

PROPERTY CODE
CHAPTER 112. CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF
TRUSTS

SUBCHAPTER A. CREATION

Sec. 112.001. METHODS OF CREATING TRUST. A trust may be created by:

(1) a property owner's declaration that the owner holds the property as trustee for another person;

(2) a property owner's inter vivos transfer of the property to another person as trustee for the transferor or a third person;

(3) a property owner's testamentary transfer to another person as trustee for a third person;

(4) an appointment under a power of appointment to another person as trustee for the donee of the power or for a third person; or

(5) a promise to another person whose rights under the promise are to be held in trust for a third person.

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

Sec. 112.002. INTENTION TO CREATE TRUST. A trust is created only if the settlor manifests an intention to create a trust.

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

Sec. 112.003. CONSIDERATION. Consideration is not required for the creation of a trust. A promise to create a trust in the future is enforceable only if the requirements for an enforceable contract are present.

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

Sec. 112.004. STATUTE OF FRAUDS. A trust in either real or personal property is enforceable only if there is written evidence of the trust's terms bearing the signature of the settlor or the settlor's authorized agent. A trust consisting of personal property, however, is enforceable if created by:

(1) a transfer of the trust property to a trustee who is neither settlor nor beneficiary if the transferor expresses simultaneously with or prior to the transfer the intention to create a trust; or

(2) a declaration in writing by the owner of property that the owner holds the property as trustee for another person or for the owner and another person as a beneficiary.

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

Sec. 112.005. TRUST PROPERTY. A trust cannot be created unless there is trust property.

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

Sec. 112.006. ADDITIONS TO TRUST PROPERTY. Property may be added to an existing trust from any source in any manner unless the addition is prohibited by the terms of the trust or the property is unacceptable to the trustee.

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

Sec. 112.007. CAPACITY OF SETTLOR. A person has the same capacity to create a trust by declaration, inter vivos or testamentary transfer, or appointment that the person has to transfer, will, or appoint free of trust.

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

Sec. 112.008. CAPACITY OF TRUSTEE. (a) The trustee must have the legal capacity to take, hold, and transfer the trust property. If the trustee is a corporation, it must have the power to act as a trustee in this state.

(b) Except as provided by Section 112.034, the fact that the person named as trustee is also a beneficiary does not disqualify the person from acting as trustee if he is otherwise qualified.

(c) The settlor of a trust may be the trustee of the trust.

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

Sec. 112.009. ACCEPTANCE BY TRUSTEE.

Text of subsec. (a) effective until January 1, 2006

(a) The signature of the person named as trustee on the writing evidencing the trust or on a separate written acceptance is conclusive evidence that the person accepted the trust. A person

named as trustee who exercises power or performs duties under the trust is presumed to have accepted the trust.

Text of subsec. (a) effective January 1, 2006

(a) The signature of the person named as trustee on the writing evidencing the trust or on a separate written acceptance is conclusive evidence that the person accepted the trust. A person named as trustee who exercises power or performs duties under the trust is presumed to have accepted the trust, except that a person named as trustee may engage in the following conduct without accepting the trust:

(1) acting to preserve the trust property if, within a reasonable time after acting, the person gives notice of the rejection of the trust to:

(A) the settlor; or

(B) if the settlor is deceased or incapacitated, all beneficiaries then entitled to receive trust distributions from the trust; and

(2) inspecting or investigating trust property for any purpose, including determining the potential liability of the trust under environmental or other law.

(b) A person named as trustee who does not accept the trust incurs no liability with respect to the trust.

(c) If the person named as the original trustee does not accept the trust or if the person is dead or does not have capacity to act as trustee, the person named as the alternate trustee under the terms of the trust or the person selected as alternate trustee according to a method prescribed in the terms of the trust may accept the trust. If a trustee is not named or if there is no alternate trustee designated or selected in the manner prescribed in the terms of the trust, the court shall appoint a trustee on a petition of any interested person.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984. Amended by Acts 2005, 79th Leg., ch. 148, Sec. 4, eff. Jan. 1, 2006.

