

1-1 By: Rodríguez S.B. No. 387  
 1-2 (In the Senate - Filed January 28, 2015; February 2, 2015,  
 1-3 read first time and referred to Committee on State Affairs;  
 1-4 March 31, 2015, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 9, Nays 0; March 31, 2015,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 387 By: Ellis

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to trusts and certain other forms of asset protection.  
 1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
 1-23 SECTION 1. Sections 42.0021(a) and (b), Property Code, are  
 1-24 amended to read as follows:  
 1-25 (a) In addition to the exemption prescribed by Section  
 1-26 42.001, a person's right to the assets held in or to receive  
 1-27 payments, whether vested or not, under any stock bonus, pension,  
 1-28 annuity, deferred compensation, profit-sharing, or similar plan,  
 1-29 including a retirement plan for self-employed individuals, or a  
 1-30 simplified employee pension plan, an individual retirement account  
 1-31 or individual retirement annuity, including an inherited  
 1-32 individual retirement account or ~~or~~ individual retirement annuity,  
 1-33 Roth IRA, or inherited Roth IRA, or a health savings account, and  
 1-34 under any annuity or similar contract purchased with assets  
 1-35 distributed from that type of plan or account, is exempt from  
 1-36 attachment, execution, and seizure for the satisfaction of debts to  
 1-37 the extent the plan, contract, annuity, or account is exempt from  
 1-38 federal income tax, or to the extent federal income tax on the  
 1-39 person's interest is deferred until actual payment of benefits to  
 1-40 the person under Section 223, 401(a), 403(a), 403(b), 408(a), 408A,  
 1-41 457(b), or 501(a), Internal Revenue Code of 1986, including a  
 1-42 government plan or church plan described by Section 414(d) or (e),  
 1-43 Internal Revenue Code of 1986. For purposes of this subsection, the  
 1-44 interest of a person in a plan, annuity, account, or contract  
 1-45 acquired by reason of the death of another person, whether as an  
 1-46 owner, participant, beneficiary, survivor, coannuitant, heir, or  
 1-47 legatee, is exempt to the same extent that the interest of the  
 1-48 person from whom the plan, annuity, account, or contract was  
 1-49 acquired was exempt on the date of the person's death. If this  
 1-50 subsection is held invalid or preempted by federal law in whole or  
 1-51 in part or in certain circumstances, the subsection remains in  
 1-52 effect in all other respects to the maximum extent permitted by law.  
 1-53 (b) Contributions to an individual retirement account,  
 1-54 individual retirement annuity, or Roth IRA that are "excess  
 1-55 contributions" within the meaning of Section 4973 ~~[exceed the~~  
 1-56 ~~amounts permitted under the applicable provisions]~~ of the Internal  
 1-57 Revenue Code of 1986, and any accrued earnings on such excess  
 1-58 contributions, are not exempt under this section unless otherwise  
 1-59 exempt by law. Amounts qualifying as nontaxable transfers or  
 1-60 rollover contributions under Section 402(a)(5), 403(a)(4),

2-1 403(b)(8), or 408(d)(3) of the Internal Revenue Code of 1986 before  
 2-2 January 1, 1993, are treated as exempt amounts under Subsection  
 2-3 (a). Amounts treated as ~~qualified~~ rollover contributions under  
 2-4 Section 402A(c)(3), 402A(c)(4), or 408A, Internal Revenue Code of  
 2-5 1986, are treated as exempt amounts under Subsection (a). In  
 2-6 addition, amounts qualifying as nontaxable rollover contributions  
 2-7 under Section 402(c), 402(e)(6), 402(f), 403(a)(4), 403(a)(5),  
 2-8 403(b)(8), 403(b)(10), 408(d)(3), 408(d)(6), 408(d)(9), or 408A of  
 2-9 the Internal Revenue Code of 1986 on or after January 1, 1993, are  
 2-10 treated as exempt amounts under Subsection (a). Amounts qualifying  
 2-11 as nontaxable rollover contributions under Section 223(f)(5) of the  
 2-12 Internal Revenue Code of 1986 on or after January 1, 2004, are  
 2-13 treated as exempt amounts under Subsection (a).

