

Part 4

Creation, Validity, Modification, and Termination of Trust

75-7-401 Methods of creating trust.

- (1) A trust may be created by:
 - (a) 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;
 - (b) declaration by the owner of property that the owner holds identifiable property as trustee; or
 - (c) exercise of a power of appointment in favor of a trustee.
- (2) A health savings account is established on the first day an individual is covered by a high deductible health plan, as defined in Section 223 of the Internal Revenue Code. The health savings account shall be opened with a trustee or custodian within the time prescribed by law, without extensions, for filing a federal income tax return for that year. A health savings account is established regardless of a transfer of cash or other property to the account and, unless required by the trustee or custodian, it is not necessary for any party to sign a health savings account trust or custodial agreement regarding the health savings account.

Amended by Chapter 278, 2009 General Session

75-7-402 Requirements for creation.

- (1) A trust is created only if:
 - (a) the settlor has capacity to create a trust, which standard of capacity shall be the same as for a person to create a will;
 - (b) the settlor indicates an intention to create the trust or a statute, judgment, or decree authorizes the creation of a trust;
 - (c) the trust has a definite beneficiary or is:
 - (i) a charitable trust;
 - (ii) a trust for the care of an animal, as provided in Section 75-2-1001; or
 - (iii) a trust for a noncharitable purpose, as provided in Section 75-2-1001;
 - (d) the trustee has duties to perform; and
 - (e) the same person is not the sole trustee and sole beneficiary.
- (2) A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.
- (3) A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

Repealed and Re-enacted by Chapter 89, 2004 General Session

75-7-403 Trusts created in other jurisdictions.

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

- (1) the settlor was domiciled, had a place of abode, or was a national;
- (2) a trustee was domiciled or had a place of business; or
- (3) any trust property was located.

Repealed and Re-enacted by Chapter 89, 2004 General Session

75-7-404 Trust purposes.

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

Repealed and Re-enacted by Chapter 89, 2004 General Session

75-7-405 Charitable purposes -- Enforcement.

- (1) A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.
- (2) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the trustee, if authorized by the terms of the trust, or if not, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.
- (3) The settlor of a charitable trust, among others, may maintain a proceeding to enforce the trust.

Repealed and Re-enacted by Chapter 89, 2004 General Session

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

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

Repealed and Re-enacted by Chapter 89, 2004 General Session

75-7-407 Evidence of oral trust.

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

Repealed and Re-enacted by Chapter 89, 2004 General Session

75-7-408 Trust for care of animal.

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

Repealed and Re-enacted by Chapter 89, 2004 General Session

75-7-409 Noncharitable trust without ascertainable beneficiary.

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

Repealed and Re-enacted by Chapter 89, 2004 General Session

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

- (1) In addition to the methods of termination prescribed by Sections 75-7-411 through 75-7-414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of

the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

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

Repealed and Re-enacted by Chapter 89, 2004 General Session

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

- (1) A noncharitable, irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust, by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized, or by the settlor's guardian with the approval of the court supervising the guardianship if an agent is not so authorized and a conservator has not been appointed.
- (2) A noncharitable, irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable, irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.
- (3) A spendthrift provision in the terms of the trust is not presumed to constitute a material purpose of the trust.
- (4) Upon termination of a trust under Subsection (1) or (2), the trustee shall distribute the trust property as agreed by the beneficiaries.
- (5) If not all of the beneficiaries consent to a proposed modification or termination of the trust under Subsection (1) or (2), the modification or termination may be approved by the court if the court is satisfied that:
 - (a) if all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and
 - (b) the interests of a beneficiary who does not consent will be adequately protected.

Repealed and Re-enacted by Chapter 89, 2004 General Session

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

- (1) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.
- (2) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.
- (3) Upon termination of a trust under this section, the trustee shall distribute the trust property as directed by the court or otherwise in a manner consistent with the purposes of the trust.

Enacted by Chapter 89, 2004 General Session

75-7-413 Cy pres.

- (1) Except as otherwise provided in Subsection (2), if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful:
 - (a) the trust does not fail, in whole or in part;
 - (b) the trust property does not revert to the settlor or the settlor's successors in interest; and
 - (c) the court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.
- (2) A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under Subsection (1) to apply cy pres to modify or terminate the trust only if, when the provision takes effect:
 - (a) the trust property is to revert to the settlor and the settlor is still living; or
 - (b) fewer than 21 years have elapsed since the date of the trust's creation.

Enacted by Chapter 89, 2004 General Session

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

- (1) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than \$100,000 may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.
- (2) The court may modify or terminate a trust or remove the trustee and appoint a different trustee if it determines that the value of the trust property is insufficient to justify the cost of administration.
- (3) Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.
- (4) This section does not apply to an easement for conservation or preservation.

Enacted by Chapter 89, 2004 General Session

75-7-415 Reformation to correct mistakes.

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

Enacted by Chapter 89, 2004 General Session

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

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

Enacted by Chapter 89, 2004 General Session

75-7-417 Combination and division of trusts.

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

Enacted by Chapter 89, 2004 General Session