

**Senator Lyle W. Hillyard** proposes the following substitute bill:

**UNIFORM TRUST CODE**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Lyle W. Hillyard**

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**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 provides a coordination clause.

**Utah Code Sections Affected:**

AMENDS:

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

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

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

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



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

35 ENACTS:

- 36 **75-7-102**, Utah Code Annotated 1953
- 37 **75-7-103**, Utah Code Annotated 1953
- 38 **75-7-104**, Utah Code Annotated 1953
- 39 **75-7-105**, Utah Code Annotated 1953
- 40 **75-7-106**, Utah Code Annotated 1953
- 41 **75-7-108**, Utah Code Annotated 1953
- 42 **75-7-109**, Utah Code Annotated 1953
- 43 **75-7-110**, Utah Code Annotated 1953
- 44 **75-7-111**, Utah Code Annotated 1953
- 45 **75-7-112**, Utah Code Annotated 1953
- 46 **75-7-113**, 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
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*Be it enacted by the Legislature of the state of Utah:*

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

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

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

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

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

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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 **H IS MADE WHEN THE SETTLOR IS INSOLVENT OR h** renders the settlor  
300a insolvent;

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

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

304 (ix) the claim is by a spouse or former spouse of the settlor on account of an agreement

305 or order for the payment of support or alimony or for a division or distribution of property;

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

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

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

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

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

321 (d) The statute of limitations for actions to satisfy a claim or liability out of the settlor's  
322 beneficial interest in or transfer into trust under Subsections (2)(c) ~~Ĥ~~ ~~[†]~~ ~~ĥ~~ (ii), (v), (vii), (viii),  
322a (ix),

323 (x), and (xi) is the statute of limitations applicable to the underlying action.

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

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

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

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

332 (iv) the power to appoint nonsubordinate advisers or trust protectors who can remove  
333 and appoint trustees, who can direct, consent to or disapprove distributions, or is the power to  
334 serve as an investment director or appoint an investment director under [~~Subsections~~  
335 ~~75-7-302(13) and (14)] Section 75-7-906.~~

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

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

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

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

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

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

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

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

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

358 (a) the settlor's debt to the creditor or other person at whose instance the trust or  
359 property transfer is voided or set aside; and

360 (b) the costs and attorney fees allowed by the court.

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

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

367 attorney fees;

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

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

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

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

378 **49-11-303. Fund investment standard -- Prudent investor rule.**

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

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

383 **59-10-103. Definitions.**

384 (1) As used in this chapter:

385 (a) "Adoption expenses" means:

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

388 (ii) any welfare agency fees or costs;

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

390 (iv) any legal fees or costs; or

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

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

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

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

396 (iii) is not enrolled in:

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

398 53A-15-301; or

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

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

402 (A) short-term capital gain; or

403 (B) long-term capital gain.

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

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

408 (e) "Corporation" includes:

409 (i) associations;

410 (ii) joint stock companies; and

411 (iii) insurance companies.

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

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

416 (I) autism;

417 (II) deafness;

418 (III) preschool developmental delay;

419 (IV) dual sensory impairment;

420 (V) hearing impairment;

421 (VI) intellectual disability;

422 (VII) multidisability;

423 (VIII) orthopedic impairment;

424 (IX) other health impairment;

425 (X) traumatic brain injury; or

426 (XI) visual impairment;

427 (B) is not receiving residential services from:

428 (I) the Division of Services for People with Disabilities created under Section

429 62A-5-102; or  
430 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;  
431 and  
432 (C) is enrolled in:  
433 (I) an education program for students with disabilities that is authorized under Section  
434 53A-15-301; or  
435 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;  
436 or  
437 (ii) is identified under guidelines of the Department of Health as qualified for:  
438 (A) Early Intervention; or  
439 (B) Infant Development Services.  
440 (g) "Employer," "employee," and "wages" are defined as provided in Section  
441 59-10-401.  
442 (h) "Fiduciary" means:  
443 (i) a guardian;  
444 (ii) a trustee;  
445 (iii) an executor;  
446 (iv) an administrator;  
447 (v) a receiver;  
448 (vi) a conservator; or  
449 (vii) any person acting in any fiduciary capacity for any individual.  
450 (i) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the  
451 homesteaded land that was held to have been diminished from the Uintah and Ouray  
452 Reservation in Hagen v. Utah, 510 U.S. 399 (1994).  
453 (j) "Individual" means a natural person and includes aliens and minors.  
454 (k) "Irrevocable trust" means a trust in which the settlor may not revoke or terminate  
455 all or part of the trust without the consent of a person who has a substantial beneficial interest  
456 in the trust and the interest would be adversely affected by the exercise of the settlor's power to  
457 revoke or terminate all or part of the trust.  
458 (l) For purposes of Subsection 59-10-114(2)(m), "long-term capital gain" is as defined  
459 in Section 1222, Internal Revenue Code.

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

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

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

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

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

468 (I) a trust;

469 (II) an estate; or

470 (III) a corporation.

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

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

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

476 (i) (A) common; or

477 (B) preferred;

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

479 (A) a resident or nonresident individual; or

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

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

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

486 (iii) issued:

487 (A) by a Utah small business corporation;

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

489 (C) for:

490 (I) money; or



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

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

524 (B) except as provided in Subsection (1)(w)(ii), meets the requirements of Section  
525 1244(c)(1)(C), Internal Revenue Code; and

526 (C) has its commercial domicile in this state.

527 (ii) Notwithstanding Subsection (1)(w)(i)(B), the time period described in Section  
528 1244(c)(1)(C) and Section 1244(c)(2), Internal Revenue Code, for determining the source of a  
529 corporation's aggregate gross receipts shall end on the last day of the taxable year for which the  
530 resident or nonresident individual makes a subtraction from federal taxable income in  
531 accordance with Subsection 59-10-114(2)(m).

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

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

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

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

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

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

546 **75-1-201. General definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

612 (19) "Governing instrument" means a deed, will, trust, insurance or annuity policy,  
613 account with POD designation, security registered in beneficiary form (TOD), pension,  
614 profit-sharing, retirement, or similar benefit plan, instrument creating or exercising a power of

615 appointment or a power of attorney, or a dispositive, appointive, or nominative instrument of  
616 any similar type.

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

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

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

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

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

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

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

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

645 (28) "Letters" includes letters testamentary, letters of guardianship, letters of

646 administration, and letters of conservatorship.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

707 (53) "Trust" includes any express trust, private or charitable, with additions thereto,

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

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

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

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

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

727 **75-1-403. Pleadings -- When parties bound by others -- Notice.**

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

774 **75-2-1209. Real estate conveyed to a trust under the Statutory Rule Against**  
775 **Perpetuities.**

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

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

782 **75-3-703. General duties -- Relation and liability to persons interested in estate --**  
783 **Standing to sue.**

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

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

801 the surviving spouse, any minor and dependent children, and any pretermitted child of the  
802 decedent as described elsewhere in this code.

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

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

808 **75-3-913. Distributions to trustee.**

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

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

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

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

819 **75-5-417. General duty of conservator.**

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

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

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

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

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

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

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

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

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

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

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

## 850 **CHAPTER 7. UTAH UNIFORM TRUST CODE**

### 851 **Part 1. General Provisions**

852 **75-7-101. Title.**

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

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

855 **75-7-102. Scope.**

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

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

858 **75-7-103. Definitions.**

859 (1) In this chapter:

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

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

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

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

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

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

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

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

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

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

877 (i) is a **Ĥ CURRENT ĥ** distributee or permissible distributee of trust income or principal; or

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

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

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

882 (ii) a trust, or a portion of a trust, consisting of property transferred by will of a  
883 decedent who at his death was domiciled in this state; or

884 (iii) a trust administered in this state.

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

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

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

893 (m) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's

894 provisions as expressed in the trust instrument or as may be established by other evidence that  
895 would be admissible in a judicial proceeding.

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

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

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

901 **75-7-104. Knowledge.**

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

903 (a) has actual knowledge of it;

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

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

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

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

918 **75-7-105. Default and mandatory rules.**

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

922 (2) ~~It~~ **EXCEPT AS SPECIFICALLY PROVIDED IN THIS CHAPTER, THE** terms of a trust  
922a prevail over any provision of this chapter except:

923 (a) the requirements for creating a trust;

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

925 trust;

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

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

928 through 75-7-416;

929 (e) the effect of a spendthrift provision ~~Ĥ~~, **SECTION 26-6-14, ĥ** and the rights of certain  
929a creditors and assignees

930 to reach a trust as provided in Part 5, Creditor's Claims-Spendthrift and Discretionary Trusts;

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

932 or terminate a bond;

933 ~~Ĥ [(g) the power of the court under Subsection 75-7-708(2) to adjust a trustee's~~

934 ~~compensation specified in the terms of the trust which is unreasonably low or high;~~

935 ——~~(h)~~ (g) ĥ the effect of an exculpatory term under Section 75-7-1008;

936 ~~Ĥ [(i) (h) ĥ~~ the rights under Sections 75-7-1010 through 75-7-1013 of a person other than a  
937 trustee or beneficiary;

938 ~~Ĥ [(j) (i) ĥ~~ periods of limitation for commencing a judicial proceeding;

939 ~~Ĥ [(k) the power of the court to take such action and exercise such jurisdiction as may be~~

940 ~~necessary in the interests of justice;]~~ ĥ and

941 ~~Ĥ [(l) (j) ĥ~~ the subject-matter jurisdiction of the court and venue for commencing a  
941a proceeding

942 as provided in Sections 75-7-203 and 75-7-205.

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

944 **75-7-106. Common law of trusts -- Principles of equity.**

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

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

949 **[75-7-208]. 75-7-107. Governing law.**

950 (1) For purposes of this section:

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

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

955 (2) If a trust has a state law provision specifying this state, the validity, construction,

956 and administration of the trust are to be governed by the laws of this state if any administration  
957 of the trust is done in this state.

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

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

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

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

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

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

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

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

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

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

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

978 **75-7-108. Principal place of administration.**

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

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

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

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



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

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

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

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

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

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

1000 (e) the date, not less than 60 days after the giving of the notice, by which the qualified  
1001 beneficiary must notify the trustee of an objection to the proposed transfer.

1002 (5) The authority of a trustee under this section to transfer a trust's principal place of  
1003 administration terminates if a qualified beneficiary notifies the trustee of an objection to the  
1004 proposed transfer on or before the date specified in the notice.

1005 (6) In connection with a transfer of the trust's principal place of administration, the  
1006 trustee may transfer some or all of the trust property to a successor trustee designated in the  
1007 terms of the trust or appointed pursuant to Section 75-7-704.

1008 Section 21. Section **75-7-109** is enacted to read:

1009 **75-7-109. Methods and waiver of notice.**

1010 (1) Notice to a person under this chapter or the sending of a document to a person  
1011 under this chapter must be accomplished in a manner reasonably suitable under the  
1012 circumstances and likely to result in receipt of the notice or document. Permissible methods of  
1013 notice or for sending a document include first-class mail, personal delivery, delivery to the  
1014 person's last known place of residence or place of business, or a properly directed electronic  
1015 message.

1016 (2) Notice under this chapter or the sending of a document under this chapter may be  
1017 waived by the person to be notified or sent the document.

1018 (3) Notice of a judicial proceeding must be given as provided in the applicable rules of  
1019 civil procedure.

1020 ~~Ĥ [Section 22. Section 75-7-110 is enacted to read:~~

1021 ~~———— 75-7-110. Others treated as qualified beneficiaries.~~

1022 ~~———— (1) Whenever notice to qualified beneficiaries of a trust is required under this chapter,~~  
1023 ~~the trustee must also give notice to any other beneficiary who has sent the trustee a request for~~  
1024 ~~notice unless otherwise directed by the settlor in the terms of the trust.~~

1025 ~~———— (2) A charitable organization expressly entitled to receive benefits under the terms of a~~  
1026 ~~charitable trust or a person appointed to enforce a trust created for the care of an animal or~~  
1027 ~~another noncharitable purpose as provided in Section 75-7-408 or 75-7-409 has the rights of a~~  
1028 ~~qualified beneficiary under this chapter.~~

1029 ~~———— (3) The attorney general has the rights of a qualified beneficiary with respect to a~~  
1030 ~~charitable trust having its principal place of administration in this state.] ĥ~~

1031 Section ~~Ĥ~~ [23] 22 ĥ . Section 75-7-111 is enacted to read:

1032 75-7-111. Nonjudicial settlement agreements.

1033 (1) For purposes of this section, "interested persons" means persons whose consent  
1034 would be required in order to achieve a binding settlement were the settlement to be approved  
1035 by the court.

1036 (2) Except as otherwise provided in Subsection (3), interested persons may enter into a  
1037 binding nonjudicial settlement agreement with respect to any matter involving a trust.

1038 (3) A nonjudicial settlement agreement is valid only to the extent it does not violate a  
1039 material purpose of the trust and includes terms and conditions that could be properly approved  
1040 by the court under this chapter or other applicable law.

1041 (4) Matters that may be resolved by a nonjudicial settlement agreement include:

1042 (a) the interpretation or construction of the terms of the trust;

1043 (b) the approval of a trustee's report or accounting;

1044 (c) direction to a trustee to refrain from performing a particular act or the grant to a  
1045 trustee of any necessary or desirable power;

1046 (d) the resignation or appointment of a trustee and the determination of a trustee's  
1047 compensation;

1048 (e) transfer of a trust's principal place of administration; and

1049 (f) liability of a trustee for an action relating to the trust.

1050 (5) Any interested person may request the court to approve a nonjudicial settlement  
1051 agreement, to determine whether the representation as provided in Part 3 was adequate, and to  
1052 determine whether the agreement contains terms and conditions the court could have properly  
1053 approved.

1054 Section 24. Section **75-7-112** is enacted to read:

1055 **75-7-112. Rules of construction.**

1056 The rules of construction that apply to the interpretation of and disposition of property  
1057 by will or other governing instrument, as defined in Section 75-1-201, also apply as appropriate  
1058 to the interpretation of the terms of a trust and the disposition of the trust property.

