

**Enrolled**  
**Senate Bill 371**

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon State Bar Estate Planning Section)

CHAPTER .....

AN ACT

Relating to trusts; creating new provisions; and amending ORS 130.010, 130.020, 130.035, 130.040, 130.045, 130.060, 130.150, 130.170, 130.195, 130.200, 130.205, 130.210, 130.240, 130.400, 130.500, 130.510 and 130.710.

**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, [*created for a charitable purpose*] 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, estate, 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) "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) "Spendthrift provision" means a term of a trust that restrains both voluntary and involuntary transfer of a beneficiary's interest.

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

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

**SECTION 2.** ORS 130.020 is amended to read:

130.020. (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) [and (2)(c)] **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. The amendments to ORS 130.020 by section 2 of this 2009 Act apply only to reports made under ORS 130.710 (3) on or after the effective date of this 2009 Act.**

**SECTION 4.** ORS 130.035 is amended to read:

130.035. (1) If any provision of this chapter requires that a trustee or other person give notice or requires that the trustee or other person send a document, the trustee or other person must give the notice or send the document in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of giving notice and sending documents under this chapter include first class mail, personal delivery, delivery to a person's last known place of residence or place of business, or properly directed electronic mail.

(2) If any provision of this chapter requires that a trustee or other person give notice or requires that the trustee or other person send a document to another person, the trustee or other person need not give the notice or send the document to any person whose identity or location is unknown and not reasonably ascertainable. If the trustee or other person cannot give notice or send a document, the trustee or other person shall prepare an affidavit setting forth the efforts made to find the person. The trustee must file the affidavit in any pending court proceeding or hold the affidavit as part of the trust records if a court proceeding is not pending.

(3) Any person entitled to receive a notice or a document under this chapter may waive receipt of the notice or document.

**(4) Subsections (1) to (3) of this section do not apply to notices of judicial proceedings.** Except as provided in subsection (5) of this section, notice of a judicial proceeding shall be given in the manner required by statute for the approval of the final account in a decedent's estate. Notice of a judicial proceeding must be given by the petitioner to the following persons:

(a) To the trustee and all persons whose interests are affected by the requested action or relief.

(b) If a person who is entitled to notice is a minor, to the minor's conservator or to another appropriate representative under ORS 130.100 to 130.120 if the minor does not have a conservator. If the minor is 14 years of age or older, notice must also be given to the minor.

(c) If a person who is entitled to notice is financially incapable, to the person and to the person's conservator or another appropriate representative under ORS 130.100 to 130.120 if the person does not have a conservator.

(d) To any other person the court requires.

(5) A judicial proceeding to contest the validity of a revocable trust must be commenced by the service of a summons in the manner required by ORCP 7. Notice of any other judicial proceeding must be given in the manner prescribed by subsection (4) of this section.

**SECTION 5.** ORS 130.040 is amended to read:

130.040. (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 non-charitable 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[, *unless contingencies make the charitable interest negligible*].

**SECTION 6.** ORS 130.045 is amended to read:

130.045. (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.

(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.

(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 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) 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)(a) 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 the trust whose address is known**

at the time of the filing. 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 days after that date, the agreement will be approved and will be binding on all persons interested in the trust.

If you file objections within the 120-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. See ORS 130.045.

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Signature

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(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 days after the filing of the agreement or memorandum, the agreement is effective and binding on all persons interested in the trust.

(6)(a) If objections are filed with the court within 120 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)(a) 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 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.

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

(e) Persons interested in the trust 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)(a) The clerk of the circuit court shall collect in advance a fee of \$65 for the filing of an agreement or memorandum of agreement under subsection (5) of this section, and a fee of \$32.50 for the filing of objections under subsection (6) of this section.

**(b) In addition to the filing fees provided for in paragraph (a) of this subsection, the clerk shall charge and collect in proceedings under this section all additional fees authorized by law for civil actions, suits or proceedings in circuit court.**

**(c) A pleading or other document is not considered filed unless the fees required by this subsection are paid. Filing fees may not be refunded to any party.**

*[(5) Any interested person may petition the court to approve a nonjudicial settlement agreement, to determine whether the representation as provided in ORS 130.100 to 130.120 was adequate and to determine whether the agreement contains terms and conditions the court could have properly approved.]*

*[(6) Modification or termination of an irrevocable trust by nonjudicial settlement agreement is governed by ORS 130.200.]*

**SECTION 7.** ORS 130.060 is amended to read:

**130.060. Except as provided in ORS 130.355,** the circuit court has jurisdiction of proceedings in this state concerning the administration of a trust.

