

SECOND REGULAR SESSION

HOUSE BILL NO. 1184

93RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES STEVENSON (Sponsor) AND RUESTMAN (Co-sponsor).

Pre-filed December 22, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

3706L.01I

AN ACT

To repeal sections 404.051, 404.550, 404.714, 456.1-103, 456.1-105, 456.1-110, 456.1-112, 456.2-204, 456.3-301, 456.3-304, 456.4-401, 456.4-402, 456.4-411A, 456.4-411B, 456.5-501, 456.5-504, 456.5-506, 456.7-703, 456.8-813, 456.8-814, 456.8-816, 473.333, 473.787, 475.092, 475.130, and 475.190, RSMo, and to enact in lieu thereof twenty-seven new sections relating to the Missouri uniform trust code.

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

Section A. Sections 404.051, 404.550, 404.714, 456.1-103, 456.1-105, 456.1-110, 456.1-112, 456.2-204, 456.3-301, 456.3-304, 456.4-401, 456.4-402, 456.4-411A, 456.4-411B, 456.5-501, 456.5-504, 456.5-506, 456.7-703, 456.8-813, 456.8-814, 456.8-816, 473.333, 473.787, 475.092, 475.130, and 475.190, RSMo, are repealed and twenty-seven new sections enacted in lieu thereof, to be known as sections 404.051, 404.550, 404.714, 456.1-103, 456.1-105, 456.1-110, 456.1-112, 456.2-204, 456.3-301, 456.3-304, 456.4-401, 456.4-402, 456.4-411A, 456.4-411B, 456.5-501, 456.5-504, 456.5-506, 456.7-703, 456.8-813, 456.8-814, 456.8-816, 469.600, 473.333, 473.787, 475.092, 475.130, and 475.190, to read as follows:

404.051. 1. The custodian shall collect, hold, maintain, manage, invest and reinvest the custodial property. The custodian may accept a transfer of additional property for the same minor into the custodianship and may consolidate into a single custodianship custodial property received for the same minor from multiple transfers or transferors.

2. The custodian may deliver, pay over to the minor for expenditure by the minor, or expend for the minor's benefit, so much of the custodial property as the custodian determines

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.

7 advisable for the use and benefit of the minor, without court order and without regard to the duty
8 or ability of the custodian in the custodian's individual capacity or of any other person to support
9 the minor, or any other income or property of the minor.

10 3. Upon the petition of a parent, guardian or conservator of a minor, an adult member
11 of the minor's family, any person interested in the welfare of the minor, or of the minor if the
12 minor has attained the age of fourteen years, the court may order the custodian to expend or to
13 pay over to the minor or the minor's parent, guardian or conservator so much of the custodial
14 property as the court determines advisable for the use and benefit of the minor.

15 4. Any delivery, payment or expenditure pursuant to subsections 2 and 3 of this section
16 is in addition to, not in substitution for, and does not affect, the obligation of any person to
17 support the minor.

18 5. (1) To the extent that the custodial property has not been expended, the custodian
19 shall deliver the custodial property in an appropriate manner, free of the custodianship, as
20 follows:

21 (a) To the minor on attaining the age of twenty-one years, or on attaining the age of
22 eighteen years for custodial property created by a transfer of property from a person other than
23 a donor and the minor requests the property; or

24 (b) On the minor's death, to the minor's estate.

25 (2) If the custodian does not deliver the custodial property to the minor or the minor's
26 estate as prescribed in subdivision (1) of this subsection, the minor or the minor's personal
27 representative may petition the court to declare the custodianship terminated and to order
28 delivery of the custodial property to the minor or to the minor's estate free of the custodianship.

29 (3) To the extent the custodial property is real property, a conveyance and delivery of the
30 real property by the minor after attaining the age at which the minor is entitled to the property
31 free of the custodianship, or by the minor's heirs, or by the minor's personal representative, shall
32 terminate the custodian's powers, duties and rights with respect to the real property.

33 (4) If the minor is an incapacitated person at the time the minor would otherwise be
34 entitled to receive the custodial property free of the custodianship, the custodian shall deliver the
35 custodial property to the incapacitated person's conservator. If the incapacitated person has no
36 conservator, the custodian may transfer the custodial property to any adult person or financial
37 institution, including the custodian, as personal custodian for the incapacitated person under any
38 law providing for custodianship of property for incapacitated adult persons.

39 6. The custodian is under a duty to act in the interest of the minor and to avoid conflicts
40 of interest that impair the custodian's ability to so act. In dealing with the custodial property, the
41 custodian shall observe the degree of care that would be observed by a prudent person dealing
42 with the property and conducting the affairs of another, except that all investments made on or

43 after August 28, 1998, shall be in accordance with the provisions of the Missouri prudent
44 investor act, sections [456.900 to 456.913] **469.900 to 469.913**, RSMo. The custodian is not
45 limited by any other statute restricting investments or expenditures by fiduciaries. If the
46 custodian has special skills or is named custodian on the basis of representations of special skills
47 or expertise, the custodian is under a duty to use those skills. The custodian, in the custodian's
48 discretion and without liability to the minor or the minor's estate, may retain any custodial
49 property received under sections 404.005 to 404.094, and may hold money or securities in the
50 financial institution or brokerage company to which the property was delivered by the transferor.

51 7. The custodian may invest in and pay premiums out of custodial property for life or
52 endowment insurance policies on the life of the minor or the life of another person in whom the
53 minor has an insurable interest, provided the insurance proceeds will be distributed on the death
54 of the insured life to the minor, the minor's estate or the custodian in the custodian's
55 representative capacity.

56 8. Subject to the degree of care prescribed in subsection 6 of this section, the custodian,
57 acting in the capacity of custodian for the benefit of the minor, has all rights, power and authority
58 over the custodial property that unmarried, nonincapacitated adult owners have over their own
59 property, except the power to make a gift of the minor's property unless the gift to be made is
60 approved by a court.

61 9. The custodian at all times shall keep custodial property separate and distinct from all
62 other property in a manner to identify it clearly as custodial property of the minor. Custodial
63 property consisting of an undivided interest in property is sufficiently separate and distinct if the
64 custodian's interest in the property is held as a tenant in common with the other owners of the
65 property and the minor's proportional interest in the property is fixed. Custodial property is
66 sufficiently so identified if it is held in the name of the custodian in the manner prescribed in
67 section 404.707.

68 10. The custodian may establish checking, savings or other similar accounts with
69 financial institutions and brokers whereby both the custodian and the minor may withdraw
70 money from the account or draw checks against the account. Money withdrawn from an account
71 or checks written against an account by the minor shall be treated as a delivery of custodial
72 property from the custodian to the minor.

73 11. Subject to the degree of care prescribed in subsection 6 of this section, the custodian,
74 acting in the capacity of custodian and for the benefit of the minor, may borrow money, lend
75 money, acquire by lease the use of property for the minor, lease custodial property and enter into
76 contracts under which the performance required by such agreements may extend beyond the date
77 the custodianship terminates. The custodian shall hold property that is borrowed or leased for

78 the minor as custodial property in the name of the custodian in the manner prescribed in section
79 404.047.

80 12. The custodian shall keep records of all transactions with respect to the custodial
81 property, including information necessary for preparation of the minor's tax returns, and make
82 them available for inspection at reasonable intervals by a parent, the minor if the minor has
83 attained the age of fourteen years, an adult member of the minor's family if the minor has no
84 living parent, and a legal representative of the minor.

85 13. The minor's custodian may comply with an agreement with a transferor of property
86 to the minor, including an agreement respecting investment objectives, expenses, compensation,
87 resignation and naming of successor custodians, to the extent that such agreement does not
88 conflict with the custodian's obligations to the minor under sections 404.005 to 404.094.

404.550. 1. The personal custodian shall collect, hold, maintain, manage, invest and
2 reinvest the custodial property. The personal custodian may accept a transfer of additional
3 property for the same beneficiary into the personal custodianship and may consolidate into a
4 single custodianship custodial property received for the same beneficiary from multiple transfers
5 or transferors.

