

Louisiana Code Title 9 - Civil code-ancillaries

RS 9:1721 — Louisiana trust code

CHAPTER 1. LOUISIANA TRUST CODE

PART I. PRELIMINARY PROVISIONS

§1721. Title

This Chapter shall be known and may be cited as the Louisiana Trust Code.

§1722. Express private trusts authorized; application of Code

Express private trusts are hereby authorized subject to the rules prescribed in this Code.

§1723. Dispositions containing substitutions

A disposition authorized by this Code may be made in trust although it would contain a prohibited substitution if it were made free of trust.

§1724. Construction of Code

The provisions of this Code shall be accorded a liberal construction in favor of freedom of disposition. Whenever this Code is silent, resort shall be had to the Civil Code or other laws, but neither the Civil Code nor any other law shall be invoked to defeat a disposition sanctioned expressly or impliedly by this Code.

§1725. Definitions

Except when the context clearly indicates otherwise, as used in this Code:

(1) "Affiliate" means a person directly or indirectly controlling or controlled by another person, or a person under direct or indirect common control with another person. It includes a person with whom a trustee has an express or implied agreement regarding the purchase of trust investment by each from the other directly or indirectly, except a broker or stock exchange.

(2) "Income beneficiary" means a beneficiary to whom income is payable, presently, conditionally, or in the future, or for whom it is accumulated, or who is entitled to the beneficial use of principal presently, conditionally, or in the future, for a time before its distribution.

(3) "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a business trust, or two or more persons having a joint or common interest.

(4) "Principal beneficiary" means a beneficiary presently, conditionally, or ultimately entitled to principal.

(5) "Proper court" in the case of an inter vivos trust means the district court of the parish designated by the settlor, or if no designation is made, the district court of the parish of the trustee's domicile when only one trustee is named, or when more than one trustee is named, or when the trustee is a nonresident, the district court of the parish where the principal trust property is located, but if the settlor has named two or more trustees in the trust instrument and they are domiciled in the same parish, the district court of the trustee's domicile shall be the proper court. If the settlor designates the court, he shall designate: (a) the district court of the parish of the domicile of the trustee; (b) the district court of the parish of the domicile of the settlor; or (c) the district court of the parish where the principal trust property is located. "Proper court" in the case of a testamentary trust means the district court having jurisdiction of the settlor's succession.

(6) "Relative" means a spouse, ascendant, descendant, brother, or sister.

(7) "Spendthrift trust," when used without other qualifying words, means a trust under which alienation by a beneficiary of an interest in income or principal is restricted to the full extent permitted by this Code.

(8) "Trust instrument" means the written document creating the trust and all amendments and modifications thereof.

Amended by Acts 1972, No. 656, §1.

PART II. CREATION OF THE TRUST

SUBPART A. GENERAL PROVISIONS

§1731. Trust defined

A trust, as the term is used in this Code, is the relationship resulting from the transfer of title to property to a person to be administered by him as a fiduciary for the benefit of another.

§1732. Inter vivos and testamentary trusts

A trust is either testamentary or inter vivos.

§1733. Testamentary trust defined

A trust is testamentary when it is created by donation mortis causa.

§1734. Inter vivos trust defined

All trusts not testamentary are considered inter vivos, regardless of the time of creation.

§1735. Gratuitous and onerous trusts

A trust may be gratuitous or onerous. It may be gratuitous as to one beneficiary and onerous as to another.

§1736. Conditions

A trust or a disposition in trust may be made subject to any condition not forbidden in this Code and not against public order or good morals.

§1737. Dispositions permitted

A settlor may dispose of property in trust to the same extent that he may dispose of that property free of trust and to any other extent authorized by this Code. A trust containing a substitution authorized by this Code is valid.

SUBPART B. FORM

§1751. Form of testamentary trust

A testamentary trust may be created only in one of the forms prescribed by the laws regulating donations mortis causa.

§1752. Form of inter vivos trust

An inter vivos trust may be created only by authentic act or by act under private signature executed in the presence of two witnesses and duly acknowledged by the settlor or by the affidavit of one of the attesting witnesses.

§1753. Technical language not required; interpretation of instrument

No particular language is required to create a trust, but it must clearly appear that the creation of a trust is intended.

A trust instrument shall be given an interpretation that will sustain the effectiveness of its provisions if the trust instrument is susceptible of such an interpretation.

1754. Incorporation by reference

A trust, whether inter vivos or testamentary, may incorporate by reference any or all of the terms of an existing trust. Unless the instrument otherwise provides, all amendments of the existing trust in force on the date of the execution of the instrument creating the new trust shall be deemed incorporated, but neither subsequent modification nor termination of the existing trust shall have any effect on the new trust.

§1755. Acceptance by trustee

The trustee may accept the trust in the trust instrument or in a separate instrument.

SUBPART C. THE SETTLOR

§1761. Settlor defined

A settlor is a person who creates a trust. A person who subsequently transfers property to the trustee of an existing trust is not a settlor.

§1762. Number of settlors

There may be one or more settlors of an inter vivos trust.

§1763. Who may be settlor of inter vivos trust

A person having capacity to contract by onerous title may be a settlor of an onerous inter vivos trust. A person having capacity to contract by gratuitous title may be a settlor of a gratuitous inter vivos trust.

§1764. Who may be settlor of testamentary trust

A natural person having capacity to make a donation mortis causa may be the settlor of a testamentary trust.

SUBPART D. THE TRUST PROPERTY

§1771. General rule

Property susceptible of private ownership, and any interest in such property may be transferred in trust.

SUBPART E. THE TRUSTEE

§1781. Trustee defined

A trustee is a person to whom title to the trust property is transferred to be administered by him as a fiduciary.

§1782. Number of trustees

There may be one or more trustees of a trust.

§1783. Who may be trustee

A. Only the following persons or entities may serve as a trustee of a trust established pursuant to this Code:

(1) A natural person enjoying full capacity to contract who is a citizen or resident alien of the United States, who may be the settlor, the beneficiary, or both.

(2) A federally insured depository institution organized under the laws of Louisiana, another state, or of the United States, or a financial institution or trust company authorized to exercise trust or fiduciary powers under the laws of Louisiana or of the United States.

B. A nonprofit corporation or trust for educational, charitable, or religious purposes that is designated as income or principal beneficiary may serve as trustee of a trust for mixed private or charitable purposes.

Acts 1985, No. 534, §1; Acts 1995, No. 215, §1; Acts 1997, No. 1400, §1, eff. July 15, 1997; Acts 2001, No. 684, §1; Acts 2004, No. 521, §1.

§1784. Jurisdiction over the trustee

A trustee who accepts a trust established pursuant to this Code submits to the jurisdiction of the courts of this state.

Acts 2001, No. 594, §2.

§1785. Manner in which trustee chosen

An original trustee, an alternate trustee, or a successor trustee may be designated in the trust instrument or chosen by the use of a method provided in the trust instrument, but neither failure of the trust instrument to so provide nor disqualification or removal of the trustee for any reason, incompetence or unwillingness to act of the person so designated or chosen shall invalidate the trust. In such a case, the proper court shall appoint one or more trustees.

Acts 1978, No. 391, §1.

§1786. Provisional trustee

The proper court may appoint a provisional trustee if necessary to preserve, safeguard, and administer the trust property. The appointment may be made summarily upon the application of an interested party or upon the court's own motion.

§1787. Provisional trustee; security

A provisional trustee shall furnish the security deemed necessary by the proper court.

§1788. Resignation of trustee

A trustee may resign at any time by giving written notice of resignation to each of the beneficiaries or by mailing written notice to each at his last known address. The trust instrument may provide another method of resignation and notice.

§1789. Removal of trustee

A. A trustee shall be removed in accordance with the provisions of the trust instrument or by the proper court for sufficient cause.

B. Additionally, a corporate trustee shall be removed upon the petition of a settlor or any current beneficiary, if the court determines that removal is in the best interest of the beneficiaries as a whole, another corporate entity that is qualified to be a trustee has agreed to serve as the trustee, and the trust instrument does not forbid such removal.

Acts 2001, No. 594, §2.

§1790. Effect of resignation or removal of trustee

Except as provided in R.S. 9:2069, a trustee who has resigned or who has been removed has no further authority with respect to the trust property. His resignation or removal does not affect his liability for his administration of the trust property.

Acts 1995, No. 358, §1.

§1791. Appeal from judgment appointing or removing trustee

A judgment or an order of court appointing or removing a trustee shall be executed provisionally. An appeal from an order or judgment appointing or removing a trustee must be taken and the security therefor furnished within thirty days from the date of the order or judgment notwithstanding the filing of an application for a rehearing or a new trial. The appeal shall be docketed and heard by preference.

SUBPART F. THE BENEFICIARY

§1801. Beneficiary defined

A beneficiary is a person for whose benefit the trust is created and may be a natural person, corporation, partnership, or other legal entity having the capacity to receive property. A trustee of a trust, in his capacity of trustee, can be the beneficiary of another trust. Neither the heir, legatee, or assignee of a designated beneficiary, nor a beneficiary by reason of a substitution under Subpart B of Part III of this Chapter, is considered a beneficiary for the purpose of fixing the maximum allowable term of the trust.

Acts 1989, No. 110, §1; Acts 1995, No. 414, §1.

§1802. Sufficiency of designation

A beneficiary must be designated in the trust instrument, except as otherwise provided in this Code. The designation is sufficient if the identity of the beneficiary is objectively ascertainable solely from standards stated in the trust instrument.

§1803. Requirement that beneficiary be in being and ascertainable

A beneficiary must be in being and ascertainable on the date of the creation of the trust, except as otherwise provided in this Code. An unborn child is deemed a person in being and ascertainable, if he is born alive.

§1804. Settlor as beneficiary

A settlor may be the sole beneficiary of income or principal or both, or one of several beneficiaries of income or principal or both.

§1805. One or several beneficiaries; separate beneficiaries

There may be one beneficiary or two or more beneficiaries as to income or principal or both. There may be separate beneficiaries of income and principal, or the same person may be a beneficiary of both income and principal, in whole or in part.

§1806. Concurrent beneficiaries

There may be several concurrent beneficiaries of income or principal or both.

§1807. Successive income beneficiaries

Several beneficiaries may be designated to enjoy income successively.

§1808. Acceptance by beneficiary

A beneficiary need not accept the benefit conferred on him; his acceptance is presumed.

§1809. Representation upon predecease of named principal beneficiary

When a testamentary trust designates as principal beneficiary a person who is a descendant, a sibling, or a descendant of a sibling of the settlor, and that person does not survive the settlor, the descendants by roots of that person will be principal beneficiaries in his place, unless the trust instrument provides otherwise.

Acts 2003, No. 480, §1.

SUBPART G. EFFECTIVE DATE OF CREATION

§1821. When testamentary trust created

A testamentary trust is created at the moment of the settlor's death, without awaiting the trustee's acceptance of the trust.

§1822. When inter vivos trust created

An inter vivos trust is created upon execution of the trust instrument, without regard to the trustee's acceptance

§1823. Retroactive nature of trustee's acceptance

A trustee's acceptance is retroactive to the date of creation of the trust.

§1824. Consequence of trustee's failure to accept

If the trustee was not a party to the trust instrument, he must accept the trust in writing within a reasonable time after its creation, or the proper court shall appoint a trustee.

§1824. Consequence of trustee's failure to accept

If the trustee was not a party to the trust instrument, he must accept the trust in writing within a reasonable time after its creation, or the proper court shall appoint a trustee.

SUBPART H. TERM OF THE TRUST

§1831. Limitations upon stipulated term

If the trust instrument stipulates a term and unless an earlier termination is required by the trust instrument, or by the proper court, a trust shall terminate at:

(1) The death of the last surviving income beneficiary or the expiration of twenty years from the death of the settlor last to die, whichever last occurs, if at least one settlor and one income beneficiary are natural persons;

(2) The death of the last surviving income beneficiary or the expiration of twenty years from the creation of the trust, whichever last occurs, if none of the settlors is a natural person but at least one income beneficiary is a natural person;

(3) The expiration of twenty years from the death of the settlor last to die, if at least one settlor is a natural person but none of the income beneficiaries is a natural person;

(4) The expiration of fifty years from the creation of the trust, if none of the settlors and none of the income beneficiaries is a natural person.

Amended by Acts 1968, No. 132, §1; Acts 1987, No. 164, §1, eff. Aug. 1, 1987.

{{NOTE: SEE ACTS 1987, NO. 164, §3.}}

§1832. Effect of stipulation of excessive term

A trust instrument that stipulates a longer term than is permitted shall be enforced as though the maximum allowable term had been stipulated.

§1833. Term in absence of stipulation

If the trust instrument stipulates no term, the trust shall terminate:

- (1) Upon the death of the last income beneficiary who is a natural person; or
- (2) At the end of the term prescribed by R.S. 9:1831(3) or 9:1831(4), if the income beneficiaries do not include a natural person.

§1834. Exceptions

The provisions of this Sub-part shall not apply to class trusts, to trusts by employers for the benefit of employees, or to charitable dispositions contained in trusts for mixed private and charitable purposes.

§1835. Definitions

For the purpose of this Sub-part, the term "surviving income beneficiary" means a natural person designated in the trust instrument to enjoy a portion of trust income, whether presently or in the future, or even conditionally; a principal beneficiary who is designated also a beneficiary of income, whether presently or in the future, or even conditionally; and also includes a principal beneficiary who becomes entitled to enjoy income because of the termination of the rights of an income beneficiary. It does not include a beneficiary whose interest in income has terminated.

SUBPART I. THE LEGITIME IN TRUST

§1841. General rule

The legitime or any portion thereof may be placed in trust provided:

- (1) The trustee after taking into account all of the other income and support to be received by the forced heir during the year shall distribute to the forced heir, or to the legal guardian of the forced heir, funds from the net income in trust sufficient for the health, maintenance, support, and education of the forced heir.

(2) The forced heir's interest is subject to no charges or conditions except as provided in R.S. 9:1843, 1844, 1891 through 1906 and Subpart B of Part III of this Chapter.

(3) Except as permitted by R.S. 9:1844, the term of the trust, as it affects the legitime, does not exceed the life of the forced heir; and

(4) The principal shall be delivered to the forced heir or his heirs, legatees, or assignees free of trust, upon the termination of the portion of the trust that affects the legitime.

Amended by Acts 1974, No. 126, §1; Acts 1979, No. 160, §1; Acts 1995, No. 414, §1; Acts 1999, No. 967, §1.

§1842. Effect of improper stipulation

A provision of a trust instrument that is incompatible with the provisions of this Sub-part shall be reformed to comply herewith.

§1843. Stipulation restraining alienation

A trust instrument may place restraints upon the alienation of the legitime in trust.

§1844. Legitime burdened with income interest or usufruct

The legitime in trust may be burdened with an income interest or with a usufruct in favor of a surviving spouse to the same extent and for the same term that a usufruct of the same property could be stipulated in favor of the same person for a like period.

Amended by Acts 1974, No. 126, §1.

§1845. Repealed by Acts 1979, No. 160, §2

§1846. Repealed by Acts 1979, No. 160, §3

§1847. Invasion of principal; legitime affected

A trustee may not pay principal to an income beneficiary if the payment would deprive another beneficiary of all or a part of his legitime, notwithstanding any contrary provision of the trust instrument.

SUBPART J. MARITAL PORTION IN TRUST

§1851. General rule

The marital portion provided under Article 2432 of the Louisiana Civil Code, whether in full property or usufruct only, or any portion thereof, may be placed in trust, if:

- (1) The net income accruing to the surviving spouse therefrom is payable to the surviving spouse not less than once each year;
- (2) The surviving spouse's interest is subject to no charges or condition, except that the trust instrument may place restrictions upon the alienation of the marital portion in trust; and
- (3) The term of the trust, as it affects the marital portion, does not exceed the life of the surviving spouse.

Added by Acts 1977, No. 67, §1. Amended by Acts 1979, No. 711, §2, eff. Jan. 1, 1980.

§1852. Marital portion in full property

An unconditional principal and income interest in trust, with income payable not less than annually for the life of the beneficiary, satisfies the marital portion to the same extent as would the full ownership not in trust of the same property; however, during the term of the trust, the trustee may pay principal from the trust property for support, maintenance, education, medical expenses, or welfare of the beneficiary and, upon termination of the portion of the trust that affects the marital portion, the principal shall be delivered to the surviving spouse or his heirs, legatees, or assigns free of trust.

Added by Acts 1977, No. 67, §1.

§1853. Marital portion in usufruct

A usufruct in trust, or an unconditional income interest in trust, without an interest in principal, payable not less than annually for a term or for the life of the beneficiary satisfies the marital portion to the same extent as would a usufruct not in trust on the same property for the same term.

Added by Acts 1977, No. 67, §1.

§1854. Effect of improper stipulation

A provision of a trust instrument that is incompatible with the provisions of this Subpart shall be reformed to comply herewith.

Added by Acts 1977, No. 67, §1.

SUBPART K. LIFE INSURANCE IN TRUST

§1881. General rule

A settlor may create an inter vivos or a testamentary trust upon the proceeds of life insurance.

If a policy of life insurance is payable to a named beneficiary of the policy as trustee, the trust is an inter vivos trust and the instrument creating the trust shall be in the form required for an inter vivos trust. The trust is an inter vivos trust although the settlor reserves incidents of ownership with respect to the policy, although the settlor reserves the power to revoke or modify the trust, and although the trustee has no active duties to perform until the death of the settlor.

If the policy of life insurance is payable to the settlor or to his succession or his succession representative, or to a testamentary trustee, the trust is testamentary and the instrument creating the trust shall be in the form required for a testamentary trust.

Amended by Acts 1972, No. 658, §1.

SUBPART L. CLASS TRUSTS

A. GENERAL RULES

§1891. Creation of class

A. Notwithstanding the provisions of R.S. 9:1803, R.S. 9:1831 through 1835, and R.S. 9:1841 through 1847, but subject to the restrictions stated in this Subpart, a person may create an inter vivos or testamentary trust in favor of a class consisting of some or all of his children, grandchildren, great grandchildren, nieces, nephews, grandnieces, grandnephews, and great grandnieces and great grandnephews, or any combination thereof, although some members of the class are not yet in being at the time of the creation of the trust, provided at least one

member of the class is then in being. Such a trust is called a class trust. If the trust instrument so provides, the interest of each beneficiary in the class shall be held in a separate trust after the class has closed.

B. If before the application of R.S. 9:1894 the class consists only of members of one generation, the interests of the members of the class shall be equal by roots from their common ancestor, unless the trust instrument provides otherwise. If before the application of R.S. 9:1894 the class consists of persons in more than one generation, their interests shall be equal by heads, unless the trust instrument provides otherwise.

Amended by Acts 1982, No. 479, §1; Acts 1989, No. 115, §1; Acts 1989, No. 339, §1, eff. June 28, 1989; Acts 1995, No. 274, §1; Acts 1995, No. 324, §1; Acts 1995, No. 1038, §1; Acts 1997, No. 682, §1; Acts 2001, No. 594, §3.

{{NOTE: SEE ACTS 1989, NO. 115, §2, AND NO. 339, §2.}}

§1892. Class members

A class may include those of the relationship whether by blood or adoption.

Acts 1985, No. 582, §1.

§1893. Income and principal designations

A class trust may be created with respect to income or principal, or both, but the members of the class must always be the sole beneficiaries of the interest affected, whether income, principal, or both. Subject to R.S. 9:2068, the trustee may invade principal for the benefit of one or more individual income beneficiaries or one or more members of any class of income beneficiaries, even though such income beneficiary may not be a member of the class of principal beneficiaries.

Amended by Acts 1968, No. 133, §1; Acts 1974, No. 127, §1; Acts 2003, No. 480, §1.

§1894. Representation

If a person dies before the creation of the trust, who would have been a member of the class if he had not died, his descendants shall be considered members of the class by representation unless the instrument otherwise provides.

Acts 1985, No. 582, §1.

§1895. Effect of death of class member during the term of the trust

A. An interest of a member of the class who dies during the term of the trust vests in his heirs or legatees, but the trust instrument may provide that the interest of a member of the class who dies intestate and without descendants during the term of the trust vests in the other members of the class, or, except as to the legitime in trust, that the interest of a member of the class who dies without descendants during the term of the trust or at its termination vests in the other members of the class.

B. For this purpose the term "other members of the class" shall include the successors to the interests of any members of the class who predecease such deceased class member, unless the trust instrument provides otherwise.

Acts 1988, No. 284, §1; Acts 1997, No. 254, §1.

§1896. Closing of the class

The trust instrument may state a date or a method for defining a date on which the class shall close. Unless the trust instrument provides otherwise, the class shall close when, because of the definition of the class, members may no longer be added to it.

Amended by Acts 1978, No. 706, §1.

§1897. Term; general rule

A trust created under the provisions of this Sub-part shall not terminate before the closing of the class. The term of the trust thereafter is determined by the rules prescribed by R.S. 9:1899 through 9:1906.

§1898. Effect of stipulation of excessive term

The stipulation of an excessive term in a disposition governed by this Sub-part shall not defeat the disposition, but the term shall be reduced to the period allowable under this Sub-part.

B. RULES GOVERNING WHEN MEMBERS OF A CLASS ARE BENEFICIARIES OF INCOME ONLY

§1899. Distribution of income; forced heirs

The trust instrument may provide when income shall be distributed, or it may provide that the trustee has discretion to determine the time or frequency of distribution or to accumulate some or all of the income, except as otherwise provided by this Code with respect to the legitime in trust.

§1900. Absence of living members before class closes; treatment of income

If the trust instrument contains a survivorship provision and all members of the class of income beneficiaries die before closing of the class, the income of the trust shall be accumulated until there is a member of the class or the class closes. If the class closes and there is no member of the class, the accumulated income shall be distributed to the beneficiaries of principal in proportion to their interests.

§1901. Closing of class; members living; effect; termination

After the class closes, the trust shall continue as to the class until the death of the last surviving member of the class, unless an earlier termination date has been stipulated.

C. RULES GOVERNING WHEN MEMBERS OF A CLASS ARE BENEFICIARIES OF PRINCIPAL ONLY

§1902. Closing of class; continuation of trust

When the members of a class are designated beneficiaries of principal only and the beneficiaries of income are not a class as defined in this Sub-part, the trust shall terminate when the class has closed and all interests in income have ceased. The trust instrument may provide that the trust shall continue with respect to the share of a class member for his lifetime.

§1903. Class not closed; termination of income interests; effect

If all designated beneficiaries of income have died, or the period of their enjoyment has otherwise lapsed before the class that is beneficiary of the trust principal has closed, the income shall be credited and distributed annually to the beneficiaries of the principal until the trust terminates, in proportion to their interests, unless the trust instrument provides otherwise.

D. RULES GOVERNING WHEN MEMBERS OF ONE CLASS ARE BENEFICIARIES OF INCOME AND MEMBERS OF A DIFFERENT CLASS ARE BENEFICIARIES OF PRINCIPAL

§1904. General rule

If the members of one class of the settlor's children or grandchildren are designated beneficiaries of income and members of a different class of his children or grandchildren are designated as beneficiaries of principal, the class of beneficiaries of income shall be governed by R.S. 9:1899 through 9:1901 and the class of beneficiaries of principal shall be governed by R.S. 9:1902 and 9:1903.

E. RULES GOVERNING WHEN THE MEMBERS OF THE SAME CLASS ARE BENEFICIARIES OF BOTH
INCOME AND PRINCIPAL

§1905. Interests in income

If members of the same class of the settlor's children or grandchildren are designated beneficiaries of both income and principal, interests in income before the class closes shall be governed by R.S. 9:1899 through 9:1901.

§1906. Term

The trust shall continue with respect to the share of a class member for his lifetime unless the trust instrument stipulates a shorter term, but the trust shall not terminate with respect to any interest until the class is closed.

SUBPART M. TRUSTS FOR EMPLOYEES

§1921. General rule

An employer may create a trust for the benefit of employees whether or not the beneficiaries are in being and ascertainable at the time of its creation. Several settlors may join in one trust for the benefit of their respective employees.

§1922. Term of trust

A trust for employees may be created for any term or for an indefinite term.

SUBPART N. ADDITIONS TO THE TRUST PROPERTY

§1931. General rule

A settlor or any other person may make additions of property to an existing trust by donation inter vivos or mortis causa, with the approval of the trustee. The right to make additions may be restricted or denied by the trust instrument.

§1932. Form

An addition of property to an existing trust must be made and accepted in the form required for such a donation free of trust.

Acts 2001, No. 594, §2.