2-14 SECTION 2. Section 111.0035(b), Property Code, is amended  
 2-15 to read as follows:

2-16 (b) The terms of a trust prevail over any provision of this  
 2-17 subtitle, except that the terms of a trust may not limit:

2-18 (1) the requirements imposed under Section 112.031;

2-19 (2) the applicability of Section 114.007 to an  
 2-20 exculpation term of a trust;

2-21 (3) the periods of limitation for commencing a  
 2-22 judicial proceeding regarding a trust;

2-23 (4) a trustee's duty:

2-24 (A) with regard to an irrevocable trust, to  
 2-25 respond to a demand for accounting made under Section 113.151 if the  
 2-26 demand is from a beneficiary who, at the time of the demand:

2-27 (i) is entitled or permitted to receive  
 2-28 distributions from the trust; or

2-29 (ii) would receive a distribution from the  
 2-30 trust if the trust terminated at the time of the demand; and

2-31 (B) to act in good faith and in accordance with  
 2-32 the purposes of the trust, except as otherwise provided by  
 2-33 Subchapter E, Chapter 114, with regard to a directing party and an  
 2-34 excluded fiduciary;

2-35 (5) a directing party's duty to act in good faith and  
 2-36 in accordance with the purposes of the trust;

2-37 (6) the power of a court, in the interest of justice,  
 2-38 to take action or exercise jurisdiction, including the power to:

2-39 (A) modify or terminate a trust or take other  
 2-40 action under Section 112.054;

2-41 (B) remove a trustee under Section 113.082;

2-42 (C) exercise jurisdiction under Section 115.001;

2-43 (D) require, dispense with, modify, or terminate  
 2-44 a trustee's bond; or

2-45 (E) adjust or deny a trustee's compensation if  
 2-46 the trustee commits a breach of trust; or

2-47 (7) ~~(6)~~ the applicability of Section 112.038.

2-48 SECTION 3. Section 111.004(7), Property Code, is amended to  
 2-49 read as follows:

2-50 (7) "Interested person" means a trustee, beneficiary,  
 2-51 or directing party or any other person having an interest in or a  
 2-52 claim against the trust or any person who is affected by the  
 2-53 administration of the trust. Whether a person, excluding a  
 2-54 trustee, directing party, or named beneficiary, is an interested  
 2-55 person may vary from time to time and must be determined according  
 2-56 to the particular purposes of and matter involved in any  
 2-57 proceeding.

2-58 SECTION 4. Section 112.035(e), Property Code, is amended to  
 2-59 read as follows:

2-60 (e) A beneficiary of the trust may not be considered a  
 2-61 settlor merely because of a lapse, waiver, or release of:

2-62 (1) a power described by Subsection (f); or

2-63 (2) the beneficiary's right to withdraw a part of the  
 2-64 trust property to the extent that the value of the property affected  
 2-65 by the lapse, waiver, or release in any calendar year does not  
 2-66 exceed the greater of ~~[the amount specified in]~~:

2-67 (A) the amount specified in Section 2041(b)(2) or  
 2-68 2514(e), Internal Revenue Code of 1986; or

2-69 (B) the amount specified in Section 2503(b),

3-1 Internal Revenue Code of 1986, with respect to the contributions by  
 3-2 each donor.

3-3 SECTION 5. Section 112.038, Property Code, is amended to  
 3-4 read as follows:

3-5 Sec. 112.038. FORFEITURE CLAUSE. (a) A provision in a  
 3-6 trust that would cause a forfeiture of or void an interest for  
 3-7 bringing any court action, including contesting a trust, is  
 3-8 enforceable unless in a court action determining whether the  
 3-9 forfeiture clause should be enforced, the person who brought the  
 3-10 action contrary to the forfeiture clause establishes by a  
 3-11 preponderance of the evidence that:

3-12 (1) just cause existed for bringing the action; and  
 3-13 (2) the action was brought and maintained in good  
 3-14 faith.

3-15 (b) This section is not intended to and does not repeal any  
 3-16 law, recognizing that forfeiture clauses generally will not be  
 3-17 construed to prevent a beneficiary from seeking to compel a  
 3-18 fiduciary to perform the fiduciary's duties, seeking redress  
 3-19 against a fiduciary for a breach of the fiduciary's duties, or  
 3-20 seeking a judicial construction of a will or trust.

3-21 SECTION 6. Sections 112.054(a) and (c), Property Code, are  
 3-22 amended to read as follows:

3-23 (a) On the petition of a trustee or a beneficiary, a court  
 3-24 may order that the trustee be changed, that the terms of the trust  
 3-25 be modified, that the trustee be directed or permitted to do acts  
 3-26 that are not authorized or that are forbidden by the terms of the  
 3-27 trust, that the trustee be prohibited from performing acts required  
 3-28 by the terms of the trust, or that the trust be terminated in whole  
 3-29 or in part, if:

3-30 (1) the purposes of the trust have been fulfilled or  
 3-31 have become illegal or impossible to fulfill;

3-32 (2) because of circumstances not known to or  
 3-33 anticipated by the settlor, the order will further the purposes of  
 3-34 the trust;

3-35 (3) modification of administrative, nondispositive  
 3-36 terms of the trust is necessary or appropriate to prevent waste or  
 3-37 avoid impairment of the trust's administration;

3-38 (4) the order is necessary or appropriate to achieve  
 3-39 the settlor's tax objectives and is not contrary to the settlor's  
 3-40 intentions; ~~or~~

3-41 (5) subject to Subsection (d):

3-42 (A) continuance of the trust is not necessary to  
 3-43 achieve any material purpose of the trust; or

3-44 (B) the order is not inconsistent with a material  
 3-45 purpose of the trust; or

3-46 (6) the order is necessary to correct a scrivener's  
 3-47 error in the governing document, even if unambiguous, to conform  
 3-48 the terms to the settlor's intention if the settlor's intent with  
 3-49 respect to the error being corrected is proved by clear and  
 3-50 convincing evidence.

