

# SENATE BILL NO. 1623

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR TRENT.

6919S.011

KRISTINA MARTIN, Secretary

## AN ACT

To repeal sections 428.049, 456.031, 456.1-103, 456.4-419, 456.5-505, and 456.8-808, RSMo, and to enact in lieu thereof six new sections relating to trusts.

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

Section A. Sections 428.049, 456.031, 456.1-103, 456.4-419, 456.5-505, and 456.8-808, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 428.049, 456.031, 456.1-103, 456.4-419, 456.5-505, and 456.8-808, to read as follows:

428.049. A claim for relief or cause of action with respect to a fraudulent transfer or obligation under sections 428.005 to 428.059 is extinguished unless action is brought:

(1) Under subdivision (1) of subsection 1 of section 428.024, within **[four]** **two** years after the transfer was made or the obligation was incurred or, if later, within **[one year]** **six months** after the transfer or obligation was or could reasonably have been discovered by the claimant;

(2) Under subdivision (2) of subsection 1 of section 428.024 or subsection 1 of section 428.029, within **[four]** **two** years after the transfer was made or the obligation was incurred; or

**EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

14 (3) Under subsection 2 of section 428.029, within [one  
15 year] **six months** after the transfer was made or the  
16 obligation was incurred.

456.031. **1.** The clerk of the probate division of the  
2 circuit court shall keep a record for each trust so  
3 registered, including trust registration statements,  
4 petitions and applications, demands for notices or bonds,  
5 and of any orders or responses relating thereto by the  
6 court, and establish and maintain a system for indexing,  
7 filing or recording which is sufficient to enable users of  
8 the records to identify and obtain information about such  
9 registered trusts. Upon payment of the fees required by law  
10 the clerk must issue certified copies of any record or paper  
11 filed or recorded.

**2. Notwithstanding any other provision of law to the  
13 contrary, upon the filing of any petition, the instrument on  
14 which the trust is based, briefs, and the entire court  
15 record, including a trust's inventory, statement filed by  
16 any fiduciary, annual verified report of a fiduciary, final  
17 report of a fiduciary, and all petitions relevant to trust  
18 administration and all court orders thereon shall be sealed  
19 upon filing and may not be made a part of the public record  
20 of the proceeding, but are available to the court, to the  
21 trustor, to any fiduciary, to any enforcer, to any  
22 beneficiary or the beneficiary's representative, to their  
23 attorneys, and to such other interested persons as the court  
24 may order upon a showing of need.**

456.1-103. In sections 456.1-101 to 456.11-1106, the  
2 following terms shall mean:

3 (1) "Action", with respect to an act of a trustee,  
4 includes a failure to act;

5           (2) "Ascertainable standard", a standard relating to  
6 an individual's health, education, support, or maintenance  
7 within the meaning of Section 2041(b)(1)(A) or Section  
8 **[2541(c)(1)] 2514(c)(1)** of the Internal Revenue Code;

9           (3) "Beneficiary", a person that:

10           (a) Has a present or future beneficial interest in a  
11 trust, vested or contingent; or

12           (b) In a capacity other than that of trustee, holds a  
13 power of appointment over trust property;

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

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

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

22           (7) **["Directed trust", any trust, including a split  
23 interest trust, in which the trust instrument:**

24           **(a) Authorizes a trust protector to instruct or direct  
25 the trustee;**

26           **(b) Charges a trust protector with any  
27 responsibilities regarding the trust;**

28           **(c) Grants the trust protector one or more powers over  
29 the trust; or**

30           **(d) Directs one or more powers over the trust to a  
31 person, who is not serving as a trustee, and is not a  
32 settlor or a beneficiary;**

33           **(8)] "Environmental law", a federal, state, or local  
34 law, rule, regulation, or ordinance relating to protection  
35 of the environment;**

36            [(9)] (8) "Financial institution", a non-foreign bank,  
37 savings and loan or trust company chartered, regulated and  
38 supervised by the Missouri division of finance, the office  
39 of the comptroller of the currency, the office of thrift  
40 supervision, the National Credit Union Administration, or  
41 the Missouri division of credit union supervision. The term  
42 "non-foreign bank" shall mean a bank that is not a foreign  
43 bank within the meaning of subdivision (1) of section  
44 361.005;

45            [(10)] (9) "Guardian", a person described in  
46 subdivision (8) of section 475.010. The term does not  
47 include a guardian ad litem;

48            [(11)] (10) "Interested persons", include  
49 beneficiaries and any others having a property right in or  
50 claim against a trust estate which may be affected by a  
51 judicial proceeding. It also includes fiduciaries and other  
52 persons representing interested persons. The meaning as it  
53 relates to particular persons may vary from time to time and  
54 must be determined according to the particular purposes of,  
55 and matter involved in, any proceeding;

56            [(12)] (11) "Interests of the beneficiaries", the  
57 beneficial interests provided in the terms of the trust;

58            [(13)] (12) "Internal Revenue Code", the United States  
59 Internal Revenue Code of 1986, as in effect on January 1,  
60 2005, or as later amended;

61            [(14)] (13) "Jurisdiction", with respect to a  
62 geographic area, includes a state or country;

63            [(15)] (14) "Person", an individual, corporation,  
64 business trust, estate, trust, partnership, limited  
65 liability company, association, joint venture, government;  
66 governmental subdivision, agency, or instrumentality; public  
67 corporation, or any other legal or commercial entity;

68            [(16)] (15) "Permissible distributee", a beneficiary  
69 who is currently eligible to receive distributions of trust  
70 income or principal, whether mandatory or discretionary;

71            [(17)] (16) "Power of withdrawal", a presently  
72 exercisable power of a beneficiary to withdraw assets from  
73 the trust without the consent of the trustee or any other  
74 person;

75            [(18)] (17) "Principal place of administration", of a  
76 trust is the trustee's usual place of business where the  
77 records pertaining to the trust are kept, or the trustee's  
78 residence if the trustee has no such place of business,  
79 unless otherwise designated by the terms of the trust as  
80 provided in section 456.1-108. In the case of cotrustees,  
81 the principal place of administration is, in the following  
82 order of priority:

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

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

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

90            [(19)] (18) "Professional fiduciary", an individual  
91 who represents himself or herself to the public as having  
92 specialized training, experience or skills in the  
93 administration of trusts;

94            [(20)] (19) "Property", anything that may be the  
95 subject of ownership, whether real or personal, legal or  
96 equitable, or any interest therein;

97            [(21)] (20) "Qualified beneficiary", a beneficiary  
98 who, on the date the beneficiary's qualification is  
99 determined:

100           (a) Is a permissible distributee;

101           (b) Would be a permissible distributee if the

102 interests of the permissible distributees described in

103 paragraph (a) of this subdivision terminated on that date; or

104           (c) Would be a permissible distributee if the trust

105 terminated on that date;

