

1 AN ACT relating to property and trusts.

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

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

5 *As used in Sections 1 to 3 of this Act:*

6 *(1) "Community property" means property owned by a community property trust*
7 *during the marriage of the settlor spouses;*

8 *(2) "Community property trust" means an express trust that complies with the*
9 *requirements of Section 3 of this Act;*

10 *(3) "Decree" means a judgment or other order of a court;*

11 *(4) "Dissolution" means either:*

12 *(a) Termination of a marriage by a decree of dissolution, divorce, annulment,*
13 *or declaration of invalidity; or*

14 *(b) Entry of a decree of legal separation;*

15 *(5) "During marriage" means a period that begins at marriage and ends at*
16 *dissolution or the death of a spouse;*

17 *(6) "Qualified trustee" means either:*

18 *(a) A natural person who is a resident of this state; or*

19 *(b) A bank or trust company authorized to act as a trustee within the state; and*

20 *(7) "Settlor spouses" means a married couple that establishes a community property*
21 *trust.*

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

24 *(1) Any arrangement between spouses involving community property shall be*
25 *considered a community property trust if one (1) or both spouses transfer*
26 *property to a trust that:*

27 *(a) Expressly declares that the trust is a Kentucky community property trust*

1 that meets the requirements of Sections 1 to 3 of this Act;

2 (b) Has at least one (1) trustee who is a qualified trustee whose powers include
3 or are limited to maintaining records for the trust, on an exclusive or a
4 nonexclusive basis, and preparing or arranging for the preparation of, on
5 an exclusive or a nonexclusive basis, any income tax returns that must be
6 filed by the trust. Both spouses or either spouse may be a trustee;

7 (c) Is signed by both spouses; and

8 (d) Contains the following language in capital letters at the beginning of the
9 trust:

10 THE CONSEQUENCES OF THIS TRUST MAY BE VERY EXTENSIVE,
11 INCLUDING BUT NOT LIMITED TO YOUR RIGHTS WITH YOUR
12 SPOUSE BOTH DURING THE COURSE OF YOUR MARRIAGE AND
13 AT THE TIME OF A DIVORCE. ACCORDINGLY, THIS AGREEMENT
14 SHOULD ONLY BE SIGNED AFTER CAREFUL CONSIDERATION. IF
15 YOU HAVE ANY QUESTIONS ABOUT THIS AGREEMENT, YOU
16 SHOULD SEEK COMPETENT ADVICE.

17 (2) In the agreement establishing a community property trust, spouses may agree on
18 and provide in writing:

19 (a) The rights and obligations in the property transferred to the trust,
20 notwithstanding when and where the property is acquired or located;

21 (b) The management and control of the property transferred to the trust;

22 (c) The disposition of the property transferred to the trust on dissolution, death,
23 or the occurrence or nonoccurrence of another event;

24 (d) The choice of law governing the interpretation of the trust; and

25 (e) Any other matter that affects the property transferred to the trust and does
26 not violate public policy or any statute imposing a criminal penalty.

27 (3) Either spouse may amend a community property trust regarding the disposition

1 of that spouse's one-half (1/2) share of the community property in the event of a
2 spouse's death.

3 (4) Except as provided in subsection (2)(a) of this section, a community property
4 trust may not be amended or revoked unless the agreement itself provides for
5 amendment or revocation.

6 (5) Whether or not both, one (1), or neither spouse is domiciled in this state, spouses
7 may classify any or all of their property as community property by transferring
8 property to a community property trust and providing in the trust that the
9 property is community property.

10 (6) A community property trust shall be enforceable without consideration.

11 (7) All property owned by a community property trust shall be considered community
12 property during marriage and the right to manage and control property that is
13 transferred to a community property trust shall be determined by the terms of the
14 trust.

15 (8) When property is distributed from a community property trust, it shall no longer
16 constitute community property.

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

19 (1) An obligation incurred by only one (1) spouse before or during marriage may be
20 satisfied from that spouse's one-half (1/2) share of a community property trust.

21 (2) An obligation incurred by both spouses during marriage may be satisfied from a
22 community property trust of the spouses.

23 (3) Upon the death of a spouse, one-half (1/2) of the aggregate value of the property
24 owned by a community property trust established by the spouses shall reflect the
25 share of the surviving spouse and the other one-half (1/2) shall reflect the share
26 of the decedent. Unless provided otherwise in the trust agreement, the trustee
27 shall have the power to distribute assets of the trust in divided or undivided

1 interests and to adjust resulting differences in valuation. A distribution in kind
 2 may be made on the basis of a non pro rata division of the aggregate value of the
 3 trust assets, on the basis of a pro rata division of each individual asset, or by
 4 using both methods.

5 (4) Upon the dissolution of the marriage of the settlor spouses, the community
 6 property trust shall terminate and the trustee shall distribute one half (1/2) of the
 7 trust assets to each spouse, with each spouse receiving one half (1/2) of each
 8 asset, unless otherwise agreed to in writing by both spouses.

