

**OREGON STATE BAR**  
**Legislative Proposal**

**RE: Legislation to give trustees power to split trusts**

**FROM: OSB Estate Planning Section**

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This bill would amend ORS 128.009.

**1. PROBLEM PRESENTED**

Trustees frequently need to divide a trust into separate segments that have different tax characteristics. This has become more of a problem because of the recent decoupling of the Oregon Inheritance Tax from the Federal Estate Tax. Many Trustees will now have trusts which are wholly non-marital trusts for Federal Estate Tax purposes, but are both marital and non-marital trusts for Oregon Inheritance Tax purposes. Being able to separate the Oregon marital trust from the Oregon non-marital trust will allow trustees to better manage both trusts. Most trust instruments had not anticipated that the two tax systems would be “decoupled,” and do not contain language giving the trustee the power to separate the non-marital trust.

**2. SOLUTION**

The proposed amendment to ORS 128.009 adds to the trustees’ powers a power to split a single trust into two separate trusts under certain conditions. The split can be accomplished without court involvement. Each new separate trust must be held and administered on identical terms as the trust from which it is severed. The trustee may, however, take into account the different tax characteristics of each trust in making administration decisions.

**3. PUBLIC POLICY IMPLICATION**

The proposed amendment will give trustees needed flexibility to cope with unexpected changes in tax and other laws where the ability to sever a trust would be useful in accomplishing the trust’s purposes.