

Missouri Uniform Trust Code

Technical Amendments

DRAFT 5-03-05

456.1-103. In sections 456.1-101 to 456.11-1106:

(1) "Action," with respect to an act of a trustee, includes a failure to act.

(2) "Ascertainable standard" means a standard relating to an individual's health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code.

~~(23)~~ "Beneficiary" means a person that:

(a) has a present or future beneficial interest in a trust, vested or contingent; or

(b) in a capacity other than that of trustee, holds a power of appointment over trust property.

~~(34)~~ "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in subsection 1 of section 456.4-405.

~~(45)~~ "Conservator" means a person described in subdivision (3) of section 475.010, RSMo. This term does not include a conservator ad litem.

~~(56)~~ "Conservator ad litem" means a person appointed by the court pursuant to the provisions of section 475.097, RSMo.

~~(67)~~ "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

~~(78)~~ "Financial institution" means a non-foreign bank, savings and loan or trust company chartered, regulated and supervised by the Missouri division of finance, the

office of the comptroller of the currency, the office of thrift supervision, the National Credit Union Administration, or the Missouri division of credit union supervision. The term "non-foreign bank" shall mean a bank that is not a foreign bank within the meaning of subdivision (1) of section 361.005, RSMo.

(89) "Guardian" means a person described in subdivision (6) of section 475.010, RSMo. The term does not include a guardian ad litem.

(910) "Interested persons" include beneficiaries and any others having a property right in or claim against a trust estate which may be affected by a judicial proceeding. It also includes fiduciaries and other persons representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(1011) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

(112) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as in effect on January 1, 2005 or as later amended.

(123) "Jurisdiction," with respect to a geographic area, includes a State or country.

(134) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(145) "Permissible distributee" means a beneficiary who is currently eligible to receive distributions of trust income or principal, whether mandatory or discretionary.

(156) "Power of withdrawal" means a presently exercisable ~~general power of a~~ beneficiary to withdraw assets from the trust without the consent of the trustee or any other person of appointment other than a power which is exercisable only upon consent of the trustee or a person holding an adverse interest.

(167) "Principal place of administration" of a trust is the trustee's usual place of business where the records pertaining to the trust are kept, or the trustee's residence if the trustee has no such place of business, unless otherwise designated by the terms of the trust as provided in section 456.1-108. In the case of cotrustees, the principal place of administration is, in the following order of priority:

(a) The usual place of business of the corporate trustee if there is but one corporate cotrustee;

(b) The usual place of business or residence of the trustee who is a professional fiduciary if there is but one such trustee and no corporate cotrustee; or

(c) The usual place of business or residence of any of the cotrustees.

(178) "Professional fiduciary" means an individual who represents himself or herself to the public as having specialized training, experience or skills in the administration of trusts.

(189) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

(1920) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

(a) is a permissible distributee;

(b) would be a permissible distributee if the interests of the permissible distributees described in paragraph (a) of this subdivision terminated on that date; or

(c) would be a permissible distributee if the trust terminated on that date.

(201) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(242) "Revocable," as applied to a trust, means that the settlor has the legal power to revoke the trust without the consent of the trustee or a person holding an adverse interest, regardless of whether the settlor has the mental capacity to do so in fact. ~~revocable by the settlor.~~

(223) "Settlor" means a person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion pursuant to the terms of the trust.

(234) "Sign" means, with present intent to authenticate or adopt a record:

(a) to execute or adopt a tangible symbol; or

(b) to attach to or logically associate with the record an electronic sound, symbol, or process.

(245) "Spendthrift provision" means a term of a trust which restrains either the voluntary or involuntary transfer or both the voluntary and involuntary transfer of a beneficiary's interest.

(256) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the

jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a State.

(267) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

(278) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

(289) "Trustee" includes an original, additional, and successor trustee, and a cotrustee.

Missouri Comment

Many new definitions have been added to the MUTC's definitional section. This is due to other changes made to the UTC. Some additional definitions for terms used in the UTC but not defined have been added. Subsections (4) and (8), respectively, defining the terms Conservator and Guardian, have been changed to conform to the Chapter 475 R.S.Mo. definitions of those two offices. The MUTC also relied upon the office of conservator ad litem established under Chapter 475 and that term is defined in Subsection (5). Subsection (7) defines "Financial institution" used throughout the MUTC with reference to other state statutes. Subsection (11) defines the term "Internal Revenue Code" to avoid its iteration throughout the MUTC.

Subsection (14) is new. This subsection was inserted as the term "Permissible distributee" is used quite often in the UTC and was undefined. That term was also used in the MUTC to modify the UTC provisions of 456.1-105.2(8) governing mandatory provisions for notice to a certain class of beneficiaries.

The definitions in Subsection (9) ("interested person"), Subsection (16) ("principal place of administration"), and Subsection (17) (Professional fiduciary") were all inserted due to the decision to retain the prior registration of trust statutes (Sections 456.400 to 456.430 R.S.Mo.). These sections are retained in the first part of Chapter 456. The definitions in the old registration of trust provisions have been placed in this section and in Section 456.2-202. The concepts from these provisions are used to establish jurisdiction and venue in Article 2 of the MUTC.