§1933. Rights of person who adds property

A person who adds property to an existing trust cannot acquire the rights of a settlor by virtue of the transfer, but the addition is subject to the general law of donations.

§1934. Modification, termination, rescission, or revocation of trust to which property added

A trust may be modified, terminated, rescinded, or revoked, as provided by law or the trust instrument, without the consent of a person who has added property to the trust, even though the property that has been added is affected.

§1935. When addition by donation inter vivos effected

An addition of property to an existing trust by donation inter vivos is effective upon acceptance by the trustee.

§1936. When addition by donation mortis causa effected

An addition of property to an existing trust by donation mortis causa is effective at the moment of the donor's death.

§1937. Definition of annual exclusion

When a trust anticipates future annual additions and refers to the annual exclusion from federal gift tax without stipulating a dollar limitation, the dollar limitation shall be the amount of the exclusion in effect in the year in which the donation is made to the trust.

Added by Acts 1982, No. 423, §1.

SUBPART O. TRUSTS FOR MIXED PRIVATE AND CHARITABLE PURPOSES

§1951. General rule

A trust may be created for mixed private and educational, charitable, or religious purposes. The dispositions of such a trust in favor of private beneficiaries are governed by the provisions of this Code; those in favor of other beneficiaries are governed by R.S. 9:2271 through 9:2337 relating to trusts for educational, charitable, or religious purposes. As long as there remains a private beneficiary, the trust shall be administered in accordance with the provisions of R.S. 9:2061 through 9:2173. Unitrusts and annuity trusts as defined in the United States Internal Revenue Code are mixed trusts.

Amended by Acts 1972, No. 659, §1.

§1952. Invasion of principal in mixed trusts

Invasion of principal in unitrusts and annuity trusts, as defined in the United States Internal Revenue Code, shall be regulated by principles set forth in that Code, unless the trust instrument provides otherwise.

Added by Acts 1972, No. 660, §1.

SUBPART P. COMMUNITY PROPERTY IN TRUST

§1955. Power to divide community interests

If a married couple transfers property to a trustee of a trust they alone have created, or if the trustee of that trust is designated as the beneficiary of a benefit payable upon a spouse's death under a policy or plan, and the transferred property or the spouses' interest in the policy or plan is wholly or partially their community property, the trust instrument may direct the trustee to divide the trust after the termination of the community into two separate shares or trusts according to the spouses' respective ownership interests in the property, or in the policy or plan. The two separate shares or trusts may be governed by different terms and conditions in the trust instrument, even as to the designation of beneficiaries. A "policy or plan" shall include a life insurance or annuity contract, and an employee benefit plan, individual retirement account, or similar benefit.

Acts 1995, No. 1038, §2.

PART III. THE INTEREST OF THE BENEFICIARY

SUBPART A. THE INTEREST OF THE INCOME BENEFICIARY

§1961. Nature of the interest

A. An interest in income may be given absolutely or conditionally. It may be given for the life of a beneficiary or for a term, certain or uncertain, not exceeding the life of a beneficiary.

B. A settlor may allocate to a beneficiary of income a portion of income. Any income not allocated to an income beneficiary shall be allocated to principal.

C. Except as otherwise provided with respect to the legitime in trust, a settlor may give a trustee who is not a beneficiary of the trust discretion to allocate income in different amounts among the income beneficiaries or to allocate some or all of the income to principal. The settlor may allow income that is not allocated by the end of the year in which it is received to remain unallocated by the trustee until a future year. Any income unallocated when the trust terminates shall be allocated to principal.

Acts 1997, No. 767, §1; Acts 2001, No. 594, §2.

§1962. Distribution of income

In the absence of a contrary stipulation, income shall be distributed to the designated beneficiary at least every six months.

§1963. Permissible stipulations regulating distribution of income

Except as otherwise provided with respect to class trusts and the legitime in trust, a settlor may stipulate when the income allocated to a beneficiary shall be distributed to him, or may stipulate that the trustee has discretion to determine the time and frequency of distribution.

If the trust instrument allows the trust to retain income received in a year of the trust and distribute it in a later year, the income retained at the end of the year is deemed to be accumulated, unless the trust instrument requires the undistributed income to be added to principal. Objective standards are not required for the accumulation of income or for the distribution of accumulated income.

Acts 2003, No. 480, §1.

§1964. Termination of income interest; undistributed income

An interest in income terminates upon the death of the designated beneficiary, or at the expiration of the period of his enjoyment if the interest is for a period less than life. At the termination of an income interest, accumulated or undistributed income that has been or is required to be allocated to the beneficiary shall be paid to the beneficiary or his heirs, legatees, assignees, or legal representatives, except as otherwise provided in this Code.

Acts 1997, No. 767, §1.

§1965. Effect of termination of interest

Unless the trust instrument provides otherwise:

(1) Termination of the interest of the sole income beneficiary prior to the termination of the trust causes each principal beneficiary to become a beneficiary of income in an amount proportionate to his interest in the principal.

(2)(a) Termination of an interest in income of one of several income beneficiaries causes the other income beneficiaries or their successors to become beneficiaries of that interest in income in proportion to their interests in the balance of trust income.

(b) If, however, termination of the income interest is by death, and if descendants of the deceased income beneficiary are the beneficiaries of an interest in trust principal or succeed to such an interest upon the death of the income beneficiary, such descendants shall become beneficiaries of the deceased beneficiary's interest in trust income in proportion to the descendants' interests in their portion of trust principal.

Acts 2003, No. 480, §1.

SUBPART B. THE INTEREST OF THE PRINCIPAL BENEFICIARY

§1971. Time of acquisition of interest

The interest of a principal beneficiary is acquired immediately upon the creation of a trust, subject to the exceptions provided in this Code and in Civil Code Article 1521(A)(2).

Acts 1995, No. 413, §1.

§1972. Treatment of interest upon death of principal beneficiary

Upon a principal beneficiary's death, his interest vests in his heirs or legatees, subject to the trust; provided, however, that the trust instrument may stipulate otherwise to the extent permitted by the following Sections of this Subpart and R.S. 9:1895.

Amended by Acts 1974, No. 160, §1; Acts 1995, No. 414, §1.

§1973. Shifting interest in principal

A. The trust instrument may provide that the interest of either an original or a substitute principal beneficiary who dies intestate and without descendants during the term of the trust or at its termination vests in some other person or persons, each of whom shall be a substitute beneficiary.

B. Except as to the legitime in trust, the trust instrument may provide that the interest of either an original or a substitute principal beneficiary who dies without descendants during the term of the trust or at its termination vests in some other person or persons, each of whom shall be a substitute beneficiary.

Added by Acts 1974, No. 160, §1. Acts 1989, No. 111, §1; Acts 1997, No. 254, §1.

§1974. Substitute beneficiary's interest may be conditional

The interest of a substitute beneficiary may be conditioned upon his surviving the principal beneficiary. The trust instrument may provide for one or more alternative substitute beneficiaries if a substitute beneficiary does not survive the principal beneficiary.

Added by Acts 1974, No. 160, §1.

§1975. Requirement that substitute beneficiary be in being and ascertainable

Except as provided in R.S. 9:1978, a substitute beneficiary must be in being and ascertainable on the date of the creation of the trust; provided, however, that a class may be a substitute beneficiary subject to the requirements of R.S. 9:1891 through R.S. 9:1906.

Added by Acts 1974, No. 160, §1. Amended by Acts 1982, No. 455 §1.

§1976. Treatment upon death of substitute beneficiary whose interest is not conditioned on survival

Upon a substitute beneficiary's death, his interest, if not conditioned on survival, vests in his heirs or legatees subject to the trust.

Added by Acts 1974, No. 160, §1.

§1977. Class as substitute beneficiary

If the substitute beneficiary is a class, the interest of a deceased member of the class is determined by the rules governing class trusts.

Added by Acts 1974, No. 160, §1.

§1978. Shifting interest in principal if beneficiary is descendant of settlor

The trust instrument may provide that the substitute beneficiaries under R.S. 9:1973 are one or more of settlor's descendants who are in being and ascertainable on the date of death of the principal beneficiary.

Added by Acts 1982, No. 455, §1; Acts 1997, No. 254, §1.

§1979. Status of potential substitute principal beneficiary

A person who will be a principal beneficiary of a trust only if a substitution occurs under R.S. 9:1973 is not considered a principal beneficiary until the substitution occurs.

Acts 2003, No. 480, §1.

SUBPART C. REFUSAL

§1981. General Rule

A beneficiary, whether of principal or income, may refuse an interest at any time after creation of the trust, provided he does so before accepting any benefit under the trust. A person incapable of contracting cannot refuse an interest in trust, but his representative may refuse for him. The refusal is irrevocable.

§1982. Acceptance of interest in inter vivos trust by creditor; effect

If a beneficiary of a gratuitous inter vivos trust refuses his interest, his creditor cannot accept it in his stead.

§1983. Acceptance of interest in testamentary trust by creditor; effect

If a beneficiary of a testamentary trust refuses his interest to the prejudice of his creditors' rights, the creditors may accept in his stead to the extent that their rights have been prejudiced.

§1984. Rights of beneficiary who refuses interest in testamentary trust

A beneficiary who refuses his interest in a testamentary trust cannot take the interest in the property free of the trust.

§1985. Manner of refusal; effect of conditions

The refusal of an interest conferred in an inter vivos trust shall be in authentic form unequivocally disclaiming the interest. The refusal of an interest conferred in a testamentary trust shall be by renunciation of the settlor's succession. Conditions attached to the refusal shall be reputed not written.

§1986. Retroactive nature of refusal

A refusal operates retroactively to the date of the creation of the trust, and a beneficiary is considered never to have received an interest.

§1987. Effect of refusal upon trustee

A refusal is not effective as to a trustee until a copy of the act of refusal has been received by him. Acts performed by a trustee before a beneficiary's refusal becomes effective as to the trustee are not affected by the refusal.

§1988. Partial refusal; refusal in another's favor

A beneficiary may refuse all or any part of an interest in trust. The designation of the person in whose favor the refusal is to operate constitutes acceptance, but such a designation is subject to any restraint placed upon alienation by the trust instrument.

Acts 1983, No. 79, §1.

§1989. Refusal of addition to trust

A beneficiary who has not refused his interest under the trust instrument may refuse an addition of property to the trust.

§1990. Effect of refusal upon interest refused

A settlor may stipulate the effect of refusal. Unless the trust instrument otherwise provides, the following rules govern:

- (1) Refusal of the entire interest in trust causes the trust to fail.
- (2) Refusal by the sole income beneficiary causes principal beneficiaries, other than the refusing beneficiary, to become income beneficiaries, to the extent of the interest refused, in amounts proportionate to their interests or, in the absence of other principal beneficiaries, such a refusal operates as a substitution of the settlor or his heirs or legatees as beneficiaries of the refused income interest.
- (3) Except as provided in Paragraph (4), refusal of an interest by one of several income beneficiaries inures in favor of the other beneficiaries or their successors in proportion to their interests in the balance of the trust income.
- (4) If one or more descendants of a refusing income beneficiary are the beneficiaries of an interest in trust principal, either by designation in the instrument or by reason of Paragraph (5), those descendants become the beneficiaries of the refused interest, in proportion to their interests in trust principal.
- (5) A principal beneficiary of a testamentary trust who refuses his interest and to whom R.S. 9:1809 would have applied had he predeceased the settlor shall be treated as having predeceased the settlor.
- (6) Unless Paragraph (5) applies, refusal by the sole principal beneficiary operates a substitution of the settlor or his heirs or legatees as beneficiary of the principal, to the extent of the interest refused, without affecting the interest of the income beneficiary.

(7) Unless Paragraph (5) applies, refusal of an interest by one of several principal beneficiaries inures in favor of the other beneficiaries or their successors in proportion to their interests in the balance of the trust principal.

Acts 1983, No. 79, §1; Acts 2003, No. 480, §1.

SUBPART D. ALIENATION BY THE BENEFICIARY

§2001. General rule

A beneficiary may transfer or encumber the whole or any part of his interest unless the trust instrument provides to the contrary.

§2002. Restraint upon alienation

The trust instrument may provide that the interest of a beneficiary shall not be subject to voluntary or involuntary alienation by a beneficiary. A restraint upon voluntary alienation by a beneficiary is valid. But a restraint upon involuntary alienation by a beneficiary is subject to the limitations prescribed by this sub-part.

§2003. Form

Except as otherwise provided by Chapter 9 of the Louisiana Commercial Laws, R.S. 10:9-101 et seq., where applicable, a transfer or an encumbrance by a beneficiary of his interest shall be by authentic act or by act under private signature executed in the presence of two witnesses and duly acknowledged by the beneficiary or by the affidavit of one of the attesting witnesses.

Except as otherwise provided by Chapter 9 of the Louisiana Commercial Laws, R.S. 10:9-101 et seq., where applicable, the transfer or encumbrance is not effective as to a trustee until a copy of the authentic act or a copy of the acknowledged act is received by him.

Acts 1991, No. 665, §1.

§2004. Seizure by creditor; general rule

A creditor may seize only:

(1) An interest in income or principal that is subject to voluntary alienation by a beneficiary.

(2) A beneficiary's interest in income and principal, to the extent that the beneficiary has donated property to the trust, directly or indirectly.

Acts 1985, No. 581, §1; Acts 1987, No. 246, §1, eff. July 3, 1987; Acts 1997, No. 253, §1.

§2005. Seizure by creditor; special claims

Notwithstanding any stipulation in the trust instrument to the contrary, the proper court, in summary proceedings to which the trustee, the beneficiary, and the beneficiary's creditor shall be parties, may permit seizure of any portion of the beneficiary's interest in trust income and principal in its discretion and as may be just under the circumstances if the claim is based upon a judgment for:

- (1) Alimony, or maintenance of a person whom the beneficiary is obligated to support;
- (2) Necessary services rendered or necessary supplies furnished to the beneficiary or to a person whom the beneficiary is obligated to support; or
- (3) Repealed by Acts 2004, No. 521, §2.

Acts 2004, No. 521, §2.

§2006. Exemption from seizure

Exemptions from seizure accorded by law to any kind of property or interest in property are effective with respect to such property in trust to the same extent as if the property were held free of trust.

SUBPART E. DEFERRED ASCERTAINMENT OF PRINCIPAL BENEFICIARIES OF REVOCABLE TRUSTS

§2011. General rule

A revocable trust instrument need not designate the beneficiaries upon the creation of the trust but may instead provide a method whereby they are determined at a later time, but no later than the time when the trust becomes irrevocable. A beneficiary thus determined may be a person who is not in being when the trust is created, as long as he is in being when the beneficiaries are determined. If beneficiaries are thus determined, any provision in this Code that refers to persons in existence at the creation of the trust shall be deemed to refer to persons in existence at the time when the beneficiaries are determined under the trust

instrument. The interest of the beneficiary may be conditioned upon the beneficiary surviving the settlor for a period of time permitted by Civil Code Article 1521(A)(2).

Acts 1988, No. 589, §1; Acts 1989, No. 112, §1; Acts 1995, No. 413, §1.

§2012. Provisional principal beneficiaries

Until the time when the principal beneficiaries are determined, the persons who would be the principal beneficiaries had that time arrived shall be known as the provisional principal beneficiaries. Provisional principal beneficiaries shall be income beneficiaries in the absence of an effectively designated income beneficiary. A provisional principal beneficiary who is not an income beneficiary is not considered a beneficiary for any purposes under this Code.

Acts 1988, No. 589, §1.

§2013. Settlor as default principal beneficiary

If the trust instrument fails effectively to designate a principal beneficiary at the time when the principal beneficiary is to be determined, the settlor shall be the principal beneficiary, and upon his death his interest shall vest in his heirs or legatees. Likewise, if at any time no provisional principal beneficiary is identifiable under the terms of the trust instrument, the settlor shall be the provisional principal beneficiary.

Acts 1988, No. 589, §1.

§2014. Number of settlors allowed

A. Except as provided in Subsection B, the provisions of this Subpart shall apply only if the trust has but one settlor.

B. If a trust is created by two settlors who are married to each other, and the trust instrument divides community property in the manner described in R.S. 9:1955, and the trust becomes irrevocable as to a spouse's share or trust no later than at the death of that spouse, the beneficiaries of such share or trust may be ascertained under the provisions of this Subpart.

Acts 1988, No. 589, §1; Acts 1995, No. 1038, §3.

PART IV. MODIFICATION, TERMINATION, REVOCATION AND RESCISSION OF THE TRUST

SUBPART A. MODIFICATION AND TERMINATION OF THE TRUST

§2021. General rule; modification

The settlor may modify the terms of the trust after its creation only to the extent he expressly reserves the right to do so.

§2022. Effect of reservation of right to revoke

Reservation of the right to revoke includes the right to modify the trust.

§2023. Effect of reservation of unrestricted right to modify

If the settlor reserves an unrestricted right to modify the trust, he may change or amend the terms of the trust in any particular, or even revoke or terminate the trust.

§2024. Concurrence of settlors in modification

All surviving competent settlors must concur in a modification of the trust.

§2025. Delegation of right to terminate or to modify administrative provisions

A settlor may delegate to another person the right to terminate a trust, or to modify the administrative provisions of a trust, but the right to modify other provisions of a trust may not be delegated.

§2026. Change of circumstances

The proper court may order the termination or modification of a trust, in whole or in part, if:

(1) The continuance of the trust unchanged would defeat or substantially impair the purposes of the trust.

(2) Except as otherwise provided by the terms of the trust, a trustee has determined that the market value of a trust is less than one hundred thousand dollars and that, in relation to the costs of administration of the trust, the continuance of the trust unchanged would defeat or substantially impair the purposes of the trust. In such a case, the court may provide for the distribution of the trust property, including principal and undistributed income, to the beneficiaries in a manner which conforms as nearly as possible to the intention of the settlor

and the court shall make appropriate provisions for the appointment of a tutor in the case of a minor beneficiary. In the event of the termination or modification of a trust under the provisions of this Paragraph, the trustee shall not be subject to liability for such termination or modification.

Acts 1991, No. 665, §1; Acts 1997, No. 252, §1; Acts 2001, No. 594, §2.

§2027. Accomplishment of purposes becoming impossible or illegal

The proper court may order the termination or modification of the trust if the purpose for which it is created becomes impossible of accomplishment or illegal.

§2028. Concurrence of settlors in termination

The consent of all settlors, trustees, and beneficiaries shall not be effective to terminate the trust or any disposition in trust, unless the trust instrument provides otherwise.

§2029. Effect of termination

A termination of a trust causes the dispositive provisions of the trust to achieve their ultimate effect. A partial termination of a trust causes some of the dispositive provisions to achieve their ultimate effect. A beneficiary receiving trust property as a result of the whole or partial termination of a trust shall be personally liable for the obligations and liabilities of the trust existing on the date of termination to the extent of the value of the trust property received by such beneficiary unless, in the case of a partial termination, existing trust property is sufficient to satisfy the obligations and liabilities of the trust.

Acts 1995, No. 344, §3.

§2030. Combination and division of trusts

A trustee may combine two or more trusts into one trust, or divide a trust into two or more trusts, on written notice to all beneficiaries having a current interest in the trust or trusts, if the combination or division does not impair the rights of any beneficiary or adversely affect the accomplishment of the purposes of the trust or trusts. The division of a trust shall be based on the fair market value of the assets of the trust on the effective date of the division and need not result in a uniform interest in each asset. After the division, discretionary distributions need not be made uniformly from each of the separate trusts. A trust instrument

may modify these rules, either to expand or to restrict the trustee's authority to combine or divide a trust.

Acts 1995, No. 344, §2; Acts 2001, No. 594, §2.

SUBPART B. REVOCATION AND RESCISSION OF THE TRUST

§2041. General rule; revocation

Except as otherwise provided in this Code, a settlor may revoke a trust in whole or in part only if he has reserved the right to revoke the trust or an unrestricted right to modify the trust.

§2042. Effect of reservation of right to revoke

A reservation by the settlor of the right to revoke includes the right to revoke the interest of any beneficiary, unless otherwise limited by the trust instrument.

§2043. Revocation or rescission under general law

An onerous disposition in trust may be rescinded for the causes and under the limitations specified in the general law of contracts. A gratuitous disposition may be revoked for the causes and under the limitations specified in the general law of donations, whether or not the right to revoke has been reserved. For this purpose every disposition in favor of a particular beneficiary shall be treated as a separate donation or contract, as the case may be.

§2044. Concurrence of settlors in revocation; effect

Revocation of a trust, or of a disposition in trust, pursuant to a reservation of such a right, requires the concurrence of all surviving competent settlors, in the absence of a contrary stipulation.

§2045. Delegation of right to revoke

A settlor who has reserved the right to revoke a trust may delegate that right only by an express statement in the trust instrument or in a power of attorney executed in authentic form referring to the trust.

Acts 2001, No. 594, §2.

§2046. Effect of revocation or rescission

The settlor may stipulate the effect of revocation or rescission of a disposition. Unless the trust instrument otherwise provides, the following rules shall govern:

(1) Revocation or rescission shall cause the trust to fail and the trust property held by the trustee at the time such revocation or rescission takes effect shall revert to the settlor or his heirs, legatees, or assignees;

(2) Revocation or rescission of a disposition affecting an income beneficiary has the same effect as if the beneficiary had died on the effective date of the revocation or rescission;

(3) Revocation or rescission at any time of a disposition in favor of a principal beneficiary operates a substitution of the settlor, or his heirs, legatees, or assignees as the beneficiary of the interest involved, without affecting the interest of the income beneficiaries; if there are two or more settlors, each disposition affecting principal shall be divided into as many separate dispositions as the number of settlors, and each settlor or his heirs, legatees, or assignees shall receive a share in proportion to the amount of his contribution to the trust principal;

(4) Revocation or rescission affects property added to a trust according to the rules of this section.

(5) Acts of the trustee with regard to the trust property shall not be affected by the subsequent revocation or rescission of a disposition in trust. After a trust has been revoked or rescinded, the trustee shall have only those powers necessary to carry out the effects of the revocation or rescission.

(6) A person receiving trust property as a result of the revocation or rescission of the trust shall be personally liable for the obligations and liabilities of the trust existing on the date of revocation or rescission to the extent of the value of the trust property received by such beneficiary unless existing trust property is sufficient to satisfy the obligations and liabilities of the trust.

Amended by Acts 1974, No. 128, §1; Acts 1995, No. 344, §3.

SUBPART C. FORMAL REQUIREMENTS

§2051. Form

A. A modification, division, termination, or revocation of a trust shall be by authentic act or by act under private signature executed in the presence of two witnesses and duly acknowledged by the person who makes the modification, division, or termination or by the affidavit of one of the attesting witnesses. The modification, division, termination, or revocation is not effective as to a trustee until a copy of the authentic act or a copy of the acknowledged act is received by him.

B. A modification, division, termination, or revocation of a trust may also be by testament. Such a modification, division, termination, or revocation is not effective as to a trustee until the trustee receives a copy of the testament and of the order probating it or ordering it filed and executed.

Acts 1995, No. 344, §1; Acts 2003, No. 480, §1.

PART V. DUTIES AND POWERS OF THE TRUSTEE

SUBPART A. GENERAL DISPOSITIONS

§2061. General rule

The nature and extent of the duties and powers of a trustee are determined from the provisions of the trust instrument, except as otherwise expressly provided in this Code, and, in the absence of any provisions of the trust instrument, by the provisions of this Part and by law.

§2062. Limitation of duties by settlor

A provision of the trust instrument that purports to limit a trustee's duty of loyalty to the beneficiary is ineffective, except to the extent permitted by this Part.

§2063. Relief from duties by beneficiary

By written instrument delivered to a trustee a competent beneficiary who is acting upon full information may, with respect to himself, and with the trustee's consent, relieve the trustee from duties and restrictions concerning the administration of the trust that are imposed upon the trustee by the trust instrument or by this Code, but no such instrument is effective to the

extent that it purports to limit prospectively and in general terms the trustee's duty of loyalty to the beneficiary.

§2064. Judicial permission or direction to deviate from administrative provisions of trust instrument

The proper court may direct or permit a trustee to deviate from a provision of the trust instrument concerning the administration of the trust if compliance would defeat or substantially impair the purposes of the trust.

Acts 1997, No. 252, §1.

§2065. Judicial permission to deviate from administrative provisions of this code

The proper court for cause shown may relieve a trustee from duties and restrictions that otherwise would be placed upon him by the administrative provisions of this Code.

