 Section 14. Section **75-7-106** is enacted to read:

453 **75-7-106. Common law of trusts -- Principles of equity.**

454 The common law of trusts and principles of equity supplement this chapter, except to
455 the extent modified by this chapter or laws of this state.

456 Section 15. Section **75-7-107** is enacted to read:

457 **75-7-107. Governing law.**

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

- 459 (1) the law of the jurisdiction designated in the terms unless the designation of that
460 jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most
461 significant relationship to the matter at issue; or

462 (2) in the absence of a controlling designation in the terms of the trust, the law of the
463 jurisdiction having the most significant relationship to the matter at issue.

464 Section 16. Section **75-7-108** is enacted to read:

465 **75-7-108. Principal place of administration.**

466 (1) Without precluding other means for establishing a sufficient connection with the
467 designated jurisdiction, terms of a trust designating the principal place of administration are
468 valid and controlling if:

469 (a) a trustee's principal place of business is located in or a trustee is a resident of the
470 designated jurisdiction; or

471 (b) all or part of the administration occurs in the designated jurisdiction.

472 (2) A trustee is under a continuing duty to administer the trust at a place appropriate to
473 its purposes, its administration, and the interests of the beneficiaries.

474 (3) Without precluding the right of the court to order, approve, or disapprove a transfer,
475 the trustee, in furtherance of the duty prescribed by Subsection (2), may transfer the trust's
476 principal place of administration to another state or to a jurisdiction outside of the United
477 States.

478 (4) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's
479 principal place of administration not less than 60 days before initiating the transfer. The notice
480 of proposed transfer must include:

481 (a) the name of the jurisdiction to which the principal place of administration is to be
482 transferred;

483 (b) the address and telephone number at the new location at which the trustee can be
484 contacted;

485 (c) an explanation of the reasons for the proposed transfer;

486 (d) the date on which the proposed transfer is anticipated to occur; and

487 (e) the date, not less than 60 days after the giving of the notice, by which the qualified
488 beneficiary must notify the trustee of an objection to the proposed transfer.

489 (5) The authority of a trustee under this section to transfer a trust's principal place of
490 administration terminates if a qualified beneficiary notifies the trustee of an objection to the
491 proposed transfer on or before the date specified in the notice.

492 (6) In connection with a transfer of the trust's principal place of administration, the

493 trustee may transfer some or all of the trust property to a successor trustee designated in the
494 terms of the trust or appointed pursuant to Section 75-7-704.

495 Section 17. Section **75-7-109** is enacted to read:

496 **75-7-109. Methods And waiver of notice.**

497 (1) Notice to a person under this chapter or the sending of a document to a person
498 under this chapter must be accomplished in a manner reasonably suitable under the
499 circumstances and likely to result in receipt of the notice or document. Permissible methods of
500 notice or for sending a document include first-class mail, personal delivery, delivery to the
501 person's last known place of residence or place of business, or a properly directed electronic
502 message.

503 (2) Notice otherwise required under this chapter or a document otherwise required to
504 be sent under this chapter need not be provided to a person whose identity or location is
505 unknown to and not reasonably ascertainable by the trustee.

506 (3) Notice under this chapter or the sending of a document under this chapter may be
507 waived by the person to be notified or sent the document.

508 (4) Notice of a judicial proceeding must be given as provided in the applicable rules of
509 civil procedure.

510 Section 18. Section **75-7-110** is enacted to read:

511 **75-7-110. Others treated as qualified beneficiaries.**

512 (1) Whenever notice to qualified beneficiaries of a trust is required under this chapter,
513 the trustee must also give notice to any other beneficiary who has sent the trustee a request for
514 notice.

515 (2) A charitable organization expressly entitled to receive benefits under the terms of a
516 charitable trust or a person appointed to enforce a trust created for the care of an animal or
517 another noncharitable purpose as provided in Section 75-7-408 or 75-7-409 has the rights of a
518 qualified beneficiary under this chapter.

519 (3) The attorney general has the rights of a qualified beneficiary with respect to a
520 charitable trust having its principal place of administration in this state.

521 Section 19. Section **75-7-111** is enacted to read:

522 **75-7-111. Nonjudicial settlement agreements.**

523 (1) For purposes of this section, "interested persons" means persons whose consent

524 would be required in order to achieve a binding settlement were the settlement to be approved
525 by the court.

526 (2) Except as otherwise provided in Subsection (3), interested persons may enter into a
527 binding nonjudicial settlement agreement with respect to any matter involving a trust.

528 (3) A nonjudicial settlement agreement is valid only to the extent it does not violate a
529 material purpose of the trust and includes terms and conditions that could be properly approved
530 by the court under this chapter or other applicable law.

531 (4) Matters that may be resolved by a nonjudicial settlement agreement include:

532 (a) the interpretation or construction of the terms of the trust;

533 (b) the approval of a trustee's report or accounting;

534 (c) direction to a trustee to refrain from performing a particular act or the grant to a
535 trustee of any necessary or desirable power;

536 (d) the resignation or appointment of a trustee and the determination of a trustee's
537 compensation;

538 (e) transfer of a trust's principal place of administration; and

539 (f) liability of a trustee for an action relating to the trust.

540 (5) Any interested person may request the court to approve a nonjudicial settlement
541 agreement, to determine whether the representation as provided in Part 3 was adequate, and to
542 determine whether the agreement contains terms and conditions the court could have properly
543 approved.

544 Section 20. Section **75-7-112** is enacted to read:

545 **75-7-112. Rules of construction.**

546 The rules of construction that apply to the interpretation of and disposition of property
547 by will or other governing instrument, as defined in Section 75-1-201, also apply as appropriate
548 to the interpretation of the terms of a trust and the disposition of the trust property.

549 Section 21. Section **75-7-113** is enacted to read:

550 **75-7-113. Penalty provisions.**

551 A provision in a trust instrument purporting to penalize a beneficiary by charging the
552 beneficiary's interest in the trust, or to penalize the beneficiary in another manner, for
553 instituting a proceeding to challenge the acts of the trustee or other fiduciary of a trust, or for
554 instituting other proceedings relating to the trust is unenforceable if probable cause exists for

555 instituting the proceedings.

556 Section 22. Section **75-7-201** is repealed and reenacted to read:

557 **Part 2. Judicial Proceedings**

558 **75-7-201. Role of court in administration of trust.**

559 (1) The court may intervene in the administration of a trust to the extent its jurisdiction
560 is invoked by an interested person or as provided by law.

561 (2) A trust is not subject to continuing judicial supervision unless ordered by the court.

562 (3) A judicial proceeding involving a trust may relate to any matter involving the trust's
563 administration, including a request for instructions and an action to declare rights.

564 Section 23. Section **75-7-202** is repealed and reenacted to read:

565 **75-7-202. Jurisdiction over trustee and beneficiary.**

566 (1) By accepting the trusteeship of a trust having its principal place of administration in
567 this state or by moving the principal place of administration to this state, the trustee submits
568 personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

569 (2) With respect to their interests in the trust, the beneficiaries of a trust having its
570 principal place of administration in this state are subject to the jurisdiction of the courts of this
571 state regarding any matter involving the trust. By accepting a distribution from such a trust, the
572 recipient submits personally to the jurisdiction of the courts of this state regarding any matter
573 involving the trust.

574 (3) This section does not preclude other methods of obtaining jurisdiction over a
575 trustee, beneficiary, or other person receiving property from the trust.

576 Section 24. Section **75-7-203** is repealed and reenacted to read:

577 **75-7-203. Subject matter jurisdiction.**

578 (1) The district court has exclusive jurisdiction of proceedings in this state brought by a
579 trustee or beneficiary concerning the administration of a trust.

580 (2) The district court has concurrent jurisdiction with other courts of this state of other
581 proceedings involving a trust.

582 (3) This section does not preclude judicial or nonjudicial alternative dispute resolution.

583 Section 25. Section **75-7-204** is repealed and reenacted to read:

584 **75-7-204. Venue.**

585 (1) Except as otherwise provided in Subsection (2), venue for a judicial proceeding

586 involving a trust is in the county in which the trust's principal place of administration is or will
587 be located and, if the trust is created by will and the estate is not yet closed, in the county in
588 which the decedent's estate is being administered.

589 (2) If a trust has no trustee, venue for a judicial proceeding for the appointment of a
590 trustee is in any county of this state in which a beneficiary resides, in any county in which any
591 trust property is located, and if the trust is created by will, in the county in which the decedent's
592 estate was or is being administered.

593 Section 26. Section **75-7-301** is repealed and reenacted to read:

594 **Part 3. Presentation**

595 **75-7-301. Basic effect.**

596 (1) Notice to a person who may represent and bind another person under this part has
597 the same effect as if notice were given directly to the other person.

598 (2) The consent of a person who may represent and bind another person under this part
599 is binding on the person represented unless the person represented objects to the representation
600 before the consent would otherwise have become effective.

601 (3) Except as otherwise provided in Sections 75-7-411 and 75-7-602, a person who
602 under this part may represent a settlor who lacks capacity may receive notice and give a
603 binding consent on the settlor's behalf.

604 Section 27. Section **75-7-302** is repealed and reenacted to read:

605 **75-7-302. Representation by holder of general testamentary power of**
606 **appointment.**

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

611 Section 28. Section **75-7-303** is repealed and reenacted to read:

612 **75-7-303. Representation by fiduciaries and parents.**

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

615 (1) a conservator may represent and bind the protected person whose estate the
616 conservator controls;

617 (2) a guardian may represent and bind the ward if a conservator of the ward's estate has
618 not been appointed;

619 (3) an agent having authority to act with respect to the particular question or dispute
620 may represent and bind the principal;

621 (4) a trustee may represent and bind the beneficiaries of the trust;

622 (5) a personal representative of a decedent's estate may represent and bind persons
623 interested in the estate; and

624 (6) a parent may represent and bind the parent's minor or unborn child if a conservator
625 or guardian for the child has not been appointed.

626 Section 29. Section **75-7-304** is repealed and reenacted to read:

627 **75-7-304. Representation by person having substantially identical interest.**

628 Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person
629 whose identity or location is unknown and not reasonably ascertainable, may be represented by
630 and bound by another having a substantially identical interest with respect to the particular
631 question or dispute, but only to the extent there is no conflict of interest between the
632 representative and the person represented.

633 Section 30. Section **75-7-305** is repealed and reenacted to read:

634 **75-7-305. Appointment of representative.**

635 (1) If the court determines that an interest is not represented under this part, or that the
636 otherwise available representation might be inadequate, the court may appoint a representative
637 to receive notice, give consent, and otherwise represent, bind, and act on behalf of a minor,
638 incapacitated, protected person, or unborn individual, or a person whose identity or location is
639 unknown. A representative may be appointed to represent several persons or interests.

640 (2) A representative may act on behalf of the individual represented with respect to any
641 matter arising under this chapter, whether or not a judicial proceeding concerning the trust is
642 pending.

643 (3) In making decisions, a representative may consider general benefit accruing to the
644 living members of the individual's family.

645 Section 31. Section **75-7-401** is repealed and reenacted to read:

646 **Part 4. Creation, Validity, Modification, and Termination of Trust**

647 **75-7-401. Methods of creating trust.**

648 A trust may be created by:

649 (1) transfer of property to another person as trustee during the settlor's lifetime or by
650 will or other disposition taking effect upon the settlor's death;

651 (2) declaration by the owner of property that the owner holds identifiable property as
652 trustee; or

653 (3) exercise of a power of appointment in favor of a trustee.

