

SECOND REGULAR SESSION
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 909
99TH GENERAL ASSEMBLY

4456H.02C

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 443.320, 456.985, 456.1035, 456.1080, 456.1-103, 456.4-420, and 456.8-808, RSMo, and to enact in lieu thereof twenty-six new sections relating to the management of certain property interests.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 443.320, 456.985, 456.1035, 456.1080, 456.1-103, 456.4-420, and
2 456.8-808, RSMo, are repealed and twenty-six new sections enacted in lieu thereof, to be known
3 as sections 443.320, 456.985, 456.1035, 456.1080, 456.1-103, 456.4-420, 456.8-808, 472.400,
4 472.405, 472.410, 472.415, 472.420, 472.425, 472.430, 472.435, 472.440, 472.445, 472.450,
5 472.455, 472.460, 472.465, 472.470, 472.475, 472.480, 472.485, and 472.490, to read as
6 follows:

443.320. **1.** The notice required by section 443.310 shall set forth the date and book and
2 page of the record of such mortgages or deeds of trust, the grantors, the time, terms and place of
3 sale, and a description of the property to be sold, and shall be given by advertisement[;] .

2. Unless the mortgage or deed of trust requires a specific method, the notice made
5 **under subsection 1 of this section shall be made through one of the following two methods,**
6 **at the discretion of the trustee:**

(1) An electronic notice posted for a minimum of twenty-one consecutive days on
8 **an internet website hosted by an entity that maintains such website for the purpose of**
9 **providing web-based notice of foreclosure sales. The last day of posting shall occur on the**
10 **scheduled foreclosure date as set forth in the posted notice. The provisions of chapter 493**
11 **and section 442.018 shall not apply to any web-based notice posted under this section. The**
12 **entity providing such web-based notices shall not restrict access to the site by way of a**
13 **registration or log in requirement. Nothing in this section shall be construed to authorize**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

14 **the giving of any shorter notice than that required by the mortgage or deed of trust. Any**
15 **entity providing notice shall be a Missouri corporation or Missouri limited liability**
16 **company formed under chapters 347 to 356 and in good standing with the Missouri**
17 **secretary of state. Such entity shall maintain an errors and omissions policy of insurance**
18 **in an amount not less than one million dollars and general liability insurance in an amount**
19 **not less than one million dollars. Such entity shall have its principal office located in**
20 **Missouri. The entity publishing such notice shall charge and receive not more than the**
21 **rate published by the entity and offered to the public and in effect for at least thirty days**
22 **preceding publication of the particular notice to which it is applied. The entity providing**
23 **notice shall maintain a historical record for each posting for a period of five years from the**
24 **day the notice was posted. The entity posting notices shall list notices grouped by the**
25 **county in which the property is located. Where the property to be sold is located in more**
26 **than one county, the notices shall be posted under each county in which a part of the**
27 **property is located. The entity providing notice shall issue an affidavit at the conclusion**
28 **of posting. The affidavit shall state the dates the notice was posted, that the entity is in**
29 **compliance with the requirements of this section, and shall have a copy of such notice**
30 **attached to the affidavit; or**

31 **(2) A notice** inserted for at least twenty times, and continued to the day of the sale, in
32 some daily newspaper, in counties having cities of fifty thousand inhabitants or more, and in all
33 other counties such notice shall be given by advertisement in some weekly newspaper published
34 in such county for four successive issues, the last insertion to be not more than one week prior
35 to the day of sale, or in some daily, triweekly or semiweekly paper published in such county at
36 least once a week for four successive weeks. Such notice shall appear on the same day of each
37 week, the last insertion to be not more than one week prior to the day of sale, and if there be no
38 newspaper published in such county or city, such notice shall be published in the nearest
39 newspaper thereto in this state. Nothing in this section shall be construed to authorize the giving
40 of any shorter notice than that required by such mortgage or deed of trust. Where the property
41 to be sold lies wholly or in part within the corporate limits of any city having or that may
42 hereafter have a population of fifty thousand inhabitants or more, then the notice provided for
43 in this section shall be published in a daily newspaper in such city and where the property to be
44 sold lies wholly or in part within the corporate limits of a city extending into two or more
45 counties, then the notice provided for in this section shall be published in some newspaper
46 published in the county in which the property lies, in the manner provided in this section for
47 publication in such county, even though such property may lie in a city having a population of
48 fifty thousand inhabitants or more. Where the property to be sold is located in more than one
49 county, the notices required in this section shall be published in each county in which a part of

50 the property is located. Other provisions of this section to the contrary notwithstanding, in any
51 county of the first class not having a charter form of government and containing a portion of a
52 city with a population over three hundred fifty thousand and in any county of the second class
53 containing a portion of a city with a population over three hundred fifty thousand, the notice
54 requirements of section 443.310 and this section may be met by advertisement in some weekly
55 newspaper published in such counties for four successive issues, the last insertion to be not more
56 than one week prior to the date of the sale.

456.985. 1. Except as otherwise provided in the terms of an instrument creating or
2 exercising a power of appointment, sections 456.970 to 456.1135 govern powers of appointment.

3 2. The terms of an instrument creating or exercising a power of appointment prevail over
4 any provisions of sections 456.970 to 456.1135 except:

5 (1) **The requisites for the creation of a power of appointment under subsections 1**
6 **to 4 of section 456.990;**

7 (2) The transferability of a power of appointment by a powerholder under subsection 1
8 of section 456.995;

9 ~~[(2)]~~ (3) The limitations on the authority of a donor to extend a general power of
10 appointment beyond the death of a powerholder under subsection 3 of section 456.995;

11 ~~[(3)]~~ (4) The power is exclusionary if the permissible appointees of a power of
12 appointment are not defined and limited under subsection 3 of section 456.1005;

13 ~~[(4)]~~ (5) The requisites for the exercise of a power of appointment under section
14 456.1015;

15 ~~[(5)]~~ (6) The effect of an impermissible appointment under section 456.1045;

16 ~~[(6)]~~ (7) A general power of appointment which is presently exercisable may be reached
17 by the creditors of the powerholder or the powerholder's estate under section 456.1100.

456.1035. 1. A powerholder of a general power of appointment that permits
2 appointment to the powerholder or the powerholder's estate may make any appointment,
3 including an appointment in trust or creating a new power of appointment, that the powerholder
4 could make in disposing of the powerholder's own property.

