

PROPERTY CODE

TITLE 9. TRUSTS

SUBTITLE B. TEXAS TRUST CODE: CREATION, OPERATION, AND TERMINATION
OF TRUSTS

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

SUBCHAPTER A. CREATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 112.008. CAPACITY OF TRUSTEE. (a) The trustee must have the legal capacity to take, hold, and transfer the trust

property. If the trustee is a corporation, it must have the power to act as a trustee in this state.

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

(c) The settlor of a trust may be the trustee of the trust. Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984.

Sec. 112.009. ACCEPTANCE BY TRUSTEE. (a) The signature of the person named as trustee on the writing evidencing the trust or on a separate written acceptance is conclusive evidence that the person accepted the trust. A person named as trustee who exercises power or performs duties under the trust is presumed to have accepted the trust, except that a person named as trustee may engage in the following conduct without accepting the trust:

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

(A) the settlor; or

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

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

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

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

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

Amended by:

Acts 2005, 79th Leg., Ch. 148 (H.B. [1190](#)), Sec. 4, eff. January 1, 2006.

Sec. 112.010. PRESUMED ACCEPTANCE BY BENEFICIARY; DISCLAIMER. (a) Acceptance by a beneficiary of an interest in a trust is presumed.

(b) A disclaimer of an interest in or power over trust property is governed by Chapter [240](#).

(c) Repealed by Acts 2015, 84th Leg., R.S., Ch. 562 , Sec. 16(4), eff. September 1, 2015.

(c-1) Repealed by Acts 2015, 84th Leg., R.S., Ch. 562 , Sec. 16(4), eff. September 1, 2015.

(c-2) Repealed by Acts 2015, 84th Leg., R.S., Ch. 562 , Sec. 16(4), eff. September 1, 2015.

(d) Repealed by Acts 2015, 84th Leg., R.S., Ch. 562 , Sec. 16(4), eff. September 1, 2015.

(e) Repealed by Acts 2015, 84th Leg., R.S., Ch. 562 , Sec. 16(4), eff. September 1, 2015.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, Sec. 2, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 467, Sec. 3, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 846, Sec. 3, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 672 (H.B. [2368](#)), Sec. 2, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. [2428](#)), Sec. 13, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. [2428](#)), Sec. 14, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 562 (H.B. [2428](#)), Sec. 16(4), eff. September 1, 2015.

Sec. 112.011. POSTHUMOUS CLASS GIFTS MEMBERSHIP. (a) A right to take as a member under a class gift does not accrue to any

person unless the person is born before, or is in gestation at, the time of death of the person by which the class is measured and survives that person by at least 120 hours.

(b) For purposes of Subsection (a), a person is:

(1) considered to be in gestation if insemination or implantation occurs at or before the time of death of the person by which the class is measured; and

(2) presumed to be in gestation at the time of death of the person by which the class is measured if the person was born before the 301st day after the date of the person's death.

(c) A provision in the trust instrument that is contrary to this section prevails over this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 844 (H.B. [2271](#)), Sec. 37, eff. September 1, 2017.

SUBCHAPTER B. VALIDITY

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

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

Sec. 112.032. ACTIVE AND PASSIVE TRUSTS; STATUTE OF USES.

(a) Except as provided by Subsection (b), title to real property held in trust vests directly in the beneficiary if the trustee has neither a power nor a duty related to the administration of the trust.

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

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

Sec. 112.033. RESERVATION OF INTERESTS AND POWERS BY SETTLOR. If during the life of the settlor an interest in a trust or

the trust property is created in a beneficiary other than the settlor, the disposition is not invalid as an attempted testamentary disposition merely because the settlor reserves or retains, either in himself or another person who is not the trustee, any or all of the other interests in or powers over the trust or trust property, such as:

- (1) a beneficial life interest for himself;
- (2) the power to revoke, modify, or terminate the trust in whole or in part;
- (3) the power to designate the person to whom or on whose behalf the income or principal is to be paid or applied;
- (4) the power to control the administration of the trust in whole or in part;
- (5) the right to exercise a power or option over property in the trust or over interests made payable to the trust under an employee benefit plan, life insurance policy, or otherwise; or
- (6) the power to add property or cause additional employee benefits, life insurance, or other interests to be made payable to the trust at any time.

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

Sec. 112.0335. CONSTRUCTION OF CERTAIN TRUSTS. (a) Unless the terms of the trust provide otherwise, if a trust is created and amendable or revocable by the settlor, or by the settlor and the settlor's spouse, Chapter 255, Estates Code, applies at the settlor's death to the construction and interpretation of at-death transfers as if the settlor of the trust is the testator, the beneficiaries of the at-death transfer are devisees, and the at-death transfers are devises.

(b) Section 355.109, Estates Code, applies to the abatement of at-death transfers.

(c) For purposes of this section, "at-death transfer" means a transfer pursuant to the terms of a trust described by Subsection (a) that is intended to take effect or become irrevocable by reason of the settlor's death.

