

THE TEXAS TRUST CODE

ATTORNEY'S ELECTRONIC EDITION

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The Texas Trusts Code *created by the Texas Legislature*
Notes and Revision History

Thanks to:

*Craig Hopper of Hopper Mikeska, PLLC
and
William D. Pargaman of Saunders, Norval, Pargaman & Atkins, LLP
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CREATION, OPERATION, AND TERMINATION OF TRUSTS

CHAPTER 111. GENERAL PROVISIONS

Sec. 111.001. Short Title.

This subtitle may be cited as the Texas Trust Code.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 111.002. Construction of Subtitle.

This subtitle and the Texas Trust Act, as amended (Articles 7425b-1 through 7425b-48, Vernon's Texas Civil Statutes), shall be considered one continuous statute, and for the purposes of any statute or of any instrument creating a trust that refers to the Texas Trust Act, this subtitle shall be considered an amendment to the Texas Trust Act.

Amended by Acts 2005, eff. January 1, 2006.

Sec. 111.003. Trusts Subject to this Subtitle.

For the purposes of this subtitle, a "trust" is an express trust only and does not include:

- (1) a resulting trust;
- (2) a constructive trust;
- (3) a business trust; or
- (4) a security instrument such as a deed of trust, mortgage, or security interest as defined by the Business & Commerce Code.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 111.0035. Default and Mandatory Rules; Conflict Between Terms and Statute.

(a) Except as provided by the terms of a trust and Subsection (b), this subtitle governs:

- (1) the duties and powers of a trustee;
- (2) relations among trustees; and
- (3) the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this subtitle, except that the terms of a trust may not limit:

- (1) the requirements imposed under Section [112.031](#);
- (2) the applicability of Section [114.007](#) to an exculpation term of a trust;
- (3) the periods of limitation for commencing a judicial proceeding regarding a trust;
- (4) a trustee's duty:

- (A) with regard to an irrevocable trust, to respond to a demand for accounting made under

Section 113.151 if the demand is from a beneficiary who, at the time of the demand:

- (i) is entitled or permitted to receive distributions from the trust; or
- (ii) would receive a distribution from the trust if the trust terminated at the time of the demand;
and

(B) to act in good faith and in accordance with the purposes of the trust;

(5) the power of a court, in the interest of justice, to take action or exercise jurisdiction, including the power to:

(A) modify, reform, or terminate a trust or take other action under Section 112.054;

(B) remove a trustee under Section 113.082;

(C) exercise jurisdiction under Section 115.001;

(D) require, dispense with, modify, or terminate a trustee's bond; or

(E) adjust or deny a trustee's compensation if the trustee commits a breach of trust; or

(6) the applicability of Section 112.038.

(c) The terms of a trust may not limit any common-law duty to keep a beneficiary of an irrevocable trust who is 25 years of age or older informed at any time during which the beneficiary:

(1) is entitled or permitted to receive distributions from the trust; or

(2) would receive a distribution from the trust if the trust were terminated.

Amended by Acts 2017, effective September 1, 2017. Sec. 17 of SB 617 provides: "(a) Except as otherwise expressly provided by a trust, a will creating a trust, or this section, the changes in law made by this Act apply to a trust existing on or created on or after September 1, 2017. "(b) For a trust existing on September 1, 2017, that was created before that date, the changes in law made by this Act apply only to an act or omission relating to the trust that occurs on or after September 1, 2017."

Sec. 111.004. Definitions.

In this subtitle:

(1) "Affiliate" includes:

(A) a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person; or

(B) any officer, director, partner, employee, or relative of a person, and any corporation or partnership of which a person is an officer, director, or partner.

(2) "Beneficiary" means a person for whose benefit property is held in trust, regardless of the nature of the interest.

(3) "Court" means a court of appropriate jurisdiction.

(4) "Express trust" means a fiduciary relationship with respect to property which arises as a manifestation by the settlor of an intention to create the relationship and which subjects the person holding title to the property to equitable duties to deal with the property for the benefit of another person.

(5) "Income" is defined in Section 116.002.

- (6) “*Interest*” means any interest, whether legal or equitable or both, present or future, vested or contingent, defeasible or indefeasible.
- (7) “*Interested person*” means a trustee, beneficiary, or any other person having an interest in or a claim against the trust or any person who is affected by the administration of the trust. Whether a person, excluding a trustee or named beneficiary, is an interested person may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding.
- (8) “*Internal Revenue Code*” means the Internal Revenue Code of 1954, as amended, or any corresponding statute subsequently in effect.
- (9) “*Inventory value*” means the cost of property purchased by a trustee, the market value of property at the time it became subject to the trust, or, in the case of a testamentary trust, any value used by the trustee that is finally determined for the purposes of an estate or inheritance tax.
- (10) “*Person*” means:
- (A) an individual;
 - (B) a corporation;
 - (C) a limited liability company;
 - (D) a partnership;
 - (E) a joint venture;
 - (F) an association;
 - (G) a joint-stock company;
 - (H) a business trust;
 - (I) an unincorporated organization;
 - (J) two or more persons having a joint or common interest, including an individual or a corporation acting as a personal representative or in any other fiduciary capacity;
 - (K) a government;
 - (L) a governmental subdivision, agency, or instrumentality;
 - (M) a public corporation; or
 - (N) any other legal or commercial entity.
- (11) “*Principal*” is defined in Section 116.002.
- (12) “*Property*” means any type of property, whether real, tangible or intangible, legal, or equitable, including property held in any digital or electronic medium. The term also includes choses in action, claims, and contract rights, including a contractual right to receive death benefits as designated beneficiary under a policy of insurance, contract, employees’ trust, retirement account, or other arrangement.
- (13) “*Relative*” means a spouse or, whether by blood or adoption, an ancestor, descendant, brother, sister, or spouse of any of them.
- (14) “*Settlor*” means a person who creates a trust or contributes property to a trustee of a trust. If more

than one person contributes property to a trustee of a trust, each person is a settlor of the portion of the property in the trust attributable to that person's contribution to the trust. The terms "grantor" and "trustor" mean the same as "settlor."

- (15) "*Terms of the trust*" means the manifestation of intention of the settlor with respect to the trust expressed in a manner that admits of its proof in judicial proceedings.
- (16) "*Transaction*" means any act performed by a settlor, trustee, or beneficiary in relation to a trust, including the creation or termination of a trust, the investment of trust property, a breach of duty, the receipt of trust property, the receipt of income or the incurring of expense, a distribution of trust property, an entry in the books and records of the trust, and an accounting by a trustee to any person entitled to receive an accounting.
- (17) "*Trust property*" means property placed in trust by one of the methods specified in Section 112.001 or property otherwise transferred to or acquired or retained by the trustee for the trust.
- (18) "*Trustee*" means the person holding the property in trust, including an original, additional, or successor trustee, whether or not the person is appointed or confirmed by a court.
- (19) "*Employees' trust*" means:
 - (A) a trust that forms a part of a stock-bonus, pension, or profit-sharing plan under Section 401, Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 401 (1986));
 - (B) a pension trust under Chapter 111; and
 - (C) an employer-sponsored benefit plan or program, or any other retirement savings arrangement, including a pension plan created under Section 3, Employee Retirement Income Security Act of 1974 (29 U.S.C.A. Sec. 1002 (1986)), regardless of whether the plan, program, or arrangement is funded through a trust.
- (20) "*Individual retirement account*" means a trust, custodial arrangement, or annuity under Section 408(a) or (b), Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 408 (1986)).
- (21) "*Retirement account*" means a retirement-annuity contract, an individual retirement account, a simplified employee pension, or any other retirement savings arrangement.
- (22) "*Retirement-annuity contract*" means an annuity contract under Section 403, Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 403 (1986)).
- (23) "*Simplified employee pension*" means a trust, custodial arrangement, or annuity under Section 408, Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 408 (1986)).
- (24) "*Environmental law*" means any federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.
- (25) "*Breach of trust*" means a violation by a trustee of a duty the trustee owes to a beneficiary.

Amended by Acts 2013, eff. September 1, 2013.

Sec. 111.005. Reenactment of Common Law.

If the law codified in this subtitle repealed a statute that abrogated or restated a common law rule, that common law rule is reestablished, except as the contents of the rule are changed by this subtitle.

Added by Acts 1983, eff. Jan. 1, 1984.

Sec. 111.006. Application.

This subtitle applies:

- (1) to all trusts created on or after January 1, 1984, and to all transactions relating to such trusts; and
- (2) to all transactions occurring on or after January 1, 1984, relating to trusts created before January 1, 1984; provided that transactions entered into before January 1, 1984, and which were subject to the Texas Trust Act, as amended (Articles 7425b-1 through 7425b-48, Vernon’s Texas Civil Statutes), and the rights, duties, and interests flowing from such transactions remain valid on and after January 1, 1984, and must be terminated, consummated, or enforced as required or permitted by this subtitle.

Added by Acts 1983, eff. Jan. 1, 1984.

CHAPTER 112. CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUSTS

SUBCHAPTER A. CREATION

Sec. 112.001. Methods of Creating Trust.

A trust may be created by:

- (1) a property owner’s declaration that the owner holds the property as trustee for another person;
- (2) a property owner’s inter vivos transfer of the property to another person as trustee for the transferor or a third person;
- (3) a property owner’s testamentary transfer to another person as trustee for a third person;
- (4) an appointment under a power of appointment to another person as trustee for the donee of the power or for a third person; or
- (5) a promise to another person whose rights under the promise are to be held in trust for a third person.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 112.002. Intention to Create Trust.

A trust is created only if the settlor manifests an intention to create a trust.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 112.003. Consideration.

Consideration is not required for the creation of a trust. A promise to create a trust in the future is enforceable only if the requirements for an enforceable contract are present.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 112.004. Statute of Frauds.

A trust in either real or personal property is enforceable only if there is written evidence of the trust’s terms bearing the signature of the settlor or the settlor’s authorized agent. A trust consisting of personal property, however, is enforceable if created by:

- (1) a transfer of the trust property to a trustee who is neither settlor nor beneficiary if the transferor expresses simultaneously with or prior to the transfer the intention to create a trust; or
- (2) a declaration in writing by the owner of property that the owner holds the property as trustee for another person or for the owner and another person as a beneficiary.

Added by Acts 1983, eff. Jan. 1, 1984.

Sec. 112.005. Trust Property.

A trust cannot be created unless there is trust property.

Added by Acts 1983, eff. Jan. 1, 1984.

Sec. 112.006. Additions to Trust Property.

Property may be added to an existing trust from any source in any manner unless the addition is prohibited by the terms of the trust or the property is unacceptable to the trustee.

Added by Acts 1983, eff. Jan. 1, 1984.

Sec. 112.007. Capacity of Settlor.

A person has the same capacity to create a trust by declaration, inter vivos or testamentary transfer, or appointment that the person has to transfer, will, or appoint free of trust.

Added by Acts 1983, eff. Jan. 1, 1984.

Sec. 112.008. Capacity of Trustee.

- (a) The trustee must have the legal capacity to take, hold, and transfer the trust property. If the trustee is a corporation, it must have the power to act as a trustee in this state.
- (b) Except as provided by Section 112.034, the fact that the person named as trustee is also a beneficiary does not disqualify the person from acting as trustee if he is otherwise qualified.
- (c) The settlor of a trust may be the trustee of the trust.

Added by Acts 1983, eff. Jan. 1, 1984.

Sec. 112.009. Acceptance by Trustee.

- (a) The signature of the person named as trustee on the writing evidencing the trust or on a separate written acceptance is conclusive evidence that the person accepted the trust. A person named as trustee who exercises power or performs duties under the trust is presumed to have accepted the trust, except that a person named as trustee may engage in the following conduct without accepting the trust:
 - (1) acting to preserve the trust property if, within a reasonable time after acting, the person gives notice of the rejection of the trust to:
 - (A) the settlor; or
 - (B) if the settlor is deceased or incapacitated, all beneficiaries then entitled to receive trust distributions from the trust; and
 - (2) inspecting or investigating trust property for any purpose, including determining the potential liability of the trust under environmental or other law.
- (b) A person named as trustee who does not accept the trust incurs no liability with respect to the trust.
- (c) If the person named as the original trustee does not accept the trust or if the person is dead or does not have capacity to act as trustee, the person named as the alternate trustee under the terms of the trust or the person selected as alternate trustee according to a method prescribed in the terms of the trust may accept the trust. If a trustee is not named or if there is no alternate trustee designated or

selected in the manner prescribed in the terms of the trust, the court shall appoint a trustee on a petition of any interested person.

Amended by Acts 2005, eff. January 1, 2006.

Sec. 112.010. Presumed Acceptance by Beneficiary; Disclaimer.

- (a) Acceptance by a beneficiary of an interest in a trust is presumed.
- (b) A disclaimer of an interest in or power over trust property is governed by Chapter 240.

Amended by Acts 2015, eff. September 1, 2015.

Sec. 112.011. Posthumous Class Gifts Membership.

- (a) A right to take as a member under a class gift does not accrue to any person unless the person is born before, or is in gestation at, the time of death of the person by which the class is measured and survives that person by at least 120 hours.
- (b) For purposes of Subsection (a), a person is:
 - (1) considered to be in gestation if insemination or implantation occurs at or before the time of death of the person by which the class is measured; and
 - (2) presumed to be in gestation at the time of death of the person by which the class is measured if the person was born before the 301st day after the date of the person's death.
- (c) A provision in the trust instrument that is contrary to this section prevails over this section.

Added by Acts 2017, effective September 1, 2017.

SUBCHAPTER B. VALIDITY

Sec. 112.031. Trust Purposes.

A trust may be created for any purpose that is not illegal. The terms of the trust may not require the trustee to commit a criminal or tortious act or an act that is contrary to public policy.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 112.032. Active and Passive Trusts; Statute of Uses.

- (a) Except as provided by Subsection (b), title to real property held in trust vests directly in the beneficiary if the trustee has neither a power nor a duty related to the administration of the trust.
- (b) The title of a trustee in real property is not divested if the trustee's title is not merely nominal but is subject to a power or duty in relation to the property.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 112.033. Reservation of Interests and Powers by Settlor.

If during the life of the settlor an interest in a trust or the trust property is created in a beneficiary other than the settlor, the disposition is not invalid as an attempted testamentary disposition merely because the settlor reserves or retains, either in himself or another person who is not the trustee, any or all of the other interests in or powers over the trust or trust property, such as:

- (1) a beneficial life interest for himself;
- (2) the power to revoke, modify, or terminate the trust in whole or in part;

- (3) the power to designate the person to whom or on whose behalf the income or principal is to be paid or applied;
- (4) the power to control the administration of the trust in whole or in part;
- (5) the right to exercise a power or option over property in the trust or over interests made payable to the trust under an employee benefit plan, life insurance policy, or otherwise; or
- (6) the power to add property or cause additional employee benefits, life insurance, or other interests to be made payable to the trust at any time.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 112.034. Merger.

- (a) If a settlor transfers both the legal title and all equitable interests in property to the same person or retains both the legal title and all equitable interests in property in himself as both the sole trustee and the sole beneficiary, a trust is not created and the transferee holds the property as his own. This subtitle does not invalidate a trust account validly created and in effect under Chapter XI, Texas Probate Code.
- (b) Except as provided by Subsection (c) of this section, a trust terminates if the legal title to the trust property and all equitable interests in the trust become united in one person.
- (c) The title to trust property and all equitable interests in the trust property may not become united in a beneficiary, other than the settlor, whose interest is protected under a spendthrift trust, and in that case the court shall appoint a new trustee or cotrustee to administer the trust for the benefit of the beneficiary.

Added by Acts 1983, eff. Jan. 1, 1984.

Sec. 112.035. Spendthrift Trusts.

- (a) A settlor may provide in the terms of the trust that the interest of a beneficiary in the income or in the principal or in both may not be voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee.
- (b) A declaration in a trust instrument that the interest of a beneficiary shall be held subject to a "spendthrift trust" is sufficient to restrain voluntary or involuntary alienation of the interest by a beneficiary to the maximum extent permitted by this subtitle.
- (c) A trust containing terms authorized under Subsection (a) or (b) of this section may be referred to as a spendthrift trust.
- (d) If the settlor is also a beneficiary of the trust, a provision restraining the voluntary or involuntary transfer of the settlor's beneficial interest does not prevent the settlor's creditors from satisfying claims from the settlor's interest in the trust estate. A settlor is not considered a beneficiary of a trust solely because:
 - (1) a trustee who is not the settlor is authorized under the trust instrument to pay or reimburse the settlor for, or pay directly to the taxing authorities, any tax on trust income or principal that is payable by the settlor under the law imposing the tax; or
 - (2) the settlor's interest in the trust was created by the exercise of a power of appointment by a third party.

- (e) A beneficiary of the trust may not be considered a settlor merely because of a lapse, waiver, or release of:
 - (1) a power described by Subsection (f); or
 - (2) the beneficiary's right to withdraw a part of the trust property to the extent that the value of the property affected by the lapse, waiver, or release in any calendar year does not exceed the greater of:
 - (A) the amount specified in Section 2041(b)(2) or 2514(e), Internal Revenue Code of 1986; or
 - (B) the amount specified in Section 2503(b), Internal Revenue Code of 1986, with respect to the contributions by each donor.
- (f) A beneficiary of the trust may not be considered to be a settlor, to have made a voluntary or involuntary transfer of the beneficiary's interest in the trust, or to have the power to make a voluntary or involuntary transfer of the beneficiary's interest in the trust, merely because the beneficiary, in any capacity, holds or exercises:
 - (1) a presently exercisable power to:
 - (A) consume, invade, appropriate, or distribute property to or for the benefit of the beneficiary, if the power is:
 - (i) exercisable only on consent of another person holding an interest adverse to the beneficiary's interest; or
 - (ii) limited by an ascertainable standard, including health, education, support, or maintenance of the beneficiary; or
 - (B) appoint any property of the trust to or for the benefit of a person other than the beneficiary, a creditor of the beneficiary, the beneficiary's estate, or a creditor of the beneficiary's estate;
 - (2) a testamentary power of appointment; or
 - (3) a presently exercisable right described by Subsection (e)(2).
- (g) For the purposes of this section, property contributed to the following trusts is not considered to have been contributed by the settlor, and a person who would otherwise be treated as a settlor or a deemed settlor of the following trusts may not be treated as a settlor:
 - (1) an irrevocable inter vivos marital trust if:
 - (A) the settlor is a beneficiary of the trust after the death of the settlor's spouse; and
 - (B) the trust is treated as:
 - (i) qualified terminable interest property under Section 2523(f), Internal Revenue Code of 1986; or
 - (ii) a general power of appointment trust under Section 2523(e), Internal Revenue Code of 1986;
 - (2) an irrevocable inter vivos trust for the settlor's spouse if the settlor is a beneficiary of the trust after the death of the settlor's spouse; or
 - (3) an irrevocable trust for the benefit of a person:

- (A) if the settlor is the person's spouse, regardless of whether or when the person was the settlor of an irrevocable trust for the benefit of that spouse; or
 - (B) to the extent that the property of the trust was subject to a general power of appointment in another person.
- (h) For the purposes of Subsection (g), a person is a beneficiary whether named a beneficiary:
- (1) under the initial trust instrument; or
 - (2) through the exercise of a limited or general power of appointment by:
 - (A) that person's spouse; or
 - (B) another person.

Amended by Amended by Acts 2017, effective September 1, 2017. See transitional note following Sec. 111.0035.

Sec. 112.036. Rule Against Perpetuities.

The rule against perpetuities applies to trusts other than charitable trusts. Accordingly, an interest is not good unless it must vest, if at all, not later than 21 years after some life in being at the time of the creation of the interest, plus a period of gestation. Any interest in a trust may, however, be reformed or construed to the extent and as provided by Section 5.043.

Amended by Acts 1984, eff. Oct. 2, 1984.

Sec. 112.037. Trust for Care of Animal.

- (a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates on the death of the animal or, if the trust is created to provide for the care of more than one animal alive during the settlor's lifetime, on the death of the last surviving animal.
- (b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if a person is not appointed in the terms of the trust, by a person appointed by the court. A person having an interest in the welfare of an animal that is the subject of a trust authorized by this section may request the court to appoint a person to enforce the trust or to remove a person appointed to enforce the trust.
- (c) Except as provided by Subsections (d) and (e), property of a trust authorized by this section may be applied only to the property's intended use under the trust.
- (d) Property of a trust authorized by this section may be applied to a use other than the property's intended use under the trust to the extent the court determines that the value of the trust property exceeds the amount required for the intended use.
- (e) Except as otherwise provided by the terms of the trust, property not required for the trust's intended use must be distributed to:
 - (1) if the settlor is living at the time the trust property is distributed, the settlor; or
 - (2) if the settlor is not living at the time the trust property is distributed:
 - (A) if the settlor has a will, beneficiaries under the settlor's will; or
 - (B) in the absence of an effective provision in a will, the settlor's heirs.
- (f) For purposes of Section 112.036, the lives in being used to determine the maximum duration of a

trust authorized by this section are:

- (1) the individual beneficiaries of the trust;
- (2) the individuals named in the instrument creating the trust; and
- (3) if the settlor or settlors are living at the time the trust becomes irrevocable, the settlor or settlors of the trust or, if the settlor or settlors are not living at the time the trust becomes irrevocable, the individuals who would inherit the settlor or settlors' property under the law of this state had the settlor or settlors died intestate at the time the trust becomes irrevocable.

