

UNIFORM TRUST CODE

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill makes substantial changes in Title 75, Chapter 7, Trust Administration to enact the Utah Uniform Trust Code.

Highlighted Provisions:

This bill:

- ▶ creates the Utah Uniform Trust Code;
- ▶ provides a governing law for the administration of trusts in concert with other states who have adopted the uniform law; and
- ▶ provides some new terms and definitions.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2004.

This bill provides a coordination clause.

Utah Code Sections Affected:

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

25-6-14, as last amended by Chapter 3, Laws of Utah 2003, Second Special Session

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

59-10-103, as last amended by Chapter 3, Laws of Utah 2003, Second Special Session

75-1-201, as last amended by Chapter 49, Laws of Utah 2003

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

75-2-1209, as enacted by Chapter 3, Laws of Utah 2003, Second Special Session

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

75-7-202, as last amended by Chapter 3, Laws of Utah 2003, Second Special Session

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

75-7-108, 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

75-7-112, Utah Code Annotated 1953

75-7-412, Utah Code Annotated 1953

75-7-413, Utah Code Annotated 1953

75-7-414, Utah Code Annotated 1953

75-7-415, Utah Code Annotated 1953

75-7-416, Utah Code Annotated 1953

75-7-417, Utah Code Annotated 1953

75-7-502, Utah Code Annotated 1953

75-7-503, Utah Code Annotated 1953

75-7-504, Utah Code Annotated 1953

75-7-505, Utah Code Annotated 1953

75-7-506, Utah Code Annotated 1953

Enrolled Copy

S.B. 47

75-7-507, Utah Code Annotated 1953
75-7-604, Utah Code Annotated 1953
75-7-605, Utah Code Annotated 1953
75-7-606, Utah Code Annotated 1953
75-7-607, Utah Code Annotated 1953
75-7-701, Utah Code Annotated 1953
75-7-702, Utah Code Annotated 1953
75-7-703, Utah Code Annotated 1953
75-7-704, Utah Code Annotated 1953
75-7-705, Utah Code Annotated 1953
75-7-706, Utah Code Annotated 1953
75-7-707, Utah Code Annotated 1953
75-7-708, Utah Code Annotated 1953
75-7-709, Utah Code Annotated 1953
75-7-801, Utah Code Annotated 1953
75-7-802, Utah Code Annotated 1953
75-7-803, Utah Code Annotated 1953
75-7-804, Utah Code Annotated 1953
75-7-805, Utah Code Annotated 1953
75-7-806, Utah Code Annotated 1953
75-7-807, Utah Code Annotated 1953
75-7-808, Utah Code Annotated 1953
75-7-809, Utah Code Annotated 1953
75-7-810, Utah Code Annotated 1953
75-7-811, Utah Code Annotated 1953
75-7-812, Utah Code Annotated 1953
75-7-813, Utah Code Annotated 1953
75-7-814, Utah Code Annotated 1953

S.B. 47

Enrolled Copy

75-7-815, Utah Code Annotated 1953
75-7-816, Utah Code Annotated 1953
75-7-817, Utah Code Annotated 1953
75-7-901, Utah Code Annotated 1953
75-7-902, Utah Code Annotated 1953
75-7-903, Utah Code Annotated 1953
75-7-904, Utah Code Annotated 1953
75-7-905, Utah Code Annotated 1953
75-7-906, Utah Code Annotated 1953
75-7-907, Utah Code Annotated 1953
75-7-1001, Utah Code Annotated 1953
75-7-1002, Utah Code Annotated 1953
75-7-1003, Utah Code Annotated 1953
75-7-1004, Utah Code Annotated 1953
75-7-1005, Utah Code Annotated 1953
75-7-1006, Utah Code Annotated 1953
75-7-1007, Utah Code Annotated 1953
75-7-1008, Utah Code Annotated 1953
75-7-1009, Utah Code Annotated 1953
75-7-1010, Utah Code Annotated 1953
75-7-1011, Utah Code Annotated 1953
75-7-1012, Utah Code Annotated 1953
75-7-1013, Utah Code Annotated 1953
75-7-1101, Utah Code Annotated 1953
75-7-1102, Utah Code Annotated 1953
75-7-1103, Utah Code Annotated 1953

REPEALS AND REENACTS:

75-7-101, as enacted by Chapter 150, Laws of Utah 1975

- 75-7-203**, as last amended by Chapter 194, Laws of Utah 1977
- 75-7-205**, as enacted by Chapter 150, Laws of Utah 1975
- 75-7-301**, as enacted by Chapter 150, Laws of Utah 1975
- 75-7-302**, as last amended by Chapter 93, Laws of Utah 2002
- 75-7-303**, as last amended by Chapter 179, Laws of Utah 1992
- 75-7-304**, as enacted by Chapter 150, Laws of Utah 1975
- 75-7-305**, as enacted by Chapter 150, Laws of Utah 1975
- 75-7-401**, as last amended by Chapter 39, Laws of Utah 1998
- 75-7-402**, as last amended by Chapter 3, Laws of Utah 2003, Second Special Session
- 75-7-403**, as last amended by Chapter 93, Laws of Utah 2002
- 75-7-404**, as last amended by Chapter 133, Laws of Utah 1991
- 75-7-405**, as enacted by Chapter 150, Laws of Utah 1975
- 75-7-406**, as enacted by Chapter 150, Laws of Utah 1975
- 75-7-407**, as enacted by Chapter 150, Laws of Utah 1975
- 75-7-408**, as enacted by Chapter 150, Laws of Utah 1975
- 75-7-409**, as last amended by Chapter 320, Laws of Utah 2000
- 75-7-410**, as enacted by Chapter 196, Laws of Utah 1999
- 75-7-411**, as enacted by Chapter 196, Laws of Utah 1999
- 75-7-501**, as enacted by Chapter 54, Laws of Utah 1982

RENUMBERS AND AMENDS:

- 75-7-107**, (Renumbered from 75-7-208, as last amended by Chapter 3, Laws of Utah 2003, Second Special Session)
- 75-7-508**, (Renumbered from 75-7-308, as enacted by Chapter 227, Laws of Utah 2002)
- 75-7-509**, (Renumbered from 75-7-309, as enacted by Chapter 227, Laws of Utah 2002)
- 75-7-510**, (Renumbered from 75-7-310, as enacted by Chapter 227, Laws of Utah 2002)
- 75-7-511**, (Renumbered from 75-7-311, as enacted by Chapter 227, Laws of Utah 2002)
- 75-7-512**, (Renumbered from 75-7-312, as enacted by Chapter 227, Laws of Utah 2002)
- 75-7-513**, (Renumbered from 75-7-313, as enacted by Chapter 227, Laws of Utah 2002)

75-7-514, (Renumbered from 75-7-314, as enacted by Chapter 227, Laws of Utah 2002)

75-7-515, (Renumbered from 75-7-315, as enacted by Chapter 227, Laws of Utah 2002)

75-7-516, (Renumbered from 75-7-316, as enacted by Chapter 227, Laws of Utah 2002)

75-7-517, (Renumbered from 75-7-317, as enacted by Chapter 227, Laws of Utah 2002)

75-7-518, (Renumbered from 75-7-318, as enacted by Chapter 227, Laws of Utah 2002)

75-7-519, (Renumbered from 75-7-319, as enacted by Chapter 227, Laws of Utah 2002)

REPEALS:

75-7-206, as enacted by Chapter 150, Laws of Utah 1975

75-7-207, as enacted by Chapter 150, Laws of Utah 1975

75-7-306, as last amended by Chapter 179, Laws of Utah 1992

75-7-307, as last amended by Chapter 30, Laws of Utah 1992

75-7-405.5, as enacted by Chapter 3, Laws of Utah 2003, Second Special Session

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

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

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

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

(2) If the instrument creating an agency or fiduciary account contains provisions authorizing the trust company, its officers, or its directors to exercise their discretion in the matter of investments, funds held in the trust account under that instrument may be invested only in those classes of securities which are approved by the directors of the trust company or a committee of directors appointed for that purpose. If a trust company acts in any agency or fiduciary capacity under appointment by a court of competent jurisdiction, it shall make and account for all investments according to the provisions of Title 75, Utah Uniform Probate Code, unless the underlying instrument provides otherwise.