§2066. Judicial permission or direction to deviate from investment provisions of trust instrument

The proper court, if convinced that adherence to the investments prescribed by the trust instrument would be likely to affect adversely the best interests of a beneficiary to a serious extent, having due regard for the purposes of the trust, may upon application by a trustee or a beneficiary permit or direct the trustee to invest in securities not prescribed by the trust instrument, but a trustee is under no duty to make such an application to the court.

§2067. Invasion of principal; action of court

The proper court may direct or permit a trustee to pay income or principal from the trust property for the necessary support, maintenance, education, medical expenses, or welfare of a beneficiary before the time he is entitled to the enjoyment of that income or principal, if the interest of no other beneficiary of the trust is impaired thereby.

§2068. Invasion of principal; provisions of trust instrument

A. The trust instrument may direct or permit a trustee to pay principal to an income beneficiary for support, maintenance, education, or medical expenses, or, pursuant to an

objective standard, for any other purpose. The trust instrument may direct the trustee to pay all or part of the principal to an income beneficiary upon the request of the beneficiary. The trust instrument may direct the trustee to pay a stipulated amount or percentage to an income beneficiary under any trust, including a unitrust or annuity trust as defined in the United States Internal Revenue Code, even if the payments exceed income. The trust instrument may provide the manner in which and the share of the trust to which the payment shall be charged; if it does not, all payments of principal made for the benefit of an income beneficiary shall be charged against such beneficiary's share in the trust as principal beneficiary, or, if there is no such share, proportionately against the shares of all principal beneficiaries. Except as provided in R.S. 9:1841 through 1847, treating the legitime in trust, a payment under this Subsection A may be made even though the payment impairs the interest of another beneficiary.

B. If the same person is beneficiary of both income and principal, the trust instrument may direct or permit the trustee in the trustee's complete discretion to invade principal held for that beneficiary.

Amended by Acts 1968, No. 133, §1; Acts 1972, No. 661, §1; Acts 1974, No. 158, §1; Acts 1989, No. 113, §1; Acts 1995, No. 220, §1; Acts 2003, No. 480, §1.

§2069. Winding-up duty and powers of trustee

If the trust terminates or is revoked, or if the trustee resigns or is removed, he shall preserve the trust property and deliver it without delay to those persons who are entitled to it. Until he delivers the property, the trustee shall retain the powers that are necessary to preserve and deliver it to those persons who are entitled to it.

Acts 1995, No. 358, §2.

SUBPART B. DUTIES OF THE TRUSTEE

§2081. Breach of trust defined

A violation by a trustee of a duty he owes to a beneficiary as trustee is a breach of trust.

§2082. Administration in interest of beneficiary; duty of impartiality

A. A trustee shall administer the trust solely in the interest of the beneficiary.

B. When there is more than one beneficiary, a trustee shall administer the trust impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the trust instrument manifests an intention that the trustee shall or may favor one or more of the beneficiaries.

Acts 2001, No. 520, §1.

§2083. Dealing on own account

A trustee in dealing with a beneficiary on the trustee's own account shall deal fairly with him and communicate to him all material facts in connection with the transaction that the trustee knows or should know.

§2084. Loan by trustee to himself

A corporate trustee shall not lend trust funds to itself or an affiliate, or to a director, an officer or an employee of itself or of an affiliate, unless the trust instrument provides otherwise. An individual trustee shall not lend funds to himself, or to his relative, employer, employee, partner, or other business associate, unless the trust instrument provides otherwise.

§2085. Sale by trustee to himself

A. A corporate trustee shall not directly or indirectly buy or sell property for the trust from or to itself or an affiliate, or from or to a director, officer, or an employee of itself or an affiliate, unless the trust instrument provides otherwise, or unless specifically authorized by a court of competent jurisdiction, after a contradictory hearing. An individual trustee shall not directly or indirectly buy or sell property for the trust from or to himself or his relative, employer, employee, partner, or other business associate, unless the trust instrument provides otherwise, or unless specifically authorized by a court of competent jurisdiction, after a contradictory hearing.

B. No trustee shall, as trustee of one trust, sell property to himself as trustee of another trust, unless the trust instruments concerned expressly provide otherwise, or unless specifically authorized by a court of competent jurisdiction, after a contradictory hearing, except that bonds, notes, bills, and other obligations issued, or fully guaranteed as to both principal and interest by the United States of America, or interests in time deposits or certificates of deposit or other short term investment instruments may be sold from one trust to another only by corporate trustees at the existing current market value.

Acts 1990, No. 359, §1, eff. July 10, 1990.

§2086. Self-dealing by corporate trustee

A. A corporate trustee shall not purchase for a trust shares of its own stock, or its bonds or other securities, or the stock, bonds, or other securities of an affiliate, unless the trust instrument provides otherwise; but the trustee may retain any such securities, together with any rights pertaining thereto, if acquired other than by purchase by that trustee.

B. A corporate trustee may invest or reinvest in the securities of mutual funds registered under the Investment Company Act of 1940, even if the trustee or an affiliate thereof receives compensation with respect to such mutual fund, provided that the compensation is reasonable and the basis for determining the compensation is disclosed to all beneficiaries affected by the investment.

Acts 2001, No. 520, §1.

§2087. Delegating performance

A. Except as otherwise provided in this Section, a trustee shall not delegate the performance of his duties.

B. A trustee may delegate the performance of acts that he could not reasonably be required to perform personally.

C. A trustee may delegate the selection of specific investments by acquiring mutual funds registered under the Investment Company Act of 1940, or other pooled funds managed by a third party, so long as the portfolio of such a fund consists substantially of investments not prohibited by the trust instrument.

D.(1) A trustee may delegate investment and asset management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. In connection with such delegation, the trustee has the duty to exercise reasonable care, skill, and caution in selecting the agent and establishing the scope and terms of the delegation consistent with the purposes and terms of the trust instrument, to review periodically the actions of the agent, and, in the event of a breach of the agent's duties discovered by the trustee, to take such action to remedy the breach as is reasonable under the circumstances.

(2) In performing a delegated function, an agent owes a duty to the trustee and to the beneficiaries to exercise reasonable care and skill, considering the scope and terms of the delegation. An agreement to relieve the agent from that duty is contrary to public policy and void.

(3) By accepting delegation from a trustee of a trust established pursuant to this Code, an agent submits to the jurisdiction of the courts of this state in all matters relating to the performance of his duties.

Acts 2001, No. 520, §1.

§2088. Accounting

A. A trustee is under a duty to a beneficiary to keep and render clear and accurate accounts of the administration of the trust. If the trust is revocable, the trustee has a duty to account to the settlor only.

B. A trustee shall render to a beneficiary or his legal representative at least once a year a clear and accurate account covering his administration for the preceding year. His first annual account shall relate to the calendar year during which he became responsible for the trust property, or, at his option, the first accounting period of not more than twelve months and shall be rendered within ninety days after the expiration of that calendar year or accounting period. Each annual account shall show in detail all receipts and disbursements of cash and all receipts and deliveries of other trust property during the year, and shall set forth a list of all items of trust property at the end of the year.

C. A trustee upon the termination, revocation, or rescission of the trust, or upon his resignation or removal, shall render to a beneficiary or his legal representative his final account covering the period elapsed since his most recent annual account (or, should the trust have terminated, or have been revoked or rescinded, during the first year, the period elapsed since he became responsible for the trust property), and setting forth the same information required for annual accounts.

D. A written approval by a beneficiary or his legal representative of an account rendered by a trustee shall be conclusive against the beneficiary with respect to all matters disclosed in the account. If a beneficiary or his legal representative fail or refuse to approve in writing an account rendered by a trustee, a trustee may apply to the proper court for an approval

contradictorily with a beneficiary. An approval obtained from the proper court is conclusive against a beneficiary with respect to all matters disclosed in the account so approved.

E. A trustee shall not be under a duty, to file his accounts with the court unless he is expressly required to do so by the trust instrument or by the proper court.

Acts 2001, No. 594, §2.

§2089. Furnishing of information

A trustee shall give to a beneficiary upon his request at reasonable times complete and accurate information as to the nature and amount of the trust property, and permit him, or a person duly authorized by him, to inspect the subject matter of the trust, and the accounts, vouchers, and other documents relating to the trust.

§2090. Prudent administration

A. A trustee shall administer the trust as a prudent person would administer it. In satisfying this standard, the trustee shall exercise reasonable care and skill, considering the purposes, terms, distribution requirements, and other circumstances of the trust.

B. A trustee who has special skills or expertise, or has held himself out as having special skills or expertise, has a duty to use those special skills or expertise.

Acts 2001, No. 520, §1.

§2091. Control and preservation of trust property

A trustee is under a duty to a beneficiary to take reasonable steps to take, keep control of, and preserve the trust property.

§2092. Recordation of instruments

A. If at any time the trust property of either an inter vivos trust or a testamentary trust includes immovables or other property the title to which must be recorded in order to affect third parties, a trustee shall file the trust instrument, or an extract thereof, for record in each parish in which the property is located.

B.(1) For purposes of recording an extract of a trust instrument, such an extract shall be executed by either the settlor or the trustee and shall include all of the following:

(a) The name of the trust, if any.

(b) A statement as to whether the trust is revocable or irrevocable.

(c) The name of each settlor.

(d) The name of each trustee and name or other description of the beneficiary or beneficiaries.

(e) The date of execution of the trust.

(f) A brief description of the immovable property or other property subject to the trust, the title to which must be recorded in order to affect third persons.

(2) The provisions of this Section authorizing the filing of an extract of the trust instrument are remedial and shall be applied retroactively to any trust extract theretofore filed for record which is in substantial compliance with the provisions of this Subsection, and such extract shall affect third persons as of the date of recordation. If the extract of an inter vivos trust instrument is recorded, the failure of the trust instrument to be in the form required by R.S. 9:1752 shall not be effective against third parties, who shall be immune from claims based on the failure of the trust instrument to be in the form required by R.S. 9:1752.

Acts 1995, No. 257, §1; Acts 2003, No. 731, §1; Acts 2004, No. 491, §1.

NOTE: SEE ACTS 1987, NO. 164, §3.

§2093. Defense of actions

A trustee shall defend actions that may result in a loss to the trust estate, unless under all the circumstances it is reasonable not to make a defense.

2094. Separation of trust property

A trustee shall keep the trust property separate from his individual property, and, so far as reasonable, keep it separate from other property not subject to the trust, and see that the property is designated as property of the trust, unless the trust instrument provides otherwise

§2095. Bank deposits

Although a trustee can properly make a general deposit of trust money in a bank, he shall use reasonable care in selecting the bank and properly earmark the deposit as a deposit of trust funds by him as trustee, unless the trust instrument provides otherwise.

A corporate trustee making a general deposit of trust money with an affiliate or its own banking department has a duty to a beneficiary to obtain as security for the deposit readily marketable bonds or other obligations having and maintaining a market value at least equal to the amount of the deposit, unless dispensed from doing so by specific words in the trust instrument, but such a dispensation shall not be construed as preventing a corporate trustee from putting up security for a deposit of trust money if it desires to do so. No security shall be required for any deposit up to the amount insured by the Federal Deposit Insurance Corporation.

Amended by Acts 1982, No. 279, §1.

§2096. Co-trustees

If there are two or more trustees, each shall participate in the administration of the trust and use reasonable care to prevent a co-trustee from committing a breach of trust and shall compel him to redress a breach of trust.

§2097. Serving as officer of legal entity in which trust funds invested

A. No trustee of any trust created under the laws of this state shall serve as an officer, including without limitation the president, vice president, secretary, treasurer, manager, or managing partner of any legal entity formed after the trust is created, other than a corporate trustee, in which trust funds are invested unless the settlor so authorizes such action in the instrument creating the trust or by a subsequent modification thereof. However, this shall not restrict the investment of trust funds in any bank or savings and loan association with deposits therein insured by the Federal Deposit Insurance Corporation or by any other agency or instrumentality of the federal government.

B. Any trustee who violates the provisions of this section shall be subject to removal for cause by a court of competent jurisdiction. The beneficiary of any such trust may offer proof to the court of competent jurisdiction that a trustee is acting in violation of this section, and upon presentation of such proof, the court shall remove the trustee.

C. All laws or parts of laws in conflict herewith are hereby repealed, but the provisions hereof shall not be construed to repeal R.S. 9:2081 through R.S. 9:2096.

Acts 1968, No. 627, §§1 to 3; Acts 1997, No. 251, §1.

SUBPART C. POWERS OF THE TRUSTEE

§2111. Extent of powers

Except as stated in R.S. 9:2061 through 9:2066, a trustee shall exercise only those powers conferred upon him by the provisions of the trust instrument or necessary or appropriate to carry out the purposes of the trust and are not forbidden by the provisions of the trust instrument.

§2112. Attachment of powers to office

All powers of a trustee shall be attached to the office and shall not be personal, unless it is otherwise provided by the trust instrument or by order of the proper court.

§2113. Exercise of powers by two trustees

If there are two trustees, the powers conferred upon them shall be exercised only by both of them, unless it is otherwise provided by the trust instrument or by order of the proper court.

§2114. Three or more trustees; exercise of powers

A power vested in three or more trustees may be exercised by a majority of the trustees, unless the trust instrument provides otherwise. A trustee who has not joined in exercising a power shall not be liable to the beneficiaries or to others for the consequences of that exercise, nor shall a dissenting trustee be liable for the consequences of an act in which he joins at the direction of the majority of trustees, if he expresses his dissent in writing to his co-trustees at or before the time of the joinder. Nothing in this section shall excuse a co-trustee from liability for inactivity in the administration of the trust nor for failure to attempt to prevent a breach of trust.

§2115. Control of discretionary powers

If discretion is conferred upon a trustee with respect to the exercise of a power, its exercise shall not be subject to control by the court, except to prevent an abuse of discretion by a trustee.

§2116. Repealed by Acts 2001, No. 520, §5.

§2117. Expenses that may be incurred

A trustee may incur expenses necessary to carry out the purposes of the trust and not forbidden by the provisions of the trust instrument, and other expenses authorized by the provisions of the trust instrument.

§2118. Lease of trust property

Unless the trust instrument provides otherwise, a trustee may enter into leases of trust property, including oil, gas, and mineral leases, either as lessor or lessee, for such periods and with such provisions as are reasonable, whether or not the term of the lease exceeds the term of the trust.

Amended by Acts 1968, No. 134, §1.

§2119. Sale of trust property

A trustee may sell trust property unless the sale is forbidden in specific words by the trust instrument or unless it appears from the provisions of the trust instrument that the property is to be retained in kind. A settlor by the provisions of the trust instrument cannot forbid a sale of immovable property for a period beyond fifteen years from his death.

§2120. Mortgage or pledge; borrowing

A trustee may mortgage or pledge trust property, or borrow money on the credit of the trust estate and charge the trust estate therefor, unless the trust instrument provides otherwise.

§2121. Compromise, arbitration, and abandonment of claims

A trustee may compromise, submit to arbitration, or abandon claims affecting the trust property.

§2122. Powers with respect to shares of stock

A trustee may exercise all powers of holders of shares of stock or other securities, including the right to vote in person or by proxy.

§2123. Stock subscription; incorporator; organizer; partnership; joint venture; limited liability company; other legal entities

A trustee may acquire and subscribe for corporate shares, act as an incorporator or organizer, or become a member of a partnership, joint venture, limited liability company, or other legal entity, unless the trust instrument provides otherwise.

Acts 1997, No. 251, §1.

§2124. Holding stock in name of nominee

A trustee owning stock may hold it in the name of a nominee, without mention of the trust in the stock certificate or stock registration book, provided that the trust records and all reports or accounts rendered by a trustee clearly show the ownership of the stock and the facts regarding its holding. A trustee shall be personally liable for any loss to the trust resulting from any act of the nominee in connection with stock so held.

§2125. Contractual liability of trust

A. If a trustee makes a contract that is within his powers as trustee, or if a predecessor trustee has made such a contract, and if a cause of action arises thereon, the party in whose favor the cause of action has accrued may sue the trustee in his representative capacity. A judgment rendered in the action in favor of the plaintiff shall affect or be satisfied out of the trust property.

B. A beneficiary may intervene in such an action for the purpose of contesting the right of the plaintiff to recover.

C. The plaintiff may also hold a trustee who makes a contract personally liable on the contract, if the contract does not exclude personal liability. The addition of the word "trustee" or the words "as trustee" together with language identifying the trust, after the signature of a trustee to a contract, shall be deemed prima facie evidence of an intent to exclude a trustee from personal liability.

§2126. Tort liability of trust

A. If a trustee or his predecessor has incurred personal liability for a tort committed in the course of administration, the trustee in his representative capacity may be sued and collection had from the trust property, if the court determines in such an action:

(1) That the tort was a common incident of the kind of business activity in which the trustee or his predecessor was properly engaged for the trust; or

(2) That, although the tort was not a common incident of such an activity, neither a trustee nor his predecessor nor an officer or employee of the trustee or his predecessor was guilty of personal fault in incurring the liability; or

(3) That, although the tort does not fall within paragraphs (1) or (2) above, it increased the value of the trust property.

B. If the tort falls within paragraphs (1) or (2) of Sub-section A above, collection may be had of the full amount of damage proved and, if the tort falls within paragraph (3) of Sub-section A above, collection may be had only to the extent of the increase in the value of the trust property.

C. A beneficiary may intervene in such an action for the purpose of contesting the right of the plaintiff to recover.

D. A trustee may also be held personally liable for any tort committed by him or his agents or employees in the course of their employment, subject to the right of exoneration or reimbursement provided in R.S. 9:2191 through 9:2196.

§2127. Standard of care in investing and management

Unless the trust instrument provides otherwise, a trustee shall invest and manage trust property as a prudent investor. In satisfying this standard, the trustee shall consider the purposes, terms, distribution requirements, and other circumstances of the trust. A trustee's investment and management decisions are to be evaluated in the context of the trust property as a whole and as part of an overall investment strategy having risk and return objectives reasonably suited to the trust. In investing within the limitations of the foregoing standard, a trustee is authorized to retain and acquire every kind of property.

Acts 1986, No. 178, §1; Acts 1991, No. 665, §2; Acts 2001, No. 520, §1.

§2128. Common trust funds

A. A trustee may establish common trust funds for the investment of trust funds of which he is trustee or cotrustee and may invest in such common trust funds, if such investment is not prohibited by the trust instrument, and if the trustee procures the consent of his cotrustees to the investment; provided that:

(1) The records, reports, and accounts of each trust having an interest in the fund clearly show the extent of such interest; and

(2) The trustee himself has no interest in such fund; and

(3) The fractional part of the management fee charged by the trustee proportionate to the interest of each beneficiary shall not, when added to any other compensation charged by a trustee to a beneficiary, exceed the total amount of compensation which would have been charged to the beneficiary if no assets of the beneficiary had been invested in the fund; and

(4) The fund is maintained under a written plan that is on file at the office of the trustee and is available for inspection during business hours by any interested party; and

(5) The trustee has had prepared annually by a certified public accountant and placed on file with the trustee, a statement of the investment changes, income, disbursements, and a list of the current investments with a notation as to defaults, for the period since the last such statement. The trustee shall notify each beneficiary that a copy of the annual statement is available and will be furnished to the beneficiary on request; and

(6) Entrances into, and withdrawals from, such common trust fund are permitted only on those days upon which the assets comprising the fund are valued; and

(7) No funds are admitted to the common trust fund at a time when less than forty per centum of the value of the common trust fund is composed of cash or marketable investments for which quotations are readily available; and

(8) The fund is managed in accordance with any regulations pertaining thereto issued from time to time by the office of financial institutions; and

(9) On the termination of a trust interested in the common trust fund, the trustee shall terminate the interest of that trust and shall pay from cash in the common trust fund to the

person or persons then entitled to the trust capital the then market value of the interest of the trust in the common trust fund.

B. If the trustee is restricted to certain investments, then he may invest only in common trust funds limited to such investments.

C. A trustee who has established a common trust fund for the investment of trust funds may also invest therein any other funds that he holds as a fiduciary, provided he procures the consent of his co-fiduciaries.

D. For the purpose of this Section, the term "trustee" shall include two or more trustees who are members of the same "affiliated group" as defined in Section 1504 of the Internal Revenue Code of 1954, as amended, with respect to any fund established pursuant to this Section, of which any of such trustee is trustee or cotrustee.

Acts 1986, No. 179, §1.

§2129. Corporate trustees; deposit of securities in clearing corporation

A. Unless the trust instrument provides otherwise, a corporate trustee may deposit or arrange for deposit in a clearing corporation securities held by it as fiduciary or as agent for a fiduciary or nonfiduciary, provided the records maintained by the corporate trustee with respect to those securities disclose the capacity in which they are held.

B. Securities deposited in a clearing corporation may be registered in the name of either the clearing corporation or its nominee without disclosing the capacity in which they are held.

C. Securities deposited in a clearing corporation may be stored together with other securities of the same class of the same issuer also stored in the clearing corporation, but not the securities of the clearing corporation, and may be combined with such other securities into one or more securities of the same class of the same issuer.

Added by Acts 1983, No. 346, §1.

§2130. Transfer of fiduciary accounts

A. Notwithstanding any other provision of this Chapter to the contrary, any two or more banks authorized to exercise fiduciary powers may enter into an agreement under which a bank

domiciled in the state of Louisiana is substituted as fiduciary for each existing fiduciary account listed in the agreement. The agreement shall be filed with the commissioner of financial institutions for approval or other disposition within thirty days, and shall be accompanied by a fee to be determined by the commissioner by rule.

B. Following approval by the commissioner and not later than sixty days prior to the effective date of a substitution under this Section, the transferring bank shall send written notice of the substitution of fiduciary to each interested party for each fiduciary account listed in the agreement. For purposes of this Section, an interested party shall include only the following, each as may be appropriate to the respective fiduciary account:

- (1) Each adult beneficiary.
- (2) Each parent, tutor, or guardian of a minor beneficiary receiving or entitled to receive current distributions of income or principal.
- (3) Each co-fiduciary.
- (4) Each person who alone or acting in conjunction with others has the power to remove the transferring bank.
- (5) Each surviving settlor.
- (6) Each issuer of a security for which the transferring bank administers a fiduciary account.
- (7) The plan sponsor of each employee benefit plan.
- (8) The principal of each agency account.
- (9) The curator of the person of each interdict under curatorship.

C. The notice shall be sent by United States mail to the person's current address as shown on the records of the transferring bank. If the transferring bank has no address on its records, the transferring bank shall make a reasonable attempt to ascertain the person's current address. The notice shall disclose the person's rights with respect to objecting to the transfer of the fiduciary account. Intentional failure to send the required notice renders the substitution of fiduciary ineffective, but an unintentional failure to send the required notice shall not impair the validity or effect of the substitution. If a substitution is determined to be ineffective

because of a defect in the required notice, the actions taken by the substitute bank before the determination of the invalidity of the substitution shall be valid if the actions would have been valid if performed by the transferring bank.

D. Except as provided by this Subsection, the prospective designation in a will or other instrument of the transferring bank as fiduciary shall be considered designation of the substitute bank. However, the transferring bank and substitute bank may agree in writing to have the designation of the transferring bank as fiduciary of particular fiduciary accounts remain binding, or the creator of the fiduciary account may, by appropriate language in the document creating the fiduciary account, provide that the fiduciary account is not eligible for substitution under this Section.

E. Substitution under this Section shall be effective for all purposes on the effective date stated in the agreement between the two banks unless, not later than fifteen days prior to the effective date:

(1) An interested party entitled to notice under this Section who possesses the lawful authority to designate the trustee or successor trustee sends via certified mail a written objection to the proposed transfer of the particular account. Upon receipt of such objection, the transferring bank shall remove that account from the operation of the agreement. The transferring bank shall, upon the direction of such interested party, transfer the account to a qualified successor.

(2) Any other interested party entitled to notice under this Section files a written petition in a court of competent jurisdiction and venue seeking to have the substitution denied and serves the transferring bank and the substitute bank with a copy of the filed petition. The substitution may be denied if the court, on notice and hearing, determines that the substitution of fiduciary is a material detriment to the account or to the beneficiaries of the account.

F. Subsection E of this Section shall be cumulative to any applicable provisions for removal of a fiduciary or appointment of a successor fiduciary in any other statute or in the instrument creating the fiduciary relationship.

G. On the effective date of the substitution, the substitute bank shall succeed to all rights, title, and interest in all property that the transferring bank holds as fiduciary in the listed accounts, without the necessity of any instrument of transfer or conveyance, and the

substitute bank shall, without the necessity of any judicial action or action by the creator of the fiduciary account, become fiduciary and perform all the duties and obligations and exercise all the powers and authority connected with or incidental to the fiduciary capacity in the same manner as if the substitute bank had been originally named or designated fiduciary. However, the transferring bank shall be responsible and liable for all actions taken by it while it acted as fiduciary.

