

Enrolled
House Bill 2598

Sponsored by Representative FAHEY; Representative KENY-GUYER (Presession filed.)

CHAPTER

AN ACT

Relating to noncharitable trusts with business purposes; creating new provisions; and amending ORS 105.965, 130.040, 130.045 and 130.155.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS chapter 130.

SECTION 2. (1) A **stewardship trust** may be created under this section for a business purpose without a definite or definitely ascertainable beneficiary. The business purpose may seek economic and noneconomic benefits.

(2) A **stewardship trust** may hold an ownership interest of any corporation, partnership, limited partnership, cooperative, limited liability company, limited liability partnership or joint venture.

(3) A **stewardship trust** may be enforced by one or more trust enforcers appointed in the terms of the trust, and the terms of the trust may provide a process for appointing successor trust enforcers. If at any time no person is acting as trust enforcer, the court shall name one or more trust enforcers. Each trust enforcer shall enforce the purpose and the terms of the trust and shall exercise authority as a fiduciary. If more than one person is acting as a trust enforcer, action may be taken by a majority of the persons acting as trust enforcers. A trust enforcer is not a beneficiary of a trust created pursuant to this section, but a trust enforcer has the rights of a qualified beneficiary.

(4) A **stewardship trust** must have a trust stewardship committee with at least three persons as members. Each member of the trust stewardship committee shall exercise authority as a fiduciary. The terms of the trust may appoint the initial members of the trust stewardship committee and may provide a process for appointing successor members. A vacancy on the trust stewardship committee must be filled if the trust stewardship committee has fewer than three members.

(5) A vacancy on the trust stewardship committee that is required to be filled must be filled in the following order of priority:

(a) By a person designated in the terms of the trust or selected through a process provided in the terms of the trust;

(b) By a person appointed by unanimous agreement of the trust enforcers; or

(c) By a person appointed by the court.

(6) Unless the terms of the trust provide otherwise and except as provided in subsections (7)(d) and (11) of this section, the trust stewardship committee may take action by a majority vote of its members.

(7) Unless the terms of the trust provide otherwise, the trust stewardship committee has the power, in carrying out the purposes of the trust and after notice to the trust enforcers, to:

- (a) Remove a trustee, with or without cause;
- (b) Appoint one or more successor trustees or co-trustees;
- (c) Remove a trust enforcer, with or without cause;
- (d) Remove a member of the stewardship committee, by unanimous vote of all other members of the trust stewardship committee;
- (e) Direct distributions from the trust; and
- (f) Exercise all rights belonging to the trustee, including the right to vote stock owned by the trust.

(8) Unless the trust agreement provides otherwise, a member of the trust stewardship committee or a trust enforcer may resign:

- (a) After at least 30 days' notice to the trustee, all trust enforcers and all members of the trust stewardship committee; or
- (b) At any time with the approval of a court.

(9) The trust stewardship committee must send a report to the trustee and to the trust enforcers at least annually showing receipts and disbursements and listing trust property and liabilities. The trust stewardship committee shall keep the trustee and the trust enforcers reasonably informed about the administration of the trust and of the material facts necessary for the trustee to comply with the trustee's duties under ORS 130.710 and for the trust enforcers to protect the purposes of the trust.

(10) A trustee of a stewardship trust shall act in accordance with a direction from the trust stewardship committee unless the action is manifestly contrary to the terms of the trust or the trustee knows that the action would constitute a serious breach of a fiduciary duty that the trust stewardship committee, the trust enforcer or the trustee owes to the trust. A trustee is liable only for willful misconduct and is not liable for reliance on documents provided by the trust stewardship committee or the trust enforcer.

(11) Unless the terms of the trust provide otherwise, the trust stewardship committee and the trust enforcers, acting together, may modify or terminate a stewardship trust by unanimous agreement of the members of the trust stewardship committee and unanimous agreement of the trust enforcers.

(12) Upon termination of a stewardship trust, the trustee shall distribute all remaining trust property as the terms of the trust provide, or if the terms of the trust do not provide for complete distribution of the property, as a court determines to be consistent with the purposes for which the trust was created.

(13) A person serving as a trustee may not serve as a trust enforcer or as a member of the trust stewardship committee, and a person serving as a trust enforcer may not serve as a member of the trust stewardship committee.

(14) A stewardship trust may be enforced for more than 90 years if the terms of the trust provide that the trust will be enforceable for a specific period not less than 90 years or in perpetuity.

