

D R A F T

SUMMARY

Revises Oregon Uniform Trust Code.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the Oregon Uniform Trust Code; creating new provisions;
3 amending ORS 130.010, 130.045, 130.170, 130.195, 130.200, 130.215, 130.305,
4 130.310, 130.315, 130.525, 130.555, 130.610, 130.615, 130.625, 130.630, 130.635,
5 130.650, 130.655, 130.710, 130.725, 130.730 and 130.735; and declaring an
6 emergency.

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

8 **SECTION 1.** ORS 130.010 is amended to read:

9 130.010. For the purposes of this chapter:

10 (1) "Ascertainable standard" means an ascertainable standard relating to
11 an individual's health, education, support or maintenance within the mean-
12 ing of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code, as in
13 effect on January 1, 2006.

14 (2) "Beneficiary" means a person that:

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

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

19 (3) "Charitable trust" means a trust, or portion of a trust, described in
20 ORS 130.170 (1).

21 (4) "Conservator" means a person appointed by a court to administer the

1 estate of a minor or adult individual.

2 (5) "Environmental law" means a federal, state or local law, rule, regu-
3 lation or ordinance relating to protection of the environment.

4 (6) "Financial institution" has the meaning given that term in ORS
5 706.008.

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

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

11 (9) "Interests of the beneficiaries" means the beneficial interests provided
12 in the terms of a trust.

13 (10) "Permissible distributee" means a beneficiary who is currently eligi-
14 ble to receive distributions of trust income or principal, whether the dis-
15 tribution is mandatory or discretionary.

16 (11) "Person" means an individual, corporation, business trust, partner-
17 ship, limited liability company, association, joint venture, public body as
18 defined in ORS 174.109 or any other legal or commercial entity.

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

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

25 (14) "Qualified beneficiary" means a beneficiary who:

26 (a) Is a permissible distributee on the date the beneficiary's qualification
27 is determined;

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

31 (c) Would be a permissible distributee if the trust terminated on the date

1 the beneficiary's qualification is determined.

2 **(15) "Remote interest beneficiary" means a beneficiary, other than**
3 **a qualified beneficiary, whose beneficial interest in the trust at the**
4 **time the determination of interest is made is contingent upon the**
5 **termination of the qualified beneficiary interest, the secondary bene-**
6 **ficiary interest and any other beneficiary interest that precedes the**
7 **interest of the remote interest beneficiary.**

8 [(15)] **(16)** "Revocable trust" means a trust that can be revoked by the
9 settlor without the consent of the trustee or a person holding an adverse
10 interest.

11 **(17) "Secondary beneficiary" means a beneficiary who, at the time**
12 **the determination of interest is made, shall become a qualified bene-**
13 **ficiary on the termination of the interest of a qualified beneficiary.**

14 [(16)] **(18)** "Settlor" means a person, including a testator, who creates a
15 trust or contributes property to a trust. If more than one person creates or
16 contributes property to a trust, each person is a settlor of the portion of the
17 trust property attributable to that person's contribution and of the portion
18 as to which that person has the power to revoke or withdraw.

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

21 [(18)] **(20)** "State" means a state of the United States, the District of
22 Columbia, Puerto Rico, the United States Virgin Islands or any territory or
23 insular possession subject to the jurisdiction of the United States. "State"
24 includes an Indian tribe or band recognized by federal law or formally ac-
25 knowledged by a state.

26 [(19)] **(21)** "Terms of a trust" means the manifestation of the settlor's in-
27 tent regarding a trust's provisions as expressed in the trust instrument or
28 as may be established by other evidence that would be admissible in a judi-
29 cial proceeding.

30 [(20)] **(22)** "Trust instrument" means an instrument executed by a settlor
31 that contains terms of the trust, including any amendments to the instru-

1 ment.

2 [(21)] (23) "Trustee" means an original trustee, an additional trustee, a
3 successor trustee or a cotrustee.

4 **SECTION 2.** ORS 130.045 is amended to read:

5 130.045. (1) For purposes of this section, "interested persons" means:

6 (a) Any settlor of a trust who is living[.];

7 (b) All **qualified** beneficiaries [*of the trust who have an interest in the*
8 *subject of the agreement,*];

9 (c) Any acting trustee of the trust[.]; and

10 (d) The Attorney General if the trust is a charitable trust [*subject to the*
11 *enforcement or supervisory powers of the state or the Attorney General under*
12 *the provisions of ORS 128.610 to 128.750*].

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

19 [(2)] (3)(a) Except as otherwise provided in subsection [(3)] (4) of this
20 section, interested persons may enter into a [*binding*] nonjudicial settlement
21 agreement with respect to any matter involving a trust.