H. A fiduciary account may be removed from the operation of the agreement by an amendment to the agreement filed with the commissioner prior to the effective date stated in the agreement.

Acts 1990, No. 191, §1; Acts 1991, No. 665, §1; Acts 2001, No. 532, §1, eff. June 21, 2001

§2127. Standard of care in investing and management

Unless the trust instrument provides otherwise, a trustee shall invest and manage trust property as a prudent investor. In satisfying this standard, the trustee shall consider the purposes, terms, distribution requirements, and other circumstances of the trust. A trustee's investment and management decisions are to be evaluated in the context of the trust property as a whole and as part of an overall investment strategy having risk and return objectives reasonably suited to the trust. In investing within the limitations of the foregoing standard, a trustee is authorized to retain and acquire every kind of property.

Acts 1986, No. 178, §1; Acts 1991, No. 665, §2; Acts 2001, No. 520, §1.

§2128. Common trust funds

A. A trustee may establish common trust funds for the investment of trust funds of which he is trustee or cotrustee and may invest in such common trust funds, if such investment is not prohibited by the trust instrument, and if the trustee procures the consent of his cotrustees to the investment; provided that:

(1) The records, reports, and accounts of each trust having an interest in the fund clearly show the extent of such interest; and

(2) The trustee himself has no interest in such fund; and

(3) The fractional part of the management fee charged by the trustee proportionate to the interest of each beneficiary shall not, when added to any other compensation charged by a trustee to a beneficiary, exceed the total amount of compensation which would have been charged to the beneficiary if no assets of the beneficiary had been invested in the fund; and

(4) The fund is maintained under a written plan that is on file at the office of the trustee and is available for inspection during business hours by any interested party; and

(5) The trustee has had prepared annually by a certified public accountant and placed on file with the trustee, a statement of the investment changes, income, disbursements, and a list of the current investments with a notation as to defaults, for the period since the last such statement. The trustee shall notify each beneficiary that a copy of the annual statement is available and will be furnished to the beneficiary on request; and

(6) Entrances into, and withdrawals from, such common trust fund are permitted only on those days upon which the assets comprising the fund are valued; and

(7) No funds are admitted to the common trust fund at a time when less than forty per centum of the value of the common trust fund is composed of cash or marketable investments for which quotations are readily available; and

(8) The fund is managed in accordance with any regulations pertaining thereto issued from time to time by the office of financial institutions; and

(9) On the termination of a trust interested in the common trust fund, the trustee shall terminate the interest of that trust and shall pay from cash in the common trust fund to the person or persons then entitled to the trust capital the then market value of the interest of the trust in the common trust fund.

B. If the trustee is restricted to certain investments, then he may invest only in common trust funds limited to such investments.

C. A trustee who has established a common trust fund for the investment of trust funds may also invest therein any other funds that he holds as a fiduciary, provided he procures the consent of his co-fiduciaries.

D. For the purpose of this Section, the term "trustee" shall include two or more trustees who are members of the same "affiliated group" as defined in Section 1504 of the Internal Revenue

Code of 1954, as amended, with respect to any fund established pursuant to this Section, of which any of such trustee is trustee or cotrustee.

Acts 1986, No. 179, §1.

§2129. Corporate trustees; deposit of securities in clearing corporation

A. Unless the trust instrument provides otherwise, a corporate trustee may deposit or arrange for deposit in a clearing corporation securities held by it as fiduciary or as agent for a fiduciary or nonfiduciary, provided the records maintained by the corporate trustee with respect to those securities disclose the capacity in which they are held.

B. Securities deposited in a clearing corporation may be registered in the name of either the clearing corporation or its nominee without disclosing the capacity in which they are held.

C. Securities deposited in a clearing corporation may be stored together with other securities of the same class of the same issuer also stored in the clearing corporation, but not the securities of the clearing corporation, and may be combined with such other securities into one or more securities of the same class of the same issuer.

Added by Acts 1983, No. 346, §1.

§2130. Transfer of fiduciary accounts

A. Notwithstanding any other provision of this Chapter to the contrary, any two or more banks authorized to exercise fiduciary powers may enter into an agreement under which a bank domiciled in the state of Louisiana is substituted as fiduciary for each existing fiduciary account listed in the agreement. The agreement shall be filed with the commissioner of financial institutions for approval or other disposition within thirty days, and shall be accompanied by a fee to be determined by the commissioner by rule.

B. Following approval by the commissioner and not later than sixty days prior to the effective date of a substitution under this Section, the transferring bank shall send written notice of the substitution of fiduciary to each interested party for each fiduciary account listed in the agreement. For purposes of this Section, an interested party shall include only the following, each as may be appropriate to the respective fiduciary account:

(1) Each adult beneficiary.

(2) Each parent, tutor, or guardian of a minor beneficiary receiving or entitled to receive current distributions of income or principal.

(3) Each co-fiduciary.

(4) Each person who alone or acting in conjunction with others has the power to remove the transferring bank.

(5) Each surviving settlor.

(6) Each issuer of a security for which the transferring bank administers a fiduciary account.

(7) The plan sponsor of each employee benefit plan.

(8) The principal of each agency account.

(9) The curator of the person of each interdict under curatorship.

C. The notice shall be sent by United States mail to the person's current address as shown on the records of the transferring bank. If the transferring bank has no address on its records, the transferring bank shall make a reasonable attempt to ascertain the person's current address. The notice shall disclose the person's rights with respect to objecting to the transfer of the fiduciary account. Intentional failure to send the required notice renders the substitution of fiduciary ineffective, but an unintentional failure to send the required notice shall not impair the validity or effect of the substitution. If a substitution is determined to be ineffective because of a defect in the required notice, the actions taken by the substitute bank before the determination of the invalidity of the substitution shall be valid if the actions would have been valid if performed by the transferring bank.

D. Except as provided by this Subsection, the prospective designation in a will or other instrument of the transferring bank as fiduciary shall be considered designation of the substitute bank. However, the transferring bank and substitute bank may agree in writing to have the designation of the transferring bank as fiduciary of particular fiduciary accounts remain binding, or the creator of the fiduciary account may, by appropriate language in the document creating the fiduciary account, provide that the fiduciary account is not eligible for substitution under this Section.

E. Substitution under this Section shall be effective for all purposes on the effective date stated in the agreement between the two banks unless, not later than fifteen days prior to the effective date:

(1) An interested party entitled to notice under this Section who possesses the lawful authority to designate the trustee or successor trustee sends via certified mail a written objection to the proposed transfer of the particular account. Upon receipt of such objection, the transferring bank shall remove that account from the operation of the agreement. The transferring bank shall, upon the direction of such interested party, transfer the account to a qualified successor.

(2) Any other interested party entitled to notice under this Section files a written petition in a court of competent jurisdiction and venue seeking to have the substitution denied and serves the transferring bank and the substitute bank with a copy of the filed petition. The substitution may be denied if the court, on notice and hearing, determines that the substitution of fiduciary is a material detriment to the account or to the beneficiaries of the account.

F. Subsection E of this Section shall be cumulative to any applicable provisions for removal of a fiduciary or appointment of a successor fiduciary in any other statute or in the instrument creating the fiduciary relationship.

G. On the effective date of the substitution, the substitute bank shall succeed to all rights, title, and interest in all property that the transferring bank holds as fiduciary in the listed accounts, without the necessity of any instrument of transfer or conveyance, and the substitute bank shall, without the necessity of any judicial action or action by the creator of the fiduciary account, become fiduciary and perform all the duties and obligations and exercise all the powers and authority connected with or incidental to the fiduciary capacity in the same manner as if the substitute bank had been originally named or designated fiduciary. However, the transferring bank shall be responsible and liable for all actions taken by it while it acted as fiduciary.

H. A fiduciary account may be removed from the operation of the agreement by an amendment to the agreement filed with the commissioner prior to the effective date stated in the agreement.

Acts 1990, No. 191, §1; Acts 1991, No. 665, §1; Acts 2001, No. 532, §1, eff. June 21, 2001.

§2131. Distributions

A trustee may make a distribution of trust property in full ownership or undivided interests, prorata or non-prorata, after taking into account the values and tax attributes of the trust property.

Acts 2003, No. 480, §1.

SUBPART D. ALLOCATION TO INCOME AND PRINCIPAL

§2141. General rule

A trust shall be administered with due regard to the respective interests of the beneficiaries in the allocation of receipts and expenditures.

§2142. Allocation to beneficiaries of income and principal

A trust receipt shall be credited, or an expenditure charged, to income or principal or partly to each:

- (1) In accordance with the terms of the trust instrument, including any provision giving the trustee discretion, notwithstanding contrary provisions of this Subpart; or
- (2) In accordance with the provisions of this Subpart, in the absence of contrary provisions of the trust instrument; or
- (3) If no rule is provided in the trust instrument or this Subpart, entirely to principal.

Acts 1989, No. 114, §1; Acts 2001, No. 520, §2.

§2143. Allocation to beneficiaries of usufruct and naked ownership

A trust is administered with due regard to the respective interests of beneficiaries of usufruct and naked ownership in the allocation of receipts and expenditures if a receipt is credited or an expenditure is charged to the beneficiary of usufruct or the beneficiary of naked ownership or partly to each:

- (1) In accordance with the terms of the trust instrument and the law regulating usufruct, notwithstanding contrary provisions of this Subpart;

(2) In accordance with the provisions of this Subpart, in the absence of applicable law regulating usufruct and if the trust instrument contains no provisions to the contrary;

(3) If neither of the preceding rules applies, in accordance with what is reasonable and equitable in view of the interests of those who are beneficiaries of usufruct as well as those who are beneficiaries of naked ownership, and in view of the manner in which men of ordinary prudence, discretion, and intelligence would act in the management of their own affairs.

2144. Income and principal distinguished

Receipts paid or delivered in return for the use of money or property forming a part of principal are income, unless this Sub-part expressly provides to the contrary.

Receipts paid or delivered as the consideration for the sale or other transfer of property forming a part of principal or as the replacement of property forming a part of principal are principal unless this Sub-part expressly provides to the contrary.

§2145. When right to income arises

The right of an income beneficiary to income from property in trust arises at the time prescribed in the trust instrument, or, if no time is prescribed and the person receiving the right to income is the first income beneficiary to receive a right to income from the property, then:

(1) At the time the property becomes subject to the trust, with respect to property transferred by inter vivos disposition;

(2) At the time when, under the laws regulating donations mortis causa, the legatee of the same type of legacy free of trust is entitled to receive income from such a legacy, with respect to property transferred by testamentary disposition.

§2146. Apportionment of receipts when right to income arises

A. In the administration of property transferred in trust:

(1) Receipts due but not paid when the right of the first income beneficiary to receive income from the property arises shall be treated as accruing when due;

(2) Receipts in the form of periodic payments, other than corporate distributions to stockholders, not due when the right of the first income beneficiary to receive income from the property arises, shall be treated as accruing from day to day;

(3) Receipts in the form of corporate distributions to stockholders shall be treated as accruing on the date fixed for the determination of stockholders of record entitled to distribution, or, if no date is fixed, on the date of declaration of the distribution by the corporation;

(4) All other receipts shall be treated as accruing at the time of payment.

B. Receipts treated as accruing after the right of the first income beneficiary to receive income from the property arises, are income if they otherwise are income under the provisions of this Sub-part. Receipts treated as accruing at an earlier time are principal.

§2147. Apportionment of receipts when right to income ceases

Upon the termination of an income interest, the income beneficiary whose interest is terminated (or his heirs, legatees, or assignees) is entitled to:

(1) Income undistributed on the date of termination;

(2) Income due but not paid to the trustee on the date of termination;

(3) Income in the form of periodic payments, other than corporate distributions to stockholders, not due on the date of termination, accrued from day to day;

(4) Corporate distributions to stockholders paid as income after the termination of the interest if the date for determination of stockholders of record entitled to distribution is a date before the termination of the interest, or, in the event no date is fixed, if the date of declaration of the distribution by the corporation is a date before termination of the interest.

§2148. Succession receipts

Succession receipts shall be credited and succession expenditures shall be charged to a legacy in trust in accordance with the laws regulating donations mortis causa.

§2149. Corporate distributions

A. Corporate distributions of shares of the distributing corporation, including distributions in the form of a stock split or stock dividend, are principal. A right to subscribe to shares or other securities issued by the distributing corporation accruing to stockholders on account of their stock ownership and the proceeds of any sale of the right are principal.

B. Except to the extent that the corporation indicates that some part of a corporate distribution is a settlement of preferred or guaranteed dividends accrued since the trustee became a stockholder or is in lieu of an ordinary cash dividend, a corporate distribution is principal if the distribution is pursuant to:

(1) A call of shares;

(2) A merger, consolidation, reorganization, or other plan by which assets of the corporation are acquired by another corporation; or

(3) A total or partial liquidation of the corporation, including any distribution that the corporation indicates is a distribution in total or partial liquidation, or any distribution of assets, other than cash, pursuant to a court decree or final administrative order by a government agency ordering distribution of the particular assets.

C. Distributions made from ordinary income by a regulated investment company or by a trust qualifying and electing to be taxed under federal law as a real estate investment trust are income. All other distributions made by the company or trust, including distributions from capital gains, depreciation, or depletion, whether in the form of cash or an option to take new stock or cash or an option to purchase additional shares, are principal.

D. All other corporate distributions are income, including cash dividends, distributions of, or rights to subscribe to, shares, securities, or obligations of corporations other than the distributing corporation, and the proceeds of the rights or of the property distributions, except as Sub-sections A, B, or C above provide otherwise.

E. If the distributing corporation gives a stockholder an option to receive a distribution either in cash or in its own shares, the distribution chosen is income, except as provided in Sub-sections B and C of this section.

F. A trustee may rely upon any statement of the distributing corporation as to any fact relevant under any provision of this Sub-part concerning the source or character of dividends or distributions of corporate assets.

§2150. Bonds

A. Bonds or other obligations for the payment of money are principal at their inventory value, except as provided in Sub-section B below. No provision shall be made for amortization of bond premiums or for accumulation for discount. The proceeds of sale, redemption, or other disposition of the bonds or obligations are principal.

B. The increment in value of a bond or other obligation for the payment of money payable at a future time in accordance with a fixed schedule of appreciation in excess of the price at which it was issued is income. The increment in value is distributable at the time provided in R.S. 9:1841 through 9:1847, R.S. 9:1891 through 9:1906, and R.S. 9:1961 through 9:1965, from the first principal cash available to the beneficiary who was the income beneficiary at the time of increment. If unrealized increment is distributed as income but out of principal, the principal shall be reimbursed for the increment when realized.

§2151. Business operations

If a trustee uses any part of the principal in the operation of a business of which, as trustee, he is a proprietor or a partner, the proceeds and losses of the business shall be allocated in accordance with what is reasonable and equitable in view of the interests of those entitled to income as well as of those entitled to principal, and in view of the manner in which men of ordinary prudence, discretion, and intelligence would act in the management of their own affairs.

§2152. Proceeds of mineral interests

A. If any part of the principal consists of a right to receive royalties or overriding royalties, production from working interests or production payments, proceeds from net profits interests or payments for the right to extract minerals from immovable property, or other interests in oil, gas, and other minerals, the allocation of the proceeds of such interests shall be made as follows:

(1) If received as a delay rental on a lease, extension of payments on a lease, shut-in royalty, or bonus for the execution of a lease, the proceeds shall be allocated to income;

(2) If received from a production payment, then to the extent of any stated factor for interest or its equivalent, the proceeds shall be allocated to income; the balance of such proceeds shall be apportioned between principal and income by allocating to principal the fraction thereof

that the unrecovered cost of the production payment bears to the remaining balance due upon the production payment (excluding any factor for interest or its equivalent) and by allocating the remainder of such proceeds to income;

(3) If received from a royalty, overriding royalty, limited royalty, or working interest, net profits interest, or from any other interest in oil, gas, or other minerals, not specifically covered in this section, such proceeds shall be allocated to principal until such time as the cost for such interest (including both tangible and intangible drilling cost) has been fully recovered; thereafter, such proceeds shall be apportioned between principal and income so that twenty-seven and one-half percent of the gross proceeds (but not to exceed fifty percent of the net proceeds remaining after payment of all expenses, direct and indirect, computed without allowances for depletion) shall be allocated to a reserve for depletion to be added to principal and the balance of the gross proceeds, after payment therefrom of all expenses, direct and indirect, shall be allocated to income.

B. This section is not applicable to timber, water, soil, sod, dirt, turf, mosses, shells, gravel, or other natural resources.

§2153. Timber

If part of the principal consists of land from which timber may be removed, the receipts from taking the timber from the land shall be allocated in accordance with what is reasonable and equitable in view of the interests of those entitled to income as well as of those entitled to principal, and in view of the manner in which men of ordinary prudence, discretion, and intelligence would act in the management of their own affairs.

§2153. Timber

If part of the principal consists of land from which timber may be removed, the receipts from taking the timber from the land shall be allocated in accordance with what is reasonable and equitable in view of the interests of those entitled to income as well as of those entitled to principal, and in view of the manner in which men of ordinary prudence, discretion, and intelligence would act in the management of their own affairs.

§2154. Other property subject to depletion

Except as provided in R.S. 9:2152 and 9:2153, if the principal consists of property subject to depletion, receipts from the property not in excess of five percent of its inventory value are income, and the balance is principal.

§2155. Underproductive property

A portion of the net proceeds of sale of any part of principal that has not produced an average net income (including the value of any beneficial use of the property by the income beneficiary) of at least one percent per annum of its inventory value for more than a year shall be treated as delayed income to which the income beneficiary is entitled as provided in this section. The net proceeds of sale are the gross proceeds received, including the value of any property received in substitution for the property disposed of, less expenses, including income taxes, incurred in disposition and less carrying charges accrued while the property was underproductive.

The sum allocated as delayed income is the difference between the net proceeds and the amount that, had it been invested at simple interest at four percent per annum while the property was underproductive, would have produced the net proceeds. That sum, plus any carrying charges and expenses previously charged against income while the property was underproductive, less any income received by the income beneficiary from the property and less the value of any beneficial use of the property by the income beneficiary, is income, and the balance is principal.

Property becomes underproductive at the beginning of the year in which it fails to produce an average net income of at least one percent per annum.

If there are successive income beneficiaries, the delayed income shall be divided among them or their heirs, legatees, or assignees according to the length of the period during which each was entitled to income.

If principal subject to this section is disposed of by conversion into property that cannot be apportioned easily, the income beneficiary is entitled to the net income from the substituted property while it is held. If within five years after the conversion the substituted property has not been further converted into easily apportionable property, no allocation as provided in this section shall be made.

This section does not apply to any period during which the trustee is under an express direction not to sell or dispose of the principal or to any period before the income from a legacy begins to accrue to the benefit of the income beneficiary.

§2156. Charges

A. The following charges shall be made against income:

(1) Ordinary expenses incurred or accrued in connection with the administration, management, or preservation of the trust property;

(2) A reasonable allowance for depreciation on property subject to depreciation under generally accepted accounting principles, but no allowance shall be made for depreciation of that portion of immovable property used by a beneficiary as a residence;

(3) One-half of court costs, attorney's fees, and other fees on periodic accounting, unless the court directs otherwise;

(4) Court costs, attorney's fees, and other fees on other accountings or judicial proceedings if the matter primarily concerns the income interest, unless the court directs otherwise;

(5) One-half of the trustee's regular compensation, whether based on a percentage of principal or income;

(6) Expenses reasonably incurred by the trustee for the management and application of income;

(7) A tax levied upon receipts defined as income under this Sub-part or the trust instrument and payable by the trustee;

(8) Interest accrued on an indebtedness.

B. If charges against income are of unusual amount, the trustee may by means of reserves or other reasonable means charge them over a reasonable period and withhold from distribution sums sufficient to produce substantial regularity in distributions.

C. The following charges shall be made against principal:

- (1) Extraordinary expenses incurred or accrued in connection with the administration, management, or preservation of the trust property;
- (2) Expenses incurred in making a capital improvement to principal, including special taxes and assessments;
- (3) Expenses incurred in investing and reinvesting principal;
- (4) One-half of court costs, attorney's fees, and other fees on periodic accounting, unless the court directs otherwise;
- (5) Court costs, attorney's fees, and other fees on other accountings or judicial proceedings if the matter primarily concerns the principal interest, unless the court directs otherwise;
- (6) Expenses incurred in maintaining or defending an action to construe the trust or to protect the trust or the trust property;
- (7) One-half of the trustee's regular compensation, whether based on a percentage of principal or income;
- (8) All the trustee's special compensation;
- (9) A tax levied upon profit, gain, or other receipts allocated to principal notwithstanding denomination of the tax as an income tax by the taxing authority;
- (10) The amount of an estate or inheritance tax apportioned to the trust, including interest and penalties;
- (11) The principal of an indebtedness;
- (12) All other expenses not chargeable to income.

D. If the payment of special taxes and assessments produces an addition to the value of the trust property, the trustee shall reserve out of income and add to principal a reasonable allowance for the depreciation of the improvement under generally accepted accounting principles, although the improvement was not made directly to the trust property.

E. Regularly recurring charges shall be apportioned to the same extent and in the same manner that receipts are apportioned under R.S. 9:2145 through 9:2147.

§2157. Inventory value defined

The term "inventory value," as used in this Sub-part, means the cost of property purchased by the trustee and the market value of other property at the time it became subject to the trust, but in the case of a testamentary trust the trustee may use any value finally determined for the purposes of an estate or inheritance tax.

SUBPART E. POWER TO ADJUST

§2158. Power to adjust

Subject to the limitations set forth in this Subpart, a trustee may make an adjustment between principal and income when the interest of one or more beneficiaries is defined by reference to the "income" of a trust, and the trustee determines, after taking into account the allocations for the year under Subpart D, that the adjustment is necessary in order for the trustee to satisfy his duty to be fair and reasonable to all the beneficiaries, taking into account the purposes of the trust.

Acts 2001, No. 520, §4.

§2159. When the power to adjust is denied

A trustee shall not make an adjustment under R.S. 9:2158:

- (1) If the existence or exercise of the power to adjust would cause ineligibility for the estate-tax or gift-tax marital deduction or charitable deduction.
- (2) That diminishes the value for gift-tax purposes of the income interest in a trust to which a person transfers property with intent to qualify for a gift tax exclusion;
- (3) If possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment; or
- (4) If the terms of the trust instrument clearly deny the trustee the power to make adjustments.

Acts 2001, No. 520, §4; Acts 2003, No. 480, §1.

§2160. Adjustment benefiting trustee

A trustee may not make an adjustment under R.S. 9:2158 that benefits himself, directly or indirectly, unless all of the current beneficiaries consent or the proper court authorizes such adjustment after notice to all current beneficiaries.

Acts 2001, No. 520, §4.

§2161. Adjustment beyond percentage limit

A. A court order shall be required in order for the trustee to make an adjustment from principal to income under R.S. 9:2158 if the amount of the adjustment from principal, when added to the amount of the net income of the trust for the year, exceeds five percent of the net fair market value of the assets of the trust at the beginning of the year.

B. A court order shall be required in order for the trustee to make an adjustment from income to principal under R.S. 9:2158 if the amount of the adjustment from income reduces the net income for the year below five percent of the net fair market value of the assets of the trust at the beginning of the year.

Acts 2001, No. 520, §4.

§2162. General provisions regarding court orders affecting adjustments

A trustee may apply for a court order under R.S. 9:2160 or 2161, or to obtain approval from the court of any other decision to adjust or not to adjust under R.S. 9:2158. The following provisions apply to such an action:

- (1) The proceeding shall be governed by R.S. 9:2233(A).
- (2) All current beneficiaries of the trust must approve the adjustment or be given the opportunity to oppose it.
- (3) A trustee's decision to adjust or not to adjust shall be approved by the court if the trustee's petition sets forth the reasons for the adjustment, or decision not to adjust, the facts upon which the trustee relies, and an explanation of how the income and principal beneficiaries will be affected, unless a beneficiary establishes that the adjustment, or decision not to adjust, would be an abuse of the trustee's discretion.

(4) An order may authorize adjustments, or non-adjustments, for future years as well as the current year, subject to the right of a person in a subsequent year who is at that time a current beneficiary of the trust to apply to the proper court to have the order modified or rescinded.

(5) For purposes of this Subpart, the "current beneficiaries" of a trust as of any date are the persons who are then the principal beneficiaries of the trust and the persons to whom the trustee is then required or permitted to distribute the income of the trust.