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

11 ➔Section 5. KRS 141.010 is amended to read as follows:

12 As used in this chapter, unless the context requires otherwise:

- 13 (1) "Commissioner" means the commissioner of the Department of Revenue;
 14 (2) "Department" means the Department of Revenue;
 15 (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December
 16 31, 2015, exclusive of any amendments made subsequent to that date, other than
 17 amendments that extend provisions in effect on December 31, 2015, that would
 18 otherwise terminate, and as modified by KRS 141.0101;
 19 (4) "Dependent" means those persons defined as dependents in the Internal Revenue
 20 Code;
 21 (5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal
 22 Revenue Code;
 23 (6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal
 24 Revenue Code;
 25 (7) "Individual" means a natural person;
 26 (8) "Modified gross income" means the greater of:
 27 (a) Adjusted gross income as defined in Section 62 of the Internal Revenue Code

- 1 of 1986, including any subsequent amendments in effect on December 31 of
2 the taxable year, and adjusted as follows:
- 3 1. Include interest income derived from obligations of sister states and
4 political subdivisions thereof; and
 - 5 2. Include lump-sum pension distributions taxed under the special
6 transition rules of Pub. L. No. 104-188, sec. 1401(c)(2); or
- 7 (b) Adjusted gross income as defined in subsection (10) of this section and
8 adjusted to include lump-sum pension distributions taxed under the special
9 transition rules of Pub. L. No. 104-188, sec. 1401(c)(2);
- 10 (9) "Gross income," in the case of taxpayers other than corporations, means "gross
11 income" as defined in Section 61 of the Internal Revenue Code;
- 12 (10) "Adjusted gross income," in the case of taxpayers other than corporations, means
13 gross income as defined in subsection (9) of this section minus the deductions
14 allowed individuals by Section 62 of the Internal Revenue Code and as modified by
15 KRS 141.0101 and adjusted as follows, except that deductions shall be limited to
16 amounts allocable to income subject to taxation under the provisions of this chapter,
17 and except that nothing in this chapter shall be construed to permit the same item to
18 be deducted more than once:
- 19 (a) Exclude income that is exempt from state taxation by the Kentucky
20 Constitution and the Constitution and statutory laws of the United States and
21 Kentucky;
 - 22 (b) Exclude income from supplemental annuities provided by the Railroad
23 Retirement Act of 1937 as amended and which are subject to federal income
24 tax by Public Law 89-699;
 - 25 (c) Include interest income derived from obligations of sister states and political
26 subdivisions thereof;
 - 27 (d) Exclude employee pension contributions picked up as provided for in KRS

- 1 6.505, 16.545, 21.360, 61.523, 61.560, 65.155, 67A.320, 67A.510, 78.610,
2 and 161.540 upon a ruling by the Internal Revenue Service or the federal
3 courts that these contributions shall not be included as gross income until such
4 time as the contributions are distributed or made available to the employee;
- 5 (e) Exclude Social Security and railroad retirement benefits subject to federal
6 income tax;
- 7 (f) Include, for taxable years ending before January 1, 1991, all overpayments of
8 federal income tax refunded or credited for taxable years;
- 9 (g) Deduct, for taxable years ending before January 1, 1991, federal income tax
10 paid for taxable years ending before January 1, 1990;
- 11 (h) Exclude any money received because of a settlement or judgment in a lawsuit
12 brought against a manufacturer or distributor of "Agent Orange" for damages
13 resulting from exposure to Agent Orange by a member or veteran of the
14 Armed Forces of the United States or any dependent of such person who
15 served in Vietnam;
- 16 (i) 1. For taxable years ending prior to December 31, 2005, exclude the
17 applicable amount of total distributions from pension plans, annuity
18 contracts, profit-sharing plans, retirement plans, or employee savings
19 plans. The "applicable amount" shall be:
- 20 a. Twenty-five percent (25%), but not more than six thousand two
21 hundred fifty dollars (\$6,250), for taxable years beginning after
22 December 31, 1994, and before January 1, 1996;
- 23 b. Fifty percent (50%), but not more than twelve thousand five
24 hundred dollars (\$12,500), for taxable years beginning after
25 December 31, 1995, and before January 1, 1997;
- 26 c. Seventy-five percent (75%), but not more than eighteen thousand
27 seven hundred fifty dollars (\$18,750), for taxable years beginning