22 **(b) If the agreement is not filed with the court under subsection (6)**
23 **of this section, the agreement is binding on all parties to the agree-**
24 **ment.**

25 **(c) If the agreement is filed with the court, the agreement is bind-**
26 **ing as provided in subsections (6) and (7) of this section unless, after**
27 **the filing of objections and a hearing, the court does not approve the**
28 **agreement. If the court does not approve the agreement, the agree-**
29 **ment is not binding on any beneficiary or party to the agreement.**

30 [(3)] (4) A nonjudicial settlement agreement is valid only to the extent the
31 agreement does not violate a material purpose of the trust and includes

1 terms and conditions that could be properly approved by the court under this
2 chapter or other applicable law.

3 [(4)] **(5)** Matters that may be resolved by a nonjudicial settlement agree-
4 ment include:

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

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

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

10 (d) The resignation or appointment of a trustee **or cotrustee** and the
11 determination of a trustee's compensation.

12 (e) Transfer of a trust's principal place of administration.

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

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

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

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

21 [(5)(a)] **(6)(a)** Any interested person may file a settlement agreement en-
22 tered into under this section, or a memorandum summarizing the provisions
23 of the agreement, with the circuit court for any county where trust assets
24 are located or where the trustee administers the trust.

25 (b) After collecting the fee provided for in subsection [(7)] **(8)** of this
26 section, the clerk shall enter the agreement or memorandum of record in the
27 court's register.

28 (c) Within five days after the filing of an agreement or memorandum un-
29 der this subsection, the person making the filing must serve a notice of the
30 filing and a copy of the agreement or memorandum on each [*person interested*
31 *in*] **beneficiary of** the trust whose address is known at the time of the filing

1 **and who is not a party to the agreement.** Service may be made personally,
2 or by registered or certified mail, return receipt requested. The notice of
3 filing shall be substantially in the following form:

4 _____

5 CAPTION NOTICE OF FILING OF
6 OF CASE SETTLEMENT AGREEMENT
7 OR MEMORANDUM OF
8 SETTLEMENT AGREEMENT

9

10 You are hereby notified that the attached document was filed by the
11 undersigned in the above entitled court on the _____ day of _____, ____.
12 Unless you file objections to the agreement within [120] **60** days after that
13 date, the agreement will be approved and will be binding on all [*persons in-*
14 *terested in the trust*] **beneficiaries and parties to the agreement.**

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

20 _____

21 Signature

22 _____

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

27 (e) If no objections are filed with the court within [120] **60** days after the
28 filing of the agreement or memorandum, the agreement is effective and
29 binding on all [*persons interested in the trust*] **beneficiaries who received**
30 **notice under paragraph (c) of this subsection and all beneficiaries who**
31 **waived notice under subsection (7)(e) of this section.**

1 ~~[(6)(a)]~~ **(7)(a)** If objections are filed with the court within ~~[120]~~ **60** days
2 after the filing of a settlement agreement or memorandum under this section,
3 the clerk of the court shall collect the fee provided in subsection ~~[(7)]~~ **(8)**
4 of this section. Upon the filing of objections, the court shall fix a time and
5 place for a hearing. The person filing the objections must serve a copy of the
6 objections on all *[persons interested in the trust]* **beneficiaries who are**
7 **parties to the agreement and all beneficiaries who received notice un-**
8 **der subsection (6)(c) of this section,** and give notice to those persons of
9 the time and place fixed by the court for a hearing. Service must be made
10 at least 10 days before the date set by the court for the hearing. Service of
11 the objections may be made personally or by registered or certified mail,
12 return receipt requested.

13 (b) Proof of mailing of objections must be filed with the court. Proof of
14 service may be made by a certificate of service in the form provided by ORCP
15 7 F, by a signed acceptance of service or by a return receipt from the postal
16 authorities.

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

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

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

22 (C) Approval of the agreement would not be equitable **to beneficiaries**
23 **who are not interested persons and who are not parties to the agree-**
24 **ment.**

25 (d) An agreement approved by the court after a hearing is binding on all
26 *[persons interested in the trust]* **beneficiaries and parties to the**
27 **agreement.**

28 (e) *[Persons interested in the trust]* **Beneficiaries entitled to notice un-**
29 **der subsection (6)(c) of this section** may waive the notice *[required under*
30 *subsection (5) of this section. If all persons interested in the trust waive the*
31 *notice, the agreement is effective and binding on all persons interested in the*

1 *trust upon filing of the agreement or memorandum with the court].*

2 [(7)] (8) The clerk of the circuit court shall collect in advance the filing
3 fees established under ORS 21.135 for the filing of an agreement or memo-
4 randum of agreement under subsection [(5)] (6) of this section and for the
5 filing of objections under subsection [(6)] (7) of this section.

