

1                           **SENATE FLOOR VERSION**  
2                           April 8, 2025  
3                           **AS AMENDED**

3 ENGROSSED HOUSE  
4 BILL NO. 1850

By: Schreiber of the House

5                           and  
6                           Howard of the Senate  
7  
8

9 An Act relating to trusts; creating the Oklahoma  
10 Uniform Trust Code; **providing short title**; providing  
11 scope of act; defining terms; providing when person  
12 or organization has knowledge of a fact; providing  
13 when this act governs the duties and power of  
14 trustee, relations among trustees, and the rights and  
15 interests of a beneficiary; providing that terms of  
16 trust prevail over provisions of this act; providing  
17 exceptions; providing that the common law of trusts  
18 and principles equity supplement this act in most  
19 circumstances; providing what governing law applies  
20 for determining the meaning and effect of the terms  
21 of a trust; providing guidelines for the principal  
22 place of administration; providing methods of  
23 notices; providing for waiver of notice; providing  
24 for rules of construction the interpretation of and  
disposition of property by will also apply to the  
interpretation of the terms of a trust and the  
disposition of the trust property; defining term;  
providing for insurable interests of trustees;  
providing guidelines on who may receive an insurable  
interest of a trustee; providing the role of a court  
in administration of a trust; providing who shall  
have jurisdiction over the trust; providing for venue  
location for legal proceedings; providing that notice  
to certain representatives has the same effect as if  
notice were given directly to the other person;  
providing that consent by a representative is binding  
on the person they represent in certain  
circumstances; providing that a settlor may not  
represent and be a beneficiary in certain

1           circumstances; providing representation power by a  
2           holder of general testamentary power of appointment;  
3           providing representation powers by fiduciaries and  
4           parents; providing for representation in certain  
5           instances by a person having substantiality identical  
6           interests; providing for appointment of a  
7           representative; providing power and duties of  
8           representative; providing methods of creating a  
9           trust; providing requirements for creating a trust;  
10          providing when a trust created in another state is  
11          valid; providing trust purpose; providing purpose of  
12          a charitable trust; providing a court select purpose  
13          or beneficiary for a charitable trust in certain  
14          circumstances; providing who may maintain a  
15          proceeding to enforce a charitable trust; providing  
16          that a trust is void if the creation was induced by  
17          fraud, duress, or undue influence; providing  
18          requirements for an oral trust; providing rules for  
19          noncharitable trust created without ascertainable  
20          beneficiary; providing when a trust terminates;  
21          providing who may commence a proceeding for the  
22          modification and termination of a trust; providing  
23          procedure for the modification or termination of a  
24          noncharitable irrevocable trust; providing that the  
                court may modify or terminate a trust in certain  
                circumstances; providing that a court may apply cy  
                pres to modify or terminate charitable trust in  
                certain circumstances; providing for modification or  
                termination of uneconomic trusts in certain  
                circumstances; providing for manner of distribution  
                if uneconomic trust is terminated; providing trust  
                that are exempt from modification or termination if  
                they are uneconomical; providing that a court may  
                reform a trust to correct certain mistakes; providing  
                that a court may modify a trust to achieve a settlors  
                tax objectives; providing that a trustee may combine  
                multiple trusts into a single trust; providing that a  
                trustee may divide a single trust into multiple  
                trusts; providing that whether or not the terms the  
                trust contain a spend thrift certain rules apply for  
                creditors claim against a settlor; providing rules  
                for a creditors claims against a settlor; providing  
                required capacity of settlor of a revocable trust;  
                providing power of settlor in a revocable trust;  
                providing power of settlor has power of withdrawal  
                for a revocable trust; providing limitations on  
                actions contesting the validity of a revocable trust;

1 providing for a beneficiary of a trust to return any  
2 distributions in certain circumstances; providing for  
3 accepting or declining of trusteeship; providing when  
4 a trustee is required to post a bond; providing  
5 procedures and requirements for co-trustees of a  
6 trust; providing when a vacancy in a trusteeship  
7 occurs; providing for appointment of successor  
8 trustees; providing procedure for the resignation of  
9 a trustee; providing for the removal of a trustee by  
10 the court; requiring former trustees to deliver  
11 property held to a successor trustee; providing for  
12 compensation of trustees; providing for reimbursement  
13 of expenses by a trustee; providing duty of trustees  
14 to administer trust; providing for a duty of loyalty  
15 by a trustee; providing for impartiality by a trustee  
16 when a trust has more than one beneficiary; requiring  
17 a trustee to administer trust prudently; providing  
18 what costs a trustee may incur in administering the  
19 trust; requiring trustees who were selected because  
20 of a special skill or expertise to use such skill or  
21 expertise in administering the trust; providing that  
22 a trustee may delegate duties and powers; providing  
23 requirements for delegating duties and powers;  
24 providing that trustee shall take reasonable steps to  
take control of and protect the trust property;  
providing requirements for recordkeeping and  
identification of trust property by a trustee;  
requiring that a trustee shall take reasonable steps  
to enforce claim of the trust and to defend claims  
against the trust; requiring a trustee to collect  
trust property from former trustees and to redress a  
breach of trust committed by a former trustee;  
providing that a trustee has a duty to inform and  
make reports to certain individuals; providing  
trustee has certain discretionary powers; providing  
general powers of a trustee; providing specific  
powers of trustee; providing procedure and  
requirements for distribution of a trust upon  
termination; providing when a trustee is entitled to  
a contribution by a co-trustee; providing that a  
trustee is accountable to a beneficiary for any  
profit made by the trustee, even absent a breach of  
trust; providing that absent a breach of trust, a  
trustee is not liable to a beneficiary for a loss or  
deprivation in the value of the trust or for not  
making a profit; providing that a trustee is not  
liable for a breach of trust if reasonably relying

upon the terms of the trust; providing that a trustee is not liable for certain events that occur that affect administration or distribution of a trust; providing limitation on personal liability of a trustee; providing that trustees who hold an interest as a general partner in a general or limited partnership is not personally liable for certain actions and events; providing that a trustee may provide a certification of trust in certain circumstances; providing requirements of a certification of trust; providing exemptions for a certification of trust may be used; providing requirements for electronic records and signatures; providing for severability of act for provisions that are held invalid; providing application to existing relationships; providing for codification; and providing an effective date.

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12  
13 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

## **ARTICLE 1**

## **GENERAL PROVISIONS AND DEFINITIONS**

16 SECTION 1. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section **1601.1** of Title 60, unless there  
18 is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma Uniform Trust Code".

SECTION 2. NEW LAW A new section of law to be codified  
in the Oklahoma Statutes as Section **1601.2** of Title 60, unless there  
is created a duplication in numbering, reads as follows:

1       The Oklahoma Uniform Trust **Code** applies to express trusts,  
2 charitable or noncharitable, and trusts created pursuant to a  
3 statute, judgment, or decree that requires the trust to be  
4 administered in the manner of an express trust.

5           SECTION 3.        NEW LAW        A new section of law to be codified  
6 in the Oklahoma Statutes as Section **1601.3** of Title 60, unless there  
7 is created a duplication in numbering, reads as follows:

8           As used in this act:

9           1. "Action", with respect to an act of a trustee, includes a  
10 failure to act;

11           2. "Ascertainable standard" means a standard relating to an  
12 individual's health, education, support, or maintenance within the  
13 meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal  
14 Revenue Code of 1986, as in effect on the effective date of this  
15 act, or as later amended;

16           3. "Beneficiary" means a person who:

17               a. has a present or future beneficial interest in a  
18                   trust, vested or contingent, or  
19               b. in a capacity other than that of trustee, holds a  
20                   power of appointment over trust property;

21           4. "Charitable trust" means a trust, or portion of a trust,  
22 created for a charitable purpose described in subsection A of  
23 Section 24 of this act;

1       5. "Environmental law" means a federal, state, or local law,  
2 rule, regulation, or ordinance relating to the protection of the  
3 environment;

4       6. "Guardian of the property" means a person appointed by the  
5 court to administer the estate of a minor or adult individual;

6       7. "Guardian of the person" means a person appointed by the  
7 court to make decisions regarding the support, care, education,  
8 health, and welfare of a minor or adult individual. The term does  
9 not include a guardian ad litem;

10      8. "Interests of the beneficiaries" means the beneficial  
11 interests provided in the terms of the trust;

12      9. "Jurisdiction", with respect to a geographic area, includes  
13 a state or country;

14      10. "Person" means an individual, corporation, business trust,  
15 estate, trust, partnership, limited liability company, association,  
16 joint venture, government, governmental subdivision, agency, or  
17 instrumentality, public corporation, or any other legal or  
18 commercial entity;

19      11. "Power of withdrawal" means a presently exercisable general  
20 power of appointment other than a power:

21           a. exercisable by a trustee and limited by an  
22                   ascertainable standard, or

23           b. exercisable by another person only upon consent of the  
24                   trustee or a person holding an adverse interest;

1       12. "Property" means anything that may be the subject of  
2 ownership, whether real or personal, legal or equitable, or any  
3 interest therein;

4       13. "Qualified beneficiary" means a beneficiary who, on the  
5 date the beneficiary's qualification is determined:

- 6           a. is a distributee or permissible distributee of a  
7                   present interest in the trust income or principal, or  
8                   has a vested remainder in the trust,
- 9           b. is a charitable organization expressly entitled to  
10                  receive benefits under the terms of a charitable  
11                  trust, or
- 12           c. is the Attorney General of this state with respect to  
13                  a charitable trust having its principal place of  
14                  administration in this state;

15       14. "Revocable", as applied to a trust, means revocable by the  
16 settlor without the consent of the trustee or a person holding an  
17 adverse interest;