- 1 after December 31, 1996, and before January 1, 1998; and
- 2 d. One hundred percent (100%), but not more than thirty-five
3 thousand dollars (\$35,000), for taxable years beginning after
4 December 31, 1997.
- 5 2. For taxable years beginning after December 31, 2005, exclude up to
6 forty-one thousand one hundred ten dollars (\$41,110) of total
7 distributions from pension plans, annuity contracts, profit-sharing plans,
8 retirement plans, or employee savings plans.
- 9 3. As used in this paragraph:
- 10 a. "Distributions" includes but is not limited to any lump-sum
11 distribution from pension or profit-sharing plans qualifying for the
12 income tax averaging provisions of Section 402 of the Internal
13 Revenue Code; any distribution from an individual retirement
14 account as defined in Section 408 of the Internal Revenue Code;
15 and any disability pension distribution;
- 16 b. "Annuity contract" has the same meaning as set forth in Section
17 1035 of the Internal Revenue Code; and
- 18 c. "Pension plans, profit-sharing plans, retirement plans, or employee
19 savings plans" means any trust or other entity created or organized
20 under a written retirement plan and forming part of a stock bonus,
21 pension, or profit-sharing plan of a public or private employer for
22 the exclusive benefit of employees or their beneficiaries and
23 includes plans qualified or unqualified under Section 401 of the
24 Internal Revenue Code and individual retirement accounts as
25 defined in Section 408 of the Internal Revenue Code;
- 26 (j) 1. a. Exclude the portion of the distributive share of a shareholder's net
27 income from an S corporation subject to the franchise tax imposed

- 1 under KRS 136.505 or the capital stock tax imposed under KRS
2 136.300; and
- 3 b. Exclude the portion of the distributive share of a shareholder's net
4 income from an S corporation related to a qualified subchapter S
5 subsidiary subject to the franchise tax imposed under KRS
6 136.505 or the capital stock tax imposed under KRS 136.300.
- 7 2. The shareholder's basis of stock held in a S corporation where the S
8 corporation or its qualified subchapter S subsidiary is subject to the
9 franchise tax imposed under KRS 136.505 or the capital stock tax
10 imposed under KRS 136.300 shall be the same as the basis for federal
11 income tax purposes;
- 12 (k) Exclude, to the extent not already excluded from gross income, any amounts
13 paid for health insurance, or the value of any voucher or similar instrument
14 used to provide health insurance, which constitutes medical care coverage for
15 the taxpayer, the taxpayer's spouse, and dependents, or for any person
16 authorized to be provided excludable coverage by the taxpayer pursuant to the
17 federal Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-
18 148, or the Health Care and Education Reconciliation Act of 2010 Pub. L. No.
19 111-152, during the taxable year. Any amounts paid by the taxpayer for health
20 insurance that are excluded pursuant to this paragraph shall not be allowed as
21 a deduction in computing the taxpayer's net income under subsection (11) of
22 this section;
- 23 (l) Exclude income received for services performed as a precinct worker for
24 election training or for working at election booths in state, county, and local
25 primary, regular, or special elections;
- 26 (m) Exclude any amount paid during the taxable year for insurance for long-term
27 care as defined in KRS 304.14-600;

- 1 (n) Exclude any capital gains income attributable to property taken by eminent
2 domain;
- 3 (o) Exclude any amount received by a producer of tobacco or a tobacco quota
4 owner from the multistate settlement with the tobacco industry, known as the
5 Master Settlement Agreement, signed on November 22, 1998;
- 6 (p) Exclude any amount received from the secondary settlement fund, referred to
7 as "Phase II," established by tobacco companies to compensate tobacco
8 farmers and quota owners for anticipated financial losses caused by the
9 national tobacco settlement;
- 10 (q) Exclude any amount received from funds of the Commodity Credit
11 Corporation for the Tobacco Loss Assistance Program as a result of a
12 reduction in the quantity of tobacco quota allotted;
- 13 (r) Exclude any amount received as a result of a tobacco quota buydown program
14 that all quota owners and growers are eligible to participate in;
- 15 (s) Exclude state Phase II payments received by a producer of tobacco or a
16 tobacco quota owner;
- 17 (t) Exclude all income from all sources for active duty and reserve members and
18 officers of the Armed Forces of the United States or National Guard who are
19 killed in the line of duty, for the year during which the death occurred and the
20 year prior to the year during which the death occurred. For the purposes of this
21 paragraph, "all income from all sources" shall include all federal and state
22 death benefits payable to the estate or any beneficiaries;~~and~~
- 23 (u) For taxable years beginning on or after January 1, 2010, exclude all military
24 pay received by active duty members of the Armed Forces of the United
25 States, members of reserve components of the Armed Forces of the United
26 States, and members of the National Guard, including compensation for state
27 active duty as described in KRS 38.205; ***and***

1 (v) Ignore any change in the cost basis of the surviving spouse's share of
2 property owned by a Kentucky community property trust occurring for
3 federal income tax purposes as a result of the death of the predeceasing
4 spouse;

5 (11) "Net income," in the case of taxpayers other than corporations, means adjusted
6 gross income as defined in subsection (10) of this section, minus:

- 7 (a) The deduction allowed by KRS 141.0202;
- 8 (b) Any amount paid for vouchers or similar instruments that provide health
9 insurance coverage to employees or their families;
- 10 (c) For taxable years beginning on or after January 1, 2010, the amount of
11 domestic production activities deduction calculated at six percent (6%) as
12 allowed in Section 199(a)(2) of the Internal Revenue Code for taxable years
13 beginning before 2010; and
- 14 (d) 1. All the deductions allowed individuals by Chapter 1 of the Internal
15 Revenue Code as modified by KRS 141.0101 except:
- 16 a. Any deduction allowed by the Internal Revenue Code for state or
17 foreign taxes measured by gross or net income, including state and
18 local general sales taxes allowed in lieu of state and local income
19 taxes under the provisions of Section 164(b)(5) of the Internal
20 Revenue Code;
- 21 b. Any deduction allowed by the Internal Revenue Code for amounts
22 allowable under KRS 140.090(1)(h) in calculating the value of the
23 distributive shares of the estate of a decedent, unless there is filed
24 with the income return a statement that such deduction has not
25 been claimed under KRS 140.090(1)(h);
- 26 c. The deduction for personal exemptions allowed under Section 151
27 of the Internal Revenue Code and any other deductions in lieu

- 1 thereof;
- 2 d. For taxable years beginning on or after January 1, 2010, the
- 3 domestic production activities deduction allowed under Section
- 4 199 of the Internal Revenue Code;
- 5 e. Any deduction for amounts paid to any club, organization, or
- 6 establishment which has been determined by the courts or an
- 7 agency established by the General Assembly and charged with
- 8 enforcing the civil rights laws of the Commonwealth, not to afford
- 9 full and equal membership and full and equal enjoyment of its
- 10 goods, services, facilities, privileges, advantages, or
- 11 accommodations to any person because of race, color, religion,
- 12 national origin, or sex, except nothing shall be construed to deny a
- 13 deduction for amounts paid to any religious or denominational
- 14 club, group, or establishment or any organization operated solely
- 15 for charitable or educational purposes which restricts membership
- 16 to persons of the same religion or denomination in order to
- 17 promote the religious principles for which it is established and
- 18 maintained;
- 19 f. Any deduction directly or indirectly allocable to income which is
- 20 either exempt from taxation or otherwise not taxed under this
- 21 chapter;
- 22 g. The itemized deduction limitation established in 26 U.S.C. sec. 68
- 23 shall be determined using the applicable amount from 26 U.S.C.
- 24 sec. 68 as it existed on December 31, 2006; and
- 25 h. A taxpayer may elect to claim the standard deduction allowed by
- 26 KRS 141.081 instead of itemized deductions allowed pursuant to
- 27 26 U.S.C. sec. 63 and as modified by this section; and

- 1 2. Nothing in this chapter shall be construed to permit the same item to be
2 deducted more than once;
- 3 (12) "Gross income," in the case of corporations, means "gross income" as defined in
4 Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and
5 adjusted as follows:
- 6 (a) Exclude income that is exempt from state taxation by the Kentucky
7 Constitution and the Constitution and statutory laws of the United States;
- 8 (b) Exclude all dividend income received after December 31, 1969;
- 9 (c) Include interest income derived from obligations of sister states and political
10 subdivisions thereof;
- 11 (d) Exclude fifty percent (50%) of gross income derived from any disposal of coal
12 covered by Section 631(c) of the Internal Revenue Code if the corporation
13 does not claim any deduction for percentage depletion, or for expenditures
14 attributable to the making and administering of the contract under which such
15 disposition occurs or to the preservation of the economic interests retained
16 under such contract;
- 17 (e) Include in the gross income of lessors income tax payments made by lessees
18 to lessors, under the provisions of Section 110 of the Internal Revenue Code,
19 and exclude such payments from the gross income of lessees;
- 20 (f) Include the amount calculated under KRS 141.205;
- 21 (g) Ignore the provisions of Section 281 of the Internal Revenue Code in
22 computing gross income;
- 23 (h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal
24 Revenue Code);
- 25 (i) Exclude any amount received by a producer of tobacco or a tobacco quota
26 owner from the multistate settlement with the tobacco industry, known as the
27 Master Settlement Agreement, signed on November 22, 1998;

- 1 (j) Exclude any amount received from the secondary settlement fund, referred to
2 as "Phase II," established by tobacco companies to compensate tobacco
3 farmers and quota owners for anticipated financial losses caused by the
4 national tobacco settlement;
- 5 (k) Exclude any amount received from funds of the Commodity Credit
6 Corporation for the Tobacco Loss Assistance Program as a result of a
7 reduction in the quantity of tobacco quota allotted;
- 8 (l) Exclude any amount received as a result of a tobacco quota buydown program
9 that all quota owners and growers are eligible to participate in;
- 10 (m) For taxable years beginning after December 31, 2004, and before January 1,
11 2007, exclude the distributive share income or loss received from a
12 corporation defined in subsection (24)(b) of this section whose income has
13 been subject to the tax imposed by KRS 141.040. The exclusion provided in
14 this paragraph shall also apply to a taxable year that begins prior to January 1,
15 2005, if the tax imposed by KRS 141.040 is paid on the distributive share
16 income by a corporation defined in subparagraphs 2. to 8. of subsection
17 (24)(b) of this section with a return filed for a period of less than twelve (12)
18 months that begins on or after January 1, 2005, and ends on or before
19 December 31, 2005. This paragraph shall not be used to delay payment of the
20 tax imposed by KRS 141.040; and
- 21 (n) Exclude state Phase II payments received by a producer of tobacco or a
22 tobacco quota owner;
- 23 (13) "Net income," in the case of corporations, means "gross income" as defined in
24 subsection (12) of this section minus:
- 25 (a) The deduction allowed by KRS 141.0202;
- 26 (b) Any amount paid for vouchers or similar instruments that provide health
27 insurance coverage to employees or their families;