Subsection (15), the UTC definition of "power of withdrawal," was changed to avoid use of the term "general exercisable power of appointment" because its meaning is often identified with its federal estate tax definition. A power of withdrawal is not a

power if exercisable in conjunction with anyone, whether the person be a trustee, a person with an adverse interest, or a person with no adverse interest.

Subsection (21) (UTC Subsection (13)) defines the term "revocable" as it is applied to a trust. The UTC definition of revocable was altered to make clear that a power to revoke held by a settlor with questionable or no capacity is still considered a power to revoke. The Subcommittee determined that it was not necessary to define the term "irrevocable" as it is applied to a trust, because a trust that is not "revocable" is "irrevocable."

Subsection (20) and (23) were inserted in conformance with UTC changes regarding authentication of documents.

456.1-105. 1. Except as otherwise provided in the terms of the trust, sections 456.1-101 to 456.11-1106 governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

2. The terms of a trust prevail over any provision of sections 456.1-101 to 456.11-1106 except:

- (1) the requirements for creating a trust;
- (2) the duty of a trustee to act in good faith and in accordance with the purposes of the trust;
- (3) the requirement that a trust and its terms be for the benefit of its beneficiaries;
- (4) the power of the court to modify or terminate a trust under section 456.4-410, subsection 3 of section 456.4-411B, and sections 456.4-412 to 456.4-416;
- (5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in sections 456.5-501 to 456.5-507;
- (6) the power of the court under section 456.7-702 to require, dispense with, or modify or terminate a bond;

(7) the power of the court under subsection 2 of section 456.7-708 to adjust a trustee's compensation specified in the terms of the trust which is unreasonably low or high;

(8) the duty to notify (a) at least one of the permissible distributees who is designated to receive notice by the terms of an irrevocable trust and who is an ancestor or lineal descendant of other permissible distributees, and (b) any other permissible distributee who is not an ancestor or lineal descendant of that designated distributee; who have has attained twenty-one years of age of the existence of the trust and of ~~their~~ the permissible distributee's rights to request trustee's reports and other information reasonably related to the administration of the trust;

(9) the duty to respond to the request of a qualified beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust;

(10) the effect of an exculpatory term under section 456.10-1008;

(11) the rights under sections 456.10-1010 to 456.10-1013 of a person other than a trustee or beneficiary;

(12) periods of limitation for commencing a judicial proceeding;

(13) the power of the court to take such action and exercise such jurisdiction as may be necessary in the interests of justice; and

(14) the venue for a judicial proceeding as provided in section 456.2-204.

Missouri Comment

Subsection 1 states that all the provisions of the MUTC are default only and are subject to override by the terms of the trust, except as provided in Subsection 2. Subsection 2 sets forth the 14 provisions of the MUTC that cannot be altered by the terms of the trust. The governing document overrides a provision of the MUTC if a provision of

the governing document specifically overrides a provision of the MUTC or a provision of the governing document is inconsistent with a MUTC provision.

Three changes were made to these mandatory rules by the MUTC. First, Subsection 2(4) was changed so that the power of a court to modify or terminate a trust with the consent of all adult beneficiaries under MUTC Section 456.4-411B.1 can be overridden by the provisions of the governing instrument. While it was determined that the liberal Missouri rule in prior Section 456.590.2 regarding termination or modification of trusts on consent of all adult beneficiaries should be retained, it was also felt that the rule was so liberal that it could result in the frustration of the intent of a settlor. Thus it was decided that a settlor should have the power to override the ability of adult beneficiaries to modify or terminate a trust without regard to the trust's material purpose.

Second, Subsection 2(8) was changed from the UTC. Under the UTC, qualified beneficiaries are entitled to certain information about a trust under Section 813(b) at such time as the trust becomes irrevocable or a trustee accepts the trusteeship of a trust. UTC Section 105(b)(8) provides that a settlor cannot override this notice requirement as to any qualified beneficiary over age 25. Qualified beneficiary includes those remainder beneficiaries who would receive trust assets if the trust terminated at the time notice were sent. It was felt that there are situations where a settlor should be able to prevent some of qualified beneficiaries from receiving notice. The MUTC amended the UTC provisions to allow a settlor to override the mandatory notice provisions of Section 456.813.2, except with respect to a permissible beneficiary over age 21. Permissible beneficiaries are only beneficiaries with a current interest in a trust. Age 21 was chosen over age 25, as settlors usually consider trust beneficiaries to be mature enough at age 21 to be involved in trust matters.

The third change also relates to UTC Section 813. That section also provides that any beneficiary may receive certain information on request. UTC Subsection 105(b)(9) provides that this section cannot be overridden by the settlor in the governing instrument. The Subcommittee decided that a settlor should be able to waive this provision with respect to beneficiaries with remote interests. This provision was thus made applicable only to qualified beneficiaries, MUTC section 456.1-105.2(9).

456.1-110. 1. A specified charitable organization or a person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in sections 456.4-408 or 456.4-409 has the rights of a qualified beneficiary under sections 456.1-101 to 456.11-1106.

