

TITLE 68
TRUSTS AND FIDUCIARIES

CHAPTER 1
TRUSTS

68-101. TRUSTEES -- POWER OF DISTRICT COURT TO APPOINT. When a trust exists without any appointed trustees or where any or all of the trustees renounce, die, or are discharged, the district court of the county where the trust property or some portion thereof is situated, must appoint another trustee to direct the execution of the trust. The court may, in its discretion, appoint the original number or any less number of trustees.

[(68-101), 1919, ch. 19, sec. 1, p. 82; C.S., sec. 6417; I.C.A., sec. 66-101.]

68-102. DEATH, RENUNCIATION, OR DISCHARGE OF TRUSTEE -- SURVIVAL OF TRUST. On the death, renunciation, or discharge of one (1) of the several number of trustees, the trust survives to the others.

[(68-102) 1919, ch. 19, sec. 2, p. 82; C.S., sec. 6418; I.C.A., sec. 66-102.]

68-103. COMPENSATION OF TRUSTEES. When a declaration of trust is silent upon the subject of compensation, the trustee is entitled to the same compensation as an executor. If it specifies the amount of his compensation, he is entitled to the amount thus specified and no more.

[(68-103) 1919, ch. 19, sec. 3, p. 82; C.S., sec. 6419; I.C.A., sec. 66-103.]

68-104. UNIFORM TRUSTEES' POWERS ACT -- DEFINITIONS. As used in this act:

(1) "Trust" means an express trust created by a trust instrument, including a will, whereby a trustee has the duty to administer a trust asset for the benefit of a named or otherwise described income or principal beneficiary, or both; "trust" does not include a resulting or constructive trust, a business trust which provides for certificates to be issued to the beneficiary, an investment trust, a voting trust, a security instrument, a trust created by the judgment or decree of a court, a liquidation trust, or a trust for the primary purpose of paying dividends, interests, interest coupons, salaries, wages, pensions or profits, or employee benefits of any kind, an instrument wherein a person is nominee or escrowee for another, a trust created in deposits in any financial institution, or other trust the nature of which does not admit of general trust administration;

(2) "Trustee" means an original, added, or successor trustee;

(3) "Prudent man" means a trustee whose exercise of trust powers is reasonable and equitable in view of the interests of income or principal beneficiaries, or both, and in view of the manner in which men of ordinary prudence, diligence, discretion, and judgment would act in the management of their own affairs.

[68-104, added 1965, ch. 95, sec. 1, p. 173.]

68-105. POWERS OF TRUSTEE CONFERRED BY TRUST OR BY LAW. (a) The trustee has all powers conferred upon him by the provisions of this act unless limited in the trust instrument.

(b) An instrument which is not a trust under section [68-104](#) (1) [, Idaho Code,] may incorporate any part of this act by reference.

[68-105, added 1965, ch. 95, sec. 2, p. 173.]

68-106. POWERS OF TRUSTEES CONFERRED BY THIS ACT. (a) From time of creation of the trust until final distribution of the assets of the trust, a trustee has the power to perform, without court authorization, every act which a prudent man would perform for the purposes of the trust including but not limited to the powers specified in subsection (c).

(b) In the exercise of his powers including the powers granted by this act, a trustee has a duty to act with due regard to his obligation as a fiduciary.

(c) A trustee has the power, subject to subsections (a) and (b):

- (1) to collect, hold, and retain trust assets received from a trustor until, in the judgment of the trustee, disposition of the assets should be made; and the assets may be retained even though they include an asset in which the trustee is personally interested;
- (2) to receive additions to the assets of the trust;
- (3) to continue or participate in the operation of any business or other enterprise, and to effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;
- (4) to acquire an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest;
- (5) to invest and reinvest trust assets in accordance with the provisions of the trust or as provided by law;
- (6) to deposit trust funds in a bank, including a bank operated by the trustee;
- (7) to acquire assets, including real estate, in the name of the trust, and to sell, convey or dispose of an asset, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon a trust asset or any interest therein; and to encumber, mortgage, or pledge a trust asset for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;
- (8) to make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;
- (9) to subdivide, develop, or dedicate land to public use; or to make or obtain the vacation of plats and adjust boundaries; or to adjust differences in valuation on exchange or partition by giving or receiving consideration; or to dedicate easements to public use without consideration;
- (10) to enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust;
- (11) to enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
- (12) to grant an option involving disposition of a trust asset, or to take an option for the acquisition of any asset;

