

CHAPTER 25

(HB 155)

AN ACT relating to property and trusts.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 3 of this Act:

- (1) *"Community property" means property owned by a community property trust during the marriage of the settlor spouses;*
- (2) *"Community property trust" means an express trust that complies with the requirements of Section 2 of this Act;*
- (3) *"Decree" means a judgment or other order of a court;*
- (4) *"Dissolution" means either:*
 - (a) *Termination of a marriage by a decree of dissolution, divorce, annulment, or declaration of invalidity; or*
 - (b) *Entry of a decree of legal separation;*
- (5) *"During marriage" means a period that begins at marriage and ends at dissolution or the death of a spouse;*
- (6) *"Qualified trustee" means either:*
 - (a) *A natural person who is a resident of this state; or*
 - (b) *A bank or trust company authorized to act as a trustee within the state; and*
- (7) *"Settlor spouses" means a married couple that establishes a community property trust.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

- (1) *Any arrangement between spouses involving community property shall be considered a community property trust if one (1) or both spouses transfer property to a trust that:*
 - (a) *Expressly declares that the trust is a Kentucky community property trust that meets the requirements of Sections 1 to 3 of this Act;*
 - (b) *Has at least one (1) trustee who is a qualified trustee whose powers include or are limited to maintaining records for the trust, on an exclusive or a nonexclusive basis, and preparing or arranging for the preparation of, on an exclusive or a nonexclusive basis, any income tax returns that must be filed by the trust. Both spouses or either spouse may be a trustee;*
 - (c) *Is signed by both spouses; and*
 - (d) *Contains the following language in capital letters at the beginning of the trust:*

THE CONSEQUENCES OF THIS TRUST MAY BE VERY EXTENSIVE, INCLUDING BUT NOT LIMITED TO YOUR RIGHTS WITH YOUR SPOUSE BOTH DURING THE COURSE OF YOUR MARRIAGE AND AT THE TIME OF A DIVORCE. ACCORDINGLY, THIS AGREEMENT SHOULD ONLY BE SIGNED AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS AGREEMENT, YOU SHOULD SEEK COMPETENT ADVICE.
- (2) *In the agreement establishing a community property trust, spouses may agree on and provide in writing:*
 - (a) *The rights and obligations in the property transferred to the trust, notwithstanding when and where the property is acquired or located;*
 - (b) *The management and control of the property transferred to the trust;*

- (c) *The disposition of the property transferred to the trust on dissolution, death, or the occurrence or nonoccurrence of another event;*
 - (d) *The choice of law governing the interpretation of the trust; and*
 - (e) *Any other matter that affects the property transferred to the trust and does not violate public policy or any statute imposing a criminal penalty.*
- (3) *Either spouse may amend a community property trust regarding the disposition of that spouse's one-half (1/2) share of the community property in the event of a spouse's death.*
 - (4) *Except as provided in subsection (2)(a) of this section, a community property trust may not be amended or revoked unless the agreement itself provides for amendment or revocation.*
 - (5) *Whether or not both, one (1), or neither spouse is domiciled in this state, spouses may classify any or all of their property as community property by transferring property to a community property trust and providing in the trust that the property is community property.*
 - (6) *A community property trust shall be enforceable without consideration.*
 - (7) *All property owned by a community property trust shall be considered community property during marriage and the right to manage and control property that is transferred to a community property trust shall be determined by the terms of the trust.*
 - (8) *When property is distributed from a community property trust, it shall no longer constitute community property.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO READ AS FOLLOWS:

- (1) *An obligation incurred by only one (1) spouse before or during marriage may be satisfied from that spouse's one-half (1/2) share of a community property trust.*
- (2) *An obligation incurred by both spouses during marriage may be satisfied from a community property trust of the spouses.*
- (3) *Upon the death of a spouse, one-half (1/2) of the aggregate value of the property owned by a community property trust established by the spouses shall reflect the share of the surviving spouse and the other one-half (1/2) shall reflect the share of the decedent. Unless provided otherwise in the trust agreement, the trustee shall have the power to distribute assets of the trust in divided or undivided interests and to adjust resulting differences in valuation. A distribution in kind may be made on the basis of a non pro rata division of the aggregate value of the trust assets, on the basis of a pro rata division of each individual asset, or by using both methods.*
- (4) *Upon the dissolution of the marriage of the settlor spouses, the community property trust shall terminate and the trustee shall distribute one-half (1/2) of the trust assets to each spouse, with each spouse receiving one-half (1/2) of each asset, unless otherwise agreed to in writing by both spouses.*

➔Section 4. Sections 1 to 3 of this Act shall be known as the Kentucky Community Property Trust Act.