654 Section 32. Section **75-7-402** is repealed and reenacted to read:

655 **75-7-402. Requirements for creation.**

656 (1) A trust is created only if:

657 (a) the settlor has capacity to create a trust;

658 (b) the settlor indicates an intention to create the trust or a statute, judgment, or decree
659 authorizes the creation of a trust;

660 (c) the trust has a definite beneficiary or is:

661 (i) a charitable trust;

662 (ii) a trust for the care of an animal, as provided in Section 75-2-1001; or

663 (iii) a trust for a noncharitable purpose, as provided in Section 75-2-1001;

664 (d) the trustee has duties to perform; and

665 (e) the same person is not the sole trustee and sole beneficiary.

666 (2) A beneficiary is definite if the beneficiary can be ascertained now or in the future,
667 subject to any applicable rule against perpetuities.

668 (3) A power in a trustee to select a beneficiary from an indefinite class is valid. If the
669 power is not exercised within a reasonable time, the power fails and the property subject to the
670 power passes to the persons who would have taken the property had the power not been
671 conferred.

672 Section 33. Section **75-7-403** is repealed and reenacted to read:

673 **75-7-403. Trusts created in other jurisdictions.**

674 A trust not created by will is validly created if its creation complies with the law of the
675 jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which,
676 at the time of creation:

677 (1) the settlor was domiciled, had a place of abode, or was a national;

678 (2) a trustee was domiciled or had a place of business; or

679 (3) any trust property was located.

680 Section 34. Section **75-7-404** is repealed and reenacted to read:

681 **75-7-404. Trust purposes.**

682 A trust may be created only to the extent its purposes are lawful, not contrary to public
683 policy, and possible to achieve. A trust and its terms must be for the benefit of its
684 beneficiaries.

685 Section 35. Section **75-7-405** is repealed and reenacted to read:

686 **75-7-405. Charitable purposes -- Enforcement.**

687 (1) A charitable trust may be created for the relief of poverty, the advancement of
688 education or religion, the promotion of health, governmental or municipal purposes, or other
689 purposes the achievement of which is beneficial to the community.

690 (2) If the terms of a charitable trust do not indicate a particular charitable purpose or
691 beneficiary, the trustee, if authorized by the terms of the trust, or if not, the court may select
692 one or more charitable purposes or beneficiaries. The selection must be consistent with the
693 settlor's intention to the extent it can be ascertained.

694 (3) The settlor of a charitable trust, among others, may maintain a proceeding to
695 enforce the trust.

696 Section 36. Section **75-7-406** is repealed and reenacted to read:

697 **75-7-406. Creation of trust induced by fraud, duress, or undue influence.**

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

700 Section 37. Section **75-7-407** is repealed and reenacted to read:

701 **75-7-407. Evidence of oral trust.**

702 Except as required by a statute other than this chapter, a trust need not be evidenced by
703 a trust instrument, but the creation of an oral trust and its terms may be established only by
704 clear and convincing evidence.

705 Section 38. Section **75-7-408** is repealed and reenacted to read:

706 **75-7-408. Trust for care of animal.**

707 A trust may be created to provide for the care of a pet or animal as provided in Section
708 75-2-1001.

709 Section 39. Section **75-7-409** is repealed and reenacted to read:

710 **75-7-409. Noncharitable trust without ascertainable beneficiary.**

711 A trust may be created for a noncharitable purpose without a definite or definitely
712 ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by
713 the trustee as provided in Section 75-2-1001.

714 Section 40. Section **75-7-410** is repealed and reenacted to read:

715 **75-7-410. Modification or termination of trust -- Proceedings for approval or**
716 **disapproval.**

717 (1) In addition to the methods of termination prescribed by Sections 75-7-411 through
718 75-7-414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms,
719 no purpose of the trust remains to be achieved, or the purposes of the trust have become
720 unlawful, contrary to public policy, or impossible to achieve.

721 (2) A proceeding to approve or disapprove a proposed modification or termination
722 under Sections 75-7-411 through 75-7-416, or trust combination or division under Section
723 75-7-417, may be commenced by a trustee or qualified beneficiary, and a proceeding to
724 approve or disapprove a proposed modification or termination under Section 75-7-411 may be
725 commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to
726 modify the trust under Section 75-7-413.

727 Section 41. Section **75-7-411** is repealed and reenacted to read:

728 **75-7-411. Modification or termination of noncharitable irrevocable trust by**
729 **consent.**

730 (1) A noncharitable irrevocable trust may be modified or terminated upon consent of
731 the settlor and all beneficiaries, even if the modification or termination is inconsistent with a
732 material purpose of the trust. A settlor's power to consent to a trust's termination may be
733 exercised by an agent under a power of attorney only to the extent expressly authorized by the
734 power of attorney or the terms of the trust, by the settlor's conservator with the approval of the
735 court supervising the conservatorship if an agent is not so authorized, or by the settlor's
736 guardian with the approval of the court supervising the guardianship if an agent is not so
737 authorized and a conservator has not been appointed.

738 (2) A noncharitable irrevocable trust may be terminated upon consent of all of the
739 beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any
740 material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent

741 of all of the beneficiaries if the court concludes that modification is not inconsistent with a
742 material purpose of the trust.

743 (3) A spendthrift provision in the terms of the trust is not presumed to constitute a
744 material purpose of the trust.

745 (4) Upon termination of a trust under Subsection (1) or (2), the trustee shall distribute
746 the trust property as agreed by the beneficiaries.

747 (5) If not all of the beneficiaries consent to a proposed modification or termination of
748 the trust under Subsection (1) or (2), the modification or termination may be approved by the
749 court if the court is satisfied that:

750 (a) if all of the beneficiaries had consented, the trust could have been modified or
751 terminated under this section; and

752 (b) the interests of a beneficiary who does not consent will be adequately protected.

753 Section 42. Section **75-7-412** is enacted to read:

754 **75-7-412. Modification or termination because of unanticipated circumstances or**
755 **inability to administer trust effectively.**

756 (1) The court may modify the administrative or dispositive terms of a trust or terminate
757 the trust if, because of circumstances not anticipated by the settlor, modification or termination
758 will further the purposes of the trust. To the extent practicable, the modification must be made
759 in accordance with the settlor's probable intention.

760 (2) The court may modify the administrative terms of a trust if continuation of the trust
761 on its existing terms would be impracticable or wasteful or impair the trust's administration.

762 (3) Upon termination of a trust under this section, the trustee shall distribute the trust
763 property as directed by the court or otherwise in a manner consistent with the purposes of the
764 trust.

765 Section 43. Section **75-7-413** is enacted to read:

766 **75-7-413. Cy pres.**

767 (1) Except as otherwise provided in Subsection (2), if a particular charitable purpose
768 becomes unlawful, impracticable, impossible to achieve, or wasteful:

769 (a) the trust does not fail, in whole or in part;

770 (b) the trust property does not revert to the settlor or the settlor's successors in interest;

771 and

772 (c) the court may apply cy pres to modify or terminate the trust by directing that the
773 trust property be applied or distributed, in whole or in part, in a manner consistent with the
774 settlor's charitable purposes.

775 (2) A provision in the terms of a charitable trust that would result in distribution of the
776 trust property to a noncharitable beneficiary prevails over the power of the court under
777 Subsection (1) to apply cy pres to modify or terminate the trust only if, when the provision
778 takes effect:

779 (a) the trust property is to revert to the settlor and the settlor is still living; or

780 (b) fewer than 21 years have elapsed since the date of the trust's creation.

781 Section 44. Section **75-7-414** is enacted to read:

782 **75-7-414. Modification or termination of uneconomic trust.**

783 (1) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust
784 property having a total value less than \$100,000 until December 31, 2010, and \$150,000
785 thereafter, may terminate the trust if the trustee concludes that the value of the trust property is
786 insufficient to justify the cost of administration.

787 (2) The court may modify or terminate a trust or remove the trustee and appoint a
788 different trustee if it determines that the value of the trust property is insufficient to justify the
789 cost of administration.

790 (3) Upon termination of a trust under this section, the trustee shall distribute the trust
791 property in a manner consistent with the purposes of the trust.

792 (4) This section does not apply to an easement for conservation or preservation.

793 Section 45. Section **75-7-415** is enacted to read:

794 **75-7-415. Reformation to correct mistakes.**

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

799 Section 46. Section **75-7-416** is enacted to read:

800 **75-7-416. Modification to achieve settlor's tax objectives.**

801 To achieve the settlor's tax objectives, the court may modify the terms of a trust in order
802 to achieve the settlor's tax objectives. The court may provide that the modification has

803 retroactive effect.

804 Section 47. Section **75-7-417** is enacted to read:

805 **75-7-417. Combination and division of trusts.**

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

809 Section 48. Section **75-7-501** is repealed and reenacted to read:

810 **Part 5. Creditor's Claims - Spendthrift and Discretionary Trusts**

811 **75-7-501. Rights of beneficiary's creditor or assignee.**

812 To the extent a beneficiary's interest is not protected by a spendthrift provision, the
813 court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest
814 by attachment of present or future distributions to or for the benefit of the beneficiary or other
815 means. The court may limit the award to relief as is appropriate under the circumstances.

816 Section 49. Section **75-7-502** is enacted to read:

817 **75-7-502. Spendthrift provision.**

818 (1) A spendthrift provision is valid only if it restrains both voluntary and involuntary
819 transfer of a beneficiary's interest.

820 (2) A term of a trust providing that the interest of a beneficiary is held subject to a
821 "spendthrift trust," or words of similar import, is sufficient to restrain both voluntary and
822 involuntary transfer of the beneficiary's interest.

823 (3) A beneficiary may not transfer an interest in a trust in violation of a valid
824 spendthrift provision and, except as otherwise provided in this part, a creditor or assignee of
825 the beneficiary may not reach the interest or a distribution by the trustee before its receipt by
826 the beneficiary.

827 Section 50. Section **75-7-503** is enacted to read:

828 **75-7-503. Exceptions to spendthrift provision.**

829 (1) In this section, "child" includes any person for whom an order or judgment for child
830 support has been entered in this or another state.

831 (2) Even if a trust contains a spendthrift provision, a beneficiary's child who has a
832 judgment or court order against the beneficiary for support or maintenance, or a judgment
833 creditor who has provided services for the protection of a beneficiary's interest in the trust, may

834 obtain from a court an order attaching present or future distributions to or for the benefit of the
835 beneficiary.

836 (3) A spendthrift provision is unenforceable against a claim of this state or the United
837 States to the extent a statute of this state or federal law so provides.

838 Section 51. Section **75-7-504** is enacted to read:

839 **75-7-504. Discretionary trusts -- Effect of standard.**

840 (1) In this section, "child" includes any person for whom an order or judgment for child
841 support has been entered in this or another state.

842 (2) Except as otherwise provided in Subsection (3), whether or not a trust contains a
843 spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to
844 the trustee's discretion, even if:

845 (a) the discretion is expressed in the form of a standard of distribution; or

846 (b) the trustee has abused the discretion.

847 (3) To the extent a trustee has not complied with a standard of distribution or has
848 abused a discretion:

849 (a) a distribution may be ordered by the court to satisfy a judgment or court order
850 against the beneficiary for support or maintenance of the beneficiary's child, spouse, or former
851 spouse; and

852 (b) the court shall direct the trustee to pay to the child, spouse, or former spouse such
853 amount as is equitable under the circumstances but not more than the amount the trustee would
854 have been required to distribute to or for the benefit of the beneficiary had the trustee complied
855 with the standard or not abused the discretion.