- (13) to vote a security, in person or by general or limited proxy;
- (14) to pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;
- (15) to sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
- (16) to hold a security in the name of a nominee or in other form without disclosure of the trust, so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the stock so held;
- (17) to insure the assets of the trust against damage or loss, and the trustee against liability with respect to third persons;
- (18) to borrow money to be repaid from trust assets or otherwise; to advance money for the protection of the trust, and for all expenses, losses, and liability sustained in the administration of the trust or because of the holding or ownership of any trust assets, for which advances with any interest the trustee has a lien on the trust assets as against the beneficiary;
- (19) to pay or contest any claim; to settle a claim by or against the trust by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the trust to the extent that the claim is uncollectible;
- (20) to pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust;
- (21) to allocate items of income or expense to either trust income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;
- (22) to pay any sum distributable to a beneficiary under legal disability, without liability to the trustee, by paying the sum to the beneficiary or by paying the sum for the use of the beneficiary either to a legal representative appointed by the court, or if none, to a relative;
- (23) to effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation;
- (24) to employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in the performance of his administrative duties; to act without independent investigation upon their recommendations; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary;
- (25) to prosecute or defend actions, claims, or proceedings for the protection of trust assets and of the trustee in the performance of his duties;
- (26) to execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the trustee.

[68-106, added 1965, ch. 95, sec. 3, p. 173; am. 1983, ch. 137, sec. 1, p. 334.]

68-106A. FIDUCIARY DUTY TO DETERMINE EQUIVALENT VALUE OF SUBSTITUTED PROPERTY. Notwithstanding the terms of a trust instrument, if a grantor has the power to substitute property of equivalent value, a trustee has a fidu-

ciary duty to determine that the substitute property is of equivalent value, prior to allowing the substitution.

[68-106A, added 2011, ch. 35, sec. 1, p. 78.]

68-107. TRUSTEE'S OFFICE NOT TRANSFERABLE -- TRANSACTIONS UNDER [CHAPTER 14, TITLE 26](#), IDAHO CODE, EXCEPTED. (1) The trustee shall not transfer his office to another or delegate the entire administration of the trust to a co-trustee or another.

(2) Subsection (1) of this section does not apply to any transfer permitted under [chapter 14, title 26](#), Idaho Code.

[68-107, added 1965, ch. 95, sec. 4, p. 173; am. 1991, ch. 215, sec. 1, p. 515.]

68-108. POWER OF COURT TO PERMIT DEVIATION OR TO APPROVE TRANSACTIONS INVOLVING CONFLICT OF INTEREST. (a) This act does not effect [affect] the power of a court of competent jurisdiction for cause shown and upon petition of the trustee or affected beneficiary and upon appropriate notice to the affected parties to relieve a trustee from any restrictions on his power that would otherwise be placed upon him by the trust or by this act.

(b) If the duty of the trustee and his individual interest or his interest as trustee of another trust, conflict in the exercise of a trust power, the power may be exercised only by court authorization, except as provided in sections [68-106](#)(c)(1), (4), (6), (18), and (24) upon petition of the trustee. Under this section, personal profit or advantage to an affiliated or subsidiary company or association is personal profit to any corporate trustee.

[68-108, added 1965, ch. 95, sec. 5, p. 173.]

68-109. POWERS EXERCISABLE BY JOINT TRUSTEES -- LIABILITY. (a) Any power vested in 3 or more trustees may be exercised by a majority, but a trustee who has not joined in exercising a power is not liable to the beneficiaries or to others for the consequences of the exercise; and a dissenting trustee is not liable for the consequences of an act in which he joins at the direction of the majority of the trustees, if he expressed his dissent in writing to any of his co-trustees at or before the time of the joinder.

(b) If 2 or more trustees are appointed to perform a trust, and if any of them is unable or refuses to accept the appointment, or, having accepted, ceases to be a trustee, the surviving or remaining trustees shall perform the trust and succeed to all the powers, duties, and discretionary authority given to the trustees jointly.

(c) This section does not excuse a co-trustee from liability for failure either to participate in the administration of the trust or to attempt to prevent a breach of trust.

[68-109, added 1965, ch. 95, sec. 6, p. 173.]

68-110. THIRD PERSONS PROTECTED IN DEALING WITH TRUSTEE. With respect to a third person dealing with a trustee or assisting a trustee in the conduct of a transaction, the existence of trust powers and their proper exercise by the trustee may be assumed without inquiry. The third person is not bound to inquire whether the trustee has power to act or is properly exercis-

ing the power; and a third person, without actual knowledge that the trustee is exceeding his powers or improperly exercising them, is fully protected in dealing with the trustee as if the trustee possessed and properly exercised the powers he purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the trustee.

[68-110, added 1965, ch. 95, sec. 7, p. 173.]

68-111. APPLICATION OF ACT. Except as specifically provided in the trust, the provisions of this act apply to any trust established after the effective date [May 17, 1965] of this act.

[68-111, added 1965, ch. 95, sec. 8, p. 173.]

