

CHAPTER 125
PROBATE — IOWA TRUST CODE
H.F. 663

AN ACT relating to the establishment of an Iowa trust code, and providing an effective date.

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

DIVISION XX
TRUST CODE
Part 1
DEFINITIONS AND GENERAL PROVISIONS

Section 1. NEW SECTION. 633.1101 SHORT TITLE.

This division may be cited as the “Iowa Trust Code” or “Trust Code”.

Sec. 2. NEW SECTION. 633.1102 DEFINITIONS.

For purposes of this division:

1. “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.
2. “Charitable trust” means a trust created for a charitable purpose as specified in section 633.5101.
3. “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 degree of understanding required to execute a contract.
 - c. In other circumstances not clearly relating to a revocable or irrevocable transfer, “competency” means the ability to make rational decisions regarding one’s financial affairs.
4. “Conservator” means a person appointed by a court to manage the estate of a minor or adult individual.
5. “Court” means any Iowa district court.
6. “Fiduciary” includes a personal representative, executor, administrator, guardian, conservator, and trustee.
7. “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.
8. “Instrument” means a signed writing.
9. “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.
10. “Person” means an individual or any legal or commercial entity.
11. “Petition” includes a complaint or statement of claim.
12. “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.
13. “Settlor” means a person, including a testator, who creates a trust.

14. "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.

15. "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.

16. "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.

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

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

Sec. 3. NEW SECTION. 633.1103 PER STIRPES RULE OF DESCENT.

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

Sec. 4. NEW SECTION. 633.1104 COMMON LAW OF TRUSTS.

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

Sec. 5. NEW SECTION. 633.1105 TRUST PROVISIONS CONTROL.

The provisions of a trust shall always control and take precedence over any section of this trust code to the contrary.

Sec. 6. NEW SECTION. 633.1106 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 the effective date of this Act, 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 the effective date of this Act.

3. This trust code applies to all trust proceedings commenced before the effective date of this Act 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.

Sec. 7. NEW SECTION. 633.1107 SCOPE OF TRUST CODE.

This trust code is intended to apply to trusts, as defined in section 633.1102, subsection 16, that are intentionally created, or deemed to be intentionally created, by individuals and other entities.

Part 2

CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUSTS

Subpart 1

CREATION AND VALIDITY OF TRUSTS

Sec. 8. NEW SECTION. 633.2101 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.

Sec. 9. NEW SECTION. 633.2102 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. Unless the trust is a charitable trust, an honorary trust, or a trust for the care of an animal, the trust has a definite beneficiary or a beneficiary who will be definitely ascertained within the period of the applicable rule against perpetuities.

2. A definite or definitely ascertainable beneficiary includes a beneficiary or class of beneficiaries designated under a power to select the beneficiaries granted by the terms of the trust to the trustee or another person.

Sec. 10. NEW SECTION. 633.2103 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 for which a written instrument is required, 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 for which a written instrument is required, 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.

Sec. 11. NEW SECTION. 633.2104 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.

Sec. 12. NEW SECTION. 633.2105 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.

Sec. 13. NEW SECTION. 633.2106 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 all 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 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.

Sec. 14. NEW SECTION. 633.2107 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.

Subpart 2

MODIFICATION AND TERMINATION OF TRUSTS

Sec. 15. NEW SECTION. 633.2201 TERMINATION OR MODIFICATION OF TRUST.

1. In addition to the methods specified in sections 633.2202 through 633.2205, 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.

3. For purposes of sections 633.2202 through 633.2205, a beneficiary is limited to a person that is an eligible recipient of income or principal, or would receive principal or income from the trust if it were terminated.

Sec. 16. NEW SECTION. 633.2202 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.

Sec. 17. NEW SECTION. 633.2203 MODIFICATION OR TERMINATION OF IRREVOCABLE TRUST IF NO MATERIAL PURPOSE.

1. An irrevocable trust may be terminated or modified either by the court or upon 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 petition to the court by the settlor, trustee, or other interested person, the court may set aside an improper termination or modification by the beneficiaries.

3. Upon termination of the trust, the trustee shall distribute the trust property in accordance with the probable intention of the settlor or as agreed by the beneficiaries.

4. For purposes of this section, the consent of a person who may bind a beneficiary is considered the consent of the beneficiary.

Sec. 18. NEW SECTION. 633.2204 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.

Sec. 19. NEW SECTION. 633.2205 REFORMATION — TAX OBJECTIVES.

