

TITLE 15
UNIFORM PROBATE CODE

CHAPTER 7
TRUST ADMINISTRATION

PART 1.
TRUST REGISTRATION

15-7-101. DUTY TO REGISTER TRUSTS. The trustee of a trust having its principal place of administration in this state shall register the trust in the court of this state at the principal place of administration. Unless otherwise designated in the trust instrument, the principal place of administration of a trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if he has no such place of business. In the case of co-trustees, the principal place of administration, if not otherwise designated in the trust instrument, is (1) the usual place of business of the corporate trustee if there is but one (1) corporate co-trustee, or (2) the usual place of business or residence of the individual trustee who is a professional fiduciary if there is but one (1) such person and no corporate co-trustee, and otherwise (3) the usual place of business or residence of any of the co-trustees as agreed upon by them. The duty to register under this Part does not apply to the trustee of a trust if registration would be inconsistent with the retained jurisdiction of a foreign court from which the trustee cannot obtain release.

[I.C., sec. 15-7-101, as added by 1971, ch. 111, sec. 1, p. 233.]

15-7-102. REGISTRATION PROCEDURES. Registration shall be accomplished by filing a statement indicating the name and address of the trustee in which it acknowledges the trusteeship. The statement shall indicate whether the trust has been registered elsewhere. The statement shall identify the trust: (1) in the case of a testamentary trust, by the name of the testator and the date and place of domiciliary probate; (2) in the case of a written inter vivos trust, by the name of each settlor and the original trustee and the date of the trust instrument; or (3) in the case of an oral trust, by information identifying the settlor or other source of funds and describing the time and manner of the trust's creation and the terms of the trust, including the subject matter, beneficiaries and time of performance. If a trust has been registered elsewhere, registration in this state is ineffective until the earlier registration is released by order of the court where prior registration occurred, or an instrument executed by the trustee and all beneficiaries, filed with the registration in this state.

[I.C., sec. 15-7-102, as added by 1971, ch. 111, sec. 1, p. 233.]

15-7-103. EFFECT OF REGISTRATION. (a) By registering a trust, or accepting the trusteeship of a registered trust, the trustee submits personally to the jurisdiction of the court in any proceeding under [section] 15-7-201 of this code relating to the trust that may be initiated by any interested person while the trust remains registered. Notice of any proceeding shall be delivered to the trustee, or mailed to him by ordinary first class mail at his address as listed in the registration or as thereafter reported to the court and to his address as then known to the petitioner.

(b) To the extent of their interests in the trust, all beneficiaries of a trust properly registered in this state are subject to the jurisdiction of the court of registration for the purposes of proceedings under section [15-7-201](#) of this code, provided notice is given pursuant to section [15-1-401](#) of this code.

[I.C., sec. 15-7-103, as added by 1971, ch. 111, sec. 1, p. 233.]

15-7-104. EFFECT OF FAILURE TO REGISTER. A trustee who fails to register a trust in a proper place as required by this Part, for purposes of any proceedings initiated by a beneficiary of the trust prior to registration, is subject to the personal jurisdiction of any court in which the trust could have been registered. In addition, any trustee who, within thirty (30) days after receipt of a written demand by a settlor or beneficiary of the trust, fails to register a trust as required by this chapter is subject to removal and denial of compensation or to surcharge as the court may direct unless directed not to register by all beneficiaries or as provided in section [15-1-108](#) of this code a person with a general power of appointment representing all the beneficiaries and acting for them. A provision in the terms of the trust purporting to excuse the trustee from the duty to register, or directing that the trust or trustee shall not be subject to the jurisdiction of the court, is ineffective.

[I.C., sec. 15-7-104, as added by 1971, ch. 111, sec. 1, p. 233.]