5 2. A powerholder of a general power of appointment that permits appointment only to
6 the creditors of the powerholder or of the powerholder's estate may appoint only to those
7 creditors.

8 3. The powerholder of a nongeneral power may:

9 (1) Make an appointment in any form, including an appointment in trust, in favor of a
10 permissible appointee;

11 (2) Create a general power **or nongeneral power** in a permissible appointee; or

12 (3) Create a nongeneral power in any person to appoint to one or more of the permissible
13 appointees of the original nongeneral power.

456.1080. As provided by sections 469.010 to ~~[469.210]~~ **469.120**, a powerholder may
2 disclaim all or part of a power of appointment, and a permissible appointee, appointee, or taker
3 in default of appointment may disclaim all or part of an interest in appointive property.

456.1-103. In sections 456.1-101 to 456.11-1106:

2 (1) "Action[-]", with respect to an act of a trustee, includes a failure to act;

3 (2) "Ascertainable standard", means a standard relating to an individual's health,
4 education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or Section
5 2541(c)(1) of the Internal Revenue Code;

6 (3) "Beneficiary", means a person that:

7 (a) has a present or future beneficial interest in a trust, vested or contingent; or

8 (b) in a capacity other than that of trustee, holds a power of appointment over trust
9 property;

10 (4) "Charitable trust", means a trust, or portion of a trust, created for a charitable purpose
11 described in subsection 1 of section 456.4-405;

12 (5) "Conservator", means a person described in subdivision (3) of section 475.010. This
13 term does not include a conservator ad litem;

14 (6) "Conservator ad litem", means a person appointed by the court pursuant to the
15 provisions of section 475.097;

16 (7) **"Directed trust", means any trust, including a split interest trust, where the**
17 **trust instrument authorizes a trust protector to instruct or direct the trustee or that**
18 **charges a trust protector with any responsibilities regarding the trust or that grants the**
19 **trust protector one or more powers over the trust;**

20 (8) "Environmental law", means a federal, state, or local law, rule, regulation, or
21 ordinance relating to protection of the environment;

22 ~~[(8)]~~ (9) "Financial institution", means a non-foreign bank, savings and loan or trust
23 company chartered, regulated and supervised by the Missouri division of finance, the office of
24 the comptroller of the currency, the office of thrift supervision, the National Credit Union
25 Administration, or the Missouri division of credit union supervision. The term "non-foreign
26 bank" shall mean a bank that is not a foreign bank within the meaning of subdivision (1) of
27 section 361.005;

28 ~~[(9)]~~ (10) "Guardian", means a person described in subdivision (7) of section 475.010.
29 The term does not include a guardian ad litem;

30 ~~[(10)]~~ (11) "Interested persons", include beneficiaries and any others having a property
31 right in or claim against a trust estate which may be affected by a judicial proceeding. It also

32 includes fiduciaries and other persons representing interested persons. The meaning as it relates
33 to particular persons may vary from time to time and must be determined according to the
34 particular purposes of, and matter involved in, any proceeding;

35 ~~[(11)]~~ **(12)** "Interests of the beneficiaries", means the beneficial interests provided in the
36 terms of the trust;

37 ~~[(12)]~~ **(13)** "Internal Revenue Code", means the United States Internal Revenue Code
38 of 1986, as in effect on January 1, 2005, or as later amended;

39 ~~[(13)]~~ **(14)** "Jurisdiction[-]", with respect to a geographic area, includes a state or
40 country;

41 ~~[(14)]~~ **(15)** "Person", means an individual, corporation, business trust, estate, trust,
42 partnership, limited liability company, association, joint venture, government; governmental
43 subdivision, agency, or instrumentality; public corporation, or any other legal or commercial
44 entity;

45 ~~[(15)]~~ **(16)** "Permissible distributee", means a beneficiary who is currently eligible to
46 receive distributions of trust income or principal, whether mandatory or discretionary;

47 ~~[(16)]~~ **(17)** "Power of withdrawal", means a presently exercisable power of a beneficiary
48 to withdraw assets from the trust without the consent of the trustee or any other person;

49 ~~[(17)]~~ **(18)** "Principal place of administration" of a trust is the trustee's usual place of
50 business where the records pertaining to the trust are kept, or the trustee's residence if the trustee
51 has no such place of business, unless otherwise designated by the terms of the trust as provided
52 in section 456.1-108. In the case of cotrustees, the principal place of administration is, in the
53 following order of priority:

54 (a) The usual place of business of the corporate trustee if there is but one corporate
55 cotrustee;

56 (b) The usual place of business or residence of the trustee who is a professional fiduciary
57 if there is but one such trustee and no corporate cotrustee; or

58 (c) The usual place of business or residence of any of the cotrustees;

59 ~~[(18)]~~ **(19)** "Professional fiduciary", means an individual who represents himself or
60 herself to the public as having specialized training, experience or skills in the administration of
61 trusts;

62 ~~[(19)]~~ **(20)** "Property", means anything that may be the subject of ownership, whether
63 real or personal, legal or equitable, or any interest therein;

64 ~~[(20)]~~ **(21)** "Qualified beneficiary", means a beneficiary who, on the date the
65 beneficiary's qualification is determined:

66 (a) is a permissible distributee;

67 (b) would be a permissible distributee if the interests of the permissible distributees
68 described in paragraph (a) of this subdivision terminated on that date; or

69 (c) would be a permissible distributee if the trust terminated on that date;

70 ~~[(21)]~~ (22) "Record", means information that is inscribed on a tangible medium or that
71 is stored in an electronic or other medium and is retrievable in perceivable form;

72 ~~[(22)]~~ (23) "Revocable[;]", as applied to a trust, means that the settlor has the legal power
73 to revoke the trust without the consent of the trustee or a person holding an adverse interest,
74 regardless of whether the settlor has the mental capacity to do so in fact;

75 ~~[(23)]~~ (24) "Settlor", means a person, including a testator, who creates, or contributes
76 property to, a trust. If more than one person creates or contributes property to a trust, each
77 person is a settlor of the portion of the trust property attributable to that person's contribution
78 except to the extent another person has the power to revoke or withdraw that portion pursuant
79 to the terms of the trust;