6 **SECTION 3.** ORS 130.170 is amended to read:

7 130.170. (1) A charitable trust is a trust **that:**

8 (a) **Expressly designates one or more charitable organizations, or**
9 **one or more classes of charitable organizations, to receive distrib-**
10 **utions as beneficiaries of the trust unless the combined interests of**
11 **all charitable beneficiaries are negligible or all charitable beneficiaries**
12 **are remote interest beneficiaries; or**

13 (b) **Is** created for the relief of poverty, the advancement of education or
14 religion, the promotion of health, governmental or municipal purposes, or
15 other purposes beneficial to the community[. *A trust is not a charitable trust*
16 *if the trust contains*], **but that does not contain** contingencies that make
17 the charitable interest negligible.

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

22 (3) The settlor of a charitable trust, in addition to other persons author-
23 ized by law or the trust instrument, may maintain a proceeding to enforce
24 the trust.

25 (4) A court may modify or terminate [*any trust of property for charitable*
26 *purposes*] **a charitable trust** only if the Attorney General is a party to the
27 proceedings.

28 **SECTION 4.** ORS 130.195 is amended to read:

29 130.195. (1) In addition to the methods of termination prescribed by ORS
30 **130.045**, 130.200, 130.205, 130.210 and 130.215, a trust terminates:

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

1 of the trust;

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

3 (c) To the extent one or more of the purposes of the trust have become
4 unlawful, contrary to public policy or impossible to achieve.

5 (2) A proceeding to approve or disapprove a proposed modification or
6 termination under ORS 130.045, 130.200, 130.205, 130.210, 130.215, 130.220 and
7 130.225, or trust combination or division under ORS 130.230, may be com-
8 menced by a trustee or beneficiary. A proceeding to approve or disapprove
9 a proposed modification or termination under ORS 130.200 may be com-
10 menced by the settlor. The settlor of a charitable trust may maintain a pro-
11 ceeding to modify the trust under ORS 130.210.

12 **SECTION 5.** ORS 130.200 is amended to read:

13 130.200. (1) An irrevocable trust may be modified or terminated with ap-
14 proval of the court upon consent of the settlor and all beneficiaries **who are**
15 **not remote interest beneficiaries**, even if the modification or termination
16 is inconsistent with a material purpose of the trust. The Attorney General
17 must consent to any modification or termination of a charitable trust. A
18 settlor's power to consent to a trust's modification or termination may be
19 exercised by:

20 (a) An agent or attorney-in-fact under a power of attorney only to the
21 extent expressly authorized by the terms of the trust **or the power of at-**
22 **torney;**

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

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

30 (2) An irrevocable trust may be terminated upon consent of all [*of the*]
31 beneficiaries **who are not remote interest beneficiaries** if the court con-

1 cludes that continuance of the trust is not necessary to achieve any material
2 purpose of the trust. An irrevocable trust may be modified upon consent of
3 all [*of the*] beneficiaries **who are not remote interest beneficiaries** if the
4 court concludes that the modification is not inconsistent with a material
5 purpose of the trust. The Attorney General must consent to any modification
6 or termination of a charitable trust.

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

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

14 (5) A proposed modification or termination of the trust under subsection
15 (1) or (2) of this section may be approved by the court without the consent
16 of all beneficiaries **who are not remote interest beneficiaries** if the court
17 finds that:

18 (a) If all [*of the*] beneficiaries **who are not remote interest benefi-**
19 **aries** had consented, the trust could have been modified or terminated under
20 this section; and

21 (b) The interests of any beneficiary who does not consent will be ade-
22 quately protected.

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

26 **SECTION 6.** ORS 130.215 is amended to read:

27 130.215. (1) After notice to the qualified beneficiaries, a trustee may ter-
28 minate a trust if the trustee concludes that the value of the trust property
29 is insufficient to justify the cost of administration. A trustee may not ter-
30 minate a trust under this section if the trustee is a **qualified** beneficiary of
31 the trust or has a duty of support for a **qualified** beneficiary of the trust.

1 (2) The court may modify or terminate a trust, or remove the trustee and
2 appoint a different trustee, if the court finds that the value of the trust
3 property is insufficient to justify the cost of administration.

4 (3) Upon termination of a trust under this section, the trustee shall dis-
5 tribute the trust property in a manner consistent with the purposes of the
6 trust.

7 (4) This section does not apply to an easement for conservation or pres-
8 ervation.

9 **SECTION 7.** ORS 130.305 is amended to read:

10 130.305. (1) A spendthrift provision is valid only if the provision restrains
11 both voluntary and involuntary transfer of a beneficiary's interest.

