

Chapter 128

1973 REPLACEMENT PART

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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, which men of prudence, discretion and intelligence acquire or retain for their own account, including but not limited to:

(1) Bonds, debentures and other corporate obligations;

(2) Stocks, preferred or common; and

(3) Contracts of life insurance as defined by ORS 731.170, issued by authorized insurers as defined by ORS 731.066.

[Amended by 1969 c.267 §1]

128.025 Investment of fiduciary property in life insurance limited. A fiduciary shall not invest more than 25 percent of the fiduciary property in life insurance as defined by ORS 128.020 unless he has express authority from the trustor to do so.

[1969 c.267 §3]

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 minors. (1) Where any property is held by trustees in trust for a minor, 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 18 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 minor's parent or guardian, if any, or otherwise apply for or toward the minor'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 minor'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 minor 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.

[Amended by 1973 c.827 §19]

Note: See note following 109.510.

128.070 [Repealed by 1973 c.506 §46]

Note: See note preceding 111.005.

128.075 Business trusts reports required; due date; filing fee; content; notice of requirement; effect of failure to file. (1) Each business trust shall file a report with the Corporation Commissioner before the 16th day of the second calendar month following each anniversary of the issuance of a certificate of authority and pay a filing fee of:

(a) \$50 for a business trust domiciled in the State of Oregon; or

(b) \$200 for a business trust domiciled without the state of Oregon.

(2) The report shall contain the following:

(a) Either a statement that there have been no changes in the trust instrument creating the trust or a statement that all amendments are on file with the commissioner;

(b) The names and address of its trustees; and

(c) The address of the registered office in this state and the name of its registered agent in this state.

(3) Not less than 30 days before the reporting date, the Corporation Commissioner shall notify the business trust of the requirement to file a report. The notice shall be sent by first-class mail, shall indicate the date upon which the report is due, and include the forms for the report.

(4) After the reporting date, if no report has been filed, the commissioner shall send to the business trust a final notice advising that no report has been filed and it is, therefore, assumed that the business trust is no longer active and that the name thereof shall become available, unless a report is filed within 30 days after the mailing of such final notice. The commissioner does not need to send the final notice to any business trust which has previously notified him that it does not intend to file the report. The final notice shall be sent by certified mail with return receipt requested.

(5) Not less than 30 days after the date of mailing of the final notice provided for by subsection (4) of this section, the commissioner may assume and note on his records that the business trust is inactive. Thereafter, the name of the business trust is available. The business trust may later give notice of its active status by filing the required report. The commissioner shall then remove his notation of the inactive status and name

availability. However, if the name has been used in the intervening period or is currently reserved by another entity with the same or a deceptively similar business trust, corporate, limited partnership, registered or assumed business name, the business trust may file a statement of the name which it elects to use within this state.

[1973 c.367 §16]

128.080 [Amended by 1973 c.177 §2; repealed by 1973 c.506 §46]

Note: See note preceding 111.005.

128.085 Limitations on trustee's administration of "private foundation" trust. Notwithstanding any provision to the contrary in the governing instrument or any law of this state, the trustee of a trust which is a "private foundation" as defined in section 509 of the Internal Revenue Code of 1954 (including nonexempt charitable trusts as defined in section 4947 (a) (1) of the Internal Revenue Code of 1954) shall not engage in any act of self dealing as defined in section 4941 (d) of the Internal Revenue Code of 1954; shall distribute its income and, when necessary, amounts from principal at such time and in such manner as not to subject the trust to the taxes on failure to distribute income imposed by section 4942 of the Internal Revenue Code of 1954; shall not retain any excess business holdings as defined in section 4943 (c) of the Internal Revenue Code of 1954; shall not make any investments in such manner as to subject the trust to the taxes on investments which jeopardize charitable purpose imposed by section 4944 of the Internal Revenue Code of 1954; and shall not make any taxable expenditures as defined in section 4945 (d) of the Internal Revenue Code of 1954.

