

1 AN ACT relating to disposition of property.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
4 READ AS FOLLOWS:

5 *As used in Sections 1 to 9 of this Act:*

6 *(1) "Electronic" means relating to technology having electrical, digital, magnetic,*
7 *wireless, optical, electromagnetic, or similar capabilities;*

8 *(2) "Electronic presence" means the relationship of two (2) or more individuals in*
9 *different locations communicating in real time to the same extent as if the*
10 *individuals were physically present in the same location;*

11 *(3) "Electronic will" means a will executed electronically in compliance with the*
12 *requirements of Section 4 of this Act;*

13 *(4) "Record" means information that is inscribed on a tangible medium or that is*
14 *stored in an electronic or other medium and is retrievable in perceivable form;*

15 *(5) "Sign" means, with present intent to authenticate or adopt a record:*

16 *(a) To execute or adopt a tangible symbol; or*

17 *(b) To affix to or logically associate with the record an electronic symbol or*
18 *process;*

19 *(6) "State" has the same meaning as in Section 82 of this Act; and*

20 *(7) "Will" has the same meaning as in Section 88 of this Act.*

21 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
22 READ AS FOLLOWS:

23 *An electronic will is a will for all purposes of the law of this Commonwealth. The law*
24 *of this Commonwealth applicable to wills and principles of equity apply to an*
25 *electronic will, except as modified by Sections 1 to 9 of this Act.*

26 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
27 READ AS FOLLOWS:

1 *A will executed electronically but not in compliance with Section 4 of this Act is an*
 2 *electronic will if executed in compliance with the law of the jurisdiction where the*
 3 *testator is:*

4 *(1) Physically located when the will is signed; or*

5 *(2) Domiciled or residing when the will is signed or when the testator dies.*

6 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
 7 READ AS FOLLOWS:

8 *(1) Subject to subsection (3) of Section 6 of this Act, an electronic will shall be:*

9 *(a) A record that is readable as text at the time of signing under paragraph (b)*
 10 *of this subsection;*

11 *(b) Signed by:*

12 *1. The testator; or*

13 *2. Another individual in the testator's name, in the testator's physical*
 14 *presence, and by the testator's direction; and*

15 *(c) Signed in the physical or electronic presence of the testator by at least two*
 16 *(2) individuals, each of whom is a resident of this Commonwealth and*
 17 *physically located in this Commonwealth at the time of signing and within a*
 18 *reasonable time after witnessing:*

19 *1. The signing of the will under paragraph (b) of this subsection; or*

20 *2. The testator's acknowledgement of the signing of the will under*
 21 *paragraph (b) of this subsection or acknowledgement of the will.*

22 *(2) An electronic symbol of a testator or witness shall consist of an electronic image*
 23 *of the testator's or witness's signature in his or her handwriting affixed to the*
 24 *electronic will.*

25 *(3) A testator's intent that the record under subsection (1)(a) of this section be the*
 26 *testator's electronic will may be established by extrinsic evidence.*

27 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO

1 READ AS FOLLOWS:

2 (1) An electronic will may revoke all or part of a previous will.

3 (2) All or part of an electronic will may be revoked by:

4 (a) A subsequent will that revokes all or part of the electronic will expressly or
5 by inconsistency; or

6 (b) A physical act, if it is established by clear and convincing evidence that the
7 testator, with the intent of revoking all or part of the will, performed the act
8 or directed another individual who performed the act in the testator's
9 physical presence.

10 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
11 READ AS FOLLOWS:

12 (1) An electronic will may be simultaneously executed, attested, and made self-
13 proving by acknowledgement of the testator and affidavits of witnesses.

14 (2) The acknowledgement and affidavits under subsection (1) of this section shall be:

15 (a) Made before a notary public authorized to administer oaths under the law
16 of the state in which execution occurs or, if fewer than two (2) attesting
17 witnesses are physically present in the same location as the testator at the
18 time of signing under subsection (1)(b) of Section 4 of this Act, before a
19 notary public authorized under KRS 423.455;

20 (b) Evidenced by the notary public's certificate under official seal affixed to or
21 logically associated with the electronic will; and

22 (c) In a form substantially similar to subsections (1) and (2) of KRS 394.225.

23 (3) A signature physically or electronically affixed to an affidavit that is affixed to or
24 logically associated with an electronic will under Sections 1 to 9 of this Act is
25 deemed a signature of the electronic will under subsection (1) of Section 4 of this
26 Act.

27 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO

1 READ AS FOLLOWS:

2 *An individual may create a certified paper copy of an electronic will by affirming under*
3 *penalty of perjury that a paper copy of the electronic will is a complete, true, and*
4 *accurate copy of the electronic will. If the electronic will is made self-proving, the*
5 *certified paper copy of the will shall include the self-proving affidavits.*

6 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
7 READ AS FOLLOWS:

8 *In applying and construing Sections 1 to 9 of this Act, consideration shall be given to*
9 *the need to promote uniformity of the law with respect to its subject matter among*
10 *states that enact it.*

11 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
12 READ AS FOLLOWS:

13 *Sections 1 to 9 of this Act shall apply to the will of a decedent who dies on or after the*
14 *effective date of this Act.*

15 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
16 READ AS FOLLOWS:

17 *As used in Sections 10 to 24 of this Act:*

18 *(1) "Electronic" has the same meaning as in Section 1 of this Act;*

19 *(2) "Electronic record" means a record created, generated, sent, communicated,*
20 *received, or stored by electronic means;*

21 *(3) "Electronic signature" means an electronic symbol or process attached to or*
22 *logically associated with a record and executed or adopted by a person with the*
23 *intent to sign the record;*

24 *(4) "Information" includes data, text, images, codes, computer programs, software,*
25 *and databases;*

26 *(5) "Nontestamentary estate planning document" means a record relating to estate*
27 *planning that is readable as text at the time of signing and is not a will or*

1 contained in a will. The term:

2 (a) Includes a record readable as text at the time of signing that creates,
3 exercises, modifies, releases, or revokes:

4 1. A trust instrument;

5 2. A trust power that under the terms of the trust requires a signed
6 record;

7 3. A certification of a trust under KRS 386B.10-120;

8 4. A power of attorney that is durable under KRS Chapter 457;

9 5. An agent's certification under KRS 457.430;

10 6. A power of appointment;

11 7. An advance directive or medical order for scope of treatment under
12 KRS 311.621 to 311.643;

13 8. A record directing disposition of an individual's body after death;

14 9. A nomination of a guardian for the signing individual;

15 10. A nomination of a guardian for a minor child or disabled adult child;

16 11. An advance directive for mental health treatment under KRS
17 202A.420 to 202A.432;

18 12. A community property survivorship agreement;

19 13. A disclaimer under KRS 394.035 or KRS 394.610 to 394.670; and

20 14. Any other record intended to carry out an individual's intent
21 regarding property or health care while incapacitated or on death; and

22 (b) Does not include a deed of real property or certificate of title for a motor
23 vehicle, watercraft, or aircraft;

24 (6) "Person" has the same meaning as in Section 82 of this Act;

25 (7) "Power of attorney" means a record that grants authority to an agent in place of
26 the principal, even if the term is not used in the record;

27 (8) "Record" has the same meaning as in Section 1 of this Act;

1 (9) "Security procedure" means a procedure to verify that an electronic signature,
 2 record, or performance is that of a specific person or to detect a change or error
 3 in an electronic record. The term includes a procedure that uses an algorithm,
 4 code, identifying word or number, encryption, or callback or other
 5 acknowledgement procedure;

6 (10) "Settlor" has the same meaning as in Section 82 of this Act;

7 (11) "Sign" has the same meaning as in Section 1 of this Act;

8 (12) "State" has the same meaning as in Section 82 of this Act;

9 (13) "Terms of a trust" has the same meaning as in Section 82 of this Act;

10 (14) "Trust instrument" has the same meaning as in Section 82 of this Act; and

11 (15) "Will" has the same meaning as in Section 88 of this Act.

12 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
 13 READ AS FOLLOWS:

14 Sections 10 to 24 of this Act shall be construed and applied to:

15 (1) Facilitate electronic estate planning documents and signatures consistent with
 16 other law; and

17 (2) To be consistent with reasonable practices concerning electronic documents and
 18 signatures and continued expansion of those practices.

19 ➔SECTION 12. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
 20 READ AS FOLLOWS:

21 (1) Except as provided in subsection (2) of this section, Sections 10 to 24 of this Act
 22 apply to an electronic nontestamentary estate planning document and an
 23 electronic signature on a nontestamentary estate planning document.

24 (2) Sections 10 to 24 of this Act do not apply to a nontestamentary estate planning
 25 document if the document precludes use of an electronic record or electronic
 26 signature.

27 (3) Sections 10 to 24 of this Act do not affect the validity of an electronic record or

1 electronic signature that is valid under:

2 (a) The Uniform Electronic Transactions Act, KRS 369.101 to 369.120; or

3 (b) The Uniform Electronic Wills Act, Sections 1 to 9 of this Act.

4 ➔SECTION 13. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
5 READ AS FOLLOWS:

6 The law of this Commonwealth and principles of equity applicable to a
7 nontestamentary estate planning document apply to an electronic nontestamentary
8 estate planning document except as modified by Sections 10 to 24 of this Act.

9 ➔SECTION 14. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
10 READ AS FOLLOWS:

11 (1) Sections 10 to 24 of this Act do not require a nontestamentary estate planning
12 document or signature on a nontestamentary estate planning document to be
13 created, generated, sent, communicated, received, stored, or otherwise processed
14 or used by electronic means or in electronic form.

15 (2) A person is not required to have a nontestamentary estate planning document in
16 electronic form or signed electronically even if the person previously created or
17 signed a nontestamentary estate planning document by electronic means.

18 (3) A person may not waive the provisions of this section.

19 ➔SECTION 15. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
20 READ AS FOLLOWS:

21 (1) A nontestamentary estate planning document or signature on a nontestamentary
22 estate planning document shall not be denied legal effect or enforceability solely
23 because it is in electronic form.

24 (2) If any other law of this Commonwealth requires a signature on a
25 nontestamentary estate planning document to be in writing, an electronic record
26 of the document satisfies the requirement.

27 (3) If other law of this Commonwealth requires a signature on a nontestamentary

1 estate planning document, an electronic signature satisfies the requirement.

2 ➔SECTION 16. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
3 READ AS FOLLOWS:

4 (1) An electronic nontestamentary estate planning document or electronic signature
5 on an electronic nontestamentary estate planning document is attributable to a
6 person if it was the act of the person. The act of the person may be shown in any
7 manner, including by showing the efficacy of a security procedure applied to
8 determine the person to which the electronic record or electronic signature was
9 attributable.

10 (2) The effect of attribution to a person under subsection (1) of this section of a
11 document or signature is determined from the context and surrounding
12 circumstances at the time of its creation, execution, or adoption and as provided
13 by other law.

14 ➔SECTION 17. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
15 READ AS FOLLOWS:

16 If other law of this Commonwealth requires a signature or record to be notarized,
17 acknowledged, verified, or made under oath, the requirement is satisfied with respect to
18 an electronic nontestamentary estate planning document if an individual authorized to
19 perform the notarization, acknowledgment, verification, or oath attaches or logically
20 associates the individual's electronic signature on the document together with all other
21 information required to be included under the other law.

22 ➔SECTION 18. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
23 READ AS FOLLOWS:

24 (1) If any other law of this Commonwealth bases the validity of a nontestamentary
25 estate planning document on whether it is signed, witnessed, or attested by
26 another individual, the signature, witnessing, or attestation of that individual may
27 be electronic.

1 (2) If other law of this Commonwealth bases the validity of a nontestamentary estate
2 planning document on whether it is signed, witnessed, or attested by another
3 individual in the presence of the individual signing the document, the presence
4 requirement is satisfied if the individuals are in each other's electronic presence.

5 ➔SECTION 19. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
6 READ AS FOLLOWS:

7 (1) Except as provided in subsection (2) of this section, if other law of this
8 Commonwealth requires an electronic nontestamentary estate planning
9 document to be retained, transmitted, copied, or filed, the requirement is satisfied
10 by retaining, transmitting, copying, or filing an electronic record that:

11 (a) Accurately reflects the information in the document after it was first
12 generated in final form as an electronic record or under Section 20 of this
13 Act; and

14 (b) Remains accessible to the extent required by the other law.

15 (2) A requirement under subsection (1) of this section to retain a record does not
16 apply to information the sole purpose of which is to enable the record to be sent,
17 communicated, or received.

18 (3) A person may satisfy subsection (1) of this section by using the services of
19 another person.

20 (4) If other law of this Commonwealth requires a nontestamentary estate planning
21 document to be presented or retained in its original form, or provides
22 consequences if a nontestamentary estate planning document is not presented or
23 retained in its original form, an electronic record retained in accordance with
24 subsection (1) of this section satisfies the other law.

