

PROPERTY CODE

TITLE 9. TRUSTS

SUBTITLE C. MISCELLANEOUS TRUSTS

CHAPTER 121. EMPLOYEES' TRUSTS

SUBCHAPTER A. PENSION TRUSTS

Sec. 121.001. PENSION TRUSTS. (a) For the purposes of this subchapter, a pension trust is an express trust:

- (1) containing or relating to property;
- (2) created by an employer as part of a stock-bonus plan, pension plan, disability or death benefit plan, or profit-sharing plan for the benefit of some or all of the employer's employees;
- (3) to which contributions are made by the employer, by some or all of the employees, or by both; and
- (4) created for the principal purpose of distributing to the employees, or the successor to their beneficial interest in the trust, the principal or income, or both, of the property held in trust.

(b) This subchapter applies to a pension trust regardless of when the trust was created.

Acts 1983, 68th Leg., p. 3691, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 121.002. EMPLOYEES OF CONTROLLED CORPORATIONS. For the purposes of this subchapter, the relationship of employer and employee exists between a corporation and its own employees, and between a corporation and the employees of each other corporation that it controls, by which it is controlled, or with which it is under common control through the exercise by one or more persons of a majority of voting rights in one or more corporations.

Acts 1983, 68th Leg., p. 3691, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 121.003. APPLICATION OF TEXAS TRUST CODE. The Texas Trust Code (Chapters [111](#) through [117](#)) applies to a pension trust.

Acts 1983, 68th Leg., p. 3691, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Amended by:

Acts 2005, 79th Leg., Ch. 148 (H.B. [1190](#)), Sec. 27, eff. January 1, 2006.

Sec. 121.004. RULE AGAINST PERPETUITIES. A pension trust may continue for as long as is necessary to accomplish the purposes of the trust and is not invalid under the rule against perpetuities or any other law restricting or limiting the duration of a trust. Acts 1983, 68th Leg., p. 3691, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 121.005. ACCUMULATION OF INCOME. Notwithstanding any law limiting the time during which trust income may be accumulated, the income of a pension trust may be accumulated under the terms of the trust for as long as is necessary to accomplish the purposes of the trust. Acts 1983, 68th Leg., p. 3692, ch. 576, Sec. 1, eff. Jan. 1, 1984.

SUBCHAPTER B. DEATH BENEFITS UNDER EMPLOYEES' TRUSTS

Sec. 121.051. DEFINITIONS. (a) In this subchapter:

(1) "Death benefit" means a benefit of any kind, including the proceeds of a life insurance policy or any other payment, in cash or property, under an employees' trust or a retirement account, a contract purchased by an employees' trust or a retirement account, or a retirement-annuity contract that is payable because of an employee's, participant's, or beneficiary's death to or for the benefit of the employee's, participant's, or beneficiary's beneficiary.

(2) "Employee" means a person covered by an employees' trust or a retirement account that provides a death benefit or a person whose interest in an employees' trust or a retirement account has not been fully distributed.

(3) "Employees' trust" means:

(A) a trust forming a part of a stock-bonus, pension, or profit-sharing plan under Section 401, Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 401 (1986));

(B) a pension trust under Chapter [111](#); and

(C) an employer-sponsored benefit plan or

program, or any other retirement savings arrangement, including a pension plan created under Section 3, Employee Retirement Income Security Act of 1974 (29 U.S.C.A. Sec. 1002 (1986)), regardless of whether the plan, program, or arrangement is funded through a trust.

(4) "Individual retirement account" means a trust, custodial arrangement, or annuity under Section 408(a) or (b), Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 408 (1986)).

(5) "Participant" means a person covered by an employees' trust or a retirement account that provides a death benefit or a person whose interest in an employees' trust or a retirement account has not been fully distributed.

(6) "Retirement account" means a retirement-annuity contract, an individual retirement account, a simplified employee pension, or any other retirement savings arrangement.

(7) "Retirement-annuity contract" means an annuity contract under Section 403, Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 403 (1986)).

(8) "Simplified employee pension" means a trust, custodial arrangement, or annuity under Section 408, Internal Revenue Code of 1954 (26 U.S.C.A. Sec. 408 (1986)).

(9) "Trust" and "trustee" have the meanings assigned by the Texas Trust Code (Chapters 111 through 115), except that "trust" includes any trust, regardless of when it is created.

(b) References to specific provisions of the Internal Revenue Code of 1954 (26 U.S.C.A.) include corresponding provisions of any subsequent federal tax laws.