(d) For purposes of the Estates Code provisions specified by this section:

(1) an at-death transfer of specifically identifiable trust property is a specific bequest, devise, or legacy;

(2) an at-death transfer from the general assets of the trust that does not transfer specifically identifiable property is a general bequest, devise, or legacy; and

(3) an at-death transfer of trust property that remains after all specific and general transfers have been satisfied is the residuary estate.

Added by Acts 2019, 86th Leg., R.S., Ch. 1112 (H.B. 2245), Sec. 2, eff. September 1, 2019.

Sec. 112.034. MERGER. (a) If a settlor transfers both the legal title and all equitable interests in property to the same person or retains both the legal title and all equitable interests in property in himself as both the sole trustee and the sole beneficiary, a trust is not created and the transferee holds the property as his own. This subtitle does not invalidate a trust account validly created and in effect under Chapter 113, Estates Code.

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

(c) The title to trust property and all equitable interests in the trust property may not become united in a beneficiary, other than the settlor, whose interest is protected under a spendthrift trust, and in that case the court shall appoint a new trustee or cotrustee to administer the trust for the benefit of the beneficiary.

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

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 846 (H.B. 2780), Sec. 13, eff. September 1, 2019.

Sec. 112.035. SPENDTHRIFT TRUSTS. (a) A settlor may

provide in the terms of the trust that the interest of a beneficiary in the income or in the principal or in both may not be voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee.

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

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

(d) If the settlor is also a beneficiary of the trust, a provision restraining the voluntary or involuntary transfer of the settlor's beneficial interest does not prevent the settlor's creditors from satisfying claims from the settlor's interest in the trust estate. A settlor is not considered a beneficiary of a trust solely because:

(1) a trustee who is not the settlor is authorized under the trust instrument to pay or reimburse the settlor for, or pay directly to the taxing authorities, any tax on trust income or principal that is payable by the settlor under the law imposing the tax; or

(2) the settlor's interest in the trust was created by the exercise of a power of appointment by a third party.

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

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

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

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

(B) the amount specified in Section 2503(b), Internal Revenue Code of 1986, with respect to the contributions by each donor.

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

(1) a presently exercisable power to:

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

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

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

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

(2) a testamentary power of appointment; or

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

(g) For the purposes of this section, property contributed to the following trusts is not considered to have been contributed by the settlor, and a person who would otherwise be treated as a settlor or a deemed settlor of the following trusts may not be treated as a settlor:

(1) an irrevocable inter vivos marital trust if:

(A) the settlor is a beneficiary of the trust after the death of the settlor's spouse; and

(B) the trust is treated as:

(i) qualified terminable interest property under Section 2523(f), Internal Revenue Code of 1986; or

(ii) a general power of appointment trust under Section 2523(e), Internal Revenue Code of 1986;

(2) an irrevocable inter vivos trust for the settlor's spouse if the settlor is a beneficiary of the trust after the death

of the settlor's spouse; or

(3) an irrevocable trust for the benefit of a person:

(A) if the settlor is the person's spouse, regardless of whether or when the person was the settlor of an irrevocable trust for the benefit of that spouse; or

(B) to the extent that the property of the trust was subject to a general power of appointment in another person.

(h) For the purposes of Subsection (g), a person is a beneficiary whether named a beneficiary:

(1) under the initial trust instrument; or

(2) through the exercise of a limited or general power of appointment by:

(A) that person's spouse; or

(B) another person.

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

Amended by:

Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 5, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 451 (H.B. 564), Sec. 4, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 2, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 62 (S.B. 617), Sec. 2, eff. September 1, 2017.

Sec. 112.036. RULE AGAINST PERPETUITIES. (a) The rule against perpetuities applies to an interest in a trust other than a charitable trust.

(b) For purposes of this section, the effective date of a trust is the date the trust becomes irrevocable.

(c) An interest in a trust must vest, if at all:

(1) not later than 300 years after the effective date of the trust, if the effective date of the trust is on or after September 1, 2021; or

(2) except as provided by Subsection (d), not later

than 21 years after some life in being at the time of the creation of the interest, plus a period of gestation, if the effective date of the trust is before September 1, 2021.

(d) An interest in a trust that has an effective date before September 1, 2021, may vest as described by Subsection (c)(1) if the trust instrument provides that an interest in the trust vests under the provisions of this section applicable to trusts on the date that the interest vests.

(e) Any interest in a trust may be reformed or construed to the extent and as provided by Section 5.043.

(f) Under this section, a settlor of a trust may not direct that a real property asset be retained or refuse that a real property asset may be sold for a period longer than 100 years.

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

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 792 (H.B. 654), Sec. 1, eff. September 1, 2021.

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

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

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

(d) Property of a trust authorized by this section may be

applied to a use other than the property's intended use under the trust to the extent the court determines that the value of the trust property exceeds the amount required for the intended use.

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

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

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

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

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

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

(1) the individual beneficiaries of the trust;

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

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

Added by Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 6, eff. January 1, 2006.