1. The terms of a trust may be reformed to conform to the settlor's intent if the failure to conform was due to a mistake of fact or law and the settlor's intent can be established.

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.

Sec. 20. NEW SECTION. 633.2206 COMBINATION OF TRUSTS.

1. A trustee, without approval of court, may combine two or more trusts with substantially similar beneficial interests.

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.

Sec. 21. NEW SECTION. 633.2207 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.

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.

Subpart 3
SPENDTHRIFT PROTECTION

Sec. 22. NEW SECTION. 633.2301 SPENDTHRIFT PROTECTION RECOGNIZED.

Except as otherwise provided in section 633.2302, if the terms of the trust provide that a beneficiary's interest in the income and principal is not subject to either voluntary or involuntary transfer, the beneficiary's interest shall not be transferred and is not subject to enforcement of a money judgment until paid to the beneficiary.

Sec. 23. NEW SECTION. 633.2302 EXCEPTIONS 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 of the following:

1. Any creditor of the beneficiary if the beneficiary is the settlor.
2. Any creditor of the beneficiary as to a distribution to be made upon an event terminating or partially terminating the trust.

Sec. 24. NEW SECTION. 633.2303 SELF-SETTLED TRUSTS.

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.

Part 3
PROVISIONS RELATING TO REVOCABLE TRUSTS

Sec. 25. NEW SECTION. 633.3101 COMPETENCY TO CREATE, REVOKE, OR MODIFY A REVOCABLE TRUST.

1. The competency necessary to create, revoke, or modify a revocable trust that contains dispositive provisions upon the death of the settlor is the same as the competency required to make a will. 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 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.

Sec. 26. NEW SECTION. 633.3102 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 the effective date of this Act.

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.

Sec. 27. NEW SECTION. 633.3103 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.

Sec. 28. NEW SECTION. 633.3104 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's power of revocation and the settlor's estate is inadequate to satisfy those claims and costs.

Sec. 29. NEW SECTION. 633.3105 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 633.3103 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.

Sec. 30. NEW SECTION. 633.3106 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.

Sec. 31. NEW SECTION. 633.3107 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 are revoked by divorce or dissolution of marriage.

2. 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.

Sec. 32. NEW SECTION. 633.3108 LIMITATION ON CONTEST OF REVOCABLE TRUST.

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.

3. If notice is given pursuant to section 633.3109, the six month period in subsection 2 is ineffectual and the applicable time period shall be determined by section 633.3109.

Sec. 33. NEW SECTION. 633.3109 NOTICE TO CREDITORS, HEIRS, SPOUSE, AND BENEFICIARIES.

1. As used in this section, "intestate heir" means only such person as would, in an intestate estate, be entitled to a share under section 633.219, subsection 1, 2, or 3.

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 633.3104.

3. If no notice is given to creditors and heirs pursuant to subsection 1, 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 settlor was domiciled.

b. If the decedent was a nonresident of the county in which some real estate of the trust is located, and 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 intestate heirs of the decedent, and each beneficiary under the trust whose identities are reasonably ascertainable, at such person's 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 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 within sixty days of mailing its claim to the trustee, or must file suit against the trust to enforce collection of the creditor's claim. 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.

Sec. 34. NEW SECTION. 633.3110 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.

Sec. 35. NEW SECTION. 633.3111 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.

Part 4
TRUST ADMINISTRATION
Subpart 1
OFFICE OF TRUSTEE

Sec. 36. NEW SECTION. 633.4101 ACCEPTANCE OR REJECTION OF TRUST BY 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 reject the trust.

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 rejection of the trust 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.

Sec. 37. NEW SECTION. 633.4102 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.

Sec. 38. NEW SECTION. 633.4103 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.

Sec. 39. NEW SECTION. 633.4104 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 rejects the trust.
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.

Sec. 40. NEW SECTION. 633.4105 FILLING VACANCY.

1. For purposes of this section, "adult beneficiaries" shall not include either of the following:
 - a. Beneficiaries who are not competent and are not represented by a guardian, conservator, or agent.
 - b. Beneficiaries who are not entitled or eligible to receive trust income or a distribution of principal were the trust to terminate at the time the agreement is made.
2. 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.
3. 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 a trust company designated by agreement of the adult beneficiaries specified in subsection 1.

(2) By majority vote of all adult beneficiaries and the parent or legal guardian of any minor or incompetent beneficiary.

(3) 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.

Sec. 41. NEW SECTION. 633.4106 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 adult beneficiaries as defined in section 633.4105, subsection 1, 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 633.6202. 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.