15-7-105. REGISTRATION -- QUALIFICATION OF FOREIGN TRUSTEE. A foreign corporate trustee is required to qualify as a foreign corporation doing business in this state if it maintains the principal place of administration of any trust within the state. A foreign cotrustee is not required to qualify in this state solely because its cotrustee maintains the principal place of administration in this state. Unless otherwise doing business in this state, local qualification by a foreign trustee, corporate or individual, is not required in order for the trustee to receive distribution from a local estate or to hold, invest in, manage or acquire property located in this state, or maintain litigation. Nothing in this section affects a determination of what other acts require qualification as doing business in this state.

[I.C., sec. 15-7-105, as added by 1971, ch. 111, sec. 1, p. 233.]

PART 2.

JURISDICTION OF COURT CONCERNING TRUSTS

15-7-201. COURT -- EXCLUSIVE JURISDICTION OF TRUSTS. (a) The court of registration has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts. Proceedings which may be maintained under this section are those concerning the administration and distribution of trusts, the declaration of rights and the determination of other matters involving trustees and beneficiaries of trusts. These include, but are not limited to, proceedings to:

- (1) appoint or remove a trustee;
- (2) review trustees' fees and to review and settle interim or final accounts;

(3) ascertain beneficiaries, to determine any question arising in the administration or distribution of any trust including questions of construction of trust instruments, to instruct trustees, and to determine the existence or nonexistence of any immunity, power, privilege, duty or right; and

(4) release registration of a trust.

(b) Neither registration of a trust nor a proceeding under this section results in continuing supervisory proceedings. The management and distribution of a trust estate, submission of accounts and reports to beneficiaries, payment of trustee's fees and other obligations of a trust, acceptance and change of trusteeship, and other aspects of the administration of a trust shall proceed expeditiously consistent with the terms of the trust, free of judicial intervention and without order, approval or other action of any court, subject to the jurisdiction of the court as invoked by interested parties or as otherwise exercised as provided by law.

[I.C., sec. 15-7-201, as added by 1971, ch. 111, sec. 1, p. 233.]

15-7-202. TRUST PROCEEDINGS -- VENUE. Venue for proceedings under section [15-7-201](#) of this Part involving registered trusts is in the place of registration. Venue for proceedings under section [15-7-201](#) of this Part involving trusts not registered in this state is in any place where the trust properly could have been registered, and otherwise by the rules of civil procedure.

[I.C., sec. 15-7-202, as added by 1971, ch. 111, sec. 1, p. 233.]

15-7-203. TRUST PROCEEDINGS -- DISMISSAL OF MATTERS RELATING TO FOREIGN TRUSTS. The court will not, over the objection of a party, entertain proceedings under section [15-7-201](#) of this Part involving a trust registered or having its principal place of administration in another state, unless (1) when all appropriate parties could not be bound by litigation in the courts of the state where the trust is registered or has its principal place of administration or (2) when the interests of justice otherwise would seriously be impaired. The court may condition a stay or dismissal of a proceeding under this section on the consent of any party to jurisdiction of the state in which the trust is registered or has its principal place of business, or the court may grant a continuance or enter any other appropriate order.

[I.C., sec. 15-7-203, as added by 1971, ch. 111, sec. 1, p. 233.]

15-7-204. COURT -- CONCURRENT JURISDICTION OF LITIGATION INVOLVING TRUSTS AND THIRD PARTIES. The court of the place in which the trust is registered has concurrent jurisdiction with other courts of this state of actions and proceedings to determine the existence or nonexistence of trusts created other than by will, of actions by or against creditors or debtors of trusts, and of other actions and proceedings involving trustees and third parties. Venue is determined by the rules generally applicable to civil action.

[I.C., sec. 15-7-204, as added by 1971, ch. 111, sec. 1, p. 233.]

15-7-205. PROCEEDINGS FOR REVIEW OF EMPLOYMENT OF AGENTS AND REVIEW OF COMPENSATION OF TRUSTEE AND EMPLOYEES OF TRUST. On petition of an interested person, after notice to all interested persons, the court may review the pro-

priety of employment of any person by a trustee including any attorney, auditor, investment advisor or other specialized agent or assistant, and the reasonableness of the compensation of any person so employed, and the reasonableness of the compensation determined by the trustee for his own services. Any person who has received excessive compensation from a trust may be ordered to make appropriate refunds.

