

Chapter 128

2003 EDITION

Trusts; Charitable Activities

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PREPARATION OF TRUSTS

128.001 Limitations on accepting payment for preparation of trust. (1) Except as provided in this section, a person may not accept anything of value in exchange for the preparation of a trust.

(2) Subsection (1) of this section does not apply to an attorney who charges and accepts a fee for the preparation of a trust for a client in the course of representing that client.

(3) Subsection (1) of this section does not apply to any trust company or financial institution as defined in ORS chapter 706.

(4) Subsection (1) of this section does not apply to a resulting or constructive trust, a business trust that provides for certificates to be issued to the beneficiary, an investment trust, a voting trust, a security instrument, a trust created by the judgment of a court, a liquidation trust, a trust for the primary purpose of paying dividends, interests, interest coupons, salaries, wages, pensions, profits or employee benefits of any kind, an instrument in which a person is nominee or escrowee for another person or a trust created in deposits in any financial institution.

(5) Nothing in this section authorizes any person to engage in the practice of law in violation of ORS 9.160. [1997 c.806 §1; 2003 c.576 §383]

UNIFORM TRUSTEES' POWERS ACT

128.003 Short title. ORS 128.003 to 128.045 may be cited as the "Uniform Trustees' Powers Act." [1977 c.614 §10]

128.005 Definitions for ORS 128.003 to 128.051 and 128.065. As used in ORS 128.003 to 128.051 and 128.065:

(1) "Trust" means an express trust created by a trust instrument, including a will, whereby a trustee has the duty to administer a trust asset for the benefit of a named or otherwise described income or principal beneficiary, or both; "trust" does not include a resulting or constructive trust, a business trust which provides for certificates to be issued to the beneficiary, an investment trust, a voting trust, a security instrument, a trust created by the judgment of a court, a liquidation trust, or a trust for the primary purpose of paying dividends, interests, interest coupons, salaries, wages, pensions or profits, or employee benefits of any kind, an instrument wherein a person is nominee or escrowee for another, a trust created in deposits in any financial institution, or other trust the nature of which does not admit of general trust administration.

(2) "Trustee" means an original, added, or successor trustee and includes the state,

or any agency thereof, when it is acting as the trustee of a trust as defined in this section. [1977 c.614 §1; 2003 c.576 §384]

128.007 Powers of trustee conferred by trust or by law. (1) The trustee has all powers conferred upon the trustee by the provisions of ORS 128.003 to 128.051, 128.065 and 128.194 to 128.218 except as is otherwise provided by statute. However, the trust instrument may confer powers in addition to those conferred under ORS 128.003 to 128.051, 128.065 and 128.194 to 128.218 or, by specific reference, prohibit the exercise of any power conferred under ORS 128.003 to 128.051, 128.065 and 128.194 to 128.218.

(2) An instrument which is not a trust under ORS 128.005 (1) may incorporate any part of ORS 128.003 to 128.051, 128.065 and 128.194 to 128.218 by reference. [1977 c.614 §2; 1995 c.157 §18]

128.009 Powers of trustee. (1) From time of creation of the trust until final distribution of the assets of the trust, subject to ORS 128.194 to 128.218, a trustee has the power to perform, without court authorization, every act which a prudent person would perform for the purposes of the trust including but not limited to the powers specified in subsection (3) of this section.

(2) In the exercise of powers including the powers granted by ORS 128.003 to 128.051, 128.065 and 128.194 to 128.218, a trustee has a duty to act with due regard to the trustee's obligation as a fiduciary.

(3) A trustee has the power, subject to subsections (1) and (2) of this section:

(a) To collect, hold, and retain trust assets received from a trustor until, in the judgment of the trustee, disposition of the assets should be made;

(b) To receive additions to the assets of the trust;

(c) To continue or participate in the operation of any business or other enterprise, and to effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;

(d) To acquire an undivided interest in a trust asset in which the trustee, in any trust capacity, holds an undivided interest;

(e) To invest and reinvest trust assets in accordance with the provisions of the trust or as provided by law;

(f) To deposit trust funds in a bank, including a bank operated by the trustee when adequately secured;

(g) To acquire or dispose of an asset, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon a trust asset or any interest therein; and

to encumber, mortgage, or pledge a trust asset for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;

(h) To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;

(i) To subdivide, develop, or dedicate land to public use; or to make or obtain the vacation of plats and adjust boundaries; or to adjust differences in valuation on exchange or partition by giving or receiving consideration; or to dedicate easements to public use without consideration;

(j) To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust;

(k) To enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(L) To grant an option involving disposition of a trust asset, or to take an option for the acquisition of any asset;

(m) To vote a security, in person or by general or limited proxy;

(n) To pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(o) To sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(p) To hold a security in the name of a nominee or in other form without disclosure of the trust, so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the stock so held;

(q) To insure the assets of the trust against damage or loss, and the trustee against liability with respect to third persons;

(r) To borrow money to be repaid from trust assets or otherwise; to advance money for the protection of the trust, and for all expenses, losses, and liability sustained in the administration of the trust or because of the holding or ownership of any trust assets, for which advances with any interest the trustee has a lien on the trust assets as against the beneficiary;

(s) To pay or contest any claim; to settle a claim by or against the trust by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim

belonging to the trust to the extent that the claim is uncollectible;

(t) To pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust;

(u) To allocate items of income or expense to either trust income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;

(v) To pay any sum distributable to a beneficiary under legal disability, without liability to the trustee, by paying the sum to the beneficiary or by paying the sum for the use of the beneficiary to any person having custody of the beneficiary under legal disability or to any person who, or corporation which, shall be furnishing maintenance, support or education to the beneficiary who is under legal disability;

(w) To effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation;

(x) To employ persons, including attorneys, auditors, investment advisors, or agents to advise or assist the trustee in the performance of administrative duties; to act without independent investigation upon their recommendations;

(y) To apply for and qualify all or any part of the property in the trust estate for special governmental programs, tax or otherwise, which may benefit the trust estate or any of the beneficiaries thereof;

(z) To prosecute or defend actions, claims, or proceedings for the protection of trust assets and of the trustee in the performance of duties;

(aa) To execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the trustee; and

(bb) To resign as trustee, if:

(A) The trustee obtains the approval of a court of competent jurisdiction for the resignation; or

(B) The resignation of the trustee is expressly authorized by the trust instrument, the trust instrument provides for the appointment of a successor trustee and the successor trustee agrees to serve.

(4) In making distributions of property under the trust to more than one beneficiary, a trustee need not divide individual items of property according to the relative share of each beneficiary, but may satisfy the interest of each beneficiary by choosing and distributing undivided items of property so long as a total value of the property distributed to

each beneficiary is sufficient to satisfy the beneficiary's interest.

(5) Subject to subsections (1) and (2) of this section, if at any time the trustee has determined that, in relation to the costs of administration thereof, the continuance of the trust pursuant to its existing terms, will defeat or substantially impair the accomplishment of the purposes of the trust, the trustee may, in its sole discretion, terminate the trust and distribute the trust property, including principal and undistributed income, to the beneficiaries in a manner which conforms as nearly as possible to the intention of the trustor. The trustee may enter into such an agreement or make such other provisions that it deems necessary or appropriate to protect the interests of the beneficiaries and to carry out the intent and purpose of the trust. The existence of spendthrift or similar protective provisions in the trust does not make this section inapplicable. A trustee may not terminate a trust under this section if the trustee is a beneficiary of the trust or has a duty of support for the beneficiary of the trust. Any termination of a trust under this section requires notice of the termination to current income beneficiaries and ascertainable remainder beneficiaries. If a charity is a current or remainder beneficiary, notice of the termination must be given to the Attorney General. [1977 c.614 §3; 1981 c.915 §1; 1989 c.73 §1; 1993 c.228 §1; 1995 c.157 §19; 2003 c.84 §13]

128.010 [Renumbered 128.055]

128.015 Transfer or delegation of trustee's office. Unless otherwise provided in the trust instrument, while continuing to act as a trustee, the trustee shall not transfer the office of the trustee to another or delegate the entire administration of the trust to a cotrustee or another. [1977 c.614 §4; 1993 c.228 §2]

128.020 [Amended by 1969 c.267 §1; renumbered 128.057]

128.021 Power of court to relieve trustee from restrictions on trustee's power. ORS 128.003 to 128.051, 128.065 and 128.194 to 128.218 do not affect the power of a court of competent jurisdiction for cause shown and upon petition of the trustee or affected beneficiary and upon appropriate notice to the affected parties to relieve a trustee from any restrictions on the power of the trustee that would otherwise be placed upon the trustee by the trust or by ORS 128.003 to 128.051, 128.065 and 128.194 to 128.218. [1977 c.614 §5; 1995 c.157 §20]

128.025 [1969 c.267 §3; renumbered 128.061]

128.026 Powers of joint trustees; liability. (1) Any power vested in three or more trustees may be exercised by a majority, but a trustee who has not joined in ex-

ercising a power is not liable to the beneficiaries or to others for the consequences of the exercise; and a dissenting trustee is not liable for the consequences of an act in which the dissenting trustee joins at the direction of the majority of the trustees, if the dissenting trustee expressed dissent in writing to any of the cotrustees at or before the time of the joinder.

(2) If two or more trustees are appointed to perform a trust, and if any of them is unable or refuses to accept the appointment, or, having accepted, ceases to be a trustee, the surviving or remaining trustees shall perform the trust and succeed to all the powers, duties, and discretionary authority given to the trustees jointly.

(3) Except to the extent provided in ORS 128.212, this section does not excuse a cotrustee from liability for failure either to participate in the administration of the trust or to attempt to prevent a breach of trust. [1977 c.614 §6; 1995 c.157 §21]

128.030 [Amended by 1977 c.614 §13; renumbered 128.065]

128.031 Protection of third persons dealing with trustee. With respect to a third person dealing with a trustee or assisting a trustee in the conduct of a transaction, the existence of trust powers and their proper exercise by the trustee may be assumed without inquiry. The third person is not bound to inquire whether the trustee has power to act or is properly exercising the power; and a third person, without actual knowledge that the trustee is exceeding the powers of the trustee or improperly exercising them, is fully protected in dealing with the trustee as if the trustee possessed and properly exercised the powers the trustee purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the trustee. [1977 c.614 §7]

128.035 Application of ORS 128.003 to 128.051. Except as specifically provided in the trust, the provisions of ORS 128.003 to 128.051 and 128.065 apply to any trust established before or after October 4, 1977, and to any trust asset acquired by the trustee before or after October 4, 1977. [1977 c.614 §8]

128.040 [Repealed by 1977 c.614 §14]

128.041 Uniformity of interpretation. ORS 128.003 to 128.051 and 128.065 shall be construed to effectuate its general purpose to make uniform the law of those states which enact it. [1977 c.614 §9]

128.045 Severability. If any provision of ORS 128.005 to 128.051 and 128.065 or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of

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ORS 128.005 to 128.051 and 128.065 which can be given effect without the invalid provision or application, and to this end the provisions of ORS 128.005 to 128.051 and 128.065 are severable. [1977 c.614 §11]

128.047 Authority of trustee to enter into partnership agreement or to acquire interest in partnership. Unless expressly prohibited by the trust instrument under which a trustee serves or by order of a court having jurisdiction over the trust, a trustee may enter into a partnership agreement with others or accept the assignment of or otherwise acquire, hold and dispose of an interest in a partnership, and in so doing may become either a general or a limited partner. In any such case, as to creditors of or claimants against the partnership and as to the other members of the partnership, the liability, if any, of the fiduciary for the debts and other liabilities of the partnership, whether ex contractu, ex delicto or otherwise, shall be limited to the assets of the trust, or so much thereof as may be necessary to discharge the debts and liabilities, but no personal liabilities shall attach to the trustee or to the beneficial owners of the assets of the trust. This section does not exonerate a trustee from liability for negligence or other wrongdoing. [1993 c.226 §3]

Note: 128.047 was added to and made a part of 128.003 to 128.051 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

128.050 [Repealed by 1977 c.614 §14]

128.051 Judicial review of certain acts of trustee; remedy for payment of excessive compensation. On petition of an interested person, after notice to all interested persons, the propriety of employment of any person by a trustee including any attorney, auditor, investment advisor or other specialized agent or assistant, the reasonableness of the compensation of any person so employed, or the reasonableness of the compensation determined by the trustee for the trustee's own services, may be reviewed by the court. Any person who has received excessive compensation from a trust for services rendered may be ordered to make appropriate refunds. [1977 c.614 §12]

DUTIES OF TRUSTEES AND FIDUCIARIES GENERALLY

128.055 Accountability for faithful execution of trust. All trustees residing or transacting business in Oregon are accountable for the faithful execution of the trust imposed upon them, according to the terms of the trust. [Formerly 128.010]

128.057 [Amended by 1969 c.267 §1; formerly 128.020; 1979 c.382 §1; repealed by 1995 c.157 §26]

128.060 [Amended by 1973 c.827 §19; repealed by 1977 c.614 §14]

128.061 [1969 c.267 §3; formerly 128.025; repealed by 1979 c.382 §2]

128.065 Deviation from instrument as to trustee's duties and powers not authorized. Nothing contained in this section and ORS 128.194 to 128.218 authorizes any departure from, or variation of, the express terms or limitations set forth in any will, agreement, court order or other instrument creating or defining the trustee's duties and powers. [Formerly 128.030; 1995 c.157 §22]

128.070 [Repealed by 1973 c.506 §46]

128.075 [1973 c.367 §16; renumbered 128.595]

128.080 [Amended by 1973 c.177 §2; repealed by 1973 c.506 §46]

128.085 Limitations on trustee's administration of "private foundation" trust. Notwithstanding any provision to the contrary in the governing instrument or any law of this state, the trustee of a trust which is a "private foundation" as defined in section 509 of the Internal Revenue Code of 1954 (including nonexempt charitable trusts as defined in section 4947 (a) (1) of the Internal Revenue Code of 1954) shall not engage in any act of self dealing as defined in section 4941 (d) of the Internal Revenue Code of 1954; shall distribute its income and, when necessary, amounts from principal at such time and in such manner as not to subject the trust to the taxes on failure to distribute income imposed by section 4942 of the Internal Revenue Code of 1954; shall not retain any excess business holdings as defined in section 4943 (c) of the Internal Revenue Code of 1954; shall not make any investments in such manner as to subject the trust to the taxes on investments which jeopardize charitable purpose imposed by section 4944 of the Internal Revenue Code of 1954; and shall not make any taxable expenditures as defined in section 4945 (d) of the Internal Revenue Code of 1954. [1971 c.197 §1]

128.090 Limitations on trustee's administration of "split-interest" trust. (1) Notwithstanding any provision to the contrary in the governing instrument or any law of this state, the trustee of a trust which is a "split-interest trust" as defined in section 4947 (a) (2) of the Internal Revenue Code of 1954, shall not engage in any act of self dealing as defined in section 4941 (d) of the Internal Revenue Code of 1954; shall not retain any excess business holdings as defined in section 4943 (c) of the Internal Revenue Code of 1954, unless the trust is one exempted from the requirements of section 4943 by section 4947 (b) (3) of the Internal Revenue Code of 1954; shall not make any investment in such manner as to subject the trust to the taxes on investments which

jeopardize charitable purpose imposed by section 4944 of the Internal Revenue Code of 1954, unless the trust is one exempted from the requirements of section 4944 by section 4947 (b) (3) of the Internal Revenue Code of 1954; and shall not make any taxable expenditures as defined in section 4945 (d) of the Internal Revenue Code of 1954.