2. Except with respect to section 456.4-411B and section 456.1-108, the attorney general of this state has the rights of a qualified beneficiary with respect to an interest in a charitable trust having its principal place of administration in this state if:

(1) a specified charitable organization is not entitled to a distribution from such interest; and

(2) distributions from the interest are payable in a manner that, if payable to an identifiable charitable entity, would qualify that entity as a specified charitable organization.

3. In this section a "specified charitable organization" means an identifiable charitable entity, the interest of which is not otherwise subject to any power of appointment or other power of termination, that, on the date that entity's qualification is determined:

(a) is a permissible distributee;

(b) would be a permissible distributee if the interests of the permissible distributees terminated on that date; or

(c) would be a permissible distributee if the trust terminated on that date.

4. No provision of this section shall limit the authority of the attorney general of this state to supervise and control charitable organizations.

Missouri Comment

UTC Section 110 provides that other beneficiaries and entities are treated as qualified beneficiaries under certain circumstances. Subsection (a) provides that any beneficiary can request notice to which a qualified beneficiary is entitled and the trustee must send that beneficiary that notice. The Subcommittee rejected this rule, and the MUTC does not contain a similar provision. After a careful analysis of the interplay between the definitions of beneficiary, qualified beneficiary, and the notice provisions of the UTC, most notably those found in UTC Section 813, the Subcommittee determined that the MUTC provides beneficiaries with significant and adequate opportunities to obtain the information necessary to protect their interest in trusts without this UTC provision.

Subsection (b) and (c) of UTC Section 110 appears to confer upon any charitable beneficiary and the Missouri Attorney General the rights of a qualified beneficiary in any charitable trust, no matter how remote or contingent the charitable interests. MUTC Section 456.1-110.3 provides a definition of “specified charitable organization” that limits charities or charitable interests that are treated as qualified beneficiaries to those who have a current interest in the trust or would be a remainder beneficiary if the trust terminated at the time notice is given. A named charitable organization is not a “specified charitable organization” if its interest is subject to anyone’s power to revoke that interest. For example, if a qualified charitable remainder trust confers upon the settlor a power to change the named charitable remainder beneficiaries of the trust, then the charitable organizations named in the trust instrument are not “specified charitable organizations.”

MUTC Section 456.1-110.2 was limited to conform to Missouri case law. In Missouri a trust is not “charitable” in the sense that the Missouri Attorney General has any involvement unless “the trust is public and indefinite to the point that no individuals or corporations have the right to bring such an action.” *State ex rel. Champion v. Holden*, 953 S.W.2d 151 (Mo. App. S.D. 1997). Thus, the Missouri Attorney General is not entitled to notice as a qualified beneficiary unless a trust interest is for the benefit of some broad charitable purposes and lacks a specific charitable beneficiary to represent that interest.

MUTC Subsection 4 was added to make it clear that the Attorney General’s authority to supervise and enforce charitable trusts is not affected by the provisions of this section.

456.2-204. 1. Venue for judicial proceedings involving ~~the internal affairs of a~~ trust administration shall be:

(1) For a trust then registered in this State, in the probate division of the circuit court where the trust is registered; or

(2) For a trust not then registered in this State, in the probate division of the circuit court where the trust could properly be registered; or

(3) For a trust not then registered in this State and which cannot properly be registered in this State, in accordance with the rules of civil procedure.

2. Where a judicial proceeding under this chapter could be maintained in more than one place in this state, the court in which the proceeding is first commenced has the exclusive right to proceed.

3. If proceedings concerning the same trust are commenced in more than one court of this State, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the court in which the proceeding was first commenced determines that venue is properly in another court, it shall transfer the proceeding to the other court.

4. If a court finds that in the interest of justice a proceeding or a file should be located in another court of this State, the court making the finding may transfer the proceeding or file to the other court.

456.3-301. 1. Notice to a person who may represent and bind another person under sections 456.3-301 to 456.3-305 has the same effect as if notice were given directly to the other person.

2. The consent of a person who may represent and bind another person under sections 456.3-301 to 456.3-305 is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

3. Except as otherwise provided in sections 456.4-411A and 456.6-602, a person who under sections 456.3-301 to 456.3-305 may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

4. A settlor may not represent and bind a beneficiary under sections 456.3-301 to 456.3-305 with respect to the termination or modification of a trust under Section 456.4-411A.

456.3-304.1. Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.

2. Unless otherwise represented, a beneficiary who is not a qualified beneficiary may be represented by and bound by a qualified beneficiary having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented, in any court proceeding under section 456.4-412, or in a nonjudicial settlement agreement entered into pursuant to section 456.1-111 in lieu of a such court proceeding.

Missouri Comment

The MUTC made ~~minor~~ changes to UTC Section 304. The representation provisions regarding conservators and guardians were changed to reflect the structure of Chapter 475, which allows the appointment of a conservator ad litem in certain circumstances. The Subcommittee moved the rule regarding representation by a parent to a more logical location in the sequence, without intending any substantive change. New subsection 2 allows qualified beneficiaries to represent all other beneficiaries in an action under section 456.4-412. That section which allows changes in administrative provisions was felt to be underutilized because of the reluctance to involve remote trust beneficiaries.