6 2. The personal custodian shall deliver, pay over to the beneficiary for expenditure by
7 the beneficiary or expend for the beneficiary's benefit, so much of the custodial property as the
8 beneficiary may from time to time direct. If the beneficiary is an incapacitated person, the
9 personal custodian may deliver, pay over to the beneficiary for expenditure by the beneficiary
10 or expend for the beneficiary's benefit, so much of the custodial property as the personal
11 custodian determines advisable for the use and benefit of the beneficiary and those members of
12 the beneficiary's family who are legally entitled to support by the beneficiary or who were
13 supported by the beneficiary at the time the beneficiary became incapacitated, without court
14 order and without regard to the duty or ability of the personal custodian in the personal
15 custodian's individual capacity or of any other person to support the beneficiary, or any other
16 income or property of the beneficiary.

17 3. (1) Upon the petition of the beneficiary, guardian or conservator of an incapacitated
18 beneficiary, an adult member of a beneficiary's family or any person interested in the welfare of
19 the beneficiary, the court may order the personal custodian to expend or to pay over to the
20 beneficiary or the beneficiary's guardian or conservator so much of the custodial property as the
21 court determines advisable for the use and benefit of the beneficiary.

22 (2) Upon petition of a personal custodian, the beneficiary, an adult member of the
23 beneficiary's family or any person interested in the welfare of the beneficiary, the probate
24 division of the circuit court shall determine and declare whether the beneficiary is a disabled or
25 incapacitated person.

26 4. Any delivery, payment or expenditure under subsections 2 and 3 of this section is in
27 addition to, not in substitution for, and does not affect the obligation of any person to support the
28 incapacitated beneficiary or the incapacitated beneficiary's dependents.

29 5. The personal custodian is under a duty to act in the interest of the beneficiary and to
30 avoid conflicts of interest that impair the personal custodian's ability to so act. In dealing with
31 the custodial property, the personal custodian shall follow the investment and other directions
32 of a beneficiary who is not incapacitated and shall observe the degree of care that would be
33 observed by a prudent person dealing with the property and conducting the affairs of another,
34 except that all investments made on or after August 28, 1998, shall be in accordance with the
35 provisions of the Missouri prudent investor act, sections [456.900 to 456.913] **469.900 to**
36 **469.913**, RSMo. The personal custodian is not limited by any other statute restricting
37 investments or expenditures by fiduciaries. If the personal custodian has special skills or is
38 named personal custodian on the basis of representation of special skills or expertise, the
39 custodian is under a duty to use those skills. The personal custodian, in the custodian's discretion
40 and without liability to the beneficiary or the beneficiary's estate, may retain any custodial
41 property received under sections 404.400 to 404.650, and may hold money or securities in the
42 financial institution or brokerage company to which the property was delivered by the transferor.

43 6. The personal custodian may invest in and pay premiums out of custodial property for
44 life or endowment insurance policies on the life of the beneficiary or the life of another person
45 in whom the beneficiary has an insurable interest, provided the insurance proceeds will be
46 distributed on the death of the insured life to the beneficiary, the persons designated by an adult
47 nonincapacitated beneficiary, the beneficiary's estate or the personal custodian in the personal
48 custodian's representative capacity.

49 7. Subject to the degree of care prescribed in subsection 5 of this section, the personal
50 custodian, acting in the capacity of personal custodian for the benefit of the beneficiary, has all
51 rights, power and authority over the custodial property that unmarried, nonincapacitated adult
52 owners have over their own property, except the power to make a gift of the beneficiary's
53 property (i) unless granted such power by a nonincapacitated beneficiary in a writing signed and
54 dated, and acknowledged or proved and certified in the manner provided by law for conveyances
55 of real estate, or (ii) unless the gift to be made is approved by a court under section 475.094,
56 RSMo.

57 8. The personal custodian at all times shall keep custodial property separate and distinct
58 from all other property in a manner to identify it clearly as custodial property of the beneficiary.
59 Custodial property consisting of an undivided interest in property is sufficiently separate and
60 distinct if the personal custodian's interest in the property is held as a tenant in common with the
61 other owners of the property and the beneficiary's proportional interest in the property is fixed.

62 Custodial property is sufficiently so identified if it is held in the name of the personal custodian
63 in the manner prescribed in section 404.540.

64 9. The personal custodian may establish checking, savings or other similar accounts with
65 financial institutions and brokers whereby both the personal custodian and the beneficiary may
66 withdraw money from the account or draw or issue checks or drafts against the account. Money
67 withdrawn from an account or checks written against an account by the beneficiary shall be
68 treated as a delivery of custodial property from the personal custodian to the beneficiary.

69 10. Subject to the degree of care prescribed in subsection 5 of this section, the personal
70 custodian, acting in the capacity of personal custodian and for the benefit of the beneficiary, may
71 borrow money, lend money, acquire by lease the use of property for the beneficiary, lease
72 custodial property and enter into contracts under which the performance required by such
73 agreements may extend beyond the date the personal custodianship terminates. The personal
74 custodian shall hold property that is borrowed or leased for the beneficiary as custodial property
75 in the name of the personal custodian in the manner prescribed in section 404.540.

76 11. The personal custodian shall keep records of all transactions with respect to the
77 custodial property, including information necessary for preparation of the beneficiary's tax
78 returns, and make them available for inspection at reasonable intervals by the beneficiary, an
79 adult member of the beneficiary's family if the beneficiary is incapacitated, and a legal
80 representative of the beneficiary.

81 12. The power, authority, duties and responsibilities of a personal custodian, as provided
82 in sections 404.400 to 404.650, may be modified by the provisions of a written agreement
83 between the transferor or beneficiary and personal custodian.

404.714. 1. An attorney in fact who elects to act under a power of attorney is under a
2 duty to act in the interest of the principal and to avoid conflicts of interest that impair the ability
3 of the attorney in fact so to act. A person who is appointed an attorney in fact under a power of
4 attorney, either durable or not durable, who undertakes to exercise the authority conferred in the
5 power of attorney, has a fiduciary obligation to exercise the powers conferred in the best interests
6 of the principal, and to avoid self-dealing and conflicts of interest, as in the case of a trustee with
7 respect to the trustee's beneficiary or beneficiaries; and in the absence of explicit authorization,
8 the attorney in fact shall exercise a high degree of care in maintaining, without modification, any
9 estate plan which the principal may have in place, including, but not limited to, arrangements
10 made by the principal for disposition of assets at death through beneficiary designations,
11 ownership by joint tenancy or tenancy by the entirety, trust arrangements or by will or codicil.
12 Unless otherwise provided in the power of attorney or in a separate agreement between the
13 principal and attorney in fact, an attorney in fact who elects to act shall exercise the authority
14 granted in a power of attorney with that degree of care that would be observed by a prudent

15 person dealing with the property and conducting the affairs of another, except that all
16 investments made on or after August 28, 1998, shall be in accordance with the provisions of the
17 Missouri prudent investor act, sections [456.900 to 456.913] **469.900 to 469.913**, RSMo. If the
18 attorney in fact has special skills or was appointed attorney in fact on the basis of representations
19 of special skills or expertise, the attorney in fact has a duty to use those skills in the principal's
20 behalf.

21 2. On matters undertaken or to be undertaken in the principal's behalf and to the extent
22 reasonably possible under the circumstances, an attorney in fact has a duty to keep in regular
23 contact with the principal, to communicate with the principal and to obtain and follow the
24 instructions of the principal.

25 3. If the principal is not available to communicate in person with the attorney in fact
26 because:

27 (1) The principal is missing under such circumstances that it is not known whether the
28 principal is alive or dead; or

29 (2) The principal is captured, interned, besieged or held hostage or prisoner in a foreign
30 country;

31

32 the authority of the attorney in fact under a power of attorney, whether durable or not, shall not
33 terminate and the attorney in fact may continue to exercise the authority conferred, faithfully and
34 in the best interests of the principal, until the principal returns or is publicly declared dead by a
35 governmental agency, domestic or foreign, or is presumed dead because of continuous absence
36 of five years as provided in section 472.290, RSMo 1986, or a similar law of the place of the last
37 known domicile of the person whose absence is in question.