25 (5) This section does not preclude a governmental agency from specifying
26 requirements for the retention of a record subject to the agency's jurisdiction in
27 addition to those in this section. In this subsection, "governmental agency"

1 means an executive, legislative, or judicial agency, department, board,
2 commission, authority, institution, or instrumentality of the federal government
3 or of a state or of a county, municipality, or other political subdivision of a state.

4 ➔SECTION 20. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
5 READ AS FOLLOWS:

6 An individual may create a certified paper copy of an electronic nontestamentary estate
7 planning document by affirming under penalty of perjury that the paper copy is a
8 complete and accurate copy of the document.

9 ➔SECTION 21. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
10 READ AS FOLLOWS:

11 Evidence relating to an electronic nontestamentary estate planning document or an
12 electronic signature on the document may not be excluded in a proceeding solely
13 because it is in electronic form.

14 ➔SECTION 22. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
15 READ AS FOLLOWS:

16 In applying and construing Sections 10 to 24 of this Act, a court shall consider the
17 promotion of uniformity of the law among the jurisdictions that enact it.

18 ➔SECTION 23. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
19 READ AS FOLLOWS:

20 Sections 10 to 24 of this Act modify, limit, or supersede the Electronic Signatures in
21 Global and National Commerce Act, 15 U.S.C. sec. 7001 et seq., as amended, but do
22 not modify, limit, or supersede 15 U.S.C. sec. 7001(c), or authorize electronic delivery
23 of any of the notices described in 15 U.S.C. sec. 7003(b).

24 ➔SECTION 24. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
25 READ AS FOLLOWS:

26 Sections 10 to 24 of this Act apply to an electronic nontestamentary estate planning
27 document created, signed, generated, sent, received, or stored before, on, or after the

1 effective date of this Act.

2 ➔SECTION 25. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
3 READ AS FOLLOWS:

4 As used in Sections 25 to 35 of this Act, unless the context otherwise requires:

5 (1) "Claim" means a right to payment, whether or not the right is reduced to
6 judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured,
7 disputed, undisputed, legal, equitable, secured, or unsecured;

8 (2) "Creditor" means, with respect to a transferor, a person who has a claim;

9 (3) "Debt" means liability on a claim;

10 (4) "Disposition":

11 (a) Means a transfer, conveyance, or assignment of property, including a
12 change in the legal ownership of property occurring upon the substitution
13 of one (1) trustee for another or the addition of one (1) or more new
14 trustees; and

15 (b) Includes the exercise of a power so as to cause a transfer of property to a
16 trustee or trustees, but shall not include the release or relinquishment of an
17 interest in property that, until the release or relinquishment, was the subject
18 of a qualified disposition;

19 (5) "Investment advisor" means a person given authority by the terms of a qualified
20 trust to direct, consent to, or disapprove a transferor's actual or proposed
21 investment decisions, distribution decisions, or other decisions of the transferor;

22 (6) "Investment decision" means the retention, purchase, sale, exchange, tender, or
23 other transaction affecting the ownership of or rights in investments;

24 (7) "Person" has the same meaning as in Section 82 of this Act;

25 (8) "Property" means anything that may be the subject of ownership, including real
26 property, personal property, and interests in real or personal property;

27 (9) "Qualified affidavit" means a sworn affidavit signed by the transferor before a

1 disposition of assets to a qualified trust that meets the requirements of Section 26
2 of this Act. In the event of a disposition by a transferor who is a trustee, the
3 affidavit shall be signed by the transferor who made the original disposition to the
4 trustee or a predecessor trustee in a form that meets the requirements of
5 paragraphs (b) and (c) of this subsection and shall state facts as of the time of the
6 original disposition;

7 (10) "Qualified disposition" means a disposition by or from a transferor with or
8 without consideration to a qualified trust after the transferor executes a qualified
9 affidavit;

10 (11) "Qualified trust" means an instrument appointing a qualified trustee or qualified
11 trustees for property that is the subject of a disposition, which instrument:

12 (a) Expressly incorporates the law of this Commonwealth to govern the validity,
13 construction, and administration of the trust;

14 (b) Is irrevocable; and

15 (c) Provides that the interest of the transferor or other beneficiary in trust
16 property or income from trust property may not be transferred, assigned,
17 pledged, or mortgaged, whether voluntarily or involuntarily, before the
18 qualified trustee or qualified trustees actually distribute property or income
19 from the trust to the beneficiary;

20 (12) "Qualified trustee" means a person who:

21 (a) In the case of a natural person, is a resident of this Commonwealth, or in
22 all other cases, is authorized by the law of this Commonwealth to act as a
23 trustee and whose activities are subject to supervision by the Kentucky
24 Department of Financial Institutions, the Federal Deposit Insurance
25 Corporation, the Comptroller of the Currency, or any successor to those
26 entities;

27 (b) Maintains or arranges for custody in this Commonwealth of some or all of

1 the property that is the subject of the qualified disposition, maintains
 2 records for the qualified trust on an exclusive or nonexclusive basis,
 3 prepares or arranges for the preparation of required income tax returns for
 4 the qualified trust, or otherwise materially participates in the administration
 5 of the qualified trust; and

6 (c) Is not the transferor;

7 (13) "Spouse or former spouse" means only persons to whom the transferor was
 8 legally married at or before the time the qualified disposition is made;

9 (14) "Transferor" means a person who, directly or indirectly, makes a disposition or
 10 causes a disposition to be made in the person's capacity:

11 (a) As an owner of property;

12 (b) As a holder of a power of appointment that authorizes the holder to appoint
 13 in favor of the holder, the holder's creditors, the holder's estate, or the
 14 creditors of the holder's estate; or

15 (c) As a trustee; and

16 (15) "Trustee" means an original, additional, and successor trustee, and a cotrustee,
 17 whether singular or plural, who is a fiduciary relative to any power or duty held
 18 by that person that could otherwise be held by a trustee.

19 ➔SECTION 26. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
 20 READ AS FOLLOWS:

21 A qualified affidavit shall state that:

22 (1) The transferor has full right, title, and authority to transfer the assets to the trust;

23 (2) The transfer of the assets to the trust will not render the transferor insolvent;

24 (3) The transferor does not intend to defraud a creditor by transferring the assets to
 25 the trust;

26 (4) The transferor does not have any pending or threatened court actions against the
 27 transferor, except for those court actions identified by the transferor on an

1 attachment to the affidavit;

2 (5) The transferor is not involved in any administrative proceedings, except for those
3 administrative proceedings identified on an attachment to the affidavit;

4 (6) The transferor does not contemplate filing for relief under the federal bankruptcy
5 code; and

6 (7) The assets being transferred to the trust were not derived from unlawful activities.

7 ➔SECTION 27. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
8 READ AS FOLLOWS:

9 (1) Notwithstanding any law to the contrary, including KRS 386B.5-020(7)(a), no
10 action of any kind, including but not limited to an action to enforce a judgment
11 entered by a court or other body having adjudicative authority, shall be brought
12 at law or in equity for an attachment or other provisional remedy against property
13 that is the subject of a qualified disposition to a qualified trust or for the
14 avoidance of a qualified disposition to a qualified trust, unless:

15 (a) The action is brought pursuant to the Kentucky Uniform Voidable
16 Transactions Act, KRS 378A.005 to 378A.140; and

17 (b) The qualified disposition was made with actual intent to defraud a creditor
18 whose claim arose after a qualified disposition.

19 (2) (a) Notwithstanding KRS 378A.090, a creditor's claim under subsection (1) of
20 this section shall be extinguished:

21 1. If the person is a creditor when the qualified disposition to a qualified
22 trust is made, unless the action is commenced within the later of two
23 (2) years after the qualified disposition is made or six (6) months after
24 the person discovers or reasonably should have discovered the
25 qualified disposition; or

26 2. If the person becomes a creditor after a qualified disposition to a
27 qualified trust is made, unless the action is commenced within two (2)

1 years after the qualified disposition is made; and

2 (b) If paragraph (a) of this subsection applies:

3 1. A person shall be deemed to have discovered the existence of a
4 qualified disposition to a qualified trust at the time any public record
5 is made of any transfer of property relative to the qualified disposition,
6 including but not limited to the conveyance of real property that is
7 recorded in the office of the county clerk in which the property is
8 located, the filing of a financing statement under Article 9 of KRS
9 Chapter 355, or the equivalent recording or filing of either with the
10 appropriate person or official under the laws of a jurisdiction other
11 than this Commonwealth; and

12 2. No creditor shall bring an action with respect to property that is the
13 subject of a qualified disposition unless that creditor proves by clear
14 and convincing evidence that the settlor's transfer of the property was
15 made with intent to defraud that specific creditor.

16 (3) For purposes of Sections 25 to 35 of this Act, a qualified disposition that is made
17 by means of a disposition by a transferor who is a trustee shall be deemed to have
18 been made as of the time the property that is the subject of the qualified
19 disposition was originally transferred to the transferor acting in the capacity of
20 trustee, or any predecessor trustee, in a form that meets the requirements of
21 subsections 11(a) and (c) of Section 25 of this Act.

22 (4) Notwithstanding any law to the contrary:

23 (a) A creditor, including a creditor whose claim arose before or after a
24 qualified disposition, or any other person shall have only the rights with
25 respect to a qualified disposition that are provided in this section and
26 Section 29 of this Act;

27 (b) Neither a creditor nor any other person shall have any claim or cause of

1 action against the trustee, an advisor of a qualified trust, or any person
2 involved in the counseling, drafting, preparation, execution, or funding of a
3 qualified trust; and

4 (c) For purposes of this subsection, counseling, drafting, preparation,
5 execution, or funding of a qualified trust includes the counseling, drafting,
6 preparation, execution, or funding of a limited partnership or limited
7 liability company if interests in the limited partnership or limited liability
8 company are subsequently transferred to the qualified trust.

9 (5) Notwithstanding any law to the contrary, no action of any kind, including but not
10 limited to an action to enforce a judgment entered by a court or other body
11 having adjudicative authority, shall be brought at law or in equity against a
12 trustee or an advisor of a qualified trust, or against any person involved in the
13 counseling, drafting, preparation, execution, or funding of a qualified trust if, as
14 of the date the action is brought, an action by a creditor with respect to the
15 qualified trust would be barred under this section.

16 (6) In circumstances where more than one (1) qualified disposition is made by means
17 of the same qualified trust:

18 (a) The making of a subsequent qualified disposition shall be disregarded in
19 determining whether a creditor's claim with respect to a prior qualified
20 disposition is extinguished as provided in subsection (2) of this section; and

21 (b) Any distribution to a beneficiary shall be deemed to have been made from
22 the latest qualified disposition.

23 (7) (a) If, in any action brought against a qualified trust, a court takes any action
24 whereby the court declines to apply the law of this Commonwealth in
25 determining the effect of a spendthrift provision of the trust:

26 1. The trustee shall immediately, upon the court's action and without the
27 further order of any court, cease in all respects to be trustee and a

1 successor trustee shall succeed as trustee in accordance with the terms
2 of the trust; or

3 2. If the trust does not provide for a successor trustee and the trust would
4 otherwise be without a trustee, a court of this Commonwealth, upon
5 the application of any beneficiary of the trust, shall appoint a
6 successor trustee upon the terms and conditions it determines to be
7 consistent with the purposes of the trust and Sections 25 to 35 of this
8 Act.

9 (b) Upon the trustee's ceasing to be trustee, the trustee shall have no power or
10 authority other than to convey the trust property to the successor trustee
11 named in the trust in accordance with this subsection.

12 (8) A qualified trust shall be subject to this section whether or not the transferor
13 retains any or all of the powers and rights described in Section 34 of this Act or
14 serves as an investment advisor pursuant to Section 32 of this Act.

15 (9) (a) Notwithstanding subsection (1) or (2) of this section, the limitations on
16 actions by creditors in law or equity shall not apply, and such creditors'
17 claims shall not be extinguished, if the transferor is indebted on account of
18 an agreement, judgment, or order of a court for the payment of any of the
19 following:

20 1. Past due child support;

21 2. Past due temporary or permanent maintenance to a spouse or former
22 spouse; or

23 3. A written agreement, judgment, or order of a court for division of
24 marital property of a spouse or former spouse, but only to the extent of
25 the debt, legally mandated interest on the debt, and the reasonable cost
26 of collection of the debt.

27 (b) 1. A claim under this subsection shall be asserted against a trustee only:

1 a. Upon a final, nonappealable determination of a Kentucky court
 2 or a fully domesticated, final, nonappealable order of a court of
 3 another state as defined by Section 82 of this Act that the debt is
 4 past due; and

5 b. After the court has determined that the claimant has made
 6 reasonable attempts to collect the debt from any other sources of
 7 the transferor or that such attempts would be futile.