1059 Section 25. Section **75-7-113** is enacted to read:

1060 **75-7-113. Penalty provisions.**

1061 A provision in a trust instrument purporting to penalize a beneficiary by charging the  
1062 beneficiary's interest in the trust, or to penalize the beneficiary in another manner, for  
1063 instituting a proceeding to challenge the acts of the trustee or other fiduciary of a trust, or for  
1064 instituting other proceedings relating to the trust is unenforceable if probable cause exists for  
1065 instituting the proceedings.

1066 Section 26. Section **75-7-202** is amended to read:

1067 **75-7-202. Effect of administration in this state -- Consent to jurisdiction.**

1068 (1) The trustee submits personally to the jurisdiction of the courts of this state  
1069 regarding any matter involving the trust if the trustee acts as trustee of a trust administered in  
1070 this state.

1071 (2) To the extent of the beneficial interests in a trust administered in this state, the  
1072 beneficiaries of the trust are subject to the jurisdiction of the courts of this state regarding any  
1073 matter involving the trust. By accepting a distribution from such a trust, the recipient submits  
1074 personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

1075 (3) By accepting the delegation of a trust function from the trustee of a trust  
1076 administered in this state, the agent submits to the jurisdiction of the courts of this state  
1077 regarding any matter involving the trust.

1078 (4) Unless otherwise designated in the trust instrument, a trust is administered in this  
1079 state if it meets the requirements of Subsection [~~59-10-103(1)(r)(ii)~~] 75-7-107(4).

1080 Section 27. Section **75-7-203** is repealed and reenacted to read:

1081 **75-7-203. Subject matter jurisdiction.**

1082 (1) The district court has exclusive jurisdiction of proceedings in this state brought by a  
1083 trustee or beneficiary concerning the administration of a trust.

1084 (2) The district court has concurrent jurisdiction with other courts of this state of other  
1085 proceedings involving a trust.

1086 (3) This section does not preclude judicial or nonjudicial alternative dispute resolution.

1087 Section 28. Section **75-7-205** is repealed and reenacted to read:

1088 **75-7-205. Venue.**

1089 (1) Except as otherwise provided in Subsection (2), venue for a judicial proceeding  
1090 involving a trust is in the county in which the trust's principal place of administration is or will  
1091 be located and, if the trust is created by will and the estate is not yet closed, in the county in  
1092 which the decedent's estate is being administered.

1093 (2) If a trust has no trustee, venue for a judicial proceeding for the appointment of a  
1094 trustee is in any county of this state in which a beneficiary resides, in any county in which any  
1095 trust property is located, and if the trust is created by will, in the county in which the decedent's  
1096 estate was or is being administered.

1097 Section 29. Section **75-7-301** is repealed and reenacted to read:

1098 **Part 3. Representation**

1099 **75-7-301. Basic effect.**

1100 (1) Notice to a person who may represent and bind another person under this part has  
1101 the same effect as if notice were given directly to the other person.

1102 (2) The consent of a person who may represent and bind another person under this part  
1103 is binding on the person represented unless the person represented objects to the representation  
1104 before the consent would otherwise have become effective.

1105 (3) Except as otherwise provided in Sections 75-7-411 and 25-6-14, a person who  
1106 under this part may represent a settlor who lacks capacity may receive notice and give a  
1107 binding consent on the settlor's behalf.

1108 Section 30. Section **75-7-302** is repealed and reenacted to read:

1109 **75-7-302. Representation by holder of general testamentary power of**  
1110 **appointment.**

1111 To the extent there is no conflict of interest between the holder of a general  
1112 testamentary power of appointment and the persons represented with respect to the particular  
1113 question or dispute, the holder may represent and bind persons whose interests, as permissible  
1114 appointees, takers in default, or otherwise, are subject to the power.

1115 Section 31. Section **75-7-303** is repealed and reenacted to read:

1116 **75-7-303. Representation by fiduciaries and parents.**

1117 To the extent there is no conflict of interest between the representative and the person  
1118 represented or among those being represented with respect to a particular question or dispute:

1119 (1) a conservator may represent and bind the protected person whose estate the  
1120 conservator controls;

1121 (2) a guardian may represent and bind the ward if a conservator of the ward's estate has  
1122 not been appointed;

1123 (3) an agent having authority to act with respect to the particular question or dispute  
1124 may represent and bind the principal;

1125 (4) a trustee may represent and bind the beneficiaries of the trust;

1126 (5) a personal representative of a decedent's estate may represent and bind persons  
1127 interested in the estate; and

1128 (6) a parent may represent and bind the parent's minor or unborn child if a conservator  
1129 or guardian for the child has not been appointed.

1130 Section 32. Section **75-7-304** is repealed and reenacted to read:

1131 **75-7-304. Representation by person having substantially identical interest.**

1132 Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person  
1133 whose identity or location is unknown and not reasonably ascertainable, may be represented by  
1134 and bound by another having a substantially identical interest with respect to the particular  
1135 question or dispute, but only to the extent there is no conflict of interest between the  
1136 representative and the person represented.

1137 Section 33. Section **75-7-305** is repealed and reenacted to read:

1138 **75-7-305. Appointment of guardian ad litem or other representative.**

1139 (1) If the court determines that an interest is not represented under this part, or that the  
1140 otherwise available representation might be inadequate, the court may appoint a guardian ad  
1141 litem or other representative to receive notice, give consent, and otherwise represent, bind, and

1142 act on behalf of a minor, incapacitated or protected person, or unborn individual, or a person  
1143 whose identity or location is unknown. A guardian ad litem or other representative may be  
1144 appointed to represent several persons or interests.

1145 (2) A guardian ad litem or other representative may act on behalf of the individual  
1146 represented with respect to any matter arising under this chapter, whether or not a judicial  
1147 proceeding concerning the trust is pending.

1148 (3) In making decisions, a guardian ad litem or other representative may consider  
1149 general benefit accruing to the living members of the individual's family.

1150 Section 34. Section **75-7-401** is repealed and reenacted to read:

1151 **Part 4. Creation, Validity, Modification, and Termination of Trust**

1152 **75-7-401. Methods of creating trust.**

1153 A trust may be created by:

1154 (1) transfer of property to another person as trustee during the settlor's lifetime or by  
1155 will or other disposition taking effect upon the settlor's death;

1156 (2) declaration by the owner of property that the owner holds identifiable property as  
1157 trustee; or

1158 (3) exercise of a power of appointment in favor of a trustee.

1159 Section 35. Section **75-7-402** is repealed and reenacted to read:

1160 **75-7-402. Requirements for creation.**

1161 (1) A trust is created only if:

1162 (a) the settlor has capacity to create a trust, which standard of capacity shall be the  
1163 same as for a person to create a will;

1164 (b) the settlor indicates an intention to create the trust or a statute, judgment, or decree  
1165 authorizes the creation of a trust;

1166 (c) the trust has a definite beneficiary or is:

1167 (i) a charitable trust;

1168 (ii) a trust for the care of an animal, as provided in Section 75-2-1001; or

1169 (iii) a trust for a noncharitable purpose, as provided in Section 75-2-1001;

1170 (d) the trustee has duties to perform; and

1171 (e) the same person is not the sole trustee and sole beneficiary.

1172 (2) A beneficiary is definite if the beneficiary can be ascertained now or in the future,

1173 subject to any applicable rule against perpetuities.

1174 (3) A power in a trustee to select a beneficiary from an indefinite class is valid. If the  
1175 power is not exercised within a reasonable time, the power fails and the property subject to the  
1176 power passes to the persons who would have taken the property had the power not been  
1177 conferred.

1178 Section 36. Section **75-7-403** is repealed and reenacted to read:

1179 **75-7-403. Trusts created in other jurisdictions.**

1180 A trust not created by will is validly created if its creation complies with the law of the  
1181 jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which,  
1182 at the time of creation:

1183 (1) the settlor was domiciled, had a place of abode, or was a national;

1184 (2) a trustee was domiciled or had a place of business; or

1185 (3) any trust property was located.

1186 Section 37. Section **75-7-404** is repealed and reenacted to read:

1187 **75-7-404. Trust purposes.**

1188 A trust may be created only to the extent its purposes are lawful, not contrary to public  
1189 policy, and possible to achieve. A trust and its terms must be for the benefit of its  
1190 beneficiaries.

1191 Section 38. Section **75-7-405** is repealed and reenacted to read:

1192 **75-7-405. Charitable purposes -- Enforcement.**

1193 (1) A charitable trust may be created for the relief of poverty, the advancement of  
1194 education or religion, the promotion of health, governmental or municipal purposes, or other  
1195 purposes the achievement of which is beneficial to the community.

1196 (2) If the terms of a charitable trust do not indicate a particular charitable purpose or  
1197 beneficiary, the trustee, if authorized by the terms of the trust, or if not, the court may select  
1198 one or more charitable purposes or beneficiaries. The selection must be consistent with the  
1199 settlor's intention to the extent it can be ascertained.

1200 (3) The settlor of a charitable trust, among others, may maintain a proceeding to  
1201 enforce the trust.

1202 Section 39. Section **75-7-406** is repealed and reenacted to read:

1203 **75-7-406. Creation of trust induced by fraud, duress, or undue influence.**

1204 A trust is void to the extent its creation was induced by fraud, duress, or undue  
1205 influence.

1206 Section 40. Section **75-7-407** is repealed and reenacted to read:

1207 **75-7-407. Evidence of oral trust.**

1208 Except as required by a statute other than this chapter, a trust need not be evidenced by  
1209 a trust instrument, but the creation of an oral trust and its terms may be established only by  
1210 clear and convincing evidence.

1211 Section 41. Section **75-7-408** is repealed and reenacted to read:

1212 **75-7-408. Trust for care of animal.**

1213 A trust may be created to provide for the care of a pet or animal as provided in Section  
1214 75-2-1001.

1215 Section 42. Section **75-7-409** is repealed and reenacted to read:

1216 **75-7-409. Noncharitable trust without ascertainable beneficiary.**

1217 A trust may be created for a noncharitable purpose without a definite or definitely  
1218 ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by  
1219 the trustee as provided in Section 75-2-1001.

1220 Section 43. Section **75-7-410** is repealed and reenacted to read:

1221 **75-7-410. Modification or termination of trust -- Proceedings for approval or**  
1222 **disapproval.**

1223 (1) In addition to the methods of termination prescribed by Sections 75-7-411 through  
1224 75-7-414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms,  
1225 no purpose of the trust remains to be achieved, or the purposes of the trust have become  
1226 unlawful, contrary to public policy, or impossible to achieve.

1227 (2) A proceeding to approve or disapprove a proposed modification or termination  
1228 under Sections 75-7-411 through 75-7-416, or trust combination or division under Section  
1229 75-7-417, may be commenced by a trustee or qualified beneficiary, and a proceeding to  
1230 approve or disapprove a proposed modification or termination under Section 75-7-411 may be  
1231 commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to  
1232 modify the trust under Section 75-7-413.

1233 Section 44. Section **75-7-411** is repealed and reenacted to read:

1234 **75-7-411. Modification or termination of noncharitable irrevocable trust by**



1235 **consent.**

1236 (1) A noncharitable, irrevocable trust may be modified or terminated upon consent of  
1237 the settlor and all beneficiaries, even if the modification or termination is inconsistent with a  
1238 material purpose of the trust. A settlor's power to consent to a trust's termination may be  
1239 exercised by an agent under a power of attorney only to the extent expressly authorized by the  
1240 power of attorney or the terms of the trust, by the settlor's conservator with the approval of the  
1241 court supervising the conservatorship if an agent is not so authorized, or by the settlor's  
1242 guardian with the approval of the court supervising the guardianship if an agent is not so  
1243 authorized and a conservator has not been appointed.

1244 (2) A noncharitable, irrevocable trust may be terminated upon consent of all of the  
1245 beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any  
1246 material purpose of the trust. A noncharitable, irrevocable trust may be modified upon consent  
1247 of all of the beneficiaries if the court concludes that modification is not inconsistent with a  
1248 material purpose of the trust.

1249 (3) A spendthrift provision in the terms of the trust is not presumed to constitute a  
1250 material purpose of the trust.

1251 (4) Upon termination of a trust under Subsection (1) or (2), the trustee shall distribute  
1252 the trust property as agreed by the beneficiaries.

1253 (5) If not all of the beneficiaries consent to a proposed modification or termination of  
1254 the trust under Subsection (1) or (2), the modification or termination may be approved by the  
1255 court if the court is satisfied that:

1256 (a) if all of the beneficiaries had consented, the trust could have been modified or  
1257 terminated under this section; and

1258 (b) the interests of a beneficiary who does not consent will be adequately protected.

1259 Section 45. Section **75-7-412** is enacted to read:

1260 **75-7-412. Modification or termination because of unanticipated circumstances or**  
1261 **inability to administer trust effectively.**

1262 (1) The court may modify the administrative or dispositive terms of a trust or terminate  
1263 the trust if, because of circumstances not anticipated by the settlor, modification or termination  
1264 will further the purposes of the trust. To the extent practicable, the modification must be made  
1265 in accordance with the settlor's probable intention.

1266           (2) The court may modify the administrative terms of a trust if continuation of the trust  
1267 on its existing terms would be impracticable or wasteful or impair the trust's administration.

1268           (3) Upon termination of a trust under this section, the trustee shall distribute the trust  
1269 property as directed by the court or otherwise in a manner consistent with the purposes of the  
1270 trust.

1271           Section 46. Section **75-7-413** is enacted to read:

1272           **75-7-413. Cy pres.**

1273           (1) Except as otherwise provided in Subsection (2), if a particular charitable purpose  
1274 becomes unlawful, impracticable, impossible to achieve, or wasteful:

1275           (a) the trust does not fail, in whole or in part;

1276           (b) the trust property does not revert to the settlor or the settlor's successors in interest;

1277 and

1278           (c) the court may apply cy pres to modify or terminate the trust by directing that the  
1279 trust property be applied or distributed, in whole or in part, in a manner consistent with the  
1280 settlor's charitable purposes.