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

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

(4) In carrying out all aspects of its trust business, a trust company shall have all the powers, privileges, and duties as set forth in [~~Section 75-7-402~~] Sections 75-7-813 and 75-7-814 with respect to trustees, whether or not the trust company is acting as a trustee as defined in Title 75.

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

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

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

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

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

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

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

(a) (i) merge or consolidate with, (ii) acquire control of, acquire all or a portion of the assets and trust business of, or assume all or any portion of the liabilities of, or (iii) transfer control to, transfer all or a portion of its assets and trust business to, or transfer all or a portion of its liabilities to, any other trust company, depository institution, or other corporation, which

institution is authorized under this chapter or under the laws of the United States to engage in the trust business in this state; or

(b) reorganize.

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

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

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

(b) any merger or other combination between a trust company and:

(i) a ~~[wholly-owned]~~ wholly owned trust company subsidiary of that trust company; or

(ii) a ~~[wholly-owned]~~ wholly owned trust company subsidiary of the depository institution holding company which owns or controls that trust company.

Section 4. Section **25-6-14** is amended to read:

25-6-14. Restricting transfers of trust interests.

(1) (a) For trusts created on or after December 31, 2003, a settlor who in writing irrevocably transfers property in trust to a trust having as trustee a company defined in Subsection 7-5-1(1)(d) who holds some or all of the trust assets in this state in a savings account described in Subsection 7-1-103(29), a certificate of deposit, a brokerage account, a trust company fiduciary account, or account or deposit located in this state that is similar to such an account may provide that the income or principal interest of the settlor as beneficiary of the trust may not be either voluntarily or involuntarily transferred before payment or delivery to the settlor as beneficiary by the trustee. The provision shall be considered to be a restriction on the transfer of the settlor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of Section 541(c)(2) of the Bankruptcy Code or successor provision.

(b) This Subsection (1) applies to:

(i) any form of transfer into trust including:

(A) conveyance; or

(B) assignment; and

(ii) transfers of:

(A) personal property;

(B) interests in personal property;

(C) real property; or

(D) interests in real property.

(2) (a) Except as provided in Subsection (2)(c), if a trust has a restriction as provided in Subsection (1)(a), a creditor or other claimant of the settlor may not satisfy a claim, or liability on it, in either law or equity, out of the settlor's transfer or settlor's beneficial interest in the trust.

(b) For the purposes of Subsection (2)(a), a creditor includes one holding or seeking to enforce a judgment entered by a court or other body having adjudicative authority as well as one with a right to payment, whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(c) A restriction provided under Subsection (1) does not prevent a creditor or person described in Subsection (2)(a) from satisfying a claim or liability out of the settlor's beneficial

interest in or transfer into trust if:

(i) the claim is a judgment, order, decree, or other legally enforceable decision or ruling resulting from a judicial, arbitration, mediation, or administrative proceeding commenced prior to or within three years after the trust is created;

(ii) the settlor's transfer into trust is made with actual intent to hinder, delay, or defraud that creditor;

(iii) the trust provides that the settlor may revoke or terminate all or part of the trust without the consent of a person who has a substantial beneficial interest in the trust and the interest would be adversely affected by the exercise of the settlor's power to revoke or terminate all or part of the trust;

(iv) the trust requires that all or a part of the trust's income or principal, or both must be distributed to the settlor as beneficiary;

(v) the claim is for a payment owed by a settlor under a child support judgment or order;

(vi) the transfer is made when the settlor is insolvent or the transfer renders the settlor insolvent;

(vii) the claim is for recovery of public assistance received by the settlor allowed under Title 26, Chapter 19, Medical Benefits Recovery Act;

(viii) the claim is a tax or other amount owed by the settlor to any governmental entity;

(ix) the claim is by a spouse or former spouse of the settlor on account of an agreement or order for the payment of support or alimony or for a division or distribution of property;

(x) (A) the settlor transferred assets into the trust that:

(I) were listed in a written representation of the settlor's assets given to a claimant to induce the claimant to enter into a transaction or agreement with the settlor; or

(II) were transferred from the settlor's control in breach of any written agreement, covenant, or security interest between the settlor and the claimant; or

(B) without limiting the claimant's right to pursue assets not held by the trust, a claimant described in Subsection (2)(c)(x)(A) may only foreclose or execute upon an asset in the trust listed in the written representation described in Subsection (2)(c)(x)(A)(I) or transferred in breach

of a written agreement, covenant, or security interest as provided in Subsection (2)(c)(x)(A)(II) to the extent of the settlor's interest in that asset when it was transferred to the trust or the equivalent value of that asset at the time of foreclosure or execution if the original asset was sold or traded by the trust; or

(xi) the claim is a judgment, award, order, sentence, fine, penalty, or other determination of liability of the settlor for conduct of the settlor constituting fraud, intentional infliction of harm, or a crime.

(d) The statute of limitations for actions to satisfy a claim or liability out of the settlor's beneficial interest in or transfer into trust under Subsections (2)(c)[~~(i)~~](ii), (v), (vii), (viii), (ix), (x), and (xi) is the statute of limitations applicable to the underlying action.

(e) For the purposes of Subsection (2)(c) "revoke or terminate" does not include:

(i) a power to veto a distribution from the trust;

(ii) a testamentary special power of appointment or similar power;

(iii) the right to receive a distribution of income, principal, or both in the discretion of another, including a trustee other than the settlor, an interest in a charitable remainder unitrust or charitable remainder annuity trust as defined in Internal Revenue Code Section 664 or successor provision, or a right to receive principal subject to an ascertainable standard set forth in the trust; or

(iv) the power to appoint nonsubordinate advisers or trust protectors who can remove and appoint trustees, who can direct, consent to or disapprove distributions, or is the power to serve as an investment director or appoint an investment director under [~~Subsections 75-7-302(13) and (14)~~] Section 75-7-906.

(3) The satisfaction of a claim under Subsection (2)(c) is limited to that part of the trust or transfer to which it applies.

(4) (a) If a trust has a restriction as provided under Subsection (1), the restriction prevents anyone, including a person listed in Subsection (2)(a), from asserting any cause of action or claim for relief against a trustee or anyone involved in the counseling, drafting, preparation, execution, or funding of the trust for:

- (i) conspiracy to commit a fraudulent conveyance;
- (ii) aiding and abetting a fraudulent conveyance; or
- (iii) participating in the trust transaction.

(b) A person prevented from asserting a cause of action or claim for relief under this Subsection (4) may assert a cause of action only against:

- (i) the trust assets; or
- (ii) the settlor or beneficiary to the extent allowed under Subsection 25-6-5(1)(a).

(5) In any action brought under Subsection (2)(c), the burden to prove the matter by clear and convincing evidence shall be upon the creditor.

(6) For purposes of this section, the transfer shall be considered to have been made on the date the property was originally transferred in trust.

(7) The courts of this state shall have exclusive jurisdiction over any action brought under this section.

(8) If a trust or a property transfer to a trust is voided or set aside under Subsection (2)(c), the trust or property transfer shall be voided or set aside only to the extent necessary to satisfy:

- (a) the settlor's debt to the creditor or other person at whose instance the trust or property transfer is voided or set aside; and
- (b) the costs and attorney fees allowed by the court.

(9) If a trust or a property transfer to a trust is voided or set aside under Subsection (2)(c) and the court is satisfied that the trustee did not act in bad faith in accepting or administering the property that is the subject of the trust:

(a) the trustee has a first and paramount lien against the property that is the subject of the trust in an amount equal to the entire cost properly incurred by the trustee in a defense of the action or proceedings to void or set aside the trust or the property transfer, including attorney fees;

(b) the trust or property transfer that is voided or set aside is subject to the proper fees, costs, preexisting rights, claims, and interest of the trustee and any predecessor trustee if the

trustee and predecessor trustee did not act in bad faith; and

(c) any beneficiary, including the settlor, may retain a distribution made by exercising a trust power or discretion vested in the trustee of the trust, if the power or discretion was properly exercised before the commencement of the action or proceeding to void or set aside the trust or property transfer.

(10) If at least one trustee is a trust company as defined in Subsection 7-5-1(1)(d), then individuals may also serve as cotrustees.