68-112. UNIFORMITY OF INTERPRETATION. This act shall be construed to effectuate its general purpose to make uniform the law of those states which enact it.

[68-112, added 1965, ch. 95, sec. 9, p. 173.]

68-113. SHORT TITLE. This act may be cited as the "Uniform Trustees' Powers Act."

[68-113, added 1965, ch. 95, sec. 10, p. 173.]

68-114. PRESENTATION OF A CERTIFICATION OF TRUST IN LIEU OF THE TRUST INSTRUMENT -- EFFECT -- FORM. (1) A trustee may present a certification of trust to any person in lieu of a copy of any trust instrument to establish the existence or terms of the trust. The trustee may present the certification voluntarily or at the request of the person with whom he is dealing. Notwithstanding any provision of this chapter to the contrary, no person is required to accept and rely solely on a certification of trust in lieu of a copy of, or excerpts from, the trust instrument itself.

(2) Such a certification must be in the form of an affidavit signed and acknowledged by all of the currently acting trustees of the trust.

[68-114, added 1998, ch. 302, sec. 1, p. 995.]

68-115. CONTENTS OF CERTIFICATION OF TRUST. (1) A certification of trust may confirm the following facts or contain the following information:

- (a) The existence of the trust and date of execution of any trust instrument;
- (b) The identity of the settlor and each currently acting trustee;
- (c) The powers of the trustee and any restrictions imposed upon him in dealing with assets of the trust;
- (d) The revocability or irrevocability of the trust and the identity of any person holding a power to revoke it;
- (e) If there is more than one (1) trustee, whether all of the currently acting trustees must, or less than all may, act to exercise identified powers of the trustee;
- (f) The identifying number of the trust and whether it is a social security number or an employer identification number;
- (g) The state or other jurisdiction under the laws of which the trust was established; and

(h) The form in which title to assets of the trust is to be taken.

(2) The certification must contain a statement that the trust has not been revoked or amended to make any representations contained in the certification incorrect, and that the signatures are those of all the currently acting trustees.

[68-115, added 1998, ch. 302, sec. 2, p. 996.]

68-116. DISPOSITIVE PROVISIONS NOT REQUIRED -- PERSON PRESENTED WITH CERTIFICATION MAY REQUEST EXCERPTS FROM TRUST INSTRUMENT DESIGNATING TRUSTEE. A certification of trust need not contain the dispositive provisions of the trust, but the person to whom the certification is presented may require copies of excerpts from any trust instrument which designate the trustee or confer upon him the power to act in the pending transaction.

[68-116, added 1998, ch. 302, sec. 3, p. 996.]

68-117. RELIANCE ON FACTS CONTAINED IN CERTIFICATION -- ENFORCEABILITY. (1) A person who acts in reliance upon a certification of trust without knowledge that the representations contained therein are incorrect is not liable to any person for so acting. A person who does not know that the facts contained in the certification are incorrect may assume without inquiry the existence of the facts contained in the certification. Knowledge may not be inferred solely from the fact that a copy of all or part of a trust instrument is held by the person relying upon the certification.

(2) A transaction, and any lien created thereby, entered into by a trustee and a person acting in reliance upon a certification of trust is fully enforceable against the assets of the trust unless the person knows that the trustee is acting outside the scope of the trust.

[68-117, added 1998, ch. 302, sec. 4, p. 997.]

68-118. FAILURE TO DEMAND CERTIFICATION OR REFUSAL TO ACCEPT AND RELY ON CERTIFICATION NOT IMPROPER ACT -- LIABILITY. A person's failure to demand a certification of trust, or his refusal to accept and rely solely on a certification of trust, may not be considered to be an improper act by him and no inference as to whether he has acted in good faith may be drawn from the failure to demand, or the refusal to accept and rely upon, a certification of trust. This section creates no implication that a person is liable for acting in reliance upon a certification of trust under circumstances where the requirements of sections [68-114](#) through [68-119](#), Idaho Code, are not satisfied.

[68-118, added 1998, ch. 302, sec. 5, p. 997.]

68-119. APPLICABILITY. The provisions of sections [68-114](#) through [68-120](#), Idaho Code, shall apply to all trusts, whether established pursuant to Idaho law or established pursuant to the law of another state or jurisdiction.

[68-119, added 1998, ch. 302, sec. 6, p. 997; am. 2006, ch. 250, sec. 1, p. 759.]

68-120. DOCTRINE OF WORTHIER TITLE INAPPLICABLE. The doctrine of worthier title shall not be applied as a rule of law or as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor's heirs, heirs at law, next of kin, distributees, relatives or family, or language of similar import, shall not create or presumptively create a reversionary interest in the transferor.

[68-120, added 2006, ch. 250, sec. 2, p. 759.]