Added by Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 6, eff. January 1, 2006.

Sec. 112.038. Forfeiture Clause.

- (a) A provision in a trust that would cause a forfeiture of or void an interest for bringing any court action, including contesting a trust, is enforceable unless in a court action determining whether the forfeiture clause should be enforced, the person who brought the action contrary to the forfeiture clause establishes by a preponderance of the evidence that:
 - (1) just cause existed for bringing the action; and
 - (2) the action was brought and maintained in good faith.
- (b) This section is not intended to and does not repeal any law, recognizing that forfeiture clauses generally will not be construed to prevent a beneficiary from seeking to compel a fiduciary to perform the fiduciary's duties, seeking redress against a fiduciary for a breach of the fiduciary's duties, or seeking a judicial construction of a will or trust.

Amended by Acts 2017, effective September 1, 2017. See transitional note following Sec. 111.0035.

SUBCHAPTER C. REVOCATION, MODIFICATION, AND TERMINATION OF TRUSTS

Sec. 112.051. Revocation, Modification, or Amendment by Settlor.

- (a) A settlor may revoke the trust unless it is irrevocable by the express terms of the instrument creating it or of an instrument modifying it.
- (b) The settlor may modify or amend a trust that is revocable, but the settlor may not enlarge the duties of the trustee without the trustee's express consent.
- (c) If the trust was created by a written instrument, a revocation, modification, or amendment of the trust must be in writing.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 112.052. Termination.

A trust terminates if by its terms the trust is to continue only until the expiration of a certain period or until the happening of a certain event and the period of time has elapsed or the event has occurred. If an event of termination occurs, the trustee may continue to exercise the powers of the trustee for the reasonable period of time required to wind up the affairs of the trust and to make distribution of its assets to the appropriate beneficiaries. The continued exercise of the trustee's powers after an event of termination does not affect the vested rights of beneficiaries of the trust.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 112.053. Disposition of Trust Property on Failure of Trust.

The settlor may provide in the trust instrument how property may or may not be disposed of in the event of failure, termination, or revocation of the trust.

Added by Acts 1983, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 895, Sec. 17, eff. Sept. 1, 1991.

Sec. 112.054. Judicial Modification, Reformation, or Termination of Trusts.

- (a) On the petition of a trustee or a beneficiary, a court may order that the trustee be changed, that the terms of the trust be modified, that the trustee be directed or permitted to do acts that are not authorized or that are forbidden by the terms of the trust, that the trustee be prohibited from performing acts required by the terms of the trust, or that the trust be terminated in whole or in part, if:
- (1) the purposes of the trust have been fulfilled or have become illegal or impossible to fulfill;
 - (2) because of circumstances not known to or anticipated by the settlor, the order will further the purposes of the trust;
 - (3) modification of administrative, nondispositive terms of the trust is necessary or appropriate to prevent waste or impairment of the trust's administration;
 - (4) the order is necessary or appropriate to achieve the settlor's tax objectives or to qualify a distributee for governmental benefits and is not contrary to the settlor's intentions; or
 - (5) subject to Subsection (d):
 - (A) continuance of the trust is not necessary to achieve any material purpose of the trust; or
 - (B) the order is not inconsistent with a material purpose of the trust.
- (b) The court shall exercise its discretion to order a modification or termination under Subsection (a) or reformation under Subsection (b-1) in the manner that conforms as nearly as possible to the probable intention of the settlor. The court shall consider spendthrift provisions as a factor in making its decision whether to modify, terminate, or reform, but the court is not precluded from exercising its discretion to modify, terminate, or reform solely because the trust is a spendthrift trust.
- (b-1) On the petition of a trustee or a beneficiary, a court may order that the terms of the trust be reformed if:
- (1) reformation of administrative, nondispositive terms of the trust is necessary or appropriate to prevent waste or impairment of the trust's administration;
 - (2) reformation is necessary or appropriate to achieve the settlor's tax objectives or to qualify a distributee for governmental benefits and is not contrary to the settlor's intentions; or
 - (3) reformation is necessary to correct a scrivener's error in the governing document, even if unambiguous, to conform the terms to the settlor's intent.
- (c) The court may direct that an order described by Subsection (a)(4) or (b-1) has retroactive effect.
- (d) The court may not take the action permitted by Subsection (a)(5) unless all beneficiaries of the trust have consented to the order or are deemed to have consented to the order. A minor, incapacitated, unborn, or unascertained beneficiary is deemed to have consented if a person representing the beneficiary's interest under Section 115.013(c) has consented or if a guardian ad litem appointed to

represent the beneficiary's interest under Section 115.014 consents on the beneficiary's behalf.

- (e) An order described by Subsection (b-1)(3) may be issued only if the settlor's intent is established by clear and convincing evidence.
- (f) Subsection (b-1) is not intended to state the exclusive basis for reformation of trusts, and the bases for reformation of trusts in equity or common law are not affected by this section.

Amended by Acts 2017, effective September 1, 2017. See transitional note following Sec. 111.0035.

Sec. 112.055. Amendment of Charitable Trusts by Operation of Law.

- (a) Except as provided by Section 112.056 and Subsection (b) of this section, the governing instrument of a trust that is a private foundation under Section 509, Internal Revenue Code, as amended, a nonexempt charitable trust that is treated as a private foundation under Section 4947(a)(1), Internal Revenue Code, as amended, or, to the extent that Section 508(e), Internal Revenue Code, is applicable to it, a nonexempt split-interest trust under Section 4947(a)(2), Internal Revenue Code, as amended, is considered to contain provisions stating that the trust:
 - (1) shall make distributions at times and in a manner as not to subject the trust to tax under Section 4942, Internal Revenue Code;
 - (2) may not engage in an act of self-dealing that would be subject to tax under Section 4941, Internal Revenue Code;
 - (3) may not retain excess business holdings that would subject it to tax under Section 4943, Internal Revenue Code;
 - (4) may not make an investment that would subject it to tax under Section 4944, Internal Revenue Code; and
 - (5) may not make a taxable expenditure that would subject it to tax under Section 4945, Internal Revenue Code.
- (b) If a trust was created before January 1, 1970, this section applies to it only for its taxable years that begin on or after January 1, 1972.
- (c) This section applies regardless of any provision in a trust's governing instrument and regardless of any other law of this state, including the provisions of this title.

Added by Acts 1983, eff. Jan. 1, 1984.

Sec. 112.056. Permissive Amendment by Trustee of Charitable Trust.

- (a) If the settlor of a trust that is described under Subsection (a) of Section 112.055 of this Act is living and competent and consents, the trustee may, without judicial proceedings, amend the trust to expressly include or exclude the provisions required by Subsection (a) of Section 112.055 of this Act.
- (b) The amendment must be in writing, and it is effective when a duplicate original is filed with the attorney general's office.

Added by Acts 1983, eff. Jan. 1, 1984.

Sec. 112.057. Division and Combination of Trusts.

- (a) The trustee may, unless expressly prohibited by the terms of the instrument establishing the trust,

divide a trust into two or more separate trusts without a judicial proceeding if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the original trust. The trustee may make a division under this subsection by:

- (1) giving written notice of the division, not later than the 30th day before the date of a division under this subsection, to each beneficiary who might then be entitled to receive distributions from the trust or may be entitled to receive distributions from the trust once it is funded; and
 - (2) executing a written instrument, acknowledged before a notary public or other person authorized to take acknowledgements of conveyances of real estate stating that the trust has been divided pursuant to this section and that the notice requirements of this subsection have been satisfied.
- (b) A trustee, in the written instrument dividing a trust, shall allocate trust property among the separate trusts on a fractional basis, by identifying the assets and liabilities passing to each separate trust, or in any other reasonable manner. The trustee shall allocate undesignated trust property received after the trustee has divided the trust into separate trusts in the manner provided by the written instrument dividing the trust or, in the absence of a provision in the written instrument, in a manner determined by the trustee.
- (c) The trustee may, unless expressly prohibited by the terms of the instrument establishing a trust, combine two or more trusts into a single trust without a judicial proceeding if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of one of the separate trusts. The trustee shall complete the trust combination by:
- (1) giving a written notice of the combination, not later than the 30th day before the effective date of the combination, to each beneficiary who might then be entitled to receive distributions from the separate trusts being combined or to each beneficiary who might be entitled to receive distributions from the separate trusts once the trusts are funded; and
 - (2) executing a written instrument, acknowledged before a notary public or other person authorized to take acknowledgments of conveyances of real estate stating that the trust has been combined pursuant to this section and that the notice requirements of this subsection have been satisfied.
- (d) The trustee may divide or combine a testamentary trust after the will establishing the trust has been admitted to probate, even if the trust will not be funded until a later date. The trustee may divide or combine any other trust before it is funded.
- (e) A beneficiary to whom written notice is required to be given under this section may waive the notice requirement in a writing delivered to the trustee. If all beneficiaries to whom notice would otherwise be required to be given under this section waive the notice requirement, notice is not required.
- (f) Notice required under this section shall be given to a guardian of the estate, guardian ad litem, or parent of a minor or incapacitated beneficiary. A guardian of the estate, guardian ad litem, or parent of a minor or incapacitated beneficiary may waive the notice requirement in accordance with this section on behalf of the minor or incapacitated beneficiary.

Amended by Acts 2011, eff. September 1, 2011.

Sec. 112.058. Conversion of Community Trust to Nonprofit Corporation.

- (a) In this section:
- (1) “*Assets*” means the assets of the component trust funds of a community trust.

(2) “Community trust” means a community trust as described by 26 C.F.R. Section 1.170A-9 (2008), including subsequent amendments.

(b) A community trust with court approval may transfer the assets of the trust to a nonprofit corporation and terminate the trust as provided by this section.

(c) The community trust may transfer assets of the trust to a nonprofit corporation only if the nonprofit corporation is organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon’s Texas Civil Statutes) and organized for the same purpose as the community trust. The charter of the nonprofit corporation must describe the purpose of the corporation and the proposed use of the assets transferred using language substantially similar to the language used in the instrument creating the community trust.

(d) To transfer the assets of and terminate a community trust under this section, the governing body of the community trust must:

(1) file a petition in a probate court, county court, or district court requesting:

(A) the transfer of the assets of the trust to a nonprofit corporation established for the purpose of receiving and administering the assets of the trust; and

(B) the termination of the trust;

(2) send by first class mail to each trust settlor and each trustee of each component trust of the community trust who can be located by the exercise of reasonable diligence a copy of the governing body’s petition and a notice specifying the time and place of the court-scheduled hearing on the petition; and

(3) publish once in a newspaper of general circulation in the county in which the proceeding is pending a notice that reads substantially similar to the following:

TO ALL INTERESTED PERSONS:

(NAME OF COMMUNITY TRUST) HAS FILED A PETITION IN (NAME OF COURT) OF (NAME OF COUNTY), TEXAS, REQUESTING PERMISSION TO CONVERT TO A NONPROFIT CORPORATION. IF PERMITTED TO CONVERT:

(1) THE (NAME OF COMMUNITY TRUST) WILL BE TERMINATED; AND

(2) THE ASSETS OF THE TRUST WILL BE:

(A) TRANSFERRED TO A NONPROFIT CORPORATION WITH THE SAME NAME AND CREATED FOR THE SAME PURPOSE AS THE (NAME OF COMMUNITY TRUST); AND

(B) HELD AND ADMINISTERED BY THE CORPORATION AS PROVIDED BY THE TEXAS NON-PROFIT CORPORATION ACT (ARTICLE 1396-1.01 ET SEQ., VERNON’S TEXAS CIVIL STATUTES).

(1) THE (NAME OF COMMUNITY TRUST) WILL BE TERMINATED; AND

(2) THE ASSETS OF THE TRUST WILL BE:

(A) TRANSFERRED TO A NONPROFIT CORPORATION WITH THE SAME NAME AND CREATED FOR THE SAME PURPOSE AS THE (NAME OF COMMUNITY TRUST); AND

(B) HELD AND ADMINISTERED BY THE CORPORATION AS PROVIDED BY THE TEXAS

NON-PROFIT CORPORATION ACT (ARTICLE 1396-1.01 ET SEQ., VERNON'S TEXAS CIVIL STATUTES).

THE PURPOSE OF THE CONVERSION IS TO ACHIEVE SAVINGS AND USE THE MONEY SAVED TO FURTHER THE PURPOSES FOR WHICH THE (NAME OF COMMUNITY TRUST) WAS CREATED.

A HEARING ON THE PETITION IS SCHEDULED ON (DATE AND TIME) AT (LOCATION OF COURT).

FOR ADDITIONAL INFORMATION, YOU MAY CONTACT THE GOVERNING BODY OF THE (NAME OF COMMUNITY TRUST) AT (ADDRESS AND TELEPHONE NUMBER) OR THE COURT.

- (e) The court shall schedule a hearing on the petition to be held after the 10th day after the date the notices required by Subsection (d) (2) are deposited in the mail or the date the notice required by Subsection (d) (3) is published, whichever is later. The hearing must be held at the time and place stated in the notices unless the court, for good cause, postpones the hearing. If the hearing is postponed, a notice of the rescheduled hearing date and time must be posted at the courthouse of the county in which the proceeding is pending or at the place in or near the courthouse where public notices are customarily posted.
- (f) The court, on a request from the governing body of the community trust, may by order require approval from the Internal Revenue Service for an asset transfer under this section. If the court orders approval from the Internal Revenue Service, the asset transfer may occur on the date the governing body of the community trust files a notice with the court indicating that the Internal Revenue Service has approved the asset transfer. The notice required by this subsection must be filed on or before the first anniversary of the date the court's order approving the asset transfer is signed. If the notice is not filed within the period prescribed by this subsection, the court's order is dissolved.
- (g) A court order transferring the assets of and terminating a community trust must provide that the duties of each trustee of each component trust fund of the community trust are terminated on the date the assets are transferred. This subsection does not affect the liability of a trustee for acts or omissions that occurred before the duties of the trustee are terminated.

Amended by Acts 2017, effective September 1, 2017. See transitional note following Sec. 111.0035.

Sec. 112.059. Termination of Uneconomic Trust.

- (a) After notice to beneficiaries who are distributees or permissible distributees of trust income or principal or who would be distributees or permissible distributees if the interests of the distributees or the trust were to terminate and no powers of appointment were exercised, the trustee of a trust consisting of trust property having a total value of less than \$50,000 may terminate the trust if the trustee concludes after considering the purpose of the trust and the nature of the trust assets that the value of the trust property is insufficient to justify the continued cost of administration.
- (b) On termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.
- (c) A trustee may not exercise a power described by Subsection (a) if the trustee's possession of the power would cause the assets of the trust to be included in the trustee's estate for federal estate tax purposes.

(d) This section does not apply to an easement for conservation or preservation.

Added by Acts 2007, eff. September 1, 2007.

SUBCHAPTER D. DISTRIBUTION OF TRUST PRINCIPAL IN FURTHER TRUST

Sec. 112.071. Definitions.

In this subchapter:

- (1) “*Authorized trustee*” means a person, other than the settlor, who has authority under the terms of a first trust to distribute the principal of the trust to or for the benefit of one or more current beneficiaries.
- (2) “*Charity*” means a charitable entity or a charitable trust, as those terms are defined by Section 123.001.
- (3) “*Current beneficiary*,” with respect to a particular date, means a person who is receiving or is eligible to receive a distribution of income or principal from a trust on that date.
- (4) “*First trust*” means an existing irrevocable inter vivos or testamentary trust all or part of the principal of which is distributed in further trust under Section 112.072 or 112.073.
- (5) “*Full discretion*” means a power to distribute principal to or for the benefit of one or more of the beneficiaries of a trust that is not a trust with limited discretion.
- (6) “*Limited discretion*” means:
 - (A) a power to distribute principal according to mandatory distribution provisions under which the trustee has no discretion; or
 - (B) a power to distribute principal to or for the benefit of one or more beneficiaries of a trust that is limited by an ascertainable standard, including the health, education, support, or maintenance of the beneficiary.
- (7) “*Presumptive remainder beneficiary*,” with respect to a particular date, means a beneficiary of a trust on that date who, in the absence of notice to the trustee of the exercise of the power of appointment and assuming that any other powers of appointment under the trust are not exercised, would be eligible to receive a distribution from the trust if:
 - (A) the trust terminated on that date; or
 - (B) the interests of all current beneficiaries ended on that date without causing the trust to terminate.
- (8) “*Principal*” means property held in trust for distribution to a remainder beneficiary when the trust terminates and includes income of the trust that, at the time of the exercise of a power of distribution under Section 112.072 or 112.073, is not currently required to be distributed.
- (9) “*Second trust*” means any irrevocable trust to which principal is distributed under Section 112.072 or 112.073.
- (10) “*Successor beneficiary*” means a beneficiary other than a current or presumptive remainder beneficiary. The term does not include a potential appointee under a power of appointment held by a beneficiary.

Amended by Acts 2017, effective September 1, 2017. See transitional note following Sec. 111.0035.

Sec. 112.072. Distribution to Second Trust: Trustee with Full Discretion.

- (a) An authorized trustee who has the full discretion to distribute the principal of a trust may distribute all or part of the principal of that trust in favor of a trustee of a second trust for the benefit of one or more current beneficiaries of the first trust who are eligible to receive income or principal from the trust and for the benefit of one or more successor or presumptive remainder beneficiaries of the first trust who are eligible to receive income or principal from the trust.
- (b) The authorized trustee may, in connection with the exercise of a power of distribution under this section, grant a power of appointment, including a currently exercisable power of appointment, in the second trust to one or more of the current beneficiaries of the first trust who, at the time the power of appointment is granted, is eligible to receive the principal outright under the terms of the first trust.
- (c) If the authorized trustee grants a power of appointment to a beneficiary under Subsection (b), the class of permissible appointees in whose favor the beneficiary may appoint under that power may be broader or different than the current, successor, and presumptive remainder beneficiaries of the first trust.
- (d) If the beneficiaries of the first trust are described as a class of persons, the beneficiaries of the second trust may include one or more persons who become members of that class after the distribution to the second trust.
- (e) The authorized trustee shall exercise a power to distribute under this section in good faith, in accordance with the terms and purposes of the trust, and in the interests of the beneficiaries.

Added by Acts 2013, eff. September 1, 2013.

Sec. 112.073. Distribution to Second Trust: Trustee with Limited Discretion.

- (a) An authorized trustee who has limited discretion to distribute the principal of a trust may distribute all or part of the principal of that trust in favor of a trustee of a second trust as provided by this section.
- (b) The current beneficiaries of the second trust must be the same as the current beneficiaries of the first trust, and the successor and presumptive remainder beneficiaries of the second trust must be the same as the successor and presumptive remainder beneficiaries of the first trust.
- (c) The second trust must include the same language authorizing the trustee to distribute the income or principal of the trust that was included in the first trust.
- (d) If the beneficiaries of the first trust are described as a class of persons, the beneficiaries of the second trust must include all persons who become members of that class after the distribution to the second trust.
- (e) If the first trust grants a power of appointment to a beneficiary of the trust, the second trust must grant the power of appointment to the beneficiary in the second trust, and the class of permissible appointees under that power must be the same as the class of permissible appointees under the power granted by the first trust.
- (f) The authorized trustee shall exercise a power of distribution under this section in good faith, in accordance with the terms and purposes of the trust, and in the interests of the beneficiaries.

Added by Acts 2013, eff. September 1, 2013.

Sec. 112.074. Notice Required.

- (a) An authorized trustee may exercise a power of distribution under Section 112.072 or 112.073 without the consent of the settlor or beneficiaries of the first trust and without court approval if the trustee provides to all of the current beneficiaries and presumptive remainder beneficiaries written notice of the trustee's decision to exercise the power.
- (b) For the purpose of determining who is a current beneficiary or presumptive remainder beneficiary entitled to the notice, a beneficiary is determined as of the date the notice is sent. A beneficiary includes a person entitled to receive property under the terms of the first trust.
- (c) Except as provided by Subsection (e-1), in addition to the notice required under Subsection (a), the authorized trustee shall give written notice of the trustee's decision to the attorney general if:
 - (1) a charity is entitled to notice;
 - (2) a charity entitled to notice is no longer in existence;
 - (3) the trustee has the authority to distribute trust assets to one or more charities that are not named in the trust instrument; or
 - (4) the trustee has the authority to make distributions for a charitable purpose described in the trust instrument, but no charity is named as a beneficiary for that purpose.
- (d) If the beneficiary has a court-appointed guardian or conservator, the notice required to be given by this section must be given to that guardian or conservator. If the beneficiary is a minor for whom no guardian or conservator has been appointed, the notice required to be given by this section must be given to a parent of the minor.
- (e) The authorized trustee is not required to provide the notice to a beneficiary who:
 - (1) is known to the trustee and cannot be located by the trustee after reasonable diligence;
 - (2) is not known to the trustee;
 - (3) waives the requirement of the notice under this section; or
 - (4) is a descendant of a beneficiary to whom the trustee has given notice if the beneficiary and the beneficiary's ancestor have similar interests in the trust and no apparent conflict of interest exists between them.
- (e-1) The trustee is not required to give notice to the attorney general under Subsection (c) if the attorney general waives that requirement in writing.
- (e-2) For purposes of Subsection (e)(3), a beneficiary is considered to have waived the requirement that notice be given under this section if a person to whom notice is required to be given with respect to that beneficiary under Subsection (d) waives the requirement that notice be given under this section.
- (f) The notice required under Subsection (a) must:
 - (1) include a statement that:
 - (A) the authorized trustee intends to exercise the power of distribution;
 - (B) the beneficiary has the right to object to the exercise of the power; and

- (C) the beneficiary may petition a court to approve, modify, or deny the exercise of the trustee's power to make a distribution under this subchapter;
- (2) describe the manner in which the trustee intends to exercise the power;
- (3) specify the date the trustee proposes to distribute the first trust to the second trust;
- (4) include the name and mailing address of the trustee;
- (5) include copies of the agreements of the first trust and the proposed second trust;
- (6) be given not later than the 30th day before the proposed date of distribution to the second trust;
and
- (7) be sent by registered or certified mail, return receipt requested, or delivered in person, unless the notice is waived in writing by the person to whom notice is required to be given.