(15) This section does not apply to trusts created pursuant to ORS 60.254.

SECTION 3. ORS 130.040 is amended to read:

130.040. (1) A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this chapter if the charitable organization is otherwise a qualified beneficiary as defined in ORS 130.010.

(2) A person appointed to enforce a trust created for the care of an animal or another non-charitable purpose as provided in ORS 130.185 or 130.190 has the rights of a qualified beneficiary under this chapter.

(3) A person appointed as a trust enforcer of a stewardship trust as provided in section 2 of this 2019 Act has the rights of a qualified beneficiary under this chapter.

[3] (4) The Attorney General has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in Oregon.

SECTION 4. ORS 130.045 is amended to read:

130.045. (1) For purposes of this section, "interested persons" means:

- (a) Any settlor of a trust who is living;
- (b) All qualified beneficiaries;
- (c) Any acting trustee of the trust; [and]
- (d) The Attorney General if the trust is a charitable trust; **and**
- (e) All members of a trust stewardship committee acting pursuant to section 2 of this 2019 Act.**

(2) If the trust or a portion of the trust is a charitable trust and is irrevocable, and the settlor retains a power to change the beneficiaries of the charitable trust during the settlor's lifetime or upon the settlor's death, the Attorney General shall be substituted as the sole interested person to represent all charitable trust beneficiaries whose beneficial interests are subject to the settlor's retained power.

(3)(a) Except as otherwise provided in subsection (4) of this section, interested persons may enter into a nonjudicial settlement agreement with respect to any matter involving a trust.

(b) If the agreement is not filed with the court under subsection (6) of this section, the agreement is binding on all parties to the agreement.

(c) If the agreement is filed with the court, the agreement is binding as provided in subsections (6) and (7) of this section unless, after the filing of objections and a hearing, the court does not approve the agreement. If the court does not approve the agreement, the agreement is not binding on any beneficiary or party to the agreement.

(4) A nonjudicial settlement agreement is valid only to the extent the agreement does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under this chapter or other applicable law.

(5) Matters that may be resolved by a nonjudicial settlement agreement include:

- (a) The interpretation or construction of the terms of the trust or other writings that affect the trust.
- (b) The approval of a trustee's report or accounting.
- (c) Direction to a trustee to refrain from performing a particular act or the grant to a trustee of any necessary or desirable power.
- (d) The resignation or appointment of a trustee or cotrustee and the determination of a trustee's compensation.
- (e) Transfer of a trust's principal place of administration.
- (f) Liability of a trustee for an action or failure to act relating to the trust.
- (g) Determining classes of creditors, beneficiaries, heirs, next of kin or other persons.
- (h) Resolving disputes arising out of the administration or distribution of the trust.
- (i) Modifying the terms of the trust, including extending or reducing the period during which the trust operates.

(6)(a) Any interested person may file a settlement agreement entered into under this section, or a memorandum summarizing the provisions of the agreement, with the circuit court for any county where trust assets are located or where the trustee administers the trust.

(b) After collecting the fee provided for in subsection (8) of this section, the clerk shall enter the agreement or memorandum of record in the court's register.

(c) Within five days after the filing of an agreement or memorandum under this subsection, the person making the filing must serve a notice of the filing and a copy of the agreement or memorandum on each beneficiary of the trust whose address is known at the time of the filing and who is not a party to the agreement. Service may be made personally, or by registered or certified mail, return receipt requested. The notice of filing shall be substantially in the following form:

CAPTION NOTICE OF FILING OF
OF CASE SETTLEMENT AGREEMENT
 OR MEMORANDUM OF
 SETTLEMENT AGREEMENT

You are hereby notified that the attached document was filed by the undersigned in the above entitled court on the _____ day of _____, _____. Unless you file objections to the agreement within 60 days after that date, the agreement will be approved and will be binding on all beneficiaries and parties to the agreement.

If you file objections within the 60-day period, the court will fix a time and place for a hearing. At least 10 days before the date of that hearing, you must serve a copy of your objections and give notice of the time and place of the hearing to all beneficiaries and parties to the agreement. See ORS 130.045.

Signature

(d) Proof of mailing of the notices required under this subsection must be filed with the court. Proof of service may be made by a certificate of service in the form provided by ORCP 7 F, by a signed acceptance of service or by a return receipt from the postal authorities.

