

**THE _____
QUALIFIED INCOME TRUST**

This Qualified Income Trust Agreement, made by _____, hereinafter called the "Grantor" and _____, hereinafter with all successors collectively called the "Trustee". The term Trustee, whether used in the plural or singular whether masculine or feminine in nature shall be interchangeable.

WITNESSETH:

In consideration of the acceptance by the Trustee of the Trust hereby created, the Grantor has assigned, transferred and delivered to the Trustee all future unearned income of the Grantor, which shall be referred to herein as the Trust Estate. The Trust Estate property shall be held, managed, invested and reinvested, upon the following terms and conditions:

ARTICLE 1 RECITALS

- A. *Grantor will be or is currently a patient in a skilled nursing facility in Florida.*
- B. *Grantor would qualify for Medicaid assistance under Florida's Institutional Care (Nursing Home) Program but for the fact that Grantor has income which exceeds the maximum allowed by Florida law to qualify for Medicaid.*
- C. *Grantor is establishing this Qualified Income Trust in order for Grantor to qualify for Medicaid assistance under Florida's Institutional Care Program.*

ARTICLE 2. NAME OF TRUST

2.01 *This Trust shall be known as THE _____ QUALIFIED INCOME TRUST.*

ARTICLE 3. IRREVOCABILITY OF TRUST

3.01 *This Trust is irrevocable. This Trust cannot be altered, amended, revoked or terminated by the Grantor. The Trust shall be irrevocable and the Grantor hereby expressly acknowledges that the Grantor has no right or power, whether alone or in conjunction with others, in whatever capacity, to alter, amend, revoke or terminate the Trust or any of the terms of this Trust Agreement, in whole or in part, or to designate the persons who shall possess or enjoy the Trust property or the income therefrom. By this Trust Agreement the Grantor intends to and does hereby relinquish absolutely and forever for possession or enjoyment of or right to the income from the Trust property, whether directly, indirectly or constructively, and every interest of any nature, present or future, in the Trust property. During the Grantor's lifetime, this Trust shall only be subject to modification or termination in the following manner; (1) by a Florida Court of competent jurisdiction for the purpose of maintaining all of the terms, provisions and conditions of this trust in compliance with federal and state laws now and hereafter promulgated governing Medicaid, income trusts, and other federal and state benefit programs, or (2) by Grantor, as hereinafter provided for the purpose of maintaining all of the terms, provisions and conditions of this trust in compliance with federal and state laws now and hereafter promulgated governing Medicaid, income trusts, and other federal and state benefit programs. This trust is a Qualified Income Trust as provided by Section 1917 (d)(4)(B) of the Social Security Act as amended under OBRA 93, and all regulations promulgated thereunder. Grantor further intends that the trust may be modified to provide maximum payments from the trust allowable by law for Grantor, Grantor's family, Grantor's creditors, the Trustee of this trust and all administrative expenses connected herewith. If the trust is modified under the provisions of this article, such modification shall be deemed made and shall relate back to the effective date of this Qualified Income Trust. Any person serving as Attorney in Fact under an unrevoked Durable Power of Attorney may sign this trust for Grantor and any amendments hereto.*

3.02 *At the time of signing of this trust, The Florida Department of Health and Rehabilitative Services has issued certain policy guidelines regarding requirements for receipt and distribution of income for*

qualification of the trust.

3.03 The provisions of Article 4 comply with The Florida Department of Health and Rehabilitative Services policy guidelines as Class One distributions. If government regulations allow implementation of any additional benefits not specifically provided herein, the trust may be amended by Grantor to comply with the regulations.

ARTICLE 4. TRUST ESTATE

4.01 The Grantor, or the Trustee, as Representative Payee, shall take possession of the unearned income of Grantor upon receipt and deliver said income to the Trustee exclusively for the uses and purposes set forth in this Trust. The Trustee acknowledges receipt, in trust, of said property. No property other than the Grantor's income shall be used to fund this Trust.