856 (4) This section does not limit the right of a beneficiary to maintain a judicial
857 proceeding against a trustee for an abuse of discretion or failure to comply with a standard for
858 distribution.

859 Section 52. Section **75-7-505** is enacted to read:

860 **75-7-505. Creditor's claim against settlor.**

861 (1) Whether or not the terms of a trust contain a spendthrift provision, the following
862 rules apply:

863 (a) During the lifetime of the settlor, the property of a revocable trust is subject to the
864 claims of the settlor's creditors. If a trust has more than one settlor, the amount the creditor or

865 assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of
866 the trust attributable to that settlor's contribution.

867 (b) With respect to an irrevocable trust, a creditor or assignee of the settlor may reach
868 the maximum amount that can be distributed to or for the settlor's benefit. If a trust has more
869 than one settlor, the amount the creditor or assignee of a particular settlor may reach may not
870 exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

871 (c) After the death of a settlor, and subject to the settlor's right to direct the source from
872 which liabilities will be paid, the property of a trust that was revocable at the settlor's death, but
873 not property received by the trust as a result of the death of the settlor which is otherwise
874 exempt from the claims of the settlor's creditors, is subject to claims of the settlor's creditors,
875 costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal
876 of remains, and statutory allowances to a surviving spouse and children to the extent the
877 settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

878 (2) For purposes of this section:

879 (a) during the period the power may be exercised, the holder of a power of withdrawal
880 is treated in the same manner as the settlor of a revocable trust to the extent of the property
881 subject to the power; and

882 (b) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of
883 the trust only to the extent the value of the property affected by the lapse, release, or waiver
884 exceeds the greater of the amount specified in Section 2041(b)(2) or 2514(e) of the Internal
885 Revenue Code of 1986, or Section 2503(b) of the Internal Revenue Code of 1986, in each case
886 as in effect on May 1, 2003.

887 Section 53. Section **75-7-506** is enacted to read:

888 **75-7-506. Overdue distribution.**

889 Whether or not a trust contains a spendthrift provision, a creditor or assignee of a
890 beneficiary may reach a mandatory distribution of income or principal, including a distribution
891 upon termination of the trust, if the trustee has not made the distribution to the beneficiary
892 within a reasonable time after the required distribution date.

893 Section 54. Section **75-7-507** is enacted to read:

894 **75-7-507. Personal obligations of trustee.**

895 Trust property is not subject to personal obligations of the trustee, even if the trustee

896 becomes insolvent or bankrupt.

897 Section 55. Section **75-7-508**, which is renumbered from Section 75-7-308 is
898 renumbered and amended to read:

899 ~~[75-7-308]~~. **75-7-508. Notice to creditors.**

900 (1) A trustee for an inter vivos revocable trust, upon the death of the settlor, may
901 publish a notice to creditors once a week for three successive weeks in a newspaper of general
902 circulation in the county where the settlor resided at the time of death, providing the trustee's
903 name and address and notifying creditors of the deceased settlor to present their claims within
904 three months after the date of the first publication of the notice or be forever barred.

905 (2) A trustee may give written notice by mail or other delivery to any known creditor of
906 the deceased settlor, notifying the creditor to present his claim within 90 days from the
907 published notice if given as provided in Subsection (1) or within 60 days from the mailing or
908 other delivery of the notice, whichever is later, or be forever barred. Written notice shall be the
909 notice described in Subsection (1) or a similar notice.

910 (3) The trustee shall not be liable to any creditor or to any successor of the deceased
911 settlor for giving or failing to give notice under this section.

912 Section 56. Section **75-7-509**, which is renumbered from Section 75-7-309 is
913 renumbered and amended to read:

914 ~~[75-7-309]~~. **75-7-509. Limitations on presentation of claims.**

915 (1) All claims against a deceased settlor which arose before the death of the deceased
916 settlor, including claims of the state and any subdivision of it, whether due or to become due,
917 absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal
918 basis, if not barred earlier by other statute of limitations, are barred against the deceased
919 settlor's estate, the trustee, the trust estate, and the beneficiaries of the deceased settlor's trust,
920 unless presented within the earlier of the following:

921 (a) one year after the settlor's death; or

922 (b) the time provided by Subsection 75-3-308(2) for creditors who are given actual
923 notice, and where notice is published, within the time provided in Subsection 75-3-308(1) for
924 all claims barred by publication.

925 (2) In all events, claims barred by the nonclaim statute at the deceased settlor's
926 domicile are also barred in this state.

927 (3) All claims against a deceased settlor's estate or trust estate which arise at or after
928 the death of the settlor, including claims of the state and any of its subdivisions, whether due or
929 to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or
930 other legal basis are barred against the deceased settlor's estate, the trustee, the trust estate, and
931 the beneficiaries of the deceased settlor, unless presented as follows:

932 (a) a claim based on a contract with the trustee within three months after performance
933 by the trustee is due; or

934 (b) any other claim within the later of three months after it arises, or the time specified
935 in Subsection (1).

936 (4) Nothing in this section affects or prevents:

937 (a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the
938 deceased settlor's estate or the trust estate;

939 (b) to the limits of the insurance protection only, any proceeding to establish liability of
940 the deceased settlor or the trustee for which he is protected by liability insurance; or

941 (c) collection of compensation for services rendered and reimbursement for expenses
942 advanced by the trustee or by the attorney or accountant for the trustee of the trust estate.

943 Section 57. Section **75-7-510**, which is renumbered from Section 75-7-310 is
944 renumbered and amended to read:

945 **[75-7-310]. 75-7-510. Manner of presentation of claims.**

946 (1) Claims against a deceased settlor's estate or inter vivos revocable trust shall be
947 presented as follows:

948 (a) The claimant may deliver or mail to the trustee, or the trustee's attorney of record, a
949 written statement of the claim indicating its basis, the name and address of the claimant, and
950 the amount claimed. The claim is considered presented upon the receipt of the written
951 statement of claim by the trustee or the trustee's attorney of record. If a claim is not yet due, the
952 date when it will become due shall be stated. If the claim is contingent or unliquidated, the
953 nature of the uncertainty shall be stated. If the claim is secured, the security shall be described.
954 Failure to describe correctly the security, the nature of any uncertainty, and the due date of a
955 claim not yet due does not invalidate the presentation made.

956 (b) The claimant may commence a proceeding against the trustee in any court where
957 the trustee may be subjected to jurisdiction to obtain payment of the claim against the deceased

958 settlor's estate or the trust estate, but the commencement of the proceeding must occur within
959 the time limited for presenting the claim. No presentation of claim is required in regard to
960 matters claimed in proceedings against the deceased settlor which were pending at the time of
961 the deceased settlor's death.

962 (2) If a claim is presented under Subsection (1)(a), no proceeding thereon may be
963 commenced more than 60 days after the trustee has mailed a notice of disallowance; but, in the
964 case of a claim which is not presently due or which is contingent or unliquidated, the trustee
965 may consent to an extension of the 60-day period, or to avoid injustice, the court, on petition,
966 may order an extension of the 60-day period, but in no event may the extension run beyond the
967 applicable statute of limitations.

968 Section 58. Section **75-7-511**, which is renumbered from Section 75-7-311 is
969 renumbered and amended to read:

970 ~~[75-7-311]~~. **75-7-511. Classification of claims.**

971 (1) If the applicable assets of the deceased settlor's estate or trust estate are insufficient
972 to pay all claims in full, the trustee shall make payment in the following order:

973 (a) reasonable funeral expenses;

974 (b) costs and expenses of administration;

975 (c) debts and taxes with preference under federal law;

976 (d) reasonable and necessary medical and hospital expenses of the last illness of the
977 deceased settlor, including compensation of persons attending him, and medical assistance if
978 Section 26-19-13.5 applies;

979 (e) debts and taxes with preference under other laws of this state; and

980 (f) all other claims.

981 (2) No preference shall be given in the payment of any claim over any other claim of
982 the same class, and a claim due and payable shall not be entitled to a preference over claims not
983 due.

984 Section 59. Section **75-7-512**, which is renumbered from Section 75-7-312 is
985 renumbered and amended to read:

986 ~~[75-7-312]~~. **75-7-512. Allowance of claims.**

987 (1) As to claims presented in the manner described in Section ~~[75-7-310]~~ 75-7-510 and
988 within the time limit prescribed in Section ~~[75-7-309]~~ 75-7-509, the trustee may mail a notice

989 to any claimant stating that the claim has been allowed or disallowed. If, after allowing or
990 disallowing a claim, the trustee changes the decision concerning the claim, the trustee shall
991 notify the claimant. The trustee may not change a disallowance of a claim after the time for the
992 claimant to file a petition for allowance or to commence a proceeding on the claim has expired
993 and the claim has been barred. If the notice of disallowance warns the claimant of the
994 impending bar, a claim which is disallowed in whole or in part by the trustee is barred so far as
995 not allowed, unless the claimant seeks a court-ordered allowance by filing a petition for
996 allowance in the court or by commencing a proceeding against the trustee not later than 60 days
997 after the mailing of the notice of disallowance or partial allowance. If the trustee fails to mail
998 notice to a claimant of action on the claim within 60 days after the time for original
999 presentation of the claim has expired, this failure has the effect of a notice of allowance.

1000 (2) Upon the petition of the trustee or a claimant in a proceeding for this purpose, the
1001 court may order any claim presented to the trustee or trustee's attorney in a timely manner and
1002 not barred by Subsection (1) to be allowed in whole or in part. Notice of this proceeding shall
1003 be given to the claimant, the trustee, and those other persons interested in the trust estate as the
1004 court may direct by order at the time the proceeding is commenced.

1005 (3) A judgment in a proceeding in another court against the trustee to enforce a claim
1006 against a deceased settlor's estate is a court-ordered allowance of the claim.

1007 (4) Unless otherwise provided in any judgment in another court entered against a
1008 trustee, allowed claims bear interest at the legal rate for the period commencing six months
1009 after the deceased settlor's date of death unless based on a contract making a provision for
1010 interest, in which case they bear interest in accordance with that provision.

1011 Section 60. Section **75-7-513**, which is renumbered from Section 75-7-313 is
1012 renumbered and amended to read:

1013 **[75-7-313]. 75-7-513. Payment of claims.**

1014 (1) Upon the expiration of the earliest of the time limitations provided in Section
1015 ~~[75-7-309]~~ 75-7-509 for the presentation of claims, the trustee shall pay the claims allowed
1016 against the deceased settlor's estate in the order of priority prescribed, for claims already
1017 presented which have not yet been allowed or whose allowance has been appealed, and for
1018 unbarred claims which may yet be presented, including costs and expenses of administration.
1019 By petition to the court in a proceeding for that purpose, a claimant whose claim has been

1020 allowed but not paid as provided in this section may secure an order directing the trustee to pay
1021 the claim to the extent that funds of the deceased settlor's estate or trust estate are available for
1022 the payment.

1023 (2) The trustee at any time may pay any just claim that has not been barred, with or
1024 without formal presentation, but he shall be personally liable to any other claimant whose claim
1025 is allowed and who is injured by the payment if:

1026 (a) the payment was made before the expiration of the time limit stated in Subsection
1027 (1) and the trustee failed to require the payee to give adequate security for the refund of any of
1028 the payment necessary to pay other claimants; or

1029 (b) the payment was made, due to the negligence or willful fault of the trustee, in a way
1030 that deprived the injured claimant of his priority.

