CHAPTER 59-12
CREATION, VALIDITY, MODIFICATION, AND TERMINATION OF TRUST

59-12-01. (401) Methods of creating trust.

A trust may be created by 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, declaration by the owner of property that the owner holds identifiable property as trustee, or exercise of a power of appointment in favor of a trustee.

59-12-02. (402) Requirements for creation.

1. A trust is created only if the settlor has capacity to create a trust, the settlor indicates an intention to create the trust, the trust has a definite beneficiary or is a charitable trust, a trust for the care of an animal, as provided in section 59-12-08, or a trust for a noncharitable purpose, as provided in section 59-12-09; the trustee has duties to perform; and 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.

59-12-03. (403) Trusts created in other jurisdictions.

A trust not created by will is validly created if its creation complies with the law of the jurisdiction in which the trust instrument was executed, or the law of the jurisdiction in which at the time of creation the settlor was domiciled, had a place of abode, or was a national; a trustee was domiciled or had a place of business; or any trust property was located.

59-12-04. (404) Trust purposes.

A trust may be created only to the extent its purposes are lawful and possible to achieve. A trust and its terms must be for the benefit of its beneficiaries.

59-12-05. (405) Charitable purposes - Enforcement.

1. A charitable trust may be created for the relief of poverty, the advancement of education or religion, the promotion of health, governmental or municipal purposes, or other purposes the achievement of which is beneficial to the community.
2. If the terms of a charitable trust do not indicate a particular charitable purpose or beneficiary, the court may select one or more charitable purposes or beneficiaries. The selection must be consistent with the settlor's intention to the extent it can be ascertained.
3. The settlor of a charitable trust or the attorney general, among others, may maintain a proceeding to enforce the trust.
4. Chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19 do not impair the rights and powers of the attorney general with respect to any trust.
5. In all cases of charitable trusts, the attorney general and the state's attorney of the county in which the trust is located are interested persons with respect to the trust estate.

59-12-06. (406) Creation of trust induced by fraud, duress, or undue influence.

A trust is void or subject to reformation by the court to the extent its creation was induced by fraud, duress, or undue influence.

59-12-07. (407) Evidence of oral trust.

Except as required by section 47-11-02 or a statute other than chapters 59-09, 59-10, 59-11, 59-12, 59-13, 59-14, 59-15, 59-16, 59-17, 59-18, and 59-19, a trust need not be evidenced by a trust instrument, but the creation of an oral trust and its terms, or an amendment or revocation of an oral trust, may be established only by clear and convincing evidence.

59-12-08. (408) Trust for care of animal.

1. A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.
2. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.
3. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

59-12-09. (409) Noncharitable trust without ascertainable beneficiary.

Except as otherwise provided in section 59-12-08 or by another statute, the following rules apply:

1. A trust may be created for a noncharitable purpose without a definite or definitely ascertainable beneficiary or for a noncharitable but otherwise valid purpose to be selected by the trustee.
2. A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court.
3. Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.

59-12-10. (410) Modification or termination of trust - Proceedings for approval or disapproval.

1. In addition to the methods of termination prescribed by sections 59-12-11, 59-12-12, 59-12-13, and 59-12-14, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful or impossible to achieve.
2. A proceeding to approve or disapprove a proposed modification or termination under sections 59-12-11, 59-12-12, 59-12-13, 59-12-14, 59-12-15, and 59-12-16, or trust combination or division under section 59-12-17, may be commenced by a trustee or beneficiary. The settlor of a charitable trust may maintain a proceeding to modify the trust under section 59-12-13.

59-12-11. (411) Modification or termination of noncharitable irrevocable trust by consent.

1. A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust. An irrevocable trust that is modified under this subsection continues to be irrevocable.

2. Upon termination of a trust under subsection 1, 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, the modification or termination may be approved by the court if the court is satisfied that if all of the beneficiaries had consented, the trust could have been modified or terminated under this section and the interests of a beneficiary who does not consent will be adequately protected.

59-12-12. (412) Modification or termination because of unanticipated circumstances or inability to administer trust effectively.

1. Upon petition by the trustee, the attorney general, or an interested party other than the settlor, the court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.
2. The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.
3. Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.

59-12-13. (413) Cy pres.

1. Except as otherwise provided in subsection 2, if a particular charitable purpose becomes unlawful, impracticable, impossible to achieve, or wasteful, the trust does not fail, in whole or in part; the trust property does not revert to the settlor or the settlor's successors in interest; and the court may apply cy pres to modify or terminate the trust by directing that the trust property be applied or distributed, in whole or in part, in a manner consistent with the settlor's charitable purposes.
2. A provision in the terms of a charitable trust that would result in distribution of the trust property to a noncharitable beneficiary prevails over the power of the court under subsection 1 to apply cy pres to modify or terminate the trust.

59-12-14. (414) Modification or termination of uneconomic trust.

1. After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than one hundred thousand dollars may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.
2. The court may modify or terminate a trust or remove the trustee and appoint a different trustee if the court determines that the value of the trust property is insufficient to justify the cost of administration.
3. Upon termination of a trust under this section, the trustee shall distribute the trust property in a manner consistent with the purposes of the trust.
4. This section does not apply to an easement for conservation or preservation.

59-12-15. (415) Reformation to correct mistakes.

The court may reform the terms of a trust, even if unambiguous, to conform the terms to the settlor's intention if it is proved by clear and convincing evidence that both the settlor's intent and the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement.

59-12-16. (416) Modification to achieve settlor's tax objectives.

To achieve the settlor's tax objectives, the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention. The court may provide that the modification has retroactive effect.

59-12-17. (417) Combination and division of trusts.

After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust. The terms of each new trust created by a division under this section do not have to be identical if the interest of each beneficiary is substantially the same under the terms of the trust prior to its division and the combined terms of all trusts after the division. Two or more trusts may be combined into a single trust if the interests of each beneficiary in the trust resulting from the combination are substantially the same as the combined interests of the beneficiary in the trusts prior to the combination. The trustee shall determine the terms controlling any trust after its combination as authorized by this section.

59-12-18. Requisites of trust relating to real property.

A trust in relation to real property is not valid unless the trust is created or declared:

1. By a written instrument, subscribed by the trustee or by the trustee's agent thereto authorized in writing;
2. By the instrument under which the trustee claims the estate affected; or
3. By operation of law.