➔Section 5. KRS 141.019 is amended to read as follows:

For taxable years beginning on or after January 1, 2018, in the case of taxpayers other than corporations:

- (1) Adjusted gross income shall be calculated by subtracting from the gross income of those taxpayers the deductions allowed individuals by Section 62 of the Internal Revenue Code and adjusting as follows:
 - (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;
 - (b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Pub. L. No. 89-699;
 - (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
 - (d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545, 21.360, 61.523, 61.560, 65.155, 67A.320, 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;
 - (e) Exclude Social Security and railroad retirement benefits subject to federal income tax;

- (f) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by a member or veteran of the Armed Forces of the United States or any dependent of such person who served in Vietnam;
- (g)
 - 1.
 - a. For taxable years beginning after December 31, 2005, but before January 1, 2018, exclude up to forty-one thousand one hundred ten dollars (\$41,110) of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans; and
 - b. For taxable years beginning on or after January 1, 2018, exclude up to thirty-one thousand one hundred ten dollars (\$31,110) of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.
 - 2. As used in this paragraph:
 - a. "Annuity contract" has the same meaning as set forth in Section 1035 of the Internal Revenue Code;
 - b. "Distributions" includes but is not limited to any lump-sum distribution from pension or profit-sharing plans qualifying for the income tax averaging provisions of Section 402 of the Internal Revenue Code; any distribution from an individual retirement account as defined in Section 408 of the Internal Revenue Code; and any disability pension distribution; and
 - c. "Pension plans, profit-sharing plans, retirement plans, or employee savings plans" means any trust or other entity created or organized under a written retirement plan and forming part of a stock bonus, pension, or profit-sharing plan of a public or private employer for the exclusive benefit of employees or their beneficiaries and includes plans qualified or unqualified under Section 401 of the Internal Revenue Code and individual retirement accounts as defined in Section 408 of the Internal Revenue Code;
- (h)
 - 1.
 - a. Exclude the portion of the distributive share of a shareholder's net income from an S corporation subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300; and
 - b. Exclude the portion of the distributive share of a shareholder's net income from an S corporation related to a qualified subchapter S subsidiary subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300.
 - 2. The shareholder's basis of stock held in an S corporation where the S corporation or its qualified subchapter S subsidiary is subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300 shall be the same as the basis for federal income tax purposes;
- (i) Exclude income received for services performed as a precinct worker for election training or for working at election booths in state, county, and local primaries or regular or special elections;
- (j) Exclude any capital gains income attributable to property taken by eminent domain;
- (k)
 - 1. Exclude all income from all sources for members of the Armed Forces who are on active duty and who are killed in the line of duty, for the year during which the death occurred and the year prior to the year during which the death occurred.
 - 2. For the purposes of this paragraph, "all income from all sources" shall include all federal and state death benefits payable to the estate or any beneficiaries;
- (l) Exclude all military pay received by members of the Armed Forces while on active duty;
- (m)
 - 1. Include the amount deducted for depreciation under 26 U.S.C. sec. 167 or 168; and
 - 2. Exclude the amounts allowed by KRS 141.0101 for depreciation;~~and~~
- (n) Include the amount deducted under 26 U.S.C. sec. 199A; and

- (o) ***Ignore any change in the cost basis of the surviving spouse's share of property owned by a Kentucky community property trust occurring for federal income tax purposes as a result of the death of the predeceasing spouse; and***
- (2) Net income shall be calculated by subtracting from adjusted gross income all the deductions allowed individuals by Chapter 1 of the Internal Revenue Code, as modified by KRS 141.0101, except:
- (a) Any deduction allowed by 26 U.S.C. sec. 164 for taxes;
 - (b) Any deduction allowed by 26 U.S.C. sec. 165 for losses, except wagering losses allowed under Section 165(d) of the Internal Revenue Code;
 - (c) Any deduction allowed by 26 U.S.C. sec. 213 for medical care expenses;
 - (d) Any deduction allowed by 26 U.S.C. sec. 217 for moving expenses;
 - (e) Any deduction allowed by 26 U.S.C. sec. 67 for any other miscellaneous deduction;
 - (f) Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that the deduction has not been claimed under KRS 140.090(1)(h);
 - (g) Any deduction allowed by 26 U.S.C. sec. 151 for personal exemptions and any other deductions in lieu thereof;
 - (h) Any deduction allowed for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained; and
 - (i) A taxpayer may elect to claim the standard deduction allowed by KRS 141.081 instead of itemized deductions allowed pursuant to 26 U.S.C. sec. 63 and as modified by this section.

