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Amendments to the Oregon Uniform Trust Code

Work Group Report

SB 592

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is housed at the Willamette
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which also provides executive,
administrative and research
support for the Commission.*

I. Introductory summary

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 Oregon Uniform Trust Code (the "OUTC"). However, as lawyers continued to work with the OUTC in practice, lawyers identified a number of places where amendments to the OUTC could improve results for people working with or using trusts. Settlers, trustees, and beneficiaries, as well as their advisors will benefit from the proposed revisions.

II. History of the project

A committee of the Estate Planning and Administration Section of the Oregon State Bar identified a number of issues that should be addressed by legislative action. The committee worked for several months and developed a proposal that the committee presented to the Executive Committee of the Estate Planning and Administration Section. 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 Work Group of the Oregon Law Commission – work on appropriate legislation would produce better results. Susan Gary, a member of the Estate Planning and Administration Section, and Charles Mauritz, chair of the committee, worked with Wendy Johnson, Deputy Director and General Counsel of the Oregon Law Commission, to develop a proposal for the Oregon Law Commission. The Oregon Law Commission approved the creation of a Work Group in November 2012.

Due to the significant work already completed on the project by the Estate Planning and Administration Section, and because those who use trusts and the Oregon Uniform Trust Code would benefit from adoption of the amendments as soon as possible, the Work Group's goal was to prepare a bill for the 2013 session. The Work Group met several times in January and February, completing its work in time for legislative counsel to complete work on the bill by the deadline. The Work Group included representatives from the original committee, other members of the Estate Planning and Administration Section who disagreed with some of the original proposals, a representative from the charities division of the office of the Attorney General, a representative of the Oregon Bankers' Association, and Legislative Counsel.

Work Group members included Chair, Prof. Susan N. Gary, University of Oregon School of Law and OLC Commissioner; Susan Bower, Oregon Dept. of Justice; Bill Brewer, Hershner Hunter LLP; Christopher Cline, Wells Fargo Bank; John Draneas, Draneas & Huglin PC; D. Charles Mauritz, Duffy Kekel LLP; Hilary Newcomb, HAN Legal; Robert Saalfeld, Saalfeld Griggs PC; Lane Shetterly, Shetterly Irick & Ozias and Chair of OLC; Jeff Thede, Thede Culpepper Moore Munro & Silliman LLP; Vanessa Usui, Duffy Kekel LLP; Matthew Whitman, Cartwright, Whitman, Baer PC; Ken

Sherman, Jr., Sherman Sherman Johnnie & Hoyt. Staff members included Prof. Jeff Dobbins, Executive Director of the OLC; Dave Heynderickx, Special Counsel to the Legislative Counsel; Wendy Johnson, Deputy Director and General Counsel of the Oregon Law Commission; Bealisa Sydlik, Deputy Legislative Counsel.

III. Statement of the problem area and objectives of the proposal

The proposed legislation seeks to balance the interests of beneficiaries in trusts with the need for efficient administration of trusts. The amendments facilitate the use of nonjudicial settlement agreements for trust modification, provide a means for a trustee to get advance authorization for certain actions through notice to beneficiaries, and provide a number of clarifying changes to delegation rules, removal, and the appointment of advisers that should improve the administration of trusts. Some of the amendments follow common estate planning practices.

IV. Review of legal solutions existing or proposed elsewhere

David English, Reporter for the Uniform Trust Code, provided comments on the original proposal, and his comments informed some of the Work Group discussions. The Work Group also considered the language of the Uniform Trust Code and in one case the amendment made in this bill returns the language of the Oregon statute to the language of the Uniform Trust Code because Oregon had adopted that section with non-uniform language.

V. The proposal

Section 1: This section adds two new definitions to the ORS 130.010:

(15) "Remote interest beneficiary" means a beneficiary of a trust whose beneficial interest in the trust, at the time the determination is made, is contingent upon the successive terminations of both the interest of a qualified beneficiary and the interest of a secondary beneficiary whose interests precede the interest of the beneficiary.