3-51 (c) The court may direct that an order described by  
 3-52 Subsection (a)(4) or (6) has retroactive effect.

3-53 SECTION 7. Sections 112.071(5), (6), and (7), Property  
 3-54 Code, are amended to read as follows:

3-55 (5) "Full discretion" means a the power to  
 3-56 distribute principal to or for the benefit of one or more of the  
 3-57 beneficiaries of a trust that is not a trust with limited discretion  
 3-58 [limited or modified by the terms of the trust in any way, including  
 3-59 by restrictions that limit distributions to purposes such as the  
 3-60 best interests, welfare, or happiness of the beneficiaries].

3-61 (6) "Limited discretion" means a ~~limited or modified~~  
 3-62 power to distribute principal to or for the benefit of one or more  
 3-63 beneficiaries of a trust that is limited by an ascertainable  
 3-64 standard, including the health, education, support, or maintenance  
 3-65 of the beneficiary.

3-66 (7) "Presumptive remainder beneficiary," with respect  
 3-67 to a particular date, means a beneficiary of a trust on that date  
 3-68 who, in the absence of notice to the trustee of the exercise of the  
 3-69 power of appointment and assuming that any other powers of

4-1 appointment under the trust are not exercised, would be eligible to  
4-2 receive a distribution from the trust if:

- 4-3 (A) the trust terminated on that date; or
- 4-4 (B) the interests of all current beneficiaries  
4-5 [~~currently eligible to receive income or principal from the trust~~]  
4-6 ended on that date without causing the trust to terminate.

4-7 SECTION 8. Section 112.072(a), Property Code, is amended to  
4-8 read as follows:

4-9 (a) An authorized trustee who has the full discretion to  
4-10 distribute the principal of a trust may distribute all or part of  
4-11 the principal of that trust in favor of a trustee of a second trust  
4-12 for the benefit of one, [~~or~~] more than one, or all of the current  
4-13 beneficiaries of the first trust [~~who are eligible to receive~~  
4-14 ~~income or principal from the trust~~] and for the benefit of one, [~~or~~]  
4-15 more than one, or all of the successor or presumptive remainder  
4-16 beneficiaries of the first trust [~~who are eligible to receive~~  
4-17 ~~income or principal from the trust~~].

4-18 SECTION 9. Section 112.078, Property Code, is amended by  
4-19 adding Subsection (f) to read as follows:

4-20 (f) This section does not limit a beneficiary's right to  
4-21 bring an action against a trustee for a breach of trust.

4-22 SECTION 10. Section 112.085, Property Code, is amended to  
4-23 read as follows:

4-24 Sec. 112.085. EXCEPTIONS TO POWER OF DISTRIBUTION. An  
4-25 authorized trustee may not exercise a power to distribute principal  
4-26 of a trust under Section 112.072 or 112.073 to:

4-27 (1) reduce, limit, or modify a beneficiary's current,  
4-28 vested right to:

- 4-29 (A) receive a mandatory distribution of income or  
4-30 principal;
- 4-31 (B) receive a mandatory annuity or unitrust  
4-32 interest;
- 4-33 (C) withdraw a percentage of the value of the  
4-34 trust; or
- 4-35 (D) withdraw a specified dollar amount from the  
4-36 trust;

4-37 (2) [~~materially impair the rights of any beneficiary~~  
4-38 ~~of the trust,~~

4-39 [~~(3)~~] materially limit a trustee's fiduciary duty:

- 4-40 (A) under the terms of the trust; or
- 4-41 (B) in a manner that would be prohibited [~~as~~  
4-42 ~~described~~] by Section 111.0035, except as provided by Subchapter E,  
4-43 Chapter 114;

4-44 (3) [~~(4)~~] decrease or indemnify against a trustee's  
4-45 liability, except as provided by Subchapter E, Chapter 114;

4-46 (4) add a provision exonerating [~~or exonerate~~] a  
4-47 trustee from liability for failure to exercise reasonable care,  
4-48 diligence, and prudence;

4-49 (5) eliminate a provision granting another person the  
4-50 right to remove or replace the authorized trustee exercising the  
4-51 distribution power under Section 112.072 or 112.073; or

4-52 (6) reduce, limit, or modify in the second trust a  
4-53 perpetuities provision included in the first trust, unless  
4-54 expressly permitted by the terms of the first trust.