456.4-401. A trust may be created by:

(1) transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;

- (2) declaration by the owner of property that the owner holds identifiable property as trustee;
- (3) exercise of a power of appointment in favor of a trustee; or
- (4) a court under sections 475.092, 475.093, ~~or~~ 511.030, RSMo, or 42 U.S.C. section 1396p(d)(4).

Missouri Comment

Subsection (4) has been altered to include creation of Medicaid related trusts under 42 U.S.C. section 1396p(d)(4).

456.4-402. 1. Other than for a trust created by a court under sections 475.092, 475.093, ~~or~~ 511.030, RSMo, or 42 U.S.C. section 1396p(d)(4), a trust is created only if:

- (1) the settlor has capacity to create a trust;
- (2) the settlor indicates an intention to create the trust;
- (3) the trust has a definite beneficiary or is:
 - (a) a charitable trust;
 - (b) a trust for the care of an animal, as provided in section 456.4-408; or
 - (c) a trust for a noncharitable purpose, as provided in section 456.4-409;
- (4) the trustee has duties to perform; and
- (5) the same person is not the sole trustee and sole beneficiary.

2. A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

3. A power in a trustee to select a beneficiary from an indefinite class is valid.

If the power is not exercised within a reasonable time, the power fails and the property

subject to the power passes to the persons who would have taken the property had the power not been conferred.

Missouri Comment

Subsection 1 has been altered to exclude creation of a Medicaid related trusts under 42 U.S.C. section 1396p(d)(4) for the requirements of this section.

456.4-411A.1. 456.4-411A.1. Except for a trust established by a court under sections 475.092, 475.093, RSMo, or 42 U.S.C. section 1396p(d)(4), ~~A~~ a noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, ~~without~~ with court approval, even if the modification or termination is inconsistent with a material purpose of the trust. A settlor's power to consent to a trust's termination or modification may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's conservator with the approval of the court supervising the conservatorship if an agent is not so authorized; or by the settlor's conservator ad litem with the approval of the court if an agent is not so authorized and a conservator has not been appointed.

2. Upon termination of a trust under subsection 1 of this section, the trustee shall distribute the trust property as agreed by the beneficiaries.

3. If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection 1 of this section, the modification or termination may be approved by the court if the court is satisfied that:

(1) if all of the beneficiaries had consented, the trust could have been modified or terminated under subsection 1 of this section; and

(2) the interests of a beneficiary who does not consent will be adequately protected.

456.4-411B. 1. When all of the adult beneficiaries having the capacity to contract consent, the court may, upon finding that the interest of any nonconsenting beneficiary will be adequately protected, modify the terms of a noncharitable irrevocable trust so as to reduce or eliminate the interests of some beneficiaries and increase those of others, change the times or amounts of payments and distributions to beneficiaries, or provide for termination of the trust at a time earlier or later than that specified by its terms. The court may at any time upon its own motion appoint a representative pursuant to section 456.3-305 to represent a nonconsenting beneficiary. The court shall appoint such a representative upon the motion of any party, unless the court determines such an appointment is not appropriate under the circumstances.

2. Upon termination of a trust under subsection 1 of this section, the trustee shall distribute the trust property as directed by the court.

3. If a trust cannot be terminated or modified under subsection 1 of this section because not all adult beneficiaries having capacity to contract consent or the terms of the trust prevent such modification or termination, the modification or termination may be approved by the court if the court is satisfied that the interests of a beneficiary, other than the settlor, who does not consent will be adequately protected, modification or termination will benefit a living settlor who is also a beneficiary, and:

(1) in the case of a termination, the party seeking termination establishes that continuance of the trust is not necessary to achieve any material purpose of the trust; or

(2) in the case of a modification, the party seeking modification establishes that the modification is not inconsistent with a material purpose of the trust, and the modification is not specifically prohibited by the terms of the trust.

4. This section shall apply to trusts created under trust instruments that become irrevocable on or after January 1, 2005. The provisions of section 456.590 shall apply to all trusts that were created under trust instruments that become irrevocable prior to January 1, 2005.

Missouri Comment

UTC Section 411 provides for non-judicial termination or modification of trusts upon consent of all beneficiaries and the settlor (Section 411(a)) and judicial modification or termination upon consent of all beneficiaries if “not inconsistent” with a material purpose of the trust (Section 411(b)). This last rule is a variant of the so-called *Clafin* rule based on the case of *Clafin v. Clafin*, 149 Mass. 19, 20 N.E.454 (1889). In 1983 Missouri statutorily rejected the *Clafin* rule with the enactment of Section 456.590.2 and chose to allow adult beneficiaries to modify trusts by consent so long as beneficiaries not directly represented received benefit.

Section 456.4-411A has been altered so that special needs trusts, including Medicaid related trusts, created under sections 475.092, 475.093, RSMo, or 42 U.S.C. section 1396p(d)(4) cannot be terminated or modified under this section.