**SECTION 8.** ORS 130.150 is amended to read:

**130.150. (1)** A trust may be created:

(a) By transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;

(b) By declaration by the owner of property that the owner holds identifiable property as trustee;

(c) By exercise of a power of appointment in favor of a trustee;

(d) By an agent or attorney-in-fact under a power of attorney that expressly grants authority to create the trust; or

(e) Pursuant to a statute or judgment that requires property to be administered in the manner of an express trust.

**(2)** The following apply to trusts for death benefits:

(a) A trustee may be named as beneficiary of any death benefits, and the death benefits shall be paid to the trustee and be held and disposed of by the trustee as provided in a trust created by the designator during the lifetime of the designator. A trust is valid even though the trust does not have a trust corpus other than the right of the trustee to receive death benefits as beneficiary.

(b) A trustee named by will may be designated as beneficiary of death benefits if the designation is made in accordance with the provisions of the policy, contract, plan, trust or other governing instrument. Upon probate of the will, **or upon the filing of an affidavit under ORS 114.515,** the death benefits are payable to the trustee to be held and disposed of under the terms of the designator's will in the same manner as other testamentary trusts are administered. Unless otherwise provided by the designator, an obligor may make payment of death benefits to the personal representative of the designator, or to the persons who are otherwise entitled to the death benefits, if a qualified trustee does not claim the death benefits within one year after the death of the designator, or if satisfactory evidence is furnished within the one-year period showing that there is no trustee who can qualify to receive the death benefits. The obligor is discharged from any liability for the death benefits upon making the payment.

(c) Death benefits received by the trustee are not subject to the debts of the designator or to inheritance or estate taxes to any greater extent than if the death benefits were payable to the beneficiaries named in the trust and not to the estate of the designator.

(d) Death benefits held in trust may be commingled with any other assets that may properly become a part of the trust.

**(3)** As used in this section:

(a) "Death benefits" means death benefits of any kind, including proceeds of life insurance policies, payments under annuity or endowment contracts, and funds payable in connection with pension, retirement, stock bonus or profit-sharing plans, or any trust administered in connection with these arrangements.

(b) "Designator" means the person entitled to designate the beneficiary of death benefits upon the death of the person.

(c) "Obligor" means the insurer or other person obligated to pay death benefits.

**SECTION 9.** ORS 130.170 is amended to read:

130.170. (1) A charitable trust [*may be*] is a **trust** 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 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 only if the Attorney General is a party to the proceedings.

**SECTION 10.** ORS 130.195 is amended to read:

130.195. (1) In addition to the methods of termination prescribed by ORS 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.** 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, 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[, *unless contingencies make the charitable interest negligible*]. 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;

(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

(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 and a conservator has not been appointed.

(2) An irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. An irrevocable trust may be modified upon consent of all of the 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[, *unless contingencies make the charitable interest negligible*].

(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.





*[(A) The agreement does not reflect the signatures of all persons required by subsection (1) or (2) of this section;]*

*[(B) The agreement is not authorized by subsection (1) or (2) of this section; or]*

*[(C) Approval of the agreement would not be equitable.]*

*[(d) An agreement approved by the court after a hearing is binding on all persons interested in the trust.]*

*[(e) Persons interested in the trust may waive the notice required under subsection (6) 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.]*

*[(8)(a) The clerk of the circuit court shall collect in advance a fee of \$65 for the filing of an agreement or memorandum of agreement under subsection (6) of this section, and a fee of \$32.50 for the filing of objections under subsection (7) of this section.]*

*[(b) In addition to the filing fees provided for in paragraph (a) of this subsection, the clerk shall charge and collect in proceedings under this section all additional fees authorized by law for civil actions, suits or proceedings in circuit court.]*

*[(c) A pleading or other document is not considered filed unless the fees required by this subsection are paid. Filing fees may not be refunded to any party.]*

**(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.** ORS 130.205 is amended to read:

130.205. (1) The court may modify the administrative or dispositive terms of a trust or terminate the trust if modification or termination will further the purposes of the trust and the modification or termination is requested by reason of circumstances not anticipated by the settlor. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

(2) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful, or would impair the trust's administration.

(3) A trustee may terminate a trust if:

(a) Termination is appropriate by reason of circumstances not anticipated by the settlor;

(b) Termination will not be inconsistent with the material purposes of the trust;

(c) All qualified beneficiaries have consented to the termination;

(d) The trustee is not a beneficiary of the trust and has no duty of support for any beneficiary of the trust; and

(e) In the case of a charitable trust, the Attorney General has consented to the termination[, or contingencies have made the charitable interest negligible].

