

Representative Greg J. Curtis proposes the following substitute bill:

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



- 26 **25-6-14**, as last amended by Chapter 3, Laws of Utah 2003, Second Special Session
- 27 **49-11-303**, as renumbered and amended by Chapter 250, Laws of Utah 2002
- 28 **59-10-103**, as last amended by Chapter 3, Laws of Utah 2003, Second Special Session
- 29 **75-1-201**, as last amended by Chapter 49, Laws of Utah 2003
- 30 **75-1-403**, as last amended by Chapter 116, Laws of Utah 2000
- 31 **75-2-1209**, as enacted by Chapter 3, Laws of Utah 2003, Second Special Session
- 32 **75-3-703**, as enacted by Chapter 150, Laws of Utah 1975
- 33 **75-3-913**, as enacted by Chapter 150, Laws of Utah 1975
- 34 **75-5-417**, as last amended by Chapter 119, Laws of Utah 1995
- 35 **75-7-202**, as last amended by Chapter 3, Laws of Utah 2003, Second Special Session

36 ENACTS:

- 37 **75-7-102**, Utah Code Annotated 1953
- 38 **75-7-103**, Utah Code Annotated 1953
- 39 **75-7-104**, Utah Code Annotated 1953
- 40 **75-7-105**, Utah Code Annotated 1953
- 41 **75-7-106**, Utah Code Annotated 1953
- 42 **75-7-108**, Utah Code Annotated 1953
- 43 **75-7-109**, Utah Code Annotated 1953
- 44 **75-7-110**, Utah Code Annotated 1953
- 45 **75-7-111**, Utah Code Annotated 1953
- 46 **75-7-112**, Utah Code Annotated 1953
- 47 **75-7-412**, Utah Code Annotated 1953
- 48 **75-7-413**, Utah Code Annotated 1953
- 49 **75-7-414**, Utah Code Annotated 1953
- 50 **75-7-415**, Utah Code Annotated 1953
- 51 **75-7-416**, Utah Code Annotated 1953
- 52 **75-7-417**, Utah Code Annotated 1953
- 53 **75-7-502**, Utah Code Annotated 1953
- 54 **75-7-503**, Utah Code Annotated 1953
- 55 **75-7-504**, Utah Code Annotated 1953
- 56 **75-7-505**, Utah Code Annotated 1953

- 57 **75-7-506**, Utah Code Annotated 1953
- 58 **75-7-507**, Utah Code Annotated 1953
- 59 **75-7-604**, Utah Code Annotated 1953
- 60 **75-7-605**, Utah Code Annotated 1953
- 61 **75-7-606**, Utah Code Annotated 1953
- 62 **75-7-607**, Utah Code Annotated 1953
- 63 **75-7-701**, Utah Code Annotated 1953
- 64 **75-7-702**, Utah Code Annotated 1953
- 65 **75-7-703**, Utah Code Annotated 1953
- 66 **75-7-704**, Utah Code Annotated 1953
- 67 **75-7-705**, Utah Code Annotated 1953
- 68 **75-7-706**, Utah Code Annotated 1953
- 69 **75-7-707**, Utah Code Annotated 1953
- 70 **75-7-708**, Utah Code Annotated 1953
- 71 **75-7-709**, Utah Code Annotated 1953
- 72 **75-7-801**, Utah Code Annotated 1953
- 73 **75-7-802**, Utah Code Annotated 1953
- 74 **75-7-803**, Utah Code Annotated 1953
- 75 **75-7-804**, Utah Code Annotated 1953
- 76 **75-7-805**, Utah Code Annotated 1953
- 77 **75-7-806**, Utah Code Annotated 1953
- 78 **75-7-807**, Utah Code Annotated 1953
- 79 **75-7-808**, Utah Code Annotated 1953
- 80 **75-7-809**, Utah Code Annotated 1953
- 81 **75-7-810**, Utah Code Annotated 1953
- 82 **75-7-811**, Utah Code Annotated 1953
- 83 **75-7-812**, Utah Code Annotated 1953
- 84 **75-7-813**, Utah Code Annotated 1953
- 85 **75-7-814**, Utah Code Annotated 1953
- 86 **75-7-815**, Utah Code Annotated 1953
- 87 **75-7-816**, Utah Code Annotated 1953

- 88 **75-7-817**, Utah Code Annotated 1953
- 89 **75-7-901**, Utah Code Annotated 1953
- 90 **75-7-902**, Utah Code Annotated 1953
- 91 **75-7-903**, Utah Code Annotated 1953
- 92 **75-7-904**, Utah Code Annotated 1953
- 93 **75-7-905**, Utah Code Annotated 1953
- 94 **75-7-906**, Utah Code Annotated 1953
- 95 **75-7-907**, Utah Code Annotated 1953
- 96 **75-7-1001**, Utah Code Annotated 1953
- 97 **75-7-1002**, Utah Code Annotated 1953
- 98 **75-7-1003**, Utah Code Annotated 1953
- 99 **75-7-1004**, Utah Code Annotated 1953
- 100 **75-7-1005**, Utah Code Annotated 1953
- 101 **75-7-1006**, Utah Code Annotated 1953
- 102 **75-7-1007**, Utah Code Annotated 1953
- 103 **75-7-1008**, Utah Code Annotated 1953
- 104 **75-7-1009**, Utah Code Annotated 1953
- 105 **75-7-1010**, Utah Code Annotated 1953
- 106 **75-7-1011**, Utah Code Annotated 1953
- 107 **75-7-1012**, Utah Code Annotated 1953
- 108 **75-7-1013**, Utah Code Annotated 1953
- 109 **75-7-1101**, Utah Code Annotated 1953
- 110 **75-7-1102**, Utah Code Annotated 1953
- 111 **75-7-1103**, Utah Code Annotated 1953
- 112 **REPEALS AND REENACTS:**
- 113 **75-7-101**, as enacted by Chapter 150, Laws of Utah 1975
- 114 **75-7-203**, as last amended by Chapter 194, Laws of Utah 1977
- 115 **75-7-205**, as enacted by Chapter 150, Laws of Utah 1975
- 116 **75-7-301**, as enacted by Chapter 150, Laws of Utah 1975
- 117 **75-7-302**, as last amended by Chapter 93, Laws of Utah 2002
- 118 **75-7-303**, as last amended by Chapter 179, Laws of Utah 1992

- 119 **75-7-304**, as enacted by Chapter 150, Laws of Utah 1975
- 120 **75-7-305**, as enacted by Chapter 150, Laws of Utah 1975
- 121 **75-7-401**, as last amended by Chapter 39, Laws of Utah 1998
- 122 **75-7-402**, as last amended by Chapter 3, Laws of Utah 2003, Second Special Session
- 123 **75-7-403**, as last amended by Chapter 93, Laws of Utah 2002
- 124 **75-7-404**, as last amended by Chapter 133, Laws of Utah 1991
- 125 **75-7-405**, as enacted by Chapter 150, Laws of Utah 1975
- 126 **75-7-406**, as enacted by Chapter 150, Laws of Utah 1975
- 127 **75-7-407**, as enacted by Chapter 150, Laws of Utah 1975
- 128 **75-7-408**, as enacted by Chapter 150, Laws of Utah 1975
- 129 **75-7-409**, as last amended by Chapter 320, Laws of Utah 2000
- 130 **75-7-410**, as enacted by Chapter 196, Laws of Utah 1999
- 131 **75-7-411**, as enacted by Chapter 196, Laws of Utah 1999
- 132 **75-7-501**, as enacted by Chapter 54, Laws of Utah 1982

133 RENUMBERS AND AMENDS:

- 134 **75-7-107**, (Renumbered from 75-7-208, as last amended by Chapter 3, Laws of Utah
- 135 2003, Second Special Session)
- 136 **75-7-508**, (Renumbered from 75-7-308, as enacted by Chapter 227, Laws of Utah 2002)
- 137 **75-7-509**, (Renumbered from 75-7-309, as enacted by Chapter 227, Laws of Utah 2002)
- 138 **75-7-510**, (Renumbered from 75-7-310, as enacted by Chapter 227, Laws of Utah 2002)
- 139 **75-7-511**, (Renumbered from 75-7-311, as enacted by Chapter 227, Laws of Utah 2002)
- 140 **75-7-512**, (Renumbered from 75-7-312, as enacted by Chapter 227, Laws of Utah 2002)
- 141 **75-7-513**, (Renumbered from 75-7-313, as enacted by Chapter 227, Laws of Utah 2002)
- 142 **75-7-514**, (Renumbered from 75-7-314, as enacted by Chapter 227, Laws of Utah 2002)
- 143 **75-7-515**, (Renumbered from 75-7-315, as enacted by Chapter 227, Laws of Utah 2002)
- 144 **75-7-516**, (Renumbered from 75-7-316, as enacted by Chapter 227, Laws of Utah 2002)
- 145 **75-7-517**, (Renumbered from 75-7-317, as enacted by Chapter 227, Laws of Utah 2002)
- 146 **75-7-518**, (Renumbered from 75-7-318, as enacted by Chapter 227, Laws of Utah 2002)
- 147 **75-7-519**, (Renumbered from 75-7-319, as enacted by Chapter 227, Laws of Utah 2002)

148 REPEALS:

- 149 **75-7-206**, as enacted by Chapter 150, Laws of Utah 1975

- 150 75-7-207, as enacted by Chapter 150, Laws of Utah 1975
- 151 75-7-306, as last amended by Chapter 179, Laws of Utah 1992
- 152 75-7-307, as last amended by Chapter 30, Laws of Utah 1992
- 153 75-7-405.5, as enacted by Chapter 3, Laws of Utah 2003, Second Special Session

154

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

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

157 **7-5-7. Management and investment of trust funds.**

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

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

170 (3) (a) Funds received or held as agent or fiduciary by any trust company which is also
171 a depository institution, whether for investment or distribution, may be deposited in the
172 commercial department or savings department of that trust company to the credit of its trust
173 department. Whenever the funds so deposited in a fiduciary or managing agency account
174 exceed the amount of federal deposit insurance applicable to that account, the trust company
175 shall deliver to the trust department or put under its control collateral security as outlined in
176 Regulation 9.10 of the Comptroller of the Currency or in Regulation 550.8 of the Office of
177 Thrift Supervision, as amended. However, if the instrument creating such a fiduciary or
178 managing agency account expressly provides that funds may be deposited to the commercial or
179 savings department of the trust company, then the funds may be so deposited without setting
180 aside collateral securities as required under this section and the deposits in the event of

181 insolvency of any such trust company shall be treated as other general deposits are treated. A
182 trust company which deposits trust funds in its commercial or savings department shall be
183 liable for interest on the deposits only at the rates, if any, paid by the trust company on deposits
184 of like kind not made to the credit of its trust department.

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

198 (4) In carrying out all aspects of its trust business, a trust company shall have all the
199 powers, privileges, and duties as set forth in [~~Section 75-7-402~~] Sections 75-7-813 and
200 75-7-814 with respect to trustees, whether or not the trust company is acting as a trustee as
201 defined in Title 75.

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

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

206 **7-5-10. Lending trust funds to trust company, officer, director, or employee as**
207 **felony.**

208 Unless expressly permitted in the instrument creating a trust account or by a person
209 authorized to give that permission or by a court order as permitted in Section [~~75-7-404~~]
210 75-7-802, no trust company shall lend to itself or to any officer or director or employee of the
211 trust company any funds held in any trust account under the powers conferred in this chapter.

212 Any officer, director or employee making such a loan, or to whom such a loan is made, is
213 guilty of a third degree felony.

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

215 **7-5-14. Mergers, consolidations, acquisitions, transfers, or reorganizations**
216 **involving entities engaged in trust business -- Succession of rights and duties -- Petition**
217 **for appointment of another trust company.**

218 (1) Notwithstanding any provision of law to the contrary, a trust company, depository
219 institution, or other corporation authorized under this chapter or under the laws of the United
220 States to engage in the trust business in this state may, subject to the provisions of Sections
221 7-1-702, 7-1-704, and 7-1-705:

222 (a) (i) merge or consolidate with, (ii) acquire control of, acquire all or a portion of the
223 assets and trust business of, or assume all or any portion of the liabilities of, or (iii) transfer
224 control to, transfer all or a portion of its assets and trust business to, or transfer all or a portion
225 of its liabilities to, any other trust company, depository institution, or other corporation, which
226 institution is authorized under this chapter or under the laws of the United States to engage in
227 the trust business in this state; or

228 (b) reorganize.

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

243 acquisition, assumption, or reorganization pursuant to this section shall be deemed to be a
244 transfer which is prohibited by Section ~~75-7-403.~~]

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

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

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

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

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

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

254 **25-6-14. Restricting transfers of trust interests.**

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

266 (b) This Subsection (1) applies to:

267 (i) any form of transfer into trust including:

268 (A) conveyance; or

269 (B) assignment; and

270 (ii) transfers of:

271 (A) personal property;

272 (B) interests in personal property;

273 (C) real property; or

274 (D) interests in real property.

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

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

284 (c) A restriction provided under Subsection (1) does not prevent a creditor or person
285 described in Subsection (2)(a) from satisfying a claim or liability out of the settlor's beneficial
286 interest in or transfer into trust if:

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

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

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

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

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

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

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

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

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

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

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

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

312 (B) without limiting the claimant's right to pursue assets not held by the trust, a
313 claimant described in Subsection (2)(c)(x)(A) may only foreclose or execute upon an asset in
314 the trust listed in the written representation described in Subsection (2)(c)(x)(A)(I) or
315 transferred in breach of a written agreement, covenant, or security interest as provided in
316 Subsection (2)(c)(x)(A)(II) to the extent of the settlor's interest in that asset when it was
317 transferred to the trust or the equivalent value of that asset at the time of foreclosure or
318 execution if the original asset was sold or traded by the trust; or

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

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

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

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

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

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

333 (iv) the power to appoint nonsubordinate advisers or trust protectors who can remove
334 and appoint trustees, who can direct, consent to or disapprove distributions, or is the power to
335 serve as an investment director or appoint an investment director under [Subsections

336 ~~75-7-302(13) and (14)]~~ Section 75-7-906.

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

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

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

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

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

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

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

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

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

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

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

- 365 (a) the trustee has a first and paramount lien against the property that is the subject of
366 the trust in an amount equal to the entire cost properly incurred by the trustee in a defense of

367 the action or proceedings to void or set aside the trust or the property transfer, including
368 attorney fees;

369 (b) the trust or property transfer that is voided or set aside is subject to the proper fees,
370 costs, preexisting rights, claims, and interest of the trustee and any predecessor trustee if the
371 trustee and predecessor trustee did not act in bad faith; and

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

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

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

379 **49-11-303. Fund investment standard -- Prudent investor rule.**

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

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

384 **59-10-103. Definitions.**

385 (1) As used in this chapter:

386 (a) "Adoption expenses" means:

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

389 (ii) any welfare agency fees or costs;

390 (iii) any child placement service fees or costs;

391 (iv) any legal fees or costs; or

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

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

394 (i) is 18 years of age or older;

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

397 (iii) is not enrolled in:

398 (A) an education program for students with disabilities that is authorized under Section
399 53A-15-301; or

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

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

403 (A) short-term capital gain; or

404 (B) long-term capital gain.

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

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

409 (e) "Corporation" includes:

410 (i) associations;

411 (ii) joint stock companies; and

412 (iii) insurance companies.

