

ORIGINAL SENATE
FILE NO. 0002

ENROLLED ACT NO. 59, SENATE

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2007 GENERAL SESSION

AN ACT relating to fiduciaries; creating the Wyoming Unitrust Act; authorizing the creation of or the conversion of an income trust to a unitrust; authorizing trustees latitude to invest trust funds for the benefit of current and future beneficiaries; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 2-3-901 through 2-3-917 are created to read:

ARTICLE 9
WYOMING UNITRUST ACT

2-3-901. Short title.

This act shall be known and may be cited as the "Wyoming Unitrust Act".

2-3-902. Definitions.

(a) As used in this act:

(i) "Beneficiary" means a person as defined in W.S. 2-3-802(a)(ii);

(ii) "Disinterested person" means a person who is not a "related or subordinate party" as defined in § 672(c) of the Internal Revenue Code, with respect to the person then acting as trustee of the trust and excludes the settlor of the trust and any interested trustee;

(iii) "Income trust" means a trust, created by either an inter vivos or a testamentary instrument, which

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directs or permits the trustee to distribute the net income of the trust to one (1) or more persons, either in fixed proportions or in amounts or proportions determined by the trustee. Notwithstanding the foregoing, no trust that otherwise is an "income trust" shall qualify under this act, if it may be subject to taxation under Internal Revenue Code §§ 2001 or 2501, until the expiration of the period for filing the return therefore, including extensions;

(iv) "Interested distributee" means a person to whom distributions of income or principal can currently be made who has the power to remove the existing trustee and designate as successor a person who may be a "related or subordinate party", as defined in Internal Revenue Code § 672(c) with respect to the distributee;

(v) "Interested trustee" means:

(A) An individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were then to terminate and be distributed;

(B) Any trustee who may be removed and replaced by an interested distributee; or

(C) An individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

(vi) "Total return unitrust" means an income trust which has been created or converted under and meets the provisions of this act;

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(vii) "Trustee" means all persons acting as trustee of the trust, except where expressly noted otherwise, whether acting in their discretion or on the direction of one (1) or more persons acting in a fiduciary capacity;

(viii) "Settlor" means a person as defined in W.S. 4-10-103(a)(xviii);

(ix) "Unitrust amount" means an amount computed as a percentage of the fair market value of the trust;

(x) "This act" means W.S. 2-3-901 through 2-3-917.

2-3-903. Unitrust election by trustee; requirements to make unitrust election.

(a) A trustee, other than an interested trustee, or where two (2) or more persons are acting as trustees, a majority of the trustees who are not interested trustees may, in its sole discretion and without the approval of the district court:

(i) Elect to release the power to adjust described in W.S. 2-3-804 and to convert an income trust to a total return unitrust;

(ii) Reconvert a total return unitrust to an income trust and reinstate the power to adjust described in W.S. 2-3-804; or

(iii) Change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if the following requirements are completed:

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(A) The trustee adopts a written policy for the trust providing:

(I) In the case of a trust being administered as an income trust, that future distributions from the trust will be unitrust amounts rather than net income;

(II) In the case of a trust being administered as a total return unitrust, that future distributions from the trust will be net income rather than unitrust amounts; or

(III) That the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy.

(b) The trustee shall mail notice of the proposed action to all beneficiaries who are receiving, or are entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated at the time the notice is given assuming nonexercise of all powers of appointment.

(c) Notice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(d) The written notice of its intention to take action shall include the following:

(i) The name and mailing address of the trustee;

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(ii) The name and telephone number of a person who may be contacted for additional information;

(iii) A description of the action proposed to be taken and an explanation of the reasons for the action;

(iv) A copy of the trustee's written policy discussed in subparagraph (a)(iii)(A) of this section;

(v) The time within which objections to the proposed action can be made, which shall be at least thirty (30) days from the mailing of the notice of proposed action; and

(vi) The date on or after which the proposed action may be taken or is effective.

(e) A beneficiary may object to the proposed action by mailing a written objection to the trustee stating the objection and the basis or reason for the objection at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(f) If the trustee receives a written objection stating the basis or reason for the objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied.

(g) A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding.

(h) If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for

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the decision, and the trustee's decision not to implement the proposed action shall not itself give rise to liability to any current or future beneficiary.

2-3-904. Unitrust election where there is no trustee other than an interested trustee; requirements to make unitrust election.

(a) If there is no trustee of the trust other than an interested trustee, the interested trustee, or where two (2) or more persons are acting as trustees and are interested trustees, a majority of the interested trustees, in its sole discretion and without the approval of the district court, may:

(i) Elect to release the power to adjust described in W.S. 2-3-804 and to convert an income trust to a total return unitrust;

(ii) Reconvert a total return unitrust to an income trust and reinstate the power to adjust described in W.S. 2-3-804; or

(iii) Change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if the requirements of W.S. 2-3-903(a) through (f) are completed and the trustee appoints a disinterested person who, in its sole discretion but acting in a fiduciary capacity, determines for the trustee:

(A) The percentage to be used to calculate the unitrust amount;

(B) The method to be used in determining the fair market value of the trust; and

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(C) Which assets, if any are to be excluded in determining the unitrust amount.

2-3-905. Unitrust election by beneficiary; ability to request trustee action.

(a) A beneficiary, who is receiving, or is entitled to receive, income under the trust or to receive a distribution of principal if the trust were terminated, may:

(i) Submit to the trustee a written request to convert an income trust to a total return unitrust;

(ii) Reconvert a total return unitrust to an income trust; or

(iii) Change the percentage used to calculate the unitrust amount pursuant to W.S. 2-3-904.