4-55 SECTION 11. Section 113.018, Property Code, is amended to  
4-56 read as follows:

4-57 Sec. 113.018. EMPLOYMENT AND APPOINTMENT OF AGENTS. (a) A  
4-58 trustee may employ attorneys, accountants, agents, including  
4-59 investment agents, and brokers reasonably necessary in the  
4-60 administration of the trust estate.

4-61 (b) Without limiting the trustee's discretion under  
4-62 Subsection (a), a trustee may grant an agent powers with respect to  
4-63 property of the trust to act for the trustee in any lawful manner  
4-64 for purposes of real property transactions.

4-65 (c) A trustee acting under Subsection (b) may delegate any  
4-66 or all of the duties and powers to:

4-67 (1) execute and deliver any legal instruments relating  
4-68 to the sale and conveyance of the property, including affidavits,  
4-69 notices, disclosures, waivers, or designations or general or

5-1 special warranty deeds binding the trustee with vendor's liens  
5-2 retained or disclaimed, as applicable, or transferred to a  
5-3 third-party lender;  
5-4 (2) accept notes, deeds of trust, or other legal  
5-5 instruments;  
5-6 (3) approve closing statements authorizing deductions  
5-7 from the sale price;  
5-8 (4) receive trustee's net sales proceeds by check  
5-9 payable to the trustee;  
5-10 (5) indemnify and hold harmless any third party who  
5-11 accepts and acts under a power of attorney with respect to the sale;  
5-12 (6) take any action, including signing any document,  
5-13 necessary or appropriate to sell the property and accomplish the  
5-14 delegated powers;  
5-15 (7) contract to purchase the property for any price on  
5-16 any terms;  
5-17 (8) execute, deliver, or accept any legal instruments  
5-18 relating to the purchase of the property or to any financing of the  
5-19 purchase, including deeds, notes, deeds of trust, guaranties, or  
5-20 closing statements;  
5-21 (9) approve closing statements authorizing payment of  
5-22 prorations and expenses;  
5-23 (10) pay the trustee's net purchase price from funds  
5-24 provided by the trustee;  
5-25 (11) indemnify and hold harmless any third party who  
5-26 accepts and acts under a power of attorney with respect to the  
5-27 purchase; or  
5-28 (12) take any action, including signing any document,  
5-29 necessary or appropriate to purchase the property and accomplish  
5-30 the delegated powers.  
5-31 (d) A trustee who delegates a power under Subsection (b) is  
5-32 liable to the beneficiaries or to the trust for an action of the  
5-33 agent to whom the power was delegated.  
5-34 (e) A delegation by the trustee under Subsection (b) must be  
5-35 documented in a written instrument acknowledged by the trustee  
5-36 before an officer authorized under the law of this state or another  
5-37 state to take acknowledgments to deeds of conveyance and administer  
5-38 oaths. A signature on a delegation by a trustee for purposes of  
5-39 this subsection is presumed to be genuine if the trustee  
5-40 acknowledges the signature in accordance with Chapter 121, Civil  
5-41 Practice and Remedies Code.  
5-42 (f) A delegation to an agent under Subsection (b) terminates  
5-43 six months from the date of the acknowledgment of the written  
5-44 delegation unless terminated earlier by:  
5-45 (1) the death or incapacity of the trustee;  
5-46 (2) the resignation or removal of the trustee; or  
5-47 (3) a date specified in the written delegation.  
5-48 (g) A person that in good faith accepts a delegation under  
5-49 Subsection (b) without actual knowledge that the delegation is  
5-50 void, invalid, or terminated, that the purported agent's authority  
5-51 is void, invalid, or terminated, or that the agent is exceeding or  
5-52 improperly exercising the agent's authority may rely on the  
5-53 delegation as if:  
5-54 (1) the delegation were genuine, valid, and still in  
5-55 effect;  
5-56 (2) the agent's authority were genuine, valid, and  
5-57 still in effect; and  
5-58 (3) the agent had not exceeded and had properly  
5-59 exercised the authority.  
5-60 (h) A trustee may delegate powers under Subsection (b) if  
5-61 the governing instrument does not affirmatively permit the trustee  
5-62 to hire agents or expressly prohibit the trustee from hiring  
5-63 agents.  
5-64 SECTION 12. Chapter 114, Property Code, is amended by  
5-65 adding Subchapter E to read as follows:  
5-66 SUBCHAPTER E. DIRECTED TRUSTS  
5-67 Sec. 114.101. DEFINITIONS. In this subchapter:  
5-68 (1) "Directing party" means any investment trust  
5-69 advisor, distribution trust advisor, or trust protector as provided