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

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

417 (I) autism;

418 (II) deafness;

419 (III) preschool developmental delay;

420 (IV) dual sensory impairment;

421 (V) hearing impairment;

422 (VI) intellectual disability;

423 (VII) multidisability;

424 (VIII) orthopedic impairment;

425 (IX) other health impairment;

426 (X) traumatic brain injury; or

427 (XI) visual impairment;

428 (B) is not receiving residential services from:

- 429 (I) the Division of Services for People with Disabilities created under Section
- 430 62A-5-102; or
- 431 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;
- 432 and
- 433 (C) is enrolled in:
- 434 (I) an education program for students with disabilities that is authorized under Section
- 435 53A-15-301; or
- 436 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;
- 437 or
- 438 (ii) is identified under guidelines of the Department of Health as qualified for:
- 439 (A) Early Intervention; or
- 440 (B) Infant Development Services.
- 441 (g) "Employer," "employee," and "wages" are defined as provided in Section
- 442 59-10-401.
- 443 (h) "Fiduciary" means:
- 444 (i) a guardian;
- 445 (ii) a trustee;
- 446 (iii) an executor;
- 447 (iv) an administrator;
- 448 (v) a receiver;
- 449 (vi) a conservator; or
- 450 (vii) any person acting in any fiduciary capacity for any individual.
- 451 (i) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the
- 452 homesteaded land that was held to have been diminished from the Uintah and Ouray
- 453 Reservation in *Hagen v. Utah*, 510 U.S. 399 (1994).
- 454 (j) "Individual" means a natural person and includes aliens and minors.
- 455 (k) "Irrevocable trust" means a trust in which the settlor may not revoke or terminate
- 456 all or part of the trust without the consent of a person who has a substantial beneficial interest
- 457 in the trust and the interest would be adversely affected by the exercise of the settlor's power to
- 458 revoke or terminate all or part of the trust.
- 459 (l) For purposes of Subsection 59-10-114(2)(m), "long-term capital gain" is as defined

460 in Section 1222, Internal Revenue Code.

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

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

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

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

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

469 (I) a trust;

470 (II) an estate; or

471 (III) a corporation.

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

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

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

477 (i) (A) common; or

478 (B) preferred;

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

480 (A) a resident or nonresident individual; or

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

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

484 (II) remains a partner until the last day of the taxable year for which the resident or
485 nonresident individual makes the subtraction from federal taxable income in accordance with
486 Subsection 59-10-114(2)(m); and

487 (iii) issued:

488 (A) by a Utah small business corporation;

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

490 (C) for:

- 491 (I) money; or
- 492 (II) other property, except for stock or securities.
- 493 (q) (i) "Resident individual" means:
- 494 (A) an individual who is domiciled in this state for any period of time during the
- 495 taxable year, but only for the duration of the period during which the individual is domiciled in
- 496 this state; or
- 497 (B) an individual who is not domiciled in this state but:
- 498 (I) maintains a permanent place of abode in this state; and
- 499 (II) spends in the aggregate 183 or more days of the taxable year in this state.
- 500 (ii) For purposes of Subsection (1)(q)(i)(B), a fraction of a calendar day shall be
- 501 counted as a whole day.
- 502 (r) (i) "Resident estate" or "resident trust" ~~[means:]~~ is as defined in Section 75-7-103.
- 503 ~~[(A) an estate of a decedent who at death was domiciled in this state;]~~
- 504 ~~[(B) a trust, or a portion of a trust, consisting of property transferred by will of a~~
- 505 ~~decedent who at his death was domiciled in this state; or]~~
- 506 ~~[(C) a trust administered in this state.]~~
- 507 ~~[(ii) A trust shall be considered to be administered in this state if:]~~
- 508 ~~[(A) the place of business where the fiduciary transacts a major portion of its~~
- 509 ~~administration of the trust is in this state; or]~~
- 510 ~~[(B) the trust states that this state is the place of administration, and any administration~~
- 511 ~~of the trust is done in this state.]~~
- 512 (s) For purposes of Subsection 59-10-114(2)(m), "short-term capital gain" is as defined
- 513 in Section 1222, Internal Revenue Code.
- 514 (t) "Taxable income" and "state taxable income" are defined as provided in Sections
- 515 59-10-111, 59-10-112, 59-10-116, 59-10-201.1, and 59-10-204.
- 516 (u) "Taxpayer" means any individual, estate, or trust or beneficiary of an estate or trust,
- 517 whose income is subject in whole or part to the tax imposed by this chapter.
- 518 (v) "Uintah and Ouray Reservation" means the lands recognized as being included
- 519 within the Uintah and Ouray Reservation in:
- 520 (i) Hagen v. Utah, 510 U.S. 399 (1994); and
- 521 (ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).

522 (w) (i) "Utah small business corporation" means a corporation that:
523 (A) is a small business corporation as defined in Section 1244(c)(3), Internal Revenue
524 Code;
525 (B) except as provided in Subsection (1)(w)(ii), meets the requirements of Section
526 1244(c)(1)(C), Internal Revenue Code; and
527 (C) has its commercial domicile in this state.
528 (ii) Notwithstanding Subsection (1)(w)(i)(B), the time period described in Section
529 1244(c)(1)(C) and Section 1244(c)(2), Internal Revenue Code, for determining the source of a
530 corporation's aggregate gross receipts shall end on the last day of the taxable year for which the
531 resident or nonresident individual makes a subtraction from federal taxable income in
532 accordance with Subsection 59-10-114(2)(m).

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

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

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

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

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

546 Section 7. Section **75-1-201** is amended to read:
547 **75-1-201. General definitions.**
548 Subject to additional definitions contained in the subsequent chapters that are
549 applicable to specific chapters, parts, or sections, and unless the context otherwise requires, in
550 this code:
551 (1) "Agent" includes an attorney-in-fact under a durable or nondurable power of
552 attorney, an individual authorized to make decisions concerning another's health care, and an

553 individual authorized to make decisions for another under a natural death act.

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

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

568 (4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of
569 an insurance or annuity policy, of an account with POD designation, of a security registered in
570 beneficiary form (TOD), or of a pension, profit-sharing, retirement, or similar benefit plan, or
571 other nonprobate transfer at death.

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

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

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

583 (8) "Court" means any of the courts of record in this state having jurisdiction in matters

584 relating to the affairs of decedents.

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

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

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

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

596 (13) "Distributee" means any person who has received property of a decedent from his
597 personal representative other than as a creditor or purchaser. A testamentary trustee is a
598 distributee only to the extent of distributed assets or increment thereto remaining in his hands.
599 A beneficiary of a testamentary trust to whom the trustee has distributed property received from
600 a personal representative is a distributee of the personal representative. For purposes of this
601 provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to
602 the extent of the devised assets.

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

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

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

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

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

613 (19) "Governing instrument" means a deed, will, trust, insurance or annuity policy,
614 account with POD designation, security registered in beneficiary form (TOD), pension,

615 profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of
616 appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of
617 any similar type.

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

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

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

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

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

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

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

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

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

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

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

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

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

656 (33) "Parent" includes any person entitled to take, or who would be entitled to take if
657 the child died without a will, as a parent under this code by intestate succession from the child
658 whose relationship is in question and excludes any person who is only a stepparent, foster
659 parent, or grandparent.

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

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

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

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

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

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

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

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

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

676 (42) "Registrar" refers to the official of the court designated to perform the functions of

677 registrar as provided in Section 75-1-307.

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

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

687 (45) "Special administrator" means a personal representative as described in Sections
688 75-3-614 through 75-3-618.

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

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

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

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

700 (50) "Survive," except for purposes of Part 3 of Article VI, Uniform TOD Security
701 Registration Act, means that an individual has neither predeceased an event, including the
702 death of another individual, nor is considered to have predeceased an event under Section
703 75-2-104 or 75-2-702. The term includes its derivatives, such as "survives," "survived,"
704 "survivor," and "surviving."

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

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

708 (53) "Trust" includes any express trust, private or charitable, with additions thereto,
709 wherever and however created. The term also includes a trust created or determined by
710 judgment or decree under which the trust is to be administered in the manner of an express
711 trust. The term excludes other constructive trusts, and it excludes resulting trusts,
712 conservatorships, personal representatives, trust accounts as defined in Title 75, Chapter 6,
713 Nonprobate Transfers, custodial arrangements pursuant to any Uniform Transfers To Minors
714 Act, business trusts providing for certificates to be issued to beneficiaries, common trust funds,
715 voting trusts, preneed funeral plans under Title 58, Chapter 9, Funeral Services Licensing Act,
716 security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts,
717 dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any
718 arrangement under which a person is nominee or escrowee for another.

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

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

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

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

728 **75-1-403. Pleadings -- When parties bound by others -- Notice.**

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

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

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

736 ~~[(a) To the extent there is no conflict of interest between the holder of a general~~
737 ~~testamentary power of appointment and the persons represented with respect to a particular~~
738 ~~question or dispute, the holder may represent and bind persons whose interests, as permissible~~

739 appointees, takers in default, or otherwise, are subject to the power:]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

775 **75-2-1209. Real estate conveyed to a trust under the Statutory Rule Against**
776 **Perpetuities.**

777 On or after the effective date, when title to real property is granted to the trustee of a
778 trust governed by Title 75, Chapter 2, Part 12, [~~Uniform~~] Statutory Rule Against Perpetuities,
779 the terms of the trust, provisions regarding the appointment of successor trustees, and the
780 names and addresses of successor trustees must be disclosed in accordance with Section
781 [~~75-7-409~~] 75-7-816.

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

783 **75-3-703. General duties -- Relation and liability to persons interested in estate --**
784 **Standing to sue.**

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

792 (2) A personal representative shall not be surcharged for acts of administration or
793 distribution if the conduct in question was authorized at the time. Subject to other obligations
794 of administration, an informally probated will is authority to administer and distribute the
795 estate according to its terms. An order of appointment of a personal representative, whether
796 issued in informal or formal proceedings, is authority to distribute apparently intestate assets to
797 the heirs of the decedent if, at the time of distribution, the personal representative is not aware
798 of a pending testacy proceeding, a proceeding to vacate an order entered in an earlier testacy
799 proceeding, a formal proceeding questioning his appointment or fitness to continue, or a
800 supervised administration proceeding. Nothing in this section affects the duty of the personal

801 representative to administer and distribute the estate in accordance with the rights of claimants,
802 the surviving spouse, any minor and dependent children, and any pretermitted child of the
803 decedent as described elsewhere in this code.

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

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

809 **75-3-913. Distributions to trustee.**

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

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

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

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

820 **75-5-417. General duty of conservator.**

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

823 (2) The conservator shall, for all estates in excess of \$50,000, excluding the residence
824 owned by the ward, send a report with a full accounting to the court on an annual basis. For
825 estates less than \$50,000, excluding the residence owned by the ward, the conservator shall fill
826 out an informal annual report and mail the report to the court. The report shall include the
827 following: a statement of assets at the beginning and end of the reporting year, income received
828 during the year, disbursements for the support of the ward, and other expenses incurred by the
829 estate. The court may require additional information. The forms for both the informal report
830 for estates under \$50,000, excluding the residence owned by the ward, and the full accounting
831 report for larger estates shall be approved by the judicial council. This annual report shall be

832 examined and approved by the court.

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

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

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

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

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

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

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

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

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

851 **CHAPTER 7. UTAH UNIFORM TRUST CODE**

852 **Part 1. General Provisions**

853 **75-7-101. Title.**

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

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

856 **75-7-102. Scope.**

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

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

859 **75-7-103. Definitions.**

860 (1) In this chapter:

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

862 (b) "Beneficiary" means a person that:

- 863 (i) has a present or future beneficial interest in a trust, vested or contingent; or
864 (ii) in a capacity other than that of trustee, holds a power of appointment over trust
865 property.
- 866 (c) "Charitable trust" means a trust, or portion of a trust, created for a charitable
867 purpose described in Subsection 75-7-405(1).
- 868 (d) "Environmental law" means a federal, state, or local law, rule, regulation, or
869 ordinance relating to protection of the environment.
- 870 (e) "Interests of the beneficiaries" means the beneficial interests provided in the terms
871 of the trust.
- 872 (f) "Jurisdiction," with respect to a geographic area, includes a state or country.
- 873 (g) "Power of withdrawal" means a presently exercisable general power of appointment
874 other than a power exercisable only upon consent of the trustee or a person holding an adverse
875 interest.
- 876 (h) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's
877 qualification is determined:
- 878 (i) is a current distributee or permissible distributee of trust income or principal; or
879 (ii) would be a distributee or permissible distributee of trust income or principal if the
880 trust terminated on that date.
- 881 (i) "Resident estate" or "resident trust" means:
- 882 (i) an estate of a decedent who at death was domiciled in this state;
883 (ii) a trust, or a portion of a trust, consisting of property transferred by will of a
884 decedent who at his death was domiciled in this state; or
- 885 (iii) a trust administered in this state.
- 886 (j) "Revocable," as applied to a trust, means revocable by the settlor without the
887 consent of the trustee or a person holding an adverse interest.
- 888 (k) "Settlor" means a person, including a testator, who creates, or contributes property
889 to, a trust. If more than one person creates or contributes property to a trust, each person is a
890 settlor of the portion of the trust property attributable to that person's contribution except to the
891 extent another person has the power to revoke or withdraw that portion.
- 892 (l) "Spendthrift provision" means a term of a trust which restrains both voluntary and
893 involuntary transfer or encumbrance of a beneficiary's interest.

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

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

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

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

902 **75-7-104. Knowledge.**

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

904 (a) has actual knowledge of it;

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

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

908 (2) An organization that conducts activities through employees has notice or
909 knowledge of a fact involving a trust only from the time the information was received by an
910 employee having responsibility to act for the trust, or would have been brought to the
911 employee's attention if the organization had exercised reasonable diligence. An organization
912 exercises reasonable diligence if it maintains reasonable routines for communicating significant
913 information to the employee having responsibility to act for the trust and there is reasonable
914 compliance with the routines. Reasonable diligence does not require an employee of the
915 organization to communicate information unless the communication is part of the individual's
916 regular duties or the individual knows a matter involving the trust would be materially affected
917 by the information.

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

919 **75-7-105. Default and mandatory rules.**

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

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

- 925 (a) the requirements for creating a trust;
926 (b) the duty of a trustee to act in good faith and in accordance with the purposes of the
927 trust;
928 (c) the requirement that a trust and its terms be for the benefit of its beneficiaries;
929 (d) the power of the court to modify or terminate a trust under Sections 75-7-410
930 through 75-7-416;
931 (e) the effect of a spendthrift provision, Section 26-6-14, and the rights of certain
932 creditors and assignees to reach a trust as provided in Part 5, Creditor's Claims-Spendthrift and
933 Discretionary Trusts;
934 (f) the power of the court under Section 75-7-702 to require, dispense with, or modify
935 or terminate a bond;
936 (g) the effect of an exculpatory term under Section 75-7-1008;
937 (h) the rights under Sections 75-7-1010 through 75-7-1013 of a person other than a
938 trustee or beneficiary;
939 (i) periods of limitation for commencing a judicial proceeding; and
940 (j) the subject-matter jurisdiction of the court and venue for commencing a proceeding
941 as provided in Sections 75-7-203 and 75-7-205.

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

943 **75-7-106. Common law of trusts -- Principles of equity.**

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

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

948 **[75-7-208]. 75-7-107. Governing law.**

949 (1) For purposes of this section:

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

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

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

956 of the trust is done in this state.