12 (2) A term of a trust providing that the interest of a beneficiary is held
13 subject to a spendthrift trust, or words of similar import, is sufficient to re-
14 strain both voluntary and involuntary transfer of the beneficiary's interest.

15 (3) A beneficiary may not transfer an interest in a trust in violation of
16 a valid spendthrift provision. Except as otherwise provided in ORS 130.300
17 to 130.325, a creditor or assignee of a beneficiary may not reach the interest
18 of a beneficiary or a distribution by the trustee before the distribution is
19 received by the beneficiary.

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

22 **SECTION 8.** ORS 130.310 is amended to read:

23 130.310. (1) As used in this section, "child" means any individual for
24 whose benefit a judgment, court order or administrative order for child sup-
25 port has been entered in any state, country or other jurisdiction.

26 (2) Even if a trust contains a spendthrift provision, the holder of a judg-
27 ment, court order or administrative order against a beneficiary for support
28 or maintenance of the beneficiary's child, spouse or former spouse or a
29 judgment creditor who has provided services for the protection of a
30 beneficiary's interest in the trust, may obtain an order from a court of this
31 state authorizing garnishment or other execution against present or future

1 distributions to or for the benefit of the beneficiary. The court may issue an
2 order authorizing execution against such amount as the court determines to
3 be equitable under the circumstances but not more than the amount the
4 trustee [*would have been*] **is** required to distribute to or for the benefit of the
5 beneficiary. Distributions subject to execution under this subsection include
6 distributions required by the express terms of the trust, such as mandatory
7 payments of income, and distributions the trustee has otherwise decided to
8 make, such as through the exercise of discretion.

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

12 **SECTION 9.** ORS 130.315 is amended to read:

13 130.315. (1) Whether or not the terms of a trust contain a spendthrift
14 provision:

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

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

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

27 **(d) Notwithstanding the provisions of paragraph (b) of this sub-**
28 **section, the assets of an irrevocable trust may not be subject to the**
29 **claims of an existing or subsequent creditor or assignee of the settlor,**
30 **in whole or in part, solely because of the existence of a discretionary**
31 **power granted to the trustee by the terms of the trust or any other**

1 **provision of law to pay the amount of tax owed directly to the taxing**
2 **authorities or to reimburse the settlor for any tax on trust income or**
3 **principal that is payable or has been paid by the settlor under the law**
4 **imposing the tax.**

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

10 (3) Upon the lapse, release or waiver of a power of withdrawal, the
11 property of the trust that is the subject of the lapse, release or waiver be-
12 comes subject to claims of creditors of the holder of the power only to the
13 extent the value of the property exceeds the greater of:

14 (a) The amount specified in section 2041(b)(2) or 2514(e) of the Internal
15 Revenue Code, as in effect on [*January 1, 2006, or section 2503(b) of the*
16 *Internal Revenue Code, as in effect on January 1, 2006*] **December 31, 2012;**

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

19 (c) **Twice the amount specified in section 2503(b) of the Internal**
20 **Revenue Code, as in effect on December 31, 2012, if the donor was**
21 **married at the time of the transfer to which the power of withdrawal**
22 **applies.**

23 (4) **The assets of an irrevocable trust that are attributable to a**
24 **contribution to an inter vivos marital deduction trust described in**
25 **section 2523(c) or (f) of the Internal Revenue Code, as in effect on**
26 **December 31, 2012, after the death of the spouse of the settlor of the**
27 **inter vivos marital deduction trust shall be deemed to have been con-**
28 **tributed by the settlor's spouse and not by the settlor.**

29 (5) **The assets of an irrevocable trust for the benefit of a person,**
30 **including the settlor, are not subject to claims of creditors of the**
31 **settlor to the extent that the property of the trust is subject to a**

1 **presently exercisable general power of appointment held by a person**
2 **other than the settlor.**

3 [(4)] (6) Subsections (2) and (3) of this section do not apply to a person
4 other than a settlor who is a beneficiary of a revocable or irrevocable trust
5 and who is also a trustee of the trust, if the power to withdraw for the
6 person's own benefit is limited by an ascertainable standard.

7 **SECTION 10.** ORS 130.525 is amended to read:

8 130.525. [ORS 130.520 to 130.575 apply only to a trust, or a portion of a
9 trust, that comes into existence during the settlor's lifetime and is a revocable
10 trust at any time after the trust was created and before the death of the
11 settlor.]