4.02 Distributions of Principal and Income: The Grantor, the Florida Agency for Health Care Administration (AHCA) and the residuary beneficiaries named below in Paragraph 4.04 shall be the beneficiaries of the trust. The Florida Agency for Health Care Administration (AHCA) is the residuary beneficiary to the extent of the total medical assistance paid on behalf of the Grantor by the State.

Prior to any payment to the nursing home on behalf of the Grantor, and prior to the assumption of any patient responsibility, the following distributions shall be made:

A. *Class One- Allowances:*

i. Payment of the Community Spouse's monthly income allowance.
ii. An amount reasonably necessary to maintain the existence of the trust and to comply with federal requirements may be retained in the trust. Deductions may be made from the monthly trust distribution to the same extent that deductions from the income of a nursing home resident who is not a trust beneficiary are allowed under the Florida Medical Assistance Program which shall include the following: a monthly personal needs allowance; specified health insurance costs and special medical services provided under Title XIX of the Federal "Social Security Act", 42 U.S.C. sec. 1396a(r), as amended; and any other deduction provided in the rules of the Florida Department of Health and Rehabilitative Services (HRS), The Florida Agency for Health Care Administration (AHCA), The Florida Department of Elder Affairs (DOEA) or any other agency with rulemaking authority for the Medicaid program. In no event shall more than the applicable Medicaid reimbursement rate be distributed to the nursing facility on behalf of the Grantor. If any money remains after the monthly distributions and deductions from the trust, such funds shall be retained and accumulate in the trust or be distributed as provided herein.

B. *Class Two- Debts, Taxes and Administrative Expenses:*

i. The Trustee may pay those expenses which are reasonably necessary for maintaining the existence of the trust, e.g., bank charges, preparation of an annual income tax return, payment of income or other taxes, and reasonable compensation of the trustee. The Trustee may authorize such amount for maintaining the trust, as long as the expenses are for necessary services which are reasonable in amount, considering the time and expertise required.

ii. The trustee shall be entitled to reasonable compensation for necessary services and expenses in maintaining the existence of the trust. Such compensation shall be commensurate with the time and expertise required.

iii. Payment for reasonable attorney fees and costs is an expense which is reasonably necessary for establishing and maintaining the existence of the trust (or in the alternative the Trust shall reimburse any person who has made payment therefor). In no event shall the payment take longer than six months following the date of execution of this Trust.

C. *Class Three- Special Needs:*

i. The Trustee shall pay to or apply for the benefit of the Grantor, for the Grantor's lifetime, such amounts from the principal, up to the whole thereof, as the Trustee, in said Trustee's discretion, may from time to time deem necessary or advisable for the satisfaction of the Grantor's special needs, and any principal not distributed shall be retained and accumulated in the trust as principal. As used in this instrument, "special needs" refers to the requisites for maintaining the Grantor's good health, safety and welfare when, in the discretion of

the trustee, such requisites are not being provided by any public agency, office or department of the State of Florida, or any other state, or of the United States. "Special needs" shall include, but not be limited to, dental care, special equipment, programs of training, education and habilitation, travel needs and recreation, protecting the beneficiary's legal rights, and maintaining any property belonging to the Grantor.

4.03 Suspension of Payments into the Trust Upon the Grantor's Discharge: In the event the Grantor is discharged from the nursing home, other than a temporary discharge to another health care facility or psychiatric facility, the Grantor's monthly unearned income shall no longer be paid into the trust but shall instead be paid directly to the Grantor or the Grantor's legal representative. In such event, no money which has accumulated in the trust prior to the Grantor's discharge shall be distributed to the Grantor but shall instead be distributed pursuant to Article 4.04 hereof.