(4) 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.

**SECTION 13.** ORS 130.210 is amended to read:

130.210. (1) Except as otherwise provided in subsection (2) of this section, if a particular charitable purpose of a trust becomes unlawful, impracticable, impossible to achieve or wasteful:

(a) The trust does not fail, in whole or in part;

(b) The trust property does not revert to the settlor or the settlor's successors in interest; and

(c) The court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.

(2) If a provision in the terms of a charitable trust would result in distribution of the trust property to a noncharitable beneficiary, a court may **not** apply cy pres to modify or terminate the trust under subsection (1)(c) of this section [*only*] if, when the provision takes effect:

(a) The trust property is to revert to the settlor and the settlor is still living; or

(b) Fewer than 50 years have elapsed since the date of the trust's creation.

**SECTION 14.** ORS 130.240 is amended to read:

130.240. (1) As used in this section:

(a) "Marital deduction" means the federal estate tax deduction allowed for transfers under section 2056 of the Internal Revenue Code, as in effect on January 1, [2006] **2008**, or the federal gift tax deduction allowed for transfers under section 2523 of the Internal Revenue Code, as in effect on January 1, [2006] **2008**.

(b) "Marital deduction gift" means a transfer of property that the settlor intended to qualify for the marital deduction.

(2) If a trust contains a marital deduction gift:

(a) The provisions of the trust, including any power, duty or discretionary authority given to a fiduciary, must be construed as necessary to comply with the marital deduction provisions of the Internal Revenue Code.

(b) The fiduciary may not take any action or have any power that impairs the tax deduction for the marital deduction gift.

(c) The marital deduction gift may be satisfied only with property that qualifies for the tax deduction.

(3) If a trust executed before September 12, 1981, indicates the settlor intended that a gift provide the maximum allowable marital deduction, the trust gives the recipient an amount equal to the maximum amount of the marital deduction that would have been allowed as of the date of the gift under federal law as it existed before September 12, 1981, with adjustments for:

(a) The provisions of section 2056(c)(1)(B) and (C) of the Internal Revenue Code in effect immediately before September 12, 1981.

(b) Reduction of the amount passing under the gift by the final federal estate tax values of any other property that passes under the trust, or by other means, that qualifies for the marital deduction. This paragraph does not apply to qualified terminable interest property under section 2056(b)(7) of the Internal Revenue Code, as in effect on January 1, [2006] **2008**.

(4) If a marital deduction gift is made in trust:

(a) The settlor's spouse is the only beneficiary of income or principal of the marital deduction property as long as the spouse lives. Nothing in this paragraph prevents exercise by the settlor's spouse of a power of appointment included in a trust that qualifies as a general power of appointment marital deduction trust.

(b) Subject to paragraph (d) of this subsection, the settlor's spouse is entitled to all of the income of the marital deduction property at least once a year, as long as the spouse is alive.

(c) The settlor's spouse has the right to require that the trustee of the trust make unproductive marital deduction property productive or convert it into productive property within a reasonable time.

(d) Notwithstanding any provision of ORS chapter 129, upon the death of the settlor's spouse all remaining accrued or undistributed income from qualified terminable interest property under sections 2056(b)(7) or 2523(f) of the Internal Revenue Code, as in effect on January 1, [2006] **2008**, passes to the estate of the settlor's spouse, unless the trust provides a different disposition that qualifies for the marital deduction.

(5)(a) Except as provided in paragraph (b) of this subsection, if a trust that makes a marital deduction gift includes a requirement that the settlor's spouse survive the settlor by a period of more than six months, or contains provisions that could result in a loss of the spouse's interest in the trust if the spouse fails to survive the settlor by at least six months, the spouse need only survive the settlor by six months to receive the marital deduction gift.

(b) If a trust that makes a marital deduction gift includes a requirement that the settlor's spouse survive a common disaster that results in the death of the settlor, the spouse need only survive until the final audit of the federal estate tax return for the settlor's estate, if any, to receive the marital deduction gift.

(6) A trustee is not liable for a good faith decision whether to make any election referred to in sections 2056(b)(7) or 2523(f) of the Internal Revenue Code, as in effect on January 1, [2006] **2008**.

(7) Subsections (4) and (6) of this section do not apply to a trust that qualifies for the marital deduction under [section 20.2056(e)-2(b) of the Code of Federal Regulations] **26 U.S.C. 2056, as described in 26 C.F.R. 2056(e)-2(b)(1)**, as in effect on January 1, [2006] **2008**.