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

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

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

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

965 [~~(4)~~] (5) If a foreign trust is administered in this state as provided in this section, the
966 following provisions are effective and enforceable under the laws of this state:

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

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

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

971 [~~(5)~~] (6) A foreign trust that moves its administration to this state is valid whether or
972 not the trust complied with the laws of this state at the time of the trust's creation or after the
973 trust's creation.

974 [~~(6)~~] (7) Unless otherwise designated in the trust instrument, a trust is administered in
975 this state if it meets the requirements of Subsection [~~59-10-103(1)(r)(ii)~~] (4).

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

977 **75-7-108. Principal place of administration.**

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

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

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

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

986 (3) Without precluding the right of the court to order, approve, or disapprove a transfer,

987 the trustee, in furtherance of the duty prescribed by Subsection (2), may transfer the trust's
988 principal place of administration to another state or to a jurisdiction outside of the United
989 States.

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

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

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

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

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

999 (e) the date, not less than 60 days after the giving of the notice, by which the qualified
1000 beneficiary must notify the trustee of an objection to the proposed transfer.

1001 (5) The authority of a trustee under this section to transfer a trust's principal place of
1002 administration terminates if a qualified beneficiary notifies the trustee of an objection to the
1003 proposed transfer on or before the date specified in the notice.

1004 (6) In connection with a transfer of the trust's principal place of administration, the
1005 trustee may transfer some or all of the trust property to a successor trustee designated in the
1006 terms of the trust or appointed pursuant to Section 75-7-704.

1007 Section 21. Section **75-7-109** is enacted to read:

1008 **75-7-109. Methods and waiver of notice.**

1009 (1) Notice to a person under this chapter or the sending of a document to a person
1010 under this chapter must be accomplished in a manner reasonably suitable under the
1011 circumstances and likely to result in receipt of the notice or document. Permissible methods of
1012 notice or for sending a document include first-class mail, personal delivery, delivery to the
1013 person's last known place of residence or place of business, or a properly directed electronic
1014 message.

1015 (2) Notice under this chapter or the sending of a document under this chapter may be
1016 waived by the person to be notified or sent the document.

1017 (3) Notice of a judicial proceeding must be given as provided in the applicable rules of

1018 civil procedure.

1019 Section 22. Section **75-7-110** is enacted to read:

1020 **75-7-110. Nonjudicial settlement agreements.**

1021 (1) For purposes of this section, "interested persons" means persons whose consent
1022 would be required in order to achieve a binding settlement were the settlement to be approved
1023 by the court.

1024 (2) Except as otherwise provided in Subsection (3), interested persons may enter into a
1025 binding nonjudicial settlement agreement with respect to any matter involving a trust.

1026 (3) A nonjudicial settlement agreement is valid only to the extent it does not violate a
1027 material purpose of the trust and includes terms and conditions that could be properly approved
1028 by the court under this chapter or other applicable law.

1029 (4) Matters that may be resolved by a nonjudicial settlement agreement include:

1030 (a) the interpretation or construction of the terms of the trust;

1031 (b) the approval of a trustee's report or accounting;

1032 (c) direction to a trustee to refrain from performing a particular act or the grant to a
1033 trustee of any necessary or desirable power;

1034 (d) the resignation or appointment of a trustee and the determination of a trustee's
1035 compensation;

1036 (e) transfer of a trust's principal place of administration; and

1037 (f) liability of a trustee for an action relating to the trust.

1038 (5) Any interested person may request the court to approve a nonjudicial settlement
1039 agreement, to determine whether the representation as provided in Part 3 was adequate, and to
1040 determine whether the agreement contains terms and conditions the court could have properly
1041 approved.

1042 Section 23. Section **75-7-111** is enacted to read:

1043 **75-7-111. Rules of construction.**

1044 The rules of construction that apply to the interpretation of and disposition of property
1045 by will or other governing instrument, as defined in Section 75-1-201, also apply as appropriate
1046 to the interpretation of the terms of a trust and the disposition of the trust property.

1047 Section 24. Section **75-7-112** is enacted to read:

1048 **75-7-112. Penalty provisions.**

1049 A provision in a trust instrument purporting to penalize a beneficiary by charging the
1050 beneficiary's interest in the trust, or to penalize the beneficiary in another manner, for
1051 instituting a proceeding to challenge the acts of the trustee or other fiduciary of a trust, or for
1052 instituting other proceedings relating to the trust is unenforceable if probable cause exists for
1053 instituting the proceedings.

1054 Section 25. Section **75-7-202** is amended to read:

1055 **75-7-202. Effect of administration in this state -- Consent to jurisdiction.**

1056 (1) The trustee submits personally to the jurisdiction of the courts of this state
1057 regarding any matter involving the trust if the trustee acts as trustee of a trust administered in
1058 this state.

1059 (2) To the extent of the beneficial interests in a trust administered in this state, the
1060 beneficiaries of the trust are subject to the jurisdiction of the courts of this state regarding any
1061 matter involving the trust. By accepting a distribution from such a trust, the recipient submits
1062 personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

1063 (3) By accepting the delegation of a trust function from the trustee of a trust
1064 administered in this state, the agent submits to the jurisdiction of the courts of this state
1065 regarding any matter involving the trust.

1066 (4) Unless otherwise designated in the trust instrument, a trust is administered in this
1067 state if it meets the requirements of Subsection [~~59-10-103(1)(r)(ii)~~] 75-7-107(4).

1068 Section 26. Section **75-7-203** is repealed and reenacted to read:

1069 **75-7-203. Subject matter jurisdiction.**

1070 (1) The district court has exclusive jurisdiction of proceedings in this state brought by a
1071 trustee or beneficiary concerning the administration of a trust.

1072 (2) The district court has concurrent jurisdiction with other courts of this state of other
1073 proceedings involving a trust.

1074 (3) This section does not preclude judicial or nonjudicial alternative dispute resolution.

1075 Section 27. Section **75-7-205** is repealed and reenacted to read:

1076 **75-7-205. Venue.**

1077 (1) Except as otherwise provided in Subsection (2), venue for a judicial proceeding
1078 involving a trust is in the county in which the trust's principal place of administration is or will
1079 be located and, if the trust is created by will and the estate is not yet closed, in the county in

1080 which the decedent's estate is being administered.

1081 (2) If a trust has no trustee, venue for a judicial proceeding for the appointment of a
1082 trustee is in any county of this state in which a beneficiary resides, in any county in which any
1083 trust property is located, and if the trust is created by will, in the county in which the decedent's
1084 estate was or is being administered.

1085 Section 28. Section **75-7-301** is repealed and reenacted to read:

1086 **Part 3. Representation**

1087 **75-7-301. Basic effect.**

1088 (1) Notice to a person who may represent and bind another person under this part has
1089 the same effect as if notice were given directly to the other person.

1090 (2) The consent of a person who may represent and bind another person under this part
1091 is binding on the person represented unless the person represented objects to the representation
1092 before the consent would otherwise have become effective.

1093 (3) Except as otherwise provided in Sections 75-7-411 and 25-6-14, a person who
1094 under this part may represent a settlor who lacks capacity may receive notice and give a
1095 binding consent on the settlor's behalf.

1096 Section 29. Section **75-7-302** is repealed and reenacted to read:

1097 **75-7-302. Representation by holder of general testamentary power of**
1098 **appointment.**

1099 To the extent there is no conflict of interest between the holder of a general
1100 testamentary power of appointment and the persons represented with respect to the particular
1101 question or dispute, the holder may represent and bind persons whose interests, as permissible
1102 appointees, takers in default, or otherwise, are subject to the power.

1103 Section 30. Section **75-7-303** is repealed and reenacted to read:

1104 **75-7-303. Representation by fiduciaries and parents.**

1105 To the extent there is no conflict of interest between the representative and the person
1106 represented or among those being represented with respect to a particular question or dispute:

1107 (1) a conservator may represent and bind the protected person whose estate the
1108 conservator controls;

1109 (2) a guardian may represent and bind the ward if a conservator of the ward's estate has
1110 not been appointed;

1111 (3) an agent having authority to act with respect to the particular question or dispute
1112 may represent and bind the principal;

1113 (4) a trustee may represent and bind the beneficiaries of the trust;

1114 (5) a personal representative of a decedent's estate may represent and bind persons
1115 interested in the estate; and

1116 (6) a parent may represent and bind the parent's minor or unborn child if a conservator
1117 or guardian for the child has not been appointed.

1118 Section 31. Section **75-7-304** is repealed and reenacted to read:

1119 **75-7-304. Representation by person having substantially identical interest.**

1120 Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person
1121 whose identity or location is unknown and not reasonably ascertainable, may be represented by
1122 and bound by another having a substantially identical interest with respect to the particular
1123 question or dispute, but only to the extent there is no conflict of interest between the
1124 representative and the person represented.

1125 Section 32. Section **75-7-305** is repealed and reenacted to read:

1126 **75-7-305. Appointment of guardian ad litem or other representative.**

1127 (1) If the court determines that an interest is not represented under this part, or that the
1128 otherwise available representation might be inadequate, the court may appoint a guardian ad
1129 litem or other representative to receive notice, give consent, and otherwise represent, bind, and
1130 act on behalf of a minor, incapacitated or protected person, or unborn individual, or a person
1131 whose identity or location is unknown. A guardian ad litem or other representative may be
1132 appointed to represent several persons or interests.

1133 (2) A guardian ad litem or other representative may act on behalf of the individual
1134 represented with respect to any matter arising under this chapter, whether or not a judicial
1135 proceeding concerning the trust is pending.

1136 (3) In making decisions, a guardian ad litem or other representative may consider
1137 general benefit accruing to the living members of the individual's family.

1138 Section 33. Section **75-7-401** is repealed and reenacted to read:

1139 **Part 4. Creation, Validity, Modification, and Termination of Trust**

1140 **75-7-401. Methods of creating trust.**

1141 A trust may be created by:

1142 (1) transfer of property to another person as trustee during the settlor's lifetime or by
1143 will or other disposition taking effect upon the settlor's death;

1144 (2) declaration by the owner of property that the owner holds identifiable property as
1145 trustee; or

1146 (3) exercise of a power of appointment in favor of a trustee.

1147 Section 34. Section **75-7-402** is repealed and reenacted to read:

1148 **75-7-402. Requirements for creation.**

1149 (1) A trust is created only if:

1150 (a) the settlor has capacity to create a trust, which standard of capacity shall be the
1151 same as for a person to create a will;

1152 (b) the settlor indicates an intention to create the trust or a statute, judgment, or decree
1153 authorizes the creation of a trust;

1154 (c) the trust has a definite beneficiary or is:

1155 (i) a charitable trust;

1156 (ii) a trust for the care of an animal, as provided in Section 75-2-1001; or

1157 (iii) a trust for a noncharitable purpose, as provided in Section 75-2-1001;

1158 (d) the trustee has duties to perform; and

1159 (e) the same person is not the sole trustee and sole beneficiary.

1160 (2) A beneficiary is definite if the beneficiary can be ascertained now or in the future,
1161 subject to any applicable rule against perpetuities.

1162 (3) A power in a trustee to select a beneficiary from an indefinite class is valid. If the
1163 power is not exercised within a reasonable time, the power fails and the property subject to the
1164 power passes to the persons who would have taken the property had the power not been
1165 conferred.

1166 Section 35. Section **75-7-403** is repealed and reenacted to read:

1167 **75-7-403. Trusts created in other jurisdictions.**

1168 A trust not created by will is validly created if its creation complies with the law of the
1169 jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which,
1170 at the time of creation:

1171 (1) the settlor was domiciled, had a place of abode, or was a national;

1172 (2) a trustee was domiciled or had a place of business; or

1173 (3) any trust property was located.

1174 Section 36. Section **75-7-404** is repealed and reenacted to read:

1175 **75-7-404. Trust purposes.**

1176 A trust may be created only to the extent its purposes are lawful, not contrary to public
1177 policy, and possible to achieve. A trust and its terms must be for the benefit of its
1178 beneficiaries.

1179 Section 37. Section **75-7-405** is repealed and reenacted to read:

1180 **75-7-405. Charitable purposes -- Enforcement.**

1181 (1) A charitable trust may be created for the relief of poverty, the advancement of
1182 education or religion, the promotion of health, governmental or municipal purposes, or other
1183 purposes the achievement of which is beneficial to the community.

1184 (2) If the terms of a charitable trust do not indicate a particular charitable purpose or
1185 beneficiary, the trustee, if authorized by the terms of the trust, or if not, the court may select
1186 one or more charitable purposes or beneficiaries. The selection must be consistent with the
1187 settlor's intention to the extent it can be ascertained.

1188 (3) The settlor of a charitable trust, among others, may maintain a proceeding to
1189 enforce the trust.

1190 Section 38. Section **75-7-406** is repealed and reenacted to read:

1191 **75-7-406. Creation of trust induced by fraud, duress, or undue influence.**

1192 A trust is void to the extent its creation was induced by fraud, duress, or undue
1193 influence.

1194 Section 39. Section **75-7-407** is repealed and reenacted to read:

1195 **75-7-407. Evidence of oral trust.**

1196 Except as required by a statute other than this chapter, a trust need not be evidenced by
1197 a trust instrument, but the creation of an oral trust and its terms may be established only by
1198 clear and convincing evidence.

1199 Section 40. Section **75-7-408** is repealed and reenacted to read:

1200 **75-7-408. Trust for care of animal.**

1201 A trust may be created to provide for the care of a pet or animal as provided in Section
1202 75-2-1001.

1203 Section 41. Section **75-7-409** is repealed and reenacted to read:

1204 **75-7-409. Noncharitable trust without ascertainable beneficiary.**

1205 A trust may be created for a noncharitable purpose without a definite or definitely
1206 ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by
1207 the trustee as provided in Section 75-2-1001.

1208 Section 42. Section **75-7-410** is repealed and reenacted to read:

1209 **75-7-410. Modification or termination of trust -- Proceedings for approval or**
1210 **disapproval.**

1211 (1) In addition to the methods of termination prescribed by Sections 75-7-411 through
1212 75-7-414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms,
1213 no purpose of the trust remains to be achieved, or the purposes of the trust have become
1214 unlawful, contrary to public policy, or impossible to achieve.

1215 (2) A proceeding to approve or disapprove a proposed modification or termination
1216 under Sections 75-7-411 through 75-7-416, or trust combination or division under Section
1217 75-7-417, may be commenced by a trustee or qualified beneficiary, and a proceeding to
1218 approve or disapprove a proposed modification or termination under Section 75-7-411 may be
1219 commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to
1220 modify the trust under Section 75-7-413.

1221 Section 43. Section **75-7-411** is repealed and reenacted to read:

1222 **75-7-411. Modification or termination of noncharitable irrevocable trust by**
1223 **consent.**

1224 (1) A noncharitable, irrevocable trust may be modified or terminated upon consent of
1225 the settlor and all beneficiaries, even if the modification or termination is inconsistent with a
1226 material purpose of the trust. A settlor's power to consent to a trust's termination may be
1227 exercised by an agent under a power of attorney only to the extent expressly authorized by the
1228 power of attorney or the terms of the trust, by the settlor's conservator with the approval of the
1229 court supervising the conservatorship if an agent is not so authorized, or by the settlor's
1230 guardian with the approval of the court supervising the guardianship if an agent is not so
1231 authorized and a conservator has not been appointed.

1232 (2) A noncharitable, irrevocable trust may be terminated upon consent of all of the
1233 beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any
1234 material purpose of the trust. A noncharitable, irrevocable trust may be modified upon consent

1235 of all of the beneficiaries if the court concludes that modification is not inconsistent with a
1236 material purpose of the trust.

