

PROPERTY CODE
SUBTITLE B. TEXAS TRUST CODE: CREATION, OPERATION, AND TERMINATION
OF TRUSTS

CHAPTER 111. GENERAL PROVISIONS

Sec. 111.001. SHORT TITLE. This subtitle may be cited as the Texas Trust Code.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 111.002. CONSTRUCTION OF SUBTITLE. This subtitle and the Texas Trust Act, as amended (Articles 7425b-1 through 7425b-48, Vernon's Texas Civil Statutes), shall be considered one continuous statute, and for the purposes of any statute or of any instrument creating a trust that refers to the Texas Trust Act, this subtitle shall be considered an amendment to the Texas Trust Act.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984; Acts 2005, 79th Leg., ch. 148, Sec. 1, eff. Jan. 1, 2006.

Sec. 111.003. TRUSTS SUBJECT TO THIS SUBTITLE. For the purposes of this subtitle, a "trust" is an express trust only and does not include:

- (1) a resulting trust;
- (2) a constructive trust;
- (3) a business trust; or
- (4) a security instrument such as a deed of trust, mortgage, or security interest as defined by the Business & Commerce Code.

Amended by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 111.0035. DEFAULT AND MANDATORY RULES; CONFLICT BETWEEN TERMS AND STATUTE.

(a) Except as provided by the terms of a trust and Subsection (b), this subtitle governs:

- (1) the duties and powers of a trustee;
- (2) relations among trustees; and
- (3) the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this subtitle, except that the terms of a trust may not limit:

- (1) the requirements imposed under Section 112.031;
- (2) the duties and liabilities of and restrictions placed on a corporate trustee under Section 113.052 or 113.053;
- (3) the applicability of Section 114.007 to an exculpation term of a trust;
- (4) the periods of limitation for commencing a judicial proceeding regarding a trust;
- (5) a trustee's duty:

(A) with regard to an irrevocable trust, to respond to a demand for accounting made under Section 113.151 if the demand is from a beneficiary who, at the time of the demand:

(i) is entitled or permitted to receive distributions from the trust; or

(ii) would receive a distribution from the trust if the trust terminated at the time of the demand;

(B) to act in good faith and in accordance with the purposes of the trust; and

(C) under Section 113.060 to a beneficiary described by Paragraph (A) that is 25 years of age or older; or

(6) the power of a court, in the interest of justice, to take action or exercise jurisdiction, including the power to:

(A) modify or terminate a trust or take other action under Section 112.054;

(B) remove a trustee under Section 113.082;

(C) exercise jurisdiction under Section 115.001;

(D) require, dispense with, modify, or terminate a trustee's bond; or

(E) adjust or deny a trustee's compensation if the trustee commits a breach of trust.

Added by Acts 2005, 79th Leg., ch. 148, Sec. 2, eff. Jan. 1, 2006.

Sec. 111.004. DEFINITIONS. In this subtitle:

(1) "Affiliate" includes:

(A) a person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another person; or

(B) any officer, director, partner, employee, or relative of a person, and any corporation or partnership of which a person is an officer, director, or partner.

(2) "Beneficiary" means a person for whose benefit property is held in trust, regardless of the nature of the interest.

(3) "Court" means a court of appropriate jurisdiction.

(4) "Express trust" means a fiduciary relationship with respect to property which arises as a manifestation by the settlor of an intention to create the relationship and which subjects the person holding title to the property to equitable duties to deal with the property for the benefit of another person.

(5) "Income" is defined in Section 116.002.

(6) "Interest" means any interest, whether legal or equitable or both, present or future, vested or contingent, defeasible or indefeasible.

(7) "Interested person" means a trustee, beneficiary, or any other person having an interest in or a claim against the trust or any person who is affected by the administration of the trust. Whether a person, excluding a trustee or named beneficiary, is an interested person may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding.

(8) "Internal Revenue Code" means the Internal Revenue Code of 1954, as amended, or any corresponding statute subsequently in effect.

(9) "Inventory value" means the cost of property purchased by a trustee, the market value of property at the time it became subject to the trust, or, in the case of a testamentary trust, any value used by the trustee that is finally determined for the purposes of an estate or inheritance tax.

