

# **OREGON LAW COMMISSION PROJECT PROPOSAL**

## **Oregon Uniform Trust Code Proposal**

### **For Submission to the Oregon Law Commission's Program Committee**

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The Oregon State Bar Estate Planning and Administration Section's Executive Committee requests that the Commission's Program Committee recommend to the full Commission the formation of a Work Group to review and make recommendations to improve the Oregon Uniform Trust Code (OUTC).

### **PROBLEM**

The law of trusts in Oregon was overhauled, effective January 1, 2006, with the adoption of much of the Uniform Trust Code. Over the past several years, several additional modifications have been made to the OUTC. However, as lawyers continue to work with the OUTC in practice, a number of problems have surfaced as a result of Oregon's non-uniform adoption of the Uniform Trust Code. In addition, lawyers have identified a number of places where amendments to the OUTC could improve results for people working with or using trusts-- both trustees and beneficiaries. A committee of the Estate Planning and Administration Section of the Oregon State Bar identified a number of issues that should be addressed. Due to the complicated nature of some of the issues, the committee was unable to develop legislation that the Executive Committee of the Section could approve. The Executive Committee thought having a broader group -- a Workgroup of the Oregon Law Commission -- work on appropriate legislation would produce better results.

The following problems with the Oregon Uniform Trust Code have been identified:

1. Requirements of identification or notification of all potential trust beneficiaries throughout the code is burdensome and practically impossible at times. The challenge is that even beneficiaries with contingent interests may want to protect those interests. New legislation will need to balance the interests of beneficiaries with the need for efficient and cost-effective administration. Two suggestions have been made: the creation of a category of remote interest beneficiaries who would not receive notice or expansion of the concept of virtual representation to allow current beneficiaries to represent the interests of certain remote beneficiaries.
2. Cross-reference errors need to be corrected. For example, in ORS 130.020(3)(b) the (d) should be a (c).
3. The committee recommended changing the term "principal place of administration." The discussion on the Executive Committee discussed the fact that this is a term of art in trust law and the term may need to be retained. The question of notice prior to moving the place of administration was also discussed and the policy question of whether notice should occur before or after the move was not resolved.
4. The committee recommended changing the group of beneficiaries who must participate in a nonjudicial settlement agreement in an attempt to limit the number of

- people who must participate. The committee's proposal restricts the beneficiaries who must participate to qualified beneficiaries. The concern addressed is that persons who are not qualified beneficiaries may have such a small and uncertain interest in the trust that they will not be responsive to attempts to modify the trust. The counter-concern is that the change proposed cuts off rights to notice to beneficiaries who may be affected by the modification. The proposal requires the Attorney General to participate in agreements involving charitable interests. The Attorney General needs to be involved in thinking about the best way to protect charitable interests.
5. The committee suggests that certain holders of a general power of a appointment or a limited power of appointment should be given statutory authority to represent and bind persons subject to the power.
  6. The definition of charitable trust should clearly include those that fund charitable activities of other charitable organizations; that is, the present definition could be more specific.
  7. The OUTC does not allow an attorney in fact to represent the interests of an incapacitated settlor even if the authority is included in a power of attorney. This provision represents a policy choice that should be revisited.
  8. The *in terrorem* clause provision in ORS 130.235 could be improved by adding a good faith standard for a fiduciary taking an action that could invoke an *in terrorem* clause (such a clause threatens to disinherit a beneficiary if that beneficiary challenges the term in [court](#)). A change is necessary to protect a trustee acting in good faith.
  9. The OUTC is silent on what happens when a trust is divided into multiple shares, each having separate beneficiaries or separate purposes. An amendment could clarify that the separate shares are new trusts.
  10. A modification of a trust that is made in a settlement agreement should not by itself violate a spendthrift provision of a trust, but the OUTC is silent on this point.
  11. Creditors of the settlor of a trust should not be able to execute on a trust solely because the trust has a discretionary power of the trustee to pay or reimburse the settlor for trust taxes. The creditors' claims provision in ORS 130.315 of the OUTC has no such exception.
  12. A number of other provisions in ORS 130.315 need adjustment to address common estate planning techniques.
  13. The definition of pretermitted child could benefit from further clarification regarding children conceived after the death of the settlor. The distribution scheme used to determine the entitlement of a pretermitted child should also be reviewed. The intestate distribution scheme found in ORS 112.045 perhaps could be used. A number of states have changed their statutes to address the issue of posthumously conceived children and these examples may be useful in thinking about the policy question of whether these children should be included as children (or descendants) of the settlor.
  14. Cotrustees may delegate performance of a function. See ORS 130.610. The procedure, acceptance, revocation, termination, etc. of such delegation could benefit from further clarification in statute.
  15. One of the grounds for removal of a trustee is that removal best serves the interests of all of the beneficiaries. See ORS 130.625(2)(d). The statute provides that the court

- must also find that “removal is not inconsistent with a material purpose.” This requirement should be deleted because the identity of the trustee, by itself, cannot be a material purpose of the trust.
16. A trustee is required to send a report annually to the permissible distributees of trust income and principal and to other qualified beneficiaries who request the report. Sometimes trustees resign or are removed and it is important that a report also be provided for the period of time between the time of the prior report and the occurrence of the vacancy so there is no gap. Such a requirement should be clearer in both ORS 130.630 and 130.710.
  17. There are no standards for setting the compensation of the trustee when there are cotrustees or when the trustee hires third parties (including financial advisors). The OUTC could do a better job to minimize excessive fees when there are multiple fiduciaries.
  18. Modification of a trust may sometimes be in the best interests of the beneficiaries while in keeping with the intent of the settlor. A trustee should not be able to block a proposed modification simply because the trustee wants to continue to serve as trustee. An amendment to the OUTC should provide that the trustee’s duty to administer the trust and the trustee’s duty of loyalty, both of which always exist for the trustee, should not be the sole basis for an objection to a modification.
  19. Several provisions could better address the concern that beneficiaries have notice that is adequate for the beneficiaries to protect their interests.
  20. The OUTC allows for the appointment of an adviser to the trustee. See ORS 130.735. The statutes are silent on authority to provide for succession of advisers and whether the trust instrument may provide a process for removal of advisers. Such authority should be provided.

### **HISTORY OF REFORM EFFORTS**

The Uniform Trust Code was completed by the Uniform Law Commissioners in 2000, and amended in 2001, 2003, 2004 and 2005. The Code has been approved by the American Bar Association (ABA Real Property, Probate and Trust Law Section) and by AARP.

The Code has been enacted in Alabama, Arizona, Arkansas, District of Columbia, Florida, Kansas, Maine, Massachusetts, Michigan, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Vermont, Virginia, West Virginia, and Wyoming. In 2012, the Code has been introduced in Maryland and New Jersey.

In 2002, a 12-person committee began reviewing Oregon’s trust law and the Uniform Trust Code. Professor Valerie Vollmar of Willamette University College of Law and Professor Susan Gary of the University of Oregon School of Law served as co-chairs of this Oregon Uniform Trust Code Study Committee. The Committee’s stated goals were to retain current Oregon law absent a very good reason to change it and promote uniformity among the states by adopting as much of the UTC as seemed desirable. The resulting product of the Committee was a substantial overhaul of the statutes and a complete reorganization of the chapter. The recommendations of the Committee eventually became Senate Bill 275 which was passed during

the 2005 legislative session. The bill was later codified and numbered ORS Chapter 130; it became effective on January 1, 2006.