106           [(22)] (21) "Record", information that is inscribed on

107 a tangible medium or that is stored in an electronic or

108 other medium and is retrievable in perceivable form;

109           [(23)] (22) "Revocable", as applied to a trust, means

110 that the settlor has the legal power to revoke the trust

111 without the consent of the trustee or a person holding an

112 adverse interest, regardless of whether the settlor has the

113 mental capacity to do so in fact;

114           [(24)] (23) "Settlor", a person, including a testator,

115 who creates, or contributes property to, a trust. If more

116 than one person creates or contributes property to a trust,

117 each person is a settlor of the portion of the trust

118 property attributable to that person's contribution except

119 to the extent another person has the power to revoke or

120 withdraw that portion pursuant to the terms of the trust;

121           [(25)] (24) "Sign", with present intent to

122 authenticate or adopt a record:

123           (a) To execute or adopt a tangible symbol; or

124           (b) To attach to or logically associate with the

125 record an electronic sound, symbol, or process;

126           [(26)] (25) "Spendthrift provision", a term of a trust

127 which restrains either the voluntary or involuntary transfer

128 or both the voluntary and involuntary transfer of a

129 beneficiary's interest;

130           [(27)] (26) "State", a state of the United States, the

131 District of Columbia, Puerto Rico, the United States Virgin

132 Islands, or any territory or insular possession subject to  
133 the jurisdiction of the United States. The term includes an  
134 Indian tribe or band recognized by federal law or formally  
135 acknowledged by a state;

136 [(28)] (27) "Terms of a trust", the manifestation of  
137 the settlor's intent regarding a trust's provisions as  
138 expressed in the trust instrument or as may be established  
139 by other evidence that would be admissible in a judicial  
140 proceeding;

141 [(29)] (28) "Trust instrument", an instrument executed  
142 by the settlor that contains terms of the trust, including  
143 any amendments thereto;

144 [(30)] "Trust protector", any person, group of persons,  
145 or entity not serving as a trustee and not the settlor or a  
146 beneficiary, designated in a trust instrument to instruct or  
147 direct the trustee or charged in the trust instrument with  
148 any responsibilities regarding the trust or expressly  
149 granted in the trust instrument one or more powers over the  
150 trust. The term trust protector includes, but is not  
151 limited to, persons or entities identified in the trust  
152 instrument as trust advisors, trust directors, distribution  
153 advisors, or investment advisors;

154 [(31)] (29) "Trustee", includes an original,  
155 additional, and successor trustee, and a cotrustee.

456.4-419. 1. Unless the terms of the trust  
2 instrument expressly provide otherwise, a trustee, other  
3 than a settlor, who has discretionary power under the terms  
4 of a trust to make a distribution of income or principal,  
5 whether or not limited by an ascertainable standard, to or  
6 for the benefit of one or more beneficiaries of a trust, the  
7 first trust, may instead exercise such discretionary power,  
8 **independently or with court approval**, by distributing all or

9 part of the income or principal subject to such  
10 discretionary power in favor of a trustee of a second trust,  
11 the second trust, created under either the same or different  
12 trust instrument in the event that the trustee of the first  
13 trust decides that the distribution is necessary or  
14 desirable after taking into account the terms and purposes  
15 of the first trust, the terms and purposes of the second  
16 trust, and the consequences of the distribution. A trustee  
17 may exercise the power described in this subsection by  
18 distributing property from the first trust to one or more  
19 second trusts or by modifying the trust instrument for the  
20 first trust which, as modified, becomes one or more second  
21 trusts.

22 2. With respect to a second trust to which a  
23 distribution is made pursuant to subsection 1 of this  
24 section:

25 (1) At least one permissible distributee of the first  
26 trust shall be a permissible distributee of the second trust  
27 immediately after the distribution;

28 (2) If, at the time of the distribution, the settlor  
29 of the first trust is living and the first trust is not a  
30 grantor trust under Subpart E of Part I of Subchapter J of  
31 Chapter 1 of the Internal Revenue Code of 1986, as amended,  
32 there may not be any permissible distributee of the second  
33 trust immediately after the distribution who is not a  
34 permissible distributee of the first trust;

35 (3) If, at the time of the distribution, the settlor  
36 of the first trust is deceased or if, at the time of the  
37 distribution, the first trust is a grantor trust under  
38 Subpart E of Part I of Subchapter J of Chapter 1 of the  
39 Internal Revenue Code of 1986, as amended, for reasons other  
40 than the trustee having the power granted by this section,

41 any beneficiary of the first trust may be included as a  
42 permissible distributee of the second trust immediately  
43 after the distribution;

44 (4) The second trust may not include any beneficiary  
45 who is not a beneficiary of the first trust; and

46 (5) The trust instrument for the second trust may  
47 retain, modify, or omit a power of appointment granted in  
48 the first trust, and the trust instrument for the second  
49 trust may create a power of appointment if the powerholder  
50 is a beneficiary of the second trust. Except to the extent  
51 provided otherwise in subsection 4 of this section, a power  
52 of appointment in the trust instrument for the second trust  
53 may be a general or nongeneral power of appointment and the  
54 permissible appointees of the power need not be limited to  
55 the beneficiaries of the first trust.

56 3. The following provisions apply to a trust that has  
57 a beneficiary with a disability:

58 (1) As used in this subsection, the following terms  
59 mean:

60 (a) "Beneficiary with a disability", a beneficiary of  
61 a first trust who the special-needs fiduciary believes may  
62 qualify for governmental benefits based on disability,  
63 whether or not the beneficiary currently receives those  
64 benefits or is an individual who has been adjudicated  
65 disabled or adjudicated incapacitated;

66 (b) "Governmental benefits", financial aid or services  
67 from a state, federal, or other public agency;

68 (c) "Special-needs fiduciary", with respect to a trust  
69 that has a beneficiary with a disability:

70 a. A trustee or other fiduciary, other than a settlor,  
71 who has discretionary power under the terms of a trust to  
72 make a distribution of income or principal, whether or not

73 limited by an ascertainable standard, to or for the benefit  
74 of one or more beneficiaries; or

75       b. If no trustee or fiduciary has discretion under  
76 subparagraph a. of this paragraph, a trustee or other  
77 fiduciary, other than a settlor, who is required to  
78 distribute part or all of the income or principal of the  
79 first trust to or for the benefit of one or more  
80 beneficiaries;

81       (d) "Special-needs trust", a trust the trustee  
82 believes would not be considered a resource for purposes of  
83 determining whether a beneficiary with a disability is  
84 eligible for governmental benefits;

85       (2) A special-needs fiduciary may exercise the  
86 authority granted by subsection 1 of this section if:

87       (a) A second trust is a special-needs trust that  
88 benefits the beneficiary with a disability; and

89       (b) The special-needs fiduciary determines that  
90 exercise of the authority pursuant to subsection 1 of this  
91 section will further the purposes of the first trust; and