38 4. If, following execution of a power of attorney, the principal is absent or becomes
39 wholly or partially disabled or incapacitated, or if there is a question with regard to the ability
40 or capacity of the principal to give instructions to and supervise the acts and transactions of the
41 attorney in fact, an attorney in fact exercising authority under a power of attorney, either durable
42 or not durable, may consult with any person or persons previously designated by the principal
43 for such purpose, and may also consult with and obtain information from the principal's spouse,
44 physician, attorney, accountant, any member of the principal's family or other person, corporation
45 or government agency with respect to matters to be undertaken in the principal's behalf and
46 affecting the principal's personal affairs, welfare, family, property and business interests.

47 5. If, following execution of a durable power of attorney, a court appoints a legal
48 representative for the principal, the attorney in fact shall follow the instructions of the court or
49 of the legal representative, and shall communicate with and be accountable to the principal's
50 guardian on matters affecting the principal's personal welfare and to the principal's conservator

51 on matters affecting the principal's property and business interests, to the extent that the
52 responsibilities of the guardian or conservator and the authority of the attorney in fact involve
53 the same subject matter.

54 6. The authority of an attorney in fact, under a power of attorney that is not durable, is
55 suspended during any period that the principal is disabled or incapacitated to the extent that the
56 principal is unable to receive or evaluate information or to communicate decisions with respect
57 to the subject of the power of attorney; and an attorney in fact exercising authority under a power
58 of attorney that is not durable shall not act in the principal's behalf during any period that the
59 attorney in fact knows the principal is so disabled or incapacitated.

60 7. An attorney in fact shall exercise authority granted by the principal in accordance with
61 the instrument setting forth the power of attorney, any modification made therein by the principal
62 or the principal's legal representative or a court, and the oral and written instructions of the
63 principal, or the written instructions of the principal's legal representative or a court.

64 8. An attorney in fact may be instructed in a power of attorney that the authority granted
65 shall not be exercised until, or shall terminate on, the happening of a future event, condition or
66 contingency, as determined in a manner prescribed in the instrument.

67 9. On the death of the principal, the attorney in fact shall follow the instructions of the
68 court, if any, having jurisdiction over the estate of the principal, or any part thereof, and shall
69 communicate with and be accountable to the principal's personal representative, or if none, the
70 principal's successors; and the attorney in fact shall promptly deliver to and put in the possession
71 and control of the principal's personal representative or successors, any property of the principal
72 and copies of any records of the attorney in fact relating to transactions undertaken in the
73 principal's behalf that are deemed by the personal representative or the court to be necessary or
74 helpful in the administration of the decedent's estate.

75 10. If an attorney in fact has a property or contract interest in the subject of the power
76 of attorney or the authority of the attorney in fact is otherwise coupled with an interest in a
77 person other than the principal, this section does not impose any duties on the attorney in fact
78 that would conflict or be inconsistent with that interest.

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

12 [(4)] (5) "Conservator" means a person described in subdivision (3) of section 475.010,
13 RSMo. This term does not include a conservator ad litem.

14 [(5)] (6) "Conservator ad litem" means a person appointed by the court pursuant to the
15 provisions of section 475.097, RSMo.

16 [(6)] (7) "Environmental law" means a federal, state, or local law, rule, regulation, or
17 ordinance relating to protection of the environment.

18 [(7)] (8) "Financial institution" means a non-foreign bank, savings and loan or trust
19 company chartered, regulated and supervised by the Missouri division of finance, the office of
20 the comptroller of the currency, the office of thrift supervision, the National Credit Union
21 Administration, or the Missouri division of credit union supervision. The term "non-foreign
22 bank" shall mean a bank that is not a foreign bank within the meaning of subdivision (1) of
23 section 361.005, RSMo.

24 [(8)] (9) "Guardian" means a person described in subdivision (6) of section 475.010,
25 RSMo. The term does not include a guardian ad litem.

26 [(9)] (10) "Interested persons" include beneficiaries and any others having a property
27 right in or claim against a trust estate which may be affected by a judicial proceeding. It also
28 includes fiduciaries and other persons representing interested persons. The meaning as it relates
29 to particular persons may vary from time to time and must be determined according to the
30 particular purposes of, and matter involved in, any proceeding.

31 [(10)] (11) "Interests of the beneficiaries" means the beneficial interests provided in the
32 terms of the trust.

33 [(11)] (12) "Internal Revenue Code" means the United States Internal Revenue Code of
34 1986, as in effect on January 1, 2005, or as later amended.

35 [(12)] (13) "Jurisdiction," with respect to a geographic area, includes a state or country.

36 [(13)] (14) "Person" means an individual, corporation, business trust, estate, trust,
37 partnership, limited liability company, association, joint venture, government; governmental
38 subdivision, agency, or instrumentality; public corporation, or any other legal or commercial
39 entity.

40 [(14)] (15) "Permissible distributee" means a beneficiary who is currently eligible to
41 receive distributions of trust income or principal, whether mandatory or discretionary.

42 [(15)] (16) "Power of withdrawal" means a presently exercisable [general] power of
43 [appointment other than a power exercisable only upon consent of the trustee or a person holding

44 an adverse interest] **a beneficiary to withdraw assets from the trust without the consent of**
45 **the trustee or any other person.**

46 [(16)] (17) "Principal place of administration" of a trust is the trustee's usual place of
47 business where the records pertaining to the trust are kept, or the trustee's residence if the trustee
48 has no such place of business, unless otherwise designated by the terms of the trust as provided
49 in section 456.1-108. In the case of cotrustees, the principal place of administration is, in the
50 following order of priority:

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

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

55 (c) The usual place of business or residence of any of the cotrustees.

56 [(17)] (18) "Professional fiduciary" means an individual who represents himself or
57 herself to the public as having specialized training, experience or skills in the administration of
58 trusts.

59 [(18)] (19) "Property" means anything that may be the subject of ownership, whether real
60 or personal, legal or equitable, or any interest therein.

61 [(19)] (20) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's
62 qualification is determined:

63 (a) is a permissible distributee;

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

66 (c) would be a permissible distributee if the trust terminated on that date.

67 [(20)] (21) "Record" means information that is inscribed on a tangible medium or that
68 is stored in an electronic or other medium and is retrievable in perceivable form.

69 [(21)] (22) "Revocable," as applied to a trust, means [revocable by the settlor] **that the**
70 **settlor has the legal power to revoke the trust** without the consent of the trustee or a person
71 holding an adverse interest, **regardless of whether the settlor has the mental capacity to do**
72 **so in fact.**

73 [(22)] (23) "Settlor" means a person, including a testator, who creates, or contributes
74 property to, a trust. If more than one person creates or contributes property to a trust, each
75 person is a settlor of the portion of the trust property attributable to that person's contribution
76 except to the extent another person has the power to revoke or withdraw that portion pursuant
77 to the terms of the trust.

78 [(23)] (24) "Sign" means, with present intent to authenticate or adopt a record:

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

80 (b) to attach to or logically associate with the record an electronic sound, symbol, or
81 process.

82 [(24)] **(25)** "Spendthrift provision" means a term of a trust which restrains either the
83 voluntary or involuntary transfer or both the voluntary and involuntary transfer of a beneficiary's
84 interest.

85 [(25)] **(26)** "State" means a state of the United States, the District of Columbia, Puerto
86 Rico, the United States Virgin Islands, or any territory or insular possession subject to the
87 jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal
88 law or formally acknowledged by a state.

89 [(26)] **(27)** "Terms of a trust" means the manifestation of the settlor's intent regarding
90 a trust's provisions as expressed in the trust instrument or as may be established by other
91 evidence that would be admissible in a judicial proceeding.