During 2011 and 2012 a small group of Oregon estate planning attorneys and others met regularly to work on revisions to the Oregon Uniform Trust Code. The group's work resulted in a bill draft (which is attached); the draft (not in LC format) was intended to be submitted for the 2013 legislative session through the Oregon State Bar's Law Improvement Program. However, it was determined during the spring of 2012, that additional work was required in order to resolve differences of opinion on some key issues. After consideration by the Estate Planning and Administration Section's Executive Committee, it was determined that the Law Commission might be an appropriate vehicle for further evaluation and refinement of this OUTC.

### **SCOPE OF PROJECT**

This project is intended to be a comprehensive review and update of The Uniform Trust Code (ORS Chapter 130). Any simplification and modernization of that chapter would be appropriately within the scope of this project. The focus should be on the issues identified in the Problem Section above.

Specifically, and as a starting point, the Law Commission work group should review the attached draft language that was prepared by a group of estate planning attorneys in 2011-2012.

### **LAW COMMISSION INVOLVEMENT**

A central aspect of the Commission's statutory purpose is for it to review Oregon's statutes and offer legislation for modernization and reform. ORS 173.338(1)(a). The Executive Committee of the Oregon State Bar Estate Planning and Administration has requested that the Commission facilitate the task of improving the Oregon Uniform Trust Code. The Commission's statutory mission makes it uniquely positioned as a structured, non-partisan forum that brings together the public and private bars, the courts, stakeholders, and academic representatives to build a consensus when reforms are necessary.

### **PROJECT PARTICIPANTS**

The Estate Planning and Administration section of the Oregon State Bar has recommended that the Law Commission include at least some of the participants of the work group that created the attached draft, along with other stakeholders as the Commission deems appropriate. The members of the workgroup that prepared the current draft included: D. Charles Mauritz (Duffy Kekel/Chair of Estate Planning and Administration Section), Christopher Cline (Wells Fargo Bank), Jeff Thede (Thede Culpepper Moore), John Draneas (Draneas & Huglin PC), Hilary Newcomb (HAN Legal), Robert Saalfeld (Saalfeld Griggs PC), Bill Brewer (Hershner Hunter LLP), and Vanessa Usui (Duffy Kekel LLP). Other practitioners who should be considered for the Law Commission work group include Matthew Whitman (Cartwright, Whitman, Baer PC) and Commissioner Susan Gary (University of Oregon School of Law). A representative of the Oregon Bankers' Association should be considered, and a representative from the Charities Section of the Attorney General's Office should be included as well.

Chapter 130 — Uniform Trust Code  
UNIFORM TRUST CODE

2011 EDITION

**Section 1.**

**130.010 UTC 103. Definitions.** For the purposes of this chapter:

(1) “Ascertainable standard” means an ascertainable standard relating to an individual’s health, education, support or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code, as in effect on January 1, 2006.

(2) “Beneficiary” means a person that:

(a) Has a present or future beneficial interest in a trust, whether vested or contingent; or

(b) Holds a power of appointment over trust property in a capacity other than that of trustee.

(3) “Charitable trust” means a trust, or portion of a trust, described in ORS 130.170 (1).

(4) “Conservator” means a person appointed by a court to administer the estate of a minor or adult individual.

(5) “Environmental law” means a federal, state or local law, rule, regulation or ordinance relating to protection of the environment.

(6) “Financial institution” has the meaning given that term in ORS 706.008.

(7) “Financially incapable” has the meaning given that term in ORS 125.005. “Financially capable” means not financially incapable.

(8) “Guardian” means a person appointed by a court to make decisions regarding the support, care, education, health and welfare of a minor or adult individual. “Guardian” does not include a guardian ad litem.

(9) “Interests of the beneficiaries” means the beneficial interests provided in the terms of a trust.

(10) “Permissible distributee” means a beneficiary who is currently eligible to receive distributions of trust income or principal, whether the distribution is mandatory or discretionary.

(11) “Person” means an individual, corporation, business trust, partnership, limited liability

company, association, joint venture, public body as defined in ORS 174.109 or any other legal or commercial entity.

(12) “Power of withdrawal” means a presently exercisable general power of appointment, other than a power exercisable by a trustee that is limited by an ascertainable standard or that is exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(13) “Property” means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(14) “Qualified beneficiary” means a beneficiary who:

(a) Is a permissible distributee on the date the beneficiary’s qualification is determined;

(b) Would be a permissible distributee if the interests of all permissible distributees described in paragraph (a) of this subsection terminated on the date the beneficiary’s qualification is determined; or

(c) Would be a permissible distributee if the trust terminated on the date the beneficiary’s qualification is determined.

(15) “Revocable trust” means a trust that can be revoked by the settlor without the consent of the trustee or a person holding an adverse interest.

~~—(16) “Remote interest beneficiary” means a beneficiary of a trust, other than a qualified beneficiary, who has an actuarial probability of less than 3% of becoming a qualified beneficiary. The determination of the actuarial probability of a remainder interest becoming a qualified beneficiary shall be determined pursuant to section 2031(a) of the Internal Revenue Code, as in effect on \_\_\_\_\_, and the Regulations promulgated thereunder.~~

(17) “Settlor” means a person, including a testator, who creates a trust or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person’s contribution and of the portion as to which that person has the power to revoke or withdraw.

~~(18)~~ “Spendthrift provision” means a term of a trust that restrains both voluntary and involuntary transfer of a beneficiary’s interest.

~~(19)~~ “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. “State” includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

~~(20)~~ “Terms of a trust” means the manifestation of the settlor’s intent regarding a trust’s provisions as expressed in the trust instrument or as may be established by other evidence that

would be admissible in a judicial proceeding.

(~~2021~~) “Trust instrument” means an instrument executed by a settlor that contains terms of the trust, including any amendments to the instrument.

(~~2122~~) “Trustee” means an original trustee, an additional trustee, a successor trustee or a cotrustee.

## Section 2.

**130.020 UTC 105. Default and mandatory rules.** (1) Except as otherwise provided in the terms of the trust, this chapter governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(2) The terms of a trust prevail over the provisions of this chapter except:

(a) The requirements of ORS 130.150 to 130.190 governing the creation of a trust.

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

(c) The requirement that a trust and the terms of a trust be for the benefit of the trust beneficiaries, and that the trust have a purpose that is lawful, not contrary to public policy and possible to achieve.

(d) The power of the court to modify or terminate a trust under ORS 130.195 to 130.225.

(e) The effect of a spendthrift provision and the rights of creditors and assignees to reach interests in a trust as provided in ORS 130.300 to 130.325.

(f) The power of the court under ORS 130.605 to require, dispense with, modify or terminate a bond.

(g) The power of the court under ORS 130.635 (2) to adjust a trustee’s compensation specified in the terms of the trust if the compensation is unreasonably low or high.

(h) Subject to subsection (3) of this section, the duty under ORS 130.710 (2)(b) and (c) to notify qualified beneficiaries of an irrevocable trust of the existence of the trust, of the identity of the trustee and of their right to request trustee reports.

(i) Subject to subsection (3) of this section, the duty under ORS 130.710 (1) to respond to the request of a qualified beneficiary of an irrevocable trust for trustee reports and other information reasonably related to the administration of a trust.

(j) The effect of an exculpatory term under ORS 130.835.

(k) The rights under ORS 130.845, 130.850, 130.855 and 130.860 of a person other than a

trustee or beneficiary.

(L) Periods of limitation for commencing a judicial proceeding.

(m) The power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice.

(n) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in ORS 130.060 and 130.065.