(17) "Secondary beneficiary" means a beneficiary, other than a qualified beneficiary, whose beneficial interest in the trust, at the time the determination of interest is made, is contingent solely upon the termination of all qualified beneficiary interests that precede the interest of the secondary beneficiary.

The OUTC provides for certain rights of notice to be given to different categories of beneficiaries. The current OUTC provides for "beneficiaries," "qualified beneficiaries," and "permissible distributees." The intention of the amendment is to create two new categories of beneficiaries, "remote interest beneficiaries" and "secondary beneficiaries." The purpose of the new categories is to provide that in some circumstances notice need not be given to beneficiaries whose interest is so

remote that they will likely never benefit from the trust. Trustees have sometimes found it difficult to obtain consent for needed modifications if consent must be obtained from all beneficiaries and some beneficiaries' interests are remote. Beneficiaries who know that they will likely never receive anything from the trust may fail to respond to requests for consent. The purpose of the amendments will be to limit the necessary notice in situations where a beneficiary's interest is remote. A remote interest beneficiary is a beneficiary that is at least third in line and in many situations fourth in line. The definition of secondary beneficiary is necessary to create the desired definition of remote interest beneficiary.

Section 2: This section amends ORS 130.045, the section that provides for nonjudicial settlement agreements on matters involving a trust. The amendment changes the persons who may enter into an agreement and clarifies the effect of filing the agreement in court. The current definition includes as "interested persons" who may enter into an agreement "beneficiaries of the trust who have an interest in the subject matter of the agreement." That provision is changed to "qualified beneficiaries." Thus, all qualified beneficiaries can be parties to the agreement without a determination that each one is interested in the subject matter.

The Attorney General is an interested person under the current definition if the trust is a charitable trust, and that provision is clarified so that the Attorney General will be an interested person whether the charitable trust is subject to the supervision of the Attorney General (as an Oregon trust) or not. This change is needed so the Attorney General can represent the interests of an Oregon charity that is the beneficiary of a trust created and operating outside Oregon. If a trust includes a gift to a charity and the settlor reserves the power to change the name of the charity (the identity of the beneficiary), the Attorney General represents the interests of all charitable beneficiaries so that a named charity that may not remain a beneficiary will not be an interested person for purposes of the agreement.

The changes to ORS 130.045 clarify that if the agreement is not filed with the court, the agreement will be binding only on the parties to the agreement. If the parties file the agreement with the court and provide notice of a right to object to beneficiaries, the agreement will be binding on all those who receive or waive notice, if no one objects. If someone objects and a hearing is held, the decision of the court will be binding on all beneficiaries of the trust and all parties to the agreement. If the court does not approve the agreement, the agreement will not be binding on any beneficiary or party.

The time period for objections is decreased from 120 days to 60 days. The longer time period impedes the ability of trusts to accomplish modifications in an efficient manner, and 60 days allows ample time for objection.

Section 3: This section amends ORS 130.170 to confirm that a trust created to distribute funds to charities is a charitable trust. Because the definition of charitable trust defines as a charitable trust a portion of a trust devoted to

charitable purposes, the changes clarify that if the charitable interests are negligible or if the charitable beneficiaries are all remote interest beneficiaries, the portion of the trust held by charitable beneficiaries will not be considered a charitable trust. For example, if a trust provides for three generations of family members, with multiple people at each generation, and then provides a contingent remainder interest in a charity so that the charity takes only if all family members die before the trust terminates, the contingent remainder interest will not be considered a “charitable trust” for purposes of the OUTC.

Section 4: This section adds a cross-reference to ORS 130.195.

Section 5: ORS 130.200(1) provides that if a settlor and all beneficiaries consent, a court can approve a modification of an irrevocable trust. Section 5 limits the beneficiaries who must consent to beneficiaries other than remote interest beneficiaries. Even if not all beneficiaries agree, ORS 130.200(5) permits a court to approve a modification if the court could have done so under the section with the consent of all beneficiaries. Consistent with the change to ORS 130.200(1), this subsection is changed to exclude remote interest beneficiaries from the beneficiaries who would have been required to consent.