4.04 Distribution of Corpus Upon Death of Grantor: This trust shall terminate upon the death of the Grantor. The trustee shall then distribute and deliver to the Florida Agency for Health Care Administration (AHCA), Florida Department of Health and Rehabilitative Services or the entity then making payments for the nursing home care and other medical assistance provided during the Grantor's Lifetime, all amounts remaining in the trust upon the death of the Grantor up to an amount equal to the total medical assistance paid on behalf of the individual. After payment to the state, payment shall be made for any unpaid administrative expenses of the trust and any remaining funds shall be distributed to the Grantor's lineal decedents, in equal shares, per stirpes.

ARTICLE 5. ADMINISTRATIVE AND PROTECTIVE PROVISIONS

5.01 Jurisdiction: This trust shall be administered expeditiously consistent with its terms, free of any judicial intervention, and without order, approval or other action by any court, subject only to the jurisdiction of a court which is invoked by the trustee or other interested party or as otherwise provided by law.

5.02 Modification or Termination by Court: During the Grantor's lifetime, this trust shall only be subject to modification or termination as set forth in Article 3 above.

5.03 Trust Property Not Subject to Probate: Any property payable to this trust shall not be subject to claims against the estate of the Grantor following death, nor shall such trust property be subject to the control of the personal representative of the Grantor, nor be included in the property administered as part of the probate estate of the Grantor.

5.04 Inalienability: No beneficiary shall have any right to anticipate, sell, assign, mortgage, pledge or otherwise dispose of or encumber all or any part of the trust estate, nor shall any part of the trust estate including income, be liable for the debts or obligations, including alimony, of any beneficiary or be subject to attachment, garnishment, execution, creditor's bill or any other legal or equitable process. All payments of income and principal under any Trusts or funds created hereunder shall be inalienable by the beneficiaries and free from the control or interference of any creditor of a beneficiary or of any spouse of a married beneficiary and shall not be subject to attachment, judgment, levy, sequestration, garnishment, bankruptcy or other insolvency proceedings or legal process or susceptible of anticipation or alienation. Should any beneficiary attempt to transfer or otherwise affect such beneficiary's interest in the Trust or fund or the income therefrom by voluntary act or operation of law or in the event of any attempted levy, attachment, garnishment or sequestration of a beneficiary's interest in the income or principal, all payments to or for such beneficiary shall, in the Trustee's sole discretion, be made either personally to the beneficiary or used by the Trustee for the benefit of the beneficiary. No monetary value passing to any beneficiary shall be vested in such beneficiary until received by such beneficiary and therefore, no creditor of a beneficiary shall be allowed to place a lien against the effective assets of this Trust and is therefore, not subject to creditors of any beneficiary creditor until received by such beneficiary. This provision shall not bar any remedy sought by either the Florida Agency for Health Care Administration (AHCA), Department of Health and Rehabilitative Services for the purpose of obtaining trust distributions in accordance with this trust declaration and applicable federal or state laws and administrative regulations.

5.05 No person dealing with the Trustee shall be obligated to inquire as to the Trustee's power or to see to the application of any money or property delivered to the Trustee. No purchaser from the Trustee or any other person dealing with the Trustee shall be under any obligation to see to the application of the purchase

money or to the proper administration of the Trust. Any corporation, its transfer agent and its dividend disbursing agent and any person, firm or corporation, bank or savings and loan association, and any other party with whom the Trustee shall deal:

A). Shall be under no obligation or liability with respect to the validity or proper administration of this Trust.

B). Shall be entitled to rely entirely upon written orders of the Trustee or his nominee, and

C). Shall be entitled to assume that this Agreement as now written is in full force and effect until receipt of the written notice of its amendment, termination or revocation.

No Trustee shall not be required to obtain authority or approval of any Court in the exercise of any power conferred hereunder and shall not be required to make current reports or accountings to any Court of its duties hereunder.