(2) This section shall not apply with respect to:

(a) Any amounts payable under the terms of a trust to income beneficiaries, unless a deduction was allowed under section 170 (f) (2) (B), section 2055 (e) (2) (B), or section 2522 (c) (2) (B) of the Internal Revenue Code of 1954;

(b) Any amounts in trust other than amounts for which a deduction was allowed under section 170, section 545 (b) (2), section 556 (b) (2), section 642 (c), section 2055, section 2106 (a) (2) or section 2522 of the Internal Revenue Code of 1954, if such other amounts are segregated from amounts for which no deduction was allowable; or

(c) Any amounts transferred in trust before May 27, 1969. [1971 c.197 §2]

128.095 Trustee may amend governing instrument of "private foundation" or "split-interest" trust with prior consent of Attorney General and benefited organizations. The trustee of a trust which is a private foundation to which ORS 128.085 applies or a split-interest trust to which ORS 128.090 applies may, with the prior consent of the Attorney General, amend the terms of the governing instrument to the extent necessary (1) to assure conformity of the governing instrument with the requirements for exemption from the taxes imposed by sections 4941 to 4945 of the Internal Revenue Code of 1954, including amendments which broaden, extend, reduce or limit the charitable purposes for which the trust is administered, or (2) to terminate the status of the trust as a private foundation in a manner described in section 507 (b) (1) of the Internal Revenue Code of 1954. Prior to giving consent, the Attorney General shall determine that the proposed amendments are necessary or appropriate to achieve the charitable purposes of the trust. If the trust is for the exclusive benefit of one or more charitable organizations, the trustee shall also obtain the prior consent of such organizations prior to amending the terms of the governing instrument in the manner set forth in this section. [1971 c.197 §3]

128.100 Authority of fiduciary to deposit securities in clearing corporation.

(1) Notwithstanding any other provision of law, any fiduciary holding securities in a fiduciary capacity, any financial institution

or trust company holding securities as a custodian or managing agent, and any financial institution or trust company holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit of the securities in a clearing corporation as defined in ORS 78.1020. When the securities are deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of the clearing corporation with any other securities of the same class deposited in the clearing corporation by any person regardless of the ownership of the securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of the fiduciary and the records of the financial institution or trust company acting as custodian, as managing agent or as custodian for a fiduciary shall at all times show the name of the party for whose account the securities are deposited. Ownership of, and other interests in, the securities may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery of certificates representing the securities. A financial institution or trust company depositing securities pursuant to this section shall be subject to the rules and regulations as, in the case of state-chartered institutions, the Department of Consumer and Business Services and, in the case of national banking associations, the Comptroller of the Currency may from time to time issue. A financial institution or a trust company acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities deposited by the financial institution or trust company in the clearing corporation for the account of the fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of the fiduciary's account or on demand by the attorney for the party, certify in writing to the party the securities deposited by the fiduciary in the clearing corporation for its account as the fiduciary.

(2) This section shall apply to any fiduciary holding securities in a fiduciary capacity, and to any financial institution or trust company holding securities as a custodian, managing agent or custodian for a fiduciary, acting on October 5, 1973, or who thereafter may act regardless of the date of the agreement, instrument or court order by which it is appointed and regardless of whether or not the fiduciary, custodian, managing agent or custodian for a fiduciary owns capital stock of the clearing corporation. [1973 c.365 §§1,2; 1985 c.676 §59; 1985 c.762 §177; 1997 c.631 §414]

128.102 Personal liability of trustee arising out of contracts and possession or control of real property. (1) A trustee is not personally liable on contracts properly entered into in the trustee's disclosed fiduciary capacity in the course of administration of the trust estate unless the trustee expressly agrees to be personally liable or unless the trustee fails to reveal the fiduciary capacity and identify the trust estate in the contract.

(2) A trustee is not personally liable for obligations arising from possession or control of property of the trust estate or for torts committed in the course of administration of the trust estate unless the trustee is personally at fault.

(3) Claims based upon contracts, obligations and torts of the types described in subsections (1) and (2) of this section may be allowed against the estate whether or not the trustee is personally liable therefor.

(4) The question of liability as between the trust estate and the individual trustee may be determined in a proceeding for accounting, surcharge or indemnification or other appropriate proceeding.

(5) Nothing in this section absolves a trustee of liability to the trust estate or beneficiaries for breach of fiduciary duty or for any tort for which the trustee is personally at fault. [1993 c.226 §5; 1997 c.659 §1]

128.110 [Amended by 1979 c.284 §108; repealed by 1981 c.66 §8]

**PROCEEDINGS AND AGREEMENTS
RELATING TO TRUST
ADMINISTRATION
(Proceedings to Modify
Trust Administration)**

128.115 Definitions for ORS 128.125 to 128.185. As used in ORS 128.125 to 128.185, "trust" and "trustee" have the meanings set forth in ORS 128.005. [1981 c.66 §1]

128.120 [Repealed by 1981 c.66 §8]

128.125 Authority of beneficiary to require trustee to prepare accounting of trust income, expenditures and assets; equitable remedy for failure by trustee to perform. (1) As used in this section, "beneficiary" means any vested income or remainder beneficiary of a trust, determined as of the date the request described in this section is received by the trustee, or the guardian or conservator of such beneficiary or the personal representative of a deceased beneficiary.

(2) A beneficiary may request in writing that the trustee of a trust for the benefit of the beneficiary prepare either or both of the following:

(a) An itemized statement of receipts and disbursements of income and principal of the trust during the 12-month period ending on the last day of the month preceding the month in which the request is received by the trustee, or if longer, for the entire period since the last such statement prepared by the trustee.

(b) An itemized statement of all property held by the trustee as of the date the request is received by the trustee.

(3) If no statement described in subsection (2) of this section has previously been prepared by the trustee for a period ending within the 12-month period described in subsection (2)(a) of this section, the trustee shall prepare the requested statement and mail or deliver a written copy thereof to the requesting beneficiary. If such a statement has previously been prepared by the trustee for a period ending within the 12-month period described in subsection (2)(a) of this section, the trustee shall mail or deliver a written copy of the prepared statement to the requesting beneficiary.

(4) Subsections (2) and (3) of this section do not prevent a trustee from preparing and providing beneficiaries with more frequent statements of receipts and disbursements and of property held by the trustee.

(5) If a trustee fails within a reasonable time to provide a requested statement as provided in subsection (3) of this section, the requesting beneficiary may petition a court with jurisdiction to grant equitable remedies in any county where trust assets are located or where the trustee resides to require the trustee to provide the statement. Upon notice to the trustee, and upon such hearing or opportunity to object as the court shall require, the court may order the trustee to provide the statement. The procedure, pleading and notice requirements for the proceeding shall be the same as provided in ORS 111.205 to 111.235 for petition to a probate court by a party interested in the estate of a decedent, and the court shall have all of the powers of the probate court in such proceedings in the probate court. [1981 c.66 §2]

128.130 [Amended by 1979 c. 284 §109; repealed by 1981 c.66 §8]

128.135 Authority of beneficiary to obtain equitable remedies to modify administration of trust; effect of proceeding; authority of court. (1) As used in this section, ORS 128.145 and 128.155, "beneficiary" means any vested or contingent beneficiary of a trust, determined as of the date of the petition, or the guardian or conservator of such beneficiary or the personal representative of a deceased beneficiary.

(2) Any beneficiary of a trust or the trustee thereof may petition the circuit court in any county where trust assets are located or where the trustee resides for the purpose of any of the following:

(a) Requiring, reviewing or approving an accounting of a trustee of the trust.

(b) Accepting a resignation of the trustee or appointing a successor trustee or an additional trustee.

(c) Obtaining authority, approval or instructions on any matter concerning the interpretation of the trust or the administration, settlement or distribution of the trust estate, including approval of a proposed exercise or nonexercise of a discretionary power under ORS chapter 129.

(d) Making any modification of the trust that the parties could make by agreement under the provisions of ORS 128.177.

(e) Converting a trust to a unitrust under ORS 129.225.

(3) Except as otherwise provided in this section, the procedure, pleading and notice requirements for a proceeding under this section shall be the same as provided in ORS 111.205 to 111.235 for petition to a probate court by a party interested in the estate of a decedent, and the court shall have all of the powers of the probate court in such proceedings in the probate court.

(4) Upon the filing of a petition under subsection (2) of this section, the petitioner shall cause notice of the petition to be given, prior to the time for filing objections or court hearing specified in the notice, to all living beneficiaries and the currently acting trustee, other than the petitioner, in the manner and within the times provided in ORS 111.215. Any beneficiary whose name, identity or existence is unknown to the petitioner may be given notice as provided in ORS 111.215 (1)(c).

(5) When petitioned to review or approve an accounting of a trustee, the court shall determine the correctness of the account and the validity and propriety of all actions of the trustee set forth therein, including the purchase, retention or disposition of any property or funds of the trust.

(6) The court, by its order or judgment, may give directions, instructions, authority or approval, or make appointments, as appear to it to be most beneficial to all beneficiaries of the trust. The court may approve or disapprove an accounting or any part thereof and may surcharge the trustee for losses, if any, caused by negligent or willful breaches of trust. Any order or judgment entered in a proceeding under this section is final, conclusive and binding upon all beneficiaries notified of the proceeding, including all in-

competent, unborn and unascertained beneficiaries of the trust, subject only to the right of appeal as provided in ORS 128.165.

(7) Every unborn or unascertainable beneficiary shall be bound by any action taken by the court for or against any living beneficiary of the same class or whose interests are similar to the interests of the unborn or unascertainable beneficiary.

(8) The court, by a provision in an order or judgment entered in a proceeding under this section, may retain jurisdiction over all the parties and over all the trust assets, and may from time to time, upon application under ORS 128.145, make such further orders or judgments regarding the purposes set forth in subsection (2) of this section as appear to be for the best interest of the beneficiaries. [1981 c.66 §3; 1993 c.222 §6; 2003 c.279 §33a]

128.140 [Repealed by 1981 c.66 §8]

128.145 Authority of party to proceeding under ORS 128.135 to obtain other modification of trust administration; adding parties. (1) Any person who is a party to a proceeding under ORS 128.135 may from time to time apply to the court for additional accountings, appointments, authority, approval or instructions. For that purpose the person shall file a petition setting forth the facts showing the need or desirability of the additional accountings, appointments, authority, approval or instructions. All the allegations of the original and subsequent petitions and all other proceedings, including previous orders or judgments up to and including the time of filing the new petition, shall constitute a part of the new petition without being realleged therein, it being sufficient to set forth therein by reference the filing of the previous petitions and the entering of the previous orders or judgments. Jurisdiction over all the other parties to enter additional orders or judgments shall be obtained in the same manner provided for obtaining jurisdiction in the original proceeding.

(2) After a petition is filed under subsection (1) of this section, the proceedings shall be the same as the proceedings in the original proceeding under ORS 128.135.

(3) Any beneficiary who is born, or whose interest becomes apparent after the original petition is filed under ORS 128.135, and who would have been a necessary party to receive notice thereof if then living, or if the interest had then been apparent, shall, if living at the time of a subsequent application for accounting, appointment, authority, approval or instructions, be made a party to the subsequent proceeding by order of the court, upon application by the beneficiary or any party to the subsequent proceeding, and thereafter is entitled to all the rights of the

other parties to the subsequent proceeding. [1981 c.66 §4]

128.150 [Repealed by 1981 c.66 §8]

128.155 Security for proceedings under ORS 128.135 or 128.145. A beneficiary who petitions a court under ORS 128.135 or 128.145 shall file with the petition an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, or an undertaking with one or more sureties to the effect that the beneficiary will pay all costs, disbursements and reasonable attorney fees that may be ordered against the beneficiary in the proceeding. If the beneficiary is unsuccessful in the proceeding and the court finds that the beneficiary filed the petition in bad faith, or that the petition was frivolous, the court may tax the costs and disbursements of the proceeding, including any appeal therein, and reasonable attorney fees against the unsuccessful beneficiary and the letter of credit issuer or the surety on the undertaking. If the beneficiary is successful, the court may tax the costs and disbursements of the proceeding, including any appeal therein, and reasonable attorney fees against the trust estate or the trustee individually. [1981 c.66 §5; 1991 c.331 §42; 1997 c.631 §415]

128.160 [Repealed by 1981 c.66 §8]

128.165 Appeal of orders or judgments entered pursuant to ORS 128.135 or 128.145. Appeals from orders or judgments entered under ORS 128.135 or 128.145 shall be taken in the same manner as from issues determined by any court of record with general jurisdiction. [1981 c.66 §6]

128.170 [Repealed by 1981 c.66 §8]

128.175 Remedies under ORS 128.135 or 128.145 cumulative. The remedies provided by ORS 128.135 and 128.145 are cumulative and do not limit or abrogate any inherent power of a court with jurisdiction to grant equitable remedies, or in any manner limit any lawful power, express or implied, conferred upon the trustee by the instrument creating the trust. [1981 c.66 §7]

(Agreements Relating to Trust Administration)

128.177 Certain agreements relating to trusts authorized; persons required to sign agreement. (1) The persons specified in subsection (2) of this section may by written instrument enter into an agreement with respect to:

- (a) Determining classes of creditors, beneficiaries, heirs, next of kin or other persons;
- (b) Resolving disputes arising out of the administration or distribution of the trust, including disputes over the construction of the language of the trust or construction of

the language of other writings that affect the trust;

(c) Granting to the trustee necessary or desirable powers not granted in the trust instrument or otherwise provided by law, to the extent that those powers are not inconsistent with the express provisions or purposes of the trust;

(d) Modifying the trust instrument, including extending or reducing the period of the trust's operation, if the modification is not inconsistent with any dominant purpose or objective of the trust; or

(e) Any other matter that can be the subject of a petition under ORS 128.135 or the subject of an amendment under ORS 128.095.

(2) An agreement under this section is not effective unless it has been signed by all of the following persons:

- (a) The trustor or grantor, if living;
- (b) All persons who have a beneficial interest in the subject of the agreement;
- (c) Any acting trustee for the trust; and
- (d) The Attorney General, if the trust is a charitable trust subject to the enforcement or supervisory powers of the state or the Attorney General under the provisions of ORS 128.610 to 128.750. [1993 c.222 §2]

128.179 Petition to appoint special representative; authority of special representative to enter into agreements relating to trust; qualifications; compensation. (1) A trustee, or any person who has a beneficial interest in the subject of an agreement proposed under ORS 128.177, may petition the court for the appointment of a special representative to represent a person whose signature is required under the terms of ORS 128.177 (2) if:

(a) The person for whom a special representative is to be appointed is a minor, is incompetent or is not yet born or ascertained; or

(b) The identity or address of the person for whom a special representative is to be appointed cannot be determined.

(2) A single special representative may be appointed under the provisions of this section to represent the interests of more than one person, or to represent the interests of a class of persons, if the interests of the persons represented by the special representative do not conflict.

(3) A special representative appointed under this section has authority to enter into and sign an agreement proposed under the provisions of ORS 128.177. The signature of the special representative binds:

(a) The persons represented by the special representative, as specified in the order of appointment; and

(b) Unborn or unascertainable persons who are of the same class as the person or persons represented by the special representative or who have interests in the trust that are similar to the interests of the person or persons represented by the special representative.

(4) A person appointed as special representative under this section must be an attorney admitted to the practice of law in this state or a person with special skill or training in the administration of trusts. A special representative may not have an interest in the trust that is the subject of an agreement under ORS 128.177, and may not be related to a personal representative with an interest in the trust, or to a trustee, beneficiary or other person with an interest in the trust.

(5) A special representative appointed under this section is entitled to reasonable compensation for services. Compensation shall be paid from the principal of the trust that is attributable to those beneficiaries who are represented.

(6) A special representative appointed under this section shall be discharged from any further responsibility with respect to the trust upon the execution of an agreement under ORS 128.177 or at such other time as may be ordered by the court. [1993 c.222 §3]

128.180 [Repealed by 1981 c.66 §8]

128.181 Filing of agreement or memorandum with circuit court; notice of filing; service. (1) A trustee, or any other person interested in a trust, may file an agreement entered into under ORS 128.177, or a memorandum summarizing the provisions of the agreement, with the circuit court for any county where trust assets are located or where the trustee administers the trust in this state.

(2) After collecting the fee provided for in ORS 128.185 (1)(a), the clerk shall enter the agreement or memorandum of record in the office of the clerk.

(3) The person filing an agreement or memorandum under this section must serve a notice of the filing and a copy of the agreement or memorandum on each person interested in the trust whose address is known within five days after the filing. Service may be made personally, or by registered or certified mail, return receipt requested. The notice of filing shall be substantially in the following form:

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

You are hereby notified that the attached document was filed by the undersigned in the above entitled court on the ____ day of _____, _____. Unless you file objections to the agreement within 120 days after that date, the agreement will be approved and will be binding on all persons interested in the trust.