6-1 by this subchapter. The term does not include:

6-2 (A) any person who merely holds:

6-3 (i) a general or limited power of  
6-4 appointment over the trust assets; or

6-5 (ii) if the person is a grantor or  
6-6 beneficiary of the trust, a power to:

6-7 (a) prohibit the trustee from taking  
6-8 any action with respect to the trust; or

6-9 (b) remove, appoint, or remove and  
6-10 appoint a trustee, investment trust advisor, distribution trust  
6-11 advisor, or trust protector or another directing party, including a  
6-12 power to designate a plan of succession for future holders of one of  
6-13 those positions;

6-14 (B) a trustee or cotrustee even if the trustee or  
6-15 cotrustee has the exclusive authority over decisions similar to an  
6-16 investment trust advisor, distribution trust advisor, or trust  
6-17 protector in comparison to another trustee or cotrustee who is  
6-18 relieved of that authority; or

6-19 (C) any person who merely holds a power over the  
6-20 trust assets exercisable in a nonfiduciary capacity without the  
6-21 approval or consent of any person in a fiduciary capacity, such as a  
6-22 power to control the beneficial enjoyment of the trust assets in  
6-23 accordance with Section 674 of the Internal Revenue Code of 1986 or  
6-24 administrative powers in accordance with Section 675 of the  
6-25 Internal Revenue Code of 1986.

6-26 (2) "Distribution trust advisor" means any one or more  
6-27 persons given authority by the governing instrument to direct,  
6-28 consent to, veto, or otherwise exercise all or any portion of the  
6-29 distribution powers and discretions of the trust, including the  
6-30 authority to make a discretionary distribution of income or  
6-31 principal.

6-32 (3) "Excluded fiduciary" means any fiduciary directed  
6-33 by the governing instrument to act in accordance with the exercise  
6-34 of specified powers by a directing party, to the extent provided by  
6-35 Section 114.106.

6-36 (4) "Fiduciary" means any person expressly given one  
6-37 or more fiduciary duties by the governing instrument, including a  
6-38 trustee.

6-39 (5) "Governing instrument" refers to the instrument  
6-40 stating the terms of a trust, including any court order  
6-41 establishing, construing, or modifying the terms of the trust in  
6-42 accordance with applicable law.

6-43 (6) "Independent fiduciary" means any fiduciary who is  
6-44 not a grantor of a trust, a beneficiary of a trust, a spouse of a  
6-45 grantor or a beneficiary of a trust, or a person related or  
6-46 subordinate to any of those persons within the meaning of Section  
6-47 672(c) of the Internal Revenue Code of 1986.

6-48 (7) "Investment trust advisor" means any one or more  
6-49 persons given authority by the governing instrument to direct,  
6-50 consent to, veto, or otherwise exercise all or any portion of the  
6-51 investment powers of the trust.

6-52 (8) "Power" means:

6-53 (A) the authority to take or withhold an action  
6-54 or decision, including an expressly specified power;

6-55 (B) the implied power necessary to exercise a  
6-56 specified power; or

6-57 (C) the authority inherent in a general grant of  
6-58 discretion.

6-59 (9) "Trust protector" means any one or more persons  
6-60 given any one or more powers in accordance with Section 114.105,  
6-61 whether or not designated with the title of trust protector by the  
6-62 governing instrument.

6-63 Sec. 114.102. APPLICABILITY OF SUBCHAPTER. (a) This  
6-64 subchapter applies to all trusts created on or after September 1,  
6-65 2015, except to the extent the governing instrument expressly  
6-66 prohibits the application of this subchapter by specific reference  
6-67 to this subchapter.

6-68 (b) Except as provided by Subsection (a), on and after  
6-69 September 1, 2015, this subchapter applies to a trust existing on or

7-1 created on or after that date that:

7-2 (1) appoints or provides for a directing party,  
7-3 including a party granted power or authority effectively comparable  
7-4 in substance to that of a directing party as provided by this  
7-5 subchapter;

7-6 (2) is modified in accordance with applicable law or  
7-7 the terms of the governing instrument to appoint or provide for a  
7-8 directing party; or

7-9 (3) is modified in accordance with a court order to  
7-10 appoint or provide for a directing party, including a party granted  
7-11 power or authority effectively comparable in substance to that of a  
7-12 directing party as provided by this subchapter, whether or not the  
7-13 court order specifies that this subchapter governs the  
7-14 responsibilities, actions, and liabilities of persons designated  
7-15 as a directing party or excluded fiduciary.