8 2. Nothing in this paragraph shall be construed to prohibit the court
 9 from making the findings required in subparagraph 1. of this
 10 paragraph in the same proceeding and order.

11 (c) This subsection shall not apply to any claim for forced heirship, legitime, or
 12 elective share.

13 ➔SECTION 28. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
 14 READ AS FOLLOWS:

15 A transferor shall only have the powers and rights conferred by the qualified trust. The
 16 powers and rights conferred by the qualified trust upon the transferor are personal
 17 powers and rights that may not be exercised by a creditor or any other person, except
 18 as expressly permitted by the trust. Except as permitted by Sections 32 and 34 of this
 19 Act, the transferor shall have no rights or authority with respect to the corpus of the
 20 qualified trust or the income from the trust, and any agreement or understanding
 21 purporting to grant or permit the retention of any greater rights or authority shall be
 22 void.

23 ➔SECTION 29. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
 24 READ AS FOLLOWS:

25 (1) A qualified disposition to a qualified trust shall be avoided only to the extent
 26 necessary to satisfy the transferor's debt to the creditor at whose instance the
 27 disposition was avoided, together with costs, including attorneys' fees, that the

1 court may allow.

2 (2) In the event any qualified disposition is avoided as described in subsection (1) of
3 this section:

4 (a) If the court is satisfied that a qualified trustee has not acted in bad faith in
5 accepting or administering the property that is the subject of the qualified
6 disposition:

7 1. The qualified trustee shall have a first and paramount lien against the
8 property that is the subject of the qualified disposition in an amount
9 equal to the entire cost, including attorneys' fees, properly incurred by
10 the qualified trustee in defense of the action or proceedings to avoid
11 the qualified disposition;

12 2. The qualified disposition shall be avoided subject to the proper fees,
13 costs, preexisting rights, claims, and interests of the qualified trustee
14 and of any predecessor qualified trustee that has not acted in bad
15 faith; and

16 3. For purposes of this paragraph, it shall be presumed that the qualified
17 trustee did not act in bad faith merely by accepting the property; and

18 (b) 1. If the court is satisfied that a beneficiary of a qualified trust has not
19 acted in bad faith, the avoidance of the qualified disposition shall be
20 subject to the beneficiary's right to retain any distribution made upon
21 the exercise of a trust power or discretion vested in the qualified
22 trustee or qualified trustees of the qualified trust, which power or
23 discretion was properly exercised prior to the creditor's
24 commencement of an action to avoid a qualified disposition.

25 2. For purposes of this paragraph, it shall be presumed that the
26 beneficiary, including a beneficiary who is also a transferor of the
27 trust, did not act in bad faith merely by creating the trust or by

1 accepting a distribution made in accordance with the terms of the
 2 trust.

3 (3) A disposition by a trustee that is not a qualified trustee to a trustee that is a
 4 qualified trustee shall not be treated as other than a qualified disposition solely
 5 because the trust instrument fails to meet the requirements of subsection (11)(a)
 6 of Section 25 of this Act.

7 (4) In the case of a disposition to more than one (1) trustee, a disposition that is
 8 otherwise a qualified disposition shall not be treated as other than a qualified
 9 disposition solely because not all of the recipient trustees are qualified trustees.

10 ➔SECTION 30. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
 11 READ AS FOLLOWS:

12 A spendthrift provision as described in subsection (11)(c) of Section 25 of this Act shall
 13 be deemed to be a restriction on the transfer of the transferor's beneficial interest in
 14 the trust that is enforceable under applicable nonbankruptcy law within the meaning
 15 of 11 U.S.C. sec. 541(c)(2) or any successor provision.

16 ➔SECTION 31. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
 17 READ AS FOLLOWS:

18 (1) For purposes of Sections 25 to 35 of this Act, none of the following shall be
 19 considered a qualified trustee:

20 (a) The transferor or any other natural person who is a nonresident of this
 21 Commonwealth; or

22 (b) An entity:

23 1. That is not authorized by the law of this Commonwealth to act as a
 24 trustee; or

25 2. Whose activities are not subject to supervision as provided in
 26 subsection (12)(a) of Section 25 of this Act.

27 (2) (a) Nothing in Sections 25 to 35 of this Act shall preclude a transferor from

- 1 appointing one (1) or more advisors, including but not limited to:
- 2 1. Advisors who have authority under the terms of the trust instrument to
- 3 remove and appoint qualified trustees or trust advisors;
- 4 2. Advisors who have authority under the terms of the trust instrument to
- 5 direct, consent to, or disapprove distributions from the trust; or
- 6 3. Investment advisors, whether or not the advisors would meet the
- 7 requirements of subsection (12) of Section 25 of this Act.
- 8 (b) For purposes of this subsection, "advisor" includes a trust protector or any
- 9 other person who, in addition to a qualified trustee, holds one (1) or more
- 10 trust powers.

11 ➔SECTION 32. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
12 READ AS FOLLOWS:

13 A person may serve as an investment advisor notwithstanding that the person is the

14 transferor of the qualified disposition.

15 ➔SECTION 33. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
16 READ AS FOLLOWS:

17 In the event that a qualified trustee of a qualified trust ceases to meet the requirements

18 of subsection (12)(a) of Section 25 of this Act, and there remains no trustee that meets

19 the requirements, the qualified trustee shall be deemed to have resigned as of the time

20 of that cessation, and thereupon, the successor qualified trustee provided for in the

21 qualified trust shall become a qualified trustee of the qualified trust, or in the absence

22 of any successor qualified trustee provided for in the qualified trust, then a court of

23 this Commonwealth shall, upon application of any interested party, appoint a successor

24 qualified trustee.

25 ➔SECTION 34. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
26 READ AS FOLLOWS:

27 A qualified trust shall not be deemed revocable on account of its inclusion of one (1) or

1 more of the following:

2 (1) A transferor's power to veto a distribution from the trust;

3 (2) A power of appointment, other than a power to appoint to the transferor, the
4 transferor's creditors, the transferor's estate, or the creditors of the transferor's
5 estate, either exercisable by written instrument of the transferor during the
6 transferor's life or exercisable by will or other written instrument of the
7 transferor effective upon the transferor's death;

8 (3) The transferor's potential or actual receipt of income, including rights to the
9 income retained in the trust;

10 (4) The transferor's potential or actual receipt of income or principal from a
11 charitable remainder unitrust or charitable remainder annuity trust as those
12 terms are defined in 26 U.S.C. sec. 664 or any successor provision;

13 (5) The transferor's receipt each year of an amount specified in the trust, the amount
14 not to exceed five percent (5%) of the initial value of the trust or its value
15 determined from time to time pursuant to the trust;

16 (6) The transferor's potential or actual receipt or use of principal if the potential or
17 actual receipt or use of principal would be the result of a qualified trustee's or
18 qualified trustees' acting;

19 (a) In the qualified trustee's or trustees' discretion. For purposes of this
20 subsection, a qualified trustee is presumed to have discretion with respect to
21 the distribution of principal unless the discretion is expressly denied to the
22 trustee by the terms of the trust;

23 (b) Pursuant to a standard that governs the distribution of principal and does
24 not confer upon the transferor a power to consume, invade, or appropriate
25 property for the benefit of the transferor, unless the power of the transferor
26 is limited by an ascertainable standard relating to the health, education,
27 support, or maintenance within the meaning of 26 U.S.C. sec. 2041(b)(1)(A)

- 1 or 2514(c)(1), as amended; or
- 2 (c) At the direction of an advisor described in Section 31 of this Act who is
- 3 acting:
- 4 1. In the advisor's discretion; or
- 5 2. Pursuant to a standard that governs the distribution of principal and
- 6 does not confer upon the transferor a power to consume, invade, or
- 7 appropriate property for the benefit of the transferor, unless the power
- 8 of the transferor is limited by an ascertainable standard relating to the
- 9 health, education, support, or maintenance within the meaning of 26
- 10 U.S.C. sec. 2041(b)(1)(A) or 2514(c)(1), as amended;
- 11 (7) The transferor's right to remove a trustee or advisor and to appoint a new trustee
- 12 or advisor; provided, however, that the right shall not include the appointment of
- 13 a person who is a related or subordinate party with respect to the transferor
- 14 within the meaning of 26 U.S.C. sec. 672(c) or any successor provision;
- 15 (8) The transferor's potential or actual use of real property held under a qualified
- 16 personal residence trust within the meaning of the term as described in 26 U.S.C.
- 17 sec. 2702(c) or any successor provision;
- 18 (9) The transferor's potential or actual receipt of income or principal to pay, in
- 19 whole or in part, income taxes due on income of the trust if the potential or actual
- 20 receipt of income or principal is pursuant to a provision in the trust instrument
- 21 that expressly permits a distribution to the transferor as reimbursement for such
- 22 taxes and if the distribution would be the result of a qualified trustee's or
- 23 qualified trustees' acting:
- 24 (a) In the qualified trustee's or trustees' discretion or pursuant to a mandatory
- 25 direction in the trust instrument; or
- 26 (b) At the direction of an advisor described in Section 31 of this Act who is
- 27 acting in that advisor's discretion;

1 (10) The ability, whether pursuant to direction in the qualified trust or discretion of a
 2 qualified trustee to pay, after the death of the transferor, all or any part of the
 3 debts of the transferor outstanding at the time of the transferor's death, the
 4 expenses of administering the transferor's estate, or any estate or inheritance tax
 5 imposed on or with respect to the transferor's estate; or

6 (11) A qualified trustee's or qualified trustees' authority to make distributions to pay
 7 taxes in lieu of or in addition to the power to make a distribution for taxes
 8 pursuant to subsections (3), (6), (9), or (10) of this section by direct payment to
 9 taxing authorities.

10 ➔SECTION 35. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
 11 READ AS FOLLOWS:

12 Sections 25 to 35 of this Act shall apply to qualified dispositions to qualified trusts and
 13 dispositions by transferors who are trustees made on or after the effective date of this
 14 Act.

15 ➔SECTION 36. SUBCHAPTER 12 OF KRS CHAPTER 386B IS
 16 ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS
 17 FOLLOWS:

18 As used in this subchapter:

19 (1) "Breach of trust" includes a violation by a trust director or trustee of a duty
 20 imposed on that director or trustee by the terms of the trust, the provisions of
 21 Sections 36 to 52 of this Act, or other law of this Commonwealth pertaining to
 22 trusts;

23 (2) "Directed trust" means a trust for which the terms of the trust grant a power of
 24 direction;

25 (3) "Directed trustee" means a trustee that is subject to a trust director's power of
 26 direction;

27 (4) "Person" has the same meaning as in Section 82 of this Act;

- 1 (5) "Power of direction" has the same meaning as in Section 82 of this Act.
 2 (6) "Settlor" has the same meaning as in Section 82 of this Act;
 3 (7) "State" has the same meaning as in Section 82 of this Act;
 4 (8) "Terms of a trust" has the same meaning as in Section 82 of this Act;
 5 (9) "Trust director" has the same meaning as in Section 82 of this Act; and
 6 (10) "Trustee" has the same meaning as in Section 82 of this Act.

7 ➔SECTION 37. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
 8 386B IS CREATED TO READ AS FOLLOWS:

9 Sections 36 to 52 of this Act apply to a trust, whenever created, that has its principal
 10 place of administration in this Commonwealth, subject to the following rules:

11 (1) If the trust was created before the effective date of this Act, Sections 36 to 52 of
 12 this Act apply only to a decision or action occurring on or after the effective date
 13 of this Act; and

14 (2) If the principal place of administration of the trust is changed to this
 15 Commonwealth on or after the effective date of this Act, Sections 36 to 52 of this
 16 Act apply only to a decision or action occurring on or after the date of the
 17 change.

18 ➔SECTION 38. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
 19 386B IS CREATED TO READ AS FOLLOWS:

20 The common law and principles of equity supplement the provisions of Sections 36 to
 21 52 of this Act, except to the extent modified by Sections 36 to 52 of this Act or another
 22 statute of this Commonwealth.

23 ➔SECTION 39. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
 24 386B IS CREATED TO READ AS FOLLOWS:

25 (1) As used in this section, "power of appointment" means a power that enables a
 26 person acting in a nonfiduciary capacity to designate a recipient of an ownership
 27 interest in or another power of appointment over trust property.

1 (2) The provisions of Sections 36 to 52 of this Act shall not apply to a:

2 (a) Power of appointment;

3 (b) Power to appoint or remove a trustee or trust director;

4 (c) Power of a settlor over a trust to the extent the settlor has a power to revoke
5 the trust;

6 (d) Power of a beneficiary over a trust to the extent the exercise or nonexercise
7 of the power affects the beneficial interest of:

8 1. The beneficiary; or

9 2. Another beneficiary represented by the beneficiary under KRS
10 386B.3-010 to 386B.3-050 with respect to the exercise or nonexercise
11 of the power, or;

12 (e) Power over a trust if:

13 1. The terms of the trust provide that the power is held in a nonfiduciary
14 capacity; and

15 2. The power must be held in a nonfiduciary capacity to achieve the
16 settlor's tax objectives under the United States Internal Revenue Code
17 of 1986, as amended, and regulations issued thereunder, as amended.