Acts 2001, No. 520, §4.

§2163. Remedies

If a court determines that a trustee has abused his discretion in making or failing to make an adjustment under R.S. 9:2158, the court shall restore the beneficiaries to the positions they would have occupied if the trustee had not abused his discretion, according to the following rules:

(1) When the abuse of discretion has resulted in no distribution to a beneficiary or a distribution that is too small, the court shall require the trustee to distribute from the trust to the beneficiary an amount that the court determines will restore the beneficiary to an appropriate economic position.

(2) When the abuse of discretion has resulted in a distribution to a beneficiary that is too large, the court shall require the trustee to withhold an amount from one or more future distributions to the beneficiary or require the beneficiary to return some or all of the distribution to the trust.

(3) When the court is unable, by means of Paragraphs (1) and (2), to restore the beneficiaries, the trust, or both to the positions they would have occupied if the trustee had not abused his discretion, the court may require the trustee to pay an appropriate amount from his own funds to one or more of the beneficiaries or the trust or both.

Acts 2001, No. 520, §4.

SUBPART E. THE TRUSTEE'S BOND

§2171. Individual and corporate trustees

An individual trustee shall furnish security for the faithful performance of his duties, unless the trust instrument dispenses with security. A corporate trustee need not furnish security unless security is required by the trust instrument.

The amount and type of security shall be approved by the proper court if not provided for in the trust instrument.

§2172. Security required by court

On the application of any interested party, the proper court may compel a trustee to furnish security adequate to protect the interests of a beneficiary even if the trustee is not otherwise required to furnish security.

§2173. Increasing, diminishing, or dispensing with trustee's security by court

On the application of any interested party, the proper court may increase, diminish, or dispense with the trustee's security.

PART VI. COMPENSATION AND INDEMNITY OF THE TRUSTEE

SUBPART A. COMPENSATION OF THE TRUSTEE

§2181. General rule

A trustee is entitled to reasonable compensation from the trust estate for his services as trustee, unless the trust instrument provides otherwise or unless the trustee waives compensation.

§2182. Effect of breach of trust upon compensation

If a trustee commits a breach of trust, the proper court in its discretion may deny him all compensation, allow him a reduced compensation, or allow him full compensation.

SUBPART B. INDEMNITY OF THE TRUSTEE

§2191. Indemnity for expenses properly incurred

A trustee is entitled to indemnity from the trust estate for expenses properly incurred by him in the administration of the trust, unless the trust instrument provides otherwise.

§2192. Indemnity for expenses not properly incurred

If an expense is not properly incurred in the administration of a trust, a trustee is entitled to indemnity from the trust estate for such an expense to the extent that he has thereby conferred a benefit upon the trust estate, unless the trust instrument provides to the contrary, or unless the circumstances make it inequitable to allow him indemnity.

If an expense is not properly incurred in the administration of a trust, a trustee is entitled to indemnity from the trust estate for the full amount of the expense, if the transaction in which the expense is incurred is of such a character that the beneficiary is in a position either to reject or accept it and he accepts it.

§2193. Liability of beneficiary

If the trust estate is not sufficient to indemnify a trustee for expenses properly incurred by him in the administration of a trust, a beneficiary shall be personally liable only if the trustee can show an express or implied contract between that beneficiary and himself that would entitle the trustee to indemnity.

§2194. Charge on beneficiary's interest

If a beneficiary is liable to a trustee as such, his interest in the trust estate is subject to a charge for the amount of his liability; but a trustee is not entitled to a charge on a beneficiary's interest in the trust estate to secure a beneficiary's liability not connected with the administration of the trust, unless the beneficiary contracts to give him such a charge.

§2195. Charge on beneficiary's interest; advance or loan of trust money

If a trustee makes an advance or loan of trust money to a beneficiary, the beneficiary's interest is subject to a charge for the repayment of the amount advanced or lent.

§2196. Indemnity for tort liability

A. A trustee who has incurred personal liability for a tort committed in the administration of the trust is entitled to indemnity from the trust estate if:

(1) The tort was a common incident of the kind of business activity in which the trustee was properly engaged for the trust, or,

(2) Although the tort was not a common incident of such activity, if neither the trustee nor an officer or employee of the trustee was guilty of personal fault in incurring the liability.

B. If a trustee has committed a tort that has increased the value of the trust property, he is entitled to indemnity from the trust estate to the extent of the increase in value, even though he would not otherwise be entitled to indemnity.

PART VII. LIABILITIES OF THE TRUSTEE

§2201. General rule

If a trustee commits a breach of trust he shall be chargeable with:

- (1) A loss or depreciation in value of the trust estate resulting from a breach of trust; or
- (2) A profit made by him through breach of trust; or
- (3) A profit that would have accrued to the trust estate if there had been no breach of trust.

§2202. Loss not resulting from breach of trust

A trustee is not liable to a beneficiary for a loss or depreciation in value of the trust property, or for a failure to make a profit not resulting from a breach of trust.

§2203. Balancing losses against gains

A trustee who is liable for a loss occasioned by one breach of trust cannot reduce the amount of his liability by deducting the amount of a gain that has accrued through another distinct breach of trust; but if the two breaches of trust are not distinct, a trustee is accountable only for the net gain or chargeable only for the net loss resulting therefrom.

§2204. Liability of successor trustee

A trustee shall not be liable to a beneficiary for a breach of trust committed by a predecessor trustee, unless he:

- (1) Knows or should know of a situation constituting a breach of trust committed by his predecessor and improperly permits it to continue; or

(2) Neglects to take proper steps to compel the predecessor to deliver the trust property to him; or

(3) Neglects to take proper steps to redress a breach of trust committed by the predecessor.

§2205. Liability of co-trustee

A trustee shall not be liable to a beneficiary for a breach of trust committed by a co-trustee, unless he:

(1) Participates in a breach of trust committed by his co-trustee;

(2) Delegates improperly the administration of the trust to his co-trustee;

(3) Conceals, approves, or acquiesces in a breach of trust committed by his co-trustee;

(4) Enables his co-trustee to commit a breach of trust by his failure to exercise reasonable care in the administration of the trust; or

(5) Neglects to take proper steps to compel his co-trustee to redress a breach of trust.

§2206. Relief from liability by trust instrument

A. The trust instrument may relieve the trustee from liability, except as provided in Subsections B and C of this section.

B. A provision in the trust instrument is not effective to relieve the trustee from liability for breach of the duty of loyalty to a beneficiary or for breach of trust committed in bad faith.

C. A provision in the trust instrument is not effective to relieve the trustee from liability if it is inserted as a result of an abuse by the trustee of a fiduciary or confidential relationship to the settlor.

§2207. Relief from liability by beneficiary

A competent beneficiary who is acting with knowledge of the material facts and whose action is not improperly induced by the conduct of a trustee may, by written instrument delivered to a trustee, relieve a trustee from liabilities that otherwise would be imposed upon him. The instrument shall not be effective if it purports to limit a trustee's liability for improperly

advancing money or conveying property to a beneficiary of a spendthrift trust or a trust under which a beneficiary's right to alienate is restricted, or if it limits prospectively and in general terms a trustee's liability for breach of the duty of loyalty to a beneficiary, or for breach of trust in bad faith.

§2208. Relief from liability by proper court

The proper court for cause shown and upon notice to an interested beneficiary may excuse a trustee wholly or partly from liability for a breach of trust if the trustee acted honestly and reasonably.

PART VIII. REMEDIES OF THE BENEFICIARY

§2221. Remedies against trustee

A beneficiary of a trust may institute an action:

- (1) To compel a trustee to perform his duties as trustee;
- (2) To enjoin a trustee from committing a breach of trust;
- (3) To compel a trustee to redress a breach of trust;
- (4) To remove a trustee.

§2222. Remedies against third persons

A trustee is the proper plaintiff to sue to enforce a right of the trust estate, except that a beneficiary may sue to enforce such a right, in order to protect his own interest, in an action against:

- (1) A trustee and an obligor, if the trustee improperly refuses, neglects, or is unable for any reason, to bring an action against the obligor; or
- (2) An obligor, if there is no trustee or the trustee cannot be subjected to the jurisdiction of the proper court.

PART IX. ACTIONS

§2231. Causes of action; procedure

If a cause or right of action accrues to a beneficiary against a trustee or a settlor or both, to a trustee against a beneficiary or a settlor or both, or to a settlor against a beneficiary or a trustee or both, the action may be by summary proceeding.

§2232. Injunctive relief

If irreparable injury, loss, or damage will otherwise result, the injunctive relief authorized by Articles 3601 through 3613 of the Code of Civil Procedure may be granted to a beneficiary as against a trustee or a settlor or both, to a trustee against a beneficiary or a settlor or both, or to a settlor against a beneficiary or a trustee or both.

§2233. Instructions

A. A trustee, a beneficiary, or a settlor in an ordinary or a summary proceeding may apply to the proper court for instructions concerning the trust instrument, the interpretation of the instrument, or the administration of the trust. An order of a proper court issued pursuant to such an application shall be full authority to act in accordance thereunder, and a trustee shall be fully protected from all claims of any person who has or who may subsequently acquire an interest in the trust property.

B. A trustee may apply for instructions in ex parte proceedings. The order issued therein will protect a third party relying on the order, but will not exonerate a trustee from liability to a settlor or a beneficiary.

§2234. Prescription

A. An action for damages by a beneficiary against a trustee for any act, omission, or breach of duty shall be brought within two years of the date that the trustee renders, by actual delivery or mail to the beneficiary, or if the beneficiary lacks legal capacity, the beneficiary's legal representative, to the last known address of the beneficiary and that of the legal representative if any, an accounting for the accounting period in which the alleged act, omission, or breach of duty arising out of the matters disclosed therein occurred. However, such actions shall in all events, even as to actions within two years of disclosure, be filed within three years of the date that the trustee renders an accounting for the accounting period in which the alleged act, omission, or breach of duty occurred. If a beneficiary is a minor when a trustee's accounting for the accounting period in which the alleged act, omission, or breach of

duty occurred is rendered, the prescriptive period of two years begins to run from the day he reaches the age of eighteen years.

B. Any action by a beneficiary against a trustee other than those described on Subsection A of this Section is prescribed by two years beginning from the date that the trustee renders his final account to the beneficiary.

C. The provisions of this Section are remedial and apply to all causes of action for damages without regard to the date when the alleged act, omission, or breach of duty occurred. The two-year and three-year periods of limitation provided for in this Section are preemptive periods within the meaning of Civil Code Article 3458, and in accordance with Civil Code Article 3461 may not be renounced, interrupted, or suspended. Notwithstanding the foregoing, a beneficiary shall have one year from July 9, 1999, to bring an action for damages against a trustee arising out of an act, omission, or breach of duty for a transaction disclosed in any prior accounting.

D. Notwithstanding any other provision of law, all actions brought in the state against any trustee, the prescriptive and preemptive period shall be governed exclusively by this Section.

Amended by Acts 1980, No. 309, §1; Acts 1999, No. 966, §1, eff. July 9, 1999.

PART X. DESIGNATION OF ATTORNEY

§2241. General rule

The trustee shall select the attorney to handle legal matters relating to the trust. The appointment of an attorney in the trust instrument is not binding on the trustee.

Acts 1983, No. 622, §1; Acts 2003, No. 480, §1.

PART XI. VALIDATION

§2251. Severability of provisions of trust instrument

If a provision in the trust instrument is invalid for any reason, the intended trust does not fail, unless the invalid provision cannot be separated from the other provisions without defeating the purpose of the trust.

§2252. Saving clause

Trusts heretofore created and any provisions or dispositions therein made shall be governed by the laws in effect at the time of their creation. Unless otherwise provided in the trust instrument, trusts created prior to the effective date of this Code shall be governed in all administrative and procedural matters by the provisions of this Code and not by laws in effect at the time of creation of such trusts, and trusts created prior to the adoption of any amendment to this Code shall be governed in administrative and procedural matters by the provisions of the amendment.

Amended by Acts 1968, No. 137, §1.

CHAPTER 1-A. UNIFORM CUSTODIAL TRUST ACT

§2260.1. Definitions

As used in this Chapter:

- (1) "Adult" means an individual who has attained the age of eighteen years.
- (2) "Beneficiary" means an individual for whom property has been transferred to or held under a declaration of trust by a custodial trustee for the individual's use and benefit under this Chapter.
- (3) "Court" means a court of competent jurisdiction.
- (4) "Curator" means a person appointed or qualified by a court to manage the estate of an individual or a person legally authorized to perform substantially the same functions.
- (5) "Custodial trust property" means an interest in property transferred to or held under a declaration of trust by a custodial trustee under this Chapter and the income from and proceeds of that interest.
- (6) "Custodial trustee" means a person designated as trustee of a custodial trust under this Chapter or a substitute or successor to the person designated.
- (7) "Incapacitated" means lacking the ability to manage property and business affairs effectively by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, disappearance, minority, or other disabling cause.

(8) "Legal representative" means a personal representative, tutor, or curator.

(9) "Member of the beneficiary's family" means a beneficiary's spouse, descendant, stepchild, parent, stepparent, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(10) "Person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, or any other legal or commercial entity.

(11) "Personal representative" means an executor, administrator, or representative of a decedent's estate, a person legally authorized to perform substantially the same functions, or a successor to any of them.

(12) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(13) "Transferor" means a person who creates a custodial trust by transfer or declaration.

(14) "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

(15) "Tutor" means a person appointed or qualified by a court to act as guardian of a minor's property or a person legally authorized to perform substantially the same functions.

Acts 1995, No. 655, §1, eff. Jan. 1, 1998.

§2260.2. Custodial trust; general

A. A person may create a custodial trust of property by a written transfer of the property to another person, evidenced by registration or by other instrument of transfer, executed in any lawful manner naming as beneficiary an individual, who may be the transferor, in which the transferee is designated, in substance, as custodial trustee under the Louisiana Uniform Custodial Trust Act.

B. A person may create a custodial trust of property by a written declaration, evidenced by registration of the property or by other instrument of declaration executed in any lawful manner, describing the property and naming as beneficiary an individual other than the declarant, in which the declarant as titleholder is designated, in substance, as custodial trustee

under the Louisiana Uniform Custodial Trust Act. A registration or other declaration of trust for the sole benefit of the declarant is not a custodial trust under this Chapter.

C. Title to custodial trust property is in the custodial trustee and the beneficial interest is in the beneficiary.

D. Except as provided in Subsection E, a transferor may not terminate a custodial trust.

E. The beneficiary, if not incapacitated, or the curator of an incapacitated beneficiary, may terminate a custodial trust by delivering to the custodial trustee a writing signed by the beneficiary or curator declaring the termination. If not previously terminated, the custodial trust terminates on the death of the beneficiary.

F. Any person may augment existing custodial trust property by the addition of other property pursuant to this Chapter.

G. The transferor may designate or authorize the designation of a successor custodial trustee in the trust instrument.

H. This Chapter does not displace or restrict other means of creating trusts. A trust the terms of which do not conform to this Chapter may be enforceable according to its terms under other law.

Acts 1995, No. 655, §1, eff. Jan. 1, 1998

§2260.3. Custodial trustee for future payment or transfer

A. A person having the right to designate the recipient of property payable or transferable upon a future event may create a custodial trust upon the occurrence of the future event by designating in writing the recipient, followed in substance by: "as custodial trustee for _____ (name of beneficiary) under the Louisiana Uniform Custodial Trust Act".

B. Persons may be designated as substitute or successor custodial trustees to whom the property must be paid or transferred in the order named if the first designated custodial trustee is unable or unwilling to serve.

C. A designation under this Section may be made in a will, a trust, a deed, a multiple-party account, an insurance policy, an instrument exercising a power of appointment, or a writing designating a beneficiary of contractual rights. Otherwise, to be effective, the designation must be registered with or delivered to the fiduciary, payor, issuer, or obligor of the future right.

Acts 1995, No. 655, §1, eff. Jan. 1, 1998.

2260.4. Form and effect of receipt and acceptance by custodial trustee; jurisdiction

A. Obligations of a custodial trustee, including the obligation to follow directions of the beneficiary, arise under this Chapter upon the custodial trustee's acceptance, express or implied, of the custodial trust property.

B. The custodial trustee's acceptance may be evidenced by a writing stating in substance:

"CUSTODIAL TRUSTEE'S RECEIPT AND ACCEPTANCE

I, _____(name of custodial trustee) acknowledge receipt of the custodial trust property described below or in the attached instrument and accept the custodial trust as custodial trustee for _____(name of beneficiary) under the Louisiana Uniform Custodial Trust Act. I undertake to administer and distribute the custodial trust property pursuant to the Louisiana Uniform Custodial Trust Act. My obligations as custodial trustee are subject to the directions of the beneficiary unless the beneficiary is designated as, is, or becomes incapacitated. The custodial trust property consists of _____.

Dated: _____

(Signature of Custodial Trustee)"

C. Upon accepting custodial trust property, a person designated as custodial trustee under this Chapter is subject to personal jurisdiction of the court with respect to any matter relating to the custodial trust.

Acts 1995, No. 655, §1, eff. Jan. 1, 1998.

§2260.5. Transfer to custodial trustee by fiduciary or obligor; facility of payment

A. Unless otherwise directed by an instrument designating a custodial trustee pursuant to R.S. 9:2260.3, a person, including a fiduciary other than a custodial trustee, who holds property of or owes a debt to an incapacitated individual not having a curator may make a transfer to an adult member of the beneficiary's family or to a trust company as custodial trustee for the use and benefit of the incapacitated individual. If the value of the property or the debt exceeds twenty thousand dollars, the transfer is not effective unless authorized by the court.

B. A written acknowledgment of delivery, signed by a custodial trustee, is a sufficient receipt and discharge for property transferred to the custodial trustee pursuant to this Section.

Acts 1995, No. 655, §1, eff. Jan. 1, 1998.

§2260.6. Multiple beneficiaries; separate custodial trusts; survivorship

A. Beneficial interests in a custodial trust created for multiple beneficiaries are deemed to be separate custodial trusts of equal undivided interests for each beneficiary. Except in a transfer or declaration for the use and benefit of a husband and wife, for whom survivorship is presumed, a right of survivorship does not exist unless the instrument creating the custodial trust specifically provides for survivorship. For purposes of this Section, "survivorship" means right of accretion.

B. Custodial trust property held under this Chapter by the same custodial trustee for the use and benefit of the same beneficiary may be administered as a single custodial trust.

C. A custodial trustee of custodial trust property held for more than one beneficiary shall separately account to each beneficiary pursuant to R.S. 9:2260.7 and 2260.15 for the administration of the custodial trust.

Acts 1995, No. 655, §1, eff. Jan. 1, 1998.

§2260.7. General duties of custodial trustee

A. If appropriate, a custodial trustee shall register or record the instrument vesting title to custodial trust property.

B. If the beneficiary is not incapacitated, a custodial trustee shall follow the directions of the beneficiary in the management, control, investment, or retention of the custodial trust property. In the absence of effective contrary direction by the beneficiary while not incapacitated, the custodial trustee shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other law restricting investments by fiduciaries. However, a custodial trustee, in the custodial trustee's discretion, may retain any custodial trust property received from the transferor. If a custodial trustee has a special skill or expertise or is named custodial trustee on the basis of representation of special skill or expertise, the custodial trustee shall use that skill or expertise.

C. Subject to Subsection B, a custodial trustee shall take control of and collect, hold, manage, invest, and reinvest custodial trust property.

D. A custodial trustee at all times shall keep custodial trust property of which the custodial trustee has control, separate from all other property in a manner sufficient to identify it clearly as custodial trust property of the beneficiary. Custodial trust property, the title to which is subject to recordation, is so identified if an appropriate instrument so identifying the property is recorded, and custodial trust property subject to registration is so identified if it is registered, or held in an account in the name of the custodial trustee, designated in substance: "as custodial trustee for _____ (name of beneficiary) under the Louisiana Uniform Custodial Trust Act".

E. A custodial trustee shall keep records of all transactions with respect to custodial trust property, including information necessary for the preparation of tax returns, and shall make the records and information available at reasonable times to the beneficiary or legal representative of the beneficiary.

F. The exercise of a durable power of attorney for an incapacitated beneficiary is not effective to terminate or direct the administration or distribution of a custodial trust.

Acts 1995, No. 655, §1, eff. Jan. 1, 1998.

§2260.8. General powers of custodial trustee

A. A custodial trustee, acting in a fiduciary capacity, has all the rights and powers over custodial trust property which an adult owner has over individually owned property, but a custodial trustee may exercise those rights and powers in a fiduciary capacity only.

B. This Section does not relieve a custodial trustee from liability for a violation of R.S. 9:2260.7.

Acts 1995, No. 655, §1, eff. Jan. 1, 1998.

§2260.9. Use of custodial trust property

A. A custodial trustee shall pay to the beneficiary or expend for the beneficiary's use and benefit so much or all of the custodial trust property as the beneficiary, while not incapacitated, may direct from time to time.

B. If the beneficiary is incapacitated, the custodial trustee shall expend so much or all of the custodial trust property as the custodial trustee considers advisable for the use and benefit of the beneficiary and individuals who were supported by the beneficiary when the beneficiary became incapacitated, or who are legally entitled to support by the beneficiary. Expenditures may be made in the manner, when, and to the extent that the custodial trustee determines suitable and proper, without court order and without regard to other support, income, or property of the beneficiary.

C. A custodial trustee may establish checking, savings, or other similar accounts of reasonable amounts under which either the custodial trustee or the beneficiary may withdraw funds from, or draw checks against, the accounts. Funds withdrawn from, or checks written against, the account by the beneficiary are distributions of custodial trust property by the custodial trustee to the beneficiary.

Acts 1995, No. 655, §1, eff. Jan. 1, 1998.

§2260.10. Determination of incapacity; effect

A. The custodial trustee shall administer the custodial trust as for an incapacitated beneficiary in the event of any of the following:

- (1) The custodial trust was created under R.S. 9:2260.5.
- (2) The transferor has so directed in the instrument creating the custodial trust.
- (3) The custodial trustee has determined that the beneficiary is incapacitated.

B. A custodial trustee may determine that the beneficiary is incapacitated in reliance upon any of the following:

(1) Previous direction or authority given by the beneficiary while not incapacitated, including direction or authority pursuant to a durable power of attorney.

(2) The certificate of the beneficiary's physician.

(3) Other persuasive evidence.

C. If a custodial trustee for an incapacitated beneficiary reasonably concludes that the beneficiary's incapacity has ceased, or that circumstances concerning the beneficiary's ability to manage property and business affairs have changed since the creation of a custodial trust directing administration as for an incapacitated beneficiary, the custodial trustee may administer the trust as for a beneficiary who is not incapacitated.

D. On petition of the beneficiary, the custodial trustee, or other person interested in the custodial trust property or the welfare of the beneficiary, the court shall determine whether the beneficiary is incapacitated.

E. Absent a determination of incapacity of the beneficiary under Subsection B or D, a custodial trustee who has reason to believe that the beneficiary is incapacitated shall administer the custodial trust in accordance with the provisions of this Chapter applicable to an incapacitated beneficiary.

F. Incapacity of a beneficiary does not terminate any of the following:

(1) The custodial trust.

(2) Any designation of a successor custodial trustee.

(3) Rights or powers of the custodial trustee.

(4) Any immunities of third persons acting on instructions of the custodial trustee.

Acts 1995, No. 655, §1, eff. Jan. 1, 1998.

§2260.11. Exemption of third person from liability

A third person in good faith and without a court order may act on instructions of, or otherwise deal with, a person purporting to make a transfer as, or purporting to act in the capacity of, a custodial trustee. In the absence of knowledge to the contrary, the third person is not responsible for determining any of the following:

- (1) The validity of the purported custodial trustee's designation.
- (2) The propriety of, or the authority under this Chapter for, any action of the purported custodial trustee.
- (3) The validity or propriety of an instrument executed or instruction given pursuant to this Chapter either by the person purporting to make a transfer or declaration or by the purported custodial trustee.
- (4) The propriety of the application of property vested in the purported custodial trustee.

Acts 1995, No. 655, §1, eff. Jan. 1, 1998.

§2260.12. Liability to third person

A. A claim based on a contract entered into by a custodial trustee acting in a fiduciary capacity, an obligation arising from the ownership or control of custodial trust property, or a tort committed in the course of administering the custodial trust may be asserted by a third person against the custodial trust property by proceeding against the custodial trustee in a fiduciary capacity, whether or not the custodial trustee or the beneficiary is personally liable.