7-16 Sec. 114.103. INVESTMENT TRUST ADVISOR. (a) An investment  
7-17 trust advisor may be designated in the governing instrument of a  
7-18 trust. The governing instrument may use the title "investment  
7-19 trust advisor" or any similar name or description demonstrating the  
7-20 intent to provide for the position and function of an investment  
7-21 trust advisor as defined by Section 114.101.

7-22 (b) The powers of an investment trust advisor:

7-23 (1) may be exercised or not exercised in the  
7-24 discretion of the investment trust advisor; and

7-25 (2) except as provided by this subchapter, are binding  
7-26 on all other persons, including each beneficiary, fiduciary, and  
7-27 excluded fiduciary and any other party having an interest in the  
7-28 trust.

7-29 (c) Unless otherwise provided by the governing instrument,  
7-30 an investment trust advisor's powers include the authority to:

7-31 (1) direct the trustee with respect to:

7-32 (A) the retention, purchase, transfer,  
7-33 assignment, sale, or encumbrance of trust property; and

7-34 (B) the investment and reinvestment of principal  
7-35 and income of the trust;

7-36 (2) direct the trustee with respect to all management,  
7-37 control, and voting powers related directly or indirectly to trust  
7-38 assets, including voting proxies for securities held in trust;

7-39 (3) select and employ one or more advisors, managers,  
7-40 consultants, counselors, or other agents in accordance with Section  
7-41 113.018; and

7-42 (4) determine the frequency and methodology for  
7-43 valuing any asset for which there is no readily available market  
7-44 value.

7-45 Sec. 114.104. DISTRIBUTION TRUST ADVISOR. (a) A  
7-46 distribution trust advisor may be designated in the governing  
7-47 instrument of a trust. The governing instrument may use the title  
7-48 "distribution trust advisor" or any similar name or description  
7-49 demonstrating the intent to provide for the position and function  
7-50 of a distribution trust advisor as defined by Section 114.101.

7-51 (b) The powers of a distribution trust advisor:

7-52 (1) may be exercised or not exercised in the  
7-53 discretion of the distribution trust advisor; and

7-54 (2) except as otherwise provided by this subchapter,  
7-55 are binding on all other persons, including each beneficiary,  
7-56 fiduciary, and excluded fiduciary and any other party having an  
7-57 interest in the trust.

7-58 (c) Unless otherwise provided in the governing instrument,  
7-59 a distribution trust advisor's powers include the authority to  
7-60 direct the trustee with regard to all decisions relating directly  
7-61 or indirectly to discretionary distributions to or for one or more  
7-62 beneficiaries.

7-63 Sec. 114.105. TRUST PROTECTOR. (a) A trust protector may  
7-64 be designated in the governing instrument of a trust. The governing  
7-65 instrument may use the title "trust protector" or any similar name  
7-66 or description demonstrating the intent to provide for the position  
7-67 and function of a trust protector as defined by Section 114.101.

7-68 (b) The powers of a trust protector:

7-69 (1) may be exercised or not exercised in the

8-1 discretion of the trust protector; and

8-2 (2) except as otherwise provided by this subchapter,  
 8-3 are binding on all other persons, including each beneficiary,  
 8-4 investment trust advisor, distribution trust advisor, fiduciary,  
 8-5 and excluded fiduciary and any other party having an interest in the  
 8-6 trust.

8-7 (c) The terms of the governing instrument shall determine  
 8-8 the powers of the trust protector, and there are no default powers.  
 8-9 The powers granted to a trust protector by the governing instrument  
 8-10 may include the authority to:

8-11 (1) modify or amend the governing instrument to  
 8-12 achieve favorable tax status or respond to changes in the Internal  
 8-13 Revenue Code of 1986 or other federal law, state law, or rulings or  
 8-14 regulations under federal or state law;

8-15 (2) increase, decrease, or modify the interests of any  
 8-16 beneficiary or beneficiaries of the trust;

8-17 (3) modify or amend the terms of any power of  
 8-18 appointment granted by the trust, so long as the modification or  
 8-19 amendment does not grant a beneficial interest to any individual,  
 8-20 class of individuals, or other party not specifically provided for  
 8-21 under the governing instrument;

8-22 (4) remove, appoint, or remove and appoint a trustee,  
 8-23 investment trust advisor, or distribution trust advisor or another  
 8-24 directing party, including the authority to designate a plan of  
 8-25 succession for future holders of one of those positions;

8-26 (5) terminate the trust, including the authority to  
 8-27 determine how the trustee shall distribute the trust property to be  
 8-28 consistent with the purposes of the trust;

8-29 (6) change the situs of the trust, the governing law of  
 8-30 the trust, or both;

8-31 (7) appoint one or more successor trust protectors,  
 8-32 including the authority to designate a plan of succession for  
 8-33 future trust protectors;

8-34 (8) interpret terms of the governing instrument at the  
 8-35 request of the trustee;

8-36 (9) advise the trustee on matters concerning a  
 8-37 beneficiary; or

8-38 (10) amend or modify the governing instrument to:

8-39 (A) take advantage of laws governing restraints  
 8-40 on alienation or distribution of trust property; or

8-41 (B) improve the administration of the trust.