18 (3) Unless the terms of a trust provide otherwise, a power granted to a person to
19 designate a recipient of an ownership interest in or power of appointment over
20 trust property which is exercisable while the person is not serving as a trustee is a
21 power of appointment and not a power of direction.

22 ➔SECTION 40. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
23 386B IS CREATED TO READ AS FOLLOWS:

24 (1) Subject to Section 41 of this Act, the terms of a trust may grant a power of
25 direction to a trust director.

26 (2) Unless the terms of a trust provide otherwise:

27 (a) A trust director may exercise any further power appropriate to the exercise

1 or nonexercise of power of direction granted to the director under
2 subsection (1) of this section; and

3 (b) Trust directors with joint powers shall act by majority decision.

4 ➔SECTION 41. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
5 386B IS CREATED TO READ AS FOLLOWS:

6 A trust director is subject to the same rules as a trustee in a like position and under
7 similar circumstances in the exercise or nonexercise of a power of direction or further
8 power under subsection (2)(a) of Section 40 of this Act regarding:

9 (1) A payback provision in the terms of a trust necessary to comply with the
10 reimbursement requirements of Medicaid law in Section 1917 of the Social
11 Security Act, 42 U.S.C. sec. 1396p(d)(4)(A), as amended, and regulations issued
12 thereunder, as amended; and

13 (2) A charitable interest in the trust, including notice regarding the interest to the
14 Attorney General.

15 ➔SECTION 42. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
16 386B IS CREATED TO READ AS FOLLOWS:

17 (1) Subject to subsection (2) of this section, with respect to a power of direction or
18 further power under subsection (2)(a) of Section 40 of this Act:

19 (a) A trust director has the same fiduciary duty and liability in the exercise or
20 nonexercise of the power:

21 1. If the power is held individually, as a sole trustee in a like position and
22 under similar circumstances; or

23 2. If the power is held jointly with a trustee or another trust director, as a
24 cotrustee in like position and under similar circumstances; and

25 (b) The terms of the trust may vary the director's duty or liability to the same
26 extent the terms of the trust could vary the duty or liability of a trustee in a
27 like position and under similar circumstances.

1 (2) Unless the terms of a trust provide otherwise, if a trust director is licensed,
2 certified, or otherwise authorized or permitted by law other than the provisions of
3 Sections 36 to 52 of this Act to provide health care in the ordinary course of the
4 director's business or practice of a profession, to the extent the director acts in
5 that capacity, the director shall have no duty or liability under Sections 36 to 52
6 of this Act.

7 (3) The terms of a trust may impose a duty or liability on a trust director in addition
8 to the duties and liabilities under this section.

9 ➔SECTION 43. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
10 386B IS CREATED TO READ AS FOLLOWS:

11 (1) Subject to subsection (2) of this section, a directed trustee shall take reasonable
12 action to comply with a trust director's exercise or nonexercise of a power of
13 direction or further power under subsection (2)(a) of Section 40 of this Act, and
14 the trustee is not liable for the action.

15 (2) A directed trustee shall not comply with a trust director's exercise or nonexercise
16 of a power of direction or further power under Section 40 of this Act to the extent
17 that by complying, the trustee would engage in willful misconduct.

18 (3) An exercise of a power of direction under which a trust director may release a
19 trustee or another trust director from liability for breach of trust is not effective
20 if:

21 (a) The breach involved the trustee's or other director's willful misconduct;

22 (b) The release was induced by improper conduct of the trustee or other
23 director in procuring the release; or

24 (c) At the time of the release, the director did not know the material facts
25 relating to the breach.

26 (4) A directed trustee that has reasonable doubt about its duty under this section may
27 petition a court with jurisdiction under Subchapter 2 of KRS Chapter 386B for

1 instructions.

2 (5) The terms of a trust may impose a duty or liability on a directed trustee in
 3 addition to the duties and liabilities under this section.

4 ➔SECTION 44. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
 5 386B IS CREATED TO READ AS FOLLOWS:

6 (1) Subject to Section 45 of this Act, a trustee shall provide information to a trust
 7 director to the extent the information is reasonably related to both:

8 (a) The powers or duties of the trustee; and

9 (b) The powers or duties of the director.

10 (2) Subject to Section 45 of this Act, a trust director shall provide information to a
 11 trustee or another trust director to the extent the information is reasonably
 12 related to both:

13 (a) The powers or duties of the director; and

14 (b) The powers or duties of the trustee or other director.

15 (3) A trustee that acts in reliance on information provided by a trust director is not
 16 liable for breach of trust to the extent the breach resulted from the reliance,
 17 unless by so acting the trust director engages in willful misconduct.

18 (4) A trust director that acts in reliance on information provided by a trustee or
 19 another trust director is not liable for a breach of trust to the extent the breach
 20 resulted from the reliance, unless by so acting the trust director engages in willful
 21 misconduct.

22 ➔SECTION 45. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
 23 386B IS CREATED TO READ AS FOLLOWS:

24 (1) Unless the terms of a trust provide otherwise:

25 (a) The trustee shall not have a duty to:

26 1. Monitor a trust director; or

27 2. Inform or give advice to a settlor, beneficiary, trustee, or trust director

1 concerning an instance in which the trustee might have acted
 2 differently than the director; and

3 (b) By taking an action described in paragraph (a) of this subsection, a trustee
 4 does not assume the duty excluded by paragraph (a) of this subsection.

5 (2) Unless the terms of a trust provide otherwise:

6 (a) The trust director shall not have a duty to:

7 1. Monitor a trustee or another trust director; or

8 2. Inform or give advice to a settlor, beneficiary, trustee, or another trust
 9 director concerning an instance in which the director might have
 10 acted differently than a trustee or another director; and

11 (b) By taking an action described in paragraph (a) of this subsection, a trust
 12 director does not assume the duty excluded by paragraph (a) of this
 13 subsection.

14 ➔SECTION 46. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
 15 386B IS CREATED TO READ AS FOLLOWS:

16 The terms of a trust may relieve a cotrustee from duty and liability with respect to
 17 another cotrustee's exercise or nonexercise of a power of the other cotrustee to the
 18 same extent that in a directed trust a directed trustee is relieved from duty and liability
 19 with respect to a trust director's power under Sections 43, 44, and 45 of this Act.

20 ➔SECTION 47. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
 21 386B IS CREATED TO READ AS FOLLOWS:

22 (1) An action against a trust director for breach of trust shall be commenced within
 23 the same limitation period as under KRS 386B.10-050 for an action for breach of
 24 trust against a trustee in a like position and under similar circumstances.

25 (2) A report or accounting has the same effect on the limitation period for an action
 26 against a trust director for breach of trust that the report or accounting would
 27 have under KRS 386B.10-050 in an action for breach of trust against a trustee in

1 *a like position and under similar circumstances.*

2 ➔SECTION 48. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
3 386B IS CREATED TO READ AS FOLLOWS:

4 *In an action against a trust director for breach of trust, the director may assert the*
5 *same defenses a trustee in a like position and under similar circumstances could assert*
6 *in an action for breach of trust against the trustee.*

7 ➔SECTION 49. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
8 386B IS CREATED TO READ AS FOLLOWS:

9 *(1) By accepting appointment as a trust director of a trust subject to the provisions of*
10 *Sections 36 to 52 of this Act, the director submits to personal jurisdiction of the*
11 *courts of this Commonwealth regarding any matter related to a power or duty of*
12 *the director.*

13 *(2) This section shall not preclude other methods of obtaining jurisdiction over a*
14 *trust director.*

15 ➔SECTION 50. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
16 386B IS CREATED TO READ AS FOLLOWS:

17 *Unless the terms of a trust provide otherwise, the rules applicable to a trustee apply to a*
18 *trust director regarding the following matters:*

19 *(1) Acceptance under KRS 386B.7-010;*

20 *(2) Giving of bond to secure performance under KRS 386B.7-020;*

21 *(3) Reasonable compensation under KRS 386B.7.080;*

22 *(4) Resignation under KRS 386B.7-050;*

23 *(5) Removal under KRS 386B.7-060; and*

24 *(6) Vacancy and appointment of successor under KRS 386B.7-040.*

25 ➔SECTION 51. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
26 386B IS CREATED TO READ AS FOLLOWS:

27 *In applying and construing Sections 36 to 52 of this Act, consideration shall be given*

1 to the need to promote uniformity of the law with respect to its subject matter among
 2 states that enact it.

3 ➔SECTION 52. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
 4 386B IS CREATED TO READ AS FOLLOWS:

5 The provisions of Sections 36 to 52 of this Act modify, limit, or supersede the
 6 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. sec. 7001 et
 7 seq., but do not modify, limit, or supersede 15 U.S.C. sec. 7001(c) or authorize
 8 electronic delivery of any of the notices described in 15 U.S.C. sec. 7003(b).

9 ➔SECTION 53. SUBCHAPTER 13 OF KRS CHAPTER 386B IS
 10 ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS
 11 FOLLOWS:

12 As used in this subchapter:

13 (1) "Appointive property" means the property or property interest subject to a power
 14 of appointment;

15 (2) "Ascertainable standard" means the same as in Section 82 of this Act;

16 (3) "Authorized fiduciary" means:

17 (a) A trustee or other fiduciary, other than a settlor, that has discretion to
 18 distribute or direct a trustee to distribute part or all of the principal of the
 19 first trust to one (1) or more current beneficiaries;

20 (b) A special fiduciary appointed under Section 60 of this Act; or

21 (c) A special needs fiduciary under Section 64 of this Act;

22 (4) "Beneficiary" means a person that:

23 (a) Has a present or future, vested or contingent, beneficial interest in a trust;

24 (b) Holds a power of appointment over trust property; or

25 (c) Is an identified charitable organization that will or may receive distributions
 26 under the terms of the trust;

27 (5) "Charitable interest" means an interest in a trust which:

- 1 (a) Is held by an identified charitable organization and makes the organization
2 a qualified beneficiary;
- 3 (b) Benefits only charitable organizations and, if the interest were held by an
4 identified charitable organization, would make the organization a qualified
5 beneficiary; or
- 6 (c) Is held solely for charitable purposes and, if the interest were held by an
7 identified charitable organization, would make the organization a qualified
8 beneficiary;
- 9 (6) "Charitable organization" means:
- 10 (a) A person, other than an individual, organized and operated exclusively for
11 charitable purposes; or
- 12 (b) A government or governmental subdivision, agency, or instrumentality, to
13 the extent it holds funds exclusively for a charitable purpose;
- 14 (7) "Charitable purpose" means the relief of poverty, the advancement of education
15 or religion, the promotion of health, a municipal or other governmental purpose,
16 or another purpose the achievement of which is beneficial to the community;
- 17 (8) "Court" means a court in this Commonwealth having jurisdiction in matters
18 relating to trusts under Subchapter 2 of this chapter;
- 19 (9) "Current beneficiary":
- 20 (a) Means a beneficiary that on the date of the beneficiary's qualification is
21 determined is a distributee or permissible distributee of trust income or
22 principal; and
- 23 (b) Includes the holder of a presently exercisable general power of appointment
24 but does not include a person that is a beneficiary only because the person
25 holds any other power of appointment;
- 26 (10) "Decanting power" or "the decanting power" means the power of an authorized
27 fiduciary under Sections 36 to 52 of this Act to distribute property of a first trust

- 1 to one (1) or more second trusts or to modify the terms of the first trust;
- 2 (11) "Expanded distributive discretion" means a discretionary power of distribution
- 3 that is not limited to an ascertainable standard or a reasonably definite standard;
- 4 (12) "First trust" means a trust over which an authorized fiduciary may exercise the
- 5 decanting power;
- 6 (13) "First-trust instrument" means the trust instrument for a first trust;
- 7 (14) "General power of appointment" means a power of appointment exercisable in
- 8 favor of a powerholder, the powerholder's estate, a creditor of the powerholder,
- 9 or a creditor of the powerholder's estate;
- 10 (15) "Jurisdiction" has the same meaning as in Section 82 of this Act;
- 11 (16) "Person" has the same meaning as in Section 82 of this Act;
- 12 (17) "Power of appointment":
- 13 (a) Means a power that enables a powerholder acting in a nonfiduciary
- 14 capacity to designate a recipient of an ownership interest in or another
- 15 power of appointment over the appointive property; and
- 16 (b) Does not include a power of attorney;
- 17 (18) "Powerholder" means a person in which a donor creates a power of
- 18 appointment;
- 19 (19) "Presently exercisable power of appointment" means a power of appointment
- 20 exercisable by the powerholder at the relevant time and:
- 21 (a) Includes a power of appointment exercisable only after the occurrence of a
- 22 specified event, the satisfaction of an ascertainable standard, or the passage
- 23 of a specified time only after:
- 24 1. The occurrence of the specified event;
- 25 2. The satisfaction of the ascertainable standard; or
- 26 3. The passage of the specified time; and
- 27 (b) Does not include a power exercisable only at the powerholder's death;