1237 (3) A spendthrift provision in the terms of the trust is not presumed to constitute a
1238 material purpose of the trust.

1239 (4) Upon termination of a trust under Subsection (1) or (2), the trustee shall distribute
1240 the trust property as agreed by the beneficiaries.

1241 (5) If not all of the beneficiaries consent to a proposed modification or termination of
1242 the trust under Subsection (1) or (2), the modification or termination may be approved by the
1243 court if the court is satisfied that:

1244 (a) if all of the beneficiaries had consented, the trust could have been modified or
1245 terminated under this section; and

1246 (b) the interests of a beneficiary who does not consent will be adequately protected.

1247 Section 44. Section **75-7-412** is enacted to read:

1248 **75-7-412. Modification or termination because of unanticipated circumstances or**
1249 **inability to administer trust effectively.**

1250 (1) The court may modify the administrative or dispositive terms of a trust or terminate
1251 the trust if, because of circumstances not anticipated by the settlor, modification or termination
1252 will further the purposes of the trust. To the extent practicable, the modification must be made
1253 in accordance with the settlor's probable intention.

1254 (2) The court may modify the administrative terms of a trust if continuation of the trust
1255 on its existing terms would be impracticable or wasteful or impair the trust's administration.

1256 (3) Upon termination of a trust under this section, the trustee shall distribute the trust
1257 property as directed by the court or otherwise in a manner consistent with the purposes of the
1258 trust.

1259 Section 45. Section **75-7-413** is enacted to read:

1260 **75-7-413. Cy pres.**

1261 (1) Except as otherwise provided in Subsection (2), if a particular charitable purpose
1262 becomes unlawful, impracticable, impossible to achieve, or wasteful:

1263 (a) the trust does not fail, in whole or in part;

1264 (b) the trust property does not revert to the settlor or the settlor's successors in interest;

1265 and

1266 (c) the court may apply cy pres to modify or terminate the trust by directing that the
1267 trust property be applied or distributed, in whole or in part, in a manner consistent with the
1268 settlor's charitable purposes.

1269 (2) A provision in the terms of a charitable trust that would result in distribution of the
1270 trust property to a noncharitable beneficiary prevails over the power of the court under
1271 Subsection (1) to apply cy pres to modify or terminate the trust only if, when the provision
1272 takes effect:

1273 (a) the trust property is to revert to the settlor and the settlor is still living; or

1274 (b) fewer than 21 years have elapsed since the date of the trust's creation.

1275 Section 46. Section **75-7-414** is enacted to read:

1276 **75-7-414. Modification or termination of uneconomic trust.**

1277 (1) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust
1278 property having a total value less than \$100,000, may terminate the trust if the trustee
1279 concludes that the value of the trust property is insufficient to justify the cost of administration.

1280 (2) The court may modify or terminate a trust or remove the trustee and appoint a
1281 different trustee if it determines that the value of the trust property is insufficient to justify the
1282 cost of administration.

1283 (3) Upon termination of a trust under this section, the trustee shall distribute the trust
1284 property in a manner consistent with the purposes of the trust.

1285 (4) This section does not apply to an easement for conservation or preservation.

1286 Section 47. Section **75-7-415** is enacted to read:

1287 **75-7-415. Reformation to correct mistakes.**

1288 The court may reform the terms of a trust, even if unambiguous, to conform the terms
1289 to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's
1290 intent and the terms of the trust were affected by a mistake of fact or law, whether in
1291 expression or inducement.

1292 Section 48. Section **75-7-416** is enacted to read:

1293 **75-7-416. Modification to achieve settlor's tax objectives.**

1294 To achieve the settlor's tax objectives, the court may modify the terms of a trust in order
1295 to achieve the settlor's tax objectives. The court may provide that the modification has
1296 retroactive effect.

1297 Section 49. Section **75-7-417** is enacted to read:

1298 **75-7-417. Combination and division of trusts.**

1299 After notice to the qualified beneficiaries, a trustee may combine two or more trusts
1300 into a single trust or divide a trust into two or more separate trusts, if the result does not impair
1301 rights of any beneficiary or adversely affect achievement of the purposes of the trust.

1302 Section 50. Section **75-7-501** is repealed and reenacted to read:

1303 **Part 5. Creditor's Claims - Spendthrift and Discretionary Trusts**

1304 **75-7-501. Rights of beneficiary's creditor or assignee.**

1305 To the extent a beneficiary's interest is not protected by a spendthrift provision or
1306 Section 26-6-14, the court may authorize a creditor or assignee of the beneficiary to reach the
1307 beneficiary's interest by attachment of present or future distributions to or for the benefit of the
1308 beneficiary or other means. The court may limit the award to relief as is appropriate under the
1309 circumstances.

1310 Section 51. Section **75-7-502** is enacted to read:

1311 **75-7-502. Spendthrift provisions for beneficiaries other than the settlor.**

1312 (1) A spendthrift provision for a beneficiary other than the settlor is valid only if it
1313 restrains both voluntary and involuntary transfer of a beneficiary's interest, even if the
1314 beneficiary is the trustee or cotrustee of the trust.

1315 (2) A term of a trust providing that the interest of a beneficiary other than the settlor is
1316 held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both
1317 voluntary and involuntary transfer of the beneficiary's interest.

1318 (3) A beneficiary may not transfer an interest in a trust in violation of a valid
1319 spendthrift provision and, except as otherwise provided in this part, a creditor or assignee of
1320 the beneficiary may not reach the interest or a distribution by the trustee before its receipt by
1321 the beneficiary.

1322 Section 52. Section **75-7-503** is enacted to read:

1323 **75-7-503. Exceptions to spendthrift provision.**

1324 (1) In this section, "child" includes any person for whom an order or judgment for child
1325 support has been entered in this or another state.

1326 (2) Even if a trust contains a spendthrift provision, a beneficiary's child who has a
1327 judgment or court order against the beneficiary for support or maintenance, or a judgment

1328 creditor who has provided services for the protection of a beneficiary's interest in the trust, may
1329 obtain from a court an order attaching present or future distributions to or for the benefit of the
1330 beneficiary.

1331 (3) A spendthrift provision is unenforceable against a claim of this state or the United
1332 States to the extent a statute of this state or federal law so provides.

1333 Section 53. Section **75-7-504** is enacted to read:

1334 **75-7-504. Discretionary trusts -- Effect of standard.**

1335 (1) In this section, "child" includes any person for whom an order or judgment for child
1336 support has been entered in this or another state.

1337 (2) Except as otherwise provided in Subsection (3), whether or not a trust contains a
1338 spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to
1339 the trustee's discretion, even if:

1340 (a) the discretion is expressed in the form of a standard of distribution; or

1341 (b) the trustee has abused the discretion.

1342 (3) To the extent a trustee has not complied with a standard of distribution or has
1343 abused a discretion:

1344 (a) a distribution may be ordered by the court to satisfy a judgment or court order
1345 against the beneficiary for support or maintenance of the beneficiary's child, spouse, or former
1346 spouse; and

1347 (b) the court shall direct the trustee to pay to the child, spouse, or former spouse such
1348 amount as is equitable under the circumstances but not more than the amount the trustee would
1349 have been required to distribute to or for the benefit of the beneficiary had the trustee complied
1350 with the standard or not abused the discretion.

1351 (4) This section does not limit the right of a beneficiary to maintain a judicial
1352 proceeding against a trustee for an abuse of discretion or failure to comply with a standard for
1353 distribution.

1354 Section 54. Section **75-7-505** is enacted to read:

1355 **75-7-505. Creditor's claim against settlor.**

1356 (1) Whether or not the terms of a trust contain a spendthrift provision, the following
1357 rules apply:

1358 (a) During the lifetime of the settlor, the property of a revocable trust is subject to the

1359 claims of the settlor's creditors. If a trust has more than one settlor, the amount the creditor or
1360 assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of
1361 the trust attributable to that settlor's contribution.

1362 (b) With respect to an irrevocable trust other than an irrevocable trust that meets the
1363 requirements of Section 25-6-14, a creditor or assignee of the settlor may reach the maximum
1364 amount that can be distributed to or for the settlor's benefit. If the trust has more than one
1365 settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the
1366 settlor's interest in the portion of the trust attributable to that settlor's contribution.

1367 (c) After the death of a settlor, and subject to the settlor's right to direct the source from
1368 which liabilities will be paid, the property of a trust that was revocable at the settlor's death, but
1369 not property received by the trust as a result of the death of the settlor which is otherwise
1370 exempt from the claims of the settlor's creditors, is subject to claims of the settlor's creditors,
1371 costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal
1372 of remains, and statutory allowances to a surviving spouse and children to the extent the
1373 settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

1374 (2) For purposes of this section:

1375 (a) during the period the power may be exercised, the holder of a power of withdrawal
1376 is treated in the same manner as the settlor of a revocable trust to the extent of the property
1377 subject to the power; and

1378 (b) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of
1379 the trust only to the extent the value of the property affected by the lapse, release, or waiver
1380 exceeds the greater of the amount specified in Subsection 2041(b)(2), 2514(e), or Section
1381 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on May 1,2004.

1382 Section 55. Section **75-7-506** is enacted to read:

1383 **75-7-506. Overdue distribution.**

1384 Whether or not a trust contains a spendthrift provision, a creditor or assignee of a
1385 beneficiary may reach a mandatory distribution of income or principal, including a distribution
1386 upon termination of the trust, if the trustee has not made the distribution to the beneficiary
1387 within a reasonable time after the required distribution date.

1388 Section 56. Section **75-7-507** is enacted to read:

1389 **75-7-507. Personal obligations of trustee.**

1390 Trust property is not subject to personal obligations of the trustee, even if the trustee
1391 becomes insolvent or bankrupt.

1392 Section 57. Section **75-7-508**, which is renumbered from Section 75-7-308 is
1393 renumbered and amended to read:

1394 ~~[75-7-308]~~. **75-7-508. Notice to creditors.**

1395 (1) A trustee for an inter vivos revocable trust, upon the death of the settlor, may
1396 publish a notice to creditors once a week for three successive weeks in a newspaper of general
1397 circulation in the county where the settlor resided at the time of death, providing the trustee's
1398 name and address and notifying creditors of the deceased settlor to present their claims within
1399 three months after the date of the first publication of the notice or be forever barred.

1400 (2) A trustee may give written notice by mail or other delivery to any known creditor of
1401 the deceased settlor, notifying the creditor to present his claim within 90 days from the
1402 published notice if given as provided in Subsection (1) or within 60 days from the mailing or
1403 other delivery of the notice, whichever is later, or be forever barred. Written notice shall be the
1404 notice described in Subsection (1) or a similar notice.

1405 (3) The trustee shall not be liable to any creditor or to any successor of the deceased
1406 settlor for giving or failing to give notice under this section.

1407 Section 58. Section **75-7-509**, which is renumbered from Section 75-7-309 is
1408 renumbered and amended to read:

1409 ~~[75-7-309]~~. **75-7-509. Limitations on presentation of claims.**

1410 (1) All claims against a deceased settlor which arose before the death of the deceased
1411 settlor, including claims of the state and any subdivision of it, whether due or to become due,
1412 absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal
1413 basis, if not barred earlier by other statute of limitations, are barred against the deceased
1414 settlor's estate, the trustee, the trust estate, and the beneficiaries of the deceased settlor's trust,
1415 unless presented within the earlier of the following:

1416 (a) one year after the settlor's death; or

1417 (b) the time provided by Subsection ~~[75-3-308]~~ 75-7-508(2) for creditors who are
1418 given actual notice, and where notice is published, within the time provided in Subsection
1419 ~~[75-3-308]~~ 75-7-508(1) for all claims barred by publication.

1420 (2) In all events, claims barred by the nonclaim statute at the deceased settlor's

1421 domicile are also barred in this state.

1422 (3) All claims against a deceased settlor's estate or trust estate which arise at or after
1423 the death of the settlor, including claims of the state and any of its subdivisions, whether due or
1424 to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or
1425 other legal basis are barred against the deceased settlor's estate, the trustee, the trust estate, and
1426 the beneficiaries of the deceased settlor, unless presented as follows:

1427 (a) a claim based on a contract with the trustee within three months after performance
1428 by the trustee is due; or

1429 (b) any other claim within the later of three months after it arises, or the time specified
1430 in Subsection (1).

1431 (4) Nothing in this section affects or prevents:

1432 (a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the
1433 deceased settlor's estate or the trust estate;

1434 (b) to the limits of the insurance protection only, any proceeding to establish liability of
1435 the deceased settlor or the trustee for which he is protected by liability insurance; or

1436 (c) collection of compensation for services rendered and reimbursement for expenses
1437 advanced by the trustee or by the attorney or accountant for the trustee of the trust estate.

1438 Section 59. Section **75-7-510**, which is renumbered from Section 75-7-310 is
1439 renumbered and amended to read:

1440 **[75-7-310]. 75-7-510. Manner of presentation of claims.**

1441 (1) Claims against a deceased settlor's estate or inter vivos revocable trust shall be
1442 presented as follows:

1443 (a) The claimant may deliver or mail to the trustee, or the trustee's attorney of record, a
1444 written statement of the claim indicating its basis, the name and address of the claimant, and
1445 the amount claimed. The claim is considered presented upon the receipt of the written
1446 statement of claim by the trustee or the trustee's attorney of record. If a claim is not yet due, the
1447 date when it will become due shall be stated. If the claim is contingent or unliquidated, the
1448 nature of the uncertainty shall be stated. If the claim is secured, the security shall be described.
1449 Failure to describe correctly the security, the nature of any uncertainty, and the due date of a
1450 claim not yet due does not invalidate the presentation made.

1451 (b) The claimant may commence a proceeding against the trustee in any court where

1452 the trustee may be subjected to jurisdiction to obtain payment of the claim against the deceased
1453 settlor's estate or the trust estate, but the commencement of the proceeding must occur within
1454 the time limited for presenting the claim. No presentation of claim is required in regard to
1455 matters claimed in proceedings against the deceased settlor which were pending at the time of
1456 the deceased settlor's death.

1457 (2) If a claim is presented under Subsection (1)(a), no proceeding thereon may be
1458 commenced more than 60 days after the trustee has mailed a notice of disallowance; but, in the
1459 case of a claim which is not presently due or which is contingent or unliquidated, the trustee
1460 may consent to an extension of the 60-day period, or to avoid injustice, the court, on petition,
1461 may order an extension of the 60-day period, but in no event may the extension run beyond the
1462 applicable statute of limitations.

1463 Section 60. Section **75-7-511**, which is renumbered from Section 75-7-311 is
1464 renumbered and amended to read:

1465 ~~[75-7-311]~~. **75-7-511**. **Classification of claims.**

1466 (1) If the applicable assets of the deceased settlor's estate or trust estate are insufficient
1467 to pay all claims in full, the trustee shall make payment in the following order:

1468 (a) reasonable funeral expenses;

1469 (b) costs and expenses of administration;

1470 (c) debts and taxes with preference under federal law;

1471 (d) reasonable and necessary medical and hospital expenses of the last illness of the
1472 deceased settlor, including compensation of persons attending him, and medical assistance if
1473 Section 26-19-13.5 applies;

1474 (e) debts and taxes with preference under other laws of this state; and

1475 (f) all other claims.

