

## **Chapter 18**

### **Charitable Trust Act**

#### **59-18-101 Short title.**

This chapter is known as the "Charitable Trust Act."

Renumbered and Amended by Chapter 2, 1987 General Session

#### **59-18-102 Definitions.**

As used in this chapter:

- (1) Section references, unless otherwise indicated, are to the Internal Revenue Code of 1954, as in effect on January 1, 1970.
- (2) "Charitable organization" means an organization described in Section 501(c)(3) and exempt from tax under Section 501(a).
- (3) "Private foundation trust" means a trust (including a trust described in Section 4947(a)(1)) as defined in Section 509(a).
- (4) "Split interest trust" means a trust for individual and charitable beneficiaries that is subject to the provisions of Section 4947(a)(2).
- (5) "Trust" means an express trust created by a trust instrument, including a will.
- (6) "Trustee" means the trustee, trustees, person, or persons possessing a power or powers referred to in this chapter.

Renumbered and Amended by Chapter 2, 1987 General Session

#### **59-18-103 Applicability to split interest trust or private foundation trust created before or after effective date.**

The provisions of this chapter that are applicable to a split interest trust or to a private foundation trust shall apply to all such trusts, whether they are created before or after the effective date of this chapter.

Renumbered and Amended by Chapter 2, 1987 General Session

#### **59-18-104 Duties and powers of trustee.**

Except as provided in Section 59-18-106, the trustee of a private foundation trust or a split interest trust has the duties and powers conferred upon him by the provisions of this chapter.

Renumbered and Amended by Chapter 2, 1987 General Session

#### **59-18-105 Trustee's fiduciary obligations and duty not to deprive trust of tax exemption, deduction or credit.**

- (1) In the exercise of his powers including the powers granted by this chapter, a trustee has a duty to act with due regard to his obligation as a fiduciary, including a duty not to exercise any power in such a way as to deprive the trust of an otherwise available tax exemption, deduction, or credit for tax purposes or deprive a donor of a trust asset of a tax deduction or credit or operate to impose a tax upon a donor, trust, or other person. The word "tax" includes, but is not limited to any federal, state, or local excise, income, gift, estate, or inheritance tax.

- (2) A trustee of a private foundation trust, except as provided in Section 59-18-106, shall make distributions at such time and in such manner as not to subject the trust to tax under Section 4942.
- (3) A trustee of a private foundation trust or a split interest trust, to the extent that the split interest trust is subject to the provisions of Section 4947(a)(2), in the exercise of his powers, except as provided in Subsection (4) of this section and Section 59-18-106, shall not:
  - (a) engage in any act of self dealing (as defined in Section 4941(d));
  - (b) retain any excess business holdings (as defined in Section 4943(c));
  - (c) make any investments in such manner as to subject the foundation to tax under Section 4944; and
  - (d) make any taxable expenditures (as defined in Section 4945(d)).
- (4) Subsections (3)(b) and (c) do not apply to a split interest trust if:
  - (a) all the income interest (and none of the remainder interest) of such trust is devoted solely to one or more of the purposes described in Section 170(c)(2)(B), and all amounts in such trust for which a deduction was allowed under Section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 have aggregate fair market value not more than 60% of the aggregate fair market value of all amounts in such trust; or
  - (b) a deduction was allowed under Section 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522 for amounts payable under the terms of such trust to every remainder beneficiary but not to any income beneficiary.

Renumbered and Amended by Chapter 2, 1987 General Session

**59-18-106 Trustee's notice to attorney general of inconsistent provisions in trust.**

If the trustee determines that the governing instrument contains provisions, in the case of a power to make distributions, which is more restrictive than Subsection 59-18-105(2), or if the trust contains other powers which specifically direct acts by the trustee that are inconsistent with the provisions of Subsection 59-18-105(3), the trustee shall notify the attorney general within six months following the effective date of this chapter, or when the trust becomes subject to this chapter, whichever last occurs. Section 59-18-105 does not apply to any trust with respect to which notice has been given unless the trust is amended to comply with the terms of this chapter.