Amended by Acts 2017, effective September 1, 2017. See transitional note following Sec. 111.0035.

Sec. 112.075. Written Instrument Required.

A distribution under Section 112.072 or 112.073 must be made by a written instrument that is signed and acknowledged by the authorized trustee and filed with the records of the first trust and the second trust.

Added by Acts 2013, eff. September 1, 2013.

Sec. 112.076. Reference to Trust Terms.

A reference to the governing instrument or terms of the governing instrument of a trust includes the terms of a second trust to which that trust's principal was distributed under this subchapter.

Added by Acts 2013, eff. September 1, 2013.

Sec. 112.077. Settlor of Second Trust.

- (a) Except as provided by Subsection (b), the settlor of a first trust is considered to be the settlor of a second trust established under this subchapter.
- (b) If a settlor of a first trust is not also the settlor of a second trust into which principal of that first trust is distributed, the settlor of the first trust is considered the settlor of the portion of the second trust distributed to the second trust from that first trust under this subchapter.

Added by Acts 2013, eff. September 1, 2013.

Sec. 112.078. Court-ordered Distribution.

- (a) An authorized trustee may petition a court to order a distribution under this subchapter.
- (b) If the authorized trustee receives a written objection to a distribution under this subchapter from a beneficiary before the proposed effective date of the distribution specified in the notice provided to the beneficiary under Section 112.074, the trustee or the beneficiary may petition a court to approve, modify, or deny the exercise of the trustee's power to make a distribution under this subchapter.
- (c) If the authorized trustee receives a written objection to the distribution from the attorney general not later than the 30th day after the date the notice required by Section 112.074 was received by the attorney general, the trustee may not make a distribution under Section 112.072 or 112.073 without petitioning a court to approve or modify the exercise of the trustee's power to make a distribution under this subchapter.

- (d) In a judicial proceeding under this section, the authorized trustee may present the trustee's reasons for supporting or opposing a proposed distribution, including whether the trustee believes the distribution would enable the trustee to better carry out the purposes of the trust.
- (e) The authorized trustee has the burden of proving that the proposed distribution furthers the purposes of the trust, is in accordance with the terms of the trust, and is in the interests of the beneficiaries.
- (f) This section does not limit a beneficiary's right to bring an action against a trustee for a breach of trust.

Amended by Acts 2017, effective September 1, 2017. See transitional note following Sec. 111.0035.

Sec. 112.079. Divided Discretion.

If an authorized trustee has full discretion to distribute the principal of a trust and another trustee has limited discretion to distribute principal under the trust instrument, the authorized trustee having full discretion may exercise the power to distribute the trust's principal under Section 112.072.

Added by Acts 2013, eff. September 1, 2013.

Sec. 112.080. Later Discovered Assets.

To the extent the authorized trustee does not provide otherwise:

- (1) the distribution of all of the principal of a first trust to a second trust includes subsequently discovered assets otherwise belonging to the first trust and principal paid to or acquired by the first trust after the distribution of the first trust's principal to the second trust; and
- (2) the distribution of part of the principal of a first trust to a second trust does not include subsequently discovered assets belonging to the first trust or principal paid to or acquired by the first trust after the distribution of principal from the first trust to the second trust, and those assets or that principal remain the assets or principal of the first trust.

Added by Acts 2013, eff. September 1, 2013.

Sec. 112.081. Other Authority to Distribute in Further Trust Not Limited.

This subchapter may not be construed to limit the power of an authorized trustee to distribute property in further trust under the terms of the governing instrument of a trust, other law, or a court order.

Added by Acts 2013, eff. September 1, 2013.

Sec. 112.082. Need for Distribution Not Required.

An authorized trustee may exercise the power to distribute principal to a second trust under Section 112.072 or 112.073 regardless of whether there is a current need to distribute principal under the terms of the first trust.

Added by Acts 2013, eff. September 1, 2013.

Sec. 112.083. Duties Not Created.

- (a) This subchapter does not create or imply a duty for an authorized trustee to exercise a power to distribute principal, and impropriety may not be inferred as a result of the trustee not exercising a power conferred by Section 112.072 or 112.073.
- (b) An authorized trustee does not have a duty to inform beneficiaries about the availability of the authority provided by this subchapter or a duty to review the trust to determine whether any action

should be taken under this subchapter.

Added by Acts 2013, eff. September 1, 2013.

Sec. 112.084. Certain Distributions Prohibited.

- (a) Except as provided by Subsection (b), an authorized trustee may not exercise a power to distribute principal of a trust otherwise provided by Section 112.072 or 112.073 if the distribution is expressly prohibited by the terms of the governing instrument of the trust.
- (b) A general prohibition of the amendment or revocation of a trust or a provision that constitutes a spendthrift clause does not preclude the exercise of a power to distribute principal of a trust under Section 112.072 or 112.073.

Added by Acts 2013, eff. September 1, 2013.

Sec. 112.085. Exceptions to Power of Distribution.

An authorized trustee may not exercise a power to distribute principal of a trust under Section 112.072 or 112.073 to:

- (1) reduce, limit, or modify a beneficiary's current, vested right to:
 - (A) receive a mandatory distribution of income or principal;
 - (B) receive a mandatory annuity or unitrust interest;
 - (C) withdraw a percentage of the value of the trust; or
 - (D) withdraw a specified dollar amount from the trust;
- (2) materially limit a trustee's fiduciary duty:
 - (A) under the terms of the trust; or
 - (B) in a manner that would be prohibited by Section 111.0035;
- (3) decrease or indemnify against a trustee's liability;
- (4) add a provision exonerating a trustee from liability for failure to exercise reasonable care, diligence, and prudence;
- (5) eliminate a provision granting another person the right to remove or replace the authorized trustee exercising the distribution power under Section 112.072 or 112.073; or
- (6) reduce, limit, or modify in the second trust a perpetuities provision included in the first trust, unless expressly permitted by the terms of the first trust.

Amended by Acts 2017, effective September 1, 2017. See transitional note following Sec. 111.0035.

Sec. 112.086. Tax-related Limitations.

- (a) The authorized trustee may not distribute the principal of a trust under Section 112.072 or 112.073 in a manner that would prevent a contribution to that trust from qualifying for or that would reduce the exclusion, deduction, or other federal tax benefit that was originally claimed for that contribution, including:
 - (1) the annual exclusion under Section 2503(b), Internal Revenue Code of 1986;
 - (2) a marital deduction under Section 2056(a) or 2523(a), Internal Revenue Code of 1986;

- (3) the charitable deduction under Section 170(a), 642(c), 2055(a), or 2522(a), Internal Revenue Code of 1986;
 - (4) direct skip treatment under Section 2642(c), Internal Revenue Code of 1986; or
 - (5) any other tax benefit for income, gift, estate, or generation-skipping transfer tax purposes under the Internal Revenue Code of 1986.
- (b) Notwithstanding Subsection (a), an authorized trustee may distribute the principal of a first trust to a second trust regardless of whether the settlor is treated as the owner of either or both trusts under Sections 671-679, Internal Revenue Code of 1986.
 - (c) If S corporation stock is held in trust, an authorized trustee may not distribute all or part of that stock under Section 112.072 or 112.073 to a second trust that is not a permitted shareholder under Section 1361(c)(2), Internal Revenue Code of 1986.
 - (d) If an interest in property that is subject to the minimum distribution rules of Section 401(a)(9), Internal Revenue Code of 1986, is held in trust, an authorized trustee may not distribute the trust's interest in the property to a second trust under Section 112.072 or 112.073 if the distribution would shorten the minimum distribution period applicable to the property.

Added by Acts 2013, eff. September 1, 2013.

Sec. 112.087. Compensation of Trustee.

- (a) Except as provided by Subsection (b) and unless a court, on application of the authorized trustee, directs otherwise, the trustee may not exercise a power under Section 112.072 or 112.073 solely to change trust provisions regarding the determination of the compensation of any trustee.
- (b) An authorized trustee, in connection with the exercise of a power under Section 112.072 or 112.073 for another valid and reasonable purpose, may bring the trustee's compensation into conformance with reasonable limits authorized by state law.
- (c) The compensation payable to an authorized trustee of the first trust may continue to be paid to the trustee of the second trust during the term of the second trust and may be determined in the same manner as the compensation would have been determined in the first trust.
- (d) An authorized trustee may not receive a commission or other compensation for the distribution of a particular asset from a first trust to a second trust under Section 112.072 or 112.073.

Added by Acts 2013, eff. September 1, 2013.

CHAPTER 113. ADMINISTRATION

SUBCHAPTER A. POWERS OF TRUSTEE

Sec. 113.001. Limitation of Powers.

A power given to a trustee by this subchapter does not apply to a trust to the extent that the instrument creating the trust, a subsequent court order, or another provision of this subtitle conflicts with or limits the power.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 113.002. General Powers.

Except as provided by Section 113.001, a trustee may exercise any powers in addition to the powers

authorized by this subchapter that are necessary or appropriate to carry out the purposes of the trust.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 113.003. Options.

A trustee may:

- (1) grant an option involving a sale, lease, or other disposition of trust property, including an option exercisable beyond the duration of the trust; or
- (2) acquire and exercise an option for the acquisition of property, including an option exercisable beyond the duration of the trust.

Added by Acts 2005, eff. January 1, 2006.

Sec. 113.004. Additions to Trust Assets.

A trustee may receive from any source additions to the assets of the trust.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 113.005. Acquisition of Undivided Interests.

A trustee may acquire all or a portion of the remaining undivided interest in property in which the trust holds an undivided interest.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 113.006. General Authority to Manage and Invest Trust Property.

Subject to the requirements of Chapter 117, a trustee may manage the trust property and invest and reinvest in property of any character on the conditions and for the lengths of time as the trustee considers proper, notwithstanding that the time may extend beyond the term of the trust.

Amended by Acts 2003, eff. Jan. 1, 2004.

Sec. 113.007. Temporary Deposits of Funds.

A trustee may deposit trust funds that are being held pending investment, distribution, or the payment of debts in a bank that is subject to supervision by state or federal authorities. However, a corporate trustee depositing funds with itself is subject to the requirements of Section 113.057 of this code.

Amended by Acts 1984, eff. Oct. 2, 1984.

Sec. 113.008. Business Entities.

A trustee may invest in, continue, or participate in the operation of any business or other investment enterprise in any form, including a sole proprietorship, partnership, limited partnership, corporation, or association, and the trustee may effect any change in the organization of the business or enterprise.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 113.009. Real Property Management.

A trustee may:

- (1) exchange, subdivide, develop, improve, or partition real property;
- (2) make or vacate public plats;
- (3) adjust boundaries;

- (4) adjust differences in valuation by giving or receiving value;
- (5) dedicate real property to public use or, if the trustee considers it in the best interest of the trust, dedicate easements to public use without consideration;
- (6) raze existing walls or buildings;
- (7) erect new party walls or buildings alone or jointly with an owner of adjacent property;
- (8) make repairs; and
- (9) make extraordinary alterations or additions in structures as necessary to make property more productive.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 113.010. Sale of Property.

A trustee may contract to sell, sell and convey, or grant an option to sell real or personal property at public auction or private sale for cash or for credit or for part cash and part credit, with or without security.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 113.011. Leases.

- (a) A trustee may grant or take a lease of real or personal property for any term, with or without options to purchase and with or without covenants relating to erection of buildings or renewals, including the lease of a right or privilege above or below the surface of real property.
- (b) A trustee may execute a lease containing terms or options that extend beyond the duration of the trust.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 113.012. Minerals.

- (a) A trustee may enter into mineral transactions, including:
 - (1) negotiating and making oil, gas, and other mineral leases covering any land, mineral, or royalty interest at any time forming a part of a trust;
 - (2) pooling and unitizing part or all of the land, mineral leasehold, mineral, royalty, or other interest of a trust estate with land, mineral leasehold, mineral, royalty, or other interest of one or more persons or entities for the purpose of developing and producing oil, gas, or other minerals, and making leases or assignments granting the right to pool and unitize;
 - (3) entering into contracts and agreements concerning the installation and operation of plans or other facilities for the cycling, repressuring, processing, or other treating or handling of oil, gas, or other minerals;
 - (4) conducting or contracting for the conducting of seismic evaluation operations;
 - (5) drilling or contracting for the drilling of wells for oil, gas, or other minerals;
 - (6) contracting for and making “dry hole” and “bottom hole” contributions of cash, leasehold interests, or other interests towards the drilling of wells;
 - (7) using or contracting for the use of any method of secondary or tertiary recovery of any mineral,

including the injection of water, gas, air, or other substances;

- (8) purchasing oil, gas, or other mineral leases, leasehold interests, or other interests for any type of consideration, including farmout agreements requiring the drilling or reworking of wells or participation therein;
- (9) entering into farmout contracts or agreements committing a trust estate to assign oil, gas, or other mineral leases or interests in consideration for the drilling of wells or other oil, gas, or mineral operations;
- (10) negotiating the transfer of and transferring oil, gas, or other mineral leases or interests for any consideration, such as retained overriding royalty interests of any nature, drilling or reworking commitments, or production interests; and
- (11) executing and entering into contracts, conveyances, and other agreements or transfers considered necessary or desirable to carry out the powers granted in this section, whether or not the action is now or subsequently recognized or considered as a common or proper practice by those engaged in the business of prospecting for, developing, producing, processing, transporting, or marketing minerals, including entering into and executing division orders, oil, gas, or other mineral sales contracts, exploration agreements, processing agreements, and other contracts relating to the processing, handling, treating, transporting, and marketing of oil, gas, or other mineral production from or accruing to a trust and receiving and receipting for the proceeds thereof on behalf of a trust.

(b) A trustee may enter into mineral transactions that extend beyond the term of the trust.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 113.013. Insurance.

A trustee may purchase insurance of any nature, form, or amount to protect the trust property and the trustee.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 113.014. Payment of Taxes.

A trustee may pay taxes and assessments levied or assessed against the trust estate or the trustee by governmental taxing or assessing authorities.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 113.015. Authority to Borrow.

A trustee may borrow money from any source, including a trustee, purchase property on credit, and mortgage, pledge, or in any other manner encumber all or any part of the assets of the trust as is advisable in the judgment of the trustee for the advantageous administration of the trust.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 113.016. Management of Securities.

A trustee may:

- (1) pay calls, assessments, or other charges against or because of securities or other investments held by the trust;
- (2) sell or exercise stock subscription or conversion rights;

- (3) vote corporate stock, general or limited partnership interests, or other securities in person or by general or limited proxy;
- (4) consent directly or through a committee or other agent to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise; and
- (5) participate in voting trusts and deposit stocks, bonds, or other securities with any protective or other committee formed by or at the instance of persons holding similar securities, under such terms and conditions respecting the deposit thereof as the trustee may approve; sell any stock or other securities obtained by conversion, reorganization, consolidation, merger, liquidation, or the exercise of subscription rights free of any restrictions upon sale otherwise contained in the trust instrument relative to the securities originally held; assent to corporate sales, leases, encumbrances, and other transactions.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 113.017. Corporate Stock or Other Securities Held in Name of Nominee.

A trustee may:

- (1) hold corporate stock or other securities in the name of a nominee;
- (2) under Subchapter B, Chapter 161, or other law, employ a bank incorporated in this state or a national bank located in this state as custodian of any corporate stock or other securities held in trust; and
- (3) under Subchapter C, Chapter 161, or other law, deposit or arrange for the deposit of securities with a Federal Reserve Bank or in a clearing corporation.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 113.018. Employment and Appointment of Agents.

- (a) A trustee may employ attorneys, accountants, agents, including investment agents, and brokers reasonably necessary in the administration of the trust estate.
- (b) Without limiting the trustee's discretion under Subsection (a), a trustee may grant an agent powers with respect to property of the trust to act for the trustee in any lawful manner for purposes of real property transactions.
- (c) A trustee acting under Subsection (b) may delegate any or all of the duties and powers to:
 - (1) execute and deliver any legal instruments relating to the sale and conveyance of the property, including affidavits, notices, disclosures, waivers, or designations or general or special warranty deeds binding the trustee with vendor's liens retained or disclaimed, as applicable, or transferred to a third-party lender;
 - (2) accept notes, deeds of trust, or other legal instruments;
 - (3) approve closing statements authorizing deductions from the sale price;
 - (4) receive trustee's net sales proceeds by check payable to the trustee;
 - (5) indemnify and hold harmless any third party who accepts and acts under a power of attorney with respect to the sale;
 - (6) take any action, including signing any document, necessary or appropriate to sell the property and accomplish the delegated powers;

- (7) contract to purchase the property for any price on any terms;
 - (8) execute, deliver, or accept any legal instruments relating to the purchase of the property or to any financing of the purchase, including deeds, notes, deeds of trust, guaranties, or closing statements;
 - (9) approve closing statements authorizing payment of prorations and expenses;
 - (10) pay the trustee's net purchase price from funds provided by the trustee;
 - (11) indemnify and hold harmless any third party who accepts and acts under a power of attorney with respect to the purchase; or
 - (12) take any action, including signing any document, necessary or appropriate to purchase the property and accomplish the delegated powers.
- (d) A trustee who delegates a power under Subsection (b) is liable to the beneficiaries or to the trust for an action of the agent to whom the power was delegated.
- (e) A delegation by the trustee under Subsection (b) must be documented in a written instrument acknowledged by the trustee before an officer authorized under the law of this state or another state to take acknowledgments to deeds of conveyance and administer oaths. A signature on a delegation by a trustee for purposes of this subsection is presumed to be genuine if the trustee acknowledges the signature in accordance with Chapter 121, Civil Practice and Remedies Code.
- (f) A delegation to an agent under Subsection (b) terminates six months from the date of the acknowledgment of the written delegation unless terminated earlier by:
- (1) the death or incapacity of the trustee;
 - (2) the resignation or removal of the trustee; or
 - (3) a date specified in the written delegation.
- (g) A person who in good faith accepts a delegation under Subsection (b) without actual knowledge that the delegation is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely on the delegation as if:
- (1) the delegation were genuine, valid, and still in effect;
 - (2) the agent's authority were genuine, valid, and still in effect; and
 - (3) the agent had not exceeded and had properly exercised the authority.
- (h) A trustee may delegate powers under Subsection (b) if the governing instrument does not affirmatively permit the trustee to hire agents or expressly prohibit the trustee from hiring agents.

Amended by Acts 2017, effective September 1, 2017. See transitional note following Sec. 111.0035.

Sec. 113.019. Claims.

A trustee may compromise, contest, arbitrate, or settle claims of or against the trust estate or the trustee.

Added by Acts 1983, eff. Jan. 1, 1984.

Sec. 113.020. Burdensome or Worthless Property.

A trustee may abandon property the trustee considers burdensome or worthless.

Added by Acts 1983, eff. Jan. 1, 1984.

Sec. 113.021. Distribution to Minor or Incapacitated Beneficiary.

- (a) A trustee may make a distribution required or permitted to be made to any beneficiary in any of the following ways when the beneficiary is a minor or a person who in the judgment of the trustee is incapacitated by reason of legal incapacity or physical or mental illness or infirmity:
- (1) to the beneficiary directly;
 - (2) to the guardian of the beneficiary's person or estate;
 - (3) by utilizing the distribution, without the interposition of a guardian, for the health, support, maintenance, or education of the beneficiary;
 - (4) to a custodian for the minor beneficiary under the Texas Uniform Transfers to Minors Act (Chapter 141) or a uniform gifts or transfers to minors act of another state;
 - (5) by reimbursing the person who is actually taking care of the beneficiary, even though the person is not the legal guardian, for expenditures made by the person for the benefit of the beneficiary;
or
 - (6) by managing the distribution as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution.
- (b) The written receipts of persons receiving distributions under Subsection (a) of this section are full and complete acquittances to the trustee.

Amended by Acts 2005, eff. January 1, 2006.