1281           (2) A provision in the terms of a charitable trust that would result in distribution of the  
1282 trust property to a noncharitable beneficiary prevails over the power of the court under  
1283 Subsection (1) to apply cy pres to modify or terminate the trust only if, when the provision  
1284 takes effect:

1285           (a) the trust property is to revert to the settlor and the settlor is still living; or

1286           (b) fewer than 21 years have elapsed since the date of the trust's creation.

1287           Section 47. Section **75-7-414** is enacted to read:

1288           **75-7-414. Modification or termination of uneconomic trust.**

1289           (1) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust  
1290 property having a total value less than \$100,000, may terminate the trust if the trustee  
1291 concludes that the value of the trust property is insufficient to justify the cost of administration.

1292           (2) The court may modify or terminate a trust or remove the trustee and appoint a  
1293 different trustee if it determines that the value of the trust property is insufficient to justify the  
1294 cost of administration.

1295           (3) Upon termination of a trust under this section, the trustee shall distribute the trust  
1296 property in a manner consistent with the purposes of the trust.

1297 (4) This section does not apply to an easement for conservation or preservation.

1298 Section 48. Section **75-7-415** is enacted to read:

1299 **75-7-415. Reformation to correct mistakes.**

1300 The court may reform the terms of a trust, even if unambiguous, to conform the terms  
 1301 to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's  
 1302 intent and the terms of the trust were affected by a mistake of fact or law, whether in  
 1303 expression or inducement.

1304 Section 49. Section **75-7-416** is enacted to read:

1305 **75-7-416. Modification to achieve settlor's tax objectives.**

1306 To achieve the settlor's tax objectives, the court may modify the terms of a trust in order  
 1307 to achieve the settlor's tax objectives. The court may provide that the modification has  
 1308 retroactive effect.

1309 Section 50. Section **75-7-417** is enacted to read:

1310 **75-7-417. Combination and division of trusts.**

1311 After notice to the qualified beneficiaries, a trustee may combine two or more trusts  
 1312 into a single trust or divide a trust into two or more separate trusts, if the result does not impair  
 1313 rights of any beneficiary or adversely affect achievement of the purposes of the trust.

1314 Section 51. Section **75-7-501** is repealed and reenacted to read:

1315 **Part 5. Creditor's Claims - Spendthrift and Discretionary Trusts**

1316 **75-7-501. Rights of beneficiary's creditor or assignee.**

1317 To the extent a beneficiary's interest is not protected by a spendthrift provision **H** OR  
 1317a **SECTION 26-6-14 h**, the  
 1318 court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest  
 1319 by attachment of present or future distributions to or for the benefit of the beneficiary or other  
 1320 means. The court may limit the award to relief as is appropriate under the circumstances.

1321 Section 52. Section **75-7-502** is enacted to read:

1322 **75-7-502. Spendthrift provisions for beneficiaries other than the settlor.**

1323 (1) A spendthrift provision for a beneficiary other than the settlor is valid only if it  
 1324 restrains both voluntary and involuntary transfer of a beneficiary's interest, even if the  
 1325 beneficiary is the trustee or cotrustee of the trust.

1326 (2) A term of a trust providing that the interest of a beneficiary other than the settlor is  
 1327 held subject to a "spendthrift trust," or words of similar import, is sufficient to restrain both

1328 voluntary and involuntary transfer of the beneficiary's interest.

1329 (3) A beneficiary may not transfer an interest in a trust in violation of a valid  
1330 spendthrift provision and, except as otherwise provided in this part, a creditor or assignee of  
1331 the beneficiary may not reach the interest or a distribution by the trustee before its receipt by  
1332 the beneficiary.

1333 Section 53. Section **75-7-503** is enacted to read:

1334 **75-7-503. Exceptions to spendthrift provision.**

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) Even if a trust contains a spendthrift provision, a beneficiary's child who has a  
1338 judgment or court order against the beneficiary for support or maintenance, or a judgment  
1339 creditor who has provided services for the protection of a beneficiary's interest in the trust, may  
1340 obtain from a court an order attaching present or future distributions to or for the benefit of the  
1341 beneficiary.

1342 (3) A spendthrift provision is unenforceable against a claim of this state or the United  
1343 States to the extent a statute of this state or federal law so provides.

1344 Section 54. Section **75-7-504** is enacted to read:

1345 **75-7-504. Discretionary trusts -- Effect of standard.**

1346 (1) In this section, "child" includes any person for whom an order or judgment for child  
1347 support has been entered in this or another state.

1348 (2) Except as otherwise provided in Subsection (3), whether or not a trust contains a  
1349 spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to  
1350 the trustee's discretion, even if:

1351 (a) the discretion is expressed in the form of a standard of distribution; or

1352 (b) the trustee has abused the discretion.

1353 (3) To the extent a trustee has not complied with a standard of distribution or has  
1354 abused a discretion:

1355 (a) a distribution may be ordered by the court to satisfy a judgment or court order  
1356 against the beneficiary for support or maintenance of the beneficiary's child, spouse, or former  
1357 spouse; and

1358 (b) the court shall direct the trustee to pay to the child, spouse, or former spouse such

1359 amount as is equitable under the circumstances but not more than the amount the trustee would  
1360 have been required to distribute to or for the benefit of the beneficiary had the trustee complied  
1361 with the standard or not abused the discretion.

1362 (4) This section does not limit the right of a beneficiary to maintain a judicial  
1363 proceeding against a trustee for an abuse of discretion or failure to comply with a standard for  
1364 distribution.

1365 Section 55. Section **75-7-505** is enacted to read:

1366 **75-7-505. Creditor's claim against settlor.**

1367 (1) Whether or not the terms of a trust contain a spendthrift provision, the following  
1368 rules apply:

1369 (a) During the lifetime of the settlor, the property of a revocable trust is subject to the  
1370 claims of the settlor's creditors. If a trust has more than one settlor, the amount the creditor or  
1371 assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of  
1372 the trust attributable to that settlor's contribution.

1373 (b) With respect to an irrevocable trust other than an irrevocable trust that meets the  
1374 requirements of Section 25-6-14, a creditor or assignee of the settlor may reach the maximum  
1375 amount that can be distributed to or for the settlor's benefit. If the trust has more than one  
1376 settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the  
1377 settlor's interest in the portion of the trust attributable to that settlor's contribution.

1378 (c) After the death of a settlor, and subject to the settlor's right to direct the source from  
1379 which liabilities will be paid, the property of a trust that was revocable at the settlor's death, but  
1380 not property received by the trust as a result of the death of the settlor which is otherwise  
1381 exempt from the claims of the settlor's creditors, is subject to claims of the settlor's creditors,  
1382 costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal  
1383 of remains, and statutory allowances to a surviving spouse and children to the extent the  
1384 settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

1385 (2) For purposes of this section:

1386 (a) during the period the power may be exercised, the holder of a power of withdrawal  
1387 is treated in the same manner as the settlor of a revocable trust to the extent of the property  
1388 subject to the power; and

1389 (b) upon the lapse, release, or waiver of the power, the holder is treated as the settlor of

1390 the trust only to the extent the value of the property affected by the lapse, release, or waiver  
1391 exceeds the greater of the amount specified in Subsection 2041(b)(2), 2514(e), or Section  
1392 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on May 1,2004.

1393 Section 56. Section **75-7-506** is enacted to read:

1394 **75-7-506. Overdue distribution.**

1395 Whether or not a trust contains a spendthrift provision, a creditor or assignee of a  
1396 beneficiary may reach a mandatory distribution of income or principal, including a distribution  
1397 upon termination of the trust, if the trustee has not made the distribution to the beneficiary  
1398 within a reasonable time after the required distribution date.

1399 Section 57. Section **75-7-507** is enacted to read:

1400 **75-7-507. Personal obligations of trustee.**

1401 Trust property is not subject to personal obligations of the trustee, even if the trustee  
1402 becomes insolvent or bankrupt.

1403 Section 58. Section **75-7-508**, which is renumbered from Section 75-7-308 is  
1404 renumbered and amended to read:

1405 **[75-7-308]. 75-7-508. Notice to creditors.**

1406 (1) A trustee for an inter vivos revocable trust, upon the death of the settlor, may  
1407 publish a notice to creditors once a week for three successive weeks in a newspaper of general  
1408 circulation in the county where the settlor resided at the time of death, providing the trustee's  
1409 name and address and notifying creditors of the deceased settlor to present their claims within  
1410 three months after the date of the first publication of the notice or be forever barred.

1411 (2) A trustee may give written notice by mail or other delivery to any known creditor of  
1412 the deceased settlor, notifying the creditor to present his claim within 90 days from the  
1413 published notice if given as provided in Subsection (1) or within 60 days from the mailing or  
1414 other delivery of the notice, whichever is later, or be forever barred. Written notice shall be the  
1415 notice described in Subsection (1) or a similar notice.

1416 (3) The trustee shall not be liable to any creditor or to any successor of the deceased  
1417 settlor for giving or failing to give notice under this section.

1418 Section 59. Section **75-7-509**, which is renumbered from Section 75-7-309 is  
1419 renumbered and amended to read:

1420 **[75-7-309]. 75-7-509. Limitations on presentation of claims.**

1421 (1) All claims against a deceased settlor which arose before the death of the deceased  
1422 settlor, including claims of the state and any subdivision of it, whether due or to become due,  
1423 absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal  
1424 basis, if not barred earlier by other statute of limitations, are barred against the deceased  
1425 settlor's estate, the trustee, the trust estate, and the beneficiaries of the deceased settlor's trust,  
1426 unless presented within the earlier of the following:

1427 (a) one year after the settlor's death; or

1428 (b) the time provided by Subsection [~~75-3-308~~] 75-7-508(2) for creditors who are  
1429 given actual notice, and where notice is published, within the time provided in Subsection  
1430 [~~75-3-308~~] 75-7-508(1) for all claims barred by publication.

1431 (2) In all events, claims barred by the nonclaim statute at the deceased settlor's  
1432 domicile are also barred in this state.

1433 (3) All claims against a deceased settlor's estate or trust estate which arise at or after  
1434 the death of the settlor, including claims of the state and any of its subdivisions, whether due or  
1435 to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or  
1436 other legal basis are barred against the deceased settlor's estate, the trustee, the trust estate, and  
1437 the beneficiaries of the deceased settlor, unless presented as follows:

1438 (a) a claim based on a contract with the trustee within three months after performance  
1439 by the trustee is due; or

1440 (b) any other claim within the later of three months after it arises, or the time specified  
1441 in Subsection (1).

1442 (4) Nothing in this section affects or prevents:

1443 (a) any proceeding to enforce any mortgage, pledge, or other lien upon property of the  
1444 deceased settlor's estate or the trust estate;

1445 (b) to the limits of the insurance protection only, any proceeding to establish liability of  
1446 the deceased settlor or the trustee for which he is protected by liability insurance; or

1447 (c) collection of compensation for services rendered and reimbursement for expenses  
1448 advanced by the trustee or by the attorney or accountant for the trustee of the trust estate.

1449 Section 60. Section **75-7-510**, which is renumbered from Section 75-7-310 is  
1450 renumbered and amended to read:

1451 [~~75-7-310~~]. **75-7-510. Manner of presentation of claims.**

1452 (1) Claims against a deceased settlor's estate or inter vivos revocable trust shall be  
1453 presented as follows:

1454 (a) The claimant may deliver or mail to the trustee, or the trustee's attorney of record, a  
1455 written statement of the claim indicating its basis, the name and address of the claimant, and  
1456 the amount claimed. The claim is considered presented upon the receipt of the written  
1457 statement of claim by the trustee or the trustee's attorney of record. If a claim is not yet due, the  
1458 date when it will become due shall be stated. If the claim is contingent or unliquidated, the  
1459 nature of the uncertainty shall be stated. If the claim is secured, the security shall be described.  
1460 Failure to describe correctly the security, the nature of any uncertainty, and the due date of a  
1461 claim not yet due does not invalidate the presentation made.

1462 (b) The claimant may commence a proceeding against the trustee in any court where  
1463 the trustee may be subjected to jurisdiction to obtain payment of the claim against the deceased  
1464 settlor's estate or the trust estate, but the commencement of the proceeding must occur within  
1465 the time limited for presenting the claim. No presentation of claim is required in regard to  
1466 matters claimed in proceedings against the deceased settlor which were pending at the time of  
1467 the deceased settlor's death.

1468 (2) If a claim is presented under Subsection (1)(a), no proceeding thereon may be  
1469 commenced more than 60 days after the trustee has mailed a notice of disallowance; but, in the  
1470 case of a claim which is not presently due or which is contingent or unliquidated, the trustee  
1471 may consent to an extension of the 60-day period, or to avoid injustice, the court, on petition,  
1472 may order an extension of the 60-day period, but in no event may the extension run beyond the  
1473 applicable statute of limitations.

1474 Section 61. Section **75-7-511**, which is renumbered from Section 75-7-311 is  
1475 renumbered and amended to read:

1476 **~~[75-7-311]~~. 75-7-511. Classification of claims.**

1477 (1) If the applicable assets of the deceased settlor's estate or trust estate are insufficient  
1478 to pay all claims in full, the trustee shall make payment in the following order:

1479 (a) reasonable funeral expenses;

1480 (b) costs and expenses of administration;

1481 (c) debts and taxes with preference under federal law;

1482 (d) reasonable and necessary medical and hospital expenses of the last illness of the



1483 deceased settlor, including compensation of persons attending him, and medical assistance if  
1484 Section 26-19-13.5 applies;

1485 (e) debts and taxes with preference under other laws of this state; and

1486 (f) all other claims.