Sec. 112.010. ACCEPTANCE OR DISCLAIMER BY OR ON BEHALF OF BENEFICIARY. (a) Acceptance by a beneficiary of an interest in a trust is presumed.

(b) If a trust is created by will, a beneficiary may disclaim an interest in the manner and with the effect for which provision is made in the applicable probate law.

(c) Except as provided by Subsection (c-1) of this section, the following persons may disclaim an interest in a trust created in any manner other than by will:

(1) a beneficiary, including a beneficiary of a spendthrift trust;

(2) the personal representative of an incompetent, deceased, unborn or unascertained, or minor beneficiary, with court approval by the court having jurisdiction over the personal representative; and

(3) the independent executor of a deceased beneficiary, without court approval.

(c-1) A person authorized to disclaim an interest in a trust under Subsection (c) of this section may not disclaim the interest if the person in his capacity as beneficiary, personal representative, or independent executor has either exercised dominion and control over the interest or accepted any benefits from the trust.

(c-2) A person authorized to disclaim an interest in a trust under Subsection (c) of this section may disclaim an interest in whole or in part by:

(1) evidencing his irrevocable and unqualified refusal to accept the interest by written memorandum, acknowledged before a notary public or other person authorized to take acknowledgments of conveyances of real estate; and

(2) delivering the memorandum to the trustee or, if there is not a trustee, to the transferor of the interest or his legal representative not later than the date that is nine months after the later of:

(A) the day on which the transfer creating the interest in the beneficiary is made;

(B) the day on which the beneficiary attains age 21; or

(C) in the case of a future interest, the date of the event that causes the taker of the interest to be finally ascertained and the interest to be indefeasibly vested.

(d) A disclaimer under this section is effective as of the date of the transfer of the interest involved and relates back for all purposes to the date of the transfer and is not subject to the claims of any creditor of the disclaimant. Unless the terms of the trust provide otherwise, the interest that is the subject of the disclaimer passes as if the person disclaiming had predeceased the transfer and a future interest that would otherwise take effect in possession or enjoyment after the termination of the estate or interest that is disclaimed takes effect as if the disclaiming beneficiary had predeceased the transfer. A disclaimer under this section is irrevocable.

(e) Failure to comply with this section makes a disclaimer ineffective except as an assignment of the interest to those who would have received the interest being disclaimed had the person attempting the disclaimer died prior to the transferor of the interest.

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. 467, Sec. 3, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 846, Sec. 3, eff. Sept. 1, 1993.

SUBCHAPTER B. VALIDITY

Sec. 112.031. TRUST PURPOSES. A trust may be created for any purpose that is not illegal. The terms of the trust may not require the trustee to commit a criminal or tortious act or an act that is contrary to public policy.

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

Sec. 112.032. ACTIVE AND PASSIVE TRUSTS; STATUTE OF USES. (a) Except as provided by Subsection (b), title to real property held in trust vests directly in the beneficiary if the trustee has neither a power nor a duty related to the administration of the trust.

(b) The title of a trustee in real property is not divested if the trustee's title is not merely nominal but is subject to a power or duty in relation to the property.

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

Sec. 112.033. RESERVATION OF INTERESTS AND POWERS BY SETTLOR. If during the life of the settlor an interest in a trust or the trust property is created in a beneficiary other than the settlor, the disposition is not invalid as an attempted testamentary disposition merely because the settlor reserves or retains, either in himself or another person who is not the trustee, any or all of the other interests in or powers over the trust or trust property, such as:

(1) a beneficial life interest for himself;

(2) the power to revoke, modify, or terminate the trust in whole or in part;

(3) the power to designate the person to whom or on whose behalf the income or principal is to be paid or applied;

(4) the power to control the administration of the trust in whole or in part;

(5) the right to exercise a power or option over property in the trust or over interests made payable to the trust under an employee benefit plan, life insurance policy, or otherwise; or

(6) the power to add property or cause additional employee benefits, life insurance, or other interests to be made payable to the trust at any time.

