Chapter 128

1955 REPLACEMENT PART

Trusts

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DUTIES OF TRUSTEES AND FIDUCIARIES GENERALLY

128.010 Accountability for faithful execution of trust. All trustees residing or transacting business in Oregon are accountable for the faithful execution of the trust imposed upon them, according to the terms of the trust.

128.020 Investments by fiduciaries; "prudent man" rule. In acquiring, investing, reinvesting, exchanging, retaining, selling and managing property for the benefit of another, a fiduciary shall exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard, a fiduciary is authorized to acquire and retain every kind of property, real, personal or mixed, and every kind of investment, specifically including but not by way of limitation, bonds, debentures and other corporate obligations, and stocks, preferred or common, which men of prudence, discretion and intelligence acquire or retain for their own account.

128.030 Deviation from instrument as to fiduciary's duties and powers not authorized. Nothing contained in ORS 128.020 to 128.050 authorizes any departure from, or variation of, the express terms or limitations set forth in any will, agreement, court order or other instrument creating or defining the fiduciary's duties and powers, but the terms "legal investment" or "authorized investment" or words of similar import, as used in any such instrument, shall mean any investment which is permitted by the terms of ORS 128.020.

128.040 Deviations authorized. Nothing contained in ORS 128.020 to 128.050 restricts the power of a court of proper jurisdiction to permit a fiduciary to deviate from the terms of any will, agreement or other instrument relating to the acquisition, investment, reinvestment, exchange, retention, sale or management of fiduciary property.

128.050 Fiduciaries under present and future instruments governed. The provisions of ORS 128.020 to 128.050 govern fiduciaries acting under wills, agreements, court orders and other instruments existing on July 5, 1947 or thereafter made.

128.060 Application of income of trust towards maintenance of infants. (1) Where any property is held by trustees in trust for an infant, either for life, or for any greater interest, or for a definite or indefinite time, and whether absolutely, or contingently on his attaining the age of 21 years, or on the occurrence of any event before his attaining that age, or the lapse of time, the trustees may, upon order of a court of competent jurisdiction, pay to the infant's parent or guardian, if any, or otherwise apply for or toward the infant's maintenance, education, or benefit, the income of that property, or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the infant's maintenance or education, or not.

(2) The trustees shall accumulate all the residue of that income in the way of compound interest, by investing the same and the resulting income thereof from time to time in securities in which they are by the settlement, if any, or by law authorized to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled thereto under the terms of the trust; provided, however, that the trustees may at any time, if they think fit, apply those accumulations, or any part thereof, as if the same were income arising in the then current year.

(3) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms and provisions of that instrument.

(4) This section applies whether such instrument comes into operation before or after the taking effect hereof.

128.070 Annual report as to trust funds for philanthropic or educational purposes. Except as otherwise provided by law, any trustee having in charge any trust fund or trust funds intended to serve philanthropic or educational purposes shall render annually, not later than December 31, to the probate court of the county wherein the trustee resides, a written report in such form and to such extent as the court may require in order to fully disclose the manner and character of the stewardship of the trustee. But if the trustee is a corporation

or nonresident then the reports required in this section shall be rendered to the probate court of the county wherein the corporation or nonresident transacts its or his chief business concerns in the state. The reports required by this section to be rendered shall be filed with the county clerk of the county where rendered.

128.080 Removal of trustee; filling vacancies; action for trust fund held by trustees removed. Any violation of the terms of any such trust shall render the trustee guilty thereof liable to removal by the probate court and such court may remove any such trustee and appoint a successor therefor and may fill vacancies caused by death or otherwise and may bring action in the name of the State of Oregon to recover any trust fund or trust funds held by any trustee so removed. The failure of any trustee to render the report mentioned in ORS 128.070 shall of itself be sufficient cause for removal by the court.