Under ORS 130.200 the settlor’s power to consent to modification can be exercised by an agent acting under a power of attorney only if the terms of the trust authorized an agent to consent to modification. Section 5 permits the authorization to occur either in the terms of the trust or in the grant of the power of attorney. This change conforms Oregon law to the Uniform Trust Code.

Section 6: Section 6 amends ORS 130.215, the provision that permits termination of a trust if the value of the trust property is too small to justify the cost of administration. The change will permit termination if the trustee is a beneficiary, so long as the trustee is not a qualified beneficiary (someone currently receiving distributions or who will receive distributions if the trust terminates).

Section 7: This section amends ORS 130.305, which governs spendthrift provisions. The amendment adds a clarifying subsection that states that entering into a settlement agreement is not, by itself, a transfer in violation of a spendthrift provision.

Section 8: This section changes the language to clarify that a court may order execution against an amount a trustee is required to distribute.

Section 9: A new subsection in ORS 130.315 provides that creditors cannot reach assets in a trust solely because the trustee holds a discretionary power to pay taxes or to reimburse the settlor for taxes paid. Property becomes subject to creditors only if the property is subject to a power of withdrawal greater than the amount of the annual exclusion or, if the donor was married, twice that amount. Assets in an inter vivos marital deduction trust will be deemed contributed by the donor’s

spouse. Assets contributed to a trust by a settlor will not be subject to claims of the settlor's creditors if someone else is given a non-general power of appointment.

Section 10: This section explains which provisions of the OUTC apply to revocable trusts. The changes clarify that the statutory rules apply to trusts that were revocable on the occurrence of an event or until the settlor's death.

Section 11: This section amends ORS 130.555 to clarify when a child will be considered a pretermitted child for purposes of a revocable trust. A child will not be considered pretermitted if the settlor acknowledges or mentions the child by name or by class either in the trust instrument or in the settlor's will. The amendment links the rules that apply to wills and revocable trusts so that the law will apply consistently in a situation in which a settlor has both a will and a revocable trust. Section 11 amends the statute so that a child will be covered if the child is born or adopted while the settlor is alive but not after the settlor's death unless the child is in gestation at the settlor's death.

ORS 130.555 currently gives a pretermitted child the share the child would have received if the settlor had died intestate, with no trust. Section 11 incorporates the provisions from the intestacy statute into ORS 130.555, so the statute now directly states the share to which a pretermitted child will be entitled.

Section 12: This section amends the provision in ORS 130.610 on delegation of duties by a co-trustee to another co-trustee. Section 12 adds language to make clear that a delegation or a revocation or termination of a delegation must be in writing.

Section 13: This section amends ORS 130.615 to provide that a vacancy in a charitable trust can be filled by unanimous agreement of all qualified beneficiaries and the Attorney General. The current version of the subsection requires the agreement of all charitable beneficiaries, which would include remote interest charitable beneficiaries and secondary charitable beneficiaries. The change will make it easier to fill a vacancy in a trusteeship, and the Attorney General can protect the interests of any charitable beneficiaries who are not qualified beneficiaries.

Section 14: ORS 130.630 authorizes the court to remove a trustee if removal "best serves the interests of all of the beneficiaries" and certain other requirements are met but only if "[r]emoval is not inconsistent with a material purpose of the trust." A trustee can always argue that a settlor's choice of trustee is a material purpose of the trust, which has made removal under this provision difficult. Section 14 amends the subsection to permit the court to remove the trustee if the other requirements are met unless the trustee establishes "by clear and convincing evidence that removal is inconsistent with a material purpose of the trust."

Section 15: ORS 130.630 states the duties of a trustee who has been removed or has resigned. Section 15 provides that the successor trustee or the court may require

the departing trustee to prepare a final report, and if the departing trustee is required to prepare a final report, the trust must pay reasonable fees and costs.