92 [(27)] **(28)** "Trust instrument" means an instrument executed by the settlor that contains
93 terms of the trust, including any amendments thereto.

94 [(28)] **(29)** "Trustee" includes an original, additional, and successor trustee, and a
95 cotrustee.

456.1-105. 1. Except as otherwise provided in the terms of the trust, sections 456.1-101
2 to 456.11-1106 govern the duties and powers of a trustee, relations among trustees, and the rights
3 and interests of a beneficiary.

4 2. The terms of a trust prevail over any provision of sections 456.1-101 to 456.11-1106
5 except:

6 (1) the requirements for creating a trust;

7 (2) the duty of a trustee to act in good faith and in accordance with the purposes of the
8 trust;

9 (3) the requirement that a trust and its terms be for the benefit of its beneficiaries;

10 (4) the power of the court to modify or terminate a trust under section 456.4-410,
11 subsection 3 of section 456.4B-411, and sections 456.4-412 to 456.4-416;

12 (5) the effect of a spendthrift provision and the rights of certain creditors and assignees
13 to reach a trust as provided in sections 456.5-501 to 456.5-507;

14 (6) the power of the court under section 456.7-702 to require, dispense with, or modify
15 or terminate a bond;

16 (7) the power of the court under subsection 2 of section 456.7-708 to adjust a trustee's
17 compensation specified in the terms of the trust which is unreasonably low or high;

18 **(8) subject to subsection 3 of this section, the duty of a trustee of an irrevocable trust**
19 **to notify [the] each permissible distributees [of an irrevocable trust who have] who has attained**
20 **the age of twenty-one years [of age] of the existence of the trust and of [their] that permissible**

21 **distributee's** rights to request trustee's reports and other information reasonably related to the
22 administration of the trust;

23 (9) the duty to respond to the request of a qualified beneficiary of an irrevocable trust for
24 trustee's reports and other information reasonably related to the administration of [a] **the** trust;

25 (10) the effect of an exculpatory term under section 456.10-1008;

26 (11) the rights under sections 456.10-1010 to 456.10-1013 of a person other than a
27 trustee or beneficiary;

28 (12) periods of limitation for commencing a judicial proceeding;

29 (13) the power of the court to take such action and exercise such jurisdiction as may be
30 necessary in the interests of justice; and

31 (14) the venue for a judicial proceeding as provided in section 456.2-204.

32 **3. For purposes of subdivision (8) of subsection 2 of this section, the settlor may**
33 **designate by the terms of the trust one or more permissible distributees to receive**
34 **notification of the existence of the trust and of the right to request trustee's reports and**
35 **other information reasonably related to the administration of the trust in lieu of providing**
36 **the notice, information or reports to any other permissible distributee who is an ancestor**
37 **of lineal descendant of the designated permissible distributee.**

456.1-110. 1. A specified charitable organization or a person appointed to enforce a trust
2 created for the care of an animal or another noncharitable purpose as provided in sections
3 456.4-408 or 456.4-409 has the rights of a qualified beneficiary under sections 456.1-101 to
4 456.11-1106.

5 2. Except with respect to [section] **sections 456.1-108 and 456.4B-411**, the attorney
6 general of this state has the rights of a qualified beneficiary with respect to an interest in a
7 charitable trust having its principal place of administration in this state if:

8 (1) a specified charitable organization is not entitled to a distribution from such interest;
9 and

10 (2) distributions from the interest are payable in a manner that, if payable to an
11 identifiable charitable entity, would qualify that entity as a specified charitable organization.

12 3. In this section a "specified charitable organization" means an identifiable charitable
13 entity, **the interest of which is not otherwise subject to any power of appointment or other**
14 **power of termination**, that, on the date that entity's qualification is determined:

15 (a) is a permissible distributee;

16 (b) would be a permissible distributee if the interests of the permissible distributees
17 terminated on that date; or

18 (c) would be a permissible distributee if the trust terminated on that date.

19 4. No provision of this section shall limit the authority of the attorney general of this
20 state to supervise and control charitable organizations.

 456.1-112. 1. If a settlor's marriage is dissolved or annulled, any beneficial terms of a
2 trust in favor of the settlor's former spouse or any fiduciary appointment of the settlor's former
3 spouse is revoked on the date the marriage is dissolved or annulled, whether or not the terms of
4 the trust refer to marital status. The terms of the trust shall be given effect as if the former
5 spouse had died immediately before the date the dissolution or annulment became final. This
6 subsection shall also apply to any beneficial interest or fiduciary appointment in favor of a
7 relative of the settlor's former spouse as if such relative were the former spouse.

8 2. Subsection 1 of this section does not apply to the terms of a trust that provide any
9 beneficial interest or fiduciary appointment for a former spouse or a relative of a former spouse
10 that was created after the marriage was dissolved or annulled, or that expressly states that
11 marriage dissolution or annulment shall not affect the designation of a former spouse or relative
12 of a former spouse as a beneficiary or a fiduciary of the trust.

13 3. A court may order or the settlor and the spouse may agree before, during, or after the
14 marriage in a binding contract or settlement agreement that subsection 1 of this section does not
15 apply to a beneficial interest or fiduciary appointment.

16 4. Any terms of a trust revoked solely by this section are revived by the settlor's
17 remarriage to the former spouse or by a nullification of the marriage dissolution or annulment.

18 5. In this section, "a relative of the settlor's former spouse" means an individual who is
19 related to the settlor's former spouse by blood, adoption or affinity and who, after the divorce or
20 annulment, is not related to the settlor by blood, adoption or affinity.

21 **6. The provisions of this section shall not apply to any trust for which a gift tax**
22 **marital deduction has been claimed or allowed under Section 2523 of the Internal Revenue**
23 **Code. The provisions of this section shall not apply in a manner that would result in**
24 **either:**

25 **(a) a transfer to a trust being treated as an incomplete gift for federal gift tax**
26 **purposes; or**

27 **(b) inclusion of assets of a trust in the gross estate of a settlor for federal estate tax**
28 **purposes.**

 456.2-204. 1. Venue for judicial proceedings involving [the internal affairs of a] trust
2 **administration** shall be:

3 (1) For a trust then registered in this state, in the probate division of the circuit court
4 where the trust is registered; or

5 (2) For a trust not then registered in this state, in the probate division of the circuit court
6 where the trust could properly be registered; or

7 (3) For a trust not then registered in this state and which cannot properly be registered
8 in this state, in accordance with the rules of civil procedure.

9 2. Where a judicial proceeding under this chapter could be maintained in more than one
10 place in this state, the court in which the proceeding is first commenced has the exclusive right
11 to proceed.

12 3. If proceedings concerning the same trust are commenced in more than one court of
13 this state, the court in which the proceeding was first commenced shall continue to hear the
14 matter, and the other courts shall hold the matter in abeyance until the question of venue is
15 decided, and if the court in which the proceeding was first commenced determines that venue
16 is properly in another court, it shall transfer the proceeding to the other court.

17 4. If a court finds that in the interest of justice a proceeding or a file should be located
18 in another court of this state, the court making the finding may transfer the proceeding or file to
19 the other court.

456.3-301. 1. Notice to a person who may represent and bind another person under
2 sections 456.3-301 to 456.3-305 has the same effect as if notice were given directly to the other
3 person.

4 2. The consent of a person who may represent and bind another person under sections
5 456.3-301 to 456.3-305 is binding on the person represented unless the person represented
6 objects to the representation before the consent would otherwise have become effective.

7 3. Except as otherwise provided in sections 456.4A-411 and 456.6-602, a person who
8 under sections 456.3-301 to 456.3-305 may represent a settlor who lacks capacity may receive
9 notice and give a binding consent on the settlor's behalf.