Sec. 113.0211. Adjustment of Charitable Trust.

- (a) In this section:
- (1) "Charitable entity" has the meaning assigned by Section 123.001(1).
 - (2) "Charitable trust" means a trust:
 - (A) the stated purpose of which is to benefit only one or more charitable entities; and
 - (B) that qualifies as a charitable entity.
- (b) The trustee of a charitable trust may acquire, exchange, sell, supervise, manage, or retain any type of investment, subject to restrictions and procedures established by the trustee and in an amount considered appropriate by the trustee, that a prudent investor, exercising reasonable skill, care, and caution, would acquire or retain in light of the purposes, terms, distribution requirements, and other circumstances of the trust. The prudence of a trustee's actions under this subsection is judged with reference to the investment of all of the trust assets rather than with reference to a single trust investment.
- (c) The trustee of a charitable trust may make one or more adjustments between the principal and the income portions of a trust to the extent that the trustee considers the adjustments necessary:
- (1) to comply with the terms of the trust, if any, that describe the amount that may or must be distributed to a charitable entity beneficiary by referring to the income portion of the trust; and

- (2) to administer the trust in order to carry out the purposes of the charitable trust.
- (d) The authority to make adjustments under Subsection (c) includes the authority to allocate all or part of a capital gain to trust income.
- (e) In making adjustments under Subsection (c), the trustee shall consider:
 - (1) except to the extent that the terms of the trust clearly manifest an intention that the trustee shall or may favor one or more charitable entity beneficiaries, the needs of a charitable entity beneficiary, based on what is fair and reasonable to all other charitable entity beneficiaries of the trust, if any; and
 - (2) the need of the trust to maintain the purchasing power of the trust's investments over time.

Added by Acts 2003, eff. Sept. 1, 2003.

Sec. 113.022. Power to Provide Residence and Pay Funeral Expenses.

A trustee of a trust that is not a charitable remainder unitrust, annuity trust, or pooled income fund that is intended to qualify for a federal tax deduction under Section 664, Internal Revenue Code, after giving consideration to the probable intention of the settlor and finding that the trustee's action would be consistent with that probable intention, may:

- (1) permit real estate held in trust to be occupied by a beneficiary who is currently eligible to receive distributions from the trust estate;
- (2) if reasonably necessary for the maintenance of a beneficiary who is currently eligible to receive distributions from the trust estate, invest trust funds in real property to be used for a home by the beneficiary; and
- (3) in the trustee's discretion, pay funeral expenses of a beneficiary who at the time of the beneficiary's death was eligible to receive distributions from the trust estate.

Amended by Acts 1985, eff. May 24, 1985.

Sec. 113.023. Ancillary Trustee.

- (a) If trust property is situated outside this state, a Texas trustee may name in writing an individual or corporation qualified to act in the foreign jurisdiction in connection with trust property as ancillary trustee.
- (b) Within the limits of the authority of the Texas trustee, the ancillary trustee has the rights, powers, discretions, and duties the Texas trustee delegates, subject to the limitations and directions of the Texas trustee specified in the instrument evidencing the appointment of the ancillary trustee.
- (c) The Texas trustee may remove an ancillary trustee and appoint a successor at any time as to all or part of the trust assets.
- (d) The Texas trustee may require security of the ancillary trustee, who is answerable to the Texas trustee for all trust property entrusted to or received by the ancillary trustee in connection with the administration of the trust.
- (e) If the law of the foreign jurisdiction requires a certain procedure or a judicial order for the appointment of an ancillary trustee or to authorize an ancillary trustee to act, the Texas trustee and the ancillary trustee must satisfy the requirements.

Added by Acts 1983, eff. Jan. 1, 1984.

Sec. 113.024. Implied Powers.

The powers, duties, and responsibilities under this subtitle do not exclude other implied powers, duties, or responsibilities that are not inconsistent with this subtitle.

Added by Acts 1983, eff. Jan. 1, 1984.

Sec. 113.025. Powers of Trustee Regarding Environmental Laws.

- (a) A trustee or a potential trustee may inspect, investigate, cause to be inspected, or cause to be investigated trust property, property that the trustee or potential trustee has been asked to hold, or property owned or operated by an entity in which the trustee or potential trustee holds or has been asked to hold any interest or for the purpose of determining the potential application of environmental law with respect to the property. This subsection does not grant any person the right of access to any property. The taking of any action under this subsection with respect to a trust or an addition to a trust is not evidence that a person has accepted the trust or the addition to the trust.
- (b) A trustee may take on behalf of the trust any action before or after the initiation of an enforcement action or other legal proceeding that the trustee reasonably believes will help to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee.

Added by Acts 1993, eff. Sept. 1, 1993.

Sec. 113.026. Authority to Designate New Charitable Beneficiary.

- (a) In this section:
 - (1) “*Charitable entity*” has the meaning assigned by Section 123.001.
 - (2) “*Failed charitable beneficiary*” means a charitable entity that is named as a beneficiary of a trust and that:
 - (A) does not exist at the time the charitable entity’s interest in the trust becomes vested;
 - (B) ceases to exist during the term of the trust; or
 - (C) ceases to be a charitable entity during the term of the trust.
- (b) This section applies only to an express written trust created by an individual with a charitable entity as a beneficiary. If the trust instrument provides a means for replacing a failed charitable beneficiary, the trust instrument governs the replacement of a failed charitable beneficiary, and this section does not apply.
- (c) The trustee of a trust may select one or more replacement charitable beneficiaries for a failed charitable beneficiary in accordance with this section.
- (d) Each replacement charitable beneficiary selected under this section by any person must:
 - (1) be a charitable entity and an entity described under Sections 170(b)(1)(A), 170(c), 2055(a), and 2522(a) of the Internal Revenue Code of 1986, as amended; and
 - (2) have the same or similar charitable purpose as the failed charitable beneficiary.
- (e) If the settlor of the trust is living and not incapacitated at the time a trustee is selecting a replacement charitable beneficiary, the trustee shall consult with the settlor concerning the selection of one or

more replacement charitable beneficiaries.

- (f) If the trustee and the settlor agree on the selection of one or more replacement charitable beneficiaries, the trustee shall send notice of the selection to the attorney general. If the attorney general determines that one or more replacement charitable beneficiaries do not have the same or similar charitable purpose as the failed charitable beneficiary, not later than the 21st day after the date the attorney general receives notice of the selection, the attorney general shall request in writing that a district court in the county in which the trust was created review the selection. If the court agrees with the attorney general's determination, any remaining replacement charitable beneficiary agreed on by the trustee and the settlor is the replacement charitable beneficiary. If there is not a remaining replacement charitable beneficiary agreed on by the trustee and the settlor, the court shall select one or more replacement charitable beneficiaries. If the court finds that the attorney general's request for a review is unreasonable, the replacement charitable beneficiary is the charitable beneficiary agreed on by the trustee and the settlor, and the court may require the attorney general to pay all court costs of the parties involved. Not later than the 30th day after the date the selection is final, the trustee shall provide to each replacement charitable beneficiary selected notice of the selection by certified mail, return receipt requested.
- (g) If the trustee and the settlor cannot agree on the selection of a replacement charitable beneficiary, the trustee shall send notice of that fact to the attorney general not later than the 21st day after the date the trustee determines that an agreement cannot be reached. The attorney general shall refer the matter to a district court in the county in which the trust was created. The trustee and the settlor may each recommend to the court one or more replacement charitable beneficiaries. The court shall select a replacement charitable beneficiary and, not later than the 30th day after the date of the selection, provide to each charitable beneficiary selected notice of the selection by certified mail, return receipt requested.

Added by Acts 1999, eff. Aug. 30, 1999.

Sec. 113.027. Distributions Generally.

When distributing trust property or dividing or terminating a trust, a trustee may:

- (1) make distributions in divided or undivided interests;
- (2) allocate particular assets in proportionate or disproportionate shares;
- (3) value the trust property for the purposes of acting under Subdivision (1) or (2); and
- (4) adjust the distribution, division, or termination for resulting differences in valuation.

Added by Acts 2005, eff. January 1, 2006.

Sec. 113.028. Certain Claims and Causes of Action Prohibited.

- (a) A trustee may not prosecute or assert a claim for damages in a cause of action against a party who is not a beneficiary of the trust if each beneficiary of the trust provides written notice to the trustee of the beneficiary's opposition to the trustee's prosecuting or asserting the claim in the cause of action.
- (b) This section does not apply to a cause of action that is prosecuted by a trustee in the trustee's individual capacity.
- (c) The trustee is not liable for failing to prosecute or assert a claim in a cause of action if prohibited by the beneficiaries under Subsection (a).

Added by Acts 2005, eff. June 17, 2005.

Sec. 113.029. Discretionary Powers; Tax Savings.

- (a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of terms such as “absolute,” “sole,” or “uncontrolled,” the trustee shall exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.
- (b) Subject to Subsection (d), and unless the terms of the trust expressly indicate that a requirement provided by this subsection does not apply:
 - (1) a person, other than a settlor, who is a beneficiary and trustee, trustee affiliate, or discretionary power holder of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee’s, the trustee affiliate’s, or the discretionary power holder’s personal benefit may exercise the power only in accordance with an ascertainable standard relating to the trustee’s, the trustee affiliate’s, or the discretionary power holder’s individual health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1), Internal Revenue Code of 1986; and
 - (2) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.
- (c) A power the exercise of which is limited or prohibited by Subsection (b) may be exercised by a majority of the remaining trustees whose exercise of the power is not limited or prohibited by Subsection (b). If the power of all trustees is limited or prohibited by Subsection (b), the court may appoint a special fiduciary with authority to exercise the power.
- (d) Subsection (b) does not apply to:
 - (1) a power held by the settlor’s spouse who is the trustee of a trust for which a marital deduction, as defined by Section 2056(b)(5) or 2523(e), Internal Revenue Code of 1986, was previously allowed;
 - (2) any trust during any period that the trust may be revoked or amended by its settlor; or
 - (3) a trust if contributions to the trust qualify for the annual exclusion under Section 2503(c), Internal Revenue Code of 1986.
- (e) In this section, “discretionary power holder” means a person who has the sole power or power shared with another person to make discretionary decisions on behalf of a trustee with respect to distributions from a trust.

Amended by Acts 2013, eff. September 1, 2013.

Sec. 113.030. Relocation of Administration of Charitable Trust.

- (a) In this section:
 - (1) “*Charitable entity*” has the meaning assigned by Section 123.001.
 - (2) “*Charitable trust*” means a trust:
 - (A) the stated purpose of which is to benefit only one or more charitable entities; and
 - (B) that qualifies as a charitable entity.

- (3) “Trust administration” means the grant-making function of the trust.
- (b) Except as provided by this section or specifically authorized by the terms of a trust, the trustee of a charitable trust may not change the location in which the trust administration takes place from a location in this state to a location outside this state.
- (c) If the trustee decides to change the location in which the trust is administered from a location in this state to a location outside this state, the trustee shall:
- (1) if the settlor is living and not incapacitated:
- (A) consult the settlor concerning the selection of a new location for the administration of the trust; and
- (B) submit the selection to the attorney general; or
- (2) if the settlor is not living or is incapacitated:
- (A) propose a new location; and
- (B) submit the proposal to the attorney general.
- (d) The trustee may file an action in the district court or statutory probate court in which the trust was created seeking a court order authorizing the trustee to change the location in which the trust is administered to a location outside this state. The court may exercise its equitable powers to effectuate the original purpose of the trust.
- (e) Except as provided by Subsection (b), the location in which the administration of the trust takes place may not be changed to a location outside this state unless:
- (1) the charitable purposes of the trust would not be impaired if the trust administration is moved; and
- (2) a district court or statutory probate court authorizes the relocation.
- (f) The attorney general may bring an action to enforce the provisions of this section. If a trustee of a charitable trust fails to comply with the provisions of this section, the district court or statutory probate court in the county in which the trust administration was originally located may remove the trustee and appoint a new trustee. Costs of a proceeding to remove a trustee, including reasonable attorney’s fees, may be assessed against the removed trustee. This provision is in addition to and does not supersede the provisions of Chapter 123.
- (g) This section does not affect a trustee’s authority to sell real estate owned by a charitable trust.

Redesignated from Property Code, Section 113.029 by Acts 2011, eff. September 1, 2011.

Sec. 113.031. Digital Assets.

- (a) In this section, “digital asset” has the meaning assigned by Section 2001.002, Estates Code.
- (b) A trustee may access digital assets as provided by Chapter 2001, Estates Code.

Added by Acts 2017, effective September 1, 2017.

SUBCHAPTER B. DUTIES OF TRUSTEE

Sec. 113.051. General Duty.

The trustee shall administer the trust in good faith according to its terms and this subtitle. In the absence of any contrary terms in the trust instrument or contrary provisions of this subtitle, in administering the trust the trustee shall perform all of the duties imposed on trustees by the common law.

Amended by Acts 2005, eff. January 1, 2006.

Sec. 113.052. Loan of Trust Funds to Trustee.

- (a) Except as provided by Subsection (b) of this section, a trustee may not lend trust funds to:
 - (1) the trustee or an affiliate;
 - (2) a director, officer, or employee of the trustee or an affiliate;
 - (3) a relative of the trustee; or
 - (4) the trustee's employer, employee, partner, or other business associate.
- (b) This section does not prohibit:
 - (1) a loan by a trustee to a beneficiary of the trust if the loan is expressly authorized or directed by the instrument or transaction establishing the trust; or
 - (2) a deposit by a corporate trustee with itself under Section 113.057 of this Act.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 113.053. Purchase or Sale of Trust Property by Trustee.

- (a) Except as provided by Subsections (b), (c), (d), (e), (f), and (g), a trustee shall not directly or indirectly buy or sell trust property from or to:
 - (1) the trustee or an affiliate;
 - (2) a director, officer, or employee of the trustee or an affiliate;
 - (3) a relative of the trustee; or
 - (4) the trustee's employer, partner, or other business associate.
- (b) A national banking association or a state-chartered corporation with the right to exercise trust powers that is serving as executor, administrator, guardian, trustee, or receiver may sell shares of its own capital stock held by it for an estate to one or more of its officers or directors if a court:
 - (1) finds that the sale is in the best interest of the estate that owns the shares;
 - (2) fixes or approves the sales price of the shares and the other terms of the sale; and
 - (3) enters an order authorizing and directing the sale.
- (c) If a corporate trustee, executor, administrator, or guardian is legally authorized to retain its own capital stock in trust, the trustee may exercise rights to purchase its own stock if increases in the stock are offered pro rata to shareholders.
- (d) If the exercise of rights or the receipt of a stock dividend results in a fractional share holding and the acquisition meets the investment standard required by this subchapter, the trustee may purchase additional fractional shares to round out the holding to a full share.
- (e) A trustee may:

- (1) comply with the terms of a written executory contract signed by the settlor, including a contract for deed, earnest money contract, buy/sell agreement, or stock purchase or redemption agreement; and
 - (2) sell the stock, bonds, obligations, or other securities of a corporation to the issuing corporation or to its corporate affiliate if the sale is made under an agreement described in Subdivision (1) or complies with the duties imposed by Chapter 117.
- (f) A national banking association, a state-chartered corporation, including a state-chartered bank or trust company, a state or federal savings and loan association that has the right to exercise trust powers and that is serving as trustee, or such an institution that is serving as custodian with respect to an individual retirement account, as defined by Section 408, Internal Revenue Code, or an employee benefit plan, as defined by Section 3(3), Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002(3)), regardless of whether the custodial account is, or would otherwise be, considered a trust for purposes of this subtitle, may, subject to its fiduciary duties:
- (1) employ an affiliate or division within a financial institution to provide brokerage, investment, administrative, custodial, or other account services for the trust or custodial account and charge the trust or custodial account for the services;
 - (2) unless the instrument governing the fiduciary relationship expressly prohibits the purchase or charge, purchase insurance underwritten or otherwise distributed by an affiliate, a division within the financial institution, or a syndicate or selling group that includes the financial institution or an affiliate and charge the trust or custodial account for the insurance premium, provided that:
 - (A) the person conducting the insurance transaction is appropriately licensed if required by applicable licensing and regulatory requirements administered by a functional regulatory agency of this state; and
 - (B) the insurance product and premium are the same or similar to a product and premium offered by organizations that are not an affiliate, a division within the financial institution, or a syndicate or selling group that includes the financial institution or an affiliate; and
 - (3) receive a fee or compensation, directly or indirectly, on account of the services performed or the insurance product sold by the affiliate, division within the financial institution, or syndicate or selling group that includes the financial institution or an affiliate, whether in the form of shared commissions, fees, or otherwise, provided that any amount charged by the affiliate, division, or syndicate or selling group that includes the financial institution or an affiliate for the services or insurance product is disclosed and does not exceed the customary or prevailing amount that is charged by the affiliate, division, or syndicate or selling group that includes the financial institution or an affiliate, or a comparable entity, for comparable services rendered or insurance provided to a person other than the trust.
- (g) In addition to other investments authorized by law for the investment of funds held by a fiduciary or by the instrument governing the fiduciary relationship, and notwithstanding any other provision of law and subject to the standard contained in Chapter 117, a bank or trust company acting as a fiduciary, agent, or otherwise, in the exercise of its investment discretion or at the direction of another person authorized to direct the investment of funds held by the bank or trust company as fiduciary, may invest and reinvest in the securities of an open-end or closed-end management investment company or investment trust registered under the Investment Company Act of 1940 (15

U.S.C. Sec. 80a-1 et seq.) if the portfolio of the investment company or investment trust consists substantially of investments that are not prohibited by the governing instrument. The fact that the bank or trust company or an affiliate of the bank or trust company provides services to the investment company or investment trust, such as those of an investment advisor, custodian, transfer agent, registrar, sponsor, distributor, manager, or otherwise, and receives compensation for those services does not preclude the bank or trust company from investing or reinvesting in the securities if the compensation is disclosed by prospectus, account statement, or otherwise. An executor or administrator of an estate under a dependent administration or a guardian of an estate shall not so invest or reinvest unless specifically authorized by the court in which such estate or guardianship is pending.

Amended by Acts 2013, eff. September 1, 2013.

Sec. 113.054. Sales from One Trust to Another.

A trustee of one trust may not sell property to another trust of which it is also trustee unless the property is:

- (1) a bond, note, bill, or other obligation issued or fully guaranteed as to principal and interest by the United States; and
- (2) sold for its current market price.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 113.055. Purchase of Trustee's Securities.

- (a) Except as provided by Subsection (b) of this section, a corporate trustee may not purchase for the trust the stock, bonds, obligations, or other securities of the trustee or an affiliate, and a noncorporate trustee may not purchase for the trust the stock, bonds, obligations, or other securities of a corporation with which the trustee is connected as director, owner, manager, or any other executive capacity.
- (b) A trustee may:
 - (1) retain stock already owned by the trust unless the retention does not satisfy the requirements prescribed by Chapter 117; and
 - (2) exercise stock rights or purchase fractional shares under Section 113.053 of this Act.

Amended by Acts 2003, eff. Jan. 1, 2004.

Sec. 113.056. Authorization to Make Certain Investments.

- (a) Unless the terms of the trust instrument provide otherwise, and subject to the investment standards provided by this subtitle and any investment standards provided by the trust instrument, the trustee may invest all or part of the trust assets in an investment vehicle authorized for the collective investment of trust funds pursuant to Part 9, Title 12, of the Code of Federal Regulations.
- (d) Subject to any investment standards provided by this chapter, Chapter 117, or the trust instrument, whenever the instrument directs, requires, authorizes, or permits investment in obligations of the United States government, the trustee may invest in and hold such obligations either directly or in the form of interests in an open-end management type investment company or investment trust registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., or in an investment vehicle authorized for the collective investment of trust funds pursuant to Part 9, Title 12 of the

Code of Federal Regulations, so long as the portfolio of such investment company, investment trust, or collective investment vehicle is limited to such obligations and to repurchase agreements fully collateralized by such obligations.

Amended by Acts 2003, eff. Jan. 1, 2004.

Sec. 113.057. Deposits by Corporate Trustee with Itself.

- (a) A corporate trustee may deposit trust funds with itself as a permanent investment if authorized by the settlor in the instrument creating the trust or if authorized in a writing delivered to the trustee by a beneficiary currently eligible to receive distributions from a trust created before January 1, 1988.
- (b) A corporate trustee may deposit with itself trust funds that are being held pending investment, distribution, or payment of debts if, except as provided by Subsection (d) of this section:
 - (1) it maintains under control of its trust department as security for the deposit a separate fund of securities legal for trust investments;
 - (2) the total market value of the security is at all times at least equal to the amount of the deposit; and
 - (3) the separate fund is marked as such.
- (c) The trustee may make periodic withdrawals from or additions to the securities fund required by Subsection (b) of this section as long as the required value is maintained. Income from securities in the fund belongs to the trustee.
- (d) Security for a deposit under this section is not required for a deposit under Subsection (a) or under Subsection (b) of this section to the extent the deposit is insured or otherwise secured under state or federal law.

Amended by Acts 1985, eff. May 24, 1985.

Sec. 113.058. Bond.