[1971 c.197 §1]

128.090 Limitations on trustee's administration of "split-interest" trust. (1) Notwithstanding any provision to the contrary in the governing instrument or any law of this state, the trustee of a trust which is a "split-interest trust" as defined in section 4947 (a) (2) of the Internal Revenue Code of 1954, shall not engage in any act of self dealing as defined in section 4941 (d) of the Internal Revenue Code of 1954; shall not retain any excess business holdings as defined in section 4943 (c) of the Internal Revenue Code of 1954, unless the trust is one exempted from the requirements of section 4943 by section 4947 (b) (3) of the Internal Revenue Code of 1954; shall not make any investment in such

manner as to subject the trust to the taxes on investments which jeopardize charitable purpose imposed by section 4944 of the Internal Revenue Code of 1954, unless the trust is one exempted from the requirements of section 4944 by section 4947 (b) (3) of the Internal Revenue Code of 1954; and shall not make any taxable expenditures as defined in section 4945 (d) of the Internal Revenue Code of 1954.

(2) This section shall not apply with respect to:

(a) Any amounts payable under the terms of a trust to income beneficiaries, unless a deduction was allowed under section 170 (f) (2) (B), section 2055 (e) (2) (B), or section 2522 (c) (2) (B) of the Internal Revenue Code of 1954;

(b) Any amounts in trust other than amounts for which a deduction was allowed under section 170, section 545 (b) (2), section 556 (b) (2), section 642 (c), section 2055, section 2106 (a) (2) or section 2522 of the Internal Revenue Code of 1954, if such other amounts are segregated from amounts for which no deduction was allowable; or

(c) Any amounts transferred in trust before May 27, 1969.
[1971 c.197 §2]

128.095 Trustee may amend governing instrument of "private foundation" or "split-interest" trust with prior consent of Attorney General and benefited organizations. The trustee of a trust which is a private foundation to which ORS 128.085 applies or a split-interest trust to which ORS 128.090 applies may, with the prior consent of the Attorney General, amend the terms of the governing instrument to the extent necessary (1) to assure conformity of the governing instrument with the requirements for exemption from the taxes imposed by sections 4941 to 4945 of the Internal Revenue Code of 1954, including amendments which broaden, extend, reduce or limit the charitable purposes for which the trust is administered, or (2) to terminate the status of the trust as a private foundation in a manner described in section 507 (b) (1) of the Internal Revenue Code of 1954. Prior to giving his consent, the Attorney General shall determine that the proposed amendments are necessary or appropriate to achieve the charitable purposes of the trust. If the trust is for the exclusive benefit of one or more charitable organizations, the trustee shall also obtain the prior consent of such organizations prior to amending the terms of

the governing instrument in the manner set forth in this section.

[1971 c.197 §3]

SUITS TO AUTHORIZE DEALING WITH TRUST PROPERTY

128.100 Authority of fiduciary to deposit securities in clearing corporation. (1) Notwithstanding any other provision of law, any fiduciary holding securities in his fiduciary capacity, any bank or trust company holding securities as a custodian or managing agent, and any bank or trust company holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit of the securities in a clearing corporation as defined in subsection (4) of ORS 78.1020. When the securities are deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of the clearing corporation with any other securities of the same class deposited in the clearing corporation by any person regardless of the ownership of the securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of the fiduciary and the records of the bank or trust company acting as custodian, as managing agent or as custodian for a fiduciary shall at all times show the name of the party for whose account the securities are deposited. Ownership of, and other interests in, the securities may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery of certificates representing the securities. A bank or trust company depositing securities pursuant to this section shall be subject to the rules and regulations as, in the case of state-chartered institutions, the state Superintendent of Banks and, in the case of national banking associations, the comptroller of the currency may from time to time issue. A bank or a trust company acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities deposited by the bank or trust company in the clearing corporation for the account of the fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of the fiduciary's account or on demand by the attorney for the party, certify in writing to the party the securities deposited by the fiduciary in the clearing corporation for its account as the fiduciary.

(2) This section shall apply to any fiduciary holding securities in his fiduciary capacity, and to any bank or trust company holding securities as a custodian, managing agent or custodian for a fiduciary, acting on October 5, 1973, or who thereafter may act regardless of the date of the agreement, instrument or court order by which it is appointed and regardless of whether or not the fiduciary, custodian, managing agent or custodian for a fiduciary owns capital stock of the clearing corporation.

[1973 c.365 §§1, 2]

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 subsequent 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 persons 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.

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 750.005 to 750.065 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 any personal property including burial vaults or professional services of a person, firm or corporation 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 person, firm or corporation, 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; 1959 c.691 §1; 1965 c.611 §14; 1967 c.359 §681]

128.412 Exceptions to ORS 128.410. The provisions of ORS 128.410 shall not include:

(1) Agreements to sell or sales of graves, crypts or niches where such graves, crypts or niches are in existence at the time of the sale or agreement to sell and are located in an endowment care cemetery as defined in ORS 97.810.