If you file objections within the 120-day period, the court will fix a time and place for a hearing. At least 10 days before the date of that hearing, you must serve a copy of your objections and give notice of the time and place of the hearing to all persons interested in the trust. See ORS 128.125 to 128.185.

Signature

(4) Proof of mailing of the notices required under this section must be made with the court. Proof of service may be made by a certificate of service in the form provided by ORCP 7 F, by a signed acceptance of service or a return receipt from the postal authorities. [1993 c.222 §4]

128.183 Objections to agreement; hearing; approval by court. (1) If no objections are filed with the court within 120 days after the filing of the agreement or memorandum under the provisions of ORS 128.181, the agreement is effective and binding on all persons interested in the trust.

(2) If objections are filed with the court within 120 days after the filing of an agreement or memorandum pursuant to the provisions of ORS 128.181, the clerk of the court shall collect the fee provided in ORS 128.185 (1)(b). Upon the filing of objections, the court shall fix a time and place for a hearing. The person filing the objections shall serve a copy of the objections on all persons interested in the trust and give notice to those persons of the time and place fixed by the court for a hearing. Service must be made at least 10 days before the date set by the court for the hearing. Service of the objections shall be made personally or by registered or certified mail, return receipt requested.

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

(4) The court shall approve an agreement entered into under ORS 128.177 after a hear-

128.185 PROTECTIVE PROCEEDINGS; POWERS OF ATTORNEY; TRUSTS

ing upon objections filed under this section unless:

(a) The agreement does not reflect the signatures of all persons required by ORS 128.177 (2);

(b) The agreement is not authorized by ORS 128.177 (1); or

(c) Approval of the agreement would not be equitable.

(5) An agreement approved by the court after a hearing is binding on all persons interested in the trust.

(6) Persons interested in the trust may waive the notice required under ORS 128.181. If all persons interested in the trust waive the notice, the agreement is effective and binding on all persons interested in the trust upon filing of the agreement or memorandum with the court. [1993 c.222 §5]

128.185 Fees. (1) The clerk of the circuit court shall collect in advance:

(a) A fee of \$65 for the filing of an agreement or memorandum of agreement under ORS 128.181; and

(b) A fee of \$32.50 for the filing of objections under ORS 128.183.

(2) In addition to the filing fees provided for in this section, the clerk shall charge and collect in proceedings under ORS 128.177 to 128.183 all additional fees authorized by law for civil actions, suits or proceedings in circuit court.

(3) A paper or pleading shall not be considered filed unless the fee required by this section is paid. Filing fees may not be refunded to any party. [1993 c.222 §7]

128.190 [Repealed by 1981 c.66 §8]

UNIFORM PRUDENT INVESTOR ACT

128.192 Definitions for ORS 128.194 to 128.218. As used in ORS 128.194 to 128.218, “trust” and “trustee” have the meanings set forth in ORS 128.005. [1995 c.157 §1]

128.194 Trustee duty to comply with prudent investor rule. (1) Except as otherwise provided in subsection (2) of this section, a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in ORS 128.194 to 128.218.

(2) The prudent investor rule is a default rule that may be expanded, restricted, eliminated or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust. [1995 c.157 §2]

128.196 Prudent investor rule. (1) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill and caution.

(2) A trustee’s investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of the overall investment strategy having risk and return objectives reasonably suited to the trust.

(3) Among circumstances that a trustee shall consider in investing and managing trust assets are such of the following as are relevant to the trust or its beneficiaries:

(a) General economic conditions;

(b) The possible effect of inflation or deflation;

(c) The expected tax consequences of investment decisions or strategies;

(d) The role that each investment or course of action plays within an overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property and real property;

(e) The expected total return from income and the appreciation of capital;

(f) Other resources of the beneficiaries;

(g) Needs for liquidity, regularity of income and preservation or appreciation of capital; and

(h) An asset’s special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(4) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(5) A trustee may invest in any kind of property or type of investment consistent with the standards of ORS 128.194 to 128.218.

(6) A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee’s representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise. [1995 c.157 §3]

128.198 Diversification of trust investments. A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. [1995 c.157 §4]

128.200 [Repealed by 1981 c.66 §8]

128.202 Trustee duty. Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements and other circumstances of the trust, and with the requirements of ORS 128.194 to 128.218. [1995 c.157 §5]

128.204 Interest of trust beneficiaries.

(1) A trustee shall invest and manage the trust assets solely in the interest of the beneficiaries.

(2) If a trust has two or more beneficiaries, the trustee shall act impartially in investing and managing the trust assets, taking into account any differing interests of the beneficiaries. [1995 c.157 §§6,7]

128.206 Costs. In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust and the skills of the trustee. [1995 c.157 §8]

128.208 Determination of compliance with prudent investor rule. Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight. [1995 c.157 §9]

128.210 [Repealed by 1981 c.66 §8]

128.212 Delegation of trustee functions; liability. (1) A trustee may delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill and caution in:

(a) Selecting an agent;

(b) Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and

(c) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(2) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(3) A trustee who complies with the requirements of subsection (1) of this section is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(4) By accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state. [1995 c.157 §10]

128.214 Trust language authorizing investments permitted under ORS 128.194 to 128.218. The following terms or comparable language in the provisions of a trust, unless otherwise limited or modified, authorize any investment or strategy permitted under ORS 128.194 to 128.218: "Investments permissible by law for investment of trust funds," "legal investments," "authorized investments," "using the judgment and care under the circumstances then prevailing that persons of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital," "prudent man rule," "prudent trustee rule" and "prudent investor rule." [1995 c.157 §11]

128.216 Uniform state laws; severability. (1) ORS 128.194 to 128.218 shall be construed to effectuate their general purpose to make uniform the law of those states which enact them.

(2) If any provision of ORS 128.194 to 128.218 or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of ORS 128.194 to 128.218 which can be given effect without the invalid provision or application, and to this end the provisions of ORS 128.194 to 128.218 are severable. [1995 c.157 §§12,14]

128.218 Short title. ORS 128.194 to 128.218 may be cited as the "Oregon Uniform Prudent Investor Act." [1995 c.157 §13]

128.220 [Repealed by 1981 c.66 §8]

128.230 [Repealed by 1981 c.66 §8]

CERTIFICATION OF TRUST

128.232 Definitions for ORS 128.234 to 128.246. As used in ORS 128.234 to 128.246, "trust" and "trustee" have the meanings set forth in ORS 128.005. [1995 c.679 §1]

128.234 Certification of trust as establishing existence and terms of trust. To establish the existence and terms of a trust:

(1) A trustee may present a certification of trust in lieu of providing a copy of the trust agreement and its amendments; and

(2) A person who proposes to deal with a trustee or trustees may require that the trustee or trustees execute and present to the person a certification of trust in lieu of providing a copy of the trust agreement and its amendments. [1995 c.679 §2]

128.236 Contents of certification of trust. A certification of trust executed pursuant to ORS 128.232 to 128.246 shall confirm the following facts or contain the following

information, executed by the trustee or all of the currently acting trustees if there is more than one trustee:

(1) The existence of the trust and the date of execution of the trust.

(2) The identity of the trustor or trustors and the currently acting trustee or trustees of the trust.

(3) The trust powers, or in lieu of a verbatim recitation of the trust powers, a statement that the trust powers include at least all those trust powers contained in the Uniform Trustees' Powers Act set forth in ORS 128.003 to 128.045.

(4) The mailing address or addresses for the currently acting trustee or trustees.

(5) The revocability or irrevocability of the trust and the identity of the person or persons holding any power to revoke the trust.

(6) Whether the trust can be modified or amended, and the identity of the person or persons holding any power to modify or amend the trust.

(7) Where there are multiple currently acting trustees, whether all or a specified number fewer than all of the currently acting trustees are required to sign in order to exercise trust powers.

(8) The trust taxpayer identification number, whether a trustor Social Security number or an employer identification number.

(9) The manner in which title to trust assets should be taken.

(10) A statement that the trust has not been revoked, modified or amended in any manner that would cause the representations contained in the certification to be incorrect. [1995 c.679 §3]

128.238 Successor trustee; dispositive provisions of trust. (1) A certification of trust may contain the identity of any successor trustee or trustees and the circumstances under which any successor trustee or trustees will assume trust powers.

(2) A certification of trust need not contain the dispositive provisions of the trust. [1995 c.679 §4]

128.240 [Repealed by 1981 c.66 §8]

128.242 Requirements applicable to trustee offering certification of trust. (1) A person may require the trustee or trustees offering the certification of trust to:

(a) Include in the certification facts other than those listed in ORS 128.236 and 128.238 which are reasonably related to the administration of the trust;

(b) Cause one or more of the trustors to join in executing the certification;

(c) Cause one or more of the beneficiaries to join in executing the certification where the certification is reasonably related to a pending or contemplated transaction with the person; and

(d) Adapt the certification to the person's own standard form, which may be incorporated in an account signature agreement or other account document.

(2) A person may also require the trustee or trustees to furnish copies of those excerpts from the original trust agreement and its amendments that relate to the facts covered by the certification.

(3) Notwithstanding subsections (1)(a) or (2) of this section, a person shall not require a trustee or trustees to furnish the dispositive provisions of the trust nor the entire trust agreement and its amendments. [1995 c.679 §5]

128.244 Rights of person acting in reliance on certification of trust. (1) A person who acts in reliance on a certification of trust containing the information set forth in ORS 128.236 without actual knowledge that the representations contained therein are incorrect is not liable to any person for acting in reliance on the certification. A person who does not have actual knowledge that the facts contained in the certification of trust are incorrect may assume without inquiry the existence of the facts contained in the certification. Actual knowledge shall not be inferred solely from the fact that a copy of all or part of the trust agreement and its amendments is held by the person relying on the certification.

(2) Any transaction, and any lien created thereby, entered into by a trustee or trustees and a person acting in reliance on a certification of trust containing the information set forth in ORS 128.236 without actual knowledge that the representations contained therein are incorrect shall be enforceable against the trust.

(3) If a person has actual knowledge that the trustee or trustees are acting outside the scope of the trust, and the actual knowledge was acquired by the person before the person either entered into the transaction with the trustee or trustees or made a binding commitment to do so, then the transaction is not enforceable against the trust.

(4) Nothing in this section and ORS 128.246 is intended to create an implication that a person is liable for acting in reliance on a certification of trust that fails to contain all the information required in ORS 128.236.

(5) Nothing in this section and ORS 128.246 shall limit the rights of the benefici-

aries of the trust against the trustee or trustees. [1995 c.679 §6]

128.246 Effect of failure to demand certification of trust. A person's failure to demand a certification of trust does not affect the protection provided the person by ORS 128.031 and no inference as to whether the person has acted in good faith may be drawn from the failure to demand a certification. [1995 c.679 §7]

128.250 [Amended by 1979 c.284 §110; repealed by 1981 c.66 §8]

IN TERROREM CLAUSES

128.255 In terrorem clause valid and enforceable; exceptions. (1) Except as provided in this section, an in terrorem clause in a trust is valid and enforceable. If a beneficiary challenges a trust that contains an in terrorem clause that applies to the beneficiary, the court shall enforce the clause against the beneficiary even though the beneficiary establishes that there was probable cause for the challenge.

(2) The court shall not enforce an in terrorem clause if the beneficiary challenging the trust establishes that the beneficiary has probable cause to believe that the trust is a forgery or that the trust has been revoked.

(3) The court shall not enforce an in terrorem clause if the challenge is brought by a fiduciary acting on behalf of a protected person under the provisions of ORS chapter 125, a guardian ad litem appointed for a minor, or a guardian ad litem appointed for an incapacitated or financially incapable person.

(4) For the purposes of this section, "in terrorem clause" means a provision in a trust that reduces or eliminates the interest of a beneficiary under the trust if the beneficiary challenges the validity of part or all of the trust. [1997 c.151 §4]

CLAIMS AGAINST NONTESTAMENTARY TRUSTS

128.256 General statute of limitations for claims against certain nontestamentary trusts. (1) Claims against a nontestamentary trust described in subsection (2) of this section that are not presented within the time limitations established under ORS 128.262 or within the statute of limitations applicable to the claim, whichever is earlier, are barred from payment from the trust estate.

(2) ORS 128.256 to 128.300 apply only if:

(a) A claim is made against assets of a trust, as defined in ORS 128.005;

(b) The trust came into existence during the grantor's lifetime and was revocable by

the grantor at any time after the trust was created and before the death of the grantor;

(c) The claim is based on the debts or liabilities of the grantor; and

(d) The claim is made against the assets of the trust after the death of the grantor.

(3) ORS 128.256 to 128.300 apply to all claims against a nontestamentary trust described in subsection (2) of this section, without regard to whether the claims are contingent, unliquidated or not yet due. [2001 c.593 §1]

Note: Section 18, chapter 593, Oregon Laws 2001, provides:

Sec. 18. ORS 115.335 and 128.256 apply only to claims against trust estates that are based on debts or liabilities of grantors who die on or after January 1, 2002. [2001 c.593 §18; 2003 c.84 §14]

128.258 Commencement of proceeding.

(1) At any time after the death of a grantor of a nontestamentary trust described in ORS 128.256 (2), a trustee of the trust may petition the probate court to determine the claims of creditors of the trust grantor. A petition under this section must include all of the following information to the extent known by the trustee:

(a) The grantor's name, date of birth, date and place of death and Social Security number.

(b) The name of the trustee.

(c) The address at which claims must be presented.

(d) The name of the trust, if any, and the date of the trust, including the dates of any amendments.

(e) The facts establishing venue in the county where the petition is being filed.

(2) The clerk of the court shall charge and collect in advance from the trustee the filing fee required from a plaintiff under ORS 21.110 (1).

(3) A proceeding under this section may be brought only:

(a) In the county where the grantor had domicile or a place of abode at the time of death;

(b) In any county where assets of the trust were located at the time of death or are located at the time the proceeding is commenced; or

(c) In the county where the grantor died.

(4) The court has personal jurisdiction over a trustee that files a petition under this section, whether the trustee is a resident or nonresident of this state, for the purposes of any proceeding relating to the trust that may be instituted by an interested person. [2001 c.593 §1a]

128.260 [Amended by 1979 c.284 §111; repealed by 1981 c.66 §8]

128.262 Limitation on presentation of claims when notice to claimants given.

Not later than four months after a petition under ORS 128.258 is entered in the register of the court, the trustee of the trust shall give notice to persons with claims against the trust estate in the manner provided by ORS 128.264 and 128.266. All claims against the trust estate are barred unless those claims are submitted before the later of:

(1) Four months after the date of first publication of notice to claimants in the manner provided by ORS 128.264; or

(2) If the trustee delivers or mails a notice to a claimant under ORS 128.266, 30 days after a notice meeting the requirements of ORS 128.266 is delivered or mailed to the last-known address of the person having or asserting the claim. [2001 c.593 §2]

128.264 Publication of notice. After filing a petition under ORS 128.258, a trustee must cause a notice to claimants to be published once in each of three consecutive weeks in a newspaper of general circulation published in the county in which the petition is filed. The notice must include:

(1) The name of the grantor;

(2) The name of the trustee and the address at which claims must be presented;

(3) The date of the first publication of the notice; and

(4) A statement that claims against the trust estate may be barred unless presented to the trustee at the address specified in the notice within four months after the date of the first publication of the notice. [2001 c.593 §3]

128.266 Notice to individual claimants.

(1) Within three months after a petition is entered in the register of the court under ORS 128.258, or within such longer time as the court allows, a trustee must make reasonably diligent efforts to investigate the financial records and affairs of the grantor and to take such further actions as are reasonably necessary to ascertain the identity and address of each person who has or asserts a claim against the trust estate. The court shall allow the trustee as much time as requested by the trustee for the purpose of determining the claims against the trust estate. The trustee must thereafter cause to be delivered or mailed a notice containing the information required in subsection (2) of this section to each person known by the trustee to have or to assert a claim against the trust estate and to the Department of Human Services. Notice under this section is not required for any claim that has already been presented, accepted or paid in full

or on account of a claim that is merely conjectural.