10 **4. A settlor may not represent and bind a beneficiary under sections 456.3-301 to**
11 **456.3-305 with respect to the termination or modification of a trust under section 456.4-**
12 **411A.**

456.3-304. 1. Unless otherwise represented, a minor, incapacitated, or unborn
2 individual, or a person whose identity or location is unknown and not reasonably ascertainable,
3 may be represented by and bound by another having a substantially identical interest with respect
4 to the particular question or dispute, but only to the extent there is no conflict of interest between
5 the representative and the person represented **with respect to a particular question or dispute.**

6 **2. Unless otherwise represented, a beneficiary who is not a qualified beneficiary**
7 **may be represented by and bound by a qualified beneficiary having a substantially**
8 **identical interest with respect to the particular question or dispute, but only to the extent**
9 **there is no conflict of interest with respect to the particular question or dispute between**
10 **the representative and the person represented, in any court proceeding under subsection**

11 **2 of section 456.4-412, or in a nonjudicial settlement agreement entered into under section**
12 **456.1-111 in lieu of such a court proceeding.**

456.4-401. A trust may be created by:

- 2 (1) transfer of property to another person as trustee during the settlor's lifetime or by will
- 3 or other disposition taking effect upon the settlor's death;
- 4 (2) declaration by the owner of property that the owner holds identifiable property as
- 5 trustee;
- 6 (3) exercise of a power of appointment in favor of a trustee; or
- 7 (4) a court under section 475.092, 475.093, or 511.030, RSMo, **or 42 U.S.C. Section**
8 **1396p(d)(4).**

456.4-402. 1. Other than for a trust created by section 475.092, 475.093, or 511.030,
2 RSMo, **or 42 U.S.C. Section 1396p(d)(4)**, a trust is created only if:

- 3 (1) the settlor has capacity to create a trust;
 - 4 (2) the settlor indicates an intention to create the trust;
 - 5 (3) the trust has a definite beneficiary or is:
 - 6 (a) a charitable trust;
 - 7 (b) a trust for the care of an animal, as provided in section 456.4-408; or
 - 8 (c) a trust for a noncharitable purpose, as provided in section 456.4-409;
 - 9 (4) the trustee has duties to perform; and
 - 10 (5) the same person is not the sole trustee and sole beneficiary.
- 11 2. A beneficiary is definite if the beneficiary can be ascertained now or in the future,
12 subject to any applicable rule against perpetuities.
- 13 3. A power in a trustee to select a beneficiary from an indefinite class is valid. If the
14 power is not exercised within a reasonable time, the power fails and the property subject to the
15 power passes to the persons who would have taken the property had the power not been
16 conferred.

456.4-411A. 1. **Except for a trust established by a court under section 475.092,**
2 **475.093, 511.033, RSMo, or 42 U.S.C. Section 1396p(d)(4)**, a noncharitable irrevocable trust
3 may be modified or terminated upon consent of the settlor and all beneficiaries, without court
4 approval, even if the modification or termination is inconsistent with a material purpose of the
5 trust. A settlor's power to consent to a trust's termination or modification may be exercised by
6 an agent under a power of attorney only to the extent expressly authorized by the power of
7 attorney or the terms of the trust; by the settlor's conservator with the approval of the court
8 supervising the conservatorship if an agent is not so authorized; or by the settlor's conservator
9 ad litem with the approval of the court if an agent is not so authorized and a conservator has not
10 been appointed.

11 2. Upon termination of a trust under subsection 1 of this section, the trustee shall
12 distribute the trust property as agreed by the beneficiaries.

13 3. If not all of the beneficiaries consent to a proposed modification or termination of the
14 trust under subsection 1 of this section, the modification or termination may be approved by the
15 court if the court is satisfied that:

16 (1) if all of the beneficiaries had consented, the trust could have been modified or
17 terminated under subsection 1 of this section; and

18 (2) the interests of a beneficiary who does not consent will be adequately protected.

 456.4-411B. 1. When all of the adult beneficiaries having the capacity to contract
2 consent, the court may, upon finding that the interest of any nonconsenting beneficiary will be
3 adequately protected, modify the terms of a noncharitable irrevocable trust so as to reduce or
4 eliminate the interests of some beneficiaries and increase those of others, change the times or
5 amounts of payments and distributions to beneficiaries, or provide for termination of the trust
6 at a time earlier or later than that specified by its terms. The court may at any time upon its own
7 motion appoint a representative pursuant to section 456.3-305 to represent a nonconsenting
8 beneficiary. The court shall appoint such a representative upon the motion of any party, unless
9 the court determines such an appointment is not appropriate under the circumstances.

10 2. Upon termination of a trust under subsection 1 of this section, the trustee shall
11 distribute the trust property as directed by the court.

12 3. If a trust cannot be terminated or modified under subsection 1 of this section because
13 not all adult beneficiaries having capacity to contract consent or the terms of the trust prevent
14 such modification or termination, the modification or termination may be approved by the court
15 if the court is satisfied that the interests of a beneficiary, other than the settlor, who does not
16 consent will be adequately protected, modification or termination will benefit a living settlor who
17 is also a beneficiary, and:

18 (1) in the case of a termination, the party seeking termination establishes that
19 continuance of the trust is not necessary to achieve any material purpose of the trust; or

20 (2) in the case of a modification, the party seeking modification establishes that the
21 modification is not inconsistent with a material purpose of the trust, and the modification is not
22 specifically prohibited by the terms of the trust.

23 4. This section shall apply to trusts created **under trust instruments that become**
24 **irrevocable** on or after January 1, 2005. The provisions of section 456.590 shall apply to all
25 trusts **that were created under trust instruments that become irrevocable** prior to January 1,
26 2005.

 456.5-501. **Except as otherwise provided in sections 456.5-506 to 456.5-507**, to the
2 extent a beneficiary's interest is not [protected by] **subject to** a spendthrift provision, an assignee

3 or a judgment creditor of the beneficiary may, without court order, reach the beneficiary's interest
4 by attachment of present or future distributions to or for the benefit of the beneficiary or other
5 means. The court may limit the award to such relief as is appropriate under the circumstances.

456.5-504. 1. [Except as otherwise provided in section 456.5-503, whether or not a trust
2 contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that
3 is subject to the trustee's discretion, even if:

4 (1) the discretion is expressed in the form of a standard of distribution; or

5 (2) the trustee has abused the discretion.] **A beneficiary's interest in a trust that is
6 subject to the trustee's discretion does not constitute an interest in property or an
7 enforceable right even if the discretion is expressed in the form of a standard of
8 distribution or the beneficiary is then serving as a trustee or co-trustee. A creditor or other
9 claimant may not attach present or future distributions from such an interest or right,
10 obtain an order from a court forcing the judicial sale of the interest or compelling the
11 trustee to make distributions, or reach the interest or right by any other means, even if the
12 trustee has abused the trustee's discretion.**

13 2. This section does not limit the right of a beneficiary to maintain a judicial proceeding
14 against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

15 **3. This section applies whether or not an interest is subject to a spendthrift
16 provision.**

17 **4. For purposes of this section, a beneficiary's interest in a trust is subject to the
18 trustee's discretion if that interest does not constitute a mandatory distribution as defined
19 in subsection 1 of section 456.5-506.**

456.5-506. 1. As used in this section, "mandatory distribution" means a
2 **distribution of income or principal which the trustee is required to make to a beneficiary
3 under the terms of the trust, including a distribution upon termination of the trust. The
4 term does not include a distribution subject to the exercise of the trustee's discretion even
5 if (1) the discretion is expressed in the form of a standard of distribution, or (2) the terms
6 of the trust authorizing a distribution couple language of discretion with language of
7 discretion.**

8 2. Whether or not a trust contains a spendthrift provision, a creditor or assignee of a
9 beneficiary may reach a mandatory distribution of income or principal, including a distribution
10 upon termination of the trust, if the trustee has not made the distribution to the beneficiary within
11 a reasonable time after the required distribution date.

456.7-703. 1. Cotrustees shall act by majority decision.

2 2. If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.

3 3. A cotrustee must participate in the performance of a trustee's function unless the
4 cotrustee is unavailable to perform the function because of absence, illness, disqualification
5 under other law, or other temporary incapacity or the cotrustee has properly delegated the
6 performance of the function to another trustee.