(2) Agreements to sell or sales of crypts or niches where such crypts or niches are not in existence at the time of the sale or agreement to sell and are to be located in an endowment care cemetery; provided that:

(a) Thirty-five percent of the sales price of such crypts or niches is deposited in accordance with the provisions of ORS 128.415; or

(b) Such endowment care cemetery deposits a bond with the State Treasurer in the amount of \$25,000 with a corporate surety. The bond shall be in a company authorized to do business in this state.

(3) Agreements to sell or sales of burial vaults or markers for installation in an endowment care cemetery; provided that:

(a) Sixty-six and two-thirds percent of the sale price of such vaults or markers is deposited in accordance with the provisions of ORS 128.415;

(b) Such endowment care cemetery is at the time of the sale or agreement to sell and for not less than 24 months before such sale or agreement has been in continuous operation as an endowment care cemetery and has assumed the obligation to supply and install the vault or marker and maintain it as part of its endowment care program; and

(c) Such endowment care cemetery deposits a bond with the State Treasurer in the amount of \$10,000 with a corporate or personal surety. Such personal surety shall submit a sworn financial statement as of the date of the bond and annually thereafter as long as the bond is in effect to insure the availability of the total amount of the sale price when required.

[1959 c.691 §2; 1967 c.359 §682]

128.415 Deposit of trust funds. (1) All such trust funds shall be deposited by the person, firm or corporation with a financial institution in the State of Oregon carrying deposit insurance, within 30 days after receipt thereof, and shall be held in a sepa-

rate 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; 1959 c.691 §3]

TRUSTS FOR DEATH BENEFITS

128.460 Definitions for ORS 128.460 to 128.500. As used in ORS 128.460 to 128.500:

(1) The words "death benefits" shall mean death benefits of any kind, including, but not limited to, proceeds of life insurance policies, payments under annuity or endowment contracts, and funds payable in connection with pension, retirement, stock bonus or profit-sharing plans, or any trust or trusts administered in connection therewith;

(2) The word "designator" shall mean the person entitled to designate the beneficiary of such death benefits upon his death; and

(3) The word "obligor" shall mean the insurer or other person obligated to pay such death benefits.

[1971 c.182 §1]

128.470 Creation of death benefits trust; trust without corpus valid. A trustee may be named as beneficiary of any death benefits and such death benefits shall be paid to such trustee and be held and disposed of by him as provided in a trust agreement made by the designator during his lifetime. It shall not be necessary to the validity of any such trust agreement or declaration of trust that it have a trust corpus other than the right of the trustee to receive such death benefits as beneficiary.

[1971 c.182 §2]

128.480 Creation of death benefits trust by will; disposition of death benefits upon probate of will. A trustee named by will may be designated as beneficiary of death benefits, if the designation is made in accordance with the provisions of the policy, contract, plan, trust or other governing instrument. Upon probate of the will, the death benefits shall be payable to the trustee to be held and disposed of under the term of the designator's last will in the same manner as other testamentary trusts are administered; but if no qualified trustee claims the death benefits within one year after the death of the designator or if satisfactory evidence is furnished within such one-year period showing that no trustee can qualify to receive such death benefits, payment thereof may be made, unless the designator has otherwise provided, by the obligor to the personal representative of the designator or to those thereafter entitled, and the obligor shall be discharged from liability.

[1971 c.182 §3]

128.490 Death benefits received by trustee not subject to additional inheritance or estate taxes. The death benefits received by the trustee shall not be subject to the debts of the designator or to inheritance or estate taxes to any greater extent than if such death benefits were payable to the beneficiaries named in the trust and not to the estate of the designator.

[1971 c.182 §4]

128.500 Commingling with other trust assets. Death benefits so held in trust may be commingled with any other assets which may properly become a part of such trust.

[1971 c.182 §5]

Note: Sec. 6, chapter 182, Oregon Laws 1971, provides:

Sec. 6. Nothing in this Act shall affect the validity of any death benefit beneficiary designation heretofore made naming trustees of a trust established by will.

EMPLOYEES' TRUSTS

128.510 Definitions. As used in ORS 128.520, "employees' 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 employees, to which contributions are made by such employers or employees, or both, for the purpose of distributing income or principal, or both, to such

employees or the beneficiaries of such employees.