1487 (2) No preference shall be given in the payment of any claim over any other claim of  
1488 the same class, and a claim due and payable shall not be entitled to a preference over claims not  
1489 due.

1490 Section 62. Section **75-7-512**, which is renumbered from Section 75-7-312 is  
1491 renumbered and amended to read:

1492 ~~[75-7-312]~~. **75-7-512. Allowance of claims.**

1493 (1) As to claims presented in the manner described in Section ~~[75-7-310]~~ 75-7-510 and  
1494 within the time limit prescribed in Section ~~[75-7-309]~~ 75-7-509, the trustee may mail a notice  
1495 to any claimant stating that the claim has been allowed or disallowed. If, after allowing or  
1496 disallowing a claim, the trustee changes the decision concerning the claim, the trustee shall  
1497 notify the claimant. The trustee may not change a disallowance of a claim after the time for the  
1498 claimant to file a petition for allowance or to commence a proceeding on the claim has expired  
1499 and the claim has been barred. If the notice of disallowance warns the claimant of the  
1500 impending bar, a claim which is disallowed in whole or in part by the trustee is barred so far as  
1501 not allowed, unless the claimant seeks a court-ordered allowance by filing a petition for  
1502 allowance in the court or by commencing a proceeding against the trustee not later than 60 days  
1503 after the mailing of the notice of disallowance or partial allowance. If the trustee fails to mail  
1504 notice to a claimant of action on the claim within 60 days after the time for original  
1505 presentation of the claim has expired, this failure has the effect of a notice of allowance.

1506 (2) Upon the petition of the trustee or a claimant in a proceeding for this purpose, the  
1507 court may order any claim presented to the trustee or trustee's attorney in a timely manner and  
1508 not barred by Subsection (1) to be allowed in whole or in part. Notice of this proceeding shall  
1509 be given to the claimant, the trustee, and those other persons interested in the trust estate as the  
1510 court may direct by order at the time the proceeding is commenced.

1511 (3) A judgment in a proceeding in another court against the trustee to enforce a claim  
1512 against a deceased settlor's estate is a court-ordered allowance of the claim.

1513 (4) Unless otherwise provided in any judgment in another court entered against a

1514 trustee, allowed claims bear interest at the legal rate for the period commencing six months  
1515 after the deceased settlor's date of death unless based on a contract making a provision for  
1516 interest, in which case they bear interest in accordance with that provision.

1517 Section 63. Section **75-7-513**, which is renumbered from Section 75-7-313 is  
1518 renumbered and amended to read:

1519 **[75-7-313]. 75-7-513. Payment of claims.**

1520 (1) Upon the expiration of the earliest of the time limitations provided in Section  
1521 ~~[75-7-309]~~ 75-7-509 for the presentation of claims, the trustee shall pay the claims allowed  
1522 against the deceased settlor's estate in the order of priority prescribed, for claims already  
1523 presented which have not yet been allowed or whose allowance has been appealed, and for  
1524 unbarred claims which may yet be presented, including costs and expenses of administration.  
1525 By petition to the court in a proceeding for that purpose, a claimant whose claim has been  
1526 allowed but not paid as provided in this section may secure an order directing the trustee to pay  
1527 the claim to the extent that funds of the deceased settlor's estate or trust estate are available for  
1528 the payment.

1529 (2) The trustee at any time may pay any just claim that has not been barred, with or  
1530 without formal presentation, but he shall be personally liable to any other claimant whose claim  
1531 is allowed and who is injured by the payment if:

1532 (a) the payment was made before the expiration of the time limit stated in Subsection  
1533 (1) and the trustee failed to require the payee to give adequate security for the refund of any of  
1534 the payment necessary to pay other claimants; or

1535 (b) the payment was made, due to the negligence or willful fault of the trustee, in a way  
1536 that deprived the injured claimant of his priority.

1537 Section 64. Section **75-7-514**, which is renumbered from Section 75-7-314 is  
1538 renumbered and amended to read:

1539 **[75-7-314]. 75-7-514. Secured claims.**

1540 Payment of a secured claim shall be upon the basis of the amount allowed if the creditor  
1541 surrenders his security; but otherwise payment shall be based upon one of the following:

1542 (1) if the creditor exhausts his security before receiving payment, unless precluded by  
1543 another provision of the law, upon the amount of the claim allowed less the fair value of the  
1544 security; or

1545 (2) if the creditor does not have the right to exhaust his security or has not done so,  
1546 upon the amount of the claim allowed less the value of the security determined by converting it  
1547 into money according to the terms of the agreement pursuant to which the security was  
1548 delivered to the creditor, or by the creditor and trustee by agreement, arbitration, compromise,  
1549 or litigation.

1550 Section 65. Section **75-7-515**, which is renumbered from Section 75-7-315 is  
1551 renumbered and amended to read:

1552 ~~[75-7-315]~~. **75-7-515. Claims not due and contingent -- unliquidated claims.**

1553 (1) If a claim which will become due at a future time or a contingent or unliquidated  
1554 claim becomes due or certain before the distribution of the trust estate, and if the claim has  
1555 been allowed or established by a proceeding, it shall be paid in the same manner as presently  
1556 due and absolute claims of the same class.

1557 (2) In other cases the trustee, or, on petition of the trustee or the claimant in a special  
1558 proceeding for that purpose, the court, may provide for payment as follows:

1559 (a) if the claimant consents, he may be paid the present or agreed value of the claim,  
1560 taking any uncertainty into account; or

1561 (b) arrangement for future payment, or possible payment, on the happening of the  
1562 contingency or on liquidation may be made by creating a trust, giving a mortgage, obtaining a  
1563 bond or security from a beneficiary, or otherwise.

1564 Section 66. Section **75-7-516**, which is renumbered from Section 75-7-316 is  
1565 renumbered and amended to read:

1566 ~~[75-7-316]~~. **75-7-516. Counterclaims.**

1567 (1) In allowing a claim, the trustee may deduct any counterclaim which the deceased  
1568 settlor's estate has against the claimant. In determining a claim against a deceased settlor's  
1569 estate, a court shall reduce the amount allowed by the amount of any counterclaims and, if the  
1570 counterclaims exceed the claim, render a judgment against the claimant in the amount of the  
1571 excess.

1572 (2) A counterclaim, liquidated or unliquidated, may arise from a transaction other than  
1573 that upon which the claim is based.

1574 (3) A counterclaim may give rise to relief exceeding in amount or different in kind  
1575 from that sought in the claim.

1576 Section 67. Section **75-7-517**, which is renumbered from Section 75-7-317 is  
1577 renumbered and amended to read:

1578 **[75-7-317]. 75-7-517. Execution and levies prohibited.**

1579 (1) No execution may issue upon nor may any levy be made against any property of the  
1580 deceased settlor's estate under any judgment against a deceased settlor or a trustee.

1581 (2) This section may not be construed to prevent the enforcement of mortgages,  
1582 pledges, or liens upon real or personal property in an appropriate proceeding.

1583 Section 68. Section **75-7-518**, which is renumbered from Section 75-7-318 is  
1584 renumbered and amended to read:

1585 **[75-7-318]. 75-7-518. Compromise of claims.**

1586 When a claim against a deceased settlor's estate has been presented in any manner, the  
1587 trustee may, if it appears in the best interest of the deceased settlor's estate, compromise the  
1588 claim, whether due or not due, absolute or contingent, liquidated or unliquidated.

1589 Section 69. Section **75-7-519**, which is renumbered from Section 75-7-319 is  
1590 renumbered and amended to read:

1591 **[75-7-319]. 75-7-519. Encumbered assets.**

1592 (1) If any assets of the deceased settlor's estate are encumbered by mortgage, pledge,  
1593 lien, or other security interest, the trustee may pay the encumbrance or any part thereof, renew  
1594 or extend any obligation secured by the encumbrance, or convey or transfer the assets to the  
1595 creditor in satisfaction of his lien, in whole or in part, whether or not the holder of the  
1596 encumbrance has presented a claim, if it appears to be in the best interest of the deceased  
1597 settlor's estate.

1598 (2) Payment of an encumbrance does not increase the share of the beneficiary entitled  
1599 to the encumbered assets unless the beneficiary is entitled to exoneration or unless the terms of  
1600 the deceased settlor's trust, under which the beneficiary is entitled to the encumbered assets,  
1601 provides otherwise.

1602 Section 70. Section **75-7-604** is enacted to read:

1603 **Part 6. Revocable Trusts**

1604 **75-7-604. Capacity of settlor of revocable trust.**

1605 The capacity required to create, amend, revoke, or add property to a revocable trust, or  
1606 to direct the actions of the trustee of a revocable trust, is the same as that required to make a

1607 will.

1608 Section 71. Section **75-7-605** is enacted to read:

1609 **75-7-605. Revocation or amendment of revocable trust.**

1610 (1) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor  
1611 may revoke or amend the trust. This Subsection (1) does not apply to a trust created under an  
1612 instrument executed before May 1, 2004.

1613 (2) If a revocable trust is created or funded by more than one settlor:

1614 (a) to the extent the trust consists of community property, the trust may be revoked by  
1615 either spouse acting alone but may be amended only by joint action of both spouses; and

1616 (b) to the extent the trust consists of property other than community property, each  
1617 settlor may revoke or amend the trust with regard to the portion of the trust property  
1618 attributable to that settlor's contribution.

1619 (3) The settlor may revoke or amend a revocable trust:

1620 (a) by substantially complying with a method provided in the terms of the trust; or

1621 (b) if the terms of the trust do not provide a method or the method provided in the  
1622 terms is not expressly made exclusive, by:

1623 (i) executing a later will or codicil that expressly refers to the trust or specifically  
1624 devises property that would otherwise have passed according to the terms of the trust; or

1625 (ii) any other method manifesting clear and convincing evidence of the settlor's intent.

1626 (4) Upon revocation of a revocable trust, the trustee shall deliver the trust property as  
1627 the settlor directs.

1628 (5) A settlor's powers with respect to revocation, amendment, or distribution of trust  
1629 property may be exercised by an agent under a power of attorney only to the extent expressly  
1630 authorized by the terms of the trust or the power.

1631 (6) A conservator of the settlor or, if no conservator has been appointed, a guardian of  
1632 the settlor may exercise a settlor's powers with respect to revocation, amendment, or  
1633 distribution of trust property only with the approval of the court supervising the  
1634 conservatorship or guardianship.

1635 (7) A trustee who does not know that a trust has been revoked or amended is not liable  
1636 to the settlor or settlor's successors in interest for distributions made and other actions taken on  
1637 the assumption that the trust had not been amended or revoked.

1638 Section 72. Section **75-7-606** is enacted to read:

1639 **75-7-606. Settlor's powers -- Powers of withdrawal.**

1640 (1) While a trust is revocable and the settlor has capacity to revoke the trust, rights of  
1641 the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively  
1642 to, the settlor.

1643 (2) If a revocable trust has more than one settlor, the duties of the trustee are owed to  
1644 all of the settlors having capacity to revoke the trust.

1645 (3) During the period the power may be exercised, the holder of a power of withdrawal  
1646 has the rights of a settlor of a revocable trust under this section to the extent of the property  
1647 subject to the power.

1648 Section 73. Section **75-7-607** is enacted to read:

1649 **75-7-607. Limitation on action contesting validity of revocable trust --**

1650 **Distribution of trust property.**

1651 (1) A person shall commence a judicial proceeding to contest the validity of a trust that  
1652 was revocable at the settlor's death within the earlier of:

1653 (a) three years after the settlor's death; or

1654 (b) 90 days after the trustee sent the person a copy of the trust instrument and a notice  
1655 informing the person of the trust's existence, of the trustee's name and address, and of the time  
1656 allowed for commencing a proceeding.

1657 (2) Upon the death of the settlor of a trust that was revocable at the settlor's death, the  
1658 trustee may proceed to distribute the trust property in accordance with the terms of the trust.

1659 The trustee is not subject to liability for doing so unless:

1660 (a) the trustee knows of a pending judicial proceeding contesting the validity of the  
1661 trust; or

1662 (b) a potential contestant has notified the trustee of a possible judicial proceeding to  
1663 contest the trust and a judicial proceeding is commenced within 60 days after the contestant  
1664 sent the notification.

1665 (3) With respect to a potential contest, the trustee is only liable for actions taken two or  
1666 more business days after the trustee has actual receipt of written notice from a potential  
1667 contestant. The written notice shall include the name of the settlor or of the trust, the name of  
1668 the potential contestant, and a description of the basis for the potential contest. The written

1669 notice shall be mailed to the trustee at the principal place of administration of the trust by  
1670 registered or certified mail, return receipt requested, or served upon the trustee in the same  
1671 manner as a summons in a civil action. Any other form or service of notice is not sufficient to  
1672 impose liability on the trustee for actions taken pursuant to the terms of the trust.

1673 (4) A beneficiary of a trust that is determined to have been invalid is liable to return  
1674 any distribution received.

1675 Section 74. Section **75-7-701** is enacted to read:

1676 **Part 7. Office of Trustee**

1677 **75-7-701. Accepting or declining trusteeship.**

1678 (1) Except as otherwise provided in Subsection (3), a person designated as trustee  
1679 accepts the trusteeship:

1680 (a) by substantially complying with a method of acceptance provided in the terms of  
1681 the trust; or

1682 (b) if the terms of the trust do not provide a method or the method provided in the  
1683 terms is not expressly made exclusive, by accepting delivery of the trust property, exercising  
1684 powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.

1685 (2) A person designated as trustee who has not yet accepted the trusteeship may reject  
1686 the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable  
1687 time after knowing of the designation is considered to have rejected the trusteeship.

1688 (3) A person designated as trustee, without accepting the trusteeship, may:

1689 (a) act to preserve the trust property if, within a reasonable time after acting, the person  
1690 sends a rejection of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a  
1691 qualified beneficiary; and

1692 (b) inspect or investigate trust property to determine potential liability under  
1693 environmental or other law or for any other purpose.