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

Sec. 112.034. MERGER. (a) If a settlor transfers both the legal title and all equitable interests in property to the same person or retains both the legal title and all equitable interests in property in himself as both the sole trustee and the sole beneficiary, a trust is not created and the transferee holds the property as his own. This subtitle does not invalidate a trust account validly created and in effect under Chapter XI, Texas Probate Code.

(b) Except as provided by Subsection (c) of this section, a trust terminates if the legal title to the trust property and all equitable interests in the trust become united in one person.

(c) The title to trust property and all equitable interests in the trust property may not become united in a beneficiary, other than the settlor, whose interest is protected under a spendthrift

trust, and in that case the court shall appoint a new trustee or cotrustee to administer the trust for the benefit of the beneficiary.

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

Sec. 112.035. SPENDTHRIFT TRUSTS. (a) A settlor may provide in the terms of the trust that the interest of a beneficiary in the income or in the principal or in both may not be voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee.

(b) A declaration in a trust instrument that the interest of a beneficiary shall be held subject to a "spendthrift trust" is sufficient to restrain voluntary or involuntary alienation of the interest by a beneficiary to the maximum extent permitted by this subtitle.

(c) A trust containing terms authorized under Subsection (a) or (b) of this section may be referred to as a spendthrift trust.

(d) If the settlor is also a beneficiary of the trust, a provision restraining the voluntary or involuntary transfer of his beneficial interest does not prevent his creditors from satisfying claims from his interest in the trust estate.

Text of subsec. (e) effective until January 1, 2006

(e) A beneficiary of the trust may not be considered a settlor merely because of a lapse, waiver, or release of the beneficiary's right to withdraw a part of the trust property if the value of the property that could have been withdrawn by exercising the right of withdrawal in any calendar year does not exceed at the time of the lapse, waiver, or release the greater of the amount specified in:

(1) Section 2041(b)(2) or 2514(e), Internal Revenue Code of 1986; or

(2) Section 2503(b), Internal Revenue Code of 1986.

Text of subsec. (e) effective January 1, 2006

(e) A beneficiary of the trust may not be considered a settlor merely because of a lapse, waiver, or release of:

(1) a power described by Subsection (f); or

(2) the beneficiary's right to withdraw a part of the trust property to the extent that the value of the property affected by the lapse, waiver, or release in any calendar year does not exceed the greater of the amount specified in:

(A) Section 2041(b)(2) or 2514(e), Internal Revenue Code of 1986; or

(B) Section 2503(b), Internal Revenue Code of 1986.

Text of subsec. (f) effective January 1, 2006

(f) A beneficiary of the trust may not be considered to be a settlor, to have made a voluntary or involuntary transfer of the beneficiary's interest in the trust, or to have the power to make a voluntary or involuntary transfer of the beneficiary's interest in the trust, merely because the beneficiary, in any capacity, holds or exercises:

(1) a presently exercisable power to:

(A) consume, invade, appropriate, or distribute property to or for the benefit of the beneficiary, if the power is:

(i) exercisable only on consent of another person holding an interest adverse to the beneficiary's interest; or

(ii) limited by an ascertainable standard, including health, education, support, or maintenance of the beneficiary; or

(B) appoint any property of the trust to or for the benefit of a person other than the beneficiary, a creditor of the beneficiary, the beneficiary's estate, or a creditor of the beneficiary's estate;

(2) a testamentary power of appointment; or

(3) a presently exercisable right described by Subsection (e)(2).

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984. Amended by Acts 1997, 75th Leg., ch. 109, Sec. 1, eff. Sept. 1, 1997; Acts 2005, 79th Leg., ch. 148, Sec. 5, eff. Jan. 1, 2006.

Sec. 112.036. RULE AGAINST PERPETUITIES. The rule against perpetuities applies to trusts other than charitable trusts. Accordingly, an interest is not good unless it must vest, if at all,

not later than 21 years after some life in being at the time of the creation of the interest, plus a period of gestation. Any interest in a trust may, however, be reformed or construed to the extent and as provided by Section 5.043.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 18, Sec. 10, eff. Oct. 2, 1984.