Sec. 112.038. FORFEITURE CLAUSE. (a) A provision in a trust that would cause a forfeiture of or void an interest for bringing any court action, including contesting a trust, is enforceable unless in a court action determining whether the forfeiture clause should be enforced, the person who brought the action contrary to the forfeiture clause establishes by a preponderance of the evidence that:

(1) just cause existed for bringing the action; and

(2) the action was brought and maintained in good faith.

(b) This section is not intended to and does not repeal any law, recognizing that forfeiture clauses generally will not be construed to prevent a beneficiary from seeking to compel a fiduciary to perform the fiduciary's duties, seeking redress against a fiduciary for a breach of the fiduciary's duties, or seeking a judicial construction of a will or trust.

Added by Acts 2009, 81st Leg., R.S., Ch. 414 (H.B. 1969), Sec. 3, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 657 (S.B. 1197), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 351 (H.B. 2380), Sec. 3.01, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 62 (S.B. 617), Sec. 3, eff. September 1, 2017.

SUBCHAPTER C. REVOCATION, MODIFICATION, AND TERMINATION OF TRUSTS

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

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

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

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

Sec. 112.052. TERMINATION. A trust terminates if by its terms the trust is to continue only until the expiration of a certain period or until the happening of a certain event and the period of time has elapsed or the event has occurred. If an event of

termination occurs, the trustee may continue to exercise the powers of the trustee for the reasonable period of time required to wind up the affairs of the trust and to make distribution of its assets to the appropriate beneficiaries. The continued exercise of the trustee's powers after an event of termination does not affect the vested rights of beneficiaries of the trust.

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

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

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

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

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

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

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

(4) the order is necessary or appropriate to achieve the settlor's tax objectives or to qualify a distributee for governmental benefits and is not contrary to the settlor's intentions; or

(5) subject to Subsection (d):

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

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

(b) The court shall exercise its discretion to order a modification or termination under Subsection (a) or reformation under Subsection (b-1) in the manner that conforms as nearly as possible to the probable intention of the settlor. The court shall consider spendthrift provisions as a factor in making its decision whether to modify, terminate, or reform, but the court is not precluded from exercising its discretion to modify, terminate, or reform solely because the trust is a spendthrift trust.

(b-1) On the petition of a trustee or a beneficiary, a court may order that the terms of the trust be reformed if:

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

(2) reformation is necessary or appropriate to achieve the settlor's tax objectives or to qualify a distributee for governmental benefits and is not contrary to the settlor's intentions; or

(3) reformation is necessary to correct a scrivener's error in the governing document, even if unambiguous, to conform the terms to the settlor's intent.

(c) The court may direct that an order described by Subsection (a)(4) has retroactive effect. The reformation of a trust under an order described by Subsection (b-1) is effective as of the creation of the trust.

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

behalf.

(e) An order described by Subsection (b-1)(3) may be issued only if the settlor's intent is established by clear and convincing evidence.

(f) Subsection (b-1) is not intended to state the exclusive basis for reformation of trusts, and the bases for reformation of trusts in equity or common law are not affected by this section.

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

Amended by:

Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 7, eff. January 1, 2006.

Acts 2017, 85th Leg., R.S., Ch. 62 (S.B. 617), Sec. 4, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 62 (S.B. 617), Sec. 5, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 1112 (H.B. 2245), Sec. 3, eff. September 1, 2019.

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

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

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

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

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

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

(b) If a trust was created before January 1, 1970, this section applies to it only for its taxable years that begin on or after January 1, 1972.

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

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

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

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

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

Sec. 112.057. DIVISION AND COMBINATION OF TRUSTS. (a) The trustee may, unless expressly prohibited by the terms of the instrument establishing the trust, divide a trust into two or more separate trusts without a judicial proceeding if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the original trust. The trustee may make a division under this subsection by:

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

distributions from the trust once it is funded; and

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

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

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

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

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

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

(e) A beneficiary to whom written notice is required to be

given under this section may waive the notice requirement in a writing delivered to the trustee. If all beneficiaries to whom notice would otherwise be required to be given under this section waive the notice requirement, notice is not required.

(f) Notice required under this section shall be given to a guardian of the estate, guardian ad litem, or parent of a minor or incapacitated beneficiary. A guardian of the estate, guardian ad litem, or parent of a minor or incapacitated beneficiary may waive the notice requirement in accordance with this section on behalf of the minor or incapacitated beneficiary.

Added by Acts 1991, 72nd Leg., ch. 895, Sec. 18, eff. Sept. 1, 1991.

Amended by:

Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 8, eff. January 1, 2006.

Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 9, eff. January 1, 2006.

Acts 2011, 82nd Leg., R.S., Ch. 657 (S.B. 1197), Sec. 3, eff. September 1, 2011.

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

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

(2) "Community trust" means a community trust as described by 26 C.F.R. Section 1.170A-9 (2008), including subsequent amendments.

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

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

creating the community trust.