92       (3) The following provisions apply to any exercise of  
93 the authority granted by this subsection:

94       (a) Notwithstanding the provisions of subdivision (4)  
95 of subsection 2 of this section to the contrary, the terms  
96 of the second trust may:

97       a. Provide that an interest is held by a pooled trust  
98 as defined by Medicaid law for the benefit of the  
99 beneficiary with a disability under 42 U.S.C. Section  
100 1396p(d) (4) (C); or

101       b. Contain payback provisions complying with  
102 reimbursement requirements of Medicaid law under 42 U.S.C.  
103 Section 1396p(d) (4) (A);

104 (b) The provisions of subdivision (3) of subsection 4  
105 of this section shall not apply to the interests of the  
106 beneficiary with a disability; and

107 (c) Except as affected by any change to the interests  
108 of the beneficiary with a disability, the second trust, or  
109 if there are two or more second trusts, the second trusts in  
110 the aggregate, shall grant each other beneficiary of the  
111 first trust beneficial interests in the second trusts which  
112 are substantially similar to the beneficiary's beneficial  
113 interests in the first trust, unless such other  
114 beneficiary's interest is modified in accordance with the  
115 provisions of this section other than this subsection.

116 4. The following provisions apply to any exercise of  
117 the authority granted by subsection 1 of this section:

118 (1) If the exercise of the authority granted by  
119 subsection 1 of this section is limited by an ascertainable  
120 standard and the trustee exercising such authority is a  
121 permissible distributee of the first trust under such  
122 standard, then:

123 (a) The discretionary power under the trust instrument  
124 for the second trust to distribute income or principal to  
125 such trustee as a permissible distributee shall be subject  
126 to the same ascertainable standard as, or a more restrictive  
127 ascertainable standard than, such standard in the trust  
128 instrument for the first trust; and

129 (b) The trust instrument for the second trust shall  
130 not:

131 a. Modify a power of appointment granted to such  
132 trustee in the first trust; or

133 b. Grant a power of appointment to such trustee that  
134 did not exist in the first trust;

135           (2) An exercise of the authority granted by subsection  
136 1 of this section is subject to the following limitations:

137           (a) If the first trust contains property that  
138 qualified, or would have qualified but for provisions of  
139 this section other than this subdivision, for a marital  
140 deduction for purposes of the gift or estate tax under the  
141 Internal Revenue Code of 1986, as amended, the trust  
142 instrument for the second trust shall not include or omit  
143 any term that, if included in or omitted from the trust  
144 instrument for the second trust, would have prevented the  
145 transfer from qualifying for the deduction, or would have  
146 reduced the amount of the deduction, under the same  
147 provisions of the Internal Revenue Code under which the  
148 transfer qualified;

149           (b) If the first trust contains property that  
150 qualified, or would have qualified but for provisions of  
151 this section other than this subdivision, for a charitable  
152 deduction for purposes of the income, gift, or estate tax  
153 under the Internal Revenue Code of 1986, as amended, the  
154 trust instrument for the second trust shall not include or  
155 omit any term that, if included in or omitted from the trust  
156 instrument for the second trust, would have prevented the  
157 transfer from qualifying for the deduction, or would have  
158 reduced the amount of the deduction, under the same  
159 provisions of the Internal Revenue Code under which the  
160 transfer qualified;

161           (c) If the first trust contains property that  
162 qualified, or would have qualified but for provisions of  
163 this section other than this subdivision, for the exclusion  
164 from the gift tax described in Section 2503(b) of the  
165 Internal Revenue Code of 1986, as amended, the trust  
166 instrument for the second trust shall not include or omit a

167 term that, if included in or omitted from the trust  
168 instrument for the second trust, would have prevented the  
169 transfer from qualifying under Section 2503(b) of the  
170 Internal Revenue Code. If the first trust contains property  
171 that qualified, or would have qualified but for provisions  
172 of this section other than this subdivision, for the  
173 exclusion from the gift tax described in Section 2503(b) of  
174 the Internal Revenue Code, by application of Section 2503(c)  
175 of the Internal Revenue Code, the trust instrument for the  
176 second trust shall not include or omit a term that, if  
177 included or omitted from the trust instrument for the second  
178 trust, would have prevented the transfer from meeting the  
179 requirements of Section 2503(c) of the Internal Revenue Code;

180 (d) If the property of the first trust includes shares  
181 of stock in an S corporation, as defined in Section 1361 of  
182 the Internal Revenue Code of 1986, as amended, and the first  
183 trust is, or but for provisions of this section other than  
184 this subdivision would be, a permitted shareholder under any  
185 provision of Section 1361 of the Internal Revenue Code, the  
186 trustee of the first trust may exercise such authority with  
187 respect to part or all of the S corporation stock only if  
188 the second trust receiving the stock is a permitted  
189 shareholder under Section 1361(c)(2) of the Internal Revenue  
190 Code. If the property of the first trust includes shares of  
191 stock in an S corporation and the first trust is, or but for  
192 provisions of this section other than this subdivision would  
193 be, a qualified subchapter-S trust within the meaning of  
194 Section 1361(d) of the Internal Revenue Code, the trust  
195 instrument for the second trust shall not include or omit a  
196 term that prevents the second trust from qualifying as a  
197 qualified subchapter-S trust; and

198           (e) If the first trust contains property that  
199 qualified, or would have qualified but for provisions of  
200 this section other than this subdivision, for a zero  
201 inclusion ratio for purpose of the generation-skipping  
202 transfer tax under Section 2642(c) of the Internal Revenue  
203 Code of 1986, as amended, the trust instrument for the  
204 second trust shall not include or omit a term that, if  
205 included in or omitted from the first trust, would have  
206 prevented the transfer to the first trust from qualifying  
207 for a zero inclusion ratio under Section 2642(c) of the  
208 Internal Revenue Code;

209           (3) The exercise of such authority does not apply to  
210 trust property subject to a presently exercisable power of  
211 withdrawal held by a trust beneficiary to whom, or for the  
212 benefit of whom, the trustee has authority to make  
213 distributions, unless after the exercise of such authority,  
214 such beneficiary's power of withdrawal is unchanged with  
215 respect to the trust property; and

216           (4) A spendthrift clause or a provision in the trust  
217 instrument that prohibits amendment or revocation of the  
218 trust shall not preclude the trustee from exercising the  
219 authority granted by subsection 1 of this section.

220           5. At least sixty days prior to making a discretionary  
221 distribution under subsection 1 of this section, the trustee  
222 of the first trust shall notify the permissible distributees  
223 of the first trust and the permissible distributees of the  
224 second trust of the distribution. A beneficiary may waive  
225 the right to the notice required by this subsection and,  
226 with respect to future distributions, may withdraw a waiver  
227 previously given.

228           6. In exercising the authority granted by subsection 1  
229 of this section, the trustee shall remain subject to all

230 fiduciary duties otherwise imposed under the trust  
231 instrument and Missouri law.