[I.C., sec. 15-7-205, as added by 1971, ch. 111, sec. 1, p. 233.]

15-7-206. TRUST PROCEEDINGS -- INITIATION BY NOTICE -- NECESSARY PARTIES. Proceedings under section [15-7-201](#) of this Part are initiated by filing a petition in the court and giving notice pursuant to section [15-1-401](#) of this code to interested parties. The court may order notification of additional persons. A decree is valid as to all who are given notice of the proceeding though fewer than all interested parties are notified.

[I.C., sec. 15-7-206, as added by 1971, ch. 111, sec. 1, p. 233.]

PART 3. DUTIES AND LIABILITIES OF TRUSTEES

15-7-301. GENERAL DUTIES NOT LIMITED. Except as specifically provided, the general duty of the trustee to administer a trust expeditiously for the benefit of the beneficiaries is not altered by this code.

[I.C., sec. 15-7-301, as added by 1971, ch. 111, sec. 1, p. 233.]

15-7-302. TRUSTEE'S STANDARD OF CARE AND PERFORMANCE. Except as otherwise provided by the terms of the trust, the trustee shall observe the standards in dealing with the trust assets that would be observed by a prudent man dealing with the property of another, and if the trustee has special skills or is named trustee on the basis of representations of special skills or expertise, he is under a duty to use those skills.

[I.C., sec. 15-7-302, as added by 1971, ch. 111, sec. 1, p. 233.]

15-7-303. DUTY TO INFORM AND ACCOUNT TO BENEFICIARIES. The trustee shall keep the beneficiaries of the trust reasonably informed of the trust and its administration. In addition:

(a) Within thirty (30) days after his acceptance of the trust, the trustee shall inform in writing the current beneficiaries and if possible, one (1) or more persons who under section [15-1-403](#) of this code may represent beneficiaries with future interests, of the court in which the trust is registered and of his name and address.

(b) Upon reasonable request, the trustee shall provide the beneficiary with a copy of the terms of the trust which describe or affect his interest and with relevant information about the assets of the trust and the particulars relating to the administration.

(c) Upon reasonable request, a beneficiary is entitled to a statement of the accounts of the trust annually and on termination of the trust or change of the trustee.

[I.C., sec. 15-7-303, as added by 1971, ch. 111, sec. 1, p. 233.]

15-7-304. DUTY TO PROVIDE BOND. A trustee need not provide bond to secure performance of his duties unless required by the terms of the trust, reasonably requested by a beneficiary or found by the court to be necessary to protect the interests of the beneficiaries who are not able to protect themselves and whose interests otherwise are not adequately represented. On petition of the trustee or other interested person the court may excuse a requirement of bond, reduce the amount of the bond, release the surety, or permit the substitution of another bond with the same or different sureties. If bond is required, it shall be filed in the court of registration or other appropriate court in amounts and with sureties and liabilities as provided in sections [15-3-604](#) and [15-3-606](#) of this code relating to bonds of personal representatives.

[I.C., sec. 15-7-304, as added by 1971, ch. 111, sec. 1, p. 233.]

15-7-305. TRUSTEE'S DUTIES -- APPROPRIATE PLACE OF ADMINISTRATION -- DEVIATION. A trustee is under a continuing duty to administer the trust at a place appropriate to the purposes of the trust and to its sound, efficient management. If the principal place of administration becomes inappropriate for any reason, the court may enter any order furthering efficient administration and the interests of beneficiaries, including, if appropriate, release of registration, removal of the trustee and appointment of a trustee in another state. Trust provisions relating to the place of administration and to changes in the place of administration or of trustee control unless compliance would be contrary to efficient administration or the purposes of the trust. Views of adult beneficiaries shall be given weight in determining the suitability of the trustee and the place of administration.

[I.C., sec. 15-7-305, as added by 1971, ch. 111, sec. 1, p. 233.]