18       15. "Settlor" means a person, including a testator, who  
19 creates, or contributes property to, a trust. If more than one  
20 person creates or contributes property to a trust, each person is a  
21 settlor of the portion of the trust property attributable to that  
22 person's contribution except to the extent another person has the  
23 power to revoke or withdraw that portion;

1       16. "Spendthrift provision" means a term of a trust which  
2 restraints both voluntary and involuntary transfer of a beneficiary's  
3 interest;

4       17. "State" means a state of the United States, the District of  
5 Columbia, Puerto Rico, the United States Virgin Islands, or any  
6 territory or insular possession subject to the jurisdiction of the  
7 United States. The term includes an Indian tribe or band recognized  
8 by federal law or formally acknowledged by a state;

9       18. "Terms of a trust" means:

10       a. except as otherwise provided in subparagraph b of this  
11 paragraph, the manifestation of the settlor's intent  
12 regarding a trust's provisions as:

- 13           (1) expressed in the trust instrument, or  
14           (2) established by other evidence that would be  
15              admissible in a judicial proceeding, or

16       b. the trust's provisions, as established, determined, or  
17 amended by:

- 18           (1) a trustee or other person in accordance with  
19              applicable law,  
20           (2) a court order, or  
21           (3) a nonjudicial settlement agreement under Section  
22              1402 of Title 60 of the Oklahoma Statutes;

1       19. "Trust instrument" means an instrument executed by the  
2 settlor that contains terms of the trust, including any amendments  
3 thereto; and

4       20. "Trustee" includes an original, additional, and successor  
5 trustee, and a co-trustee.

6           SECTION 4.       NEW LAW       A new section of law to be codified  
7 in the Oklahoma Statutes as Section **1601.4** of Title 60, unless there  
8 is created a duplication in numbering, reads as follows:

9           A. Subject to subsection B of this section, a person has  
10 knowledge of a fact if the person:

11           1. Has actual knowledge of it;

12           2. Has received a notice or notification of it; or

13           3. From all the facts and circumstances known to the person at  
14 the time in question, has reason to know it.

15           B. An organization that conducts activities through employees  
16 has notice or knowledge of a fact involving a trust only from the  
17 time the information was received by an employee having  
18 responsibility to act for the trust, or would have been brought to  
19 the employee's attention if the organization had exercised  
20 reasonable diligence. An organization exercises reasonable  
21 diligence if it maintains reasonable routines for communicating  
22 significant information to the employee having responsibility to act  
23 for the trust and there is reasonable compliance with the routines.  
24 Reasonable diligence does not require an employee of the

1 organization to communicate information unless the communication is  
2 part of the individual's regular duties or the individual knows a  
3 matter involving the trust would be materially affected by the  
4 information.

5 SECTION 5. NEW LAW A new section of law to be codified  
6 in the Oklahoma Statutes as Section **1601.5** of Title 60, unless there  
7 is created a duplication in numbering, reads as follows:

8 A. Except as otherwise provided in the terms of the trust, this  
9 act governs the duties and powers of a trustee, relations among  
10 trustees, and the rights and interests of a beneficiary.

11 B. The terms of a trust prevail over any provision of this act  
12 except:

13 1. The requirements for creating a trust;  
14 2. Subject to the Oklahoma Uniform Directed Trust Act, Sections  
15 1209, 1211, and 1212 of Title 60 of the Oklahoma Statutes, the duty  
16 of a trustee to act in good faith and in accordance with the terms  
17 and purposes of the trust and the interests of the beneficiaries;

18 3. The requirement that a trust and its terms be for the  
19 benefit of its beneficiaries, and that the trust have a purpose that  
20 is lawful, not contrary to public policy, and possible to achieve;

21 4. The power of the court to modify or terminate a trust under  
22 Sections 28 through 34 of this act;

1       5. The effect of a spendthrift provision and the rights of  
2 certain creditors and assignees to reach a trust as provided in  
3 Section 36 of this act;

4       6. The power of the court under Section 41 of this act to  
5 require, dispense with, or modify or terminate a bond;

6       7. The power of the court under subsection B of Section 47 of  
7 this act to adjust a trustee's compensation specified in the terms  
8 of the trust which is unreasonably low or high;

9       8. The duty under paragraphs 2 and 3 of Section 60 of this act  
10 to notify qualified beneficiaries of an irrevocable trust who have  
11 attained twenty-five (25) years of age of the existence of the  
12 trust, of the identity of the trustee, and of their right to request  
13 trustee's reports;

14       9. The duty under subsection A of Section 60 of this act to  
15 respond to the request of a qualified beneficiary of an irrevocable  
16 trust for trustee's reports and other information reasonably related  
17 to the administration of a trust;

18       10. The rights under Sections 68 through 71 of this act of a  
19 person other than a trustee or beneficiary;

20       11. Periods of limitation for commencing a judicial proceeding;

21       12. The power of the court to take such action and exercise  
22 such jurisdiction as may be necessary in the interests of justice;  
23 and

1       13. The subject matter jurisdiction of the court and venue for  
2 commencing a proceeding as provided in Section 14 of this act.

3       SECTION 6.       NEW LAW       A new section of law to be codified  
4 in the Oklahoma Statutes as Section **1601.6** of Title 60, unless there  
5 is created a duplication in numbering, reads as follows:

6       The common law of trusts and principles of equity supplement  
7 this act, except to the extent modified by this act or another  
8 statute of this state.

9       SECTION 7.       NEW LAW       A new section of law to be codified  
10 in the Oklahoma Statutes as Section **1601.7** of Title 60, unless there  
11 is created a duplication in numbering, reads as follows:

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

14       1. The law of the jurisdiction designated in the terms unless  
15 the designation of that jurisdiction's law is contrary to a strong  
16 public policy of the jurisdiction having the most significant  
17 relationship to the matter at issue; or

18       2. In the absence of a controlling designation in the terms of  
19 the trust, the law of the jurisdiction having the most significant  
20 relationship to the matter at issue.

21       SECTION 8.       NEW LAW       A new section of law to be codified  
22 in the Oklahoma Statutes as Section **1601.8** of Title 60, unless there  
23 is created a duplication in numbering, reads as follows:

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

- 5           1. A trustee's principal place of business is located in or a  
6 trustee is a resident of the designated jurisdiction; or  
7           2. All or part of the administration occurs in the designated  
8 jurisdiction.

9       B. A trustee is under a continuing duty to administer the trust  
10 at a place appropriate to its purposes, its administration, and the  
11 interests of the beneficiaries.

12      C. Without precluding the right of the court to order, approve,  
13 or disapprove a transfer, the trustee, in furtherance of the duty  
14 prescribed by subsection B of this section, may transfer the trust's  
15 principal place of administration to another state or to a  
16 jurisdiction outside of the United States.

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

- 21           1. The name of the jurisdiction to which the principal place of  
22 administration is to be transferred;  
23           2. The address and telephone number at the new location at  
24 which the trustee can be contacted;

1       3. An explanation of the reasons for the proposed transfer;

2       4. The date on which the proposed transfer is anticipated to  
3 occur; and

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

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

11      F. In connection with a transfer of the trust's principal place  
12 of administration, the trustee may transfer some or all of the trust  
13 property to a successor trustee designated in the terms of the trust  
14 or appointed pursuant to Section 43 of this act.

15      SECTION 9.       NEW LAW       A new section of law to be codified  
16 in the Oklahoma Statutes as Section **1601.9** of Title 60, unless there  
17 is created a duplication in numbering, reads as follows:

18      A. Notice to a person under this act or the sending of a  
19 document to a person under this act must be accomplished in a manner  
20 reasonably suitable under the circumstances and likely to result in  
21 receipt of the notice or document. Permissible methods of notice or  
22 for sending a document include first-class mail, personal delivery,  
23 delivery to the person's last known place of residence or place of  
24 business, or a properly directed electronic message.

1       B. Notice otherwise required under this act or a document  
2 otherwise required to be sent under this act need not be provided to  
3 a person whose identity or location is unknown to and not reasonably  
4 ascertainable by the trustee.

5       C. Notice under this act or the sending of a document under  
6 this act may be waived by the person to be notified or sent the  
7 document.

8       D. Notice of a judicial proceeding must be given as provided in  
9 the applicable rules of civil procedure.

10      SECTION 10.     NEW LAW     A new section of law to be codified  
11 in the Oklahoma Statutes as Section **1601.10** of Title 60, unless  
12 there is created a duplication in numbering, reads as follows:

13       The rules of construction that apply in this state to the  
14 interpretation of and disposition of property by will also apply as  
15 appropriate to the interpretation of the terms of a trust and the  
16 disposition of the trust property.

17      SECTION 11.     NEW LAW     A new section of law to be codified  
18 in the Oklahoma Statutes as Section **1601.11** of Title 60, unless  
19 there is created a duplication in numbering, reads as follows:

20       A. In this section, "settlor" means a person that executes a  
21 trust instrument. The term includes a person for which a fiduciary  
22 or agent is acting.

23       B. A trustee of a trust has an insurable interest in the life  
24 of an individual insured under a life insurance policy that is owned

1 by the trustee of the trust acting in a fiduciary capacity or that  
2 designates the trust itself as the owner if, on the date the policy  
3 is issued:

4       1. The insured is:

- 5           a. a settlor of the trust, or  
6           b. an individual in whom a settlor of the trust has, or  
7                   would have had if living at the time the policy was  
8                   issued, an insurable interest; and

9       2. The life insurance proceeds are primarily for the benefit of  
10 one or more trust beneficiaries that have:

- 11           a. an insurable interest in the life of the insured, or  
12           b. a substantial interest engendered by love and  
13                   affection in the continuation of the life of the  
14                   insured and, if not already included under  
15                   subparagraph a of this paragraph, who are:

- 16              (1) related within the third degree or closer, as  
17                   measured by the civil law system of determining  
18                   degrees of relation, either by blood or law, to  
19                   the insured, or  
20              (2) stepchildren of the insured.