232         7. This section does not impose on a trustee a duty to  
233 exercise the authority granted by subsection 1 of this  
234 section in favor of another trust or to consider exercising  
235 such authority in favor of another trust.

236         8. A second trust may have a duration that is the same  
237 as or different from the duration of the first trust.

238 However, to the extent that property of the second trust is  
239 attributable to property of the first trust, the property of  
240 the second trust is subject to any rules governing maximum  
241 perpetuity, accumulation, or suspension of the power of  
242 alienation which apply to property of the first trust. **The**  
243 **perpetuities period and any other time limitation on the**  
244 **vesting of an interest applicable to the first trust shall**  
245 **apply to property of the second trust as if the second trust**  
246 **had been created on the date the first trust was created.**

247 The provisions of this subsection shall not preclude the  
248 creation of a general power of appointment in the trust  
249 instrument for a second trust as authorized by subdivision  
250 (5) of subsection 2 of this section.

251         9. In the event the trust instrument for the second  
252 trust in part does not comply with this section but would  
253 otherwise be effective under this section, the exercise of  
254 the power is effective and the following rules apply with  
255 respect to the principal of the second trust attributable to  
256 the exercise of the power:

257             (1) A provision in the trust instrument for the second  
258 trust which is not permitted under this section is void to  
259 the extent necessary to comply with this section; and

260             (2) A provision required by this section to be in the  
261 trust instrument for the second trust which is not contained

262 in the trust instrument is deemed to be included in the  
263 trust instrument to the extent necessary to comply with this  
264 section.

265 10. This section is intended to codify and, from and  
266 after enactment, to provide certain limitations to the  
267 common law of this state, and this section applies to any  
268 trust governed by the laws of this state, including a trust  
269 whose principal place of administration is transferred to  
270 this state before or after the enactment of this section.

456.5-505. 1. Whether or not the terms of a trust  
2 contain a spendthrift provision, during the lifetime of the  
3 settlor, the property of a revocable trust is subject to  
4 claims of the settlor's creditors.

5 2. With respect to an irrevocable trust without a  
6 spendthrift provision, a creditor or assignee of the settlor  
7 may reach the maximum amount that can be distributed to or  
8 for the settlor's benefit. If a trust has more than one  
9 settlor, the amount the creditor or assignee of a particular  
10 settlor may reach may not exceed the settlor's interest in  
11 the portion of the trust attributable to that settlor's  
12 contribution.

13 3. With respect to an irrevocable trust with a  
14 spendthrift provision, a spendthrift provision will prevent  
15 the settlor's creditors from satisfying claims from the  
16 trust assets except:

17 (1) Where the conveyance of assets to the trust was  
18 fraudulent as to creditors pursuant to the provisions of  
19 chapter 428; or

20 (2) To the extent of the settlor's beneficial interest  
21 in the trust assets, if at the time the trust became  
22 irrevocable:

23           (a) The settlor was the sole beneficiary of either the  
24 income or principal of the trust or retained the power to  
25 amend the trust; or

26           (b) The settlor was one of a class of beneficiaries  
27 and retained a right to receive a specific portion of the  
28 income or principal of the trust that was determinable  
29 solely from the provisions of the trust instrument.

30           4. In the event that a trust meets the requirements  
31 set forth in subsection 3 of this section, a settlor's  
32 creditors may not reach the settlor's beneficial interest in  
33 that trust, regardless of:

34           (1) Any testamentary power of appointment that is  
35 exercisable by the settlor, by a will or other written  
36 instrument, in favor of any appointees other than the  
37 settlor, the settlor's estate, the settlor's creditors, or  
38 the creditors of the settlor's estate; or

39           (2) The settlor's power to veto distributions from the  
40 trust.

41           5. Any trustee who has a duty or power to pay the  
42 debts of a deceased settlor may publish a notice in a  
43 newspaper published in the county designated in subdivision  
44 (3) of this subsection once a week for four consecutive  
45 weeks in substantially the following form:

46                       To all persons interested in the  
47 estate of \_\_\_\_\_, decedent. The  
48 undersigned \_\_\_\_\_ is acting as Trustee  
49 under a trust the terms of which provide  
50 that the debts of the decedent may be paid  
51 by the Trustee(s) upon receipt of proper  
52 proof thereof. The address of the Trustee  
53 is \_\_\_\_\_.

54 All creditors of the decedent are  
55 noticed to present their claims to the  
56 undersigned within six (6) months from the  
57 date of the first publication of this  
58 notice or be forever barred.

59 \_\_\_\_\_ Trustee

60 (1) If such publication is duly made by the trustee,  
61 any debts not presented to the trustee within six months  
62 from the date of the first publication of the preceding  
63 notice shall be forever barred as against the trustee and  
64 the trust property.

65 (2) A trustee shall not be liable to account to the  
66 decedent's personal representative under the provisions of  
67 section 461.300 by reason of any debt barred under the  
68 provisions of this subsection.

69 (3) Such publication shall be in a newspaper published  
70 in:

71 (a) The county in which the domicile of the settlor at  
72 the time of his or her death is situated;

73 (b) If the settlor had no domicile in this state at  
74 the time of his or her death, any county wherein trust  
75 assets are located; except that, when the major part of the  
76 trust assets in this state consist of real estate, the  
77 notice shall be published in the county in which the real  
78 estate or the major part thereof is located; or

79 (c) If the settlor had no domicile in this state at  
80 the time of his or her death and no trust assets are located  
81 therein, the county wherein the principal place of  
82 administration of the trust is located.

83 (4) For purposes of this subsection, the term  
84 "domicile" means the place in which the settlor voluntarily

85 fixed his or her abode, not for a mere special or temporary  
86 purpose, but with a present intention of remaining there  
87 permanently or for an indefinite term.

88 6. For purposes of this section:

89 (1) During the period the power may be exercised, the  
90 holder of a power of withdrawal is treated in the same  
91 manner as the settlor of a revocable trust to the extent of  
92 the property subject to the power; and

93 (2) Upon the lapse, release, or waiver of the power,  
94 the holder is treated as the settlor of the trust only to  
95 the extent the value of the property affected by the lapse,  
96 release, or waiver exceeds the greater of the amount  
97 specified in Sections 2041(b)(2), 2514(e) or 2503(b) of the  
98 Internal Revenue Code.