(3) Except as provided in subsection (4) of this section, the settlor, in the trust instrument or in another writing delivered to the trustee, may waive or modify the duties of a trustee under ORS 130.710 to give notice, information and reports to qualified beneficiaries by:

(a) Waiving or modifying those duties during the period that either the settlor is alive and financially capable, or the settlor's spouse, if a qualified beneficiary, is alive and financially capable; or

(b) Designating a person or persons to act in good faith to protect the interests of qualified beneficiaries and to receive any notice, information or reports required under ORS 130.710 (1), (2)(b) to ~~(d)~~ and (3) in lieu of providing the notice, information or reports to the qualified beneficiaries.

(4) All reports under ORS 130.710 (3) that contain information relating to termination of the trust must be provided to the qualified beneficiaries and to any person or persons designated under subsection (3)(b) of this section.

### Section 3.

**130.022 UTC 108. ~~Principal place~~Place of administration.** (1) Terms of a trust designating the ~~principal~~ place of administration are valid and controlling if:

~~—(a) A trustee's principal place of business is located in the designated state, country or other jurisdiction, or the trustee is a resident of the designated state, country or other jurisdiction;~~

~~—(b)~~ (a) All or part of the administration occurs in the designated state, country or other jurisdiction; or

(eb) Other means exist for establishing a sufficient connection with the designated state, country or other jurisdiction.

(2) A trustee is under a continuing duty to administer the trust at a place appropriate to the trust's purposes, the trust's administration and the interests of the beneficiaries. Absent a substantial change of circumstances, the trustee may assume that the original place of administration is also the appropriate place of administration. The duty to administer the trust at an appropriate place may prevent a trustee from moving the place of administration.

(3)(a) A trustee may transfer the trust's ~~principal~~ place of administration to another state, country or other jurisdiction if the transfer is in furtherance of the duty imposed by subsection (2) of this section.

(b4) A trustee shall promptly notify the qualified beneficiaries of ~~the trust of a proposed~~ transfer of the trust's ~~principal~~ place of administration ~~not fewer than 60 days before initiating either immediately preceding or following~~ the transfer. The notice of ~~proposed~~ transfer must include all of the following:

(Aa) The name of the new state, country or other jurisdiction ~~to which of~~ the ~~principal~~ place of administration ~~is to be transferred~~;

(Bb) The address and telephone number at the new location at which the trustee can be contacted;

(Cc) An explanation of the reasons for the ~~proposed~~ transfer; and

(Dd) The effective date ~~on which of~~ the ~~proposed~~ transfer ~~is anticipated to occur~~.

~~—(E) The date by which the qualified beneficiary must notify the trustee of an objection to the proposed transfer. The date for notifying a trustee of an objection may not be fewer than 60 days after the date on which the notice is given.~~

~~—(c) The authority of a trustee under this subsection to transfer a trust's principal place of administration terminates if a qualified beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.~~

~~—(d) The trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust or appointed pursuant to ORS 130.615 in connection with a transfer of the trust's principal place of administration. [2005 c.348 §8]~~

#### Section 4.

**130.040 UTC 110. Other persons treated as qualified beneficiaries.** (1) A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this chapter if the charitable organization is otherwise a qualified beneficiary as defined in ORS 130.010.

(2) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in ORS 130.185 or 130.190 has the rights of a qualified beneficiary under this chapter.

(3) The Attorney General has the rights of a qualified beneficiary with respect to a charitable trust having its ~~principal~~ place of administration in Oregon. [2005 c.348 §10; 2009 c.275 §5]

## Section 5.

**130.045 UTC 111. Nonjudicial settlement agreements.** (1) For purposes of this section, ~~“interested persons” means any settlor of a trust who is living, all beneficiaries of the trust who have an interest in the subject of the agreement, any acting trustee of the trust, and the Attorney General if the trust is a charitable trust subject to the enforcement or supervisory powers of the state or the Attorney General under the provisions of ORS 128.610 to 128.750.~~

(a) “Interested persons” means any settlor of a trust who is living, any acting trustee of the trust, all qualified beneficiaries, and the Attorney General if the trust is a charitable trust.

(b) If the trust is a charitable trust, is irrevocable, and the settlor retains a power to change the charitable beneficiaries during the settlor’s lifetime or at the settlor’s death, the Attorney General shall be substituted as the sole interested person to represent all existing qualified and potentially qualified charitable beneficiaries of the trust whose beneficial interests are subject to the settlor’s retained power.

(2) Except as otherwise provided in subsection (3) of this section, interested persons may enter into a ~~binding~~ nonjudicial settlement agreement with respect to any matter involving a trust. The settlement agreement is binding on all parties to the agreement regardless of whether the agreement is filed with the court under subsection (5)(a) of this section.

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

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

(a) The interpretation or construction of the terms of the trust or other writings that affect the trust.

(b) The approval of a trustee’s report or accounting.

(c) Direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power.

(d) The resignation or appointment of a trustee or cotrustee and the determination of a trustee’s compensation.

(e) Transfer of a trust’s ~~principals~~situs or place of administration.

(f) Liability of a trustee for an action or failure to act relating to the trust.

(g) Determining classes of creditors, beneficiaries, heirs, next of kin or other persons.

(h) Resolving disputes arising out of the administration or distribution of the trust.

(i) Modifying the terms of the trust, including extending or reducing the period during which the trust operates.

(5)(a) Any interested person may file a settlement agreement entered into under this section, or a memorandum summarizing the provisions of the agreement, with the circuit court for any county where trust assets are located or where the trustee administers the trust.

(b) After collecting the fee provided for in subsection (7) of this section, the clerk shall enter the agreement or memorandum of record in the court's register.

(c) Within five days after the filing of an agreement or memorandum under this subsection, the person making the filing must serve a notice of the filing and a copy of the agreement or memorandum on each ~~person interested in~~beneficiary of the trust whose address is known at the time of the filing and who is not a party to the agreement. Service may be made personally, or by registered or certified mail, return receipt requested. The notice of filing shall be substantially in the following form:

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CAPTION  
OF CASE

NOTICE OF FILING OF  
SETTLEMENT AGREEMENT  
OR MEMORANDUM OF  
SETTLEMENT AGREEMENT

You are hereby notified that the attached document was filed by the undersigned in the above entitled court on the \_\_\_\_ day of

\_\_\_\_, \_\_\_\_\_. Unless you file objections to the agreement within ~~120~~60 days after that date, the agreement will be approved and will be binding on all ~~persons interested in the trust~~beneficiaries.

If you file objections within the ~~120~~60-day period, the court will fix a time and place for a hearing. At least 10 days before the date of that hearing, you must serve a copy of your objections and give notice of the time and place of the hearing to all ~~persons interested in the trust~~beneficiaries. See ORS 130.045.

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Signature

(d) Proof of mailing of the notices required under this subsection must be filed with the court. Proof of service may be made by a certificate of service in the form provided by ORCP 7 F, by a signed acceptance of service or by a return receipt from the postal authorities.

(e) If no objections are filed with the court within ~~120~~60 days after the filing of the agreement or memorandum, the agreement is effective and binding on all persons ~~interested in the trust~~receiving notice under subsection (5)(C) of this section.

(6)(a) If objections are filed with the court within ~~120~~60 days after the filing of a settlement agreement or memorandum under this section, the clerk of the court shall collect the fee provided in subsection (7) of this section. Upon the filing of objections, the court shall fix a time and place for a hearing. The person filing the objections must serve a copy of the objections on all ~~persons interested in the trust~~beneficiaries who are parties to the agreement and any beneficiary receiving notice pursuant to subsection (5)(c) of this section and give notice to those persons of the time and place fixed by the court for a hearing. Service must be made at least 10 days before the date set by the court for the hearing. Service of the objections may be made personally or by registered or certified mail, return receipt requested.