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

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

15 **(b) Is a revocable trust on the occurrence of any of the events de-**
16 **scribed in ORS 130.530 or 130.535.**

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

20 **SECTION 11.** ORS 130.555 is amended to read:

21 130.555. (1) As used in this section, "pretermitted child" means a child of
22 a settlor who [*is born or adopted*], after the execution of the trust instru-
23 ment, **is born or adopted during the lifetime of the settlor or is in**
24 **gestation at the time of the settlor's death**, who is not [*provided for in*
25 *the trust*] **acknowledged** or mentioned, **either by name or by class**, in the
26 trust instrument **or in the settlor's will**, and who survives the settlor.

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

30 (3) If a settlor has one or more children living when the settlor executes
31 a trust instrument and provision is made in the trust for any of those chil-

1 dren, a pretermitted child is entitled to share in the trust estate as follows:

2 (a) The pretermitted child may share only in the portion of the trust es-
3 tate intended to benefit living children.

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

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

11 (4) If a settlor has no child living when the settlor executes a trust in-
12 strument, [*a pretermitted child is entitled to a*] **the pretermitted children**
13 **are entitled to the following** share of the trust estate [*as though the settlor*
14 *had died intestate and had not executed the trust instrument*]:

15 (a) **If the settlor dies leaving a surviving spouse and all pretermitted**
16 **children are the issue of the surviving spouse, the pretermitted chil-**
17 **dren are not entitled to any share of the trust estate.**

18 (b) **If the settlor dies leaving a surviving spouse and not all**
19 **pretermitted children are the issue of the surviving spouse, the**
20 **pretermitted children, as a class, are entitled to one-half of the trust**
21 **estate, with shares of the trust to be divided equally.**

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

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

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

30 (b) If the pretermitted child is entitled to a share of the trust estate under
31 subsection (4) of this section, the share must be recovered from the benefi-

1 ciaries on a pro rata basis, out of the portions of the trust estate passing to
2 those persons under the trust.

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

6 **SECTION 12.** ORS 130.610 is amended to read:

7 130.610. (1) Cotrustees who are unable to reach a unanimous decision may
8 act by majority decision.

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

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

13 (a) The cotrustee is unavailable to perform the function because of ab-
14 sence, illness or disqualification under other law;

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

17 (c) The cotrustee has [*properly*] delegated the performance of the function
18 to another trustee **pursuant to subsection (5) of this section.**

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

24 (5) Except as prohibited in the terms of the trust, a cotrustee may dele-
25 gate [*to a cotrustee the performance of a function. Unless a delegation was*
26 *irrevocable, a cotrustee may revoke any delegation*] **the performance of a**
27 **function to another cotrustee, and the other cotrustee may accept the**
28 **delegation of the performance of the function. The delegation and the**
29 **acceptance must be in writing. A delegation shall remain in effect**
30 **until it terminates by its terms, is revoked in writing by the cotrustee**
31 **making the delegation or is terminated in writing by the cotrustee**

1 **accepting the delegation.**

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

5 (7) Each cotrustee shall exercise reasonable care to:

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

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

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

12 **SECTION 13.** ORS 130.615 is amended to read:

13 130.615. (1) A vacancy in a trusteeship occurs if:

14 (a) A person designated as trustee rejects the trusteeship;

15 (b) A person designated as trustee cannot be identified, cannot be located
16 or does not exist;

17 (c) A trustee resigns;

18 (d) A trustee is disqualified or removed;

19 (e) A trustee dies; or

20 (f) A guardian or conservator is appointed for an individual serving as
21 trustee.

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

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

27 (a) By a person designated in the terms of the trust to act as successor
28 trustee;

29 (b) By a person appointed by unanimous agreement of the qualified ben-
30 eficiaries; or

31 (c) By a person appointed by the court.

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

3 (a) By a person designated in the terms of the trust to act as successor
4 trustee;

5 (b) By a person appointed by unanimous agreement of [*the charitable or-*
6 *ganizations expressly designated to receive distributions under the terms of the*
7 *trust, all noncharitable*] **all** qualified beneficiaries and the Attorney General;
8 or

9 (c) By a person appointed by the court.

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

14 **SECTION 14.** ORS 130.625 is amended to read:

15 130.625. (1) The settlor, a cotrustee or a beneficiary may request that a
16 court remove a trustee, or a trustee may be removed by a court on its own
17 motion.

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

19 (a) The trustee has committed a serious breach of trust;

20 (b) Lack of cooperation among cotrustees substantially impairs the ad-
21 ministration of the trust;

22 (c) Removal of the trustee best serves the interests of the beneficiaries
23 because the trustee is unfit or unwilling, or has persistently failed to ad-
24 minister the trust effectively; or

25 (d) Removal of the trustee best serves the interests of all of the benefi-
26 aries and:

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

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

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

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

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

7 **SECTION 15.** ORS 130.630 is amended to read:

8 130.630. (1) Unless a cotrustee remains in office or the court otherwise
9 orders, a trustee who has resigned or been removed has the duties of a
10 trustee and the powers necessary to protect the trust property until the trust
11 property is delivered to a successor trustee or other person who is entitled
12 to the property.