[1955 c.586 §1]

128.520 Employees' trust may be in perpetuity; accumulation of income. An employees' trust may be permitted to accumulate 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 employees' trust may continue in perpetuity or 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]

BUSINESS TRUSTS

128.560 "Business trust" described. A "business trust" is any association, including a real estate investment trust, engaged in or operating a business under a written trust agreement or declaration of trust, the beneficial interest under which is divided into transferable certificates of participation or shares, other than a trust engaged solely in exercising the voting rights pertaining to corporate shares or other securities in accordance with the terms of a written instrument.

[1971 c.491 §1]

128.565 Business trust permitted. A business trust is permitted as a recognized form of association for the conduct of business within the State of Oregon.

[1971 c.491 §2]

128.570 Business trusts and trustees not subject to bank and trust company regulations. Neither a business trust nor the trustees of such trust are subject to the provisions of ORS chapters 706, 707, 708 and 709.

[1971 c.491 §3]

128.575 Creation of business trust; filing with Corporation Commissioner required. (1) Any business trust desiring to do business in this state shall first file with the Corporation Commissioner:

(a) A verified copy of the trust instrument creating such trust and any subsequent amendments thereto;

(b) The assumed business name, if any;

(c) The names and addresses of its trustees; and

(d) A designation of its registered office and registered agent in this state.

(2) The filing described in subsection (1) of this section shall be accompanied by a filing fee of:

(a) \$50 for a business trust domiciled within the State of Oregon; or

(b) \$200 for a business trust domiciled without the State of Oregon.

(3) If the Corporation Commissioner finds that the filing conforms to law, he shall, when all fees have been paid, issue a certificate of authority entitling the business trust to do business in this state.

(4) If a business trust amends its trust instrument after it has been issued a certificate of authority entitling it to do business in this state, it shall file a verified copy of any such amendment with the Corporation Commissioner and shall pay a filing fee of \$25 to the Corporation Commissioner.
[1971 c.491 §4; 1973 c.367 §12]

128.580 Business trusts subject to certain corporate laws. Any business trust shall be subject to such applicable provisions of law, now or hereafter enacted, with respect to domestic and foreign corporations, respectively, as relate to the issuance of securities, filing of required statements or reports, service of process, general grants of power to act, right to sue and be sued, limitation of individual liability of shareholders, rights to acquire, mortgage, sell, lease, operate and otherwise to deal in real and personal property, and other applicable rights and duties existing under the common law and statutes of this state in a manner similar to those applicable to domestic and foreign corporations. Title to any real or personal property may be held in the name of the trust, one or more of the trustees or any other person as nominee.
[1971 c.491 §5; 1973 c.367 §13]

128.585 Personal liability of trustees, shareholders or beneficiaries of business trust. The trustees, shareholders or beneficiaries of a business trust shall not, as such, be personally liable for any obligations of such business trust arising after June 25, 1971. Persons becoming trustees, shareholders or beneficiaries after June 25, 1971, shall not be personally liable, as such, for obligations of the business trust existing on June 25, 1971.

[1971 c.491 §6; 1973 c.367 §14]

128.590 Certificate of authority as conclusive evidence of compliance with laws; exception. For purposes of ORS 128.585, a certificate of authority issued by the Corporation Commissioner shall be conclusive evidence that all conditions precedent required to be performed by the business trust have been complied with and that the business trust is authorized to do business in this state, except as against this state in a proceeding to cancel or revoke the certificate of authority for violations of the provisions of ORS 128.580.
[1971 c. 491 §7]

UNIFORM SUPERVISION OF TRUSTEES FOR CHARITABLE PURPOSES ACT

128.610 Short title. ORS 128.610 to 128.750, 128.805 to 128.845 and subsections (2), (3) and (4) of ORS 128.990 may be cited as the Uniform Supervision of Trustees for Charitable Purposes Act.
[1963 c.583 §1; 1971 c.589 §1]

128.620 Definitions. As used in ORS 128.610 to 128.750, 128.805 to 128.845 and subsections (2), (3) and (4) of ORS 128.990:

(1) "Charitable corporation" means any nonprofit corporation organized under the laws of this state for charitable or eleemosynary purposes and any similar foreign corporation doing business or holding property in this state for such purposes. For the purposes of ORS 128.610 to 128.750, the mere making of grants or donations to institutions or beneficiaries within the State of Oregon, or the investigation of applicants for such grants or donations, shall not constitute doing business in this state.