Acts 1983, 68th Leg., p. 3692, ch. 576, Sec. 1, eff. Jan. 1, 1984. Amended by Acts 1987, 70th Leg., ch. 741, Sec. 3, eff. Aug. 31, 1987.

Sec. 121.052. PAYMENT OF DEATH BENEFIT TO TRUSTEE. (a) A death benefit is payable to a trustee of a trust evidenced by a written instrument or declaration existing on the date of an employee's or participant's death, or to a trustee named or to be named as trustee of a trust created under an employee's or participant's will, if the trustee is designated as beneficiary

under the plan containing the employees' trust or under the retirement account.

(b) A trustee of a testamentary trust may be designated under Subsection (a) prior to the execution of the will.

(c) A death benefit under a will is not payable until the will is probated.

(d) The trustee shall hold, administer, and dispose of a death benefit payable under this section in accordance with the terms of the trust on the date of the employee's death.

(e) A death benefit is payable to a trustee of a trust created by the will of a person other than the employee if:

(1) the will has been probated at the time of the employee's death; and

(2) the death benefit is payable to the trustee to be held, administered, and disposed of in accordance with the terms of the testamentary trust.

Acts 1983, 68th Leg., p. 3693, ch. 576, Sec. 1, eff. Jan. 1, 1984.
Amended by Acts 1987, 70th Leg., ch. 741, Sec. 4, eff. Aug. 31, 1987.

Sec. 121.053. VALIDITY OF TRUST DECLARATION. The validity of a trust agreement or declaration is not affected by:

(1) the absence of a corpus other than the right of the trustee to receive a death benefit as beneficiary;

(2) the employee's reservation of the right to designate another beneficiary of the death benefit; or

(3) the existence of authority to amend, modify, revoke, or terminate the agreement or declaration.

Acts 1983, 68th Leg., p. 3693, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 121.054. UNCLAIMED BENEFITS. If a trustee does not claim a death benefit on or before the first anniversary of the employee's or participant's death or if satisfactory evidence is provided to a trustee, custodian, other fiduciary, or other obligor of the employees' trust, contract purchased by the employees' trust, or the retirement account before the first anniversary of the employee's or participant's death that there is or will be no

trustee to receive the death benefit, the death benefit shall be paid:

(1) according to the beneficiary designation under the plan, trust, contract, or arrangement providing the death benefit under the employees' trust or retirement account; or

(2) if there is no designation in the employees' trust or retirement account, to the personal representative of the deceased employee's or participant's estate.

Acts 1983, 68th Leg., p. 3693, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Amended by Acts 1987, 70th Leg., ch. 741, Sec. 5, eff. Aug. 31, 1987.

Sec. 121.055. EXEMPTION FROM TAXES AND DEBTS. Unless the trust agreement, declaration of trust, or will provides otherwise, a death benefit payable to a trustee under this subchapter is not:

(1) part of the deceased employee's estate;

(2) subject to the debts of the deceased employee or the employee's estate, or to other charges enforceable against the estate; or

(3) subject to the payment of taxes enforceable against the deceased employee's estate to a greater extent than if the death benefit is payable, free of trust, to a beneficiary other than the executor or administrator of the estate of the employee.

Acts 1983, 68th Leg., p. 3694, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 121.056. COMMINGLING OF ASSETS. A trustee who receives a death benefit under this subchapter may commingle the property with other assets accepted by the trustee and held in trust, either before or after the death benefit is received.

Acts 1983, 68th Leg., p. 3694, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 121.057. PRIOR DESIGNATIONS NOT AFFECTED. This subchapter does not affect the validity of a beneficiary designation made by an employee before April 3, 1975, that names a trustee as beneficiary of a death benefit.

Acts 1983, 68th Leg., p. 3694, ch. 576, Sec. 1, eff. Jan. 1, 1984.

Sec. 121.058. CONSTRUCTION. (a) This subchapter is intended to be declaratory of the common law of this state.

(b) A court shall liberally construe this subchapter to effect the intent that a death benefit received by a trustee under this subchapter is not subject to the obligations of the employee or the employee's estate unless the trust receiving the benefit expressly provides otherwise.

(c) A death benefit shall not be included in property administered as part of a testator's estate or in an inventory filed with the county court because of a reference in a will to the death benefit or because of the naming of the trustee of a testamentary trust.

Acts 1983, 68th Leg., p. 3694, ch. 576, Sec. 1, eff. Jan. 1, 1984.