1694 Section 75. Section **75-7-702** is enacted to read:

1695 **75-7-702. Trustee's bond.**

1696 (1) A trustee shall give bond to secure performance of the trustee's duties only if the  
1697 court finds that a bond is needed to protect the interests of the beneficiaries or is required by  
1698 the terms of the trust and the court has not dispensed with the requirement.

1699 (2) The court may specify the amount of a bond, its liabilities, and whether sureties are

1700 necessary. The court may modify or terminate a bond at any time.

1701 (3) A regulated financial service institution qualified to do trust business in this state  
1702 need not give bond, unless required by the terms of the trust. The cost of any bond shall be  
1703 borne by the trust.

1704 (4) Unless otherwise directed by the court, the cost of the bond is charged to the trust.

1705 Section 76. Section **75-7-703** is enacted to read:

1706 **75-7-703. Cotrustees.**

1707 (1) Cotrustees who are unable to reach a unanimous decision may act by majority  
1708 decision.

1709 (2) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the  
1710 trust.

1711 (3) A cotrustee must participate in the performance of a trustee's function unless the  
1712 cotrustee is unavailable to perform the function because of absence, illness, disqualification  
1713 under other law, or other temporary incapacity, or the cotrustee has properly delegated the  
1714 performance of the function to another trustee.

1715 (4) If a cotrustee is unavailable to perform duties because of absence, illness,  
1716 disqualification under other law, or other temporary incapacity, or if a cotrustee fails or refuses  
1717 to act after reasonable notice, and prompt action is necessary to achieve the purposes of the  
1718 trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the  
1719 remaining cotrustees may act for the trust.

1720 (5) A trustee may not delegate to a cotrustee the performance of a function the settlor  
1721 intended the trustees to perform jointly as determined from the terms of the trust. If one of the  
1722 cotrustees is a regulated financial service institution qualified to do trust business in this state  
1723 and the remaining cotrustees are individuals, a delegation by the individual cotrustees to the  
1724 regulated financial service institution of the performance of trust investment functions shall be  
1725 presumed to be in accordance with the settlor's intent unless the terms of the trust specifically  
1726 provide otherwise. Unless a delegation was irrevocable, a trustee may revoke a delegation  
1727 previously made.

1728 (6) Except as otherwise provided in Subsection (7), a trustee who does not join in an  
1729 action of another trustee is not liable for the action.

1730 (7) Each trustee shall exercise reasonable care to:



- 1731 (a) prevent a cotrustee from committing a serious breach of trust; and  
1732 (b) compel a cotrustee to redress a serious breach of trust.  
1733 (8) A dissenting trustee who joins in an action at the direction of the majority of the  
1734 trustees and who notified any cotrustee of the dissent at or before the time of the action is not  
1735 liable for the action unless the action is a serious breach of trust.

1736 Section 77. Section **75-7-704** is enacted to read:

1737 **75-7-704. Vacancy in trusteeship -- Appointment of successor.**

1738 (1) A vacancy in a trusteeship occurs if:

1739 (a) a person designated as trustee rejects the trusteeship;

1740 (b) a person designated as trustee cannot be identified or does not exist;

1741 (c) a trustee resigns;

1742 (d) a trustee is disqualified or removed;

1743 (e) a trustee dies; or

1744 (f) a guardian or conservator is appointed for an individual serving as trustee, unless  
1745 otherwise provided in the trust.

1746 (2) If one or more cotrustees remain in office, a vacancy in a trusteeship need not be  
1747 filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

1748 (3) A vacancy in a trusteeship required to be filled must be filled in the following order  
1749 of priority:

1750 (a) by a person designated in the terms of the trust to act as successor trustee;

1751 (b) by a person appointed by unanimous agreement of the qualified beneficiaries; or

1752 (c) by a person appointed by the court.

1753 (4) A vacancy in a trusteeship of a charitable trust that is required to be filled must be  
1754 filled in the following order of priority:

1755 (a) by a person designated in the terms of the trust to act as successor trustee;

1756 (b) by a person selected by the charitable organizations expressly designated to receive  
1757 distributions under the terms of the trust if the attorney general concurs in the selection; or

1758 (c) by a person appointed by the court.

1759 (5) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court  
1760 may appoint an additional trustee or special fiduciary whenever the court considers the  
1761 appointment necessary for the administration of the trust.

1762 Section 78. Section **75-7-705** is enacted to read:

1763 **75-7-705. Resignation of trustee.**

1764 (1) A trustee may resign:

1765 (a) upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and

1766 all cotrustees; or

1767 (b) with the approval of the court.

1768 (2) In approving a resignation, the court may issue orders and impose conditions

1769 reasonably necessary for the protection of the trust property.

1770 (3) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or

1771 omissions of the trustee is not discharged or affected by the trustee's resignation.

1772 Section 79. Section **75-7-706** is enacted to read:

1773 **75-7-706. Removal of trustee.**

1774 (1) The settlor, a cotrustee, or a qualified beneficiary may request the court to remove a  
1775 trustee, or a trustee may be removed by the court on its own initiative.

1776 (2) The court may remove a trustee if:

1777 (a) the trustee has committed a serious breach of trust;

1778 (b) lack of cooperation among cotrustees substantially impairs the administration of the  
1779 trust;

1780 (c) because of unfitness, unwillingness, or persistent failure of the trustee to administer  
1781 the trust effectively, the court determines that removal of the trustee best serves the interests of

1782 the beneficiaries; or

1783 (d) there has been a substantial change of circumstances or removal is requested by all

1784 of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests

1785 of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a

1786 suitable cotrustee or successor trustee is available.

1787 (3) Pending a final decision on a request to remove a trustee, or in lieu of or in addition

1788 to removing a trustee, the court may order appropriate relief under Subsection 75-7-1001(2)

1789 necessary to protect the trust property or the interests of the beneficiaries.

1790 Section 80. Section **75-7-707** is enacted to read:

1791 **75-7-707. Delivery of property by former trustee.**

1792 (1) Unless a cotrustee remains in office or the court otherwise orders, and until the trust

1793 property is delivered to a successor trustee or other person entitled to it, a trustee who has  
 1794 resigned or been removed has the duties of a trustee and the powers necessary to protect the  
 1795 trust property.

1796 (2) A trustee who has resigned or been removed shall proceed expeditiously to deliver  
 1797 the trust property within the trustee's possession to the cotrustee, successor trustee, or other  
 1798 person entitled to it.

1799 Section 81. Section **75-7-708** is enacted to read:

1800 **75-7-708. Compensation of trustee.**

1801 **Ĥ [(†) ĥ If the terms of a trust do not specify the trustee's compensation, a trustee is entitled**  
 1802 **to compensation that is reasonable under the circumstances.**

1803 **Ĥ [(2) If the terms of a trust specify the trustee's compensation, the trustee is entitled to be**  
 1804 **compensated as specified, but the court may allow more or less compensation if:**

1805 **—— (a) the duties of the trustee are substantially different from those contemplated when**  
 1806 **the trust was created; or**

1807 **—— (b) the compensation specified by the terms of the trust would be unreasonably low or**  
 1808 **high.] ĥ**

1809 Section 82. Section **75-7-709** is enacted to read:

1810 **75-7-709. Reimbursement of expenses.**

1811 **(1) A trustee is entitled to be reimbursed out of the trust property, with interest as**  
 1812 **appropriate, for:**

1813 **(a) expenses that were properly incurred in the administration of the trust; and**

1814 **(b) to the extent necessary to prevent unjust enrichment of the trust, expenses that were**  
 1815 **not properly incurred in the administration of the trust.**

1816 **(2) An advance by the trustee of money for the protection of the trust gives rise to a**  
 1817 **lien against trust property to secure reimbursement with reasonable interest.**

1818 Section 83. Section **75-7-801** is enacted to read:

1819 **Part 8. Duties and Powers of Trustee**

1820 **75-7-801. Duty to administer trust.**

1821 **Upon acceptance of a trusteeship, the trustee shall administer the trust expeditiously**  
 1822 **and in good faith, in accordance with its terms and purposes and the interests of the**  
 1823 **beneficiaries, and in accordance with this chapter.**

1824 Section 84. Section **75-7-802** is enacted to read:

1825 **75-7-802. Duty of loyalty.**

1826 (1) A trustee shall administer the trust solely in the interests of the beneficiaries.

1827 (2) Subject to the rights of persons dealing with or assisting the trustee as provided in

1828 Section 75-7-1012, a sale, encumbrance, or other transaction involving the investment or

1829 management of trust property entered into by the trustee for the trustee's own personal account

1830 or which is otherwise affected by a conflict between the trustee's fiduciary and personal

1831 interests is voidable by a beneficiary affected by the transaction unless:

1832 (a) the transaction was authorized by the terms of the trust;

1833 (b) the transaction was approved by the court;

1834 (c) the beneficiary did not commence a judicial proceeding within the time allowed by

1835 Section 75-7-1005;

1836 (d) the beneficiary consented to the trustee's conduct, ratified the transaction, or

1837 released the trustee in compliance with Section 75-7-1009; or

1838 (e) the transaction involves a contract entered into or claim acquired by the trustee

1839 before the person became or contemplated becoming trustee.

1840 (3) A sale, encumbrance, or other transaction involving the investment or management

1841 of trust property is presumed to be affected by a conflict between personal and fiduciary

1842 interests if it is entered into by the trustee with:

1843 (a) the trustee's spouse;

1844 (b) the trustee's descendants, siblings, parents, or their spouses;

1845 (c) an agent of the trustee, including but not limited to an attorney, accountant, or

1846 financial advisor; or

1847 (d) a corporation or other person or enterprise in which the trustee, or a person that

1848 owns a significant interest in the trustee, has an interest that might affect the trustee's best

1849 judgment.

1850 (4) A transaction between a trustee and a beneficiary that does not concern trust

1851 property but that occurs during the existence of the trust or while the trustee retains significant

1852 influence over the beneficiary and from which the trustee obtains an advantage is voidable by

1853 the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

1854 (5) A transaction not concerning trust property in which the trustee engages in the

1855 trustee's individual capacity involves a conflict between personal and fiduciary interests if the  
 1856 transaction concerns an opportunity properly belonging to the trust.

1857 (6) An investment by a trustee in securities of an investment company or investment  
 1858 trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is  
 1859 not presumed to be affected by a conflict between personal and fiduciary interests if the  
 1860 investment complies with the prudent investor rule of Section 75-7-901. The trustee may be  
 1861 compensated by the investment company or investment trust for providing those services out of  
 1862 fees charged to the trust ~~Ĥ [if the trustee at least annually notifies the persons entitled under~~  
 1863 ~~Section 75-7-811 to receive a copy of the trustee's annual report, disclosing the existence of the~~  
 1864 ~~compensation, the reasons for the compensation, and how the amount was calculated]~~ ~~ĥ~~ .

1865 (7) In voting shares of stock or in exercising powers of control over similar interests in  
 1866 other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the  
 1867 trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or  
 1868 appoint directors or other managers who will manage the corporation or enterprise in the best  
 1869 interests of the beneficiaries.

1870 (8) This section does not preclude the following transactions ~~Ĥ [; if fair to the~~  
 1871 ~~beneficiaries]~~ **BY THE TRUSTEE** ~~ĥ~~ :

1872 (a) an agreement between a trustee and a beneficiary relating to the appointment or  
 1873 compensation of the trustee;

1874 (b) payment of reasonable compensation to the trustee;

1875 (c) a transaction between a trust and another trust, decedent's estate, conservatorship, or  
 1876 guardianship of which the trustee is a fiduciary or in which a beneficiary has an interest;

1877 (d) a deposit of trust money in a regulated financial service institution operated by the  
 1878 trustee; or

1879 (e) an advance by the trustee of money for the protection of the trust ~~Ĥ~~ ;

1879a (f) COLLECT, HOLD, AND RETAIN TRUST ASSETS RECEIVED FROM A TRUSTOR UNTIL, IN  
 1879b THE JUDGMENT OF THE TRUSTEE, DISPOSITION OF THE ASSETS SHOULD BE MADE. THE  
 1879c ASSETS MAY BE RETAINED EVEN THOUGH THEY INCLUDE AN ASSET IN WHICH THE TRUSTEE IS  
 1879d PERSONALLY INTERESTED;

1879e (g) ACQUIRE AN UNDIVIDED INTEREST IN A TRUST ASSET IN WHICH THE TRUSTEE, IN ANY  
 1879f TRUST CAPACITY, HOLDS AN UNDIVIDED INTEREST;

1879g (h) BORROW MONEY TO BE REPAYED FROM TRUST ASSETS OR OTHERWISE;

1879h (i) ADVANCE MONEY TO BE REPAYED FROM TRUST ASSETS OR OTHERWISE; OR

1879i (j) EMPLOY PERSONS, INCLUDING ATTORNEYS, AUDITORS, INVESTMENT ADVISERS, OR  
 1879j AGENTS, EVEN IF THEY ARE ASSOCIATED WITH THE TRUSTEE, TO ADVISE OR ASSIST THE  
 1879k TRUSTEE IN THE PERFORMANCE OF HIS ADMINISTRATIVE DUTIES; OR ~~ĥ~~

1879l Ĥ (ii) ACT WITHOUT INDEPENDENT INVESTIGATION UPON THEIR RECOMMENDATIONS; AND  
1879m (iii) INSTEAD OF ACTING PERSONALLY, EMPLOY ONE OR MORE AGENTS TO PERFORM  
1879n ANY ACT OF ADMINISTRATION, WHETHER OR NOT DISCRETIONARY;  
1879o (k) IF A GOVERNING INSTRUMENT OR ORDER REQUIRES OR AUTHORIZES INVESTMENT IN  
1879p UNITED STATES GOVERNMENT OBLIGATIONS, A TRUSTEE MAY INVEST IN THOSE OBLIGATIONS,  
1879q EITHER DIRECTLY OR IN THE FORM OF SECURITIES OR OTHER INTERESTS, IN ANY OPEN-END OR  
1879r CLOSED-END MANAGEMENT TYPE INVESTMENT COMPANY OR INVESTMENT TRUST REGISTERED  
1879s UNDER THE PROVISIONS OF THE INVESTMENT COMPANY ACT OF 1940, 15 U.S.C. SECTIONS 80a-1  
1879t THROUGH 80a-64 IF:  
1879u (i) THE PORTFOLIO OF THE INVESTMENT COMPANY OR INVESTMENT TRUST IS LIMITED TO  
1879v UNITED STATES GOVERNMENT OBLIGATIONS, AND REPURCHASE AGREEMENTS ARE FULLY  
1879w COLLATERALIZED BY UNITED STATES GOVERNMENT OBLIGATIONS; AND  
1879x (ii) THE INVESTMENT COMPANY OR INVESTMENT TRUST TAKES DELIVERY OF THE  
1879y COLLATERAL FOR ANY REPURCHASE AGREEMENT EITHER DIRECTLY OR THROUGH AN  
1879z AUTHORIZED CUSTODIAN ĥ .  
1880 (9) The court may appoint a special fiduciary to make a decision with respect to any  
1881 proposed transaction that might violate this section if entered into by the trustee.  
1882 Section 85. Section **75-7-803** is enacted to read:  
1883 **75-7-803. Impartiality.**  
1884 If a trust has two or more beneficiaries, the trustee shall act impartially in investing,  
1885 managing, and distributing the trust property, giving due regard to the beneficiaries' respective

1886 interests.