(e) If no objections are filed with the court within 60 days after the filing of the agreement or memorandum, the agreement is effective and binding on all beneficiaries who received notice under paragraph (c) of this subsection and all beneficiaries who waived notice under subsection (7)(e) of this section.

(7)(a) If objections are filed with the court within 60 days after the filing of a settlement agreement or memorandum under this section, the clerk of the court shall collect the fee provided in subsection (8) of this section. Upon the filing of objections, the court shall fix a time and place for a hearing. The person filing the objections must serve a copy of the objections on all beneficiaries who are parties to the agreement and all beneficiaries who received notice under subsection (6)(c) of this section, and give notice to those persons of the time and place fixed by the court for a hearing. Service must be made at least 10 days before the date set by the court for the hearing. Service of the objections may be made personally or by registered or certified mail, return receipt requested.

(b) Proof of mailing of objections must be filed with the court. Proof of service may be made by a certificate of service in the form provided by ORCP 7 F, by a signed acceptance of service or by a return receipt from the postal authorities.

(c) The court shall approve an agreement entered into under this section after a hearing upon objections filed under this subsection unless:

(A) The agreement does not reflect the signatures of all persons required by this section;

(B) The agreement is not authorized by this section; or

(C) Approval of the agreement would not be equitable to beneficiaries who are not interested persons and who are not parties to the agreement.

(d) An agreement approved by the court after a hearing is binding on all beneficiaries and parties to the agreement.

(e) Beneficiaries entitled to notice under subsection (6)(c) of this section may waive the notice.

(8) The clerk of the circuit court shall collect in advance the filing fees established under ORS 21.135 for the filing of an agreement or memorandum of agreement under subsection (6) of this section and for the filing of objections under subsection (7) of this section.

SECTION 5. ORS 130.155 is amended to read:

130.155. (1) A trust is created only if all of the following requirements are met:

(a) The settlor has capacity to create a trust.

(b) The settlor indicates an intention to create the trust.

(c) The trust has a definite beneficiary or is:

(A) A charitable trust;

(B) A trust for the care of an animal, as provided in ORS 130.185; [or]

(C) A trust for a noncharitable purpose, as provided in ORS 130.190; or

(D) A stewardship trust, as provided in section 2 of this 2019 Act.

(d) The trustee has duties to perform.

(e) The same person is not the sole trustee and sole beneficiary.

(2) A beneficiary is definite for the purposes of subsection (1)(c) of this section if the beneficiary can be ascertained when the trust is created or at any time thereafter, subject to any applicable rule against perpetuities.

(3) A power of a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

SECTION 6. ORS 105.965 is amended to read:

105.965. ORS 105.950, statutory rule against perpetuities, does not apply to:

(1) A nonvested property interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of:

(a) A premarital or postmarital agreement;

(b) A separation or divorce settlement;

(c) A spouse's election;

(d) A similar arrangement arising out of a prospective existing or previous marital relationship between the parties;

(e) A contract to make or not to revoke a will or trust;

(f) A contract to exercise or not to exercise a power of appointment;

(g) A transfer in satisfaction of a duty of support; or

(h) A reciprocal transfer;

(2) A fiduciary's power relating to the administration or management of assets, including the power of a fiduciary to sell, lease or mortgage property, and the power of a fiduciary to determine principal and income;

(3) A power to appoint a fiduciary;

(4) A discretionary power of a trustee to distribute principal before termination of a trust to a beneficiary having an indefeasibly vested interest in the income and principal;

(5) A nonvested property interest held by a charity, government or governmental agency or subdivision, if the nonvested property interest is preceded by an interest held by another charity, government or governmental agency or subdivision;

(6) A nonvested property interest in or a power of appointment with respect to a trust or other property arrangement forming part of a pension, profit sharing, stock bonus, health, disability, death benefit, income deferral or other current or deferred benefit plan for one or more employees, independent contractors or their beneficiaries or spouses, to which contributions are made for the purpose of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income or principal in the trust or other property arrangement, except a nonvested property interest or a power of appointment that is created by an election of a participant or a beneficiary or spouse; [or]

(7) A property interest, power of appointment or arrangement that was not subject to the common-law rule against perpetuities or is excluded by another statute of this state; or

(8) A stewardship trust created pursuant to section 2 of this 2019 Act if the terms of the trust clearly elect that the statutory rule against perpetuities not apply to the trust and include a reference to this subsection.

Passed by House April 18, 2019

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 16, 2019

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2019

Approved:

.....M,....., 2019

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2019

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Bev Clarno, Secretary of State