13 (2) A trustee who has resigned or been removed shall proceed expe-
14 ditiously to deliver any trust property in the trustee's possession to the
15 cotrustee, successor trustee or other person who is entitled to the property.

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

21 **SECTION 16.** ORS 130.635 is amended to read:

22 130.635. (1) If the terms of a trust do not specify the trustee's compen-
23 sation, a trustee is entitled to compensation that is reasonable under the
24 circumstances.

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

28 (a) The duties of the trustee are substantially different from those con-
29 templated when the trust was created; or

30 (b) The compensation specified by the terms of the trust would be unrea-
31 sonably low or high.

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

5 **(4) If the terms of a trust do not specify the trustee's compensation,**
6 **the fees paid to third parties, including but not limited to financial**
7 **advisors, who perform trustee functions must be taken into account**
8 **in determining reasonable trustee compensation under this section.**

9 **SECTION 17.** ORS 130.650 is amended to read:

10 130.650. **(1)** Upon acceptance of a trusteeship, the trustee shall administer
11 the trust in good faith, in accordance with its terms and purposes and the
12 interests of the beneficiaries, and in accordance with this chapter.

13 **(2) A trustee is not required to object to a modification, reformation**
14 **or termination of the trust under ORS 130.045, 130.200, 130.205, 130.210,**
15 **130.215, 130.220 or 130.225, or a trust combination or division under ORS**
16 **130.230, solely because of the existence of the duty to administer the**
17 **trust under subsection (1) of this section or the duty of loyalty under**
18 **ORS 130.655 (1).**

19 **SECTION 18.** ORS 130.655 is amended to read:

20 130.655. **(1)** A trustee shall administer the trust solely in the interests of
21 the beneficiaries.

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

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

29 **(b)** The transaction was approved by a court;

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

1 (d) The beneficiary consented to the trustee's conduct, ratified the trans-
2 action or released the trustee in the manner provided by ORS 130.840; or

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

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

9 (a) The trustee's spouse;

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

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

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

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

21 (5) A transaction not concerning trust property in which the trustee en-
22 gages in the trustee's individual capacity involves a conflict between per-
23 sonal and fiduciary interests if the transaction concerns an opportunity
24 properly belonging to the trust.

25 (6) An investment by a trustee in securities of an investment company or
26 an investment trust to which the trustee, or an affiliate of the trustee, pro-
27 vides services in a capacity other than as trustee is not presumed to be af-
28 fected by a conflict between personal and fiduciary interests if the
29 investment otherwise complies with the prudent investor rule of ORS 130.750
30 to 130.775. In addition to compensation for acting as trustee, the trustee may
31 be compensated by the investment company or investment trust for providing

1 those services out of fees charged to the trust. If the trustee receives com-
2 pensation from the investment company or investment trust for providing
3 investment advisory or investment management services, the trustee at least
4 annually shall give notice of the rate and method by which that compen-
5 sation was determined to the persons entitled under ORS 130.710 to receive
6 a copy of the trustee's annual report.

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

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

15 (a) An agreement between a trustee and a beneficiary relating to the ap-
16 pointment or compensation of the trustee;

17 (b) Payment of reasonable compensation to the trustee;

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

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

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

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

27 (g) A loan to the trustee for the protection of the trust, or for the pay-
28 ment of expenses, losses or liabilities sustained by the trustee in the admin-
29 istration of the trust or by reason of owning or possessing any trust assets.
30 A loan under this paragraph may be from a lender operated by, or affiliated
31 with, the trustee.

1 **(9) A trustee is not required to object to a modification, reformation**
2 **or termination of the trust under ORS 130.045, 130.200, 130.205, 130.210,**
3 **130.215, 130.220 or 130.225, or a trust combination or division under ORS**
4 **130.230, solely because of the existence of the duty of loyalty under**
5 **subsection (1) of this section or the duty to administer the trust under**
6 **ORS 130.650 (1).**

7 [(9)] **(10)** The court may appoint a special fiduciary to make a decision
8 with respect to any proposed transaction that might violate this section if
9 entered into by the trustee.

10 **SECTION 19.** ORS 130.710 is amended to read:

11 130.710. (1) A trustee shall keep the qualified beneficiaries of the trust
12 reasonably informed about the administration of the trust and of the mate-
13 rial facts necessary for those beneficiaries to protect their interests. If rea-
14 sonable under the circumstances, a trustee may respond to a request for
15 information related to the administration of the trust from a beneficiary who
16 is not a qualified beneficiary.