99 7. For all purposes of sections 456.5-501 to 456.5-  
100 508, the settlor of any of the following trusts, known as  
101 the "first trust" in this subsection, shall not be treated  
102 as the settlor of any other trust, known as the "second  
103 trust" in this subsection, that is created pursuant to the  
104 exercise of a power of appointment over the first trust if  
105 the settlor is a beneficiary of the second trust:

106 (1) An irrevocable inter vivos trust for the benefit  
107 of the settlor's spouse that qualifies for the marital  
108 deduction from the federal gift tax under Section 2523(e) of  
109 the Internal Revenue Code;

110 (2) An irrevocable inter vivos trust for the benefit  
111 of the settlor's spouse that qualifies for the marital  
112 deduction from the federal gift tax under Section 2523(f) of  
113 the Internal Revenue Code;

114 (3) An irrevocable inter vivos trust for the benefit  
115 of the settlor's spouse, or the settlor's spouse and other  
116 beneficiaries, where the settlor's spouse is the beneficiary

117 who exercises the power of appointment to create the second  
118 trust; and

119 (4) An irrevocable inter vivos trust where any  
120 beneficiary exercises a general power of appointment to  
121 create the second trust.

122 8. This section shall not apply to a spendthrift trust  
123 described, defined, or established in section 456.014.

124 9. **An action by a creditor against a transfer to a**  
125 **Missouri qualified self-settled trust with a spendthrift**  
126 **provision shall be brought within two years from the date**  
127 **the transfer is made or within six months from the date the**  
128 **creditor discovers or reasonably should have discovered the**  
129 **transfer, whichever is later.**

456.8-808. 1. [While a trust is revocable, the  
2 trustee may follow a direction of the settlor that is  
3 contrary to the terms of the trust.] **As used in this**  
4 **section, the following terms mean:**

5 (1) "Custodial account", an account, established by a  
6 party with a bank as defined in 26 U.S.C. Section 408(n) or  
7 with another person approved by the Internal Revenue Service  
8 as satisfying the requirements to be a nonbank trustee or a  
9 nonbank passive trustee set forth in regulations promulgated  
10 by the United States Department of the Treasury under 26  
11 U.S.C. Section 408, that is governed by an instrument  
12 concerning the establishment or maintenance, or both, of an  
13 individual retirement account, qualified retirement plan,  
14 Archer medical savings account, health savings account,  
15 Coverdell education savings account, or any similar  
16 retirement or savings vehicle permitted under the Internal  
17 Revenue Code of 1986, as amended;

18 (2) "Custodial account owner", any party who:

19 (a) Establishes a custodial account;

20 (b) Has the power to designate the beneficiaries or  
21 appoint the custodian of the custodial account; or

22 (c) Is the party who possesses the power to direct the  
23 investment, disposition, or retention of any assets in the  
24 custodial account or name an authorized designee to affect  
25 the same;

26 (3) "Distribution trust advisor", a fiduciary, given  
27 authority by the instrument to exercise all or any portions  
28 of the powers and discretions set forth in subsection 16 of  
29 this section;

30 (4) "Excluded fiduciary", any fiduciary excluded from  
31 exercising certain powers under the instrument, which powers  
32 may be exercised by the grantor, custodial account owner,  
33 trust advisor, trust protector, trust committee, or other  
34 persons designated in the instrument;

35 (5) "Family advisor", any person:

36 (a) Whose appointment is provided for in the governing  
37 instrument or by court order;

38 (b) Who is authorized to consult with or advise a  
39 fiduciary regarding fiduciary or nonfiduciary matters and  
40 actions; and

41 (c) Who may also be authorized by the governing  
42 instrument or court order to otherwise act in a nonfiduciary  
43 capacity;

44 (6) "Fiduciary", a trustee or custodian under any  
45 instrument, an executor, administrator, or personal  
46 representative of a decedent's estate, or any other party,  
47 including a trust advisor, a trust protector, or a trust  
48 committee, who is acting in a fiduciary capacity for any  
49 person, trust, or estate;

50 (7) "Investment trust advisor", a fiduciary, given  
51 authority by the instrument to exercise all or any portions

52 of the powers and discretions set forth in subsection 15 of  
53 this section;

54 (8) "Tax trust advisor", a fiduciary, given authority  
55 by the instrument to exercise any tax power, including all  
56 or any powers and discretions set forth in subsection 18 of  
57 this section;

58 (9) "Trust advisor", an investment trust advisor, a  
59 distribution trust advisor, a tax trust advisor, or, in the  
60 case of a custodial account, a custodial account owner or  
61 the owner's designee;

62 (10) "Trust protector", any person whose appointment  
63 as protector is provided for in the instrument. Such person  
64 may not be considered to be acting in a fiduciary capacity  
65 except to the extent the governing instrument provides  
66 otherwise. However, a protector shall be considered acting  
67 in a fiduciary capacity to the extent that the person  
68 exercises the authority of an investment trust advisor, a  
69 distribution trust advisor, or a tax trust advisor.

70 2. A trust instrument may provide for one or more  
71 persons, not then serving as a trustee and not the settlor  
72 or a beneficiary, to be given any powers, **rights,**  
73 **privileges, benefits, immunities, or authorities** over the  
74 trust **that is available to a trustee under the laws of this**  
75 **state or under the trust instrument** as expressly granted in  
76 the trust instrument. Any such person may be identified and  
77 appointed as a trust protector or **[similar term] trust**  
78 **advisor**. Whenever a trust instrument names, appoints,  
79 authorizes, or otherwise designates a trust protector, the  
80 trust shall be deemed a directed trust.

81 3. A trust protector appointed in the trust instrument  
82 shall have only the powers granted to the trust protector by  
83 the express terms of the trust instrument, and a trust

84 protector is only authorized to act within the scope of the  
85 authority expressly granted in the trust instrument.

86 Without limiting the authority of the settlor to grant  
87 powers to a trust protector, the express powers that may be  
88 granted **and exercised, in the best interests of the trust,**  
89 **in the sole and absolute discretion of the trust protector,**  
90 **and are binding on all other persons** include[, but are not  
91 limited to,] the following:

92 (1) Remove and appoint a trustee [or a trust protector  
93 or name], **a fiduciary provided for in the trust instrument,**  
94 **trust advisor, investment committee member, or distribution**  
95 **committee member or appoint** a successor [trustee or] trust  
96 protector;

97 (2) Modify or amend the trust instrument to:

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

101 (b) **Take advantage of laws governing restraints on**  
102 **alienation, distribution of trust property, or the**  
103 **administration of the trust;**

104 (c) **Change the terms of any power of appointment**  
105 **granted by the trust, except a modification or amendment may**  
106 **not grant a beneficial interest to any individual or class**  
107 **of individuals not specifically provided for under the trust**  
108 **instrument;**

109 (d) Reflect legal changes that affect trust  
110 administration;

111 [(c)] (e) Correct errors or ambiguities that might  
112 otherwise require court construction; or

113 [(d)] (f) Correct a drafting error that defeats a  
114 grantor's intent;

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

117 (4) Terminate the trust [in favor of the beneficiary  
118 or beneficiaries of the trust];

119 (5) Change the applicable law governing the trust and  
120 the trust situs; [or]

121 (6) [Such] Veto or direct trust distributions;

122 (7) Interpret terms of the trust instrument at the  
123 request of the trustee;

124 (8) Advise the trustee on matters concerning a  
125 beneficiary; or

126 (9) Add to the trust:

127 (a) An individual beneficiary or beneficiaries from a  
128 class of individuals identified in the governing instrument;

129 or

130 (b) A charitable beneficiary or beneficiaries from a  
131 class of charities identified in the trust instrument;

132 (10) Provide other powers and discretions as are  
133 expressly granted to the trust protector in the trust  
134 instrument.