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

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

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

(B) the termination of the trust;

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

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

TO ALL INTERESTED PERSONS:

(NAME OF COMMUNITY TRUST) HAS FILED A PETITION IN (NAME OF COURT) OF (NAME OF COUNTY), TEXAS, REQUESTING PERMISSION TO CONVERT TO A NONPROFIT CORPORATION. IF PERMITTED TO CONVERT:

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

(2) THE ASSETS OF THE TRUST WILL BE:

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

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

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

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

FOR ADDITIONAL INFORMATION, YOU MAY CONTACT THE GOVERNING

BODY OF THE (NAME OF COMMUNITY TRUST) AT (ADDRESS AND TELEPHONE NUMBER) OR THE COURT.

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

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

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

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

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 62 (S.B. 617), Sec. 6, eff. September 1, 2017.

Sec. 112.059. TERMINATION OF UNECONOMIC TRUST. (a) After notice to beneficiaries who are distributees or permissible distributees of trust income or principal or who would be

distributees or permissible distributees if the interests of the distributees or the trust were to terminate and no powers of appointment were exercised, the trustee of a trust consisting of trust property having a total value of less than \$50,000 may terminate the trust if the trustee concludes after considering the purpose of the trust and the nature of the trust assets that the value of the trust property is insufficient to justify the continued cost of administration.

(b) On termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

(c) A trustee may not exercise a power described by Subsection (a) if the trustee's possession of the power would cause the assets of the trust to be included in the trustee's estate for federal estate tax purposes.

(d) This section does not apply to an easement for conservation or preservation.

Added by Acts 2007, 80th Leg., R.S., Ch. 451 (H.B. 564), Sec. 5, eff. September 1, 2007.

SUBCHAPTER D. DISTRIBUTION OF TRUST PRINCIPAL IN FURTHER TRUST

Sec. 112.071. DEFINITIONS. In this subchapter:

(1) "Authorized trustee" means a person, other than the settlor, who has authority under the terms of a first trust to distribute the principal of the trust to or for the benefit of one or more current beneficiaries.

(2) "Charity" means a charitable entity or a charitable trust, as those terms are defined by Section 123.001.

(3) "Current beneficiary," with respect to a particular date, means a person who is receiving or is eligible to receive a distribution of income or principal from a trust on that date.

(4) "First trust" means an existing irrevocable inter vivos or testamentary trust all or part of the principal of which is distributed in further trust under Section 112.072 or 112.073.

(5) "Full discretion" means a power to distribute

principal to or for the benefit of one or more of the beneficiaries of a trust that is not a trust with limited discretion.

(6) "Limited discretion" means:

(A) a power to distribute principal according to mandatory distribution provisions under which the trustee has no discretion; or

(B) a power to distribute principal to or for the benefit of one or more beneficiaries of a trust that is limited by an ascertainable standard, including the health, education, support, or maintenance of the beneficiary.

(7) "Presumptive remainder beneficiary," with respect to a particular date, means a beneficiary of a trust on that date who, in the absence of notice to the trustee of the exercise of the power of appointment and assuming that any other powers of appointment under the trust are not exercised, would be eligible to receive a distribution from the trust if:

(A) the trust terminated on that date; or

(B) the interests of all current beneficiaries ended on that date without causing the trust to terminate.

(8) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates and includes income of the trust that, at the time of the exercise of a power of distribution under Section [112.072](#) or [112.073](#), is not currently required to be distributed.

(9) "Second trust" means any irrevocable trust to which principal is distributed under Section [112.072](#) or [112.073](#).

(10) "Successor beneficiary" means a beneficiary other than a current or presumptive remainder beneficiary. The term does not include a potential appointee under a power of appointment held by a beneficiary.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. [2913](#)), Sec. 3, eff. September 1, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 62 (S.B. [617](#)), Sec. 7, eff. September 1, 2017.

Sec. 112.0715. CREATION OF SECOND TRUST. (a) A second

trust may be created by a distribution of principal under Section 112.072 or 112.073 to a trust created under the same trust instrument as the first trust from which the principal is distributed or to a trust created under a different trust instrument.

(b) If a second trust is created by a distribution of principal under Section 112.072 or 112.073 to a trust created under the same trust instrument as the first trust from which the principal is distributed, the property is not required to be retitled.

(c) The legislature intends this section to be a codification of the common law of this state in effect immediately before September 1, 2019.

Added by Acts 2019, 86th Leg., R.S., Ch. 1112 (H.B. 2245), Sec. 4, eff. September 1, 2019.

Sec. 112.072. DISTRIBUTION TO SECOND TRUST: TRUSTEE WITH FULL DISCRETION. (a) An authorized trustee who has the full discretion to distribute the principal of a trust may distribute all or part of the principal of that trust in favor of a trustee of a second trust for the benefit of one, more than one, or all of the current beneficiaries of the first trust and for the benefit of one, more than one, or all of the successor or presumptive remainder beneficiaries of the first trust.