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

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

22 (c) Except as provided in subsection (10) of this section, within a reason-
23 able time after the date the trustee acquires knowledge of the creation of
24 an irrevocable trust, or the date the trustee acquires knowledge that a for-
25 merly revocable trust has become irrevocable, whether by the death of the
26 settlor or otherwise, the trustee shall notify the qualified beneficiaries of the
27 trust's existence, of the identity of the settlor or settlors, of the right to re-
28 quest a copy of the trust instrument and of the right to a trustee's report
29 as provided in subsection (3) of this section.

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

1 (3)(a) Except as provided in subsection (10) of this section, a trustee shall
2 send a trustee report, at least annually and upon termination of the trust,
3 to the permissible distributees of trust income or principal and to other
4 qualified beneficiaries who request the report. The report must include a
5 listing of trust property and liabilities, and must show the market values of
6 trust assets, if feasible. The report must reflect all receipts and disburse-
7 ments of the trust, including the source and amount of the trustee's com-
8 pensation.

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

15 (c) A personal representative, conservator or guardian may send the
16 qualified beneficiaries a trustee report on behalf of a deceased or financially
17 incapable trustee.

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

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

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

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

31 (8) Despite any other provision of this section, information, notice and

1 reports required by this section shall be given only to the settlor's spouse
2 if:

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

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

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

24 **SECTION 20.** ORS 130.725 is amended to read:

25 130.725. Without limiting the authority conferred by ORS 130.720, a trus-
26 tee may do any of the following:

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

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

31 (3) Exchange, partition or otherwise change the character of trust prop-

1 erty.

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

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

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

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

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

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

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

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

30 (8) Construct, repair, alter or otherwise improve buildings or other
31 structures on real property in which the trust has an interest, demolish im-

1 improvements, raze existing or erect new party walls or buildings on real
2 property in which the trust has an interest, subdivide or develop land, dedi-
3 cate land to public use or grant public or private easements, and make or
4 vacate plats and adjust boundaries.

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

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

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

16 (12) Abandon or decline to administer property of no value or property
17 of a value that is not adequate to justify its collection or continued admin-
18 istration.

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

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

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

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

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

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

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

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

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

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

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

21 (19) Pledge trust property to guarantee loans made by others to the ben-
22 eficiary.

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

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

30 (a) Directly;

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

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

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

5 (e) By paying the distribution to any existing custodian under the Uni-
6 form Transfers to Minors Act;

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

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

14 (22) On distribution **or payment** of trust property or the division or ter-
15 mination of a trust, make distributions **and payments in cash or in kind,**
16 **or** in divided or undivided interests, allocate particular assets in propor-
17 tionate or disproportionate shares, value the trust property for those pur-
18 poses and adjust for resulting differences in valuation.

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

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

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

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

30 (27) Allocate items of income or expense to either trust income or prin-
31 cipal, as provided by law, including creation of reserves out of income for

1 depreciation, obsolescence or amortization, or for depletion in mineral or
2 timber properties.

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

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

10 (30) Deposit securities in a clearing corporation as provided in ORS
11 128.100.

12 **SECTION 21.** ORS 130.730 is amended to read:

13 130.730. *[(1) Upon termination or partial termination of a trust, the trustee*
14 *may send to the beneficiaries a proposal for distribution. The right of any*
15 *beneficiary to object to a distribution made pursuant to the proposal terminates*
16 *if the beneficiary does not notify the trustee of an objection within 30 days*
17 *after the proposal was sent, but only if the proposal informed the beneficiary*
18 *of the right to object and the time allowed for objection.]*

19 *[(2) Upon the occurrence of an event terminating or partially terminating*
20 *a trust, the trustee shall proceed expeditiously to distribute the trust property*
21 *to the persons entitled to the property. The trustee may retain a reasonable*
22 *reserve for the payment of debts, expenses and taxes.]*

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

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

26 *[(b) The beneficiary, at the time of the release, did not know of the*
27 *beneficiary's rights or of the material facts relating to the breach.]*

28 **(1) Upon the occurrence of an event, satisfaction of a condition or**
29 **exercise of a power that terminates or partially terminates a trust or**
30 **creates an obligation for the trustee to pay or distribute all or any**
31 **portion of a trust to a beneficiary, the beneficiary's interest in the**