- 1 (c) For taxable years beginning on or after January 1, 2010, the amount of
2 domestic production activities deduction calculated at six percent (6%) as
3 allowed in Section 199(a)(2) of the Internal Revenue Code for taxable years
4 beginning before 2010; and
- 5 (d) All the deductions from gross income allowed corporations by Chapter 1 of
6 the Internal Revenue Code and as modified by KRS 141.0101, except:
- 7 1. Any deduction for a state tax which is computed, in whole or in part, by
8 reference to gross or net income and which is paid or accrued to any
9 state of the United States, the District of Columbia, the Commonwealth
10 of Puerto Rico, any territory or possession of the United States, or to any
11 foreign country or political subdivision thereof;
 - 12 2. The deductions contained in Sections 243, 244, 245, and 247 of the
13 Internal Revenue Code;
 - 14 3. The provisions of Section 281 of the Internal Revenue Code shall be
15 ignored in computing net income;
 - 16 4. Any deduction directly or indirectly allocable to income which is either
17 exempt from taxation or otherwise not taxed under the provisions of this
18 chapter, and nothing in this chapter shall be construed to permit the
19 same item to be deducted more than once;
 - 20 5. Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of
21 the Internal Revenue Code);
 - 22 6. Any deduction for amounts paid to any club, organization, or
23 establishment which has been determined by the courts or an agency
24 established by the General Assembly and charged with enforcing the
25 civil rights laws of the Commonwealth, not to afford full and equal
26 membership and full and equal enjoyment of its goods, services,
27 facilities, privileges, advantages, or accommodations to any person

1 because of race, color, religion, national origin, or sex, except nothing
2 shall be construed to deny a deduction for amounts paid to any religious
3 or denominational club, group, or establishment or any organization
4 operated solely for charitable or educational purposes which restricts
5 membership to persons of the same religion or denomination in order to
6 promote the religious principles for which it is established and
7 maintained;

- 8 7. Any deduction prohibited by KRS 141.205;
- 9 8. Any dividends-paid deduction of any captive real estate investment trust;
10 and
- 11 9. For taxable years beginning on or after January 1, 2010, the domestic
12 production activities deduction allowed under Section 199 of the
13 Internal Revenue Code;

14 (14) (a) "Taxable net income," in the case of corporations that are taxable in this state,
15 means "net income" as defined in subsection (13) of this section;

16 (b) "Taxable net income," in the case of corporations that are taxable in this state
17 and taxable in another state, means "net income" as defined in subsection (13)
18 of this section and as allocated and apportioned under KRS 141.120. A
19 corporation is taxable in another state if, in any state other than Kentucky, the
20 corporation is required to file a return for or pay a net income tax, franchise
21 tax measured by net income, franchise tax for the privilege of doing business,
22 or corporate stock tax;

23 (c) "Taxable net income," in the case of homeowners' associations as defined in
24 Section 528(c) of the Internal Revenue Code, means "taxable income" as
25 defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the
26 provisions of subsection (3) of this section, the Internal Revenue Code
27 sections referred to in this paragraph shall be those code sections in effect for

- 1 the applicable tax year; and
- 2 (d) "Taxable net income," in the case of a corporation that meets the requirements
- 3 established under Section 856 of the Internal Revenue Code to be a real estate
- 4 investment trust, means "real estate investment trust taxable income" as
- 5 defined in Section 857(b)(2) of the Internal Revenue Code, except that a
- 6 captive real estate investment trust shall not be allowed any deduction for
- 7 dividends paid;
- 8 (15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue
- 9 Code;
- 10 (16) "Taxable year" means the calendar year or fiscal year ending during such calendar
- 11 year, upon the basis of which net income is computed, and in the case of a return
- 12 made for a fractional part of a year under the provisions of this chapter or under
- 13 regulations prescribed by the commissioner, "taxable year" means the period for
- 14 which the return is made;
- 15 (17) "Resident" means an individual domiciled within this state or an individual who is
- 16 not domiciled in this state, but maintains a place of abode in this state and spends in
- 17 the aggregate more than one hundred eighty-three (183) days of the taxable year in
- 18 this state;
- 19 (18) "Nonresident" means any individual not a resident of this state;
- 20 (19) "Employer" means "employer" as defined in Section 3401(d) of the Internal
- 21 Revenue Code;
- 22 (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal
- 23 Revenue Code;
- 24 (21) "Number of withholding exemptions claimed" means the number of withholding
- 25 exemptions claimed in a withholding exemption certificate in effect under KRS
- 26 141.325, except that if no such certificate is in effect, the number of withholding
- 27 exemptions claimed shall be considered to be zero;