Sec. 42. NEW SECTION. 633.4107 REMOVAL OF TRUSTEE.

1. A trustee may be removed in accordance with the terms of the trust, by the court on its own motion, or on petition of a settlor, cotrustee, or beneficiary under section 633.6202.

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. 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.

Sec. 43. NEW SECTION. 633.4108 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.

Sec. 44. NEW SECTION. 633.4109 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.

Sec. 45. NEW SECTION. 633.4110 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.

Sec. 46. NEW SECTION. 633.4111 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 beneficiary who is entitled to an accounting under section 633.4213, subsection 6.
- b. Each beneficiary who was given the last preceding account.
- 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.

Subpart 2

FIDUCIARY DUTIES OF TRUSTEE

Sec. 47. NEW SECTION. 633.4201 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.

Sec. 48. NEW SECTION. 633.4202 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 substantial 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 633.4506.
- c. The transaction is approved by the court after notice to interested persons.
- 3. A transaction affected by a substantial 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.

Sec. 49. NEW SECTION. 633.4203 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.

Sec. 50. NEW SECTION. 633.4204 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.

Sec. 51. NEW SECTION. 633.4205 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.

Sec. 52. NEW SECTION. 633.4206 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.

Sec. 53. NEW SECTION. 633.4207 DIRECTORY POWERS.

1. If the terms of the trust grant a person other than the trustee power to direct certain actions of the trustee, the trustee shall act in accordance with the exercise of the power unless an attempted exercise violates the terms of the trust or the trustee is aware that the attempted exercise violates a fiduciary duty which the person owes the beneficiaries of the trust or the trustee believes or has reason to know that the individual is incompetent.

2. The holder of a directory power who violates a fiduciary duty owed to the beneficiaries is liable for any loss which results.

Sec. 54. NEW SECTION. 633.4208 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.

Sec. 55. NEW SECTION. 633.4209 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.

Sec. 56. NEW SECTION. 633.4210 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.

Sec. 57. NEW SECTION. 633.4211 ENFORCEMENT AND DEFENSE OF CLAIMS AND ACTIONS.

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

Sec. 58. NEW SECTION. 633.4212 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.

Sec. 59. NEW SECTION. 633.4213 DUTY TO INFORM AND ACCOUNT.

1. A trustee shall keep the beneficiaries of the trust reasonably informed of the administration of the trust.

2. Within thirty days after accepting the office of the trustee, the trustee shall inform the beneficiaries of the acceptance. Within thirty days after the death of a settlor of a trust, the trustee shall inform the beneficiaries having vested interests of their respective interests in the trust unless the trust specifies otherwise.

3. A trustee shall inform the beneficiaries in advance of a transaction affecting trust property comprising a significant portion of the value of the trust and whose fair market value is not readily ascertainable.

4. On reasonable request of a beneficiary, a trustee shall provide the beneficiary with a copy of the trust instrument and with information about matters of administration relevant to the beneficiary's interest unless the trust specifies otherwise.

5. A trustee shall prepare and send to the beneficiaries an account of the trust property, liabilities, receipts, and disbursements at least annually, at the termination of the trust, and upon a change of a trustee. An accounting on behalf of a former trustee shall be prepared by the former trustee, or if the trustee's appointment terminated by reason of death or incapacity, by the former trustee's personal representative or guardian or conservator.

6. Copies of accountings and other information required under this section need only be sent to the following beneficiaries:

- a. The beneficiaries defined in section 633.4105.
- b. Each beneficiary who has delivered to the trustee or other fiduciary a written request for a copy of the account or other information.

7. An accounting and other information required under this section may be waived if the person entitled to a copy consents in writing.

Sec. 60. NEW SECTION. 633.4214 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.

Subpart 3 UNIFORM PRUDENT INVESTOR ACT

Sec. 61. NEW SECTION. 633.4301 SHORT TITLE.

This subpart may be cited as the “Uniform Prudent Investor Act”.

Sec. 62. NEW SECTION. 633.4302 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 subpart.

Sec. 63. NEW SECTION. 633.4303 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.

Sec. 64. NEW SECTION. 633.4304 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 subpart.

Sec. 65. NEW SECTION. 633.4305 LOYALTY.

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

Sec. 66. NEW SECTION. 633.4306 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.

Sec. 67. NEW SECTION. 633.4307 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.

Sec. 68. NEW SECTION. 633.4308 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.