1476 (2) No preference shall be given in the payment of any claim over any other claim of
1477 the same class, and a claim due and payable shall not be entitled to a preference over claims not
1478 due.

1479 Section 61. Section **75-7-512**, which is renumbered from Section 75-7-312 is
1480 renumbered and amended to read:

1481 ~~[75-7-312]~~. **75-7-512**. **Allowance of claims.**

1482 (1) As to claims presented in the manner described in Section ~~[75-7-310]~~ 75-7-510 and

1483 within the time limit prescribed in Section [~~75-7-309~~] 75-7-509, the trustee may mail a notice
1484 to any claimant stating that the claim has been allowed or disallowed. If, after allowing or
1485 disallowing a claim, the trustee changes the decision concerning the claim, the trustee shall
1486 notify the claimant. The trustee may not change a disallowance of a claim after the time for the
1487 claimant to file a petition for allowance or to commence a proceeding on the claim has expired
1488 and the claim has been barred. If the notice of disallowance warns the claimant of the
1489 impending bar, a claim which is disallowed in whole or in part by the trustee is barred so far as
1490 not allowed, unless the claimant seeks a court-ordered allowance by filing a petition for
1491 allowance in the court or by commencing a proceeding against the trustee not later than 60 days
1492 after the mailing of the notice of disallowance or partial allowance. If the trustee fails to mail
1493 notice to a claimant of action on the claim within 60 days after the time for original
1494 presentation of the claim has expired, this failure has the effect of a notice of allowance.

1495 (2) Upon the petition of the trustee or a claimant in a proceeding for this purpose, the
1496 court may order any claim presented to the trustee or trustee's attorney in a timely manner and
1497 not barred by Subsection (1) to be allowed in whole or in part. Notice of this proceeding shall
1498 be given to the claimant, the trustee, and those other persons interested in the trust estate as the
1499 court may direct by order at the time the proceeding is commenced.

1500 (3) A judgment in a proceeding in another court against the trustee to enforce a claim
1501 against a deceased settlor's estate is a court-ordered allowance of the claim.

1502 (4) Unless otherwise provided in any judgment in another court entered against a
1503 trustee, allowed claims bear interest at the legal rate for the period commencing six months
1504 after the deceased settlor's date of death unless based on a contract making a provision for
1505 interest, in which case they bear interest in accordance with that provision.

1506 Section 62. Section **75-7-513**, which is renumbered from Section 75-7-313 is
1507 renumbered and amended to read:

1508 ~~[75-7-313]~~. **75-7-513. Payment of claims.**

1509 (1) Upon the expiration of the earliest of the time limitations provided in Section
1510 [~~75-7-309~~] 75-7-509 for the presentation of claims, the trustee shall pay the claims allowed
1511 against the deceased settlor's estate in the order of priority prescribed, for claims already
1512 presented which have not yet been allowed or whose allowance has been appealed, and for
1513 unbarred claims which may yet be presented, including costs and expenses of administration.

1514 By petition to the court in a proceeding for that purpose, a claimant whose claim has been
1515 allowed but not paid as provided in this section may secure an order directing the trustee to pay
1516 the claim to the extent that funds of the deceased settlor's estate or trust estate are available for
1517 the payment.

1518 (2) The trustee at any time may pay any just claim that has not been barred, with or
1519 without formal presentation, but he shall be personally liable to any other claimant whose claim
1520 is allowed and who is injured by the payment if:

1521 (a) the payment was made before the expiration of the time limit stated in Subsection
1522 (1) and the trustee failed to require the payee to give adequate security for the refund of any of
1523 the payment necessary to pay other claimants; or

1524 (b) the payment was made, due to the negligence or willful fault of the trustee, in a way
1525 that deprived the injured claimant of his priority.

1526 Section 63. Section **75-7-514**, which is renumbered from Section 75-7-314 is
1527 renumbered and amended to read:

1528 ~~[75-7-314].~~ **75-7-514. Secured claims.**

1529 Payment of a secured claim shall be upon the basis of the amount allowed if the creditor
1530 surrenders his security; but otherwise payment shall be based upon one of the following:

1531 (1) if the creditor exhausts his security before receiving payment, unless precluded by
1532 another provision of the law, upon the amount of the claim allowed less the fair value of the
1533 security; or

1534 (2) if the creditor does not have the right to exhaust his security or has not done so,
1535 upon the amount of the claim allowed less the value of the security determined by converting it
1536 into money according to the terms of the agreement pursuant to which the security was
1537 delivered to the creditor, or by the creditor and trustee by agreement, arbitration, compromise,
1538 or litigation.

1539 Section 64. Section **75-7-515**, which is renumbered from Section 75-7-315 is
1540 renumbered and amended to read:

1541 ~~[75-7-315].~~ **75-7-515. Claims not due and contingent -- unliquidated claims.**

1542 (1) If a claim which will become due at a future time or a contingent or unliquidated
1543 claim becomes due or certain before the distribution of the trust estate, and if the claim has
1544 been allowed or established by a proceeding, it shall be paid in the same manner as presently

1545 due and absolute claims of the same class.

1546 (2) In other cases the trustee, or, on petition of the trustee or the claimant in a special
1547 proceeding for that purpose, the court, may provide for payment as follows:

1548 (a) if the claimant consents, he may be paid the present or agreed value of the claim,
1549 taking any uncertainty into account; or

1550 (b) arrangement for future payment, or possible payment, on the happening of the
1551 contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a
1552 bond or security from a beneficiary, or otherwise.

1553 Section 65. Section **75-7-516**, which is renumbered from Section 75-7-316 is
1554 renumbered and amended to read:

1555 **[75-7-316]. 75-7-516. Counterclaims.**

1556 (1) In allowing a claim, the trustee may deduct any counterclaim which the deceased
1557 settlor's estate has against the claimant. In determining a claim against a deceased settlor's
1558 estate, a court shall reduce the amount allowed by the amount of any counterclaims and, if the
1559 counterclaims exceed the claim, render a judgment against the claimant in the amount of the
1560 excess.

1561 (2) A counterclaim, liquidated or unliquidated, may arise from a transaction other than
1562 that upon which the claim is based.

1563 (3) A counterclaim may give rise to relief exceeding in amount or different in kind
1564 from that sought in the claim.

1565 Section 66. Section **75-7-517**, which is renumbered from Section 75-7-317 is
1566 renumbered and amended to read:

1567 **[75-7-317]. 75-7-517. Execution and levies prohibited.**

1568 (1) No execution may issue upon nor may any levy be made against any property of the
1569 deceased settlor's estate under any judgment against a deceased settlor or a trustee.

1570 (2) This section may not be construed to prevent the enforcement of mortgages,
1571 pledges, or liens upon real or personal property in an appropriate proceeding.

1572 Section 67. Section **75-7-518**, which is renumbered from Section 75-7-318 is
1573 renumbered and amended to read:

1574 **[75-7-318]. 75-7-518. Compromise of claims.**

1575 When a claim against a deceased settlor's estate has been presented in any manner, the

1576 trustee may, if it appears in the best interest of the deceased settlor's estate, compromise the
1577 claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

1578 Section 68. Section **75-7-519**, which is renumbered from Section 75-7-319 is
1579 renumbered and amended to read:

1580 ~~[75-7-319]~~. **75-7-519. Encumbered assets.**

1581 (1) If any assets of the deceased settlor's estate are encumbered by mortgage, pledge,
1582 lien, or other security interest, the trustee may pay the encumbrance or any part thereof, renew
1583 or extend any obligation secured by the encumbrance, or convey or transfer the assets to the
1584 creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the
1585 encumbrance has presented a claim, if it appears to be in the best interest of the deceased
1586 settlor's estate.

1587 (2) Payment of an encumbrance does not increase the share of the beneficiary entitled
1588 to the encumbered assets unless the beneficiary is entitled to exoneration or unless the terms of
1589 the deceased settlor's trust, under which the beneficiary is entitled to the encumbered assets,
1590 provides otherwise.

1591 Section 69. Section **75-7-604** is enacted to read:

1592 **Part 6. Revocable Trusts**

1593 **75-7-604. Capacity of settlor of revocable trust.**

1594 The capacity required to create, amend, revoke, or add property to a revocable trust, or
1595 to direct the actions of the trustee of a revocable trust, is the same as that required to make a
1596 will.

1597 Section 70. Section **75-7-605** is enacted to read:

1598 **75-7-605. Revocation or amendment of revocable trust.**

1599 (1) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor
1600 may revoke or amend the trust. This Subsection (1) does not apply to a trust created under an
1601 instrument executed before May 1, 2004.

1602 (2) If a revocable trust is created or funded by more than one settlor:

1603 (a) to the extent the trust consists of community property, the trust may be revoked by
1604 either spouse acting alone but may be amended only by joint action of both spouses; and

1605 (b) to the extent the trust consists of property other than community property, each
1606 settlor may revoke or amend the trust with regard to the portion of the trust property

1607 attributable to that settlor's contribution.

1608 (3) The settlor may revoke or amend a revocable trust:

1609 (a) by substantially complying with a method provided in the terms of the trust; or

1610 (b) if the terms of the trust do not provide a method or the method provided in the

1611 terms is not expressly made exclusive, by:

1612 (i) executing a later will or codicil that expressly refers to the trust or specifically

1613 devises property that would otherwise have passed according to the terms of the trust; or

1614 (ii) any other method manifesting clear and convincing evidence of the settlor's intent.

1615 (4) Upon revocation of a revocable trust, the trustee shall deliver the trust property as

1616 the settlor directs.

1617 (5) A settlor's powers with respect to revocation, amendment, or distribution of trust

1618 property may be exercised by an agent under a power of attorney only to the extent expressly

1619 authorized by the terms of the trust or the power.

1620 (6) A conservator of the settlor or, if no conservator has been appointed, a guardian of

1621 the settlor may exercise a settlor's powers with respect to revocation, amendment, or

1622 distribution of trust property only with the approval of the court supervising the

1623 conservatorship or guardianship.

1624 (7) A trustee who does not know that a trust has been revoked or amended is not liable

1625 to the settlor or settlor's successors in interest for distributions made and other actions taken on

1626 the assumption that the trust had not been amended or revoked.

1627 Section 71. Section **75-7-606** is enacted to read:

1628 **75-7-606. Settlor's powers -- Powers of withdrawal.**

1629 (1) While a trust is revocable and the settlor has capacity to revoke the trust, rights of

1630 the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively

1631 to, the settlor.

1632 (2) If a revocable trust has more than one settlor, the duties of the trustee are owed to

1633 all of the settlors having capacity to revoke the trust.

1634 (3) During the period the power may be exercised, the holder of a power of withdrawal

1635 has the rights of a settlor of a revocable trust under this section to the extent of the property

1636 subject to the power.

1637 Section 72. Section **75-7-607** is enacted to read:

1638 75-7-607. Limitation on action contesting validity of revocable trust --

1639 **Distribution of trust property.**

1640 (1) A person shall commence a judicial proceeding to contest the validity of a trust that
1641 was revocable at the settlor's death within the earlier of:

1642 (a) three years after the settlor's death; or

1643 (b) 90 days after the trustee sent the person a copy of the trust instrument and a notice
1644 informing the person of the trust's existence, of the trustee's name and address, and of the time
1645 allowed for commencing a proceeding.

1646 (2) Upon the death of the settlor of a trust that was revocable at the settlor's death, the
1647 trustee may proceed to distribute the trust property in accordance with the terms of the trust.

1648 The trustee is not subject to liability for doing so unless:

1649 (a) the trustee knows of a pending judicial proceeding contesting the validity of the
1650 trust; or

1651 (b) a potential contestant has notified the trustee of a possible judicial proceeding to
1652 contest the trust and a judicial proceeding is commenced within 60 days after the contestant
1653 sent the notification.

1654 (3) With respect to a potential contest, the trustee is only liable for actions taken two or
1655 more business days after the trustee has actual receipt of written notice from a potential
1656 contestant. The written notice shall include the name of the settlor or of the trust, the name of
1657 the potential contestant, and a description of the basis for the potential contest. The written
1658 notice shall be mailed to the trustee at the principal place of administration of the trust by
1659 registered or certified mail, return receipt requested, or served upon the trustee in the same
1660 manner as a summons in a civil action. Any other form or service of notice is not sufficient to
1661 impose liability on the trustee for actions taken pursuant to the terms of the trust.

1662 (4) A beneficiary of a trust that is determined to have been invalid is liable to return
1663 any distribution received.

1664 Section 73. Section **75-7-701** is enacted to read:

1665 **Part 7. Office of Trustee**

1666 **75-7-701. Accepting or declining trusteeship.**

1667 (1) Except as otherwise provided in Subsection (3), a person designated as trustee
1668 accepts the trusteeship:

1669 (a) by substantially complying with a method of acceptance provided in the terms of
1670 the trust; or

1671 (b) if the terms of the trust do not provide a method or the method provided in the
1672 terms is not expressly made exclusive, by accepting delivery of the trust property, exercising
1673 powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

1674 (2) A person designated as trustee who has not yet accepted the trusteeship may reject
1675 the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable
1676 time after knowing of the designation is considered to have rejected the trusteeship.

1677 (3) A person designated as trustee, without accepting the trusteeship, may:

1678 (a) act to preserve the trust property if, within a reasonable time after acting, the person
1679 sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a
1680 qualified beneficiary; and

1681 (b) inspect or investigate trust property to determine potential liability under
1682 environmental or other law or for any other purpose.

1683 Section 74. Section **75-7-702** is enacted to read:

1684 **75-7-702. Trustee's bond.**

1685 (1) A trustee shall give bond to secure performance of the trustee's duties only if the
1686 court finds that a bond is needed to protect the interests of the beneficiaries or is required by
1687 the terms of the trust and the court has not dispensed with the requirement.

1688 (2) The court may specify the amount of a bond, its liabilities, and whether sureties are
1689 necessary. The court may modify or terminate a bond at any time.

1690 (3) A regulated financial service institution qualified to do trust business in this state
1691 need not give bond, unless required by the terms of the trust. The cost of any bond shall be
1692 borne by the trust.

1693 (4) Unless otherwise directed by the court, the cost of the bond is charged to the trust.

1694 Section 75. Section **75-7-703** is enacted to read:

1695 **75-7-703. Cotrustees.**

1696 (1) Cotrustees who are unable to reach a unanimous decision may act by majority
1697 decision.

1698 (2) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the
1699 trust.

1700 (3) A cotrustee must participate in the performance of a trustee's function unless the
1701 cotrustee is unavailable to perform the function because of absence, illness, disqualification
1702 under other law, or other temporary incapacity, or the cotrustee has properly delegated the
1703 performance of the function to another trustee.

1704 (4) If a cotrustee is unavailable to perform duties because of absence, illness,
1705 disqualification under other law, or other temporary incapacity, or if a cotrustee fails or refuses
1706 to act after reasonable notice, and prompt action is necessary to achieve the purposes of the
1707 trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the
1708 remaining cotrustees may act for the trust.

1709 (5) A trustee may not delegate to a cotrustee the performance of a function the settlor
1710 intended the trustees to perform jointly as determined from the terms of the trust. If one of the
1711 cotrustees is a regulated financial service institution qualified to do trust business in this state
1712 and the remaining cotrustees are individuals, a delegation by the individual cotrustees to the
1713 regulated financial service institution of the performance of trust investment functions shall be
1714 presumed to be in accordance with the settlor's intent unless the terms of the trust specifically
1715 provide otherwise. Unless a delegation was irrevocable, a trustee may revoke a delegation
1716 previously made.