- 1 (20) "Qualified beneficiary" has the same meaning as in Section 82 of this Act;
- 2 (21) "Reasonably definite standard" means a clearly measurable standard under
3 which a holder of a power of distribution is legally accountable within the
4 meaning of 26 U.S.C. sec. 674(b)(5)(A), as amended, and any applicable
5 regulations;
- 6 (22) "Record" has the same meaning as in Section 1 of this Act;
- 7 (23) "Second-trust instrument" means the trust instrument for a second trust;
- 8 (24) "Settlor," except as otherwise provided in Section 76 of this Act, has the same
9 meaning as in Section 82 of this Act;
- 10 (25) "Sign" has the same meaning as in Section 1 of this Act;
- 11 (26) "State" has the same meaning as in Section 82 of this Act;
- 12 (27) "Terms of the trust" has the same meaning as in Section 82 of this Act; and
- 13 (28) "Trust instrument" has the same meaning as in Section 82 of this Act.
- 14 ➔SECTION 54. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
15 386B IS CREATED TO READ AS FOLLOWS:
- 16 (1) Except as otherwise provided in subsections (2) and (3) of this section, the
17 provisions of Sections 53 to 80 of this Act shall apply to an express trust that is
18 irrevocable or revocable by the settlor only with the consent of the trustee or a
19 person holding an adverse interest.
- 20 (2) Sections 53 to 80 of this Act shall not apply to a trust held solely for charitable
21 purposes.
- 22 (3) Subject to Section 66 of this Act, a trust instrument may restrict or prohibit
23 exercise of the decanting power.
- 24 (4) Sections 53 to 80 of this Act do not limit the power of a trustee, powerholder, or
25 other person to distribute or appoint property in further trust or to modify a trust
26 under the trust instrument, statutes of this Commonwealth other than the
27 provisions of Sections 53 to 80 of this Act, common law, a court order, or a

1 nonjudicial settlement agreement.

2 (5) Sections 53 to 80 of this Act do not affect the ability of a settlor to provide in a
 3 trust instrument for the distribution of the trust property or appointment in
 4 further trust of the trust property or for modification of the trust instrument.

5 ➔SECTION 55. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
 6 386B IS CREATED TO READ AS FOLLOWS:

7 (1) In exercising the decanting power, an authorized fiduciary shall act in
 8 accordance with its fiduciary duties, including the duty to act in accordance with
 9 the purposes of the first trust.

10 (2) Sections 53 to 80 of this Act do not create or imply a duty to exercise the
 11 decanting power or to inform the beneficiaries about the applicability of Sections
 12 53 to 80 of this Act.

13 (3) Except as otherwise provided in a first-trust instrument, for purposes of Sections
 14 36 to 52 of this Act and KRS 386B.8-010 and 386B.8-020, the terms of the first
 15 trust are deemed to include the decanting power.

16 ➔SECTION 56. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
 17 386B IS CREATED TO READ AS FOLLOWS:

18 Sections 53 to 80 of this Act shall apply to a trust created before, on, or after the
 19 effective date of this Act which:

20 (1) Has its principal place of administration in this Commonwealth, including a trust
 21 whose principal place of administration has been changed to this
 22 Commonwealth; or

23 (2) Provides by its trust instrument that it is governed by the law of this
 24 Commonwealth or is governed by the law of this Commonwealth for the purpose
 25 of:

26 (a) Administration, including administration of a trust whose governing law for
 27 purposes of administration has been changed to the law of this

1 Commonwealth;

2 (b) Construction of the terms of the trust; or

3 (c) Determining the meaning or effect of terms of the trust.

4 ➔SECTION 57. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
5 386B IS CREATED TO READ AS FOLLOWS:

6 A trustee or other person that reasonably relies on the validity of a distribution of part
7 or all of the property of a trust to another trust, or a modification of a trust, under
8 Sections 53 to 80 of this Act, statutes of this Commonwealth other than Sections 53 to
9 80 of this Act, or the law of another jurisdiction is not liable to any person for any
10 action or failure to act as a result of the reliance.

11 ➔SECTION 58. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
12 386B IS CREATED TO READ AS FOLLOWS:

13 (1) A notice period in this section begins on the day notice is given under subsection
14 (3) of this section and ends fifty-nine (59) days after the day notice is given.

15 (2) Except as otherwise provided in Sections 53 to 80 of this Act, an authorized
16 fiduciary may exercise the decanting power without the consent of any person
17 and without court approval.

18 (3) Except as otherwise provided in subsection (6) of this section, an authorized
19 fiduciary shall give notice in a record of the intended exercise of the decanting
20 power not less than sixty (60) days before the exercise to:

21 (a) Each settlor of the first trust, if living or then in existence;

22 (b) Each qualified beneficiary of the first trust;

23 (c) Each holder of a presently exercisable power of appointment over any part
24 or all of the first trust;

25 (d) Each person that currently has the right to remove or replace the authorized
26 fiduciary;

27 (e) Each other fiduciary of the first trust;

- 1 (f) Each fiduciary of the second trust; and
- 2 (g) The Attorney General, if subsection (2) of Section 65 of this Act applies.
- 3 (4) An authorized fiduciary is not required to give notice under subsection (3) of this
- 4 section to a person that is not known to the fiduciary or is known to the fiduciary
- 5 but cannot be located by the fiduciary after reasonable diligence.
- 6 (5) A notice under subsection (3) of this section shall:
- 7 (a) Specify the manner in which the authorized fiduciary intends to exercise the
- 8 decanting power;
- 9 (b) Specify the proposed effective date for exercise of the power;
- 10 (c) Include a copy of the first-trust instrument; or
- 11 (d) Include a copy of all second-trust instruments.
- 12 (6) The decanting power may be exercised before the expiration of the notice period
- 13 under subsection (1) of this section if all persons entitled to receive notice waive
- 14 the period in a signed record.
- 15 (7) The receipt of notice, waiver of the notice period, or expiration of the notice
- 16 period does not affect the right of a person to file an application under Section 60
- 17 of this Act asserting that:
- 18 (a) An attempted exercise of the decanting power is ineffective because it did
- 19 not comply with the provisions of Sections 53 to 80 of this Act or was an
- 20 abuse of discretion or breach of fiduciary duty; or
- 21 (b) Section 73 of this Act applies to the exercise of the decanting power.
- 22 (8) An exercise of the decanting power is not ineffective because of the failure to give
- 23 notice to one (1) or more persons under subsection (3) of this section if the
- 24 authorized fiduciary acted with reasonable care to comply with subsection (3) of
- 25 this section.

26 ➔SECTION 59. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER

27 386B IS CREATED TO READ AS FOLLOWS:

- 1 (1) Notice to a person with authority to represent and bind another person under a
 2 first-trust instrument or the provisions of this chapter has the same effect as
 3 notice given directly to the person represented.
- 4 (2) Consent of or waiver by a person with authority to represent and bind another
 5 person under a first-trust instrument or the provisions of this chapter is binding
 6 on the person represented unless the person represented objects to the
 7 representation before the consent or waiver otherwise would become effective.
- 8 (3) A person with authority to represent and bind another person under a first-trust
 9 instrument or the provisions of this chapter may file an application under Section
 10 60 of this Act on behalf of the person represented.
- 11 (4) A settlor may not bind or represent a beneficiary under Sections 53 to 80 of this
 12 Act.

13 ➔SECTION 60. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
 14 386B IS CREATED TO READ AS FOLLOWS:

- 15 (1) On application of an authorized fiduciary, a person entitled to notice under
 16 subsection (3) of Section 58 of this Act, a beneficiary, or with respect to a
 17 charitable interest, the Attorney General or other person that has standing to
 18 enforce the charitable interest, the court may:
- 19 (a) Provide instructions to the authorized fiduciary regarding whether a
 20 proposed exercise of the decanting power is permitted under Sections 53 to
 21 80 of this Act and consistent with the fiduciary duties of the authorized
 22 fiduciary;
- 23 (b) Appoint a special fiduciary and authorize the special fiduciary to determine
 24 whether the decanting power should be exercised under Sections 53 to 80 of
 25 this Act and to exercise the decanting power;
- 26 (c) Approve an exercise of the decanting power;
- 27 (d) Determine that a proposed or attempted exercise of the decanting power is

1 ineffective because:

2 1. After applying Section 73 of this Act, the proposed or attempted
 3 exercise does not or did not comply with the provisions of Sections 53
 4 to 80 of this Act; or

5 2. The proposed or attempted exercise would be or was an abuse of
 6 fiduciary's discretion or a breach of fiduciary duty;

7 (e) Determine the extent to which Section 73 of this Act applies to a prior
 8 exercise of the decanting power;

9 (f) Provide instructions to the trustee regarding the application of Section 73 of
 10 this Act to a prior exercise of the decanting power; or

11 (g) Order other relief to carry out the purposes of Sections 53 to 80 of this Act.

12 (2) On application of an authorized fiduciary, the court may approve:

13 (a) An increase in the fiduciary's compensation under Section 67 of this Act; or

14 (b) A modification under Section 69 of this Act of a provision granting a person
 15 the right to remove or replace the fiduciary.

16 ➔SECTION 61. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
 17 386B IS CREATED TO READ AS FOLLOWS:

18 An exercise of the decanting power shall be made in a record signed by an authorized
 19 fiduciary. The signed record shall, directly or by reference to the notice required by
 20 Section 58 of this Act, identify the first trust and the second trust or trusts and state the
 21 property of the first trust being distributed to each second trust and the property, if any,
 22 that remains in the first trust.

23 ➔SECTION 62. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
 24 386B IS CREATED TO READ AS FOLLOWS:

25 (1) As used in this section:

26 (a) "Noncontingent right" means a right that is not subject to the exercise of
 27 discretion or the occurrence of a specified event that is not certain to occur.

1 The term does not include a right held by a beneficiary if any person has
2 discretion to distribute property subject to the right to any person other than
3 the beneficiary or the beneficiary's estate;

4 (b) "Presumptive remainder beneficiary" means a qualified beneficiary other
5 than a current beneficiary;

6 (c) "Successor beneficiary" means a beneficiary that is not a qualified
7 beneficiary on the date the beneficiary's qualification is determined. The
8 term does not include a person that is a beneficiary only because the person
9 holds a nongeneral power of appointment; and

10 (d) "Vested interest" means:

11 1. A right to a mandatory distribution that is a noncontingent right as of
12 the date of the exercise of the decanting power;

13 2. A current and noncontingent right, annually or more frequently, to a
14 mandatory distribution of income, a specified dollar amount, or a
15 percentage of value of some or all of the trust property;

16 3. A current and noncontingent right, annually or more frequently, to
17 withdraw income, a specified dollar amount, or a percentage of value
18 of some or all of the trust property;

19 4. A presently exercisable general power of appointment; or

20 5. A right to receive an ascertainable part of the trust property on the
21 trust's termination which is not subject to the exercise of discretion or
22 to the occurrence of a specified event that is not certain to occur.

23 (2) Subject to subsection (3) of this section and Section 65 of this Act, an authorized
24 fiduciary that has expanded distributive discretion over the principal of a first
25 trust for the benefit of one (1) or more current beneficiaries may exercise the
26 decanting power over the principal of the first trust.

27 (3) Subject to Section 64 of this Act, in an exercise of the decanting power under this

1 section, a second trust shall not:

2 (a) Include as a current beneficiary a person that is not a current beneficiary of
3 the first trust, except as otherwise provided in subsection (4) of this section;

4 (b) Include as a presumptive remainder beneficiary or successor beneficiary a
5 person that is not a current beneficiary, presumptive remainder beneficiary,
6 or successor beneficiary of the first trust, except as otherwise provided in
7 subsection (4) of this section; or

8 (c) Reduce or eliminate a vested interest.

9 (4) Subject to subsection (3)(c) of this section and Section 65 of this Act, in an
10 exercise of the decanting power under this section, a second trust may be a trust
11 created or administered under the law of any jurisdiction and may:

12 (a) Retain a power of appointment granted in the first trust;

13 (b) Omit a power of appointment granted in the first trust, other than a
14 presently exercisable general power of appointment;

15 (c) Create or modify a power of appointment if the powerholder is a current
16 beneficiary of the first trust and the authorized fiduciary has expanded
17 distributive discretion to distribute principal to the beneficiary; and

18 (d) Create or modify a power of appointment if the powerholder is a
19 presumptive remainder beneficiary or successor beneficiary of the first
20 trust, but the exercise of the power may take effect only after the
21 powerholder becomes, or would have become if then living, a current
22 beneficiary.