80 ~~[(24)]~~ (25) "Sign", means[;] with present intent to authenticate or adopt a record:

81 (a) to execute or adopt a tangible symbol; or

82 (b) to attach to or logically associate with the record an electronic sound, symbol, or
83 process;

84 ~~[(25)]~~ (26) "Spendthrift provision", means a term of a trust which restrains either the
85 voluntary or involuntary transfer or both the voluntary and involuntary transfer of a beneficiary's
86 interest;

87 ~~[(26)]~~ (27) "State", means a state of the United States, the District of Columbia, Puerto
88 Rico, the United States Virgin Islands, or any territory or insular possession subject to the
89 jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal
90 law or formally acknowledged by a state;

91 ~~[(27)]~~ (28) "Terms of a trust", means the manifestation of the settlor's intent regarding
92 a trust's provisions as expressed in the trust instrument or as may be established by other
93 evidence that would be admissible in a judicial proceeding;

94 ~~[(28)]~~ (29) "Trust instrument", means an instrument executed by the settlor that contains
95 terms of the trust, including any amendments thereto;

96 ~~[(29)]~~ (30) "Trust protector", means any person, group of persons, or entity not
97 serving as a trustee and not the settlor or a beneficiary designated in a trust instrument to
98 instruct or direct the trustee or charged in the trust instrument with any responsibilities
99 regarding the trust or expressly granted in the trust instrument one or more powers over
100 the trust. The term "trust protector" includes, but is not limited to, persons or entities
101 identified in the trust instrument as trust advisors, trust directors, distribution advisors,
102 or investment advisors;

103 **(31)** "Trustee", includes an original, additional, and successor trustee, and a cotrustee.
104 456.4-420. 1. If a trust instrument containing a no-contest clause is or has become
105 irrevocable, an interested person may file a petition to the court for an interlocutory
106 determination whether a particular motion, petition, or other claim for relief by the interested
107 person would trigger application of the no-contest clause or would otherwise trigger a forfeiture
108 that is enforceable under applicable law and public policy.
109 2. The petition described in subsection 1 of this section shall be verified under oath. The
110 petition may be filed by an interested person either as a separate judicial proceeding, or brought
111 with other claims for relief in a single judicial proceeding, all in the manner prescribed generally
112 for such proceedings under this chapter. If a petition is joined with other claims for relief, the
113 court shall enter its order or judgment on the petition before proceeding any further with any
114 other claim for relief joined therein. In ruling on such a petition, the court shall consider the text
115 of the clause, the context to the terms of the trust instrument as a whole, and in the context of the
116 verified factual allegations in the petition. No evidence beyond the pleadings and the trust
117 instrument shall be taken except as required to resolve an ambiguity in the no-contest clause.
118 3. An order or judgment determining a petition described in subsection 1 of this section
119 shall have the effect set forth in subsections 4 and 5 of this section, and shall be subject to appeal
120 as with other final judgments. If the order disposes of fewer than all claims for relief in a judicial
121 proceeding, that order is subject to interlocutory appeal in accordance with the applicable rules
122 for taking such an appeal. If an interlocutory appeal is taken, the court may stay the pending
123 judicial proceeding until final disposition of said appeal on such terms and conditions as the
124 court deems reasonable and proper under the circumstances. A final ruling on the applicability
125 of a no-contest clause shall not preclude any later filing and adjudication of other claims related
126 to the trust.
127 4. An order or judgment, in whole or in part, on a petition described in subsection 1 of
128 this section shall result in the no-contest clause being enforceable to the extent of the court's
129 ruling, and shall govern application of the no-contest clause to the extent that the interested
130 person then proceeds forward with the claims described therein. In the event such an
131 interlocutory order or judgment is vacated, reversed, or otherwise modified on appeal, no
132 interested person shall be prejudiced by any reliance, through action, inaction, or otherwise, on
133 the order or judgment prior to final disposition of the appeal.
134 5. An order or judgment shall have effect only as to the specific trust terms and factual
135 basis recited in the petition. If claims are later filed that are materially different than those upon
136 which the order or judgment is based, then to the extent such new claims are raised, the party in
137 whose favor the order or judgment was entered shall have no protection from enforcement of the
138 no-contest clause otherwise afforded by the order and judgment entered under this section.

36 6. For purposes of this section, a "no-contest clause" shall mean a provision in a trust
37 instrument purporting to rescind a donative transfer to, or a fiduciary appointment of, any person,
38 or that otherwise effects a forfeiture of some or all of an interested person's beneficial interest
39 in a trust estate as a result of some action taken by the beneficiary. This definition shall not be
40 construed in any way as determining whether a no-contest clause is enforceable under applicable
41 law and public policy in a particular factual situation. As used in this section, the term "no-
42 contest clause" shall also mean an "in terrorem clause".

43 7. A no-contest clause is not enforceable against an interested person in, but not limited
44 to, the following circumstances:

45 (1) Filing a motion, petition, or other claim for relief objecting to the jurisdiction or
46 venue of the court over a proceeding concerning a trust, or over any person joined, or attempted
47 to be joined, in such a proceeding;

48 (2) Filing a motion, petition, or other claim for relief concerning an accounting, report,
49 or notice that has or should have been made by a trustee, provided the interested person
50 otherwise has standing to do so under applicable law, including, but not limited to, section 456.6-
51 603;

52 (3) Filing a motion, petition, or other claim for relief under chapter 475 concerning the
53 appointment of a guardian or conservator for the settlor;

54 (4) Filing a motion, petition, or other claim for relief under chapter 404 concerning the
55 settlor;

56 (5) Disclosure to any person of information concerning a trust instrument or that is
57 relevant to a proceeding before the court concerning the trust instrument or property of the trust
58 estate, unless such disclosure is otherwise prohibited by law;

59 (6) Filing a motion, pleading, or other claim for relief seeking approval of a nonjudicial
60 settlement agreement concerning a trust instrument, as set forth in section 456.1-111;

61 **(7) Filing a motion, pleading, or other claim for relief concerning a breach of trust**
62 **by a trustee including, but not limited to, a claim under section 456.10-1001. For purposes**
63 **of this subdivision, "breach of trust" means a trustee's violation of the terms of a trust**
64 **instrument, a violation of the trustee's general fiduciary obligations, or a trustee's violation**
65 **of a duty that equity imposes on a trustee;**

66 **(8) Filing a motion, pleading, or other claim for relief concerning removal of a**
67 **trustee including, but not limited to, a claim for removal under section 456.7-706; and**

68 (9) To the extent a petition under subsection 1 of this section is limited to the procedure
69 and purpose described therein.