B. A custodial trustee is not personally liable to a third person either:

- (1) On a contract properly entered into in a fiduciary capacity unless the custodial trustee fails to reveal that capacity or to identify the custodial trust in the contract.
- (2) For an obligation arising from control of custodial trust property or for a tort committed in the course of the administration of the custodial trust unless the custodial trustee is personally at fault.

C. A beneficiary is not personally liable to a third person for an obligation arising from beneficial ownership of custodial trust property or for a tort committed in the course of

administration of the custodial trust unless the beneficiary is personally in possession of the custodial trust property giving rise to the liability or is personally at fault.

D. Subsections B and C do not preclude actions or proceedings to establish liability of the custodial trustee or beneficiary to the extent the person sued is protected as the insured by liability insurance.

Acts 1995, No. 655, §1, eff. Jan. 1, 1998

§2260.13. Declination, resignation, incapacity, death, or removal of custodial trustee; designation of successor custodial trustee

A. Before accepting the custodial trust property, a person designated as custodial trustee may decline to serve by notifying the person who made the designation, the transferor, or the transferor's legal representative. If an event giving rise to a transfer has not occurred, the substitute custodial trustee designated under R.S. 9:2260.3 becomes the custodial trustee, or, if a substitute custodial trustee has not been designated, the person who made the designation may designate a substitute custodial trustee pursuant to R.S. 9:2260.3. In other cases, the transferor or the transferor's legal representative may designate a substitute custodial trustee.

B. A custodial trustee who has accepted the custodial trust property may resign by means of any of the following:

(1) Delivering written notice to a successor custodial trustee, if any, the beneficiary and, if the beneficiary is incapacitated, to the beneficiary's curator, if any.

(2) Transferring, or registering, or recording an appropriate instrument relating to the custodial trust property, in the name of, and delivering the records to, the successor custodial trustee identified under Subsection C.

C. If a custodial trustee or successor custodial trustee is ineligible, resigns, dies, or becomes incapacitated, the successor designated under R.S. 9:2260.2(G) or 2260.3 becomes custodial trustee. If there is no effective provision for a successor, the beneficiary, if not incapacitated, may designate a successor custodial trustee. If the beneficiary is incapacitated, or fails to act within ninety days after the ineligibility, resignation, death, or incapacity of the custodial trustee, the beneficiary's curator becomes successor custodial trustee. If the beneficiary does

not have a curator or the curator fails to act, the resigning custodial trustee may designate a successor custodial trustee.

D. If a successor custodial trustee is not designated pursuant to Subsection C, the transferor, the legal representative of the transferor or of the custodial trustee, an adult member of the beneficiary's family, the tutor or curator of the beneficiary, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary may petition the court to designate a successor custodial trustee.

E. A custodial trustee who declines to serve or resigns, or the legal representative of a deceased or incapacitated custodial trustee, as soon as practicable, shall put the custodial trust property and records in the possession and control of the successor custodial trustee. The successor custodial trustee may enforce the obligation to deliver custodial trust property and records and becomes responsible for each item as received.

F. A beneficiary, the beneficiary's curator, an adult member of the beneficiary's family, a tutor of the person of the beneficiary, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary may petition the court to remove the custodial trustee for cause and designate a successor custodial trustee, to require the custodial trustee to furnish a bond or other security for the faithful performance of fiduciary duties, or for other appropriate relief.

Acts 1995, No. 655, §1, eff. Jan. 1, 1998.

§2260.14. Expenses, compensation, and bond of custodial trustee

Except as otherwise provided in the instrument creating the custodial trust, in an agreement with the beneficiary, or by court order, a custodial trustee:

(1) Is entitled to reimbursement from custodial trust property for reasonable expenses incurred in the performance of fiduciary services.

(2) Has a noncumulative election, to be made no later than six months after the end of each calendar year, to charge a reasonable compensation for fiduciary services performed during that year.

(3) Need not furnish a bond or other security for the faithful performance of fiduciary duties.

Acts 1995, No. 655, §1, eff. Jan. 1, 1998.

§2260.15. Reporting and accounting by custodial trustee; determination of liability of custodial trustee

A.(1) Upon the acceptance of custodial trust property, the custodial trustee shall provide a written statement describing the custodial trust property and shall thereafter provide a written statement of the administration of the custodial trust property as follows:

(a) Once each year.

(b) Upon request at reasonable times by the beneficiary or the beneficiary's legal representative.

(c) Upon resignation or removal of the custodial trustee.

(d) Upon termination of the custodial trust.

(2) The statements must be provided to the beneficiary or to the beneficiary's legal representative, if any. Upon termination of the beneficiary's interest, the custodial trustee shall furnish a current statement to the person to whom the custodial trust property is to be delivered.

B. A beneficiary, the beneficiary's legal representative, an adult member of the beneficiary's family, a person interested in the custodial trust property, or a person interested in the welfare of the beneficiary may petition the court for an accounting by the custodial trustee or the custodial trustee's legal representative.

C. A successor custodial trustee may petition the court for an accounting by a predecessor custodial trustee.

D. In an action or proceeding under this Chapter or in any other proceeding, the court may require or permit the custodial trustee or the custodial trustee's legal representative to account. The custodial trustee or the custodial trustee's legal representative may petition the court for approval of final accounts.

E. If a custodial trustee is removed, the court shall require an accounting and order delivery of the custodial trust property and records to the successor custodial trustee and the execution of all instruments required for transfer of the custodial trust property.

F. On petition of the custodial trustee or any person who could petition for an accounting, the court, after notice to interested persons, may issue instructions to the custodial trustee or review the propriety of the acts of the custodial trustee or the reasonableness of compensation determined by the custodial trustee for the services of the custodial trustee or others.

Acts 1995, No. 655, §1, eff. Jan. 1, 1998.

§2260.16. Limitations of action against custodial trustee

A. Except as provided in Subsection C, unless previously barred by adjudication, consent, or prescription, a claim for relief against a custodial trustee for accounting or breach of duty is barred as to a beneficiary, a person to whom custodial trust property is to be paid or delivered, or the legal representative of an incapacitated or deceased beneficiary or payee who either:

(1) Has received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within two years after receipt of the final account or statement; or

(2) Has not received a final account or statement fully disclosing the matter unless an action or proceeding to assert the claim is commenced within three years after the termination of the custodial trust.

B. Except as provided in Subsection C, a claim for relief to recover from a custodial trustee for fraud, misrepresentation, or concealment related to the final settlement of the custodial trust or concealment of the existence of the custodial trust is barred unless an action or proceeding to assert the claim is commenced within five years after the termination of the custodial trust.

C. A claim for relief is not barred by this Section if the claimant:

(1) Is a minor, until the earlier of two years after the claimant becomes an adult or dies.

(2) Is an incapacitated adult, until two years after any of the following, whichever occurs first:

(a) The appointment of a curator.

(b) The removal of the incapacity.

(c) The death of the claimant.

(3) Was an adult, now deceased, who was not incapacitated, until two years after the claimant's death if he died less than five years after termination of the custodial trust.

Acts 1995, No. 655, §1, eff. Jan. 1, 1998.

§2260.17. Distribution on termination

A. Upon termination of a custodial trust, the custodial trustee shall transfer the unexpended custodial trust property to one of the following:

(1) To the beneficiary, if not incapacitated or deceased.

(2) To the curator or other recipient designated by the court for an incapacitated beneficiary.

(3) Upon the beneficiary's death, in the following order:

(a) As last directed in a writing signed by the deceased beneficiary while not incapacitated and received by the custodial trustee during the life of the deceased beneficiary.

(b) To the survivor of multiple beneficiaries if survivorship, or right of accretion, is provided for pursuant to R.S. 9:2260.6.

(c) As designated in the instrument creating the custodial trust.

(d) To the estate of the deceased beneficiary.

B. If, when the custodial trust would otherwise terminate, the distributee is incapacitated, the custodial trust continues for the use and benefit of the distributee as beneficiary until the incapacity is removed or the custodial trust is otherwise terminated.

C. Death of a beneficiary does not terminate the power of the custodial trustee to discharge obligations of the custodial trustee or beneficiary incurred before the termination of the custodial trust.

Acts 1995, No. 655, §1, eff. Jan. 1, 1998.

§2260.18. Methods and forms for creating custodial trusts

A. If a transaction, including a declaration with respect to or a transfer of specific property, otherwise satisfies applicable law, the criteria of R.S. 9:2260.2 are satisfied by either of the following:

(1) The execution and either delivery to the custodial trustee or recording of an instrument in substantially the following form:

"TRANSFER UNDER THE LOUISIANA

UNIFORM CUSTODIAL TRUST ACT

I, _____(name of transferor or name and representative capacity if a fiduciary), transfer to _____(name of trustee other than transferor), as custodial trustee for _____(name of beneficiary) as beneficiary and _____as distributee on termination of the trust in absence of direction by the beneficiary under the Louisiana Uniform Custodial Trust Act, the following: (insert a description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: _____

(Signature)"

(2) The execution and the recording or giving notice of its execution to the beneficiary of an instrument in substantially the following form:

"DECLARATION OF TRUST UNDER THE LOUISIANA

UNIFORM CUSTODIAL TRUST ACT

I, _____(name of owner of property), declare that henceforth I hold as custodial trustee for _____(name of beneficiary other than transferor) as beneficiary and _____as distributee on termination of the trust in absence of direction by the beneficiary under the Louisiana Uniform Custodial Trust Act, the following: (insert a

description of the custodial trust property legally sufficient to identify and transfer each item of property).

Dated: _____

(Signature)"

B. Customary methods of transferring or evidencing ownership of property may be used to create a custodial trust, including any of the following:

(1) Registration of a security in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for _____(name of beneficiary) under the Louisiana Uniform Custodial Trust Act".

(2) Delivery of a certificated security, or a document necessary for the transfer of an uncertificated security, together with any necessary endorsement, to an adult other than the transferor or to a trust company as custodial trustee, accompanied by an instrument in substantially the form prescribed in Paragraph A(1).

(3) Payment of money or transfer of a security held in the name of a broker or a financial institution or its nominee to a broker or financial institution for credit to an account in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for _____(name of beneficiary) under the Louisiana Uniform Custodial Trust Act".

(4) Registration of ownership of a life or endowment insurance policy or annuity contract with the issuer in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for _____(name of beneficiary) under the Louisiana Uniform Custodial Trust Act."

(5) Delivery of a written assignment to an adult other than the transferor or to a trust company whose name in the assignment is designated in substance by the words: "as custodial trustee for _____(name of beneficiary) under the Louisiana Uniform Custodial Trust Act".

(6) Irrevocable exercise of a power of appointment, pursuant to its terms, in favor of a trust company, an adult other than the donee of the power, or the donee who holds the power if the beneficiary is other than the donee, whose name in the appointment is designated in substance: "as custodial trustee for _____(name of beneficiary) under the Louisiana Uniform Custodial Trust Act".

(7) Delivery of a written notification or assignment of a right to future payment under a contract to an obligor which transfers the right under the contract to a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, whose name in the notification or assignment is designated in substance: "as custodial trustee for _____(name of beneficiary) under the Louisiana Uniform Custodial Trust Act".

(8) Execution, delivery, and recordation of a conveyance of an interest in real property in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for _____(name of beneficiary) under the Louisiana Uniform Custodial Trust Act".

(9) Issuance of a certificate of title by an agency of a state or of the United States which evidences title to tangible personal property which is either:

(a) Issued in the name of a trust company, an adult other than the transferor, or the transferor if the beneficiary is other than the transferor, designated in substance: "as custodial trustee for _____(name of beneficiary) under the Louisiana Uniform Custodial Trust Act";
or

(b) Delivered to a trust company or an adult other than the transferor or endorsed by the transferor to that person, designated in substance: "custodial trustee for _____(name of beneficiary) under the Louisiana Uniform Custodial Trust Act".

(10) Execution and delivery of an instrument of gift to a trust company or an adult other than the transferor, designated in substance: "as custodial trustee for _____(name of beneficiary) under the Louisiana Uniform Custodial Trust Act".

Acts 1995, No. 655, §1, eff. Jan. 1, 1998.

§2260.19. Applicable law

A. This Chapter applies to a transfer or declaration creating a custodial trust that refers to this Chapter if, at the time of the transfer or declaration, the transferor, beneficiary, or custodial trustee is a resident of or has its principal place of business in this state or custodial trust property is located in this state. The custodial trust remains subject to this Chapter despite a later change in residence or principal place of business of the transferor, beneficiary, or custodial trustee, or removal of the custodial trust property from this state.

B. A transfer made pursuant to an act of another state substantially similar to this Chapter is governed by the law of that state and may be enforced in this state.

Acts 1995, No. 655, §1, eff. Jan. 1, 1998.

§2260.20. Uniformity of application and construction

This Chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Chapter among states enacting it.

Acts 1995, No. 655, §1, eff. Jan. 1, 1998.

§2260.21. Short title

This Chapter may be cited as the "Louisiana Uniform Custodial Trust Act".

Acts 1995, No. 655, §1, eff. Jan. 1, 1998.

CHAPTER 1-B. FOREIGN TRUSTS

§2262.1. Definitions

A. As used in this Chapter, "foreign trust" shall mean any of the following:

(1) A trust which by the terms of the trust instrument is governed by the law of a jurisdiction other than Louisiana.

(2) A trust of which the settlor was domiciled in a jurisdiction other than Louisiana at the time the trust was created.

B. As used in this Chapter, "institutional trustee" shall mean an entity entitled to serve as a trustee pursuant to the provisions of R.S. 9:1783(A)(2) and (B).

Acts 2001, No. 890, §1.

§2262.2. Recordation of instruments

A. If at any time the trust property of a foreign trust includes an immovable or other property in Louisiana the title to which must be recorded in order to affect third parties, a trustee shall file the trust instrument, or an extract thereof, for record in each parish in which the property is located.

B.(1) For purposes of recording an extract of a trust instrument, such an extract of a trust instrument either shall be in such form and contain such information as may be lawful under the law of the jurisdiction which the parties have expressly chosen to govern the trust, or shall be executed by either the settlor or the trustee and shall include all of the following:

(a) The name of the trust, if any.

(b) The name of each settlor.

(c) The name of the trustee.

(d) The name or other description of the beneficiary or beneficiaries.

(e) The date of the trust instrument.

(f) A statement whether the trust is revocable or irrevocable.

(g) A description of the immovable property or other property subject to the trust.

(h) Any other provisions of the trust instrument as the party executing the extract deems useful.

(2) The provisions of this Section authorizing the filing of an extract of the trust instrument are remedial and shall be applied retroactively to any trust extract theretofore filed for record which is in substantial compliance with the provisions of this Section, and such extract shall affect third persons as of the date of recordation.

Acts 2001, No. 890, §1.

§2262.3. Authority to convey

The authority of a trustee of a foreign trust or his representative to execute and deliver a conveyance of immovable property situated in Louisiana may be evidenced in any manner that is lawful under the law which the parties have expressly chosen to govern the trust.

Acts 2001, No. 890, §1.

§2262.4. Form

A trust instrument executed outside this state in the manner prescribed by, and in conformity with, the law of the place of its execution, or the law of the settlor's domicile, at the time of its execution shall be deemed to be legally executed and shall have the same force and effect in this state as if executed in the manner prescribed by the laws of this state, provided the trust instrument is in writing and subscribed by the settlor.

Acts 2001, No. 890, §1.

CHAPTER 2. TRUSTS FOR CHARITABLE, BENEVOLENT, OR ELEEMOSYNARY PURPOSE

PART I. IN GENERAL

§2271. Donation; purposes; beneficiaries; conditions

Any person may make a donation inter vivos or mortis causa to a trustee or trustees either for the benefit of educational, charitable, or literary institutions existing at the time of the donation or thereafter to be founded or for educational, charitable, or literary purposes generally without designating the particular purpose to be fostered. Accordingly, the donor may designate the particular use to be made of the donation or he may permit the trustee or trustees to designate, create, or change, from time to time and as often as they may deem wise, the beneficiary of the trust estate or of any part thereof. The donor may impose in the act of donation any conditions he may desire which are not contrary to law.

§2272. Natural or individual trustees

The donor may prescribe the number of trustees, the causes for which any trustee shall cease to be such, the manner in which vacancies shall be filled, and the manner and formalities according to which the trustees shall meet and transact business.

§2273. Corporate trustees

A federally insured depository institution organized under the laws of Louisiana, another state, or of the United States, or a financial institution or trust company authorized to exercise trust or fiduciary powers under the laws of Louisiana or of the United States, may accept, hold, and administer the donation and exercise all the powers conferred by this Part.

Acts 2003, No. 480, §1.

§2274. Trust property

The donor may prescribe the manner in which the property shall be administered and the objects to which it or any part of it, or the revenues thereof, shall be applied. The property donated cannot be made inalienable, but the donor may prescribe in what manner and under what circumstances the trustee or trustees may sell the property or any part of it, or change any investment.

§2275. Board of trustees

When the donation is made to individual trustees, they and their successors, upon complying with the laws relative to the organization of corporations for literary, scientific, religious, and charitable purposes, shall constitute a body corporate with the power of continuous succession and unlimited duration, and with all the powers conferred upon corporations by law and by custom; however, the requirements as to the number of persons necessary for the formation of a corporation shall not apply to the trustees. If any of the trustees do not accept the trust, the others named may accept and proceed to fill the vacancies in the manner prescribed in the act of donation.

§2276. Successors to trustees appointed by donor

Wherever there is an entire failure of the individual trustees to accept, the governor shall appoint as trustees a number of persons equal to the number appointed by the donor and they shall have all the powers granted to and be subject to all the obligations imposed upon the original trustees.

Whenever a trust company or bank trustee shall fail to accept, shall decline to act, or shall cease to exist, the Governor shall appoint another trust company or trust bank created by the laws of this state, or a national bank having its principal office in this state, as successor trustee, which shall have all the powers granted to and be subject to all the obligations imposed upon the original trustee.

§2277. Administration of property; compensation

The board of trustees, trust company, or bank trustee shall administer the property in conformity with the directions contained in the act of donation, if there be such directions, and if not, shall administer it in their discretion. They shall have all the powers needed in such administration and shall be entitled to reasonable compensation for their services.

§2278. Subsequent donations

The board of trustees, trust company, or bank trustee may accept and administer other donations mortis causa or inter vivos from the same or from other donors and apply them as may be prescribed in the subsequent acts of donation. The administration of the property given by the subsequent acts of donation shall be governed by the directions contained in the subsequent acts of donation, if there be such directions, and otherwise, in the discretion of the board of trustees, trust company, or bank trustee.

§2279. Substitutions, fidei commissa, or trust dispositions; laws not applicable

The laws relative to substitutions, fidei commissa, or trust dispositions, shall not apply to or in any manner affect donations made for the purposes and in the manner provided by this Part, and all laws or parts of laws conflicting with the provisions of this Part are repealed insofar as regards the purposes of this Part, but not otherwise.

§2280. Corporations; authority to make donations for charitable purposes

Every corporation organized under the laws of this state, unless otherwise provided in its charter, shall have power, when authorized by its board of directors or executive committee, to make donations to any corporation, trust, fund or foundation created or organized in the United States or in any possession thereof or under the law of the United States or of any state or territory or of any possession of the United States, organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; provided, that a donation shall not be authorized hereunder if the donee institution shall own more than ten per centum (10%) of the voting stock of the donor corporation or one of its subsidiaries. The provisions of this Part shall not be construed as interpreting the rights and powers of

corporations as heretofore existing. Nothing in this Part shall affect the power of any foreign corporation doing business in this state, unless otherwise provided in its charter.

Added by Acts 1954, No. 638, §1.

§2281. Definition of terms used in R.S. 9:2282

As used in R.S. 9:2282, the following words and phrases shall have the meanings ascribed to them in this Section:

(1) The term "Trust" shall be limited to express or implied trusts created for educational, charitable or religious purposes where all or a substantial part of the corpus thereof shall have been contributed by the local beneficiaries (as hereinafter defined), or by their predecessor beneficiaries; and where said corpus shall consist of real or personal property situated within the state of Louisiana. R.S. 9:2282 shall have no application to private trusts, either express or implied; to trusts administered by any public governmental authority; to Roman Catholic educational, charitable or religious trusts; or to trusts for educational, charitable or religious purposes where all or a substantial portion of the corpus shall not have been contributed by the local beneficiaries thereof, or by their predecessor beneficiaries.

(2) The term "local beneficiaries" shall mean those persons residing within the state of Louisiana who shall have contributed (or whose predecessor beneficiaries shall have contributed) all or a substantial part of the corpus of the trust, as above defined, and who shall locally, immediately, and directly enjoy the benefits of such trust.

(3) The term "majority of beneficiaries" shall be defined as sixty-six and two-thirds per cent of the adult local beneficiaries residing within the state of Louisiana and enjoying locally and immediately and directly the benefits of such trust.

Acts 1960, No. 346, §1.

§2282. Method of transfer of control of educational, charitable or religious trusts; grounds

When a majority of the local beneficiaries of any educational, charitable or religious Trust (all as defined in R.S. 9:2281) shall determine that there exists a deep-seated and irreconcilable hostility or tension between them and any or all of the trustees or others in authority exercising control over the administration of such Trust; then, and in such event, said majority of the local beneficiaries may file a petition in the District Court of the parish wherein any part

of the corpus of said Trust is situated, setting forth the grounds for relief as stated herein and praying for a decree of the court discharging all existing trustees and all others in authority exercising control over the administration of such trust (by whatever name designated) and for the appointment of other trustees who shall, upon their appointment and qualification in conformity with the terms of the decree of the court, thereupon become vested with complete control and authority over the corpus of said Trust. All successor-trustees so appointed and qualified shall be citizens of the state of Louisiana, residing within the jurisdiction of the court appointing them, and who shall be a local beneficiary as defined in R.S. 9:2281(2). However, before entering a decree removing the existing trustees and all others in authority exercising control over the administration of such Trust and appointing successor-trustees, the Court shall first find affirmatively that the conditions set forth in this Section as alleged in the petition actually exist. The acting trustees and all others in authority with respect to said Trust shall be made parties defendant to the petition; shall be summoned in the manner provided by law; and shall be afforded every statutory right to plead, answer or except to the petition filed against them, and to appear and be heard in opposition thereto.

Acts 1960, No. 346, §2

§2283. Governing instrument; contents

A. Notwithstanding any provision in this section or in the governing instrument to the contrary (except as provided in Subsection C), the governing instrument of each trust that is a private foundation described in Section 509 of the Internal Revenue Code of 1954¹ (including each nonexempt charitable trust described in section 4947(a)(1) of the Code² that is treated as a private foundation) and the governing instrument of each nonexempt split-interest trust described in section 4947(a)(2) of the Code³ (but only to the extent that section 508(e) of the Code⁴ is applicable to such nonexempt split-interest trust under section 4947(a)(2) of the Code) shall be deemed to contain the following provisions: The trust shall make distributions at such time and in such manner as not to subject the trust to tax under section 4942 of the Code;⁵ the trust shall not engage in any act of self-dealing that would subject it to tax under section 4941 of the Code;⁶ the trust shall not retain any excess business holdings that would subject it to tax under section 4943 of the Code;⁷ the trust shall not make any investments that would subject it to tax under section 4944 of the Code;⁸ and the trust shall not make any taxable expenditures that would subject it to tax under section 4945 of the Code.⁹ With respect to any such trust created prior to January 1, 1970, this Subsection A shall apply only for its taxable years beginning on or after January 1, 1972.

B. The trustee of any trust described in Subsection A (with the consent of the settlor, if then living and competent to give consent) may, without judicial proceedings, amend the governing instrument to expressly include the provisions required by section 508(e) of the Code by executing a written amendment to the trust and filing a duplicate original of such amendment with the Attorney General of Louisiana.

C. The trustee of any trust described in Subsection A (with the consent of the settlor, if then living and competent to give consent) may, without judicial proceedings, amend such trust to expressly exclude the application of Subsection A by executing a written amendment to the trust and filing a duplicate original of such amendment with the Attorney General of Louisiana, and upon filing of such amendment, Subsection A shall not apply to such trust.

D. All references in this section to the "Code" are to the United States Internal Revenue Code of 1954, and all references in this section to specific sections of the Code include corresponding provisions of any subsequent federal tax laws.

Added by Acts 1971, No. 154, §1.

¹ 26 U.S.C.A. §509.

² 26 U.S.C.A. §4947(a)(1).

³ 26 U.S.C.A. §4947(a)(2).

⁴ 26 U.S.C.A. §508(e).

⁵ 26 U.S.C.A. §4942.

⁶ 26 U.S.C.A. §4941.

⁷ 26 U.S.C.A. §4943.