5.06 No Successor Trustee shall be liable or responsible in any way for the acts or defaults of any predecessor Trustee, nor for any loss or expense caused by anything done or neglected to be done by any predecessor Trustee, but such Successor Trustee shall be liable only for his, her or its own acts and defaults with respect to the Trust funds actually received by him, her, or it, as Trustee.

5.07 Except as otherwise expressly provided herein, all actions by Co-Trustees shall be taken only by unanimous decision. One Co-Trustee may authorize one or more of the other Co-Trustee to act in the Co-Trustee's behalf in the exercise of any of the powers granted to the Co-Trustee under the terms of this Trust Agreement, and such Co-Trustee who grants and assigns such authority shall be exonerated from any loss, claim or liability arising from such authorization.

5.08 Any beneficiary may renounce or disclaim, in whole or in part, his or her interest under any Trust created and provided for herein and such renunciation or disclaimer shall operate in the same manner as would such beneficiary's death. Thus, any interest renounced or disclaimed shall not pass as intestacy but shall pass under the terms hereof as though such beneficiary had not survived the particular event upon which such beneficial interest is determined.

5.09 Each Trust created under this instrument shall terminate not later than twenty-one years after the death of the last survivor of the beneficiaries who are living on the date of this instrument. At termination, if the Trustee is not otherwise able to give effect to the provisions of this instrument, the remaining Trust Estate shall be distributed to the beneficiaries of the then current Trust income in the proportions in which they are entitled to share in the income.

ARTICLE 6. POWERS OF TRUSTEE

6.01 Florida Trust Law: The trustee may exercise all the powers provided in Florida Statute 737.402, a copy of which is attached and incorporated by reference herein as Exhibit "A", and as amended after the date of this trust. The right to pay principal or income from the trust, for the benefit of Grantor, shall be exclusively vested in the Trustee, or the successor trustee. However, any power provided under Florida Statute 737.402 which would cause disqualification from government benefits contemplated or provided hereunder or cause this trust to lose qualification as a Qualified Income Trust shall not be exercisable by the Trustee hereunder.

6.02 Prudent Investor Rule: The Grantor specifically waives compliance by the trustee or any successor trustee with the provisions of Florida Statute 518.11 and 518.112.

6.03 Distribution: The trustee may make any payments permitted under this trust to (1) to the Grantor, (2) the Grantor's guardian, (3) any person deemed suitable by the trustee, or (4) by direct payment of the Grantor's expenses.

ARTICLE 7. TRUSTEE SUCCESSION AND ADMINISTRATIVE PROVISIONS

7.01 Resignation or Death of the Trustee: Any trustee may resign by giving thirty days written notice to the Grantor and to each beneficiary. Such resignation shall be effective 30 days from the date notice is given. In the event of resignation, death or incapacity of _____, as Trustee, then _____ shall serve as Successor Trustee. If all enumerated Trustee, named above, are unable or unwilling to act, the beneficiaries who are *sui juris*, and if not, through their guardian, may, by a majority in number, designate a Trustee to act, subject to those provisions of this Trust regarding the ability of

the beneficiary to make such a designation. Such appointment shall be in writing and executed in the presence of two (2) subscribing witnesses.

7.02 Vacancy: A Trustee may resign at any time by filing a written notice of resignation which shall become effective upon the qualification of a Successor Trustee. A Successor Trustee shall qualify by filing a written notice of acceptance. Any Trustee or Successor Trustee hereunder shall have the right to resign at any time by giving thirty (30) days written notice to the current beneficiaries of the Trust. Thereafter, a majority of such beneficiaries who are *sui juris* shall have the right within such thirty (30) day period to appoint a Successor Trustee unless a Successor Trustee is already designated to serve under the provisions of this Trust. In the event the current beneficiaries shall fail to designate a Successor Trustee within the time specified, then the acting Trustee may apply to a Court of competent jurisdiction, for leave to resign, for the appointment of a Successor Trustee and the Judicial settlement of its accounts.