Section 16: This section clarifies rules on fees paid to trustees by adding two subsections. Compensation must reflect the total services provided to the trust by co-trustees or by third parties such as financial advisors, so that the trust is not paying duplicative fees.

Sections 17 and 18: A trustee has a duty of obedience to carry out the terms of the trust (ORS 130.650) and a duty of loyalty to administer the trust solely in the interests of the beneficiaries (ORS 130.655). These duties could suggest to a trustee that any modification of a trust would be a violation of one or both of these duties. Section 17 amends ORS 130.650 and Section 18 amends ORS 130.655 to clarify that the mere existence of these duties does not require a trustee to object to a modification of a trust.

Section 19: ORS 130.710 requires the trustee to keep the qualified beneficiaries informed about the administration of the trust. The current statute requires a trustee who leaves office to send a report to the qualified beneficiaries. The amendment states that the former trustee must send the report if the successor trustee or the court requires it.

Section 20: This section clarifies ORS 130.725(22) to indicate that distribution of trust property may include payments in cash or in kind.

Section 21: This section rewrites ORS 130.730 to provide more clarity in the trustee's duties on termination of a trust and the effectiveness of a release executed by a beneficiary.

Section 22: ORS 130.735 provides rules for the appointment of a person who will act as an adviser to the trustee. Section 22 adds a sentence indicating that "[t]he appointment may provide for succession of advisers and for a process for the removal of advisers." Section 22 also adds a provision on removal of an adviser by the court.

Section 24: This section creates a new section in ORS chapter 130. The new section states that if a trustee is permitted or obligated to divide a trust into separate shares for separate beneficiaries, each share will be deemed a new trust and the trust from which the new trust is created will be deemed to terminate.

Section 25: This section creates a new section in ORS chapter 130. The new section creates a process by which a trustee can give a beneficiary notice of a proposed action and then proceed with the action if the beneficiary does not object within 45 days. The notice to the beneficiary must clearly inform the beneficiary of the right to object and the way to object and must provide sufficient information for the beneficiary to make an informed decision about whether to object. The beneficiary

must object in writing. If the beneficiary does not object the beneficiary is barred from taking action against the trustee in connection with the action. The notice process does not apply to a number of types of self-dealing transactions between the trustee and trust, including, among others, settlement of trust accounts or the trustee's report, actions involving property sales or exchanges between the trustee and the trust, and settlement of actions by the trust against the trustee. The new section lists the types of actions to which the section does not apply.

Amendment on Abatement: An amendment to the Bill will add a new section to the OUTC. The new section will apply the abatement rules from probate law to property being distributed from a revocable trust. As with property distributed under a will, the new section will provide that after the payment of creditors and expenses of administration, the trustee will first pay specific gifts (identifiable items), then general gifts (fungible gifts like gifts of money), and then the residuary gifts.

VI. Conclusion

These amendments to the OUTC will improve trust law for Oregonians and will benefit settlors, trustees, and beneficiaries, as well as their advisors. The bill should be adopted because the amendments will improve the operation of the law with respect to trusts.

CHAPTER 529

AN ACT

SB 592

Relating to the Oregon Uniform Trust Code; creating new provisions; amending ORS 130.010, 130.045, 130.170, 130.195, 130.200, 130.215, 130.305, 130.310, 130.315, 130.525, 130.555, 130.610, 130.615, 130.625, 130.630, 130.635, 130.650, 130.655, 130.710, 130.725, 130.730 and 130.735; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 130.010 is amended to read: 130.010. 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) "**Remote interest beneficiary**" means a beneficiary of a trust whose beneficial interest in the trust, at the time the determination of interest is made, is contingent upon the successive terminations of both the interest of a qualified beneficiary and the interest of a secondary beneficiary whose interests precede the interest of the remote interest beneficiary.

[(15)] (16) "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.

(17) "**Secondary beneficiary**" means a beneficiary, other than a qualified beneficiary, whose beneficial interest in the trust, at the time the determination of interest is made, is contingent solely upon the termination of all qualified beneficiary interests that precede the interest of the secondary beneficiary.