**SECTION 15.** ORS 130.400 is amended to read:

130.400. (1) The trustee may compromise a claim against the trust estate.

(2) A claim presented to a trustee under ORS 130.350 to 130.450 shall be considered allowed as presented unless within 60 days after the date of presentment of the claim the trustee mails or delivers a notice of disallowance of the claim in whole or in part to the claimant and to the attorney of the claimant if the claimant has an attorney.

(3) A notice of disallowance of a claim shall inform the claimant that the claim has been disallowed in whole or in part and, to the extent disallowed, will be barred unless the claimant requests a summary determination or brings an action in the manner provided by subsection (4) of this section.

(4) If a trustee disallows a claim submitted under ORS 130.350 to 130.450 in whole or in part, the claimant, within 30 days after the date of mailing or delivery of the notice of disallowance, may:

(a) File a request for summary determination of the claim in the probate court, with proof of service of a copy of the request upon the trustee or the attorney of the trustee; or

(b) Commence a separate action against the trustee on the claim in the [circuit] **probate** court.

(5) If the claimant fails either to request a summary determination or commence a separate action as provided in subsection (4) of this section, the claim is barred to the extent the claim has been disallowed by the trustee.

(6) If a claimant prevails in a proceeding or action under subsection (4) of this section, the claim shall be allowed or judgment entered in the full amount determined to be due to the claimant. The claim or judgment shall be paid from the assets of the trust estate only to the extent that funds are available after payment of other claims with higher priority under ORS 130.425.

(7) If the claimant files a request for summary determination of a claim under subsection (4) of this section, the trustee may notify the claimant in writing that the claimant must commence a separate action against the trustee on the claim within 60 days after the claimant receives the notice. Notice under this subsection must be given by the trustee within 30 days after the request for summary determination is served on the trustee or the attorney of the trustee. If the claimant fails to commence a separate action within the time allowed, the claim is barred to the extent the claim has been disallowed by the trustee.

(8) In a proceeding for summary determination under this section:

(a) The trustee shall make response to the claim as though the claim were a complaint filed in an action.

(b) The court shall hear the matter without a jury, after notice to the claimant and trustee. The court shall determine the claim in a summary manner, and shall make an order allowing or disallowing the claim in whole or in part.

(c) No appeal may be taken from the order of the court made in a proceeding for summary determination under this section.

(9) If a civil action is commenced under subsection (4) of this section, a trustee, or beneficiary, may petition the court to approve a proposed disposition of claims or to provide instructions on the treatment of claims.

(10) A claimant filing a request for summary determination of a claim under subsection (4) of this section must pay the filing fee required of a defendant or respondent under ORS 21.110 (1) and other fees applicable to civil actions in circuit court.

**SECTION 16.** ORS 130.500 is amended to read:

130.500. (1) A person who has capacity to make a will has capacity to create, amend, revoke or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust.

**(2) A revocable trust remains a revocable trust for the purposes of ORS 130.520 to 130.575 even though the trust cannot be revoked because:**

**(a) The settlor becomes financially incapable; or**

**(b) An event occurs that by the terms of the trust prevents the revocation of the trust.**

**SECTION 17.** ORS 130.510 is amended to read:

130.510. (1) While the settlor of a revocable trust is alive, rights of the beneficiaries are subject to the control of the settlor, and the duties of the trustee are owed exclusively to the settlor. Beneficiaries other than the settlor have no right to receive notice, information or reports under [ORS 130.710] **this chapter.**

(2) The rights of the beneficiaries with respect to property that is subject to a power of withdrawal are subject to the control of the holder of the power during the period that the power may be exercised, and the duties of the trustee are owed exclusively to the holder of a power of withdrawal with respect to the property that is subject to the power.

**SECTION 18.** 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) [At least annually and upon termination of the trust] **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, unless a cotrustee remains in office, a trustee report 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) [Despite] **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 19.** The amendments to ORS 130.710 by section 18 of this 2009 Act apply only to revocable trusts that become irrevocable on or after the effective date of this 2009 Act.

**SECTION 20.** Section 21 of this 2009 Act is added to and made a part of ORS chapter 130.

**SECTION 21.** (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. 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.

**Passed by Senate March 20, 2009**

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Secretary of Senate

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President of Senate

**Passed by House May 26, 2009**

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Speaker of House

**Received by Governor:**

.....M,....., 2009

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.....M,....., 2009

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Governor

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