15-7-306. PERSONAL LIABILITY OF TRUSTEE TO THIRD PARTIES. (a) Unless otherwise provided in the contract, a trustee is not personally liable on contracts properly entered into in his fiduciary capacity in the course of administration of the trust estate unless he fails to reveal his representative capacity and identify the trust estate in the contract.

(b) A trustee is personally liable for obligations arising from ownership or control of property of the trust estate or for torts committed in the course of administration of the trust estate only if he is personally at fault.

(c) Claims based on contracts entered into by a trustee in his fiduciary capacity, on obligations arising from ownership or control of the trust estate, or on torts committed in the course of trust administration may be asserted against the trust estate by proceeding against the trustee in his fiduciary capacity, whether or not the trustee is personally liable therefor.

(d) The question of liability as between the trust estate and the trustee individually may be determined in a proceeding for accounting, surcharge or indemnification or other appropriate proceeding.

[I.C., sec. 15-7-306, as added by 1971, ch. 111, sec. 1, p. 233.]

15-7-307. LIMITATIONS ON PROCEEDINGS AGAINST TRUSTEES AFTER FINAL ACCOUNT. Unless previously barred by adjudication, consent or limitation, any claim against a trustee for breach of trust is barred as to any beneficiary

who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary unless a proceeding to assert the claim is commenced within six (6) months after receipt of the final account or statement. In any event and notwithstanding lack of full disclosure a trustee who has issued a final account or statement received by the beneficiary and has informed the beneficiary of the location and availability of records for his examination is protected after three (3) years. A beneficiary is deemed to have received a final account or statement if, being an adult, it is received by him personally or if, being a minor or disabled person, it is received by his representative as described in subsections (a) (1) and (2) [(a) and (b)] of section [15-1-403](#) of this code.

[I.C., sec. 15-7-307, as added by 1971, ch. 111, sec. 1, p. 233.]

15-7-308. REMOVAL OF TRUSTEE. (1) A trustee may be removed in accordance with the terms of the trust or by the court on its own initiative or on petition of a trustor, cotrustee or beneficiary.

(2) The court may remove a trustee or order other appropriate relief:

(a) If the trustee has committed a material breach of trust;

(b) If the trustee is unfit or unable to administer the trust;

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

(d) If the investment decisions of the trustee, although not constituting a breach of trust, have resulted in investment performance persistently and substantially below those of comparable trusts;

(e) If, because of changed circumstances, removal of the trustee would substantially further the trustor's purpose in creating the trust; or

(f) For other good cause shown.

(3) Pending a final decision on the petition to remove the trustee, the court may order such appropriate relief as may be necessary to protect the trust property or the interests of the beneficiaries.

[15-7-308, added 2000, ch. 157, sec. 1, p. 400.]

PART 4. POWERS OF TRUSTEES

15-7-401. POWERS OF TRUSTEES. The powers of trustees are set forth in the uniform powers of trustees act, sections [68-104](#) through [68-113](#), Idaho Code.

[I.C., sec. 15-7-401, as added by 1971, ch. 111, sec. 1, p. 233.]

15-7-402. ADDITIONAL POWERS. In addition to the powers provided for in section [15-7-401](#), Idaho Code, a trustee shall have the following powers:

(1) To sever any trust estate on a fractional share basis into two (2) or more separate trusts for any reason.

(2) To divide a trust into two (2) or more single trusts or consolidate two (2) or more trusts into a single trust, upon those terms and conditions as it considers appropriate, provided that the trustee make a written determination that: (a) division or consolidation is not inconsistent with the intent of the trustor with regard to any trust to be consolidated or divided; (b) division or consolidation would facilitate administration of the