Section 5. Section **49-11-303** is amended to read:

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

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

Section 6. Section **59-10-103** is amended to read:

59-10-103. Definitions.

(1) As used in this chapter:

(a) "Adoption expenses" means:

(i) any actual medical and hospital expenses of the mother of the adopted child which are incident to the child's birth;

(ii) any welfare agency fees or costs;

(iii) any child placement service fees or costs;

(iv) any legal fees or costs; or

(v) any other fees or costs relating to an adoption.

(b) "Adult with a disability" means an individual who:

(i) is 18 years of age or older;

(ii) is eligible for services under Title 62A, Chapter 5, Services for People with Disabilities; and

(iii) is not enrolled in:

(A) an education program for students with disabilities that is authorized under Section

53A-15-301; or

(B) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind.

(c) (i) For purposes of Subsection 59-10-114(2)(m), "capital gain transaction" means a transaction that results in a:

(A) short-term capital gain; or

(B) long-term capital gain.

(ii) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the commission may by rule define the term "transaction."

(d) "Commercial domicile" means the principal place from which the trade or business of a Utah small business corporation is directed or managed.

(e) "Corporation" includes:

(i) associations;

(ii) joint stock companies; and

(iii) insurance companies.

(f) "Dependent child with a disability" means an individual 21 years of age or younger who:

(i) (A) is diagnosed by a school district representative under rules adopted by the State Board of Education as having a disability classified as:

(I) autism;

(II) deafness;

(III) preschool developmental delay;

(IV) dual sensory impairment;

(V) hearing impairment;

(VI) intellectual disability;

(VII) multidisability;

(VIII) orthopedic impairment;

(IX) other health impairment;

(X) traumatic brain injury; or

(XI) visual impairment;

(B) is not receiving residential services from:

(I) the Division of Services for People with Disabilities created under Section 62A-5-102;

or

(II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind; and

(C) is enrolled in:

(I) an education program for students with disabilities that is authorized under Section 53A-15-301; or

(II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind; or

(ii) is identified under guidelines of the Department of Health as qualified for:

(A) Early Intervention; or

(B) Infant Development Services.

(g) "Employer," "employee," and "wages" are defined as provided in Section 59-10-401.

(h) "Fiduciary" means:

(i) a guardian;

(ii) a trustee;

(iii) an executor;

(iv) an administrator;

(v) a receiver;

(vi) a conservator; or

(vii) any person acting in any fiduciary capacity for any individual.

(i) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the homesteaded land that was held to have been diminished from the Uintah and Ouray Reservation in *Hagen v. Utah*, 510 U.S. 399 (1994).

(j) "Individual" means a natural person and includes aliens and minors.

(k) "Irrevocable trust" means a trust in which the settlor may not revoke or terminate all or part of the trust without the consent of a person who has a substantial beneficial interest in the trust and the interest would be adversely affected by the exercise of the settlor's power to revoke

or terminate all or part of the trust.

(l) For purposes of Subsection 59-10-114(2)(m), "long-term capital gain" is as defined in Section 1222, Internal Revenue Code.

(m) "Nonresident individual" means an individual who is not a resident of this state.

(n) "Nonresident trust" or "nonresident estate" means a trust or estate which is not a resident estate or trust.

(o) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization:

(A) through or by means of which any business, financial operation, or venture is carried on; and

(B) which is not, within the meaning of this chapter:

(I) a trust;

(II) an estate; or

(III) a corporation.

(ii) "Partnership" does not include any organization not included under the definition of "partnership" in Section 761, Internal Revenue Code.

(iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or organization described in Subsection (1)(o)(i).

(p) "Qualifying stock" means stock that is:

(i) (A) common; or

(B) preferred;

(ii) as defined by the commission by rule, originally issued to:

(A) a resident or nonresident individual; or

(B) a partnership if the resident or nonresident individual making a subtraction from federal taxable income in accordance with Subsection 59-10-114(2)(m):

(I) was a partner when the stock was issued; and

(II) remains a partner until the last day of the taxable year for which the resident or nonresident individual makes the subtraction from federal taxable income in accordance with

Subsection 59-10-114(2)(m); and

(iii) issued:

(A) by a Utah small business corporation;

(B) on or after January 1, 2003; and

(C) for:

(I) money; or

(II) other property, except for stock or securities.

(q) (i) "Resident individual" means:

(A) an individual who is domiciled in this state for any period of time during the taxable year, but only for the duration of the period during which the individual is domiciled in this state; or

(B) an individual who is not domiciled in this state but:

(I) maintains a permanent place of abode in this state; and

(II) spends in the aggregate 183 or more days of the taxable year in this state.

(ii) For purposes of Subsection (1)(q)(i)(B), a fraction of a calendar day shall be counted as a whole day.

(r) (i) "Resident estate" or "resident trust" ~~[means:]~~ is as defined in Section 75-7-103.

~~[(A) an estate of a decedent who at death was domiciled in this state;]~~

~~[(B) a trust, or a portion of a trust, consisting of property transferred by will of a decedent who at his death was domiciled in this state; or]~~

~~[(C) a trust administered in this state.]~~

~~[(ii) A trust shall be considered to be administered in this state if:]~~

~~[(A) the place of business where the fiduciary transacts a major portion of its administration of the trust is in this state; or]~~

~~[(B) the trust states that this state is the place of administration, and any administration of the trust is done in this state.]~~

(s) For purposes of Subsection 59-10-114(2)(m), "short-term capital gain" is as defined in Section 1222, Internal Revenue Code.

(t) "Taxable income" and "state taxable income" are defined as provided in Sections 59-10-111, 59-10-112, 59-10-116, 59-10-201.1, and 59-10-204.

(u) "Taxpayer" means any individual, estate, or trust or beneficiary of an estate or trust, whose income is subject in whole or part to the tax imposed by this chapter.

(v) "Uintah and Ouray Reservation" means the lands recognized as being included within the Uintah and Ouray Reservation in:

(i) Hagen v. Utah, 510 U.S. 399 (1994); and

(ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).

(w) (i) "Utah small business corporation" means a corporation that:

(A) is a small business corporation as defined in Section 1244(c)(3), Internal Revenue Code;

(B) except as provided in Subsection (1)(w)(ii), meets the requirements of Section 1244(c)(1)(C), Internal Revenue Code; and

(C) has its commercial domicile in this state.

(ii) Notwithstanding Subsection (1)(w)(i)(B), the time period described in Section 1244(c)(1)(C) and Section 1244(c)(2), Internal Revenue Code, for determining the source of a corporation's aggregate gross receipts shall end on the last day of the taxable year for which the resident or nonresident individual makes a subtraction from federal taxable income in accordance with Subsection 59-10-114(2)(m).

(x) "Ute tribal member" means a person who is enrolled as a member of the Ute Indian Tribe of the Uintah and Ouray Reservation.

(y) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

(2) (a) Any term used in this chapter has the same meaning as when used in comparable context in the laws of the United States relating to federal income taxes unless a different meaning is clearly required.

(b) Any reference to the Internal Revenue Code or to the laws of the United States shall mean the Internal Revenue Code or other provisions of the laws of the United States relating to federal income taxes that are in effect for the taxable year.

(c) Any reference to a specific section of the Internal Revenue Code or other provision of the laws of the United States relating to federal income taxes shall include any corresponding or comparable provisions of the Internal Revenue Code as hereafter amended, redesignated, or reenacted.

Section 7. Section **75-1-201** is amended to read:

75-1-201. General definitions.

Subject to additional definitions contained in the subsequent chapters that are applicable to specific chapters, parts, or sections, and unless the context otherwise requires, in this code:

(1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.

(2) "Application" means a written request to the registrar for an order of informal probate or appointment under Title 75, Chapter 3, Part 3, Informal Probate and Appointment Proceedings.

(3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a "beneficiary of a beneficiary designation," refers to a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or other nonprobate transfer at death; and, as it relates to a "beneficiary designated in a governing instrument," includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment, and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of an insurance or annuity policy, of an account with POD designation, of a security registered in beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or

other nonprobate transfer at death.

(5) "Child" includes any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

(6) "Claims," in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. "Claims" does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

(7) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(8) "Court" means any of the courts of record in this state having jurisdiction in matters relating to the affairs of decedents.