[(16)] (18) "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.

[(17)] (19) "Spendthrift provision" means a term of a trust that restrains both voluntary and involuntary transfer of a beneficiary's interest.

[(18)] (20) "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.

[(19)] (21) "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.

[(20)] (22) "Trust instrument" means an instrument executed by a settlor that contains terms of the trust, including any amendments to the instrument.

[(21)] (23) "Trustee" means an original trustee, an additional trustee, a successor trustee or a cotrustee.

SECTION 2. ORS 130.045 is amended to read:
 130.045. (1) For purposes of this section, “interested persons” means:

- (a) Any settlor of a trust who is living[.];
- (b) All **qualified** beneficiaries [*of the trust who have an interest in the subject of the agreement,*];
- (c) Any acting trustee of the trust[.]; and
- (d) 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*].

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

[(2)] **(3)(a)** Except as otherwise provided in subsection [(3)] **(4)** of this section, interested persons may enter into a [*binding*] nonjudicial settlement agreement with respect to any matter involving a trust.

(b) If the agreement is not filed with the court under subsection (6) of this section, the agreement is binding on all parties to the agreement.

(c) If the agreement is filed with the court, the agreement is binding as provided in subsections (6) and (7) of this section unless, after the filing of objections and a hearing, the court does not approve the agreement. If the court does not approve the agreement, the agreement is not binding on any beneficiary or party to the agreement.

[(3)] **(4)** 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)] **(5)** 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 principal 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)] **(6)(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)] **(8)** 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:

CAPTION OF CASE	NOTICE OF FILING OF SETTLEMENT AGREEMENT OR MEMORANDUM OF SETTLEMENT AGREEMENT
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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 and parties to the agreement.**

If you file objections within the [120-day] **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 and parties to the agreement.** See ORS 130.045.

 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*] **beneficiaries who received notice under paragraph (c) of this subsection and all beneficiaries who**

waived notice under subsection (7)(e) of this section.

[(6)(a)] **(7)(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)] **(8)** 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 all beneficiaries who received notice under subsection (6)(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 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 the trust] **beneficiaries and parties to the agreement**.

(e) [Persons interested in the trust] **Beneficiaries entitled to notice under subsection (6)(c) of this section** may waive the notice [required under subsection (5) of this section]. *If all persons interested in the trust waive the notice, the agreement is effective and binding on all persons interested in the trust upon filing of the agreement or memorandum with the court*.

[(7)] **(8)** 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)] **(6)** of this section and for the filing of objections under subsection [(6)] **(7)** of this section.

SECTION 3. ORS 130.170 is amended to read:

130.170. (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 are negligible or all charitable beneficiaries are remote interest beneficiaries; 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 the trust contains*, **but that does not contain** 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 charitable purposes*] **a charitable trust** only if the Attorney General is a party to the proceedings.

SECTION 4. ORS 130.195 is amended to read:

130.195. (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 5. ORS 130.200 is amended to read:

130.200. (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 a 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 a 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 beneficiaries **who are not remote interest beneficiaries** if the court finds that:

(a) If all [*of the*] beneficiaries **who are not 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 6. ORS 130.215 is amended to read:

130.215. (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 **qualified** beneficiary of the trust 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 7. ORS 130.305 is amended to read:

130.305. (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.

(4) A settlement agreement entered into under ORS 130.045 is not, by itself, a transfer in violation of a valid spendthrift provision.

SECTION 8. ORS 130.310 is amended to read:

130.310. (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 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*] **is** 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 9. ORS 130.315 is amended to read:

130.315. (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 paragraph (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 the amount of tax owed directly to the taxing authorities or to reimburse the settlor for any tax on trust income or principal that is payable or has been paid by the settlor under the law imposing the 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 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] **December 31, 2012;**

(b) **The amount specified in section 2503(b) of the Internal Revenue Code, as in effect on December 31, 2012; or**

(c) **Twice the amount specified in section 2503(b) of the Internal Revenue Code, as in effect on December 31, 2012, 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 section 2523(e) or (f) of the Internal Revenue Code, as in effect on December 31, 2012, 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 sub-**

ject to a presently exercisable general power of appointment held by a person other than the settlor.