70 8. In any proceeding brought under this section, the court may award costs, expenses,
71 and attorneys' fees to any party, as provided in section 456.10-1004.

456.8-808. 1. While a trust is revocable, the trustee may follow a direction of the settlor that is contrary to the terms of the trust.

2. A trust instrument may provide for ~~[the appointment of a trust protector. For purposes of this section, a "trust protector", whether referred to in the trust instrument by that name or by some other name, is a person, other than the settlor, a trustee, or a beneficiary, who is expressly granted in the trust instrument one or more powers over the trust]~~ **one or more persons, not then serving as a trustee and not the settlor or a beneficiary, to be given any powers over the trust as expressly granted in the trust instrument. Any such person may be identified and appointed as a trust protector or similar term. Whenever a trust instrument names, appoints, authorizes, or otherwise designates a trust protector, the trust shall be deemed a directed trust.**

3. A trust protector appointed in the trust instrument shall have only the powers granted to the trust protector by the express terms of the trust instrument, and a trust protector is only authorized to act within the scope of the authority expressly granted in the trust instrument. Without limiting the authority of the settlor to grant powers to a trust protector, the express powers that may be granted include, but are not limited to, the following:

(1) Remove and appoint a trustee **or a trust protector** or name a successor trustee or trust protector;

(2) Modify or amend the trust instrument to:

(a) Achieve favorable tax status or respond to changes in the Internal Revenue Code or state law, or the rulings and regulations under such code or law;

(b) Reflect legal changes that affect trust administration;

(c) Correct errors or ambiguities that might otherwise require court construction; or

(d) Correct a drafting error that defeats a grantor's intent;

(3) Increase, decrease, modify, or restrict the interests of the beneficiary or beneficiaries of the trust;

(4) Terminate the trust in favor of the beneficiary or beneficiaries of the trust;

(5) Change the applicable law governing the trust and the trust situs; or

(6) Such other powers as are expressly granted to the trust protector in the trust instrument.

4. Notwithstanding any provision in the trust instrument to the contrary, a trust protector shall have no power to modify a trust to:

(1) Remove a requirement from a trust created to meet the requirements of 42 U.S.C. Section 1396p(d)(4) to pay back a governmental entity for benefits provided to the permissible beneficiary of the trust at the death of that beneficiary; or

36 (2) Reduce or eliminate an income interest of the income beneficiary of any of the
37 following types of trusts:

38 (a) A trust for which a marital deduction has been taken for federal tax purposes under
39 Section 2056 or 2523 of the Internal Revenue Code or for state tax purposes under any
40 comparable provision of applicable state law, during the life of the settlor's spouse;

41 (b) A charitable remainder trust under Section 664 of the Internal Revenue Code, during
42 the life of the noncharitable beneficiary;

43 (c) A grantor retained annuity trust under Section 2702 of the Internal Revenue Code,
44 during any period in which the settlor is a beneficiary; or

45 (d) A trust for which an election as a qualified Sub-Chapter S Trust under Section
46 1361(d) of the Internal Revenue Code is currently in place.

47 5. Except to the extent otherwise provided in a trust instrument specifically referring to
48 this subsection, the trust protector shall not exercise a power in a way that would result in a
49 taxable gift for federal gift tax purposes or cause the inclusion of any assets of the trust in the
50 trust protector's gross estate for federal estate tax purposes.

51 6. Except to the extent otherwise provided in the trust instrument and in subsection 7 of
52 this section, and notwithstanding any provision of sections 456.1-101 to 456.11-1106 to the
53 contrary:

54 (1) A trust protector shall act in a fiduciary capacity in carrying out the powers granted
55 to the trust protector in the trust instrument, and shall have such duties to the beneficiaries, the
56 settlor, or the trust as set forth in the trust instrument, **provided that the trust instrument may**
57 **provide that the trust protector shall act in a nonfiduciary capacity.** A trust protector is not
58 a trustee, and is not liable or accountable as a trustee when performing or declining to perform
59 the express powers given to the trust protector in the trust instrument. A trust protector is not
60 liable for the acts or omissions of any fiduciary or beneficiary under the trust instrument;

61 (2) A trust protector is exonerated from any and all liability for the trust protector's acts
62 or omissions, or arising from any exercise or nonexercise of the powers expressly conferred on
63 the trust protector in the trust instrument, unless it is established by a preponderance of the
64 evidence that the acts or omissions of the trust protector were done or omitted in breach of the
65 trust protector's duty, in bad faith or with reckless indifference;

66 (3) A trust protector is authorized to exercise the express powers granted in the trust
67 instrument at any time and from time to time after the trust protector acquires knowledge of their
68 appointment as trust protector and of the powers granted. **The trust protector may take any**
69 **action, judicial or otherwise, necessary to carry out the duties given to the trust protector**
70 **in the trust instrument;**

71 (4) A trust protector is entitled to receive, from the assets of the trust for which the trust
72 protector is acting, reasonable compensation, and reimbursement of the reasonable costs and
73 expenses incurred, in determining whether to carry out, and in carrying out, the express powers
74 given to the trust protector in the trust instrument;

75 (5) A trust protector is entitled to receive, from the assets of the trust for which the trust
76 protector is acting, reimbursement of the reasonable costs and expenses, including attorney's
77 fees, of defending any claim made against the trust protector arising from the acts or omissions
78 of the trust protector acting in that capacity unless it is established by clear and convincing
79 evidence that the trust protector was acting in bad faith or with reckless indifference; and

80 (6) The express powers granted in the trust instrument shall not be exercised by the trust
81 protector for the trust protector's own personal benefit.