(9) "Descendant" of an individual means all of his descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this title.

(10) "Devise," when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will.

(11) "Devisee" means any person designated in a will to receive a devise. For the purposes of Title 75, Chapter 3, Probate of Wills and Administration, in the case of a devise to an existing trust or trustee, or to a trustee in trust described by will, the trust or trustee is the devisee, and the beneficiaries are not devisees.

(12) "Disability" means cause for a protective order as described by Section 75-5-401.

(13) "Distributee" means any person who has received property of a decedent from his personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a

personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(14) "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this title as originally constituted and as it exists from time to time during administration.

(15) "Exempt property" means that property of a decedent's estate which is described in Section 75-2-403.

(16) "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

(17) "Foreign personal representative" means a personal representative of another jurisdiction.

(18) "Formal proceedings" means proceedings conducted before a judge with notice to interested persons.

(19) "Governing instrument" means a deed, will, trust, insurance or annuity policy, account with POD designation, security registered in beneficiary form (TOD), pension, profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of any similar type.

(20) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, or by written instrument as provided in Section 75-5-202.5, but excludes one who is merely a guardian ad litem.

(21) "Heirs," except as controlled by Section 75-2-711, means persons, including the surviving spouse and state, who are entitled under the statutes of intestate succession to the property of a decedent.

(22) "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, except minority, to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions.

(23) "Informal proceedings" mean those conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will or appointment of a personal representative.

(24) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person. It also includes persons having priority for appointment as personal representative ~~[and]~~, other fiduciaries representing interested persons, a settlor of a trust, if living, or the settlor's legal representative, if any, if the settlor is living but incapacitated. The meaning as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding.

(25) "Issue" of a person means descendant as defined in Subsection (9).

(26) "Joint tenants with the right of survivorship" and "community property with the right of survivorship" includes coowners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of coownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

(27) "Lease" includes an oil, gas, or other mineral lease.

(28) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(29) "Minor" means a person who is under 18 years of age.

(30) "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.

(31) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death.

(32) "Organization" includes a corporation, limited liability company, business trust, estate, trust, partnership, joint venture, association, government or governmental subdivision or agency, or any other legal or commercial entity.

(33) "Parent" includes any person entitled to take, or who would be entitled to take if the

child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

(34) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

(35) "Person" means an individual or an organization.

(36) (a) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

(b) "General personal representative" excludes special administrator.

(37) "Petition" means a written request to the court for an order after notice.

(38) "Proceeding" includes action at law and suit in equity.

(39) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(40) "Protected person" means a person for whom a conservator has been appointed. A "minor protected person" means a minor for whom a conservator has been appointed because of minority.

(41) "Protective proceeding" means a proceeding described in Section 75-5-401.

(42) "Registrar" refers to the official of the court designated to perform the functions of registrar as provided in Section 75-1-307.

(43) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest, or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate, and, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

(44) "Settlement," in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

(45) "Special administrator" means a personal representative as described in Sections 75-3-614 through 75-3-618.

(46) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, [or] any territory or insular possession subject to the jurisdiction of the United States, or a Native American tribe or band recognized by federal law or formally acknowledged by a state.

(47) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(48) "Successors" means persons, other than creditors, who are entitled to property of a decedent under the decedent's will or this title.

(49) "Supervised administration" refers to the proceedings described in Title 75, Chapter 3, Part 5, Supervised Administration.

(50) "Survive," except for purposes of Part 3 of Article VI, Uniform TOD Security Registration Act, means that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under Section 75-2-104 or 75-2-702. The term includes its derivatives, such as "survives," "survived," "survivor," and "surviving."

(51) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(52) "Testator" includes an individual of either sex.

(53) "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. The term also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. The term excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in Title 75, Chapter 6, Nonprobate Transfers, custodial arrangements pursuant to any Uniform Transfers To Minors Act, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, preneed funeral plans

under Title 58, Chapter 9, Funeral Services Licensing Act, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

(54) "Trustee" includes an original, additional, ~~or~~ and successor trustee, and cotrustee, whether or not appointed or confirmed by the court.

(55) "Ward" means a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

(56) "Will" includes codicil and any testamentary instrument which merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.

Section 8. Section **75-1-403** is amended to read:

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

In formal proceedings involving inter vivos or testamentary trusts, including proceedings to modify or terminate a trust, estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the following apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(6) Whenever consent may be given by a person pursuant to this chapter, the consent of~~

~~a person who may represent and bind the person represented under this section is the consent of, and is binding on, the person represented unless the person represented objects to the representation before the consent would otherwise become effective.]~~

Section 9. Section **75-2-1209** is amended to read:

75-2-1209. Real estate conveyed to a trust under the Statutory Rule Against Perpetuities.

On or after the effective date, when title to real property is granted to the trustee of a trust governed by Title 75, Chapter 2, Part 12, [~~Uniform~~] Statutory Rule Against Perpetuities, the terms of the trust, provisions regarding the appointment of successor trustees, and the names and addresses of successor trustees must be disclosed in accordance with Section [~~75-7-409~~] 75-7-816.

Section 10. Section **75-3-703** is amended to read:

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

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

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

formal proceeding questioning his appointment or fitness to continue, or a supervised administration proceeding. Nothing in this section affects the duty of the personal representative to administer and distribute the estate in accordance with the rights of claimants, the surviving spouse, any minor and dependent children, and any pretermitted child of the decedent as described elsewhere in this code.

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

Section 11. Section **75-3-913** is amended to read:

75-3-913. Distributions to trustee.

(1) Before distributing to a trustee, the personal representative may require that the trust be registered if the state in which it is to be administered provides for registration and that the trustee inform the qualified beneficiaries as provided in Section [~~75-7-303~~] 75-7-811.

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

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

Section 12. Section **75-5-417** is amended to read:

75-5-417. General duty of conservator.

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

(2) The conservator shall, for all estates in excess of \$50,000, excluding the residence owned by the ward, send a report with a full accounting to the court on an annual basis. For estates less than \$50,000, excluding the residence owned by the ward, the conservator shall fill out an informal annual report and mail the report to the court. The report shall include the

following: a statement of assets at the beginning and end of the reporting year, income received during the year, disbursements for the support of the ward, and other expenses incurred by the estate. The court may require additional information. The forms for both the informal report for estates under \$50,000, excluding the residence owned by the ward, and the full accounting report for larger estates shall be approved by the judicial council. This annual report shall be examined and approved by the court.

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

(4) (a) ~~[If] The court may impose a fine in an amount not to exceed \$5,000, if, after receiving written notice of the failure to file and after a grace period of two months have elapsed,~~ a conservator or corporate fiduciary: ~~[(a)]~~

~~(i) makes a substantial misstatement on filings of any required annual reports; [(b)]~~

~~(ii) is guilty of gross impropriety in handling the property of the ward; or [(c)]~~

~~(iii) willfully fails to file the report required by this section[, after receiving written notice of the failure to file and after a grace period of two months have elapsed; then the court may impose a fine in an amount not to exceed \$5,000].~~

(b) The court may also order restitution of funds misappropriated from the estate of a ward.

(c) The penalty shall be paid by the conservator or corporate fiduciary and may not be paid by the estate.

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

Section 13. Section **75-7-101** is repealed and reenacted to read:

CHAPTER 7. UTAH UNIFORM TRUST CODE

Part 1. General Provisions

75-7-101. Title.

This chapter is known as the "Utah Uniform Trust Code."

Section 14. Section **75-7-102** is enacted to read:

75-7-102. Scope.

This chapter applies to trusts as defined in Section 75-1-201.

Section 15. Section **75-7-103** is enacted to read:

75-7-103. Definitions.

(1) In this chapter:

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

(b) "Beneficiary" means a person that:

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

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

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

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

(e) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

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

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

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

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

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

(i) "Resident estate" or "resident trust" means:

(i) an estate of a decedent who at death was domiciled in this state;

(ii) a trust, or a portion of a trust, consisting of property transferred by will of a decedent

who at his death was domiciled in this state; or

(iii) a trust administered in this state.

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

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

(l) "Spendthrift provision" means a term of a trust which restrains both voluntary and involuntary transfer or encumbrance of a beneficiary's interest.