(2) The notice required by this section must include:

(a) The name and Social Security number of the grantor;

(b) The name of the trustee and the address at which claims must be presented;

(c) A statement that claims against the trust estate that are not presented to the trustee within 30 days after the date of the notice may be barred;

(d) The date of the notice, which shall be the date on which the notice is delivered or mailed; and

(e) A copy of the grantor's death certificate. [2001 c.593 §4; 2003 c.14 §45]

128.268 Form of claim; evidence in support. (1) A claim presented under ORS 128.256 to 128.300 must:

(a) Be in writing.

(b) Describe the nature and the amount of the claim, if ascertainable.

(c) State the name and address of the claimant and any attorney for the claimant.

(2) A defect of form of a claim timely presented may be waived by the trustee or by the court.

(3) Upon demand of a trustee, a claimant must produce any written evidence supporting a claim made under ORS 128.256 to 128.300 and account for any written evidence supporting a claim that is not produced. [2001 c.593 §5]

128.270 [Repealed by 1981 c.66 §8]

128.272 Claim based on debt due or judgment. (1) If a claim on a debt due is presented and allowed, allowance shall be in the amount of the debt remaining unpaid on the date of allowance.

(2) If a judgment was entered on a claim prior to the death of the grantor, the claim shall be presented under ORS 128.256 to 128.300 in the same manner as if no judgment had been entered, and a copy of the judgment shall be attached to the claim. The claim may be disallowed only if the judgment was void or voidable, or if the judgment could have been set aside on the date of the grantor's death, or if the claim is not presented within the time required by ORS 128.256. If the judgment was a lien against the property of the trust estate on the date of the grantor's death, the judgment shall be treated as a claim on a debt due for which the creditor holds security. In all other respects, a claim that has been reduced to judgment shall have the same priority under ORS 128.290 as a claim that has not been reduced to judgment. [2001 c.593 §6]

128.274 Claim on debts not yet due. A claim on a debt not due, whether or not the creditor holds security for the claim, may be presented under ORS 128.256 to 128.300 as a claim on a debt due. If the claim is allowed, allowance shall be in an amount equal to the value of the debt on the date of allowance. The creditor, after allowance of the claim, may withdraw the claim without prejudice to other remedies. Payment on the basis of the amount allowed discharges the debt and the security, if any, held by the creditor for the claim. [2001 c.593 §7]

128.276 Claim on secured debt that is due. (1) A claim on a debt due for which the creditor holds security may be presented under ORS 128.256 to 128.300 as a claim on an unsecured debt due, or the creditor may elect to rely entirely on the security without presentation of the claim.

(2) If the claim is presented under this section, the claim shall describe the security. If the security is an encumbrance that is recorded, the encumbrance may be described by reference to the book, page, date and place of recording.

(3) If a claim is presented and allowed under this section, payment shall be on the basis of the amount of the debt remaining unpaid on the date that the claim is allowed.

(4) If the creditor surrenders the security for a claim presented and allowed under this section, payment shall be on the basis of the amount allowed.

(5)(a) If the creditor does not surrender the security for a claim presented and allowed under this section, and the creditor exhausts the security before receiving payment on the claim, payment shall be on the basis of the amount allowed less the amount realized on exhausting the security unless otherwise provided by law.

(b) If the creditor does not surrender the security for a claim presented and allowed under this section, and the creditor does not exhaust the security before receiving payment or does not have the right to exhaust the security, payment shall be on the basis of the amount allowed less the value of the security determined by agreement or as the court may order.

(6) The trustee may convey the secured property to the creditor in consideration of the satisfaction or partial satisfaction of the claim. [2001 c.593 §7a]

128.278 Claim on contingent or unliquidated debt. (1) A claim on a contingent or unliquidated debt shall be presented under ORS 128.256 to 128.300 in the same manner as other claims. If the debt becomes absolute or liquidated before distribution of the trust

estate, the claim shall be paid in the same manner as a claim on an absolute or liquidated debt.

(2) If a contingent or unliquidated debt does not become absolute or liquidated before distribution of the trust estate, the trustee may provide for payment of the claim by any of the following methods:

(a) The creditor and trustee may determine, by agreement, arbitration or compromise, the value of the debt and the claim may be allowed and paid in the same manner as a claim on an absolute or liquidated debt.

(b) The trustee may distribute the trust estate, but retain sufficient funds to pay the claim if and when the debt becomes absolute or liquidated. Distribution of trust assets may not be delayed under this paragraph for more than two years after distribution would otherwise be required by the terms of the trust. If the debt does not become absolute or liquidated within that time, the funds retained, after payment therefrom of any expenses accruing during that time, shall be distributed to the beneficiaries.

(3) A court may order the trustee to make distribution of the trust estate as though the claim did not exist.

(4) If after distribution under subsection (2)(b) or (3) of this section the debt becomes absolute or liquidated, the beneficiaries are liable to the creditor to the extent of the trust estate received by them. Payment of the debt may be arranged by creating a trust, giving a mortgage, securing a bond from a distributee or by other method. [2001 c.593 §8]

128.280 Allowance and disallowance of claims. (1) The trustee may compromise a claim against the trust estate.

(2) A claim presented to a trustee under ORS 128.256 to 128.300 shall be considered allowed as presented unless within 60 days after the date of presentment of the claim the trustee mails or delivers a notice of disallowance of the claim in whole or in part to the claimant and to the attorney of the claimant if the claimant has an attorney.

(3) A notice of disallowance of a claim shall inform the claimant that the claim has been disallowed in whole or in part and, to the extent disallowed, will be barred unless the claimant requests a summary determination or brings an action in the manner provided by subsection (4) of this section.

(4) If a trustee disallows a claim submitted under ORS 128.256 to 128.300 in whole or in part, the claimant, within 30 days after the date of mailing or delivery of the notice of disallowance, may:

(a) File a request for summary determination of the claim in the probate court, with

proof of service of a copy of the request upon the trustee or the attorney of the trustee; or

(b) Commence a separate action against the trustee on the claim in the circuit court.

(5) If the claimant fails either to request a summary determination or commence a separate action as provided in subsection (4) of this section, the claim is barred to the extent the claim has been disallowed by the trustee.

(6) If a claimant prevails in a proceeding or action under subsection (4) of this section, the claim shall be allowed or judgment entered in the full amount determined to be due to the claimant. The claim or judgment shall be paid from the assets of the trust estate only to the extent that funds are available after payment of other claims with higher priority under ORS 128.290.

(7) If the claimant files a request for summary determination of a claim under subsection (4) of this section, the trustee may notify the claimant in writing that the claimant must commence a separate action against the trustee on the claim within 60 days after the claimant receives the notice. Notice under this subsection must be given by the trustee within 30 days after the request for summary determination is served on the trustee or the attorney of the trustee. If the claimant fails to commence a separate action within the time allowed, the claim is barred to the extent the claim has been disallowed by the trustee.

(8) In a proceeding for summary determination under this section:

(a) The trustee shall make response to the claim as though the claim were a complaint filed in an action.

(b) The court shall hear the matter without a jury, after notice to the claimant and trustee. The court shall determine the claim in a summary manner, and shall make an order allowing or disallowing the claim in whole or in part.

(c) No appeal may be taken from the order of the court made in a proceeding for summary determination under this section.

(9) If a civil action is commenced under subsection (4) of this section, a trustee, or beneficiary as defined by ORS 128.135, may petition the court to approve a proposed disposition of claims or to provide instructions on the treatment of claims.

(10) A claimant filing a request for summary determination of a claim under subsection (4) of this section must pay the filing fee required of a defendant or respondent under ORS 21.110 (1) and other fees applicable to civil actions in circuit court. [2001 c.593 §9]

128.282 Creditor may obtain order for payment. A creditor whose claim has been allowed or established by summary determination or separate action, and who has not received payment within six months after the date of the first publication of notice to interested persons, may apply to the court for an order directing the trustee to pay the claim. The trustee may recover amounts owing under the claim from any beneficiary who received a distribution from the trust estate. The right of recovery is limited to the extent the beneficiary's distribution would have been reduced by timely payment of all allowed or established claims. [2001 c.593 §9a]

128.284 Evidence required to allow court approval of claim disallowed by trustee. A claim that has been disallowed by a trustee under ORS 128.256 to 128.300 may not be allowed by any court except upon some competent, satisfactory evidence other than the testimony of the claimant. [2001 c.593 §9b]

128.286 Waiver of statute of limitations. A claim subject to ORS 128.256 to 128.300 that is barred by a statute of limitations may not be allowed by the trustee or by any court except upon the written direction or consent of those interested persons who would be adversely affected by allowance of the claim. [2001 c.593 §9c]

128.288 Tolling of statute of limitations on claim. If a claim is not barred by the statute of limitations on the date of death of the grantor, the claim is not barred by any statute of limitations until at least one year after the date of death. [2001 c.593 §9d]

128.290 Priority of claims. (1) Claims allowed against the trust estate under ORS 128.256 to 128.300 must be paid by the trustee in the following order of priority:

(a) Expenses of administering the trust estate.

(b) Expenses of a plain and decent funeral and disposition of the remains of the grantor.

(c) Debts and taxes with preference under federal law.

(d) Reasonable and necessary medical and hospital expenses of the last illness of the grantor, including compensation of persons attending the grantor.

(e) Taxes with preference under the laws of this state that are due and payable while possession of the trust estate of the grantor is retained by the trustee.

(f) Debts owed employees of the grantor for labor performed within 90 days immediately preceding the date of death of the grantor.

(g) Child support arrearages.

(h) A claim of the Department of Human Services for the net amount of public assistance, as defined in ORS 411.010, paid to or for the grantor, and the claim of the department for care and maintenance of any grantor who was at a state institution to the extent provided in ORS 179.610 to 179.770.

(i) All other claims against the trust estate.

(2) If the assets of the trust estate are insufficient to pay in full all expenses or claims of any one class specified in subsection (1) of this section, each expense or claim of that class shall be paid only in proportion to the amount thereof. [2001 c.593 §10]

128.292 Applicability of time limitations to public bodies. Notwithstanding ORS 12.250, all statutes of limitations and other time limitations imposed under ORS 128.256 to 128.300 apply to actions brought in the name of the state, or brought in the name of any county or public corporation, and to actions brought for the benefit of the state or for the benefit of any county or public corporation. [2001 c.593 §11]

128.294 Applicability of time limitations to certain claims based on liens against property and liability of grantor or trustee. The statutes of limitations and time limitations provided by ORS 128.256 to 128.300 do not affect:

(1) Any proceeding to enforce a mortgage, pledge or other lien upon property of the trust estate;

(2) Any proceeding to quiet title or reform any instrument with respect to title to property; or

(3) To the limits of the insurance protection only, any proceeding to establish liability of the grantor or the trustee for which the grantor or trustee is protected by liability insurance at the time the proceeding is commenced. [2001 c.593 §12]

128.296 Petition to close case. (1) Not earlier than four months after the publication of notice to claimants, or the date on which all claims against the trust estate have been resolved, whichever is later, a trustee that has filed a petition under ORS 128.258 must file a petition to close the case with a statement that all claims received by the trustee have been paid in full or otherwise resolved in the manner required by ORS 128.256 to 128.300. The trustee must attach to the petition an affidavit attesting to compliance with ORS 128.264 and 128.266. The trustee must attach to the affidavit a copy of the notice published under ORS 128.264 and a copy of any notice delivered or mailed under ORS 128.266. The affidavit must attest

to the date on which each notice was delivered or mailed, and the name and address of the person to whom each notice was delivered or mailed.

(2) Upon the filing of the petition to close the case in compliance with the provisions of this section, the court shall enter an order closing the case. [2001 c.593 §13]

128.298 Dismissal for want of prosecution. (1) If the trustee does not file a petition to close the case under ORS 128.296 within one year after filing a petition under ORS 128.258, the court clerk shall mail a notice to the trustee, or the attorney for the trustee if the trustee is represented by counsel, informing the trustee that a judgment of dismissal will be entered in the case for want of prosecution unless an application for a continuance is made to the court and good cause is shown within 60 days after the date of the notice. Good cause for a continuance includes the pendency of a separate action under ORS 128.280 (4).

(2) If an application for a continuance is not made under this section, or the court fails to find good cause for a continuance, the court shall enter a judgment of dismissal of the proceeding without prejudice. The dismissal does not bar a claimant's right to pursue claims against a trustee, and a claimant shall have the same rights as if the trustee filed no proceeding. [2001 c.593 §14]

128.300 Consolidation of proceedings. If the proceeding to determine claims against a deceased grantor is pending under ORS 128.256 to 128.300 at the same time as probate proceedings under ORS chapter 115, upon motion of any party or upon the court's own motion, any of the courts conducting proceedings may:

(1) Order a joint hearing or trial on the common claims;

(2) Order that the proceedings be consolidated; or

(3) Make orders concerning the proceedings to avoid unnecessary costs for delays. [2001 c.593 §15]

PET TRUSTS

128.308 Pet trusts. (1) Any person may establish a pet trust for the care of designated domestic or pet animals. A pet trust may provide for the care of individually named animals or for a class of animals, but any animal provided for under the trust must be living at the time of the trustor's death. Wills and other instruments shall be liberally construed in favor of finding the creation of a pet trust, and there is a presumption against merely precatory or honorary disposition on behalf of domestic and pet animals.

128.310 PROTECTIVE PROCEEDINGS; POWERS OF ATTORNEY; TRUSTS

(2) The terms and conditions of a pet trust may be enforced by an individual designated for that purpose in the trust instrument. If the trust instrument does not designate a person to enforce the terms and conditions of the pet trust, the circuit court may appoint a person for that purpose. Reasonable compensation for a person appointed by the court may be paid from the assets of the trust.

(3) If a trustee is not designated in a pet trust or the person designated to act as trustee is unwilling or unable to serve, the circuit court shall name a trustee. A pet trust may designate one or more persons to serve as successor trustee. The court may order the transfer of the property to a person other than the designated trustee or successor trustee if the transfer is required to ensure that the trustor's intent is carried out. The court may also make such other orders as the court deems necessary to carry out the intent of the trustor and the purposes of this section.

(4) Upon termination of a pet trust, the trustee shall transfer the unexpended trust property in the following order:

(a) As directed by the trust instrument;

(b) If the trust was created in a nonresiduary clause in the trustor's will, under the residuary clause in the trustor's will; or

(c) If paragraphs (a) and (b) of this subsection do not apply, to the persons to whom the estate of the trustor would pass by intestate succession under ORS 112.025 to 112.055.

(5) Except as ordered by a circuit court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(6) A pet trust terminates as provided by the terms of the trust instrument. If the trust instrument makes no provision for termination of the trust, the trust terminates when no living animal is covered by the trust or when all trust assets are exhausted, whichever occurs first. [2001 c.636 §1]

UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT

128.310 Short title. ORS 128.310 to 128.355 may be cited as the "Uniform Management of Institutional Funds Act." [1975 c.707 §11]

128.315 Definitions for ORS 128.310 to 128.355. As used in ORS 128.310 to 128.355:

(1) "Institution" means an incorporated or unincorporated nonpublic organization or-

ganized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes.

(2) "Institutional fund" means a fund held by an institution for its exclusive use, benefit or purposes, but does not include (a) a fund held for an institution by a trustee that is not an institution or (b) a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.

(3) "Endowment fund" means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

(4) "Governing board" means the body responsible for the management of an institution or of an institutional fund.

(5) "Historic dollar value" means the aggregate fair value in dollars of (a) an endowment fund at the time it became an endowment fund, (b) each subsequent donation to the fund at the time it is made and (c) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the institution is conclusive.