[4] (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 10. ORS 130.525 is amended to read:

130.525. [ORS 130.520 to 130.575 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 at any time after the trust was created and before the death of the settlor.]

(1) **ORS 130.530 and 130.535 apply only to a trust, or portion of a trust:**

(a) **That comes into existence during the settlor's lifetime; and**

(b) **Is a revocable trust on the occurrence of any of the events described in ORS 130.530 or 130.535.**

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

SECTION 11. ORS 130.555 is amended to read:

130.555. (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, **is born or adopted during the lifetime of the settlor or is in gestation at the time of the settlor's death,** who is not [provided for in the trust] **acknowledged or mentioned, either by name or by class, in the trust instrument or in the settlor's will,** and who survives the settlor.

(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 a] **the pretermitted children are entitled to 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 the surviving 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 the surviving spouse, the pretermitted children, as a class, are entitled to one-half of the trust estate, with shares of the trust to be divided equally.**

(c) **If the settlor dies without leaving a surviving spouse, the pretermitted children are entitled to the entire trust estate, with shares of the trust to be divided equally.**

(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 12. ORS 130.610 is amended to read:

130.610. (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 the other cotrustee may accept the delegation of the performance of the 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 is 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.

SECTION 13. ORS 130.615 is amended to read:

130.615. (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.

SECTION 14. ORS 130.625 is amended to read:

130.625. (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;

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

[(C)] (B) A suitable cotrustee or successor trustee is available; and

(C) The trustee fails to establish by clear and convincing evidence that removal is inconsistent with a material purpose of the trust.

(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 15. ORS 130.630 is amended to read:

130.630. (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.

(3) A successor trustee or the court may require a trustee that has resigned or been removed to send a report as provided in ORS 130.710 (3). Reasonable compensation for preparation of the report, and reasonable fees and costs incurred in the preparation and distribution of the report, shall be paid by the trust.

SECTION 16. ORS 130.635 is amended to read:

130.635. (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 trustees' 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, who perform trustee functions must be taken into account in determining reasonable trustee compensation under this section.

SECTION 17. ORS 130.650 is amended to read:

130.650. (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 is not required to object to a modification, reformation or termination of the trust under ORS 130.045, 130.200, 130.205, 130.210, 130.215, 130.220 or 130.225, or a trust combination or division under ORS 130.230, solely because of the existence of the duty to administer the trust under subsection (1) of this section or the duty of loyalty under ORS 130.655 (1).

SECTION 18. ORS 130.655 is amended to read:

130.655. (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 **corporations and** other forms of business entities, the trustee shall act in the best interests of the beneficiaries. If the trust is *[the sole]* an 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 conserva-

torship 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) A trustee is not required to object to a modification, reformation or termination of the trust under ORS 130.045, 130.200, 130.205, 130.210, 130.215, 130.220 or 130.225, or a trust combination or division under ORS 130.230, solely because of the existence of the duty of loyalty under subsection (1) of this section or the duty to administer the trust under ORS 130.650 (1).

[9] (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 19. ORS 130.710 is amended to read:

130.710. (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 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)(a) 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.

(b) Upon a vacancy in a trusteeship, unless a cotrustee remains in office, [*a trustee report must be sent to the qualified beneficiaries by the former trustee*] **and if required by the successor trustee or the court, the former trustee shall send a trustee report for the period from the prior report, if any, through the time of vacancy to the qualified beneficiaries of the trust.**

(c) 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 distrib-

ution 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 20. ORS 130.725 is amended to read:

130.725. 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:

(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 21. ORS 130.730 is amended to read:

130.730. *[(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 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, expenses and taxes.]

[(3) A release by a beneficiary of a trustee from liability for breach of trust is invalid to the extent:]

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

[(b) 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.]

(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 of trust property 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.