135 Any of the powers enumerated in this subsection, as they  
136 exist at the time of the signing of a will or trust  
137 instrument, may be, by appropriate reference made thereto,  
138 incorporated in whole or in part in such will or trust  
139 instrument, by a clearly expressed intention of a testator  
140 of a will or trustee of a trust instrument.

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

144 (1) Remove a requirement from a trust created to meet  
145 the requirements of 42 U.S.C. Section 1396p(d)(4) to pay

146 back a governmental entity for benefits provided to the  
147 permissible beneficiary of the trust at the death of that  
148 beneficiary; or

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

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

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

159 (c) A grantor retained annuity trust under Section  
160 2702 of the Internal Revenue Code, during any period in  
161 which the settlor is a beneficiary; or

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

165 5. Except to the extent otherwise provided in a trust  
166 instrument specifically referring to this subsection, the  
167 trust protector shall not exercise a power in a way that  
168 would result in a taxable gift for federal gift tax purposes  
169 or cause the inclusion of any assets of the trust in the  
170 trust protector's gross estate for federal estate tax  
171 purposes.

172 6. Except to the extent otherwise provided in the  
173 trust instrument and in subsection 7 of this section, and  
174 notwithstanding any provision of sections 456.1-101 to  
175 456.11-1106 to the contrary:

176 (1) A trust protector shall act in a fiduciary  
177 capacity in carrying out the powers granted to the trust

178 protector in the trust instrument, and shall have such  
179 duties to the beneficiaries, the settlor, or the trust as  
180 set forth in the trust instrument, provided that the trust  
181 instrument may provide that the trust protector shall act in  
182 a nonfiduciary capacity. A trust protector is not a  
183 trustee, and is not liable or accountable as a trustee when  
184 performing or declining to perform the express powers given  
185 to the trust protector in the trust instrument. A trust  
186 protector is not liable for the acts or omissions of any  
187 fiduciary or beneficiary under the trust instrument;

188 (2) A trust protector is exonerated from any and all  
189 liability for the trust protector's acts or omissions, or  
190 arising from any exercise or nonexercise of the powers  
191 expressly conferred on the trust protector in the trust  
192 instrument, unless it is established by a preponderance of  
193 the evidence that the acts or omissions of the trust  
194 protector were done or omitted in breach of the trust  
195 protector's duty, in bad faith or with reckless indifference;

196 (3) A trust protector is authorized to exercise the  
197 express powers granted in the trust instrument at any time  
198 and from time to time after the trust protector acquires  
199 knowledge of their appointment as trust protector and of the  
200 powers granted. The trust protector may take any action,  
201 judicial or otherwise, necessary to carry out the duties  
202 given to the trust protector in the trust instrument;

203 (4) A trust protector is entitled to receive, from the  
204 assets of the trust for which the trust protector is acting,  
205 reasonable compensation, and reimbursement of the reasonable  
206 costs and expenses incurred, in determining whether to carry  
207 out, and in carrying out, the express powers given to the  
208 trust protector in the trust instrument;

209 (5) A trust protector is entitled to receive, from the  
210 assets of the trust for which the trust protector is acting,  
211 reimbursement of the reasonable costs and expenses,  
212 including attorney's fees, of defending any claim made  
213 against the trust protector arising from the acts or  
214 omissions of the trust protector acting in that capacity  
215 unless it is established by clear and convincing evidence  
216 that the trust protector was acting in bad faith or with  
217 reckless indifference; and

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

221 7. If a trust protector is granted a power in the  
222 trust instrument to direct, consent to, or disapprove a  
223 trustee's actual or proposed investment decision,  
224 distribution decision, or other decision of the trustee  
225 required to be performed under applicable trust law in  
226 carrying out the duties of the trustee in administering the  
227 trust, then only with respect to such power, excluding the  
228 powers identified in subsection 3 of this section,] The  
229 trust protector **or trust advisor** shall have [the same duties  
230 and liabilities] **no greater liability to any person than** as  
231 if serving as a trustee **holding or benefitting from the**  
232 **rights, powers, privileges, benefits, immunities, or**  
233 **authority provided or allowed** under the trust instrument **to**  
234 **such trust advisor or trust protector** unless the trust  
235 instrument expressly provides otherwise. [In carrying out  
236 any written directions given to the trustee by the trust  
237 protector concerning actual or proposed investment  
238 decisions, the trustee shall not be subject to the  
239 provisions of sections 469.900 to 469.913. For purposes of  
240 this subsection, "investment decisions" means, with respect

241 to any investment, decisions to retain, purchase, sell,  
242 exchange, tender, or otherwise engage in transactions  
243 affecting the ownership of investments or rights therein  
244 and, with respect to nonpublicly traded investments, the  
245 valuation thereof.

246 8. Any trustee of a directed trust shall not be  
247 accountable under the law or equity for any act or omission  
248 of a trust protector and shall stand absolved from liability  
249 for executing the decisions or instructions from a trust  
250 protector or for monitoring the actions or inactions of a  
251 trust protector. A trustee shall take reasonable steps to  
252 facilitate the activity of a trust protector in a directed  
253 trust. A trustee shall carry out the written directions  
254 given to the trustee by a trust protector acting within the  
255 scope of the powers expressly granted to the trust protector  
256 in the trust instrument. Except as otherwise provided in  
257 the trust instrument, the trustee shall not be liable for  
258 any loss resulting directly or indirectly from any act taken  
259 or omitted as a result of the written direction of the trust  
260 protector or the failure of the trust protector to provide  
261 consent. Except as otherwise provided in the trust  
262 instrument, the trustee shall have no duty to monitor the  
263 conduct of the trust protector, provide advice to or consult  
264 with the trust protector, or communicate with or warn or  
265 apprise any beneficiary concerning instances in which the  
266 trustee would or might have exercised the trustee's own  
267 discretion in a manner different from the manner directed by  
268 the trust protector. Except as otherwise provided in the  
269 trust instrument, any actions taken by the trustee at the  
270 trust protector's direction shall be deemed to be  
271 administrative actions taken by the trustee solely to allow  
272 the trustee to carry out the instructions of the trust

273 protector and shall not be deemed to constitute an act by  
274 the trustee to monitor the trust protector or otherwise  
275 participate in actions within the scope of the trust  
276 protector's authority. Whenever a directed trust reserves  
277 to a person or vests in an advisory or investment committee  
278 authority to direct the making or retention of any  
279 investment, to the exclusion of the trustee or trustees, the  
280 excluded trustee or trustees shall not be liable,  
281 individually or as a trustee, for any loss resulting from  
282 the making or retention of any investment pursuant to such  
283 direction.