There was no significant opposition to Section 456.590.2 R.S.Mo. or support that the *Clafin* rule should be restored. Section 456.590.2 has been widely used, but its use has produced only two reported cases in 18 years, *Hamerstrom v. Commerce Bank Of Kansas City, N.A.*, 808 S.W.2d 434 (Mo. App. W.D. 1991) and *In re Nitsche* 46 S.W. 3d 682 (Mo.App. S.D. 2001). Accordingly, the substance of section 456.590.2 was incorporated into MUTC Section 456.4-411B.1, continuing Missouri’s rejection of the *Clafin* rule. Because of the extensive rewriting of this UTC section, the original statute has been split into two Sections, 456.4-411A that covers modification or termination with consent of the settlor and the beneficiaries and Section 456.4-411B that covers modification or termination with consent of all beneficiaries only.

Experience with Section 456.590.2 R.S.Mo., however, raised practical concerns that are addressed in MUTC Section 456.4-411B.1. First, there is concern whether there has been a true analysis of the benefit of the variation or termination to the minor, unborn, or unascertained beneficiaries in actions brought under Section 456.590.2. Assuming all adult beneficiaries have consented, this is the only true statutory

requirement for a successful action. Faced with the consent of all adult beneficiaries, a judge may view the matter as similar to the entry of a consent judgement.

Those classes of beneficiaries who are either unrepresented or deemed represented by others will almost invariably be the remainder beneficiaries whose interests may be extinguished by a trust termination. To address this concern MUTC Section 456.4-411B.1 requires that a court find that the interests of the minor, unborn, and unascertained beneficiaries be adequately protected by any proposed variation or termination. This should afford parties to a section 456.590.2 action and the court more flexibility in crafting remedies instead of applying a rigid “benefits” test to terminations or modifications.

The last sentence of Section 456.411B.1 provides another measure of protection for minor, unborn, and unascertained beneficiaries. The court is required to appoint a representative under Section 456.3-305 upon the motion of any party, unless the court finds good cause not to do so. Of course, a court always has authority to appoint a representative on its own motion.

The provisions of Section 456.411B.3 restate the common law of Missouri in effect prior to its modification by Section 456.590.2 in 1981 and that still applies in all contexts, except where there is consent of all adult beneficiaries to termination or modification in the circumstances set forth in the statute and a court finds termination or modification complies with the provisions of Section 456.411B.1. The Subcommittee felt that this statute, consistent with prior Missouri law, would not allow a modification of a provision that the settlor clearly intended to be a part of the terms of the trust.

The UTC language in this section has been modified to make it clear that the party seeking modification or termination has the burden of proof to show that no material purpose of the settlor is affected by the proposed actions. The UTC’s presumption that a spendthrift clause does not constitute a material purpose of the settlor has been removed. Thus, whether a spendthrift clause constitutes a material purpose of the settlor is for the court to establish on a case-by-case basis.

Section 456.4-411B is **prospective only** and Section 456.590 has been retained and is applicable to trusts that become irrevocable prior to January 1, 2005. This was in response to attorneys who felt that that this section would make a significant change in the law. The drafters view is that this section merely clarifies prior law and codifies existing law and does not create a significant change.

456.5-501. Except as otherwise provided in sections 456.5-502 to 456.5-507, to
the extent a beneficiary’s interest is not ~~protected by~~ subject to a spendthrift provision, an assignee or a judgment creditor of the beneficiary may, without court order, reach the

beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

Missouri Comment

This section was changed to make it clear that a beneficiary's interest in a trust that does not contain a spendthrift clause may not be subject to claims of creditor's or others. For example, discretionary interests in trusts are protected from claims under 456.5-504.

456.5-504. 1. A beneficiary's interest in a trust that is subject to the trustee's discretion does not constitute an interest in property even if the discretion is expressed in the form of a standard of distribution or the beneficiary is then serving as a trustee or co-trustee. A creditor or other claimant may not attach present or future distributions from such an interest, obtain an order from a court ordering the judicial sale of the interest or order compelling the trustee to make distributions, or reach the interest by any other means, even if the trustee has abused the discretion. ~~Except as otherwise provided in section 456.5-503, whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee's discretion, even if:~~

~~(1) the discretion is expressed in the form of a standard of distribution; or~~

~~_____ (2) the trustee has abused the discretion.~~

2. This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

3. This section applies whether or not an interest is subject to a spendthrift provision.

4. For purposes of Sections 456.5-501 to 456.5-507, a beneficiary's discretionary interest in trust income or principal that is not limited by a distribution standard is not a property interest and present or future distributions to or for the benefit of the beneficiary can not be attached by a creditor, assignee, or any other claimant by judicial sale, by obtaining an order compelling the trustee to make distributions from the trust, or by any other means, regardless of whether the trust instrument includes a spendthrift provision.

Missouri Comment

UTC Section 504 provided that a creditor of a beneficiary cannot compel distributions from a discretionary trust (with or without spendthrift protection) even if the trust contains a distribution standard or the trustee has abused its discretion. The UTC section also contains exemptions to this rule for children and former spouses that are similar to the exceptions to spendthrift protection found in UTC Section 503. MUTC Section 456.5-504 retains the general UTC rule but deletes the exceptions because Missouri law as set forth in MUTC Section 456.5-503 already covers attachment of a beneficiary's income interest in a discretionary trust. This section was also altered to clearly state present Missouri law that discretionary interests in trusts are not property for any purposes, including bankruptcy, dissolution of marriage, Medicaid claims, or any other claims of creditors or others.

456.5-506.1 In this section, "mandatory distribution" means a distribution of income or principal which the trustee is required to make to a beneficiary under the terms of the trust, including a distribution upon termination of the trust. The term does not include a distribution subject to the exercise of the trustee's discretion even if (1) the discretion is expressed in the form of a standard of distribution, or (2) the terms of the trust authorizing a distribution couple language of discretion with language of direction.

2. Whether or not a trust contains a spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution of income or principal, including a

distribution upon termination of the trust, if the trustee has not made the distribution to the beneficiary within a reasonable time after the designated distribution date.

<INSERT UTC COMMENT>

- 456.7-703. 1. Cotrustees shall act by majority decision.
2. If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.
3. A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.
4. If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.
5. A trustee may ~~not~~ delegate to a cotrustee the performance of a function in accordance with subsection 1 of section 456.8-807 ~~the settlor reasonably expected the trustees to perform jointly~~. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.
6. Except as otherwise provided in subsection 7 of this section, a trustee who does not join in an action of another trustee is not liable for the action.
7. Each trustee shall exercise reasonable care to:
- (1) prevent a cotrustee from committing a serious breach of trust; and

(2) compel a cotrustee to redress a serious breach of trust.

8. A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

456.8-813. 1. A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.

2. A trustee:

(1) upon request of a beneficiary, shall promptly furnish to the beneficiary a copy of the trust instrument;

(2) within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;

(3) within sixty days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report as provided in subsection 3; and

(4) shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.

~~Subdivision (2) and (3) of this subsection do not apply to a trust that became irrevocable before January 1, 2005.~~

3. A trustee shall send to the permissible distributees of trust income or principal, and to other beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a co-trustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative, conservator, or guardian may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

4. A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

5. A trustee may charge a reasonable fee to a beneficiary for providing information under this section.

6. The request of any beneficiary for information under any provision of this section shall be with respect to a single trust that is sufficiently identified to enable the trustee to locate the records of the trust.

7. If the trustee is bound by any confidentiality restrictions with respect to an asset of a trust, any beneficiary who is eligible to receive information pursuant to this section about such asset shall agree to be bound by the confidentiality restrictions that bind the trustee before receiving such information from the trustee.

8. This section 456.8-813 does not apply to a trust created under a trust instrument that became irrevocable before January 1, 2005 and law in effect prior to January 1, 2005 regarding the subject matter of this section shall continue to apply to those trusts.

Missouri Comment

This section clarifies an area of Missouri Law that lacks definition and authority. The requirement that first-line remainder beneficiaries be given notice of various events and be supplied with specified information without having to request that information is probably a change of Missouri law, *Siefert v. Leonhardt*, 975 S.W.2d 489 (Mo. App. E.D. 1998). This section is certainly a substantial change from the prior Missouri statutory provision that only required an accounting to income beneficiaries, prior Section 456.233 R.S.Mo.

The provisions of subsection 1 that states a trustee has a duty to keep the qualified beneficiaries reasonably informed about the administration of a trust is a general statement of law, the specific requirements of which are specified in the other subsections of section 456.8-813. Subsection 1 does not impose an independent duty on a trustee separate and apart from those other provisions of this section.

The basic notice requirements of the UTC have been kept intact in MUTC Section 456.8-813. However, the MUTC adds four new provisions. First, ~~the last sentence of section MUTC 456.8-813.28 provides that the entire section 456.8-813.2(2) and 456.8-813.2(3) are~~ **is prospective only** and does not apply to a trust that is irrevocable on the effective date of the MUTC. While this result may be inherent in the UTC provisions, the Subcommittee felt that there was enough ambiguity so that an explicit provision was appropriate. No inference should be drawn about the notice requirements of law applicable prior to January 1, 2005 by reason of the prospective nature of this section.

Second, MUTC section 456.8-813.5 provides that a trustee may charge a reasonable fee for providing information under section 456.8-813. In this context a reasonable fee means that the charge must be reasonably related to the costs to the trustee for supplying the information requested. Third, section 456.8-813.6 provides that any request for information has to be made with respect to a specific trust and must contain sufficient information for the trustee to be able to locate the trust records.

Fourth, a beneficiary who receives an asset that is subject to a confidentiality restriction is bound by that restriction. This should prevent a beneficiary from circumventing confidentiality restrictions that apply to an outright owner of restricted property. Also, this should reduce the chance that a trustee would face the difficult choice of being sued for violating the confidentiality agreement or for failure to provide

information to the beneficiary.

456.8-814. 1. Notwithstanding the ~~breadth of discretion granted to a trustee in the terms of the trust, including the~~ use of such terms as "absolute," "sole," or "uncontrolled," in the exercise of discretion under an ascertainable standard, the trustee shall exercise a such discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

2. Subject to subsection 4 of this section, and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

(1) a person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard ~~relating to the trustee's individual health, education, support, or maintenance within the meaning of section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code;~~

(2) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person; and

(3) for purposes of this subsection 2 of this section, the term "trustee" shall include a person who is deemed to have any power of a trustee, whether because such person has the right to remove or replace any trustee, because a reciprocal trust or power doctrine applies, or for any other reason.

3. A power whose exercise is limited or prohibited by subsection 2 may be exercised by a majority of the remaining trustees whose exercise of the power is not so

limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

4. Subsection 2 of this section does not apply to:

(1) a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in section 2056(b)(5) or 2523(b)(5) of the Internal Revenue Code was previously allowed;

(2) any trust during any period that the trust may be revoked or amended by its settlor; or

(3) a trust if contributions to the trust qualify for the annual exclusion under section 2503(c) of the Internal Revenue Code.

<INSERT MISSOURI COMMENT>

456.8-816. Without limiting the authority conferred by section 456.8-815, a trustee may:

(1) collect trust property and accept or reject additions to the trust property from a settlor or any other person;

(2) acquire or sell property in divided or undivided interests, for cash or on credit, at public or private sale;

(3) exchange, partition, or otherwise change the character of trust property;

(4) deposit trust money in an account in a financial institution;

(5) borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust;

(6) with respect to an interest in a proprietorship, partnership, limited liability company, business trust, corporation, or other form of business or enterprise, continue the business or other enterprise and take any action that may be taken by shareholders, members, or property owners, including merging, dissolving, or otherwise changing the form of business organization or contributing additional capital;

(7) with respect to stocks or other securities, exercise the rights of an absolute owner, including the right to:

(a) vote, or give proxies to vote, with or without power of substitution, or enter into or continue a voting trust agreement;

(b) hold a security in the name of a nominee or in other form without disclosure of the trust so that title may pass by delivery;

(c) pay calls, assessments, and other sums chargeable or accruing against the securities, and sell or exercise stock subscription or conversion rights; and

(d) deposit the securities with a depository or other financial institution;

(8) with respect to an interest in real property, construct, or make ordinary or extraordinary repairs to, alterations to, or improvements in, buildings or other structures, demolish improvements, raze existing or erect new party walls or buildings, subdivide or develop land, dedicate land to public use or grant public or private easements, and make or vacate plats and adjust boundaries;

(9) enter into a lease for any purpose as lessor or lessee, including a lease or other arrangement for exploration and removal of natural resources, with or without the option to purchase or renew, for a period within or extending beyond the duration of the trust;

(10) grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property, including an option exercisable beyond the duration of the trust, and exercise an option so acquired;

(11) insure the property of the trust against damage or loss and insure the trustee, the trustee's agents, and beneficiaries against liability arising from the administration of the trust;

(12) abandon or decline to administer property of no value or of insufficient value to justify its collection or continued administration;

(13) with respect to possible liability for violation of environmental law:

(a) inspect or investigate property the trustee holds or has been asked to hold, or property owned or operated by an organization in which the trustee holds or has been asked to hold an interest, for the purpose of determining the application of environmental law with respect to the property;

(b) take action to prevent, abate, or otherwise remedy any actual or potential violation of any environmental law affecting property held directly or indirectly by the trustee, whether taken before or after the assertion of a claim or the initiation of governmental enforcement;

(c) decline to accept property into trust or disclaim any power with respect to property that is or may be burdened with liability for violation of environmental law;

(d) compromise claims against the trust which may be asserted for an alleged violation of environmental law; and

(e) pay the expense of any inspection, review, abatement, or remedial action to comply with environmental law;

(14) pay or contest any claim, settle a claim by or against the trust, and release, in whole or in part, a claim belonging to the trust;

(15) pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and other expenses incurred in the administration of the trust;

(16) exercise elections with respect to federal, state, and local taxes;

(17) select a mode of payment under any employee benefit or retirement plan, annuity, or life insurance payable to the trustee, exercise rights thereunder, including exercise of the right to indemnification for expenses and against liabilities, and take appropriate action to collect the proceeds;

(18) make loans out of trust property, including loans to a beneficiary on terms and conditions the trustee considers to be fair and reasonable under the circumstances, and the trustee has a lien on future distributions for repayment of those loans;

(19) pledge trust property to guarantee or secure loans made by others to a beneficiary;

(20) appoint a trustee to act in another jurisdiction with respect to trust property located in the other jurisdiction, confer upon the appointed trustee all of the powers and duties of the appointing trustee, require that the appointed trustee furnish security, and remove any trustee so appointed;

(21) pay an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated, by paying it directly to the beneficiary or applying it for the beneficiary's benefit, or by:

(a) paying it to the beneficiary's conservator or, if the beneficiary does not have a conservator, the beneficiary's guardian;

(b) paying it to the beneficiary's custodian under the Missouri Transfers to Minors Law under sections 404.005 to 404.094, RSMo, or a personal custodian under sections 404.400 to 404.650, RSMo, and, for that purpose, creating a custodianship or custodial trust;

(c) if the trustee does not know of a conservator, guardian, custodian, or custodial trustee, paying it to an adult relative or other person having legal or physical care or custody of the beneficiary, to be expended on the beneficiary's behalf; or

(d) managing it as a separate fund on the beneficiary's behalf, subject to the beneficiary's continuing right to withdraw the distribution;

(22) on distribution of trust property or the division or termination of a trust, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the trust property for those purposes, and adjust for resulting differences in valuation;

(23) resolve a dispute concerning the interpretation of the trust or its administration by mediation, arbitration, or other procedure for alternative dispute resolution;

(24) prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties;

(##) To engage and compensate attorney, accountants, investment advisors, or other agents, and to delegate to them trustee's duties and functions in accordance with the provisions of Section 456.8-807;

(25) sign and deliver contracts and other instruments that are useful to achieve or facilitate the exercise of the trustee's powers.

(26) on termination of the trust, exercise the powers appropriate to wind up the administration of the trust and distribute the trust property to the persons entitled to it; and

(27) To invest and reinvest trust assets in accordance with sections 469.900 to 469.913, RSMo; including investing and reinvesting in securities or obligations of any state or its political subdivisions, including securities or obligations that are underwritten by the trustee or an affiliate of the trustee or a syndicate in which the trustee or an affiliate of the trustee is a member which meet the standards established by the division of finance pursuant to subsection 5 of section 362.550, RSMo.

475.092. 1. If it is established in a proceeding conducted in ~~the~~ a manner prescribed for similar to a proceeding for the appointment of a conservator of the estate that a person is a minor or disabled, or is blind or has a physical or mental disability as defined under state or federal law, the court, without appointing a conservator, may authorize, direct or ratify any transaction necessary or desirable to achieve any security, service, or care arrangement meeting the foreseeable needs of the ~~minor or disabled~~ person.

2. When it has been established in such a proceeding that the person is a minor or disabled, or is blind or has a physical or mental disability as defined under state or federal law, the court, without appointing a conservator, may authorize, direct or ratify any contract or other transaction relating to the ~~minor or disabled~~ person's financial affairs or involving such person's estate if the court determines that the transaction is in the best interests of the ~~minor or disabled~~ person and if such action would otherwise be within the power of the court ~~pursuant to this chapter~~. A transaction pursuant to this section may

include the establishment by the court or other grantor of an inter vivos trust, including a trust that complies with the provisions of 42 U.S.C. §1396p(d)(4), on behalf of the ~~minor~~ ~~or disabled~~ person provided that upon such person's death, after the payment of trustees' fees, any payments to the state Medicaid agency that are required by the provisions of 42 U.S.C. §1396p(d)(4) are made ~~the state of Missouri shall first receive all amounts remaining in the trust up to an amount equal to the total medical assistance paid on such person's behalf pursuant to a state plan as provided in Title 42 of the United States Code~~ and, provided further, that any creditor of the ~~minor or disabled~~ person other than the state of Missouri shall also be paid all sums due for such person's care, maintenance and support, to the extent trust property is sufficient therefore, and, provided, such trust shall terminate upon such person's death and any amounts remaining in the trust after the foregoing payments shall be distributed to ~~such decedent's estate~~ the remainder beneficiaries designated in the trust. This section shall not be interpreted to require all such trusts to be established by a court proceeding.

3. Before approving a protective arrangement or other transaction pursuant to this section, the court shall consider the interests of creditors and dependents of the ~~minor or disabled~~ person and, in view of such person's disability, whether such person needs the continuing protection of a conservator. The court may appoint a special conservator to assist in the accomplishment of any protective arrangement or other transaction authorized pursuant to this section who shall have the authority conferred by the order and serve until discharged by order after report to the court of all matters done pursuant to the order of appointment.

4. Notwithstanding any other law to the contrary, the trustee of any trust created or approved by a Missouri court prior to August 28, 1999 for the benefit of for a person who is minor or disabled, or is blind or has a physical or mental disability as defined under state or federal law, person prior to August 28, 1999, shall not be liable to the state of Missouri or to any creditor of such person if, on August 28, 1999, the trust does not have sufficient assets to reimburse the state of Missouri for medical assistance paid on such person's behalf pursuant to a state plan as provided in Title 42 of the United States Code or to reimburse a creditor for sums due for such person's care, maintenance and support. Any such trust which is in existence as of August 28, 1999, shall be subject to subsection 2 of this section, as amended, notwithstanding any provisions of such trust to the contrary. The trustee shall not be liable for any distributions or payments made prior to August 28, 1999, pursuant to the terms of such trust.

<INSERT MISSOURI COMMENT>

Section 469.500. **Worthier-Title Doctrine Abolished.** The doctrine of worthier title and the Rule in Bingham's case is abolished as a rule of law and as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor's "heirs," "heirs at law," "next of kin," "distributees," "relatives," or "family," or language of similar import, does not create or presumptively create a reversionary interest in the transferor.

<INSERT MISSOURI COMMENT>

CORRECTIONS TO MO PRUDENT INVESTOR CROSS REFERENCES.

Missouri Transfers to Minors Law: Mo. Rev. Stat. § 404.051.6

Missouri Personal Custodian Law: Mo. Rev. Stat. § 404.550.5

Durable Power of Attorney Law of Missouri: Mo. Rev. Stat. § 404.714.1

Supervised Personal Representatives: Mo. Rev. Stat. § 473.333

Independent Personal Representatives: Mo. Rev. Stat. § 473.787.1

Missouri Conservatorships: Mo. Rev. Stat. §§ 475.130.1 and 475.190.3