(2) Incidental to a termination or partial termination of a trust, the trustee may request

that a beneficiary execute a release of the trustee from liability for breach of trust. A release under this subsection 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, the material facts relating to the breach or sufficient information to enable the beneficiary to know of a potential claim or to inquire into the existence of a breach or potential claim.

SECTION 22. ORS 130.735 is amended to read:

130.735. (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.

SECTION 23. Sections 24, 25 and 26 of this 2013 Act are added to and made a part of ORS chapter 130.

SECTION 24. 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:

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

(2) All of the terms of the trust instrument will be applied independently to each new trust created pursuant to this section except as terms are specifically limited in the trust instrument; and

(3) 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 to the proper administration of the terminated trust occasioned by the terminating event, condition or exercise.

SECTION 25. (1) Prior to a 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 a beneficiary receiving a notice of proposed action under subsection (1) of this section 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 45 days after the notice was sent, or within such longer time as may be 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) Adequately provides sufficient information regarding the proposed action to enable the beneficiary to make an informed decision.

(3) If a beneficiary receiving notice does not object as provided in this section, the beneficiary will be deemed to have consented to the proposed action and the beneficiary may not thereafter file an action or other civil proceeding based in tort, contract or otherwise if the proposed action is taken by the trustee within a reasonable time after the notice was given under this section. This subsection does not apply to the following:

(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.

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

SECTION 26. (1) As used in this section, "abate" or "abatement" means to reduce or the reduction of a gift from a trust at the settlor's death on account of the insufficiency of the trust property to pay all claims and expenses and distribute all gifts in full.

(2) If the trust instrument expresses an order of abatement, or if the plan of distribution or the express or implied purpose of the distribution from the trust would be defeated by the order of abatement stated in subsection (3) of this section, the shares of the distributees abate as may be found necessary to give effect to the intention of the settlor.

(3) Except as provided in ORS 130.555 as to the shares of pretermitted children, and in ORS 114.600 to 114.725 relating to the elective share of the surviving spouse, shares of distributees abate without any preference or priority as between real and personal property in the following order:

(a) Property of the trust not disposed of by the terms of the trust instrument.

(b) Residuary gifts, which are gifts paid from the trust after all claims and expenses are paid and all general gifts and specific gifts are dis-

tributed under the terms of the trust instrument.

(c) General gifts, which are gifts chargeable generally on the trust corpus and which are not distinguishable from other parts of the trust corpus and are not given under the terms of the trust instrument as a gift of a specific thing or of a specified part of the trust corpus.

(d) Specific gifts, which are gifts of a specific thing or of a specified part of the trust corpus as described under the terms of the trust instrument and that are capable of identification.

(4) A general gift charged on any specific property or fund is considered, for purposes of abatement, to be property specifically given to the extent of the value of the property or fund on which the general gift is charged. Upon the failure or insufficiency of the property or fund on which the general gift is charged, the gift is considered a general gift to the extent of the failure or insufficiency.

(5) Abatement within each classification is in proportion to the amounts of property each of the distributees would have received had full distribution of the property been made in accordance with the terms of the trust instrument.

(6) Persons to whom the trust instrument gives tangible personal property not used in

trade, agriculture or other business are not required to contribute from that property unless the property forms a substantial amount of the total estate and the court specifically orders contribution because of the gift.

(7) When the subject matter of a preferred gift is sold or used incident to administration, abatement shall be achieved by appropriate adjustments in, or contribution from, other interests in the remaining assets.

SECTION 27. Sections 24, 25 and 26 of this 2013 Act and the amendments to ORS 130.010, 130.045, 130.170, 130.195, 130.200, 130.215, 130.305, 130.310, 130.315, 130.525, 130.555, 130.610, 130.615, 130.625, 130.630, 130.635, 130.650, 130.655, 130.710, 130.725, 130.730 and 130.735 by sections 1 to 22 of this 2013 Act apply to trust proceedings commenced on or after the effective date of this 2013 Act.

SECTION 28. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

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