

**THE OREGON UNIFORM TRUST CODE:
KEY CHANGES MADE TO OREGON LAW BY SB 275
(Section References Are to Sections of SB 275)**

February 3, 2005

Section 3 (UTC 103). “Beneficiary” is defined to include a person with a present or future interest, whether vested or contingent, and a person holding a power of appointment, other than as a trustee. “Qualified beneficiary” is a more narrowly defined group. The effect of the changes to the definition of beneficiary is of particular importance in connection with the duty to inform and report set forth in Section 71, but because trustees owe duties to “beneficiaries,” the change affects provisions throughout the Oregon Code.

Section 5 (UTC 105). Certain provisions of the Oregon Code are mandatory and cannot be changed by the settlor. Subsections (2)(h) and (i) of this section on the duties to inform and report to qualified beneficiaries probably do not change Oregon law, assuming that Oregon follows the common law rule that a trustee has to account to somebody. Under subsection (3), however, a settlor can modify or waive these duties either (a) for so long as the settlor or the settlor’s spouse (if a qualified beneficiary) is alive and financially capable or (b) if the settlor names another person to receive the information.

Section 18 (UTC 303). This section extends current Oregon provisions on representation beyond modification to include representation for notice and other purposes. Section 18 also extends virtual representation to minors and financially incapable adults.

Section 22 (UTC 402). This section changes Oregon law to permit a trustee to select beneficiaries from an indefinite class.

Section 25 (UTC 405). This section gives a settlor of a charitable trust standing to enforce the trust.

Section 28 (UTC 408). Subsection (3) changes Oregon law by permitting distribution of excess property in a pet trust if a court determines that the value of the trust property exceeds the amount required for the intended use. The trustee will distribute the excess property to persons designated in the trust instrument or, if none are designated, to the settlor or the settlor’s successors.

Section 29 (UTC 409). This section validates a trust created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable purpose to be selected by the trustee. The trust can be enforced for 90 years.

Section 30 (UTC 410). A settlor can commence a proceeding to modify or terminate a trust or to ask the court to apply cy pres to a charitable trust.

Section 31 (UTC 411). Subsection (3) presumes that a spendthrift clause is a material purpose, which means that a court is unlikely to modify or terminate a spendthrift trust, even when all the beneficiaries consent. This probably does not change Oregon law, but current law is unclear.

Section 33 (UTC 413). This section liberalizes cy pres to permit a court to apply cy pres to a charitable trust if a purpose becomes “wasteful.” In addition, application of cy pres no longer requires a finding of general charitable intent. Cy pres can be applied even if the trust provides for the transfer of the property to a noncharity on the failure of a charitable purpose, provided that 50 years have elapsed since creation of the trust.

Section 35 (UTC 415). This section allows a court to reform the terms of a trust, even if unambiguous, if clear and convincing evidence proves the settlor’s intent and establishes that a mistake of law or fact affected the terms being construed. This probably does not change Oregon law, because the common law allows reformation of trusts (but not of wills).

Section 36 (UTC 416). This section allows a court to modify the terms of a trust to achieve the settlor’s tax objectives. Existing Oregon statutes do not expressly provide for this type of modification, although they probably permit it.

Section 37 (UTC 417). This section permits a trustee to combine or divide a trust without court approval if the rights of beneficiaries and the purposes of the trust are not materially affected.

Section 40 (UTC 502). This section provides that using the words “spendthrift trust” is sufficient to create a spendthrift trust.

Section 45 (UTC 601). The standard of capacity required to create a revocable trust is lowered to be the same as that required to execute a will.

Section 46 (UTC 602). This section changes the presumption that a trust is irrevocable to a presumption that the trust is revocable unless the trust expressly provides otherwise.

By permitting “substantial compliance” with the procedure required by a revocable trust for revocation or amendment, the Oregon Code may loosen the current rules a bit.

Section 46 authorizes an agent acting under a durable power of attorney to revoke a trust only if the trust expressly authorizes the agent to do so.

Section 48 (UTC 603). While a settlor of a revocable trust is living, all rights of the beneficiaries, including rights to information, are subject to the settlor’s control, and the trustee owes duties only to the settlor. Under current law, the trustee’s duties extend to all beneficiaries.

Section 49 (UTC 604). This section creates statutes of limitations for actions contesting the validity of a revocable trust: four months after notice is given or three years after the settlor’s death. The four-month period is consistent with the period for contesting wills. The three-year period is different from the rules that apply to wills.

Section 54 (UTC 705). This section makes it easier for a trustee to resign without court approval.

Section 55 (UTC 706). This section allows the settlor of an irrevocable trust to petition for removal of a trustee. Section 55 does not require a beneficiary to post a bond before petitioning the court for removal of a trustee or for any other action. The Study Committee believes that the bond requirement under current Oregon law unreasonably bars access to court.

Section 71 (UTC 813). This section modifies the duties to inform and report to beneficiaries by limiting these duties to qualified beneficiaries.

Under subsection (1), a trustee no longer has a duty to respond to requests for information from beneficiaries who are not qualified beneficiaries, but the trustee may choose to respond to reasonable requests from these beneficiaries.

Under subsection (2), a trustee has a duty to provide a copy of the trust instrument to a qualified beneficiary who requests it. Current practice may be to provide only those portions of the instrument that are pertinent to the particular beneficiary.

Subsection (2) also imposes notification duties on a trustee when the trustee accepts a trusteeship or becomes aware that an irrevocable trust has been created. These notification duties do not apply retroactively to trustee acceptances that occurred or to trusts that became irrevocable prior to the effective date of the Oregon Code.

Under subsection (3), a trustee has a duty to send annual reports to qualified beneficiaries. However, as explained above, Section 5 permits the settlor to limit this duty provided that the settlor identifies someone to receive the reports.

A beneficiary who asks for information must ask with respect to a single, identifiable trust. The trustee may charge a reasonable fee for providing information to the beneficiary.

Despite the usual rules under Section 71, subsection (8) provides that information, notice, and reports will be given only to the settlor's spouse if (a) the spouse survives the settlor, (b) the spouse is financially capable, (c) the spouse is the only beneficiary currently eligible to receive trust distributions, and (d) all of the other qualified beneficiaries of the trust are descendants of the spouse.

In the case of a revocable trust, information, notice, and reports will be given only to the settlor while the settlor is alive. *See* Section 48(1).

Section 73 (UTC 814). Subsections (2)–(4) add tax savings clauses to Oregon law.

Section 87 (UTC 1005). In addition to providing for two periods of limitation consistent with current Oregon law, this section cuts off a beneficiary's claims against a trustee after one year if the trustee discloses to the beneficiary specific information about potential claims.

Section 89 (UTC 1007). At common law, a trustee is absolutely liable for misdelivery of trust property even if the trustee does not have notice of the happening of an event that affects distribution under the trust terms. The Oregon Code protects a trustee who does not have notice of such an event.

Section 95 (UTC 1013). The current certification of trust statute was used as the model for the Oregon Code (replacing the UTC version), but the current statute has been modified slightly by adding some provisions from the Idaho statute.