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

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

(2) Terms not specifically defined in this section have the meanings provided in Section 75-1-201.

Section 16. Section **75-7-104** is enacted to read:

75-7-104. Knowledge.

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

(a) has actual knowledge of it;

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

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

(2) An organization that conducts activities through employees has notice or knowledge of a fact involving a trust only from the time the information was received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if

it maintains reasonable routines for communicating significant information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

Section 17. Section **75-7-105** is enacted to read:

75-7-105. Default and mandatory rules.

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

(2) Except as specifically provided in this chapter, the terms of a trust prevail over any provision of this chapter except:

(a) the requirements for creating a trust;

(b) the duty of a trustee to act in good faith and in accordance with the purposes of the trust;

(c) the requirement that a trust and its terms be for the benefit of its beneficiaries;

(d) the power of the court to modify or terminate a trust under Sections 75-7-410 through 75-7-416;

(e) the effect of a spendthrift provision, Section 26-6-14, and the rights of certain creditors and assignees to reach a trust as provided in Part 5, Creditor's Claims-Spendthrift and Discretionary Trusts;

(f) the power of the court under Section 75-7-702 to require, dispense with, or modify or terminate a bond;

(g) the effect of an exculpatory term under Section 75-7-1008;

(h) the rights under Sections 75-7-1010 through 75-7-1013 of a person other than a trustee or beneficiary;

(i) periods of limitation for commencing a judicial proceeding; and

(j) the subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in Sections 75-7-203 and 75-7-205.

Section 18. Section **75-7-106** is enacted to read:

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

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

Section 19. Section **75-7-107**, which is renumbered from Section 75-7-208 is renumbered and amended to read:

[75-7-208]. 75-7-107. Governing law.

(1) For purposes of this section:

(a) "Foreign trust" means a trust that is created in another state or country and valid in the state or country in which the trust is created.

(b) "State law provision" means a provision that the laws of a named state govern the validity, construction, and administration of a trust.

(2) If a trust has a state law provision specifying this state, the validity, construction, and administration of the trust are to be governed by the laws of this state if any administration of the trust is done in this state.

(3) For all trusts created on or after December 31, 2003, if a trust does not have a state law provision, the validity, construction, and administration of the trust are to be governed by the laws of this state if the trust is administered in this state.

(4) A trust shall be considered to be administered in this state if:

(a) the trust states that this state is the place of administration, and any administration of the trust is done in this state; or

(b) the place of business where the fiduciary transacts a major portion of its administration of the trust is in this state.

~~(4)~~ (5) If a foreign trust is administered in this state as provided in this section, the following provisions are effective and enforceable under the laws of this state:

(a) a provision in the trust that restricts the transfer of trust assets in a manner similar to Section 25-6-14;

(b) a provision that allows the trust to be perpetual; or

(c) a provision that is not expressly prohibited by the law of this state.

~~[(5)]~~ (6) A foreign trust that moves its administration to this state is valid whether or not the trust complied with the laws of this state at the time of the trust's creation or after the trust's creation.

~~[(6)]~~ (7) Unless otherwise designated in the trust instrument, a trust is administered in this state if it meets the requirements of Subsection ~~[59-10-103(1)(r)(ii)]~~ (4).

Section 20. Section **75-7-108** is enacted to read:

75-7-108. Principal place of administration.

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

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

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

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

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

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

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

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

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

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

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

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

(6) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to Section 75-7-704.

Section 21. Section **75-7-109** is enacted to read:

75-7-109. Methods and waiver of notice.

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

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

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

Section 22. Section **75-7-110** is enacted to read:

75-7-110. Nonjudicial settlement agreements.

(1) For purposes of this section, "interested persons" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

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

(3) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved

by the court under this chapter or other applicable law.

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

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

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

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

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

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

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

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

Section 23. Section **75-7-111** is enacted to read:

75-7-111. Rules of construction.

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

Section 24. Section **75-7-112** is enacted to read:

75-7-112. Penalty provisions.

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

Section 25. Section **75-7-202** is amended to read:

75-7-202. Effect of administration in this state -- Consent to jurisdiction.

(1) The trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust if the trustee acts as trustee of a trust administered in this state.

(2) To the extent of the beneficial interests in a trust administered in this state, the beneficiaries of the trust are subject to the jurisdiction of the courts of this state regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(3) By accepting the delegation of a trust function from the trustee of a trust administered in this state, the agent submits to the jurisdiction of the courts of this state regarding any matter involving the trust.

(4) Unless otherwise designated in the trust instrument, a trust is administered in this state if it meets the requirements of Subsection [~~59-10-103(1)(r)(ii)~~] 75-7-107(4).

Section 26. Section **75-7-203** is repealed and reenacted to read:

75-7-203. Subject matter jurisdiction.

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

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

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

Section 27. Section **75-7-205** is repealed and reenacted to read:

75-7-205. Venue.

(1) Except as otherwise provided in Subsection (2), venue for a judicial proceeding involving a trust is in the county in which the trust's principal place of administration is or will be located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

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

Section 28. Section **75-7-301** is repealed and reenacted to read:

Part 3. Representation

75-7-301. Basic effect.

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

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

(3) Except as otherwise provided in Sections 75-7-411 and 25-6-14, a person who under this part may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

Section 29. Section **75-7-302** is repealed and reenacted to read:

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

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

Section 30. Section **75-7-303** is repealed and reenacted to read:

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

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

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

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

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

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

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

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

Section 31. Section **75-7-304** is repealed and reenacted to read:

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

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

Section 32. Section **75-7-305** is repealed and reenacted to read:

75-7-305. Appointment of guardian ad litem or other representative.

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

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

(3) In making decisions, a guardian ad litem or other representative may consider general benefit accruing to the living members of the individual's family.

Section 33. Section **75-7-401** is repealed and reenacted to read:

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

75-7-401. Methods of creating trust.

A trust may be created by:

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

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

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

Section 34. Section **75-7-402** is repealed and reenacted to read:

75-7-402. Requirements for creation.

(1) A trust is created only if:

(a) the settlor has capacity to create a trust, which standard of capacity shall be the same as for a person to create a will;

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

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

(i) a charitable trust;

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

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

(d) the trustee has duties to perform; and

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

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

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

Section 35. Section **75-7-403** is repealed and reenacted to read:

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

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

the time of creation:

- (1) the settlor was domiciled, had a place of abode, or was a national;
- (2) a trustee was domiciled or had a place of business; or
- (3) any trust property was located.

Section 36. Section **75-7-404** is repealed and reenacted to read:

75-7-404. Trust purposes.

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

Section 37. Section **75-7-405** is repealed and reenacted to read:

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

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

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

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

Section 38. Section **75-7-406** is repealed and reenacted to read:

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

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

Section 39. Section **75-7-407** is repealed and reenacted to read:

75-7-407. Evidence of oral trust.

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

Section 40. Section **75-7-408** is repealed and reenacted to read:

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

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

Section 41. Section **75-7-409** is repealed and reenacted to read:

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

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

Section 42. Section **75-7-410** is repealed and reenacted to read:

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

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

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

Section 43. Section **75-7-411** is repealed and reenacted to read:

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

(1) A noncharitable, irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney

or the terms of the trust, by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized, or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.

(2) A noncharitable, irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable, irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

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

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

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

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

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

Section 44. Section **75-7-412** is enacted to read:

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

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

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

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

Section 45. Section **75-7-413** is enacted to read:

75-7-413. Cy pres.

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

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

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

and

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

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

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

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

Section 46. Section **75-7-414** is enacted to read:

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

(1) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than \$100,000, may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

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

(3) Upon termination of a trust under this section, the trustee shall distribute the trust

property in a manner consistent with the purposes of the trust.

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

Section 47. Section **75-7-415** is enacted to read:

75-7-415. Reformation to correct mistakes.

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

Section 48. Section **75-7-416** is enacted to read:

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

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

Section 49. Section **75-7-417** is enacted to read:

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

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

Section 50. Section **75-7-501** is repealed and reenacted to read:

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

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

To the extent a beneficiary's interest is not protected by a spendthrift provision or Section 26-6-14, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to relief as is appropriate under the circumstances.

Section 51. Section **75-7-502** is enacted to read:

75-7-502. Spendthrift provisions for beneficiaries other than the settlor.