1031 Section 61. Section **75-7-514**, which is renumbered from Section 75-7-314 is
1032 renumbered and amended to read:

1033 ~~[75-7-314]~~. **75-7-514**. **Secured claims.**

1034 Payment of a secured claim shall be upon the basis of the amount allowed if the creditor
1035 surrenders his security; but otherwise payment shall be based upon one of the following:

1036 (1) if the creditor exhausts his security before receiving payment, unless precluded by
1037 another provision of the law, upon the amount of the claim allowed less the fair value of the
1038 security; or

1039 (2) if the creditor does not have the right to exhaust his security or has not done so,
1040 upon the amount of the claim allowed less the value of the security determined by converting it
1041 into money according to the terms of the agreement pursuant to which the security was
1042 delivered to the creditor, or by the creditor and trustee by agreement, arbitration, compromise,
1043 or litigation.

1044 Section 62. Section **75-7-515**, which is renumbered from Section 75-7-315 is
1045 renumbered and amended to read:

1046 ~~[75-7-315]~~. **75-7-515**. **Claims not due and contingent -- unliquidated claims.**

1047 (1) If a claim which will become due at a future time or a contingent or unliquidated
1048 claim becomes due or certain before the distribution of the trust estate, and if the claim has
1049 been allowed or established by a proceeding, it shall be paid in the same manner as presently
1050 due and absolute claims of the same class.

1051 (2) In other cases the trustee, or, on petition of the trustee or the claimant in a special
1052 proceeding for that purpose, the court, may provide for payment as follows:

1053 (a) if the claimant consents, he may be paid the present or agreed value of the claim,
1054 taking any uncertainty into account; or

1055 (b) arrangement for future payment, or possible payment, on the happening of the
1056 contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a
1057 bond or security from a beneficiary, or otherwise.

1058 Section 63. Section **75-7-516**, which is renumbered from Section 75-7-316 is
1059 renumbered and amended to read:

1060 **[75-7-316]. 75-7-516. Counterclaims.**

1061 (1) In allowing a claim, the trustee may deduct any counterclaim which the deceased
1062 settlor's estate has against the claimant. In determining a claim against a deceased settlor's
1063 estate, a court shall reduce the amount allowed by the amount of any counterclaims and, if the
1064 counterclaims exceed the claim, render a judgment against the claimant in the amount of the
1065 excess.

1066 (2) A counterclaim, liquidated or unliquidated, may arise from a transaction other than
1067 that upon which the claim is based.

1068 (3) A counterclaim may give rise to relief exceeding in amount or different in kind
1069 from that sought in the claim.

1070 Section 64. Section **75-7-517**, which is renumbered from Section 75-7-317 is
1071 renumbered and amended to read:

1072 **[75-7-317]. 75-7-517. Execution and levies prohibited.**

1073 (1) No execution may issue upon nor may any levy be made against any property of the
1074 deceased settlor's estate under any judgment against a deceased settlor or a trustee.

1075 (2) This section may not be construed to prevent the enforcement of mortgages,
1076 pledges, or liens upon real or personal property in an appropriate proceeding.

1077 Section 65. Section **75-7-518**, which is renumbered from Section 75-7-318 is
1078 renumbered and amended to read:

1079 **[75-7-318]. 75-7-518. Compromise of claims.**

1080 When a claim against a deceased settlor's estate has been presented in any manner, the
1081 trustee may, if it appears in the best interest of the deceased settlor's estate, compromise the

1082 claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

1083 Section 66. Section **75-7-519**, which is renumbered from Section 75-7-319 is
1084 renumbered and amended to read:

1085 ~~[75-7-319]~~. **75-7-519. Encumbered assets.**

1086 (1) If any assets of the deceased settlor's estate are encumbered by mortgage, pledge,
1087 lien, or other security interest, the trustee may pay the encumbrance or any part thereof, renew
1088 or extend any obligation secured by the encumbrance, or convey or transfer the assets to the
1089 creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the
1090 encumbrance has presented a claim, if it appears to be in the best interest of the deceased
1091 settlor's estate.

1092 (2) Payment of an encumbrance does not increase the share of the beneficiary entitled
1093 to the encumbered assets unless the beneficiary is entitled to exoneration or unless the terms of
1094 the deceased settlor's trust, under which the beneficiary is entitled to the encumbered assets,
1095 provides otherwise.

1096 Section 67. Section **75-7-601** is enacted to read:

1097 **Part 6. Revocable Trusts**

1098 **75-7-601. Capacity of settlor of revocable trust.**

1099 The capacity required to create, amend, revoke, or add property to a revocable trust, or
1100 to direct the actions of the trustee of a revocable trust, is the same as that required to make a
1101 will.

1102 Section 68. Section **75-7-602** is enacted to read:

1103 **75-7-602. Revocation or amendment of revocable trust.**

1104 (1) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor
1105 may revoke or amend the trust. This Subsection (1) does not apply to a trust created under an
1106 instrument executed before May 5, 2003.

1107 (2) If a revocable trust is created or funded by more than one settlor:

1108 (a) to the extent the trust consists of community property, the trust may be revoked by
1109 either spouse acting alone but may be amended only by joint action of both spouses; and

1110 (b) to the extent the trust consists of property other than community property, each
1111 settlor may revoke or amend the trust with regard to the portion of the trust property
1112 attributable to that settlor's contribution.

- 1113 (3) The settlor may revoke or amend a revocable trust:
1114 (a) by substantially complying with a method provided in the terms of the trust; or
1115 (b) if the terms of the trust do not provide a method or the method provided in the
1116 terms is not expressly made exclusive, by:
1117 (i) executing a later will or codicil that expressly refers to the trust or specifically
1118 devises property that would otherwise have passed according to the terms of the trust; or
1119 (ii) any other method manifesting clear and convincing evidence of the settlor's intent.
1120 (4) Upon revocation of a revocable trust, the trustee shall deliver the trust property as
1121 the settlor directs.
1122 (5) A settlor's powers with respect to revocation, amendment, or distribution of trust
1123 property may be exercised by an agent under a power of attorney only to the extent expressly
1124 authorized by the terms of the trust or the power.
1125 (6) A conservator of the settlor or, if no conservator has been appointed, a guardian of
1126 the settlor may exercise a settlor's powers with respect to revocation, amendment, or
1127 distribution of trust property only with the approval of the court supervising the
1128 conservatorship or guardianship.
1129 (7) A trustee who does not know that a trust has been revoked or amended is not liable
1130 to the settlor or settlor's successors in interest for distributions made and other actions taken on
1131 the assumption that the trust had not been amended or revoked.

1132 Section 69. Section **75-7-603** is enacted to read:

1133 **75-7-603. Settlor's powers -- Powers of withdrawal.**

- 1134 (1) While a trust is revocable and the settlor has capacity to revoke the trust, rights of
1135 the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively
1136 to, the settlor.
1137 (2) If a revocable trust has more than one settlor, the duties of the trustee are owed to
1138 all of the settlors having capacity to revoke the trust.
1139 (3) During the period the power may be exercised, the holder of a power of withdrawal
1140 has the rights of a settlor of a revocable trust under this section to the extent of the property
1141 subject to the power.

1142 Section 70. Section **75-7-604** is enacted to read:

1143 **75-7-604. Limitation on action contesting validity of revocable trust --**

1144 **Distribution of trust property.**

1145 (1) A person shall commence a judicial proceeding to contest the validity of a trust that
1146 was revocable at the settlor's death within the earlier of:

1147 (a) one year after the settlor's death; or

1148 (b) 90 days after the trustee sent the person a copy of the trust instrument and a notice
1149 informing the person of the trust's existence, of the trustee's name and address, and of the time
1150 allowed for commencing a proceeding.

1151 (2) Upon the death of the settlor of a trust that was revocable at the settlor's death, the
1152 trustee may proceed to distribute the trust property in accordance with the terms of the trust.
1153 The trustee is not subject to liability for doing so unless:

1154 (a) the trustee knows of a pending judicial proceeding contesting the validity of the
1155 trust; or

1156 (b) a potential contestant has notified the trustee of a possible judicial proceeding to
1157 contest the trust and a judicial proceeding is commenced within 60 days after the contestant
1158 sent the notification.

1159 (3) With respect to a potential contest, the trustee is only liable for actions taken two or
1160 more business days after the trustee has actual receipt of written notice from a potential
1161 contestant. The written notice shall include the name of the settlor or of the trust, the name of
1162 the potential contestant, and a description of the basis for the potential contest. The written
1163 notice shall be mailed to the trustee at the principal place of administration of the trust by
1164 registered or certified mail, return receipt requested, or served upon the trustee in the same
1165 manner as a summons in a civil action. Any other form or service of notice is not sufficient to
1166 impose liability on the trustee for actions taken pursuant to the terms of the trust.

1167 (4) A beneficiary of a trust that is determined to have been invalid is liable to return
1168 any distribution received.

1169 Section 71. Section **75-7-701** is enacted to read:

1170 **Part 7. Office of Trustee**1171 **75-7-701. Accepting or declining trusteeship.**

1172 (1) Except as otherwise provided in Subsection (3), a person designated as trustee
1173 accepts the trusteeship:

1174 (a) by substantially complying with a method of acceptance provided in the terms of

1175 the trust; or

1176 (b) if the terms of the trust do not provide a method or the method provided in the
1177 terms is not expressly made exclusive, by accepting delivery of the trust property, exercising
1178 powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

1179 (2) A person designated as trustee who has not yet accepted the trusteeship may reject
1180 the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable
1181 time after knowing of the designation is considered to have rejected the trusteeship.

1182 (3) A person designated as trustee, without accepting the trusteeship, may:

1183 (a) act to preserve the trust property if, within a reasonable time after acting, the person
1184 sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a
1185 qualified beneficiary; and

1186 (b) inspect or investigate trust property to determine potential liability under
1187 environmental or other law or for any other purpose.

1188 Section 72. Section **75-7-702** is enacted to read:

1189 **75-7-702. Trustee's bond.**

1190 (1) A trustee shall give bond to secure performance of the trustee's duties only if the
1191 court finds that a bond is needed to protect the interests of the beneficiaries or is required by
1192 the terms of the trust and the court has not dispensed with the requirement.

1193 (2) The court may specify the amount of a bond, its liabilities, and whether sureties are
1194 necessary. The court may modify or terminate a bond at any time.

1195 (3) A regulated financial-service institution qualified to do trust business in this state
1196 need not give bond, even if required by the terms of the trust.

1197 (4) Unless otherwise directed by the court, the cost of the bond is charged to the trust.

1198 Section 73. Section **75-7-703** is enacted to read:

1199 **75-7-703. Cotrustees.**

1200 (1) Cotrustees who are unable to reach a unanimous decision may act by majority
1201 decision.

1202 (2) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the
1203 trust.

1204 (3) A cotrustee must participate in the performance of a trustee's function unless the
1205 cotrustee is unavailable to perform the function because of absence, illness, disqualification

1206 under other law, or other temporary incapacity or the cotrustee has properly delegated the
1207 performance of the function to another trustee.

1208 (4) If a cotrustee is unavailable to perform duties because of absence, illness,
1209 disqualification under other law, or other temporary incapacity, and prompt action is necessary
1210 to achieve the purposes of the trust or to avoid injury to the trust property, the remaining
1211 cotrustee or a majority of the remaining cotrustees may act for the trust.