7.03 Representative of Beneficiary: The guardian or attorney in fact under a Durable Power of Attorney of a beneficiary under legal disability, may act for such beneficiary for all purposes under the administrative provisions of this trust. A Durable Power of Attorney shall be construed to include authority under this provision whether or not specifically provided in the Power of Attorney instrument.

7.04 Rights of Successors: Every successor trustee shall have all the title, rights, powers, privileges and duties conferred on or imposed upon the original trustee, without any conveyance or transfer. No successor trustee shall be responsible for any act or omission to act on the part of any previous trustee. Upon accepting the Trust, a Successor Trustee shall be substituted for and have the same rights and powers, discretionary or otherwise, as the original Trustee. A Successor Trustee shall be under no obligation to inquire into the acts or to examine the accounts of any prior Trustee and shall not be liable for acts, omissions or failures to account properly prior to qualification.

7.05 No Bond: No trustee or any successor shall be required to give any bond in any jurisdiction; and if, notwithstanding this direction, any bond is required by any law, statute or rule of court, no sureties shall be required.

ARTICLE 8. DEFINITIONS

8.01 Any reference in this trust to the Florida Department of Health and Rehabilitative Services, or the Florida Medical Assistance Program, shall include any successor public agency, program which becomes vested with the responsibility for providing publicly-supported nursing home care to eligible Florida residents.

ARTICLE 9. EFFECTIVE DATE

9.01 This trust shall be effective on the date of signing this Trust.

IN WITNESS WHEREOF, the Grantor and Trustee have signed this document the _____ day of _____, 20 _____.

Signed, Sealed and Delivered in the Presence of:

(Witness #1 Sign Name)

(Grantor's Agent Sign Grantor's Name)

(Witness #1, Print Name)

by: _____
(Grantor's Agent Sign Name)

(Witness #2 Sign Name)

(Witness #2, Print Name)

STATE OF _____

COUNTY OF _____

BEFORE ME the undersigned authority, duly authorized to take acknowledgments and administer oaths, means of _____ physical presence or _____ online notarization, appeared _____, Agent for the Grantor, _____ who acknowledged the execution of this Release, and who produced a Driver's License as identification.

{Notary Seal}

Notary Public

My Commission Expires:

(Witness #1 Sign Name)

(Trustee Sign Name)

(Witness #1, Print Name)

(Witness #2 Sign Name)

(Witness #2, Print Name)

STATE OF _____

COUNTY OF _____

BEFORE ME the undersigned authority, duly authorized to take acknowledgments and administer oaths, means of _____ physical presence or _____ online notarization, appeared _____, Trustee who acknowledged the execution of this Release, and who produced a Driver's License as identification.

{Notary Seal}

Notary Public

My Commission Expires:

EXHIBIT "A"

TITLE XLII ESTATES AND TRUSTS

CHAPTER 737 TRUST ADMINISTRATION

PART IV POWERS OF TRUSTEES (ss. 737.401-737.406)

737.402 Powers of trustees conferred by this part.

(1) From the creation of the trust until final distribution of the assets from the trust, a trustee has the power to perform every act that a prudent trustee would perform for the purposes of the trust, without court authorization, including, but not limited to, the powers specified in subsections (2) and (3) but subject to the limitations of subsection (4).

(2) Unless otherwise provided in the trust instrument, a trustee has the power:

(a) To collect, hold, and retain trust assets received from a settlor until disposition of the assets should be made. The assets may be retained even though they include an asset in which the trustee is personally interested.

(b) To hold without liability, other than that involved in holding property legal for investment of trust funds, any and all property received from or through the settlor of the trust, whether or not permissible for investment of funds of that particular trust, and any property lawfully coming into the hands of the trustees instead of or in substitution therefor, including the power to exchange capital stock of any bank or trust company, including capital stock of the corporate trustee, for capital stock in any registered bank holding company if the bank holding company is subject to the provisions of 12 U.S.C. ss. 1841 et seq., as amended, commonly known as the Bank Holding Company Act of 1956. This provision does not cover reinvestments of cash made by the trustee except for the purchase of fractional shares and the exercise of rights acquired in the exchange.