82 7. If a trust protector is granted a power in the trust instrument to direct, consent to, or
83 disapprove a trustee's actual or proposed investment decision, distribution decision, or other
84 decision of the trustee required to be performed under applicable trust law in carrying out the
85 duties of the trustee in administering the trust, then only with respect to such power, excluding
86 the powers identified in subsection 3 of this section, the trust protector shall have the same duties
87 and liabilities as if serving as a trustee under the trust instrument **unless the trust instrument**
88 **expressly provides otherwise. In carrying out any written directions given to the trustee**
89 **by the trust protector concerning actual or proposed investment decisions, the trustee shall**
90 **not be subject to the provisions of sections 469.900 to 469.913. For purposes of this**
91 **subsection, "investment decisions" means, with respect to any investment, decisions to**
92 **retain, purchase, sell, exchange, tender, or otherwise engage in transactions affecting the**
93 **ownership of investments or rights therein and, with respect to nonpublicly traded**
94 **investments, the valuation thereof.**

95 8. **Any trustee of a directed trust shall not be accountable under the law or equity**
96 **for any act or omission of a trust protector and shall stand absolved from liability for**
97 **executing the decisions or instructions from a trust protector or for monitoring the actions**
98 **or inactions of a trust protector. A trustee shall take reasonable steps to facilitate the**
99 **activity of a trust protector in a directed trust.** A trustee shall carry out the written directions
100 given to the trustee by a trust protector acting within the scope of the powers expressly granted
101 to the trust protector in the trust instrument. Except [~~in cases of bad faith or reckless indifference~~
102 ~~on the part of the trustee, or~~] as otherwise provided in the trust instrument, the trustee shall not
103 be liable for any loss resulting directly or indirectly from any act taken or omitted as a result of
104 the written direction of the trust protector or the failure of the trust protector to provide consent.
105 Except as otherwise provided in the trust instrument, the trustee shall have no duty to monitor
106 the conduct of the trust protector, provide advice to or consult with the trust protector, or

107 communicate with or warn or apprise any beneficiary concerning instances in which the trustee
108 would or might have exercised the trustee's own discretion in a manner different from the manner
109 directed by the trust protector. **Except as otherwise provided in the trust instrument, any**
110 **actions taken by the trustee at the trust protector's direction shall be deemed to be**
111 **administrative actions taken by the trustee solely to allow the trustee to carry out the**
112 **instructions of the trust protector and shall not be deemed to constitute an act by the**
113 **trustee to monitor the trust protector or otherwise participate in actions within the scope**
114 **of the trust protector's authority.**

115 9. Except to the extent otherwise expressly provided in the trust instrument, the trust
116 protector shall be entitled to receive information regarding the administration of the trust as
117 follows:

118 (1) Upon the request of the trust protector, unless unreasonable under the circumstances,
119 the trustee shall promptly provide to the trust protector any and all information related to the trust
120 that may relate to the exercise or nonexercise of a power expressly granted to the trust protector
121 in the trust instrument. The trustee has no obligation to provide any information to the trust
122 protector except to the extent a trust protector requests information under this section;

123 (2) The request of the trust protector for information under this section shall be with
124 respect to a single trust that is sufficiently identified to enable the trustee to locate the records
125 of the trust; and

126 (3) If the trustee is bound by any confidentiality restrictions with respect to an asset of
127 a trust, a trust protector who requests information under this section about such asset shall agree
128 to be bound by the confidentiality restrictions that bind the trustee before receiving such
129 information from the trustee.

130 10. A trust protector may resign by giving thirty days' written notice to the trustee and
131 any successor trust protector. A successor trust protector, if any, shall have all the powers
132 expressly granted in the trust instrument to the resigning trust protector unless such powers are
133 expressly modified for the successor trust protector.

134 11. A trust protector of a trust having its principal place of administration in this state
135 submits personally to the jurisdiction of the courts of this state during any period that the
136 principal place of administration of the trust is located in this state and the trust protector is
137 serving in such capacity. **The trust instrument may also provide that a trust protector is**
138 **subject to the personal jurisdiction of the courts of this state as a condition of appointment.**

472.400. Sections 472.400 to 472.490 shall be known and may be cited as the
2 **"Missouri Fiduciary Access to Digital Assets Act".**

472.405. As used in sections 472.400 to 472.490, the following terms mean:

2 **(1) "Access", includes view, marshal, manage, copy, distribute, or delete;**

- 3 (2) "Account", an arrangement under a terms-of-service agreement in which a
4 custodian carries, maintains, processes, receives, or stores a digital asset of the user or
5 provides goods or services to the user;
- 6 (3) "Agent", an attorney-in-fact granted authority under a durable or nondurable
7 power of attorney;
- 8 (4) "Carries", engages in the transmission of electronic communications;
- 9 (5) "Catalogue of electronic communications", information that identifies each
10 person with which a user has had an electronic communication, the time and date of the
11 communication, and the electronic address of the person;
- 12 (6) "Conservator", a person appointed by a court to have the care and custody of
13 the estate of a minor or a disabled person. A "limited conservator" is one whose duties or
14 powers are limited. The term "conservator", as used in sections 472.400 to 472.490,
15 includes limited conservator unless otherwise specified or apparent from the context;
- 16 (7) "Content of an electronic communication", information concerning the
17 substance or meaning of the communication which:
- 18 (a) Has been sent or received by a user;
- 19 (b) Is in electronic storage by a custodian providing an electronic-communication
20 service to the public or is carried or maintained by a custodian providing a remote-
21 computing service to the public; and
- 22 (c) Is not readily accessible to the public;
- 23 (8) "Court", any court with competent jurisdiction within this state;
- 24 (9) "Custodian", a person that carries, maintains, processes, receives, or stores a
25 digital asset of a user;
- 26 (10) "Designated recipient", a person chosen by a user using an online tool to
27 administer digital assets of the user;
- 28 (11) "Digital asset", an electronic record in which an individual has a right or
29 interest. The term does not include an underlying asset or liability unless the asset or
30 liability is itself an electronic record;
- 31 (12) "Electronic", relating to technology having electrical, digital, magnetic,
32 wireless, optical, electromagnetic, or similar capabilities;
- 33 (13) "Electronic communication", has the same meaning as set forth in 18 U.S.C.
34 Section 2510(12), as amended;
- 35 (14) "Electronic communication service", a custodian that provides to a user the
36 ability to send or receive an electronic communication;
- 37 (15) "Fiduciary", an original, additional, or successor personal representative,
38 conservator, agency, or trustee;

39 **(16) "Information", data, text, images, videos, sounds, codes, computer programs,**
40 **software, databases, or the like;**