7 4. If a cotrustee is unavailable to perform duties because of absence, illness,
8 disqualification under other law, or other temporary incapacity, and prompt action is necessary
9 to achieve the purposes of the trust or to avoid injury to the trust property, the remaining
10 cotrustee or a majority of the remaining cotrustees may act for the trust.

11 5. A trustee may [not] delegate to a cotrustee the performance of a function [the settlor
12 reasonably expected the trustees to perform jointly] **in accordance with subsection 1 of section**
13 **456.8-807**. Unless a delegation was irrevocable, a trustee may revoke a delegation previously
14 made.

15 6. Except as otherwise provided in subsection 7 of this section, a trustee who does not
16 join in an action of another trustee is not liable for the action.

17 7. Each trustee shall exercise reasonable care to:

18 (1) prevent a cotrustee from committing a serious breach of trust; and

19 (2) compel a cotrustee to redress a serious breach of trust.

20 8. A dissenting trustee who joins in an action at the direction of the majority of the
21 trustees and who notified any cotrustee of the dissent at or before the time of the action is not
22 liable for the action unless the action is a serious breach of trust.

 456.8-813. 1. (1) A trustee shall keep the qualified beneficiaries of the trust reasonably
2 informed about the administration of the trust and of the material facts necessary for them to
3 protect their interests. **A trustee shall be presumed to have fulfilled this duty if the trustee**
4 **complies with the notice and information requirements prescribed in subsections 2 to 7 of**
5 **this section.**

6 (2) Unless unreasonable under the circumstances, a trustee shall promptly respond to a
7 beneficiary's request for information related to the administration of the trust.

8 2. A trustee:

9 (1) upon request of a beneficiary, shall promptly furnish to the beneficiary a copy of the
10 trust instrument;

11 (2) within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries
12 of the acceptance and of the trustee's name, address, and telephone number;

13 (3) within sixty days after the date the trustee acquires knowledge of the creation of an
14 irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has
15 become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified
16 beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request

17 a copy of the trust instrument, and of the right to a trustee's report as provided in subsection 3
18 of this section; and

19 (4) shall notify the qualified beneficiaries in advance of any change in the method or rate
20 of the trustee's compensation. [Subdivisions (2) and (3) of this subsection do not apply to a trust
21 that became irrevocable before January 1, 2005.]

22 3. A trustee shall send to the permissible distributees of trust income or principal, and
23 to other beneficiaries who request it, at least annually and at the termination of the trust, a report
24 of the trust property, liabilities, receipts, and disbursements, including the source and amount of
25 the trustee's compensation, a listing of the trust assets and, if feasible, their respective market
26 values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be
27 sent to the qualified beneficiaries by the former trustee. A personal representative, conservator,
28 or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated
29 trustee.

30 4. A beneficiary may waive the right to a trustee's report or other information otherwise
31 required to be furnished under this section. A beneficiary, with respect to future reports and
32 other information, may withdraw a waiver previously given.

33 5. A trustee may charge a reasonable fee to a beneficiary for providing information under
34 this section.

35 6. The request of any beneficiary for information under any provision of this section shall
36 be with respect to a single trust that is sufficiently identified to enable the trustee to locate the
37 records of the trust.

38 7. If the trustee is bound by any confidentiality restrictions with respect to an asset of a
39 trust, any beneficiary who is eligible to receive information pursuant to this section about such
40 asset shall agree to be bound by the confidentiality restrictions that bind the trustee before
41 receiving such information from the trustee.

42 **8. This section does not apply to a trust created under a trust instrument that**
43 **became irrevocable before January 1, 2005, and the law in effect prior to January 1, 2005,**
44 **regarding the subject matter of this section shall continue to apply to those trusts.**

456.8-814. 1. Notwithstanding the [breadth of discretion granted to a trustee in the terms
2 of the trust, including the] use of such terms as "absolute," "sole," or "uncontrolled," **in the**
3 **exercise of discretion under an ascertainable standard,** the trustee shall exercise [a] **such**
4 discretionary power in good faith and in accordance with the terms and purposes of the trust and
5 the interests of the beneficiaries.

6 2. Subject to subsection 4 of this section, and unless the terms of the trust expressly
7 indicate that a rule in this subsection does not apply:

8 (1) a person other than a settlor who is a beneficiary and trustee of a trust that confers
9 on the trustee a power to make discretionary distributions to or for the trustee's personal benefit
10 may exercise the power only in accordance with an ascertainable standard [relating to the
11 trustee's individual health, education, support, or maintenance within the meaning of Section
12 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code];

13 (2) a trustee may not exercise a power to make discretionary distributions to satisfy a
14 legal obligation of support that the trustee personally owes another person; and

15 (3) for purposes of this subsection 2 of this section, the term "trustee" shall include a
16 person who is deemed to have any power of a trustee, whether because such person has the right
17 to remove or replace any trustee, because a reciprocal trust or power doctrine applies, or for any
18 other reason.

19 3. A power whose exercise is limited or prohibited by subsection 2 may be exercised by
20 a majority of the remaining trustees whose exercise of the power is not so limited or prohibited.
21 If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary
22 with authority to exercise the power.

23 4. Subsection 2 of this section does not apply to:

24 (1) a power held by the settlor's spouse who is the trustee of a trust for which a marital
25 deduction, as defined in Section 2056(b)(5) or 2523(b)(5) of the Internal Revenue Code was
26 previously allowed;

27 (2) any trust during any period that the trust may be revoked or amended by its settlor;
28 or

29 (3) a trust if contributions to the trust qualify for the annual exclusion under Section
30 2503(c) of the Internal Revenue Code.

456.8-816. Without limiting the authority conferred by section 456.8-815, a trustee may:

2 (1) collect trust property and accept or reject additions to the trust property from a settlor
3 or any other person;

4 (2) acquire or sell property in divided or undivided interests, for cash or on credit, at
5 public or private sale;

6 (3) exchange, partition, or otherwise change the character of trust property;

7 (4) deposit trust money in an account in a financial institution;

8 (5) borrow money, with or without security, and mortgage or pledge trust property for
9 a period within or extending beyond the duration of the trust;

10 (6) with respect to an interest in a proprietorship, partnership, limited liability company,
11 business trust, corporation, or other form of business or enterprise, continue the business or other
12 enterprise and take any action that may be taken by shareholders, members, or property owners,

13 including merging, dissolving, or otherwise changing the form of business organization or
14 contributing additional capital;

15 (7) with respect to stocks or other securities, exercise the rights of an absolute owner,
16 including the right to:

17 (a) vote, or give proxies to vote, with or without power of substitution, or enter into or
18 continue a voting trust agreement;

19 (b) hold a security in the name of a nominee or in other form without disclosure of the
20 trust so that title may pass by delivery;

21 (c) pay calls, assessments, and other sums chargeable or accruing against the securities,
22 and sell or exercise stock subscription or conversion rights; and

23 (d) deposit the securities with a depositary or other financial institution;

24 (8) with respect to an interest in real property, construct, or make ordinary or
25 extraordinary repairs to, alterations to, or improvements in, buildings or other structures,
26 demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop
27 land, dedicate land to public use or grant public or private easements, and make or vacate plats
28 and adjust boundaries;

29 (9) enter into a lease for any purpose as lessor or lessee, including a lease or other
30 arrangement for exploration and removal of natural resources, with or without the option to
31 purchase or renew, for a period within or extending beyond the duration of the trust;

32 (10) grant an option involving a sale, lease, or other disposition of trust property or
33 acquire an option for the acquisition of property, including an option exercisable beyond the
34 duration of the trust, and exercise an option so acquired;

35 (11) insure the property of the trust against damage or loss and insure the trustee, the
36 trustee's agents, and beneficiaries against liability arising from the administration of the trust;

37 (12) abandon or decline to administer property of no value or of insufficient value to
38 justify its collection or continued administration;

39 (13) with respect to possible liability for violation of environmental law:

40 (a) inspect or investigate property the trustee holds or has been asked to hold, or property
41 owned or operated by an organization in which the trustee holds or has been asked to hold an
42 interest, for the purpose of determining the application of environmental law with respect to the
43 property;

44 (b) take action to prevent, abate, or otherwise remedy any actual or potential violation
45 of any environmental law affecting property held directly or indirectly by the trustee, whether
46 taken before or after the assertion of a claim or the initiation of governmental enforcement;

47 (c) decline to accept property into trust or disclaim any power with respect to property
48 that is or may be burdened with liability for violation of environmental law;

49 (d) compromise claims against the trust which may be asserted for an alleged violation
50 of environmental law; and

51 (e) pay the expense of any inspection, review, abatement, or remedial action to comply
52 with environmental law;

53 (14) pay or contest any claim, settle a claim by or against the trust, and release, in whole
54 or in part, a claim belonging to the trust;

55 (15) pay taxes, assessments, compensation of the trustee and of employees and agents
56 of the trust, and other expenses incurred in the administration of the trust;

57 (16) exercise elections with respect to federal, state, and local taxes;

58 (17) select a mode of payment under any employee benefit or retirement plan, annuity,
59 or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right
60 to indemnification for expenses and against liabilities, and take appropriate action to collect the
61 proceeds;

62 (18) make loans out of trust property, including loans to a beneficiary on terms and
63 conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee
64 has a lien on future distributions for repayment of those loans;

65 (19) pledge trust property to guarantee or secure loans made by others to a beneficiary;

66 (20) appoint a trustee to act in another jurisdiction with respect to trust property located
67 in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the
68 appointing trustee, require that the appointed trustee furnish security, and remove any trustee so
69 appointed;

70 (21) pay an amount distributable to a beneficiary who is under a legal disability or who
71 the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or
72 applying it for the beneficiary's benefit, or by:

73 (a) paying it to the beneficiary's conservator or, if the beneficiary does not have a
74 conservator, the beneficiary's guardian;

75 (b) paying it to the beneficiary's custodian under the Missouri transfers to minors law
76 under sections 404.005 to 404.094, RSMo, or a personal custodian under sections 404.400 to
77 404.650, RSMo, and, for that purpose, creating a custodianship or custodial trust;

78 (c) if the trustee does not know of a conservator, guardian, custodian, or custodial
79 trustee, paying it to an adult relative or other person having legal or physical care or custody of
80 the beneficiary, to be expended on the beneficiary's behalf; or

81 (d) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's
82 continuing right to withdraw the distribution;

83 (22) on distribution of trust property or the division or termination of a trust, make
84 distributions in divided or undivided interests, allocate particular assets in proportionate or

85 disproportionate shares, value the trust property for those purposes, and adjust for resulting
86 differences in valuation;

87 (23) resolve a dispute concerning the interpretation of the trust or its administration by
88 mediation, arbitration, or other procedure for alternative dispute resolution;

89 (24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to
90 protect trust property and the trustee in the performance of the trustee's duties;

91 (25) **to engage and compensate attorneys, accountants, investment advisors, or**
92 **other agents, and to delegate to them trustee's duties and functions in accordance with the**
93 **provisions of section 456.8-807;**

94 (26) sign and deliver contracts and other instruments that are useful to achieve or
95 facilitate the exercise of the trustee's powers[.];

96 [(26)] (27) on termination of the trust, exercise the powers appropriate to wind up the
97 administration of the trust and distribute the trust property to the persons entitled to it; and

98 [(27)] (28) to invest and reinvest trust assets in accordance with sections 469.900 to
99 469.913, RSMo; including investing and reinvesting in securities or obligations of any state or
100 its political subdivisions, including securities or obligations that are underwritten by the trustee
101 or an affiliate of the trustee or a syndicate in which the trustee or an affiliate of the trustee is a
102 member which meet the standards established by the division of finance pursuant to subsection
103 5 of section 362.550, RSMo.

469.600. The doctrine of worthier title and the Rule in Bingham's case is abolished
2 **as a rule of law and as a rule of construction. Language in a governing instrument**
3 **describing the beneficiaries of a disposition as the transferor's "heirs", "heirs at law",**
4 **"next of kin", "distributees", "relatives", or "family", or language of similar import does**
5 **not create or presumptively create a reversionary interest in the transferor.**

473.333. If it appears that there is a surplus of money in the hands of the personal
2 representative that will not shortly be required for the expenses of administration, or payment
3 of claims, taxes or other required disbursements, the personal representative shall make such
4 investment of the money on or after August 28, 1998, in accordance with the provisions of the
5 Missouri prudent investor act, sections [456.900 to 456.913] **469.900 to 469.913**, RSMo. The
6 personal representative may also, without an order of court, invest in (1) direct obligations of,
7 or obligations unconditionally guaranteed as to principal and interest, by the United States, or
8 (2) accounts of savings and loan associations to the extent the accounts are insured by the Federal
9 Savings and Loan Insurance Corporation, without inquiry as to whether the investment is
10 reasonable and prudent. An order of court authorizing investments pursuant to this section does
11 not relieve a personal representative or his sureties of responsibility and liability if the investment

12 made is not in fact in accordance with the Missouri prudent investor act, sections [456.900 to
13 456.913] **469.900 to 469.913**, RSMo.

473.787. 1. While letters testamentary or of administration authorizing independent
2 administration of the estate are in force, the personal representative therein named is an
3 independent personal representative and his administration of the estate is an independent
4 administration, and all actions taken on or after August 28, 1996, shall be in accordance with the
5 provisions of the Missouri prudent investor act, sections [456.900 to 456.913] **469.900 to**
6 **469.913**, RSMo.

7 2. An independent personal representative shall proceed expeditiously with the
8 settlement and distribution of the estate in accordance with the applicable provisions of this
9 chapter and, except as otherwise specified by the provisions of sections 473.780 to 473.843, shall
10 do so without adjudication, order, or direction of the court, but he may invoke the jurisdiction
11 of the court, in proceedings authorized by this code, to resolve questions concerning the estate
12 or its administration or distribution.

13 3. Unless he is a member in good standing of the Missouri bar, an independent personal
14 representative, because he owes a fiduciary duty to the persons interested in the estate, shall
15 secure the advice and services of an attorney, who is not a salaried employee of the personal
16 representative, on legal questions arising in connection with:

17 (1) The application for and issuance of letters testamentary or of administration;

18 (2) The collection, investment and preservation of assets;

19 (3) The inventory;

20 (4) The allowance, disallowance, compromise and payment of claims;

21 (5) The making of tax returns;

22 (6) The transfer and encumbrance of property of the estate;

23 (7) The interpretation of the will and of the intestacy laws;

24 (8) The scheme and making of distribution; and

25 (9) The closing of the estate.

475.092. 1. If it is established in a proceeding conducted in [the] a manner [prescribed
2 for] **similar to a proceeding for the** appointment of a conservator of the estate that a person is
3 a minor or disabled, **or is blind or has a physical or mental disability as defined under state**
4 **or federal law**, the court, without appointing a conservator, may authorize, direct or ratify any
5 transaction necessary or desirable to achieve any security, service, or care arrangement meeting
6 the foreseeable needs of the [minor or disabled] person.