1887 Section 86. Section **75-7-804** is enacted to read:

1888 **75-7-804. Prudent administration.**

1889 A trustee shall administer the trust as a prudent person would, by considering the  
1890 purposes, terms, distributional requirements, and other circumstances of the trust. In satisfying  
1891 this standard, the trustee shall exercise reasonable care, skill, and caution.

1892 Section 87. Section **75-7-805** is enacted to read:

1893 **75-7-805. Costs of administration.**

1894 In administering a trust, the trustee may incur only costs that are reasonable in relation  
1895 to the trust property, the purposes of the trust, and the skills of the trustee.

1896 Section 88. Section **75-7-806** is enacted to read:

1897 **75-7-806. Trustee's skills.**

1898 A trustee who is named trustee in reliance upon the trustee's representation that the  
1899 trustee has special skills or expertise, shall use those special skills or expertise.

1900 Section 89. Section **75-7-807** is enacted to read:

1901 **75-7-807. Control and protection of trust property.**

1902 A trustee shall take reasonable steps to take control of and protect the trust property.

1903 Section 90. Section **75-7-808** is enacted to read:

1904 **75-7-808. Recordkeeping and identification of trust property.**

1905 (1) A trustee shall keep adequate records of the administration of the trust.

1906 (2) A trustee shall keep trust property separate from the trustee's own property.

1907 (3) Except as otherwise provided in Subsection (4), a trustee shall cause the trust  
1908 property to be designated so that the interest of the trust, to the extent feasible, appears in  
1909 records maintained by a party other than a trustee or beneficiary.

1910 (4) If the trustee maintains records clearly indicating the respective interests, a trustee  
1911 may invest as a whole the property of two or more separate trusts.

1912 Section 91. Section **75-7-809** is enacted to read:

1913 **75-7-809. Enforcement and defense of claims.**

1914 A trustee shall take reasonable steps to enforce claims of the trust and to defend claims  
1915 against the trust.

1916 Section 92. Section **75-7-810** is enacted to read:

1917 **75-7-810. Collecting trust property.**

1918 A trustee shall take reasonable steps to compel a former trustee or other person to  
 1919 deliver trust property to the trustee, and to redress a breach of trust known to the trustee to have  
 1920 been committed by a former trustee, unless the terms of the trust provide otherwise.

1921 Section 93. Section **75-7-811** is enacted to read:

1922 **75-7-811. Duty to inform and report.**

1923 (1) Except to the extent the terms of the trust provide otherwise, a trustee shall keep the  
 1924 qualified beneficiaries of the trust reasonably informed about the administration of the trust and  
 1925 of the material facts necessary for them to protect their interests. Unless unreasonable under  
 1926 the circumstances, and unless otherwise provided by the terms of the trust a trustee shall  
 1927 promptly respond to a qualified beneficiary's request for information related to the  
 1928 administration of the trust.

1929 (2) Except to the extent the terms of the trust provide otherwise, a trustee:

1930 (a) upon request of a qualified beneficiary, shall promptly furnish to the beneficiary a  
 1931 copy of the portions of the trust instrument which describe or affect the beneficiary's interest;

1932 (b) within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries  
 1933 of the acceptance and of the trustee's name, address, and telephone number;

1934 (c) within 60 days after the date the trustee acquires knowledge of the creation of an  
 1935 irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has  
 1936 become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified  
 1937 beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to  
 1938 request a copy of the trust instrument, and of the right to a trustee's report as provided in  
 1939 Subsection (3); and

1940 (d) shall notify the qualified beneficiaries in advance of any change in the method or  
 1941 rate of the trustee's compensation.

1942 (3) A trustee shall send to the ~~H~~ [distributees or permissible distributees of trust income or  
 1943 principal, and, except to the extent the terms of the trust provide otherwise, to other] ~~h~~ qualified  
 1944 beneficiaries who request it, at least annually and at the termination of the trust, a report of the  
 1945 trust property, liabilities, receipts, and disbursements, including the amount of the trustee's  
 1946 compensation or a fee schedule or other writing showing how the trustee's compensation was  
 1947 determined, a listing of the trust assets and, if feasible, their respective market values. Upon a



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

1952 (4) A **QUALIFIED** beneficiary may waive the right to a trustee's report or other  
1952a information  
1953 otherwise required to be furnished under this section. A beneficiary, with respect to future  
1954 reports and other information, may withdraw a waiver previously given.

1955 Section 94. Section **75-7-812** is enacted to read:

1956 **75-7-812. Discretionary powers -- Tax savings.**

1957 (1) Notwithstanding the breadth of discretion granted to a trustee in the terms of the  
1958 trust, including the use of such terms as "absolute," "sole," or "uncontrolled," the trustee shall  
1959 exercise a discretionary power in good faith and in accordance with the terms and purposes of  
1960 the trust and the interests of the beneficiaries.

1961 (2) Subject to Subsection (4), and unless the terms of the trust expressly indicate that a  
1962 rule in this section does not apply:

1963 (a) a person other than a settlor who is a beneficiary and trustee of a trust that confers  
1964 on the trustee a power to make discretionary distributions to or for the trustee's personal benefit  
1965 may exercise the power only in accordance with an ascertainable standard relating to the  
1966 trustee's individual health, education, support, or maintenance within the meaning of  
1967 Subsection 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on  
1968 May 1, 2004; and

1969 (b) a trustee may not exercise a power to make discretionary distributions to satisfy a  
1970 legal obligation of support that the trustee personally owes another person.

1971 (3) A power whose exercise is limited or prohibited by Subsection (2) may be  
1972 exercised by a majority of the remaining trustees whose exercise of the power is not so limited  
1973 or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a  
1974 special fiduciary with authority to exercise the power.

1975 (4) Subsection (2) does not apply to:

1976 (a) a power held by the settlor's spouse who is the trustee of a trust for which a marital  
1977 deduction, as defined in Subsection 2056(b)(5) or 2523(e) of the Internal Revenue Code of  
1978 1986, as in effect on May 1, 2004, was previously allowed;

1979            (b) any trust during any period that the trust may be revoked or amended by its settlor;  
1980 or  
1981            (c) a trust if contributions to the trust qualify for the annual exclusion under Subsection  
1982 2503(c) of the Internal Revenue Code of 1986, as in effect on May 1, 2004.  
1983            Section 95. Section **75-7-813** is enacted to read:  
1984            **75-7-813. General powers of trustee.**  
1985            (1) A trustee, without authorization by the court, may exercise:  
1986            (a) powers conferred by the terms of the trust; or  
1987            (b) except as limited by the terms of the trust:  
1988            (i) all powers over the trust property which an unmarried competent owner has over  
1989 individually owned property;  
1990            (ii) any other powers appropriate to achieve the proper investment, management, and  
1991 distribution of the trust property; and  
1992            (iii) any other powers conferred by this chapter.  
1993            (2) The exercise of a power is subject to the fiduciary duties prescribed by this part.  
1994            Section 96. Section **75-7-814** is enacted to read:  
1995            **75-7-814. Specific powers of trustee.**  
1996            Without limiting the authority conferred by Section 75-7-813, a trustee may:  
1997            (1) collect trust property and accept or reject additions to the trust property from a  
1998 settlor or any other person;  
1999            (2) acquire or sell property, for cash or on credit, at public or private sale;  
2000            (3) exchange, partition, or otherwise change the character of trust property;  
2001            (4) deposit trust money in an account in a regulated financial service institution;  
2002            (5) borrow money, with or without security from any financial institution, including a  
2003 financial institution that is serving as a trustee or one of its affiliates, and mortgage or pledge  
2004 trust property for a period within or extending beyond the duration of the trust;  
2005            (6) with respect to an interest in a proprietorship, partnership, limited liability  
2006 company, business trust, corporation, or other form of business or enterprise, continue the  
2007 business or other enterprise and take any action that may be taken by shareholders, members, or  
2008 property owners, including merging, dissolving, or otherwise changing the form of business  
2009 organization or contributing additional capital;

2010 (7) with respect to stocks or other securities, exercise the rights of an absolute owner,  
2011 including the right to:

2012 (a) vote, or give proxies to vote, with or without power of substitution, or enter into or  
2013 continue a voting trust agreement;

2014 (b) hold a security in the name of a nominee or in other form without disclosure of the  
2015 trust so that title may pass by delivery;

2016 (c) pay calls, assessments, and other sums chargeable or accruing against the securities,  
2017 and sell or exercise stock subscription or conversion rights; and

2018 (d) deposit the securities with a depository or other regulated financial service  
2019 institution;

2020 (8) with respect to an interest in real property, construct, or make ordinary or  
2021 extraordinary repairs to, alterations to, or improvements in, buildings or other structures,  
2022 demolish improvements, raze existing or erect new party walls or buildings, subdivide or  
2023 develop land, dedicate land to public use or grant public or private easements, and make or  
2024 vacate plats and adjust boundaries;

2025 (9) enter into a lease for any purpose as lessor or lessee, including a lease or other  
2026 arrangement for exploration and removal of natural resources, with or without the option to  
2027 purchase or renew, for a period within or extending beyond the duration of the trust;

2028 (10) grant an option involving a sale, lease, or other disposition of trust property or  
2029 acquire an option for the acquisition of property, including an option exercisable beyond the  
2030 duration of the trust, and exercise an option so acquired;

2031 (11) insure the property of the trust against damage or loss and insure the trustee, the  
2032 trustee's agents, and beneficiaries against liability arising from the administration of the trust;

2033 (12) abandon or decline to administer property of no value or of insufficient value to  
2034 justify its collection or continued administration;

2035 (13) with respect to possible liability for violation of environmental law:

2036 (a) inspect or investigate property the trustee holds or has been asked to hold, or  
2037 property owned or operated by an organization in which the trustee holds or has been asked to  
2038 hold an interest, for the purpose of determining the application of environmental law with  
2039 respect to the property;

2040 (b) take action to prevent, abate, or otherwise remedy any actual or potential violation

2041 of any environmental law affecting property held directly or indirectly by the trustee, whether  
2042 taken before or after the assertion of a claim or the initiation of governmental enforcement;

2043 (c) decline to accept property into trust or disclaim any power with respect to property  
2044 that is or may be burdened with liability for violation of environmental law;

2045 (d) compromise claims against the trust which may be asserted for an alleged violation  
2046 of environmental law; and

2047 (e) pay the expense of any inspection, review, abatement, or remedial action to comply  
2048 with environmental law;

2049 (14) pay or contest any claim, settle a claim by or against the trust, and release, in  
2050 whole or in part, a claim belonging to the trust;

2051 (15) pay taxes, assessments, compensation of the trustee and of employees and agents  
2052 of the trust, and other expenses incurred in the administration of the trust;

2053 (16) exercise elections with respect to federal, state, and local taxes;

2054 (17) select a mode of payment under any employee benefit or retirement plan, annuity,  
2055 or life insurance payable to the trustee, exercise rights thereunder, including exercise of the  
2056 right to indemnification for expenses and against liabilities, and take appropriate action to  
2057 collect the proceeds;

2058 (18) make loans out of trust property, including loans to a beneficiary on terms and  
2059 conditions the trustee considers to be fair and reasonable under the circumstances, and the  
2060 trustee has a lien on future distributions for repayment of those loans;

2061 (19) pledge trust property to guarantee loans made by others to the beneficiary;

2062 (20) appoint a trustee to act in another jurisdiction with respect to trust property located  
2063 in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the  
2064 appointing trustee, require that the appointed trustee furnish security, and remove any trustee so  
2065 appointed;

2066 (21) pay an amount distributable to a beneficiary who is under a legal disability or who  
2067 the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or  
2068 applying it for the beneficiary's benefit, or by:

2069 (a) paying it to the beneficiary's conservator or, if the beneficiary does not have a  
2070 conservator, the beneficiary's guardian;

2071 (b) paying it to the beneficiary's custodian under Title 75, Chapter 5a, Uniform

2072 Transfers to Minors Act;

2073 (c) if the trustee does not know of a conservator, guardian, custodian, or custodial  
 2074 trustee, paying it to an adult relative or other person having legal or physical care or custody of  
 2075 the beneficiary, to be expended on the beneficiary's behalf; or

2076 (d) managing it as a separate fund on the beneficiary's behalf, subject to the  
 2077 beneficiary's continuing right to withdraw the distribution;

2078 (22) on distribution of trust property or the division or termination of a trust, make  
 2079 distributions in divided or undivided interests, allocate particular assets in proportionate or  
 2080 disproportionate shares, value the trust property for those purposes, and adjust for resulting  
 2081 differences in valuation;

2082 (23) resolve a dispute concerning the interpretation of the trust or its administration by  
 2083 mediation, arbitration, or other procedure for alternative dispute resolution;

2084 (24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to  
 2085 protect trust property and the trustee in the performance of the trustee's duties;

2086 (25) sign and deliver contracts and other instruments that are useful to achieve or  
 2087 facilitate the exercise of the trustee's powers; ~~h~~ [and] ~~h~~

2088 (26) on termination of the trust, exercise the powers appropriate to finalize the  
 2089 administration of the trust and distribute the trust property to the persons entitled to it ~~h~~ ; AND

2089a (27) (a) DELEGATE INVESTMENT AND MANAGEMENT FUNCTIONS THAT A PRUDENT  
 2089b TRUSTEE OF COMPARABLE SKILLS COULD PROPERLY DELEGATE UNDER THE CIRCUMSTANCES.  
 2089c THE TRUSTEE SHALL EXERCISE REASONABLE CARE, SKILL, AND CAUTION IN:

2089d (i) SELECTING THE AGENT;

2089e (ii) ESTABLISHING THE SCOPE AND TERMS OF THE DELEGATION CONSISTENT WITH THE  
 2089f PURPOSES OF THE TRUST; AND

2089g (iii) PERIODICALLY REVIEWING THE AGENT'S ACTIONS TO MONITOR THE AGENT'S  
 2089h PERFORMANCE AND COMPLIANCE WITH THE TERMS OF THE DELEGATION.