(2) "Trustee" means:

(a) Any individual, group of individuals, corporation or other legal entity holding property in trust pursuant to any charitable trust;

(b) Any corporation which has accepted property to be used for a particular charitable corporate purpose as distinguished from the general purposes of the corporation; and

(c) A corporation formed for the administration of a charitable trust, pursuant to the directions of the settlor or at the instance of the trustee.

(3) "Charitable purpose" means any purpose to promote the well-being of the public at large, or for the benefit of an indefinite number of persons, including but not limited

to educational, literary, or scientific purposes, or for the prevention of cruelty to children or animals, or for the benefit of religion, rehabilitation services, public recreation, civic improvement, or services which lessen the burdens of government.

(4) "Religious organization" means any organized church or group organized for the purpose of divine worship, religious teaching, or other directly ancillary purposes.

(5) "Educational institution" means a school, college or other institution with an established curriculum, student body and faculty, conducting classes in buildings adapted for that purpose.

(6) "Solicitation" means any request or appeal, either oral or written, or any endeavor to obtain, seek or plead for funds, property, financial assistance, or other thing of value, including the promise or grant of any money or property of any kind or value for a charitable purpose; but excluding:

(a) Direct grants or allocations of funds received or solicited from any affiliated fund raising organization by a member agency; and

(b) Unsolicited contributions received from any individual donor, foundation, trust, governmental agency, or other source, unless such contributions are received in conjunction with a solicitation drive.

[1963 c.583 §§3, 4; 1971 c.589 §2]

128.630 Application of ORS 128.610 to 128.845. (1) ORS 128.610 to 128.750, 128.805 to 128.845 and subsections (2), (3) and (4) of ORS 128.990 apply to all charitable corporations and trustees holding property for charitable purposes over which the state or the Attorney General has enforcement or supervisory powers.

(2) ORS 128.610 to 128.750, 128.805 to 128.845 and subsections (2), (3) and (4) of ORS 128.990 shall apply regardless of any contrary provisions of any instrument.

[1963 c.583 §§2, 14; 1971 c.589 §3]

128.640 Exemptions from application of ORS 128.610 to 128.845. ORS 128.610 to 128.750, 128.805 to 128.845 and subsection (2) of ORS 128.990 do not apply to the United States, any state, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or to any of their agencies or governmental subdivisions; and ORS 128.610 to 128.750 do not apply to any religious corporation sole or other religious corporation or organization

which holds property for religious purposes, or to any officer, director or trustee thereof who holds property for like purposes, to a cemetery corporation regulated under ORS 61.755 to 61.775, to a child-caring agency regulated under ORS 418.215 to 418.265 or to a charitable corporation organized and operated primarily as a religious organization, educational institution, hospital, historical society or museum.

[1963 c.583 §5; 1971 c.589 §4]

128.650 Register of charitable corporations and trustees; authority of Attorney General to maintain register. The Attorney General shall establish and maintain a register of charitable corporations and trustees subject to ORS 128.610 to 128.750, 128.805 to 128.845 and subsections (2), (3) and (4) of ORS 128.990 and of the particular trust or other relationship under which they hold property for charitable purposes and, to that end, may conduct whatever investigation is necessary, and shall obtain from public records, court officers, taxing authorities, trustees, and other sources, whatever information, copies of instruments, reports and records are needed for the establishment and maintenance of the register.

[1963 c.583 §6; 1971 c.589 §5]

128.660 Filing of articles of incorporation or other instrument with Attorney General. Every charitable corporation and trustee subject to ORS 128.610 to 128.750 who has received property for charitable purposes shall file with the Attorney General, within six months after receiving possession or control of such property, a copy of the articles of incorporation, trust agreement or other instrument providing for his title, powers or duties.

[1963 c.583 §7; 1971 c.589 §6]

128.670 Filing of reports; fees; authority of Attorney General relating to reports.

(1) Except as otherwise provided, every charitable corporation and trustee subject to ORS 128.610 to 128.750 shall, in addition to filing copies of the instruments previously required, file with the Attorney General periodic written reports, under oath, setting forth information as to the nature of the assets held for charitable purposes and the administration thereof by the corporation or trustee.

(2) The Attorney General may classify trusts and other relationships concerning property held for a charitable purpose as to

purpose, nature of assets, duration of the trust or other relationship, amount of assets, amounts to be devoted to charitable purposes, nature of trustee, or otherwise, and may establish different rules for the different classes as to time and nature of the reports required to the ends that:

(a) He shall receive reasonably current, periodic reports as to all charitable trusts or other relationships of a similar nature, which will enable him to ascertain whether they are being properly administered; and

(b) Periodic reports shall not unreasonably add to the expense of the administration of charitable trusts and similar relationships.