7 2. When it has been established in such a proceeding that the person is a minor or
8 disabled, **or is blind or has a physical or mental disability as defined under state or federal**
9 **law**, the court, without appointing a conservator, may authorize, direct or ratify any contract or

10 other transaction relating to the [minor or disabled] person's financial affairs or involving such
11 person's estate if the court determines that the transaction is in the best interests of the [minor or
12 disabled] person and if such action would otherwise be within the power of the court [pursuant
13 to this chapter]. A transaction pursuant to this section may include the establishment by the court
14 or other grantor of an inter vivos trust, **including a trust that complies with the provisions of**
15 **42 U.S.C. Section 1396p(d)(4)**, on behalf of the [minor or disabled] person provided that upon
16 such person's death, after the payment of trustees' fees, [the state of Missouri shall first receive
17 all amounts remaining in the trust up to an amount equal to the total medical assistance paid on
18 such person's behalf pursuant to a state plan as provided in Title 42 of the United States Code]
19 **any payments to the state Medicaid agency that are required by the provisions of 42 U.S.C.**
20 **Section 1396p(d)(4) are made** and, provided further, that any creditor of the [minor or disabled]
21 person other than the state of Missouri shall also be paid all sums due for such person's care,
22 maintenance and support, to the extent trust property is sufficient therefor, and, provided, such
23 trust shall terminate upon such person's death and any amounts remaining in the trust after the
24 foregoing payments shall be distributed to [such decedent's estate] **the remainder beneficiaries**
25 **designated in the trust or as designated pursuant to the exercise of a power of appointment**
26 **set forth in the trust. This section shall not be interpreted to require all such trusts to be**
27 **established by a court proceeding.**

28 3. Before approving a protective arrangement or other transaction pursuant to this
29 section, the court shall consider the interests of creditors and dependents of the [minor or
30 disabled] person and, in view of such person's disability, whether such person needs the
31 continuing protection of a conservator. The court may appoint a special conservator to assist in
32 the accomplishment of any protective arrangement or other transaction authorized pursuant to
33 this section who shall have the authority conferred by the order and serve until discharged by
34 order after report to the court of all matters done pursuant to the order of appointment.

35 4. Notwithstanding any other law to the contrary, the trustee of any trust created or
36 approved by a Missouri court [for a minor or disabled person] prior to August 28, 1999, **for the**
37 **benefit of a person who is a minor or disabled, or is blind or has a physical or mental**
38 **disability as defined under state or federal law** shall not be liable to the state of Missouri or
39 to any creditor of such person if, on August 28, 1999, the trust does not have sufficient assets to
40 reimburse the state of Missouri for medical assistance paid on such person's behalf pursuant to
41 a state plan as provided in Title 42 of the United States Code or to reimburse a creditor for sums
42 due for such person's care, maintenance and support. Any such trust which is in existence as of
43 August 28, 1999, shall be subject to subsection 2 of this section, as amended, notwithstanding
44 any provisions of such trust to the contrary. The trustee shall not be liable for any distributions
45 or payments made prior to August 28, 1999, pursuant to the terms of such trust.

475.130. 1. Conservator of the estate of a minor or disabled person shall, under supervision of the court, protect, preserve and manage the estate, invest it, on or after August 28, 1998, in accordance with the provisions of the Missouri prudent investor act, sections [456.900 to 456.913] **469.900 to 469.913**, RSMo, apply it as provided in this code, account for it faithfully, perform all other duties required of him by law, and at the termination of the conservatorship deliver the assets of the protectee to the persons entitled thereto. In protecting, preserving and managing the estate, the conservator of the estate is under a duty to use the degree of care, skill and prudence which an ordinarily prudent man uses in managing the property of, and conducting transactions on behalf of, others. If a conservator of the estate has special skills or is appointed on the basis of representations of special skills or expertise, he is under a duty to use those skills in the conduct of the protectee's affairs. A conservator of the estate is under a duty to act in the interest of the protectee and to avoid conflicts of interest which impair his ability so to act.

2. The conservator of the estate shall take possession of all of the protectee's real and personal property, and of rents, income, issue and profits therefrom, whether accruing before or after his appointment, and of the proceeds arising from the sale, mortgage, lease or exchange thereof. Subject to such possession, the title to all such estate, and to the increment and proceeds thereof, is in the protectee and not in the conservator. Upon a showing that funds available or payable for the benefit of the protectee by any federal agency are being applied for the benefit of the protectee, or that such federal agency has refused to recognize the authority of the conservator to administer such funds, the court may waive, by order, the duty of the conservator to account therefor.

3. The court has full authority under the rules of civil procedure to enjoin any person from interfering with the right of the conservator to possession of the assets of the protectee, including benefits payable from any source.

4. The conservator of the estate shall prosecute and defend all actions instituted in behalf of or against the protectee; collect all debts due or becoming due to the protectee, and give acquittances and discharges therefor, and adjust, settle and pay all claims due or becoming due from the protectee so far as his estate and effects will extend, except as provided in sections 507.150 and 507.188, RSMo.

5. A conservator of the estate has power, without authorization or approval of the court, to:

(1) Settle or compromise a claim against the protectee or the estate agreeing to pay or paying not more than one thousand dollars;

(2) Settle, abandon or compromise a claim in favor of the estate which does not exceed one thousand dollars;

37 (3) Sell, or agree to sell, chattels, choses in action and investment securities reasonably
38 worth not more than one thousand dollars for cash or upon terms involving a reasonable
39 extension of credit;

40 (4) Exchange, or agree to exchange, chattels, choses in action and investment securities
41 for other such property of equivalent value, not in excess of one thousand dollars;

42 (5) Insure or contract for insurance of property of the estate against fire, theft and other
43 hazards;

44 (6) Insure or contract for insurance protecting the protectee against any liability likely
45 to be incurred, including medical and hospital expenses, and protecting the conservator against
46 liability to third parties arising from acts or omissions connected with possession or management
47 of the estate;

48 (7) Contract for needed repairs and maintenance of property of the estate;

49 (8) Lease land and buildings for terms not exceeding one year, reserving reasonable rent,
50 and renew any such lease for a like term;

51 (9) Vote corporate stock in person or by general or limited proxy;

52 (10) Contract for the provision of board, lodging, education, medical care, or necessities
53 of the protectee for periods not exceeding one year, and renew any such contract for a like period.

54 6. If, in exercising any power conferred by subsection 5, of this section, a conservator
55 breaches any of the duties enumerated in subsection 1, he may be surcharged for losses to the
56 estate caused by the breach but persons who dealt with the conservator in good faith, without
57 knowledge of or reason to suspect the breach of duty, may enforce and retain the benefits of any
58 transaction with the conservator which he has power under subsection 5 of this section to
59 conduct.

 475.190. 1. The conservator shall invest the money of the protectee, from whatever
2 source derived, unless it is required for other lawful purposes.

3 2. No investment, other than an investment (a) in the direct obligations of or obligations
4 unconditionally guaranteed as to principal and interest by the United States or (b) in savings
5 accounts and time deposits, including time certificates of deposit, in banking institutions to the
6 extent such accounts or deposits are insured by the Federal Deposit Insurance Corporation or (c)
7 in accounts of savings and loan associations to the extent such accounts are insured by the
8 Federal Savings and Loan Insurance Corporation, shall be made without prior order of the court.

9 3. The conservator may invest in any other property, real or personal, which the court
10 finds is a reasonable and prudent investment in the circumstances. An order of court authorizing
11 investment under this subsection does not relieve a conservator or his sureties of responsibility
12 and liability if the investment made is not in fact in accordance with the Missouri prudent
13 investor act, sections [456.900 to 456.913] **469.900 to 469.913**, RSMo.

14 4. Every conservator shall make a report at every annual settlement of the disposition
15 made by the conservator of the money belonging to the protectee entrusted to him. If it appears
16 that the money is invested in securities, then the conservator shall report a detailed description
17 of the securities and shall describe any real estate security and state where it is situated, and its
18 value, which report shall be filed in the court. The court shall carefully examine into the report
19 as soon as made, and, if in the opinion of the court the security is insufficient, the court shall
20 make such orders as are necessary to protect the interest of the protectee. The conservator and
21 his sureties are liable on their bond for any omission to comply with the orders of the court. If
22 the money has not been invested as authorized by law the conservator shall state that fact and the
23 reasons, and shall state that the conservator has been unable to make an investment after diligent
24 effort to do so.

25 5. If any conservator refuses or neglects to make the report at the time aforesaid, or
26 makes a false report thereof, he and his sureties are liable on their bond for all loss or damage
27 to the protectee occasioned by reason of his neglect or refusal so to report, or by making a false
28 report, and the conservator may, on account thereof, be removed from his trust in the discretion
29 of the court.

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