(1) A spendthrift provision for a beneficiary other than the settlor is valid only if it restrains both voluntary and involuntary transfer of a beneficiary's interest, even if the beneficiary is the trustee or cotrustee of the trust.

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

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

Section 52. Section **75-7-503** is enacted to read:

75-7-503. Exceptions to spendthrift provision.

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

(2) Even if a trust contains a spendthrift provision, a beneficiary's child who has a judgment or court order against the beneficiary for support or maintenance, or a judgment creditor who has provided services for the protection of a beneficiary's interest in the trust, may obtain from a court an order attaching present or future distributions to or for the benefit of the beneficiary.

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

Section 53. Section **75-7-504** is enacted to read:

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

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

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

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

(b) the trustee has abused the discretion.

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

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

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

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

Section 54. Section **75-7-505** is enacted to read:

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

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

(a) During the lifetime of the settlor, the property of a revocable trust is subject to the claims of the settlor's creditors. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(b) With respect to an irrevocable trust other than an irrevocable trust that meets the requirements of Section 25-6-14, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit. If the trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(c) After the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death, but not property received by the trust as a result of the death of the settlor which is otherwise exempt

from the claims of the settlor's creditors, is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

(2) For purposes of this section:

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

(b) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in Subsection 2041(b)(2), 2514(e), or Section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on May 1, 2004.

Section 55. Section **75-7-506** is enacted to read:

75-7-506. Overdue distribution.

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

Section 56. Section **75-7-507** is enacted to read:

75-7-507. Personal obligations of trustee.

Trust property is not subject to personal obligations of the trustee, even if the trustee becomes insolvent or bankrupt.

Section 57. Section **75-7-508**, which is renumbered from Section 75-7-308 is renumbered and amended to read:

[75-7-308]. 75-7-508. Notice to creditors.

(1) A trustee for an inter vivos revocable trust, upon the death of the settlor, may publish a notice to creditors once a week for three successive weeks in a newspaper of general circulation in the county where the settlor resided at the time of death, providing the trustee's name and

address and notifying creditors of the deceased settlor to present their claims within three months after the date of the first publication of the notice or be forever barred.

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

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

Section 58. Section **75-7-509**, which is renumbered from Section 75-7-309 is renumbered and amended to read:

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

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

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

(b) the time provided by Subsection ~~[75-3-308]~~ 75-7-508(2) for creditors who are given actual notice, and where notice is published, within the time provided in Subsection ~~[75-3-308]~~ 75-7-508(1) for all claims barred by publication.

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

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

the beneficiaries of the deceased settlor, unless presented as follows:

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

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

(4) Nothing in this section affects or prevents:

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

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

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

Section 59. Section **75-7-510**, which is renumbered from Section 75-7-310 is renumbered and amended to read:

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

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

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

(b) The claimant may commence a proceeding against the trustee in any court where the trustee may be subjected to jurisdiction to obtain payment of the claim against the deceased settlor's estate or the trust estate, but the commencement of the proceeding must occur within the

time limited for presenting the claim. No presentation of claim is required in regard to matters claimed in proceedings against the deceased settlor which were pending at the time of the deceased settlor's death.

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

Section 60. Section **75-7-511**, which is renumbered from Section 75-7-311 is renumbered and amended to read:

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

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

- (a) reasonable funeral expenses;
- (b) costs and expenses of administration;
- (c) debts and taxes with preference under federal law;
- (d) reasonable and necessary medical and hospital expenses of the last illness of the deceased settlor, including compensation of persons attending him, and medical assistance if Section 26-19-13.5 applies;
- (e) debts and taxes with preference under other laws of this state; and
- (f) all other claims.

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

Section 61. Section **75-7-512**, which is renumbered from Section 75-7-312 is renumbered and amended to read:

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

(1) As to claims presented in the manner described in Section ~~[75-7-310]~~ 75-7-510 and

within the time limit prescribed in Section [~~75-7-309~~] 75-7-509, the trustee may mail a notice to any claimant stating that the claim has been allowed or disallowed. If, after allowing or disallowing a claim, the trustee changes the decision concerning the claim, the trustee shall notify the claimant. The trustee may not change a disallowance of a claim after the time for the claimant to file a petition for allowance or to commence a proceeding on the claim has expired and the claim has been barred. If the notice of disallowance warns the claimant of the impending bar, a claim which is disallowed in whole or in part by the trustee is barred so far as not allowed, unless the claimant seeks a court-ordered allowance by filing a petition for allowance in the court or by commencing a proceeding against the trustee not later than 60 days after the mailing of the notice of disallowance or partial allowance. If the trustee fails to mail notice to a claimant of action on the claim within 60 days after the time for original presentation of the claim has expired, this failure has the effect of a notice of allowance.

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

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

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

Section 62. Section **75-7-513**, which is renumbered from Section 75-7-313 is renumbered and amended to read:

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

(1) Upon the expiration of the earliest of the time limitations provided in Section [~~75-7-309~~] 75-7-509 for the presentation of claims, the trustee shall pay the claims allowed

against the deceased settlor's estate in the order of priority prescribed, for claims already presented which have not yet been allowed or whose allowance has been appealed, and for unbarred claims which may yet be presented, including costs and expenses of administration. By petition to the court in a proceeding for that purpose, a claimant whose claim has been allowed but not paid as provided in this section may secure an order directing the trustee to pay the claim to the extent that funds of the deceased settlor's estate or trust estate are available for the payment.

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

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

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

Section 63. Section **75-7-514**, which is renumbered from Section 75-7-314 is renumbered and amended to read:

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

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

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

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

Section 64. Section **75-7-515**, which is renumbered from Section 75-7-315 is renumbered

and amended to read:

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

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

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

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

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

Section 65. Section **75-7-516**, which is renumbered from Section 75-7-316 is renumbered and amended to read:

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

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

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

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

Section 66. Section **75-7-517**, which is renumbered from Section 75-7-317 is renumbered and amended to read:

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

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

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

Section 67. Section **75-7-518**, which is renumbered from Section 75-7-318 is renumbered and amended to read:

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

When a claim against a deceased settlor's estate has been presented in any manner, the trustee may, if it appears in the best interest of the deceased settlor's estate, compromise the claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

Section 68. Section **75-7-519**, which is renumbered from Section 75-7-319 is renumbered and amended to read:

[75-7-319]. 75-7-519. Encumbered assets.

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

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

Section 69. Section **75-7-604** is enacted to read:

Part 6. Revocable Trusts

75-7-604. Capacity of settlor of revocable trust.

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

Section 70. Section **75-7-605** is enacted to read:

75-7-605. Revocation or amendment of revocable trust.

(1) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This Subsection (1) does not apply to a trust created under an instrument executed before May 1, 2004.

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

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

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

(3) The settlor may revoke or amend a revocable trust:

(a) by substantially complying with a method provided in the terms of the trust; or

(b) if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by:

(i) executing a later will or codicil that expressly refers to the trust or specifically devises property that would otherwise have passed according to the terms of the trust; or

(ii) any other method manifesting clear and convincing evidence of the settlor's intent.

(4) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

(5) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power.

(6) A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

(7) A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the

assumption that the trust had not been amended or revoked.

Section 71. Section **75-7-606** is enacted to read:

75-7-606. Settlor's powers -- Powers of withdrawal.

(1) While a trust is revocable and the settlor has capacity to revoke the trust, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

(2) If a revocable trust has more than one settlor, the duties of the trustee are owed to all of the settlors having capacity to revoke the trust.

(3) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

Section 72. Section **75-7-607** is enacted to read:

75-7-607. Limitation on action contesting validity of revocable trust -- Distribution of trust property.

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

(a) three years after the settlor's death; or

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

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

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

or

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

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

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

Section 73. Section **75-7-701** is enacted to read:

Part 7. Office of Trustee

75-7-701. Accepting or declining trusteeship.

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

(a) by substantially complying with a method of acceptance provided in the terms of the trust; or

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

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

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

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

(b) inspect or investigate trust property to determine potential liability under

environmental or other law or for any other purpose.

Section 74. Section **75-7-702** is enacted to read:

75-7-702. Trustee's bond.

