

alternative method acceptable to the department. The financial assurance instrument submitted must ensure the facility's financial capability to provide reasonable and necessary response during the lifetime of the project and for a specified period of time following closure as required by rules adopted by the commission.

Approved April 25, 2008

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## CHAPTER 1119

### TRUSTS, ESTATES, AND CONSERVATORSHIPS — INTERESTS, RIGHTS, FIDUCIARIES, AND TAXATION

*S.F. 2350*

**AN ACT** relating to trusts and estates including the administration of small estates, and including retroactive and other applicability provisions.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 12.71, subsection 8, Code 2007, is amended to read as follows:

8. Bonds issued under the provisions of this section are declared to be issued for a general public and governmental purpose and all bonds issued under this section shall be exempt from taxation by the state of Iowa and the interest on the bonds shall be exempt from the state income tax and the state inheritance ~~and estate~~ tax.

Sec. 2. Section 12.81, subsection 8, Code 2007, is amended to read as follows:

8. Bonds issued under the provisions of this section are declared to be issued for a general public and governmental purpose and all bonds issued under this section shall be exempt from taxation by the state of Iowa and the interest on the bonds shall be exempt from the state income tax and the state inheritance ~~and estate~~ tax.

Sec. 3. Section 12.91, subsection 9, Code Supplement 2007, is amended to read as follows:

9. Bonds issued under the provisions of this section are declared to be issued for a general public and governmental purpose and all bonds issued under this section shall be exempt from taxation by the state of Iowa and the interest on the bonds shall be exempt from the state income tax and the state inheritance ~~and estate~~ tax.

Sec. 4. Section 16.177, subsection 8, Code 2007, is amended to read as follows:

8. Bonds issued under this section are declared to be issued for an essential public and governmental purpose and all bonds issued under this section shall be exempt from taxation by the state of Iowa and the interest on the bonds shall be exempt from the state income tax and the state inheritance ~~and estate~~ tax.

Sec. 5. Section 321.47, unnumbered paragraph 2, Code 2007, is amended to read as follows:

The persons entitled under the laws of descent and distribution of an intestate's property to the possession and ownership of a vehicle owned in whole or in part by a decedent, upon filing an affidavit stating the name and date of death of the decedent, the right to possession and ownership of the persons filing the affidavit, and that there has been no administration of the decedent's estate, which instrument shall also contain an agreement to indemnify creditors of the decedent who would be entitled to levy execution upon the motor vehicle to the extent of the value of the motor vehicle, are entitled upon fulfilling the other requirements of this

chapter, to the issuance of a registration card for the interest of the decedent in the vehicle and a certificate of title to it. If a decedent dies testate, and either the will is not probated or is admitted to probate without administration, the persons entitled to the possession and ownership of a vehicle owned in whole or in part by the decedent may file an affidavit and, upon fulfilling the other requirements of this chapter, are entitled to the issuance of a registration card for the interest of the decedent in the vehicle and a certificate of title to the vehicle. The affidavit shall contain the same information and indemnity agreement as is required in cases of intestacy pursuant to this section. A requirement of chapter 450 ~~or 451~~ shall not be considered satisfied by the filing of the affidavit provided for in this section. If, from the records in the office of the county treasurer, there appear to be any liens on the vehicle, the certificate of title shall contain a statement of the liens unless the application is accompanied by proper evidence of their satisfaction or extinction. Evidence of extinction may consist of, but is not limited to, an affidavit of the applicant stating that a security interest was foreclosed as provided in chapter 554, article 9, part 6.

Sec. 6. Section 421.60, subsection 2, paragraph c, unnumbered paragraph 1, Code 2007, is amended to read as follows:

If the notice of assessment or denial of a claim for refund relates to a tax return filed pursuant to section 422.14 or chapter 450, ~~or 451~~, by the taxpayer which designates an individual as an authorized representative of the taxpayer with respect to that return, or if a power of attorney has been filed with the department by the taxpayer which designates an individual as an authorized representative of the taxpayer with respect to any tax that is included in the notice of assessment or denial of a claim for refund, a copy of the notice together with any additional information required to be sent to the taxpayer shall be sent to the authorized representative as well.

Sec. 7. Section 450.7, subsection 2, unnumbered paragraph 1, Code 2007, is amended to read as follows:

Notice of the lien is not required to be recorded. The rights of the state under the lien have priority over all subsequent mortgages, purchases, or judgment creditors; and a conveyance after the decedent's death of the property subject to a lien does not discharge the property except as otherwise provided in this chapter. However, if additional tax is determined to be owing under this chapter ~~or chapter 451~~ after the lien has been released under paragraph "a" or "b", the lien does not have priority over subsequent mortgages, purchases, or judgment creditors unless notice of the lien is recorded in the office of the recorder of the county where the estate is probated, or where the property is located if the estate has not been administered. The department of revenue may release the lien by filing in the office of the clerk of the court in the county where the property is located, the decedent owner died, or the estate is pending or was administered, one of the following:

Sec. 8. Section 450.68, unnumbered paragraph 2, Code 2007, is amended to read as follows:

Federal tax returns, copies of returns, return information as defined in section 6103(b) of the Internal Revenue Code, and state inheritance tax returns, which are required to be filed with the department for the enforcement of the inheritance ~~and estate~~ tax laws of this state, shall be deemed and held as confidential by the department. However, such returns or return information, may be disclosed by the director to officers or employees of other state agencies, subject to the same confidentiality restrictions imposed on the officers and employees of the department.

Sec. 9. Section 455G.6, subsection 14, Code 2007, is amended to read as follows:

14. Bonds issued under the provisions of this section are declared to be issued for an essential public and governmental purpose and all bonds issued under this chapter shall be exempt from taxation by the state of Iowa and the interest on the bonds shall be exempt from the state income tax and the state inheritance ~~and estate~~ tax.

Sec. 10. Section 463C.12, subsection 8, Code 2007, is amended to read as follows:

8. Tax-exempt bonds issued by the authority in connection with the program, which are exempt from taxation for federal tax purposes, are also exempt from taxation by the state of Iowa and the interest on these bonds is exempt from state income taxes and state inheritance and estate taxes.

Sec. 11. Section 524.1406, subsection 3, paragraph a, Code 2007, is amended to read as follows:

a. Notwithstanding any contrary provision in chapter 490, division XIII, in determining the fair value of the shareholder's shares of a bank organized under this chapter or a bank holding company as defined in section 524.1801 in a transaction or event in which the shareholder is entitled to appraisal rights, due consideration shall be given to valuation factors recognized for federal and estate tax purposes, including discounts for minority interests and discounts for lack of marketability. However, any payment made to shareholders under section 490.1324 shall be in an amount not less than the stockholders' equity in the bank disclosed in its last statement of condition filed under section 524.220 or the total equity capital of the bank holding company disclosed in the most recent report filed by the bank holding company with the board of governors of the federal reserve system, divided by the number of shares outstanding.

Sec. 12. Section 614.14, subsections 1 and 5, Code 2007, are amended to read as follows:

1. If an interest in real estate is held of record by a trustee, a bona fide purchaser acquires all rights in the real estate which the trustee and the beneficiary of the trust had and any rights of persons claiming by, through or under them, free of any adverse claim including but not limited to claims arising under section 561.13 or claims relating to an interest in real estate arising under section 633.238.

5. a. A person holding an adverse claim arising or existing prior to January 1, ~~1992~~ 2009, by reason of a transfer of an interest in real estate by a trustee, or a purported trustee, shall not file an action to enforce such claim after December 31, ~~1993~~ 2010, at law or in equity, in any court to recover or establish any interest in or claim to such real estate, legal or equitable, against the holder of the record title to the real estate.

b. An action based upon an adverse claim arising on or after January 1, ~~1992~~ 2009, by reason of a transfer of an interest in real estate by a trustee, or a purported trustee, shall not be maintained either at law or in equity, in any court to recover or establish any interest in or claim to such real estate, legal or equitable, against the holder of the record title to the real estate, legal or equitable, more than one year after the date of recording of the instrument from which such claim may arise.

Sec. 13. Section 614.14, Code 2007, is amended by adding the following new subsection: NEW SUBSECTION. 7. An interest in real estate currently or previously held of record by a trust shall be deemed to be held of record by the trustee of such trust.

Sec. 14. Section 633.3, subsection 4, Code 2007, is amended to read as follows:

4. Charges — includes costs of administration, funeral expenses, cost of monument, and federal and state estate taxes.

Sec. 15. Section 633.175, Code 2007, is amended to read as follows:

633.175 WAIVER OF BOND BY COURT.

The court, for good cause shown, may exempt any fiduciary from giving bond, if the court finds that the interests of creditors and distributees will not thereby be prejudiced. However, the court, except as provided in section 633.172, subsection 2, shall not exempt a conservator from giving bond in a conservatorship with total assets of more than ~~ten~~ twenty-five thousand dollars, excluding real property, unless it is a voluntary conservatorship in which the petitioner is eighteen years of age or older and has waived bond in the petition.

Sec. 16. Section 633.241, Code 2007, is amended to read as follows:

633.241 TIME FOR ELECTION TO RECEIVE LIFE ESTATE IN HOMESTEAD.

If the surviving spouse does not make an election to receive the life estate in the homestead and file it with the clerk within four months from the date of ~~second publication of notice to creditors~~ service of notice under section 633.237, it shall be conclusively presumed that the surviving spouse waives the right to make the election. The court on application may, prior to the expiration of the period of four months, for cause shown, enter an order extending the time for making the election.

Sec. 17. Section 633.267, Code 2007, is amended to read as follows:

633.267 CHILDREN BORN OR ADOPTED AFTER EXECUTION OF WILL.

~~When~~ If a testator fails to provide in the testator's will for any of the testator's children born to or adopted by the testator after the making execution of the testator's last will, such child, whether born before or after the testator's death, shall receive a share in the estate of the testator equal in value to that which the child would have received under section 633.211, 633.212, or 633.219, whichever section or sections are applicable, if the testator had died intestate, unless it appears from the will that such omission was intentional.

Sec. 18. Section 633.374, Code 2007, is amended to read as follows:

633.374 ALLOWANCE TO SURVIVING SPOUSE.

1. If the personal representative of the estate is not the decedent's spouse, the personal representative of the estate shall cause written notice concerning support to be mailed to the surviving spouse pursuant to section 633.40, subsection 5. The notice shall inform the surviving spouse of the surviving spouse's right to apply, within four months of service of the notice, for support for a period of twelve months following the death of the decedent, and for support of the decedent's dependents who reside with the spouse for the same period of time.

2. The court shall, upon application, set off and order paid to the surviving spouse, as part of the costs of administration, sufficient of the decedent's property as it deems reasonable for the proper support of the surviving spouse for the period of twelve months following the death of the decedent. ~~When said~~ If the application is not made by the personal representative, notice of hearing upon the application shall be given to the personal representative. The court shall take into consideration the station in life of the surviving spouse and the assets and condition of the estate. The allowance shall also include such additional amount as the court deems reasonable for the proper support, during such period, of dependents of the decedent who reside with the surviving spouse. Such allowance to the surviving spouse shall not abate upon the death or remarriage of such spouse. If an application for support has not been filed within four months following service of the notice by or on behalf of the surviving spouse and the dependents of the decedent who reside with the surviving spouse, the surviving spouse and the dependents of the decedent shall be deemed to have waived the right to apply for support during the administration of the estate.

Sec. 19. Section 633.436, unnumbered paragraph 1, Code 2007, is amended to read as follows:

Except as provided in sections 633.211 and 633.212, shares of the distributees shall abate, for the payment of debts and charges, federal ~~and state~~ estate taxes, legacies, the shares of children born or adopted after the making of a will, or the share of the surviving spouse who elects to take against the will, without any preference or priority as between real and personal property, in the following order:

Sec. 20. Section 633.449, Code 2007, is amended to read as follows:

633.449 PAYMENT OF FEDERAL ESTATE TAXES.

All federal ~~and state~~ estate taxes (~~as~~, distinguished from state inheritance taxes) taxes, owing by the estate of a decedent shall be paid from the property of the estate, unless the will of the decedent, or other trust instrument, provides expressly to the contrary.

Sec. 21. Section 633A.2301, Code 2007, is amended by striking the section and inserting in lieu thereof the following:

**633A.2301 RIGHTS OF BENEFICIARY, CREDITOR, AND ASSIGNEE.**

To the extent a beneficiary's interest is not subject to a spendthrift provision, and subject to sections 633A.2305 and 633.2306,<sup>1</sup> the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by levy, attachment, or execution of present or future distributions to or for the benefit of the beneficiary or other means.

Sec. 22. Section 633A.2302, Code 2007, is amended by striking the section and inserting in lieu thereof the following:

**633A.2302 SPENDTHRIFT PROTECTION RECOGNIZED.**

Except as otherwise provided in section 633A.2303:

1. A term of a trust providing that the interest of a beneficiary is held subject to a "spendthrift trust", or words of similar import, is sufficient to restrain both voluntary and involuntary transfer, assignment, and encumbrance of the beneficiary's interest.

2. A beneficiary shall not transfer, assign, or encumber an interest in a trust in violation of a valid spendthrift provision, and a creditor or assignee of the beneficiary of a spendthrift trust shall not reach the interest of the beneficiary or a distribution by the trustee before its receipt by the beneficiary.

3. Notwithstanding subsections 1 and 2, the interest of a beneficiary of a valid spendthrift trust may be reached to satisfy an enforceable claim against the beneficiary or the beneficiary's estate for either of the following:

- a. Services or supplies for necessities provided to or for the beneficiary.
- b. Tax claims by the United States to the extent authorized by federal law or an applicable provision of the Code.

Sec. 23. Section 633A.2303, Code 2007, is amended by striking the section and inserting in lieu thereof the following:

**633A.2303 SPENDTHRIFT TRUSTS FOR THE BENEFIT OF SETTLOR.**

A term of a trust prohibiting an involuntary transfer of a beneficiary's interest shall be invalid as against claims by any creditors of the beneficiary if the beneficiary is the settlor.

Sec. 24. NEW SECTION. **633A.2304 AMOUNT REACHABLE BY CREDITORS OR TRANSFEREES OF SETTLOR.**

1. If a settlor is a beneficiary of a trust created by the settlor, a transferee or creditor of the settlor may reach the maximum amount that the trustee could pay to or for the settlor's benefit.

2. In the case of a trust with multiple settlors, the amount the creditors or transferees of a particular settlor may reach shall not exceed the portion of the trust attributable to that settlor's contribution.

3. The assets of an irrevocable trust shall not become subject to the claims of creditors of the settlor of a trust solely due to a provision in the trust that allows a trustee of the trust to reimburse the settlor for income taxes payable on the income of the trust. This subsection shall not limit the rights of the creditor of the settlor to assert a claim against the assets of the trust due to the retention or grant of any rights to the settlor under the trust instrument or any other beneficial interest of the settlor other than as specifically set forth in this subsection.

Sec. 25. NEW SECTION. **633A.2305 DISCRETIONARY TRUSTS — EFFECT OF STANDARD.**

1. Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary shall not compel a distribution that is subject to the trustee's discretion, even if any of the following occur:

- a. The discretion is expressed in the form of a standard of distribution.
  - b. The trustee has abused its discretion.
2. This section shall not apply to a creditor of a beneficiary or to a creditor of a deceased

<sup>1</sup> See chapter 1191, §131 herein

beneficiary enforcing an interest in a trust, if any, given to a beneficiary by the trust instrument.

Sec. 26. NEW SECTION. 633A.2306 COURT ACTION — TRUSTEE'S DISCRETION.

1. If a trustee has discretion as to payments to a beneficiary, and refuses to make payments or exercise its discretion, the court shall neither order the trustee to exercise its discretion nor order payment from any such trust, if any such payment would inure, directly or indirectly, to the benefit of a creditor of the beneficiary.

2. Notwithstanding subsection 1, court<sup>2</sup> may order payment to a creditor of a beneficiary or to a creditor of a deceased beneficiary if the beneficiary has or had an interest in the trust.

Sec. 27. NEW SECTION. 633A.2307 OVERDUE DISTRIBUTION.

1. A creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the required distribution date.

2. For the purposes of this section, "mandatory distribution" means a distribution required by the express terms of the trust of any of the following:

- a. All of the income, net income, or principal of the trust.
- b. A fraction or percentage of the income or principal of the trust.
- c. A specific dollar amount from the trust.

3. A distribution that is subject to a condition shall not be considered a mandatory distribution.

4. If a creditor or assignee of a beneficiary is permitted to reach a mandatory distribution under this section, the sole remedy of the creditor or assignee shall be to apply to the court having jurisdiction of the trust after a reasonable period of time has expired, for a judgment ordering the trustee to pay to the creditor or the assignee a sum of money equal to the lesser of the amount of the debt or assignment, or the amount of the mandatory distribution described in subsection 2. Any other remedy, including but not limited to attachment or garnishment of any interest in the trust, recovery of court costs or attorney fees, or placing a lien of any type on any trust property or on the interest of any beneficiary in the trust, shall not be permitted or ordered by any court. Any writing signed by the beneficiary, allowing any remedy other than payment of the mandatory distribution not made to the beneficiary within a reasonable time after required distribution date, shall be void and shall not be enforced by any court.

Sec. 28. Section 633A.3106, Code 2007, is amended to read as follows:

633A.3106 CHILDREN BORN OR ADOPTED AFTER EXECUTION OF A REVOCABLE TRUST.

When a settlor fails to provide in a revocable trust for any of the settlor's children born to or adopted by the settlor after the making execution of the trust or the last amendment to the trust, such child, whether born before or after the settlor's death, shall receive a share of the trust equal in value to that which the child would have received under section 633.211, 633.212, or 633.219, whichever is applicable, as if the settlor had died intestate, unless it appears from the terms of the trust or decedent's will that such omission was intentional.

Sec. 29. Section 633A.3108, subsection 2, Code 2007, is amended to read as follows:

2. Unless the trustee is a party to a pending proceeding contesting its validity, on or after the date six months following the death of the settlor, the trustee of a revocable trust may assume the trust's validity and proceed to distribute the trust property in accordance with the terms of the trust, without liability for so doing. Liability for an improper distribution in such a case is solely on the beneficiaries.

Sec. 30. Section 633A.3112, subsection 1, Code 2007, is amended to read as follows:

1. "Charges" includes costs of administration, funeral expenses, costs of monuments, and federal ~~and state~~ estate taxes.

<sup>2</sup> According to enrolled Act; the phrase "the court" probably intended

Sec. 31. Section 633A.4703, unnumbered paragraph 1, Code Supplement 2007, is amended to read as follows:

Except as otherwise provided by the governing instrument, where necessary to abate shares of the beneficiaries of a trust for the payment of debts and charges, federal ~~and state~~ estate taxes, bequests, the share of the surviving spouse who takes an elective share, and the shares of children born or adopted after the execution of the trust, abatement shall occur in the following order:

Sec. 32. Section 633A.5104, Code 2007, is amended to read as follows:

633A.5104 INTERESTED PERSONS — PROCEEDINGS.

The settlor, or if the settlor is deceased or not competent, the settlor's designee named or designated pursuant to section 633A.5106, the trustee, the attorney general, and any charitable entity or other person with a special interest in the trust shall be interested persons in a proceeding involving a charitable trust.

Sec. 33. NEW SECTION. 633A.5106 SETTLOR — ENFORCEMENT OF CHARITABLE TRUST — DESIGNATION.

A settlor may maintain an action to enforce a charitable trust established by the settlor and may designate, either in the agreement establishing the trust or in a written statement signed by the settlor and delivered to the trustee, a person or persons, by name or by description, whether or not born at the time of such designation, to enforce the charitable trust if the settlor is deceased or not competent.

Sec. 34. Section 635.1, Code Supplement 2007, is amended to read as follows:

635.1 WHEN APPLICABLE.

When the gross value of the probate assets of a decedent subject to the jurisdiction of this state does not exceed one hundred thousand dollars, and upon a petition as provided in section 635.2 of an authorized petitioner in accordance with section 633.227, 633.228, or 633.290, the clerk shall issue letters of appointment for administration to the proposed personal representative named in the petition, if qualified to serve pursuant to section 633.63 or upon court order pursuant to section 633.64. Unless otherwise provided in this chapter, the provisions of chapter 633 apply to an estate probated pursuant to this chapter.

Sec. 35. Section 635.2, subsections 2 and 4, Code Supplement 2007, are amended to read as follows:

2. The name and address of the surviving spouse, ~~if any~~ and the name and relationship of each beneficiary in a testate estate or known heirs in an intestate estate.

4. A statement that the probate property of the decedent subject to the jurisdiction of this state does not have an aggregate gross value of more than the amount permitted under the provisions of section 635.1 and the approximate amount of personal property and income for the purposes of setting a bond.

Sec. 36. Section 635.8, subsections 2 and 4, Code Supplement 2007, are amended to read as follows:

2. If no actions or proceedings involving the estate are pending in the court thirty days after notice of the closing statement is filed, the estate shall close and the personal representative shall be discharged after distribution and the personal representative shall be discharged upon the earlier of either of the following:

a. The filing of a statement of disbursement of assets with the clerk by the personal representative.

b. An additional thirty days have passed after notice of the closing statement is filed.

4. If a closing statement is not filed within twelve months of the date of issuance of a letter of appointment, an interlocutory report shall be filed within such time period. Such report shall be provided to all interested parties at least once every six months until the closing statement has been filed unless excused by the court for good cause shown. The provisions of sec-

tion 633.473 requiring final settlement within three years shall apply to an estate probated pursuant to this chapter. A closing statement filed under this section has the same effect as final settlement of the estate under chapter 633.

Sec. 37. Chapter 451, Code 2007, is repealed.

Sec. 38. Section 637.609, Code 2007, is repealed.

Sec. 39. APPLICABILITY.

1. The sections of this Act amending section 614.14 apply retroactively to all trusts in existence on or after July 1, 1998.

2. The section of this Act amending section 633.175 applies to conservatorships in existence on or after the effective date of this Act.

3. The sections of this Act amending sections 633.241, 633.267, and 633.374 apply to estates of decedents dying on or after July 1, 2008.

4. The section of this Act amending section 633A.3106 applies to trusts of settlors dying on or after July 1, 2008.

5. The section of this Act amending section 633A.3108 applies to trusts in existence on or after July 1, 2008.

6. The sections of this Act amending section 633A.5104 and enacting section 633A.5106 apply to charitable trusts in existence on or after July 1, 2008.

Approved April 25, 2008

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## CHAPTER 1120

### HOME OWNERSHIP ASSISTANCE FOR MILITARY PERSONNEL

*S.F. 2354*

**AN ACT** concerning the home ownership assistance program for members of the military.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. NEW SECTION. 16.54 HOME OWNERSHIP ASSISTANCE PROGRAM FOR MILITARY MEMBERS.

1. For the purposes of this section, “eligible member of the armed forces of the United States” means a person who is or was a member of the national guard, reserve, or regular component of the armed forces of the United States who has served at least ninety days of active duty service beginning on or after September 11, 2001. “Eligible member of the armed forces of the United States” also means a former member of the national guard, reserve, or regular component of the armed forces of the United States who was honorably discharged due to injuries incurred while on active federal service beginning on or after September 11, 2001, that precluded completion of a minimum aggregate of ninety days of active federal service.

2. The home ownership assistance program is established to continue the program implemented pursuant to 2005 Iowa Acts, chapter 161, section 1, as amended by 2005 Iowa Acts, chapter 115, section 37, and continued in accordance with 2006 Iowa Acts, chapter 1167, sections 3 and 4, and other appropriations, to provide financial assistance to eligible members of the armed forces of the United States to be used for purchasing primary residences in the state of Iowa.

3. The program shall be administered by the authority and shall provide loans, grants, or