1 **terminated trust, portion or distribution indefeasibly vests in the**
2 **beneficiary as of the event, satisfaction or exercise, subject to ORS**
3 **114.600 to 114.725, rights of creditors and the administration and sale**
4 **of trust property by the trustee. The trustee shall proceed expe-**
5 **ditiously to distribute the trust property to the persons entitled to the**
6 **property. The trustee may retain a reasonable reserve for the payment**
7 **of debts, fees, expenses and taxes.**

8 **(2) Incidental to a termination or partial termination of a trust, the**
9 **trustee may request that a beneficiary execute a release of the trustee**
10 **from liability for breach of trust. A release under this subsection is**
11 **invalid to the extent:**

- 12 **(a) The release was induced by improper conduct of the trustee; or**
13 **(b) The trustee failed to adequately disclose to the beneficiary, at**
14 **the time of the release, the material facts relating to the breach or**
15 **sufficient information to enable the beneficiary to know of a potential**
16 **claim or to inquire into the existence of a breach or potential claim.**

17 **SECTION 22.** ORS 130.735 is amended to read:

18 130.735. (1) A trust instrument may appoint a person to act as an adviser
19 for the purpose of directing or approving decisions made by the trustee, in-
20 cluding decisions related to distribution of trust assets and to the purchase,
21 sale or exchange of trust investments. The appointment must be made by a
22 provision of the trust that specifically refers to this section. **The appoint-**
23 **ment may provide for succession of advisers and for a process for the**
24 **removal of advisers.** An adviser shall exercise all authority granted under
25 the trust instrument as a fiduciary unless the trust instrument provides
26 otherwise. A person who agrees to act as an adviser is subject to Oregon law
27 and submits to the jurisdiction of the courts of this state.

28 (2) If a trust instrument provides that a trustee is to follow the direction
29 of an adviser, and that trustee acts in accordance with the adviser's di-
30 rections, the trustee is not liable for any loss resulting directly or indirectly
31 from the trustee's decision unless the decision constitutes reckless indiffer-

1 ence to the purposes of the trust or the interests of the beneficiaries.

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

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

13 (5) Absent clear and convincing evidence to the contrary, all actions
14 taken by a trustee for the purpose of implementing directions from an ad-
15 viser, including confirming that the adviser's directions have been carried
16 out and recording and reporting activities requested by the adviser, are pre-
17 sumed to be administrative actions taken by the trustee solely for the pur-
18 pose of allowing the trustee to perform the duties assigned to the trustee
19 under the trust instrument. Administrative actions taken by a trustee for the
20 purpose of implementing directions from an adviser do not constitute moni-
21 toring of the adviser or other participation in decisions that are within the
22 scope of the adviser's authority.

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

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

25 **(b) Removal of the adviser best serves the interests of the benefi-**
26 **ciaries because the adviser is unfit or unwilling, or has persistently**
27 **failed to timely and effectively advise the trustee in matters assigned**
28 **to the adviser in the trust instrument under subsection (1) of this**
29 **section.**

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

1 **SECTION 24. If the occurrence of an event, satisfaction of a condi-**
2 **tion or exercise of a power allows or creates an obligation for the**
3 **trustee to divide a trust or any portion of a trust into separate shares**
4 **or portions for the benefit of separate beneficiaries:**

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

7 (2) All of the terms of the trust instrument will be applied inde-
8 pendently to each new trust created pursuant to this section except
9 as terms are specifically limited in the trust instrument; and

10 (3) The trust or portion of the trust from which the new trust
11 originates will be deemed to terminate to the extent of the new trust,
12 subject only to the proper administration of the terminated trust oc-
13 casioned by the terminating event, condition or exercise.

14 **SECTION 25. (1) Prior to a proposed action to be taken by a trustee**
15 **regarding the administration of a trust, the trustee may send the**
16 **beneficiaries a written notice of the proposed action informing the**
17 **beneficiaries of the proposed action.**

18 (2) The right of a beneficiary receiving a notice of proposed action
19 under subsection (1) of this section to object to a proposed action de-
20 scribed in the notice is barred if the beneficiary does not notify the
21 trustee in writing of an objection within 45 days after the notice was
22 sent, or within such longer time as may be stated in the notice, but
23 only to the extent that the notice of proposed action:

24 (a) Clearly informs the beneficiary of the right to object, the man-
25 ner in which to object and the date by which the objection must be
26 received by the trustee;

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

30 (c) Adequately provides sufficient information regarding the pro-
31 posed action to enable the beneficiary to make an informed decision.

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

8 **(a) Allowance of the trustee's compensation;**

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

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

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

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

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

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

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

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

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

30 **SECTION 27.** **This 2013 Act being necessary for the immediate**
31 **preservation of the public peace, health and safety, an emergency is**

1 **declared to exist, and this 2013 Act takes effect on its passage.**

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