Renumbered and Amended by Chapter 2, 1987 General Session

**59-18-107 Amendment of governing instrument.**

- (1) In the case of a trust which is solely for a named charitable organization or organizations and as to which the trustee does not possess any discretion with regard to the distribution of income or principal among two or more such organizations, the trustee, with the consent of the named charitable organization or organizations, may amend the governing instrument to comply with the provisions of Subsection 59-18-105(2).
- (2) In the case of a charitable trust which is not subject to the provisions of Subsection (1), the trustee with the consent of the attorney general may amend the governing instrument to comply with the provisions of Subsection 59-18-105(2).

Renumbered and Amended by Chapter 2, 1987 General Session

**59-18-108 Court's power to relieve trustee from restrictions on powers and duties.**

This chapter does not affect the power of a court of competent jurisdiction for cause shown and upon petition of the trustee, attorney general, or affected beneficiary, and upon appropriate notice to the affected parties to relieve a trustee from any restrictions on his powers and duties that are placed upon him by the governing instrument or applicable law.

Renumbered and Amended by Chapter 2, 1987 General Session

**59-18-109 Release of power to select charitable donees.**

- (1) The trustee of a trust all of the unexpired interests in which are devoted to one or more charitable purposes, unless the creating instrument expressly provides otherwise, may release a power to select charitable donees.
- (2) The release of a power to select charitable donees may apply to all or any part of the property subject to the power and may reduce or limit the charitable organizations or classes of charitable organizations in whose favor the power is exercisable.
- (3) A release shall be effected by a duly acknowledged written instrument signed by the trustee and delivered as provided in Subsection (4).
- (4) Delivery of a release shall be accomplished as follows:
  - (a) if the release is accomplished by specifying a charitable organization or organizations as beneficiary or beneficiaries of the trust, by delivery of a copy of the release to each designated charitable organization;
  - (b) if the release is accomplished by reducing the class of permissible charitable organizations, by delivery of a copy of the release to the attorney general.
- (5) If a release is accomplished by specifying a public charitable organization or organizations as beneficiary or beneficiaries of the trust, the trust at all times thereafter shall be operated exclusively for the benefit of and supervised by the specified public charitable organization or organizations.

Renumbered and Amended by Chapter 2, 1987 General Session

**59-18-110 Election and consent to release of trust to specified charitable organization.**

A trustee of a trust for the benefit of a public charitable organization or organizations may, with the consent of such organization or organizations, come under Subsection 59-18-109(5) by filing an election, accompanied by the consents, with the attorney general. Thereafter, the trust shall be subject to Subsection 59-18-109(5) and Section 59-18-111.

Renumbered and Amended by Chapter 2, 1987 General Session

**59-18-111 Duties of trustee of trust subject to supervision by specified charitable organization.**

The trustee of a trust subject to the supervision by a specified public charitable organization or organizations, as provided in Subsection 59-18-109(5), shall file with each specified charitable organization:

- (1) a trust copy of the governing instrument together with a written report, under oath, setting forth complete information as to the nature of the assets and liabilities with the delivery of the release pursuant to Subsection 59-18-109(4) or the filing of the election under Section 59-18-110;
- (2) an annual report, within 4-1/2 months following the close of each year, setting forth a complete statement of receipts, disbursements, assets (together with cost and market value of each asset), and liabilities; and

(3) such other information as the public charitable organization or organizations deem necessary to compel proper administration of the trust.

Renumbered and Amended by Chapter 2, 1987 General Session

**59-18-112 Interpretation of chapter to encourage charitable gifts.**

This chapter shall be interpreted to effectuate the intent of the state of Utah to preserve, foster, and encourage gifts to or for the benefit of charitable organizations.

Renumbered and Amended by Chapter 2, 1987 General Session

**59-18-113 Application of chapter to trusts and trust assets established or acquired before or after effective date.**

Except as specifically provided in the trust, the provisions of this chapter apply to any trust established before or after the effective date of this chapter and to any trust asset acquired by the trustee before or after the effective date of this chapter.

Renumbered and Amended by Chapter 2, 1987 General Session