1717 (6) Except as otherwise provided in Subsection (7), a trustee who does not join in an
1718 action of another trustee is not liable for the action.

1719 (7) Each trustee shall exercise reasonable care to:

1720 (a) prevent a cotrustee from committing a serious breach of trust; and

1721 (b) compel a cotrustee to redress a serious breach of trust.

1722 (8) A dissenting trustee who joins in an action at the direction of the majority of the
1723 trustees and who notified any cotrustee of the dissent at or before the time of the action is not
1724 liable for the action unless the action is a serious breach of trust.

1725 Section 76. Section **75-7-704** is enacted to read:

1726 **75-7-704. Vacancy in trusteeship -- Appointment of successor.**

1727 (1) A vacancy in a trusteeship occurs if:

1728 (a) a person designated as trustee rejects the trusteeship;

1729 (b) a person designated as trustee cannot be identified or does not exist;

1730 (c) a trustee resigns;

- 1731 (d) a trustee is disqualified or removed;
1732 (e) a trustee dies; or
1733 (f) a guardian or conservator is appointed for an individual serving as trustee, unless
1734 otherwise provided in the trust.
- 1735 (2) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be
1736 filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.
- 1737 (3) A vacancy in a trusteeship required to be filled must be filled in the following order
1738 of priority:
- 1739 (a) by a person designated in the terms of the trust to act as successor trustee;
1740 (b) by a person appointed by unanimous agreement of the qualified beneficiaries; or
1741 (c) by a person appointed by the court.
- 1742 (4) A vacancy in a trusteeship of a charitable trust that is required to be filled must be
1743 filled in the following order of priority:
- 1744 (a) by a person designated in the terms of the trust to act as successor trustee;
1745 (b) by a person selected by the charitable organizations expressly designated to receive
1746 distributions under the terms of the trust if the attorney general concurs in the selection; or
1747 (c) by a person appointed by the court.
- 1748 (5) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court
1749 may appoint an additional trustee or special fiduciary whenever the court considers the
1750 appointment necessary for the administration of the trust.
- 1751 Section 77. Section **75-7-705** is enacted to read:
1752 **75-7-705. Resignation of trustee.**
- 1753 (1) A trustee may resign:
- 1754 (a) upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and
1755 all cotrustees; or
- 1756 (b) with the approval of the court.
- 1757 (2) In approving a resignation, the court may issue orders and impose conditions
1758 reasonably necessary for the protection of the trust property.
- 1759 (3) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or
1760 omissions of the trustee is not discharged or affected by the trustee's resignation.
- 1761 Section 78. Section **75-7-706** is enacted to read:

1762 75-7-706. Removal of trustee.

1763 (1) The settlor, a cotrustee, or a qualified beneficiary may request the court to remove a
1764 trustee, or a trustee may be removed by the court on its own initiative.

1765 (2) The court may remove a trustee if:

1766 (a) the trustee has committed a serious breach of trust;

1767 (b) lack of cooperation among cotrustees substantially impairs the administration of the
1768 trust;

1769 (c) because of unfitness, unwillingness, or persistent failure of the trustee to administer
1770 the trust effectively, the court determines that removal of the trustee best serves the interests of
1771 the beneficiaries; or

1772 (d) there has been a substantial change of circumstances or removal is requested by all
1773 of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests
1774 of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a
1775 suitable cotrustee or successor trustee is available.

1776 (3) Pending a final decision on a request to remove a trustee, or in lieu of or in addition
1777 to removing a trustee, the court may order appropriate relief under Subsection 75-7-1001(2)
1778 necessary to protect the trust property or the interests of the beneficiaries.

1779 Section 79. Section **75-7-707** is enacted to read:

1780 **75-7-707. Delivery of property by former trustee.**

1781 (1) Unless a cotrustee remains in office or the court otherwise orders, and until the trust
1782 property is delivered to a successor trustee or other person entitled to it, a trustee who has
1783 resigned or been removed has the duties of a trustee and the powers necessary to protect the
1784 trust property.

1785 (2) A trustee who has resigned or been removed shall proceed expeditiously to deliver
1786 the trust property within the trustee's possession to the cotrustee, successor trustee, or other
1787 person entitled to it.

1788 Section 80. Section **75-7-708** is enacted to read:

1789 **75-7-708. Compensation of trustee.**

1790 If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to
1791 compensation that is reasonable under the circumstances.

1792 Section 81. Section **75-7-709** is enacted to read:

1793 **75-7-709. Reimbursement of expenses.**

1794 (1) A trustee is entitled to be reimbursed out of the trust property, with interest as
1795 appropriate, for:

1796 (a) expenses that were properly incurred in the administration of the trust; and

1797 (b) to the extent necessary to prevent unjust enrichment of the trust, expenses that were
1798 not properly incurred in the administration of the trust.

1799 (2) An advance by the trustee of money for the protection of the trust gives rise to a
1800 lien against trust property to secure reimbursement with reasonable interest.

1801 Section 82. Section **75-7-801** is enacted to read:

1802 **Part 8. Duties and Powers of Trustee**

1803 **75-7-801. Duty to administer trust.**

1804 Upon acceptance of a trusteeship, the trustee shall administer the trust expeditiously
1805 and in good faith, in accordance with its terms and purposes and the interests of the
1806 beneficiaries, and in accordance with this chapter.

1807 Section 83. Section **75-7-802** is enacted to read:

1808 **75-7-802. Duty of loyalty.**

1809 (1) A trustee shall administer the trust solely in the interests of the beneficiaries.

1810 (2) Subject to the rights of persons dealing with or assisting the trustee as provided in
1811 Section 75-7-1012, a sale, encumbrance, or other transaction involving the investment or
1812 management of trust property entered into by the trustee for the trustee's own personal account
1813 or which is otherwise affected by a conflict between the trustee's fiduciary and personal
1814 interests is voidable by a beneficiary affected by the transaction unless:

1815 (a) the transaction was authorized by the terms of the trust;

1816 (b) the transaction was approved by the court;

1817 (c) the beneficiary did not commence a judicial proceeding within the time allowed by
1818 Section 75-7-1005;

1819 (d) the beneficiary consented to the trustee's conduct, ratified the transaction, or
1820 released the trustee in compliance with Section 75-7-1009; or

1821 (e) the transaction involves a contract entered into or claim acquired by the trustee
1822 before the person became or contemplated becoming trustee.

1823 (3) A sale, encumbrance, or other transaction involving the investment or management

1824 of trust property is presumed to be affected by a conflict between personal and fiduciary
1825 interests if it is entered into by the trustee with:

1826 (a) the trustee's spouse;

1827 (b) the trustee's descendants, siblings, parents, or their spouses;

1828 (c) an agent of the trustee, including but not limited to an attorney, accountant, or
1829 financial advisor; or

1830 (d) a corporation or other person or enterprise in which the trustee, or a person that
1831 owns a significant interest in the trustee, has an interest that might affect the trustee's best
1832 judgment.

1833 (4) A transaction between a trustee and a beneficiary that does not concern trust
1834 property but that occurs during the existence of the trust or while the trustee retains significant
1835 influence over the beneficiary and from which the trustee obtains an advantage is voidable by
1836 the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

1837 (5) A transaction not concerning trust property in which the trustee engages in the
1838 trustee's individual capacity involves a conflict between personal and fiduciary interests if the
1839 transaction concerns an opportunity properly belonging to the trust.

1840 (6) An investment by a trustee in securities of an investment company or investment
1841 trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is
1842 not presumed to be affected by a conflict between personal and fiduciary interests if the
1843 investment complies with the prudent investor rule of Section 75-7-901. The trustee may be
1844 compensated by the investment company or investment trust for providing those services out of
1845 fees charged to the trust.

1846 (7) In voting shares of stock or in exercising powers of control over similar interests in
1847 other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the
1848 trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or
1849 appoint directors or other managers who will manage the corporation or enterprise in the best
1850 interests of the beneficiaries.

1851 (8) This section does not preclude the following actions by the trustee:

1852 (a) an agreement between the trustee and a beneficiary relating to the appointment or
1853 compensation of the trustee;

1854 (b) payment of reasonable compensation to the trustee;

1855 (c) a transaction between a trust and another trust, decedent's estate, conservatorship, or
1856 guardianship of which the trustee is a fiduciary or in which a beneficiary has an interest;

1857 (d) a deposit of trust money in a regulated financial service institution operated by the
1858 trustee;

1859 (e) an advance by the trustee of money for the protection of the trust;

1860 (f) collecting, holding, and retaining trust assets received from a trustor until, in the
1861 judgment of the trustee, disposition of the assets should be made, even though the assets
1862 include an asset in which the trustee is personally interested;

1863 (g) acquiring an undivided interest in a trust asset in which the trustee, in any trust
1864 capacity, holds an undivided interest;

1865 (h) borrowing money to be repaid from the trust assets or otherwise;

1866 (i) advancing money to be repaid from the assets or otherwise;

1867 (j) employing persons, including attorneys, auditors, investment advisers, or agents,
1868 even if they are associated with the trustee:

1869 (i) to advise or assist the trustee in the performance of the trustee's administrative
1870 duties or perform any act of administration, whether or not discretionary; or

1871 (ii) to act without independent investigation upon their recommendations;

1872 (k) if a governing instrument or order requires or authorizes investment in United
1873 States government obligations, investing in those obligations, either directly or in the form of
1874 securities or other interests, in any open-end or closed-end management type investment
1875 company or investment trust registered under the provisions of the Investment Company Act of
1876 1940, 15 U.S.C. Sections 80a-1 through 80a-64 if:

1877 (i) the portfolio of the investment company or investment trust is limited to United
1878 States government obligations, and repurchase agreements are fully collateralized by United
1879 States government obligations; and

1880 (ii) the investment company or investment trust takes delivery of the collateral for any
1881 repurchase agreement either directly or through an authorized custodian.

1882 (9) The court may appoint a special fiduciary to make a decision with respect to any
1883 proposed transaction that might violate this section if entered into by the trustee.

1884 Section 84. Section **75-7-803** is enacted to read:

1885 **75-7-803. Impartiality.**

1886 If a trust has two or more beneficiaries, the trustee shall act impartially in investing,
1887 managing, and distributing the trust property, giving due regard to the beneficiaries' respective
1888 interests.

1889 Section 85. Section **75-7-804** is enacted to read:

1890 **75-7-804. Prudent administration.**

1891 A trustee shall administer the trust as a prudent person would, by considering the
1892 purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying
1893 this standard, the trustee shall exercise reasonable care, skill, and caution.

1894 Section 86. Section **75-7-805** is enacted to read:

1895 **75-7-805. Costs of administration.**

1896 In administering a trust, the trustee may incur only costs that are reasonable in relation
1897 to the trust property, the purposes of the trust, and the skills of the trustee.

1898 Section 87. Section **75-7-806** is enacted to read:

1899 **75-7-806. Trustee's skills.**

1900 A trustee who is named trustee in reliance upon the trustee's representation that the
1901 trustee has special skills or expertise, shall use those special skills or expertise.

1902 Section 88. Section **75-7-807** is enacted to read:

1903 **75-7-807. Control and protection of trust property.**

1904 A trustee shall take reasonable steps to take control of and protect the trust property.

1905 Section 89. Section **75-7-808** is enacted to read:

1906 **75-7-808. Recordkeeping and identification of trust property.**

1907 (1) A trustee shall keep adequate records of the administration of the trust.

1908 (2) A trustee shall keep trust property separate from the trustee's own property.

1909 (3) Except as otherwise provided in Subsection (4), a trustee shall cause the trust
1910 property to be designated so that the interest of the trust, to the extent feasible, appears in
1911 records maintained by a party other than a trustee or beneficiary.

1912 (4) If the trustee maintains records clearly indicating the respective interests, a trustee
1913 may invest as a whole the property of two or more separate trusts.

1914 Section 90. Section **75-7-809** is enacted to read:

1915 **75-7-809. Enforcement and defense of claims.**

1916 A trustee shall take reasonable steps to enforce claims of the trust and to defend claims

1917 against the trust.

1918 Section 91. Section **75-7-810** is enacted to read:

1919 **75-7-810. Collecting trust property.**

1920 A trustee shall take reasonable steps to compel a former trustee or other person to
1921 deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have
1922 been committed by a former trustee, unless the terms of the trust provide otherwise.

1923 Section 92. Section **75-7-811** is enacted to read:

1924 **75-7-811. Duty to inform and report.**

1925 (1) Except to the extent the terms of the trust provide otherwise, a trustee shall keep the
1926 qualified beneficiaries of the trust reasonably informed about the administration of the trust and
1927 of the material facts necessary for them to protect their interests. Unless unreasonable under
1928 the circumstances, and unless otherwise provided by the terms of the trust a trustee shall
1929 promptly respond to a qualified beneficiary's request for information related to the
1930 administration of the trust.

1931 (2) Except to the extent the terms of the trust provide otherwise, a trustee:

1932 (a) upon request of a qualified beneficiary, shall promptly furnish to the beneficiary a
1933 copy of the portions of the trust instrument which describe or affect the beneficiary's interest;

1934 (b) within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries
1935 of the acceptance and of the trustee's name, address, and telephone number;

1936 (c) within 60 days after the date the trustee acquires knowledge of the creation of an
1937 irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has
1938 become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified
1939 beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to
1940 request a copy of the trust instrument, and of the right to a trustee's report as provided in

1941 Subsection (3); and

1942 (d) shall notify the qualified beneficiaries in advance of any change in the method or
1943 rate of the trustee's compensation.

1944 (3) A trustee shall send to the qualified beneficiaries who request it, at least annually
1945 and at the termination of the trust, a report of the trust property, liabilities, receipts, and
1946 disbursements, including the amount of the trustee's compensation or a fee schedule or other
1947 writing showing how the trustee's compensation was determined, a listing of the trust assets

1948 and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a
1949 cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former
1950 trustee, unless the terms of the trust provide otherwise. A personal representative, conservator,
1951 or guardian may send the qualified beneficiaries a report on behalf of a deceased or
1952 incapacitated trustee.

1953 (4) A qualified beneficiary may waive the right to a trustee's report or other information
1954 otherwise required to be furnished under this section. A beneficiary, with respect to future
1955 reports and other information, may withdraw a waiver previously given.

1956 Section 93. Section **75-7-812** is enacted to read:

1957 **75-7-812. Discretionary powers -- Tax savings.**

1958 (1) Notwithstanding the breadth of discretion granted to a trustee in the terms of the
1959 trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the trustee shall
1960 exercise a discretionary power in good faith and in accordance with the terms and purposes of
1961 the trust and the interests of the beneficiaries.

1962 (2) Subject to Subsection (4), and unless the terms of the trust expressly indicate that a
1963 rule in this section does not apply:

1964 (a) a person other than a settlor who is a beneficiary and trustee of a trust that confers
1965 on the trustee a power to make discretionary distributions to or for the trustee's personal benefit
1966 may exercise the power only in accordance with an ascertainable standard relating to the
1967 trustee's individual health, education, support, or maintenance within the meaning of
1968 Subsection 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on
1969 May 1, 2004; and

1970 (b) a trustee may not exercise a power to make discretionary distributions to satisfy a
1971 legal obligation of support that the trustee personally owes another person.

1972 (3) A power whose exercise is limited or prohibited by Subsection (2) may be
1973 exercised by a majority of the remaining trustees whose exercise of the power is not so limited
1974 or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a
1975 special fiduciary with authority to exercise the power.