284       9. Except to the extent otherwise expressly provided  
285 in the trust instrument, the trust protector shall be  
286 entitled to receive information regarding the administration  
287 of the trust as follows:

288       (1) Upon the request of the trust protector, unless  
289 unreasonable under the circumstances, the trustee shall  
290 promptly provide to the trust protector any and all  
291 information related to the trust that may relate to the  
292 exercise or nonexercise of a power expressly granted to the  
293 trust protector in the trust instrument. The trustee has no  
294 obligation to provide any information to the trust protector  
295 except to the extent a trust protector requests information  
296 under this section;

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

301       (3) If the trustee is bound by any confidentiality  
302 restrictions with respect to an asset of a trust, a trust  
303 protector who requests information under this section about  
304 such asset shall agree to be bound by the confidentiality

305 restrictions that bind the trustee before receiving such  
306 information from the trustee.

307 10. A trust protector may resign by giving thirty  
308 days' written notice to the trustee and any successor trust  
309 protector. A successor trust protector, if any, shall have  
310 all the powers expressly granted in the trust instrument to  
311 the resigning trust protector unless such powers are  
312 expressly modified for the successor trust protector.

313 11.] 5. A trust protector **or trust advisor, by**  
314 **accepting appointment to serve as a trust protector or trust**  
315 **advisor**, of a trust having its principal place of  
316 administration in this state submits personally to the  
317 jurisdiction of the courts of this state during any period  
318 that the principal place of administration of the trust is  
319 located in this state and the trust protector is serving in  
320 such capacity, **regardless of whether the investment advisory**  
321 **agreements or other related agreements provide otherwise.**  
322 The trust instrument may also provide that a trust protector  
323 **or trust advisor** is subject to the personal jurisdiction of  
324 the courts of this state as a condition of appointment. **The**  
325 **trust protector or trust advisor may be made a party to any**  
326 **action or proceeding if issues relate to a decision or**  
327 **action of the trust protector or trust advisor.**

328 6. Except as otherwise provided in the trust  
329 instrument, an excluded fiduciary shall not be liable,  
330 either individually or as a fiduciary, for any loss  
331 resulting from:

332 (1) Any act taken or omitted as a result of the  
333 written direction of the trust protector or trust advisor  
334 appointed under the instrument, including any loss from the  
335 trust advisor breaching fiduciary responsibilities or  
336 acting beyond the trust advisor's scope of authority;

337           (2) A failure to take any action proposed by an  
338 excluded fiduciary, which requires prior authorization of  
339 the trust advisor, if that excluded fiduciary timely sought  
340 but failed to obtain the authorization;

341           (3) Any action or inaction, except for gross  
342 negligence or willful misconduct, when an excluded fiduciary  
343 is required, pursuant to the trust instrument or any other  
344 reason, to assume the role of trust protector or trust  
345 advisor;

346           (4) Reliance upon any trust advisor for valuation of  
347 trust assets;

348           (5) Any tax filing made or tax position taken based on  
349 the recommendations or instructions received from the tax  
350 trust advisor or from a tax preparer or professional used by  
351 the excluded fiduciary at the direction of the grantor, the  
352 tax trust advisor, or another trust fiduciary.

353           7. Any excluded fiduciary shall be relieved from any:

354           (1) Obligation to:

355           (a) Independently value trust assets;

356           (b) Review or evaluate any direction from a  
357 distribution trust advisor;

358           (c) Perform investment or suitability reviews,  
359 inquiries, or investigations; or

360           (d) Make recommendations or evaluations with respect  
361 to any investments to the extent the trust advisor had  
362 authority to direct the acquisition, disposition, or  
363 retention of the investment; and

364           (2) Duty to communicate with or warn or apprise any  
365 beneficiary or third-party concerning instances in which the  
366 excluded fiduciary would or might have exercised the  
367 excluded fiduciary's own discretion in a manner different

368 from the manner directed by the trust advisor or trust  
369 protector.

370 8. (1) If the excluded fiduciary offers such  
371 communication to the trust advisor, trust protector, or any  
372 investment person selected by the investment trust advisor,  
373 such action does not constitute an undertaking by the  
374 excluded fiduciary to monitor or otherwise participate in  
375 actions within the scope of the advisor's authority or to  
376 constitute any duty to do so.

377 (2) Absent contrary provisions in the trust  
378 instrument, the actions of the excluded fiduciary, including  
379 any communications with the trust advisor and others and  
380 carrying out, recording, and reporting actions taken at the  
381 trust advisor's direction, pertaining to matters within the  
382 scope of authority of the trust advisor or trust protector  
383 constitute administrative actions taken by the excluded  
384 fiduciary solely to allow the excluded fiduciary to perform  
385 those duties assigned to the excluded fiduciary under the  
386 governing instrument, and such administrative actions do not  
387 constitute an undertaking by the excluded fiduciary to  
388 monitor, participate, or otherwise take any fiduciary  
389 responsibility for actions within the scope of authority of  
390 the trust protector or trust advisor.

391 9. Nothing in subdivision (2) of subsection 6 of this  
392 section imposes an obligation or liability with respect to a  
393 custodian of a custodial account.

394 10. In an action against an excluded fiduciary  
395 pursuant to the provisions of this section, the burden to  
396 prove the matter by clear and convincing evidence is on the  
397 person seeking to hold the excluded fiduciary liable.

398           11. An excluded fiduciary may continue to follow the  
399 direction of the trust advisor upon the incapacity or death  
400 of the grantor if the instrument so allows.

401           12. If one or more trust advisors and tax trust  
402 advisors are given authority by the terms of a trust  
403 instrument to direct, consent to, or disapprove a  
404 fiduciary's investment, distribution, or tax decisions, or  
405 proposed investment, distribution, or tax decisions, such  
406 trust advisors and tax trust advisors are considered to be  
407 fiduciaries when exercising such authority.

408           13. (1) For investment decisions, so long as there is  
409 at least one fiduciary exercising the authority of the  
410 investment trust advisor pursuant to subsection 15 of this  
411 section for the investment, except in the case of gross  
412 negligence or willful misconduct by the fiduciary investment  
413 advisor in the selection or monitoring of the nonfiduciary  
414 trust advisors, the trust instrument may provide that such  
415 other trust advisors acting pursuant to this section are not  
416 acting in a fiduciary capacity.

417           (2) For distribution decisions, so long as there is at  
418 least one fiduciary exercising the authority of the  
419 distribution trust advisor pursuant to subsection 16 of this  
420 section for the distribution, except in the case of gross  
421 negligence or willful misconduct by the fiduciary  
422 distribution advisor in the selection or monitoring of the  
423 nonfiduciary trust advisors, the trust instrument may  
424 provide that the other trust advisors acting pursuant to  
425 this section are not acting in a fiduciary capacity.