21       The following table identifies the relatives of an insured  
22 within three degrees of lineal and collateral consanguinity using  
23 the civil law method, with each row representing a generation.

			Great- Grandparents (3)
		Grandparents (2)	
	Parents (1)	Aunts and Uncles (3)	
<b>INSURED</b>	Sisters and Brothers (2)		
Children (1)	Nieces and Nephews (3)		
Grandchildren (2)			
Great- Grandchildren (3)			

ARTICLE 2

## **JUDICIAL PROCEEDINGS**

SECTION 12. NEW LAW A new section of law to be codified

23 in the Oklahoma Statutes as Section **1602.1** of Title 60, unless there  
24 is created a duplication in numbering, reads as follows:

1       A. The court may intervene in the administration or  
2 construction of a trust to the extent its jurisdiction is invoked by  
3 an interested person or as provided by law.

4       B. A trust is not subject to continuing judicial supervision  
5 unless ordered by the court.

6       C. A judicial proceeding involving a trust may relate to any  
7 matter involving the trust's administration or construction,  
8 including a request for instructions and an action to declare  
9 rights.

10      SECTION 13.     NEW LAW     A new section of law to be codified  
11 in the Oklahoma Statutes as Section **1602.2** of Title 60, unless there  
12 is created a duplication in numbering, reads as follows:

13      A. By accepting the trusteeship of a trust having its principal  
14 place of administration in this state or by moving the principal  
15 place of administration to this state, the trustee submits  
16 personally to the jurisdiction of the courts of this state regarding  
17 any matter involving the trust.

18      B. With respect to their interests in the trust, the  
19 beneficiaries of a trust having its principal place of  
20 administration in this state are subject to the jurisdiction of the  
21 courts of this state regarding any matter involving the trust. By  
22 accepting a distribution from such a trust, the recipient submits  
23 personally to the jurisdiction of the courts of this state regarding  
24 any matter involving the trust.

1       C. This section does not preclude other methods of obtaining  
2 jurisdiction over a trustee, beneficiary, or other person receiving  
3 property from the trust.

4 SECTION 14. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section **1602.3** of Title 60, unless there  
6 is created a duplication in numbering, reads as follows:

7       A. Except as otherwise provided in subsection B of this  
8 section, venue for a judicial proceeding involving a trust is proper  
9 in the county of this state in which the trust's principal place of  
10 administration is or will be located and, if the trust is created by  
11 will and the estate is not yet closed, in the county in which the  
12 decedent's estate is being administered.

13       B. If a trust has no trustee, venue for a judicial proceeding  
14 for the appointment of a trustee may be in a county of this state in  
15 which a beneficiary resides, in a county in which any trust property  
16 is located, and if the trust is created by will, in the county in  
17 which the decedent's estate was or is being administered.

### **ARTICLE 3**

## REPRESENTATION

20 SECTION 15. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section **1603.1** of Title 60, unless there  
22 is created a duplication in numbering, reads as follows:

1       A. Notice to a person who may represent and bind another person  
2 under this article has the same effect as if notice were given  
3 directly to the other person.

4       B. The consent of a person who may represent and bind another  
5 person under this article is binding on the person represented  
6 unless the person represented objects to the representation before  
7 the consent would otherwise have become effective.

8       C. Except as otherwise provided in Section 29 of this act, a  
9 person who under this article may represent a settlor who lacks  
10 capacity may receive notice and give a binding consent on the  
11 settlor's behalf.

12      D. A settlor may not represent and bind a beneficiary under  
13 this article with respect to the termination or modification of a  
14 trust under subsection A of Section 29 of this act.

15      SECTION 16.     NEW LAW       A new section of law to be codified  
16 in the Oklahoma Statutes as Section **1603.2** of Title 60, unless there  
17 is created a duplication in numbering, reads as follows:

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

1 SECTION 17. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section **1603.3** of Title 60, unless there  
3 is created a duplication in numbering, reads as follows:

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

7 1. A guardian of the property may represent and bind the estate  
8 that the guardian controls;

9 2. A guardian of the person may represent and bind the ward if  
10 a guardian of the property of the ward's estate has not been  
11 appointed;

12 3. An agent having authority to act with respect to the  
13 particular question or dispute may represent and bind the principal;

14 4. A trustee may represent and bind the beneficiaries of the  
15 trust;

16 5. A personal representative of a decedent's estate may  
17 represent and bind persons interested in the estate; and

18 6. A parent may represent and bind the parent's minor or unborn  
19 child if a guardian of the property or guardian of the person for  
20 the child has not been appointed.

21 SECTION 18. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section **1603.4** of Title 60, unless there  
23 is created a duplication in numbering, reads as follows:

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

8            SECTION 19.        NEW LAW        A new section of law to be codified  
9 in the Oklahoma Statutes as Section **1603.5** of Title 60, unless there  
10 is created a duplication in numbering, reads as follows:

11            A. If the court determines that an interest is not represented  
12 under this act, or that the otherwise available representation might  
13 be inadequate, the court may appoint a representative to receive  
14 notice, give consent, and otherwise represent, bind, and act on  
15 behalf of a minor, incapacitated, or unborn individual, or a person  
16 whose identity or location is unknown, in the same manner as  
17 appointment of a guardian ad litem. A representative may be  
18 appointed to represent several persons or interests.

19            B. A representative may act on behalf of the individual  
20 represented with respect to any matter arising under this act,  
21 whether or not a judicial proceeding concerning the trust is  
22 pending.

23            C. In making decisions, a representative may consider general  
24 benefit accruing to the living members of the individual's family.

## **ARTICLE 4**

## **CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST**

SECTION 20. NEW LAW A new section of law to be codified

in the Oklahoma Statutes as Section **1604.1** of Title 60, unless there is created a duplication in numbering, reads as follows:

A trust may be created by:

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

2. Declaration by the owner of property that the owner holds identifiable property as trustee; or

### 3. Exercise of a power of appointment in favor of a trustee.

13 SECTION 21. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section **1604.2** of Title 60, unless there  
15 is created a duplication in numbering, reads as follows:

A. A trust is created only if:

1. The settlor has capacity to create a trust;

2. The settlor indicates an intention to create the trust;

3. The trust has a definite beneficiary or is:

a. a charitable trust, or

b. a trust for a noncharitable purpose, as provided in  
Section 27 of this act;

4. The trustee has duties to perform; and

1       5. The same person is not the sole trustee and sole  
2 beneficiary.

3       B. A beneficiary is definite if the beneficiary can be  
4 ascertained now or in the future.

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

10      SECTION 22.     NEW LAW     A new section of law to be codified  
11 in the Oklahoma Statutes as Section **1604.3** of Title 60, unless there  
12 is created a duplication in numbering, reads as follows:

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

17      1. The settlor was domiciled, had a place of abode, or was a  
18 national;

19      2. A trustee was domiciled or had a place of business; or

20      3. Any trust property was located.

21      SECTION 23.     NEW LAW     A new section of law to be codified  
22 in the Oklahoma Statutes as Section **1604.4** of Title 60, unless there  
23 is created a duplication in numbering, reads as follows:

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

4       SECTION 24.      NEW LAW      A new section of law to be codified  
5 in the Oklahoma Statutes as Section **1604.5** of Title 60, unless there  
6 is created a duplication in numbering, reads as follows:

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

11          B. If the terms of a charitable trust do not indicate a  
12 particular charitable purpose or beneficiary, the court may select  
13 one or more charitable purposes or beneficiaries. The selection  
14 must be consistent with the settlor's intention to the extent it can  
15 be ascertained.

16          C. The settlor of a charitable trust, among others, may  
17 maintain a proceeding to enforce the trust.

18       SECTION 25.      NEW LAW      A new section of law to be codified  
19 in the Oklahoma Statutes as Section **1604.6** of Title 60, unless there  
20 is created a duplication in numbering, reads as follows:

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

1 SECTION 26. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section **1604.7** of Title 60, unless there  
3 is created a duplication in numbering, reads as follows:

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

8 SECTION 27. NEW LAW A new section of law to be codified  
9 in the Oklahoma Statutes as Section **1604.8** of Title 60, unless there  
10 is created a duplication in numbering, reads as follows:

11 Except as otherwise provided in this act or by another statute,  
12 the following rules apply:

13 1. A trust may be created for a noncharitable purpose without a  
14 definite or definitely ascertainable beneficiary or for a  
15 noncharitable but otherwise valid purpose to be selected by the  
16 trustee;

17 2. A trust authorized by this section may be enforced by a  
18 person appointed in the terms of the trust or, if no person is so  
19 appointed, by a person appointed by the court; and

20 3. Property of a trust authorized by this section may be  
21 applied only to its intended use, except to the extent the court  
22 determines that the value of the trust property exceeds the amount  
23 required for the intended use. Except as otherwise provided in the  
24 terms of the trust, property not required for the intended use must

1      be distributed to the settlor, if then living, otherwise to the  
2      settlor's successors in interest.

3                SECTION 28.        NEW LAW        A new section of law to be codified  
4      in the Oklahoma Statutes as Section **1604.9** of Title 60, unless there  
5      is created a duplication in numbering, reads as follows:

6                A.    In addition to the methods of termination prescribed by  
7      Sections 29 through 32 of this act, a trust terminates to the extent  
8      the trust is revoked or expires pursuant to its terms, no purpose of  
9      the trust remains to be achieved, or the purposes of the trust have  
10     become unlawful, contrary to public policy, or impossible to  
11     achieve.