23 (5) A power of appointment described in paragraphs (a) to (d) of subsection (4) of
24 this section may be general or nongeneral. The class of permissible appointees in
25 favor of which the power may be exercised may be broader than or different from
26 the beneficiaries of the first trust.

27 (6) If an authorized fiduciary has expanded distributive discretion over part but not

1 all of the principal of a first trust, the fiduciary may exercise the decanting power
 2 under this section over that part of the principal over which the authorized
 3 fiduciary has expanded distributive discretion.

4 ➔SECTION 63. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
 5 386B IS CREATED TO READ AS FOLLOWS:

6 (1) As used in this section, "limited distributive discretion" means a discretionary
 7 power of distribution that is limited to an ascertainable standard or a reasonably
 8 definite standard.

9 (2) An authorized fiduciary that has limited distributive discretion over the principal
 10 of the first trust for the benefit of one (1) or more current beneficiaries may
 11 exercise the decanting power over the principal of the first trust.

12 (3) Under this section and subject to Section 65 of this Act, a second trust may be
 13 created or administered under the law of any jurisdiction. Under this section, the
 14 second trusts, in the aggregate, shall grant each beneficiary of the first trust
 15 beneficial interests which are substantially similar to the beneficial interests of
 16 the beneficiary of the first trust.

17 (4) A power to make a distribution under a second trust for the benefit of a
 18 beneficiary who is an individual substantially similar to a power under the first
 19 trust to make a distribution directly to the beneficiary. A distribution is for the
 20 benefit of a beneficiary if:

21 (a) The distribution is applied for the benefit of the beneficiary;

22 (b) The beneficiary is under a legal disability or the trustee reasonably believes
 23 the beneficiary is incapacitated, and the distribution is made as permitted
 24 under this chapter; or

25 (c) The distribution is made as permitted under the terms of the first-trust
 26 instrument and the second-trust instrument for the benefit of the
 27 beneficiary.

1 (5) If an authorized fiduciary has limited distributive discretion over part but not all
 2 of the principal of a first trust, the fiduciary may exercise the decanting power
 3 under this section over that part of the principal over which the authorized
 4 fiduciary has limited distributive discretion.

5 ➔SECTION 64. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
 6 386B IS CREATED TO READ AS FOLLOWS:

7 (1) As used in this section:

8 (a) "Beneficiary with a disability" means a beneficiary of a first trust who the
 9 special needs fiduciary believes may qualify for governmental benefits based
 10 on disability, whether or not the beneficiary currently receives those benefits
 11 or is an individual who has been adjudicated incompetent;

12 (b) "Governmental benefits" means financial aid or services from a state,
 13 federal, or other public agency;

14 (c) "Special needs fiduciary" means, with respect to a trust that has a
 15 beneficiary with a disability:

16 1. A trustee or other fiduciary, other than a settlor, that has discretion to
 17 distribute part or all of the principal of a first trust to one (1) or more
 18 current beneficiaries;

19 2. If no trustee or fiduciary has discretion under subparagraph 1. of this
 20 paragraph, a trustee or other fiduciary, other than a settlor, that has
 21 discretion to distribute part or all of the income of the first trust to one
 22 (1) or more current beneficiaries; or

23 3. If no trustee or beneficiary has discretion under subparagraphs 1. and
 24 2. of this paragraph, a trustee or other fiduciary, other than a settlor,
 25 that is required to distribute part or all of the income or principal of
 26 the first trust to one (1) or more current beneficiaries; and

27 (d) "Special needs trust" means a trust that the trustee believes would not be

1 considered a resource for purposes of determining whether a beneficiary
2 with a disability is eligible for governmental benefits.

3 (2) A special needs fiduciary may exercise the decanting power in Section 62 of this
4 Act over the principal of the first trust as if the fiduciary had authority to
5 distribute principal to a beneficiary with a disability subject to expanded
6 distributive discretion if:

7 (a) A second trust is a special needs trust that benefits the beneficiary with a
8 disability; and

9 (b) The special needs fiduciary determines that exercise of the decanting power
10 will further the purposes of the first trust.

11 (3) In an exercise of the decanting power under this section, the following rules
12 apply:

13 (a) Notwithstanding subsection (3)(b) of Section 62 of this Act, the interest in
14 the second trust of a beneficiary with a disability may:

15 1. Be a pooled trust as defined by Medicaid law for the benefit of the
16 beneficiary with a disability under 42 U.S.C. sec. 1396p(d)(4)(A), as
17 amended; or

18 2. Contain payback provisions complying with reimbursement
19 requirements of Medicaid law under 42 U.S.C. sec. 1396p(d)(4)(A), as
20 amended;

21 (b) Subsection (3)(c) of Section 62 of this Act shall not apply to the interests of
22 the beneficiary with a disability; and

23 (c) Except as affected by any change to the interests of the beneficiary with a
24 disability, the second trust, or if there are two (2) or more second trusts, the
25 second trusts in the aggregate, shall grant each other beneficiary of the first
26 trust beneficial interests in the second trust which are substantially similar
27 to the beneficiary's beneficial interests in the first trust.

1 ➔SECTION 65. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
2 386B IS CREATED TO READ AS FOLLOWS:

3 (1) As used in this section:

4 (a) "Determinable charitable interest" means a charitable interest that is a
5 right to a mandatory distribution currently, periodically, on the occurrence
6 of a specified event, or after the passage of a specified time and which is
7 unconditional or will be held solely for charitable purposes; and

8 (b) "Unconditional" means not subject to the occurrence of a specified event
9 that is not certain to occur, other than a requirement in a trust instrument
10 that a charitable organization be in existence or qualify under a particular
11 provision of the United States Internal Revenue Code of 1986, as amended,
12 on the date of the distribution, if the charitable organization meets the
13 requirement on the date of determination.

14 (2) If a first trust contains a determinable charitable interest, the Attorney General
15 has the rights of a qualified beneficiary and may represent and bind the
16 charitable interest.

17 (3) If a first trust contains a charitable interest, the second trust or trusts shall not:

18 (a) Diminish the charitable interest;

19 (b) Diminish the interest of an identified charitable organization that holds the
20 charitable interest;

21 (c) Alter any charitable purpose stated in the first-trust instrument; or

22 (d) Alter any condition or restriction related to the charitable interest.

23 (4) If there are two (2) or more second trusts, the second trusts shall be treated as one
24 (1) trust for purposes of determining whether the exercise of the decanting power
25 diminishes the charitable interest or diminishes the interest of an identified
26 charitable organization for purposes of subsection (3) of this section.

27 (5) If a first trust contains a determinable charitable interest, the second trust or

1 trusts that include a charitable interest pursuant to subsection (3) of this section
2 shall be administered under the law of this Commonwealth unless:

3 (a) The Attorney General, after having received notice under Section 58 of this
4 Act, fails to object in a signed record delivered to the authorized fiduciary
5 within the notice period;

6 (b) The Attorney General consents in a signed record to the second trust or
7 trusts being administered under the law of another jurisdiction; or

8 (c) The court approves the exercise of the decanting power.

9 (6) Sections 53 to 80 of this Act do not limit the powers and duties of the Attorney
10 General under the law of this Commonwealth other than the provisions of
11 Sections 53 to 80 of this Act.

12 ➔SECTION 66. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
13 386B IS CREATED TO READ AS FOLLOWS:

14 (1) An authorized fiduciary may not exercise the decanting power to the extent the
15 first-trust instrument expressly prohibits the exercise of:

16 (a) The decanting power; or

17 (b) A power granted by state law to the fiduciary to distribute part or all of the
18 principal of the trust to another trust or to modify the trust.

19 (2) Exercise of the decanting power is subject to any restriction in the first-trust
20 instrument that expressly applies to the exercise of:

21 (a) The decanting power; or

22 (b) A power granted by state law to a fiduciary to distribute part or all of the
23 principal of the trust to another trust or to modify the trust.

24 (3) A general prohibition of the amendment or revocation of a first trust, a
25 spendthrift clause, or a clause restraining the voluntary or involuntary transfer of
26 a beneficiary's interest does not preclude exercise of the decanting power.

27 (4) Subject to subsections (1) and (2) of this section, an authorized fiduciary may

1 exercise the decanting power under Sections 53 to 80 of this Act even if the first-
 2 trust instrument permits the authorized fiduciary or another person to modify the
 3 first-trust instrument or to distribute part or all of the principal of the first trust to
 4 another trust.

5 (5) If a first-trust instrument contains an express prohibition described in subsection
 6 (1) of this section or an express restriction described in subsection (2) of this
 7 section, the provision shall be included in the second-trust instrument.

8 ➔SECTION 67. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
 9 386B IS CREATED TO READ AS FOLLOWS:

10 (1) If a first-trust instrument specifies an authorized fiduciary's compensation, the
 11 fiduciary may not exercise the decanting power to increase the fiduciary's
 12 compensation above the specified compensation unless:

13 (a) All qualified beneficiaries of the second trust consent to the increase in a
 14 signed record; or

15 (b) The increase is approved by the court.

16 (2) If a first-trust instrument does not specify an authorized fiduciary's
 17 compensation, the fiduciary may not exercise the decanting power to increase the
 18 fiduciary's compensation above the compensation permitted by this chapter
 19 unless:

20 (a) All qualified beneficiaries of the second trust consent to the increase in a
 21 signed record; or

22 (b) The increase is approved by the court.

23 (3) A change in an authorized fiduciary's compensation which is incidental to other
 24 changes made by the exercise of the decanting power is not an increase in the
 25 fiduciary's compensation for purposes of subsections (1) and (2) of this section.

26 ➔SECTION 68. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
 27 386B IS CREATED TO READ AS FOLLOWS:

1 (1) Except as otherwise provided in this section, a second-trust instrument may not
 2 relieve an authorized fiduciary from liability for breach of trust to a greater
 3 extent than the first-trust instrument.

4 (2) A second-trust instrument may provide for indemnification of an authorized
 5 fiduciary of the first trust or another person acting in a fiduciary capacity under
 6 the first trust for any liability or claim that would have been payable from the first
 7 trust if the decanting power had not been exercised.

8 (3) A second-trust instrument may not reduce fiduciary liability in the aggregate.

9 (4) Subject to subsection (3) of this section, a second-trust instrument may divide and
 10 reallocate fiduciary powers among the fiduciaries, including one (1) or more
 11 trustees, distribution advisors, investment advisors, trust protectors, or other
 12 persons, and relieve a fiduciary from liability for an act or failure to act of
 13 another fiduciary as permitted by law of this Commonwealth other than Sections
 14 53 to 80 of this Act.

15 ➔SECTION 69. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
 16 386B IS CREATED TO READ AS FOLLOWS:

17 An authorized fiduciary may not exercise the decanting power to modify a provision in
 18 a first-trust instrument granting another person power to remove or replace the
 19 fiduciary unless:

20 (1) The person holding the power consents to the modification in a signed record and
 21 the modification applies only to that person;

22 (2) The person holding the power and the qualified beneficiaries of the second trust
 23 consent to the modification in a signed record and the modification grants a
 24 substantially similar power to another person; or

25 (3) The court approves the modification and the modification grants a substantially
 26 similar power to another person.

27 ➔SECTION 70. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER

1 386B IS CREATED TO READ AS FOLLOWS:

2 (1) As used in this section:

3 (a) "Grantor trust" means a trust as to which a settlor of a first trust is
4 considered the owner under 26 U.S.C. secs. 671 to 677, as amended, or 26
5 U.S.C. sec. 679, as amended;

6 (b) "Internal Revenue Code" means the United States Internal Revenue Code
7 of 1986, as amended;

8 (c) "Nongrantor trust" means a trust that is not a grantor trust; and

9 (d) "Qualified benefits property" means property subject to the minimum
10 distribution requirements of 26 U.S.C. sec. 401(a)(9), as amended, and any
11 applicable regulations, or to any similar requirements that refer to 26
12 U.S.C. sec. 401(a)(9) or the regulations.