(b) The authorized trustee may, in connection with the exercise of a power of distribution under this section, grant a power of appointment, including a currently exercisable power of appointment, in the second trust to one or more of the current beneficiaries of the first trust who, at the time the power of appointment is granted, is eligible to receive the principal outright under the terms of the first trust.

(c) If the authorized trustee grants a power of appointment to a beneficiary under Subsection (b), the class of permissible appointees in whose favor the beneficiary may appoint under that power may be broader or different than the current, successor, and presumptive remainder beneficiaries of the first trust.

(d) If the beneficiaries of the first trust are described as

a class of persons, the beneficiaries of the second trust may include one or more persons who become members of that class after the distribution to the second trust.

(e) The authorized trustee shall exercise a power to distribute under this section in good faith, in accordance with the terms and purposes of the trust, and in the interests of the beneficiaries.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3, eff. September 1, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 62 (S.B. 617), Sec. 8, eff. September 1, 2017.

Sec. 112.073. DISTRIBUTION TO SECOND TRUST: TRUSTEE WITH LIMITED DISCRETION. (a) An authorized trustee who has limited discretion to distribute the principal of a trust may distribute all or part of the principal of that trust in favor of a trustee of a second trust as provided by this section.

(b) The current beneficiaries of the second trust must be the same as the current beneficiaries of the first trust, and the successor and presumptive remainder beneficiaries of the second trust must be the same as the successor and presumptive remainder beneficiaries of the first trust.

(c) The second trust must include the same language authorizing the trustee to distribute the income or principal of the trust that was included in the first trust.

(d) If the beneficiaries of the first trust are described as a class of persons, the beneficiaries of the second trust must include all persons who become members of that class after the distribution to the second trust.

(e) If the first trust grants a power of appointment to a beneficiary of the trust, the second trust must grant the power of appointment to the beneficiary in the second trust, and the class of permissible appointees under that power must be the same as the class of permissible appointees under the power granted by the first trust.

(f) The authorized trustee shall exercise a power of

distribution under this section in good faith, in accordance with the terms and purposes of the trust, and in the interests of the beneficiaries.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3, eff. September 1, 2013.

Sec. 112.074. NOTICE REQUIRED. (a) An authorized trustee may exercise a power of distribution under Section 112.072 or 112.073 without the consent of the settlor or beneficiaries of the first trust and without court approval if the trustee provides to all of the current beneficiaries and presumptive remainder beneficiaries written notice of the trustee's decision to exercise the power.

(b) For the purpose of determining who is a current beneficiary or presumptive remainder beneficiary entitled to the notice, a beneficiary is determined as of the date the notice is sent. A beneficiary includes a person entitled to receive property under the terms of the first trust.

(c) Except as provided by Subsection (e-1), in addition to the notice required under Subsection (a), the authorized trustee shall give written notice of the trustee's decision to the attorney general if:

- (1) a charity is entitled to notice;
- (2) a charity entitled to notice is no longer in existence;
- (3) the trustee has the authority to distribute trust assets to one or more charities that are not named in the trust instrument; or
- (4) the trustee has the authority to make distributions for a charitable purpose described in the trust instrument, but no charity is named as a beneficiary for that purpose.

(d) If the beneficiary has a court-appointed guardian or conservator, the notice required to be given by this section must be given to that guardian or conservator. If the beneficiary is a minor for whom no guardian or conservator has been appointed, the notice required to be given by this section must be given to a

parent of the minor.

(e) The authorized trustee is not required to provide the notice to a beneficiary who:

(1) is known to the trustee and cannot be located by the trustee after reasonable diligence;

(2) is not known to the trustee;

(3) waives the requirement of the notice under this section; or

(4) is a descendant of a beneficiary to whom the trustee has given notice if the beneficiary and the beneficiary's ancestor have similar interests in the trust and no apparent conflict of interest exists between them.

(e-1) The trustee is not required to give notice to the attorney general under Subsection (c) if the attorney general waives that requirement in writing.

(e-2) For purposes of Subsection (e)(3), a beneficiary is considered to have waived the requirement that notice be given under this section if a person to whom notice is required to be given with respect to that beneficiary under Subsection (d) waives the requirement that notice be given under this section.

(f) The notice required under Subsection (a) must:

(1) include a statement that:

(A) the authorized trustee intends to exercise the power of distribution;

(B) the beneficiary has the right to object to the exercise of the power; and

(C) the beneficiary may petition a court to approve, modify, or deny the exercise of the trustee's power to make a distribution under this subchapter;

(2) describe the manner in which the trustee intends to exercise the power;

(3) specify the date the trustee proposes to distribute the first trust to the second trust;

(4) include the name and mailing address of the trustee;

(5) include copies of the agreements of the first trust and the proposed second trust;

(6) be given not later than the 30th day before the proposed date of distribution to the second trust; and

(7) be sent by registered or certified mail, return receipt requested, or delivered in person, unless the notice is waived in writing by the person to whom notice is required to be given.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3, eff. September 1, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 62 (S.B. 617), Sec. 9, eff. September 1, 2017.