(b) Proof of mailing of objections must be filed with the court. Proof of service may be made by a certificate of service in the form provided by ORCP 7 F, by a signed acceptance of service or by a return receipt from the postal authorities.

(c) The court shall approve an agreement entered into under this section after a hearing upon objections filed under this subsection unless:

(A) The agreement does not reflect the signatures of all interested persons required by this section;

(B) The agreement is not authorized by this section; or

(C) Approval of the agreement would not be equitable to beneficiaries who are not interested persons and who are not parties to the agreement.

(d) An agreement approved by the court after a hearing is binding on all ~~persons interested in beneficiaries of~~ the trust.

(e) ~~Persons interested in the trust~~All interested persons and all beneficiaries entitled to notice pursuant to subsection (5)(c) of this section may waive the notice required under subsection (5)(c) of this section. If all such persons ~~interested in the trust~~ waive the notice, the agreement is effective and binding on all such persons ~~interested in the trust~~ upon filing of the agreement or memorandum with the court.

(7) The clerk of the circuit court shall collect in advance the filing fees established under ORS 21.135 for the filing of an agreement or memorandum of agreement under subsection (5) of this section and for the filing of objections under subsection (6) of this section.

#### Section 6.

**130.055 UTC 202. Jurisdiction over trustee and beneficiary.** (1) By accepting the trusteeship of a trust having its ~~principal~~ place of administration in Oregon or by moving the ~~principal~~ place of administration to this state, the trustee submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

(2) The beneficiaries of a trust having its ~~principal~~ place of administration in Oregon are subject to the jurisdiction of the courts of Oregon regarding any matter involving the beneficiaries' interests in the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of this state regarding any matter involving the trust.

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

#### Section 7.

**130.065 UTC 204. Venue.** (1) Except as otherwise provided in this section, venue for a judicial proceeding involving a trust is in the county in which the trust's ~~principal~~ place of administration is or will be located.

(2) If a trust is created by will and the estate is not yet closed, venue for a judicial proceeding involving a trust is in the county in which the decedent's estate is being administered.

(3) If a trust has no trustee, venue for a judicial proceeding for the appointment of a trustee is in a county in which a beneficiary resides, in a county in which any trust property is located and, if the trust is created by will, in the county in which the decedent's estate was or is being administered. [2005 c.348 §15]

#### Section 8.

**130.110 UTC 303. Representation by fiduciaries ~~and~~ parents, and power holders.** To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

(1) A conservator may represent and bind the estate that the conservator controls;

(2) An agent having authority to act with respect to the particular question or dispute may represent and bind the principal;

(3) A trustee may represent and bind the beneficiaries of the trust;

(4) A personal representative of a decedent's estate may represent and bind persons interested in the estate; and

(5) A parent may represent and bind the parent's minor or unborn child if a conservator for the child has not been appointed.

(6) The holder of a general power of appointment, exercisable either during the power holder's lifetime or at death, or a limited power of appointment, exercisable either during the power holder's lifetime or at death, that excludes as possible appointees only the power holder, his or her estate, his or her creditors, or the creditors of his or her estate, may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

## Section 9.

**130.170 UTC 405. Charitable ~~purposes~~ trusts; enforcement.** (1) A charitable trust is a trust ~~that:~~

(a) Expressly designates one or more charitable organizations, or one or more classes of charitable organizations, to receive distributions as beneficiaries of the trust, unless the combined interests of all charitable beneficiaries do not constitute more than the interest of a remote interest beneficiary; or

(b) is created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes beneficial to the community. ~~A trust is not a charitable trust if, unless~~ the trust contains contingencies that make the charitable interest negligible.

(2) If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent that intent can be ascertained.

(3) The settlor of a charitable trust, in addition to other persons authorized by law or the trust instrument, may maintain a proceeding to enforce the trust.

(4) A court may modify or terminate ~~any trust of property for a~~ charitable ~~purposes~~ trust only if the Attorney General is a party to the proceedings.

## Section 10.

**130.195 UTC 410. Modification or termination of trust; proceedings for approval or disapproval.** (1) In addition to the methods of termination prescribed by ORS 130.~~045~~, 130.200, 130.205, 130.210 and 130.215, a trust terminates:

(a) To the extent the trust is revoked or expires pursuant to the terms of the trust;

(b) If no purpose of the trust remains to be achieved; or

(c) To the extent one or more of 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 ORS 130.045, 130.200, 130.205, 130.210, 130.215, 130.220 and 130.225, or trust combination or division under ORS 130.230, may be commenced by a trustee or beneficiary. A proceeding to approve or disapprove a proposed modification or termination under ORS 130.200 may be commenced by the settlor. The settlor of a charitable trust may maintain a proceeding to modify the trust under ORS 130.210.

#### Section 11.

**130.200 UTC 411. Modification or termination of irrevocable trust by consent.** (1) An irrevocable trust may be modified or terminated with approval of the court upon consent of the settlor and all beneficiaries who are not remote interest beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust. The Attorney General must consent to any modification or termination of a charitable trust. A settlor's power to consent to a trust's modification or termination may be exercised by:

(a) An agent or attorney-in-fact under a power of attorney only to the extent expressly authorized by the terms of the trust or the power of attorney;

(b) The settlor's conservator with the approval of the court supervising the conservatorship if an agent or attorney-in-fact is not authorized by the terms of the trust or the power of attorney; or

(c) The settlor's guardian with the approval of the court supervising the guardianship if an agent or attorney-in-fact is not authorized by the terms of the trust or the power of attorney and a conservator has not been appointed.

(2) An irrevocable trust may be terminated upon consent of all ~~of the~~ beneficiaries who are not remote interest beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. An irrevocable trust may be modified upon consent of all ~~of the~~ beneficiaries who are not remote interest beneficiaries if the court concludes that the modification is not inconsistent with a material purpose of the trust. The Attorney General must consent to any modification or termination of a charitable trust.

(3) For the purposes of subsections (1) and (2) of this section, a spendthrift provision in the terms of the trust is rebuttably presumed to constitute a material purpose of the trust.

(4) Upon termination of a trust under subsection (1) or (2) of this section, the trustee shall distribute the trust property as agreed to by the beneficiaries and, in the case of a charitable trust requiring the Attorney General's consent, as agreed to by the Attorney General.

(5) A proposed modification or termination of the trust under subsection (1) or (2) of this section may be approved by the court without the consent of all remote interest beneficiaries if the court finds that:

(a) If all ~~of the~~remote interest beneficiaries had consented, the trust could have been modified or terminated under this section; and

(b) The interests of any beneficiary who does not consent will be adequately protected.

(6) A binding nonjudicial settlement agreement relating to modification or termination of a trust may be entered into by all interested persons, as defined in ORS 130.045.

## Section 12.

**130.215 UTC 414. Modification or termination of uneconomic trust.** (1) After notice to the qualified beneficiaries, a trustee may terminate a trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration. A trustee may not terminate a trust under this section if the trustee is a beneficiary of the trust but is not a remote interest beneficiary, or has a duty of support for a qualified beneficiary of the trust.

(2) The court may modify or terminate a trust, or remove the trustee and appoint a different trustee, if the court finds 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.