- (a) A corporate trustee is not required to provide a bond to secure performance of its duties as trustee.
- (b) Unless the instrument creating the trust provides otherwise, a noncorporate trustee must give bond:
 - (1) payable to the trust estate of the trust, the registry of the court, or each person interested in the trust, as their interests may appear; and
 - (2) conditioned on the faithful performance of the trustee's duties.
- (c) The bond must be in an amount and with the sureties required by order of a court in a proceeding brought for this determination.
- (d) Any interested person may bring an action to increase or decrease the amount of a bond, require a bond, or substitute or add sureties. Notwithstanding Subsection (b), for cause shown, a court may require a bond even if the instrument creating the trust provides otherwise.
- (e) The trustee shall deposit the bond with the clerk of the court that issued the order requiring the bond. A suit on the bond may be maintained on a certified copy. Appropriate proof of a recovery on a bond reduces the liability of the sureties pro tanto.
- (f) Failure to comply with this section does not make void or voidable or otherwise affect an act or transaction of a trustee with any third person.

Amended by Acts 2007, eff. September 1, 2007.

SUBCHAPTER C. RESIGNATION OR REMOVAL OF TRUSTEE, AND AUTHORITY OF MULTIPLE AND SUCCESSOR TRUSTEES

Sec. 113.081. Resignation of Trustee.

- (a) A trustee may resign in accordance with the terms of the trust instrument, or a trustee may petition a court for permission to resign as trustee.
- (b) The court may accept a trustee's resignation and discharge the trustee from the trust on the terms and conditions necessary to protect the rights of other interested persons.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 113.082. Removal of Trustee.

- (a) A trustee may be removed in accordance with the terms of the trust instrument, or, on the petition of an interested person and after hearing, a court may, in its discretion, remove a trustee and deny part or all of the trustee's compensation if:
 - (1) the trustee materially violated or attempted to violate the terms of the trust and the violation or attempted violation results in a material financial loss to the trust;
 - (2) the trustee becomes incapacitated or insolvent;
 - (3) the trustee fails to make an accounting that is required by law or by the terms of the trust; or
 - (4) the court finds other cause for removal.
- (b) A beneficiary, cotrustee, or successor trustee may treat a violation resulting in removal as a breach of trust.
- (c) A trustee of a charitable trust may not be removed solely on the grounds that the trustee exercised the trustee's power to adjust between principal and income under Section 113.0211.

Amended by Acts 2005, eff. January 1, 2006.

Sec. 113.083. Appointment of Successor Trustee.

- (a) On the death, resignation, incapacity, or removal of a sole or surviving trustee, a successor trustee shall be selected according to the method, if any, prescribed in the trust instrument. If for any reason a successor is not selected under the terms of the trust instrument, a court may and on petition of any interested person shall appoint a successor in whom the trust shall vest.
- (b) If a vacancy occurs in the number of trustees originally appointed under a valid charitable trust agreement and the trust agreement does not provide for filling the vacancy, the remaining trustees may fill the vacancy by majority vote.

Added by Acts 1983, eff. Jan. 1, 1984.

Sec. 113.084. Powers of Successor Trustee.

Unless otherwise provided in the trust instrument or by order of the court appointing a successor trustee, the successor trustee has the rights, powers, authority, discretion, and title to trust property conferred on the trustee.

Added by Acts 1983, eff. Jan. 1, 1984.

Sec. 113.085. Exercise of Powers by Multiple Trustees.

- (a) Cotrustees may act by majority decision.
- (b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.
- (c) A cotrustee shall participate in the performance of a trustee's function unless the cotrustee:
 - (1) is unavailable to perform the function because of absence, illness, suspension under this code or other law, disqualification, if any, under this code, disqualification under other law, or other temporary incapacity; or
 - (2) has delegated the performance of the function to another trustee in accordance with the terms of the trust or applicable law, has communicated the delegation to all other cotrustees, and has filed the delegation in the records of the trust.
- (d) If a cotrustee is unavailable to participate in the performance of a trustee's function for a reason described by Subsection (c) (1) and prompt action is necessary to achieve the efficient administration or purposes of the trust or to avoid injury to the trust property or a beneficiary, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.
- (e) A trustee may delegate to a cotrustee the performance of a trustee's function unless the settlor specifically directs that the function be performed jointly. Unless a cotrustee's delegation under this subsection is irrevocable, the cotrustee making the delegation may revoke the delegation.

Amended by Acts 2009, eff. September 1, 2009.

SUBCHAPTER E. ACCOUNTING BY TRUSTEE

Sec. 113.151. Demand for Accounting.

- (a) A beneficiary by written demand may request the trustee to deliver to each beneficiary of the trust a written statement of accounts covering all transactions since the last accounting or since the creation of the trust, whichever is later. If the trustee fails or refuses to deliver the statement on or before the 90th day after the date the trustee receives the demand or after a longer period ordered by a court, any beneficiary of the trust may file suit to compel the trustee to deliver the statement to all beneficiaries of the trust. The court may require the trustee to deliver a written statement of account to all beneficiaries on finding that the nature of the beneficiary's interest in the trust or the effect of the administration of the trust on the beneficiary's interest is sufficient to require an accounting by the trustee. However, the trustee is not obligated or required to account to the beneficiaries of a trust more frequently than once every 12 months unless a more frequent accounting is required by the court. If a beneficiary is successful in the suit to compel a statement under this section, the court may, in its discretion, award all or part of the costs of court and all of the suing beneficiary's reasonable and necessary attorney's fees and costs against the trustee in the trustee's individual capacity or in the trustee's capacity as trustee.
- (b) An interested person may file suit to compel the trustee to account to the interested person. The court may require the trustee to deliver a written statement of account to the interested person on finding that the nature of the interest in the trust of, the claim against the trust by, or the effect of the administration of the trust on the interested person is sufficient to require an accounting by the trustee.

Amended by Acts 2003, eff. Sept. 1, 2003.

Sec. 113.152. Contents of Accounting.

A written statement of accounts shall show:

- (1) all trust property that has come to the trustee's knowledge or into the trustee's possession and that has not been previously listed or inventoried as property of the trust;
- (2) a complete account of receipts, disbursements, and other transactions regarding the trust property for the period covered by the account, including their source and nature, with receipts of principal and income shown separately;
- (3) a listing of all property being administered, with an adequate description of each asset;
- (4) the cash balance on hand and the name and location of the depository where the balance is kept; and
- (5) all known liabilities owed by the trust.

Added by Acts 1983, eff. Jan. 1, 1984.

SUBCHAPTER F. COMMON TRUST FUNDS

Sec. 113.171. Common Trust Funds.

- (a) A bank or trust company qualified to act as a fiduciary in this state may establish common trust funds to provide investments to itself as a fiduciary, including as a custodian under the Texas Uniform Transfers to Minors Act (Chapter 141) or a uniform gifts or transfers to minors act of another state or to itself and others as cofiduciaries.
- (b) The fiduciary or cofiduciary may place investment funds in interests in common trust funds if:
 - (1) the investment is not prohibited by the instrument or order creating the fiduciary relationship; and
 - (2) if there are cofiduciaries, the cofiduciaries consent to the investment.
- (c) A common trust fund includes a fund:
 - (1) qualified for exemption from federal income taxation as a common trust fund and maintained exclusively for eligible fiduciary accounts; and
 - (2) consisting solely of assets of retirement, pension, profit sharing, stock bonus, or other employees' trusts that are exempt from federal income taxation.

Amended by Acts 2005, eff. January 1, 2006.

Sec. 113.172. Affiliated Institutions.

A bank or trust company that is a member of an affiliated group under Section 1504, Internal Revenue Code of 1954 (26 U.S.C. 1504), with a bank or trust company maintaining common trust funds may participate in one or more of the funds.

Added by Acts 1983, eff. Jan. 1, 1984.

CHAPTER 114. LIABILITIES, RIGHTS, AND REMEDIES OF TRUSTEES, BENEFICIARIES, AND THIRD PERSONS

SUBCHAPTER A. LIABILITY OF TRUSTEE

Sec. 114.001. Liability of Trustee to Beneficiary.

- (a) The trustee is accountable to a beneficiary for the trust property and for any profit made by the

trustee through or arising out of the administration of the trust, even though the profit does not result from a breach of trust; provided, however, that the trustee is not required to return to a beneficiary the trustee's compensation as provided by this subtitle, by the terms of the trust instrument, or by a writing delivered to the trustee and signed by all beneficiaries of the trust who have full legal capacity.

- (b) The trustee is not liable to the beneficiary for a loss or depreciation in value of the trust property or for a failure to make a profit that does not result from a failure to perform the duties set forth in this subtitle or from any other breach of trust.
- (c) A trustee who commits a breach of trust is chargeable with any damages resulting from such breach of trust, including but not limited to:
 - (1) any loss or depreciation in value of the trust estate as a result of the breach of trust;
 - (2) any profit made by the trustee through the breach of trust; or
 - (3) any profit that would have accrued to the trust estate if there had been no breach of trust.
- (d) The trustee is not liable to the beneficiary for a loss or depreciation in value of the trust property or for acting or failing to act under Section 113.025 or under any other provision of this subtitle if the action or failure to act relates to compliance with an environmental law and if there is no gross negligence or bad faith on the part of the trustee. The provision of any instrument governing trustee liability does not increase the liability of the trustee as provided by this section unless the settlor expressly makes reference to this subsection.
- (e) The trustee has the same protection from liability provided for a fiduciary under 42 U.S.C. Section 9607(n).

Amended by Acts 2003, eff. Jan. 1, 2004.

Sec. 114.002. Liability of Successor Trustee for Breach of Trust by Predecessor.

A successor trustee is liable for a breach of trust of a predecessor only if he knows or should know of a situation constituting a breach of trust committed by the predecessor and the successor trustee:

- (1) improperly permits it to continue;
- (2) fails to make a reasonable effort to compel the predecessor trustee to deliver the trust property; or
- (3) fails to make a reasonable effort to compel a redress of a breach of trust committed by the predecessor trustee.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 114.003. Powers to Direct: Charitable Trusts.

- (a) In this section, "*charitable trust*" has the meaning assigned by Section 123.001.
 - (a-1) The terms of a charitable trust may give a trustee or other person a power to direct the modification or termination of the trust.
- (b) If the terms of a charitable trust give a person the power to direct certain actions of the trustee, the trustee shall act in accordance with the person's direction unless:
 - (1) the direction is manifestly contrary to the terms of the trust; or

- (2) the trustee knows the direction would constitute a serious breach of a fiduciary duty that the person holding the power to direct owes to the beneficiaries of the trust.
- (c) A person, other than a beneficiary, who holds a power to direct with respect to a charitable trust is presumptively a fiduciary required to act in good faith with regard to the purposes of the trust and the interests of the beneficiaries. The holder of a power to direct with respect to a charitable trust is liable for any loss that results from a breach of the person's fiduciary duty.

Amended by Acts 2015, eff. June 19, 2015.

Sec. 114.0031. Directed Trusts; Advisors.

- (a) In this section:
 - (1) “*Advisor*” includes protector.
 - (2) “*Investment decision*” means, with respect to any investment, the retention, purchase, sale, exchange, tender, or other transaction affecting the ownership of the investment or rights in the investment and, with respect to a nonpublicly traded investment, the valuation of the investment.
- (b) This section does not apply to a charitable trust as defined by Section 123.001.
- (c) For purposes of this section, an advisor with authority with respect to investment decisions is an investment advisor.
- (d) A protector has all the power and authority granted to the protector by the trust terms, which may include:
 - (1) the power to remove and appoint trustees, advisors, trust committee members, and other protectors;
 - (2) the power to modify or amend the trust terms to achieve favorable tax status or to facilitate the efficient administration of the trust; and
 - (3) the power to modify, expand, or restrict the terms of a power of appointment granted to a beneficiary by the trust terms.
- (e) If the terms of a trust give a person the authority to direct, consent to, or disapprove a trustee's actual or proposed investment decisions, distribution decisions, or other decisions, the person is considered to be an advisor and a fiduciary when exercising that authority except that the trust terms may provide that an advisor acts in a nonfiduciary capacity.
- (f) A trustee who acts in accordance with the direction of an advisor, as prescribed by the trust terms, is not liable, except in cases of wilful misconduct on the part of the trustee so directed, for any loss resulting directly or indirectly from that act.
- (g) If the trust terms provide that a trustee must make decisions with the consent of an advisor, the trustee is not liable, except in cases of wilful misconduct or gross negligence on the part of the trustee, for any loss resulting directly or indirectly from any act taken or not taken as a result of the advisor's failure to provide the required consent after having been requested to do so by the trustee.
- (h) If the trust terms provide that a trustee must act in accordance with the direction of an advisor with respect to investment decisions, distribution decisions, or other decisions of the trustee, the trustee does not, except to the extent the trust terms provide otherwise, have the duty to:
 - (1) monitor the conduct of the advisor;

- (2) provide advice to the advisor or consult with the advisor; or
 - (3) communicate with or warn or apprise any beneficiary or third party concerning instances in which the trustee would or might have exercised the trustee's own discretion in a manner different from the manner directed by the advisor.
- (i) Absent clear and convincing evidence to the contrary, the actions of a trustee pertaining to matters within the scope of the advisor's authority, such as confirming that the advisor's directions have been carried out and recording and reporting actions taken at the advisor's direction, are presumed to be administrative actions taken by the trustee solely to allow the trustee to perform those duties assigned to the trustee under the trust terms, and such administrative actions are not considered to constitute an undertaking by the trustee to monitor the advisor or otherwise participate in actions within the scope of the advisor's authority.

Added by Acts 2015, eff. June 19, 2015.

Sec. 114.004. Actions Taken Prior to Knowledge or Notice of Facts.

A trustee is not liable for a mistake of fact made before the trustee has actual knowledge or receives written notice of the happening of any event that determines or affects the distribution of the income or principal of the trust, including marriage, divorce, attainment of a certain age, performance of education requirements, or death.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 114.005. Release of Liability by Beneficiary.

- (a) A beneficiary who has full legal capacity and is acting on full information may relieve a trustee from any duty, responsibility, restriction, or liability as to the beneficiary that would otherwise be imposed on the trustee by this subtitle, including liability for past violations.
- (b) The release must be in writing and delivered to the trustee.

Amended by Acts 2007, eff. September 1, 2007.

Sec. 114.006. Liability of Cotrustees for Acts of Other Cotrustees.

- (a) A trustee who does not join in an action of a cotrustee is not liable for the cotrustee's action, unless the trustee does not exercise reasonable care as provided by Subsection (b).
- (b) Each trustee shall exercise reasonable care to:
 - (1) prevent a cotrustee from committing a serious breach of trust; and
 - (2) compel a cotrustee to redress a serious breach of trust.
- (c) Subject to Subsection (b), a dissenting trustee who joins in an action at the direction of the majority of the trustees and who has notified any cotrustee of the dissent in writing at or before the time of the action is not liable for the action.

Amended by Acts 2005, eff. January 1, 2006.

Sec. 114.007. Exculpation of Trustee.

- (a) A term of a trust relieving a trustee of liability for breach of trust is unenforceable to the extent that the term relieves a trustee of liability for:
 - (1) a breach of trust committed:

- (A) in bad faith;
- (B) intentionally; or
- (C) with reckless indifference to the interest of a beneficiary; or

(2) any profit derived by the trustee from a breach of trust.

(b) A term in a trust instrument relieving the trustee of liability for a breach of trust is ineffective to the extent that the term is inserted in the trust instrument as a result of an abuse by the trustee of a fiduciary duty to or confidential relationship with the settlor.

(c) This section applies only to a term of a trust that may otherwise relieve a trustee from liability for a breach of trust. Except as provided in Section 111.0035, this section does not prohibit the settlor, by the terms of the trust, from expressly:

(1) relieving the trustee from a duty or restriction imposed by this subtitle or by common law; or

(2) directing or permitting the trustee to do or not to do an action that would otherwise violate a duty or restriction imposed by this subtitle or by common law.

Added by Acts 2005, eff. January 1, 2006.

Sec. 114.008. Remedies for Breach of Trust.

(a) To remedy a breach of trust that has occurred or might occur, the court may:

(1) compel the trustee to perform the trustee's duty or duties;

(2) enjoin the trustee from committing a breach of trust;

(3) compel the trustee to redress a breach of trust, including compelling the trustee to pay money or to restore property;

(4) order a trustee to account;

(5) appoint a receiver to take possession of the trust property and administer the trust;

(6) suspend the trustee;

(7) remove the trustee as provided under Section 113.082;

(8) reduce or deny compensation to the trustee;

(9) subject to Subsection (b), void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property of which the trustee wrongfully disposed and recover the property or the proceeds from the property; or

(10) order any other appropriate relief.

(b) Notwithstanding Subsection (a)(9), a person other than a beneficiary who, without knowledge that a trustee is exceeding or improperly exercising the trustee's powers, in good faith assists a trustee or in good faith and for value deals with a trustee is protected from liability as if the trustee had or properly exercised the power exercised by the trustee.

Added by Acts 2005, eff. January 1, 2006.

SUBCHAPTER B. LIABILITY OF BENEFICIARY

Sec. 114.031. Liability of Beneficiary to Trustee.

- (a) A beneficiary is liable for loss to the trust if the beneficiary has:
 - (1) misappropriated or otherwise wrongfully dealt with the trust property;
 - (2) expressly consented to, participated in, or agreed with the trustee to be liable for a breach of trust committed by the trustee;
 - (3) failed to repay an advance or loan of trust funds;
 - (4) failed to repay a distribution or disbursement from the trust in excess of that to which the beneficiary is entitled; or
 - (5) breached a contract to pay money or deliver property to the trustee to be held by the trustee as part of the trust.
- (b) Unless the terms of the trust provide otherwise, the trustee is authorized to offset a liability of the beneficiary to the trust estate against the beneficiary's interest in the trust estate, regardless of a spendthrift provision in the trust.

Added by Acts 1983, eff. Jan. 1, 1984.

Sec. 114.032. Liability for Written Agreements.

- (a) A written agreement between a trustee and a beneficiary, including a release, consent, or other agreement relating to a trustee's duty, power, responsibility, restriction, or liability, is final and binding on the beneficiary and any person represented by a beneficiary as provided by this section if:
 - (1) the instrument is signed by the beneficiary;
 - (2) the beneficiary has legal capacity to sign the instrument; and
 - (3) the beneficiary has full knowledge of the circumstances surrounding the agreement.
- (b) A written agreement signed by a beneficiary who has the power to revoke the trust or the power to appoint, including the power to appoint through a power of amendment, the income or principal of the trust to or for the benefit of the beneficiary, the beneficiary's creditors, the beneficiary's estate, or the creditors of the beneficiary's estate is final and binding on any person who takes under the power of appointment or who takes in default if the power of appointment is not executed.
- (c) A written instrument is final and binding on a beneficiary who is a minor if:
 - (1) the minor's parent, including a parent who is also a trust beneficiary, signs the instrument on behalf of the minor;
 - (2) no conflict of interest exists; and
 - (3) no guardian, including a guardian ad litem, has been appointed to act on behalf of the minor.
- (d) A written instrument is final and binding on an unborn or unascertained beneficiary if a beneficiary who has an interest substantially identical to the interest of the unborn or unascertained beneficiary signs the instrument. For purposes of this subsection, an unborn or unascertained beneficiary has a substantially identical interest only with a trust beneficiary from whom the unborn or unascertained beneficiary descends.

- (e) This section does not apply to a written instrument that modifies or terminates a trust in whole or in part unless the instrument is otherwise permitted by law.

Added by Acts 1999, eff. Sept. 1, 1999.

SUBCHAPTER C. RIGHTS OF TRUSTEE

Sec. 114.061. Compensation.

- (a) Unless the terms of the trust provide otherwise and except as provided in Subsection (b) of this section, the trustee is entitled to reasonable compensation from the trust for acting as trustee.
- (b) If the trustee commits a breach of trust, the court may in its discretion deny him all or part of his compensation.

Added by Acts 1983, eff. Jan. 1, 1984.

Sec. 114.062. Exoneration or Reimbursement for Tort.

- (a) Except as provided in Subsection (b) of this section, a trustee who incurs personal liability for a tort committed in the administration of the trust is entitled to exoneration from the trust property if the trustee has not paid the claim or to reimbursement from the trust property if the trustee has paid the claim, if:
- (1) the trustee was properly engaged in a business activity for the trust and the tort is a common incident of that kind of activity;
 - (2) the trustee was properly engaged in a business activity for the trust and neither the trustee nor an officer or employee of the trustee is guilty of actionable negligence or intentional misconduct in incurring the liability; or
 - (3) the tort increased the value of the trust property.
- (b) A trustee who is entitled to exoneration or reimbursement under Subdivision (3) of Subsection (a) is entitled to exoneration or reimbursement only to the extent of the increase in the value of the trust property.

Added by Acts 1983, eff. Jan. 1, 1984.

Sec. 114.063. General Right to Reimbursement.

- (a) A trustee may discharge or reimburse himself from trust principal or income or partly from both for:
- (1) advances made for the convenience, benefit, or protection of the trust or its property;
 - (2) expenses incurred while administering or protecting the trust or because of the trustee's holding or owning any of the trust property; and
 - (3) expenses incurred for any action taken under Section 113.025.
- (b) The trustee has a lien against trust property to secure reimbursement under Subsection (a).
- (c) A potential trustee is entitled to reimbursement from trust principal or income or partly from both for reasonable expenses incurred for any action taken under Section 113.025(a) if:
- (1) a court orders reimbursement or the potential trustee has entered into a written agreement providing for reimbursement with the personal representative of the estate, the trustee of the trust, the settlor, the settlor's attorney-in-fact, the settlor's personal representative, or the person

or entity designated in the trust instrument or will to appoint a trustee; and

- (2) the potential trustee has been appointed trustee under the terms of the trust instrument or will or has received a written request to accept the trust from the settlor, the settlor's attorney-in-fact, the settlor's personal representative, or the person or entity designated in the trust instrument or will to appoint a trustee.

Amended by Acts 1993, eff. Sept. 1, 1993.

Sec. 114.064. Costs.

- (a) In any proceeding under this code the court may make such award of costs and reasonable and necessary attorney's fees as may seem equitable and just.

Added by Acts 1985, eff. May 24, 1985.

SUBCHAPTER D. THIRD PERSONS

Sec. 114.081. Protection of Person Dealing with Trustee.

- (a) A person who deals with a trustee in good faith and for fair value actually received by the trust is not liable to the trustee or the beneficiaries of the trust if the trustee has exceeded the trustee's authority in dealing with the person.
- (b) A person other than a beneficiary is not required to inquire into the extent of the trustee's powers or the propriety of the exercise of those powers if the person:
 - (1) deals with the trustee in good faith; and
 - (2) obtains:
 - (A) a certification of trust described by Section 114.086; or
 - (B) a copy of the trust instrument.
- (c) A person who in good faith delivers money or other assets to a trustee is not required to ensure the proper application of the money or other assets.
- (d) A person other than a beneficiary who in good faith assists a former trustee, or who in good faith and for value deals with a former trustee, without knowledge that the trusteeship has terminated, is protected from liability as if the former trustee were still a trustee.
- (e) Comparable protective provisions of other laws relating to commercial transactions or transfer of securities by fiduciaries prevail over the protection provided by this section.

Amended by Acts 2007, eff. September 1, 2007.

Sec. 114.082. Conveyance by Trustee.

If property is conveyed or transferred to a trustee in trust but the conveyance or transfer does not identify the trust or disclose the names of the beneficiaries, the trustee may convey, transfer, or encumber the title of the property without subsequent question by a person who claims to be a beneficiary under the trust or who claims by, through, or under an undisclosed beneficiary.

Amended by Acts 1987, eff. Aug. 31, 1987.

Sec. 114.0821. Liability of Trust Property.

Although trust property is held by the trustee without identifying the trust or its beneficiaries, the trust

property is not liable to satisfy the personal obligations of the trustee.

Renumbered from Sec. 114.082(b) by Acts 1987, eff. Aug. 31, 1987.

Sec. 114.083. Rights and Liabilities for Committing Torts.

- (a) A personal liability of a trustee or a predecessor trustee for a tort committed in the course of the administration of the trust may be collected from the trust property if the trustee is sued in a representative capacity and the court finds that:
 - (1) the trustee was properly engaged in a business activity for the trust and the tort is a common incident of that kind of activity;
 - (2) the trustee was properly engaged in a business activity for the trust and neither the trustee nor an officer or employee of the trustee is guilty of actionable negligence or intentional misconduct in incurring the liability; or
 - (3) the tort increased the value of the trust property.
- (b) A trust that is liable for the trustee's tort under Subdivision (3) of Subsection (a) is liable only to the extent of the permanent increase in value of the trust property.
- (c) A plaintiff in an action against the trustee as the representative of the trust does not have to prove that the trustee could have been reimbursed by the trust if the trustee had paid the claim.
- (d) Subject to the rights of exoneration or reimbursement under Section 114.062, the trustee is personally liable for a tort committed by the trustee or by the trustee's agents or employees in the course of their employment.

Added by Acts 1983, eff. Jan. 1, 1984.

Sec. 114.084. Contracts of Trustee.

- (a) If a trustee or a predecessor trustee makes a contract that is within his power as trustee and a cause of action arises on the contract, the plaintiff may sue the trustee in his representative capacity, and a judgment rendered in favor of the plaintiff is collectible by execution against the trust property. The plaintiff may sue the trustee individually if the trustee made the contract and the contract does not exclude the trustee's personal liability.
- (b) The addition of "trustee" or "as trustee" after the signature of a trustee who is party to a contract is prima facie evidence of an intent to exclude the trustee from personal liability.
- (c) In an action on a contract against a trustee in the trustee's representative capacity the plaintiff does not have to prove that the trustee could have been reimbursed by the trust if the trustee had paid the claim.

Added by Acts 1983, eff. Jan. 1, 1984.

Sec. 114.085. Partnerships.

- (a) To the extent allowed by law, a trustee who takes the place of a deceased partner in a general partnership in accordance with the articles of partnership is liable to third persons only to the extent of the:
 - (1) deceased partner's capital in the partnership; and
 - (2) trust funds held by the trustee.

- (b) A trustee who contracts to enter a general partnership in its capacity as trustee shall limit, to the extent allowed by law, the trust's liability to:
 - (1) the trust assets contributed to the partnership; and
 - (2) other assets of the trust under the management of the contracting trustee.
- (c) If another provision of this subtitle conflicts with this section, this section controls. This section does not exonerate a trustee from liability for negligence.

Added by Acts 1983, eff. Jan. 1, 1984.

Sec. 114.086. Certification of Trust.

- (a) As an alternative to providing a copy of the trust instrument to a person other than a beneficiary, the trustee may provide to the person a certification of trust containing the following information:
 - (1) a statement that the trust exists and the date the trust instrument was executed;
 - (2) the identity of the settlor;
 - (3) the identity and mailing address of the currently acting trustee;
 - (4) one or more powers of the trustee or a statement that the trust powers include at least all the powers granted a trustee by Subchapter A, Chapter 113;
 - (5) the revocability or irrevocability of the trust and the identity of any person holding a power to revoke the trust;
 - (6) the authority of cotrustees to sign or otherwise authenticate and whether all or less than all of the cotrustees are required in order to exercise powers of the trustee; and
 - (7) the manner in which title to trust property should be taken.
- (b) A certification of trust may be signed or otherwise authenticated by any trustee.
- (c) A certification of trust must state that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification to be incorrect.
- (d) A certification of trust:
 - (1) is not required to contain the dispositive terms of a trust; and
 - (2) may contain information in addition to the information required by Subsection (a).
- (e) A recipient of a certification of trust may require the trustee to furnish copies of the excerpts from the original trust instrument and later amendments to the trust instrument that designate the trustee and confer on the trustee the power to act in the pending transaction.
- (f) A person who acts in reliance on a certification of trust without knowledge that the representations contained in the certification are incorrect is not liable to any person for the action and may assume without inquiry the existence of the facts contained in the certification.
- (g) If a person has actual knowledge that the trustee is acting outside the scope of the trust, and the actual knowledge was acquired by the person before the person entered into the transaction with the trustee or made a binding commitment to enter into the transaction, the transaction is not enforceable against the trust.

- (h) A person who in good faith enters into a transaction relying on a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification are correct. This section does not create an implication that a person is liable for acting in reliance on a certification of trust that fails to contain all the information required by Subsection (a). A person's failure to demand a certification of trust does not:
 - (1) affect the protection provided to the person by Section 114.081; or
 - (2) create an inference as to whether the person has acted in good faith.
- (i) A person making a demand for the trust instrument in addition to a certification of trust or excerpts as described by Subsection (e) is liable for damages if the court determines that the person did not act in good faith in making the demand.
- (j) This section does not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.
- (k) This section does not limit the rights of a beneficiary of the trust against the trustee.

Added by Acts 2007, eff. September 1, 2007.

CHAPTER 115. JURISDICTION, VENUE, AND PROCEEDINGS

SUBCHAPTER A. JURISDICTION AND VENUE

Sec. 115.001. Jurisdiction.

- (a) Except as provided by Subsection (d) of this section, a district court has original and exclusive jurisdiction over all proceedings by or against a trustee and all proceedings concerning trusts, including proceedings to:
 - (1) construe a trust instrument;
 - (2) determine the law applicable to a trust instrument;
 - (3) appoint or remove a trustee;
 - (4) determine the powers, responsibilities, duties, and liability of a trustee;
 - (5) ascertain beneficiaries;
 - (6) make determinations of fact affecting the administration, distribution, or duration of a trust;
 - (7) determine a question arising in the administration or distribution of a trust;
 - (8) relieve a trustee from any or all of the duties, limitations, and restrictions otherwise existing under the terms of the trust instrument or of this subtitle;
 - (9) require an accounting by a trustee, review trustee fees, and settle interim or final accounts; and
 - (10) surcharge a trustee.
- (a-1) The list of proceedings described by Subsection (a) over which a district court has exclusive and original jurisdiction is not exhaustive. A district court has exclusive and original jurisdiction over a proceeding by or against a trustee or a proceeding concerning a trust under Subsection (a) whether or not the proceeding is listed in Subsection (a).
- (b) The district court may exercise the powers of a court of equity in matters pertaining to trusts.

- (c) The court may intervene in the administration of a trust to the extent that the court's jurisdiction is invoked by an interested person or as otherwise provided by law. A trust is not subject to continuing judicial supervision unless the court orders continuing judicial supervision.
- (d) The jurisdiction of the district court is exclusive except for jurisdiction conferred by law on:
 - (1) a statutory probate court;
 - (2) a court that creates a trust under Section 867, Texas Probate Code;
 - (3) a court that creates a trust under Section 142.005;
 - (4) a justice court under Chapter 27, Government Code;
 - (5) a small claims court under Chapter 28, Government Code; or
 - (6) a county court at law.

Amended by Acts Acts 2011, eff. September 1, 2011.

Sec. 115.002. Venue.

- (a) The venue of an action under Section 115.001 of this Act is determined according to this section.
- (b) If there is a single, noncorporate trustee, an action shall be brought in the county in which:
 - (1) the trustee resides or has resided at any time during the four-year period preceding the date the action is filed; or
 - (2) the situs of administration of the trust is maintained or has been maintained at any time during the four-year period preceding the date the action is filed.
- (b-1) If there are multiple trustees none of whom is a corporate trustee and the trustees maintain a principal office in this state, an action shall be brought in the county in which:
 - (1) the situs of administration of the trust is maintained or has been maintained at any time during the four-year period preceding the date the action is filed; or
 - (2) the trustees maintain the principal office.
- (b-2) If there are multiple trustees none of whom is a corporate trustee and the trustees do not maintain a principal office in this state, an action shall be brought in the county in which:
 - (1) the situs of administration of the trust is maintained or has been maintained at any time during the four-year period preceding the date the action is filed; or
 - (2) any trustee resides or has resided at any time during the four-year period preceding the date the action is filed.
- (c) If there are one or more corporate trustees, an action shall be brought in the county in which:
 - (1) the situs of administration of the trust is maintained or has been maintained at any time during the four-year period preceding the date the action is filed; or
 - (2) any corporate trustee maintains its principal office in this state.
- (c-1) Notwithstanding Subsections (b), (b-1), (b-2), and (c), if the settlor is deceased and an administration of the settlor's estate is pending in this state, an action involving the interpretation and administration of an inter vivos trust created by the settlor or a testamentary trust created by

the settlor's will may be brought:

- (1) in a county in which venue is proper under Subsection (b), (b-1), (b-2), or (c); or
 - (2) in the county in which the administration of the settlor's estate is pending.
- (d) For just and reasonable cause, including the location of the records and the convenience of the parties and witnesses, the court may transfer an action from a county of proper venue under this section to another county of proper venue:
- (1) on motion of a defendant or joined party, filed concurrently with or before the filing of the answer or other initial responsive pleading, and served in accordance with law; or
 - (2) on motion of an intervening party, filed not later than the 20th day after the court signs the order allowing the intervention, and served in accordance with law.
- (e) Notwithstanding any other provision of this section, on agreement by all parties the court may transfer an action from a county of proper venue under this section to any other county.
- (f) For the purposes of this section:
- (1) "*Corporate trustee*" means an entity organized as a financial institution or a corporation with the authority to act in a fiduciary capacity.
 - (2) "*Principal office*" means:
 - (A) if there are one or more corporate trustees, an office of a corporate trustee in this state where the decision makers for the corporate trustee within this state conduct the daily affairs of the corporate trustee; or
 - (B) if there are multiple trustees, none of which is a corporate trustee, an office in this state that is not maintained within the personal residence of any trustee, and in which one or more trustees conducts the daily affairs of the trustees.
 - (2-a) The mere presence of an agent or representative of a trustee does not establish a principal office as defined by Subdivision (2). The principal office of a corporate trustee or the principal office maintained by multiple noncorporate trustees may also be but is not necessarily the same as the situs of administration of the trust.
 - (3) "*Situs of administration*" means the location in this state where the trustee maintains the office that is primarily responsible for dealing with the settlor and beneficiaries of the trust. The situs of administration may also be but is not necessarily the same as the principal office of a corporate trustee or the principal office maintained by multiple noncorporate trustees.

Amended by Acts 2017, effective September 1, 2017. See transitional note following Sec. 111.0035.

SUBCHAPTER B. PARTIES, PROCEDURE, AND JUDGMENTS

Sec. 115.011. Parties.

- (a) Any interested person may bring an action under Section 115.001 of this Act.
- (b) Contingent beneficiaries designated as a class are not necessary parties to an action under Section 115.001. The only necessary parties to such an action are:
 - (1) a beneficiary of the trust on whose act or obligation the action is predicated;

- (2) a beneficiary of the trust designated by name, other than a beneficiary whose interest has been distributed, extinguished, terminated, or paid;
 - (3) a person who is actually receiving distributions from the trust estate at the time the action is filed; and
 - (4) the trustee, if a trustee is serving at the time the action is filed.
- (c) The attorney general shall be given notice of any proceeding involving a charitable trust as provided by Chapter 123 of this code.
- (d) A beneficiary of a trust may intervene and contest the right of the plaintiff to recover in an action against the trustee as representative of the trust for a tort committed in the course of the trustee's administration or on a contract executed by the trustee.

Amended by Acts 2011, eff. September 1, 2011.

Sec. 115.012. Rules of Procedure.

Except as otherwise provided, all actions instituted under this subtitle are governed by the Texas Rules of Civil Procedure and the other statutes and rules that are applicable to civil actions generally.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 115.013. Pleadings and Judgments.

- (a) Actions and proceedings involving trusts are governed by this section.
- (b) An affected interest shall be described in pleadings that give reasonable information to an owner by name or class, by reference to the instrument creating the interest, or in other appropriate manner.
- (c) A person is bound by an order binding another in the following cases:
- (1) an order binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, binds other persons to the extent their interests, as objects, takers in default, or otherwise are subject to the power;
 - (2) to the extent there is no conflict of interest between them or among persons represented:
 - (A) an order binding a guardian of the estate or a guardian ad litem binds the ward; and
 - (B) an order binding a trustee binds beneficiaries of the trust in proceedings to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties;
 - (3) if there is no conflict of interest and no guardian of the estate or guardian ad litem has been appointed, a parent may represent his minor child as guardian ad litem or as next friend; and
 - (4) an unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding.
- (d) Notice under Section 115.015 shall be given either to a person who will be bound by the judgment or to one who can bind that person under this section, and notice may be given to both. Notice may be given to unborn or unascertained persons who are not represented under Subdivision (1) or (2) of Subsection (c) by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

Amended by Acts 2009, eff. September 1, 2009.

Sec. 115.014. Guardian or Attorney Ad Litem.

- (a) At any point in a proceeding a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If there is not a conflict of interests, a guardian ad litem may be appointed to represent several persons or interests.
- (b) At any point in a proceeding a court may appoint an attorney ad litem to represent any interest that the court considers necessary, including an attorney ad litem to defend an action under Section 114.083 for a beneficiary of the trust who is a minor or who has been adjudged incompetent.
- (c) A guardian ad litem may consider general benefit accruing to the living members of a person's family.
- (d) A guardian ad litem is entitled to reasonable compensation for services in the amount set by the court to be taxed as costs in the proceeding.
- (e) An attorney ad litem is entitled to reasonable compensation for services in the amount set by the court in the manner provided by Section 114.064.

Amended by Acts 2009, eff. September 1, 2009.

Sec. 115.015. Notice to Beneficiaries of Tort or Contract Proceeding.

- (a) A court may not render judgment in favor of a plaintiff in an action on a contract executed by the trustee or in an action against the trustee as representative of the trust for a tort committed in the course of the trustee's administration unless the plaintiff proves that before the 31st day after the date the action began or within any other period fixed by the court that is more than 30 days before the date of the judgment, the plaintiff gave notice of the existence and nature of the action to:
 - (1) each beneficiary known to the trustee who then had a present or contingent interest; or
 - (2) in an action on a contract involving a charitable trust, the attorney general and any corporation that is a beneficiary or agency in the performance of the trust.
- (b) The plaintiff shall give the notice required by Subsection (a) of this section by registered mail or by certified mail, return receipt requested, addressed to the party to be notified at the party's last known address. The trustee shall give the plaintiff a list of the beneficiaries or persons having an interest in the trust estate and their addresses, if known to the trustee, before the 11th day after the date the plaintiff makes a written request for the information.
- (c) The plaintiff satisfies the notice requirements of this section by notifying the persons on the list provided by the trustee.

Amended by Acts 1983, eff. Jan. 1, 1984.

Sec. 115.016. Notice.

- (a) If notice of hearing on a motion or other proceeding is required, the notice may be given in the manner prescribed by law or the Texas Rules of Civil Procedure, or, alternatively, notice may be given to any party or to his attorney if the party has appeared by attorney or requested that notice be sent to his attorney.

- (b) If the address or identity of a party is not known and cannot be ascertained with reasonable diligence, on order of the court notice may be given by publishing a copy of the notice at least three times in a newspaper having general circulation in the county where the hearing is to be held. The first publication of the notice must be at least 10 days before the time set for the hearing. If there is no newspaper of general circulation in the county where the hearing is to be held, the publication shall be made in a newspaper of general circulation in an adjoining county.

Added by Acts 1983, eff. Jan. 1, 1984.

Sec. 115.017. Waiver of Notice.

A person, including a guardian of the estate, a guardian ad litem, or other fiduciary, may waive notice by a writing signed by the person or his attorney and filed in the proceedings.

Added by Acts 1983, eff. Jan. 1, 1984.

CHAPTER 116. UNIFORM PRINCIPAL AND INCOME ACT

SUBCHAPTER A. DEFINITIONS, FIDUCIARY DUTIES, AND OTHER MISCELLANEOUS PROVISIONS

Sec. 116.001. Short Title.

This chapter may be cited as the Uniform Principal and Income Act.

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 116.002. Definitions.

In this chapter:

- (1) “*Accounting period*” means a calendar year unless another 12-month period is selected by a fiduciary. The term includes a portion of a calendar year or other 12-month period that begins when an income interest begins or ends when an income interest ends.
- (2) “*Beneficiary*” includes, in the case of a decedent’s estate, an heir, legatee, and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.
- (3) “*Fiduciary*” means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.
- (4) “*Income*” means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in Subchapter D.
- (5) “*Income beneficiary*” means a person to whom net income of a trust is or may be payable.
- (6) “*Income interest*” means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee’s discretion.
- (7) “*Mandatory income interest*” means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute.
- (8) “*Net income*” means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under this chapter to or from income during the period.

- (9) “*Person*” has the meaning assigned by Section 111.004.
- (10) “*Principal*” means property held in trust for distribution to a remainder beneficiary when the trust terminates.
- (11) “*Remainder beneficiary*” means a person entitled to receive principal when an income interest ends.
- (12) “*Terms of a trust*” means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.
- (13) “*Trustee*” has the meaning assigned by Section 111.004.

Amended by Acts 2007, eff. September 1, 2007.

Sec. 116.003. Uniformity of Application and Construction.

In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 116.004. Fiduciary Duties; General Principles.

- (a) In allocating receipts and disbursements to or between principal and income, and with respect to any matter within the scope of Subchapters B and C, a fiduciary:
 - (1) shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter;
 - (2) may administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this chapter;
 - (3) shall administer a trust or estate in accordance with this chapter if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and
 - (4) shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.
- (b) In exercising the power to adjust under Section 116.005(a) or a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, or this chapter, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. A determination in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 116.005. Trustee’s Power to Adjust.

- (a) A trustee may adjust between principal and income to the extent the trustee considers necessary if the trustee invests and manages trust assets as a prudent investor, the terms of the trust describe the

amount that may or must be distributed to a beneficiary by referring to the trust's income, and the trustee determines, after applying the rules in Section 116.004(a), that the trustee is unable to comply with Section 116.004(b). The power to adjust conferred by this subsection includes the power to allocate all or part of a capital gain to trust income.

- (b) In deciding whether and to what extent to exercise the power conferred by Subsection (a), a trustee shall consider all factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:
- (1) the nature, purpose, and expected duration of the trust;
 - (2) the intent of the settlor;
 - (3) the identity and circumstances of the beneficiaries;
 - (4) the needs for liquidity, regularity of income, and preservation and appreciation of capital;
 - (5) the assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;
 - (6) the net amount allocated to income under the other sections of this chapter and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;
 - (7) whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;
 - (8) the actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and
 - (9) the anticipated tax consequences of an adjustment.
- (c) A trustee may not make an adjustment:
- (1) that reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;
 - (2) that changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;
 - (3) from any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;
 - (4) if possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;
 - (5) if possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not possess the power to make an adjustment;

- (6) if the trustee is a beneficiary of the trust; or
 - (7) if the trustee is not a beneficiary, but the adjustment would benefit the trustee directly or indirectly.
- (d) If Subsection (c)(4), (5), (6), or (7) applies to a trustee and there is more than one trustee, a cotrustee to whom the provision does not apply may make the adjustment unless the exercise of the power by the remaining trustee or trustees is not permitted by the terms of the trust.
- (e) A trustee may release the entire power conferred by Subsection (a) or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising the power will cause a result described in Subsections (c)(1)-(5) or Subsection (c)(7) or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in Subsection (c). The release may be permanent or for a specified period, including a period measured by the life of an individual.
- (f) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by Subsection (a).

Amended by Acts 2011, eff. September 1, 2011.

Sec. 116.006. Judicial Control of Discretionary Power.

- (a) The court may not order a trustee to change a decision to exercise or not to exercise a discretionary power conferred by Section 116.005 of this chapter unless the court determines that the decision was an abuse of the trustee's discretion. A trustee's decision is not an abuse of discretion merely because the court would have exercised the power in a different manner or would not have exercised the power.
- (b) The decisions to which Subsection (a) applies include:
- (1) a decision under Section 116.005(a) as to whether and to what extent an amount should be transferred from principal to income or from income to principal; and
 - (2) a decision regarding the factors that are relevant to the trust and its beneficiaries, the extent to which the factors are relevant, and the weight, if any, to be given to those factors in deciding whether and to what extent to exercise the discretionary power conferred by Section 116.005(a).
- (c) If the court determines that a trustee has abused the trustee's discretion, the court may place the income and remainder beneficiaries in the positions they would have occupied if the discretion had not been abused, according to the following rules:
- (1) to the extent that the abuse of discretion has resulted in no distribution to a beneficiary or in a distribution that is too small, the court shall order the trustee to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary, in whole or in part, to the beneficiary's appropriate position;
 - (2) to the extent that the abuse of discretion has resulted in a distribution to a beneficiary which is too large, the court shall place the beneficiaries, the trust, or both, in whole or in part, in their appropriate positions by ordering the trustee to withhold an amount from one or more future distributions to the beneficiary who received the distribution that was too large or ordering that beneficiary to return some or all of the distribution to the trust; and

- (3) to the extent that the court is unable, after applying Subdivisions (1) and (2), to place the beneficiaries, the trust, or both, in the positions they would have occupied if the discretion had not been abused, the court may order the trustee to pay an appropriate amount from its own funds to one or more of the beneficiaries or the trust or both.
- (d) If the trustee of a trust reasonably believes that one or more beneficiaries of such trust will object to the manner in which the trustee intends to exercise or not exercise a discretionary power conferred by Section 116.005, the trustee may petition the court having jurisdiction over the trust, and the court shall determine whether the proposed exercise or nonexercise by the trustee of such discretionary power will result in an abuse of the trustee's discretion. The trustee shall state in such petition the basis for its belief that a beneficiary would object. The failure or refusal of a beneficiary to sign a waiver or release is not reasonable grounds for a trustee to believe the beneficiary will object. The court may appoint one or more guardians ad litem or attorneys ad litem pursuant to Section 115.014. If the petition describes the proposed exercise or nonexercise of the power and contains sufficient information to inform the beneficiaries of the reasons for the proposal, the facts upon which the trustee relies, and an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power, a beneficiary who challenges the proposed exercise or nonexercise has the burden of establishing that it will result in an abuse of discretion. The trustee shall advance from the trust principal all costs incident to the judicial determination, including the reasonable attorney's fees and costs of the trustee, any beneficiary or beneficiaries who are parties to the action and who retain counsel, any guardian ad litem, and any attorney ad litem. At the conclusion of the proceeding, the court may award costs and reasonable and necessary attorney's fees as provided in Section 114.064, including, if the court considers it appropriate, awarding part or all of such costs against the trust principal or income, awarding part or all of such costs against one or more beneficiaries or such beneficiary's or beneficiaries' share of the trust, or awarding part or all of such costs against the trustee in the trustee's individual capacity, if the court determines that the trustee's exercise or nonexercise of discretionary power would have resulted in an abuse of discretion or that the trustee did not have reasonable grounds for believing one or more beneficiaries would object to the proposed exercise or nonexercise of the discretionary power.

Amended by Acts 2009, eff. September 1, 2009.

Sec. 116.007. Provisions Regarding Noncharitable Unitrusts.

- (a) This section does not apply to a charitable remainder unitrust as defined by Section 664(d), Internal Revenue Code of 1986 (26 U.S.C. Section 664), as amended.
- (b) In this section:
- (1) "*Unitrust*" means a trust the terms of which require distribution of a unitrust amount.
 - (2) "*Unitrust amount*" means a distribution mandated by the terms of a trust in an amount equal to a fixed percentage of not less than three or more than five percent per year of the net fair market value of the trust's assets, valued at least annually. The unitrust amount may be determined by reference to the net fair market value of the trust's assets in one year or more than one year.
- (c) Distribution of the unitrust amount is considered a distribution of all of the income of the unitrust and shall not be considered a fundamental departure from applicable state law. A distribution of the unitrust amount reasonably apportions the total return of a unitrust.
- (d) Unless the terms of the trust specifically provide otherwise, a distribution of the unitrust amount

shall be treated as first being made from the following sources in order of priority:

- (1) from net accounting income determined as if the trust were not a unitrust;
- (2) from ordinary accounting income not allocable to net accounting income;
- (3) from net realized short-term capital gains;
- (4) from net realized long-term capital gains; and
- (5) from the principal of the trust estate.

Added by Acts 2003, eff. Jan. 1, 2004.

SUBCHAPTER B. DECEDENT'S ESTATE OR TERMINATING INCOME INTEREST

Sec. 116.051. Determination and Distribution of Net Income.

After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

- (1) A fiduciary of an estate or of a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in Subchapters C, D, and E which apply to trustees and the rules in Subdivision (5). The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.
- (2) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in Subchapters C, D, and E which apply to trustees and by:
 - (A) including in net income all income from property used to discharge liabilities;
 - (B) paying from income or principal, in the fiduciary's discretion, fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes, but the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the reduction or loss of the deduction; and
 - (C) paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.
- (3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or any other amount provided by the will, the terms of the trust, or applicable law from net income determined under Subdivision (2) or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will. Unless otherwise provided by the will or the terms of the trust, a beneficiary who receives a pecuniary amount, regardless of whether in trust, shall be paid interest on the pecuniary amount at the legal rate of interest as provided by Section 302.002, Finance Code. Interest on the

pecuniary amount is payable:

- (A) under a will, beginning on the first anniversary of the date of the decedent's death; or
 - (B) under a trust, beginning on the first anniversary of the date on which an income interest ends.
- (4) A fiduciary shall distribute the net income remaining after distributions required by Subdivision (3) in the manner described in Section 116.052 to all other beneficiaries even if the beneficiary holds an unqualified power to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.
- (5) A fiduciary may not reduce principal or income receipts from property described in Subdivision (1) because of a payment described in Section 116.201 or 116.202 to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The net income and principal receipts from the property are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.
- (6) A fiduciary, without reduction for taxes, shall pay to a charitable organization that is entitled to receive income under Subdivision (4) any amount allowed as a tax deduction to the estate or trust for income payable to the charitable organization.

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 116.052. Distribution to Residuary and Remainder Beneficiaries.

- (a) Each beneficiary described in Section 116.051(4) is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.
- (b) In determining a beneficiary's share of net income, the following rules apply:
- (1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations.
 - (2) The beneficiary's fractional interest in the undistributed principal assets must be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust.
 - (3) The beneficiary's fractional interest in the undistributed principal assets must be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation.
 - (4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are

actually distributed.

- (c) If a fiduciary does not distribute all of the collected but undistributed net income to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income.
- (d) A fiduciary may apply the rules in this section, to the extent that the fiduciary considers it appropriate, to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

Added by Acts 2003, eff. Jan. 1, 2004.

SUBCHAPTER C. APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST

Sec. 116.101. When Right to Income Begins and Ends.

- (a) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.
- (b) An asset becomes subject to a trust:
 - (1) on the date it is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;
 - (2) on the date of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or
 - (3) on the date of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.
- (c) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under Subsection (d), even if there is an intervening period of administration to wind up the preceding income interest.
- (d) An income interest ends on the day before an income beneficiary dies or another terminating event occurs, or on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 116.102. Apportionment of Receipts and Disbursements When Decedent Dies or Income Interest Begins.

- (a) A trustee shall allocate an income receipt or disbursement other than one to which Section 116.051(1) applies to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.
- (b) A trustee shall allocate an income receipt or disbursement to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement must be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins must be allocated to principal and the balance must be allocated to income.

- (c) An item of income or an obligation is due on the date the payer is required to make a payment. If a payment date is not stated, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which Section 116.151 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that must be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 116.103. Apportionment When Income Interest Ends.

- (a) In this section, “*undistributed income*” means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal under the terms of the trust.
- (b) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the beneficiary’s share of the undistributed income that is not disposed of under the terms of the trust unless the beneficiary has an unqualified power to revoke more than five percent of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked must be added to principal.
- (c) When a trustee’s obligation to pay a fixed annuity or a fixed fraction of the value of the trust’s assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

Added by Acts 2003, eff. Jan. 1, 2004.

SUBCHAPTER D. ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST

PART 1. RECEIPTS FROM ENTITIES

Sec. 116.151. Character of Receipts.

- (a) In this section, “*entity*” means a corporation, partnership, limited liability company, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate to which Section 116.152 applies, a business or activity to which Section 116.153 applies, or an asset-backed security to which Section 116.178 applies.
- (b) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.
- (c) A trustee shall allocate the following receipts from an entity to principal:
- (1) property other than money;
 - (2) money received in one distribution or a series of related distributions in exchange for part or all of a trust’s interest in the entity;
 - (3) money received in total or partial liquidation of the entity; and
 - (4) money received from an entity that is a regulated investment company or a real estate investment

trust if the money distributed is a capital gain dividend for federal income tax purposes.

(d) Money is received in partial liquidation:

- (1) to the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or
- (2) if the total amount of money and property received in a distribution or series of related distributions is greater than 20 percent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

(e) Money is not received in partial liquidation, nor may it be taken into account under Subsection (d)(2), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary must pay on taxable income of the entity that distributes the money.

(f) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 116.152. Distribution from Trust or Estate.

A trustee shall allocate to income an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest, and shall allocate to principal an amount received as a distribution of principal from such a trust or estate. If a trustee purchases an interest in a trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, Section 116.151 or 116.178 applies to a receipt from the trust.

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 116.153. Business and Other Activities Conducted by Trustee.

- (a) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.
- (b) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts must be retained for working capital, the acquisition or replacement of fixed assets, and other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.
- (c) Activities for which a trustee may maintain separate accounting records include:
 - (1) retail, manufacturing, service, and other traditional business activities;
 - (2) farming;
 - (3) raising and selling livestock and other animals;

- (4) management of rental properties;
- (5) extraction of minerals and other natural resources;
- (6) timber operations; and
- (7) activities to which Section 116.177 applies.

Added by Acts 2003, eff. Jan. 1, 2004.

PART 2. RECEIPTS NOT NORMALLY APPORTIONED

Sec. 116.161. Principal Receipts.

A trustee shall allocate to principal:

- (1) to the extent not allocated to income under this chapter, assets received from a transferor during the transferor's lifetime, a decedent's estate, a trust with a terminating income interest, or a payer under a contract naming the trust or its trustee as beneficiary;
- (2) money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this subchapter;
- (3) amounts recovered from third parties to reimburse the trust because of disbursements described in Section 116.202(a)(7) or for other reasons to the extent not based on the loss of income;
- (4) proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest is income;
- (5) net income received in an accounting period during which there is no beneficiary to whom a trustee may or must distribute income; and
- (6) other receipts as provided in Part 3.

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 116.162. Rental Property.

To the extent that a trustee accounts for receipts from rental property pursuant to this section, the trustee shall allocate to income an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, must be added to principal and held subject to the terms of the lease and is not available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 116.163. Obligation to Pay Money.

- (a) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, must be allocated to income without any provision for amortization of premium.
- (b) A trustee shall allocate to principal an amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity. If the obligation matures within one year after it is purchased or

acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust must be allocated to income.

- (c) This section does not apply to an obligation to which Section 116.172, 116.173, 116.174, 116.175, 116.177, or 116.178 applies.

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 116.164. Insurance Policies and Similar Contracts.

- (a) Except as otherwise provided in Subsection (b), a trustee shall allocate to principal the proceeds of a life insurance policy or other contract in which the trust or its trustee is named as beneficiary, including a contract that insures the trust or its trustee against loss for damage to, destruction of, or loss of title to a trust asset. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal.
- (b) A trustee shall allocate to income proceeds of a contract that insures the trustee against loss of occupancy or other use by an income beneficiary, loss of income, or, subject to Section 116.153, loss of profits from a business.
- (c) This section does not apply to a contract to which Section 116.172 applies.

Added by Acts 2003, eff. Jan. 1, 2004.

PART 3. RECEIPTS NORMALLY APPORTIONED

Sec. 116.171. Insubstantial Allocations Not Required.

If a trustee determines that an allocation between principal and income required by Section 116.172, 116.173, 116.174, 116.175, or 116.178 is insubstantial, the trustee may allocate the entire amount to principal unless one of the circumstances described in Section 116.005(c) applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in Section 116.005(d) and may be released for the reasons and in the manner described in Section 116.005(e).

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 116.172. Deferred Compensation, Annuities, and Similar Payments.

- (a) In this section:
- (1) “*Future payment asset*” means the asset from which a payment is derived.
 - (2) “*Payment*” means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer’s general assets or from a separate fund created by the payer.
 - (3) “*Separate fund*” includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.
- (b) To the extent that the payer characterizes a payment as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.
- (c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or

part of the payment is required to be made, a trustee shall allocate to income the part of the payment that does not exceed an amount equal to:

- (1) four percent of the fair market value of the future payment asset on the date specified in Subsection (d); less
 - (2) the total amount that the trustee has allocated to income for all previous payments received from the future payment asset during the same accounting period in which the payment is received.
- (d) For purposes of Subsection (c)(1), the determination of the fair market value of a future payment asset is made on the later of:
- (1) the date on which the future payment asset first becomes subject to the trust; or
 - (2) the last day of the accounting period of the trust that immediately precedes the accounting period during which the payment is received.
- (e) For each accounting period a payment is received, the amount determined under Subsection (c)(1) must be prorated on a daily basis unless the determination of the fair market value of a future payment asset is made under Subsection (d) (2) and is for an accounting period of 365 days or more.
- (f) A trustee shall allocate to principal the part of the payment described by Subsection (c) that is not allocated to income.
- (g) If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of Subsection (c) and this subsection, a payment is not “required to be made” to the extent that it is made only because the trustee exercises a right of withdrawal.
- (h) Subsections (j) and (k) apply and Subsections (b) and (c) do not apply in determining the allocation of a payment made from a separate fund to:
- (1) a trust to which an election to qualify for a marital deduction under Section 2056(b)(7), Internal Revenue Code of 1986, has been made; or
 - (2) a trust that qualifies for the marital deduction under Section 2056(b)(5), Internal Revenue Code of 1986.
- (i) Subsections (h), (j), and (k) do not apply if and to the extent that a series of payments would, without the application of Subsection (h), qualify for the marital deduction under Section 2056(b)(7) (C), Internal Revenue Code of 1986.
- (j) The trustee shall determine the internal income of the separate fund for the accounting period as if the separate fund were a trust subject to this code. On request of the surviving spouse, the trustee shall demand of the person administering the separate fund that this internal income be distributed to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund, and the balance to the principal. On request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made to the trust during the accounting period from the separate fund.
- (k) If the trustee cannot determine the internal income of the separate fund but can determine the value of the separate fund, the internal income of the separate fund shall be four percent of the fund’s value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund’s

value, the internal income of the fund shall be the product of the interest rate and the present value of the expected future payments, as determined under Section 7520, Internal Revenue Code of 1986, for the month preceding the accounting period for which the computation is made.

Amended by Acts 2009, eff. September 1, 2009.

Sec. 116.173. Liquidating Asset.

- (a) In this section, “*liquidating asset*” means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes a leasehold, patent, copyright, royalty right, and right to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include a payment subject to Section 116.172, resources subject to Section 116.174, timber subject to Section 116.175, an activity subject to Section 116.177, an asset subject to Section 116.178, or any asset for which the trustee establishes a reserve for depreciation under Section 116.203.
- (b) A trustee shall allocate to income 10 percent of the receipts from a liquidating asset and the balance to principal.
- (c) The trustee may allocate a receipt from any interest in a liquidating asset the trust owns on January 1, 2004, in the manner provided by this chapter or in any lawful manner used by the trustee before January 1, 2004, to make the same allocation.

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 116.174. Minerals, Water, and Other Natural Resources.

- (a) To the extent that a trustee accounts for receipts from an interest in minerals or other natural resources pursuant to this section, the trustee shall allocate them as follows:
 - (1) If received as delay rental or annual rent on a lease, a receipt must be allocated to income.
 - (2) If received from a production payment, a receipt must be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance must be allocated to principal.
 - (3) If received as a royalty, shut-in-well payment, take-or-pay payment, or bonus, the trustee shall allocate the receipt equitably.
 - (4) If an amount is received from a working interest or any other interest not provided for in Subdivision (1), (2), or (3), the trustee must allocate the receipt equitably.
- (b) An amount received on account of an interest in water that is renewable must be allocated to income. If the water is not renewable, the trustee must allocate the receipt equitably.
- (c) This chapter applies whether or not a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.
- (d) The trustee may allocate a receipt from any interest in minerals, water, or other natural resources the trust owns on January 1, 2004, in the manner provided by this chapter or in any lawful manner used by the trustee before January 1, 2004, to make the same allocation. The trustee shall allocate a receipt from any interest in minerals, water, or other natural resources acquired by the trust after January 1, 2004, in the manner provided by this chapter.

- (e) An allocation of a receipt under this section is presumed to be equitable if the amount allocated to principal is equal to the amount allowed by the Internal Revenue Code of 1986 as a deduction for depletion of the interest.

Amended by Acts 2007, eff. September 1, 2007.

Sec. 116.175. Timber.

- (a) To the extent that a trustee accounts for receipts from the sale of timber and related products pursuant to this section, the trustee shall allocate the net receipts:
 - (1) to income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the timber during the accounting periods in which a beneficiary has a mandatory income interest;
 - (2) to principal to the extent that the amount of timber removed from the land exceeds the rate of growth of the timber or the net receipts are from the sale of standing timber;
 - (3) to or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in Subdivisions (1) and (2); or
 - (4) to principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to Subdivision (1), (2), or (3).
- (b) In determining net receipts to be allocated pursuant to Subsection (a), a trustee shall deduct and transfer to principal a reasonable amount for depletion.
- (c) This chapter applies whether or not a decedent or transferor was harvesting timber from the property before it became subject to the trust.
- (d) If a trust owns an interest in timberland on January 1, 2004, the trustee may allocate a net receipt from the sale of timber and related products in the manner provided by this chapter or in any lawful manner used by the trustee before January 1, 2004, to make the same allocation. If the trust acquires an interest in timberland after January 1, 2004, the trustee shall allocate net receipts from the sale of timber and related products in the manner provided by this chapter.

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 116.176. Property Not Productive of Income.

- (a) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under Section 116.005 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by Section 116.005(a). The trustee may decide which action or combination of actions to take.
- (b) In cases not governed by Subsection (a), proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 116.177. Derivatives and Options.

- (a) In this section, “*derivative*” means a contract or financial instrument or a combination of contracts and financial instruments which gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.
- (b) To the extent that a trustee does not account under Section 116.153 for transactions in derivatives, the trustee shall allocate to principal receipts from and disbursements made in connection with those transactions.
- (c) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option must be allocated to principal. An amount paid to acquire the option must be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, must be allocated to principal.

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 116.178. Asset-backed Securities.

- (a) In this section, “*asset-backed security*” means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive from the collateral financial assets only the interest or other current return or only the proceeds other than interest or current return. The term does not include an asset to which Section 116.151 or 116.172 applies.
- (b) If a trust receives a payment from interest or other current return and from other proceeds of the collateral financial assets, the trustee shall allocate to income the portion of the payment which the payer identifies as being from interest or other current return and shall allocate the balance of the payment to principal.
- (c) If a trust receives one or more payments in exchange for the trust’s entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust’s interest in the security over more than one accounting period, the trustee shall allocate 10 percent of the payment to income and the balance to principal.