Sec. 112.037. TRUST FOR CARE OF ANIMAL. (a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates on the death of the animal or, if the trust is created to provide for the care of more than one animal alive during the settlor's lifetime, on the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if a person is not appointed in the terms of the trust, by a person appointed by the court. A person having an interest in the welfare of an animal that is the subject of a trust authorized by this section may request the court to appoint a person to enforce the trust or to remove a person appointed to enforce the trust.

(c) Except as provided by Subsections (d) and (e), property of a trust authorized by this section may be applied only to the property's intended use under the trust.

(d) Property of a trust authorized by this section may be applied to a use other than the property's intended use under the trust to the extent the court determines that the value of the trust property exceeds the amount required for the intended use.

(e) Except as otherwise provided by the terms of the trust, property not required for the trust's intended use must be distributed to:

(1) if the settlor is living at the time the trust property is distributed, the settlor; or

(2) if the settlor is not living at the time the trust property is distributed:

(A) if the settlor has a will, beneficiaries under the settlor's will; or

(B) in the absence of an effective provision in a will, the settlor's heirs.

(f) For purposes of Section 112.036, the lives in being used to determine the maximum duration of a trust authorized by this section are:

(1) the individual beneficiaries of the trust;

(2) the individuals named in the instrument creating the trust; and

(3) if the settlor or settlors are living at the time the trust becomes irrevocable, the settlor or settlors of the trust or, if the settlor or settlors are not living at the time the trust becomes irrevocable, the individuals who would inherit the settlor or settlors' property under the law of this state had the settlor or settlors died intestate at the time the trust becomes irrevocable.

Added by Acts 2005, 79th Leg., ch. 148, Sec. 6, eff. Jan. 1, 2006.

SUBCHAPTER C. REVOCATION, MODIFICATION, AND TERMINATION OF TRUSTS

Sec. 112.051. REVOCATION, MODIFICATION, OR AMENDMENT BY SETTLOR. (a) A settlor may revoke the trust unless it is irrevocable by the express terms of the instrument creating it or of an instrument modifying it.

(b) The settlor may modify or amend a trust that is revocable, but the settlor may not enlarge the duties of the trustee without the trustee's express consent.

(c) If the trust was created by a written instrument, a revocation, modification, or amendment of the trust must be in writing.

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

Sec. 112.052. TERMINATION. A trust terminates if by its terms the trust is to continue only until the expiration of a certain period or until the happening of a certain event and the period of time has elapsed or the event has occurred. If an event of termination occurs, the trustee may continue to exercise the powers of the trustee for the reasonable period of time required to wind up the affairs of the trust and to make distribution of its assets to the appropriate beneficiaries. The continued exercise of the trustee's powers after an event of termination does not affect the vested rights of beneficiaries of the trust.

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

eff. Jan. 1, 1984.

Sec. 112.053. DISPOSITION OF TRUST PROPERTY ON FAILURE OF TRUST. The settlor may provide in the trust instrument how property may or may not be disposed of in the event of failure, termination, or revocation of the trust.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984. Amended by Acts 1991, 72nd Leg., ch. 895, Sec. 17, eff. Sept. 1, 1991.

Sec. 112.054. JUDICIAL MODIFICATION OR TERMINATION OF TRUSTS. (a) On the petition of a trustee or a beneficiary, a court may order that the trustee be changed, that the terms of the trust be modified, that the trustee be directed or permitted to do acts that are not authorized or that are forbidden by the terms of the trust, that the trustee be prohibited from performing acts required by the terms of the trust, or that the trust be terminated in whole or in part, if:

(1) the purposes of the trust have been fulfilled or have become illegal or impossible to fulfill;

(2) because of circumstances not known to or anticipated by the settlor, the order will further the purposes of the trust;

(3) modification of administrative, nondispositive terms of the trust is necessary or appropriate to prevent waste or avoid impairment of the trust's administration;

(4) the order is necessary or appropriate to achieve the settlor's tax objectives and is not contrary to the settlor's intentions; or

(5) subject to Subsection (d):

(A) continuance of the trust is not necessary to achieve any material purpose of the trust; or

(B) the order is not inconsistent with a material purpose of the trust.