Sec. 112.075. WRITTEN INSTRUMENT REQUIRED. A distribution under Section 112.072 or 112.073 must be made by a written instrument that is signed and acknowledged by the authorized trustee and filed with the records of the first trust and the second trust.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3, eff. September 1, 2013.

Sec. 112.076. REFERENCE TO TRUST TERMS. A reference to the governing instrument or terms of the governing instrument of a trust includes the terms of a second trust to which that trust's principal was distributed under this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3, eff. September 1, 2013.

Sec. 112.077. SETTLOR OF SECOND TRUST. (a) Except as provided by Subsection (b), the settlor of a first trust is considered to be the settlor of a second trust established under this subchapter.

(b) If a settlor of a first trust is not also the settlor of a second trust into which principal of that first trust is distributed, the settlor of the first trust is considered the settlor of the portion of the second trust distributed to the second trust from that first trust under this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3,

eff. September 1, 2013.

Sec. 112.078. COURT-ORDERED DISTRIBUTION. (a) An authorized trustee may petition a court to order a distribution under this subchapter.

(b) If the authorized trustee receives a written objection to a distribution under this subchapter from a beneficiary before the proposed effective date of the distribution specified in the notice provided to the beneficiary under Section 112.074, the trustee or the beneficiary may petition a court to approve, modify, or deny the exercise of the trustee's power to make a distribution under this subchapter.

(c) If the authorized trustee receives a written objection to the distribution from the attorney general not later than the 30th day after the date the notice required by Section 112.074 was received by the attorney general, the trustee may not make a distribution under Section 112.072 or 112.073 without petitioning a court to approve or modify the exercise of the trustee's power to make a distribution under this subchapter.

(d) In a judicial proceeding under this section, the authorized trustee may present the trustee's reasons for supporting or opposing a proposed distribution, including whether the trustee believes the distribution would enable the trustee to better carry out the purposes of the trust.

(e) The authorized trustee has the burden of proving that the proposed distribution furthers the purposes of the trust, is in accordance with the terms of the trust, and is in the interests of the beneficiaries.

(f) This section does not limit a beneficiary's right to bring an action against a trustee for a breach of trust.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3, eff. September 1, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 62 (S.B. 617), Sec. 10, eff. September 1, 2017.

Sec. 112.079. DIVIDED DISCRETION. If an authorized trustee

has full discretion to distribute the principal of a trust and another trustee has limited discretion to distribute principal under the trust instrument, the authorized trustee having full discretion may exercise the power to distribute the trust's principal under Section [112.072](#).

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. [2913](#)), Sec. 3, eff. September 1, 2013.

Sec. 112.080. LATER DISCOVERED ASSETS. To the extent the authorized trustee does not provide otherwise:

(1) the distribution of all of the principal of a first trust to a second trust includes subsequently discovered assets otherwise belonging to the first trust and principal paid to or acquired by the first trust after the distribution of the first trust's principal to the second trust; and

(2) the distribution of part of the principal of a first trust to a second trust does not include subsequently discovered assets belonging to the first trust or principal paid to or acquired by the first trust after the distribution of principal from the first trust to the second trust, and those assets or that principal remain the assets or principal of the first trust.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. [2913](#)), Sec. 3, eff. September 1, 2013.

Sec. 112.081. OTHER AUTHORITY TO DISTRIBUTE IN FURTHER TRUST NOT LIMITED. This subchapter may not be construed to limit the power of an authorized trustee to distribute property in further trust under the terms of the governing instrument of a trust, other law, or a court order.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. [2913](#)), Sec. 3, eff. September 1, 2013.

Sec. 112.082. NEED FOR DISTRIBUTION NOT REQUIRED. An authorized trustee may exercise the power to distribute principal to a second trust under Section [112.072](#) or [112.073](#) regardless of whether there is a current need to distribute principal under the terms of the first trust.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3, eff. September 1, 2013.

Sec. 112.083. DUTIES NOT CREATED. (a) This subchapter does not create or imply a duty for an authorized trustee to exercise a power to distribute principal, and impropriety may not be inferred as a result of the trustee not exercising a power conferred by Section 112.072 or 112.073.

(b) An authorized trustee does not have a duty to inform beneficiaries about the availability of the authority provided by this subchapter or a duty to review the trust to determine whether any action should be taken under this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3, eff. September 1, 2013.

Sec. 112.084. CERTAIN DISTRIBUTIONS PROHIBITED.

(a) Except as provided by Subsection (b), an authorized trustee may not exercise a power to distribute principal of a trust otherwise provided by Section 112.072 or 112.073 if the distribution is expressly prohibited by the terms of the governing instrument of the trust.

(b) A general prohibition of the amendment or revocation of a trust or a provision that constitutes a spendthrift clause does not preclude the exercise of a power to distribute principal of a trust under Section 112.072 or 112.073.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3, eff. September 1, 2013.