(10) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a business trust, an unincorporated organization, or two or more persons having a joint or common interest, including an individual or a corporation acting as a personal representative or in any other fiduciary capacity.

(11) "Principal" is defined in Section 116.002.

(12) "Property" means any type of property, whether real, tangible or intangible, legal, or equitable. The term also includes choses in action, claims, and contract rights, including a contractual right to receive death benefits as designated beneficiary under a policy of insurance, contract, employees' trust, retirement account, or other arrangement.

(13) "Relative" means a spouse or, whether by blood or adoption, an ancestor, descendant, brother, sister, or spouse of any of them.

Text of subd. (14) effective until January 1, 2006

(14) "Settlor" means the person who creates the trust. The terms "grantor" and "trustor" mean the same as "settlor."

Text of subd. (14) effective January 1, 2006

(14) "Settlor" means a person who creates a trust or contributes property to a trustee of a trust. If more than one person contributes property to a trustee of a trust, each person is a settlor of the portion of the property in the trust attributable to that person's contribution to the trust. The terms "grantor" and "trustor" mean the same as "settlor."

(15) "Terms of the trust" means the manifestation of intention of the settlor with respect to the trust expressed in a manner that admits of its proof in judicial proceedings.

(16) "Transaction" means any act performed by a settlor, trustee, or beneficiary in relation to a trust, including the creation or termination of a trust, the investment of trust property, a breach of duty, the receipt of trust property, the receipt of income or the incurring of expense, a distribution of trust property, an entry in the books and records of the trust, and an accounting by a trustee to any person entitled to receive an accounting.

(17) "Trust property" means property placed in trust by one of the methods specified in Section 112.001 or property otherwise transferred to or acquired or retained by the trustee for the trust.

(18) "Trustee" means the person holding the property in trust.

(19) "Employees' trust" means:

(A) a trust that forms a part of a stock-bonus, pension, or profit-sharing plan under Section 401, Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 401 (1986));

(B) a pension trust under Chapter 111; and

(C) an employer-sponsored benefit plan or program, or any other retirement savings arrangement, including a pension plan created under Section 3, Employee Retirement Income Security Act of 1974 (29 U.S.C.A. Sec. 1002 (1986)), regardless of whether the plan, program, or arrangement is funded through a trust.

(20) "Individual retirement account" means a trust, custodial arrangement, or annuity under Section 408(a) or (b), Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 408 (1986)).

(21) "Retirement account" means a retirement-annuity contract, an individual retirement account, a simplified employee pension, or any other retirement savings arrangement.

(22) "Retirement-annuity contract" means an annuity contract under Section 403, Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 403 (1986)).

(23) "Simplified employee pension" means a trust, custodial arrangement, or annuity under Section 408, Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 408 (1986)).

(24) "Environmental law" means any federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

Text of subd. (25) effective January 1, 2006

(25) "Breach of trust" means a violation by a trustee of a duty the trustee owes to a beneficiary.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 741, Sec. 1, 2, eff. Aug. 31, 1987; Acts 1993, 73rd Leg., ch. 846, Sec. 28, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 642, Sec. 14, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 659, Sec. 2, eff. Jan. 1, 2004; Acts 2003, 78th Leg., ch. 1103, Sec. 2, eff. Jan. 1, 2004; Acts 2005, 79th Leg., ch. 148, Sec. 3, eff. Jan. 1, 2006.

Sec. 111.005. REENACTMENT OF COMMON LAW. If the law codified in this subtitle repealed a statute that abrogated or restated a common law rule, that common law rule is reestablished, except as the contents of the rule are changed by this subtitle.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 111.006. APPLICATION. This subtitle applies:

(1) to all trusts created on or after January 1, 1984, and to all transactions relating to such trusts; and

(2) to all transactions occurring on or after January 1, 1984, relating to trusts created before January 1, 1984; provided that transactions entered into before January 1, 1984, and which were subject to the Texas Trust Act, as amended (Articles 7425b-1 through 7425b-48, Vernon's Texas Civil Statutes), and the rights, duties, and interests flowing from such transactions remain valid on and after January 1, 1984, and must be terminated, consummated, or enforced as required or permitted by this subtitle. Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.