1976 (4) Subsection (2) does not apply to:

1977 (a) a power held by the settlor's spouse who is the trustee of a trust for which a marital
1978 deduction, as defined in Subsection 2056(b)(5) or 2523(e) of the Internal Revenue Code of

1979 1986, as in effect on May 1, 2004, was previously allowed:

1980 (b) any trust during any period that the trust may be revoked or amended by its settlor;

1981 or

1982 (c) a trust if contributions to the trust qualify for the annual exclusion under Subsection

1983 2503(c) of the Internal Revenue Code of 1986, as in effect on May 1, 2004.

1984 Section 94. Section **75-7-813** is enacted to read:

1985 **75-7-813. General powers of trustee.**

1986 (1) A trustee, without authorization by the court, may exercise:

1987 (a) powers conferred by the terms of the trust; or

1988 (b) except as limited by the terms of the trust:

1989 (i) all powers over the trust property which an unmarried competent owner has over
1990 individually owned property;

1991 (ii) any other powers appropriate to achieve the proper investment, management, and
1992 distribution of the trust property; and

1993 (iii) any other powers conferred by this chapter.

1994 (2) The exercise of a power is subject to the fiduciary duties prescribed by this part.

1995 Section 95. Section **75-7-814** is enacted to read:

1996 **75-7-814. Specific powers of trustee.**

1997 (1) Without limiting the authority conferred by Section 75-7-813, a trustee may:

1998 (a) collect trust property and accept or reject additions to the trust property from a
1999 settlor or any other person;

2000 (b) acquire or sell property, for cash or on credit, at public or private sale;

2001 (c) exchange, partition, or otherwise change the character of trust property;

2002 (d) deposit trust money in an account in a regulated financial service institution;

2003 (e) borrow money, with or without security from any financial institution, including a
2004 financial institution that is serving as a trustee or one of its affiliates, and mortgage or pledge
2005 trust property for a period within or extending beyond the duration of the trust;

2006 (f) with respect to an interest in a proprietorship, partnership, limited liability company,
2007 business trust, corporation, or other form of business or enterprise, continue the business or
2008 other enterprise and take any action that may be taken by shareholders, members, or property
2009 owners, including merging, dissolving, or otherwise changing the form of business

2010 organization or contributing additional capital:

2011 (g) with respect to stocks or other securities, exercise the rights of an absolute owner,
2012 including the right to:

2013 (i) vote, or give proxies to vote, with or without power of substitution, or enter into or
2014 continue a voting trust agreement;

2015 (ii) hold a security in the name of a nominee or in other form without disclosure of the
2016 trust so that title may pass by delivery;

2017 (iii) pay calls, assessments, and other sums chargeable or accruing against the
2018 securities, and sell or exercise stock subscription or conversion rights; and

2019 (iv) deposit the securities with a depository or other regulated financial service
2020 institution;

2021 (h) with respect to an interest in real property, construct, or make ordinary or
2022 extraordinary repairs to, alterations to, or improvements in, buildings or other structures,
2023 demolish improvements, raze existing or erect new party walls or buildings, subdivide or
2024 develop land, dedicate land to public use or grant public or private easements, and make or
2025 vacate plats and adjust boundaries;

2026 (i) enter into a lease for any purpose as lessor or lessee, including a lease or other
2027 arrangement for exploration and removal of natural resources, with or without the option to
2028 purchase or renew, for a period within or extending beyond the duration of the trust;

2029 (j) grant an option involving a sale, lease, or other disposition of trust property or
2030 acquire an option for the acquisition of property, including an option exercisable beyond the
2031 duration of the trust, and exercise an option so acquired;

2032 (k) insure the property of the trust against damage or loss and insure the trustee, the
2033 trustee's agents, and beneficiaries against liability arising from the administration of the trust;

2034 (l) abandon or decline to administer property of no value or of insufficient value to
2035 justify its collection or continued administration;

2036 (m) with respect to possible liability for violation of environmental law:

2037 (i) inspect or investigate property the trustee holds or has been asked to hold, or
2038 property owned or operated by an organization in which the trustee holds or has been asked to
2039 hold an interest, for the purpose of determining the application of environmental law with
2040 respect to the property;

- 2041 (ii) take action to prevent, abate, or otherwise remedy any actual or potential violation
2042 of any environmental law affecting property held directly or indirectly by the trustee, whether
2043 taken before or after the assertion of a claim or the initiation of governmental enforcement;
- 2044 (iii) decline to accept property into trust or disclaim any power with respect to property
2045 that is or may be burdened with liability for violation of environmental law;
- 2046 (iv) compromise claims against the trust which may be asserted for an alleged violation
2047 of environmental law; and
- 2048 (v) pay the expense of any inspection, review, abatement, or remedial action to comply
2049 with environmental law;
- 2050 (n) pay or contest any claim, settle a claim by or against the trust, and release, in whole
2051 or in part, a claim belonging to the trust;
- 2052 (o) pay taxes, assessments, compensation of the trustee and of employees and agents of
2053 the trust, and other expenses incurred in the administration of the trust;
- 2054 (p) exercise elections with respect to federal, state, and local taxes;
- 2055 (q) select a mode of payment under any employee benefit or retirement plan, annuity,
2056 or life insurance payable to the trustee, exercise rights thereunder, including exercise of the
2057 right to indemnification for expenses and against liabilities, and take appropriate action to
2058 collect the proceeds;
- 2059 (r) make loans out of trust property, including loans to a beneficiary on terms and
2060 conditions the trustee considers to be fair and reasonable under the circumstances, and the
2061 trustee has a lien on future distributions for repayment of those loans;
- 2062 (s) pledge trust property to guarantee loans made by others to the beneficiary;
- 2063 (t) appoint a trustee to act in another jurisdiction with respect to trust property located
2064 in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the
2065 appointing trustee, require that the appointed trustee furnish security, and remove any trustee so
2066 appointed;
- 2067 (u) pay an amount distributable to a beneficiary who is under a legal disability or who
2068 the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or
2069 applying it for the beneficiary's benefit, or by:
- 2070 (i) paying it to the beneficiary's conservator or, if the beneficiary does not have a
2071 conservator, the beneficiary's guardian;

2072 (ii) paying it to the beneficiary's custodian under Title 75, Chapter 5a, Uniform
2073 Transfers to Minors Act;

2074 (iii) if the trustee does not know of a conservator, guardian, custodian, or custodial
2075 trustee, paying it to an adult relative or other person having legal or physical care or custody of
2076 the beneficiary, to be expended on the beneficiary's behalf; or

2077 (iv) managing it as a separate fund on the beneficiary's behalf, subject to the
2078 beneficiary's continuing right to withdraw the distribution;

2079 (v) on distribution of trust property or the division or termination of a trust, make
2080 distributions in divided or undivided interests, allocate particular assets in proportionate or
2081 disproportionate shares, value the trust property for those purposes, and adjust for resulting
2082 differences in valuation;

2083 (w) resolve a dispute concerning the interpretation of the trust or its administration by
2084 mediation, arbitration, or other procedure for alternative dispute resolution;

2085 (x) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to
2086 protect trust property and the trustee in the performance of the trustee's duties;

2087 (y) sign and deliver contracts and other instruments that are useful to achieve or
2088 facilitate the exercise of the trustee's powers; and

2089 (z) on termination of the trust, exercise the powers appropriate to finalize the
2090 administration of the trust and distribute the trust property to the persons entitled to it.

2091 (2) A trustee may delegate investment and management functions that a prudent trustee
2092 of comparable skills could properly delegate under the circumstances.

2093 (a) The trustee shall exercise reasonable care, skill, and caution in:

2094 (i) selecting the agent;

2095 (ii) establishing the scope and terms of the delegation consistent with the purposes of
2096 the trust; and

2097 (iii) periodically reviewing the agent's actions to monitor the agent's performance and
2098 compliance with the terms of the delegation.

2099 (b) In performing a delegated function, an agent has a duty to the trust to exercise
2100 reasonable care to comply with the terms of the delegation.

2101 (c) A trustee who complies with the requirements of this Subsection (2) is not liable to
2102 the beneficiaries or to the trust for the decisions or actions of the agent to whom the function

2103 was delegated.

2104 Section 96. Section **75-7-815** is enacted to read:

2105 **75-7-815. Distribution upon termination.**

2106 (1) Upon termination or partial termination of a trust, the trustee may send to the
2107 beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed
2108 distribution terminates if the beneficiary does not notify the trustee of an objection within 30
2109 days after the proposal was sent but only if the proposal informed the beneficiary of the right to
2110 object and of the time allowed for objection.

2111 (2) Upon the occurrence of an event terminating or partially terminating a trust, the
2112 trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it,
2113 subject to the right of the trustee to retain a reasonable reserve for the payment of debts,
2114 expenses, and taxes.

2115 (3) A release by a beneficiary of a trustee from liability for breach of trust is invalid to
2116 the extent:

2117 (a) it was induced by improper conduct of the trustee; or

2118 (b) the beneficiary, at the time of the release, did not know or had no reason to know of
2119 the beneficiary's rights or of the material facts relating to the breach.

2120 Section 97. Section **75-7-816** is enacted to read:

2121 **75-7-816. Recitals when title to real property is in trust -- Failure.**

2122 (1) When title to real property is granted to a person as trustee, the terms of the trust
2123 may be given either:

2124 (a) in the deed of transfer; or

2125 (b) in an instrument signed by the grantor and recorded in the same office as the grant
2126 to the trustee.

2127 (2) If the terms of the trust are not made public as required in Subsection (1), a
2128 conveyance from the trustee is absolute in favor of purchasers for value who take the property
2129 without notice of the terms of the trust.

2130 (3) The terms of the trust recited in the deed of transfer or the instrument recorded
2131 under Subsection (1)(b) shall include:

2132 (a) the name of the trustee;

2133 (b) the address of the trustee; and

2134 (c) the name and date of the trust.

2135 (4) Any real property titled in a trust which has a restriction on transfer described in
2136 Section 25-6-14 shall include in the title the words "asset protection trust".

2137 Section 98. Section **75-7-817** is enacted to read:

2138 **75-7-817. Marital deduction formulas -- Trusts.**

2139 (1) For estates of decedents dying after December 31, 1981, where a decedent's trust
2140 executed before September 13, 1981, contains a formula expressly providing that the
2141 decedent's spouse is to receive the maximum amount of property qualifying for the marital
2142 deduction allowable by federal law, this formula shall be construed as referring to the unlimited
2143 marital deduction allowable by federal law as amended by Section 403(a) of the Economic
2144 Recovery Tax Act of 1981.

2145 (2) The intention of a trustor as expressed in the trust shall control the legal effect of
2146 any dispositions made by it for purposes of construing Subsection (1), and the rule of
2147 construction of Subsection (1) shall apply unless a contrary intention is indicated by the trust.

2148 Section 99. Section **75-7-901** is enacted to read:

2149 **Part 9. Utah Uniform Prudent Investor Act**

2150 **75-7-901. Prudent investor rule.**

2151 (1) Except as otherwise provided in Subsection (2), a trustee who invests and manages
2152 trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule
2153 set forth in this chapter. If a trustee is named on the basis of a trustee's representations of
2154 special skills or expertise, the trustee has a duty to use those special skills or expertise.

2155 (2) The prudent investor rule is a default rule and may be expanded, restricted,
2156 eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a
2157 beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the
2158 trust.

2159 Section 100. Section **75-7-902** is enacted to read:

2160 **75-7-902. Standard of care -- Portfolio strategy -- Risk and return objectives.**

2161 (1) A trustee shall invest and manage trust assets as a prudent investor would, by
2162 considering the purposes, terms, distribution requirements, and other circumstances of the trust.
2163 In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

2164 (2) A trustee's investment and management decisions respecting individual assets must

2165 be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of
2166 an overall investment strategy having risk and return objectives reasonably suited to the trust.

2167 (3) Among circumstances that a trustee shall consider in investing and managing trust
2168 assets are the following which may be relevant to the trust or its beneficiaries:

2169 (a) general economic conditions;

2170 (b) the possible effect of inflation or deflation;

2171 (c) the expected tax consequences of investment decisions or strategies;

2172 (d) the role that each investment or course of action plays within the overall trust
2173 portfolio, which may include financial assets, interests in closely held enterprises, tangible and
2174 intangible personal property, and real property;

2175 (e) the expected total return from income and the appreciation of capital;

2176 (f) other resources of the beneficiaries;

2177 (g) needs for liquidity, regularity of income, and preservation or appreciation of capital;

2178 and

2179 (h) an asset's special relationship or special value, if any, to the purposes of the trust or
2180 to one or more of the beneficiaries.

2181 (4) A trustee shall make a reasonable effort to verify facts relevant to the investment
2182 and management of trust assets.

2183 (5) A trustee may invest in any kind of property or type of investment consistent with
2184 the standards of this chapter.

2185 Section 101. Section **75-7-903** is enacted to read:

2186 **75-7-903. Diversification.**

2187 A trustee shall diversify the investments of the trust unless the trustee reasonably
2188 determines that, because of special circumstances, the purposes of the trust are better served
2189 without diversifying.

2190 Section 102. Section **75-7-904** is enacted to read:

2191 **75-7-904. Duties at inception of trusteeship.**

2192 Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee
2193 shall review the trust assets and make and implement decisions concerning the retention and
2194 disposition of assets, in order to bring the trust portfolio into compliance with the purposes,
2195 terms, distribution requirements, and other circumstances of the trust, and with the

2196 requirements of this chapter.

2197 Section 103. Section **75-7-905** is enacted to read:

2198 **75-7-905. Reviewing compliance.**

2199 Compliance with the prudent investor rule is determined in light of the facts and
2200 circumstances existing at the time of a trustee's decision or action and not by hindsight. This
2201 section does not require a specific outcome in investing.

2202 Section 104. Section **75-7-906** is enacted to read:

2203 **75-7-906. Investment direction.**

2204 (1) For purposes of this section, "investment direction" means a direction that is
2205 binding on the trustee, except for an investment direction given by a settlor as described in
2206 Subsection (2) to do any of the following with respect to an investment:

2207 (a) retention;

2208 (b) purchase;

2209 (c) sale;

2210 (d) exchange;

2211 (e) tender; or

2212 (f) any other transaction affecting ownership in the investment.

2213 (2) (a) During the time period that a trust is revocable, the trustee may follow any
2214 investment direction of the settlor, including an investment direction that:

2215 (i) is manifestly contrary to the terms of the trust; or

2216 (ii) seriously breaches a fiduciary duty to the beneficiaries.

2217 (b) The trustee is not liable for any loss resulting from following an investment
2218 direction described in Subsection (2)(a).

2219 (3) If the terms of a trust authorize a person to give investment direction to the trustee,
2220 the person authorized to give investment direction:

2221 (a) is presumptively a fiduciary only with respect to an investment direction that the
2222 person gives to the trustee;

2223 (b) is required to act in good faith with regard to:

2224 (i) the purposes of the trust; and

2225 (ii) the interests of the beneficiaries; and

2226 (c) is liable for any loss that results from breach of the fiduciary duty only with respect

2227 to an investment direction that the person gives to the trustee.

2228 (4) Except in cases of willful misconduct or gross negligence, a trustee is not liable for
2229 any loss that results from following an investment direction if:

2230 (a) the terms of a trust authorizes a person to give the investment direction to the
2231 trustee; and

2232 (b) the trustee acts in accordance with the investment direction given by a person
2233 described in Subsection (4)(a).