41 **(17) "Online tool", an electronic service provided by a custodian that allows the**
42 **user, in an agreement distinct from the terms-of-service agreement between the custodian**
43 **and user, to provide directions for disclosure or nondisclosure of digital assets to a third**
44 **person;**

45 **(18) "Person", an individual, estate, trust, business or nonprofit entity, public**
46 **corporation, government or governmental subdivision, agency, instrumentality, or other**
47 **legal entity;**

48 **(19) "Personal representative", executor or administrator, including an**
49 **administrator with the will annexed, an administrator de bonis non, an administrator**
50 **pending contest, an administrator during minority or absence, and any other type of**
51 **administrator of the estate of a decedent whose appointment is permitted, or any person**
52 **who performs substantially the same function under the law of Missouri, including without**
53 **limitation an affiant who has filed a small estate affidavit under section 473.097. It does**
54 **not include an executor de son tort;**

55 **(20) "Power of attorney", a record that grants an agent authority to act in the place**
56 **of a principal;**

57 **(21) "Principal", an individual who grants authority to an agent in a power of**
58 **attorney;**

59 **(22) "Protected person", an individual for whom a conservator has been appointed,**
60 **including a protectee, a disabled person, and an individual for whom an application for the**
61 **appointment of a conservator is pending;**

62 **(23) "Record", information that is inscribed on a tangible medium or that is stored**
63 **in an electronic or other medium and is retrievable in perceivable form;**

64 **(24) "Remote computing service", a custodian that provides to a user computer**
65 **processing services or the storage of digital assets by means of an electronic**
66 **communications system, as defined in 18 U.S.C. Section 2510(14), as amended;**

67 **(25) "Terms-of-service agreement", an agreement that controls the relationship**
68 **between a user and a custodian;**

69 **(26) "Trustee", a fiduciary with legal title to property pursuant to an agreement**
70 **or declaration that creates a beneficial interest in another, including an original,**
71 **additional, and successor trustee, and a co-trustee;**

72 **(27) "User", a person that has an account with a custodian;**

73 (28) "Will", includes a testamentary instrument, a codicil, a testamentary
74 instrument that only appoints an executor, and instrument that revokes or revises a
75 testamentary instrument.

 472.410. 1. Sections 472.400 to 472.490 shall apply to:

2 (1) A fiduciary or agent acting under a will or power of attorney executed before,
3 on, or after the effective date of sections 472.400 to 472.490;

4 (2) A personal representative acting for a decedent who dies before, on, or after the
5 effective date of sections 472.400 to 472.490;

6 (3) A conservatorship proceeding commenced before, on, or after the effective date
7 of sections 472.400 to 472.490; and

8 (4) A trustee acting under a trust created before, on, or after the effective date of
9 sections 472.400 to 472.490.

10 2. Sections 472.400 to 472.490 shall apply to a custodian if the user resides in this
11 state or resided in this state at the time of the user's death.

12 3. Sections 472.400 to 472.490 shall not apply to a digital asset of an employer used
13 by an employee in the ordinary course of the employer's business.

 472.415. 1. A user may use an online tool to direct the custodian to disclose to a
2 designated recipient or not to disclose some or all of the user's digital assets, including the
3 content of electronic communications. If the online tool allows the user to modify or delete
4 a direction at all times, a direction regarding disclosure using an online tool overrides a
5 contrary direction by the user in a will, trust, power of attorney, or other record.

6 2. If a user has not used an online tool to give direction under subsection 1 of this
7 section or if the custodian has not provided an online tool, the user may allow or prohibit
8 in a will, trust, power of attorney, or other record, disclosure to a fiduciary of some or all
9 of the user's digital assets, including the content of electronic communications sent or
10 received by the user.

11 3. A user's direction under subsection 1 or 2 of this section overrides a contrary
12 provision in a terms-of-service agreement that does not require the user to act affirmatively
13 and distinctly from the user's assent to the terms-of-service.

 472.420. 1. Sections 472.400 to 472.490 shall not change or impair a right of a
2 custodian or a user under a terms-of-service agreement to access and use digital assets of
3 the user.

4 2. Sections 472.400 to 472.490 shall not give a fiduciary or a designated recipient
5 any new or expanded rights other than those held by the user for whom, or for whose
6 estate, the fiduciary or designated recipient acts or represents.

7 **3. A fiduciary's or a designated recipient's access to digital assets may be modified**
8 **or eliminated by a user, by federal law, or by a terms-of-service agreement if the user has**
9 **not provided direction under section 472.415.**

2 **472.425. 1. When disclosing digital assets of a user under sections 472.400 to**
3 **472.490 the custodian may at its sole discretion:**

4 **(1) Grant a fiduciary or designated recipient full access to the user's account;**

5 **(2) Grant a fiduciary or designated recipient partial access to the user's account**
6 **sufficient to perform the tasks with which the fiduciary or designated recipient is charged;**
7 **or**

8 **(3) Provide a fiduciary or designated recipient a copy in a record of any digital**
9 **asset that, on the date the custodian received the request for disclosure, the user could have**
10 **accessed if the user were alive and had full capacity and access to the account.**

11 **2. A custodian may assess a reasonable administrative charge for the cost of**
12 **disclosing digital assets under sections 472.400 to 472.490.**

13 **3. A custodian shall not disclose under sections 472.400 to 472.490 a digital asset**
14 **deleted by a user.**

15 **4. If a user directs or a fiduciary requests a custodian to disclose under sections**
16 **472.400 to 472.490 some, but not all, of the user's digital assets, the custodian need not**
17 **disclose the assets if segregation of the assets would impose an undue burden on the**
18 **custodian. If the custodian believes the direction or request imposes an undue burden, the**
19 **custodian or fiduciary may seek an order from the court to disclose:**

20 **(1) A subset limited by date of the user's digital assets;**

21 **(2) All of the user's digital assets to the fiduciary or designated recipient;**

22 **(3) None of the user's digital assets; or**

(4) All of the user's digital assets to the court for review in camera.