(3) The Attorney General may suspend the filing of reports as to a particular charitable trust or relationship for a reasonable, specifically designated time upon written application of the trustee filed with the Attorney General and after the Attorney General has filed in the register of charitable trusts a written statement that the interests of the beneficiaries will not be prejudiced thereby and that periodic reports are not required for proper supervision by his office.

(4) A copy of an account filed by the trustee in any court having jurisdiction of the trust or other relationship, if the account substantially complies with the rules and regulations of the Attorney General, may be filed as a report required by this section.

(5) The first report for a trust or similar relationship hereafter established, unless the filing thereof is suspended as provided in subsection (3) of this section, shall be filed not later than four months and 15 days following the close of the first calendar or fiscal year in which any part of the income or principal is authorized or required to be applied to a charitable purpose. Subsequent annual reports shall be submitted not later than four months and 15 days following the close of each calendar or fiscal year adopted by the charitable corporation or trustee.

(6) The Attorney General shall make rules and regulations as to the time for filing reports, the contents thereof, and the manner of executing and filing them. He may make additional rules and amend existing regulations as necessary for the proper administration of this section.

(7) Each charitable corporation, trustee, or other charitable organization filing a report required by this section shall pay to the Department of Justice, with such report, a

fee based on the total amount of its income and receipts during the time covered by the report, as follows:

(a) \$5, if less than \$10,000, or if it received no income and receipts during the time covered by the report;

(b) \$10, if \$10,000 or more but less than \$50,000;

(c) \$20, if \$50,000 or more but less than \$100,000;

(d) \$100, if \$100,000 or more but less than \$500,000;

(e) \$200, if \$500,000 or more but less than \$1,000,000;

(f) \$250, if \$1,000,000 or more.

(8) If the fee prescribed by subsection (7) of this section is not paid when due or if the charitable corporation or trustee fails to file a report by the date due, a penalty charge of an additional \$5 shall be paid to the Department of Justice. All fees and penalties received by the Department of Justice under this subsection shall be paid over to the State Treasurer monthly for deposit in the General Fund in the Department of Justice Operating Account created under the provisions of ORS 180.180. Amounts deposited in the General Fund pursuant to this subsection are continuously appropriated to the Attorney General to pay the expenses of his office in administering the Uniform Supervision of Trustees for Charitable Purposes Act.

[1963 c.583 §8; 1971 c.589 §7; 1973 c.506 §40; 1973 c.775 §4]

Note: See note preceding 111.005.

128.680 Investigatory authority of Attorney General. The Attorney General may investigate transactions and relationships of corporations and trustees subject to ORS 128.610 to 128.750, 128.805 to 128.845 and subsections (2), (3) and (4) of ORS 128.990 for the purpose of ascertaining whether or not the purposes of the corporation or trust are being carried out in accordance with the terms and provisions of the articles of incorporation or other instrument. He may require any agent, trustee, fiduciary, beneficiary, institution, association or corporation, or other person to appear, at a named time and place, in the county designated by the Attorney General, where the person resides or is found, to give information under oath and to produce books, memoranda, papers, documents of title, and evidence of assets, liabilities, receipts or disbursements in the possession or control of the person ordered to appear.

[1963 c.583 §10; 1971 c.589 §8]

128.690 Order for attendance by Attorney General; effect. When the Attorney General requires the attendance of any person, as provided in ORS 128.680, he shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered or certified mail to the person at least 14 days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena and, upon application of the Attorney General, obedience to the order may be enforced by any court having jurisdiction of charitable trusts in the county where the trust may be in existence or administered or the person receiving it resides or is found, in the same manner as though the notice were a subpoena. The court, after hearing, for cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend or postpone all or any part of its provisions.

[1963 c.583 §11]

128.700 [1963 c.583 §12; repealed by 1973 c.794 §34]

128.710 Enforcement; jurisdiction of court. (1) The Attorney General may institute appropriate proceedings to secure compliance with ORS 128.610 to 128.750, 128.805 to 128.845 and subsections (2), (3) and (4) of ORS 128.990 and to invoke the jurisdiction of the court. Wilful failure to comply with an order of any court having jurisdiction of charitable trusts requiring an accounting by a charitable corporation or trustee shall constitute grounds for removal of the officers of such charitable corporation or of such trustee and the appointment by the court of successor officers or trustee. The powers and duties of the Attorney General provided in ORS 128.610 to 128.750, 128.805 to 128.845 and subsections (2), (3) and (4) of ORS 128.990 are in addition to his existing powers and duties.