12               B.    A proceeding to approve or disapprove a proposed  
13     modification or termination under Sections 29 through 34 of this  
14     act, or trust combination or division under Section 35 of this act,  
15     may be commenced by a trustee or beneficiary, and a proceeding to  
16     approve or disapprove a proposed modification or termination under  
17     Section 29 of this act may be commenced by the settlor. The settlor  
18     of a charitable trust may maintain a proceeding to modify the trust  
19     under Section 31 of this act.

20               SECTION 29.        NEW LAW        A new section of law to be codified  
21      in the Oklahoma Statutes as Section **1604.10** of Title 60, unless  
22      there is created a duplication in numbering, reads as follows:

23               A.    If, upon petition, the court finds that the settlor and all  
24     beneficiaries consent to the modification or termination of a

1 noncharitable irrevocable trust, the court shall approve the  
2 modification or termination even if the modification or termination  
3 is inconsistent with a material purpose of the trust. A settlor's  
4 power to consent to a trust's modification or termination may be  
5 exercised by an agent under a power of attorney only to the extent  
6 expressly authorized by the power of attorney or the terms of the  
7 trust; by the settlor's guardian of the property with the approval  
8 of the court supervising the guardianship if an agent is not so  
9 authorized; or by the settlor's guardian of the person with the  
10 approval of the court supervising the guardianship if an agent is  
11 not so authorized and a guardian of the property has not been  
12 appointed. This subsection does not apply to irrevocable trusts  
13 created before or to revocable trusts that become irrevocable before  
14 the effective date of this act.

15       B. A noncharitable irrevocable trust may be terminated upon  
16 consent of all of the beneficiaries if the court concludes that  
17 continuance of the trust is not necessary to achieve any material  
18 purpose of the trust. A noncharitable irrevocable trust may be  
19 modified upon consent of all of the beneficiaries if the court  
20 concludes that modification is not inconsistent with a material  
21 purpose of the trust.

22       C. A spendthrift provision in the terms of the trust is not  
23 presumed to constitute a material purpose of the trust.

24

1       D. Upon termination of a trust under subsection A or B of this  
2 section, the trustee shall distribute the trust property as agreed  
3 by the beneficiaries.

4       E. If not all of the beneficiaries consent to a proposed  
5 modification or termination of the trust under subsection A or B of  
6 this section, the modification or termination may be approved by the  
7 court if the court is satisfied that:

8           1. If all of the beneficiaries had consented, the trust could  
9 have been modified or terminated under this section; and

10          2. The interests of a beneficiary who does not consent will be  
11 adequately protected.

12       SECTION 30.      NEW LAW       A new section of law to be codified  
13 in the Oklahoma Statutes as Section **1604.11** of Title 60, unless  
14 there is created a duplication in numbering, reads as follows:

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

21       B. The court may modify the administrative terms of a trust if  
22 continuation of the trust on its existing terms would be  
23 impracticable or wasteful or impair the trust's administration.

1       C. Upon termination of a trust under this section, the trustee  
2 shall distribute the trust property in a manner consistent with the  
3 purposes of the trust.

4           SECTION 31.     NEW LAW       A new section of law to be codified  
5 in the Oklahoma Statutes as Section **1604.12** of Title 60, unless  
6 there is created a duplication in numbering, reads as follows:

7           A. Except as otherwise provided in subsection B of this  
8 section, if a particular charitable purpose becomes unlawful,  
9 impracticable, impossible to achieve, or wasteful:

10              1. The trust does not fail, in whole or in part;

11              2. The trust property does not revert to the settlor or the  
12 settlor's successors in interest; and

13              3. The court may apply cy pres to modify or terminate the trust  
14 by directing that the trust property be applied or distributed, in  
15 whole or in part, in a manner consistent with the settlor's  
16 charitable purposes.

17           B. A provision in the terms of a charitable trust that would  
18 result in distribution of the trust property to a noncharitable  
19 beneficiary prevails over the power of the court under subsection A  
20 of this section to apply cy pres to modify or terminate the trust  
21 only if, when the provision takes effect, the trust property is to  
22 revert to the settlor and the settlor is still living.

1 SECTION 32. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section **1604.13** of Title 60, unless  
3 there is created a duplication in numbering, reads as follows:

4       A. After notice to the qualified beneficiaries, the trustee of  
5 a trust consisting of trust property having a total value less than  
6 Fifty Thousand Dollars (\$50,000.00) may terminate the trust if the  
7 trustee concludes that the value of the trust property is  
8 insufficient to justify the cost of administration.

9       B. The court may modify or terminate a trust or remove the  
10 trustee and appoint a different trustee if it determines that the  
11 value of the trust property is insufficient to justify the cost of  
12 administration.

13       C. Upon termination of a trust under this section, the trustee  
14 shall distribute the trust property in a manner consistent with the  
15 purposes of the trust.

16       D. This section does not apply to an easement for conservation  
17 or preservation.

18 SECTION 33. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section **1604.14** of Title 60, unless  
20 there is created a duplication in numbering, reads as follows:

21       The court may reform the terms of a trust, even if unambiguous,  
22 to conform the terms to the settlor's intention if it is proved by  
23 clear and convincing evidence what the settlor's intention was and

1 | that the terms of the trust were affected by a mistake of fact or  
2 | law, whether in expression or inducement.

3 | SECTION 34. NEW LAW A new section of law to be codified  
4 | in the Oklahoma Statutes as Section **1604.15** of Title 60, unless  
5 | there is created a duplication in numbering, reads as follows:

6 | To achieve the settlor's tax objectives, the court may modify  
7 | the terms of a trust in a manner that is not contrary to the  
8 | settlor's probable intention. The court may provide that the  
9 | modification has retroactive effect.

10 | SECTION 35. NEW LAW A new section of law to be codified  
11 | in the Oklahoma Statutes as Section **1604.16** of Title 60, unless  
12 | there is created a duplication in numbering, reads as follows:

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

18 | **ARTICLE 5**

19 | **CREDITOR'S CLAIM AGAINST SETTLOR**

20 | SECTION 36. NEW LAW A new section of law to be codified  
21 | in the Oklahoma Statutes as Section **1605.1** of Title 60, unless there  
22 | is created a duplication in numbering, reads as follows:

23 | A. Whether or not the terms of a trust contain a spendthrift  
24 | provision, the following rules apply:

1       1. Except as provided by the laws of this state, during the  
2 lifetime of the settlor, the property of a revocable trust is  
3 subject to claims of the settlor's creditors; and

4       2. Except as provided by the laws of this state, after the  
5 death of a settlor, and subject to the settlor's right to direct the  
6 source from which liabilities will be paid, the property of a trust  
7 that was revocable at the settlor's death is subject to claims of  
8 the settlor's creditors, costs of administration of the settlor's  
9 estate, the expenses of the settlor's funeral and disposal of  
10 remains, and statutory allowances to a surviving spouse and children  
11 to the extent the settlor's probate estate is inadequate to satisfy  
12 those claims, costs, expenses, and allowances.

13       B. For purposes of this section:

14       1. During the period the power may be exercised, the holder of  
15 a power of withdrawal is treated in the same manner as the settlor  
16 of a revocable trust to the extent of the property subject to the  
17 power; and

18       2. Upon the lapse, release, or waiver of the power, the holder  
19 is treated as the settlor of the trust only to the extent the value  
20 of the property affected by the lapse, release, or waiver exceeds  
21 the greater of the amount specified in Section 2041(b)(2) or 2514(e)  
22 of the Internal Revenue Code of 1986, or Section 2503(b) of the  
23 Internal Revenue Code of 1986, in each case as in effect on the  
24 effective date of this act, or as later amended.

## **ARTICLE 6**

## **REVOCABLE TRUSTS**

SECTION 37. NEW LAW A new section of law to be codified

in the Oklahoma Statutes as Section **1606.1** of Title 60, unless there is created a duplication in numbering, reads as follows:

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

SECTION 38. NEW LAW A new section of law to be codified

in the Oklahoma Statutes as Section **1606.2** of Title 60, unless there is created a duplication in numbering, reads as follows:

A. To the extent a trust is revocable by a settlor, a trustee may follow a direction of the settlor that is contrary to the terms of the trust. To the extent a trust is revocable by a settlor in conjunction with a person other than a trustee or person holding an adverse interest, the trustee may follow a direction from the settlor and the other person holding the power to revoke even if the direction is contrary to the terms of the trust.

B. To the extent a trust is revocable and the settlor has capacity to revoke the trust, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.

C. During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable

1 trust under this section to the extent of the property subject to  
2 the power.

3 SECTION 39. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section **1606.3** of Title 60, unless there  
5 is created a duplication in numbering, reads as follows:

6 A. A person may commence a judicial proceeding to contest the  
7 validity of a trust that was revocable at the settlor's death within  
8 three (3) years after the later of either the settlor's death or  
9 actual or constructive notice of the existence and terms of the  
10 trust.

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

15 1. The trustee knows of a pending judicial proceeding  
16 contesting the validity of the trust;

17 2. The trustee knows of claims, costs, expenses, or allowances  
18 that would be payable from the trust pursuant to paragraph 2 of  
19 subsection A of Section 36 of this act; or

20 3. A potential contestant has notified the trustee of a  
21 possible judicial proceeding to contest the trust and a judicial  
22 proceeding is commenced within sixty (60) days after the contestant  
23 sent the notification.

1       C. A beneficiary of a trust that is determined to have been  
2 invalid or which is subject to claims, costs, expenses, or  
3 allowances under paragraph 2 of subsection B of this section is  
4 liable to return any distribution received.

