

FIRST REGULAR SESSION

HOUSE BILL NO. 981

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MITTEN.

2090H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 456.950, RSMo, and to enact in lieu thereof one new section relating to qualified spousal trusts.

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

Section A. Section 456.950, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 456.950, to read as follows:

456.950. 1. As used in this section, "qualified spousal trust" means a trust:

(1) The settlors of which are married to each other at the time of the creation of the trust; and

(2) The terms of which provide that during the joint lives of the settlors **or the life of the sole surviving settlor** all property transferred to, or held by, the trustee **[are]** is:

(a) Held and administered in one trust for the benefit of both settlors, **which may be** revocable by either settlor or both settlors while ~~either or~~ both are alive, **and by one settlor after the death or incapacity of the other**, and each settlor having the right to receive distributions of income or principal, whether mandatory or within the discretion of the trustee, from the entire trust for the joint lives of the settlors and for the survivor's life; or

(b) Held and administered in two separate shares of one trust for the benefit of each of the settlors, with the trust revocable by each settlor with respect to that settlor's separate share of that trust without the participation or consent of the other settlor, and each settlor having the right to receive distributions of income or principal, whether mandatory or within the discretion of the trustee, from that settlor's separate share for that settlor's life; or

(c) Held and administered under the terms and conditions contained in paragraphs (a) and (b) of this subdivision.

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.

18 2. A qualified spousal trust may contain any other trust terms that are not inconsistent
19 with the provisions of this section, including, without limitation, a discretionary power to
20 distribute trust property to a person in addition to a settlor.

21 3. All property at any time held in a qualified spousal trust, without regard to how such
22 property was titled prior to it being so held[;] :

23 (1) Shall have the same immunity from the claims of a separate creditor of either settlor
24 as if such property were held outside the trust by the settlors as tenants by the entirety, unless
25 otherwise provided in writing by the settlor or settlors who transferred such property to the trust,
26 and such property shall be treated for that purpose, including without limitation, federal and state
27 bankruptcy laws, as tenants by entirety property[~~Property held in a qualified spousal trust~~] ;

28 (2) **Shall be exempt from attachment and execution during the settlors' joint lives**
29 **to the extent of any settlor's interest, right, or power therein, except from the claims of the**
30 **settlors' joint creditors; and**

31 (3) Shall cease to receive immunity from the claims of creditors upon the dissolution of
32 marriage of the settlors by a court.

33 4. As used in this section, "property" means any interest in any type of property held in
34 a qualified spousal trust, the income thereon, and any property into which such interest, proceeds,
35 or income may be converted.

36 5. Upon the death of each settlor, all property held by the trustee of the qualified spousal
37 trust shall be distributed as directed by the then current terms of the governing instrument of such
38 trust. Upon the death of the first settlor to die, if immediately prior to death the predeceased
39 settlor's interest in the qualified spousal trust was then held in such settlor's separate share, the
40 property held in such settlor's separate share may pass into an irrevocable trust for the benefit of
41 the surviving settlor **or other beneficiary** upon such terms as the governing instrument shall
42 direct, including without limitation a spendthrift provision as provided in section 456.5-502.
43 **Property may be held in or transferred to a settlor's separate share of a trust by**
44 **designation under the current terms of the governing instrument of such trust or under the**
45 **specific titling of property that refers to such separate share of the trust or its trustee as the**
46 **owner.**

47 6. The respective rights of settlors who are married to each other in any property for
48 purposes of a dissolution of the settlors' marriage shall not be affected or changed by reason of
49 the transfer of that property to, or its subsequent administration as an asset of, a qualified spousal
50 trust during the marriage of the settlors, unless both settlors expressly agree otherwise in writing.

51 7. No transfer to a qualified spousal trust shall avoid or defeat the Missouri uniform
52 fraudulent transfer act in chapter 428.

53 8. This section shall apply to all trusts which fulfill the criteria set forth in this section
54 for a qualified spousal trust regardless of whether such trust was created before, on, or after
55 August 28, 2011.

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WITHDRAWN