1212 (5) A trustee may not delegate to a cotrustee the performance of a function the settlor
1213 reasonably expected the trustees to perform jointly. If one of the cotrustees is a regulated
1214 financial service institution qualified to do trust business in this state and the remaining
1215 cotrustees are individuals, a delegation by the individual cotrustees to the regulated financial
1216 service institution of the performance of trust investment functions shall be presumed to be in
1217 accordance with the settlor's intent unless the terms of the trust specifically provide otherwise.
1218 Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

1219 (6) Except as otherwise provided in Subsection (7), a trustee who does not join in an
1220 action of another trustee is not liable for the action.

1221 (7) Each trustee shall exercise reasonable care to:

1222 (a) prevent a cotrustee from committing a serious breach of trust; and

1223 (b) compel a cotrustee to redress a serious breach of trust.

1224 (8) A dissenting trustee who joins in an action at the direction of the majority of the
1225 trustees and who notified any cotrustee of the dissent at or before the time of the action is not
1226 liable for the action unless the action is a serious breach of trust.

1227 Section 74. Section **75-7-704** is enacted to read:

1228 **75-7-704. Vacancy in trusteeship -- Appointment of successor.**

1229 (1) A vacancy in a trusteeship occurs if:

1230 (a) a person designated as trustee rejects the trusteeship;

1231 (b) a person designated as trustee cannot be identified or does not exist;

1232 (c) a trustee resigns;

1233 (d) a trustee is disqualified or removed;

1234 (e) a trustee dies; or

1235 (f) a guardian or conservator is appointed for an individual serving as trustee, unless
1236 otherwise provided in the trust.

1237 (2) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be
1238 filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

1239 (3) A vacancy in a trusteeship required to be filled must be filled in the following order
1240 of priority:

1241 (a) by a person designated in the terms of the trust to act as successor trustee;

1242 (b) by a person appointed by unanimous agreement of the qualified beneficiaries; or

1243 (c) by a person appointed by the court.

1244 (4) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court
1245 may appoint an additional trustee or special fiduciary whenever the court considers the
1246 appointment necessary for the administration of the trust.

1247 Section 75. Section **75-7-705** is enacted to read:

1248 **75-7-705. Resignation of trustee.**

1249 (1) A trustee may resign:

1250 (a) upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and
1251 all cotrustees; or

1252 (b) with the approval of the court.

1253 (2) In approving a resignation, the court may issue orders and impose conditions
1254 reasonably necessary for the protection of the trust property.

1255 (3) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or
1256 omissions of the trustee is not discharged or affected by the trustee's resignation.

1257 Section 76. Section **75-7-706** is enacted to read:

1258 **75-7-706. Removal of trustee.**

1259 (1) The settlor, a cotrustee, or a qualified beneficiary may request the court to remove a
1260 trustee, or a trustee may be removed by the court on its own initiative.

1261 (2) The court may remove a trustee if:

1262 (a) the trustee has committed a serious breach of trust;

1263 (b) lack of cooperation among cotrustees substantially impairs the administration of the
1264 trust;

1265 (c) because of unfitness, unwillingness, or persistent failure of the trustee to administer
1266 the trust effectively, the court determines that removal of the trustee best serves the interests of
1267 the beneficiaries; or

1268 (d) there has been a substantial change of circumstances or removal is requested by all
1269 of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests
1270 of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a
1271 suitable cotrustee or successor trustee is available.

1272 (3) Pending a final decision on a request to remove a trustee, or in lieu of or in addition
1273 to removing a trustee, the court may order appropriate relief under Subsection 75-7-1001(2)
1274 necessary to protect the trust property or the interests of the beneficiaries.

1275 Section 77. Section **75-7-707** is enacted to read:

1276 **75-7-707. Delivery of property by former trustee.**

1277 (1) Unless a cotrustee remains in office or the court otherwise orders, and until the trust
1278 property is delivered to a successor trustee or other person entitled to it, a trustee who has
1279 resigned or been removed has the duties of a trustee and the powers necessary to protect the
1280 trust property.

1281 (2) A trustee who has resigned or been removed shall proceed expeditiously to deliver
1282 the trust property within the trustee's possession to the cotrustee, successor trustee, or other
1283 person entitled to it.

1284 Section 78. Section **75-7-708** is enacted to read:

1285 **75-7-708. Compensation of trustee.**

1286 (1) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled
1287 to compensation that is reasonable under the circumstances.

1288 (2) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be
1289 compensated as specified, but the court may allow more or less compensation if:

1290 (a) the duties of the trustee are substantially different from those contemplated when
1291 the trust was created; or

1292 (b) the compensation specified by the terms of the trust would be unreasonably low or
1293 high.

1294 Section 79. Section **75-7-709** is enacted to read:

1295 **75-7-709. Reimbursement of expenses.**

1296 (1) A trustee is entitled to be reimbursed out of the trust property, with interest as
1297 appropriate, for:

1298 (a) expenses that were properly incurred in the administration of the trust; and

1299 (b) to the extent necessary to prevent unjust enrichment of the trust, expenses that were
1300 not properly incurred in the administration of the trust.

1301 (2) An advance by the trustee of money for the protection of the trust gives rise to a
1302 lien against trust property to secure reimbursement with reasonable interest.

1303 Section 80. Section **75-7-801** is enacted to read:

1304 **Part 8. Duties and Powers of Trustee**

1305 **75-7-801. Duty to administer trust.**

1306 Upon acceptance of a trusteeship, the trustee shall administer the trust in good faith, in
1307 accordance with its terms and purposes and the interests of the beneficiaries, and in accordance
1308 with this chapter.

1309 Section 81. Section **75-7-802** is enacted to read:

1310 **75-7-802. Duty of loyalty.**

1311 (1) A trustee shall administer the trust solely in the interests of the beneficiaries.

1312 (2) Subject to the rights of persons dealing with or assisting the trustee as provided in
1313 Section 75-7-1012, a sale, encumbrance, or other transaction involving the investment or
1314 management of trust property entered into by the trustee for the trustee's own personal account
1315 or which is otherwise affected by a conflict between the trustee's fiduciary and personal
1316 interests is voidable by a beneficiary affected by the transaction unless:

1317 (a) the transaction was authorized by the terms of the trust;

1318 (b) the transaction was approved by the court;

1319 (c) the beneficiary did not commence a judicial proceeding within the time allowed by
1320 Section 75-7-1005;

1321 (d) the beneficiary consented to the trustee's conduct, ratified the transaction, or
1322 released the trustee in compliance with Section 75-7-1009; or

1323 (e) the transaction involves a contract entered into or claim acquired by the trustee
1324 before the person became or contemplated becoming trustee.

1325 (3) A sale, encumbrance, or other transaction involving the investment or management
1326 of trust property is presumed to be affected by a conflict between personal and fiduciary
1327 interests if it is entered into by the trustee with:

1328 (a) the trustee's spouse;

1329 (b) the trustee's descendants, siblings, parents, or their spouses;

1330 (c) an agent or attorney of the trustee; or

1331 (d) a corporation or other person or enterprise in which the trustee, or a person that
1332 owns a significant interest in the trustee, has an interest that might affect the trustee's best
1333 judgment.

1334 (4) A transaction between a trustee and a beneficiary that does not concern trust
1335 property but that occurs during the existence of the trust or while the trustee retains significant
1336 influence over the beneficiary and from which the trustee obtains an advantage is voidable by
1337 the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

1338 (5) A transaction not concerning trust property in which the trustee engages in the
1339 trustee's individual capacity involves a conflict between personal and fiduciary interests if the
1340 transaction concerns an opportunity properly belonging to the trust.

1341 (6) An investment by a trustee in securities of an investment company or investment
1342 trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is
1343 not presumed to be affected by a conflict between personal and fiduciary interests if the
1344 investment complies with the prudent investor rule of Section 75-7-901. The trustee may be
1345 compensated by the investment company or investment trust for providing those services out of
1346 fees charged to the trust if the trustee at least annually notifies the persons entitled under
1347 Section 75-7-813 to receive a copy of the trustee's annual report of the rate and method by
1348 which the compensation was determined.

1349 (7) In voting shares of stock or in exercising powers of control over similar interests in
1350 other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the
1351 trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or
1352 appoint directors or other managers who will manage the corporation or enterprise in the best
1353 interests of the beneficiaries.

1354 (8) This section does not preclude the following transactions, if fair to the
1355 beneficiaries:

1356 (a) an agreement between a trustee and a beneficiary relating to the appointment or
1357 compensation of the trustee;

1358 (b) payment of reasonable compensation to the trustee;

1359 (c) a transaction between a trust and another trust, decedent's estate, conservatorship, or
1360 guardianship of which the trustee is a fiduciary or in which a beneficiary has an interest;

1361 (d) a deposit of trust money in a regulated financial-service institution operated by the
1362 trustee; or

1363 (e) an advance by the trustee of money for the protection of the trust.

1364 (9) The court may appoint a special fiduciary to make a decision with respect to any
1365 proposed transaction that might violate this section if entered into by the trustee.

1366 Section 82. Section **75-7-803** is enacted to read:

1367 **75-7-803. Impartiality.**

1368 If a trust has two or more beneficiaries, the trustee shall act impartially in investing,
1369 managing, and distributing the trust property, giving due regard to the beneficiaries' respective
1370 interests.

1371 Section 83. Section **75-7-804** is enacted to read:

1372 **75-7-804. Prudent administration.**

1373 A trustee shall administer the trust as a prudent person would, by considering the
1374 purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying
1375 this standard, the trustee shall exercise reasonable care, skill, and caution.

1376 Section 84. Section **75-7-805** is enacted to read:

1377 **75-7-805. Costs of administration.**

1378 In administering a trust, the trustee may incur only costs that are reasonable in relation
1379 to the trust property, the purposes of the trust, and the skills of the trustee.

1380 Section 85. Section **75-7-806** is enacted to read:

1381 **75-7-806. Trustee's skills.**

1382 A trustee who has special skills or expertise, or is named trustee in reliance upon the
1383 trustee's representation that the trustee has special skills or expertise, shall use those special
1384 skills or expertise.

1385 Section 86. Section **75-7-807** is enacted to read:

1386 **75-7-807. Delegation by trustee.**

1387 (1) A trustee may delegate duties and powers that a prudent trustee of comparable
1388 skills could properly delegate under the circumstances. The trustee shall exercise reasonable
1389 care, skill, and caution in:

1390 (a) selecting an agent;

1391 (b) establishing the scope and terms of the delegation, consistent with the purposes and

1392 terms of the trust; and

1393 (c) periodically reviewing the agent's actions in order to monitor the agent's

1394 performance and compliance with the terms of the delegation.

1395 (2) In performing a delegated function, an agent owes a duty to the trust to exercise

1396 reasonable care to comply with the terms of the delegation.

1397 (3) A trustee who complies with Subsection (1) is not liable to the beneficiaries or to

1398 the trust for an action of the agent to whom the function was delegated.

1399 (4) By accepting a delegation of powers or duties from the trustee of a trust that is

1400 subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

1401 Section 87. Section **75-7-808** is enacted to read:

1402 **75-7-808. Powers to direct.**

1403 (1) While a trust is revocable, the trustee may follow a direction of the settlor that is

1404 contrary to the terms of the trust.