Sec. 69. NEW SECTION. 633.4309 DELEGATION OF INVESTMENT AND MANAGEMENT FUNCTIONS.

1. A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in all of the following activities:

- a. Selecting an agent.
- b. Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust.
- c. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

2. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

3. A trustee who complies with the requirements of subsection 1 is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

4. 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.

Sec. 70. NEW SECTION. 633.4310 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.

Subpart 4
POWERS OF TRUSTEES

Sec. 71. NEW SECTION. 633.4401 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 subpart 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.

Sec. 72. NEW SECTION. 633.4402 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. Continue or participate in the operation of a business or other enterprise that is part of the trust property and affect an incorporation, dissolution, or other change in the form of the organization of the business or enterprise.
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.
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. 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.
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. Make a distribution of property and money in divided or undivided interests, pro rata or non-pro rata, and adjust 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. Expend trust funds to inspect or investigate property that the trustee has been asked to hold, or property owned or operated by an entity in which the trustee holds or has been asked to hold an interest for the purpose of determining the application of environmental law with respect to the property, and 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.
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.

Subpart 5

LIABILITY OF TRUSTEES TO BENEFICIARIES

Sec. 73. NEW SECTION. 633.4501 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.

Sec. 74. NEW SECTION. 633.4502 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 633.4603, 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.

Sec. 75. NEW SECTION. 633.4503 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.

Sec. 76. NEW SECTION. 633.4504 LIMITATION OF ACTION AGAINST TRUSTEE FOLLOWING FINAL ACCOUNT.

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 later of the receipt of the account or report or 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 the effective date of this Act 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 the effective date of the Act shall be time barred after one year unless an exception applies to toll the statute.

Sec. 77. NEW SECTION. 633.4505 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.

Sec. 78. NEW SECTION. 633.4506 BENEFICIARY'S CONSENT, RELEASE, OR AFFIRMANCE — 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. Notwithstanding the provisions of subsection 1, a beneficiary may hold a trustee liable for breach of trust under either of the following circumstances:

a. The beneficiary at the time of the consent, release, or affirmation did not know of the beneficiary's rights and of the material facts the trustee knew or should have known and the trustee did not reasonably believe that the beneficiary knew.

b. The consent, release, or affirmation of the beneficiary was induced by improper conduct of the trustee.

Subpart 6 RIGHTS OF THIRD PARTIES

Sec. 79. NEW SECTION. 633.4601 PERSONAL LIABILITY — LIMITATIONS.

1. Except as otherwise provided in the contract or in this subpart, 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 or 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 633.6202.

Sec. 80. NEW SECTION. 633.4602 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.

Sec. 81. NEW SECTION. 633.4603 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.

Sec. 82. NEW SECTION. 633.4604 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.

Sec. 83. NEW SECTION. 633.4605 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.

Subpart 7
TRUST CONSTRUCTION

Sec. 84. NEW SECTION. 633.4701 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's 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 in accordance with section 633.2106.

Part 5 CHARITABLE TRUSTS

Sec. 85. NEW SECTION. 633.5101 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.

Sec. 86. NEW SECTION. 633.5102 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.

Sec. 87. NEW SECTION. 633.5103 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.

Sec. 88. NEW SECTION. 633.5104 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.

Part 6 PROCEEDINGS CONCERNING TRUSTS Subpart 1 JURISDICTION AND VENUE

Sec. 89. NEW SECTION. 633.6101 SUBJECT MATTER JURISDICTION.

1. The court has exclusive jurisdiction of proceedings concerning the internal affairs of a trust.

2. The court has concurrent jurisdiction of actions and proceedings to determine the existence of a trust, actions and proceedings by or against creditors or debtors of trusts, and other actions and proceedings involving trustees and third persons.

Sec. 90. NEW SECTION. 633.6102 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.

Sec. 91. NEW SECTION. 633.6103 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.

Sec. 92. NEW SECTION. 633.6104 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.

Sec. 93. NEW SECTION. 633.6105 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 any of the following:

a. The transfer of the trust property to a trustee in this or another jurisdiction, or the transfer of the place of administration of the 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 adult beneficiaries.

b. Any new trustee to whom the trust property is to be transferred is qualified, willing, and able to administer the trust or trust property under the terms of the trust.

c. If the trust or any portion of the trust property is to be 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 has approved the transfer.

2. 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 embraced in the order.

3. If the court grants a petition to transfer a trust or trust property to this state, the court shall require the trustee to give bond, if necessary under the law of the other jurisdiction or of this state, and may require bond as provided in section 633.4102.