ARTICLE 7

## **OFFICE OF TRUSTEE**

7 SECTION 40. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section **1607.1** of Title 60, unless there  
9 is created a duplication in numbering, reads as follows:

10 A. Except as otherwise provided in subsection C of this  
11 section, a person designated as trustee accepts the trusteeship:

12        1. By substantially complying with a method of acceptance  
13 provided in the terms of the trust; or

14        2. If the terms of the trust do not provide a method or the  
15 method provided in the terms is not expressly made exclusive, by  
16 accepting delivery of the trust property, exercising powers or  
17 performing duties as trustee, or otherwise indicating acceptance of  
18 the trusteeship.

19       B. A person designated as trustee who has not yet accepted the  
20 trusteeship may reject the trusteeship. A designated trustee who  
21 does not accept the trusteeship within a reasonable time after  
22 knowing of the designation is deemed to have rejected the  
23 trusteeship.

1       C. A person designated as trustee, without accepting the  
2 trusteeship, may:

3           1. Act to preserve the trust property if, within a reasonable  
4 time after acting, the person sends a rejection of the trusteeship  
5 to the settlor or, if the settlor is dead or lacks capacity, to a  
6 qualified beneficiary; and

7           2. Inspect or investigate trust property to determine potential  
8 liability under environmental or other law or for any other purpose.

9       SECTION 41.       NEW LAW       A new section of law to be codified  
10 in the Oklahoma Statutes as Section **1607.2** of Title 60, unless there  
11 is created a duplication in numbering, reads as follows:

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

17       B. The court may specify the amount of a bond, its liabilities,  
18 and whether sureties are necessary. The court may modify or  
19 terminate a bond at any time.

20       C. A regulated financial service institution qualified to do  
21 trust business in this state need not give bond, even if required by  
22 the terms of the trust.

1 SECTION 42. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section **1607.3** of Title 60, unless there  
3 is created a duplication in numbering, reads as follows:

4 A. Co-trustees who are unable to reach a unanimous decision may  
5 act by majority decision.

6 B. If a vacancy occurs in a co-trusteeship, the remaining co-  
7 trustees may act for the trust.

8 C. Subject to Section 1212 of Title 60 of the Oklahoma  
9 Statutes, a co-trustee must participate in the performance of a  
10 trustee's function unless the co-trustee is unavailable to perform  
11 the function because of absence, illness, disqualification under  
12 other law, or other temporary incapacity or the co-trustee has  
13 properly delegated the performance of the function to another  
14 trustee.

15 D. If a co-trustee is unavailable to perform duties because of  
16 absence, illness, disqualification under other law, or other  
17 temporary incapacity, and prompt action is necessary to achieve the  
18 purposes of the trust or to avoid injury to the trust property, the  
19 remaining co-trustee or a majority of the remaining co-trustees may  
20 act for the trust.

21 E. A trustee may not delegate to a co-trustee the performance  
22 of a function the settlor reasonably expected the trustees to  
23 perform jointly. Unless a delegation was irrevocable, a trustee may  
24 revoke a delegation previously made.

1       F. Except as otherwise provided in subsection G of this  
2 section, a trustee who does not join in an action of another trustee  
3 is not liable for the action.

4       G. Subject to Section 1212 of Title 60 of the Oklahoma  
5 Statutes, each trustee shall exercise reasonable care to:

6           1. Prevent a co-trustee from committing a serious breach of  
7 trust; and

8           2. Compel a co-trustee to redress a serious breach of trust.

9       H. A dissenting trustee who joins in an action at the direction  
10 of the majority of the trustees and who notified any co-trustee of  
11 the dissent at or before the time of the action is not liable for  
12 the action unless the action is a serious breach of trust.

13       SECTION 43.       NEW LAW       A new section of law to be codified  
14 in the Oklahoma Statutes as Section **1607.4** of Title 60, unless there  
15 is created a duplication in numbering, reads as follows:

16           A. A vacancy in a trusteeship occurs if:

17           1. A person designated as trustee rejects the trusteeship;

18           2. A person designated as trustee cannot be identified or does  
19 not exist;

20           3. A trustee resigns;

21           4. A trustee is disqualified or removed;

22           5. A trustee dies; or

23           6. A guardian is appointed for an individual serving as  
24 trustee.

1       B. If one or more co-trustees remain in office, a vacancy in a  
2 trusteeship need not be filled. A vacancy in a trusteeship must be  
3 filled if the trust has no remaining trustee.

4       C. A vacancy in a trusteeship of a noncharitable trust that is  
5 required to be filled must be filled in the following order of  
6 priority:

7           1. By a person designated in the terms of the trust to act as  
8 successor trustee;

9           2. By a person appointed by unanimous agreement of the  
10 qualified beneficiaries; or

11           3. By a person appointed by the court.

12       D. A vacancy in a trusteeship of a charitable trust that is  
13 required to be filled must be filled in the following order of  
14 priority:

15           1. By a person designated in the terms of the trust to act as  
16 successor trustee;

17           2. By a person selected by the charitable organizations  
18 expressly designated to receive distributions under the terms of the  
19 trust if the Office of the Attorney General concurs in the  
20 selection; or

21           3. By a person appointed by the court.

22       E. Whether or not a vacancy in a trusteeship exists or is  
23 required to be filled, the court may appoint an additional trustee

1 or special fiduciary whenever the court considers the appointment  
2 necessary for the administration of the trust.

3 SECTION 44. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section **1607.5** of Title 60, unless there  
5 is created a duplication in numbering, reads as follows:

6 A. A trustee may resign:

7 1. Upon at least thirty (30) days' notice to the qualified  
8 beneficiaries, the settlor, if living, and all co-trustees; or  
9 2. With the approval of the court.

10 B. In approving a resignation, the court may issue orders and  
11 impose conditions reasonably necessary for the protection of the  
12 trust property.

13 C. Any liability of a resigning trustee or of any sureties on  
14 the trustee's bond for acts or omissions of the trustee is not  
15 discharged or affected by the trustee's resignation, but may be  
16 discharged by court order upon notice to the qualified  
17 beneficiaries, the settlor, if living, and all co-trustees.

18 SECTION 45. NEW LAW A new section of law to be codified  
19 in the Oklahoma Statutes as Section **1607.6** of Title 60, unless there  
20 is created a duplication in numbering, reads as follows:

21 A. The settlor, a co-trustee, or a beneficiary may request the  
22 court to remove a trustee, or a trustee may be removed by the court  
23 on its own initiative.

24 B. The court may remove a trustee if:

1       1. The trustee has committed a serious breach of trust;

2       2. Lack of cooperation among co-trustees substantially impairs

3 the administration of the trust;

4       3. Due to unfitness, unwillingness, or persistent failure of

5 the trustee to administer the trust effectively, the court

6 determines that removal of the trustee best serves the interests of

7 the beneficiaries; or

8       4. There has been a substantial change of circumstances or

9 removal is requested by all of the qualified beneficiaries, the

10 court finds that removal of the trustee best serves the interests of

11 all of the beneficiaries and is not inconsistent with a material

12 purpose of the trust, and a suitable co-trustee or successor trustee

13 is available.

14       C. Pending a final decision on a request to remove a trustee,

15 or in lieu of or in addition to removing a trustee, the court may

16 order such appropriate relief under subsection B of Section 175.57

17 of Title 60 of the Oklahoma Statutes as may be necessary to protect

18 the trust property or the interests of the beneficiaries.

19       SECTION 46.       NEW LAW       A new section of law to be codified

20 in the Oklahoma Statutes as Section **1607.7** of Title 60, unless there

21 is created a duplication in numbering, reads as follows:

22       A. Unless a co-trustee remains in office or the court otherwise

23 orders, and until the trust property is delivered to a successor

24 trustee or other person entitled to it, a trustee who has resigned

1 or been removed has the duties of a trustee and the powers necessary  
2 to protect the trust property.

3       B. A trustee who has resigned or been removed shall proceed  
4 expeditiously to deliver the trust property within the trustee's  
5 possession to the co-trustee, successor trustee, or other person  
6 entitled to it.

7       SECTION 47.       NEW LAW       A new section of law to be codified  
8 in the Oklahoma Statutes as Section **1607.8** of Title 60, unless there  
9 is created a duplication in numbering, reads as follows:

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

13      B. If the terms of a trust specify the trustee's compensation,  
14 the trustee is entitled to be compensated as specified, but the  
15 court may allow more or less compensation if:

16       1. The duties of the trustee are substantially different from  
17 those contemplated when the trust was created; or

18       2. The compensation specified by the terms of the trust would  
19 be unreasonably low or high.

20       SECTION 48.       NEW LAW       A new section of law to be codified  
21 in the Oklahoma Statutes as Section **1607.9** of Title 60, unless there  
22 is created a duplication in numbering, reads as follows:

23      A. A trustee is entitled to be reimbursed out of the trust  
24 property, with interest as appropriate, for:

1. Expenses that were properly incurred in the administration of the trust; and
2. To the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.

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

## **ARTICLE 8**

## **DUTIES AND POWERS OF TRUSTEE**

SECTION 49. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section **1608.1** of Title 60, unless there is created a duplication in numbering, reads as follows:

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

SECTION 50. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section **1608.2** of Title 60, unless there is created a duplication in numbering, reads as follows:

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

B. Subject to the rights of persons dealing with or assisting the trustee as provided in subsection I of Section 175.57 of Title

1      60 of the Oklahoma Statutes, a sale, encumbrance, or other  
2 transaction involving the investment or management of trust property  
3 entered into by the trustee for the trustee's own personal account  
4 or which is otherwise affected by a conflict between the trustee's  
5 fiduciary and personal interests is voidable by a beneficiary  
6 affected by the transaction unless:

- 7            1. The transaction was authorized by the terms of the trust;
- 8            2. The transaction was approved by the court;
- 9            3. The beneficiary did not commence a judicial proceeding

10        within the time allowed by subsection E of Section 175.57 of Title  
11 60 of the Oklahoma Statutes;

12        4. The beneficiary consented to the trustee's conduct, ratified  
13 the transaction, or released the trustee in compliance with  
14 subsection G of Section 175.57 of Title 60 of the Oklahoma Statutes;  
15 or

16        5. The transaction involves a contract entered into or claim  
17 acquired by the trustee before the person became or contemplated  
18 becoming trustee.