➔Section 6. KRS 386.175 is amended to read as follows:

- (1) For the purposes of this section, the following definitions apply:
- (a) "Current beneficiary" means a person who is a permissible distributee of trust income or principal;
 - (b) "Original trust" means a trust established under an irrevocable trust instrument pursuant to the terms of which a trustee has discretionary power to distribute principal or income of the trust to or for the benefit of one (1) or more current beneficiaries of the trust; and
 - (c) "Second trust" means a trust established under an irrevocable trust instrument, the current beneficiaries of which are one (1) or more of the current beneficiaries of the original trust. The second trust may be a trust created under the same trust instrument as the original trust or under a different trust instrument ***or the original trust whose terms have been modified under this section.***
- (2) A trustee of an original trust may, without authorization by the court, exercise the discretionary power to distribute principal or income to or for the benefit of one (1) or more current beneficiaries of the original trust by appointing all or part of the principal or income of the original trust subject to the power in favor of the trustee of a second trust ***or by modifying the terms of the original trust.*** The trustee of the original trust may exercise this power whether or not there is a current need to distribute principal or income under any standard provided in the terms of the original trust. The trustee's special power to appoint trust principal or income in further trust under this section includes the power to create the second trust.
- (3) The second trust may be a trust created or administered under the laws of any jurisdiction, within or without the United States.
- (4) The terms of the second trust shall be subject to all of the following:
- (a) The beneficiaries of the second trust may include only beneficiaries of the original trust;

- (b) A beneficiary who has only a future beneficial interest, vested or contingent, in the original trust cannot have the future beneficial interest accelerated to a present interest in the second trust;
 - (c) The terms of the second trust may not reduce any fixed income, annuity, or unitrust interest of a beneficiary in the assets of the original trust, including an interest which is to take effect in the future;
 - (d) If any contribution to the original trust qualified for a marital or charitable deduction for federal income, gift, or estate tax purposes under the Internal Revenue Code, then the second trust shall not contain any provision that, if included in the original trust, would have prevented the original trust from qualifying for the deduction or that would have reduced the amount of the deduction;
 - (e) If contributions to the original trust have been excluded from the gift tax by the application of Sections 2503(b) and 2503(c) of the Internal Revenue Code, then the second trust shall provide that the beneficiary's remainder interest in the contributions shall vest and become distributable no later than the date upon which the interest would have vested and become distributable under the terms of the original trust;
 - (f) If any beneficiary of the original trust has a currently exercisable power of withdrawal over trust property, then either:
 - a. The terms of the second trust shall provide a power of withdrawal in the second trust identical to the power of withdrawal in the original trust; or
 - b. Sufficient trust property shall remain in the original trust to satisfy the currently exercisable power of withdrawal;
 - (g) If the original trust holds stock of an S corporation, the terms of the second trust shall not prevent or eliminate an election to be a qualified subchapter S trust or an electing small business trust or result in the termination of the S election of such corporation;
 - (h) If the power to distribute principal or income in the original trust is subject to an ascertainable standard, then the power to distribute income or principal in the second trust shall be subject to the same or a more restrictive ascertainable standard as in the original trust when the trustee exercising the power described in subsection (2) of this section is a possible beneficiary under the standard; and
 - (i) The second trust may confer a power of appointment upon a beneficiary of the original trust to whom or for the benefit of whom the trustee has the power to distribute principal or income of the original trust. The permissible appointees of the power of appointment conferred upon a beneficiary may include persons who are not beneficiaries of the original or second trust. The power of appointment conferred upon a beneficiary shall be subject to KRS 381.224, 381.225, and 381.226 covering the time at which the permissible period of the rule against perpetuities and suspension of power of alienation begins and the law that determines the permissible period of the rule against perpetuities and suspension of power of alienation of the original trust.
- (5) The court may appoint a special fiduciary with the authority to exercise the power to appoint principal or income under subsection (2) of this section.
- (6) The exercise of the power to appoint principal or income under subsection (2) of this section:
- (a) Shall be considered an exercise of a power of appointment, other than a power to appoint to the trustee, the trustee's creditors, the trustee's estate, or the creditors of the trustee's estate;
 - (b) Shall be subject to KRS 381.224, 381.225, and 381.226 covering the time at which the permissible period of the rule against perpetuities and suspension of power of alienation begins and the law that determines the permissible period of the rule against perpetuities and suspension of power of alienation of the original trust; and
 - (c) Is not prohibited by a spendthrift provision or by a provision in the original trust instrument that prohibits amendment or revocation of the trust.
- (7) To effect the exercise of the power to appoint principal or income under subsection (2) of this section, all of the following shall apply:
- (a) The exercise of the power to appoint shall be made by an instrument in writing, signed and acknowledged by the trustee, setting forth the manner of the exercise of the power, including the terms