- 1 (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue
2 Code and includes other income subject to withholding as provided in Section
3 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;
- 4 (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the
5 Internal Revenue Code;
- 6 (24) (a) For taxable years beginning before January 1, 2005, and after December 31,
7 2006, "corporation" means "corporation" as defined in Section 7701(a)(3) of
8 the Internal Revenue Code; and
- 9 (b) For taxable years beginning after December 31, 2004, and before January 1,
10 2007, "corporations" means:
- 11 1. "Corporations" as defined in Section 7701(a)(3) of the Internal Revenue
12 Code;
 - 13 2. S corporations as defined in Section 1361(a) of the Internal Revenue
14 Code;
 - 15 3. A foreign limited liability company as defined in KRS 275.015;
 - 16 4. A limited liability company as defined in KRS 275.015;
 - 17 5. A professional limited liability company as defined in KRS 275.015;
 - 18 6. A foreign limited partnership as defined in KRS 362.2-102(9);
 - 19 7. A limited partnership as defined in KRS 362.2-102(14);
 - 20 8. A limited liability partnership as defined in KRS 362.155(7) or in 362.1-
21 101(7) or (8);
 - 22 9. A real estate investment trust as defined in Section 856 of the Internal
23 Revenue Code;
 - 24 10. A regulated investment company as defined in Section 851 of the
25 Internal Revenue Code;
 - 26 11. A real estate mortgage investment conduit as defined in Section 860D of
27 the Internal Revenue Code;

1 12. A financial asset securitization investment trust as defined in Section
2 860L of the Internal Revenue Code; and

3 13. Other similar entities created with limited liability for their partners,
4 members, or shareholders.

5 For purposes of this paragraph, "corporation" shall not include any publicly
6 traded partnership as defined by Section 7704(b) of the Internal Revenue Code
7 that is treated as a partnership for federal tax purposes under Section 7704(c)
8 of the Internal Revenue Code or its publicly traded partnership affiliates. As
9 used in this paragraph, "publicly traded partnership affiliates" shall include
10 any limited liability company or limited partnership for which at least eighty
11 percent (80%) of the limited liability company member interests or limited
12 partner interests are owned directly or indirectly by the publicly traded
13 partnership;

14 (25) "Doing business in this state" includes but is not limited to:

- 15 (a) Being organized under the laws of this state;
- 16 (b) Having a commercial domicile in this state;
- 17 (c) Owning or leasing property in this state;
- 18 (d) Having one (1) or more individuals performing services in this state;
- 19 (e) Maintaining an interest in a pass-through entity doing business in this state;
- 20 (f) Deriving income from or attributable to sources within this state, including
21 deriving income directly or indirectly from a trust doing business in this state,
22 or deriving income directly or indirectly from a single-member limited
23 liability company that is doing business in this state and is disregarded as an
24 entity separate from its single member for federal income tax purposes; or
- 25 (g) Directing activities at Kentucky customers for the purpose of selling them
26 goods or services.

27 Nothing in this subsection shall be interpreted in a manner that goes beyond the

1 limitations imposed and protections provided by the United States Constitution or
2 Pub. L. No. 86-272;

3 (26) "Pass-through entity" means any partnership, S corporation, limited liability
4 company, limited liability partnership, limited partnership, or similar entity
5 recognized by the laws of this state that is not taxed for federal purposes at the
6 entity level, but instead passes to each partner, member, shareholder, or owner their
7 proportionate share of income, deductions, gains, losses, credits, and any other
8 similar attributes;

9 (27) "S corporation" means "S corporation" as defined in Section 1361(a) of the Internal
10 Revenue Code;

11 (28) "Limited liability pass-through entity" means any pass-through entity that affords
12 any of its partners, members, shareholders, or owners, through function of the laws
13 of this state or laws recognized by this state, protection from general liability for
14 actions of the entity; and

15 (29) "Captive real estate investment trust" means a real estate investment trust as defined
16 in Section 856 of the Internal Revenue Code that meets the following requirements:

17 (a) 1. The shares or other ownership interests of the real estate investment trust
18 are not regularly traded on an established securities market; or

19 2. The real estate investment trust does not have enough shareholders or
20 owners to be required to register with the Securities and Exchange
21 Commission; and

22 (b) 1. The maximum amount of stock or other ownership interest that is owned
23 or constructively owned by a corporation equals or exceeds:

24 a. Twenty-five percent (25%), if the corporation does not occupy
25 property owned, constructively owned, or controlled by the real
26 estate investment trust; or

27 b. Ten percent (10%), if the corporation occupies property owned,

1 constructively owned, or controlled by the real estate investment
2 trust.

3 The total ownership interest of a corporation shall be determined by
4 aggregating all interests owned or constructively owned by a
5 corporation;

6 2. For the purposes of this paragraph:

7 a. "Corporation" means a corporation taxable under KRS 141.040,
8 and includes an affiliated group as defined in KRS 141.200, that is
9 required to file a consolidated return pursuant to the provisions of
10 KRS 141.200; and

11 b. "Owned or constructively owned" means owning shares or having
12 an ownership interest in the real estate investment trust, or owning
13 an interest in an entity that owns shares or has an ownership
14 interest in the real estate investment trust. Constructive ownership
15 shall be determined by looking across multiple layers of a
16 multilayer pass-through structure; and

17 (c) The real estate investment trust is not owned by another real estate investment
18 trust.