trusts; and (c) division or consolidation would be in the best interests of all beneficiaries and not materially impair their respective interests. The trustee shall give written notice of the proposed division or consolidation by personal service or by certified mail to all interested persons of every trust affected by the division or consolidation and to any trustee of such trust(s) who does not join in the notice. The notice shall: (i) state the name and mailing address of the trustee; (ii) include a copy of the governing instrument of each trust to be divided or consolidated; (iii) include a statement of assets and liabilities of each trust to be divided or consolidated, dated within ninety (90) days of the notice; (iv) fully describe the terms and manner of division or consolidation; and (v) state the reasons supporting the proposed division or consolidation. The notice shall advise the recipient of the right to petition for a judicial determination of the proposed division or consolidation as provided in subsection (3) of this section. The notice shall include a form on which consent or objection to the proposed division or consolidation may be indicated. If the trustee receives written consent to the proposed division or consolidation from all persons entitled to notice, the trustee may divide or consolidate the trusts as provided in the notice. Any person dealing with the trustee of the resulting divided or consolidated trust is entitled to rely on the authority of that trustee to act and is not obliged to inquire into the validity or propriety of the division or consolidation under this section.

(3) Any interested person may petition the court of the county in which the principal place of administration of a trust is located for an order dividing one (1) or more trusts or consolidating two (2) or more trusts. If nonjudicial consolidation has been commenced pursuant to subsection (2) of this section, a petition may be filed under this section unless the trustee has received all necessary consents. The principal place of administration of the trust is the trustee's usual place of business where the records pertaining to the trust are kept, or the trustee's residence if the trustee has no such place of business. At the conclusion of the hearing, if the court finds that the requirements of subsections (2) (a), (b) and (c) of this section have been satisfied, it may direct division of one (1) or more trusts or consolidation of two (2) or more trusts on such terms and conditions as appropriate. The court, in its discretion, may provide for payment from one (1) or more of the trusts of reasonable fees and expenses for any party to the proceeding.

(4) If the net fair market value of the assets of a trust, taken collectively, is less than one hundred thousand dollars (\$100,000), the trustee may terminate the trust by the following procedure:

- (a) The trustee shall determine a plan for distribution that agrees, as nearly as possible, with the trust's dispositive plan;
- (b) The trustee shall give notice, in writing, to all interested persons of its intent to distribute the assets in accordance with the plan unless an interested person objects in writing within thirty (30) days after the date of the notice, containing also in such notice a statement of the provisions of paragraph (e) of this subsection;
- (c) If no written objection is received by the trustee within thirty (30) days after the date of the written notice to all interested persons, the trustee shall proceed to distribute the trust assets in accordance with the plan;
- (d) If the trustee receives a written objection to the plan within thirty (30) days after the date of the notice, the trustee shall not

distribute the assets of the trust, but may then petition the court for an order authorizing distribution in accordance with the plan, and the court shall have plenary authority to approve, modify, or reject the trustee's petition;

(e) For purposes of the thirty (30) day provisions of this subsection, the "date of notice" shall be the later of the date set forth in the notice (if any) or the date of actual mailing, if mailed, or of actual delivery, if delivered in person to the interested person, and provided further that an objection in writing is timely if mailed within thirty (30) days to the trustee, with the burden of proof of the date of such mailing to be on the interested person.

The existence of a spendthrift or similar provision shall not affect the trustee's powers under this subsection unless the trust instrument specifically provides that the trustee shall not have the power to terminate the trust.

(5) This section applies to all trusts whenever created.

[15-7-402, added 1995, ch. 180, sec. 1, p. 663; am. 1997, ch. 211, sec. 1, p. 629; am. 2006, ch. 162, sec. 1, p. 482.]

15-7-403. APPOINTMENT OF TRUSTEE AND LETTERS OF TRUSTEESHIP. Upon application to the court in which the trust is registered in the state of Idaho, and notice to all interested parties, the court may appoint the trustee as such (or as successor trustee, if applicable). Upon filing of an acceptance of the duties of the office of trustee by the trustee, containing the oath of the trustee to the effect that the trustee will perform the duties of his office according to the law, letters of trusteeship shall be issued, evidencing the authority of the trustee. Such letters may be recorded in the office of the county recorder in any county in which property held by the trust is located and, from the time of filing of such letters for record, notice is imparted to all persons of the contents of such letters of trusteeship. The application to the court shall contain at least the following:

(1) A statement of the interest of the applicant in the matter, including the priority of the person whose appointment is sought and a statement of the names and addresses and priority for appointment of any other persons having a prior or equal right to the appointment under law or the terms of the trust;

(2) A description of the trust;

(3) A statement identifying and indicating the address of any existing trustee of the trust whose appointment has not been terminated;

(4) The name and address of the person or entity for whom appointment is sought;

(5) A statement identifying and indicating the address of all current and contingent beneficiaries of the trust, and the ages of any such beneficiaries that are minors;

(6) A statement that a copy of the trust is either in the possession of the court or accompanies the application, or that copies of portions of the trust accompany the application showing:

(a) The grantor and original trustee of the trust,

(b) Any language regarding the appointment of an original or successor trustee, including any limitations thereon,

(c) The signature page(s) of the trust,

(d) Any amendments to the trust which relate to the appointment of an original or successor trustee, including any limitations thereon;

(7) A statement that, after the exercise of reasonable diligence, the applicant is unaware of any instrument revoking the trust;

(8) If the application is for appointment of a successor trustee, a statement of the method of termination of the appointment of the prior trustee and the effective date thereof and that copies of any documents relating thereto are in the possession of the court or accompany the application.

[15-7-403, added 1998, ch. 80, sec. 1, p. 286; am. 2004, ch. 55, sec. 3, p. 258.]

PART 5. TRUST PROTECTOR

15-7-501. TRUST PROTECTOR. (1) Definition of terms:

(a) "Distribution trust advisor" means a person given authority by the trust instrument to exercise all or any portions of the powers and discretions set forth in subsection (11) of this section.

(b) "Excluded fiduciary" means any fiduciary excluded from exercising certain powers under the instrument, which powers may be exercised by the grantor or a trust advisor or a trust protector.

(c) "Fiduciary" means a trustee under any testamentary or other trust, an executor, administrator, or personal representative of a decedent's estate, or any other party, including a trust advisor or a trust protector, who is acting in a fiduciary capacity for any person, trust or estate.

(d) "Instrument" means any revocable or irrevocable trust document whether created inter vivos or testamentary.

(e) "Investment trust advisor" means a person given authority by the trust instrument to exercise all or any portions of the powers and discretions set forth in subsection (10) of this section.

(f) "Trust advisor" means a distribution trust advisor or an investment advisor.

(g) "Trust protector" means any disinterested third party whose appointment is provided for in the trust instrument.

(2) Liability limits of excluded fiduciary. An excluded fiduciary is not liable, either individually or as a fiduciary, for either of the following:

(a) Any loss that results from compliance with a direction of the trust advisor;

(b) Any loss that results from a failure to take any action proposed by an excluded fiduciary that requires a prior authorization of the trust advisor if that excluded fiduciary timely sought but failed to obtain that authorization.

Any excluded fiduciary is also relieved from any obligation to perform investment reviews and make recommendations with respect to any investments to the extent the trust advisor had authority to direct the acquisition, disposition or retention of any such investment.

(3) Death of grantor. An excluded fiduciary may continue to follow the direction of the trust advisor upon the incapacity or death of the grantor if the instrument so allows.

(4) When trust advisor considered as fiduciary. If one (1) or more trust advisors are given authority by the terms of a governing instrument to direct, consent to, or disapprove a fiduciary's investment decisions, or

proposed investment decisions, such trust advisors shall be considered to be fiduciaries when exercising such authority unless the governing instrument provides otherwise.

(5) Excluded fiduciary's liability for loss if trust protector appointed. If an instrument appoints a trust protector, the excluded fiduciary is not liable for any loss resulting from any action taken upon such trust protector's direction.

