CHAPTER 59-15
OFFICE OF TRUSTEE

59-15-01. (701) Accepting or declining trusteeship.

1. Except as otherwise provided in subsection 3, a person designated as trustee accepts the trusteeship by substantially complying with a method of acceptance provided in the terms of the trust or, if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by accepting delivery of the trust property, exercising powers or performing duties as trustee, or otherwise indicating acceptance of the trusteeship.
2. A person designated as trustee who has not yet accepted the trusteeship may decline the trusteeship. A designated trustee who does not accept the trusteeship within a reasonable time after knowing of the designation is deemed to have declined the trusteeship.
3. A person designated as trustee, without accepting the trusteeship, may act to preserve the trust property if, within a reasonable time after acting, the person sends a declination of the trusteeship to the settlor or, if the settlor is dead or lacks capacity, to a qualified beneficiary and inspect or investigate trust property to determine potential liability under environmental or other law or for any other purpose.

59-15-02. (702) Trustee's bond.

1. A trustee shall give bond to secure performance of the trustee's duties only if the court finds that a bond is needed to protect the interests of the beneficiaries or is required by the terms of the trust and the court has not dispensed with the requirement.
2. The court may specify the amount of a bond, its liabilities, and whether sureties are necessary. The court may modify or terminate a bond at any time.
3. A bank or trust company qualified to act as a trustee in this state need not give bond, even if required by the terms of the trust.

59-15-03. (703) Cotrustees.

1. Cotrustees who are unable to reach a unanimous decision may act by majority decision.
2. If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust.
3. A cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.
4. If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.
5. A trustee may delegate to a cotrustee the performance of any function other than a function that the terms of the trust expressly require to be performed by the trustees jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation previously made.
6. Except as otherwise provided in subsection 7, a trustee who does not join in an action of another trustee is not liable for the action.
7. Each trustee shall exercise reasonable care to prevent a cotrustee from committing a serious breach of trust and compel a cotrustee to redress a serious breach of trust.
8. A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notified any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

59-15-04. (704) Vacancy in trusteeship - Appointment of successor.

1. A vacancy in a trusteeship occurs if a person designated as trustee declines the trusteeship, a person designated as trustee cannot be identified, cannot be located, or does not exist, a trustee resigns, a trustee is disqualified or removed, a trustee dies, or a guardian or conservator is appointed for an individual serving as trustee.
2. If one or more cotrustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.
3. A vacancy in a trusteeship of a noncharitable trust which is required to be filled must be filled in the following order of priority. First, the vacancy must be filled by a person designated in the terms of the trust or appointed under the terms of the trust to act as successor trustee. Second, the vacancy must be filled by a person appointed by unanimous agreement of the qualified beneficiaries. Finally, the vacancy must be filled by a person appointed by the court.
4. A vacancy in a trusteeship of a charitable trust which is required to be filled must be filled in the following order of priority. First, the vacancy must be filled by a person designated in the terms of the trust or appointed under the terms of the trust to act as successor trustee. Second, the vacancy must be filled by a person selected by the charitable organizations expressly designated to receive distributions under the terms of the trust if the attorney general concurs in the selection. Finally, the vacancy must be filled by a person appointed by the court.
5. Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

59-15-05. (705) Resignation of trustee.

1. A trustee may resign:
   a. Upon at least thirty days' notice to the settlor, if living, to all cotrustees, and the qualified beneficiaries, except those qualified beneficiaries under a revocable trust that the settlor has the capacity to revoke; or
   b. With the approval of the court.
2. In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.
3. Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee is not discharged or affected by the trustee's resignation.

59-15-06. (706) Removal of trustee.

1. The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.
2. The court may remove a trustee if the trustee has committed a serious breach of trust; if lack of cooperation among cotrustees substantially impairs the administration of the trust; if because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or if there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.
3. Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under subsection 2 of section 59-18-01 as may be necessary to protect the trust property or the interests of the beneficiaries.

59-15-07. (707) Delivery of property by former trustee.

1. Unless a cotrustee remains in office or the court otherwise orders, and until the trust property is delivered to a successor trustee or other person entitled to it, a trustee who

has resigned or been removed has the duties of a trustee and the powers necessary to protect the trust property.

2. A trustee who has resigned or been removed shall proceed expeditiously to deliver the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to the property.
3. Title to all trust property must be owned by and vested in any successor trustee without any conveyance, transfer, or assignment by the prior trustee.

59-15-08. (708) Compensation of trustee.

1. If the terms of a trust do not specify the trustee's compensation, a trustee is entitled to compensation that is reasonable under the circumstances.
2. If the terms of a trust specify the trustee's compensation, the trustee is entitled to be compensated as specified, but the court may allow more or less compensation if the duties of the trustee are substantially different from those contemplated when the trust was created or the compensation specified by the terms of the trust would be unreasonably low or high.

59-15-09. (709) Reimbursement of expenses.

1. A trustee is entitled to be reimbursed out of the trust property, with interest as appropriate, for expenses that were properly incurred in the administration of the trust and, to the extent necessary to prevent unjust enrichment of the trust, expenses that were not properly incurred in the administration of the trust.
2. An advance by the trustee of money for the protection of the trust gives rise to a lien against trust property to secure reimbursement with reasonable interest. The lien under this subsection does not apply to a common or collective fund that is exempt under 26 U.S.C. 584.