(6) "Gift instrument" means a will, deed, grant, conveyance, agreement, memorandum, writing or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or held by an institution as an institutional fund. [1975 c.707 §2]

128.320 Amount of expenditure for uses and purposes of fund. The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by ORS 128.340. This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution. [1975 c.707 §3; 1995 c.79 §47]

128.325 When ORS 128.320 not applicable; limit on implying net appreciation restriction. ORS 128.320 does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended. A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an

endowment, or from a direction or authorization in the applicable gift instrument to use only "income," "interest," "dividends," or "rents, issues or profits," or "to preserve the principal intact," or a direction which contains other words of similar import. This rule of construction applies to gift instruments executed or in effect before or after September 13, 1975. [1975 c.707 §4]

128.330 Power of governing board to invest and retain property of fund. In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or in the applicable law other than law relating to investments by a fiduciary, may:

(1) Invest and reinvest an institutional fund in any real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships or individuals and obligations of any government or subdivision or instrumentality thereof;

(2) Retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable;

(3) Include all or any part of an institutional fund in any pooled or common fund maintained by the institution; and

(4) Invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board. [1975 c.707 §5]

128.335 Authority of governing board to delegate power. The governing board may:

(1) Delegate to its committees, officers or employees of the institution or the fund or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds;

(2) Contract with independent investment advisors, investment counsel or managers, banks or trust companies, so to act; and

(3) Authorize the payment of compensation for investment advisory or management services. [1975 c.707 §6]

128.340 Standard of care for investment and delegation of duties. In the administration of the powers to appropriate appreciation, to make and retain investments and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long and short term needs of the institution in carrying out its education, religious, charitable or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends and general economic conditions. [1975 c.707 §7]

128.345 Release of restriction on fund with consent of donor by application to court; notice to Attorney General; limit on extent of release. (1) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

(2) If written consent of the donor cannot be obtained by reason of the death, disability, unavailability or impossibility of identification of the donor, the governing board may apply in the name of the institution to the appropriate circuit court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The Attorney General shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund.

(3) A release under this section may not allow a fund to be used for purposes other than educational, religious, charitable or other eleemosynary purposes of the institution affected.

(4) This section does not limit the application of the doctrine of cy pres. [1975 c.707 §8]

128.350 Uniformity of interpretation. ORS 128.310 to 128.355 shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of ORS 128.310 to 128.355 among those states which enact it. [1975 c.707 §10]

128.355 Severability. If any provision of ORS 128.310 to 128.355 or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of ORS

128.310 to 128.355 which can be given effect without the invalid provision or application, and to this end the provisions of ORS 128.310 to 128.355 are declared severable. [1975 c.707 §9]

**GENERAL PROVISIONS GOVERNING
NONTESTAMENTARY TRUSTS**

128.370 Definitions for ORS 128.370 to 128.397. For the purposes of ORS 128.370 to 128.397:

(1) "Grantor" means the individual who created a trust described in subsection (3) of this section.

(2) "Specific distribution" means a distribution of specific property to a specific beneficiary that is required under the terms of a trust instrument.

(3) "Trust" means a trust as defined in ORS 128.005, or a portion of a trust as defined in ORS 128.005, that comes into existence during the grantor's lifetime and is revocable by the grantor at any time after the trust was created and before the death of the grantor. [2003 c.84 §1]

128.375 Effect of marriage. Unless otherwise provided by the terms of the trust instrument, a trust is not revoked by the marriage of the grantor after the trust instrument is executed. [2003 c.84 §2]

128.378 Revocation by divorce or annulment. (1) Unless otherwise provided by the terms of the trust instrument, a grantor's divorce or the annulment of the grantor's marriage, after the trust instrument is executed:

(a) Revokes all provisions of the trust in favor of the former spouse of the grantor;

(b) Revokes all powers of appointment, general or nongeneral, in the trust exercisable by the former spouse; and

(c) Revokes any provision in the trust naming the former spouse as trustee.

(2) Unless otherwise provided by the terms of the trust instrument, a trust shall be construed as though the former spouse predeceased the grantor if, after the trust instrument is executed, the grantor divorces the spouse or the marriage of the grantor to the spouse is annulled. [2003 c.84 §3]

128.380 Contract of sale of property not revocation. Unless otherwise provided by the terms of the trust instrument, a contract of sale made by a trustee to convey property that is the subject of a specific distribution is not a revocation of the specific distribution. If all or part of the property that is the subject of the contract of sale has not been delivered at the time set in the trust instrument for the specific distribution,

the property passes by the specific distribution but is subject to the terms of the contract of sale. [2003 c.84 §4]

128.382 Encumbrance or disposition of property after trust instrument executed. Unless otherwise provided by the terms of the trust instrument:

(1) A disposition of a portion of property that is subject to a specific distribution does not affect the operation of the trust upon the remaining portion of the property; and

(2) If property subject to a specific distribution is encumbered, the property passes under the specific distribution but is subject to the encumbrance. [2003 c.84 §5]

128.385 When trust assets pass to descendants of beneficiary; class gifts. Unless otherwise provided by the terms of the trust instrument, when property is to be distributed under the trust to any beneficiary who is related by blood or adoption to the grantor, and the beneficiary dies leaving lineal descendants either before the grantor dies or before the time set in the trust instrument for distribution, the descendants take by right of representation the property the beneficiary would have taken if the beneficiary had not died. Unless otherwise provided by the terms of the trust instrument, this section applies to a beneficiary who is entitled to receive property under a class gift if the beneficiary dies after the trust instrument is executed. [2003 c.84 §6]

128.388 Children born or adopted after trust instrument executed. (1) As used in this section, "pretermitted child" means a child of a grantor who is born or adopted after the execution of the trust instrument, who is not provided for in the trust or mentioned in the trust instrument and who survives the grantor.

(2) If a grantor has one or more children living when the grantor executes a trust instrument and no provision is made in the trust for any of those children, a pretermitted child is not entitled to any share of the trust estate.

(3) If a grantor has one or more children living when the grantor executes a trust instrument and provision is made in the trust for any of those children, a pretermitted child is entitled to share in the trust estate as follows:

(a) The pretermitted child may share only in the portion of the trust estate intended to benefit living children.

(b) The share of each pretermitted child is equal to the total value of the portion of the trust estate intended to benefit the living children divided by the number of pretermitted children plus the number of liv-

ing children for whom provision, other than nominal provision, is made in the trust.

(c) To the extent possible, the interest of each pretermitted child in the trust estate shall be of the same character, whether equitable or legal, as the interest the grantor gave to the living children under the trust.

(4) If a grantor has no child living when the grantor executes a trust instrument, a pretermitted child is entitled to a share of the trust estate as though the grantor had died intestate and had not executed the trust instrument.

(5) A pretermitted child may recover the share of the trust estate to which the child is entitled as follows:

(a) If the pretermitted child is entitled to a share of the trust estate under subsection (3) of this section, the share must be recovered from the other children.

(b) If the pretermitted child is entitled to a share of the trust estate under subsection (4) of this section, the share must be recovered from the beneficiaries on a pro rata basis, out of the portions of the trust estate passing to those persons under the trust.

(c) In reducing the shares of the beneficiaries under this subsection, the character of the dispositive plan adopted by the grantor in the trust must be preserved to the extent possible. [2003 c.84 §7]

128.390 Failure of specific distribution.

(1) Subject to this section, a specific distribution does not fail by reason of the destruction, damage, sale, condemnation or change in form of the property that is the subject of the specific distribution unless:

(a) The trust instrument provides that the specific distribution fails under the particular circumstances; or

(b) The grantor, during the lifetime of the grantor, or the trustee gives property to the beneficiary of the specific distribution with the intent of satisfying the specific distribution.

(2) If part of the property that is the subject of a specific distribution is destroyed, damaged, sold or condemned, the remaining interest in the property passes pursuant to the specific distribution. The part of the property that is destroyed, damaged, sold or condemned is subject to subsections (3) to (6) of this section if the property would have been deemed under the common law.

(3) If property that is the subject of a specific distribution is insured and the property is destroyed or damaged, the beneficiary of the specific distribution is entitled to receive the following amounts, less any amount expended or incurred by the grantor or trust

estate in restoration or repair of the property:

(a) Any insurance proceeds for the destroyed or damaged property unpaid at the time set in the trust instrument for the specific distribution; and

(b) An amount equal to all insurance payments paid to the grantor, and such proceeds or awards paid to the trustee for the destroyed or damaged property, during the six-month period immediately preceding the time set in the trust instrument for the specific distribution.

(4) If property that is the subject of a specific distribution is sold by the grantor or the trustee, the beneficiary of the specific distribution is entitled to receive:

(a) Any balance of the purchase price unpaid at the time set in the trust instrument for the specific distribution, including any security interest in the property and interest accruing before the time set in the trust instrument for the specific distribution; and

(b) An amount equal to all payments paid to the grantor or the trustee for the property during the six-month period immediately preceding the time set in the trust instrument for the specific distribution. Acceptance of a promissory note of the purchaser or a third party is not considered payment under this paragraph, but payment on the note is payment on the purchase price.

(5) If property that is the subject of a specific distribution is taken by condemnation before the time set in the trust instrument for the specific distribution, the beneficiary of the specific distribution is entitled to receive:

(a) Any amount of the condemnation award unpaid at the time set in the trust instrument for the specific distribution; and

(b) An amount equal to the sums paid under the condemnation award to the grantor or the trustee during the six-month period immediately preceding the time set in the trust instrument for the specific distribution.

(6) If securities as defined in ORS 59.015 are the subject of a specific distribution, and after the execution of the trust other securities of the same or another entity are distributed to the trustee or trust estate by reason of a partial liquidation, stock dividend, stock split, merger, consolidation, reorganization, recapitalization, redemption, exchange or any other similar transaction, the specific distribution includes the additional or substituted securities.

(7) The amount that a beneficiary of a specific distribution receives under this sec-

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tion must be reduced by any expenses of the sale or of the collection of the proceeds of insurance, sale or condemnation award and by any amount by which income is increased by reasons of items provided for in this section. Expenses subject to this subsection include attorney fees. [2003 c.84 §8]

128.392 Effect of failure of specific distribution. If a specific distribution, other than a specific distribution that governs the residue of the trust estate, fails for any reason, the property that is the subject of the specific distribution becomes part of the residue and must be distributed as provided by the terms of the trust instrument for the residue. [2003 c.84 §9]

128.395 When gift made by grantor is advancement. Property that the grantor gives during the grantor's lifetime to a beneficiary of the trust is an advancement against the beneficiary's share of the trust only if either the grantor makes a written statement that the property constitutes an advancement or the beneficiary makes a written statement acknowledging that the property constitutes an advancement. For purposes of applying the property against the beneficiary's share of the trust, the property must be valued as of the time the beneficiary takes possession or enjoyment of the property, or as of the time of death of the grantor, whichever occurs first. [2003 c.84 §10]

128.397 Effect of advancement on distribution. (1) If the value of an advancement made to a beneficiary under ORS 128.395 exceeds the beneficiary's share in the trust estate, the beneficiary shall be excluded from any further share of the trust estate, but the beneficiary is not required to refund any part of the advancement. If the value of the beneficiary's share in the trust estate is greater than the value of all property received as advancements, the beneficiary is entitled to receive from the trust estate the balance of the share owing to the beneficiary after deducting all amounts received as advancements.

(2) For the purpose of determining the shares of the beneficiaries of either a residuary gift or a class gift under a trust, the value of all advancements made by the grantor to beneficiaries of such gift shall be added to the value of the total property distributed pursuant to the gift, the sum then divided among all beneficiaries of the gift, and the value of the advancement then deducted from the share of the beneficiary to whom the advancement was made. [2003 c.84 §11]

128.398 Marital deduction gifts. (1) As used in this section:

(a) "Marital deduction" means the federal

estate tax deduction allowed for transfers under section 2056 of the Internal Revenue Code, as in effect on May 24, 2003, or the federal gift tax deduction allowed for transfers under section 2523 of the Internal Revenue Code, as in effect on May 24, 2003.

(b) "Marital deduction gift" means a transfer of property that the grantor intended to qualify for the marital deduction.

(c) "Trust" means a trust as defined ORS 128.005.

(2) If a trust contains a marital deduction gift:

(a) The provisions of the trust, including any power, duty or discretionary authority given to a fiduciary, must be construed as necessary to comply with the marital deduction provisions of the Internal Revenue Code.

(b) The fiduciary may not take any action or have any power that impairs the tax deduction for the marital deduction gift.

(c) The marital deduction gift may be satisfied only with property that qualifies for the tax deduction.

(3) If a trust executed before September 12, 1981, indicates the grantor intended that a gift provide the maximum allowable marital deduction, the trust gives the recipient an amount equal to the maximum amount of the marital deduction that would have been allowed as of the date of the gift under federal law as it existed before September 12, 1981, with adjustments for:

(a) The provisions of section 2056(c)(1)(B) and (C) of the Internal Revenue Code in effect immediately before September 12, 1981.

(b) Reduction of the amount passing under the gift by the final federal estate tax values of any other property that passes under the trust, or by other means, that qualifies for the marital deduction. This paragraph does not apply to qualified terminable interest property under section 2056(b)(7) of the Internal Revenue Code, as in effect on May 24, 2003.

(4) If a marital deduction gift is made in trust:

(a) The grantor's spouse is the only beneficiary of income or principal of the marital deduction property as long as the spouse lives. Nothing in this paragraph prevents exercise by the grantor's spouse of a power of appointment included in a trust that qualifies as a general power of appointment marital deduction trust.

(b) Subject to paragraph (d) of this subsection, the grantor's spouse is entitled to all of the income of the marital deduction property at least once a year, as long as the spouse is alive.

(c) The grantor's spouse has the right to require that the trustee of the trust make unproductive marital deduction property productive or convert it into productive property within a reasonable time.

(d) Notwithstanding any provision of ORS 129.005 to 129.125, upon the death of the grantor's spouse all remaining accrued or undistributed income from qualified terminable interest property under sections 2056(b)(7) or 2523(f) of the Internal Revenue Code, as in effect on May 24, 2003, passes to the estate of the grantor's spouse, unless the trust provides a different disposition that qualifies for the marital deduction.

(5)(a) Except as provided in paragraph (b) of this subsection, if a trust that makes a marital deduction gift includes a requirement that the grantor's spouse survive the grantor by a period of more than six months, or contains provisions that could result in a loss of the spouse's interest in the trust if the spouse fails to survive the grantor by at least six months, the spouse need only survive the grantor by six months to receive the marital deduction gift.

(b) If a trust that makes a marital deduction gift includes a requirement that the grantor's spouse survive a common disaster that results in the death of the grantor, the spouse need only survive until the final audit of the federal estate tax return for the grantor's estate, if any, to receive the marital deduction gift.

(6) A trustee is not liable for a good faith decision whether to make any election referred to in sections 2056(b)(7) or 2523(f) of the Internal Revenue Code, as in effect on May 24, 2003.

(7) Subsections (4) and (6) of this section do not apply to a trust that qualifies for the marital deduction under section 20.2056(e)-2(b) of the Code of Federal Regulations, as in effect on May 24, 2003. [2003 c.84 §12]

Note: 129.005 to 129.125 were repealed by section 36, chapter 279, Oregon Laws 2003. The text of 128.398 was not amended by enactment of the Legislative Assembly to reflect the repeal. Editorial adjustment of 128.398 for the repeal of 129.005 to 129.125 has not been made.