(b) If the trustee declines or fails to act within six (6) months of receipt of the written request, the beneficiary may petition the district court to order the conversion or adjustment.

2-3-906. Settlor created unitrust.

A settlor may create a trust instrument with terms providing that the trust shall be administered as a total return unitrust under this act. A settlor may also create a trust instrument with terms providing that the trust may be administered as either an income trust or as a total return unitrust under this act in the discretion of the trustee or a trust protector appointed in the trust instrument.

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2-3-907. Valuations.

(a) The fair market value of a trust subject to this act shall be determined, at least annually, using a valuation date or dates or averages of valuation dates as are deemed appropriate except that:

(i) The trustee shall not include in the fair market value the value of any residential property or any tangible personal property that the income beneficiary has the right to occupy or use; and

(ii) The trustee shall not limit or restrict any right of the beneficiary to use the excluded property in accordance with the governing instrument.

(b) Assets for which a fair market value cannot be readily ascertained shall be valued using valuation methods as are deemed reasonable and appropriate as determined in the sole discretion of the trustee. The assets may be excluded from valuation in the sole discretion of the trustee, provided all income received with respect to the assets is distributed to the extent distributable in accordance with the terms of the governing instrument.

2-3-908. Unitrust percentages.

The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, in any event not less than three percent (3%) nor more than five percent (5%), taking into account the intentions of the settlor of the trust as expressed in the governing instrument, the needs of the beneficiaries, general economic conditions, projected current earnings and

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appreciation for the trust, and projected inflation and its impact on the trust.

2-3-909. Treatment and allocation of income.

(a) Following the conversion of an income trust to a total return unitrust or upon creation of a total return unitrust by a settlor, the trustee:

(i) Shall treat the unitrust amount as if it were net income of the trust for purposes of determining the amount available, from time to time, for distribution from the trust; and

(ii) May allocate to trust income for each taxable year of the trust, or portion thereof:

(A) Net short-term capital gain described in Internal Revenue Code § 1222(5) for the year, or portion thereof, but only to the extent that the amount so allocated together with all other amounts allocated to trust income for the year, or portion thereof does not exceed the unitrust amount for the year, a portion thereof; and

(B) Net long-term capital gain described in Internal Revenue Code § 1222(7) for the year, or portion thereof, but only to the extent that the amount so allocated together with all other amounts, including amounts described in subparagraph (A) of this paragraph, allocated to trust income for the year, or portion thereof, does not exceed the unitrust amount for the year, or portion thereof.

2-3-910. Administration.

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(a) In administering a total return unitrust, the trustee may, in its sole discretion, but subject to the provisions of the governing instrument, determine:

(i) The effective date of the conversion;

(ii) The timing of distributions, including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases;

(iii) Whether distributions are to be made in cash or in kind or partly in cash and partly in kind;

(iv) If the trust is reconverted to an income trust, the effective date of the reconversion; and

(v) Other administrative issues as may be necessary or appropriate to carry out the purposes of this act.

2-3-911. Treatment of underpayments or overpayments.

In the event of an underpayment to a beneficiary, the trustee shall pay to a beneficiary within a reasonable time, and in the event of an overpayment to a beneficiary, the trustee shall recover from the beneficiary either by repayment by the beneficiary or by withholding from future distributions to the beneficiary, an amount equal to the difference between the amount properly payable and the amount actually paid.

2-3-912. Effect of conversion on governing instrument.

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Conversion to a total return unitrust under the provisions of this act shall not affect any other provision of the governing instrument, if any, regarding distributions of principal.

2-3-913. Situs.

(a) This act shall be construed as pertaining to the administration of a trust and shall be available to any trust that is administered in Wyoming under Wyoming law unless:

(i) The governing instrument reflects an intention that the beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;

(ii) The trust is a trust described in Internal Revenue Code §§ 170(f)(2)(B), 664(d), 2702(a)(3) or 2702(b); or

(iii) The governing instrument expressly prohibits use of this act by specific reference to this act.

2-3-914. Trustee's liability.

Any trustee or disinterested person who in good faith takes or fails to take any action under this act shall not be liable to any person affected by the action or inaction, regardless of whether the person received written notice as provided in this act and regardless of whether the person was under a legal disability at the time of the delivery of the notice. The person's exclusive remedy shall be to obtain an order of the district court directing the trustee to convert an income trust to a total return unitrust, to

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reconvert from a total return unitrust to an income trust or to change the percentage used to calculate the unitrust amount.

2-3-915. Judicial control of discretionary powers.

(a) A court shall not change a trustee's decision to exercise or not to exercise a discretionary power conferred by this act unless it determines that the decision was an abuse of the trustee's discretion. A court shall not determine that a trustee abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.

(b) Where a beneficiary elects to challenge an action or nonaction by a trustee or disinterested party under the powers and authority granted in the party under this act, the beneficiary has the burden of establishing, by a preponderance of the evidence, that the actions or nonactions by a trustee or a disinterested party abused the trustee's or the party's discretion. A beneficiary who fails to state a basis or reason for an objection or fails to prove by a preponderance of the evidence the proposed action should be taken or should not be taken shall be liable to all other beneficiaries for damages and costs associated with the objection.

2-3-916. Limitation of election.

An action shall not be taken under W.S. 2-3-903, 2-3-904 or 2-3-905 more frequently than every two (2) years, unless the district court orders otherwise.

2-3-917. Application.

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This act applies to every trust or decedent's estate existing on July 1, 2007 or created thereafter except as otherwise expressly provided in the will or terms of the trust or in this act.

Section 2. This act is effective July 1, 2007.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk