

## IOWA TRUST CODE

### Footnotes

Transferred from ch 633, division XXI, in Code Supplement 2005 pursuant to Code editor directive; 2005 Acts, ch 38, §54  
For applicability of chapter 633 and this chapter to trusts subject to continuous court supervision, see §633.10, 633.699B, and 633A.1107

### **633A.1101 Short title.**

This chapter may be cited as the "*Iowa Trust Code*" or "*Trust Code*".

99 Acts, ch 125, §1, 109

C2001, §633.1101

2005 Acts, ch 38, §52, 54

CS2005, §633A.1101

### **633A.1102 Definitions.**

For purposes of this chapter:

1. "*Adjusted gross estate*", as it relates to a trust, means the same as defined in section 633.266.
2. "*Beneficiary*", as it relates to a trust beneficiary, includes a person who has any present or future interest in the trust, vested or contingent, and also includes the owner of an interest by assignment or other transfer.
3. "*Charitable trust*" means a trust created for a charitable purpose as specified in section 633A.5101.
4. "*Competency*" means any one of the following:
  - a. In the case of a revocable transfer, "*competency*" means the degree of understanding required to execute a will.
  - b. In the case of an irrevocable transfer, "*competency*" means the ability to understand the effect the gift may have on the future financial security of the donor and anyone who may be dependent on the donor.
5. "*Conservator*" means a person appointed by a court to manage the estate of a minor or adult individual.
6. "*Court*" means any Iowa district court.
7. "*Fiduciary*" includes a personal representative, executor, administrator, guardian, conservator, and trustee.
8. "*Guardian*" means a person appointed by a court to make decisions with respect to the support, care, education, health, and welfare of a minor or adult individual, but excludes one who is merely a guardian ad litem. A minor's custodial parent shall be deemed to be the child's guardian in the absence of a court-appointed guardian.
9. "*Instrument*" means a signed writing.

10. *"Interested person"* includes a trustee, an acting successor trustee, a beneficiary who may receive income or principal currently from the trust, or would receive principal of the trust if the trust were terminated at the time relevant to the determination, and a fiduciary representing an interested person. The meaning as it relates to particular persons may vary from time to time according to the particular purpose of, and matters involved in, any proceeding.

11. *"Person"* means an individual or any legal or commercial entity.

12. *"Petition"* includes a complaint or statement of claim.

13. *"Property"* means anything that may be the subject of ownership, whether real or personal, legal or equitable, tangible or intangible, and includes any interest in such item, including a chose in action, claim, or beneficiary designation under a policy of insurance, employees' trust, or other arrangement, whether revocable or irrevocable.

14. *"Qualified beneficiary"* means a beneficiary who, on the date the beneficiary's qualification is determined, is any of the following:

a. Eligible to receive distributions of income or principal from the trust.

b. Would receive property from the trust upon immediate termination of the trust.

15. *"Settlor"* means a person, including a testator, who creates a trust.

16. *"State"* means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

17. *"Term"* or *"terms"*, when used in relation to a trust, means the manifestation of the settlor's intent regarding a trust's provisions at the time of the trust's creation or amendment. *"Term"* includes those concepts expressed directly in writing, as well as those inferred from constructional preferences or rules, or by other proof admissible under the rules of evidence.

18. *"Trust"* means an express trust, charitable or noncharitable, with additions thereto, wherever and however created, including a trust created or determined by a judgment or decree under which the trust is to be administered in the manner of an express trust. *"Trust"* does not include any of the following:

a. A Totten trust account.

b. A custodial arrangement pursuant to the uniform transfers to minors Act of any state.

c. A business trust that is taxed as a partnership or corporation.

d. An investment trust subject to regulation under the laws of this state or any other jurisdiction.

e. A common trust fund.

f. A voting trust.

g. A security arrangement.

h. A transfer in trust for purpose of suit or enforcement of a claim or right.

*i.* A liquidation trust.

*j.* A trust for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind.

*k.* An arrangement under which a person is a nominee or escrow agent for another.

*l.* Constructive or resulting trusts.

*m.* Burial, funeral, and perpetual care trusts.

19. *"Trust company"* means a person who has qualified to engage in and conduct a trust business in this state.

20. *"Trustee"* includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

99 Acts, ch 125, §2, 109; 2000 Acts, ch 1150, §7

C2001, §633.1102

2002 Acts, ch 1107, §1; 2003 Acts, ch 95, §6; 2004 Acts, ch 1015, §25; 2005 Acts, ch 38, §35, 52, 54, 55

CS2005, §633A.1102

### **633A.1103 Per stirpes rule of descent.**

Unless the trust instrument provides otherwise, all gifts to multigeneration classes shall be per stirpes.

99 Acts, ch 125, §3, 109

C2001, §633.1103

2005 Acts, ch 38, §54

CS2005, §633A.1103

### **633A.1104 Common law of trusts.**

Except to the extent that this chapter modifies the common law governing trusts, the common law of trusts shall supplement this trust code.

99 Acts, ch 125, §4, 109

C2001, §633.1104

2005 Acts, ch 38, §52, 54

CS2005, §633A.1104

### **633A.1105 Trust terms control.**

The terms of a trust shall always control and take precedence over any section of this trust code to the contrary. If a term of the trust modifies or makes any section of this trust code inapplicable to the trust, the

common law shall apply to any issues raised by such term.

99 Acts, ch 125, §5, 109

C2001, §633.1105

2003 Acts, ch 95, §7; 2004 Acts, ch 1015, §26; 2005 Acts, ch 38, §54

CS2005, §633A.1105

**633A.1106 General rule concerning application of the Iowa trust code.**

1. This trust code applies to all trusts within the scope of this trust code, regardless of whether the trust was created before, on, or after July 1, 2000, except as otherwise stated in this trust code.
2. This trust code applies to all proceedings concerning trusts within the scope of this trust code commenced on or after July 1, 2000.
3. This trust code applies to all trust proceedings commenced before July 1, 2000, unless the court finds that application of a particular provision of this trust code would substantially interfere with the effective conduct of the proceedings or the rights of the parties or other interested persons. In that case, the particular provision of this trust code at issue shall not apply, and the court shall apply prior law.

99 Acts, ch 125, §6, 109

C2001, §633.1106

2005 Acts, ch 38, §54

CS2005, §633A.1106

**633A.1107 Scope of trust code.**

1. Except as otherwise provided in subsection 2, this trust code shall apply to trusts, as defined in section 633A.1102, that are intentionally created, or deemed to be intentionally created, by individuals and other entities.
2. With regard to trusts described in section 633.10 that have not been judicially released from continuous court supervision, this trust code shall apply only to the extent not inconsistent with the relevant provisions of chapter 633. With regard to all other trusts defined in section 633A.1102, the terms of chapter 633 shall be inapplicable, and the terms of this trust code shall prevail over any inconsistent provisions of Iowa law.

99 Acts, ch 125, §7, 109

C2001, §633.1107

2005 Acts, ch 38, §36, 54, 55

CS2005, §633A.1107

**Footnotes**

See also §633.10 and 633.699B

### **633A.1108 Governing law.**

1. A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which at the time the trust was created the settlor was domiciled, had a place of abode, or was a national.

2. The meaning and effect of the terms of the trust not created by will shall be determined by any of the following:

*a.* Except as provided in paragraph "c", the law of the jurisdiction designated in the terms of the trust, on the condition that at the time the trust was created the designated jurisdiction had a substantial relationship to the trust. A jurisdiction has a substantial relationship to the trust if it is the residence or domicile of the settlor or of any qualified beneficiary, the location of a substantial portion of the assets of the trust, or a place where the trustee was domiciled or had a place of business.

*b.* Except as provided in paragraph "c", in the absence of a controlling designation in the terms of the trust, the law of the jurisdiction that has the most significant relationship to the matter at issue.

*c.* As to real property, the law of the jurisdiction where the real property is located.

2003 Acts, ch 95, §8

CS2003, §633.1108

2005 Acts, ch 38, §54

CS2005, §633A.1108

### **633A.2101 Methods of creating trusts.**

A trust may be created by any of the following methods:

1. Transfer of property to another person as trustee during the settlor's lifetime, or by will taking effect upon the settlor's death.

2. Declaration by the owner of property that the owner holds property as trustee.

3. Exercise of a power of appointment in favor of another person as trustee.

4. A promise enforceable by the trustee to transfer property to the trustee.

99 Acts, ch 125, §8, 109

C2001, §633.2101

2005 Acts, ch 38, §54

CS2005, §633A.2101

### **633A.2102 Requirements for validity.**

1. A trust is created only if all of the following elements are satisfied:

- a.* The settlor was competent and indicated an intention to create a trust.
  - b.* The same person is not the sole trustee and sole beneficiary.
  - c.* The trust has a definite beneficiary or a beneficiary who will be definitely ascertained within the period of the applicable rule against perpetuities, unless the trust is a charitable trust, an honorary trust, or a trust for pets.
  - d.* The trustee has duties to perform.
2. A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property passes to the person or persons who would have taken the property had the power not been conferred.

3. A trust is not merged or invalid because a person, including but not limited to the settlor of the trust, is or may become the sole trustee and the sole holder of the present beneficial interest in the trust, provided that one or more other persons hold a beneficial interest in the trust, whether such interest be vested or contingent, present or future, and whether created by express provision of the instrument or as a result of reversion to the settlor's estate.

99 Acts, ch 125, §9, 109

C2001, §633.2102

2002 Acts, ch 1107, §2; 2003 Acts, ch 95, §9; 2005 Acts, ch 38, §54

CS2005, §633A.2102

### **633A.2103 Statute of frauds.**

1. A trust is enforceable when evidenced by either of the following:
- a.* A written instrument signed by the trustee, or by the trustee's agent if authorized in writing.
  - b.* A written instrument conveying the trust property signed by the settlor, or by the settlor's agent if authorized in writing.
2. If an owner of property declares that property is held upon a trust, the written instrument evidencing the trust must be signed by the settlor according to one of the following:
- a.* Before or at the time of the declaration.
  - b.* After the time of the declaration but before the settlor has transferred the property.
3. If an owner of property while living transfers property to another person to hold upon a trust, the written instrument evidencing the trust must be signed according to one of the following:
- a.* By the settlor, concurrently with or before the transfer.
  - b.* By the trustee, concurrently with or before the transfer, or after the transfer but before the trustee has transferred the property to a third person.
4. Oral trusts that have not been reduced to writing as specified in this section are not enforceable. This

section does not affect the power of a court to declare a resulting or constructive trust in the appropriate case or to order other relief where appropriate.

99 Acts, ch 125, §10, 109

C2001, §633.2103

2003 Acts, ch 95, §10, 11; 2005 Acts, ch 38, §54

CS2005, §633A.2103

#### **633A.2104 Trust purposes.**

1. A trust is created only if it has a private or charitable purpose that is not unlawful or against public policy.
2. A trust created for a private purpose must be administered for the benefit of its beneficiaries.

99 Acts, ch 125, §11, 109

C2001, §633.2104

2005 Acts, ch 38, §54

CS2005, §633A.2104

#### **633A.2105 Honorary trusts trusts for pets.**

1. A trust for a lawful noncharitable purpose for which there is no definite or definitely ascertainable beneficiary is valid but may be performed by the trustee for only twenty-one years, whether or not the terms of the trust contemplate a longer duration.
2. A trust for the care of an animal living at the settlor's death is valid. The trust terminates when no living animal is covered by its terms.
3. A portion of the property of a trust authorized by this section shall not be converted to any use other than its intended use unless the terms of the trust so provide or the court determines that the value of the trust property substantially exceeds the amount required.
4. The intended use of a trust authorized by this section may be enforced by a person designated for that purpose in the terms of the trust or, if none, by a person appointed by the court.

99 Acts, ch 125, §12, 109

C2001, §633.2105

2005 Acts, ch 38, §54

CS2005, §633A.2105

#### **633A.2106 Resulting trusts.**

1. Where the owner of property gratuitously transfers the property and manifests in the trust instrument an intention that the transferee should hold the property in trust but the trust fails, the transferee holds the trust

estate as a resulting trust for the transferor or the transferor's estate, unless either of the following is true:

*a.* The transferor manifested in the trust instrument an intention that no resulting trust should arise.

*b.* The intended trust fails for illegality and the policy against unjust enrichment of the transferee is outweighed by the policy against giving relief to a person who has entered into an illegal transaction.

2. Where the owner of property gratuitously transfers the property subject to a trust which is properly declared and which has been fully performed without exhausting the trust estate, the trustee holds the surplus as a resulting trust for the transferor or the transferor's estate, unless the transferor manifested in the trust instrument an intention that no resulting trust of the surplus should arise.

3. If the transferor's estate is the recipient of property under this section and the administration of that estate has been closed and there is no question as to the proper recipients of the property, it is not necessary to reopen the estate administration for the purpose of distribution.

99 Acts, ch 125, §13, 109; 2000 Acts, ch 1150, §8

C2001, §633.2106

2005 Acts, ch 38, §54

CS2005, §633A.2106

### **633A.2107 Constructive trusts.**

A constructive trust arises when a person holding title to property is subject to an equitable duty to convey the property to another, on the ground that the person holding title would be unjustly enriched if the person were permitted to retain the property.

99 Acts, ch 125, §14, 109

C2001, §633.2107

2005 Acts, ch 38, §54

CS2005, §633A.2107

### **633A.2201 Termination of trust.**

1. In addition to the methods specified in sections 633A.2202 through 633A.2206, a trust terminates when any of the following occurs:

*a.* The term of the trust expires.

*b.* The trust purpose is fulfilled.

*c.* The trust purpose becomes unlawful or impossible to fulfill.

*d.* The trust is revoked.

2. On termination of a trust, the trustee may exercise the powers necessary to wind up the affairs of the trust and distribute the trust property to those entitled to the trust property.

99 Acts, ch 125, § 15, 109; 2000 Acts, ch 1150, §9

C2001, §633.2201

2002 Acts, ch 1107, §3; 2005 Acts, ch 38, §54, 55

CS2005, §633A.2201

**633A.2202 Modification or termination by settlor and all beneficiaries.**

1. An irrevocable trust may be modified or terminated upon the consent of the settlor and all of the beneficiaries.
2. Upon termination of the trust, the trustee shall distribute the trust property as agreed by the settlor and all beneficiaries, or in the absence of unanimous agreement, as ordered by the court.
3. For purposes of this section, the consent of a person who may bind a beneficiary or otherwise act on a beneficiary's behalf is considered the consent of the beneficiary.

99 Acts, ch 125, §16, 109

C2001, §633.2202

2005 Acts, ch 38, §54

CS2005, §633A.2202

**633A.2203 Modification or termination of irrevocable trust by court.**

1. An irrevocable trust may be terminated or modified by the court with the consent of all of the beneficiaries if continuance of the trust on the same or different terms is not necessary to carry out a material purpose.
2. Upon termination of the trust, the court shall order the distribution of trust property in accordance with the probable intention of the settlor.
3. For purposes of this section, the consent of a person who may bind a beneficiary is considered the consent of the beneficiary.

99 Acts, ch 125, §17, 109; 2000 Acts, ch 1150, §10

C2001, §633.2203

2005 Acts, ch 38, §54

CS2005, §633A.2203

**633A.2204 Modification of administrative provisions by court for change of circumstances.**

On petition by a trustee or beneficiary, the court may modify the administrative provisions of the trust, if, owing to circumstances not known to the settlor and not anticipated by the settlor, the continuation of the trust under its terms would defeat or substantially impair the accomplishment of the purposes of the trust. If necessary to carry out the purposes of the trust, the court may order the trustee to do acts that are not authorized or are forbidden by the trust instrument.

2000 Acts, ch 1150, §11

C2001, §633.2204

2005 Acts, ch 38, §54

CS2005, §633A.2204

**633A.2205 Noncharitable trust with uneconomically low value.**

1. On petition by a trustee or beneficiary, the court may terminate or modify a noncharitable trust or appoint a new trustee if the court determines that the value of the trust property is insufficient to justify the cost of administration involved and that continuation of the trust under its existing terms would defeat or significantly impair the accomplishment of the trust purposes.

2. Upon termination of a trust under this section, the trustee shall distribute the trust property in accordance with the probable intention of the settlor under the circumstances. Extrinsic evidence is admissible for the purpose of ascertaining the probable intention of the settlor.

99 Acts, ch 125, §18, 109

C2001, §633.2205

2002 Acts, ch 1107, §4; 2005 Acts, ch 38, §54

CS2005, §633A.2205

**633A.2206 Reformation tax objectives.**

1. The court may reform the terms of the trust, even if unambiguous, to conform to the settlor's intent if it is proved by clear and convincing evidence that the settlor's intent and the terms of the trust were affected by a mistake of fact or law whether expressed or induced.

2. The terms of the trust may be construed or modified, in a manner that does not violate the settlor's probable intent, to achieve the settlor's tax objectives.

99 Acts, ch 125, §19, 109

C2001, §633.2206

2002 Acts, ch 1107, §5; 2005 Acts, ch 38, §54

CS2005, §633A.2206

**633A.2207 Combination of trusts.**

1. A trustee, without approval of court, may combine two or more trusts with substantially similar beneficial interests unless the trust is a court reporting trust.

2. On petition by a trustee or beneficiary, the court may combine two or more trusts, whether or not the beneficial interests are substantially similar, if the court determines that administration as a single trust will not defeat or significantly impair the accomplishment of the trust purposes or the rights of the beneficiaries.

3. Where the court orders the combination of two trusts that are not essentially identical, the court shall include in its order a finding as to which trust provisions control.

99 Acts, ch 125, §20, 109; 2000 Acts, ch 1150, §12

C2001, §633.2207

2005 Acts, ch 38, §54

CS2005, §633A.2207

### **633A.2208 Division of trusts.**

1. Without approval of a court, a trustee may divide a trust into two or more separate trusts with substantially similar terms if the division will not defeat or substantially impair the accomplishment of the trust purposes or the rights of the beneficiaries unless the trust is a court reporting trust.

2. On petition by a trustee or beneficiary, the court may divide a trust into two or more separate trusts, whether or not their terms are similar, if the court determines that dividing the trust is in the best interest of the beneficiaries and will not defeat or substantially impair the accomplishment of the trust purposes or the rights of the beneficiaries. To facilitate the division, the trustee may divide the trust assets in kind, by pro rata or non-pro rata division, or by any combination of the methods.

3. By way of illustration and without limitation, a trust may be divided pursuant to this section to allow a trust to qualify as a marital deduction trust for tax purposes, as a qualified subchapter S trust for federal income tax purposes, as a separate trust for federal generation skipping tax purposes, or for any other federal or state income, estate, excise, or inheritance tax benefit, or to facilitate the administration of a trust.

99 Acts, ch 125, §21, 109; 2000 Acts, ch 1150, §13

C2001, §633.2208

2005 Acts, ch 38, §37, 54

CS2005, §633A.2208

### **633A.2301 Spendthrift protection recognized.**

Except as otherwise provided in section 633A.2302, all of the following provisions shall apply:

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 transfers of the beneficiary's interest.

2. *a.* 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.

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

(1) All of the income, net income, or principal of the trust.

(2) A fraction or percentage of the income or principal of the trust.

(3) A specific dollar amount from the trust.

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

3. 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 such 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. No 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 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 the required distribution date, shall be void and shall not be enforced by any court.

4. A creditor or assignee of a beneficiary of a spendthrift trust may not compel a distribution that is subject to the trustee's discretion despite the fact that:

a. The distribution is expressed in the form of a standard of distribution.

b. The trustee has abused its discretion.

99 Acts, ch 125, §22, 109

C2001, §633.2301

2004 Acts, ch 1015, §27; 2005 Acts, ch 38, §38, 54, 55

CS2005, §633A.2301

#### **633A.2302 Exception to spendthrift protection.**

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

99 Acts, ch 125, §23, 109

C2001, §633.2302

2004 Acts, ch 1015, §28; 2005 Acts, ch 38, §54

CS2005, §633A.2302

#### **633A.2303 Amount reachable by creditors or transferees.**

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 creditor or transferee 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 a 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.

99 Acts, ch 125, §24, 109

C2001, §633.2303

2005 Acts, ch 38, §39, 54

CS2005, §633A.2303

### **633A.3101 Competency to create, revoke, or modify a revocable trust.**

1. To create, revoke, or modify a revocable trust, the settlor must be competent. An aggrieved person shall have all causes of action and remedies available to the aggrieved person in attacking the creation, revocation, or modification of a revocable trust as one would if attacking the propriety of the execution of a will.

2. The level of competency required of a settlor to direct the actions of the trustee, or to contribute property to, or to withdraw property from, a trust is the same as that required to create a revocable trust.

99 Acts, ch 125, §25, 109; 2000 Acts, ch 1150, §14

C2001, §633.3101

2005 Acts, ch 38, §54

CS2005, §633A.3101

### **633A.3102 Revocation or modification.**

1. Unless the terms of the trust expressly provide that the trust is irrevocable, the settlor may revoke or modify the trust. This subsection does not apply to trusts created under instruments executed before July 1, 2000.

2. Except as otherwise provided by the terms of the trust, if a trust is created or funded by more than one settlor, each settlor may revoke or modify the trust as to the portion of the trust contributed by that settlor.

3. A trust that is revocable by the settlor may be revoked or modified by any of the following methods:

*a.* By compliance with any method specified by the terms of the trust.

*b.* Unless the terms of the trust expressly make the method specified exclusive, then either of the following:

(1) By a writing, other than a will, signed by the settlor and delivered to the trustee during the settlor's lifetime.

(2) By a later will or codicil expressly referring to the trust and which makes a devise of the property that would otherwise have passed by the terms of the trust.

4. Upon termination of a revocable trust, the trustee must distribute the trust property as the settlor directs.

5. The settlor's powers with respect to revocation or modification may be exercised by an agent under a power of attorney only and to the extent the power of attorney expressly so authorizes.

6. Except to the extent prohibited by the terms of the trust, a conservator may revoke or modify a trust with the approval of the court supervising the conservatorship.

99 Acts, ch 125, §26, 109

C2001, §633.3102

2005 Acts, ch 38, §54

CS2005, §633A.3102

### **633A.3103 Other rights of settlor.**

Except to the extent the terms of the trust otherwise provide, while a trust is revocable and the individual holding the power to revoke the trust is competent, all of the following apply:

1. The holder of the power, and not the beneficiary, has the rights afforded beneficiaries.
2. The duties of the trustee are owed to the holder of the power.
3. The trustee shall follow a written direction given by the holder of the power, or a person to whom the power has been delegated in writing, without liability for so doing, so long as the action by the delegate is authorized by the trust.

99 Acts, ch 125, §27, 109

C2001, §633.3103

2005 Acts, ch 38, §54

CS2005, §633A.3103

### **633A.3104 Creditor claims against revocable trust.**

1. During the lifetime of the settlor, the trust property of a revocable trust is subject to the claims of the settlor's creditors to the extent of the settlor's power of revocation.
2. Following the death of a settlor, the property of a revocable trust subject to the settlor's power of revocation at the time of death is subject to the claims of the settlor's creditors and costs of administration of the settlor's estate to the extent of the value of the property over which the settlor had a power of revocation, if the settlor's estate is inadequate to satisfy those claims and costs.

99 Acts, ch 125, §28, 109; 2000 Acts, ch 1150, §15

C2001, §633.3104

2005 Acts, ch 38, §54

CS2005, §633A.3104

### **633A.3105 Rights of and creditor claims against holder of general power of appointment.**

1. The holder of a presently exercisable general power of appointment over trust property has the rights of a holder of the power to revoke a trust under section 633A.3103 to the extent of the property subject to the power.

2. Property in trust subject to a presently exercisable general power of appointment is chargeable with the claims of the holder's creditors and costs of administration of the holder's estate to the same extent as if the holder was a settlor and the power of appointment was a power of revocation.

99 Acts, ch 125, §29, 109

C2001, §633.3105

2005 Acts, ch 38, §54, 55

CS2005, §633A.3105

### **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 of 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.

99 Acts, ch 125, §30, 109

C2001, §633.3106

2005 Acts, ch 38, §54

CS2005, §633A.3106

### **633A.3107 Effect of divorce or dissolution.**

1. If, after executing a revocable trust, the settlor is divorced or the settlor's marriage is dissolved, all provisions in the trust in favor of the settlor's spouse or of a relative of the settlor's spouse, including but not limited to dispositions, appointments of property, and nominations to serve in any fiduciary or representative capacity, are revoked by divorce or dissolution of marriage unless the trust instrument provides otherwise.

2. Unless the trust instrument provides otherwise, in the event the settlor and spouse remarry each other, the provisions of the revocable trust revoked by the divorce or dissolution of marriage shall be reinstated unless otherwise modified by the settlor, except for provisions in favor of a person who died prior to the remarriage which shall not be reinstated.

For the purposes of this section, "*relative of the settlor's spouse*" means a person who is related to the divorced settlor's former spouse by blood, adoption, or affinity, and who, subsequent to the divorce or dissolution of marriage, ceased to be related to the settlor by blood, adoption, or affinity.

99 Acts, ch 125, §31, 109; 2000 Acts, ch 1150, §16

C2001, §633.3107

2005 Acts, ch 38, §40, 54

CS2005, §633A.3107

**633A.3108 Limitation on contest of revocable trust.**

Unless notice is given as provided in section 633A.3109, the following provisions shall apply:

1. Unless previously barred by adjudication, consent, or other limitation, a proceeding to contest the validity of a revocable trust must be brought no later than one year following the death of the settlor.
2. Unless the trustee is a party to a pending proceeding contesting its validity, 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.

99 Acts, ch 125, §32, 109; 2000 Acts, ch 1150, §17

C2001, §633.3108

2005 Acts, ch 38, §54, 55

CS2005, §633A.3108

**633A.3109 Notice to creditors, heirs, spouse, and beneficiaries.**

1. As used in this section, "*heir*" means only such person as would, in an intestate estate, be entitled to a share under section 633.219.
2. A creditor of a deceased settlor of a revocable trust must bring suit to enforce its claim against the assets of the decedent's trust within one year of the decedent's death or be forever barred from collection against the trust assets. If a probate administration is commenced for the decedent and notice is properly given pursuant to section 633.230 or 633.304, a creditor's rights shall be determined under those sections and section 633A.3104.
3. If no notice is given to creditors and heirs pursuant to subsection 2, a creditor's rights may be established or terminated if the trustee gives notice as follows:
  - a. The trustee shall publish a notice once each week for two consecutive weeks in a daily or weekly newspaper of general circulation published in the county in which the decedent was a resident at the time of death, and in any county of which the decedent was a nonresident but in which some real estate of the trust is located. If the decedent was not a resident of Iowa, but the principal place of administration is in Iowa, the trustee shall publish notice in the county that is the principal place of administration pursuant to section 633A.6102.
  - b. If at any time during the pendency of the trust administration the trustee has knowledge of the name and address of a person believed to own or possess a claim which will not, or may not, be paid or otherwise satisfied during administration, the trustee shall provide a notice by ordinary mail to each such claimant at the claimant's last known address.
  - c. As soon as practicable, the trustee shall give a notice by ordinary mail to the surviving spouse, the heirs of the decedent, and each beneficiary under the trust whose identities are reasonably ascertainable, at such persons' last known addresses.

d. The notice in paragraphs "a", "b", and "c" shall include notification of the decedent's death, and the fact that any action to contest the validity of the trust must be brought within the later to occur of sixty days from the date of the second publication of the notice made pursuant to paragraph "a" or thirty days from the date of mailing of the notice pursuant to paragraph "b" or "c". A person who does not make a claim within the appropriate period is forever barred.

e. The trustee shall give notice to debtors to make payment, and to creditors having claims against the trust assets to mail proof of their claim to the trustee via certified mail, return receipt requested, within the later to occur of sixty days from the second publication of the notice or thirty days from the date of mailing of the notice, or thereafter be forever barred.

4. The notice described in subsection 3 shall be substantially in the following form:

To all persons regarding ..... deceased, who died on or about ..... (year) ..... You are hereby notified that ..... is the trustee of the ..... Trust. At this time, no probate administration is contemplated with regard to the above-referenced decedent's estate.

Any action to contest the validity of the trust must be brought in the District Court of ..... County, Iowa, within the later to occur of sixty days from the date of second publication of this notice, or thirty days from the date of mailing this notice to all heirs of the decedent, spouse of the decedent, and beneficiaries under the trust whose identities are reasonably ascertainable. Any claim not filed within this period shall be forever barred.

Notice is further given that all persons indebted to the decedent or to the trust are requested to make immediate payment to the undersigned trustee. Creditors having claims against the trust must mail them to the trustee at the address listed below via certified mail, return receipt requested. Unless creditor claims are mailed by the later to occur of sixty days from the second publication of this notice or thirty days from the date of mailing this notice, a claim shall be forever barred, unless otherwise allowed or paid.

Dated this .... day of ..... (year) ..... Trust ..... Trustee Address: .....

Date of second publication .... day of ..... (year) .....

5. The claimant either must receive satisfaction of its claim, or must file suit against the trust to enforce collection of the creditor's claim within sixty days of mailing its claim to the trustee. The trustee and creditor may agree to extend the limitations period for filing an action to enforce the claim. If the claimant fails to properly file its claim within the established time period or bring an action to enforce its claim within the established time period, the creditor's claim shall be forever barred.

99 Acts, ch 125, §33, 109; 2000 Acts, ch 1150, §18

C2001, §633.3109

2002 Acts, ch 1119, §101; 2005 Acts, ch 38, §54, 55

CS2005, §633A.3109

### **633A.3110 Rights of trustee regarding claims in a probate administration.**

1. If a probate administration has been commenced for which a revocable trust could be held responsible for the payment of claims, expenses, or taxes, the trustee shall be an interested party in that probate administration.

2. The trustee shall receive notice of all potential charges against the trust assets and must either authorize the payments for which the trust may be found liable or be given the opportunity to dispute or defend any such payment.

99 Acts, ch 125, §34, 109

C2001, §633.3110

2005 Acts, ch 38, §54

CS2005, §633A.3110

### **633A.3111 Trustee's liability for distributions.**

1. A trustee who distributes trust assets without making adequate provisions for the payment of creditor claims that are known or reasonably ascertainable shall be jointly and severally liable with the beneficiaries to the extent of the distributions made.

2. A trustee shall be entitled to indemnification from the beneficiaries for all amounts paid to creditors under this section, to the extent of distributions made.

99 Acts, ch 125, §35, 109; 2000 Acts, ch 1150, §19

C2001, §633.3111

2005 Acts, ch 38, §54

CS2005, §633A.3111

### **633A.3112 Classification of debts and charges.**

If a revocable trust becomes subject to the claims of a settlor's creditors and the costs of administration of the settlor's estate pursuant to section 633A.3104, following the payment of the proper costs of administration of the trust and any claims against the trust, the debts and charges of the settlor's estate payable by the trust shall be classified pursuant to sections 633.425 and 633.426 as such sections exist on the date of the settlor's death.

2005 Acts, ch 38, §41, 55

### **633A.4101 Acceptance or declination to serve as trustee.**

1. A person named as trustee accepts the office of trustee by doing one of the following:

*a.* Signing the trust instrument, or signing a separate written acceptance.

*b.* Except as provided in subsection 3, knowingly accepting delivery of the trust property or exercising powers or performing duties as trustee.

2. A person named as trustee who has not yet accepted the office of trustee may in writing decline to serve as trustee.

3. If there is an immediate risk of damage to the trust property, the person named as trustee may act to preserve the trust property without accepting the office of trustee, if within a reasonable time after acting, the

person delivers a written declination to serve to the settlor, or if the settlor is dead or lacks capacity, to the beneficiaries eligible to receive income or principal distributions from the trust.

99 Acts, ch 125, §36, 109; 2000 Acts, ch 1150, §20

C2001, §633.4101

2005 Acts, ch 38, §54

CS2005, §633A.4101

### **633A.4102 Trustee's bond.**

1. A trustee is not required to give a bond to secure performance of the trustee's duties unless one of the following applies:

*a.* A bond is expressly required by the terms of the trust.

*b.* A bond is found by the court to be necessary to protect the interests of beneficiaries, regardless of the terms of the trust.

2. If a bond is required, it must be filed, and be in an amount and with sureties and liabilities as the court may order. The court may excuse a requirement of a bond, reduce or increase the amount of a bond, release a surety, or permit the substitution of another bond with the same or different sureties.

3. The amount of a bond otherwise required may be reduced by the value of trust property deposited with a financial institution in a manner that prevents its unauthorized disposition, and by the value of real property which the trustee, by express limitation of power, lacks power to convey without court authorization.

4. Except as otherwise provided by the terms of the trust or ordered by the court, the cost of a bond is charged to the trust.

5. A bank or trust company shall not be required to give a bond, whether or not the terms of the trust require a bond.

99 Acts, ch 125, §37, 109

C2001, §633.4102

2005 Acts, ch 38, §54

CS2005, §633A.4102

### **633A.4103 Actions by cotrustees.**

Unless the terms of the trust provide otherwise, the following apply to actions of cotrustees:

1. A power held by cotrustees may be exercised by majority action.

2. If impasse occurs due to the failure to reach a majority decision, any trustee may petition the court to decide the issue, or a majority of the trustees may consent to an alternative form of dispute resolution.

3. If a vacancy occurs in the office of a cotrustee, the remaining cotrustees may act for the trust as if they are

the only trustees.

4. If a cotrustee is unavailable to perform duties because of absence, illness, or other temporary incapacity, the remaining cotrustees may act for the trust, as if they were the only trustees, if necessary to accomplish the purposes of the trust or to avoid irreparable injury to the trust property.

99 Acts, ch 125, §38, 109

C2001, §633.4103

2005 Acts, ch 38, §54

CS2005, §633A.4103

**633A.4104 Vacancy in office of trustee.**

A vacancy in the office of trustee exists if any of the following occurs:

1. The person named as trustee declines to serve as trustee.
2. The person named as trustee cannot be identified or does not exist.
3. The trustee resigns or is removed.
4. The trustee dies.
5. A guardian or conservator of the trustee's person or estate is appointed.

99 Acts, ch 125, §39, 109; 2000 Acts, ch 1150, §21

C2001, §633.4104

2005 Acts, ch 38, §54

CS2005, §633A.4104

**633A.4105 Filling vacancy.**

1. A trustee must be appointed to fill a vacancy in the office of the trustee only if the trust has no trustee or the terms of the trust require a vacancy in the office of cotrustee to be filled.

2. A vacancy in the office of trustee shall be filled according to the following:

*a.* By the person named in or nominated pursuant to the method specified by the terms of the trust.

*b.* If the terms of the trust do not name a person or specify a method for filling the vacancy, or if the person named or nominated pursuant to the method specified fails to accept, one of the following methods shall be used:

(1) By majority vote of all qualified beneficiaries, who are adults, and the representative of any minor or incompetent qualified beneficiary as provided in section 633A.6303.

(2) By a person appointed by the court on petition of an interested person or of a person named as trustee by

the terms of the trust. The court, in selecting a trustee, shall consider any nomination made by the adult beneficiaries and representatives of any minor and incompetent beneficiaries as designated in section 633A.6303.

99 Acts, ch 125, §40, 109; 2000 Acts, ch 1150, §22

C2001, §633.4105

2002 Acts, ch 1107, §6, 7; 2003 Acts, ch 44, §103; 2003 Acts, ch 95, §12; 2005 Acts, ch 38, §54, 55

CS2005, §633A.4105

### **633A.4106 Resignation of trustee.**

1. A trustee who has accepted a trust may resign by any of the following methods:

*a.* As provided by the terms of the trust.

*b.* With the consent of the person holding the power to revoke the trust if the holder is competent or is represented by a guardian, conservator, or agent.

*c.* With the consent of the qualified beneficiaries who are adults if the trust is irrevocable or the holder of the power to revoke lacks competency or is not represented by a guardian, conservator, or agent.

*d.* Upon written notice to the holder of the power to revoke if the holder substantially changes the trustee's duties and the trustee does not concur.

*e.* By filing a petition to resign under section 633A.6202. The resignation takes effect ninety days after the filing, or upon approval of the petition by the court, whichever first occurs. The court must accept the trustee's resignation but may impose such orders and conditions as are reasonably necessary for the protection of the trust property, including the appointment of a receiver or temporary trustee.

2. The liability for acts or omissions of a resigning trustee or of any sureties on the trustee's bond is not released or affected by the trustee's resignation.

99 Acts, ch 125, §41, 109

C2001, §633.4106

2002 Acts, ch 1107, §8; 2005 Acts, ch 38, §54, 55

CS2005, §633A.4106

### **633A.4107 Removal of trustee.**

1. A trustee may be removed in accordance with the terms of the trust, or on petition of a settlor, cotrustee, or beneficiary under section 633A.6202.

2. The court may remove a trustee, or order other appropriate relief if any of the following occurs:

*a.* If the trustee has committed a material breach of the trust.

*b.* If the trustee is unfit to administer the trust.

- c.* If hostility or lack of cooperation among cotrustees impairs the administration of the trust.
- d.* If the trustee's investment performance is consistently and substantially substandard.
- e.* If the trustee's compensation is excessive under the circumstances.
- f.* If the trustee merges with another institution or the location or place of administration of the trust changes.
- g.* For other good cause shown.

3. If it appears to the court that trust property or the interests of a beneficiary may suffer loss or injury pending a final decision on a petition for removal of a trustee, the court may suspend the powers of the trustee, compel the trustee to surrender trust property to a cotrustee, receiver, or temporary trustee, or order other appropriate relief.

99 Acts, ch 125, §42, 109; 2000 Acts, ch 1150, §23

C2001, §633.4107

2003 Acts, ch 95, §13; 2005 Acts, ch 38, §54, 55

CS2005, §633A.4107

#### **633A.4108 Delivery of property by former trustee.**

Unless a cotrustee remains in office, a former trustee, or if the trustee's appointment terminated because of death or disability, the former trustee's personal representative or guardian or conservator, is responsible for and has the powers necessary to protect the trust property and other powers essential to the trust's administration until the property is delivered to a successor trustee or a person appointed by the court to receive the property.

99 Acts, ch 125, §43, 109

C2001, §633.4108

2005 Acts, ch 38, §54

CS2005, §633A.4108

#### **633A.4109 Compensation of trustee.**

1. If the terms of the trust do not specify the trustee's compensation, a trustee or cotrustee is entitled to compensation that is reasonable under the circumstances.
2. If the terms of the trust specify the trustee's compensation, the trustee is entitled to be compensated as so provided, except that upon proper showing, the court may allow more or less compensation in the following instances:
  - a.* If the duties of the trustee are substantially different from those contemplated when the trust was created.
  - b.* If the compensation specified by the terms of the trust would be inequitable, or unreasonably low or high.
  - c.* In extraordinary circumstances calling for equitable relief.

99 Acts, ch 125, §44, 109

C2001, §633.4109

2005 Acts, ch 38, §54

CS2005, §633A.4109

**633A.4110 Repayment for expenditures.**

A trustee is entitled to be repaid out of the trust property, with interest as appropriate, for all of the following expenditures:

1. Expenditures that were properly incurred in the administration of the trust.
2. To the extent that they benefited the trust, expenditures that were not properly incurred in the administration of the trust.

99 Acts, ch 125, §45, 109

C2001, §633.4110

2005 Acts, ch 38, §54

CS2005, §633A.4110

**633A.4111 Notice of increased trustee's fee.**

1. As used in this section, "*trustee's fee*" includes a trustee's periodic base fee, rate of percentage compensation, minimum fee, hourly rate, and transaction charge, but does not include fees for extraordinary services.
2. A trustee shall not charge an increased trustee's fee for administration of a trust unless the trustee first gives at least thirty days' written notice of the increased fee to all of the following beneficiaries:
  - a. Each qualified beneficiary.
  - b. Each beneficiary who was given the last preceding accounting.
  - c. Each beneficiary who has made a written request to the trustee for notice of an increased trustee's fee, and has given an address for receiving notice by mail.
3. If a beneficiary files a petition for review of an increased trustee's fee or for removal of a trustee and serves a copy of the petition on the trustee within the thirty-day period, the increased fee does not take effect until otherwise ordered by the court or the petition is dismissed.

99 Acts, ch 125, §46, 109; 2000 Acts, ch 1150, §24

C2001, §633.4111

2002 Acts, ch 1107, §9; 2005 Acts, ch 38, §54

**633A.4201 Duty to administer trust alteration by terms of trust.**

1. On acceptance of a trust, the trustee shall administer the trust according to the terms of the trust and according to this trust code, except to the extent the terms of the trust provide otherwise.
2. The terms of the trust may expand, restrict, eliminate, or otherwise alter the duties prescribed by this trust code, and the trustee may reasonably rely on those terms, but nothing in this trust code authorizes a trustee to act in bad faith or in disregard of the purposes of the trust or the interest of the beneficiaries.

99 Acts, ch 125, §47, 109

C2001, §633.4201

2005 Acts, ch 38, §54

CS2005, §633A.4201

**633A.4202 Duty of loyalty impartiality confidential relationship.**

1. A trustee shall administer the trust solely in the interest of the beneficiaries, and shall act with due regard to their respective interests.
2. Any transaction involving the trust which is affected by a material conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless one of the following applies:
  - a. The transaction was expressly authorized by the terms of the trust.
  - b. The beneficiary consented to or affirmed the transaction or released the trustee from liability as provided in section 633A.4506.
  - c. The transaction is approved by the court after notice to interested persons.
3. A transaction affected by a material conflict between personal and fiduciary interests includes any sale, encumbrance, or other transaction involving the trust property entered into by the trustee, the spouse, descendant, agent, or attorney of a trustee, or corporation or other enterprise in which the trustee has a substantial beneficial interest.
4. A transaction not involving trust property between a trustee and a beneficiary which occurs during the existence of the trust or while the trustee retains significant influence over the beneficiary and from which the trustee obtains an advantage is an abuse of a confidential relationship unless the trustee establishes that the transaction was fair.
5. This section does not apply to any of the following:
  - a. An agreement between a trustee and a beneficiary relating to the appointment of the trustee.
  - b. The payment of compensation to the trustee, whether by agreement, the terms of the trust, or this trust code.
  - c. A transaction between a trust and another trust, decedent's or conservatorship estate of which the trustee is

a fiduciary if the transaction is fair to the beneficiaries of the trust.

*d.* An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee if the investment complies with the prudent investor rule. The trustee may be compensated by the investment company or investment trust for providing services from fees charged to the trust if the trustee provides annual notice and a copy of the trustee's annual report, including the rate and method by which the trustee's compensation was determined, to the persons specified in section 633A.4213.

*e.* A deposit of trust money in a regulated financial service institution operated by the trustee.

99 Acts, ch 125, §48, 109

C2001, §633.4202

2002 Acts, ch 1107, §10; 2005 Acts, ch 38, §54, 55

CS2005, §633A.4202

### **633A.4203 Standard of prudence.**

A trustee shall administer the trust with the reasonable care, skill, and caution as a prudent person would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust.

99 Acts, ch 125, §49, 109

C2001, §633.4203

2005 Acts, ch 38, §54

CS2005, §633A.4203

### **633A.4204 Costs of administration.**

A trustee may only incur costs that are reasonable in relation to the trust property, purposes, and other circumstances of the trust.

99 Acts, ch 125, §50, 109

C2001, §633.4204

2005 Acts, ch 38, §54

CS2005, §633A.4204

### **633A.4205 Special skills.**

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.

99 Acts, ch 125, §51, 109

C2001, §633.4205

2005 Acts, ch 38, §54

CS2005, §633A.4205

**633A.4206 Delegation.**

1. A trustee shall not delegate to an agent or cotrustee the entire administration of the trust or the responsibility to make or participate in the making of decisions with respect to discretionary distributions, but a trustee may otherwise delegate the performance of functions that a prudent trustee of comparable skills might delegate under similar circumstances.
2. The trustee shall exercise reasonable care, skill, and caution in the following activities:
  - a. Selecting an agent.
  - b. Establishing the scope and terms of a delegation, consistent with the purposes and terms of the trust.
  - c. Periodically reviewing an agent's overall performance and compliance with the terms of the delegation.
  - d. Redressing an action or decision of an agent which would constitute a breach of trust if performed by the trustee.
3. A trustee who complies with the requirements of subsections 1 and 2 is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom a function was delegated.
4. In performing a delegated function, an agent shall exercise reasonable care to comply with the terms of the delegation.
5. 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.

99 Acts, ch 125, §52, 109

C2001, §633.4206

2005 Acts, ch 38, §54

CS2005, §633A.4206

**633A.4207 Directory powers.**

1. While a trust is revocable, the trustee may follow a written direction of the settlor that is contrary to the terms of the trust.
2. If the terms of the trust confer upon a person other than the settlor of a revocable trust power to direct certain actions of the trustee, the trustee shall act in accordance with an exercise of the power unless the trustee knows the attempted exercise violates the terms of the trust or the trustee knows that the person holding the power is incompetent.
3. A person other than a beneficiary who holds a power to direct is presumptively a fiduciary who is 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 is liable for any loss that results from a breach of a fiduciary duty.

99 Acts, ch 125, §53, 109

C2001, §633.4207

2003 Acts, ch 95, §14; 2005 Acts, ch 38, §54

CS2005, §633A.4207

**633A.4208 Cotrustees.**

1. If a trust has more than one trustee, each trustee shall perform all of the following duties:

*a.* Participate in the administration of the trust.

*b.* Take reasonable steps to prevent a cotrustee from committing a breach of trust, and to compel a cotrustee to redress a breach of trust.

2. A trustee who complies with subsection 1 is not liable to the beneficiaries or to the trust for the decisions or actions of a cotrustee.

99 Acts, ch 125, §54, 109

C2001, §633.4208

2005 Acts, ch 38, §54

CS2005, §633A.4208

**633A.4209 Control and safeguarding of trust property.**

A trustee shall take reasonable steps under the circumstances to take control of and to safeguard the trust property unless it is in the best interests of the trust to abandon or refuse acceptance of the property.

99 Acts, ch 125, §55, 109

C2001, §633.4209

2005 Acts, ch 38, §54

CS2005, §633A.4209

**633A.4210 Separation and identification of trust property.**

A trustee shall do all of the following:

1. Keep the trust property separate from other property of the trustee unless the trust provides otherwise.

2. Cause the trust property to be designated in such a manner that the interest of the trust clearly appears.

99 Acts, ch 125, §56, 109

C2001, §633.4210

2005 Acts, ch 38, §54

CS2005, §633A.4210

**633A.4211 Enforcement and defense of claims and actions.**

A trustee shall take reasonable steps to enforce claims of the trust, to defend claims against the trust, and to defend against actions that may result in a loss to the trust.

99 Acts, ch 125, §57, 109

C2001, §633.4211

2002 Acts, ch 1107, §11; 2005 Acts, ch 38, §54

CS2005, §633A.4211

**633A.4212 Prior fiduciaries.**

A trustee shall take reasonable steps to do all of the following:

1. Compel a former trustee or other fiduciary to deliver trust property to the trustee.
2. Redress a breach of trust known to the trustee to have been committed by a prior trustee or other fiduciary.

99 Acts, ch 125, §58, 109

C2001, §633.4212

2005 Acts, ch 38, §54

CS2005, §633A.4212

**633A.4213 Duty to inform and account.**

A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and the material facts necessary to protect the beneficiaries' interests.

1. The trustee shall inform each qualified beneficiary of the beneficiary's right to receive an annual accounting and a copy of the trust instrument. The trustee shall also inform each qualified beneficiary about the process necessary to obtain an annual accounting or a copy of the trust instrument, if not provided. The trustee shall further inform each qualified beneficiary whether the beneficiary will, or will not, receive an annual accounting if the beneficiary fails to take any action. If a qualified beneficiary has previously been provided the notice required by this section, additional notice shall not be required due to a change of trustees or a change in the composition of the qualified beneficiaries.

2. The trustee shall provide the notice required in subsection 1 to each qualified beneficiary within a reasonable time following any of the following events:

*a.* The commencement of the trust administration.

*b.* The trustee becoming aware that there is a new qualified beneficiary or a representative of any minor or incompetent beneficiary.

c. The trust becoming irrevocable.

d. The time that no person, except the trustee, has the right to change the beneficiaries of the trust.

3. A trustee of an irrevocable trust shall provide annually to each adult beneficiary and the representative of any minor or incompetent beneficiary who may receive a distribution of income or principal during the accounting time period, an accounting, unless an accounting has been waived specifically for that accounting time period.

4. This section does not apply to any trust where the grantor has retained the right, or has transferred the right, to change the beneficiaries of the trust.

5. The only consequence to a trustee's failure to provide a required accounting or notice is that the trustee shall not be able to rely upon the statute of limitations under section 633A.4504. If the trustee has refused, after a reasonable request, to provide an accounting to a qualified beneficiary, the court may assess costs, including attorney fees, against the trustee personally.

6. The format and content of an accounting required by this section shall be within the discretion of the trustee, as long as sufficient to reasonably inform the beneficiary of the condition and activities of the trust during the accounting period.

7. This section does not apply to any trust created prior to July 1, 2002. This section applies to any trust created on or after July 1, 2002, unless the settlor has specifically waived the requirements of this section in the trust instrument. Waiver of this section shall not bar any beneficiary's common-law right to an accounting, and shall not provide any immunity to a trustee, acting under the terms of the trust, for liability to any beneficiary who discovers facts giving rise to a cause of action against the trustee.

99 Acts, ch 125, §59, 109

C2001, §633.4213

2001 Acts, ch 176, §78; 2002 Acts, ch 1107, §12; 2002 Acts, ch 1175, §93; 2003 Acts, ch 95, §15; 2005 Acts, ch 38, §54, 55

CS2005, §633A.4213

### **633A.4214 Duties with regard to discretionary powers.**

1. A trustee shall exercise a discretionary power within the bounds of reasonable judgment and in accordance with applicable fiduciary principles and the terms of the trust.

2. Notwithstanding the use of such terms as "absolute", "sole", or "uncontrolled" in the grant of discretion, a trustee shall act in accordance with fiduciary principles and shall not act in bad faith or in disregard of the purposes of the trust or the power. Absent an abuse of discretion, a trustee's exercise of discretion is not subject to control by a court.

3. Subject to paragraph "c" and unless the terms of the trust expressly indicate that a rule in this subsection does not apply, all of the following shall apply:

a. A person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee the power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in

accordance with an ascertainable standard relating to the trustee's individual health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986.

b. A trustee shall not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes to another person.

c. This subsection does not apply to the following:

(1) A power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in section 2056(b)(5) or 2523(e) of the Internal Revenue Code of 1986, was previously allowed.

(2) A trust that may be revoked or amended by the settlor.

(3) A trust, if contributions to the trust qualify for an annual exclusion under section 2503(c) of the Internal Revenue Code of 1986.

4. A power whose exercise is limited or prohibited by subsection 3 may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

99 Acts, ch 125, §60, 109

C2001, §633.4214

2002 Acts, ch 1107, §13; 2003 Acts, ch 95, §16; 2003 Acts, ch 108, §109; 2005 Acts, ch 38, §54

CS2005, §633A.4214

### **633A.4301 Short title.**

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

99 Acts, ch 125, §61, 109

C2001, §633.4301

2005 Acts, ch 38, §54, 55

CS2005, §633A.4301

### **633A.4302 Standard of care portfolio strategy risk and return objectives.**

1. A trustee shall invest and manage trust property 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.

2. 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.

3. A trustee shall consider all of the following circumstances, to the extent relevant to the trust or its beneficiaries in investing and managing trust property:

- a.* General economic conditions.
  - b.* The possible effect of inflation or deflation.
  - c.* The expected tax consequences of investment decisions or strategies.
  - d.* 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.
  - e.* The expected total return from income and the appreciation of capital.
  - f.* Other resources of the beneficiaries.
  - g.* Needs for liquidity, regularity of income, and preservation or appreciation of capital.
  - h.* An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.
4. A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust property.
5. A trustee may invest in any kind of property or type of investment consistent with the standards of this part.

99 Acts, ch 125, §62, 109

C2001, §633.4302

2005 Acts, ch 38, §54, 55

CS2005, §633A.4302

#### **633A.4303 Diversification.**

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

99 Acts, ch 125, §63, 109

C2001, §633.4303

2005 Acts, ch 38, §54

CS2005, §633A.4303

#### **633A.4304 Duties at inception of trusteeship.**

Within a reasonable time after accepting a trusteeship or receiving trust property, a trustee shall review the trust property 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 part.

99 Acts, ch 125, §64, 109

C2001, §633.4304

2005 Acts, ch 38, §54, 55

CS2005, §633A.4304

**633A.4305 Loyalty.**

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

99 Acts, ch 125, §65, 109

C2001, §633.4305

2005 Acts, ch 38, §54

CS2005, §633A.4305

**633A.4306 Impartiality.**

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

99 Acts, ch 125, §66, 109

C2001, §633.4306

2005 Acts, ch 38, §54

CS2005, §633A.4306

**633A.4307 Investment costs.**

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

99 Acts, ch 125, §67, 109

C2001, §633.4307

2005 Acts, ch 38, §54

CS2005, §633A.4307

**633A.4308 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.

99 Acts, ch 125, §68, 109

C2001, §633.4308

2005 Acts, ch 38, §54

CS2005, §633A.4308

**633A.4309 Language invoking prudent investor rule.**

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 trust code:

1. Investments permissible by law for investment of trust funds.
2. Legal investments.
3. Authorized investments.
4. 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.
5. Prudent man rule.
6. Prudent trustee rule.
7. Prudent person rule.
8. Prudent investor rule.

99 Acts, ch 125, §70, 109

C2001, §633.4309

2005 Acts, ch 38, §54

CS2005, §633A.4309

**633A.4401 General powers fiduciary duties.**

1. A trustee, without authorization by the court, may exercise the following powers:
  - a. The powers conferred by the terms of the trust.
  - b. Except as limited by the terms of the trust, powers conferred by this trust code.
2. This part does not affect the power of the court to relieve a trustee from restrictions in the terms of the trust on the exercise of powers, to confer on a trustee additional powers whether or not authorized by the terms of the trust, or to restrict the exercise of a power otherwise given to the trustee by the terms of the trust or this trust code.
3. The grant of a power to a trustee, whether by the terms of the trust, this trust code, or the court, does not in itself govern the exercise of the power. In exercising a power, the trustee shall act in accordance with

fiduciary principles.

99 Acts, ch 125, §71, 109

C2001, §633.4401

2005 Acts, ch 38, §54, 55

CS2005, §633A.4401

### **633A.4402 Specific powers of trustees.**

In addition to the powers conferred by the terms of the trust, a trustee may perform all actions necessary to accomplish the proper management, investment, and distribution of the trust property, including the following powers:

1. Collect, hold, and retain trust property received from a settlor or any other person. The property may be retained even though it includes property in which the trustee is personally interested.
2. Accept or refuse to accept additions to the property of the trust from a settlor or any other person.
3. With respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue or participate in the operation of a business or other enterprise that is part of the trust and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of a business organization and contributing additional capital.
4. Deposit trust funds in an account in a financial institution, including a financial institution operated by the trustee.
5. Acquire or dispose of property, for cash or on credit, at public or private sale, or by exchange.
6. Manage, control, divide, develop, improve, exchange, partition, change the character of, or abandon trust property. 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 participate in voting trusts, pooling arrangements, and foreclosures, and in connection therewith, deposit securities with and transfer title and delegate discretion to any protective or other committee as the trustee considers advisable.
7. Encumber, mortgage, or pledge trust property for a term within or extending beyond the term of the trust in connection with the exercise of a power vested in the trustee.
8. Make ordinary or extraordinary repairs, alterations, or improvements in buildings or other trust property; demolish improvements; and raze existing or erect new party walls or buildings.
9. Subdivide or develop land, dedicate land to public use, make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation on exchange or partition by giving or receiving consideration, and dedicate easements to public use without consideration.
10. Enter into a lease for any purpose as lessor or lessee with or without the option to purchase or renew and for a term within or extending beyond the term of the trust.
11. Enter into a lease or arrangement for exploration and removal of gas, oil, or other minerals or geothermal energy, and enter into a community oil lease or a pooling or unitization agreement.

12. Grant an option involving disposition of trust property or take an option for the acquisition of property, including an option that is exercisable beyond the duration of the trust.
13. With respect to shares of stock of a domestic or foreign corporation, any membership in a nonprofit corporation, or other property, the trustee may do the following:
  - a. Vote in person, and give proxies to exercise, any voting rights with respect to the shares, memberships, or property.
  - b. Waive notice of a meeting or give consent to the holding of a meeting.
  - c. Authorize, ratify, approve, or confirm any action that could be taken by shareholders, members, or property owners.
14. Pay calls, assessments, and any other sums chargeable or accruing against or on account of securities.
15. Sell or exercise stock subscription or conversion rights.
16. Select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, and exercise rights thereunder, including the right to indemnification for expenses and against liabilities, and take appropriate action to collect proceeds.
17. Hold a security in the name of a nominee or in other form without disclosure of the trust so that title to the security may pass by delivery.
18. Deposit securities in a securities' depository.
19. Insure the property of the trust against damage or loss and insure the trustee against liability with respect to third persons.
20. Borrow money for any trust purpose to be repaid from trust property.
21. Pay or contest any claim; settle a claim by or against the trust by compromise, arbitration, or otherwise; and release, in whole or in part, a claim belonging to the trust.
22. Pay taxes, assessments, reasonable compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the collection, care, administration, and protection of the trust.
23. Make loans out of trust property to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and guarantee loans to the beneficiary by encumbrances on trust property.
24. Pay an amount distributable to a beneficiary, whether or not the beneficiary is under a legal disability, by paying the amount to the beneficiary or by paying the amount to another person for the use or benefit of the beneficiary.
25. Upon distribution of trust property or the division or termination of a trust, make distribution in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation.
26. Employ accountants, attorneys, investment advisors, appraisers, or other persons, even if they are associated or affiliated with the trustee, to advise or assist the trustee in the performance of administrative duties.

27. With respect to any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, a trustee shall do all of the following:

*a.* Inspect or investigate property the trustee holds or has been asked to hold or property owned or operated by an organization in which the trustee holds an interest in or has been asked to hold an interest in, and expend trust funds therefore, for the purpose of determining any potential environmental law violations with respect to the property.

*b.* Take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement.

*c.* Decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of any environmental law.

*d.* Negotiate claims against the trust which may be asserted for an alleged violation of environmental law.

*e.* Pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law.

28. Withhold funds from distribution for the purpose of maintaining a reserve for any valid business purpose, or as a depletion reserve, if, in the trustee's discretion, the failure to do so would unfairly, and materially, reduce the value of the interest of the remainder.

29. Execute and deliver instruments that are useful to accomplish or facilitate the exercise of the trustee's powers.

30. Prosecute or defend an action, claim, or proceeding in order to protect trust property.

31. Resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution.

32. Upon termination of the trust, exercise the powers necessary to conclude the administration of the trust and distribute the trust property to the person or persons entitled to the trust property.

99 Acts, ch 125, §72, 109

C2001, §633.4402

2002 Acts, ch 1107, §14, 15; 2005 Acts, ch 38, §54

CS2005, §633A.4402

### **633A.4501 Violations of duties breach of trust.**

1. A violation by a trustee of a duty the trustee owes a beneficiary is a breach of trust.

2. The remedies of a beneficiary for breach of trust are exclusively equitable and any action shall be brought in a court of equity.

99 Acts, ch 125, §73, 109

C2001, §633.4501

2005 Acts, ch 38, §54

CS2005, §633A.4501

**633A.4502 Breach of trust actions.**

To remedy a breach of trust which has occurred or may occur, a beneficiary or cotrustee of the trust may request the court to do any of the following:

1. Compel the trustee to perform the trustee's duties.
2. Enjoin the trustee from committing a breach of trust.
3. Compel the trustee to redress a breach of trust by payment of money or otherwise.
4. Appoint a receiver or temporary trustee to take possession of the trust property and administer the trust.
5. Remove the trustee.
6. Reduce or deny compensation to the trustee.
7. Subject to section 633A.4603, nullify an act of the trustee, impose an equitable lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds.
8. Order any other appropriate relief.

99 Acts, ch 125, §74, 109

C2001, §633.4502

2002 Acts, ch 1107, §16; 2005 Acts, ch 38, §54, 55

CS2005, §633A.4502

**633A.4503 Breach of trust liability.**

A beneficiary may charge a trustee who commits a breach of trust with the amount required to restore the value of the trust property and trust distributions to what they would have been had the breach not occurred, or, if greater, the amount of profit lost by reason of the breach.

99 Acts, ch 125, §75, 109

C2001, §633.4503

2005 Acts, ch 38, §54

CS2005, §633A.4503

**633A.4504 Limitation of action against trustee.**

1. Unless previously barred by adjudication, consent, or other limitation, a claim against a trustee for breach of trust is barred as to a beneficiary who has received a final account or other report adequately disclosing the

existence of the claim, unless a proceeding to assert the claim is commenced within one year after the earlier of the receipt of the accounting or report of the termination of the trust relationship between the trustee and beneficiary. An account or report adequately discloses the existence of a claim if it provides sufficient information so that the beneficiary knows of the claim or reasonably should have inquired into its existence.

2. For the purpose of subsection 1, a beneficiary is deemed to have received an account or report in the following instances:

*a.* In the case of an adult who is reasonably capable of understanding the account or report, if it is received by the adult personally.

*b.* In the case of an adult who is not reasonably capable of understanding the account or report, if it is received by the adult's legal representative, including a guardian ad litem or other person appointed for this purpose.

*c.* In the case of a minor, if it is received by the minor's guardian or conservator or, if the minor does not have a guardian or conservator, if it is received by a parent of the minor who does not have a conflict of interest.

3. Any claim for breach of trust against a trustee who has presented a final report to a beneficiary more than one year prior to July 1, 2000, shall be time barred unless some exception stated in this section applies which tolls the statute. Any claim arising under this section within one year of July 1, 2000, shall be time barred after one year unless an exception applies to toll the statute.

99 Acts, ch 125, §76, 109; 2000 Acts, ch 1150, §25

C2001, §633.4504

2005 Acts, ch 38, §54

CS2005, §633A.4504

### **633A.4505 Exculpation of trustee.**

A provision in the terms of the trust relieving a trustee of liability for breach of trust is unenforceable to the extent that it does either of the following:

1. Relieves a trustee of liability for breach of trust committed intentionally, with gross negligence, in bad faith, or with reckless indifference to the interest of the beneficiary, or for any profit derived by the trustee from the breach.

2. Was inserted as the result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

99 Acts, ch 125, §77, 109

C2001, §633.4505

2005 Acts, ch 38, §54

CS2005, §633A.4505

### **633A.4506 Beneficiary's consent, release, or affirmation nonliability of trustee.**

1. A beneficiary shall not hold a trustee liable for a breach of trust if the beneficiary does any of the

following:

*a.* Consents to the conduct constituting the breach.

*b.* Releases the trustee from liability for the breach.

*c.* Affirms the transaction constituting the breach.

2. A beneficiary may hold a trustee liable for breach of trust despite a consent, release, or affirmation by the beneficiary if, at the time of the consent, release, or affirmation, all of the following applied:

*a.* The beneficiary did not know of the beneficiary's rights.

*b.* The beneficiary did not know the material facts known to the trustee or which the trustee should have known.

*c.* The trustee did not reasonably believe that the beneficiary knew the beneficiary's rights and that the beneficiary knew material facts known to the trustee or which the trustee should have known.

3. A beneficiary may hold a trustee liable for breach of a trust despite a consent, release, or affirmation by the beneficiary if the consent, release, or affirmation was induced by improper conduct of the trustee.

99 Acts, ch 125, §78, 109

C2001, §633.4506

2002 Acts, ch 1107, §17, 18; 2003 Acts, ch 95, §17; 2005 Acts, ch 38, §54

CS2005, §633A.4506

### **633A.4507 Attorney fees and costs.**

In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

2004 Acts, ch 1015, §29

C2005, §633.4507

2005 Acts, ch 38, §54

CS2005, §633A.4507

### **633A.4601 Personal liability limitations.**

1. Except as otherwise provided in the contract or in this part, a trustee is not personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administration of the trust unless the trustee fails to reveal the representative capacity or identify the trust in the contract.

2. A trustee is personally liable for obligations arising from ownership or control of trust property, including liability for environmental law violations, and for torts committed in the course of administering a trust only if the trustee is personally at fault.

3. A claim based on a contract entered into by a trustee in the trustee's representative capacity, on an obligation arising from ownership or control of trust property, or on a tort committed in the course of administering a trust may be asserted against the trust by proceeding against the trustee in the trustee's representative capacity, whether or not the trustee is personally liable on the claim.

4. A question of liability as between the trust and the trustee personally may be determined in a proceeding brought under section 633A.6202.

99 Acts, ch 125, §79, 109

C2001, §633.4601

2002 Acts, ch 1107, §19; 2005 Acts, ch 38, §54, 55

CS2005, §633A.4601

### **633A.4602 Dissenting cotrustees.**

1. A cotrustee who does not join in exercising a power is not liable to a third party for the consequences of the exercise of the power.

2. A dissenting cotrustee who joins in an action at the direction of the majority cotrustees is not liable to a third party for the action if the dissenting cotrustee expresses the dissent in writing to any other cotrustee at or before the action is taken.

3. This section does not excuse a cotrustee from liability for failure to discharge a cotrustee's duties as a trustee.

99 Acts, ch 125, §80, 109

C2001, §633.4602

2005 Acts, ch 38, §54

CS2005, §633A.4602

### **633A.4603 Obligations of third parties.**

1. With respect to a third party dealing with a trustee or assisting a trustee in the conduct of a transaction, if the third party acts in good faith and for a valuable consideration and without knowledge that the trustee is exceeding the trustee's powers or is improperly exercising them, the following apply:

*a.* A third party is not bound to inquire as to whether a trustee has power to act or is properly exercising a power and may assume without inquiry the existence of a trust power and its proper exercise.

*b.* A third party is fully protected in dealing with or assisting a trustee, as if the trustee has and is properly exercising the power the trustee purports to exercise.

2. A third party who acts in good faith is not bound to ensure the proper application of trust property paid or delivered to the trustee.

3. If a third party acting in good faith and for a valuable consideration enters into a transaction with a former trustee without knowledge that the person is no longer a trustee, the third party is fully protected as if the

former trustee were still a trustee.

99 Acts, ch 125, §81, 109

C2001, §633.4603

2005 Acts, ch 38, §54

CS2005, §633A.4603

**633A.4604 Certification of trust.**

1. A trustee may present a certification of trust to any person in lieu of providing a copy of the trust instrument to establish the existence or terms of the trust.
2. The certification must contain a statement that the trust has not been revoked, modified, or amended in any manner which would cause the representations contained in the certification of trust to be incorrect and must contain a statement that it is being signed by all of the currently acting trustees of the trust and is sworn and subscribed to under penalty of perjury before a notary public.
3. A certification of trust need not contain the dispositive provisions of the trust which set forth the distribution of the trust estate.
4. A person may require that the trustee offering the certification of trust provide copies of those excerpts from the original trust instrument and amendments to the original trust instrument which designate the trustee and confer upon the trustee the power to act in the pending transaction.
5. A person who acts in reliance upon a certification of trust without knowledge that the representations contained in the certification are incorrect is not liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge shall not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the trust certification. A transaction, and a lien created by a transaction, entered into by the trustee and a person acting in reliance upon a certification of trust is enforceable against the trust assets.
6. A person making a demand for the trust instrument in addition to a certification of trust or excerpts shall be liable for damages, including attorney fees, incurred as a result of the refusal to accept the certification of trust or excerpts in lieu of the trust instrument if the court determines that the person acted unreasonably in requesting the trust instrument.
7. This section does not limit the rights of beneficiaries to obtain copies of the trust instrument or rights of others to obtain copies in a proceeding concerning the trust.

99 Acts, ch 125, §82, 109

C2001, §633.4604

2005 Acts, ch 38, §54

CS2005, §633A.4604

**633A.4605 Liability for wrongful taking, concealing, or disposing of trust property.**

A person who, in bad faith, wrongfully takes, conceals, or disposes of trust property is liable for twice the

value of the property, attorney fees, court costs, and where consistent with existing law, punitive damages, recoverable in an action by a trustee for the benefit of the trust.

99 Acts, ch 125, §83, 109

C2001, §633.4605

2005 Acts, ch 38, §54

CS2005, §633A.4605

**633A.4701 Survivorship with respect to future interests under terms of trust substitute takers.**

1. Unless otherwise specifically stated by the terms of the trust, the interest of each beneficiary is contingent on the beneficiary surviving until the date on which the beneficiary becomes entitled to possession or enjoyment of the beneficiary's interest in the trust.
2. If a beneficiary dies prior to becoming entitled to possession or enjoyment of the beneficiary's interest and the terms of the trust provide for an alternate beneficiary who is living on the date the interest becomes possessory, the alternate beneficiary succeeds to the interest in accordance with the terms of the trust.
3. If a beneficiary dies prior to becoming entitled to possession or enjoyment of the beneficiary's interest and no alternate beneficiary is named in the trust, and the beneficiary has issue who are living on the date the interest becomes possessory, the issue of the beneficiary who are living on such date shall receive the interest of the beneficiary.
4. If both a beneficiary of an interest and any alternate beneficiary of that interest named in the trust die prior to the interest becoming possessory, and the beneficiary has no issue who are living on the date the interest becomes possessory, the issue of the alternate beneficiary who are living on such date shall take the interest of the beneficiary.
5. If both the beneficiary of an interest and any alternate beneficiary of that interest named in the trust die prior to the interest becoming possessory, and neither the beneficiary nor the alternate beneficiary has issue who are living on the date the interest becomes possessory, the beneficiary's interest shall be distributed to the takers of the settlor's residuary estate, or, if the trust is the sole taker of the settlor's residuary estate, in accordance with section 633A.2106.
6. If both the beneficiary of an interest and any alternate beneficiary of that interest named in the trust die prior to the interest becoming possessory, and both the beneficiary and the alternate beneficiary have issue who are living on the date the interest becomes possessory, the issue of the beneficiary succeed to the interest of the beneficiary. The issue of the alternate beneficiary shall not succeed to any part of the interest of the beneficiary.
7. For the purposes of this section, persons appointed under a power of appointment shall be considered beneficiaries under this section and takers in default of appointment designated by the instrument creating the power of appointment shall be considered alternate beneficiaries under this section.
8. Subsections 2, 3, 4, 5, 6, and 7 do not apply to any interest subject to an express condition of survivorship imposed by the terms of the trust. For the purposes of this section, words of survivorship including, but not limited to, "my surviving children", "if a person survives" a named period, and terms of like import, shall be construed to create an express condition of survivorship. Words of survivorship include language requiring survival to the distribution date or to any earlier or unspecified time, whether those words are expressed in condition precedent, condition subsequent, or any other form.

9. For the purposes of this section, a term of the trust requiring that a beneficiary survive a person whose death does not make the beneficiary entitled to possession or enjoyment of the beneficiary's interest in the trust shall not be considered as "otherwise specifically stated by the terms of the trust" nor as an "express condition of survivorship imposed by the terms of the trust".

10. If an interest to which this section applies is given to a class, other than a class described as "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", "family", or a class described by language of similar import, the members of the class who are living on the date on which the class becomes entitled to possession or enjoyment of the interest shall be considered as alternate beneficiaries under this section. However, neither the residuary beneficiaries under the settlor's will nor the settlor's heirs shall be considered as alternate beneficiaries for the purposes of this section.

99 Acts, ch 125, §84, 109

C2001, §633.4701

2003 Acts, ch 95, §18, 19; 2005 Acts, ch 38, §42, 43, 54, 55

CS2005, §633A.4701

### **633A.4702 Discretionary language prevails over other standard.**

In the absence of clear and convincing evidence to the contrary, language in a governing instrument granting a trustee discretion to make or withhold a distribution shall prevail over any language in the governing instrument indicating that the beneficiary may have a legally enforceable right to distributions or indicating a standard for payments or distributions.

2004 Acts, ch 1015, §30

C2005, §633.4702

2005 Acts, ch 38, §54

CS2005, §633A.4702

### **633A.4703 General order for abatement.**

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, and the shares of children born or adopted after the execution of the trust, abatement shall occur in the following order:

1. Shares allocated to the residuary beneficiaries of the trust shall be abated first, on a pro rata basis.
2. Shares defined by a dollar amount, on a pro rata basis.
3. Shares described as specific items of property whether tangible or intangible shall be abated last, and such abatement shall be done as equitably by the trustee among the various beneficiaries as circumstances reasonably allow.
4. Notwithstanding subsections 1, 2, or 3, a disposition in favor of the grantor's surviving spouse shall not be abated where such abatement would have the effect of increasing the amount of federal estate or federal gift taxes payable by a person or an entity.

2005 Acts, ch 38, §44

**633A.4704 Simultaneous death.**

If the determination of the successor of a beneficial interest in a trust is dependent upon whether a beneficiary has survived the death of a settlor, of another beneficiary, or of any other person, the uniform simultaneous death Act, sections 633.523 through 633.528, shall govern the determination of who shall be considered to have died first.

2005 Acts, ch 38, §45

**633A.4705 Principal and income.**

Chapter 637 shall apply to trusts subject to this chapter.

2005 Acts, ch 38, §46

**633A.4706 Small distributions to minors payment.**

When a minor becomes entitled under the terms of the trust to a beneficial interest in the trust upon the distribution of the trust fund and the value of the interest does not exceed the sum of twenty-five thousand dollars, the trustee may pay the interest to a custodian under any uniform transfers to minors Act.\* Receipt by the custodian shall have the same force and effect as though payment had been made to a duly appointed and qualified conservator for the minor.

2005 Acts, ch 38, §47

**Footnotes**

\*Uniform transfers to minors, see chapter 565B

**633A.5101 Charitable purposes.**

1. A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, or any other purpose the accomplishment of which is beneficial to the community.
2. If the terms of the trust do not indicate a particular charitable purpose or beneficiaries, the trustee may select one or more charitable purposes or beneficiaries.

99 Acts, ch 125, §85, 109

C2001, §633.5101

2005 Acts, ch 38, §54

CS2005, §633A.5101

**633A.5102 Application of cy pres.**

Unless the terms of the trust provide to the contrary the following apply:

1. A charitable trust does not fail, in whole or in part, if a particular purpose for which the trust was created

becomes impracticable, unlawful, or impossible to fulfill.

2. If a particular charitable purpose for which a trust was created becomes impracticable, unlawful, or impossible to fulfill, the court may modify the terms of the trust or direct that the property of the trust be distributed in whole or in part in a manner best meeting the settlor's general charitable purposes. If an administrative provision of a charitable trust becomes impracticable, unlawful, impossible to fulfill, or otherwise impairs the effective administration of the trust, the court may modify the provision.

99 Acts, ch 125, §86, 109

C2001, §633.5102

2005 Acts, ch 38, §54

CS2005, §633A.5102

### **633A.5103 Trust with uneconomically low value.**

1. On petition by a trustee or other interested person, if the court determines that the value of the trust property is insufficient to justify the cost of administration involved, the court may appoint a new trustee or may modify or terminate the charitable trust.

2. Upon termination of a trust under this section, the court shall distribute the trust property in a manner consistent with the settlor's charitable purposes.

99 Acts, ch 125, §87, 109

C2001, §633.5103

2005 Acts, ch 38, §54

CS2005, §633A.5103

### **633A.5104 Interested persons proceedings.**

The settlor, 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.

99 Acts, ch 125, §88, 109

C2001, §633.5104

2005 Acts, ch 38, §54

CS2005, §633A.5104

### **633A.5105 Charitable trusts.**

In addition to the provisions of this chapter, a charitable trust that is a private foundation shall be governed by the provisions of chapter 634.

2005 Acts, ch 38, §48

### **633A.6101 Subject matter jurisdiction.**

The district court sitting in probate has exclusive jurisdiction of proceedings concerning the internal affairs of a trust and of actions and proceedings to determine the existence of a trust, actions and proceedings by or against creditors or debtors of a trust, and other actions and proceedings involving a trust and third persons. Such jurisdiction may be invoked by any interested party at any time.

99 Acts, ch 125, §89, 109

C2001, §633.6101

2002 Acts, ch 1107, §20; 2005 Acts, ch 38, §49, 54

CS2005, §633A.6101

### **633A.6102 Principal place of administration of trust.**

1. Unless otherwise designated in the terms of the trust, the principal place of administration of a trust is the usual place where the day-to-day activity of the trust is carried on by the trustee or the trustee's representative who is primarily responsible for the administration of the trust.

2. If the principal place of administration of the trust cannot be determined under subsection 1, it must be determined as follows:

*a.* If the trust has one trustee, the principal place of administration of the trust is the trustee's residence or usual place of business.

*b.* If the trust has more than one trustee, the principal place of administration of the trust is the residence or usual place of business of any of the cotrustees as agreed upon by them or, if not, the residence or usual place of business of any of the cotrustees.

99 Acts, ch 125, §90, 109

C2001, §633.6102

2005 Acts, ch 38, §54

CS2005, §633A.6102

### **633A.6103 Jurisdiction over trustees and beneficiaries.**

1. By accepting the trusteeship of a trust having its principal place of administration in this state, the trustee submits personally to the jurisdiction of the court.

2. To the extent of their interests in the trust, all beneficiaries of a trust having its principal place of administration in this state are subject to the jurisdiction of the court.

99 Acts, ch 125, §91, 109

C2001, §633.6103

2005 Acts, ch 38, §54

CS2005, §633A.6103

**633A.6104 County of venue.**

1. A proceeding may be commenced in the county in which the trust's principal place of administration is or is to be located and if the trust is created by will, also in the county in which the decedent's estate is administered.
2. If a trust not created by will has no trustee, a proceeding for appointing a trustee shall be commenced in the county in which a beneficiary resides or the trust property, or some portion of the trust property, is located.
3. Except as otherwise provided in subsections 1 and 2, a proceeding shall be commenced in accordance with the rules applicable to civil actions generally.

99 Acts, ch 125, §92, 109

C2001, §633.6104

2005 Acts, ch 38, §54

CS2005, §633A.6104

**633A.6105 Transfer of jurisdiction.**

1. The court may transfer the place of administration of a trust to or from this state or transfer some or all of the trust property to a trustee in or outside this state if it finds that the transfer of the trust property to a trustee in this or another jurisdiction, or the transfer of the place of administration of a trust to this or another jurisdiction, will promote the best interests of the trust and those interested in it, taking into account the economical and convenient administration of the trust and the views of the qualified beneficiaries.
2. A new trustee to whom the trust property is to be transferred shall be qualified, willing, and able to administer the trust or trust property under the terms of the trust.
3. If the trust or any portion of the trust property is transferred to another jurisdiction and if approval of the transfer by the other court is required under the law of the other jurisdiction, the proper court in the other jurisdiction must have approved the transfer in order for the transfer to be effective.
4. If a transfer is ordered, the court may direct the manner of transfer and impose terms and conditions as may be just, including a requirement for the substitution of a successor trustee in any pending litigation in this state. A delivery of property in accordance with the order of the court is a full discharge of the trustee with respect to all property specified in the order.
5. If the court grants a petition to transfer a trust or trust property to this state, the court shall require the trustee to give a bond, if necessary under the law of the other jurisdiction or of this state, and may require bond as provided in section 633A.4102.
6. Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee, in furtherance of the trustee's duty to administer the trust at a place appropriate to its purpose or administration, and the interests of the beneficiaries, may transfer the trust's principal place of administration to another state or to a jurisdiction outside the United States.

99 Acts, ch 125, §93, 109

C2001, §633.6105

2002 Acts, ch 1107, §21; 2003 Acts, ch 95, §20; 2005 Acts, ch 38, §54, 55

CS2005, §633A.6105

**633A.6201 Judicial intervention intermittent.**

The administration of trusts shall proceed expeditiously and free of judicial intervention, except to the extent the jurisdiction of the court is invoked by interested parties or otherwise exercised as provided by law.

99 Acts, ch 125, §94, 109

C2001, §633.6201

2005 Acts, ch 38, §54

CS2005, §633A.6201

**633A.6202 Petitions purposes of proceedings.**

1. Except as otherwise provided in section 633A.3103, a trustee or beneficiary of a trust may petition the court concerning the internal affairs of the trust or to determine the existence of the trust.
2. Proceedings concerning the internal affairs of a trust include proceedings to do any of the following:
  - a. Construe and determine the terms of a trust.
  - b. Determine the existence of any immunity, power, privilege, duty, or right.
  - c. Determine the validity of a trust provision.
  - d. Ascertain beneficiaries and determine to whom property shall pass or be delivered upon final or partial termination of the trust.
  - e. Settle accounts and pass upon the acts of the trustee, including the exercise of discretionary powers.
  - f. Instruct the trustee.
  - g. Compel the trustee to report information about the trust or account to the beneficiary.
  - h. Grant powers to or modify powers of the trustee.
  - i. Fix or allow payment of the trustee's compensation or review the reasonableness of the compensation.
  - j. Appoint or remove a trustee.
  - k. Accept the resignation of a trustee.
  - l. Compel redress of a breach of trust by any available remedy.
  - m. Approve or direct the modification or termination of the trust.

n. Approve or direct the combination or division of trusts.

o. Authorize or direct transfer of a trust or trust property to or from another jurisdiction.

p. Determine liability of a trust for debts or the expenses of administration of the estate of a deceased settlor.

q. Determine any other issue that will aid in the administration of the trust.

99 Acts, ch 125, §95, 109

C2001, §633.6202

2002 Acts, ch 1119, §191; 2005 Acts, ch 38, §54, 55

CS2005, §633A.6202

### **633A.6301 Definition and applicability.**

1. For purposes of this part, "*fiduciary matter*" includes any item listed in section 633A.6202, subsection 2.

2. Persons interested in a fiduciary matter may approve a judicial settlement and represent and bind other persons interested in the fiduciary matter.

3. Notice to a person who may represent and bind another person under this trust code has the same effect as if notice were given directly to the person represented.

4. The consent of a person who may represent and bind another person under this trust code is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

99 Acts, ch 125, §96, 109

C2001, §633.6301

2002 Acts, ch 1107, §22; 2003 Acts, ch 95, §21; 2005 Acts, ch 38, §54, 55

CS2005, §633A.6301

### **633A.6302 Representation by holders of powers.**

1. The holders or all coholders of a power of revocation or presently exercisable general power of appointment, including one in the form of a power of amendment, may represent and bind the persons whose interests, as objects, takers in default, or otherwise, are subject to the power.

2. To the extent there is no conflict of interest between the holders and the persons represented with respect to the fiduciary matter, persons whose interests are subject to a general testamentary power of appointment may be represented and bound by the holder or holders of the power.

99 Acts, ch 125, §97, 109

C2001, §633.6302

2005 Acts, ch 38, §54

CS2005, §633A.6302

**633A.6303 Representation by fiduciaries and parents.**

To the extent there is no conflict of interest between the representer and those represented with respect to the fiduciary matter, the following are permitted:

1. A conservator may represent and bind the person whose estate the conservator controls.
2. A trustee may represent and bind the beneficiaries of the trust.
3. A personal representative may represent and bind the persons interested in the decedent's estate.
4. If no conservator has been appointed, a parent may represent and bind a minor child.

99 Acts, ch 125, §98, 109

C2001, §633.6303

2005 Acts, ch 38, §54

CS2005, §633A.6303

**633A.6304 Representation by holders of similar interests.**

Unless otherwise represented, a minor or an incompetent, unborn, or unascertained person may be represented by and bound by another person having a substantially identical interest with respect to the fiduciary matter but only to the extent that the person's interest is adequately represented.

99 Acts, ch 125, §99, 109

C2001, §633.6304

2005 Acts, ch 38, §54

CS2005, §633A.6304

**633A.6305 Notice of judicial settlement.**

1. Notice of a judicial settlement shall be given to every interested person or to one who can bind an interested person as described in sections 633A.6302 and 633A.6303.
2. Notice may be given to a person or to another who may bind the person.
3. Notice is given to unborn or unascertained persons who are not represented under sections 633A.6302 and 633A.6303, by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

99 Acts, ch 125, §100, 109

C2001, §633.6305

2005 Acts, ch 38, §54, 55

CS2005, §633A.6305

**633A.6306 Appointment of guardian ad litem.**

1. At any point in a judicial proceeding, the court may appoint a guardian ad litem to represent and approve a settlement on behalf of the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate.
2. If not precluded by conflict of interest, a guardian ad litem may be appointed to represent several persons or interests.
3. The court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.
4. In approving a judicially supervised settlement, a guardian ad litem may consider general family benefit.

99 Acts, ch 125, §101, 109

C2001, §633.6306

2005 Acts, ch 38, §54

CS2005, §633A.6306

**633A.6307 Appointment of special representative.**

1. In connection with a nonjudicial settlement, the court may appoint a special representative to represent the interests of and approve a settlement on behalf of designated persons.
2. If not precluded by a conflict of interest, a special representative may be appointed to represent several persons or interests.
3. In approving a settlement, a special representative may consider general family benefit. As a condition for approval, a special representative may require that those represented receive a benefit.

99 Acts, ch 125, §102, 109

C2001, §633.6307

2005 Acts, ch 38, §54

CS2005, §633A.6307

**633A.6308 Nonjudicial settlement agreements.**

1. For purposes of this part, "*interested persons*" means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.
2. Except as otherwise provided in subsection 3, or as to a modification or termination of a trust under section 633A.2203, interested persons may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust.

3. A nonjudicial settlement is valid only to the extent the settlement does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this trust code or other applicable law.
4. Matters that may be resolved by a nonjudicial settlement agreement include any of the following:
- a.* The interpretation or construction of the terms of the trust.
  - b.* The approval of a trustee's report or accounting.
  - c.* Direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power.
  - d.* The resignation or appointment of a trustee and the determination of a trustee's compensation.
  - e.* The transfer of a trust's principal place of administration.
  - f.* The liability of a trustee for an action relating to the trust.
5. Any interested person may request the court to approve a nonjudicial settlement agreement, to determine whether the representation provided was adequate, and to determine whether the agreement contains terms and conditions the court could have properly approved.

2003 Acts, ch 95, §22

CS2003, §633.6308

2005 Acts, ch 38, §54, 55

CS2005, §633A.6308