of the second trust and the effective date of the exercise of the power. The instrument shall be filed with the records of the original trust;

- (b) The trustee shall give written notice of the trustee's intention to exercise the power to all current beneficiaries of the original trust and all beneficiaries of the oldest generation of remainder beneficiaries of the **original**~~first~~ trust, by certified mail with restricted delivery and return receipt, at least sixty (60) days prior to the effective date of the exercise of the power to appoint. The notice shall include a copy of the instrument described in paragraph (a) of this subsection;
 - (c) If all beneficiaries entitled to notice have received the notice as evidenced by the certified mail return receipt and waive the notice period by a signed written instrument delivered to the trustee, the trustee's power to appoint principal or income shall be exercisable after notice is waived by all such beneficiaries, notwithstanding the effective date of the exercise of the power;
 - (d) A current beneficiary or a beneficiary who is not a current beneficiary but is a member of the oldest generation of the remainder beneficiaries of the original trust may, no later than thirty (30) days from the date of receiving notice under paragraph (b) of this subsection, commence a judicial proceeding pursuant to KRS 386B.2-010 to object to the proposed exercise of the power under subsection (2) of this section. In such case the proposed exercise of the power shall require consent of the court; and
 - (e) In the event that a beneficiary did not receive the notice as evidenced by the certified mail return receipt, and no other beneficiary has commenced a proceeding under paragraph (d) of this subsection, the trustee may seek the approval of the District Court to exercise the power.
- (8) Nothing in this section shall be construed to create or imply a duty of the trustee to exercise the power to distribute principal or income, and no inference of impropriety shall be made as a result of a trustee not exercising the power to appoint principal or income conferred under subsection (2) of this section. Nothing in this section shall be construed to abridge the right of any trustee who has the power to appoint property in further trust that arises under the terms of the original trust or under any provision of law or under common law.
- (9) This section shall not apply to any charitable remainder trust as defined in 26 U.S.C. sec. 664(d).
- (10) A trustee or beneficiary may commence a judicial proceeding pursuant to KRS 386B.2-010 to approve or disapprove of a proposed exercise of the trustee's special power to appoint to a second trust pursuant to subsection (2) of this section.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 396 IS CREATED TO READ AS FOLLOWS:

- (1) *Upon the appointment of a personal representative, the clerk of the probate court shall publish notice to creditors as provided in KRS 424.340. The notice shall state that creditors must present their claims within six (6) months after the appointment of the personal representative or be forever barred.*
- (2) *A personal representative may give actual notice in writing by mail or other delivery to a creditor, notifying the creditor to present his or her claim within sixty (60) days after the mailing or other delivery of the notice or be forever barred.*
- (3) *The personal representative is not liable to a creditor or to a successor of the decedent for giving or failing to give notice pursuant to subsection (2) of this section.*

➔Section 8. KRS 396.011 is amended to read as follows:

- (1) All claims against a decedent's estate which arose before the death of the decedent, excluding claims of the United States, the State of Kentucky and any subdivision thereof, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by other statute of limitations *or non-claim statutes*, are barred against the estate, the personal representative, and the heirs and devisees *and non-probate transferees* of the decedent, unless presented *within the earlier of the following*:
 - (a) *Eight (8) months after the decedent's death;*
 - (b) *The time period provided in subsection (2) of Section 7 of this Act for creditors who are given actual notice; or*
 - (c) *The time period provided in subsection (1) of Section 7 of this Act for creditors who are barred by publication.*~~[within six (6) months after the appointment of the personal representative, or where no personal representative has been appointed, within two (2) years after the decedent's death.]~~

- (2) Nothing in this section shall affect or prevent:
- (a) To the extent of the security only, any proceeding to enforce any mortgage, pledge, lien or other security interest securing an obligation of the decedent or upon property of the estate; or
 - (b) To the limits of the insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by liability insurance.

Signed by Governor March 17, 2020.