2089i (b) IN PERFORMING A DELEGATED FUNCTION, AN AGENT HAS A DUTY TO THE TRUST TO  
 2089j EXERCISE REASONABLE CARE TO COMPLY WITH THE TERMS OF THE DELEGATION.

2089k (c) A TRUSTEE WHO COMPLIES WITH THE REQUIREMENTS OF THIS SUBSECTION (27)(a) IS  
 2089l NOT LIABLE TO THE BENEFICIARIES OR TO THE TRUST FOR THE DECISIONS OR ACTIONS OF THE  
 2089m AGENT TO WHOM THE FUNCTION WAS DELEGATED ~~h~~ .

2090 Section 97. Section **75-7-815** is enacted to read:

2091 **75-7-815. Distribution upon termination.**

2092 (1) Upon termination or partial termination of a trust, the trustee may send to the  
 2093 beneficiaries a proposal for distribution. The right of any beneficiary to object to the proposed  
 2094 distribution terminates if the beneficiary does not notify the trustee of an objection within 30

2095 days after the proposal was sent but only if the proposal informed the beneficiary of the right to  
2096 object and of the time allowed for objection.

2097 (2) Upon the occurrence of an event terminating or partially terminating a trust, the  
2098 trustee shall proceed expeditiously to distribute the trust property to the persons entitled to it,  
2099 subject to the right of the trustee to retain a reasonable reserve for the payment of debts,  
2100 expenses, and taxes.

2101 (3) A release by a beneficiary of a trustee from liability for breach of trust is invalid to  
2102 the extent:

2103 (a) it was induced by improper conduct of the trustee; or  
2104 (b) the beneficiary, at the time of the release, did not know or had no reason to know of  
2105 the beneficiary's rights or of the material facts relating to the breach.

2106 Section 98. Section **75-7-816** is enacted to read:

2107 **75-7-816. Recitals when title to real property is in trust -- Failure.**

2108 (1) When title to real property is granted to a person as trustee, the terms of the trust  
2109 may be given either:

2110 (a) in the deed of transfer; or

2111 (b) in an instrument signed by the grantor and recorded in the same office as the grant  
2112 to the trustee.

2113 (2) If the terms of the trust are not made public as required in Subsection (1), a  
2114 conveyance from the trustee is absolute in favor of purchasers for value who take the property  
2115 without notice of the terms of the trust.

2116 (3) The terms of the trust recited in the deed of transfer or the instrument recorded  
2117 under Subsection (1)(b) shall include:

2118 (a) the name of the trustee;

2119 (b) the address of the trustee; and

2120 (c) the name and date of the trust.

2121 (4) Any real property titled in a trust which has a restriction on transfer described in  
2122 Section 25-6-14 shall include in the title the words "asset protection trust".

2123 Section 99. Section **75-7-817** is enacted to read:

2124 **75-7-817. Marital deduction formulas -- Trusts.**

2125 (1) For estates of decedents dying after December 31, 1981, where a decedent's trust  
2126 executed before September 13, 1981, contains a formula expressly providing that the  
2127 decedent's spouse is to receive the maximum amount of property qualifying for the marital  
2128 deduction allowable by federal law, this formula shall be construed as referring to the unlimited  
2129 marital deduction allowable by federal law as amended by Section 403(a) of the Economic  
2130 Recovery Tax Act of 1981.

2131 (2) The intention of a trustor as expressed in the trust shall control the legal effect of  
2132 any dispositions made by it for purposes of construing Subsection (1), and the rule of  
2133 construction of Subsection (1) shall apply unless a contrary intention is indicated by the trust.

2134 Section 100. Section **75-7-901** is enacted to read:

2135 **Part 9. Utah Uniform Prudent Investor Act**

2136 **75-7-901. Prudent investor rule.**

2137 (1) Except as otherwise provided in Subsection (2), a trustee who invests and manages  
 2138 trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule  
 2139 set forth in this chapter. **IF A TRUSTEE IS NAMED ON THE BASIS OF A TRUSTEE'S**  
 2139a **REPRESENTATIONS OF SPECIAL SKILLS OR EXPERTISE, THE TRUSTEE HAS A DUTY TO USE**  
 2139b **THOSE SPECIAL SKILLS OR EXPERTISE.** <sup>h</sup>

2140 (2) The prudent investor rule is a default rule and may be expanded, restricted,  
 2141 eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a  
 2142 beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the  
 2143 trust.

2144 Section 101. Section **75-7-902** is enacted to read:

2145 **75-7-902. Standard of care -- Portfolio strategy -- Risk and return objectives.**

2146 (1) A trustee shall invest and manage trust assets as a prudent investor would, by  
 2147 considering the purposes, terms, distribution requirements, and other circumstances of the trust.  
 2148 In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

2149 (2) A trustee's investment and management decisions respecting individual assets must  
 2150 be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of  
 2151 an overall investment strategy having risk and return objectives reasonably suited to the trust.

2152 (3) Among circumstances that a trustee shall consider in investing and managing trust  
 2153 assets are the following which may be relevant to the trust or its beneficiaries:

2154 (a) general economic conditions;

2155 (b) the possible effect of inflation or deflation;

2156 (c) the expected tax consequences of investment decisions or strategies;

2157 (d) the role that each investment or course of action plays within the overall trust  
 2158 portfolio, which may include financial assets, interests in closely held enterprises, tangible and  
 2159 intangible personal property, and real property;

2160 (e) the expected total return from income and the appreciation of capital;

2161 (f) other resources of the beneficiaries;

2162 (g) needs for liquidity, regularity of income, and preservation or appreciation of capital;

2163 and

2164 (h) an asset's special relationship or special value, if any, to the purposes of the trust or



2165 to one or more of the beneficiaries.

2166 (4) A trustee shall make a reasonable effort to verify facts relevant to the investment  
2167 and management of trust assets.

2168 (5) A trustee may invest in any kind of property or type of investment consistent with  
2169 the standards of this chapter.

2170 Section 102. Section **75-7-903** is enacted to read:

2171 **75-7-903. Diversification.**

2172 A trustee shall diversify the investments of the trust unless the trustee reasonably  
2173 determines that, because of special circumstances, the purposes of the trust are better served  
2174 without diversifying.

2175 Section 103. Section **75-7-904** is enacted to read:

2176 **75-7-904. Duties at inception of trusteeship.**

2177 Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee  
2178 shall review the trust assets and make and implement decisions concerning the retention and  
2179 disposition of assets, in order to bring the trust portfolio into compliance with the purposes,  
2180 terms, distribution requirements, and other circumstances of the trust, and with the  
2181 requirements of this chapter.

2182 Section 104. Section **75-7-905** is enacted to read:

2183 **75-7-905. Reviewing compliance.**

2184 Compliance with the prudent investor rule is determined in light of the facts and  
2185 circumstances existing at the time of a trustee's decision or action and not by hindsight. This  
2186 section does not require a specific outcome in investing.

2187 Section 105. Section **75-7-906** is enacted to read:

2188 **75-7-906. Investment direction.**

2189 (1) For purposes of this section, "investment direction" means a direction that is  
2190 binding on the trustee, except for an investment direction given by a settlor as described in  
2191 Subsection (2) to do any of the following with respect to an investment:

2192 (a) retention;

2193 (b) purchase;

2194 (c) sale;

2195 (d) exchange;

- 2196 (e) tender; or
- 2197 (f) any other transaction affecting ownership in the investment.
- 2198 (2) (a) During the time period that a trust is revocable, the trustee may follow any
- 2199 investment direction of the settlor, including an investment direction that:
- 2200 (i) is manifestly contrary to the terms of the trust; or
- 2201 (ii) seriously breaches a fiduciary duty to the beneficiaries.
- 2202 (b) The trustee is not liable for any loss resulting from following an investment
- 2203 direction described in Subsection (2)(a).
- 2204 (3) If the terms of a trust authorize a person to give investment direction to the trustee,
- 2205 the person authorized to give investment direction:
- 2206 (a) is presumptively a fiduciary only with respect to an investment direction that the
- 2207 person gives to the trustee;
- 2208 (b) is required to act in good faith with regard to:
- 2209 (i) the purposes of the trust; and
- 2210 (ii) the interests of the beneficiaries; and
- 2211 (c) is liable for any loss that results from breach of the fiduciary duty only with respect
- 2212 to an investment direction that the person gives to the trustee.
- 2213 (4) Except in cases of willful misconduct or gross negligence, a trustee is not liable for
- 2214 any loss that results from following an investment direction if:
- 2215 (a) the terms of a trust authorizes a person to give the investment direction to the
- 2216 trustee; and
- 2217 (b) the trustee acts in accordance with the investment direction given by a person
- 2218 described in Subsection (4)(a).
- 2219 (5) If the terms of a trust require another person's approval or consent to an investment
- 2220 decision of the trustee:
- 2221 (a) the person from whom approval or consent is required:
- 2222 (i) is presumptively a fiduciary;
- 2223 (ii) is required to act in good faith with regard to:
- 2224 (A) the purposes of the trust; and
- 2225 (B) the interests of the beneficiaries; and
- 2226 (iii) is liable for any loss that results from breach of the fiduciary duty; and

2227 (b) except in cases of willful misconduct or gross negligence, the trustee is not liable  
2228 for any loss resulting from any act not taken as a result of the person's failure to respond to a  
2229 request for approval or consent.

2230 Section 106. Section **75-7-907** is enacted to read:

2231 **75-7-907. Language invoking standard of chapter.**

2232 The following terms or comparable language in the provisions of a trust, unless  
2233 otherwise limited or modified, authorizes any investment or strategy permitted under this  
2234 chapter: "investments permissible by law for investment of trust funds," "legal investments,"  
2235 "authorized investments," "using the judgment and care under the circumstances then  
2236 prevailing that persons of prudence, discretion, and intelligence exercise in the management of  
2237 their own affairs, not in regard to speculation but in regard to the permanent disposition of their  
2238 funds, considering the probable income as well as the probable safety of their capital," "prudent  
2239 man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

2240 Section 107. Section **75-7-1001** is enacted to read:

2241 **Part 10. Liability of Trustees and Rights of Persons Dealing with Trustee**

2242 **75-7-1001. Remedies for breach of trust.**

2243 (1) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of  
2244 trust.

2245 (2) To remedy a breach of trust that has occurred or may occur, the court may:

2246 (a) compel the trustee to perform the trustee's duties;

2247 (b) enjoin the trustee from committing a breach of trust;

2248 (c) compel the trustee to redress a breach of trust by paying money, restoring property,  
2249 or other means;

2250 (d) order a trustee to account;

2251 (e) appoint a special fiduciary to take possession of the trust property and administer  
2252 the trust;

2253 (f) suspend the trustee;

2254 (g) remove the trustee as provided in Section 75-7-706;

2255 (h) reduce or deny compensation to the trustee;

2256 (i) subject to Section 75-7-1012, void an act of the trustee, impose a lien or a  
2257 constructive trust on trust property, or trace trust property wrongfully disposed of and recover

2258 the property or its proceeds; or

2259 (j) order any other appropriate relief.

2260 Section 108. Section **75-7-1002** is enacted to read:

2261 **75-7-1002. Damages for breach of trust.**

2262 (1) A trustee who commits a breach of trust is liable to the beneficiaries affected for the  
2263 greater of:

2264 (a) the amount required to restore the value of the trust property and trust distributions  
2265 to what they would have been had the breach not occurred; or

2266 (b) the profit the trustee made by reason of the breach.

2267 (2) Except as otherwise provided in this Subsection (2), if more than one trustee is  
2268 liable to the beneficiaries for a breach of trust, a trustee is entitled to contribution from the  
2269 other trustee or trustees. A trustee is not entitled to contribution if the trustee was substantially  
2270 more at fault than another trustee or if the trustee committed the breach of trust in bad faith or  
2271 with reckless indifference to the purposes of the trust or the interests of the beneficiaries. A  
2272 trustee who received a benefit from the breach of trust is not entitled to contribution from  
2273 another trustee to the extent of the benefit received.

2274 Section 109. Section **75-7-1003** is enacted to read:

2275 **75-7-1003. Damages in absence of breach.**

2276 (1) A trustee is accountable to an affected beneficiary for any profit made by the trustee  
2277 arising from the administration of the trust, even absent a breach of trust.

2278 (2) Absent a breach of trust, a trustee is not liable to a beneficiary for a loss or  
2279 depreciation in the value of trust property or for not having made a profit.