1405 (2) If the terms of a trust confer upon a person other than the settlor of a revocable trust

1406 power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise

1407 of the power unless the attempted exercise is manifestly contrary to the terms of the trust or the

1408 trustee knows the attempted exercise would constitute a serious breach of a fiduciary duty that

1409 the person holding the power owes to the beneficiaries of the trust.

1410 (3) The terms of a trust may confer upon a trustee or other person a power to direct the

1411 modification or termination of the trust.

1412 (4) A person, other than a beneficiary, who holds a power to direct is presumptively a

1413 fiduciary who, as such, is required to act in good faith with regard to the purposes of the trust

1414 and the interests of the beneficiaries. The holder of a power to direct is liable for any loss that

1415 results from breach of a fiduciary duty.

1416 Section 88. Section **75-7-809** is enacted to read:

1417 **75-7-809. Control and protection of trust property.**

1418 A trustee shall take reasonable steps to take control of and protect the trust property.

1419 Section 89. Section **75-7-810** is enacted to read:

1420 **75-7-810. Recordkeeping and identification of trust property.**

1421 (1) A trustee shall keep adequate records of the administration of the trust.

1422 (2) A trustee shall keep trust property separate from the trustee's own property.

1423 (3) Except as otherwise provided in Subsection (4), a trustee shall cause the trust
1424 property to be designated so that the interest of the trust, to the extent feasible, appears in
1425 records maintained by a party other than a trustee or beneficiary.

1426 (4) If the trustee maintains records clearly indicating the respective interests, a trustee
1427 may invest as a whole the property of two or more separate trusts.

1428 Section 90. Section **75-7-811** is enacted to read:

1429 **75-7-811. Enforcement and defense of claims.**

1430 A trustee shall take reasonable steps to enforce claims of the trust and to defend claims
1431 against the trust.

1432 Section 91. Section **75-7-812** is enacted to read:

1433 **75-7-812. Collecting trust property.**

1434 A trustee shall take reasonable steps to compel a former trustee or other person to
1435 deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have
1436 been committed by a former trustee.

1437 Section 92. Section **75-7-813** is enacted to read:

1438 **75-7-813. Duty to inform and report.**

1439 (1) Except to the extent the terms of the trust provide otherwise, a trustee shall keep the
1440 qualified beneficiaries of the trust reasonably informed about the administration of the trust and
1441 of the material facts necessary for them to protect their interests. Unless unreasonable under
1442 the circumstances, and unless otherwise provided by the terms of the trust, a trustee shall
1443 promptly respond to a qualified beneficiary's request for information related to the
1444 administration of the trust.

1445 (2) Except to the extent the terms of the trust provide otherwise, a trustee:

1446 (a) upon request of a qualified beneficiary, shall promptly furnish to the beneficiary a
1447 copy of the portions of the trust instrument which describe or affect the beneficiary's interest;

1448 (b) within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries
1449 of the acceptance and of the trustee's name, address, and telephone number;

1450 (c) within 60 days after the date the trustee acquires knowledge of the creation of an
1451 irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has
1452 become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified
1453 beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to

1454 request a copy of the trust instrument, and of the right to a trustee's report as provided in
1455 Subsection (3); and

1456 (d) shall notify the qualified beneficiaries in advance of any change in the method or
1457 rate of the trustee's compensation.

1458 (3) A trustee shall send to the distributees or permissible distributees of trust income or
1459 principal, and, except to the extent the terms of the trust provide otherwise, to other qualified
1460 beneficiaries who request it, at least annually and at the termination of the trust, a report of the
1461 trust property, liabilities, receipts, and disbursements, including the source and amount of the
1462 trustee's compensation, a listing of the trust assets and, if feasible, their respective market
1463 values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be
1464 sent to the qualified beneficiaries by the former trustee, unless the terms of the trust provide
1465 otherwise. A personal representative, conservator, or guardian may send the qualified
1466 beneficiaries a report on behalf of a deceased or incapacitated trustee.

1467 (4) A beneficiary may waive the right to a trustee's report or other information
1468 otherwise required to be furnished under this section. A beneficiary, with respect to future
1469 reports and other information, may withdraw a waiver previously given.

1470 Section 93. Section **75-7-814** is enacted to read:

1471 **75-7-814. Discretionary powers -- Tax savings.**

1472 (1) Notwithstanding the breadth of discretion granted to a trustee in the terms of the
1473 trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the trustee shall
1474 exercise a discretionary power in good faith and in accordance with the terms and purposes of
1475 the trust and the interests of the beneficiaries.

1476 (2) Subject to Subsection (4), and unless the terms of the trust expressly indicate that a
1477 rule in this Subsection (2) does not apply:

1478 (a) a person other than a settlor who is a beneficiary and trustee of a trust that confers
1479 on the trustee a power to make discretionary distributions to or for the trustee's personal benefit
1480 may exercise the power only in accordance with an ascertainable standard relating to the
1481 trustee's individual health, education, support, or maintenance within the meaning of Section
1482 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on May 5,
1483 2003; and

1484 (b) a trustee may not exercise a power to make discretionary distributions to satisfy a

1485 legal obligation of support that the trustee personally owes another person.

1486 (3) A power whose exercise is limited or prohibited by Subsection (2) may be
1487 exercised by a majority of the remaining trustees whose exercise of the power is not so limited
1488 or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a
1489 special fiduciary with authority to exercise the power.

1490 (4) Subsection (2) does not apply to:

1491 (a) a power held by the settlor's spouse who is the trustee of a trust for which a marital
1492 deduction, as defined in Section 2056(b)(5) or 2523(e) of the Internal Revenue Code of 1986,
1493 as in effect on May 5, 2003, was previously allowed;

1494 (b) any trust during any period that the trust may be revoked or amended by its settlor;
1495 or

1496 (c) a trust if contributions to the trust qualify for the annual exclusion under Section
1497 2503(c) of the Internal Revenue Code of 1986, as in effect on May 5, 2003.

1498 Section 94. Section **75-7-815** is enacted to read:

1499 **75-7-815. General powers of trustee.**

1500 (1) A trustee, without authorization by the court, may exercise:

1501 (a) powers conferred by the terms of the trust; or

1502 (b) except as limited by the terms of the trust:

1503 (i) all powers over the trust property which an unmarried competent owner has over
1504 individually owned property;

1505 (ii) any other powers appropriate to achieve the proper investment, management, and
1506 distribution of the trust property; and

1507 (iii) any other powers conferred by this chapter.

1508 (2) The exercise of a power is subject to the fiduciary duties prescribed by this part.

1509 Section 95. Section **75-7-816** is enacted to read:

1510 **75-7-816. Specific powers of trustee.**

1511 Without limiting the authority conferred by Section 75-7-815, a trustee may:

1512 (1) collect trust property and accept or reject additions to the trust property from a
1513 settlor or any other person;

1514 (2) acquire or sell property, for cash or on credit, at public or private sale;

1515 (3) exchange, partition, or otherwise change the character of trust property;

- 1516 (4) deposit trust money in an account in a regulated financial-service institution;
1517 (5) borrow money, with or without security from any financial institution, including a
1518 financial institution that is serving as a trustee or one of its affiliates, and mortgage or pledge
1519 trust property for a period within or extending beyond the duration of the trust;
1520 (6) with respect to an interest in a proprietorship, partnership, limited liability
1521 company, business trust, corporation, or other form of business or enterprise, continue the
1522 business or other enterprise and take any action that may be taken by shareholders, members, or
1523 property owners, including merging, dissolving, or otherwise changing the form of business
1524 organization or contributing additional capital;
1525 (7) with respect to stocks or other securities, exercise the rights of an absolute owner,
1526 including the right to:
1527 (a) vote, or give proxies to vote, with or without power of substitution, or enter into or
1528 continue a voting trust agreement;
1529 (b) hold a security in the name of a nominee or in other form without disclosure of the
1530 trust so that title may pass by delivery;
1531 (c) pay calls, assessments, and other sums chargeable or accruing against the securities,
1532 and sell or exercise stock subscription or conversion rights; and
1533 (d) deposit the securities with a depository or other regulated financial-service
1534 institution;
1535 (8) with respect to an interest in real property, construct, or make ordinary or
1536 extraordinary repairs to, alterations to, or improvements in, buildings or other structures,
1537 demolish improvements, raze existing or erect new party walls or buildings, subdivide or
1538 develop land, dedicate land to public use or grant public or private easements, and make or
1539 vacate plats and adjust boundaries;
1540 (9) enter into a lease for any purpose as lessor or lessee, including a lease or other
1541 arrangement for exploration and removal of natural resources, with or without the option to
1542 purchase or renew, for a period within or extending beyond the duration of the trust;
1543 (10) grant an option involving a sale, lease, or other disposition of trust property or
1544 acquire an option for the acquisition of property, including an option exercisable beyond the
1545 duration of the trust, and exercise an option so acquired;
1546 (11) insure the property of the trust against damage or loss and insure the trustee, the

1547 trustee's agents, and beneficiaries against liability arising from the administration of the trust;

1548 (12) abandon or decline to administer property of no value or of insufficient value to
1549 justify its collection or continued administration;

1550 (13) with respect to possible liability for violation of environmental law:

1551 (a) inspect or investigate property the trustee holds or has been asked to hold, or
1552 property owned or operated by an organization in which the trustee holds or has been asked to
1553 hold an interest, for the purpose of determining the application of environmental law with
1554 respect to the property;

1555 (b) take action to prevent, abate, or otherwise remedy any actual or potential violation
1556 of any environmental law affecting property held directly or indirectly by the trustee, whether
1557 taken before or after the assertion of a claim or the initiation of governmental enforcement;

1558 (c) decline to accept property into trust or disclaim any power with respect to property
1559 that is or may be burdened with liability for violation of environmental law;

1560 (d) compromise claims against the trust which may be asserted for an alleged violation
1561 of environmental law; and

1562 (e) pay the expense of any inspection, review, abatement, or remedial action to comply
1563 with environmental law;

1564 (14) pay or contest any claim, settle a claim by or against the trust, and release, in
1565 whole or in part, a claim belonging to the trust;

1566 (15) pay taxes, assessments, compensation of the trustee and of employees and agents
1567 of the trust, and other expenses incurred in the administration of the trust;

1568 (16) exercise elections with respect to federal, state, and local taxes;

1569 (17) select a mode of payment under any employee benefit or retirement plan, annuity,
1570 or life insurance payable to the trustee, exercise rights thereunder, including exercise of the
1571 right to indemnification for expenses and against liabilities, and take appropriate action to
1572 collect the proceeds;

1573 (18) make loans out of trust property, including loans to a beneficiary on terms and
1574 conditions the trustee considers to be fair and reasonable under the circumstances, and the
1575 trustee has a lien on future distributions for repayment of those loans;

1576 (19) pledge trust property to guarantee loans made by others to the beneficiary;

1577 (20) appoint a trustee to act in another jurisdiction with respect to trust property located

1578 in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the
1579 appointing trustee, require that the appointed trustee furnish security, and remove any trustee so
1580 appointed;

1581 (21) pay an amount distributable to a beneficiary who is under a legal disability or who
1582 the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or
1583 applying it for the beneficiary's benefit, or by:

1584 (a) paying it to the beneficiary's conservator or, if the beneficiary does not have a
1585 conservator, the beneficiary's guardian;

1586 (b) paying it to the beneficiary's custodian under Title 75, Chapter 5a, Uniform
1587 Transfers to Minors Act or custodial trustee under the Uniform Custodial Trust Act, and, for
1588 that purpose, creating a custodianship or custodial trust;

1589 (c) if the trustee does not know of a conservator, guardian, custodian, or custodial
1590 trustee, paying it to an adult relative or other person having legal or physical care or custody of
1591 the beneficiary, to be expended on the beneficiary's behalf; or

1592 (d) managing it as a separate fund on the beneficiary's behalf, subject to the
1593 beneficiary's continuing right to withdraw the distribution;

1594 (22) on distribution of trust property or the division or termination of a trust, make
1595 distributions in divided or undivided interests, allocate particular assets in proportionate or
1596 disproportionate shares, value the trust property for those purposes, and adjust for resulting
1597 differences in valuation;

1598 (23) resolve a dispute concerning the interpretation of the trust or its administration by
1599 mediation, arbitration, or other procedure for alternative dispute resolution;

1600 (24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to
1601 protect trust property and the trustee in the performance of the trustee's duties;

1602 (25) sign and deliver contracts and other instruments that are useful to achieve or
1603 facilitate the exercise of the trustee's powers; and

1604 (26) on termination of the trust, exercise the powers appropriate to wind up the
1605 administration of the trust and distribute the trust property to the persons entitled to it.