## Section 13.

**130.235 In terrorem clause.** (1) Except as provided in this section, an in terrorem clause in a trust is valid and enforceable. If a beneficiary challenges a trust that contains an in terrorem clause that applies to the beneficiary, the court shall enforce the clause against the beneficiary even though the beneficiary establishes that there was probable cause for the challenge.

(2) The court shall not enforce an in terrorem clause if the beneficiary challenging the trust establishes that the beneficiary has probable cause to believe that the trust is a forgery or that the trust has been revoked.

(3) The court shall not enforce an in terrorem clause if the challenge is brought in good faith by a fiduciary acting on behalf of a protected person under the provisions of ORS chapter 125, a guardian ad litem appointed for a minor or a guardian ad litem appointed for an incapacitated or financially incapable person.

(4) For the purposes of this section, “in terrorem clause” means a provision in a trust that reduces or eliminates the interest of a beneficiary under the trust if the beneficiary challenges the validity of part or all of the trust.

#### Section. 14.

**ORS 130.\*\*\*. Trust division.** For purposes of this chapter, if the occurrence of an event, satisfaction of a condition, or exercise of a power allows or creates an obligation for the trustee to divide a trust or any portion of a trust into separate shares or portions for the benefit of separate beneficiaries.

(a) each share resulting from the division of the trust will be deemed to be a new trust for the sole benefit of its beneficiaries;

(b) all of the terms of the trust instrument will be applied independently to each new trust except as terms are specifically limited in the trust instrument; and

(c) the trust or portion of the trust from which the new trust originates will be deemed to terminate to the extent of the new trust, subject only the proper administration of the terminated trust occasioned by the terminating event, condition, or exercise.

#### Section 15.

**130.305 UTC 502. Spendthrift provision.** (1) A spendthrift provision is valid only if the provision restrains both voluntary and involuntary transfer of a beneficiary’s interest.

(2) A term of a trust providing that the interest of a beneficiary is held subject to a spendthrift trust, or words of similar import, is sufficient to restrain both voluntary and involuntary transfer of the beneficiary’s interest.

(3) A beneficiary may not transfer an interest in a trust in violation of a valid spendthrift provision. Except as otherwise provided in ORS 130.300 to 130.325, a creditor or assignee of a beneficiary may not reach the interest of a beneficiary or a distribution by the trustee before the distribution is received by the beneficiary. A settlement agreement entered into under ORS 130.045 is not, by itself, a transfer in violation of a valid spendthrift provision.

#### Section 16.

**130.310 UTC 503. Exceptions to spendthrift provisions.** (1) As used in this section, “child” means any individual for whose benefit a judgment, court order or administrative order for child support has been entered in any state, country or other jurisdiction.

(2) Even if a trust contains a spendthrift provision, the holder of a judgment, court order or administrative order against a beneficiary for support or maintenance of the beneficiary’s child, spouse or former spouse or a judgment creditor who has provided services for the protection of a beneficiary’s interest in the trust, may obtain an order from a court of this state authorizing

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garnishment or other execution against present or future distributions to or for the benefit of the beneficiary. The court may issue an order authorizing execution against such amount as the court determines to be equitable under the circumstances but not more than the amount the trustee ~~would have been~~ required to distribute to or for the benefit of the beneficiary. Distributions subject to execution under this subsection include distributions required by the express terms of the trust, such as mandatory payments of income, and distributions the trustee has otherwise decided to make, such as through the exercise of discretion.

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

## Section 17.

**130.315 UTC 505. Creditor's claim against settlor.** (1) Whether or not the terms of a trust contain a spendthrift provision:

(a) During the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors.

(b) A creditor or assignee of the settlor of an irrevocable trust may reach the maximum amount that can be distributed to or for the settlor's benefit. If an irrevocable trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the settlor's interest in the portion of the trust attributable to that settlor's contribution.

(c) If a trust was revocable at the settlor's death, the property of the trust becomes subject to creditors' claims as provided in ORS 130.350 to 130.450 when the settlor dies. The payment of claims is subject to the settlor's right to direct the priority of the sources from which liabilities of the settlor are to be paid.

(d) Notwithstanding the provisions of section (b) of this subsection, the assets of an irrevocable trust may not be subject to the claims of an existing or subsequent creditor or assignee of the settlor, in whole or in part, solely because of the existence of a discretionary power granted to the trustee by the terms of the trust, or any other provision of law, to pay directly to the taxing authorities or to reimburse the settlor for any tax on trust income or principal that is payable by the settlor under the law imposing such tax.

(2) For the purpose of creditors' claims, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent property of the trust is subject to the power. The provisions of this subsection apply to the holder of a power of withdrawal only during the period that the power may be exercised.

(3) Upon the lapse, release or waiver of a power of withdrawal, the property of the trust that is the subject of the lapse, release or waiver becomes subject to claims of creditors of the holder of the power only to the extent the value of the property exceeds the ~~greater~~ greatest of:

(a) the amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code, as in effect on January 1, 2006, or section 2503(b) of the Internal Revenue Code, as in effect on January 1, 2006;

—(4) (b) the amount specified in section 2503(b) of the Internal Revenue Code, as in effect on \_\_\_\_\_; or

(c) two times the amount specified in § 2503(b) of the Internal Revenue Code, as in effect on \_\_\_\_\_, if the donor was married at the time of the transfer to which the power of withdrawal applies.

(4) The assets of an irrevocable trust that are attributable to a contribution to an inter vivos marital deduction trust described in either section 2523(e) or (f) of the Internal Revenue Code, as in effect on \_\_\_\_\_, after the death of the spouse of the settlor of the inter vivos marital deduction trust shall be deemed to have been contributed by the settlor's spouse and not by the settlor.

(5) The assets of an irrevocable trust for the benefit of a person, including the settlor, are not subject to claims of creditors of the settlor to the extent that the property of the trust is subject to a presently exercisable general power of appointment held by a person other than the settlor.

(6) Subsections (2) and (3) of this section do not apply to a person other than a settlor who is a beneficiary of a revocable or irrevocable trust and who is also a trustee of the trust, if the power to withdraw for the person's own benefit is limited by an ascertainable standard.

## Section 18.

**130.525 Applicability of ORS 130.520 to 130.575.** (1) ORS 130.520, 130.530 and 130.535 apply only to a trust, or a portion of a trust, that comes into existence during the settlor's lifetime and is a revocable trust on the occurrence of any of the events described in such sections and before the death of the settlor.

(2) ORS 130.540 and 130.575 apply only to a trust, or a portion of a trust, that comes into existence during the settlor's lifetime and ~~is~~ was a revocable trust at ~~any~~ the time ~~after the trust was created and before the death of the settlor.~~ settlor's death.

## Section 19.

**130.555 Children born or adopted after execution of trust instrument.** (1) As used in this section, "pretermitted child" means a child of a settlor who ~~is born or adopted~~, after the execution of the trust instrument, ~~who is adopted during the lifetime of the settlor or is born during the lifetime or is in gestation at the death of the settlor~~, is not ~~provided for in the trust~~ acknowledged or mentioned, ~~either by name or class~~, in the trust instrument ~~or in the settlor's will~~, and who survives the settlor.

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(2) If a settlor has one or more children living when the settlor executes a trust instrument and no provision is made in the trust for any of those children, a pretermitted child is not entitled to any share of the trust estate.

(3) If a settlor has one or more children living when the settlor executes a trust instrument and provision is made in the trust for any of those children, a pretermitted child is entitled to share in the trust estate as follows:

(a) The pretermitted child may share only in the portion of the trust estate intended to benefit living children.