(6) Powers and discretions of trust protector. The powers and discretions of a trust protector shall be as provided in the governing instrument and may, in the best interests of the trust, be exercised or not exercised in the sole and absolute discretion of the trust protector and shall be binding on all other persons. Such powers and discretion may include the following:

(a) To modify or amend the trust instrument to achieve favorable tax status or because of changes in the Internal Revenue Code, state law, or the rulings and regulations thereunder;

(b) To increase or decrease the interests of any beneficiaries to the trust;

(c) To modify the terms of any power of appointment granted by the trust. However, a modification or amendment may not grant a beneficial interest to any individual or class of individuals not specifically provided for under the trust instrument;

(d) To terminate the trust;

(e) To veto or direct trust distributions;

(f) To change situs or governing law of the trust, or both;

(g) To appoint a successor trust protector;

(h) To interpret terms of the trust instrument at the request of the trustee;

(i) To advise the trustee on matters concerning a beneficiary; and

(j) To amend or modify the trust instrument to take advantage of laws governing restraints on alienation, distribution of trust property, or the administration of the trust.

(7) Submission to court jurisdiction -- Effect on trust advisor or trust protector. By accepting an appointment to serve as a trust advisor or trust protector of a trust that is subject to the laws of this state, the trust advisor or the trust protector submits to the jurisdiction of the courts of Idaho even if investment advisory agreements or other related agreements provide otherwise, and the trust advisor or trust protector may be made a party to any action or proceeding if issues relate to a decision or action of the trust advisor or trust protector.

(8) Powers of trust protector incorporated by reference in will or trust instrument. Any of the powers enumerated in subsection (6) of this section, as they exist at the time of the signing of a will by a testator or testatrix or at the time of the signing of a trust instrument by a trustor may be, by appropriate reference made thereto, incorporated in whole or in part in such will or trust instrument by a clearly expressed intention of a testator or testatrix of a will or trustor of a trust instrument.

(9) Investment trust advisor or distribution trust advisor provided for in trust instrument. A trust instrument governed by the laws of Idaho may provide for a person to act as an investment trust advisor or a distribution trust advisor, respectively, with regard to investment decisions or discretionary distributions.

(10) Powers and discretions of investment trust advisor. The powers and discretions of an investment trust advisor shall be provided in the trust in-

strument and may be exercised or not exercised, in the best interests of the trust, in the sole and absolute discretion of the investment trust advisor and are binding on any other person and any other interested party, fiduciary, and excluded fiduciary. Unless the terms of the document provide otherwise, the investment trust advisor has the power to perform the following:

- (a) Direct the trustee with respect to the retention, purchase, sale or encumbrance of trust property and the investment and reinvestment of principal and income of the trust;
- (b) Vote proxies for securities held in trust; and
- (c) Select one (1) or more investment advisors, managers or counselors, including the trustee, and delegate to them any of its powers.

(11) Powers and discretions of distribution trust advisor. The powers and discretions of a distribution trust advisor shall be provided in the trust instrument and may be exercised or not exercised, in the best interests of the trust, in the sole and absolute discretion of the distribution trust advisor and are binding on any other person and any other interested party, fiduciary, and excluded fiduciary. Unless the terms of the document provide otherwise, the distribution trust advisor shall direct the trustee with regard to all discretionary distributions to beneficiaries.

[15-7-501, added 1999, ch. 331, sec. 1, p. 893; am. 2007, ch. 68, sec. 2, p. 178.]

15-7-502. SPENDTHRIFT TRUSTS. (1) A settlor may provide in the terms of the trust that the interest of a beneficiary in the income or in the principal or in both may not be voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee.

(2) A declaration in a trust instrument that the interest of a beneficiary shall be held subject to a "spendthrift trust" is sufficient to restrain voluntary or involuntary alienation of the interest by a beneficiary to the maximum extent permitted under this section.

(3) Validity of a restraint on transfer in a trust document shall not require specific reference to or identical verbiage set forth in subsection (1) or (2) of this section.

(4) If a person is both a settlor and beneficiary of the same trust, a provision restraining the voluntary or involuntary transfer of the settlor's beneficial interest in such trust does not prevent the settlor's creditors from satisfying claims from the settlor's interest in the trust estate that relates to the portion of the trust that was contributed by the settlor. For the purposes of this subsection, however, a settlor shall not be considered to be a beneficiary of an irrevocable trust created by the settlor and taxed for federal income tax purposes pursuant to the grantor trust rules of the Internal Revenue Code, sections 671 through 679, inclusive, if the settlor's only beneficial interest in such trust consists of the right to receive a distribution from such trust in an amount equal to or less than the amount of the federal and state income tax liability incurred by the settlor as a result of such trust being characterized as a grantor trust pursuant to the aforementioned grantor trust rules.