13 (2) An exercise of the decanting power is subject to the following limitations:

14 (a) If a first trust contains property that qualified, or would have qualified but
15 for provisions of Sections 53 to 80 of this Act other than this section, for a
16 marital deduction for purposes of the gift or estate tax under the Internal
17 Revenue Code or a state gift, estate, or inheritance tax, the second-trust
18 instrument shall not include or omit any term that, if included in or omitted
19 from the trust instrument for the trust to which the property was
20 transferred, would have prevented the transfer from qualifying for the
21 deduction, or would have reduced the amount of the deduction, under the
22 same provisions of the Internal Revenue Code or state law under which the
23 transfer qualified;

24 (b) If the first trust contains property that qualified, or would have qualified but
25 for provisions of Sections 53 to 80 of this Act other than this section, for a
26 charitable deduction for purposes of the income, gift, or estate tax under the
27 Internal Revenue Code or a state income, gift, estate, or inheritance tax, the

1 second-trust instrument shall not include or omit any term that, if included
2 from or omitted from the trust instrument for the trust to which the property
3 was transferred, would have prevented the transfer from qualifying for the
4 deduction, or would have reduced the amount of the deduction, under the
5 same provisions of the Internal Revenue Code or state law under which the
6 transfer qualified;

7 (c) If the first trust contains property that qualified, or would have qualified but
8 for provisions of Sections 53 to 80 of this Act other than this section, for the
9 exclusion from the gift tax described in:

10 1. 26 U.S.C. sec. 2503(b), as amended, the second-trust instrument shall
11 not include or omit a term that, if included in or omitted from the trust
12 instrument for the trust to which the property was transferred, would
13 have prevented the transfer from qualifying under 26 U.S.C. sec.
14 2503(b), as amended; or

15 2. 26 U.S.C. sec. 2503(c), as amended, the second-trust instrument shall
16 not include or omit a term that, if included in or omitted from the trust
17 instrument for the trust to which the property was transferred, would
18 have prevented the transfer from qualifying under 26 U.S.C. sec.
19 2503(c), as amended;

20 (d) If the property of the first trust includes shares of stock in an S corporation
21 as defined in 26 U.S.C. sec. 1361, as amended, and the first trust is, but for
22 provisions of Sections 53 to 80 of this Act other than this section would be, a
23 permitted shareholder under any provision of 26 U.S.C. sec. 1361, as
24 amended, an authorized fiduciary may exercise the power with respect to
25 part of all the S-corporation stock only if any second trust receiving the
26 stock is a permitted shareholder under 26 U.S.C. sec. 1361(c)(2), as
27 amended. If the property of the first trust includes shares of stock in an S

1 corporation and the first trust is, or but for provisions of Sections 53 to 80
2 of this Act other than this section would be, a qualified subchapter-S trust
3 within the meaning of 26 U.S.C. sec. 1361(d), as amended, the second-trust
4 instrument shall not include or omit a term that prevents the second trust
5 from qualifying as a qualified subchapter-S trust;

6 (e) If the first trust contains property that qualified, or would have qualified but
7 for provisions of Sections 53 to 80 of this Act other than this section, for a
8 zero inclusion ratio for purposes of the generation-skipping transfer tax
9 under 26 U.S.C. sec. 2642(c), as amended, the second-trust instrument shall
10 not include or omit a term that, if included in or omitted from the first-trust
11 instrument, would have prevented the transfer to the first trust from
12 qualifying for a zero inclusion ratio under 26 U.S.C. sec. 2642(c), as
13 amended;

14 (f) If the first trust is directly or indirectly the beneficiary of qualified benefits
15 property, the second-trust instrument shall not include or omit any term
16 that, if included in or omitted from the first-trust instrument, would have
17 increased the minimum distributions required with respect to the qualified
18 benefits property under 26 U.S.C. sec. 401(a)(9), as amended, and any
19 applicable regulations, or any similar requirements that refer to 26 U.S.C.
20 sec. 401(a)(9), as amended, or the regulations. If an attempted exercise of
21 the decanting power violates the preceding sentence, the trustee is deemed to
22 have held the qualified benefits property and any reinvested distributions of
23 the property as a separate share from the date of the exercise of the power,
24 and Section 73 of this Act applies to the separate share;

25 (g) If the first trust qualifies as a grantor trust because of the application of 26
26 U.S.C. sec. 672(f)(2)(A), as amended, the second trust shall not include or
27 omit a term that, if included in or omitted from the first-trust instrument,

1 would have prevented the first trust from qualifying under 26 U.S.C. sec.
2 672(f)(2)(A), as amended;

3 (h) As used in this paragraph, "tax benefit" means a federal or state tax
4 deduction, exemption, exclusion, or other benefit not otherwise listed in this
5 section, except for a benefit arising from being a grantor trust. Subject to
6 paragraph (i) of this subsection, a second-trust instrument shall not include
7 or omit a term that, if included in or omitted from the first-trust instrument,
8 would have prevented qualification for a tax benefit if:

9 1. The first-trust instrument expressly indicates an intent to qualify for
10 the benefit or the first-trust instrument clearly is designed to enable
11 the first trust to qualify for the benefit; and

12 2. The transfer of property held by the first trust or the first trust
13 qualified, or but for the provisions of Sections 53 to 80 of this Act
14 other than this section, would have qualified for the tax benefit;

15 (i) Subject to paragraph (d) of this subsection:

16 1. Except as otherwise provided in paragraph (g) of this subsection, the
17 second trust may be a nongrantor trust, even if the first trust is a
18 grantor trust; and

19 2. Except as otherwise provided in paragraph (j) of this subsection, the
20 second trust may be a grantor trust, even if the first trust is a
21 nongrantor trust; and

22 (j) An authorized fiduciary may not exercise the decanting power if a settlor
23 objects in a signed record delivered to the fiduciary within the notice period
24 and:

25 1. The first trust and a second trust are both grantor trusts, in whole or
26 in part, the first trust grants the settlor or another person the power to
27 cause the first trust to cease to be a grantor trust, and the second trust

- 1 does not grant an equivalent power to the settlor or other person; or
- 2 2. The first trust is a nongrantor trust and a second trust is a grantor
- 3 trust, in whole or in part, with respect to the settlor, unless:
- 4 a. The settlor has the power at all times to cause the second trust to
- 5 cease to be a grantor trust; or
- 6 b. The first-trust instrument contains a provision granting the
- 7 settlor or another person a power that would cause the first trust
- 8 to cease to be a grantor trust and the second-trust instrument
- 9 contains the same provision.

10 ➔SECTION 71. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER

11 386B IS CREATED TO READ AS FOLLOWS:

- 12 (1) Subject to subsection (2) of this section, a second trust may have a duration that
- 13 is the same as or different from the duration of the first trust.
- 14 (2) To the extent that property of a second trust is attributable to property of the first
- 15 trust, the property of the second trust is subject to any rules governing maximum
- 16 perpetuity, accumulation, or suspension of the power of alienation which apply to
- 17 the property of the first trust.

18 ➔SECTION 72. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER

19 386B IS CREATED TO READ AS FOLLOWS:

- 20 An authorized fiduciary may exercise the decanting power whether or not under the
- 21 first trust's discretionary distribution standard the fiduciary would have made or could
- 22 have been compelled to make a discretionary distribution of principal at the time of the
- 23 exercise.

24 ➔SECTION 73. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER

25 386B IS CREATED TO READ AS FOLLOWS:

- 26 (1) If exercise of the decanting power would be effective under Sections 53 to 80 of
- 27 this Act except that the second-trust instrument in part does not comply with the

1 provisions of Sections 53 to 80 of this Act, the exercise of the power is effective
 2 and the following rules shall apply with respect to the principal of the second
 3 trust attributable to the exercise of the power:

4 (a) A provision in the second-trust instrument which is not permitted under
 5 Sections 53 to 80 of this Act is void to the extent necessary to comply with
 6 Sections 53 to 80 of this Act; and

7 (b) A provision required by Sections 53 to 80 of this Act to be in the second-
 8 trust instrument which is not contained in the instrument is deemed to be
 9 included in the instrument to the extent necessary to comply with Sections
 10 53 to 80 of this Act.

11 (2) If a trustee or other fiduciary of a second trust determines that subsection (1) of
 12 this section applies to a prior exercise of the decanting power, the fiduciary shall
 13 take corrective action consistent with the fiduciary's duties.

14 ➔SECTION 74. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
 15 386B IS CREATED TO READ AS FOLLOWS:

16 (1) As used in this section:

17 (a) "Animal trust" means a trust or an interest in a trust created to provide for
 18 the care of one (1) or more animals; and

19 (b) "Protector" means a person appointed in an animal trust to enforce the
 20 trust on behalf of the animal or, if no such person is appointed in the trust,
 21 a person appointed by the court for that purpose.

22 (2) The decanting power may be exercised over an animal trust that has a protector
 23 to the extent the trust could be decanted under Sections 53 to 80 of this Act if
 24 each animal that benefits from the trust were an individual, if the protector
 25 consents in a signed record to the exercise of the power.

26 (3) A protector for an animal has the rights under Sections 53 to 80 of this Act of a
 27 qualified beneficiary.

1 (4) Notwithstanding any other provision of Sections 53 to 80 of this Act, if a first
2 trust is an animal trust, in an exercise of the decanting power, the second trust
3 shall provide that trust property may be applied only to its intended purpose for
4 the period the first trust benefitted the animal.

5 ➔SECTION 75. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
6 386B IS CREATED TO READ AS FOLLOWS:

7 A reference in KRS Chapter 386B to a trust instrument or terms of the trust includes a
8 second-trust instrument and the terms of the second trust.

9 ➔SECTION 76. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
10 386B IS CREATED TO READ AS FOLLOWS:

11 (1) For purposes of law of this Commonwealth other than Sections 53 to 80 of this
12 Act and subject to subsection (2) of this section, a settlor of a first trust is deemed
13 to be the settlor of the second trust with respect to the portion of the principal of
14 the first trust subject to the exercise of the decanting power.

15 (2) In determining settlor intent with respect to a second trust, the intent of a settlor
16 of the first trust, a settlor of the second trust, and the authorized fiduciary may be
17 considered.

18 ➔SECTION 77. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
19 386B IS CREATED TO READ AS FOLLOWS:

20 (1) Except as otherwise provided in subsection (3) of this section, if exercise of the
21 decanting power was intended to distribute all the principal of the first trust to
22 one (1) or more second trusts, later-discovered property belonging to the first
23 trust and property paid to or acquired by the first trust after the exercise of the
24 power is part of the trust estate of the second trust or trusts.

25 (2) Except as otherwise provided in subsection (3) of this section, if exercise of the
26 decanting power was intended to distribute less than all the principal of the first
27 trust to one (1) or more second trusts, later-discovered property belonging to the

1 first trust or property paid to or acquired by the first trust after exercise of the
 2 power remains part of the trust estate of the first trust.

3 (3) An authorized fiduciary may provide in an exercise of the decanting power or by
 4 the terms of a second trust for disposition of later-discovered property belonging
 5 to the first trust or property paid to or acquired by the first trust after exercise of
 6 the power.

7 ➔SECTION 78. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
 8 386B IS CREATED TO READ AS FOLLOWS:

9 A debt, liability, or other obligation enforceable against property of a first trust is
 10 enforceable to the same extent against the property when held by the second trust after
 11 exercise of the decanting power.

12 ➔SECTION 79. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
 13 386B IS CREATED TO READ AS FOLLOWS:

14 In applying and construing Sections 53 to 80 of this Act, consideration shall be given
 15 to the need to promote uniformity of the law with respect to its subject matter among
 16 states that enact it.

17 ➔SECTION 80. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
 18 386B IS CREATED TO READ AS FOLLOWS:

19 The provisions of Sections 53 to 80 of this Act modify, limit, or supersede the
 20 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. sec. 7001 et
 21 seq., but do not modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. sec.
 22 7001(c), or authorize electronic delivery of any of the notices described in Section
 23 103(b) of that Act, 15 U.S.C. sec. 7003(b).

24 ➔Section 81. KRS 386.010 is amended to read as follows:

25 As used in KRS 386.010 to 386.170~~[386.175]~~, unless the context requires otherwise:

26 (1) "Fiduciary" means any trustee, guardian, executor, administrator, conservator or
 27 other individual or corporation holding funds or otherwise acting in a fiduciary

1 capacity.

2 (2) "Principal" means any person to whom a fiduciary, as such, owes an obligation.