(b) The share of each pretermitted child is equal to the total value of the portion of the trust estate intended to benefit the living children divided by the number of pretermitted children plus the number of living children for whom provision, other than nominal provision, is made in the trust.

(c) To the extent possible, the interest of each pretermitted child in the trust estate shall be of the same character, whether equitable or legal, as the interest the settlor gave to the living children under the trust.

(4) If a settlor has no child living when the settlor executes a trust instrument, a pretermitted child is entitled to at the following share of the trust estate ~~as though the settlor had died intestate and had not executed the trust instrument.~~

(a) If the settlor dies leaving a surviving spouse and all pretermitted children are the issue of such spouse, the pretermitted children are not entitled to any share of the trust estate.

(b) If the settlor dies leaving a surviving spouse and not all pretermitted children are the issue of such spouse, the pretermitted children, as a class, are entitled to one-quarter of the trust estate.

(c) If the settlor dies without leaving a surviving spouse, the pretermitted children are entitled to the entire trust estate.

(5) A pretermitted child may recover the share of the trust estate to which the child is entitled as follows:

(a) If the pretermitted child is entitled to a share of the trust estate under subsection (3) of this section, the share must be recovered from the other children.

(b) If the pretermitted child is entitled to a share of the trust estate under subsection (4) of this section, the share must be recovered from the beneficiaries on a pro rata basis, out of the portions of the trust estate passing to those persons under the trust.

(c) In reducing the shares of the beneficiaries under this subsection, the character of the dispositive plan adopted by the settlor in the trust must be preserved to the extent possible.

## Section 20.

**130.610 UTC 703. Cotrustees.** (1) Cotrustees who are unable to reach a unanimous decision may act by majority decision.

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

(3) A cotrustee must participate in the performance of a trustee's function unless:

(a) The cotrustee is unavailable to perform the function because of absence, illness or disqualification under other law;

(b) The cotrustee is unavailable to perform the function because the cotrustee is temporarily financially incapable; or

(c) The cotrustee has ~~properly~~ delegated the performance of the function to another trustee pursuant to subsection (5) of this section.

(4) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law or temporary financial incapability, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(5) Except as prohibited in the terms of the trust, a cotrustee may delegate ~~to a cotrustee the performance of a function. Unless a delegation was irrevocable, a cotrustee may revoke any delegation the performance of a function to another cotrustee, and such other cotrustee may accept the delegation of the performance of such function. The delegation and the acceptance must be in writing. A delegation shall remain in effect until it terminates by its terms, is revoked in writing by the cotrustee making the delegation, or terminated in writing by the cotrustee accepting the delegation.~~

(6) Except as otherwise provided in subsection (7) of this section, a cotrustee who does not join in an action of another cotrustee is not liable for the action.

(7) Each cotrustee shall exercise reasonable care to:

(a) Prevent a cotrustee from committing a serious breach of trust; and

(b) Compel a cotrustee to redress a serious breach of trust.

(8) A dissenting cotrustee who joins in an action at the direction of the majority of the cotrustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

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## Section 21.

**130.615 UTC 704. Vacancy in trusteeship; appointment of successor.** (1) A vacancy in a trusteeship occurs if:

- (a) A person designated as trustee rejects the trusteeship;
- (b) A person designated as trustee cannot be identified, cannot be located or does not exist;
- (c) A trustee resigns;
- (d) A trustee is disqualified or removed;
- (e) A trustee dies; or
- (f) A guardian or conservator is appointed for an individual serving as trustee.

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

(3) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

- (a) By a person designated in the terms of the trust to act as successor trustee;
- (b) By a person appointed by unanimous agreement of the qualified beneficiaries; or
- (c) By a person appointed by the court.

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

- (a) By a person designated in the terms of the trust to act as successor trustee;
- (b) By a person appointed by unanimous agreement of ~~the charitable organizations expressly designated to receive distributions under the terms of the trust, all noncharitable~~all qualified beneficiaries and the Attorney General; or
- (c) By a person appointed by the court.

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

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## Section 22.

**130.625 UTC 706. Removal of trustee.** (1) The settlor, a cotrustee or a beneficiary may request that a court remove a trustee, or a trustee may be removed by a court on its own motion.

(2) A court may remove a trustee if the court finds:

- (a) The trustee has committed a serious breach of trust;
- (b) Lack of cooperation among cotrustees substantially impairs the administration of the trust;
- (c) Removal of the trustee best serves the interests of the beneficiaries because the trustee is unfit or unwilling, or has persistently failed to administer the trust effectively; or

(d) Removal of the trustee best serves the interests of all of the beneficiaries and:

(A) There has been a substantial change of circumstances or removal has been requested by all of the qualified beneficiaries; and

~~—(B) Removal is not inconsistent with a material purpose of the trust; and~~

~~—(C) (B)~~ A suitable cotrustee or successor trustee is available.

(3) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under ORS 130.800 (2) as may be necessary to protect the trust property or the interests of the beneficiaries.

## Section 23.

**130.630 UTC 707. Delivery of property by former trustee.** (1) Unless a cotrustee remains in office or the court otherwise orders, a trustee who has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property until the trust property is delivered to a successor trustee or other person who is entitled to the property.

(2) A trustee who has resigned or been removed shall proceed expeditiously to deliver any trust property in the trustee's possession to the cotrustee, successor trustee or other person who is entitled to the property; and shall send a report as provided in ORS 130.710(3).

## Section 24.

**130.635 UTC 708. Compensation of trustee.** (1) If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.

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

(a) The duties of the trustee are substantially different from those contemplated when the trust was created; or

(b) The compensation specified by the terms of the trust would be unreasonably low or high.

(3) If more than one trustee is serving and the terms of the trust do not specify the trustee's compensation, the compensation paid to all trustees under this section shall be based on the total services provided by all trustees.

(4) If the terms of a trust do not specify the trustee's compensation, the fees paid to third parties (including, but not limited to, financial advisors) performing trustee functions shall be taken into account in determining reasonable trustee compensation under this section.

#### **Section 25.**

**130.650 UTC 801. Duty to administer trust.** (1) 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 chapter.

(2) A trustee's duty to administer the trust under subsection 1 of this section may not be the sole basis on which the trustee objects to a modification or termination of the trust under ORS 130.045, 130.200, 130.205, 130.210, 130.215, 130.220 and 130.225, or a trust combination or division under ORS 130.230.

#### **Section 26.**

**130.655 UTC 802. Duty of loyalty.** (1) A trustee shall administer the trust solely in the interests of the beneficiaries.

(2) Subject to the rights of persons dealing with or assisting the trustee as provided in ORS 130.855, a sale, encumbrance or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or that is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

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

(b) The transaction was approved by a court;

(c) The beneficiary did not commence a judicial proceeding within the time allowed by ORS 130.820;

(d) The beneficiary consented to the trustee's conduct, ratified the transaction or released the trustee in the manner provided by ORS 130.840; or

(e) The transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(3) A sale, encumbrance or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between the personal and fiduciary interests of the trustee if it is entered into by the trustee with:

(a) The trustee's spouse;

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

(c) An agent or attorney of the trustee; or

(d) A corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(4) Unless a trustee can establish that the transaction was fair to the beneficiary, a transaction between a trustee and a beneficiary that does not concern trust property but from which the trustee obtains an advantage is voidable by the beneficiary if the transaction occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary.

(5) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(6) An investment by a trustee in securities of an investment company or an investment trust to which the trustee, or an affiliate of the trustee, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor rule of ORS 130.750 to 130.775. In addition to compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee at least annually shall give notice of the rate and method by which that compensation was determined to the persons entitled under ORS 130.710 to receive a copy of the trustee's annual report.