8-42 (d) Except as otherwise provided by the governing  
 8-43 instrument, a trust protector has no duty to monitor any  
 8-44 fiduciary's conduct.

8-45 Sec. 114.106. EXCLUDED FIDUCIARY. (a) If a fiduciary is  
 8-46 directed by the governing instrument to act in accordance with the  
 8-47 exercise of specified powers by a directing party, those specified  
 8-48 powers are considered granted not to the fiduciary but to the  
 8-49 directing party, and the fiduciary is considered excluded from  
 8-50 exercising those specified powers.

8-51 (b) If a governing instrument provides that a fiduciary, as  
 8-52 to one or more specified matters, is to act, omit action, or make  
 8-53 decisions only with the consent of a directing party, then the  
 8-54 fiduciary is considered an excluded fiduciary only with respect to  
 8-55 those matters.

8-56 Sec. 114.107. DUTY AND LIABILITY OF DIRECTING PARTY.

8-57 (a) Within the limits of the directing party's authority, a  
 8-58 directing party:

8-59 (1) is a fiduciary of the trust;

8-60 (2) except as provided by the governing instrument,  
 8-61 has all the powers and protections granted to trustees under this  
 8-62 subtitle; and

8-63 (3) is subject to the same fiduciary duties and  
 8-64 standards applicable to a trustee of a trust, unless the governing  
 8-65 instrument provides otherwise.

8-66 (b) The governing instrument may not limit the duties of the  
 8-67 directing party or relieve a directing party of any duties or  
 8-68 standards that could not be limited as to a trustee or of which a  
 8-69 trustee could not be relieved, including the duties and standards



9-1 set forth in Sections 111.0035 and 114.007.

9-2 Sec. 114.108. DUTY AND LIABILITY OF EXCLUDED FIDUCIARY.

9-3 (a) An excluded fiduciary shall act in accordance with the  
 9-4 governing instrument and comply with the directing party's exercise  
 9-5 of the powers granted to the directing party by the governing  
 9-6 instrument.

9-7 (b) Notwithstanding Section 111.0035, if the terms of a  
 9-8 trust provide that an excluded fiduciary is to follow the direction  
 9-9 of a directing party or act only with a directing party's consent or  
 9-10 direction:

9-11 (1) if the excluded fiduciary complies with the  
 9-12 direction of a directing party, the excluded fiduciary is not  
 9-13 liable for any loss resulting directly or indirectly from any act  
 9-14 taken or not taken by the excluded fiduciary pursuant to the  
 9-15 directing party's direction; or

9-16 (2) if the directing party fails to direct, consent,  
 9-17 or act after having been requested to do so by the excluded  
 9-18 fiduciary, the excluded fiduciary is not liable for any loss  
 9-19 resulting directly or indirectly from any act taken or not taken by  
 9-20 the excluded fiduciary as a result of the directing party's failure  
 9-21 to direct, consent, or act.

9-22 (c) Subsection (b) does not apply if:

9-23 (1) the direction is contrary to an express  
 9-24 prohibition or mandate in the governing instrument, which shall be  
 9-25 evaluated exclusively on the terms of the governing instrument and  
 9-26 without reference to any judicial or legal standard;

9-27 (2) the excluded fiduciary acts in a manner that  
 9-28 constitutes wilful misconduct; or

9-29 (3) the excluded fiduciary has actual knowledge that  
 9-30 the direction would constitute fraud as applied to the fiduciary  
 9-31 duties of the directing party.

9-32 (d) Unless otherwise provided by the governing instrument,  
 9-33 an excluded fiduciary does not have any duty to:

9-34 (1) monitor the directing party's conduct;

9-35 (2) provide the directing party with advice or consult  
 9-36 with the directing party;

9-37 (3) inform or warn any directing party or any  
 9-38 beneficiary or third party that the excluded fiduciary disagrees  
 9-39 with any of the directing party's actions or directions;

9-40 (4) do anything to prevent the directing party from  
 9-41 giving any direction or taking any action; or

9-42 (5) compel the directing party to redress the  
 9-43 directing party's action or direction.

9-44 (e) Absent clear evidence to the contrary, the actions of an  
 9-45 excluded fiduciary pertaining to matters within the limits of  
 9-46 authority of the directing party, including confirming that the  
 9-47 directing party's directions have been carried out and recording  
 9-48 and reporting actions taken pursuant to the directing party's  
 9-49 direction, shall be presumed to be administrative actions taken by  
 9-50 the excluded fiduciary and may not be considered an undertaking by  
 9-51 the excluded fiduciary to monitor the directing party's actions or  
 9-52 participate in actions within the limits of the directing party's  
 9-53 authority.