3 ➔Section 82. KRS 386B.1-010 is amended to read as follows:

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

5 (1) "Action" with respect to an act of a trustee, includes a failure to act;

6 (2) "Ascertainable standard" means a standard relating to an individual's health,
7 education, support, or maintenance within the meaning of 26 U.S.C. sec.
8 2041(b)(1)(A) or 26 U.S.C. sec. 2514(c)(1), as amended;

9 (3) "Beneficiary" means a person that:

10 (a) Has a present or future beneficial interest in a trust, vested or contingent; or

11 (b) In a capacity other than that of trustee, holds a power of appointment over
12 trust property;

13 (4) "Charitable trust" means a trust, or part of a trust, established for a charitable
14 purpose as described in KRS 386B.4-050(1);

15 (5) "Conservator" means a person appointed by the court to administer the estate of a
16 minor or adult individual;

17 (6) "Environmental law" means a federal, state, or local law, rule, regulation, or
18 ordinance relating to protection of the environment;

19 (7) "Guardian" means a person appointed by the court, a parent, or a spouse to make
20 decisions regarding the support, care, education, health, and welfare of a minor or
21 adult individual. The term shall not include a guardian ad litem;

22 (8) "Interests of the beneficiaries" means the beneficial interests provided in the terms
23 of the trust;

24 (9) "Jurisdiction," with respect to a geographic area, includes a state or country;

25 (10) "Person" means any individual or entity as defined in KRS 446.010;

26 **(11) "Power of direction":**

27 **(a) Means a power over a trust granted to a person by the terms of the trust to**

1 *the extent the power is exercisable while the person is not serving as a*
2 *trustee;*

3 *(b) Includes a power over the investment, management, or distribution of trust*
4 *property or other matters of trust administration; and*

5 *(c) Excludes the powers described in subsection (2) of Section 39 of this Act;*

6 ~~(12)~~~~(11)~~ "Power of withdrawal" means a presently exercisable general power of
7 appointment other than a power:

8 (a) Exercisable by a trustee and limited by an ascertainable standard; or

9 (b) Exercisable by another person only on the consent of the trustee or a person
10 holding an adverse interest;

11 ~~(13)~~~~(12)~~ "Property" means anything that may be the subject of ownership, whether
12 legal or equitable, or any interest therein;

13 ~~(14)~~~~(13)~~ "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's
14 qualification is determined:

15 (a) Is a distributee or permissible distributee of trust income or principal;

16 (b) Would be a distributee or permissible distributee of trust income or principal
17 if the interests of the distributees described in paragraph (a) of this subsection
18 ended on that date without causing the trust to end; or

19 (c) Would be a distributee or permissible distributee of trust income or principal
20 if the trust ended on that date;

21 ~~(15)~~~~(14)~~ "Revocable," as applied to a trust, means revocable by the settlor without the
22 consent of the trustee or a person holding an adverse interest;

23 ~~(16)~~~~(15)~~ "Settlor" means a person, including a testator, who creates or contributes
24 property to a trust. If more than one (1) person creates or contributes property to a
25 trust, each person is a settlor of the part of the trust property attributable to that
26 person's contribution except to the extent another person has the power to revoke or
27 withdraw that part;

1 ~~(17)~~[(16)] "Spendthrift provision" means a term of a trust which restrains both voluntary
2 and involuntary transfer of a beneficiary's interest;

3 ~~(18)~~[(17)] "State" means a state of the United States, the District of Columbia, Puerto
4 Rico, the United States Virgin Islands, or any territory or insular possession subject
5 to the jurisdiction of the United States. The term includes an Indian tribe or band
6 recognized by federal law or formally acknowledged by a state;

7 ~~(19)~~[(18)] "Terms of a trust" means:

8 (a) Except as otherwise provided in paragraph (b) of this subsection, the
9 manifestation of the settlor's intent regarding a trust's provisions as:

- 10 1. Expressed in the trust instrument; ~~or as may be~~
11 2. Established by other evidence that would be admissible in a judicial
12 proceeding; or

13 (b) The trust's provisions as established, determined, or amended by:

- 14 1. A trustee or trust director in accordance with applicable law;
15 2. A court order; or
16 3. A nonjudicial settlement agreement under KRS 386B.1-090;

17 ~~(20)~~[(19)] (a) "Trust" means an express trust established by a trust instrument,
18 including a will, whereby a trustee has the duty to administer a trust asset for
19 the benefit of a named or otherwise described income or principal beneficiary,
20 or both. This definition includes oral trusts.

21 (b) "Trust" does not include a resulting or constructive trust, a business trust
22 which provides for certificates to be issued to the beneficiary, an investment
23 trust, a voting trust, a security instrument, a trust established by the judgment
24 of a court, a liquidation trust, or a trust for the primary purpose of paying
25 dividends, interests, interest coupons, salaries, wages, pensions or profits, or
26 employee benefits of any kind, an instrument in which a person is nominee or
27 escrowee for another, a trust established in deposits in any financial

1 institution, or other trust the nature of which does not admit of general trust
2 administration;

3 **(21) "Trust director" means a person that is granted power of direction by the terms**
4 **of a trust to the extent the power is exercisable while the person is not serving as**
5 **a trustee. The person is a trust director whether or not the terms of the trust refer**
6 **to the person as a trust director and whether or not the person is a beneficiary or**
7 **settlor of the trust;**

8 ~~(22)~~~~(20)~~ "Trust instrument" means an instrument signed by the settlor that contains
9 terms of the trust, including any amendments thereto; and

10 ~~(23)~~~~(21)~~ "Trustee" includes an original, additional, and successor trustee, and a
11 cotrustee.

12 ➔Section 83. KRS 386B.1-030 is amended to read as follows:

13 (1) Except as otherwise provided in the terms of the trust, this chapter governs the
14 duties and powers of a trustee, relations among trustees, and the rights and interests
15 of a beneficiary.

16 (2) The terms of a trust prevail over any provision of this chapter, except:

17 (a) The requirements for creating a trust;

18 (b) **Subject to Sections 43, 45, and 46 of this Act,** the duty of a trustee to act in
19 good faith and in the interests of the beneficiaries;

20 (c) The requirement that a trust and its terms be for the benefit of its
21 beneficiaries, and that the trust have a purpose that is lawful, not contrary to
22 public policy, and possible to achieve;

23 (d) The power of the court to change or terminate a trust under Subchapter 4 of
24 this chapter;

25 (e) The effect of a spendthrift provision and the rights of certain creditors and
26 assignees to reach a trust as provided in Subchapter 5 of this chapter;

27 (f) The power of the court under KRS 386B.7-020 to require, dispense with, or

1 modify or terminate a bond;

2 (g) The power of the court under KRS 386B.7-080(2) to adjust a trustee's
3 compensation as specified in the terms of the trust which is unreasonably low
4 or high;

5 (h) The duty to notify and report under KRS 386B.8-130(2);

6 (i) The effect of an exculpatory term under KRS 386B.10-080;

7 (j) The rights under KRS 386B.10-100, 386B.10-110, and 386B.10-120 of a
8 person other than a trustee or beneficiary;

9 (k) Periods of limitation for commencing a judicial proceeding;

10 (l) The power of the court to take such action and exercise such jurisdiction as
11 may be necessary in the interests of justice; and

12 (m) The subject-matter jurisdiction of the court and venue for commencing a
13 proceeding as provided in KRS 386B.2-030 and 386B.2-040.

14 ➔Section 84. KRS 386B.1-060 is amended to read as follows:

15 (1) Without precluding other means for establishing a connection with the designated
16 jurisdiction, terms of a trust designating the principal place of administration are
17 valid and controlling if:

18 (a) A trustee's principal place of business is located in or a trustee is a resident of
19 the designated jurisdiction;~~[(b)]~~

20 **(b) A trust director's principal place of business is located in or a trust director**
21 **is a resident of the designated jurisdiction; or**

22 **(c)**~~[(b)]~~ All or part of the administration occurs in the designated jurisdiction.

23 (2) A trustee is under a continuing duty to administer the trust at a place appropriate to
24 its purposes, its administration, and the interests of the beneficiaries.

25 (3) Without precluding the right of the court to order, approve, or disapprove a transfer,
26 the trustee, in furtherance of the duty prescribed by subsection (2) of this section,
27 may transfer the trust's principal place of administration to another state or to a

- 1 jurisdiction outside of the United States.
- 2 (4) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's
3 principal place of administration not less than sixty (60) days before initiating the
4 transfer. The notice of proposed transfer shall include:
- 5 (a) The name of the jurisdiction to which the principal place of administration is
6 to be transferred;
- 7 (b) The address and telephone number at the new location at which the trustee
8 can be contacted;
- 9 (c) An explanation of the reasons for the proposed transfer;
- 10 (d) The date on which the proposed transfer is anticipated to occur; and
- 11 (e) The date, not less than sixty (60) days after the giving of the notice, by which
12 the qualified beneficiary shall notify the trustee of an objection to the
13 proposed transfer.
- 14 (5) The authority of a trustee under this section to transfer a trust's principal place of
15 administration ends if a qualified beneficiary notifies the trustee of an objection to
16 the proposed transfer on or before the date specified in the notice.
- 17 (6) In connection with a transfer of the trust's principal place of administration, the
18 trustee may transfer some or all of the trust property to a successor trustee
19 designated in the terms of the trust or appointed under KRS 386B.7-040.
- 20 (7) The District Court shall have exclusive jurisdiction over matters under this section.
- 21 ➔Section 85. KRS 386B.3-010 is amended to read as follows:
- 22 (1) Notice to a person who may represent and bind another person under this
23 subchapter has the same effect as if notice were given directly to the other person.
- 24 (2) The consent of a person who may represent and bind another person under this
25 subchapter is binding on the person represented unless the person represented
26 objects to the representation before the consent would otherwise have become
27 effective.

1 (3) Except as otherwise provided under KRS 386B.4-110 and 386B.6-020, a person
2 who under this subchapter may represent a settlor who lacks capacity, may receive
3 notice and give a binding consent on the settlor's behalf.

4 (4) A settlor may not represent and bind a beneficiary under this subchapter with
5 respect to the termination or modification of a trust under KRS 386B.4-110(1).

6 (5) Provisions of this subchapter shall also be applicable to Sections 53 to 80 of this
7 Act~~[KRS 386.175]~~ regarding a trustee's power to appoint principal and income in
8 favor of a trustee of a second trust and KRS 386.454 regarding a trustee's power to
9 adjust between principal and income and conversion to unitrust.

10 ➔Section 86. KRS 386B.6-030 is amended to read as follows:

11 (1) While a trust is revocable:

12 (a) And, in the reasonable belief of the trustee, the settlor has capacity to revoke
13 the trust, rights of the beneficiaries are subject to the control of, and the duties
14 of the trustee are owed exclusively to, the settlor; and

15 (b) *The trustee may follow a direction of the settlor that is contrary to the terms*
16 *of the trust.*

17 (2) During the period the power may be exercised, the holder of a power of withdrawal
18 has the rights of a settlor of a revocable trust under this section to the extent of the
19 property subject to the power.

20 ➔Section 87. KRS 386B.7-030 is amended to read as follows:

21 (1) Cotrustees who are unable to reach a unanimous decision may act by majority
22 decision.

23 (2) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the
24 trust.

25 (3) *Subject to Section 46 of this Act,* a cotrustee shall participate in the performance of
26 a trustee's function unless the cotrustee is unavailable to perform the function
27 because of absence, illness, disqualification under other law, or other temporary

1 incapacity or the cotrustee has properly delegated the performance of the function
2 to another trustee.

3 (4) If a cotrustee is unavailable to perform duties because of absence, illness,
4 disqualification under other law, or other temporary incapacity, and prompt action
5 is necessary to achieve the purposes of the trust or to avoid injury to the trust
6 property, the remaining cotrustee or a majority of the remaining cotrustees may act
7 for the trust.

8 (5) A trustee may not delegate to a cotrustee the performance of a function the settlor
9 reasonably expected the trustees to perform jointly. Unless a delegation was
10 irrevocable, a trustee may revoke a delegation previously made.

11 (6) Except as otherwise provided in subsection (7) of this section, a trustee who does
12 not join in an action of another trustee is not liable for the action.

13 (7) **Subject to Section 46 of this Act,** each trustee shall exercise reasonable care to:

14 (a) Prevent a cotrustee from committing a breach of trust; and

15 (b) Compel a cotrustee to redress a breach of trust.

16 (8) A dissenting trustee who joins in an action at the direction of the majority of the
17 trustees and who notified any cotrustee of the dissent at or before the time of the
18 action is not liable for the action unless the action is a breach of trust.

19 ➔Section 88. KRS 394.010 is amended to read as follows:

20 As used in this chapter, unless the context requires otherwise, "will":

21 **(1)** Means a last will or testament, codicil, appointment by will, writing in the nature of
22 a will in exercise of a power, and any other testamentary disposition; **and**

23 **(2)** **Includes a codicil and any testamentary instrument that merely appoints an**
24 **executor, revokes or revises another will, nominates a guardian, or expressly**
25 **excludes or limits the right of an individual or class to succeed to property of the**
26 **decendent passing by intestate succession.**

27 ➔Section 89. The following KRS sections are repealed:

1 386B.8-080 Powers to direct.

2 386.175 Trustee's power to appoint principal or income in favor of trustee of second
3 trust -- Terms of second trust -- Special fiduciary -- Notice -- Judicial
4 proceedings.

5 ➔Section 90. Sections 1 to 9 of this Act may be cited as the Uniform Electronic
6 Wills Act.

7 ➔Section 91. Sections 10 to 24 of this Act may be cited as the Uniform Electronic
8 Estate Planning Documents Act.

9 ➔Section 92. Sections 25 to 35 of this Act may be cited as the Kentucky
10 Qualified Dispositions in Trust Act.

11 ➔Section 93. Sections 36 to 52 of this Act may be cited as the Uniform Directed
12 Trust Act.

13 ➔Section 94. Sections 53 to 80 of this Act may be cited as the Uniform Trust
14 Decanting Act.