Added by Acts 2003, eff. Jan. 1, 2004.

SUBCHAPTER E. ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST

Sec. 116.201. Disbursements from Income.

A trustee shall make the following disbursements from income to the extent that they are not disbursements to which Section 116.051(2)(B) or (C) applies:

- (1) one-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee unless, consistent with the trustee’s fiduciary duties, the trustee determines that a different portion, none, or all of the compensation should be allocated to income;

- (2) one-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;
- (3) all of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and
- (4) recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

Amended by Acts 2013, eff. September 1, 2013.

Sec. 116.202. Disbursements from Principal.

- (a) A trustee shall make the following disbursements from principal:
 - (1) the remaining one-half of the disbursements described in Section 116.201(1) unless, consistent with the trustee's fiduciary duties, the trustee determines that a different portion, none, or all of those disbursements should be allocated to income, in which case that portion of the disbursements that are not allocated to income shall be allocated to principal;
 - (1-a) the remaining one-half of the disbursements described in Section 116.201(2);
 - (2) all of the trustee's compensation calculated on principal as a fee for acceptance, distribution, or termination, and disbursements made to prepare property for sale;
 - (3) payments on the principal of a trust debt;
 - (4) expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;
 - (5) premiums paid on a policy of insurance not described in Section 116.201(4) of which the trust is the owner and beneficiary;
 - (6) estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and
 - (7) disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws or regulations and other payments made to comply with those laws or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.
- (b) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the principal balance of the obligation.

Amended by Acts 2013, eff. September 1, 2013.

Sec. 116.203. Transfers from Income to Principal for Depreciation.

- (a) In this section, "*depreciation*" means a reduction in value due to wear, tear, decay, corrosion, or gradual obsolescence of a fixed asset having a useful life of more than one year.

- (b) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but may not transfer any amount for depreciation:
 - (1) of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;
 - (2) during the administration of a decedent's estate; or
 - (3) under this section if the trustee is accounting under Section 116.153 for the business or activity in which the asset is used.
- (c) An amount transferred to principal need not be held as a separate fund.

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 116.204. Transfers from Income to Reimburse Principal.

- (a) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.
- (b) Principal disbursements to which Subsection (a) applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:
 - (1) an amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;
 - (2) a capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;
 - (3) disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;
 - (4) periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and
 - (5) disbursements described in Section 116.202(a)(7).
- (c) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in Subsection (a).

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 116.205. Income Taxes.

- (a) A tax required to be paid by a trustee based on receipts allocated to income must be paid from income.
- (b) A tax required to be paid by a trustee based on receipts allocated to principal must be paid from principal, even if the tax is called an income tax by the taxing authority.
- (c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income must be paid:
 - (1) from income to the extent that receipts from the entity are allocated only to income;
 - (2) from principal to the extent that receipts from the entity are allocated only to principal;

- (3) proportionately from principal and income to the extent that receipts from the entity are allocated to both principal and income; and
 - (4) from principal to the extent that the tax exceeds the total receipts from the entity.
- (d) After applying the other provisions of this section, the trustee shall adjust income or principal receipts to the extent that the trust's taxes are reduced because the trust receives a deduction for payments made to a beneficiary.

Amended by Acts 2011, eff. September 1, 2011.

Sec. 116.206. Adjustments Between Principal and Income Because of Taxes.

- (a) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries which arise from:
- (1) elections and decisions, other than those described in Subsection (b), that the fiduciary makes from time to time regarding tax matters;
 - (2) an income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or
 - (3) the ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.
- (b) If the amount of an estate tax marital deduction or charitable contribution deduction is reduced because a fiduciary deducts an amount paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement must equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contribution deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced must be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income.

Added by Acts 2003, eff. Jan. 1, 2004.

CHAPTER 117. UNIFORM PRUDENT INVESTOR ACT

Sec. 117.001. Short Title.

This chapter may be cited as the "Uniform Prudent Investor Act."

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 117.002. Uniformity of Application and Construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among the states enacting it.

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 117.003. Prudent Investor Rule.

- (a) Except as otherwise provided in Subsection (b), a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this chapter.

- (b) The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 117.004. Standard of Care; Portfolio Strategy; Risk and Return Objectives.

- (a) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.
- (b) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.
- (c) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:
- (1) general economic conditions;
 - (2) the possible effect of inflation or deflation;
 - (3) the expected tax consequences of investment decisions or strategies;
 - (4) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;
 - (5) the expected total return from income and the appreciation of capital;
 - (6) other resources of the beneficiaries;
 - (7) needs for liquidity, regularity of income, and preservation or appreciation of capital; and
 - (8) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.
- (d) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.
- (e) Except as otherwise provided by and subject to this subtitle, a trustee may invest in any kind of property or type of investment consistent with the standards of this chapter.
- (f) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 117.005. Diversification.

A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 117.006. Duties at Inception of Trusteeship.

Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this chapter.

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 117.007. Loyalty.

A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 117.008. Impartiality.

If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries.

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 117.009. Investment Costs.

In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee.

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 117.010. Reviewing Compliance.

Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 117.011. Delegation of Investment and Management Functions.

- (a) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:
 - (1) selecting an agent;
 - (2) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
 - (3) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.
- (b) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.
- (c) A trustee who complies with the requirements of Subsection (a) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated, unless:
 - (1) the agent is an affiliate of the trustee; or
 - (2) under the terms of the delegation:

- (A) the trustee or a beneficiary of the trust is required to arbitrate disputes with the agent; or
- (B) the period for bringing an action by the trustee or a beneficiary of the trust with respect to an agent's actions is shortened from that which is applicable to trustees under the law of this state.

(d) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

Added by Acts 2003, eff. Jan. 1, 2004.

Sec. 117.012. Language Invoking Standard of Chapter.

The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorizes any investment or strategy permitted under this chapter: "investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule," "prudent person rule," and "prudent investor rule."

Added by Acts 2003, eff. Jan. 1, 2004.

SUBTITLE C. MISCELLANEOUS TRUSTS

CHAPTER 121. EMPLOYEES' TRUSTS

SUBCHAPTER A. PENSION TRUSTS

Sec. 121.001. Pension Trusts.

(a) For the purposes of this subchapter, a pension trust is an express trust:

- (1) containing or relating to property;
- (2) created by an employer as part of a stock-bonus plan, pension plan, disability or death benefit plan, or profit-sharing plan for the benefit of some or all of the employer's employees;
- (3) to which contributions are made by the employer, by some or all of the employees, or by both; and
- (4) created for the principal purpose of distributing to the employees, or the successor to their beneficial interest in the trust, the principal or income, or both, of the property held in trust.

(b) This subchapter applies to a pension trust regardless of when the trust was created.

Acts 1983, eff. Jan. 1, 1984.

Sec. 121.002. Employees of Controlled Corporations.

For the purposes of this subchapter, the relationship of employer and employee exists between a corporation and its own employees, and between a corporation and the employees of each other corporation that it controls, by which it is controlled, or with which it is under common control through the exercise by one or more persons of a majority of voting rights in one or more corporations.

Acts 1983, eff. Jan. 1, 1984.

Sec. 121.003. Application of Texas Trust Code.

The Texas Trust Code (Chapters 111 through 117) applies to a pension trust.

Amended by Acts 2005, eff. January 1, 2006.

Sec. 121.004. Rule Against Perpetuities.

A pension trust may continue for as long as is necessary to accomplish the purposes of the trust and is not invalid under the rule against perpetuities or any other law restricting or limiting the duration of a trust.

Acts 1983, eff. Jan. 1, 1984.

Sec. 121.005. Accumulation of Income.

Notwithstanding any law limiting the time during which trust income may be accumulated, the income of a pension trust may be accumulated under the terms of the trust for as long as is necessary to accomplish the purposes of the trust.

Acts 1983, 68th Leg., p. 3692, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER B. DEATH BENEFITS UNDER EMPLOYEES' TRUSTS

Sec. 121.051. Definitions.

(a) In this subchapter:

- (1) *"Death benefit"* means a benefit of any kind, including the proceeds of a life insurance policy or any other payment, in cash or property, under an employees' trust or a retirement account, a contract purchased by an employees' trust or a retirement account, or a retirement-annuity contract that is payable because of an employee's, participant's, or beneficiary's death to or for the benefit of the employee's, participant's, or beneficiary's beneficiary.
- (2) *"Employee"* means a person covered by an employees' trust or a retirement account that provides a death benefit or a person whose interest in an employees' trust or a retirement account has not been fully distributed.
- (3) *"Employees' trust"* means:
 - (A) a trust forming a part of a stock-bonus, pension, or profit-sharing plan under Section 401, Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 401 (1986));
 - (B) a pension trust under Chapter 111; and
 - (C) an employer-sponsored benefit plan or program, or any other retirement savings arrangement, including a pension plan created under Section 3, Employee Retirement Income Security Act of 1974 (29 U.S.C.A. Sec. 1002 (1986)), regardless of whether the plan, program, or arrangement is funded through a trust.
- (4) *"Individual retirement account"* means a trust, custodial arrangement, or annuity under Section 408(a) or (b), Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 408 (1986)).
- (5) *"Participant"* means a person covered by an employees' trust or a retirement account that provides a death benefit or a person whose interest in an employees' trust or a retirement account has not been fully distributed.
- (6) *"Retirement account"* means a retirement-annuity contract, an individual retirement account, a

simplified employee pension, or any other retirement savings arrangement.

- (7) “*Retirement-annuity contract*” means an annuity contract under Section 403, Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 403 (1986)).
- (8) “*Simplified employee pension*” means a trust, custodial arrangement, or annuity under Section 408, Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 408 (1986)).
- (9) “*Trust*” and “*trustee*” have the meanings assigned by the Texas Trust Code (Chapters 111 through 115), except that “trust” includes any trust, regardless of when it is created.

(b) References to specific provisions of the Internal Revenue Code of 1954 (26 U.S.C.A.) include corresponding provisions of any subsequent federal tax laws.

Amended by Acts 1987, eff. Aug. 31, 1987.

Sec. 121.052. Payment of Death Benefit to Trustee.

- (a) A death benefit is payable to a trustee of a trust evidenced by a written instrument or declaration existing on the date of an employee’s or participant’s death, or to a trustee named or to be named as trustee of a trust created under an employee’s or participant’s will, if the trustee is designated as beneficiary under the plan containing the employees’ trust or under the retirement account.
- (b) A trustee of a testamentary trust may be designated under Subsection (a) prior to the execution of the will.
- (c) A death benefit under a will is not payable until the will is probated.
- (d) The trustee shall hold, administer, and dispose of a death benefit payable under this section in accordance with the terms of the trust on the date of the employee’s death.
- (e) A death benefit is payable to a trustee of a trust created by the will of a person other than the employee if:
 - (1) the will has been probated at the time of the employee’s death; and
 - (2) the death benefit is payable to the trustee to be held, administered, and disposed of in accordance with the terms of the testamentary trust.

Amended by Acts 1987, eff. Aug. 31, 1987.

Sec. 121.053. Validity of Trust Declaration.

The validity of a trust agreement or declaration is not affected by:

- (1) the absence of a corpus other than the right of the trustee to receive a death benefit as beneficiary;
- (2) the employee’s reservation of the right to designate another beneficiary of the death benefit; or
- (3) the existence of authority to amend, modify, revoke, or terminate the agreement or declaration.

Acts 1983, eff. Jan. 1, 1984.

Sec. 121.054. Unclaimed Benefits.

If a trustee does not claim a death benefit on or before the first anniversary of the employee’s or participant’s death or if satisfactory evidence is provided to a trustee, custodian, other fiduciary, or other obligor of the employees’ trust, contract purchased by the employees’ trust, or the retirement account before the first anniversary of the employee’s or participant’s death that there is or will be no trustee to

receive the death benefit, the death benefit shall be paid:

- (1) according to the beneficiary designation under the plan, trust, contract, or arrangement providing the death benefit under the employees' trust or retirement account; or
- (2) if there is no designation in the employees' trust or retirement account, to the personal representative of the deceased employee's or participant's estate.

Amended by Acts 1987, eff. Aug. 31, 1987.

Sec. 121.055. Exemption from Taxes and Debts.

Unless the trust agreement, declaration of trust, or will provides otherwise, a death benefit payable to a trustee under this subchapter is not:

- (1) part of the deceased employee's estate;
- (2) subject to the debts of the deceased employee or the employee's estate, or to other charges enforceable against the estate; or
- (3) subject to the payment of taxes enforceable against the deceased employee's estate to a greater extent than if the death benefit is payable, free of trust, to a beneficiary other than the executor or administrator of the estate of the employee.

Acts 1983, eff. Jan. 1, 1984.

Sec. 121.056. Commingling of Assets.

A trustee who receives a death benefit under this subchapter may commingle the property with other assets accepted by the trustee and held in trust, either before or after the death benefit is received.

Acts 1983, eff. Jan. 1, 1984.

Sec. 121.057. Prior Designations Not Affected.

This subchapter does not affect the validity of a beneficiary designation made by an employee before April 3, 1975, that names a trustee as beneficiary of a death benefit.

Acts 1983, eff. Jan. 1, 1984.

Sec. 121.058. Construction.

- (a) This subchapter is intended to be declaratory of the common law of this state.
- (b) A court shall liberally construe this subchapter to effect the intent that a death benefit received by a trustee under this subchapter is not subject to the obligations of the employee or the employee's estate unless the trust receiving the benefit expressly provides otherwise.
- (c) A death benefit shall not be included in property administered as part of a testator's estate or in an inventory filed with the county court because of a reference in a will to the death benefit or because of the naming of the trustee of a testamentary trust.

Acts 1983, eff. Jan. 1, 1984.

CHAPTER 123. ATTORNEY GENERAL PARTICIPATION IN PROCEEDINGS INVOLVING CHARITABLE TRUSTS

Sec. 123.001. Definitions.

In this chapter:

- (1) “*Charitable entity*” means a corporation, trust, community chest, fund, foundation, or other entity organized for scientific, educational, philanthropic, or environmental purposes, social welfare, the arts and humanities, or another civic or public purpose described by Section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)).
- (2) “*Charitable trust*” means a charitable entity, a trust the stated purpose of which is to benefit a charitable entity, or an inter vivos or testamentary gift to a charitable entity.
- (3) “*Proceeding involving a charitable trust*” means a suit or other judicial proceeding the object of which is to:
 - (A) terminate a charitable trust or distribute its assets to other than charitable donees;
 - (B) depart from the objects of the charitable trust stated in the instrument creating the trust, including a proceeding in which the doctrine of cy-pres is invoked;
 - (C) construe, nullify, or impair the provisions of a testamentary or other instrument creating or affecting a charitable trust;
 - (D) contest or set aside the probate of an alleged will under which money, property, or another thing of value is given for charitable purposes;
 - (E) allow a charitable trust to contest or set aside the probate of an alleged will;
 - (F) determine matters relating to the probate and administration of an estate involving a charitable trust; or
 - (G) obtain a declaratory judgment involving a charitable trust.
- (4) “*Fiduciary or managerial agent*” means an individual, corporation, or other entity acting either as a trustee, a member of the board of directors, an officer, an executor, or an administrator for a charitable trust.

Amended by Acts 1995, eff. Sept. 1, 1995.

Sec. 123.002. Attorney General’s Participation.

For and on behalf of the interest of the general public of this state in charitable trusts, the attorney general is a proper party and may intervene in a proceeding involving a charitable trust. The attorney general may join and enter into a compromise, settlement agreement, contract, or judgment relating to a proceeding involving a charitable trust.

Added by Acts 1987, eff. Sept. 1, 1987.

Sec. 123.003. Notice.

- (a) Any party initiating a proceeding involving a charitable trust shall give notice of the proceeding to the attorney general by sending to the attorney general, by registered or certified mail, a true copy of the petition or other instrument initiating the proceeding involving a charitable trust within 30 days of the filing of such petition or other instrument, but no less than 25 days prior to a hearing in such a proceeding. This subsection does not apply to a proceeding that is initiated by an application that exclusively seeks the admission of a will to probate, regardless of whether the application seeks the appointment of a personal representative, if the application:
 - (1) is uncontested; and

(2) is not subject to Section 83, Texas Probate Code.

- (b) Notice shall be given to the attorney general of any pleading which adds new causes of action or additional parties to a proceeding involving a charitable trust in which the attorney general has previously waived participation or in which the attorney general has otherwise failed to intervene. Notice shall be given by sending to the attorney general by registered or certified mail a true copy of the pleading within 30 days of the filing of the pleading, but no less than 25 days prior to a hearing in the proceeding.
- (c) The party or the party's attorney shall execute and file in the proceeding an affidavit stating the facts of the notice and shall attach to the affidavit the customary postal receipts signed by the attorney general or an assistant attorney general.

Amended by Acts 2007, eff. September 1, 2007.

Sec. 123.004. Voidable Judgment or Agreement.

- (a) A judgment in a proceeding involving a charitable trust is voidable if the attorney general is not given notice of the proceeding as required by this chapter. On motion of the attorney general after the judgment is rendered, the judgment shall be set aside.
- (b) A compromise, settlement agreement, contract, or judgment relating to a proceeding involving a charitable trust is voidable on motion of the attorney general if the attorney general is not given notice as required by this chapter unless the attorney general has:
 - (1) declined in writing to be a party to the proceeding; or
 - (2) approved and joined in the compromise, settlement agreement, contract, or judgment.

Added by Acts 1987, eff. Sept. 1, 1987.

Sec. 123.005. Breach of Fiduciary Duty: Venue; Jurisdiction.

- (a) Venue in a proceeding brought by the attorney general alleging breach of a fiduciary duty by a charitable entity or a fiduciary or managerial agent of a charitable trust shall be a court of competent jurisdiction in Travis County or in the county where the defendant resides or has its principal office. To the extent of a conflict between this subsection and any provision of the Texas Probate Code providing for venue of a proceeding brought with respect to a charitable trust created by a will that has been admitted to probate, this subsection controls.
- (b) A statutory probate court of Travis County has concurrent jurisdiction with any other court on which jurisdiction is conferred by Section 4A, Texas Probate Code, in a proceeding brought by the attorney general alleging breach of a fiduciary duty with respect to a charitable trust created by a will that has been admitted to probate.

Amended by Acts 2011, eff. June 17, 2011.

Sec. 123.006. Attorney's Fees.

- (a) In a proceeding subject to Section 123.005, the attorney general, if successful in the proceeding, is entitled to recover from the charitable entity or fiduciary or managerial agent of the charitable trust actual costs incurred in bringing the suit and may recover reasonable attorney's fees.
- (b) In a proceeding in which the attorney general intervenes under this chapter, other than a proceeding subject to Section 123.005, a court may award the attorney general court costs and reasonable and necessary attorney's fees as may seem equitable and just.

Added by Acts 2009, eff. September 1, 2009.

CHAPTER 124. PARTITION OF MINERAL INTERESTS OF CHARITABLE TRUST

Sec. 124.001. Definitions.

In this chapter:

- (1) “*Charitable entity*” means a corporation, trust, community chest, fund, foundation, or other entity organized for scientific, educational, philanthropic, or environmental purposes, social welfare, the arts and humanities, or another civic or public purpose described by Section 501(c)(3), Internal Revenue Code of 1986.
- (2) “*Charitable trust*” means a charitable entity, a trust the stated purpose of which is to benefit a charitable entity, or an inter vivos or testamentary gift to a charitable entity.
- (3) “*Mineral interest*” means an interest in oil, gas, or other mineral substance in place or that otherwise constitutes real property without regard to the depth at which such mineral substance is found.

Added by Acts 2013, eff. June 14, 2013.

Sec. 124.002. Compulsory Divestment Prohibited.

In a suit or other judicial proceeding the object or effect of which is to compel the partition of a mineral interest owned or claimed by a charitable trust, a sale or other action that would divest the charitable trust of the trust’s ownership of a mineral interest may not be ordered unless the trust has refused to execute a mineral lease, the terms of which are fair and reasonable, to the plaintiff or petitioner in the proceeding.

Added by Acts 2013, eff. June 14, 2013.

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Notes and Revision History of Attorney's Electronic Edition

Notes

Originally I removed the Table of Contents generated in the native WordPerfect version of this document after generating the PDF, figuring that the bookmarks did a better job. Seeing as how the bookmarks are nested, though, perhaps others may find a scannable complete Table of Contents handy. If not, you can just edit the PDF and delete those pages. Or ask me, and I'll put up a version without the Table.

Please contact me (mike@koeneckelaw.com) if you find any errors, or with any suggestions you may have.

Revision History

This project grew out of the Texas Estates Code, Attorney's Electronic Edition: I realized the Trusts Code on my computer was out of date, so wanted to create a similar version. I keep it up to date by working from **Bill Pargaman's** invaluable REPTL Legislative Updates.

Version 1.0: August 8, 2017. Formatted and updated the Trusts Code to 2017 amendments.

Version 1.1: August 10, 2017. Fixed incorrect bookmarks. Added an index.