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

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

(3) A regulated financial service institution qualified to do trust business in this state need not give bond, unless required by the terms of the trust. The cost of any bond shall be borne by the trust.

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

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

75-7-703. Cotrustees.

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

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

(3) A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity, or the cotrustee has properly delegated the performance of the function to another trustee.

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

(5) A trustee may not delegate to a cotrustee the performance of a function the settlor intended the trustees to perform jointly as determined from the terms of the trust. If one of the

cotrustees is a regulated financial service institution qualified to do trust business in this state and the remaining cotrustees are individuals, a delegation by the individual cotrustees to the regulated financial service institution of the performance of trust investment functions shall be presumed to be in accordance with the settlor's intent unless the terms of the trust specifically provide otherwise. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.

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

(7) Each trustee shall exercise reasonable care to:

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

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

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

Section 76. Section **75-7-704** is enacted to read:

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

(1) A vacancy in a trusteeship occurs if:

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

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

(c) a trustee resigns;

(d) a trustee is disqualified or removed;

(e) a trustee dies; or

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

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

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

- (a) by a person designated in the terms of the trust to act as successor trustee;
- (b) by a person appointed by unanimous agreement of the qualified beneficiaries; or
- (c) by a person appointed by the court.

(4) A vacancy in a trusteeship of a charitable trust that is required to be filled must be filled in the following order of priority:

- (a) by a person designated in the terms of the trust to act as successor trustee;
- (b) by a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust if the attorney general concurs in the selection; or
- (c) by a person appointed by the court.

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

Section 77. Section **75-7-705** is enacted to read:

75-7-705. Resignation of trustee.

(1) A trustee may resign:

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

(b) with the approval of the court.

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

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

Section 78. Section **75-7-706** is enacted to read:

75-7-706. Removal of trustee.

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

(2) The court may remove a trustee if:

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

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

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

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

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

Section 79. Section **75-7-707** is enacted to read:

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

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

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

Section 80. Section **75-7-708** is enacted to read:

75-7-708. Compensation of trustee.

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

Section 81. Section **75-7-709** is enacted to read:

75-7-709. Reimbursement of expenses.

(1) A trustee is entitled to be reimbursed out of the trust property, with interest as

appropriate, for:

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

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

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

Section 82. Section **75-7-801** is enacted to read:

Part 8. Duties and Powers of Trustee

75-7-801. Duty to administer trust.

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

Section 83. Section **75-7-802** is enacted to read:

75-7-802. Duty of loyalty.

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

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

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

(b) the transaction was approved by the court;

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

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

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

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

(a) the trustee's spouse;

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

(c) an agent of the trustee, including but not limited to an attorney, accountant, or financial advisor; or

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

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

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

(6) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment complies with the prudent investor rule of Section 75-7-901. The trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust.

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

(8) This section does not preclude the following actions by the trustee:

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

(b) payment of reasonable compensation to the trustee;

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

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

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

(f) collecting, holding, and retaining trust assets received from a trustor until, in the judgment of the trustee, disposition of the assets should be made, even though the assets include an asset in which the trustee is personally interested;

(g) acquiring an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest;

(h) borrowing money to be repaid from the trust assets or otherwise;

(i) advancing money to be repaid from the assets or otherwise;

(j) employing persons, including attorneys, auditors, investment advisers, or agents, even if they are associated with the trustee;

(i) to advise or assist the trustee in the performance of the trustee's administrative duties or perform any act of administration, whether or not discretionary; or

(ii) to act without independent investigation upon their recommendations;

(k) if a governing instrument or order requires or authorizes investment in United States government obligations, investing in those obligations, either directly or in the form of securities or other interests, in any open-end or closed-end management type investment company or investment trust registered under the provisions of the Investment Company Act of 1940, 15 U.S.C. Sections 80a-1 through 80a-64 if:

(i) the portfolio of the investment company or investment trust is limited to United States government obligations, and repurchase agreements are fully collateralized by United States government obligations; and

(ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian.

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

Section 84. Section **75-7-803** is enacted to read:

75-7-803. Impartiality.

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

Section 85. Section **75-7-804** is enacted to read:

75-7-804. Prudent administration.

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

Section 86. Section **75-7-805** is enacted to read:

75-7-805. Costs of administration.

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

Section 87. Section **75-7-806** is enacted to read:

75-7-806. Trustee's skills.

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

Section 88. Section **75-7-807** is enacted to read:

75-7-807. Control and protection of trust property.

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

Section 89. Section **75-7-808** is enacted to read:

75-7-808. Recordkeeping and identification of trust property.

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

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

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

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

Section 90. Section **75-7-809** is enacted to read:

75-7-809. Enforcement and defense of claims.

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

Section 91. Section **75-7-810** is enacted to read:

75-7-810. Collecting trust property.

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

Section 92. Section **75-7-811** is enacted to read:

75-7-811. Duty to inform and report.

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

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

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

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

(c) within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in Subsection (3); and

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

(3) A trustee shall send to the qualified beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the amount of the trustee's compensation or a fee schedule or other writing showing how the trustee's compensation was determined, a listing of the trust assets and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee, unless the terms of the trust provide otherwise. A personal representative, conservator, or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

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

Section 93. Section **75-7-812** is enacted to read:

75-7-812. Discretionary powers -- Tax savings.

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

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

(a) a person other than a settlor who is a beneficiary and trustee of a trust that confers on

the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard relating to the trustee's individual health, education, support, or maintenance within the meaning of Subsection 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on May 1, 2004; and

(b) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

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

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

(a) a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in Subsection 2056(b)(5) or 2523(e) of the Internal Revenue Code of 1986, as in effect on May 1, 2004, was previously allowed;

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

(c) a trust if contributions to the trust qualify for the annual exclusion under Subsection 2503(c) of the Internal Revenue Code of 1986, as in effect on May 1, 2004.

Section 94. Section **75-7-813** is enacted to read:

75-7-813. General powers of trustee.

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

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

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

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

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

(iii) any other powers conferred by this chapter.

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

Section 95. Section **75-7-814** is enacted to read:

75-7-814. Specific powers of trustee.

(1) Without limiting the authority conferred by Section 75-7-813, a trustee may:

- (a) collect trust property and accept or reject additions to the trust property from a settlor or any other person;
- (b) acquire or sell property, for cash or on credit, at public or private sale;
- (c) exchange, partition, or otherwise change the character of trust property;
- (d) deposit trust money in an account in a regulated financial service institution;
- (e) borrow money, with or without security from any financial institution, including a financial institution that is serving as a trustee or one of its affiliates, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;
- (f) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;
- (g) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:
 - (i) vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;
 - (ii) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;
 - (iii) pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and
 - (iv) deposit the securities with a depository or other regulated financial service institution;
- (h) with respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures,

demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

(i) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(j) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(k) insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

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

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

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

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

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

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

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

(n) pay or contest any claim, settle a claim by or against the trust, and release, in whole or

in part, a claim belonging to the trust;

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

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

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

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

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

(t) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

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

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

(ii) paying it to the beneficiary's custodian under Title 75, Chapter 5a, Uniform Transfers to Minors Act;

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

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

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

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

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

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

(z) on termination of the trust, exercise the powers appropriate to finalize the administration of the trust and distribute the trust property to the persons entitled to it.

(2) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances.

(a) The trustee shall exercise reasonable care, skill, and caution in:

(i) selecting the agent;

(ii) establishing the scope and terms of the delegation consistent with the purposes of the trust; and

(iii) periodically reviewing the agent's actions to monitor the agent's performance and compliance with the terms of the delegation.

(b) In performing a delegated function, an agent has a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(c) A trustee who complies with the requirements of this Subsection (2) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

Section 96. Section **75-7-815** is enacted to read:

75-7-815. Distribution upon termination.

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

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

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

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

- (a) it was induced by improper conduct of the trustee; or
- (b) the beneficiary, at the time of the release, did not know or had no reason to know of the beneficiary's rights or of the material facts relating to the breach.

Section 97. Section **75-7-816** is enacted to read:

75-7-816. Recitals when title to real property is in trust -- Failure.

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

- (a) in the deed of transfer; or
- (b) in an instrument signed by the grantor and recorded in the same office as the grant to the trustee.