19        C. A sale, encumbrance, or other transaction involving the  
20 investment or management of trust property is presumed to be  
21 affected by a conflict between personal and fiduciary interests if  
22 it is entered into by the trustee with:

- 23            1. The trustee's spouse;

1       2. The trustee's descendants, siblings, parents, or their  
2 spouses;

3       3. An agent or attorney of the trustee; or

4       4. A corporation or other person or enterprise in which the  
5 trustee, or a person that owns a significant interest in the  
6 trustee, has an interest that might affect the trustee's best  
7 judgment.

8           D. A transaction between a trustee and a beneficiary that does  
9 not concern trust property but that occurs during the existence of  
10 the trust or while the trustee retains significant influence over  
11 the beneficiary and from which the trustee obtains an advantage is  
12 voidable by the beneficiary unless the trustee establishes that the  
13 transaction was fair to the beneficiary.

14           E. A transaction not concerning trust property in which the  
15 trustee engages in the trustee's individual capacity involves a  
16 conflict between personal and fiduciary interests if the transaction  
17 concerns an opportunity properly belonging to the trust.

18           F. An investment by a trustee in securities of an investment  
19 company or investment trust to which the trustee, or its affiliate,  
20 provides services in a capacity other than as trustee is not  
21 presumed to be affected by a conflict between personal and fiduciary  
22 interests if the investment otherwise complies with the prudent  
23 investor rule of the Oklahoma Uniform Prudent Investor Act. In  
24 addition to its compensation for acting as trustee, the trustee may

1 be compensated by the investment company or investment trust for  
2 providing those services out of fees charged to the trust. If the  
3 trustee receives compensation from the investment company or  
4 investment trust for providing investment advisory or investment  
5 management services, the trustee must at least annually notify the  
6 persons entitled under Section 60 of this act to receive a copy of  
7 the trustee's annual report of the rate and method by which that  
8 compensation was determined.

9 G. In voting shares of stock or in exercising powers of control  
10 over similar interests in other forms of enterprise, the trustee  
11 shall act in the best interests of the beneficiaries. If the trust  
12 is the sole owner of a corporation or other form of enterprise, the  
13 trustee shall elect or appoint directors or other managers who will  
14 manage the corporation or enterprise in the best interests of the  
15 beneficiaries.

16 H. This section does not preclude the following transactions,  
17 if fair to the beneficiaries:

- 18 1. An agreement between a trustee and a beneficiary relating to  
19 the appointment or compensation of the trustee;
- 20 2. Payment of reasonable compensation to the trustee;
- 21 3. A transaction between a trust and another trust, decedent's  
22 estate, or conservatorship of which the trustee is a fiduciary or in  
23 which a beneficiary has an interest;

1       4. A deposit of trust money in a regulated financial-service  
2 institution operated by the trustee; or

3       5. An advance by the trustee of money for the protection of the  
4 trust.

5           I. The court may appoint a special fiduciary to make a decision  
6 with respect to any proposed transaction that might violate this  
7 section if entered into by the trustee.

8       SECTION 51.      NEW LAW      A new section of law to be codified  
9 in the Oklahoma Statutes as Section **1608.3** of Title 60, unless there  
10 is created a duplication in numbering, reads as follows:

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

15       SECTION 52.      NEW LAW      A new section of law to be codified  
16 in the Oklahoma Statutes as Section **1608.4** of Title 60, unless there  
17 is created a duplication in numbering, reads as follows:

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

22       SECTION 53.      NEW LAW      A new section of law to be codified  
23 in the Oklahoma Statutes as Section **1608.5** of Title 60, unless there  
24 is created a duplication in numbering, reads as follows:

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

4       SECTION 54.      NEW LAW      A new section of law to be codified  
5 in the Oklahoma Statutes as Section **1608.6** of Title 60, unless there  
6 is created a duplication in numbering, reads as follows:

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

11       SECTION 55.      NEW LAW      A new section of law to be codified  
12 in the Oklahoma Statutes as Section **1608.7** of Title 60, unless there  
13 is created a duplication in numbering, reads as follows:

14           A. A trustee may delegate duties and powers that a prudent  
15 trustee of comparable skills could properly delegate under the  
16 circumstances. The trustee shall exercise reasonable care, skill,  
17 and caution in:

- 18           1. Selecting an agent;
- 19           2. Establishing the scope and terms of the delegation,  
20 consistent with the purposes and terms of the trust; and
- 21           3. Periodically reviewing the agent's actions in order to  
22 monitor the agent's performance and compliance with the terms of the  
23 delegation.

1       B. In performing a delegated function, an agent owes a duty to  
2 the trust to exercise reasonable care to comply with the terms of  
3 the delegation.

4       C. A trustee who complies with subsection A of this section is  
5 not liable to the beneficiaries or to the trust for an action of the  
6 agent to whom the function was delegated.

7       D. By accepting a delegation of powers or duties from the  
8 trustee of a trust that is subject to the law of this state, an  
9 agent submits to the jurisdiction of the courts of this state.

10      SECTION 56.     NEW LAW     A new section of law to be codified  
11 in the Oklahoma Statutes as Section **1608.8** of Title 60, unless there  
12 is created a duplication in numbering, reads as follows:

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

15      SECTION 57.     NEW LAW     A new section of law to be codified  
16 in the Oklahoma Statutes as Section **1608.9** of Title 60, unless there  
17 is created a duplication in numbering, reads as follows:

18       A. A trustee shall keep adequate records of the administration  
19 of the trust.

20       B. A trustee shall keep trust property separate from the  
21 trustee's own property.

22       C. Except as otherwise provided in subsection D of this  
23 section, a trustee shall cause the trust property to be designated  
24 so that the interest of the trust, to the extent feasible, appears

1      in records maintained by a party other than a trustee or  
2      beneficiary.

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

6            SECTION 58.        NEW LAW        A new section of law to be codified  
7      in the Oklahoma Statutes as Section **1608.10** of Title 60, unless  
8      there is created a duplication in numbering, reads as follows:

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

11            SECTION 59.        NEW LAW        A new section of law to be codified  
12     in the Oklahoma Statutes as Section **1608.11** of Title 60, unless  
13     there is created a duplication in numbering, reads as follows:

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

18            SECTION 60.        NEW LAW        A new section of law to be codified  
19     in the Oklahoma Statutes as Section **1608.12** of Title 60, unless  
20     there is created a duplication in numbering, reads as follows:

21            A. A trustee shall keep the qualified beneficiaries of the  
22     trust reasonably informed about the administration of the trust and  
23     of the material facts necessary for them to protect their interests.  
24     Unless unreasonable under the circumstances, a trustee shall

1 | promptly respond to a beneficiary's request for information related  
2 | to the administration of the trust.

3 |       B. A trustee:

4 |       1. Upon request of a qualified beneficiary, shall promptly  
5 | furnish to the qualified beneficiary a copy of the trust instrument;

6 |       2. Within sixty (60) days after accepting a trusteeship, shall  
7 | notify the qualified beneficiaries of the acceptance and of the  
8 | trustee's name, address, and telephone number;

9 |       3. Within sixty (60) days after the date the trustee acquires  
10 | knowledge of the creation of an irrevocable trust, or the date the  
11 | trustee acquires knowledge that a formerly revocable trust has  
12 | become irrevocable, whether by the death of the settlor or  
13 | otherwise, shall notify the qualified beneficiaries of the trust's  
14 | existence, of the identity of the settlor or settlors, of the right  
15 | to request a copy of the trust instrument, and of the right to a  
16 | trustee's report as provided in subsection C of this section; and

17 |       4. Shall notify the qualified beneficiaries in advance of any  
18 | change in the method or rate of the trustee's compensation.

19 |       C. A trustee shall send to the distributees or permissible  
20 | distributees of trust income or principal, and to other qualified  
21 | beneficiaries who request it, at least annually and at the  
22 | termination of the trust, a report of the trust property,  
23 | liabilities, receipts, and disbursements, including the source and  
24 | amount of the trustee's compensation, a listing of the trust assets

1 and, if feasible, their respective market values. Upon a vacancy in  
2 a trusteeship, unless a co-trustee remains in office, a report must  
3 be sent to the qualified beneficiaries by the former trustee. A  
4 personal representative or guardian may send the qualified  
5 beneficiaries a report on behalf of a deceased or incapacitated  
6 trustee.

7 D. A beneficiary may waive the right to a trustee's report or  
8 other information otherwise required to be furnished under this  
9 section. A beneficiary, with respect to future reports and other  
10 information, may withdraw a waiver previously given.

11 E. Paragraphs 2 and 3 of subsection B of this section do not  
12 apply to a trustee who accepts a trusteeship before the effective  
13 date of this act, to an irrevocable trust created before the  
14 effective date of this act, or to a revocable trust that becomes  
15 irrevocable before the effective date of this act.

16 SECTION 61. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section **1608.13** of Title 60, unless  
18 there is created a duplication in numbering, reads as follows:

19 A. Notwithstanding the breadth of discretion granted to a  
20 trustee in the terms of the trust, including the use of such terms  
21 as "absolute", "sole", or "uncontrolled", the trustee shall exercise  
22 a discretionary power in good faith and in accordance with the terms  
23 and purposes of the trust and the interests of the beneficiaries.