128.400 [1987 c.813 §3; 1997 c.631 §416; 2001 c.796 §7; renumbered 97.923 in 2001]

128.405 [1987 c.813 §1; 2001 c.796 §16; renumbered 97.925 in 2001]

128.407 [1987 c.813 §2; 2001 c.796 §17; renumbered 97.927 in 2001]

128.410 [1953 c.639 §1; 1955 c.524 §1; 1959 c.691 §1; 1965 c.611 §14; 1967 c.359 §681; 1979 c.661 §1; repealed by 1987 c.813 §17]

128.412 [1959 c.691 §2; 1967 c.359 §682; 1985 c.207 §23; 1987 c.813 §11; 1991 c.331 §43; 1997 c.631 §417; 1999 c.68 §1; 2001 c.796 §8; renumbered 97.929 in 2001]

128.414 [1993 c.467 §3; 1995 c.325 §2; 2001 c.796 §9; renumbered 97.931 in 2001]

128.415 [1953 c.639 §2; 1955 c.524 §2; 1959 c.691 §3; 1981 c.484 §1; 1985 c.207 §24; 1987 c.214 §1; 1987 c.813 §12; 1989 c.171 §14; 2001 c.796 §10; renumbered 97.937 in 2001]

128.420 [1981 c.719 §9a; 1983 c.810 §26; 1987 c.158 §18b; repealed by 1987 c.813 §17]

128.421 [1987 c.813 §4; 1989 c.1048 §3; 2001 c.796 §11; renumbered 97.939 in 2001]

128.423 [1987 c.813 §5; 1989 c.1048 §1; 1995 c.720 §1; 2001 c.796 §12; renumbered 97.941 in 2001]

128.425 [1987 c.813 §6; 1989 c.1048 §2; 1995 c.720 §2; 2001 c.796 §13; renumbered 97.943 in 2001]

128.430 [1987 c.813 §7; 2001 c.796 §14; renumbered 97.944 in 2001]

128.435 [1987 c.813 §8; 1995 c.144 §8; 2001 c.796 §15; renumbered 97.945 in 2001]

128.440 [1987 c.813 §8a; 2001 c.796 §18; renumbered 97.946 in 2001]

TRUSTS FOR DEATH BENEFITS

128.460 Definitions for ORS 128.460 to 128.500. As used in ORS 128.460 to 128.500:

(1) The words "death benefits" shall mean death benefits of any kind, including, but not limited to, proceeds of life insurance policies, payments under annuity or endowment contracts, and funds payable in connection with pension, retirement, stock bonus or profit-sharing plans, or any trust or trusts administered in connection therewith;

(2) The word "designator" shall mean the person entitled to designate the beneficiary of such death benefits upon the death of the person; and

(3) The word "obligor" shall mean the insurer or other person obligated to pay such death benefits. [1971 c.182 §1]

128.470 Creation of death benefits trust; trust without corpus valid. A trustee may be named as beneficiary of any death benefits and such death benefits shall be paid to such trustee and be held and disposed of by the trustee as provided in a trust agreement made by the designator during the lifetime of the designator. It shall not be necessary to the validity of any such trust agreement or declaration of trust that it have a trust corpus other than the right of the trustee to receive such death benefits as beneficiary. [1971 c.182 §2]

128.480 Creation of death benefits trust by will; disposition of death benefits upon probate of will. A trustee named by will may be designated as beneficiary of death benefits, if the designation is made in accordance with the provisions of the policy, contract, plan, trust or other governing instrument. Upon probate of the will, the death benefits shall be payable to the trustee to be held and disposed of under the term of the designator's last will in the same manner as other testamentary trusts are administered; but if no qualified trustee claims the death benefits within one year after the death of

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the designator or if satisfactory evidence is furnished within such one-year period showing that no trustee can qualify to receive such death benefits, payment thereof may be made, unless the designator has otherwise provided, by the obligor to the personal representative of the designator or to those thereafter entitled, and the obligor shall be discharged from liability. [1971 c.182 §3]

128.490 Death benefits received by trustee not subject to additional inheritance or estate taxes. The death benefits received by the trustee shall not be subject to the debts of the designator or to inheritance or estate taxes to any greater extent than if such death benefits were payable to the beneficiaries named in the trust and not to the estate of the designator. [1971 c.182 §4]

128.500 Commingling with other trust assets. Death benefits so held in trust may be commingled with any other assets which may properly become a part of such trust. [1971 c.182 §5]

EMPLOYEES' TRUSTS

128.510 Definitions for ORS 128.520. As used in ORS 128.520, "employees' trust" means a trust of real or personal property forming part of a pension, profit sharing, stock bonus, annuity, disability or death benefit plan of an employer or group of employers for the benefit of the employees of the employer or group of employers, to which contributions are made by such employers or employees, or both, for the purpose of distributing income or principal, or both, to such employees or the beneficiaries of such employees. [1955 c.586 §1]

128.520 Employees' trust may be in perpetuity; accumulation of income. An employees' trust may be permitted to accumulate for such time as may be necessary to accomplish the purpose for which it is created, and is not invalid as violating any rule of law against perpetuities or the suspension of the power of alienation of title to property. The income from any property held in an employees' trust may continue in perpetuity or in accordance with the terms of such trust, and the plan of which such trust forms a part, for such time as may be necessary to accomplish the purpose for which such trust is created. [1955 c.586 §2]

BUSINESS TRUSTS

128.560 "Business trust" described. A "business trust" is any association, including a real estate investment trust, engaged in or operating a business under a written trust agreement or declaration of trust, the beneficial interest under which is divided into

transferable certificates of participation or shares, other than a trust engaged solely in exercising the voting rights pertaining to corporate shares or other securities in accordance with the terms of a written instrument. [1971 c.491 §1]

128.565 Business trust permitted. A business trust is permitted as a recognized form of association for the conduct of business within the State of Oregon. [1971 c.491 §2]

128.570 Business trusts and trustees not subject to bank and trust company regulations. Neither a business trust nor the trustees of such trust are subject to the provisions of ORS chapters 706, 707 and 709. [1971 c.491 §3; 1997 c.631 §418]

128.573 Forms. Upon request, the Secretary of State may furnish forms for documents required or permitted to be filed under ORS 128.560 to 128.600. The Secretary of State may by rule require the use of the forms. [1995 c.215 §23]

128.575 Filing with Office of Secretary of State required; fees; amendments. (1) Any business trust desiring to do business in this state shall first submit to the Office of Secretary of State a copy of the trust instrument creating the trust and any subsequent amendments to the trust and a document setting forth:

- (a) The business trust name and the state or country of formation;
- (b) The names and addresses of its trustees;
- (c) The street address of the business trust's registered office in this state and the name of the registered agent;
- (d) A mailing address to which the Secretary of State may mail notices; and
- (e) Any additional identifying information that the Secretary of State by rule may require.

(2) The filing described in subsection (1) of this section shall be accompanied by the applicable filing fee.

(3) If the Secretary of State finds that the document contains the required information, the Secretary of State, when all fees have been paid, shall file the trust instrument and document and return an acknowledgment of filing to the sender.

(4) If a business trust amends its trust instrument it shall submit for filing a copy of the amendment to the Office of Secretary of State. The amendment shall set forth:

- (a) The name of the business trust as shown on the records of the Office of Secretary of State; and

(b) The information as changed. [1971 c.491 §4; 1973 c.367 §12; 1985 c.351 §21; 1985 c.728 §81a; 1987 c.94 §128; 1995 c.215 §24; 1999 c.486 §18]

128.580 Business trusts subject to certain corporate laws. Any business trust shall be subject to such provisions of law, now or hereafter enacted, with respect to domestic and foreign corporations, respectively, as relate to the issuance of securities, filing of required statements or reports, service of process, general grants of power to act, right to sue and be sued, limitation of individual liability of shareholders and rights to acquire, mortgage, sell, lease, operate and otherwise to deal in real and personal property. Except as otherwise provided in its trust agreement or declaration of trust, or any amendments thereto, any business trust shall also be subject to the other provisions of ORS chapter 60 and other rights and duties existing under the common law and statutes of this state applicable to domestic and foreign corporations. Title to any real or personal property may be held in the name of the trust, one or more of the trustees or any other person as nominee. [1971 c.491 §5; 1973 c.367 §13; 1979 c.208 §6; 1987 c.94 §99]

128.585 Personal liability of trustees, shareholders or beneficiaries of business trust. The trustees, shareholders or beneficiaries of a business trust shall not, as such, be personally liable for any obligations of such business trust arising after June 25, 1971. Persons becoming trustees, shareholders or beneficiaries after June 25, 1971, shall not be personally liable, as such, for obligations of the business trust existing on June 25, 1971. [1971 c.491 §6; 1973 c.367 §14]

128.590 Filing of trust instrument as conclusive evidence of compliance with laws; exception. For purposes of ORS 128.585, filing of the trust instrument by the Secretary of State shall be conclusive evidence that all conditions precedent required to be performed by the business trust have been complied with and that the business trust is authorized to do business in this state, except as against this state in a proceeding to cancel or revoke the filing for violations of the provisions of ORS 128.580. [1971 c.491 §7; 1985 c.728 §82]

128.595 Annual report; due date; content; notice of requirement; effect of failure to file. (1) Each business trust by the anniversary date shall file a report with the Secretary of State accompanied by the annual fee.

(2) The report shall contain the following:

(a) The name of the business trust and the state or country under whose law it is formed;

(b) The names and addresses of its trustees;

(c) The street address of the registered office in this state and the name of the trust's registered agent at that office;

(d) A mailing address to which the Secretary of State may mail notices;

(e) The category of the classification code as established by rule of the Secretary of State most closely designating the primary business activity of the business trust;

(f) The federal employer identification number of the trust; and

(g) Any additional identifying information that the Secretary of State by rule may require.

(3) The annual report shall be on forms prescribed and furnished by the Secretary of State. The information contained in the annual report shall be current as of 30 days before the anniversary of the business trust.

(4) The Secretary of State shall mail the report form to any address shown for the business trust in the current records of the Office of the Secretary of State. The failure of the business trust to receive the report form from the Secretary of State shall not relieve the business trust of its duty to deliver a report as required by this section.

(5) If the Secretary of State finds the report conforms to the requirements of this section, the Secretary of State shall file the report.

(6) If the Secretary of State finds that the report does not conform to the requirements of this section, the Secretary of State shall return the report to the business trust. The business trust shall correct the annual report and return it to the Secretary of State within 45 days after the Secretary of State returns the report.

(7) If no report is filed by the reporting date or if no corrected report is filed within the 45-day period, the Secretary of State shall send to the business trust a final notice advising that no report has been filed and it is, therefore, assumed that the business trust is no longer active unless a report is filed within 45 days after the mailing of such final notice.

(8) Not less than 45 days after the date of mailing of the final notice provided for by subsection (7) of this section, the Secretary of State may assume and note on the records of the Secretary of State that the business trust is inactive. [Formerly 128.075; 1983 c.717 §29; 1985 c.351 §22; 1985 c.728 §82b; 1987 c.94 §130; 1987 c.843 §18; 1993 c.190 §17; 1995 c.215 §25]

128.597 Inactivation of business trust. The Secretary of State may commence a

proceeding to inactivate the trust instrument of a business trust if:

(1) The business trust does not pay when due any fees imposed by ORS 128.560 to 128.600;

(2) The business trust does not deliver its annual report to the Secretary of State when due;

(3) The business trust is without a registered agent or registered office in this state;

(4) The business trust does not notify the Secretary of State that its registered agent or registered office has been changed, that its registered agent has resigned or that its registered office has been discontinued; or

(5) The business trust's period of duration stated in the trust instrument expires. [1995 c.215 §27]

128.599 Reinstatement of business trust following inactivation. (1) A business trust inactivated under ORS 128.597 may apply to the Secretary of State for reinstatement within five years from the date of inactivation. The application shall state:

(a) The name of the business trust and effective date of its administrative inactivation; and

(b) That the ground or grounds for inactivation either did not exist or have been eliminated.

(2) If the Secretary of State determines that the application contains the information required by subsection (1) of this section, that the information is correct and that the business trust's name satisfies the requirements of ORS 60.094, the Secretary of State shall reinstate the business trust.

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative inactivation and the business trust is considered to resume carrying on its business as if the administrative inactivation had never occurred. [1995 c.215 §28]

128.600 Filing, service, copying and certification fees. The Secretary of State shall collect the fees described in ORS 56.140 for each document delivered for filing under ORS 128.560 to 128.600 and for process served on the secretary under ORS 128.560 to 128.600. The secretary may collect the fees described in ORS 56.140 for copying any public record under ORS 128.560 to 128.600, certifying the copy or certifying to other facts of record under ORS 128.560 to 128.600. [1987 c.94 §129; 1991 c.132 §14; 1995 c.215 §26; 1999 c.652 §15]

CHARITABLE TRUST AND CORPORATION ACT

128.610 Short title. ORS 128.610 to 128.750 may be cited as the Charitable Trust and Corporation Act. [1963 c.583 §1; 1971 c.589 §1; 1981 c.593 §1; 1985 c.729 §25; 1985 c.730 §4]

128.620 Definitions for ORS 128.610 to 128.750. As used in ORS 128.610 to 128.750:

(1) "Charitable corporation" means any nonprofit corporation organized under the laws of this state for charitable or eleemosynary purposes and any similar foreign corporation doing business or holding property in this state for such purposes. The mere making of grants or donations to institutions or beneficiaries within the State of Oregon, or the investigation of applicants for such grants or donations, shall not constitute doing business in this state. However, the solicitation of funds for charitable purposes in this state shall constitute doing business therein.

(2) "Trustee" means:

(a) Any individual, group of individuals, corporation or other legal entity holding property in trust pursuant to any charitable trust;

(b) Any corporation which has accepted property to be used for a particular charitable corporate purpose as distinguished from the general purposes of the corporation; and

(c) A corporation formed for the administration of a charitable trust, pursuant to the directions of the settlor or at the instance of the trustee.

(3) "Charitable purpose" means any purpose to promote the well-being of the public at large, or for the benefit of an indefinite number of persons, including but not limited to educational, literary, or scientific purposes, or for the prevention of cruelty to children or animals, or for the benefit of religion, rehabilitation services, public recreation, civic improvement, or services which lessen the burdens of government.

(4) "Religious organization" means any organized church or group organized for the purpose of divine worship, religious teaching, or other directly ancillary purposes. [1963 c.583 §§3,4; 1971 c.589 §2; 1981 c.593 §2; 1985 c.730 §5; 1989 c.334 §1]

128.630 Application of ORS 128.610 to 128.750. (1) ORS 128.610 to 128.750 apply to all charitable corporations and trustees holding property for charitable purposes over which the state or the Attorney General has enforcement or supervisory powers.

(2) ORS 128.610 to 128.750 shall apply regardless of any contrary provisions of any instrument. [1963 c.583 §§2,14; 1971 c.589 §3; 1981 c.593 §3; 1985 c.729 §27; 1985 c.730 §6]

128.640 Exemptions from application of ORS 128.610 to 128.750. (1) ORS 128.610 to 128.750 do not apply to the United States, any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or to any of their agencies or governmental subdivisions.

(2) ORS 128.650 to 128.670 and 128.720 do not apply to:

(a) Any religious corporation sole or other religious corporation or organization which holds property for religious purposes, or to any officer, director or trustee thereof who holds property for like purposes;

(b) A cemetery that is registered with the State Mortuary and Cemetery Board under ORS 692.275 or a historic cemetery listed with the Oregon Commission on Historic Cemeteries under ORS 97.782;

(c) A trustee that holds property for charitable purposes in the event that the sole beneficiary of a charitable remainder trust serves as trustee; or

(d) A child-caring agency regulated under ORS 418.215 to 418.265. [1963 c.583 §5; 1971 c.589 §4; 1981 c.593 §4; 1985 c.730 §7; 1989 c.334 §2; 1999 c.731 §10; 2003 c.173 §8]

128.650 Register of charitable corporations and trustees; authority of Attorney General to maintain register. The Attorney General shall establish and maintain a register of charitable corporations and trustees subject to ORS 128.610 to 128.750 and of the particular trust or other relationship under which they hold property for charitable purposes and, to that end, may conduct whatever investigation is necessary, and shall obtain from public records, court officers, taxing authorities, trustees, and other sources, whatever information, copies of instruments, reports and records are needed for the establishment and maintenance of the register. [1963 c.583 §6; 1971 c.589 §5; 1981 c.593 §5; 1985 c.729 §29; 1985 c.730 §8]

128.660 Filing of articles of incorporation or other instrument with Attorney General. Every charitable corporation and trustee subject to ORS 128.610 to 128.750 who has received property for charitable purposes shall file with the Attorney General, upon receiving possession or control of such property, a copy of the articles of incorporation, trust agreement or other instrument providing for title, powers or duties. [1963 c.583 §7; 1971 c.589 §6; 1981 c.593 §6]

128.670 Filing of reports; rules; fees; authority of Attorney General relating to reports; civil penalty. (1) Except as otherwise provided, every charitable corporation and trustee subject to ORS 128.610 to 128.750 shall, in addition to filing copies of the instruments previously required, file with the

Attorney General periodic written reports setting forth information as to the nature of the assets held for charitable purposes and the administration thereof by the corporation or trustee.