(2) Nothing in ORS 128.610 to 128.750, 128.805 to 128.845 and subsections (2), (3) and (4) of ORS 128.990 shall impair or restrict the jurisdiction of any court with respect to any of the matters covered by it, except that no court shall have jurisdiction to modify or terminate any trust of property for charitable purposes unless the Attorney General is a party to the proceedings.

[1963 c.583 §13; 1971 c.589 §9]

128.720 Copies of certain documents and notice to be provided Attorney General. Every person who offers for probate any in-

strument which establishes a testamentary trust of property for charitable purposes or who records in any county any inter vivos transfer of property for charitable purposes shall furnish a copy of such document to the Attorney General. Upon filing the final account and petition for decree of distribution of any estate through which a residuary testamentary trust for charitable purposes is established, the personal representative shall mail a copy thereof, and a copy of the notice fixing the time for filing objections thereto, to the Attorney General not less than 20 days before the time fixed in the notice. The custodian of the records of a court having jurisdiction of probate matters or of charitable trusts shall furnish such copies of papers, records and files of his office relating to the subject of ORS 128.610 to 128.750 as the Attorney General requires.

[1963 c.583 §15; 1971 c.589 §10]

128.730 List of certain claims for exemptions from taxation to be provided Attorney General. Every officer, agency, board or commission of this state, receiving applications for exemption from taxation of any corporation, charitable trust or similar relationship in which the corporation or trustee is subject to ORS 128.610 to 128.750 shall annually file with the Attorney General a list of all applications received during the year.

[1963 c.583 §16; 1971 c.589 §11]

128.740 Disallowance of tax exemptions for failure to file reports; reinstatement of exemptions. (1) No tax exemption under ORS 316.277 or 317.080 shall be allowed to any charitable corporation or trustee subject to ORS 128.610 to 128.750, 128.805 to 128.845 and subsections (2), (3) and (4) of ORS 128.990 for any year or years for which it fails to file with the Attorney General, on or before the due date, any registration or report required by ORS 128.610 to 128.750, 128.805 to 128.845 and subsections (2), (3) and (4) of ORS 128.990.

(2) The exemption shall be disallowed under this section only after the Attorney General has notified the Department of Revenue in writing that the charitable corporation or trustee subject to the provisions of ORS 128.610 to 128.750, 128.805 to 128.845 and subsections (2), (3) and (4) of ORS 128.990 has failed to file any such registration or report on or before the due date thereof.

(3) If an exemption is disallowed under this section, such exemption may be reinstated when the registration or periodic reports are filed. However, any such charitable corporation or trustee shall pay the maximum tax imposed by ORS chapter 316 or 317 for any year or years for which its exemption was disallowed under this section.

(4) No exemption shall be disallowed under this section for income years commencing before January 1, 1964.
[1963 c.583 §17; 1971 c.589 §12]

128.750 Uniformity of interpretation.

The Uniform Supervision of Trustees for Charitable Purposes Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.
[1963 c.583 §19]

CHARITABLE ORGANIZATIONS; FUND SOLICITATIONS

128.805 Certain charitable organizations required to submit report to Attorney General on fund raising activities; report to be verified. All persons, corporations, societies or other organizations, except those specified in ORS 128.825, that solicit funds for charitable purposes and collect more than \$250 in any 12-month period shall file a detailed report with the Attorney General, showing the amount of funds received from solicitations or other fund raising activities and all expenditures for supplies, equipment, goods, services, or other expenses. The report shall be filed not later than four months and 15 days following the close of the calendar or fiscal year on a form furnished by the Attorney General. The report shall contain a detailed list of all salaries and wages paid and expenses allowed to any officer, employe, agent, each of whom shall be identified by name, and the disposition of the net proceeds received from solicited contributions or other fund raising activities. The report shall be verified by the person soliciting the funds under his own authority, or if filed by a corporation, society or other organization by its managing officer or agent.
[1971 c.589 §14]

128.810 [1959 c.599 §1; repealed by 1967 c.359 §704]

128.815 Restrictions on use of filing required by ORS 128.805 in fund raising activities. (1) No person, and no charitable corporation, trustee or organization subject to ORS

128.610 to 128.750, 128.805 to 128.845 and subsections (2), (3) and (4) of ORS 128.990 shall in any way use, in connection with any solicitation subject to ORS 128.805, the fact or requirement of registration, or of the filing of any report pursuant to the Uniform Supervision of Trustees for Charitable Purposes Act, with the intent to cause or in a manner tending to cause any person to believe that such solicitation, the manner in which it is conducted, its purposes, any use to which the proceeds will be applied, or the person or organization conducting it have been or will be in any way indorsed, sanctioned or approved by the Attorney General or any other governmental agency or office.