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

(8) This section does not preclude the following transactions, if fair to the beneficiaries:

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

(b) Payment of reasonable compensation to the trustee;

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

(d) A deposit of trust money in a financial institution operated by the trustee;

(e) An advance by the trustee of money for the protection of the trust;

(f) An advance by the trustee of money to the trust for the payment of expenses, losses or liabilities sustained by the trustee in the administration of the trust or by reason of owning or possessing any trust assets; or

(g) A loan to the trustee for the protection of the trust, or for the payment of expenses, losses or liabilities sustained by the trustee in the administration of the trust or by reason of owning or possessing any trust assets. A loan under this paragraph may be from a lender operated by, or affiliated with, the trustee.

~~—(9) (9) A trustee's duty of loyalty under this section may not be the sole basis on which the trustee objects to a modification or termination of the trust under ORS 130.045, 130.200, 130.205, 130.210, 130.215, 130.220 and 130.225, or a trust combination or division under ORS 130.230.~~

~~(10)~~ The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

## Section 27.

**130.710 UTC 813. Duty to inform and report.** (1) A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for those beneficiaries to protect their interests. If reasonable under the circumstances, a trustee may respond to a request for information related to the administration of the trust from a beneficiary who is not a qualified beneficiary.

(2)(a) Upon request of a qualified beneficiary, a trustee shall promptly furnish to the qualified beneficiary a copy of the trust instrument.

(b) Within a reasonable time after accepting a trusteeship, a trustee shall notify all qualified beneficiaries of the acceptance and of the trustee's name, address and telephone number.

(c) Except as provided in subsection (10) of this section, within a reasonable time after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death

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of the settlor or otherwise, the trustee shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument and of the right to a trustee's report as provided in subsection (3) of this section.

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

(3) Except as provided in subsection (10) of this section, a trustee shall send a trustee report, at least annually and upon termination of the trust, to the permissible distributees of trust income or principal and to other qualified beneficiaries who request the report. The report must include a listing of trust property and liabilities, and must show the market values of trust assets, if feasible. The report must reflect all receipts and disbursements of the trust, including the source and amount of the trustee's compensation. Upon a vacancy in a trusteeship, including a vacancy resulting from a resignation or removal of a trustee, unless a cotrustee remains in office, a trustee report for the period from the prior report through the time of vacancy must be sent to the qualified beneficiaries by the former trustee. A personal representative, conservator or guardian may send the qualified beneficiaries a trustee report on behalf of a deceased or financially incapable trustee.

(4) A qualified beneficiary may waive the right to a trustee report or other information otherwise required to be furnished under this section. A qualified beneficiary may withdraw a waiver at any time for the purpose of future reports and other information.

(5) A trustee may charge a reasonable fee to a beneficiary for providing information under this section.

(6) A beneficiary's request for any information under this section must be with respect to a single trust that is sufficiently identified to enable the trustee to locate the trust's records.

(7) If the trustee is bound by any confidentiality restrictions regarding a trust asset, any beneficiary eligible under this section to receive information about that asset must agree to be bound by the same confidentiality restrictions before receiving the information.

(8) Despite any other provision of this section, information, notice and reports required by this section shall be given only to the settlor's spouse if:

- (a) The spouse survives the settlor;
- (b) The spouse is financially capable;
- (c) The spouse is the only permissible distributee of the trust; and
- (d) All of the other qualified beneficiaries of the trust are descendants of the spouse.

(9) Notwithstanding any other provision of this section, while the settlor of a revocable trust is alive, beneficiaries other than the settlor have no right to receive notice, information or reports under this section.

(10) A trustee need not provide a qualified beneficiary with the notice of the right to a trustee's report under subsection (2)(c) of this section, and need not send trustee reports to the beneficiary under subsection (3) of this section, until six months after a revocable trust becomes irrevocable if the beneficiary's only interest in the trust is a distribution of a specific item of property or distribution of a specific amount of money. The trustee must provide the notice of the right to a trustee's report required by subsection (2)(c) of this section at the end of the six-month period if the beneficiary has not received distribution of the specific item of property or specific amount of money before the end of the period. If notice is provided to a qualified beneficiary under this subsection, the trustee must thereafter send trustee reports to the beneficiary until distribution of the specific item of property or specific amount of money.

#### **Section 28.**

**130.725 UTC 816. Specific powers of trustee.** Without limiting the authority conferred by ORS 130.720, a trustee may do any of the following:

(1) Collect trust property and accept or reject additions to the trust property from a settlor or any other person.

(2) Acquire or sell property, for cash or on credit, at public or private sale.

(3) Exchange, partition or otherwise change the character of trust property.

(4) Deposit trust money in an account in a financial institution, including a financial institution operated by the trustee, if the deposit is adequately insured or secured.

(5) Borrow money, with or without security, to be repaid from trust assets or otherwise, and advance money for the protection of the trust and for all expenses, losses and liabilities sustained in the administration of the trust or because of the holding or ownership of any trust assets. Money may be borrowed under this subsection from any lender, including a financial institution operated by or affiliated with the trustee. A trustee is entitled to be reimbursed out of the trust property or from property that has been distributed from the trust, with reasonable interest, for an advance of money under this subsection.

(6) Continue operation of any proprietorship, partnership, limited liability company, business trust, corporation or other form of business or enterprise in which the trust has an interest, and take any action that may be taken by shareholders, members or property owners, including merging, dissolving or otherwise changing the form of business organization or contributing additional capital.

(7) Exercise the rights of an absolute owner of stocks and other securities, including the right to:

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

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

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

(d) Deposit the securities with a depository or other financial institution.

(8) Construct, repair, alter or otherwise improve buildings or other structures on real property in which the trust has an interest, demolish improvements, raze existing or erect new party walls or buildings on real property in which the trust has an interest, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries.

(9) Enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, even though the period of the lease extends beyond the duration of the trust.

(10) Grant an option involving a sale, lease or other disposition of trust property or acquire an option for the acquisition of property, even though the option is exercisable after the trust is terminated, and exercise an option so acquired.

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

(12) Abandon or decline to administer property of no value or property of a value that is not adequate to justify its collection or continued administration.

(13) Avoid possible liability for violation of environmental law by:

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

(b) Taking action to prevent, abate or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

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

(d) Compromising claims against the trust that may be asserted for an alleged violation of environmental law; and

(e) Paying the expense of any inspection, review, abatement or remedial action to comply with environmental law.

(14) Pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust.

(15) Pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust.

(16) Exercise elections available under federal, state and local tax laws.

(17) Select a mode of payment under any employee benefit or retirement plan, annuity or life insurance payable to the trustee, exercise rights under employee benefit or retirement plans, annuities or policies of life insurance, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds.

(18) Make loans out of trust property. The trustee may make a loan to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances. The trustee may collect loans made to a beneficiary by making deductions from future distributions to the beneficiary.

(19) Pledge trust property to guarantee loans made by others to the beneficiary.

(20) Appoint a trustee to act in another state, country or other jurisdiction with respect to trust property located in the other state, country or other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security and remove any trustee so appointed.