(b) The court shall exercise its discretion to order a modification or termination under Subsection (a) in the manner that conforms as nearly as possible to the probable intention of the settlor. The court shall consider spendthrift provisions as a factor in making its decision whether to modify or terminate, but the court is not precluded from exercising its discretion to modify or terminate solely because the trust is a spendthrift trust.

(c) The court may direct that an order described by Subsection (a)(4) has retroactive effect.

(d) The court may not take the action permitted by Subsection (a)(5) unless all beneficiaries of the trust have consented to the order or are deemed to have consented to the order. A minor, incapacitated, unborn, or unascertained beneficiary is deemed to have consented if a person representing the beneficiary's interest under Section 115.013(c) has consented or if a guardian ad litem appointed to represent the beneficiary's interest under Section 115.014 consents on the beneficiary's behalf.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984. Amended by Acts 1985, 69th Leg., ch. 149, Sec. 1, eff. May 24, 1985; Acts 2005, 79th Leg., ch. 148, Sec. 7, eff. Jan. 1, 2006.

Sec. 112.055. AMENDMENT OF CHARITABLE TRUSTS BY OPERATION OF LAW. (a) Except as provided by Section 112.056 and Subsection (b) of this section, the governing instrument of a trust that is a private foundation under Section 509, Internal Revenue Code, as amended, a nonexempt charitable trust that is treated as a private foundation under Section 4947(a)(1), Internal Revenue Code, as amended, or, to the extent that Section 508(e), Internal Revenue Code, is applicable to it, a nonexempt split-interest trust under Section 4947(a)(2), Internal Revenue Code, as amended, is considered to contain provisions stating that the trust:

(1) shall make distributions at times and in a manner as not to subject the trust to tax under Section 4942, Internal Revenue Code;

(2) may not engage in an act of self-dealing that would be subject to tax under Section 4941, Internal Revenue Code;

(3) may not retain excess business holdings that would subject it to tax under Section 4943, Internal Revenue Code;

(4) may not make an investment that would subject it to tax under Section 4944, Internal Revenue Code; and

(5) may not make a taxable expenditure that would subject it to tax under Section 4945, Internal Revenue Code.

(b) If a trust was created before January 1, 1970, this

section applies to it only for its taxable years that begin on or after January 1, 1972.

(c) This section applies regardless of any provision in a trust's governing instrument and regardless of any other law of this state, including the provisions of this title.

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

Sec. 112.056. PERMISSIVE AMENDMENT BY TRUSTEE OF CHARITABLE TRUST. (a) If the settlor of a trust that is described under Subsection (a) of Section 112.055 of this Act is living and competent and consents, the trustee may, without judicial proceedings, amend the trust to expressly include or exclude the provisions required by Subsection (a) of Section 112.055 of this Act.

(b) The amendment must be in writing, and it is effective when a duplicate original is filed with the attorney general's office.

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

Sec. 112.057. DIVISION AND COMBINATION OF TRUSTS .

Text of subsec. (a) intro. paragraph effective until January 1, 2006

(a) The trustee may, unless expressly prohibited by the terms of the instrument establishing the trust, divide a trust into two or more separate trusts without a judicial proceeding if the trustee reasonably determines that the division of the trust could result in a significant decrease in current or future federal income, gift, estate, generation-skipping transfer taxes, or any other tax imposed on trust property. If the trustee divides the trust, the terms of the separate trusts must be identical to the terms of the original trust, but differing tax elections may be made for the separate trusts. The trustee may make a division under this subsection by:

Text of subsec. (a) intro. paragraph effective January 1, 2006

(a) The trustee may, unless expressly prohibited by the terms of the instrument establishing the trust, divide a trust into two or more separate trusts without a judicial proceeding if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the original trust. The trustee may make a division under this subsection by:

(1) giving written notice of the division, not later than the 30th day before the date of a division under this subsection, to each beneficiary who might then be entitled to receive distributions from the trust or may be entitled to receive distributions from the trust once it is funded; and

(2) executing a written instrument, acknowledged before a notary public or other person authorized to take acknowledgements of conveyances of real estate stating that the trust has been divided pursuant to this section and that the notice requirements of this subsection have been satisfied.