24

1       B. Subject to subsection D of this section, and unless the  
2 terms of the trust expressly indicate that a rule in this subsection  
3 does not apply:

4           1. A person other than a settlor who is a beneficiary and  
5 trustee of a trust that confers on the trustee a power to make  
6 discretionary distributions to or for the trustee's personal benefit  
7 may exercise the power only in accordance with an ascertainable  
8 standard; and

9           2. A trustee may not exercise a power to make discretionary  
10 distributions to satisfy a legal obligation of support that the  
11 trustee personally owes another person.

12          C. A power whose exercise is limited or prohibited by  
13 subsection B of this section may be exercised by a majority of the  
14 remaining trustees whose exercise of the power is not so limited or  
15 prohibited. If the power of all trustees is so limited or  
16 prohibited, the court may appoint a special fiduciary with authority  
17 to exercise the power.

18          D. Subsection B of this section does not apply to:

19           1. A power held by the settlor's spouse who is the trustee of a  
20 trust for which a marital deduction, as defined in Section  
21 2056(b)(5) or 2523(e) of the Internal Revenue Code of 1986, as in  
22 effect on the effective date of this act, or as later amended, was  
23 previously allowed;

1       2. Any trust during any period that the trust may be revoked or  
2 amended by its settlor; or  
3           3. A trust if contributions to the trust qualify for the annual  
4 exclusion under Section 2503(c) of the Internal Revenue Code of  
5 1986, as in effect on the effective date of this act, or as later  
6 amended.

7       **E. If a distribution to a beneficiary is subject to the**  
8 **exercise of the trustee's discretion, whether or not the terms of a**  
9 **trust include a standard to guide the trustee in making**  
10 **distributions, then the interest is neither a property interest nor**  
11 **an enforceable right, but a mere expectancy.**

12       SECTION 62.       NEW LAW       A new section of law to be codified  
13 in the Oklahoma Statutes as Section **1608.14** of Title 60, unless  
14 there is created a duplication in numbering, reads as follows:

- 15       A. A trustee, without authorization by the court, may exercise:  
16           1. Powers conferred by the terms of the trust; and  
17           2. Except as limited by the terms of the trust:  
18              a. all powers over the trust property which an unmarried  
19                 competent owner has over individually owned property,  
20              b. any other powers appropriate to achieve the proper  
21                 investment, management, and distribution of the trust  
22                 property, and  
23              c. any other powers conferred by this act.

1       B. The exercise of a power is subject to the fiduciary duties  
2 prescribed by this article.

3             SECTION 63.        NEW LAW        A new section of law to be codified  
4 in the Oklahoma Statutes as Section **1608.15** of Title 60, unless  
5 there is created a duplication in numbering, reads as follows:

6             Without limiting the authority conferred by Section 62 of this  
7 act, a trustee may:

8             1. Collect trust property and accept or reject additions to the  
9 trust property from a settlor or any other person;

10            2. Acquire or sell property, for cash or on credit, at public  
11 or private sale;

12            3. Exchange, partition, or otherwise change the character of  
13 trust property;

14            4. Deposit trust money in an account in a regulated financial-  
15 service institution;

16            5. Borrow money, with or without security, and mortgage or  
17 pledge trust property for a period within or extending beyond the  
18 duration of the trust;

19            6. With respect to an interest in a proprietorship,  
20 partnership, limited liability company, business trust, corporation,  
21 or other form of business or enterprise, continue the business or  
22 other enterprise and take any action that may be taken by  
23 shareholders, members, or property owners, including merging,

1      dissolving, or otherwise changing the form of business organization  
2      or contributing additional capital;

3            7. With respect to stocks or other securities, exercise the  
4      rights of an absolute owner, including the right to:

- 5                a. vote, or give proxies to vote, with or without power  
6                          of substitution, or enter into or continue a voting  
7                          trust agreement,
- 8                b. hold a security in the name of a nominee or in other  
9                          form without disclosure of the trust so that title may  
10                  pass by delivery,
- 11               c. pay calls, assessments, and other sums chargeable or  
12                          accruing against the securities, and sell or exercise  
13                          stock subscription or conversion rights, and
- 14               d. deposit the securities with a depository or other  
15                          regulated financial-service institution;

16            8. With respect to an interest in real property, construct, or  
17      make ordinary or extraordinary repairs to, alterations to, or  
18      improvements in, buildings or other structures, demolish  
19      improvements, raze existing or erect new party walls or buildings,  
20      subdivide or develop land, dedicate land to public use or grant  
21      public or private easements, and make or vacate plats and adjust  
22      boundaries;

23            9. Enter into a lease for any purpose as lessor or lessee,  
24      including a lease or other arrangement for exploration and removal

1 of natural resources, with or without the option to purchase or  
2 renew, for a period within or extending beyond the duration of the  
3 trust;

4       10. Grant an option involving a sale, lease, or other  
5 disposition of trust property or acquire an option for the  
6 acquisition of property, including an option exercisable beyond the  
7 duration of the trust, and exercise an option so acquired;

8       11. Insure the property of the trust against damage or loss and  
9 insure the trustee, the trustee's agents, and beneficiaries against  
10 liability arising from the administration of the trust;

11       12. Abandon or decline to administer property of no value or of  
12 insufficient value to justify its collection or continued  
13 administration;

14       13. With respect to possible liability for violation of  
15 environmental law:

16           a. inspect or investigate property the trustee holds or  
17 has been asked to hold, or property owned or operated  
18 by an organization in which the trustee holds or has  
19 been asked to hold an interest, for the purpose of  
20 determining the application of environmental law with  
21 respect to the property,

22           b. take action to prevent, abate, or otherwise remedy any  
23 actual or potential violation of any environmental law  
24 affecting property held directly or indirectly by the

1                   trustee, whether taken before or after the assertion  
2                   of a claim or the initiation of governmental  
3                   enforcement,

4                 c. decline to accept property into trust or disclaim any  
5                   power with respect to property that is or may be  
6                   burdened with liability for violation of environmental

7                   law,

8                 d. compromise claims against the trust which may be  
9                   asserted for an alleged violation of environmental  
10                  law, and

11                 e. pay the expense of any inspection, review, abatement,  
12                   or remedial action to comply with environmental law;

13                 14. Pay or contest any claim, settle a claim by or against the

14                 trust, and release, in whole or in part, a claim belonging to the  
15                 trust;

16                 15. Pay taxes, assessments, compensation of the trustee and of  
17                 employees and agents of the trust, and other expenses incurred in  
18                 the administration of the trust;

19                 16. Exercise elections with respect to federal, state, and  
20                 local taxes;

21                 17. Select a mode of payment under any employee benefit or  
22                 retirement plan, annuity, or life insurance payable to the trustee,  
23                 exercise rights thereunder, including exercise of the right to

1 indemnification for expenses and against liabilities, and take  
2 appropriate action to collect the proceeds;

3       18. Make loans out of trust property, including loans to a  
4 beneficiary on terms and conditions the trustee considers to be fair  
5 and reasonable under the circumstances, and the trustee has a lien  
6 on future distributions for repayment of those loans;

7       19. Pledge trust property to guarantee loans made by others to  
8 the beneficiary;

9       20. Appoint a trustee to act in another jurisdiction with  
10 respect to trust property located in the other jurisdiction, confer  
11 upon the appointed trustee all of the powers and duties of the  
12 appointing trustee, require that the appointed trustee furnish  
13 security, and remove any trustee so appointed;

14       21. Pay an amount distributable to a beneficiary who is under a  
15 legal disability or who the trustee reasonably believes is  
16 incapacitated, by paying it directly to the beneficiary or applying  
17 it for the beneficiary's benefit, or by:

18           a. paying it to the beneficiary's guardian of the  
19              property or, if the beneficiary does not have a  
20              guardian of the property, the beneficiary's guardian  
21              of the person,

22           b. paying it to the beneficiary's custodian under the  
23              Oklahoma Uniform Transfers to Minors Act, and, for  
24              that purpose, creating a custodianship,

- 1           c. if the trustee does not know of a guardian of the  
2           property, guardian of the person, or custodian, paying  
3           it to an adult relative or other person having legal  
4           or physical care or custody of the beneficiary, to be  
5           expended on the beneficiary's behalf, or  
6           d. managing it as a separate fund on the beneficiary's  
7           behalf, subject to the beneficiary's continuing right  
8           to withdraw the distribution;

9           22. On distribution of trust property or the division or  
10          termination of a trust, make distributions in divided or undivided  
11          interests, allocate particular assets in proportionate or  
12          disproportionate shares, value the trust property for those  
13          purposes, and adjust for resulting differences in valuation;

14          23. Resolve a dispute concerning the interpretation of the  
15          trust or its administration by mediation, arbitration, or other  
16          procedure for alternative dispute resolution;

17          24. Prosecute or defend an action, claim, or judicial  
18          proceeding in any jurisdiction to protect trust property and the  
19          trustee in the performance of the trustee's duties;

20          25. Sign and deliver contracts and other instruments that are  
21          useful to achieve or facilitate the exercise of the trustee's  
22          powers; and

23  
24

1       26. On termination of the trust, exercise the powers  
2 appropriate to wind up the administration of the trust and  
3 distribute the trust property to the persons entitled to it.

4       SECTION 64.      NEW LAW      A new section of law to be codified  
5 in the Oklahoma Statutes as Section **1608.16** of Title 60, unless  
6 there is created a duplication in numbering, reads as follows:

7       A. Upon termination or partial termination of a trust, the  
8 trustee may send to the beneficiaries a proposal for distribution.  
9 The right of any beneficiary to object to the proposed distribution  
10 terminates if the beneficiary does not notify the trustee of an  
11 objection within thirty (30) days after the proposal was sent but  
12 only if the proposal informed the beneficiary of the right to object  
13 and of the time allowed for objection.