128.090 and 128.100 [Reserved for expansion]

SUITS TO AUTHORIZE DEALING WITH TRUST PROPERTY

128.110 Suit for decree authorizing dealing with trust property. When any trust in real or personal property, or both, has been or shall be created by will, deed or otherwise, and the trustee or trustees, or any person interested in the trust or any person interested in the property embraced in the trust upon the termination thereof, whether such latter interest is by way of a vested or contingent remainder, executory devise, conditional limitation, shifting use or of any other nature, deems it for the interest of all persons who are or may become interested in the property that the same or any part thereof should be sold, mortgaged, improved, exchanged, leased or otherwise dealt with in any other manner, such party or parties may commence a suit for the purpose of obtaining a decree for the sale, mortgaging, leasing, improving, exchanging of or otherwise dealing with the property, or any portion thereof. Any court of equity in a county in which any of such trust property may be situated shall have jurisdiction to hear the cause of suit and enter the proper decree.

128.120 Parties. All persons who are living at the time of the commencement of the suit, and who are interested, whether as trustees or beneficiaries, in the property under the trust, or who have any vested, contingent, executory or reversionary interest therein at the termination of the trust, shall be made parties defendant, except those who are made parties plaintiff. In determining who are interested parties within the meaning of this section, all persons living at the commencement of the suit who at that time have any apparent interest in the property shall be included, but any person whose name, identity or existence is unknown to the person instituting the proceedings may be made a party and served as provided in ORS 128.140. The provisions of this section shall apply to all subseqquent proceedings in the same suit to obtain subsequent decrees therein.

128.130 Summons; form. The summons in the suit shall be in the usual form, and in addition it shall contain the following notice as and for the succinct statement of the relief demanded, which is required by ORS 15.120: "The object of this suit is to obtain a decree authorizing the trustees of the trust set forth in the complaint herein to sell, mortgage, lease, exchange, improve or otherwise deal with the property embraced in the trust, in accordance with the prayer of the complaint."

128.140 Publication against unknown heirs or parties; conclusiveness of judgment. (1) Any person who may be a necessary or proper party to the suit within the meaning of ORS 128.110 to 128.270, whose name, identity or existence is unknown to the party or parties instituting proceedings thereunder, may be made a party and served by publication as provided in this section. Any such parties shall be designated in the title of the suit as "other unknown parties who have or claim some title, estate, lien or interest in the property described in the complaint herein." If such unknown parties are the heirs of any deceased person, they may be proceeded against under the name and title of "the unknown heirs of (naming the deceased)."

(2) Upon presenting an affidavit to the court or judge, showing to his satisfaction that the heirs of such deceased person or such unknown persons may be proper parties to the suit or action, and that their names, identity or existence cannot with the use of reasonable diligence be ascertained, the court

or judge may grant an order that service of the summons be made on the unknown heirs or unknown persons by publication thereof in the same manner as in suits against nonresident defendants.

(3) All unknown heirs of deceased persons and all unknown persons or parties so served by publication shall have the same rights as are provided by law in case of all other defendants upon whom service is made by publication, and the suit shall proceed against such unknown heirs or unknown person or parties in the same manner and with like effect as against defendants who are named, upon whom service is made by publication, and any such unknown heirs or unknown person or parties who have or claim any right, estate, lien or interest in the property in controversy shall be bound and concluded by the judgment or decree in the suit as effectually as if the suit were brought against the defendant by his or her name and constructive service of summons obtained.

128.150 Decree binding on persons born during suit. All interested persons who are born subsequent to the commencement of the suit shall be deemed parties to the suit by being represented therein by the defendants served, and shall be bound by any decree or decrees therein as fully as if made parties and duly served with process therein.

128.160 Authority conferrable on trustee; continuing jurisdiction of court. The court in the suit has jurisdiction to authorize the trustee to sell, mortgage, lease, improve, exchange or otherwise deal with the property, or any part thereof, whether such power is or is not given to the trustee in the instrument creating the trust, and the court may authorize the trustee to use the proceeds of any sale, mortgage or lease, or other trust funds or property, for the purpose of improving property belonging to the trust estate, or for paying liens upon any part of the trust estate, or for the purpose of reinvesting the proceeds or funds in other property, or for other purposes which may appear beneficial to all concerned. Any additional property so acquired shall be held under the trust and the instrument creating the same for the benefit of all persons interested. All the proceeds or property shall continue to be under the supervision of the court, which may from time to time make such orders and decrees in the suit as may be needed to enable the trustees to deal with the trust property or funds with all the powers of owners, keeping in view the full protection of the interests of all persons, living or unborn, in the property embraced in the trust.

128.170 When relief to be granted. The court shall grant the relief prayed for in the complaint whenever it appears that it is for the best interests of the trust estate, and all persons in any manner interested therein, to grant such relief.

128.180 Contents of decree; security by trustee. The court may in its decree embody such directions relating to the use or investment of the proceeds of the sale or mortgage and such provisions relating to the improvement of any of the trust property as shall seem to it to be most beneficial to all persons interested in the property. It may also require the trustee to give security in case it deems such security necessary for the protection of those interested in the property. When security is so required, it shall be only in such amount as may seem necessary.

128.190 Provision for retaining jurisdiction. The court may by a provision inserted in the decree retain jurisdiction over all the parties and over all the trust property, and may from time to time, upon application made as provided in ORS 128.200 make such further decrees in the suit touching the selling, mortgaging, exchanging, improving, leasing or other dealing with the property belonging to the estate as shall seem to be for the best interest of all persons interested in the property.

128.200 Application for supplemental decree. Any person who is a party to the suit may from time to time apply to the court for an additional decree therein to authorize the further selling, mortgaging, improving, exchanging, leasing or other dealing with the trust property. For this purpose he shall file a complaint in the suit, setting forth the facts showing the need or desirability of the additional selling, mortgaging, improving, exchanging, leasing or other dealing with the property. All the allegations of the original and subsequent complaints and all other proceedings in the suit, including the previous decree or decrees down to the time of filing the new complaint, shall constitute a part of the subsequent complaint without being realleged therein, it being sufficient to set forth therein by reference the

filing of such complaint or complaints and the rendering of such former decree or decrees. Jurisdiction over all the other parties to the suit to render such additional decree shall be obtained in the same manner provided for securing jurisdiction originally in the suit.

128.210 Proceedings. After the service of the summons to obtain a supplemental decree, the proceedings shall continue in all respects the same as the proceedings to obtain the original decree in the suit.

128.220 Additional parties. Any person who is born, or whose interest has become apparent since the original commencement of the suit, and who would have been a necessary party if then living, or if his interest had then been apparent, shall, if living at the time of the subsequent application for power to sell, mortgage, exchange, improve, lease or otherwise deal with additional property, upon his own application or upon the application of any party to the suit, be made a party to the suit by order of court, and shall thereafter be entitled to all the rights of the other parties to the suit, including the service of a summons upon him in case he is not made a party upon his own application.

128.230 Protection of persons under instrument executed pursuant to decree. The grantee, mortgagee, lessee or other party whose instrument is executed under the authority of the decree in a suit pursuant to ORS 128.110 to 128.270 shall be fully protected thereunder without reference to the proper application of any of the moneys or other consideration paid by him under such instrument, and such instrument shall be as effective as if executed by the creator of the trust, and by all the parties to the suit, including unknown parties served as provided in ORS 128.140, and by all persons represented by any such parties.

128.240 Report and confirmation of dealings with trust property. The court shall by order make such provisions for the reporting to the court of the terms of any proposed sale, mortgage, exchange, lease or improvement of or other dealing with the property and for the confirmation thereof as may be necessary for the protection of all interests in the property, and no such proposed sale, mortgage, lease, exchange, improvement or other dealing with the property shall be executed or concluded until the confirmation thereof by the court.

128.250 Application of provisions as to suits in equity. All provisions of law relating to the commencement of and procedure in suits, including the procedure to obtain jurisdiction of the parties, shall apply to the suits authorized by ORS 128.110 to 128.270, except as otherwise provided in ORS 128.110 to 128.270.

128.260 Remedy as cumulative. The remedy provided by ORS 128.110 to 128.270 is cumulative and does not limit or abrogate any inherent power of a court of equity, including the inherent power to authorize the sale, mortgage, exchange, improvement or lease of or otherwise dealing with trust property, or in any manner limit any lawful power, express or implied, conferred upon the trustee by the will, deed or other instrument creating such trust, to sell, mortgage, exchange, improve, lease or otherwise deal with the trust property, or any part thereof.

128.270 Undertaking when suit instituted by party other than trustee; costs and disbursements. Any person, firm or corporation, other than the trustee, instituting proceedings under any of the provisions of ORS 128.110 to 128.270, shall contemporaneously with the filing of the proceedings, file an undertaking with one or more sureties to the effect that he will, if unsuccessful, pay all costs or disbursements that may be decreed against him therein; and if such person, firm or corporation is unsuccessful in the proceedings, the court shall tax the costs and disbursements of the proceedings, together with reasonable attorney's fees, against the unsuccessful party or parties and the surety or sureties on such undertaking.

128.280 to 128.400 [Reserved for expansion]

PREARRANGED FUNERAL PLANS AS TRUSTS

128.410 Payments made under prearranged funeral plans as trust funds. Whenever an agreement not governed by the provisions of ORS 742.010 to 742.070 is made with any person for the final disposition of a dead human body, wherein the delivery of personal property to be used under a prearranged funeral plan, or the furnishing of professional services of a funeral director or embalmer in connection therewith, is not

immediately required, all payments and proceeds made by any person, herein named trustor, under the agreement, including interest thereon, shall be and remain trust funds in the name of the funeral director or embalmer, herein named trustee, upon a trust for the benefit of the estate of the person for whom such prearranged funeral plan is made, revocable by the trustor, until the death of the person for the benefit of whose estate the funds were paid. [1953 c.639 §1; 1955 c.524 §1]

128.415 Deposit of trust funds. (1) All such trust funds shall be deposited by the funeral director or embalmer with a financial institution in the State of Oregon carrying deposit insurance, within three days after receipt thereof, and shall be held in a separate account in the name of the depositor followed by the words "trustee of funeral plan trust," in trust for the person for whom such prearranged funeral plan is made until said trust fund is released under any of the following conditions:

(a) Upon proof of the death of such person, the financial institution shall release such trust fund to the trustee.

(b) Upon presentation of the written request of the trustor, the financial institution shall release such trust fund as directed in such request.

(c) Upon furnishing proof of the death, dissolution, insolvency or merger with another of the trustee, the financial institution shall release such trust fund to the trustor.

(2) The financial institution shall in no way be responsible for the fulfillment of any prearranged funeral plan, excepting only such financial institution shall release said trust fund, as provided in this section. [1953 c.639 §2; 1955 c.524 §2]

128.420 to 128.500 [Reserved for expansion]

EMPLOYES' TRUSTS

128.510 Definitions. As used in ORS 128.520, "employes' trust" means a trust of real or personal property forming part of a pension, profit sharing, stock bonus, annuity, disability or death benefit plan of an employer or group of employers for the benefit of his or their employes, to which contributions are made by such employers or employes, or both, for the purpose of distributing income or principal, or both, to such employes or the beneficiaries of such employes. [1955 c.586 §1]

128.520 Employes' trust may be in perpetuity; accumulation of income. An employes' trust may continue in perpetuity or for such time as may be necessary to accomplish the purpose for which it is created, and is not invalid as violating any rule of law against perpetuities or the suspension of the power of alienation of title to property. The income from any property held in an employes' trust may be permitted to accumulate in accordance with the terms of such trust, and the plan of which such trust forms a part, for such time as may be necessary to accomplish the purpose for which such trust is created. [1955 c.586 §2]

128.530 to 128.980 [Reserved for expansion]

PENALTIES

128.990 Penalties. Violation of any of the provisions of ORS 128.410 or 128.415 is punishable, upon conviction, by a fine not exceeding $1,000, or imprisonment in the county jail not exceeding one year, or both. [1953 c.639 §3]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on October 15, 1955.

Sam R. Haley
Legislative Counsel