(b) A trustee, in the written instrument dividing a trust, shall allocate trust property among the separate trusts on a fractional basis, by identifying the assets and liabilities passing to each separate trust, or in any other reasonable manner. The trustee shall allocate undesignated trust property received after the trustee has divided the trust into separate trusts in the manner provided by the written instrument dividing the trust or, in the absence of a provision in the written instrument, in a manner determined by the trustee.

Text of subsec. (c) effective until January 1, 2006

(c) The trustee may, unless expressly prohibited by the terms of the instrument establishing the trust, merge two or more trusts having identical terms into a single trust if the trustee reasonably determines that merging the trusts could result in a significant decrease in current or future federal income, gift, estate, generation-skipping transfer taxes, or any other tax imposed on trust property. The trustee shall complete the trust merger by:

(1) giving a written notice of the merger, not later than the 30th day before the effective date of the merger, to each beneficiary who might then be entitled to receive distributions from the separate trusts being merged or to each beneficiary who might be entitled to receive distributions from the separate trusts once the trusts are funded; and

(2) executing a written instrument, acknowledged

before a notary public or other person authorized to take acknowledgments of conveyances of real estate stating that the trust has been merged pursuant to this section and that the notice requirements of this subsection have been satisfied.

Text of subsec. (c) effective January 1, 2006

(c) The trustee may, unless expressly prohibited by the terms of the instrument establishing a trust, combine two or more trusts into a single trust without a judicial proceeding if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of one of the separate trusts. The trustee shall complete the trust combination by:

(1) giving a written notice of the combination, not later than the 30th day before the effective date of the combination, to each beneficiary who might then be entitled to receive distributions from the separate trusts being combined or to each beneficiary who might be entitled to receive distributions from the separate trusts once the trusts are funded; and

(2) executing a written instrument, acknowledged before a notary public or other person authorized to take acknowledgments of conveyances of real estate stating that the trust has been combined pursuant to this section and that the notice requirements of this subsection have been satisfied.

Text of subsec. (d) effective until January 1, 2006

(d) The trustee may divide or merge a testamentary trust after the will establishing the trust has been admitted to probate, even if the trust will not be funded until a later date. The trustee may divide or merge any other trust before it is funded if the instrument establishing the trust is not revocable at the time of the division or merger.

Text of subsec. (d) effective January 1, 2006

(d) The trustee may divide or combine a testamentary trust after the will establishing the trust has been admitted to probate, even if the trust will not be funded until a later date. The trustee may divide or combine any other trust before it is funded.

Added by Acts 1991, 72nd Leg., ch. 895, Sec. 18, eff. Sept. 1, 1991. Amended by Acts 2005, 79th Leg., ch. 148, Sec. 8, 9, eff. Jan. 1, 2006.

Sec. 112.058. CONVERSION OF COMMUNITY TRUST TO NONPROFIT CORPORATION. (a) In this section:

(1) "Assets" means the assets of the component trust funds of a community trust.

(2) "Community trust" means a community trust as described by 26 C.F.R. Section 1.170A-9(e)(11) (1999), including subsequent amendments.

(b) A community trust with court approval may transfer the assets of the trust to a nonprofit corporation and terminate the trust as provided by this section.

(c) The community trust may transfer assets of the trust to a nonprofit corporation only if the nonprofit corporation is organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) and organized for the same purpose as the community trust. The charter of the nonprofit corporation must describe the purpose of the corporation and the proposed use of the assets transferred using language substantially similar to the language used in the instrument creating the community trust.