Sec. 112.085. EXCEPTIONS TO POWER OF DISTRIBUTION. An authorized trustee may not exercise a power to distribute principal of a trust under Section 112.072 or 112.073 to:

(1) reduce, limit, or modify a beneficiary's current, vested right to:

(A) receive a mandatory distribution of income or principal;

(B) receive a mandatory annuity or unitrust interest;

(C) withdraw a percentage of the value of the trust; or

(D) withdraw a specified dollar amount from the trust;

(2) materially limit a trustee's fiduciary duty:

(A) under the terms of the trust; or

(B) in a manner that would be prohibited by Section [111.0035](#);

(3) decrease or indemnify against a trustee's liability;

(4) add a provision exonerating a trustee from liability for failure to exercise reasonable care, diligence, and prudence;

(5) eliminate a provision granting another person the right to remove or replace the authorized trustee exercising the distribution power under Section [112.072](#) or [112.073](#); or

(6) reduce, limit, or modify in the second trust a perpetuities provision included in the first trust, unless expressly permitted by the terms of the first trust.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. [2913](#)), Sec. 3, eff. September 1, 2013.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 62 (S.B. [617](#)), Sec. 11, eff. September 1, 2017.

Sec. 112.086. TAX-RELATED LIMITATIONS. (a) The authorized trustee may not distribute the principal of a trust under Section [112.072](#) or [112.073](#) in a manner that would prevent a contribution to that trust from qualifying for or that would reduce the exclusion, deduction, or other federal tax benefit that was originally claimed for that contribution, including:

(1) the annual exclusion under Section 2503(b), Internal Revenue Code of 1986;

(2) a marital deduction under Section 2056(a) or 2523(a), Internal Revenue Code of 1986;

(3) the charitable deduction under Section 170(a), 642(c), 2055(a), or 2522(a), Internal Revenue Code of 1986;

(4) direct skip treatment under Section 2642(c), Internal Revenue Code of 1986; or

(5) any other tax benefit for income, gift, estate, or generation-skipping transfer tax purposes under the Internal Revenue Code of 1986.

(b) Notwithstanding Subsection (a), an authorized trustee may distribute the principal of a first trust to a second trust regardless of whether the settlor is treated as the owner of either or both trusts under Sections 671-679, Internal Revenue Code of 1986.

(c) If S corporation stock is held in trust, an authorized trustee may not distribute all or part of that stock under Section 112.072 or 112.073 to a second trust that is not a permitted shareholder under Section 1361(c)(2), Internal Revenue Code of 1986.

(d) If an interest in property that is subject to the minimum distribution rules of Section 401(a)(9), Internal Revenue Code of 1986, is held in trust, an authorized trustee may not distribute the trust's interest in the property to a second trust under Section 112.072 or 112.073 if the distribution would shorten the minimum distribution period applicable to the property.

Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. 2913), Sec. 3, eff. September 1, 2013.

Sec. 112.087. COMPENSATION OF TRUSTEE. (a) Except as provided by Subsection (b) and unless a court, on application of the authorized trustee, directs otherwise, the trustee may not exercise a power under Section 112.072 or 112.073 solely to change trust provisions regarding the determination of the compensation of any trustee.

(b) An authorized trustee, in connection with the exercise of a power under Section 112.072 or 112.073 for another valid and reasonable purpose, may bring the trustee's compensation into conformance with reasonable limits authorized by state law.

(c) The compensation payable to an authorized trustee of the first trust may continue to be paid to the trustee of the second trust during the term of the second trust and may be determined in

the same manner as the compensation would have been determined in the first trust.

(d) An authorized trustee may not receive a commission or other compensation for the distribution of a particular asset from a first trust to a second trust under Section [112.072](#) or [112.073](#). Added by Acts 2013, 83rd Leg., R.S., Ch. 699 (H.B. [2913](#)), Sec. 3, eff. September 1, 2013.

SUBCHAPTER E. EFFECT OF DISSOLUTION OF MARRIAGE ON CERTAIN
TRANSFERS IN TRUST

Sec. 112.101. DEFINITIONS. In this subchapter:

(1) "Disposition or appointment of property" includes a transfer of property to or a provision of another benefit to a beneficiary under a trust instrument.

(2) "Divorced individual" means an individual whose marriage has been dissolved by divorce, annulment, or a declaration that the marriage is void.

(3) "Relative" means an individual who is related to another individual by consanguinity or affinity, as determined under Sections [573.022](#) and [573.024](#), Government Code, respectively.

(4) "Revocable," with respect to a disposition, appointment, provision, or nomination, means a disposition to, appointment of, provision in favor of, or nomination of an individual's spouse or any relative of the individual's spouse who is not a relative of the individual that is contained in a trust instrument executed by the individual before the dissolution of the individual's marriage to the spouse and that the individual was solely empowered by law or by the trust instrument to revoke regardless of whether the individual had the capacity to exercise the power at that time.

Added by Acts 2019, 86th Leg., R.S., Ch. 1112 (H.B. [2245](#)), Sec. 5, eff. September 1, 2019.