Subpart 2
JUDICIAL PROCEEDINGS CONCERNING TRUSTS

Sec. 94. NEW SECTION. 633.6201 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.

Sec. 95. NEW SECTION. 633.6202 PETITIONS — PURPOSES OF PROCEEDINGS.

1. Except as otherwise provided in section 633.3103, 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 or* 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.

Subpart 3
SETTLEMENT AGREEMENTS AND REPRESENTATION

Sec. 96. NEW SECTION. 633.6301 DEFINITION AND APPLICABILITY.

1. For purposes of this subpart, "fiduciary matter" includes any item listed in section 633.6202, 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. Except to the extent the terms of the trust indicate that the procedures specified are not to apply, a person interested in a fiduciary matter may approve a nonjudicial settlement containing such terms and conditions as a court could properly approve and represent and bind other persons interested in the fiduciary matter.

Sec. 97. NEW SECTION. 633.6302 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.

* The word "of" probably intended

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.

Sec. 98. NEW SECTION. 633.6303 REPRESENTATION BY FIDUCIARIES AND PAR-ENTS.

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.

Sec. 99. NEW SECTION. 633.6304 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.

Sec. 100. NEW SECTION. 633.6305 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 633.6302 and 633.6303.
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 633.6302 and 633.6303, by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

Sec. 101. NEW SECTION. 633.6306 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.

Sec. 102. NEW SECTION. 633.6307 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.

Sec. 103. Section 262.14, subsection 3, unnumbered paragraph 1, Code 1999, is amended to read as follows:

Any portion of the funds may be invested by the board. In the investment of the funds, the board shall exercise the judgment and care, under the circumstances then prevailing, which

persons of prudence, discretion and intelligence exercise in their own affairs as provided in ~~section 633.123, subsection 1~~ chapter 633, division XX, part 4, subpart 3.

Sec. 104. Section 412.4, Code 1999, is amended to read as follows:

412.4 PAYMENTS AND INVESTMENTS.

The council, board of waterworks trustees, or other board or commission, whichever is authorized by law to manage and operate any such waterworks, or other municipally owned and operated public utility, shall have the right and power to contract with any legal reserve insurance company, authorized to conduct its business in the state, or any bank located in Iowa having trust powers for the investment of funds contributed to an annuity or pension system, for the payment of the pensions or annuities provided in such pension or annuity retirement system, and may pay the premiums or make the contribution of such contract out of the fund provided in section 412.2. Funds contributed to a bank pursuant to such a contract shall be invested in the manner prescribed in section ~~633.123 or~~ 633.123A or chapter 633, division XX, part 4, subpart 3, and may be commingled with and invested as a part of a common or master fund managed for the benefit of more than one public utility.

Sec. 105. Section 633.123A, subsection 1, unnumbered paragraph 1, Code 1999, is amended to read as follows:

Notwithstanding any other provision of law, a bank or trust company acting as a fiduciary, in addition to other investments authorized by law for the investment of funds by a fiduciary or by the instrument governing the fiduciary and in the exercise of its investment discretion or at the direction of another person authorized to direct investment of funds held by the fiduciary, may invest and reinvest such funds in the securities of an open-end or closed-end management investment company or investment trust registered under the federal Investment Company Act of 1940, 15 U.S.C. § 80a-1 et seq. Investment and reinvestment under this section is allowed as long as the portfolio of such investment company or investment trust consists substantially of investments not otherwise prohibited by section* ~~633.123 division XX, part 4, subpart 3 of this chapter,~~ or by the governing instrument.

Sec. 106. Section 633.348, Code 1999, is amended to read as follows:

633.348 RIGHT TO RETAIN EXISTING PROPERTY.

Notwithstanding the provisions of ~~section 633.123 division XX, part 4, subpart 3, of this chapter,~~ any personal representative may continue to hold any investment or property originally received by the personal representative and also any increase thereof.

Sec. 107. Section 633.646, subsection 5, Code 1999, is amended to read as follows:

5. Notwithstanding the provisions of ~~section 633.123 division XX, part 4, subpart 3, of this chapter,~~ to continue to hold any investment or other property originally received by the conservator, and also any increase thereof, pending the timely filing of the first annual report.

Sec. 108. Section 633.123, Code 1999, is repealed.

Sec. 109. EFFECTIVE DATE. This Act takes effect July 1, 2000.

Approved May 14, 1999

* The word "section" probably intended