(d) To transfer the assets of and terminate a community trust under this section, the governing body of the community trust must:

(1) file a petition in a probate court, county court, or district court requesting:

(A) the transfer of the assets of the trust to a nonprofit corporation established for the purpose of receiving and administering the assets of the trust; and

(B) the termination of the trust;

(2) send by first class mail to each trust settlor and each trustee of each component trust of the community trust who can be located by the exercise of reasonable diligence a copy of the governing body's petition and a notice specifying the time and place of the court-scheduled hearing on the petition; and

(3) publish once in a newspaper of general circulation in the county in which the proceeding is pending a notice that reads substantially similar to the following:

TO ALL INTERESTED PERSONS:

(NAME OF COMMUNITY TRUST) HAS FILED A PETITION IN (NAME OF

COURT) OF (NAME OF COUNTY), TEXAS, REQUESTING PERMISSION TO CONVERT TO A NONPROFIT CORPORATION. IF PERMITTED TO CONVERT:

(1) THE (NAME OF COMMUNITY TRUST) WILL BE TERMINATED;
AND

(2) THE ASSETS OF THE TRUST WILL BE:

(A) TRANSFERRED TO A NONPROFIT CORPORATION WITH THE SAME NAME AND CREATED FOR THE SAME PURPOSE AS THE (NAME OF COMMUNITY TRUST); AND

(B) HELD AND ADMINISTERED BY THE CORPORATION AS PROVIDED BY THE TEXAS NON-PROFIT CORPORATION ACT (ARTICLE 1396-1.01 ET SEQ., VERNON'S TEXAS CIVIL STATUTES).

(1) THE (NAME OF COMMUNITY TRUST) WILL BE TERMINATED;
AND

(2) THE ASSETS OF THE TRUST WILL BE:

(A) TRANSFERRED TO A NONPROFIT CORPORATION WITH THE SAME NAME AND CREATED FOR THE SAME PURPOSE AS THE (NAME OF COMMUNITY TRUST); AND

(B) HELD AND ADMINISTERED BY THE CORPORATION AS PROVIDED BY THE TEXAS NON-PROFIT CORPORATION ACT (ARTICLE 1396-1.01 ET SEQ., VERNON'S TEXAS CIVIL STATUTES).

THE PURPOSE OF THE CONVERSION IS TO ACHIEVE SAVINGS AND USE THE MONEY SAVED TO FURTHER THE PURPOSES FOR WHICH THE (NAME OF COMMUNITY TRUST) WAS CREATED.

A HEARING ON THE PETITION IS SCHEDULED ON (DATE AND TIME) AT (LOCATION OF COURT).

FOR ADDITIONAL INFORMATION, YOU MAY CONTACT THE GOVERNING BODY OF THE (NAME OF COMMUNITY TRUST) AT (ADDRESS AND TELEPHONE NUMBER) OR THE COURT.

(e) The court shall schedule a hearing on the petition to be held after the 10th day after the date the notices required by Subsection (d)(2) are deposited in the mail or the date the notice required by Subsection (d)(3) is published, whichever is later. The hearing must be held at the time and place stated in the notices unless the court, for good cause, postpones the hearing. If the hearing is postponed, a notice of the rescheduled hearing date and time must be posted at the courthouse of the county in which the proceeding is pending or at the place in or near the courthouse where public notices are customarily posted.

(f) The court, on a request from the governing body of the community trust, may by order require approval from the Internal Revenue Service for an asset transfer under this section. If the court orders approval from the Internal Revenue Service, the asset transfer may occur on the date the governing body of the community trust files a notice with the court indicating that the Internal Revenue Service has approved the asset transfer. The notice required by this subsection must be filed on or before the first anniversary of the date the court's order approving the asset transfer is signed. If the notice is not filed within the period prescribed by this subsection, the court's order is dissolved.

(g) A court order transferring the assets of and terminating a community trust must provide that the duties of each trustee of each component trust fund of the community trust are terminated on the date the assets are transferred. This subsection does not affect the liability of a trustee for acts or omissions that occurred before the duties of the trustee are terminated.

Added by Acts 1999, 76th Leg., ch. 1035, Sec. 1, eff. Sept. 1, 1999.