(2) Any written or oral statement made in connection with a solicitation subject to ORS 128.805, that the person or organization conducting the solicitation is registered or has filed, will file or is required to file any report with the Attorney General, or any statement of similar import, shall be immediately followed by a statement of equal prominence that such registration or report in no way constitutes or implies any indorsement, sanction or approval of the solicitation, its purposes, the manner in which it is conducted or the person or organization conducting it, by the Attorney General or any other governmental agency or officer.
[1971 c.589 §14a]

128.820 [1959 c.599 §§2, 3, 4, 5; amended by 1967 c.359 §125; renumbered 731.704]

128.825 Organizations exempt from provisions of ORS 128.805 to 128.845. ORS 128.805 to 128.845 shall not apply to:

(1) Any educational institution, hospital, historical society or museum, church or religious organization soliciting funds solely for its own use, or any other similar society soliciting funds, including membership fees or dues solely from its members, or any church or religious organization or society soliciting funds only from members of its congregation, or persons otherwise presently affiliated with such church, religious organization or society.

(2) Any local affiliate of a state-wide or national organization, when all local fund raising expenses are paid by the parent organization, if the parent organization files a report required by this section.
[1971 c.589 §15]

128.830 [1959 c.599 §7; amended by 1967 c.359 §126; renumbered 731.708]

128.835 Audit of organization accounts required upon petition of contributors; costs of audit; disclosure required. Upon petition of 10 persons who contributed funds, or a lesser number who in the aggregate contributed funds totaling at least \$250, during any 12-month period, to any person or organization enumerated in ORS 128.805, the circuit court of the county in which such person or organization resides or has its principal office shall appoint a competent certified public accountant to audit the accounts of such person or organization pertaining to funds solicited, and shall file his report with the county clerk of the county. A copy of the report shall be forwarded by the accountant to the Attorney General. The cost of the audit shall be paid by the petitioners. It shall be the duty of the person having custody of any of the records or books of account of the person or organization pertaining to the receipt or expenditures of any such funds, to place them at the disposal of any person appointed to audit the accounts, pursuant to the provisions of this section.

[1971 c.589 §16]

128.840 [1959 c.599 §6; repealed by 1967 c.359 §704]

128.845 Solicitations by noncomplying organization may be enjoined. The Attorney General may obtain an injunction against solicitation of funds by any person, corporation, society or other organization subject to ORS 128.610 to 128.750, 128.805 to 128.845 and subsections (2), (3) and (4) of ORS 128.990 until it has complied with all regis-

tration and reporting requirements applicable to it under those statutes.

[1971 c.589 §17]

128.850 [1959 c.599 §8; amended by 1967 c.359 §128; renumbered 731.716]

128.860 [1959 c.599 §11; amended by 1967 c.359 §129; renumbered 731.720]

128.870 [1959 c.599 §12; repealed by 1967 c.359 §704]

128.880 [1959 c.599 §9; amended by 1967 c.359 §130; renumbered 731.724]

128.890 [1959 c.599 §10; repealed by 1967 c.359 §704]

PENALTIES

128.990 Penalties. (1) 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.

(2) Any violation of ORS 128.610 to 128.750 and 128.805 to 128.845 is punishable upon conviction by a fine not exceeding \$250.

(3) The responsible officers or trustees, managing committee or managing director of any corporation, society, trust or other organization which fails to file a report as required by ORS 128.670 or 128.805 shall, upon conviction, be fined no more than \$250.

(4) Any person who prepares or files, or assists in preparing or filing a report required by ORS 128.670 or 128.805 that is false or fraudulent shall be punished upon conviction by imprisonment in the penitentiary for not more than five years.

[1959 c.639 §3; subsections (2), (3), (4) enacted as 1971 c.589 §18]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, 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 November 1, 1973.

Thomas G. Clifford
Legislative Counsel