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

20 (1) For the purposes of this section, the following definitions apply:

21 (a) "Current beneficiary" means a person who is a permissible distributee of trust
22 income or principal;

23 (b) "Original trust" means a trust established under an irrevocable trust instrument
24 pursuant to the terms of which a trustee has discretionary power to distribute
25 principal or income of the trust to or for the benefit of one (1) or more current
26 beneficiaries of the trust; and

27 (c) "Second trust" means a trust established under an irrevocable trust instrument,

1 the current beneficiaries of which are one (1) or more of the current
2 beneficiaries of the original trust. The second trust may be a trust created
3 under the same trust instrument as the original trust or under a different trust
4 instrument **or the original trust whose terms have been modified under this**
5 **section.**

6 (2) A trustee of an original trust may, without authorization by the court, exercise the
7 discretionary power to distribute principal or income to or for the benefit of one (1)
8 or more current beneficiaries of the original trust by appointing all or part of the
9 principal or income of the original trust subject to the power in favor of the trustee
10 of a second trust **or by modifying the terms of the original trust.** The trustee of the
11 original trust may exercise this power whether or not there is a current need to
12 distribute principal or income under any standard provided in the terms of the
13 original trust. The trustee's special power to appoint trust principal or income in
14 further trust under this section includes the power to create the second trust.

15 (3) The second trust may be a trust created or administered under the laws of any
16 jurisdiction, within or without the United States.

17 (4) The terms of the second trust shall be subject to all of the following:

18 (a) The beneficiaries of the second trust may include only beneficiaries of the
19 original trust;

20 (b) A beneficiary who has only a future beneficial interest, vested or contingent,
21 in the original trust cannot have the future beneficial interest accelerated to a
22 present interest in the second trust;

23 (c) The terms of the second trust may not reduce any fixed income, annuity, or
24 unitrust interest of a beneficiary in the assets of the original trust, including an
25 interest which is to take effect in the future;

26 (d) If any contribution to the original trust qualified for a marital or charitable
27 deduction for federal income, gift, or estate tax purposes under the Internal

- 1 Revenue Code, then the second trust shall not contain any provision that, if
2 included in the original trust, would have prevented the original trust from
3 qualifying for the deduction or that would have reduced the amount of the
4 deduction;
- 5 (e) If contributions to the original trust have been excluded from the gift tax by
6 the application of Sections 2503(b) and 2503(c) of the Internal Revenue Code,
7 then the second trust shall provide that the beneficiary's remainder interest in
8 the contributions shall vest and become distributable no later than the date
9 upon which the interest would have vested and become distributable under the
10 terms of the original trust;
- 11 (f) If any beneficiary of the original trust has a currently exercisable power of
12 withdrawal over trust property, then either:
- 13 a. The terms of the second trust shall provide a power of withdrawal in the
14 second trust identical to the power of withdrawal in the original trust; or
- 15 b. Sufficient trust property shall remain in the original trust to satisfy the
16 currently exercisable power of withdrawal;
- 17 (g) If the original trust holds stock of an S corporation, the terms of the second
18 trust shall not prevent or eliminate an election to be a qualified subchapter S
19 trust or an electing small business trust or result in the termination of the S
20 election of such corporation;
- 21 (h) If the power to distribute principal or income in the original trust is subject to
22 an ascertainable standard, then the power to distribute income or principal in
23 the second trust shall be subject to the same or a more restrictive ascertainable
24 standard as in the original trust when the trustee exercising the power
25 described in subsection (2) of this section is a possible beneficiary under the
26 standard; and
- 27 (i) The second trust may confer a power of appointment upon a beneficiary of the

1 original trust to whom or for the benefit of whom the trustee has the power to
2 distribute principal or income of the original trust. The permissible appointees
3 of the power of appointment conferred upon a beneficiary may include
4 persons who are not beneficiaries of the original or second trust. The power of
5 appointment conferred upon a beneficiary shall be subject to KRS 381.224,
6 381.225, and 381.226 covering the time at which the permissible period of the
7 rule against perpetuities and suspension of power of alienation begins and the
8 law that determines the permissible period of the rule against perpetuities and
9 suspension of power of alienation of the original trust.

10 (5) The court may appoint a special fiduciary with the authority to exercise the power to
11 appoint principal or income under subsection (2) of this section.

12 (6) The exercise of the power to appoint principal or income under subsection (2) of
13 this section:

14 (a) Shall be considered an exercise of a power of appointment, other than a power
15 to appoint to the trustee, the trustee's creditors, the trustee's estate, or the
16 creditors of the trustee's estate;

17 (b) Shall be subject to KRS 381.224, 381.225, and 381.226 covering the time at
18 which the permissible period of the rule against perpetuities and suspension of
19 power of alienation begins and the law that determines the permissible period
20 of the rule against perpetuities and suspension of power of alienation of the
21 original trust; and

22 (c) Is not prohibited by a spendthrift provision or by a provision in the original
23 trust instrument that prohibits amendment or revocation of the trust.