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

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

- (a) the name of the trustee;
- (b) the address of the trustee; and
- (c) the name and date of the trust.

(4) Any real property titled in a trust which has a restriction on transfer described in Section 25-6-14 shall include in the title the words "asset protection trust".

Section 98. Section **75-7-817** is enacted to read:

75-7-817. Marital deduction formulas -- Trusts.

(1) For estates of decedents dying after December 31, 1981, where a decedent's trust executed before September 13, 1981, contains a formula expressly providing that the decedent's spouse is to receive the maximum amount of property qualifying for the marital deduction allowable by federal law, this formula shall be construed as referring to the unlimited marital deduction allowable by federal law as amended by Section 403(a) of the Economic Recovery Tax Act of 1981.

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

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

Part 9. Utah Uniform Prudent Investor Act

75-7-901. Prudent investor rule.

(1) Except as otherwise provided in Subsection (2), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this chapter. If a trustee is named on the basis of a trustee's representations of special skills or expertise, the trustee has a duty to use those special skills or expertise.

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

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

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

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

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

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

(a) general economic conditions;

(b) the possible effect of inflation or deflation;

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

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

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

(f) other resources of the beneficiaries;

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

and

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

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

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

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

75-7-903. Diversification.

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

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

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

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

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

75-7-905. Reviewing compliance.

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight. This section does not require a specific outcome in investing.

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

75-7-906. Investment direction.

(1) For purposes of this section, "investment direction" means a direction that is binding on the trustee, except for an investment direction given by a settlor as described in Subsection (2) to do any of the following with respect to an investment:

- (a) retention;
- (b) purchase;
- (c) sale;
- (d) exchange;
- (e) tender; or
- (f) any other transaction affecting ownership in the investment.

(2) (a) During the time period that a trust is revocable, the trustee may follow any investment direction of the settlor, including an investment direction that:

- (i) is manifestly contrary to the terms of the trust; or
- (ii) seriously breaches a fiduciary duty to the beneficiaries.

(b) The trustee is not liable for any loss resulting from following an investment direction described in Subsection (2)(a).

(3) If the terms of a trust authorize a person to give investment direction to the trustee,

the person authorized to give investment direction:

(a) is presumptively a fiduciary only with respect to an investment direction that the person gives to the trustee;

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

(i) the purposes of the trust; and

(ii) the interests of the beneficiaries; and

(c) is liable for any loss that results from breach of the fiduciary duty only with respect to an investment direction that the person gives to the trustee.

(4) Except in cases of willful misconduct or gross negligence, a trustee is not liable for any loss that results from following an investment direction if:

(a) the terms of a trust authorizes a person to give the investment direction to the trustee;
and

(b) the trustee acts in accordance with the investment direction given by a person described in Subsection (4)(a).

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

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

(i) is presumptively a fiduciary;

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

(A) the purposes of the trust; and

(B) the interests of the beneficiaries; and

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

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

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

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

The following terms or comparable language in the provisions of a trust, unless otherwise

limited or modified, authorizes any investment or strategy permitted under this chapter: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

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

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

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

- (1) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.
- (2) To remedy a breach of trust that has occurred or may occur, the court may:
 - (a) compel the trustee to perform the trustee's duties;
 - (b) enjoin the trustee from committing a breach of trust;
 - (c) compel the trustee to redress a breach of trust by paying money, restoring property, or other means;
 - (d) order a trustee to account;
 - (e) appoint a special fiduciary to take possession of the trust property and administer the trust;
 - (f) suspend the trustee;
 - (g) remove the trustee as provided in Section 75-7-706;
 - (h) reduce or deny compensation to the trustee;
 - (i) subject to Section 75-7-1012, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or
 - (j) order any other appropriate relief.

Section 107. Section **75-7-1002** is enacted to read:

75-7-1002. Damages for breach of trust.

(1) A trustee who commits a breach of trust is liable to the beneficiaries affected for the greater of:

(a) the amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred; or

(b) the profit the trustee made by reason of the breach.

(2) Except as otherwise provided in this Subsection (2), if more than one trustee is liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially more at fault than another trustee or if the trustee committed the breach of trust in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A trustee who received a benefit from the breach of trust is not entitled to contribution from another trustee to the extent of the benefit received.

Section 108. Section **75-7-1003** is enacted to read:

75-7-1003. Damages in absence of breach.

(1) A trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.

(2) Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.

Section 109. Section **75-7-1004** is enacted to read:

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

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

(2) If a trustee defends or prosecutes any proceeding in good faith, whether successful or not, the trustee is entitled to receive from the trust the necessary expenses and disbursements, including reasonable attorney's fees, incurred.

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

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

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

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

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

- (a) the removal, resignation, or death of the trustee;
- (b) the termination of the beneficiary's interest in the trust; or
- (c) the termination of the trust.

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

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

75-7-1006. Reliance on trust instrument.

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

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

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

If the happening of an event, including marriage, divorce, performance of educational requirements, or death, affects the administration or distribution of a trust, a trustee is not liable for a loss resulting from the trustee's lack of knowledge or lack of notice.

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

75-7-1008. Exculpation of trustee.

A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it:

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

(2) was inserted by the trustee or fiduciary without disclosure of its existence and contents.

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

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

A trustee is not liable to a beneficiary for breach of trust if the beneficiary, while having capacity, consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless at the time of the consent, release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material facts relating to the breach.

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

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

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

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

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

(4) The question of liability as between the trust estate and the trustee individually may be determined in a proceeding for accounting, surcharge, or indemnification or other appropriate proceeding.

(5) Whenever an instrument creating a trust reserves to the settlor, or vests in an advisory

or investment committee, or in any other person or persons, including one or more cotrustees to the exclusion of the trustee or to the exclusion of one or more of several trustees, authority to direct the making or retention of any investment, the excluded trustee or trustees shall not be liable, either individually or as a fiduciary, for any loss resulting from the making or retention of any investment pursuant to such direction.

(6) In the absence of actual knowledge or information which would cause a reasonable trustee to inquire further, no trustee shall be liable for failure to take necessary steps to compel the redress of any breach of trust or fiduciary duty by any predecessor personal representative, trustee, or other fiduciary. The provisions of this section shall not be construed to limit the fiduciary liability of any trustee for his own acts or omissions with respect to the trust estate.

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

75-7-1011. Interest as general partner.

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

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

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

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

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

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

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

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

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

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

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

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

75-7-1013. Certification of trust.

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

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

(b) the identity of the settlor;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Part 11. Miscellaneous Provisions

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

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

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

75-7-1102. Electronic records and signatures.

The provisions of this chapter governing the legal effect, validity, or enforceability of

electronic records or electronic signatures, and of contracts formed or performed with the use of such records or signatures, conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. §7002) and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

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

75-7-1103. Application to existing relationships.

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

(a) all trusts created before, on, or after July 1, 2004;

(b) all judicial proceedings concerning trusts commenced on or after July 1, 2004; and

(c) judicial proceedings concerning trusts commenced before July 1, 2004 unless the court finds that application of a particular provision of this chapter would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this chapter does not apply and the superseded section will apply.

(2) Any rule of construction or presumption provided in this chapter applies to trust instruments executed before July 1, 2004 unless there is a clear indication of a contrary intent in the terms of the trust.

(3) An act done before July 1, 2004 is not affected by this chapter.

(4) If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before July 1, 2004, that statute continues to apply to the right even if it has been repealed or superseded.

Section 122. **Repealer.**

This bill repeals:

Section **75-7-206, Proceedings for review of employment of agents and review of compensation of trustee and employees of trust.**

Section **75-7-207, Trust proceedings -- Initiation by notice -- Necessary parties.**

Section **75-7-306, Personal liability of trustee to third parties.**

Section **75-7-307, Limitations on proceedings against trustees after final account.**

Section **75-7-405.5, Vacancy in trusteeship -- Appointment of successor.**

Section 123. **Effective date.**

This bill takes effect on July 1, 2004.

Section 124. **Coordinating S.B. 47 with S.B. 30.**

If this S.B. 47 and S.B. 30, Medical Benefits Recovery Act Amendments, both pass it is the intent of the Legislature that cross-references in S.B. 30 to Sections 75-7-308 and 75-7-309 be changed to 75-7-508 and 75-7-509, respectively.