2234 (5) If the terms of a trust require another person's approval or consent to an investment
2235 decision of the trustee:

2236 (a) the person from whom approval or consent is required:

2237 (i) is presumptively a fiduciary;

2238 (ii) is required to act in good faith with regard to:

2239 (A) the purposes of the trust; and

2240 (B) the interests of the beneficiaries; and

2241 (iii) is liable for any loss that results from breach of the fiduciary duty; and

2242 (b) except in cases of willful misconduct or gross negligence, the trustee is not liable
2243 for any loss resulting from any act not taken as a result of the person's failure to respond to a
2244 request for approval or consent.

2245 Section 105. Section **75-7-907** is enacted to read:

2246 **75-7-907. Language invoking standard of chapter.**

2247 The following terms or comparable language in the provisions of a trust, unless
2248 otherwise limited or modified, authorizes any investment or strategy permitted under this
2249 chapter: "investments permissible by law for investment of trust funds," "legal investments,"
2250 "authorized investments," "using the judgment and care under the circumstances then
2251 prevailing that persons of prudence, discretion, and intelligence exercise in the management of
2252 their own affairs, not in regard to speculation but in regard to the permanent disposition of their
2253 funds, considering the probable income as well as the probable safety of their capital," "prudent
2254 man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

2255 Section 106. Section **75-7-1001** is enacted to read:

2256 **Part 10. Liability of Trustees and Rights of Persons Dealing with Trustee**

2257 **75-7-1001. Remedies for breach of trust.**

- 2258 (1) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of
2259 trust.
- 2260 (2) To remedy a breach of trust that has occurred or may occur, the court may:
- 2261 (a) compel the trustee to perform the trustee's duties;
2262 (b) enjoin the trustee from committing a breach of trust;
2263 (c) compel the trustee to redress a breach of trust by paying money, restoring property,
2264 or other means;
- 2265 (d) order a trustee to account;
2266 (e) appoint a special fiduciary to take possession of the trust property and administer
2267 the trust;
- 2268 (f) suspend the trustee;
2269 (g) remove the trustee as provided in Section 75-7-706;
2270 (h) reduce or deny compensation to the trustee;
2271 (i) subject to Section 75-7-1012, void an act of the trustee, impose a lien or a
2272 constructive trust on trust property, or trace trust property wrongfully disposed of and recover
2273 the property or its proceeds; or
- 2274 (j) order any other appropriate relief.

2275 Section 107. Section **75-7-1002** is enacted to read:

2276 **75-7-1002. Damages for breach of trust.**

- 2277 (1) A trustee who commits a breach of trust is liable to the beneficiaries affected for the
2278 greater of:
- 2279 (a) the amount required to restore the value of the trust property and trust distributions
2280 to what they would have been had the breach not occurred; or
- 2281 (b) the profit the trustee made by reason of the breach.
- 2282 (2) Except as otherwise provided in this Subsection (2), if more than one trustee is
2283 liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the
2284 other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially
2285 more at fault than another trustee or if the trustee committed the breach of trust in bad faith or
2286 with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A
2287 trustee who received a benefit from the breach of trust is not entitled to contribution from
2288 another trustee to the extent of the benefit received.

2289 Section 108. Section **75-7-1003** is enacted to read:

2290 **75-7-1003. Damages in absence of breach.**

2291 (1) A trustee is accountable to an affected beneficiary for any profit made by the trustee
2292 arising from the administration of the trust, even absent a breach of trust.

2293 (2) Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or
2294 depreciation in the value of trust property or for not having made a profit.

2295 Section 109. Section **75-7-1004** is enacted to read:

2296 **75-7-1004. Attorney's fees and costs.**

2297 (1) In a judicial proceeding involving the administration of a trust, the court may, as
2298 justice and equity may require, award costs and expenses, including reasonable attorney's fees,
2299 to any party, to be paid by another party or from the trust that is the subject of the controversy.

2300 (2) If a trustee defends or prosecutes any proceeding in good faith, whether successful
2301 or not, the trustee is entitled to receive from the trust the necessary expenses and
2302 disbursements, including reasonable attorney's fees, incurred.

2303 Section 110. Section **75-7-1005** is enacted to read:

2304 **75-7-1005. Limitation of action against trustee.**

2305 (1) A beneficiary may not commence a proceeding against a trustee for breach of trust
2306 more than six months after the date that the beneficiary or a person who may represent and
2307 bind the beneficiary was sent a report that adequately disclosed the existence of a potential
2308 claim for breach of trust and informed the beneficiary of the time allowed for commencing a
2309 proceeding.

2310 (2) A report adequately discloses the existence of a potential claim for breach of trust if
2311 it provides sufficient information so that the beneficiary or representative knows of the
2312 potential claim or should have inquired into its existence.

2313 (3) If Subsection (1) does not apply, a judicial proceeding by a beneficiary against a
2314 trustee for breach of trust must be commenced within one year after the first to occur of:

2315 (a) the removal, resignation, or death of the trustee;

2316 (b) the termination of the beneficiary's interest in the trust; or

2317 (c) the termination of the trust.

2318 (4) This section does not preclude an action to recover for fraud or misrepresentation
2319 related to the report.

2320 Section 111. Section **75-7-1006** is enacted to read:

2321 **75-7-1006. Reliance on trust instrument.**

2322 A trustee who acts in reasonable reliance on the terms of the trust as expressed in the
2323 trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach
2324 resulted from the reliance.

2325 Section 112. Section **75-7-1007** is enacted to read:

2326 **75-7-1007. Event affecting administration or distribution.**

2327 If the happening of an event, including marriage, divorce, performance of educational
2328 requirements, or death, affects the administration or distribution of a trust, a trustee is not liable
2329 for a loss resulting from the trustee's lack of knowledge or lack of notice.

2330 Section 113. Section **75-7-1008** is enacted to read:

2331 **75-7-1008. Exculpation of trustee.**

2332 A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the
2333 extent that it:

2334 (1) relieves the trustee of liability for breach of trust committed in bad faith or with
2335 reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

2336 (2) was inserted by the trustee or fiduciary without disclosure of its existence and
2337 contents.

2338 Section 114. Section **75-7-1009** is enacted to read:

2339 **75-7-1009. Beneficiary's consent, release, or ratification.**

2340 A trustee is not liable to a beneficiary for breach of trust if the beneficiary, while having
2341 capacity, consented to the conduct constituting the breach, released the trustee from liability for
2342 the breach, or ratified the transaction constituting the breach, unless at the time of the consent,
2343 release, or ratification, the beneficiary did not know of the beneficiary's rights or of the material
2344 facts relating to the breach.

2345 Section 115. Section **75-7-1010** is enacted to read:

2346 **75-7-1010. Limitation on personal liability of trustee.**

2347 (1) Except as otherwise provided in the contract, a trustee is not personally liable on a
2348 contract properly entered into in the trustee's fiduciary capacity in the course of administering
2349 the trust if the trustee in the contract disclosed the fiduciary capacity.

2350 (2) A trustee is personally liable for torts committed in the course of administering a

2351 trust, or for obligations arising from ownership or control of trust property, including liability
2352 for violation of environmental law, only if the trustee is personally at fault.

2353 (3) A claim based on a contract entered into by a trustee in the trustee's fiduciary
2354 capacity, on an obligation arising from ownership or control of trust property, or on a tort
2355 committed in the course of administering a trust, may be asserted in a judicial proceeding
2356 against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally
2357 liable for the claim.

2358 (4) The question of liability as between the trust estate and the trustee individually may
2359 be determined in a proceeding for accounting, surcharge, or indemnification or other
2360 appropriate proceeding.

2361 (5) Whenever an instrument creating a trust reserves to the settlor, or vests in an
2362 advisory or investment committee, or in any other person or persons, including one or more
2363 cotrustees to the exclusion of the trustee or to the exclusion of one or more of several trustees,
2364 authority to direct the making or retention of any investment, the excluded trustee or trustees
2365 shall not be liable, either individually or as a fiduciary, for any loss resulting from the making
2366 or retention of any investment pursuant to such direction.

2367 (6) In the absence of actual knowledge or information which would cause a reasonable
2368 trustee to inquire further, no trustee shall be liable for failure to take necessary steps to compel
2369 the redress of any breach of trust or fiduciary duty by any predecessor personal representative,
2370 trustee, or other fiduciary. The provisions of this section shall not be construed to limit the
2371 fiduciary liability of any trustee for his own acts or omissions with respect to the trust estate.

2372 Section 116. Section **75-7-1011** is enacted to read:

2373 **75-7-1011. Interest as general partner.**

2374 (1) Except as otherwise provided in Subsection (3) or unless personal liability is
2375 imposed in the contract, a trustee who holds an interest as a general partner in a general or
2376 limited partnership is not personally liable on a contract entered into by the partnership after
2377 the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in
2378 a statement previously filed pursuant to Title 48, Chapter 2a, Utah Revised Uniform Limited
2379 Partnership Act.

2380 (2) Except as otherwise provided in Subsection (3), a trustee who holds an interest as a
2381 general partner is not personally liable for torts committed by the partnership or for obligations

2382 arising from ownership or control of the interest unless the trustee is personally at fault.

2383 (3) The immunity provided by this section does not apply if an interest in the
2384 partnership is held by the trustee in a capacity other than that of trustee or is held by the
2385 trustee's spouse or one or more of the trustee's descendants, siblings, or parents, or the spouse
2386 of any of them.

2387 (4) If the trustee of a revocable trust holds an interest as a general partner, the settlor is
2388 personally liable for contracts and other obligations of the partnership as if the settlor were a
2389 general partner.

2390 Section 117. Section **75-7-1012** is enacted to read:

2391 **75-7-1012. Protection of person dealing with trustee.**

2392 (1) A person other than a beneficiary who in good faith assists a trustee, or who in
2393 good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or
2394 improperly exercising the trustee's powers is protected from liability as if the trustee properly
2395 exercised the power.

2396 (2) A person other than a beneficiary who in good faith deals with a trustee is not
2397 required to inquire into the extent of the trustee's powers or the propriety of their exercise.

2398 (3) A person who in good faith delivers assets to a trustee need not ensure their proper
2399 application.

2400 (4) A person other than a beneficiary who in good faith assists a former trustee, or who
2401 in good faith and for value deals with a former trustee, without knowledge that the trusteeship
2402 has terminated is protected from liability as if the former trustee were still a trustee.

2403 (5) Comparable protective provisions of other laws relating to commercial transactions
2404 or transfer of securities by fiduciaries prevail over the protection provided by this section.

2405 Section 118. Section **75-7-1013** is enacted to read:

2406 **75-7-1013. Certification of trust.**

2407 (1) Instead of furnishing a copy of the trust instrument to a person other than a
2408 beneficiary, the trustee may furnish to the person a certification of trust containing the
2409 following information:

2410 (a) that the trust exists and the date the trust instrument was executed;

2411 (b) the identity of the settlor;

2412 (c) the identity and address of the currently acting trustee;

- 2413 (d) the powers of the trustee in the pending transaction;
2414 (e) the revocability or irrevocability of the trust and the identity of any person holding a
2415 power to revoke the trust;
2416 (f) the authority of cotrustees to sign or otherwise authenticate and whether all or less
2417 than all are required in order to exercise powers of the trustee; and
2418 (g) the name in which title to trust property may be taken.
2419 (2) A certification of trust may be signed or otherwise authenticated by any trustee.
2420 (3) A certification of trust must state that the trust has not been revoked, modified, or
2421 amended in any manner that would cause the representations contained in the certification of
2422 trust to be incorrect.
2423 (4) A certification of trust need not contain the dispositive terms of a trust.
2424 (5) A recipient of a certification of trust may require the trustee to furnish copies of
2425 those excerpts from the original trust instrument and later amendments which designate the
2426 trustee and confer upon the trustee the power to act in the pending transaction.
2427 (6) A person who acts in reliance upon a certification of trust without knowledge that
2428 the representations contained in it are incorrect is not liable to any person for acting and may
2429 assume without inquiry the existence of the facts contained in the certification. Knowledge of
2430 the terms of the trust may not be inferred solely from the fact that a copy of all or part of the
2431 trust instrument is held by the person relying upon the certification.
2432 (7) A person who in good faith enters into a transaction in reliance upon a certification
2433 of trust may enforce the transaction against the trust property as if the representations contained
2434 in the certification were correct.
2435 (8) A person making a demand for the trust instrument in addition to a certification of
2436 trust or excerpts is liable for costs, expenses, attorney fees, and damages if the court determines
2437 that the person did not act in good faith in demanding the trust instrument.
2438 (9) This section does not limit the right of a person to obtain a copy of the trust
2439 instrument in a judicial proceeding concerning the trust.

2440 Section 119. Section **75-7-1101** is enacted to read:

2441 **Part 11. Miscellaneous Provisions**

2442 **75-7-1101. Uniformity of application and construction.**

2443 In applying and construing this chapter, consideration must be given to the need to

2444 promote uniformity of the law with respect to its subject matter among states that enact it.

2445 Section 120. Section **75-7-1102** is enacted to read:

2446 **75-7-1102. Electronic records and signatures.**

2447 The provisions of this chapter governing the legal effect, validity, or enforceability of
2448 electronic records or electronic signatures, and of contracts formed or performed with the use
2449 of such records or signatures, conform to the requirements of Section 102 of the Electronic
2450 Signatures in Global and National Commerce Act (15 U.S.C. §7002) and supersede, modify,
2451 and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

2452 Section 121. Section **75-7-1103** is enacted to read:

2453 **75-7-1103. Application to existing relationships.**

2454 (1) Except as otherwise provided, this chapter applies to:

2455 (a) all trusts created before, on, or after July 1, 2004;

2456 (b) all judicial proceedings concerning trusts commenced on or after July 1, 2004; and

2457 (c) judicial proceedings concerning trusts commenced before July 1, 2004 unless the
2458 court finds that application of a particular provision of this chapter would substantially interfere
2459 with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in
2460 which case the particular provision of this chapter does not apply and the superseded section
2461 will apply.

2462 (2) Any rule of construction or presumption provided in this chapter applies to trust
2463 instruments executed before July 1, 2004 unless there is a clear indication of a contrary intent
2464 in the terms of the trust.

2465 (3) An act done before July 1, 2004 is not affected by this chapter.

2466 (4) If a right is acquired, extinguished, or barred upon the expiration of a prescribed
2467 period that has commenced to run under any other statute before July 1, 2004, that statute
2468 continues to apply to the right even if it has been repealed or superseded.

2469 Section 122. **Repealer.**

2470 This bill repeals:

2471 Section **75-7-206, Proceedings for review of employment of agents and review of**
2472 **compensation of trustee and employees of trust.**

2473 Section **75-7-207, Trust proceedings -- Initiation by notice -- Necessary parties.**

2474 Section **75-7-306, Personal liability of trustee to third parties.**

2475 Section **75-7-307, Limitations on proceedings against trustees after final account.**

2476 Section **75-7-405.5, Vacancy in trusteeship -- Appointment of successor.**

2477 Section 123. **Effective date.**

2478 This bill takes effect on July 1, 2004.

2479 Section 124. **Coordinating S.B. 47 with S.B. 30.**

2480 If this S.B. 47 and S.B. 30, Medical Benefits Recovery Act Amendments, both pass it is

2481 the intent of the Legislature that cross-references in S.B. 30 to Sections 75-7-308 and 75-7-309

2482 be changed to 75-7-508 and 75-7-509, respectively.