(2) The Attorney General may classify trusts and other relationships concerning property held for a charitable purpose as to purpose, nature of assets, duration of the trust or other relationship, amount of assets, amounts to be devoted to charitable purposes, nature of trustee, or otherwise, and may establish different rules for the different classes as to time and nature of the reports required to the ends that:

(a) The Attorney General shall receive reasonably current, periodic reports as to all charitable trusts or other relationships of a similar nature, which will enable the Attorney General to ascertain whether they are being properly administered; and

(b) Periodic reports shall not unreasonably add to the expense of the administration of charitable trusts and similar relationships.

(3) The Attorney General may suspend the filing of reports as to a particular charitable trust or relationship for a reasonable, specifically designated time after the Attorney General has filed in the register of charitable trusts a written statement that the interests of the beneficiaries will not be prejudiced thereby and that periodic reports are not required for proper supervision by the Attorney General's office.

(4) A copy of an account filed by the trustee in any court having jurisdiction of the trust or other relationship, if the account substantially complies with the rules of the Attorney General, may be filed as a report required by this section.

(5) The first report for a trust or similar relationship hereafter established, unless the filing thereof is suspended as provided in subsection (3) of this section, shall be filed not later than four months and 15 days following the close of the first calendar or fiscal year in which any part of the income or principal is authorized or required to be applied to a charitable purpose. Subsequent annual reports shall be submitted not later than four months and 15 days following the close of each calendar or fiscal year adopted by the charitable corporation or trustee.

(6) The Attorney General shall make rules as to the time for filing reports, the contents thereof, and the manner of executing and filing them. The Attorney General may make additional rules and amend existing rules as necessary for the proper administration of the Charitable Trust and Corporation Act.

(7) Each charitable corporation, trustee, or other charitable organization filing a report required by this section shall pay to the Department of Justice, with such report, a fee based in part on the total amount of its income and receipts during the time covered by the report and in part on its fund balance at the close of the calendar or fiscal year adopted by the charitable corporation or trustee:

(a) The fee based on income and receipts shall be as follows:

(A) \$10, if it received no income and receipts during the time covered by the report or if it received less than \$25,000;

(B) \$25, if \$25,000 or more but less than \$50,000;

(C) \$45, if \$50,000 or more but less than \$100,000;

(D) \$75, if \$100,000 or more but less than \$250,000;

(E) \$100, if \$250,000 or more but less than \$500,000;

(F) \$135, if \$500,000 or more but less than \$750,000;

(G) \$170, if \$750,000 or more but less than \$1 million; or

(H) \$200, if \$1 million or more.

(b) The fee based on the fund balance shall be one-hundredth of one percent of the fund balance. The fee shall be rounded off to whole dollars; amounts under 50 cents shall be dropped and amounts from 50 cents to 99 cents shall be increased to the next dollar. The fee shall allow for the following exceptions:

(A) Any amount of a fund balance over and above \$10 million shall not be subject to the fund balance fee.

(B) No fee shall be due under this paragraph if the fund balance is less than \$50,000.

(C) With respect to foreign organizations, only the fund balance of assets held in Oregon shall be subject to the fee due under this paragraph.

(D) The fee shall not apply to fixed assets held for use in the operation of a charitable organization.

(8)(a) If the fee prescribed by subsection (7) of this section is not paid when due or if the charitable corporation or trustee fails to file a report by the date due, a penalty charge of an additional \$20 shall be paid to the Department of Justice.

(b) The Attorney General may at any time after a fee or report is delinquent give written notice by certified mail to the charitable corporation, trustee or other charitable organization of the delinquency, requiring it

to correct the delinquency and informing it of the Attorney General's authority to impose an additional penalty if it fails to do so within a specified number of days thereafter, but not less than 10. Thereafter, unless the fee, including the penalty charge prescribed by paragraph (a) of this subsection, or the report, or both, are filed within the specified number of days, the Attorney General may impose an additional penalty, not exceeding the greater of \$300 or twice the fee prescribed by subsection (7) of this section which is due with the delinquent report, in the manner provided by ORS 183.745. In any judicial review of the order of the Attorney General, the order shall be reversed or modified only if the court finds that the Attorney General lacked authority to impose the penalty or the amount of the penalty imposed was unconscionable in the circumstances.

(c) The Attorney General may grant an extension of time for a reasonable period for filing a report upon written application filed by or on behalf of the charitable corporation or trustee stating the reason that additional time should be allowed for filing the report beyond the ordinary due date. If the request is submitted on or prior to the due date for filing the report, the \$20 penalty charge will not be due unless the report and fee are thereafter not filed within the extended period granted for filing the report, or, if the request is denied, within 10 days after the denial is received by the corporation.

(9) All fees and penalties received by the Department of Justice under subsections (7) and (8) of this section shall be paid over to the State Treasurer monthly for deposit in the Department of Justice Operating Account created under the provisions of ORS 180.180. Amounts deposited pursuant to this subsection are continuously appropriated to the Attorney General to pay the expenses of the Department of Justice in administering the Charitable Trust and Corporation Act and the Charitable Solicitations Act as established in ORS 128.610 to 128.750 and 128.801 to 128.898. [1963 c.583 §8; 1971 c.589 §7; 1973 c.506 §40; 1973 c.775 §4; 1975 c.388 §5; 1981 c.593 §7; 1985 c.730 §9; 1991 c.734 §7]

128.680 Investigatory authority of Attorney General. The Attorney General may investigate transactions and relationships of corporations and trustees subject to ORS 128.610 to 128.750 for the purpose of ascertaining whether or not the purposes of the corporation or trust are being carried out in accordance with the terms and provisions of the articles of incorporation or other instrument, whether a person or organization has engaged in a violation of the Charitable Trust and Corporation Act, ORS 128.610 to 128.750 or whether such a person or organization has breached a fiduciary duty arising

under the common law. The Attorney General may require any agent, trustee, fiduciary, beneficiary, institution, association or corporation, or other person to appear, at a named time and place, in the county designated by the Attorney General, where the person resides or is found, to give information under oath and to produce books, memoranda, papers, documents of title, and evidence of assets, liabilities, receipts or disbursements in the possession or control of the person ordered to appear. [1963 c.583 §10; 1971 c.589 §8; 1981 c.593 §9; 1985 c.729 §30; 1985 c.730 §11]

128.690 Order for attendance by Attorney General; effect. When the Attorney General requires the attendance of any person, as provided in ORS 128.680, the Attorney General shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered or certified mail to the person at least 14 days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena and, upon application of the Attorney General, obedience to the order may be enforced by any court having jurisdiction of charitable trusts in the county where the trust may be in existence or administered or the person receiving it resides or is found, in the same manner as though the notice were a subpoena. The court, after hearing, for cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend or postpone all or any part of its provisions. [1963 c.583 §11]

128.700 [1963 c.583 §12; repealed by 1973 c.794 §34]

128.710 Enforcement; jurisdiction of court. (1) The Attorney General may institute appropriate proceedings to secure compliance with ORS 128.610 to 128.750 and to invoke the jurisdiction of the court. Willful failure to comply with an order of any court having jurisdiction of charitable trusts requiring an accounting by a charitable corporation or trustee shall constitute grounds for removal of the officers of such charitable corporation or of such trustee and the appointment by the court of successor officers or trustee. The powers and duties of the Attorney General provided in ORS 128.610 to 128.750 are in addition to existing powers and duties.

(2) Nothing in ORS 128.610 to 128.750 shall impair or restrict the jurisdiction of any court with respect to any of the matters covered by it, except that no court shall have jurisdiction to modify or terminate any trust of property for charitable purposes unless the Attorney General is a party to the proceedings. [1963 c.583 §13; 1971 c.589 §9; 1981 c.593 §10; 1985 c.729 §31; 1985 c.730 §12]

128.720 Copies of certain documents and notice to be provided Attorney General. Every person who offers for probate any instrument which establishes a testamentary trust of property for charitable purposes or who records in any county any inter vivos transfer of property for charitable purposes shall furnish a copy of such document to the Attorney General. Upon filing the final account and petition for a judgment of distribution of any estate through which a residuary testamentary trust for charitable purposes is established, the personal representative shall mail a copy thereof, and a copy of the notice fixing the time for filing objections thereto, to the Attorney General not less than 20 days before the time fixed in the notice. The custodian of the records of a court having jurisdiction of probate matters or of charitable trusts shall furnish such copies of papers, records and files of the office of the custodian relating to the subject of ORS 128.610 to 128.750 as the Attorney General requires. [1963 c.583 §15; 1971 c.589 §10; 2003 c.576 §385]

128.730 List of certain claims for exemptions from taxation to be provided Attorney General. Every officer, agency, board or commission of this state, receiving applications for exemption from taxation of any corporation, charitable trust or similar relationship in which the corporation or trustee is subject to ORS 128.610 to 128.750 shall annually file with the Attorney General a list of all applications received during the year. [1963 c.583 §16; 1971 c.589 §11]

128.735 Attorney fees in action to enforce fiduciary or other duty. (1) In any suit or action against a charitable corporation or trustee or any other charitable organization to enforce any fiduciary or other duty arising under ORS 128.610 to 128.750 or to enforce any fiduciary duty arising under the common law, the court in its discretion may award the prevailing party reasonable attorney fees at trial and on appeal and, as part of costs and disbursements, reasonable investigative expenses and reasonable expert witness fees.

(2) If the Attorney General prevails, the attorney fees, costs and disbursements of the Attorney General may, in the discretion of the court, be a judgment against the responsible officers of the charitable corporation or trustee of a charitable trust, or may be paid out of the corpus of the trust. [1985 c.730 §2]

128.740 [1963 c.583 §17; 1971 c.589 §12; repealed by 1975 c.388 §8]

128.750 Uniformity of interpretation. The Charitable Trust and Corporation Act, ORS 128.610 to 128.750, shall be so construed as to effectuate its general purpose to make

128.801 PROTECTIVE PROCEEDINGS; POWERS OF ATTORNEY; TRUSTS

uniform the law of those states which enact it. [1963 c.583 §19; 1981 c.593 §11; 1985 c.730 §14]

CHARITABLE SOLICITATIONS ACT

128.801 Definitions for ORS 128.801 to 128.898. As used in ORS 128.801 to 128.898:

(1) "Charitable purpose" means any purpose to promote the well-being of the public at large, or for the benefit of an indefinite number of persons, including but not limited to educational, literary or scientific purposes, or for the prevention of cruelty to children or animals, or for the benefit of religion, rehabilitation services, public recreation, civic improvement or services which lessen the burdens of government.

(2) "Commercial fund raising solicitation" means the solicitation of funds for nonprofit beneficiaries, whether named or unspecified, through the sale of goods or services, whether the goods or services are delivered to a purchaser or donated to third parties, and where the solicitation is conducted by a commercial fund raising firm or commercial coventurer. If donors receive insubstantial items or other benefits in return for contributions, such a solicitation of funds is not a commercial fund raising solicitation if the items or benefits received are considered premiums and do not affect the deductibility of the contributions for federal income tax purposes. A solicitation is conducted by a commercial fund raising firm or commercial coventurer if the soliciting agents are under the direction and control of a commercial fund raising firm or commercial coventurer; the fact that the solicitors are paid by the beneficiary is of no consequence.

(3) "Commercial coventurer" means any sole proprietorship, partnership, corporation or any other legal entity, organized for profit or formed as a nonprofit mutual benefit corporation, who is regularly and primarily engaged in trade or commerce in this state other than in conjunction with the raising of funds for nonprofit purposes and who conducts commercial fund raising solicitations on an infrequent basis.

(4) "Commercial fund raising firm" means any sole proprietorship, partnership, corporation or any other legal entity, organized for profit or formed as a nonprofit mutual benefit corporation, who, for compensation or other consideration regularly conducts commercial fund raising solicitations.

(5) "Professional fund raising firm" means any sole proprietorship, partnership, corporation or any other legal entity, organized for profit or as a nonprofit mutual benefit corporation, who, for compensation or other consideration, manages or conducts the solicitation of funds, not including commer-

cial fund raising solicitations, on behalf of any nonprofit organization.

(6)(a) "Solicitation" means any oral or written request for a contribution, including the solicitor's offer or attempt to sell any property, rights, services or other thing, in connection with which:

(A) The name of any nonprofit organization is used as an inducement for making the contribution or consummating the sale; or

(B) Any statement is made which implies that the whole or any part of the contribution or proceeds from the sale will be donated to any nonprofit organization.

(b) "Solicitation" does not include the making of any request or appeal on behalf of a candidate, political committee or measure as defined in ORS 260.005, unless the appeal states or implies that contributions will be used, in whole or in part, for a charitable purpose or includes a representation that a ticket to an event may be donated by a contributor to the solicitors for use by another. [1985 c.729 §3; 1991 c.532 §1]

128.802 Registration of professional fund raising firms required; fee; renewal; notice of change of information. (1) No person shall act as a professional fund raising firm with respect to the solicitation of funds in this state on behalf of any nonprofit organization unless the professional fund raising firm is registered with the Attorney General.

(2) Applications for registration or reregistration shall be in writing, under oath, on a form prescribed by the Attorney General and shall be accompanied by a fee in the amount of \$250.

(3) The application shall contain such information as the Attorney General shall require and which is consistent with ORS 128.801 to 128.898, including:

(a) The address of the principal place of business of the applicant and any local addresses if the principal place of business is not located in the state.

(b) The form of the applicant's organization.

(c) The names and personal addresses of all principals of the organization, including all officers and all persons who own a 10 percent or more interest in the organization.

(4) Each registration is valid for one year and may be renewed for additional one-year periods upon application to the Attorney General and payment of the registration fee.

(5) The Attorney General shall be notified in writing of any change in the information contained in the application within seven days after the change occurs. [1991 c.532 §17]

128.804 Fund raising notice; contents.

(1) Prior to each solicitation campaign to be conducted in this state, where the services of a professional fund raising firm are employed, the firm shall file a completed fund raising notice on forms prescribed by the Attorney General. A copy of the written fund raising plan, described in ORS 128.807 and a copy of the written disclosure, when required by ORS 128.809, shall be attached to the notice.

(2) The fund raising notice shall be in writing, under oath, and shall include a description of the solicitation campaign, the projected starting date of the campaign, a description of the role of the firm, the bank account number and location where the solicited funds will be deposited, including the name of the organization or organizations that control the account and the address and telephone number of the headquarters for each campaign if different than the principal place of business identified on the firm's registration form, as well as the person in charge of each such location. If the solicitation is being conducted by agents of the firm, the notice shall include a provision affirming that the solicitation material has been approved by the nonprofit beneficiary. [1991 c.532 §18]

128.805 [1971 c.589 §14; 1981 c.593 §12; repealed by 1985 c.729 §1; 1985 c.730 §15]

128.806 [1985 c.729 §4; repealed by 1991 c.532 §26]

128.807 Required submission of financial plan to nonprofit beneficiary. (1) A professional fund raising firm shall not participate in a solicitation campaign in this state without first submitting a written financial plan to the nonprofit beneficiary. A nonprofit organization, utilizing the services of a professional fund raising firm, shall not solicit in this state unless it has obtained such a written financial plan from the firm. The written financial plan shall provide a good faith projection of the total expenses and revenue for each solicitation campaign contemplated by the agreement with the nonprofit beneficiary.

(2) In the case of solicitation campaigns which are directed at targeted individual donors, such as in telemarketing or direct mail solicitations, the plan shall specify whether each campaign is directed toward new donor acquisitions, individual donor renewals or some combination thereof. [1991 c.532 §19]

128.809 Required disclosure of agency by solicitors. No person shall engage in an in-person solicitation as an agent of a professional fund raising firm, including a face-to-face or telephone solicitation, unless it is disclosed orally in the course of the solicitation but prior to asking for a commitment for

a contribution from the solicitee, and in writing to any solicitee that makes a pledge to be delivered within 10 days of the date of the pledge that the solicitor is operating under the direction and control of a named professional fund raising firm. [1991 c.532 §20]

128.810 [1959 c.599 §1; repealed by 1967 c.359 §704]

128.811 [1985 c.729 §5; repealed by 1991 c.532 §26]

128.812 Required submission of financial report after campaign. Within 90 days after a solicitation campaign has been completed, unless funds are to be collected by the nonprofit beneficiary, the professional fund raising firm shall file with the Attorney General a financial report for the campaign, including gross receipts and all expenditures incurred in the solicitation campaign. The report shall be completed on a form prescribed by the Attorney General. The report shall be signed by an official of the professional fund raising firm and an official from each beneficiary and they shall certify, under oath, that it is true to the best of their knowledge. A similar interim financial report shall be filed one year after the start of the solicitation campaign in the case of a solicitation campaign still in progress on that date. [1991 c.532 §21]

128.813 [1975 c.388 §2; repealed by 1985 c.729 §1; 1985 c.730 §15]

128.814 Presumption of breach of fiduciary duty by officer or director of nonprofit beneficiary. (1) There shall be a rebuttable presumption of a breach of fiduciary duty if an officer or director of a nonprofit beneficiary enters into an agreement with a professional fund raising firm:

(a) For a duration to exceed two years unless the nonprofit beneficiary has obtained written proposals from at least two other professional fund raising firms; or

(b) Where one of the stated or implied purposes of the solicitation campaign is to acquire an identified list of donors for use as a donor base for future solicitations by the nonprofit beneficiary, unless the nonprofit beneficiary has exclusive rights to the ownership and use of the list of donors.