9-54 (f) An excluded fiduciary may, but is not required to,  
 9-55 obtain and rely on an opinion of counsel on any matter relevant to  
 9-56 this subchapter.

9-57 Sec. 114.109. JURISDICTION. By accepting an appointment to  
 9-58 serve as a directing party of a trust that is subject to the laws of  
 9-59 this state, the directing party submits to the jurisdiction of the  
 9-60 courts of this state even if investment advisory agreements or  
 9-61 other related agreements provide otherwise, and the directing party  
 9-62 may be made a party to any action or proceeding in which issues  
 9-63 relate to a decision or action of the directing party.

9-64 Sec. 114.110. TAX SAVINGS PROVISIONS. Notwithstanding the  
 9-65 other provisions of this subchapter, and except as otherwise  
 9-66 provided by the governing instrument, none of the default powers  
 9-67 granted to a directing party authorize:

9-68 (1) a grantor of a trust to direct distributions;

9-69 (2) any directing party who is a beneficiary, or a

10-1 directing party who is not an independent fiduciary and who was  
10-2 appointed by a beneficiary, to direct distributions other than in  
10-3 accordance with the limits of Section 113.029;

10-4 (3) any directing party to have any incidents of  
10-5 ownership over a life insurance policy insuring the life of the  
10-6 directing party or the directing party's spouse; or

10-7 (4) any directing party to hold any power that would  
10-8 cause the inclusion of assets of the trust in the directing party's  
10-9 estate that would not otherwise be included.

10-10 SECTION 13. Sections 115.002(b-1) and (b-2), Property Code,  
10-11 are amended to read as follows:

10-12 (b-1) If there are multiple [~~noncorporate~~] trustees none of  
10-13 whom is a corporate trustee and the trustees maintain a principal  
10-14 office in this state, an action shall be brought in the county in  
10-15 which:

10-16 (1) the situs of administration of the trust is  
10-17 maintained or has been maintained at any time during the four-year  
10-18 period preceding the date the action is filed; or

10-19 (2) the trustees maintain the principal office.

10-20 (b-2) If there are multiple [~~noncorporate~~] trustees none of  
10-21 whom is a corporate trustee and the trustees do not maintain a  
10-22 principal office in this state, an action shall be brought in the  
10-23 county in which:

10-24 (1) the situs of administration of the trust is  
10-25 maintained or has been maintained at any time during the four-year  
10-26 period preceding the date the action is filed; or

10-27 (2) any trustee resides or has resided at any time  
10-28 during the four-year period preceding the date the action is filed.

10-29 SECTION 14. Section 181.083, Property Code, is amended by  
10-30 adding Subsections (c) and (d) to read as follows:

10-31 (c) To the extent specified in an instrument in which a  
10-32 donee exercises a power, any estate or interest in real or personal  
10-33 property created through the exercise of the power by the donee is  
10-34 considered to have been created at the time of the exercise of the  
10-35 donee's power and not at the time of the creation of the donee's  
10-36 power, provided that in the instrument the donee:

10-37 (1) specifically refers to Section 181.083(c),  
10-38 Property Code;

10-39 (2) specifically asserts an intention to exercise a  
10-40 power of appointment by creating another power of appointment  
10-41 described in Section 2041(a)(3) or Section 2514(d), Internal  
10-42 Revenue Code of 1986; or

10-43 (3) specifically asserts an intention to postpone the  
10-44 vesting of any estate or interest in the property that is subject to  
10-45 the power, or suspend the absolute ownership or power of alienation  
10-46 of that property, for a period ascertainable without regard to the  
10-47 date of the creation of the donee's power.

10-48 (d) Subsection (c) applies regardless of whether the  
10-49 donee's power may be exercised in favor of the donee, the donee's  
10-50 creditors, the donee's estate, or the creditors of the donee's  
10-51 estate.

10-52 SECTION 15. (a) Except as otherwise expressly provided by a  
10-53 trust, a will creating a trust, or this section, the changes in law  
10-54 made by this Act apply to a trust existing or created on or after  
10-55 September 1, 2015.

10-56 (b) For a trust existing on September 1, 2015, that was  
10-57 created before that date, the changes in law made by this Act apply  
10-58 only to an act or omission relating to the trust that occurs on or  
10-59 after September 1, 2015.

10-60 SECTION 16. Sections 114.003(b) and (c), Property Code, are  
10-61 repealed.

10-62 SECTION 17. This Act takes effect September 1, 2015.

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