14       B. Upon the occurrence of an event terminating or partially  
15 terminating a trust, the trustee shall proceed reasonably to  
16 distribute the trust property to the persons entitled to it, subject  
17 to the right of the trustee to retain a reasonable reserve for the  
18 payment of debts, expenses, and taxes.

19       C. A release by a beneficiary of a trustee from liability for  
20 breach of trust is invalid to the extent:

- 21       1. It was induced by improper conduct of the trustee; or
- 22       2. The beneficiary, at the time of the release, did not know of  
23 the beneficiary's rights or of the material facts relating to the  
24 breach.

## **ARTICLE 10**

## **LIABILITY OF TRUSTEES AND RIGHTS OF PERSONS DEALING WITH TRUSTEE**

SECTION 65. NEW LAW A new section of law to be codified

in the Oklahoma Statutes as Section **1610.1** of Title 60, unless there is created a duplication in numbering, reads as follows:

Except as otherwise provided in subsections A and B of Section

175.57 of Title 60 of the Oklahoma Statutes, if more than one

trustee is liable to the beneficiaries for a breach of trust, a

trustee is entitled to contribution from the other trustee or

trustees. A trustee is not entitled to contribution if the trustee has breached his fiduciary duty.

was substantially more at fault than another trustee or if the

trustee committed the breach of trust in bad faith or with reckless disregard for the rights of the beneficiaries.

indifference to the purposes of the trust or the interests of the

beneficiaries. A trustee who received a benefit from the breach of

trust is not entitled to contribution from another trustee to the

extent of the benefit received

SECTION 66 NEW LAW A new section of law to

the Oklahoma Statutes as Section 1610.3 of Title 60, unless there

is created a duplication in numbering needs as follows:

1       B. Absent a breach of trust, a trustee is not liable to a  
2 beneficiary for a loss or depreciation in the value of trust  
3 property or for not having made a profit.

4       SECTION 67.      NEW LAW      A new section of law to be codified  
5 in the Oklahoma Statutes as Section **1610.3** of Title 60, unless there  
6 is created a duplication in numbering, reads as follows:

7       A trustee who acts in reasonable reliance on the terms of the  
8 trust as expressed in the trust instrument is not liable to a  
9 beneficiary for a breach of trust to the extent the breach resulted  
10 from the reliance.

11       SECTION 68.      NEW LAW      A new section of law to be codified  
12 in the Oklahoma Statutes as Section **1610.4** of Title 60, unless there  
13 is created a duplication in numbering, reads as follows:

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

20       SECTION 69.      NEW LAW      A new section of law to be codified  
21 in the Oklahoma Statutes as Section **1610.5** of Title 60, unless there  
22 is created a duplication in numbering, reads as follows:

1       A. The limitations on personal liability of a trustee as set  
2 forth in subsection H of Section 175.57 of Title 60 of the Oklahoma  
3 Statutes and in subsection H of Section 42 of this act shall apply.

4       B. A claim based on a contract entered into by a trustee in the  
5 trustee's fiduciary capacity, on an obligation arising from  
6 ownership or control of trust property, or on a tort committed in  
7 the course of administering a trust, may be asserted in a judicial  
8 proceeding against the trustee in the trustee's fiduciary capacity,  
9 whether or not the trustee is personally liable for the claim.

10      SECTION 70.     NEW LAW     A new section of law to be codified  
11 in the Oklahoma Statutes as Section **1610.6** of Title 60, unless there  
12 is created a duplication in numbering, reads as follows:

13       A. Except as otherwise provided in subsection C of this section  
14 or unless personal liability is imposed in the contract, a trustee  
15 who holds an interest as a general partner in a general or limited  
16 partnership is not personally liable on a contract entered into by  
17 the partnership after the trust's acquisition of the interest if the  
18 fiduciary capacity was disclosed in the contract or in a statement  
19 previously filed pursuant to the Oklahoma Revised Uniform  
20 Partnership Act or Oklahoma Uniform Limited Partnership Act of 2010.

21       B. Except as otherwise provided in subsection C of this  
22 section, a trustee who holds an interest as a general partner is not  
23 personally liable for torts committed by the partnership or for

1 obligations arising from ownership or control of the interest unless  
2 the trustee is personally at fault.

3       C. The immunity provided by this section does not apply if an  
4 interest in the partnership is held by the trustee in a capacity  
5 other than that of trustee or is held by the trustee's spouse or one  
6 or more of the trustee's descendants, siblings, or parents, or the  
7 spouse of any of them.

8       D. Except as otherwise provided by Oklahoma law, if the trustee  
9 of a revocable trust holds an interest as a general partner, the  
10 settlor is personally liable for contracts and other obligations of  
11 the partnership as if the settlor were a general partner.

12       SECTION 71.       NEW LAW       A new section of law to be codified  
13 in the Oklahoma Statutes as Section **1610.7** of Title 60, unless there  
14 is created a duplication in numbering, reads as follows:

15       A. Instead of furnishing a copy of the trust instrument to a  
16 person other than a beneficiary, and in lieu of or in addition to a  
17 memorandum of trust under subsection A of Section 175.6 of Title 60  
18 of the Oklahoma Statutes, the trustee may furnish to the person a  
19 certification of trust containing the following information:

20           1. That the trust exists and the date the trust instrument was  
21 executed;

22           2. The identity of the settlor;

23           3. The identity and address of the currently acting trustee;

24           4. The powers of the trustee;

1       5. The revocability or irrevocability of the trust and the  
2 identity of any person holding a power to revoke the trust;

3       6. The authority of co-trustees to sign or otherwise  
4 authenticate and whether all or less than all are required in order  
5 to exercise powers of the trustee;

6       7. The trust's taxpayer identification number; and

7       8. The manner of taking title to trust property.

8           B. A certification of trust under this section may be signed or  
9 otherwise authenticated by any trustee.

10          C. A certification of trust under this section must state that  
11 the trust has not been revoked, modified, or amended in any manner  
12 that would cause the representations contained in the certification  
13 of trust to be incorrect.

14          D. A certification of trust under this section need not contain  
15 the dispositive terms of a trust.

16          E. A recipient of a certification of trust under this section  
17 may require the trustee to furnish copies of those excerpts from the  
18 original trust instrument and later amendments which designate the  
19 trustee and confer upon the trustee the power to act in the pending  
20 transaction.

21          F. A person who acts in reliance upon a certification of trust  
22 under this section without knowledge that the representations  
23 contained therein are incorrect is not liable to any person for so  
24 acting and may assume without inquiry the existence of the facts

1 contained in the certification. Knowledge of the terms of the trust  
2 may not be inferred solely from the fact that a copy of all or part  
3 of the trust instrument is held by the person relying upon the  
4 certification.

5 G. A person who in good faith enters into a transaction in  
6 reliance upon a certification of trust under this section may  
7 enforce the transaction against the trust property as if the  
8 representations contained in the certification were correct.

9 H. A person making a demand for the trust instrument in  
10 addition to a certification of trust under this section, or excerpts  
11 of the trust instrument, is liable for damages if the court  
12 determines that the person did not act in good faith in demanding  
13 the trust instrument.

14 I. This section does not limit the right of a person to obtain  
15 a copy of the trust instrument in a judicial proceeding concerning  
16 the trust.

17 **ARTICLE 11**

18 **MISCELLANEOUS PROVISIONS**

19 SECTION 72. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section **1611.1** of Title 60, unless there  
21 is created a duplication in numbering, reads as follows:

22 The provisions of this act governing the legal effect, validity,  
23 or enforceability of electronic records or electronic signatures,  
24 and of contracts formed or performed with the use of such records or

1 signatures, conform to the requirements of Section 102 of the  
2 Electronic Signatures in Global and National Commerce Act (15  
3 U.S.C., Section 7002) and supersede, modify, and limit the  
4 requirements of the Electronic Signatures in Global and National  
5 Commerce Act.

6 SECTION 73. NEW LAW A new section of law to be codified  
7 in the Oklahoma Statutes as Section **1611.2** of Title 60, unless there  
8 is created a duplication in numbering, reads as follows:

9 If any provision of this act or its application to any person or  
10 circumstances is held invalid, the invalidity does not affect other  
11 provisions or applications of this act which can be given effect  
12 without the invalid provision or application, and to this end the  
13 provisions of this act are severable.

14 SECTION 74. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section **1611.3** of Title 60, unless there  
16 is created a duplication in numbering, reads as follows:

17 A. Except as otherwise provided in this act, on the effective  
18 date of this act:

19 1. This act applies to all trusts created before, on, or after  
20 its effective date;

21 2. This act applies to all judicial proceedings concerning  
22 trusts commenced on or after its effective date;

23 3. This act applies to judicial proceedings concerning trusts  
24 commenced before its effective date unless the court finds that

1 application of a particular provision of this act would  
2 substantially interfere with the effective conduct of the judicial  
3 proceedings or prejudice the rights of the parties, in which case  
4 the particular provision of this act does not apply and the  
5 superseded law applies;

6       4. Any rule of construction or presumption provided in this act  
7 applies to trust instruments executed before the effective date of  
8 the act unless there is a clear indication of a contrary intent in  
9 the terms of the trust; and

10      5. An act enacted before the effective date of the act is not  
11 affected by this act.

12       B. If a right is acquired, extinguished, or barred upon the  
13 expiration of a prescribed period that has commenced to run under  
14 any other statute before the effective date of the act, that statute  
15 continues to apply to the right even if it has been repealed or  
16 superseded.

17       C. The applicable provisions of the Oklahoma Trust Act shall  
18 continue to apply, unless such provision is inconsistent with an  
19 express provision of this act, and further, except as expressly  
20 provided in this act.

21       SECTION 75. This act shall become effective November 1, 2025.  
22 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY  
23 April 8, 2025 - DO PASS AS AMENDED  
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