(5) A beneficiary of a trust shall not be considered a settlor of a trust merely because of a lapse, waiver or release of:

- (a) A power described in subsection (6) of this section; or
- (b) The beneficiary's right to withdraw a part of the trust property to the extent that the value of the property affected by the lapse, waiver

or release in any calendar year does not exceed the greater of the amount specified in:

- (i) Section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, as amended; or
- (ii) Section 2503(b) of the Internal Revenue Code of 1986, as amended.

(6) A beneficiary of a trust shall not be considered a settlor, to have made a voluntary or involuntary transfer of the beneficiary's interest in a trust, or to have the power to make a voluntary or involuntary transfer of the beneficiary's interest in the trust, merely because the beneficiary, in any capacity including, but not limited to, as a trustee, holds or exercises:

- (a) A presently exercisable power to:
 - (i) Consume, invade, appropriate or distribute property to or for the benefit of the beneficiary, if the power is either exercisable only on consent of another person holding an interest adverse to the beneficiary's interest or limited by an ascertainable standard including, but not limited to, health, education, support or maintenance of the beneficiary; or
 - (ii) Exercise a limited power of appointment, as defined in the Internal Revenue Code of 1986, as amended, including, but not limited to, the power to appoint any property of the trust to or for the benefit of a person other than the beneficiary, a creditor of the beneficiary, the beneficiary's estate, or a creditor of the beneficiary's estate;
- (b) A testamentary power of appointment; or
- (c) A presently exercisable right described in subsection (5)(b) of this section.

[15-7-502, added 2007, ch. 68, sec. 4, p. 181; am. 2015, ch. 77, sec. 1, p. 199.]

PART 6. PURPOSE TRUSTS

15-7-601. PURPOSE TRUSTS. (1) A trust may be created for any purpose, charitable or noncharitable, under the terms of a trust agreement or will. A noncharitable trust so created is a purpose trust and shall exist to serve a purpose.

(2) A purpose trust does not need a beneficiary.

(3) A purpose trust shall be enforceable on the terms set forth in the trust agreement by the person named to enforce the trust; provided, however, that the failure to name a person to enforce the trust shall not void the trust or otherwise cause it to be unenforceable.

(4) A person named to enforce a purpose trust may resign or be removed or replaced in accordance with the trust.

(5) If the person named to enforce the trust resigns, or is removed, or is unwilling or unable to act, and if no successor is named in accordance with the trust, the trustee shall forthwith apply to the court having jurisdiction of the purpose trust for directions or for a person to be appointed by the court to enforce the trust. The court having jurisdiction of the purpose trust shall be empowered to make an order appointing a person to enforce the trust on such terms as it sees fit and to designate how successors will be named.

(6) During any period of time when no person is named or acting to enforce a purpose trust, the court having jurisdiction of the purpose trust shall have the right to exercise all powers necessary to enforce the trust in order to serve the purpose for which it was created.

(7) Any interested person, as defined in section [15-1-201](#)(25), Idaho Code, may bring an action under law or equity to enforce a purpose trust.

(8) Charitable trusts are not governed by this section.

(9) A purpose trust created prior to July 1, 2005, shall be valid and enforceable from the date of the trust's creation.

[15-7-601, added 2005, ch. 99, sec. 1, p. 319; am. 2020, ch. 82, sec. 6, p. 178.]

PART 7. DRY TRUSTS

15-7-701. DRY TRUSTS. A trust shall be valid and enforceable even though it may not be funded at a given time, or from time to time, or does not have any res or corpus or otherwise contain any asset of any nature.

[15-7-701, added 2006, ch. 161, sec. 2, p. 482.]