1606 Section 96. Section **75-7-817** is enacted to read:

1607 **75-7-817. Distribution upon termination.**

1608 (1) Upon termination or partial termination of a trust, the trustee may send to the

1609 beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed
1610 distribution terminates if the beneficiary does not notify the trustee of an objection within 30
1611 days after the proposal was sent but only if the proposal informed the beneficiary of the right to
1612 object and of the time allowed for objection.

1613 (2) Upon the occurrence of an event terminating or partially terminating a trust, the
1614 trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it,
1615 subject to the right of the trustee to retain a reasonable reserve for the payment of debts,
1616 expenses, and taxes.

1617 (3) A release by a beneficiary of a trustee from liability for breach of trust is invalid to
1618 the extent:

1619 (a) it was induced by improper conduct of the trustee; or

1620 (b) the beneficiary, at the time of the release, did not know of the beneficiary's rights or
1621 of the material facts relating to the breach.

1622 Section 97. Section **75-7-818** is enacted to read:

1623 **75-7-818. Recitals when title to real property is in trust -- Failure.**

1624 (1) When title to real property is granted to a person as trustee, the terms of the trust
1625 may be given either:

1626 (a) in the deed of transfer; or

1627 (b) in an instrument signed by the grantor and recorded in the same office as the grant
1628 to the trustee.

1629 (2) If the terms of the trust are not made public as required in Subsection (1), a
1630 conveyance from the trustee is absolute in favor of purchasers for value who take the property
1631 without notice of the terms of the trust.

1632 (3) The terms of the trust recited in the deed of transfer or the instrument recorded
1633 under Subsection (1)(b) shall include:

1634 (a) the name of the trustee;

1635 (b) the address of the trustee; and

1636 (c) the name and date of the trust.

1637 Section 98. Section **75-7-819** is enacted to read:

1638 **75-7-819. Marital deduction formulas -- Trusts.**

1639 (1) For estates of decedents dying after December 31, 1981, where a decedent's trust

1640 executed before September 13, 1981, contains a formula expressly providing that the
1641 decendent's spouse is to receive the maximum amount of property qualifying for the marital
1642 deduction allowable by federal law, this formula shall be construed as referring to the unlimited
1643 marital deduction allowable by federal law as amended by Section 403(a) of the Economic
1644 Recovery Tax Act of 1981.

1645 (2) The intention of a trustor as expressed in the trust shall control the legal effect of
1646 any dispositions made by it for purposes of construing Subsection (1), and the rule of
1647 construction of that subsection shall apply unless a contrary intention is indicated by the trust.

1648 Section 99. Section **75-7-901** is enacted to read:

1649 **Part 9. Utah Uniform Prudent Investor Act**

1650 **75-7-901. Prudent investor rule.**

1651 (1) Except as otherwise provided in Subsection (2), a trustee who invests and manages
1652 trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule
1653 set forth in this chapter.

1654 (2) The prudent investor rule is a default rule and may be expanded, restricted,
1655 eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a
1656 beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the
1657 trust.

1658 Section 100. Section **75-7-902** is enacted to read:

1659 **75-7-902. Standard of care -- Portfolio strategy -- Risk and return objectives.**

1660 (1) A trustee shall invest and manage trust assets as a prudent investor would, by
1661 considering the purposes, terms, distribution requirements, and other circumstances of the trust.
1662 In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

1663 (2) A trustee's investment and management decisions respecting individual assets must
1664 be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of
1665 an overall investment strategy having risk and return objectives reasonably suited to the trust.

1666 (3) Among circumstances that a trustee shall consider in investing and managing trust
1667 assets are the following which may be relevant to the trust or its beneficiaries:

1668 (a) general economic conditions;

1669 (b) the possible effect of inflation or deflation;

1670 (c) the expected tax consequences of investment decisions or strategies;

1671 (d) the role that each investment or course of action plays within the overall trust
1672 portfolio, which may include financial assets, interests in closely held enterprises, tangible and
1673 intangible personal property, and real property;

1674 (e) the expected total return from income and the appreciation of capital;

1675 (f) other resources of the beneficiaries;

1676 (g) needs for liquidity, regularity of income, and preservation or appreciation of capital;

1677 and

1678 (h) an asset's special relationship or special value, if any, to the purposes of the trust or
1679 to one or more of the beneficiaries.

1680 (4) A trustee shall make a reasonable effort to verify facts relevant to the investment
1681 and management of trust assets.

1682 (5) A trustee may invest in any kind of property or type of investment consistent with
1683 the standards of this chapter.

1684 Section 101. Section **75-7-903** is enacted to read:

1685 **75-7-903. Diversification.**

1686 A trustee shall diversify the investments of the trust unless the trustee reasonably
1687 determines that, because of special circumstances, the purposes of the trust are better served
1688 without diversifying.

1689 Section 102. Section **75-7-904** is enacted to read:

1690 **75-7-904. Duties at inception of trusteeship.**

1691 Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee
1692 shall review the trust assets and make and implement decisions concerning the retention and
1693 disposition of assets, in order to bring the trust portfolio into compliance with the purposes,
1694 terms, distribution requirements, and other circumstances of the trust, and with the
1695 requirements of this chapter.

1696 Section 103. Section **75-7-905** is enacted to read:

1697 **75-7-905. Reviewing compliance.**

1698 Compliance with the prudent investor rule is determined in light of the facts and
1699 circumstances existing at the time of a trustee's decision or action and not by hindsight.

1700 Section 104. Section **75-7-906** is enacted to read:

1701 **75-7-906. Investment direction.**

- 1702 (1) For purposes of this section, "investment direction" means a direction:
1703 (a) that is binding on the trustee, except for an investment direction given by a settlor
1704 as described in Subsection (2);
1705 (b) to do any of the following with respect to an investment:
1706 (i) retention;
1707 (ii) purchase;
1708 (iii) sale;
1709 (iv) exchange;
1710 (v) tender; or
1711 (vi) any other transaction affecting ownership in the investment.
1712 (2) (a) During the time period that a trust is revocable, the trustee may follow any
1713 investment direction of the settlor, including an investment direction that:
1714 (i) is manifestly contrary to the terms of the trust; or
1715 (ii) seriously breaches a fiduciary duty to the beneficiaries.
1716 (b) The trustee is not liable for any loss resulting from following an investment
1717 direction described in Subsection (2)(a).
1718 (3) If the terms of a trust authorize a person to give investment direction to the trustee,
1719 the person authorized to give investment direction:
1720 (a) is presumptively a fiduciary only with respect to an investment direction that the
1721 person gives to the trustee;
1722 (b) is required to act in good faith with regard to:
1723 (i) the purposes of the trust; and
1724 (ii) the interests of the beneficiaries; and
1725 (c) is liable for any loss that results from breach of the fiduciary duty only with respect
1726 to an investment direction that the person gives to the trustee.
1727 (4) Except in cases of willful misconduct or gross negligence, a trustee is not liable for
1728 any loss that results from following an investment direction if:
1729 (a) the terms of a trust authorizes a person to give the investment direction to the
1730 trustee; and
1731 (b) the trustee acts in accordance with the investment direction given by a person
1732 described in Subsection (4)(a).

1733 (5) If the terms of a trust require another person's approval or consent to an investment
1734 decision of the trustee:

1735 (a) the person from whom approval or consent is required:

1736 (i) is presumptively a fiduciary;

1737 (ii) is required to act in good faith with regard to:

1738 (A) the purposes of the trust; and

1739 (B) the interests of the beneficiaries; and

1740 (iii) is liable for any loss that results from breach of the fiduciary duty; and

1741 (b) except in cases of willful misconduct or gross negligence, the trustee is not liable
1742 for any loss resulting from any act not taken as a result of the person's failure to respond to a
1743 request for approval or consent.

1744 Section 105. Section **75-7-907** is enacted to read:

1745 **75-7-907. Language invoking standard of chapter.**

1746 The following terms or comparable language in the provisions of a trust, unless
1747 otherwise limited or modified, authorizes any investment or strategy permitted under this
1748 chapter: "investments permissible by law for investment of trust funds," "legal investments,"
1749 "authorized investments," "using the judgment and care under the circumstances then
1750 prevailing that persons of prudence, discretion, and intelligence exercise in the management of
1751 their own affairs, not in regard to speculation but in regard to the permanent disposition of their
1752 funds, considering the probable income as well as the probable safety of their capital," "prudent
1753 man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

1754 Section 106. Section **75-7-1001** is enacted to read:

1755 **Part 10. Liability of Trustees and Rights of Persons Dealing with Trustee**

1756 **75-7-1001. Remedies for breach of trust.**

1757 (1) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of
1758 trust.

1759 (2) To remedy a breach of trust that has occurred or may occur, the court may:

1760 (a) compel the trustee to perform the trustee's duties;

1761 (b) enjoin the trustee from committing a breach of trust;

1762 (c) compel the trustee to redress a breach of trust by paying money, restoring property,
1763 or other means;

- 1764 (d) order a trustee to account;
1765 (e) appoint a special fiduciary to take possession of the trust property and administer
1766 the trust;
1767 (f) suspend the trustee;
1768 (g) remove the trustee as provided in Section 75-7-706;
1769 (h) reduce or deny compensation to the trustee;
1770 (i) subject to Section 75-7-1012, void an act of the trustee, impose a lien or a
1771 constructive trust on trust property, or trace trust property wrongfully disposed of and recover
1772 the property or its proceeds; or
1773 (j) order any other appropriate relief.
1774 Section 107. Section **75-7-1002** is enacted to read:
1775 **75-7-1002. Damages for breach of trust.**
1776 (1) A trustee who commits a breach of trust is liable to the beneficiaries affected for the
1777 greater of:
1778 (a) the amount required to restore the value of the trust property and trust distributions
1779 to what they would have been had the breach not occurred; or
1780 (b) the profit the trustee made by reason of the breach.
1781 (2) Except as otherwise provided in this Subsection (2), if more than one trustee is
1782 liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the
1783 other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially
1784 more at fault than another trustee or if the trustee committed the breach of trust in bad faith or
1785 with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A
1786 trustee who received a benefit from the breach of trust is not entitled to contribution from
1787 another trustee to the extent of the benefit received.
1788 Section 108. Section **75-7-1003** is enacted to read:
1789 **75-7-1003. Damages in absence of breach.**
1790 (1) A trustee is accountable to an affected beneficiary for any profit made by the trustee
1791 arising from the administration of the trust, even absent a breach of trust.
1792 (2) Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or
1793 depreciation in the value of trust property or for not having made a profit.
1794 Section 109. Section **75-7-1004** is enacted to read:

1795 **75-7-1004. Attorney's fees and costs.**

1796 In a judicial proceeding involving the administration of a trust, the court may, as justice
1797 and equity may require, award costs and expenses, including reasonable attorney's fees, to any
1798 party, to be paid by another party or from the trust that is the subject of the controversy.