⁸ 26 U.S.C.A. §4944.

⁹ 26 U.S.C.A. §4945.

PART II. PERPETUAL DURATION

§2291. Duration of trust when right to destroy not reserved

Whenever one or more persons have donated, subscribed, or contributed a sum of money or other property and have dedicated it, in any manner, to some charitable, benevolent, or eleemosynary use, and have not expressly reserved in the dedication the right to dissolve, abolish, or destroy the trust or dedication made, the trust or dedication shall continue forever as long as there is a competent person or institution to administer it.

§2292. Duration of trust according to principles of order or institution

When any money or other property has been donated, subscribed or contributed for charitable purposes and according to the uses, customs, tenets, or principles of any fraternal, charitable, religious, or benevolent order or institution, authorized and existing in this state, the trust shall not fail or its purposes be defeated and the funds distributed, as long as there is in this state, a lodge, branch, or society capable of executing and administering the trust and funds for the germane purposes for which it was created. The dissolution of the association or corporation originally administering the trust shall in no wise affect or defeat it.

§2293. Forfeiture to state when no person or institution competent to execute

Where there is no person or institution capable and competent to execute and administer the trust, it shall be forfeited to the state, with all funds and property, for the benefit of the public schools, except where an express reservation has been made by the donors in the dedication to re-claim the amounts subscribed or contributed.

§2294. Trusts already created; dissolution or liquidation; summary proceedings to recover funds; retrospective operation

This Part shall apply to trusts already created, and in cases of funds contributed or subscribed for a trust to be administered in charitable, benevolent, and fraternal work, according to the usages, customs, or tenets of any authorized and established fraternal, benevolent, or charitable order or institution in this state, and a special corporation has been organized to administer the trust, and which has voluntarily dissolved or liquidated, and the assets of such trust abolished or destroyed, without the express sanction of such order or institution which is capable of executing and administering the trust, whether such funds are distributed by order of court or judicial liquidator or not, the fraternal order, benevolent or charitable institution or its proper officers may proceed summarily against the persons or corporations, receiving the funds, and recover them by judgment of court, to be used and administered by such order or institution in this state for the purpose for which the same was originally declared and

intended, provided, it has not been more than ten years since the distribution of such assets or funds before suit to recover is filed and citation served on the defendants. This Part shall operate retrospectively as to trusts which have been altered within the last six years, and where no final account has been filed, and approved by judgment of court one year prior to the filing the suit.

§2295. Intention of part

It is the intention of this Part to declare that trusts created or formed for the relief of the distressed, education of orphans, support of indigent persons, and all other charitable, benevolent, and fraternal purposes, whether already created or to be hereafter created in this state, whether incorporated or not, shall continue forever, or so long as there is a person or institution capable of executing, administering, or carrying out the same.

PART III. DONATIONS TO RELIGIOUS ORGANIZATIONS

§2321. Title quieted and perfected by lapse of time

There is hereby quieted and perfected title to real estate donated to church and religious representatives, religious associations or religious corporations, or their successors or religious assigns, where over ten years continuous and uninterrupted possession and use for the purposes intended by the donation have been had and elapsed since the date of the execution of the donation and where the real estate presently is being possessed and used for the purposes intended in the donation and where such donation is of record in the office of the clerk and recorder of the parish in which the donated property is situated.

Acts 1952, No. 462, §1. Amended by Acts 1960, No. 226, §1; Acts 1962, No. 439, §1. Acts 1984, No. 205, §1.

§2322. Rights in property after perfection of title

In all cases the donees or their successors, assigns or representatives may effectively use, mortgage, hypothecate, incumber, alienate and/or dispose of the property donated or any part thereof without regard thereafter to the conditions or changes imposed in the donation, upon declaring the same to have been fully complied with to all intents and purposes by said lapse of time, possession and use in compliance with said conditions or changes, and upon declaring the public policy served thereby to be against restricting property from commerce.

Acts 1952, No. 462, §2. Amended by Acts 1960, No. 226, §2; Acts 1962, No. 439, §1.

PART IV. CY PRES

§2331. Circumstances authorizing application of doctrine; jurisdiction; petitioners

In any case in which circumstances have changed since the execution or probate of a will containing a trust or conditional bequest for charitable, educational or eleemosynary purposes, or since the death of the donor who during his lifetime established a trust or made a conditional donation for any of such purposes, and the change in circumstances is such as to render impractical, impossible or illegal a literal compliance with the terms thereof, the district court having jurisdiction of the succession of the testator or of the domicile of the donee (and in the parish of Orleans, the civil district court) may, upon petition of a trustee, or of the person or corporation having custody or possession of the property subject to said trust, conditional bequest or donation or of any heir, legatee or donee who in the absence or invalidity of such trust, conditional bequest or donation would have been entitled to any part of the property contained therein, in accordance with the procedure hereinafter set forth, enter a judgment directing that such charitable trust, devise or conditional bequest or donation shall be administered or expended in such manner (either generally or specifically defined) as, in the judgment of said court, will most effectively accomplish as nearly as practicable under existing conditions the general purpose of the trust, will or donation, without regard to and free from any specific restriction, limitation or direction contained therein.

Acts 1954, No. 592, §1. Amended by Acts 1970, No. 43, §1.

§2332. Filing of petition; order; notice; service

In the event of the filing of a petition by such trustee or person or corporation having custody or possession of the property, trust or conditional bequest or donation as hereinabove set forth, the court shall thereupon enter an order directing:

(1) That a notice be published stating in general terms the nature of the said trust, devise, conditional bequest or donation and the relief prayed for in said petition, which said notice shall be published in a newspaper of general circulation in the parish once a week for thirty days in the manner provided for judicial advertisements, and

(2) That service of a copy of the petition be made upon any and all persons (including heirs in intestacy of the testator or special or universal legatees or donees) who, in the absence or invalidity of the said trust, devise, conditional bequest or donation would be entitled to the property therein contained; provided, however, that if no heir in intestacy or special or universal legatee or donee is present or can be found within the State of Louisiana, then and in such event such service shall be made upon the attorney general of the State of Louisiana, and in such case proceedings carried on contradictorily with the said attorney general shall, for all purposes, be as fully effective and valid as if the individual heirs in intestacy, legatees or donees had been personally served. In the event such petition has not been brought by the trustee, donee or person or corporation having custody or possession of such property, then service shall also be made upon such trustee, donee or person or corporation having custody or possession of such property. Said order shall further fix a date not less than thirty days subsequent to said order upon which said heir in intestacy, legatee, donee or the attorney general, as the case may be, shall show cause why the prayer in the petition shall not be granted. Service of a certified copy of said petition and order shall be made as aforesaid not later than fifteen days prior to the date set for said hearing.

Acts 1954, No. 592, §2. Amended by Acts 1970, No. 43, §1.

§2333. Hearing, evidence

Upon the date fixed for the said hearing, or upon any adjournment thereof, the district court shall hear evidence:

(1) As to whether or not there are heirs in intestacy or legatees or donees within the State of Louisiana; provided, however, that the court shall not require more than reasonable efforts to determine the existence and presence of such heirs or legatees or donees.

(2) The terms of the original trust, devise, conditional bequest or donation inter vivos.

(3) The facts and circumstances which, in the opinion of petitioners, render impractical, impossible or illegal the literal compliance with the terms of such trust, devise, conditional bequest or donation inter vivos.

(4) The proposed method or methods of administration or expenditure of the property subject to the trust, devise, conditional bequest or donation in a manner which will most effectively accomplish, as nearly as practical under existing conditions, the general purpose thereof,

without regard to and free from any specific restriction, limitation or direction contained therein.

Acts 1954, No. 592, §3. Amended by Acts 1970, No. 43, §1.

§2334. Judgment

The said district court shall thereupon enter a judgment in the premises and may direct that such trusts or devises or conditional bequests or donations shall be administered or expended in such a manner or manners as will most effectively accomplish, as nearly as practicable under existing conditions, the general purpose of such trust, devise, conditional bequest or donation, without regard to and free from any specific restriction, limitation or direction contained therein; provided, however, that in the absence of a clearly expressed intention to the contrary no such trust, devise, conditional bequest or donation inter vivos for charitable, educational or eleemosynary purposes shall be invalid because the specific method provided by the testator or donor for the accomplishment of the general purpose indicated by him is or becomes, for any reason, impractical, impossible or unlawful; provided, further, that in the event that the heirs, legatees or donees who in the absence or invalidity of said trust, devise, conditional bequest or donation would be entitled to the property contained therein shall have made recommendations as to the use or expenditure of the property subject to such trust, devise, conditional bequest or donation inter vivos, then and in such event the court, in determining the manner or manners which will most effectively accomplish the general purpose of such trust, devise, conditional bequest or donation inter vivos, shall give preference to the recommendations of such heirs, legatees or donees.

Acts 1954, No. 592, §4. Amended by Acts 1970, No. 43, §1.

§2335. Immunity of trustee acting pursuant to judgment

In the event that a judgment is entered by the district court directing the administration or expenditure of such trust, conditional bequest or donation inter vivos, in the manner provided hereinabove, and such judgment becomes final without appeal, then no trustee, donee or other person or corporation having custody of the property, subject to such trust, conditional bequest or donation inter vivos, who has administered or expended the said property in accordance with the provisions of said judgment shall ever be liable personally to any person whatsoever for failure to administer said trust, conditional bequest or donation in accordance with the literal terms thereof, and upon a proper showing to said district court that the

administration or expenditure thereof in accordance with the terms of said judgment shall have been completed, said trustee, donee or other person or corporation having custody or possession of said property shall be fully and finally discharged from all responsibility in the premises.

Acts 1954, No. 592, §5. Amended by Acts 1970, No. 43, §1.

§2336. Appeal

No devolutive appeal may be taken from a judgment rendered pursuant to this Part. Any party interested may prosecute a suspensive appeal from such a judgment by filing a petition or motion therefor within thirty days, exclusive of Sundays, from the date of signing of said judgment and posting bond as may be fixed by the court.

Acts 1954, No. 592, §6. Amended by Acts 1970, No. 43, §1.

§2337. Application of Part

The provisions of this Part shall be applicable to any trust, devise, conditional bequest or donation inter vivos now in being or hereafter created.

Acts 1954, No. 592, §7. Amended by Acts 1970, No. 43, §1.

PART V. UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT

§2337.1. Definitions

As used in this Part:

(1) "Institution" means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes, or a governmental organization to the extent that it holds funds exclusively for any of these purposes.

(2) "Institutional fund" means a fund held by an institution for its exclusive use, benefit, or purposes, but does not include (i) a fund held for an institution by a trustee that is not an institution or (ii) a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.

(3) "Endowment fund" means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

(4) "Governing board" means the body responsible for the management of an institution or of an institutional fund.

(5) "Historic dollar value" means the aggregate fair value in dollars of (i) an endowment fund at the time it became an endowment fund, (ii) each subsequent donation to the fund at the time it is made, and (iii) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the institution is conclusive.

(6) "Gift instrument" means a will, deed, grant, donation, conveyance, agreement, memorandum, writing, or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or held by an institution as an institutional fund.

Added by Acts 1976, No. 410, §1.

§2337.2. Appropriation of appreciation

The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by Section 2337.6. This Section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution.

Added by Acts 1976, No. 410, §1.

§2337.3. Interpretation

Section 2337.2 does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended. A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only "income," "interest," "dividends," "usufruct," or "rents, issues or profits," or "to preserve the principal intact," or "to

preserve the naked ownership intact," or a direction which contains other words of similar import. This interpretation applies to gift instruments executed or in effect before or after the effective date of this Part.

Added by Acts 1976, No. 410, §1.

§2337.4. Authority to invest

In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to investments a fiduciary may make, the governing board, subject to any specific limitations set forth in the applicable gift instrument or in the applicable law other than law relating to investments by a fiduciary, may:

(1) Invest and reinvest an institutional fund in any corporeal or incorporeal immovable or movable property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures, and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships, or individuals, and obligations of any government or subdivision or instrumentality thereof.

(2) Retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable.

(3) Include all or any part of an institutional fund in any pooled or common fund maintained by the institution; and

(4) Invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interests in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

Added by Acts 1976, No. 410, §1

§2337.5. Delegation of investment management

Except as otherwise provided by the applicable gift instrument or by applicable law relating to governmental institutions funds, the governing board may (1) delegate to its committees, officers or employees of the institution or the fund, or agents, including investment counsel,

the authority to act in place of the board in investment and reinvestment of institutional funds, (2) contract with independent investment advisors, investment counsel of managers, banks, or trust companies, so to act, and (3) authorize the payment of compensation for investment advisory or management services.

Added by Acts 1976, No. 410, §1.

§2337.6. Standard of care

In the administration of the powers to appropriate appreciation, to make and retain investments, and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. In so doing they shall consider long and short term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions.

Added by Acts 1976, No. 410, §1.

§2337.7. Release of use or investment restrictions

A. With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

B. If written consent of the donor cannot be obtained by reason of his death, disability, unavailability, or impossibility of identification, the governing board may apply by petition in the name of the institution to a district court of competent jurisdiction for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. Notification of interested parties shall be made in accordance with R.S. 9:2332. If the court finds that the restriction is obsolete, inappropriate, or impracticable, it may by order release the restriction in whole or in part. A release under this Subsection may not change an endowment fund to a fund that is not an endowment fund.

C. A release under this Section may not allow a fund to be used for purposes other than the educational, religious, charitable, or other eleemosynary purposes of the institution affected.

D. This Section does not limit the application of the doctrine of cy pres.

Added by Acts 1976, No. 410, §1.

§2337.7. Release of use or investment restrictions

A. With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

B. If written consent of the donor cannot be obtained by reason of his death, disability, unavailability, or impossibility of identification, the governing board may apply by petition in the name of the institution to a district court of competent jurisdiction for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. Notification of interested parties shall be made in accordance with R.S. 9:2332. If the court finds that the restriction is obsolete, inappropriate, or impracticable, it may by order release the restriction in whole or in part. A release under this Subsection may not change an endowment fund to a fund that is not an endowment fund.

C. A release under this Section may not allow a fund to be used for purposes other than the educational, religious, charitable, or other eleemosynary purposes of the institution affected.

D. This Section does not limit the application of the doctrine of cy pres.

Added by Acts 1976, No. 410, §1.

§2337.8. Short title

This Part may be cited as the "Uniform Management of Institutional Funds Act."

Added by Acts 1976, No. 410, §1.

CHAPTER 2-A. PUBLIC TRUSTS

§2341. Public trusts authorized; purposes

A. Express trusts may be created or amended to issue obligations and to provide funds for the furtherance and accomplishment of any authorized public function or purpose of the state or of any parish, municipality, political or governmental subdivision or any other governmental unit in the state in real or personal property, or either or both, or in any estate or interest in either or both, with the state, or any such governmental units as the beneficiary thereof by

and with the: (1) express approval of the governor and two-thirds of the elected members of each house of the legislature if the state of Louisiana or any state agency is the beneficiary; (2) express approval of a majority of the membership of the governing authority of the beneficiary and the State Bond Commission or its successor if a parish or municipality or a political or governmental subdivision thereof is the beneficiary; and (3) express approval of a majority of the membership of the governing authority of the beneficiary and the State Bond Commission or its successor, in all other cases. The beneficiary of any such trust is authorized to utilize the trust to issue obligations to accomplish any of the foregoing authorized public functions or purposes of the beneficiary. Provided, that no funds of said beneficiary derived from sources other than the trust property, or the operation thereof, shall be charged with or expended for property of or the operation of said trust, except by express action of the legislature or the governing authority of the beneficiary, as the case may be, prior to the charging or expending of the funds. The officers or any other governmental agencies or authorities having the custody, management or control of any property, real or personal or both, of the beneficiary of such trust, or of such a proposed trust, which property shall be used for the execution of the trust purposes, are authorized and empowered to lease such property for said purposes in accordance with law, after the acceptance of the beneficial interest therein by the beneficiary.

B.(1) For purposes of this Chapter, authorized public functions or purposes of the state and of any parish, municipality, political or governmental subdivision or any other governmental unit in this state, except as otherwise and to the contrary provided by the laws of this state, shall mean and include but not be limited to:

(a) Hospital, medical, health, nursery care, nursing care, clinical, ambulance, laboratory, and related services and facilities.

(b) Housing, mortgage finance and related services, activities, facilities, and properties.

(c) Penitentiary, rehabilitation, incarceration, and other correctional services and facilities.

(d) Educational services and facilities and related housing and dormitory services and facilities.

(e) Providing, developing, securing, and improving water storage, treatment, supply, and distribution services and facilities.

(f) Sanitary and storm sewer and other liquid and solid waste collection, disposal, treatment, and drainage services and facilities.

- (g) Educational or commercial communication equipment and facilities.
- (h) Mass transit, commuting and transportation, and parking services, equipment, and facilities.
- (i) Cultural and civic facilities, services and activities.
- (j) Community development and redevelopment facilities and activities.
- (k) Gas, electric, petroleum, coal and other energy collection, recovery, generation, storage, transportation, and distribution facilities and activities.
- (l) Industrial, manufacturing, and other economic development facilities and activities.
- (m) Antipollution and air, water, ground, and subsurface pollution abatement and control facilities and activities.
- (n) Airport and water port and related facilities, services, and activities.
- (o) Facilities, property and equipment of any nature for the use or occupancy of the state or the United States, or any agencies or instrumentalities thereof or of any governmental units in the state.

(2) For purposes of this Chapter, authorized public functions or purposes of the state and of any parish, municipality, political or governmental subdivision, or any other governmental unit in this state shall not mean or include casino gaming operations and riverboat gaming operations or any acquisition, construction, demolition, repair, maintenance, or other costs associated directly or indirectly with an official gaming establishment or a riverboat licensed for gaming activities and facilities associated with docking, berthing, or loading and unloading passengers of such riverboats. For purposes of this limitation "casino gaming operations" and "official gaming establishment" shall have the meanings ascribed to them in the Louisiana Economic Development and Gaming Corporation Act, R.S. 27:201 et seq.

C. The trustees of a public trust shall make and adopt bylaws for the due and orderly administration and regulation of the affairs of the public trust. All bylaws of a public trust shall be submitted in writing to the governor of the state of Louisiana, if the state of Louisiana or any state agency is the beneficiary and, in all other cases, the governing authority of the beneficiary. The governor or the governing authority of the beneficiary shall have the power

to veto all or part of the proposed bylaws. Failure to approve or veto the proposed bylaws within thirty days shall constitute automatic approval.

D. All public trusts hereafter created or amended under this Chapter shall constitute public corporations of the beneficiary, and as such shall have the powers and duties of such corporations, including the power to incur debt and contract obligations; to sue and be sued; to have a corporate seal; to do and perform all acts in a corporate capacity and in a corporate name. All public trusts created heretofore or hereafter shall be subject to the Public Contracts Law, Public Records Law, Public Meetings Law, Code of Ethics, and the Bond Validation Procedures Law.

E.(1) Upon the application of one or more of the deep-water port commissions or deep-water port, harbor, or terminal districts as defined by Article VI, Section 44 of the Louisiana Constitution of 1974, as authorized by the governing board of such deep-water port commission or deep-water port, harbor, or terminal district, the governor of the state of Louisiana is authorized to create a public trust with the power to issue obligations, to guarantee loans, and to lend money for the purpose of financing and facilitating the import and export of goods, commodities, and services, and the financing of services connected with the import and export of goods, commodities, and services. The beneficiary of such a trust shall be the state of Louisiana. Only one such public trust shall be created in the state by the governor. The trust so created is authorized to issue obligations to accomplish its purposes.

(2)(a) The trust shall have the power and authority to issue and reissue obligations, bonds, notes, or other evidences of indebtedness having a term of fifteen years or less to finance its functions. The functions of the trust shall include but not be limited to: financing and facilitating the import and export of goods, commodities, and services; the financing of services connected with the import and export of goods, commodities, and services; promoting and developing the import and export of goods, commodities, and services; promoting and developing the deep-water ports, harbors, and terminals of the state; guaranteeing loans; and providing funds for the operation, maintenance, and administrative expenses of the trust. All such obligations shall be submitted to and approved by the State Bond Commission prior to the issuance and delivery of such obligations.

(b) All such obligations issued by the trust shall be negotiable instruments, and shall be solely the obligations of the trust and not of the state of Louisiana. The obligations and income thereof shall be exempt from all taxation in the state of Louisiana. The obligations shall be payable out of the income, revenues, and receipts derived or to be derived from the trust

properties and facilities maintained and operated by the trust or received by the trust from any other sources whatsoever, including, but not by way of limitation, other monies which, by law or contract, may be made available to the trust. In addition to the pledge of income, revenues, or receipts to secure said obligations, the trust may further secure their payment by any other security authorized in the resolution authorizing the issuance of the obligations. Such obligations shall be authorized and issued by a resolution adopted by a majority vote of the trustees present and voting and shall be of such series, bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in such denominations, be in such form, carry such registration and exchangeability privileges, be payable at such place or places, be subject to such terms of redemption and be entitled to such priorities on the income, revenues, and receipts of the trust and contain such other provisions as such resolution may provide. The obligations shall be executed in the name of the trust in the manner provided in the resolution authorizing the issuance of such obligations. Such obligations may be sold in such manner and from time to time as may be determined by the trust to be most beneficial and the trust may pay all expenses and commissions which it may deem necessary or advantageous in connection with the issuance and sale thereof.

(c) Obligations issued hereunder are hereby declared legal investments and are hereby made securities in which all insurance companies and associations and other persons carrying on an insurance business, trust companies, banks, bankers, banking associations, savings banks, and savings associations, including savings and loan associations, credit unions, building and loan associations, investment companies, executors, administrators, trustees, and other fiduciaries, pension, profit-sharing, retirement funds, and other persons carrying on a banking business, and all other persons who are authorized to invest in revenue bonds may properly and legally invest funds, including capital in their control or belonging to them. Such obligations are hereby made securities which may properly and legally be deposited with and received by any state or municipal or public officer or any agency or political subdivisions of the state for any purpose for which the deposit of revenue bonds is authorized by law.

(d) Any resolution authorizing the issuance of obligations shall be published one time in the official journal of the state of Louisiana; however, it shall not be necessary to publish any exhibits to such resolution if the same are available for public inspection and such fact is stated in the publication. For thirty days after the date of publication, any person in interest may contest the legality of the resolution, any provision of the obligations to be issued pursuant to it, the provisions therein made for the security and payment of the obligations, and the validity of all the provisions and proceedings relating to the authorization and issuance of such

obligations. After that time, no person may contest the regularity, formality, legality, or effectiveness of the resolution, any provisions of the obligations to be issued pursuant to it, the provisions for the security and payment of the obligations, and the validity of all other provisions and proceedings relating to their authorization and issuance, for any cause whatever. Thereafter, it shall be conclusively presumed that the obligations are legal and that every legal requirement for the issuance of the obligations has been complied with. The bonds shall not be contestable after the thirty days.

(3) The trust shall have the power to lend money at competitive rates of interest, and to guarantee loans, in order to facilitate the functions of the trust set forth in R.S. 9:2341(E)(2).

(4) The governor shall appoint one trustee of the trust from each congressional district in the state, and the secretary of the Department of Economic Development shall be a trustee, serving in an ex officio capacity. The appointed trustees shall serve six-year staggered terms; however, of the initial trustees appointed after January 13, 1992, three shall serve terms of two years, three shall serve terms of four years, and two shall serve terms of six years, all as designated by the governor.

(5) The governor shall designate one member of the trust to serve as chairman. The trustees shall elect a vice-chairman and a secretary-treasurer from among the members of the trust.

(6) Except as otherwise provided herein the provisions of this Chapter shall be applicable to the public trust created under this Subsection. The provisions of R.S. 9:2347 shall not be applicable to the public trust created under this Subsection; however, all financial advisors fees and any underwriters discount may be approved in writing by the State Bond Commission and the attorney general's office.

(7) Any attorneys' fees in connection with the issuance of any obligations, notes, or other evidences of indebtedness shall be subject to approval of the attorney general.

(8) All obligations, notes, or other evidences of indebtedness issued by the public trust shall be special obligations of the trust and shall be deemed to have been issued on behalf of the beneficiary of the trust.

(9) In no event shall any obligations, notes, or other evidences of indebtedness of the trust constitute an obligation, either special or general, of the state of Louisiana within the meaning

of any constitutional or statutory provision whatsoever, and the obligations shall contain a recital to that effect.