(21) Make a distribution to a beneficiary who is under a legal disability or who the trustee reasonably believes is financially incapable, either:

(a) Directly;

(b) By application of the distribution for the beneficiary's benefit;

(c) By paying the distribution to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

(d) By creating a custodianship under the Uniform Transfers to Minors Act by paying the distribution to a custodian for the beneficiary;

(e) By paying the distribution to any existing custodian under the Uniform Transfers to Minors Act;

(f) By paying the distribution to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf, if the trustee does not know of a conservator, guardian or custodian for the beneficiary; or

(g) By managing the distribution as a separate fund held by the trustee on behalf of the beneficiary, subject to the beneficiary's continuing right to withdraw the distribution.

(22) On distribution ~~or payment~~ of trust property or the division or termination of a trust, make distributions ~~and payments in cash or in kind, or~~ in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes and adjust for resulting differences in valuation.

(23) Resolve a dispute concerning the interpretation of the trust or the administration of the trust by mediation, arbitration or other procedure for alternative dispute resolution.

(24) Prosecute or defend an action, claim or judicial proceeding in any state, country or other jurisdiction to protect trust property and the trustee in the performance of the trustee's duties.

(25) Sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers.

(26) On termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to the property.

(27) 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.

(28) Employ persons, including attorneys, auditors, investment advisors or agents, to advise or assist the trustee in the performance of administrative duties. A trustee may act based on the recommendations of professionals without independently investigating the recommendations.

(29) Apply for and qualify all or part of the property in the trust estate for special governmental tax programs or other programs that may benefit the trust estate or any of the beneficiaries.

(30) Deposit securities in a clearing corporation as provided in ORS 128.100.

## Section 29.

**130.730 UTC 817. Distribution upon termination.** ~~(1) Upon termination or partial termination of a trust, the trustee may send to the beneficiaries a proposal for distribution. The right of any beneficiary to object to a distribution made pursuant to the proposal terminates if the beneficiary does not notify the trustee of an objection within 30 days after the proposal was sent, but only if the proposal informed the beneficiary of the right to object and the time allowed for objection.~~

~~— (2) Upon the occurrence of an event terminating or partially terminating a trust, the~~ (1) Upon the occurrence of an event, satisfaction of a condition, or exercise of a power that terminates or partially terminates a trust or creates an obligation for the trustee to pay or distribute all or any portion of a trust to a beneficiary, the beneficiary's interest in the terminated trust, portion, or distribution indefeasibly vests in the beneficiary as of the event, satisfaction, or exercise, subject to ORS 114.600 to 114.725, rights of creditors, and the administration and sale by the trustee. The trustee shall proceed expeditiously to distribute the trust property to the persons entitled to the property. The trustee may retain a reasonable reserve for the payment of debts, fees, expenses and taxes.

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~~(3) A release by 2)~~ Incidental to a termination or partial termination of a trust, the trustee may request that a beneficiary execute a release of ~~at the~~ trustee from liability for breach of trust. Any such release given by the beneficiary is invalid to the extent:

(a) The release was induced by improper conduct of the trustee; or

(b) The trustee failed to adequately disclose to the beneficiary, at the time of the release, ~~did not know of the beneficiary's rights or of~~ the material facts relating to the breach. ~~[2005- or sufficient information to enable the beneficiary to know of a potential claim or to inquire into its existence.~~

### Section 30.

**ORS 130.\*\*\* Notice of Proposed Trustee Action; beneficiary objection.** (1) Prior to any proposed action to be taken by a trustee regarding the administration of a trust, the trustee may send the beneficiaries a written notice of the proposed action informing the beneficiaries of the proposed action.

(2) The right of any beneficiary receiving a notice of proposed action to object to a proposed action described in the notice is barred if the beneficiary does not notify the trustee in writing of an objection within 30 days after the proposal was sent (or such longer period stated in the notice), but only to the extent that the notice of proposed action:

(a) clearly informs the beneficiary of the right to object, the manner in which to object, and the date by which the objection must be received by the trustee,

(b) states that the beneficiary's right to object may be barred if the beneficiary does not object within the time and in the manner allowed for objection; and

~~(c-348 §764)~~ adequately discloses sufficient facts and circumstances regarding the proposed action to enable the beneficiary to make an informed decision.

(3) An objection delivered to the trustee by a beneficiary receiving notice is valid under this section only if the objection expresses the nature and basis of the beneficiary's objection in sufficient detail to reasonably inform the trustee of the substance of the beneficiary's objection.

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(4) If a beneficiary receiving notice does not validly object pursuant to this section, the beneficiary will be deemed to consent to the proposed action, and the beneficiary may not thereafter maintain a civil action in tort, contract, or other recovery theory if the proposed action is taken by the trustee within a reasonable time after the notice was given under subsection 1 of this section. This subsection (4) shall not apply to the following actions:

(a) Allowance of the trustee's compensation;

(b) Settlement of trust accounts or the trustee's report;

(c) Sale of trust property to the trustee or sale of the trustee's property to the trust;

(d) Exchange of trust property for property of the trustee;

(e) Grant of an option to the trustee to purchase trust property;

(f) Allowance, payment, or settlement of a trustee's claim against the trust;

(g) Compromise or settlement of a claim, action, or proceeding by the trust against the trustee; or

(h) Extension, renewal, or modification of the terms of a debt or other obligation of the trustee owing to or in favor of the trust.

(5) The receipt of an objection by the trustee does not prohibit the trustee from taking the proposed action or sending subsequent notices of proposed action to the beneficiaries regarding the same or similar proposed actions.

## **Section 31.**

**130.735 Appointment of adviser; liability of trustee.** (1) A trust instrument may appoint a person to act as an adviser for the purpose of directing or approving decisions made by the trustee, including decisions related to distribution of trust assets and to the purchase, sale or exchange of trust investments. The appointment must be made by a provision of the trust that specifically refers to this section. The appointment may provide for succession of advisers and for a process for the removal of advisers. An adviser shall exercise all authority granted under the trust instrument as a fiduciary unless the trust instrument provides otherwise. A person who agrees to act as an adviser is subject to Oregon law and submits to the jurisdiction of the courts of this state.

(2) If a trust instrument provides that a trustee is to follow the direction of an adviser, and that trustee acts in accordance with the adviser's directions, the trustee is not liable for any loss resulting directly or indirectly from the trustee's decision unless the decision constitutes reckless indifference to the purposes of the trust or the interests of the beneficiaries.

(3) If a trust instrument provides that a trustee is to make decisions with the approval of an adviser, and the adviser does not provide approval within a reasonable time after the trustee has made a request for approval of a decision, the trustee is not liable for any loss resulting directly or indirectly from the decision unless the decision constitutes reckless indifference to the purposes of the trust or the interests of the beneficiaries.

(4) Except to the extent specifically provided by the trust instrument, a trustee has no duty to monitor an adviser's conduct, provide advice to the adviser, consult with the adviser or give notice to any beneficiary or third party about decisions made pursuant to the adviser's direction that the trustee would have decided differently.

(5) Absent clear and convincing evidence to the contrary, all actions taken by a trustee for the purpose of implementing directions from an adviser, including confirming that the adviser's directions have been carried out and recording and reporting activities requested by the adviser, are presumed to be administrative actions taken by the trustee solely for the purpose of allowing the trustee to perform the duties assigned to the trustee under the trust instrument. Administrative actions taken by a trustee for the purpose of implementing directions from an adviser do not constitute monitoring of the adviser or other participation in decisions that are within the scope of the adviser's authority.

(6) A court may remove an adviser if the court finds:

(a) The adviser has committed a serious breach of trust; or

(b) Removal of the adviser best serves the interests of the beneficiaries because the adviser is unfit or unwilling, or has persistently failed to timely and effectively advise the trustee in matters assigned to the adviser in the trust instrument under subsection (1) of this section.

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