1799 Section 110. Section **75-7-1005** is enacted to read:

1800 **75-7-1005. Limitation of action against trustee.**

1801 (1) A beneficiary may not commence a proceeding against a trustee for breach of trust
1802 more than one year after the date that the beneficiary or a person who may represent and bind
1803 the beneficiary was sent a report that adequately disclosed the existence of a potential claim for
1804 breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.

1805 (2) A report adequately discloses the existence of a potential claim for breach of trust if
1806 it provides sufficient information so that the beneficiary or representative knows of the
1807 potential claim or should have inquired into its existence.

1808 (3) If Subsection (1) does not apply, a judicial proceeding by a beneficiary against a
1809 trustee for breach of trust must be commenced within three years after the first to occur of:

1810 (a) the removal, resignation, or death of the trustee;

1811 (b) the termination of the beneficiary's interest in the trust; or

1812 (c) the termination of the trust.

1813 (4) This section does not preclude an action to recover for fraud or misrepresentation
1814 related to the report.

1815 Section 111. Section **75-7-1006** is enacted to read:

1816 **75-7-1006. Reliance on trust instrument.**

1817 A trustee who acts in reasonable reliance on the terms of the trust as expressed in the
1818 trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach
1819 resulted from the reliance.

1820 Section 112. Section **75-7-1007** is enacted to read:

1821 **75-7-1007. Event affecting administration or distribution.**

1822 If the happening of an event, including marriage, divorce, performance of educational
1823 requirements, or death, affects the administration or distribution of a trust, a trustee who has
1824 exercised reasonable care to ascertain the happening of the event is not liable for a loss
1825 resulting from the trustee's lack of knowledge.

1826 Section 113. Section **75-7-1008** is enacted to read:

1827 **75-7-1008. Exculpation of trustee.**

1828 (1) A term of a trust relieving a trustee of liability for breach of trust is unenforceable
1829 to the extent that it:

1830 (a) relieves the trustee of liability for breach of trust committed in bad faith or with
1831 reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

1832 (b) was inserted as the result of an abuse by the trustee of a fiduciary or confidential
1833 relationship to the settlor.

1834 (2) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an
1835 abuse of a fiduciary or confidential relationship unless the trustee proves that the exculpatory
1836 term is fair under the circumstances and that its existence and contents were adequately
1837 communicated to the settlor.

1838 Section 114. Section **75-7-1009** is enacted to read:

1839 **75-7-1009. Beneficiary's consent, release, or ratification.**

1840 A trustee is not liable to a beneficiary for breach of trust if the beneficiary, while having
1841 capacity, consented to the conduct constituting the breach, released the trustee from liability for
1842 the breach, or ratified the transaction constituting the breach, unless:

1843 (1) the consent, release, or ratification of the beneficiary was induced by improper
1844 conduct of the trustee; or

1845 (2) at the time of the consent, release, or ratification, the beneficiary did not know of
1846 the beneficiary's rights or of the material facts relating to the breach.

1847 Section 115. Section **75-7-1010** is enacted to read:

1848 **75-7-1010. Limitation on personal liability of trustee.**

1849 (1) Except as otherwise provided in the contract, a trustee is not personally liable on a
1850 contract properly entered into in the trustee's fiduciary capacity in the course of administering
1851 the trust if the trustee in the contract disclosed the fiduciary capacity.

1852 (2) A trustee is personally liable for torts committed in the course of administering a
1853 trust, or for obligations arising from ownership or control of trust property, including liability
1854 for violation of environmental law, only if the trustee is personally at fault.

1855 (3) A claim based on a contract entered into by a trustee in the trustee's fiduciary
1856 capacity, on an obligation arising from ownership or control of trust property, or on a tort

1857 committed in the course of administering a trust, may be asserted in a judicial proceeding
1858 against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally
1859 liable for the claim.

1860 Section 116. Section **75-7-1011** is enacted to read:

1861 **75-7-1011. Interest as general partner.**

1862 (1) Except as otherwise provided in Subsection (3) or unless personal liability is
1863 imposed in the contract, a trustee who holds an interest as a general partner in a general or
1864 limited partnership is not personally liable on a contract entered into by the partnership after
1865 the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in
1866 a statement previously filed pursuant to Title 48, Chapter 2a, Utah Revised Uniform Limited
1867 Partnership Act.

1868 (2) Except as otherwise provided in Subsection (3), a trustee who holds an interest as a
1869 general partner is not personally liable for torts committed by the partnership or for obligations
1870 arising from ownership or control of the interest unless the trustee is personally at fault.

1871 (3) The immunity provided by this section does not apply if an interest in the
1872 partnership is held by the trustee in a capacity other than that of trustee or is held by the
1873 trustee's spouse or one or more of the trustee's descendants, siblings, or parents, or the spouse
1874 of any of them.

1875 (4) If the trustee of a revocable trust holds an interest as a general partner, the settlor is
1876 personally liable for contracts and other obligations of the partnership as if the settlor were a
1877 general partner.

1878 Section 117. Section **75-7-1012** is enacted to read:

1879 **75-7-1012. Protection of person dealing with trustee.**

1880 (1) A person other than a beneficiary who in good faith assists a trustee, or who in
1881 good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or
1882 improperly exercising the trustee's powers is protected from liability as if the trustee properly
1883 exercised the power.

1884 (2) A person other than a beneficiary who in good faith deals with a trustee is not
1885 required to inquire into the extent of the trustee's powers or the propriety of their exercise.

1886 (3) A person who in good faith delivers assets to a trustee need not ensure their proper
1887 application.

1888 (4) A person other than a beneficiary who in good faith assists a former trustee, or who
1889 in good faith and for value deals with a former trustee, without knowledge that the trusteeship
1890 has terminated is protected from liability as if the former trustee were still a trustee.

1891 (5) Comparable protective provisions of other laws relating to commercial transactions
1892 or transfer of securities by fiduciaries prevail over the protection provided by this section.

1893 Section 118. Section **75-7-1013** is enacted to read:

1894 **75-7-1013. Certification of trust.**

1895 (1) Instead of furnishing a copy of the trust instrument to a person other than a
1896 beneficiary, the trustee may furnish to the person a certification of trust containing the
1897 following information:

1898 (a) that the trust exists and the date the trust instrument was executed;

1899 (b) the identity of the settlor;

1900 (c) the identity and address of the currently acting trustee;

1901 (d) the powers of the trustee in the pending transaction;

1902 (e) the revocability or irrevocability of the trust and the identity of any person holding a
1903 power to revoke the trust;

1904 (f) the authority of cotrustees to sign or otherwise authenticate and whether all or less
1905 than all are required in order to exercise powers of the trustee; and

1906 (g) the name in which title to trust property may be taken.

1907 (2) A certification of trust may be signed or otherwise authenticated by any trustee.

1908 (3) A certification of trust must state that the trust has not been revoked, modified, or
1909 amended in any manner that would cause the representations contained in the certification of
1910 trust to be incorrect.

1911 (4) A certification of trust need not contain the dispositive terms of a trust.

1912 (5) A recipient of a certification of trust may require the trustee to furnish copies of
1913 those excerpts from the original trust instrument and later amendments which designate the
1914 trustee and confer upon the trustee the power to act in the pending transaction.

1915 (6) A person who acts in reliance upon a certification of trust without knowledge that
1916 the representations contained in it are incorrect is not liable to any person for acting and may
1917 assume without inquiry the existence of the facts contained in the certification. Knowledge of
1918 the terms of the trust may not be inferred solely from the fact that a copy of all or part of the

1919 trust instrument is held by the person relying upon the certification.

1920 (7) A person who in good faith enters into a transaction in reliance upon a certification
1921 of trust may enforce the transaction against the trust property as if the representations contained
1922 in the certification were correct.

1923 (8) A person making a demand for the trust instrument in addition to a certification of
1924 trust or excerpts is liable for costs, expenses, attorney fees, and damages if the court determines
1925 that the person did not act in good faith in demanding the trust instrument.

1926 (9) This section does not limit the right of a person to obtain a copy of the trust
1927 instrument in a judicial proceeding concerning the trust.

1928 Section 119. Section **75-7-1101** is enacted to read:

1929 **Part 11. Miscellaneous Provisions**

1930 **75-7-1101. Uniformity of application and construction.**

1931 In applying and construing this uniform act, consideration must be given to the need to
1932 promote uniformity of the law with respect to its subject matter among states that enact it.

1933 Section 120. Section **75-7-1102** is enacted to read:

1934 **75-7-1102. Electronic records and signatures.**

1935 The provisions of this chapter governing the legal effect, validity, or enforceability of
1936 electronic records or electronic signatures, and of contracts formed or performed with the use
1937 of such records or signatures, conform to the requirements of Section 102 of the Electronic
1938 Signatures in Global and National Commerce Act (15 U.S.C. Sec. 7002) and supersede,
1939 modify, and limit the requirements of the Electronic Signatures in Global and National
1940 Commerce Act.

1941 Section 121. Section **75-7-1103** is enacted to read:

1942 **75-7-1103. Application to existing relationships.**

1943 (1) Except as otherwise provided, this chapter applies to:

1944 (a) all trusts created before, on, or after May 5, 2003;

1945 (b) all judicial proceedings concerning trusts commenced on or after May 5, 2003; and

1946 (c) judicial proceedings concerning trusts commenced before May 5, 2003 unless the
1947 court finds that application of a particular provision of this chapter would substantially interfere
1948 with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in
1949 which case the particular provision of this chapter does not apply and the superseded section

1950 will apply.

1951 (2) Any rule of construction or presumption provided in this chapter applies to trust
1952 instruments executed before May 5, 2003 unless there is a clear indication of a contrary intent
1953 in the terms of the trust.

1954 (3) An act done before May 5, 2003 is not affected by this chapter.

1955 (4) If a right is acquired, extinguished, or barred upon the expiration of a prescribed
1956 period that has commenced to run under any other statute before May 5, 2003, that statute
1957 continues to apply to the right even if it has been repealed or superseded.

1958 Section 122. **Repealer.**

1959 This act repeals:

1960 Section **75-7-205, Court -- Concurrent jurisdiction of litigation involving trusts**
1961 **and third parties.**

1962 Section **75-7-206, Proceedings for review of employment of agents and review of**
1963 **compensation of trustee and employees of trust.**

1964 Section **75-7-207, Trust proceedings -- Initiation by notice -- Necessary parties.**

1965 Section **75-7-306, Personal liability of trustee to third parties.**

1966 Section **75-7-307, Limitations on proceedings against trustees after final account.**

Legislative Review Note

as of 2-13-03 11:25 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

State Impact

It is estimated that provisions of this bill can be implemented with existing resources.

Individual and Business Impact

Beneficiaries of trust agreements may benefit financially from provisions of this legislation, but it cannot be quantified.

Office of the Legislative Fiscal Analyst