472.430. If a deceased user consented or a court directs disclosure of the contents
2 **of electronic communications of the user, the custodian shall disclose to the personal**
3 **representative of the estate of the user the content of an electronic communication sent or**
4 **received by the user if the representative gives the custodian:**

5 **(1) A written request for disclosure in physical or electronic form;**

6 **(2) A certified copy of the death certificate of the user;**

7 **(3) A certified copy of the letters testamentary or letters of administration of the**
8 **representative or a certified copy of the certificate of clerk in connection with a small estate**
9 **affidavit or court order;**

10 **(4) Unless the user provided direction using an online tool, then in the case of user**
11 **consent to disclosure, a copy of the user's will, trust, power of attorney, or other record**

12 **evidencing the user's consent to disclosure of the content of electronic communications;**
13 **and**

14 **(5) If requested by the custodian for the purpose of identifying the correct account**
15 **of the user:**

16 **(a) A number, username, address, or other unique subscriber or account identifier**
17 **assigned by the custodian to identify the user's account;**

18 **(b) Evidence linking the account to the user; or**

19 **(c) A finding by the court that:**

20 **a. The user had a specific account with the custodian, identifiable by the**
21 **information specified in paragraph (a) of this subdivision;**

22 **b. Disclosure of the content of electronic communications of the user would not**
23 **violate 18 U.S.C. Section 2701 et seq., as amended, 47 U.S.C. Section 222, as amended, or**
24 **other applicable law;**

25 **c. Unless the user provided direction using an online tool, the user consented to**
26 **disclosure of the content of electronic communications; or**

27 **d. Disclosure of the content of electronic communications of the user is reasonably**
28 **necessary for administration of the estate.**

472.435. Unless the user prohibited disclosure of digital assets or the court directs
2 **otherwise, a custodian shall disclose to the personal representative of the estate of a**
3 **deceased user a catalogue of electronic communications sent or received by the user and**
4 **digital assets, other than the content of electronic communications, of the user, if the**
5 **representative gives the custodian:**

6 **(1) A written request for disclosure in physical or electronic form;**

7 **(2) A certified copy of the death certificate of the user;**

8 **(3) A certified copy of the letters testamentary or letters of administration of the**
9 **representative or a certified copy of certificate of clerk in connection with a small-estate**
10 **affidavit or court order; and**

11 **(4) If requested by the custodian for the purpose of identifying the correct account**
12 **of the correct user:**

13 **(a) A number, username, address, or other unique subscriber or account identifier**
14 **assigned by the custodian to identify the user's account;**

15 **(b) Evidence linking the account to the user;**

16 **(c) An affidavit stating that disclosure of the user's digital assets is reasonably**
17 **necessary for administration of the estate; or**

18 **(d) A finding by the court that:**

19 a. The user had a specific account with the custodian, identifiable by the
20 information specified in paragraph (a) of this subdivision; or

21 b. Disclosure of the user's digital assets is reasonably necessary for administration
22 of the estate.

**472.440. To the extent a power of attorney expressly grants an agent authority over
2 the content of an electronic communications sent or received by the principal and unless
3 directed otherwise by the principal or the court, a custodian shall disclose to the agent the
4 content if the agent gives the custodian:**

5 (1) A written request for disclosure in physical or electronic form;

6 (2) An original or copy of the power of attorney expressly granting the agent
7 authority over the content of electronic communications of the principal;

8 (3) A certification by the agent, under penalty of perjury, that the power of
9 attorney is in effect; and

10 (4) If requested by the custodian for the purpose of identifying the correct account
11 of the correct user:

12 (a) A number, username, address, or other unique subscriber or account identifier
13 assigned by the custodian to identify the principal's account; or

14 (b) Evidence linking the account to the principal.

**472.445. Unless otherwise ordered by the court, directed by the principal, or
2 provided by a power of attorney, a custodian shall disclose to an agent with specific
3 authority over digital assets or general authority to act on behalf of a principal a catalogue
4 of electronic communications sent or received by the principal and digital assets, other
5 than the content of electronic communications, of the principal if the agent gives the
6 custodian:**

7 (1) A written request for disclosure in physical or electronic form;

8 (2) An original or a copy of the power of attorney that gives the agent specific
9 authority over digital assets or general authority to act on behalf of the principal;

10 (3) A certification by the agent, under penalty of perjury, that the power of
11 attorney is in effect; and

12 (4) If requested by the custodian for the purpose of identifying the correct account
13 of the correct user:

14 (a) A number, username, address, or other unique subscriber or account identifier
15 assigned by the custodian to identify the principal's account; or

16 (b) Evidence linking the account to the principal.

**472.450. Unless otherwise ordered by the court or provided in a trust, a custodian
2 shall disclose to a trustee that is an original user of an account any digital asset of the**

3 account held in trust, including a catalogue of electronic communications of the trustee and
4 the content of the electronic communications.

472.455. Unless otherwise ordered by the court, directed by the user, or provided
2 in a trust, a custodian shall disclose to a trustee that is not an original user of an account
3 the content of an electronic communication sent or received by an original or successor
4 user and carried, maintained, processed, received, or stored by the custodian in the account
5 of the trust if the trustee gives the custodian:

6 (1) A written request for disclosure in physical or electronic form;

7 (2) A certified copy of the trust instrument or a certification of the trust under
8 section 456.10-1013 that includes consent to disclosure of the content of electronic
9 communications to the trustee;

10 (3) A certification by the trustee, under penalty of perjury, that the trust exists and
11 the trustee is a currently acting trustee of the trust; and

12 (4) If requested by the custodian for the purpose of identifying the correct account
13 of the correct user:

14 (a) A number, username, address, or other unique subscriber or account identifier
15 assigned by the custodian to identify the trust's account; or

16 (b) Evidence linking the account to the trust.

472.460. Unless otherwise ordered by the court, directed by the user, or provided
2 in a trust, a custodian shall disclose, to a trustee that is not an original user of an account,
3 a catalogue of electronic communications sent or received by an original or successor user
4 and stored, carried, or maintained by the custodian in an account of the trust and any
5 digital assets, other than the content of electronic communications, in which the trust has
6 a right or interest if the trustee gives the custodian:

7 (1) A written request for disclosure in physical or electronic form;

8 (2) A certified copy of the trust instrument or a certification of the trust under
9 section 456.10-1013;

10 (3) A certification by the trustee, under penalty of perjury, that the trust exists and
11 the trustee is a currently acting trustee of the trust; and

12 (4) If requested by the custodian for the purpose of identifying the correct account
13 of the correct user:

14 (a) A number, username, address, or other unique subscriber or account identifier
15 assigned by the custodian to identify the trust's account; or

16 (b) Evidence linking the account to the trust.