24 (7) To effect the exercise of the power to appoint principal or income under subsection
25 (2) of this section, all of the following shall apply:

26 (a) The exercise of the power to appoint shall be made by an instrument in
27 writing, signed and acknowledged by the trustee, setting forth the manner of

- 1 the exercise of the power, including the terms of the second trust and the
2 effective date of the exercise of the power. The instrument shall be filed with
3 the records of the original trust;
- 4 (b) The trustee shall give written notice of the trustee's intention to exercise the
5 power to all current beneficiaries of the original trust and all beneficiaries of
6 the oldest generation of remainder beneficiaries of the original~~[first]~~ trust, by
7 certified mail with restricted delivery and return receipt, at least sixty (60)
8 days prior to the effective date of the exercise of the power to appoint. The
9 notice shall include a copy of the instrument described in paragraph (a) of this
10 subsection;
- 11 (c) If all beneficiaries entitled to notice have received the notice as evidenced by
12 the certified mail return receipt and waive the notice period by a signed
13 written instrument delivered to the trustee, the trustee's power to appoint
14 principal or income shall be exercisable after notice is waived by all such
15 beneficiaries, notwithstanding the effective date of the exercise of the power;
- 16 (d) A current beneficiary or a beneficiary who is not a current beneficiary but is a
17 member of the oldest generation of the remainder beneficiaries of the original
18 trust may, no later than thirty (30) days from the date of receiving notice under
19 paragraph (b) of this subsection, commence a judicial proceeding pursuant to
20 KRS 386B.2-010 to object to the proposed exercise of the power under
21 subsection (2) of this section. In such case the proposed exercise of the power
22 shall require consent of the court; and
- 23 (e) In the event that a beneficiary did not receive the notice as evidenced by the
24 certified mail return receipt, and no other beneficiary has commenced a
25 proceeding under paragraph (d) of this subsection, the trustee may seek the
26 approval of the District Court to exercise the power.
- 27 (8) Nothing in this section shall be construed to create or imply a duty of the trustee to

1 exercise the power to distribute principal or income, and no inference of
2 impropriety shall be made as a result of a trustee not exercising the power to appoint
3 principal or income conferred under subsection (2) of this section. Nothing in this
4 section shall be construed to abridge the right of any trustee who has the power to
5 appoint property in further trust that arises under the terms of the original trust or
6 under any provision of law or under common law.

7 (9) This section shall not apply to any charitable remainder trust as defined in 26 U.S.C.
8 sec. 664(d).

9 (10) A trustee or beneficiary may commence a judicial proceeding pursuant to KRS
10 386B.2-010 to approve or disapprove of a proposed exercise of the trustee's special
11 power to appoint to a second trust pursuant to subsection (2) of this section.

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

14 **(1) Upon the appointment of a personal representative, the clerk of the probate court**
15 **shall publish notice to creditors as provided in KRS 424.340. The notice shall**
16 **state that creditors must present their claims within six (6) months after the**
17 **appointment of the personal representative or be forever barred.**

18 **(2) A personal representative may give actual notice in writing by mail or other**
19 **delivery to a creditor, notifying the creditor to present his or her claim within**
20 **sixty (60) days after the mailing or other delivery of the notice or be forever**
21 **barred.**

22 **(3) The personal representative is not liable to a creditor or to a successor of the**
23 **decedent for giving or failing to give notice pursuant to subsection (2) of this**
24 **section.**

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

26 (1) All claims against a decedent's estate which arose before the death of the decedent,
27 excluding claims of the United States, the State of Kentucky and any subdivision

1 thereof, whether due or to become due, absolute or contingent, liquidated or
2 unliquidated, founded on contract, tort, or other legal basis, if not barred earlier by
3 other statute of limitations **or non-claim statutes**, are barred against the estate, the
4 personal representative, and the heirs and devisees **and nonprobate transferees** of
5 the decedent, unless presented **within the earlier of the following:**

6 **(a) Eight (8) months after the decedent's death;**

7 **(b) The time period provided in subsection (2) of Section 7 of this Act for**
8 **creditors who are given actual notice; or**

9 **(c) The time period provided in subsection (1) of Section 7 of this Act for**
10 **creditors who are barred by publication.** ~~within six (6) months after the~~

11 ~~appointment of the personal representative, or where no personal~~
12 ~~representative has been appointed, within two (2) years after the decedent's~~
13 ~~death.]~~

14 (2) Nothing in this section shall affect or prevent:

15 (a) To the extent of the security only, any proceeding to enforce any mortgage,
16 pledge, lien or other security interest securing an obligation of the decedent or
17 upon property of the estate; or

18 (b) To the limits of the insurance protection only, any proceeding to establish
19 liability of the decedent or the personal representative for which he is
20 protected by liability insurance.