Sec. 112.102. REVOCATION OF CERTAIN NONTESTAMENTARY TRANSFERS; TREATMENT OF FORMER SPOUSE OR FORMER SPOUSE'S RELATIVE AS BENEFICIARY UNDER CERTAIN POLICIES OR PLANS. (a) The

dissolution of the marriage revokes a provision in a trust instrument that was executed by a divorced individual as settlor before the divorced individual's marriage was dissolved and that:

(1) is a revocable disposition or appointment of property made to the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual;

(2) revocably confers a general or special power of appointment on the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual; or

(3) revocably nominates the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual to serve:

(A) as a personal representative, trustee, conservator, agent, or guardian; or

(B) in another fiduciary or representative capacity.

(b) Subsection (a) does not apply if one of the following provides otherwise:

(1) a court order;

(2) the express terms of a trust instrument executed by the divorced individual before the individual's marriage was dissolved; or

(3) an express provision of a contract relating to the division of the marital estate entered into between the divorced individual and the individual's former spouse before, during, or after the marriage.

(c) Sections [9.301](#) and [9.302](#), Family Code, govern the designation of a former spouse as a beneficiary of certain life insurance policies or as a beneficiary under certain retirement benefit plans or other financial plans.

Added by Acts 2019, 86th Leg., R.S., Ch. 1112 (H.B. [2245](#)), Sec. 5, eff. September 1, 2019.

Sec. 112.103. EFFECT OF REVOCATION. (a) An interest granted in a provision of a trust instrument that is revoked under

Section [112.102](#)(a)(1) or (2) passes as if the former spouse of the divorced individual who executed the trust instrument and each relative of the former spouse who is not a relative of the divorced individual disclaimed the interest granted in the provision.

(b) An interest granted in a provision of a trust instrument that is revoked under Section [112.102](#)(a)(3) passes as if the former spouse and each relative of the former spouse who is not a relative of the divorced individual died immediately before the dissolution of the marriage.

Added by Acts 2019, 86th Leg., R.S., Ch. 1112 (H.B. [2245](#)), Sec. 5, eff. September 1, 2019.

Sec. 112.104. LIABILITY OF CERTAIN PURCHASERS OR RECIPIENTS OF CERTAIN PAYMENTS, BENEFITS, OR PROPERTY. A bona fide purchaser of property from a divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual or a person who receives from the former spouse or any relative of the former spouse who is not a relative of the divorced individual a payment, benefit, or property in partial or full satisfaction of an enforceable obligation:

(1) is not required by this subchapter to return the payment, benefit, or property; and

(2) is not liable under this subchapter for the amount of the payment or the value of the property or benefit.

Added by Acts 2019, 86th Leg., R.S., Ch. 1112 (H.B. [2245](#)), Sec. 5, eff. September 1, 2019.

Sec. 112.105. LIABILITY OF FORMER SPOUSE OR FORMER SPOUSE'S RELATIVE FOR CERTAIN PAYMENTS, BENEFITS, OR PROPERTY. A divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual who, not for value, receives a payment, benefit, or property to which the former spouse or the relative of the former spouse who is not a relative of the divorced individual is not entitled as a result of Sections [112.102](#)(a) and (b):

(1) shall return the payment, benefit, or property to the person who is entitled to the payment, benefit, or property

under this subchapter; or

(2) is personally liable to the person described by Subdivision (1) for the amount of the payment or the value of the benefit or property received, as applicable.

Added by Acts 2019, 86th Leg., R.S., Ch. 1112 (H.B. 2245), Sec. 5, eff. September 1, 2019.

Sec. 112.106. CERTAIN TRUSTS WITH DIVORCED INDIVIDUALS AS JOINT SETTLORS. (a) This section applies only to a trust created under a trust instrument that:

(1) was executed by two married individuals as settlors whose marriage to each other is subsequently dissolved; and

(2) includes a provision described by Section 112.102(a).

(b) On the death of one of the divorced individuals who is a settlor of a trust to which this section applies, the trustee shall divide the trust into two trusts, each of which shall be composed of the property attributable to the contributions of only one of the divorced individuals.

(c) An action authorized in a trust instrument described by Subsection (a) that requires the actions of both divorced individuals may be taken with respect to a trust established in accordance with Subsection (b) from the surviving divorced individual's contributions solely by that divorced individual.

(d) The provisions of this subchapter apply independently to each trust established in accordance with Subsection (b) as if the divorced individual from whose contributions the trust was established had been the only settlor to execute the trust instrument described by Subsection (a).

(e) This section does not apply if one of the following provides otherwise:

(1) a court order;

(2) the express terms of a trust instrument executed by the two divorced individuals before their marriage was dissolved; or

(3) an express provision of a contract relating to the

division of the marital estate entered into between the two divorced individuals before, during, or after their marriage.

Added by Acts 2019, 86th Leg., R.S., Ch. 1112 (H.B. [2245](#)), Sec. 5, eff. September 1, 2019.