472.465. 1. After an opportunity for a hearing under Missouri conservatorship law,
2 the court may grant a conservator access to the digital assets of a protected person.

3 **2. Unless otherwise ordered by the court or directed by the user, a custodian shall**
4 **disclose to a conservator the catalogue of electronic communications sent or received by**
5 **a protected person and any digital assets, other than the content of electronic**
6 **communications, in which the protected person has a right or interest if the conservator**
7 **gives the custodian:**

8 **(1) A written request for disclosure in physical or electronic form;**

9 **(2) A certified copy of the court order that gives the conservator authority over the**
10 **digital assets of the protected person; and**

11 **(3) If requested by the custodian for the purpose of identifying the correct account**
12 **of the correct user:**

13 **(a) A number, username, address, or other unique subscriber or account identifier**
14 **assigned by the custodian to identify the account of the protected person; or**

15 **(b) Evidence linking the account to the protected person.**

16 **3. A conservator with general authority to manage the assets of a protected person**
17 **may request a custodian of the digital assets of the protected person to suspend or**
18 **terminate an account of the protected person for good cause. A request made under this**
19 **subsection shall be accompanied by a certified copy of the court order giving the**
20 **conservator authority over the protected person's property.**

472.470. 1. The legal duties imposed on a fiduciary charged with managing
2 **tangible property apply to the management of digital assets, including:**

3 **(1) The duty of care;**

4 **(2) The duty of loyalty; and**

5 **(3) The duty of confidentiality.**

6 **2. A fiduciary's or designated recipient's authority with respect to a digital asset**
7 **of a user:**

8 **(1) Except as otherwise provided in section 472.415, is subject to the applicable**
9 **terms-of-service agreement;**

10 **(2) Is subject to other applicable law, including copyright law;**

11 **(3) In the case of a fiduciary, is limited by the scope of the fiduciary's duties; and**

12 **(4) May not be used to impersonate the user.**

13 **3. A fiduciary with authority over the property of a decedent, protected person,**
14 **principal, or settlor has the right to access any digital asset in which the decedent,**
15 **protected person, principal, or settlor had a right or interest and that is not held by a**
16 **custodian or subject to a terms-of-service agreement.**

17 **4. A fiduciary acting within the scope of the fiduciary's duties is an authorized user**
18 **of the property of the decedent, protected person, principal, or settlor for the purpose of**

19 applicable computer-fraud and unauthorized-computer-access laws, including Missouri
20 law on unauthorized computer access.

21 5. A fiduciary with authority over the tangible, personal property of a decedent,
22 protected person, principal, or settlor:

23 (1) Has the right to access the property and any digital asset stored in it; and

24 (2) Is an authorized user for the purpose of computer-fraud and
25 unauthorized-computer-access laws, including Missouri law on unauthorized computer
26 access.

27 6. A custodian may disclose information in an account to a fiduciary of the user
28 when the information is required to terminate an account used to access digital assets
29 licensed to the user.

30 7. A fiduciary of a user may request a custodian to terminate the user's account.
31 A request for termination shall be in writing, in either physical or electronic form, and
32 accompanied by:

33 (1) If the user is deceased, a certified copy of the death certificate of the user;

34 (2) A certified copy of the letter of testamentary or letters of administration of the
35 representative or a certified copy of the certificate of clerk in connection with a small-estate
36 affidavit or court order, power of attorney, or trust giving the fiduciary authority over the
37 account; and

38 (3) If requested by the custodian for the purpose of identifying the correct account
39 of the correct user:

40 (a) A number, username, address, or other unique subscriber or account identifier
41 assigned by the custodian to identify the user's account;

42 (b) Evidence linking the account to the user; or

43 (c) A finding by the court that the user had a specific account with the custodian,
44 identifiable by the information specified in paragraph (a) of this subdivision.

472.475. 1. Not later than sixty days after receipt of the information required
2 under sections 472.430 to 472.470, a custodian shall comply with a request under sections
3 472.400 to 472.490 from a fiduciary or designated recipient to disclose digital assets or
4 terminate an account. If the custodian fails to comply, the fiduciary or designated recipient
5 may apply to the court for an order directing compliance.

6 2. An order under subsection 1 of this section directing compliance shall contain
7 a finding that compliance is not in violation of 18 U.S.C. Section 2702, as amended.

8 3. A custodian may notify the user that a request for disclosure or to terminate an
9 account was made under sections 472.400 to 472.490.

10 **4. A custodian may deny a request under sections 472.400 to 472.490 from a**
11 **fiduciary or designated recipient for disclosure of digital assets or to terminate an account**
12 **if the custodian is aware of any lawful access to the account following the receipt of the**
13 **fiduciary's request.**

14 **5. Sections 472.400 to 472.490 do not limit a custodian's ability to obtain or require**
15 **a fiduciary or designated recipient requesting disclosure or termination under such**
16 **sections to obtain a court order which:**

17 **(1) Specifies that an account belongs to the protected person or principal;**

18 **(2) Specifies that there is sufficient consent from the protected person or principal**
19 **to support the requested disclosure; and**

20 **(3) Contains a finding required by law other than as provided under sections**
21 **472.400 to 472.490.**

22 **6. A custodian and its officers, employees, and agents are immune from liability for**
23 **an act or omission done in good faith in compliance with sections 472.400 to 472.490.**

472.480. In applying and construing sections 472.400 to 472.490, consideration may
2 **be given to the need to promote uniformity of the law with respect to its subject matter**
3 **among states that enact similar provisions.**

472.485. Sections 472.400 to 472.490 modify, limit, or supersede the Electronic
2 **Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but do**
3 **not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or**
4 **authorize electronic delivery of any of the notices described in Section 103(b) of that act,**
5 **15 U.S.C. Section 7003(b).**

472.490. If any provision of sections 472.400 to 472.490 or the application of such
2 **sections to any person or circumstance is held invalid, the invalidity does not affect other**
3 **provisions or application of sections 472.400 to 472.490 which can be given effect without**
4 **the invalid provision or application, and to this end the provisions of sections 472.400 to**
5 **472.490 are severable.**

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