2280 Section 110. Section **75-7-1004** is enacted to read:

2281 **75-7-1004. Attorney's fees and costs.**

2282 **Ĥ (1) ĥ** In a judicial proceeding involving the administration of a trust, the court may, as  
2282a justice

2283 and equity may require, award costs and expenses, including reasonable attorney's fees, to any  
2284 party, to be paid by another party or from the trust that is the subject of the controversy.

2284a **Ĥ (2) IF A TRUSTEE DEFENDS OR PROSECUTES ANY PROCEEDING IN GOOD FAITH,**  
2284b **WHETHER SUCCESSFUL OR NOT, THE TRUSTEE IS ENTITLED TO RECEIVE FROM THE TRUST THE**  
2284c **NECESSARY EXPENSES AND DISBURSEMENTS, INCLUDING REASONABLE ATTORNEY'S FEES**  
2284d **INCURRED. ĥ**

2285 Section 111. Section **75-7-1005** is enacted to read:

2286 **75-7-1005. Limitation of action against trustee.**

2287 (1) A beneficiary may not commence a proceeding against a trustee for breach of trust  
2288 more than six months after the date that the beneficiary or a person who may represent and

2289 bind the beneficiary was sent a report that adequately disclosed the existence of a potential  
 2290 claim for breach of trust and informed the beneficiary of the time allowed for commencing a  
 2291 proceeding.

2292 (2) A report adequately discloses the existence of a potential claim for breach of trust if  
 2293 it provides sufficient information so that the beneficiary or representative knows of the  
 2294 potential claim or should have inquired into its existence.

2295 (3) If Subsection (1) does not apply, a judicial proceeding by a beneficiary against a  
 2296 trustee for breach of trust must be commenced within one year after the first to occur of:

2297 (a) the removal, resignation, or death of the trustee;

2298 (b) the termination of the beneficiary's interest in the trust; or

2299 (c) the termination of the trust.

2300 (4) This section does not preclude an action to recover for fraud or misrepresentation  
 2301 related to the report.

2302 Section 112. Section **75-7-1006** is enacted to read:

2303 **75-7-1006. Reliance on trust instrument.**

2304 A trustee who acts in reasonable reliance on the terms of the trust as expressed in the  
 2305 trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach  
 2306 resulted from the reliance.

2307 Section 113. Section **75-7-1007** is enacted to read:

2308 **75-7-1007. Event affecting administration or distribution.**

2309 If the happening of an event, including marriage, divorce, performance of educational  
 2310 requirements, or death, affects the administration or distribution of a trust, a trustee is not liable  
 2311 for a loss resulting from the trustee's lack of knowledge or lack of notice.

2312 Section 114. Section **75-7-1008** is enacted to read:

2313 **75-7-1008. Exculpation of trustee.**

2314 Ĥ [(t)] ĥ A term of a trust relieving a trustee of liability for breach of trust is unenforceable  
 2315 to the extent that it:

2316 Ĥ [(a)] (1) ĥ relieves the trustee of liability for breach of trust committed in bad faith or with  
 2317 reckless indifference to the purposes of the trust or the interests of the beneficiaries; or

2318 Ĥ [(b)] (2) ĥ was inserted Ĥ [as the result of an abuse by the trustee of a fiduciary or  
 2318a confidential

2319 relationship to the settlor] BY THE TRUSTEE OR FIDUCIARY WITHOUT DISCLOSURE OF ITS

2319a EXISTENCE AND CONTENTS ĥ .

2320 ~~Ĥ [(2) An exculpatory term drafted or caused to be drafted by the trustee is invalid as an~~  
 2321 ~~abuse of a fiduciary or confidential relationship unless the settlor is or was represented by~~  
 2322 ~~independent counsel or the trustee proves that the exculpatory term is fair under the~~  
 2323 ~~circumstances and that its existence and contents were adequately communicated to the settlor.] ĥ~~

2324 Section 115. Section **75-7-1009** is enacted to read:

2325 **75-7-1009. Beneficiary's consent, release, or ratification.**

2326 A trustee is not liable to a beneficiary for breach of trust if the beneficiary, while having  
 2327 capacity, consented to the conduct constituting the breach, released the trustee from liability for  
 2328 the breach, or ratified the transaction constituting the breach, unless Ĥ [;

2329 ~~—— (1) the consent, release, or ratification of the beneficiary was induced by improper~~  
 2330 ~~conduct of the trustee;~~

2331 ~~—— (2) ĥ at the time of the consent, release, or ratification, the beneficiary did not know of~~  
 2332 ~~the beneficiary's rights or of the material facts relating to the breach Ĥ [;~~

2333 ~~—— (3) the beneficiary was not represented by independent counsel] ĥ .~~

2334 Section 116. Section **75-7-1010** is enacted to read:

2335 **75-7-1010. Limitation on personal liability of trustee.**

2336 (1) Except as otherwise provided in the contract, a trustee is not personally liable on a  
 2337 contract properly entered into in the trustee's fiduciary capacity in the course of administering  
 2338 the trust if the trustee in the contract disclosed the fiduciary capacity.

2339 (2) A trustee is personally liable for torts committed in the course of administering a  
 2340 trust, or for obligations arising from ownership or control of trust property, including liability  
 2341 for violation of environmental law, only if the trustee is personally at fault.

2342 (3) A claim based on a contract entered into by a trustee in the trustee's fiduciary  
 2343 capacity, on an obligation arising from ownership or control of trust property, or on a tort  
 2344 committed in the course of administering a trust, may be asserted in a judicial proceeding  
 2345 against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally  
 2346 liable for the claim.

2347 (4) The question of liability as between the trust estate and the trustee individually may  
 2348 be determined in a proceeding for accounting, surcharge, or indemnification or other  
 2349 appropriate proceeding.

2350 (5) Whenever an instrument creating a trust reserves to the settlor, or vests in an

2351 advisory or investment committee, or in any other person or persons, including one or more  
2352 cotrustees to the exclusion of the trustee or to the exclusion of one or more of several trustees,  
2353 authority to direct the making or retention of any investment, the excluded trustee or trustees  
2354 shall not be liable, either individually or as a fiduciary, for any loss resulting from the making  
2355 or retention of any investment pursuant to such direction.

2356 (6) In the absence of actual knowledge or information which would cause a reasonable  
2357 trustee to inquire further, no trustee shall be liable for failure to take necessary steps to compel  
2358 the redress of any breach of trust or fiduciary duty by any predecessor personal representative,  
2359 trustee, or other fiduciary. The provisions of this section shall not be construed to limit the  
2360 fiduciary liability of any trustee for his own acts or omissions with respect to the trust estate.

2361 Section 117. Section **75-7-1011** is enacted to read:

2362 **75-7-1011. Interest as general partner.**

2363 (1) Except as otherwise provided in Subsection (3) or unless personal liability is  
2364 imposed in the contract, a trustee who holds an interest as a general partner in a general or  
2365 limited partnership is not personally liable on a contract entered into by the partnership after  
2366 the trust's acquisition of the interest if the fiduciary capacity was disclosed in the contract or in  
2367 a statement previously filed pursuant to Title 48, Chapter 2a, Utah Revised Uniform Limited  
2368 Partnership Act.

2369 (2) Except as otherwise provided in Subsection (3), a trustee who holds an interest as a  
2370 general partner is not personally liable for torts committed by the partnership or for obligations  
2371 arising from ownership or control of the interest unless the trustee is personally at fault.

2372 (3) The immunity provided by this section does not apply if an interest in the  
2373 partnership is held by the trustee in a capacity other than that of trustee or is held by the  
2374 trustee's spouse or one or more of the trustee's descendants, siblings, or parents, or the spouse  
2375 of any of them.

2376 (4) If the trustee of a revocable trust holds an interest as a general partner, the settlor is  
2377 personally liable for contracts and other obligations of the partnership as if the settlor were a  
2378 general partner.

2379 Section 118. Section **75-7-1012** is enacted to read:

2380 **75-7-1012. Protection of person dealing with trustee.**

2381 (1) A person other than a beneficiary who in good faith assists a trustee, or who in

2382 good faith and for value deals with a trustee, without knowledge that the trustee is exceeding or  
2383 improperly exercising the trustee's powers is protected from liability as if the trustee properly  
2384 exercised the power.

2385 (2) A person other than a beneficiary who in good faith deals with a trustee is not  
2386 required to inquire into the extent of the trustee's powers or the propriety of their exercise.

2387 (3) A person who in good faith delivers assets to a trustee need not ensure their proper  
2388 application.

2389 (4) A person other than a beneficiary who in good faith assists a former trustee, or who  
2390 in good faith and for value deals with a former trustee, without knowledge that the trusteeship  
2391 has terminated is protected from liability as if the former trustee were still a trustee.

2392 (5) Comparable protective provisions of other laws relating to commercial transactions  
2393 or transfer of securities by fiduciaries prevail over the protection provided by this section.

2394 Section 119. Section **75-7-1013** is enacted to read:

2395 **75-7-1013. Certification of trust.**

2396 (1) Instead of furnishing a copy of the trust instrument to a person other than a  
2397 beneficiary, the trustee may furnish to the person a certification of trust containing the  
2398 following information:

2399 (a) that the trust exists and the date the trust instrument was executed;

2400 (b) the identity of the settlor;

2401 (c) the identity and address of the currently acting trustee;

2402 (d) the powers of the trustee in the pending transaction;

2403 (e) the revocability or irrevocability of the trust and the identity of any person holding a  
2404 power to revoke the trust;

2405 (f) the authority of cotrustees to sign or otherwise authenticate and whether all or less  
2406 than all are required in order to exercise powers of the trustee; and

2407 (g) the name in which title to trust property may be taken.

2408 (2) A certification of trust may be signed or otherwise authenticated by any trustee.

2409 (3) A certification of trust must state that the trust has not been revoked, modified, or  
2410 amended in any manner that would cause the representations contained in the certification of  
2411 trust to be incorrect.

2412 (4) A certification of trust need not contain the dispositive terms of a trust.



2413 (5) A recipient of a certification of trust may require the trustee to furnish copies of  
2414 those excerpts from the original trust instrument and later amendments which designate the  
2415 trustee and confer upon the trustee the power to act in the pending transaction.

2416 (6) A person who acts in reliance upon a certification of trust without knowledge that  
2417 the representations contained in it are incorrect is not liable to any person for acting and may  
2418 assume without inquiry the existence of the facts contained in the certification. Knowledge of  
2419 the terms of the trust may not be inferred solely from the fact that a copy of all or part of the  
2420 trust instrument is held by the person relying upon the certification.

2421 (7) A person who in good faith enters into a transaction in reliance upon a certification  
2422 of trust may enforce the transaction against the trust property as if the representations contained  
2423 in the certification were correct.

2424 (8) A person making a demand for the trust instrument in addition to a certification of  
2425 trust or excerpts is liable for costs, expenses, attorney fees, and damages if the court determines  
2426 that the person did not act in good faith in demanding the trust instrument.

2427 (9) This section does not limit the right of a person to obtain a copy of the trust  
2428 instrument in a judicial proceeding concerning the trust.

2429 Section 120. Section **75-7-1101** is enacted to read:

2430 **Part 11. Miscellaneous Provisions**

2431 **75-7-1101. Uniformity of application and construction.**

2432 In applying and construing this chapter, consideration must be given to the need to  
2433 promote uniformity of the law with respect to its subject matter among states that enact it.

2434 Section 121. Section **75-7-1102** is enacted to read:

2435 **75-7-1102. Electronic records and signatures.**

2436 The provisions of this chapter governing the legal effect, validity, or enforceability of  
2437 electronic records or electronic signatures, and of contracts formed or performed with the use  
2438 of such records or signatures, conform to the requirements of Section 102 of the Electronic  
2439 Signatures in Global and National Commerce Act (15 U.S.C. §7002) and supersede, modify,  
2440 and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

2441 Section 122. Section **75-7-1103** is enacted to read:

2442 **75-7-1103. Application to existing relationships.**

2443 (1) Except as otherwise provided, this chapter applies to:

2444 (a) all trusts created before, on, or after H [May] JULY h 1, 2004;

2445 (b) all judicial proceedings concerning trusts commenced on or after H [May] JULY h 1,  
2445a 2004; and

2446 (c) judicial proceedings concerning trusts commenced before H [May] JULY h 1, 2004

2446a unless the

2447 court finds that application of a particular provision of this chapter would substantially interfere

2448 with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in

2449 which case the particular provision of this chapter does not apply and the superseded section

2450 will apply.

2451 (2) Any rule of construction or presumption provided in this chapter applies to trust

2452 instruments executed before H [May] JULY h 1, 2004 unless there is a clear indication of a contrary

2452a intent

2453 in the terms of the trust.

2454 (3) An act done before H [May] JULY h 1, 2004 is not affected by this chapter.

2455 (4) If a right is acquired, extinguished, or barred upon the expiration of a prescribed

2456 period that has commenced to run under any other statute before H [May] JULY h 1, 2004, that

2456a statute

2457 continues to apply to the right even if it has been repealed or superseded.

2458 **Section 123. Repealer.**

2459 This bill repeals:

2460 **Section 75-7-206, Proceedings for review of employment of agents and review of**

2461 **compensation of trustee and employees of trust.**

2462 **Section 75-7-207, Trust proceedings -- Initiation by notice -- Necessary parties.**

2463 **Section 75-7-306, Personal liability of trustee to third parties.**

2464 **Section 75-7-307, Limitations on proceedings against trustees after final account.**

2465 **Section 75-7-405.5, Vacancy in trusteeship -- Appointment of successor.**

2466 **Section 124. Coordinating S.B. 47 with S.B. 30.**

2467 If this S.B. 47 and S.B. 30, Medical Benefits Recovery Act Amendments, both pass it is

2468 the intent of the Legislature that cross-references in S.B. 30 to Sections 75-7-308 and 75-7-309

2469 be changed to 75-7-508 and 75-7-509, respectively.