F. Each appointment by the governor shall be submitted to the Senate for confirmation.

Acts 1970, No. 135, §1; Amended by Acts 1976, No. 699, §1, eff. Aug. 4, 1976; Acts 1978, No. 778, §1; Acts 1979, No. 524, §1, eff. July 17, 1979; Acts 1984, No. 375, §1, eff. July 6, 1984; Acts 1986, No. 953, §1, eff. July 14, 1986; Acts 1986, No. 897, §1; Acts 1986, 1st Ex. Sess., No. 27, §1, eff. Dec. 24, 1986; Acts 1987, No. 377, §1, eff. July 7, 1987; Acts 1990, No. 457, §1; Acts 1991, No. 189, §1, eff. Jan. 13, 1992; Acts 1993, No. 693, §1, eff. June 21, 1993.

NOTE: SEE ACTS 1984, NO. 375, §2.

§2342. Mode of creation; acceptance of beneficial interest; amendments

A. Such trusts shall be created, organized, structured and empowered by written instruments or by will. In the case of written instruments, the same shall be subscribed by the settlor or settlors by authentic act or by act under private signature executed in the presence of two witnesses and duly acknowledged by the settlor or settlors or by the affidavit of one of the attesting witnesses and before the same shall become effective the beneficial interest therein shall be accepted by the governor and two-thirds of the elected members of each house of the legislature if the state of Louisiana or any state agency be the beneficiary, or by the governing body of any other beneficiary named therein, which power and authority of acceptance hereby is conferred upon the governor and the legislature and the governing bodies of the parishes, municipalities and other political and governmental units in the state. Thereupon the said instrument or will, together with the written acceptance of the beneficial interest endorsed thereon, shall be recorded in the official records in the office of the clerk of court of each parish wherein is situated any real estate, or any interest therein, belonging to said trust, as well as the parish wherein is located the trust property or wherein are conducted its principal operations. In the case of any trust of which the state of Louisiana or a state agency thereof shall be the beneficiary, a certified copy of such instrument or will and the instrument of acceptance shall be filed with the secretary of state. Upon the acceptance of the beneficial interest by the beneficiary as hereinabove authorized and provided, the same shall be and constitute a binding contract between the state of Louisiana and the settlor or settlors, or the executor of the estate of the settlor, for the acceptance of the beneficial interest in the trust property by the designated beneficiary and the application of the proceeds of the trust property and its operation for the purposes, and in accordance with the stipulations of the

trust instrument or will. Such trusts shall have duration for the term as shall be specified in the instrument or will creating said trust.

B. No public trust in which the state of Louisiana, any state agency, any parish or municipality, or any other political or governmental unit in the state is the beneficiary may be amended without a two-thirds vote of approval of the trustees of such trust. Provided further, that any such amendment shall be subject to approval as provided in Subsection (A) of Section 2341 of this Chapter.

Acts 1970, No. 135, §2. Amended by Acts 1976, No. 699, §1, eff. Aug. 4, 1976.

§2343. Trustees; appointment; powers; duties; term of office; compliance with Public Bid Law, Public Meetings Law, and Public Records Law; legislative oversight

A.(1) Every person becoming a trustee of a public trust shall be subject to the provisions of R.S. 14:138 and 140 and first shall take the oath of office required of public officials. The oaths of office shall be administered by any person authorized to administer oaths in the state and shall be filed with the secretary of state in the case of trusts wherein the state or a state agency is the beneficiary; in the case of trusts wherein a parish, municipality, political or governmental subdivision, or other governmental units in the state is the beneficiary and in all other cases in the official records in the office of the clerk of court of the parish of the beneficiary's situs.

(2) Every trustee, officer, and employee of a public trust who handles funds of a public trust shall furnish a good and sufficient fidelity bond in an amount and with surety as may be specified and approved by a majority of the trustees, such bond to be in a surety company authorized to transact surety business in the state. The trustees may, at their election, purchase good and sufficient fidelity bonds.

(3) Except as inconsistent with the provisions of this Chapter, trustees shall have those additional duties as are provided by the Louisiana Trust Code for trustees appointed pursuant to such code.

(4) Trustees shall serve without compensation, but may receive per diem not to exceed two hundred dollars and be reimbursed for vouchered expenses incurred in the performance of their duties as trustees at the reimbursement rates applicable to state officers as provided by rules and regulations promulgated by the commissioner of administration.

B.(1) Notwithstanding the terms of any instrument creating a public trust in existence on August 15, 1999, or which creates a public trust after such date, any public trust that names the state of Louisiana or any state agency as a beneficiary shall have seven trustees appointed by the governor of the state of Louisiana, with consent of the Senate.

(2) The initial terms of the trustees shall be as follows: one member shall be appointed for a term of one year; two members shall be appointed for a term of two years; one member shall be appointed for a term of three years; two members shall be appointed for a term of four years; and one member shall be appointed for a term of five years. At the expiration of such initial term of each member and of each succeeding member's term, the governor shall appoint a successor who shall serve for a term of five years.

(3) Whenever a vacancy on such trust shall occur by death, resignation, or otherwise, the governor shall fill the same by appointment, and the appointee shall hold office during the remainder of the unexpired term. Each member shall hold office until his successor has been appointed and qualified.

(4) The trustees shall elect a chairman, a vice chairman, and a secretary-treasurer from their own members.

C. Repealed by Acts 1999, No. 1238, §2.

D. Meetings of the trustees of all public trusts shall be open to the public and the records of all public trusts shall be public records to the same extent as is required by law for the beneficiary.

E.(1) All contracts of a public trust for construction, labor, equipment, material, or repairs shall be awarded to the lowest responsible bidder who has bid according to the contract plans and specifications as advertised, in full accordance with the Public Contract Law, Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950.

(2) In addition to the requirements provided for in Paragraph (1) of this Subsection, any public trust whose sole beneficiary is a hospital service district is hereby authorized to utilize the sole source purchasing provisions as provided in R.S. 39:1597.

F.(1) Trustees of any public trust hereafter created, not within the scope of R.S. 9:2343(B) shall be the members of the governing authority of the beneficiary or persons appointed by the governing authority of the beneficiary. However, any member of the legislature, all or a

portion of whose district lies within the boundaries of the beneficiary of the public trust, shall be an "ex officio" trustee of that public trust if he consents in writing to be a trustee, whether or not that public trust was created prior to January 1, 1985.

(2) Trustees of any public trust hereafter created may be removed from office for cause, including incompetency, neglect of duty, or malfeasance in office, by a district court having jurisdiction.

(3) In the case of persons appointed by the governing authority of the beneficiary or by the governor, as the case may be, such persons shall be appointed for a term not in excess of six years, and shall be subject to removal for cause, as aforesaid, by or at the will of the beneficiary.

(4) In the event of removal of a trustee under this Section, a successor trustee shall be appointed in the same manner as aforesaid except in the case of trusts subject to R.S. 9:2343(B).

(5) However, in the event a trustee is so removed who is also a member of the governing body of a parish or municipal beneficiary, or a legislator who is an ex officio trustee, the successor trustee shall be appointed by the district court wherein the removal occurred. Said successor trustee shall serve only until the removed trustee ceases to serve as a member of the governing body of the parish or municipal beneficiary or as a member of the legislature and his successor on said governing body or in the legislature has qualified.

G. In the proposed adoption, amendment, or repeal of any rule, as defined in R.S. 49:951(6), or the proposed adoption, increasing, or decreasing of any fee, a public trust of which the state is not the beneficiary shall be subject to legislative oversight pursuant to R.S. 49:968. A public trust of which the state is not the beneficiary shall submit the report required by R.S. 40:600.6(D) to the House Committee on Municipal, Parochial and Cultural Affairs and the Senate Committee on Local and Municipal Affairs.

Acts 1970, No. 135, §3. Amended by Acts 1976, No. 699, §1, eff. Aug. 4, 1976; Acts 1978, No. 778, §1; Acts 1981, No. 239, §1; Acts 1984, No. 722, §1, eff. January 1, 1985; Acts 1992, No. 1062, §1; Acts 1999, No. 1238, §§1,2; Acts 1999, No. 1323, §1; Acts 2005, No. 150, §1.

§2344. Liability of trustees and beneficiary

A. No trustee or beneficiary shall be charged personally with any liability whatsoever by reason of any act or omission committed or suffered in the performance of such trust or in the operation of the trust property; but any act, liability for omission or obligation of a trustee or trustees in the execution of such trust, or in the operation of the trust property, shall extend to the whole of the trust estate, or so much thereof as may be necessary to discharge such liability or obligation, and not otherwise.

B. Any obligations issued by a public trust under this Chapter shall not constitute or create any debt or debts, liability or liabilities or a loan of the credit of or a pledge of the faith and credit of the beneficiary of the state or any political or governmental unit thereof but shall be solely the obligation of the public trust.

Acts 1970, No. 135, §4. Amended by Acts 1976, No. 699, §1, eff. Aug. 4, 1976.

§2345. Termination of public trusts

A. The acceptance of the beneficial interest in any public trust heretofore or hereafter created may be terminated by the beneficiary thereof at any time by the following methods, as applicable. Where the state or any state agency is the beneficiary, the acceptance is terminated by law duly enacted or by Concurrent Resolution of the Senate and House of Representatives. Where another governmental unit be the beneficiary, the acceptance is terminated by duly adopted ordinance or resolution of the governing body of the beneficiary as may be applicable.

B. Notwithstanding the provisions of Subsection A of this Section, the acceptance of the beneficial interest in any public trust heretofore or hereafter created shall not be terminated while there exists outstanding any indebtedness or other contractual obligations chargeable against the trust estate. The termination of the acceptance of the beneficial interest by the beneficiary of a public trust shall not prejudice nor affect any valid indebtedness or obligation of the trust; however, upon termination of the acceptance, the trustee or trustees shall have no powers or authority under the provisions of this Chapter, but shall be governed exclusively by the provisions of the Louisiana Trust Code, exclusive of Chapter 2-A of Title 9 of the Louisiana Revised Statutes, and by the laws of this state pertaining to charitable trusts.

Acts 1970, No. 135, §5. Amended by Acts 1976, No. 699, §1, eff. Aug. 4, 1976; Acts 1978, No. 778, §1.

§2346. Audits; supervision by legislative auditor; operating budget approval

A. Any public trust created hereunder shall be subject to the supervision of the legislative auditor of the state of Louisiana, to the same extent as the beneficiary thereof. Should the beneficiary thereof not be subject to the supervision of the legislative auditor, then provision shall be made in the instrument creating the trust for an annual, independent audit of the trust by a certified public accountant. Any such independent audit shall be subject to the authority of the legislative auditor to prescribe and approve the terms and conditions of such audit as set forth in the provisions of R.S. 24:513(A).

B. Any public trust created hereunder in which the state of Louisiana is the beneficiary shall be audited on an annual basis by the legislative auditor as provided in R.S. 24:513 and such public trusts shall annually provide sworn statements of revenues and expenditures in accordance with R.S. 24:514.

C. No later than sixty days before the beginning of its annual operating year, a public trust in which the state of Louisiana is a beneficiary shall submit its proposed annual operating budget to the Joint Legislative Committee on the Budget for its review and approval. The public trust may submit a proposed modification to its approved annual operating budget to the Joint Legislative Committee on the Budget for its review and approval at any time during the course of the annual operating year. At no time shall the public trust incur any expenditures or obligate itself for items which deviate from its approved annual operating budget.

Acts 1970, No. 135, §6. Amended by Acts 1976, No. 699, §1, eff. Aug. 4, 1976; Acts 1981, No. 238, §1; Acts 1999, No. 915, §1, eff. July 2, 1999.

§2347. Bonds of public trust

A. To provide funds for and to fulfill and achieve its authorized public functions or purposes, a public trust may incur debt and issue bonds, notes or other evidences of indebtedness, hereinafter referred to collectively as "bonds" subject to the following:

(1) If the beneficiary of the public trust is a parish, municipality or a political or governmental subdivision thereof, and such bonds or other debt obligations are issued for the purpose of providing, constructing, expanding, or altering public facilities which are to be operated, maintained or administered by any such parish, municipality or political or governmental subdivision thereof, such bonds shall be approved by a vote of a majority of the qualified

electors of the beneficiary who vote in a special election held for that purpose in the manner provided by Subtitle II, Chapter 4, Part II of Title 39 of the Louisiana Revised Statutes of 1950. Furthermore, in all other cases, if the beneficiary of the trust is a parish, municipality or a political or governmental subdivision thereof, all bonds and other debt obligations shall be issued only after the trust has adopted an appropriate resolution giving notice of its intention to issue such bonds or other debt obligations, which resolution shall include a general description of the bonds or other debt obligations to be issued and the security therefor, and notice of this intention shall be published once a week for four weeks in a newspaper in the locality of the beneficiary or in the parish where it is located, the first publication to appear at least thirty days before the public meeting of the trust at which the trust will meet in open and public session to hear any objections to the proposed issuance of such bonds or other debt obligations. The notice of intent so published shall state the date, time, and place of the public hearing and shall state, and the law is hereby declared to be, that if at such hearing a petition duly signed by electors of the beneficiary in a number not less than five per cent of the electors of the beneficiary voting at the last special or general election object to the issuance of the proposed bonds or other debt obligations, then such bonds or other debt obligations shall not be issued until approved by a vote of a majority of the qualified electors of the beneficiary who vote in a special election held for the purpose in the manner provided by Subtitle II, Chapter 4, Part II of Title 39 of the Louisiana Revised Statutes of 1950. Any such petition shall be accompanied by a certificate of the parish registrar of voters certifying that the signers of the petition are qualified electors of the beneficiary and the number of signers amounts to not less than five per cent of the electors in said beneficiary in number, voting at the last special or general election. Prior to the publication of the notice of intention required hereinabove, the contents of said notice of intention shall be approved by the State Bond Commission. All bonds and other debt obligations issued hereunder for the purpose of providing, developing, securing and improving the water storage, treatment, supply and distribution services and facilities and sanitary and storm sewer collection, disposal, treatment and drainage services and facilities, shall be issued in accordance with the provisions of Subpart B or C, Part I of Chapter 10, Title 33 of the Louisiana Revised Statutes of 1950, and/or any and all other laws of the state pertaining to revenue bonds for public utilities.

(2) All such bonds shall be negotiable instruments, and shall be solely the obligations of the trust and not of the state of Louisiana or the beneficiary. The bonds and the income thereof shall be exempt from all taxation in the state of Louisiana. The bonds shall be payable out of the income, revenues and receipts derived or to be derived from the trust properties and facilities maintained and operated by the trust or received by the trust from any other sources

whatsoever, including, but not by way of limitation, other monies which, by law or contract, may be made available to the trust. In addition to the pledge of income, revenues or receipts to secure said bonds, the trust may further secure their payment by a conventional mortgage upon any or all of the properties constructed or acquired or to be constructed or acquired by it. Such bonds shall be authorized and issued by resolution adopted by a two-thirds vote of the trustees of the trust and shall be of such series, bear such date or dates, mature at such time or times, bear interest at such rate or rates not exceeding the maximum rate at which revenue bonds of the beneficiary can be issued and sold, be in such denominations, be in such form, either coupon or fully registered without coupons, carry such registration and exchangeability privileges, be payable at such place or places, be subject to such terms of redemption and be entitled to such priorities on the income, revenues and receipts of the trust as such resolution may provide. The bonds shall be signed by such officers as the trust shall determine and one of such signatures may be facsimile. Coupon bonds shall have attached thereto interest coupons bearing the facsimile signatures of such officer or officers as the trust shall designate. Any such bonds may be issued and delivered, notwithstanding that one or more of the officers signing such bonds or the officer or officers whose facsimile signature or signatures may be on the coupons shall have ceased to be such officer or officers at the time such bonds shall actually have been delivered. Such bonds may be sold in such manner and from time to time as may be determined by the trust to be most beneficial and the trust may pay all expenses and commissions which it may deem necessary or advantageous in connection with the issuance and sale thereof subject to the provisions of Subsection (K) of this Section.

(3) Bonds and notes issued hereunder are hereby declared legal investments and are hereby made securities in which all insurance companies and associations and other persons carrying on an insurance business, trust companies, banks, bankers, banking associations, savings banks and savings associations, including savings and loan associations, credit unions, building and loan associations, investment companies, executors, administrators, trustees and other fiduciaries, pension, profit-sharing, retirement funds and other persons carrying on a banking business, and all other persons who are authorized to invest in revenue bonds may properly and legally invest funds, including capital in their control or belonging to them. Such bonds and notes are hereby made securities which may properly and legally be deposited with and received by any state or municipal or public officer or any agency or political subdivisions of the state for any purpose for which the deposit of revenue bonds is authorized by law. Nothing contained herein shall authorize the investment of public pension or retirement funds in public trust bonds or other obligations.

B. The trust may in any resolution authorizing the issuance of such bonds enter into such covenants with the future holder or holders of the bonds as to the management and operation of the trust properties or facilities, the imposition and collection of fees and charges for services and facilities furnished by the trust, the disposition of such fees and revenues, the issuance of future bonds and the creation of future liens and encumbrances against such facilities and the revenues therefrom, the carrying of insurance on the facilities, the keeping of books and records, and other pertinent matters, as may be deemed proper by the trust to assure the marketability of the bonds, provided such covenants are not inconsistent with the provisions of this Chapter. Any holder of the bonds or of any of the coupons thereto attached may by appropriate legal action compel performance of all duties required of the trust and officials by this Chapter or by the resolution authorizing the issuance of bonds if not inconsistent with the provisions of this Chapter. If any bond issued hereunder is permitted to go into default as to principal or interest, any court of competent jurisdiction may pursuant to the application of the holder of the bond, appoint a receiver for the facilities of the trust, which receiver shall be under the duty of operating the facilities and collecting and distributing the revenues thereof pledged to the payment of the bonds, pursuant to the provisions and requirements of this Chapter and the resolution authorizing the bonds. As hereinbefore provided, such bonds may in the discretion of the trust be additionally secured by mortgage on all or any part of the trust properties or facilities acquired, constructed, extended or improved with the proceeds thereof, and the trust shall have full discretion to make such provisions as it may see fit for the making and enforcement of such mortgage and the provisions to be therein contained.

C. If more than one series of bonds is issued hereunder payable from the revenues of any facility, priority of lien on such revenues shall depend on the time of delivery of the bonds, each series enjoying a lien prior and superior to that enjoyed by any series of bonds subsequently delivered, except that where provision is made in the proceedings authorizing any issue or series of bonds for the issuance of additional bonds in the future on a parity therewith pursuant to procedures or restrictions provided in such proceedings, additional bonds may be issued in the future on a parity with such issue or series in the manner so provided in such proceedings.

D. The trust may issue bonds under this Chapter payable from revenues to be derived from two or more facilities owned and operated by the trust (whether or not such facilities are related or used in conjunction) for the purpose of constructing, acquiring, extending or improving any one or more of the facilities, which bonds may be additionally secured by a

mortgage upon such facilities; provided, however, in no event shall the bonds constitute a claim against any property or revenue of the trust not specifically pledged or hypothecated for payment of such bonds.

E. Any resolution authorizing the issuance of bonds hereunder shall provide for the creation of a sinking fund into which shall be paid from the revenues of the trust properties and facilities financed by the proceeds of the bonds, subject only to prior payment of the reasonable and necessary expenses of operating and maintaining such properties and facilities, sums fully sufficient to pay the principal and interest of the bonds as the bonds become due and payable, and to create such reserve for contingencies as may be required by the resolution. The monies in the sinking fund shall be applied to the payment of interest on and principal of the bonds or to the purchase of retirement of the bonds prior to maturity in the manner provided in the resolution.

F. The trust may authorize the issuance of refunding bonds of the trust for the purpose of refunding outstanding bonds issued pursuant to this Chapter. Such refunding bonds may either be sold and the proceeds applied to or deposited in escrow for the retirement of the outstanding bonds, or may be delivered in exchange for the outstanding bonds. The refunding bonds shall be authorized in all respects as original bonds are herein required to be authorized, and the authority in authorizing the refunding bonds shall provide for the security of the bonds, the sources from which the bonds are to be paid and for the rights of the holders thereof in all respects as herein provided for other bonds issued under authority of this Chapter. The trust may also provide that the refunding bonds shall have the same priority of lien on the revenues pledged for their payment as was enjoyed by the bonds refunded.

G. It shall be provided in the resolution authorizing any bonds hereunder that such bonds shall recite that they are issued under authority of this Chapter. Such recital shall conclusively import full compliance with all of the provisions of this Chapter and all bonds issued containing such recital shall be incontestable for any cause whatsoever after thirty days from the date of publication of the notice of sale of the bonds as provided for hereinafter.

H. All bond issues of a public trust shall be submitted to and approved by the State Bond Commission prior to the issuance and delivery of said bonds. All bonds of a public trust shall be sold by the State Bond Commission. Provided, bonds of a public trust issued in connection with any projects or facilities of the trust for the provisions of industrial, manufacturing or other economic development facilities and activities shall be sold in accordance with the provisions of R.S. 39:991, et seq., subject to the requirement that a notice of intent to sell such

bonds shall be published at least seven days in advance of the sale date. After approval by the State Bond Commission as required herein and at least seven days prior to the sale of such bonds by the State Bond Commission the public trust shall cause to be published a notice of sale in a newspaper of general circulation in the parish of the beneficiary's situs, or if the state or any state agency be the beneficiary, such publication shall be in the official state journal, and in a financial journal or newspaper containing a section devoted to municipal bond news published in either New Orleans, Louisiana or New York, New York. This notice of sale shall state if any proposals have been made for the purchase of the bonds and that other proposals will be considered and that the proposal most advantageous to the issuer will be accepted at the time of the sale. After adoption of the resolution or other proceedings authorizing the sale of bonds, said resolution or other proceedings shall be published in a newspaper of general circulation in the parish of the beneficiary's situs, or, if the state or any state agency be the beneficiary, such publication shall be in the official state journal. For a period of thirty days from the date of publication of the notice of sale, any person or persons in interest shall have the right to contest the legality of the notice of sale, resolution or other proceedings authorizing the issuance of the bonds and the legality of the bond issue for any cause, after which time no one shall have any cause or right of action to contest the legality of said resolution or other proceedings or of the bonds authorized thereby for any cause whatsoever. If no suit, action or proceedings are begun contesting the validity of the bonds within the thirty days herein prescribed, the authority to issue the bonds and to provide for the payment thereof, the legality thereof and of all of the provisions of the resolution or other proceedings authorizing the issuance of the bonds shall be conclusively presumed, and no court shall have authority to inquire into such matters. Such bonds shall have all the qualities of negotiable instruments under the law merchant and the commercial laws of the state of Louisiana.

I. All bonds, notes or other evidences of indebtedness issued by a public trust shall be special obligations of the trust and shall be deemed to have been issued on behalf of the beneficiary of the trust. In no event shall any bonds, notes or other evidences of indebtedness of a trust constitute an obligation, either general or special, of the state of Louisiana or the beneficiary of the trust within the meaning of any constitutional or statutory provision whatsoever, and the bonds shall contain a recital to that effect.

J. If the bond issue of the trust requires the expenditure of any state funds in the acquisition of any facilities or properties for use by the trust or if any contractual obligation is to be undertaken or incurred by the state in excess of one year in connection therewith, a two-thirds

vote of both the members of the State Bond Commission and the Joint Legislative Committee on the Budget approving such action shall be required as a condition to such action.

K. The trustee or trustees may employ a financial advisor to furnish services in preparing any bond issues for the issuance and may contract for the payment of his services provided however, no continuing fee arrangement with a financial advisor shall exist after the delivery of any bonds and all bond issues upon which the financial advisor provides services shall be sold only at an advertised public sale. All financial advisors fees and any underwriters discount must be approved in writing by the State Bond Commission and the attorney general's office. Any attorneys fees in connection with the financing and the acquisition or construction of the project to be financed shall be subject to approval of the attorney general. Whoever violates this Subsection shall be subject to the imposition of the penalties provided in R.S. 42:264.

L. All bonds heretofore issued under the provisions of Act 135 of the 1970 Regular Session of the Louisiana Legislature are hereby validated, ratified and confirmed and declared to be valid and binding obligations of the public trust in accordance with the terms of their issuance. All proceedings heretofore had in connection with the issuance of such bonds are hereby ratified, validated and confirmed. However, the provisions of this Chapter shall apply to any new or additional bonds issued by any public trusts in existence at the time of the effective date of this Chapter, notwithstanding that said public trusts may have previously issued and have outstanding any bonds and/or notes.

Acts 1970, No. 135, §8; Amended by Acts 1976, No. 699, §1, eff. Aug. 4, 1976; Acts 1978, No. 778, §1; Acts 1986, No. 977, §1, eff. July 14, 1986.