426           (3) For tax decisions, so long as there is at least  
427 one fiduciary exercising the authority of the tax trust  
428 advisor pursuant to subsection 18 of this section for the  
429 tax decision, except in the case of gross negligence or

430 willful misconduct by the fiduciary tax trust advisor in the  
431 selection or monitoring of the nonfiduciary tax trust  
432 advisors, the trust instrument may provide that such other  
433 tax trust advisors acting pursuant to this section are not  
434 acting in a fiduciary capacity.

435         14. A trust instrument governed by the laws of this  
436 state may provide for a person to act as an investment trust  
437 advisor, a distribution trust advisor, or a tax trust  
438 advisor, respectively, with regard to investment decisions,  
439 distribution decisions, or tax decisions, respectively.  
440 Unless otherwise provided or restricted by the terms of the  
441 trust instrument, any person may simultaneously serve as a  
442 trust advisor and a trust protector.

443         15. The powers and discretions of an investment trust  
444 advisor shall be as provided in the trust instrument and may  
445 be exercised in the best interests of the trust, in the sole  
446 and absolute discretion of the investment trust advisor, and  
447 are binding on any other person and any other interested  
448 party, fiduciary, and excluded fiduciary. In addition to  
449 the powers and discretions granted to the investment trust  
450 advisor in the trust instrument, the investment trust  
451 advisor may also exercise any of the following powers and  
452 discretions to the extent such exercise is not prohibited  
453 under the terms of the trust instrument:

454             (1) Direct the trustee with respect to the retention,  
455 purchase, sale, exchange, tender, or other transaction  
456 affecting the ownership thereof or rights therein of trust  
457 investments. These powers include the pledge or encumbrance  
458 of trust property, lending of trust assets, either secured  
459 or unsecured, at terms defined by the investment trust  
460 advisor to any party including beneficiaries of the trust

461 and the investment and reinvestment of principal and income  
462 of the trust;

463 (2) Vote proxies for securities held in trust;

464 (3) Select one or more investment advisers, managers,  
465 or counselors, including the trustee, and delegate to them  
466 any of its powers;

467 (4) Direct the trustee with respect to any additional  
468 powers and discretions over investment and management of  
469 trust assets provided in the trust instrument;

470 (5) Direct the trustee as to the value of nonpublicly  
471 traded trust investments; and

472 (6) Direct the trustee as to any investment or  
473 management power referenced in this chapter.

474 16. The powers and discretions of a distribution trust  
475 advisor over any discretionary distributions of income or  
476 principal, including distributions pursuant to an  
477 ascertainable standard or other criteria and appointments  
478 pursuant to section 456.4-419, shall be provided in the  
479 trust instrument and may be exercised or not exercised, in  
480 the best interests of the trust, in the sole and absolute  
481 discretion of the distribution trust advisor, and are  
482 binding on any other person and any other interested party,  
483 fiduciary, and excluded fiduciary. Unless the terms of the  
484 trust instrument provide otherwise, then, in addition to the  
485 powers and discretions granted to the distribution trust  
486 advisor in the trust instrument, the distribution trust  
487 advisor shall direct the trustee with regard to all  
488 discretionary distributions to beneficiaries, may direct  
489 appointments pursuant to section 456.4-419.

490 17. (1) The powers and discretions of a family  
491 advisor are as provided in the trust instrument or by court  
492 order and may be exercised, in the best interests of the

493 trust, and in the sole and absolute discretion of the family  
494 advisor. The powers and discretions shall only include the  
495 following:

496 (a) Remove and appoint a trustee, a fiduciary provided  
497 for in the governing trust instrument, trust advisor,  
498 investment committee member, or distribution committee  
499 member;

500 (b) Appoint a trust protector, or a family advisor;

501 (c) Advise the trustee on matters concerning any  
502 beneficiary; receive trust accountings, investment reports,  
503 and other information from the trustee or to which a  
504 beneficiary is entitled; attend meetings whether in person  
505 or by any other means with the trustee, investment trust  
506 advisors, distribution trust advisors, or other advisors  
507 whether in person or by any means, electronic or otherwise;  
508 and to consult with a fiduciary regarding both fiduciary and  
509 nonfiduciary matters or actions, all without any power or  
510 discretion to take any action as a fiduciary; or

511 (d) Provide direction regarding notification of  
512 qualified beneficiaries under this chapter.

513 (2) A family advisor is not required to exercise any  
514 powers or discretions under any circumstances. Every action  
515 or inaction by a family advisor is a nonfiduciary action or  
516 inaction and a family advisor is absolutely excluded from  
517 liability to any other person for an action or inaction as a  
518 family advisor. A court may review a family advisor's  
519 exercise of the powers described in paragraphs (a), (b), and  
520 (d) of subdivision (1) of this subsection only if the family  
521 advisor acts dishonestly or with an improper motive but may  
522 not review a family advisor's failure to exercise any  
523 powers. A reasonableness standard may not be applied to any  
524 action or inaction of a family advisor. Except as provided

525 in this subdivision, a court has no jurisdiction to review a  
526 family advisor's action or inaction.

527 (3) A family advisor is entitled to compensation as  
528 provided in the trust instrument. If the trust instrument  
529 does not provide for or establish compensation, a family  
530 advisor is entitled to reasonable compensation for the  
531 exercise of the powers and discretions granted to the family  
532 advisor pursuant to this chapter.

533 18. The powers and discretions of a tax trust advisor  
534 shall be as provided in the trust instrument and may be  
535 exercised, in the best interests of the trust, in the sole  
536 and absolute discretion of the tax trust advisor, and are  
537 binding on any other person and any other interested party,  
538 fiduciary, and excluded fiduciary. In addition to the  
539 powers and discretions granted to the tax trust advisor in  
540 the trust instrument, the tax trust advisor may also  
541 exercise any of the following powers and discretions to the  
542 extent the exercise is not prohibited under the terms of  
543 such instrument:

544 (1) Direct the trustee with respect to tax matters  
545 related to the trust, including tax elections, tax returns  
546 to be filed, positions to be taken on tax returns, tax  
547 payments to be made, and the anticipated tax impact to the  
548 trust or a beneficiary of any transaction involving the  
549 trust, including:

550 (a) The retention, purchase, sale, exchange, or tender  
551 of any asset of the trust;

552 (b) Any contribution to or distribution from:

553 a. The trust; or

554 b. An entity owned by the trust;

555 (2) Direct the trustee:

556           (a) To rely on any tax information received from the  
557 settlor, the settlor's agents, a tax trust advisor, or other  
558 individuals regarding matters that have tax implications to  
559 the trust or trust beneficiaries;

560           (b) To sign and file tax returns;

561           (c) With respect to any additional powers and  
562 discretions over tax-related matters provided in the  
563 governing instrument; or

564           (d) As to any tax-related powers referenced in this  
565 chapter; and

566           (3) Select one or more tax advisors to prepare tax  
567 returns or other related filings.

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