(2) It shall be presumed that such donor list acquisition is a purpose of the campaign unless the agreement specifies otherwise.

(3) This section shall not prohibit a professional fund raising firm from retaining a security interest in a list for the limited purpose of recovering amounts owed to it pursuant to the terms of the contract. [1991 c.532 §22]

128.815 [1971 c.589 §14a; 1981 c.593 §13; repealed by 1985 c.729 §1; 1985 c.730 §15]

128.816 [1985 c.729 §6; repealed by 1991 c.532 §26]

128.820 [1959 c.599 §§2,3,4,5; 1967 c.359 §125; renumbered 731.704]

128.821 Registration of commercial fund raising firms required; fee; renewal; notice of change in information. (1) No person shall engage in solicitations for contributions for or on behalf of a commercial fund raising firm unless the commercial fund raising firm is registered with the Attorney General.

(2) Applications for registration or reregistration shall be in writing, under oath, on a form prescribed by the Attorney General and shall be accompanied by a fee in the amount of \$250.

(3) The application shall contain such information as the Attorney General shall require and which is consistent with ORS 128.801 to 128.898, including:

(a) The address of the principal place of business of the applicant and any local addresses if the principal place of business is not located in the state.

(b) The form of the applicant's organization.

(c) The names and personal addresses of all principals of the organization, including all officers and all persons who own a 10 percent or more interest in the organization.

(4) Each registration is valid for one year and may be renewed for additional one-year periods upon application to the Attorney General and payment of the registration fee.

(5) The Attorney General shall be notified in writing of any change in the information contained in the application within seven days after the change occurs. [1985 c.729 §7; 1991 c.532 §2]

128.823 Designation of amount to be paid to beneficiaries; manner of specification; minimum amount payable. (1) No person shall engage in commercial fund raising solicitations unless there is a designated amount to be paid to nonprofit beneficiaries. Where the nonprofit beneficiary is identified in the solicitation campaign, the amount shall be specified in a contract or letter of agreement with such a beneficiary. The amount shall be specified in terms of:

(a) An amount per unit of the goods or services to be purchased;

(b) A specified percentage of the gross funds solicited; or

(c) A good faith estimate of the gross funds solicited.

(2) Nonprofit beneficiaries shall receive no less than 90 percent of the designated estimate under subsection (1)(c) of this section. Any designated amount shall exclude any amount which the nonprofit beneficiary is to pay as expenses of the solicitation campaign, such as all costs of the goods or services sold

or cost of fund raising events staged. [1991 c.532 §5]

128.824 Disclosures required in commercial fund raising solicitations. (1) All commercial fund raising solicitations shall include a clear and conspicuous disclosure of the identity of the commercial fund raising firm or commercial coventurer.

(a) In the case of a vending machine, it shall be disclosed on the device that the machine is owned and operated by the commercial fund raising firm or commercial coventurer.

(b) In the case of an in-person solicitation, including a face-to-face or telephone solicitation, it shall be disclosed orally in the course of the solicitation but prior to asking for a commitment for a contribution from the solicitee, and in writing to any solicitee that makes a pledge to be delivered within 10 days of the date of the pledge that the solicitor is operating under the direction and control of a named commercial fund raising firm or commercial coventurer.

(c) In the case of a solicitation by advertisement or mass distribution, including posters, leaflets, automatic dialing machines, publications and audio or video broadcasts, it shall be disclosed in the body of the solicitation material that the product or service is marketed by a named commercial fund raising firm or commercial coventurer.

(2) All commercial fund raising solicitations shall include a clear and conspicuous disclosure of the amount of the solicited funds to be paid to the nonprofit beneficiary as provided in ORS 128.823.

(a) In the case of a vending machine, the disclosure shall be on the device.

(b) In the case of an in-person solicitation, including a face-to-face or telephone solicitation, the disclosure shall be in the form of a written statement to any solicitee who makes a pledge, to be delivered within 10 days of the date of the pledge.

(c) In the case of a solicitation by advertisement or mass distribution, the disclosure shall be in the body of the solicitation material. [1991 c.532 §6]

128.825 [1971 c.589 §15; repealed by 1985 c.729 §1; 1985 c.730 §15]

128.826 Commercial fund raising contracts and notice; filing. (1) At least 10 days prior to the commencement of each commercial fund raising solicitation campaign, a commercial fund raising firm shall file with the Attorney General a completed fund raising notice on forms prescribed by the Attorney General. A copy of the contract or letter of agreement with any beneficiary and a copy of the disclosure material re-

quired by ORS 128.824 shall be attached to the notice.

(2) The fund raising notice shall be in writing, under oath, and shall include a description of the fund raising event or campaign, the projected starting and ending dates of the campaign, the bank account number and location where the solicited funds will be deposited, including the name of the organization or organizations that control the account, and the address and telephone number of the headquarters for each commercial solicitation campaign if different than the principal place of business identified on the commercial fund raising firm's registration form as well as the person in charge of each such location. The notice shall include a provision affirming that the disclosure material described in subsection (1) of this section has been affirmed by all beneficiaries. [1985 c.729 §8; 1991 c.532 §3]

128.830 [1959 c.599 §7; 1967 c.359 §126; renumbered 731.708]

128.831 [1985 c.729 §9; repealed by 1991 c.532 §26]

128.835 [1971 c.589 §16; 1981 c.593 §14; repealed by 1985 c.729 §1; 1985 c.730 §15]

128.836 [1985 c.729 §10; repealed by 1991 c.532 §26]

128.840 [1959 c.599 §6; repealed by 1967 c.359 §704]

128.841 Commercial fund raising firm financial reports; contents; filing. Within 90 days after a commercial fund raising solicitation campaign has been completed, the commercial fund raising firm shall file with the Attorney General a financial report for the campaign, including gross receipts and all expenditures incurred in the solicitation campaign. The report shall be completed on a form prescribed by the Attorney General. The report shall be signed by an official of the commercial fund raising firm and an official from each beneficiary and they shall certify, under oath, that it is true to the best of their knowledge. A similar interim financial report shall be filed one year after the start of the solicitation campaign in the case of a solicitation campaign still in progress on that date. [1985 c.729 §11; 1991 c.532 §7]

128.845 [1971 c.589 §17; 1981 c.593 §15; repealed by 1985 c.729 §1; 1985 c.730 §15]

128.846 Maintenance of records by commercial fund raising firm. (1) A commercial fund raising firm shall maintain for a period of not less than three years from the completion of each fund raising campaign, the following records:

(a) The name and address of each contributor and the date and amount of the contribution, if the preceding is known to the commercial fund raising firm.

(b) The name and address of each paid solicitor and the dates and amount of compensation paid to each such solicitor.

(c) Records of all fund raising expenses incurred in the course of the fund raising campaign.

(2) If the commercial fund raising firm sells tickets to an event and represents that tickets will be donated for use by another, the commercial fund raising firm shall also maintain, for the same period as specified in subsection (1) of this section, the following records:

(a) The name and address of those contributors donating tickets and the number of tickets donated by each contributor; and

(b) The name and address of all organizations receiving donated tickets, including the number of tickets received by each organization.

(3) All records described in this section shall be available for inspection by the Attorney General upon request. [1985 c.729 §12; 1991 c.532 §8]

128.848 Accountings required of commercial coventurer. A commercial coventurer shall keep a final accounting for each commercial fund raising solicitation that it conducts for a period of three years following the completion of the campaign. A commercial coventurer shall provide such an accounting for each commercial fund raising solicitation it conducts not later than 20 days after it is requested by the Attorney General or any nonprofit beneficiary. [1991 c.532 §16]

128.850 [1959 c.599 §8; 1967 c.359 §128; renumbered 731.716]

128.851 [1985 c.729 §13; repealed by 1991 c.532 §26]

128.855 [1975 c.388 §3; 1977 c.467 §1; repealed by 1985 c.729 §1; 1985 c.730 §15]

128.856 Written consent by beneficiary to use of name. No person, other than volunteers or employees under the direction and control of a nonprofit beneficiary, shall represent that any part of the contributions received will be given or donated to any named nonprofit beneficiary unless such organization has consented in writing to the use of its name, prior to the solicitation. The written consent shall be signed by an officer, director or trustee of the organization. [1985 c.729 §14; 1991 c.532 §9]

128.860 [1959 c.599 §11; 1967 c.359 §129; renumbered 731.720]

128.861 Written consent required for representations about use of tickets. A commercial fund raising firm shall not represent, in the course of its solicitation activities, that tickets to events will be donated for use by another unless it has complied with the following requirements:

(1) The commercial fund raising firm shall obtain commitments, in writing, from beneficiaries stating that they will accept

donated tickets and specifying the number of tickets they are willing to accept;

(2) The commercial fund raising firm shall solicit and accept no more contributions of donated tickets than the number of ticket commitments it has received from beneficiaries; and

(3) A ticket commitment alone, as described in this section, shall not constitute written consent to use the organization's name as described in ORS 128.856. [1985 c.729 §15; 1991 c.532 §10]

128.865 [1975 c.388 §4; 1981 c.897 §37; repealed by 1985 c.729 §1; 1985 c.730 §15]

128.866 Injunction by Attorney General. The Attorney General may obtain an injunction against solicitation of contributions until:

(1) The charitable organization, beneficiary, professional fund raising firm or commercial fund raising firm has complied with all registration and reporting requirements of the Charitable Solicitations Act and ORS 128.610 to 128.750; or

(2) Breaches of fiduciary duties have been corrected and the officers and directors responsible for the breaches have been removed. [1985 c.729 §17; 1991 c.532 §11; 2003 c.40 §3]

128.870 [1959 c.599 §12; repealed by 1967 c.359 §704]

128.871 Denial or revocation of registration. Subject to ORS chapter 183, the Attorney General may deny registration or revoke any registration issued pursuant to ORS 128.802 or 128.821 for a period not to exceed five years, if the Attorney General finds:

(1) A material misrepresentation or false statement to be in the application for registration or any other statement filed with the Attorney General as provided in ORS 128.801 to 128.898 and 128.995.

(2) Any material violation of ORS 128.801 to 128.898 or the rules adopted by the Attorney General pursuant to ORS 128.801 to 128.898 and 128.995. [1985 c.729 §23; 1991 c.532 §12]

128.876 Rules. The Attorney General shall make rules as to the filing and execution of reports and registration statements required by ORS 128.610 to 128.650, 128.680, 128.710, 128.801 to 128.899, 128.995 and 646.608 and to the contents thereof. The Attorney General may make additional rules and amend existing rules as necessary for the proper administration of the Charitable Solicitations Act. [1985 c.729 §18; 2003 c.14 §46]

128.880 [1959 c.599 §9; 1967 c.359 §130; renumbered 731.724]

128.881 Deposit of fees and penalties; use. All fees and penalties received by the Department of Justice under ORS 128.802 and 128.821 shall be paid over to the State

Treasurer monthly for deposit in the Department of Justice Operating Account created under the provisions of ORS 180.180. Amounts deposited pursuant to this section are continuously appropriated to the Attorney General to pay the expenses of the Department of Justice in administering the Charitable Trust and Corporation Act as established in ORS 128.610 and the Charitable Solicitations Act. [1985 c.729 §20; 1991 c.532 §13]

128.886 False or misleading representations prohibited. (1) No person shall make any false or misleading representations in the course of any solicitation of contributions.

(2) A representation may be any manifestation of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

(3) No person shall have a cause of action under ORS 646.638 for an alleged violation of any provision of this section if the alleged false or misleading representation is made by a volunteer of an organization which is exempt from federal taxation under section 501(c) of the Internal Revenue Code of 1954, as amended, and the alleged false or misleading representation is not made at the direction of paid personnel. [1985 c.729 §16; 1989 c.913 §2; 1991 c.532 §14]

128.890 [1959 c.599 §10; repealed by 1967 c.359 §704]

128.891 Prohibited representations; written notice. (1) No solicitation for contributions shall in any way use the fact or requirement of registration, or any filing of any report pursuant to the Charitable Solicitations Act or ORS 128.610 to 128.750, with the intent to cause or in a manner tending to cause any person to believe that such solicitation, the manner in which it is conducted, its purposes, any use to which the proceeds will be applied, or the person or organization conducting it have been or will be in any way indorsed, sanctioned or approved by the Attorney General or any other governmental agency or office.

(2) Any written or oral statement made in connection with a solicitation of contributions that the person or organization conducting the solicitation is registered or has filed, will file or is required to file any report with the Attorney General, or any statement of similar import, shall be immediately followed by a statement of equal prominence that such registration or report in no way constitutes or implies any indorsement, sanction or approval of the solicitation, its purposes, the manner in which it is conducted or the person or organization conducting it, by the Attorney General or any other governmental agency or officer. [1985 c.729 §19]

128.893 Use of in-state address. (1) A person may not use an address in this state, including a return address, in a solicitation, or in written material issued in connection with a solicitation, made on behalf of a nonprofit organization unless:

(a) The nonprofit organization actually maintains and staffs an office in this state; or

(b) The solicitation, or written material issued in connection with a solicitation, discloses:

(A) The address of the actual headquarters of the nonprofit organization; and

(B) That the address in this state is a mail drop or that the address in this state is solely the address of a mail handling facility.

(2) If the disclosures described in subsection (1) of this section are required in a written solicitation, or in written material issued in connection with a solicitation, the disclosures shall be printed immediately proximate to the address in this state and in a location and typeface no less prominent than the address in this state. [2003 c.40 §2]

128.896 [1985 c.730 §13; 1991 c.734 §8; renumbered 128.899 in 1991]

128.898 Short title. ORS 128.801 to 128.898 and 128.995 may be cited as the Charitable Solicitations Act. [1985 c.729 §2]

CIVIL PENALTIES

128.899 Civil penalties for violation of ORS 128.610 to 128.750. (1) The responsible

officers or trustees of a corporation or trust which fails to register or file a report required by ORS 128.610 to 128.750 or the Charitable Trust and Corporation Act may be assessed a civil penalty not to exceed \$1,000 by the Attorney General.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(3) All penalties recovered under this section shall be credited to the Department of Justice Operating Account as described in ORS 128.670 (9). [Formerly 128.896]

CRIMINAL PENALTIES

128.990 [1959 c.639 §3; subsections (2), (3), (4) enacted as 1971 c.589 §18; 1975 c.388 §7; 1981 c.593 §16; 1985 c.729 §21; 1987 c.813 §13; renumbered 97.992 in 2001]

128.991 [1987 c.813 §9; 1993 c.467 §4; 1995 c.325 §3; 2001 c.796 §19; renumbered 97.994 in 2001]

128.992 Penalties for ORS 128.610 to 128.750. Filing or assisting in preparing or filing a statement or report required by the Charitable Trust and Corporation Act, ORS 128.610 to 128.750, that is false or fraudulent is a Class A misdemeanor. [1985 c.730 §3]

128.995 Penalties for ORS 128.801 to 128.898. Violation of ORS 128.802, 128.821 or filing or assisting in preparing or filing a statement or report required by ORS 128.801 to 128.898 that is false or fraudulent is a Class A misdemeanor. [1985 c.729 §24; 1991 c.532 §23]