(c) To receive additions to the assets of the trust.

(d) To continue or participate in the operation of any business or other enterprise and to effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise.

(e) To acquire an undivided interest in a trust asset, including, but not limited to, a money market mutual fund, mutual fund, or common trust fund, in which asset the trustee holds an undivided interest in any trust capacity, including any money market or other mutual fund from which the trustee, any cotrustee, or any affiliate or associate of the trustee or cotrustee is entitled to receive reasonable compensation for providing necessary services as an investment adviser, portfolio manager, or servicing agent. A trustee, cotrustee, or affiliate or associate of the trustee or cotrustee may receive compensation for such services in addition to fees received for administering the trust, provided such compensation is fully disclosed in writing to all current income beneficiaries of the trust.

(f) To invest and reinvest trust assets in accordance with the provisions of the trust or as provided by law.

(g) If a bank, to deposit trust funds in another department of the same entity or in a bank that is affiliated with the trustee bank.

(h) To acquire or dispose of an asset for cash or on credit at a public or private sale; to manage, develop, improve, exchange, partition, change the character of, or abandon a trust asset or any interest in it; and to encumber, mortgage, or pledge a trust asset for a term within or extending beyond the term of the trust in connection with the exercise of any power vested in the trustee.

(i) To make ordinary or extraordinary repairs or alterations in buildings or other structures; to demolish any improvements; or to raze existing, or erect new, party walls or buildings.

(j) To subdivide, develop, or dedicate land to public use; to make, or obtain the vacation of, plats and adjust boundaries; to adjust differences in valuation on exchange or partition by giving or receiving consideration; or to dedicate easements to public use without consideration.

(k) To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.

(l) To enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.

(m) To grant an option involving disposition of a trust asset or to take an option for the acquisition of any asset.

(n) To vote a security, in person or by general or limited proxy, or not to vote a security.

(o) To pay calls, assessments, and any other sums chargeable or accruing against, or on account of, securities.

(p) To sell or exercise stock subscription or conversion rights and consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.

(q) To hold property in the name of a nominee or in other form without disclosure of the trust so that title to the property may pass by delivery, but the trustee is liable for any act of the nominee in connection with the property so held.

(r) To insure the assets of the trust against damage or loss and insure the trustee against liability with respect to third persons.

(s) To borrow money, to be repaid from trust assets or otherwise, and to advance money for the protection of the trust and for all expenses, losses, and liabilities sustained in the administration of the trust or because of the holding or ownership of any trust assets, for which advances, with any interest, the trustee has a lien on the trust assets as against the beneficiary.

(t) To pay or contest any claim; to settle a claim by or against the trust by compromise, arbitration, or otherwise; and to release any claim belonging to the trust in whole or in part to the extent that the claim is uncollectible.

(u) To pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust.

(v) To allocate items of income or expense to either trust income or principal, as provided by law.

(w) To pay any sum distributable to a beneficiary under legal disability to the beneficiary or by paying the sum for the use of the beneficiary either to a legal representative appointed by the court or, if none, to a relative; and, when income is directed to be paid to minors, apply and expend it for their benefit either with or without the intervention of a guardian.

(x) To effect distribution of property and money in divided or undivided interests and to adjust resulting differences in valuation.

(y) To employ persons, including attorneys, auditors, investment advisers, or agents, even if they are the trustee or associated with the trustee, to advise or assist the trustee in the performance of his administrative duties; to act without independent investigation upon their recommendations; and, instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary.

(z) To prosecute or defend actions, claims, or proceedings for the protection of trust assets and of the trustee in the performance of his duties.

(aa) To execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the trustee.

(3) If a trustee has determined that the market value of a trust is less than \$50,000 and that, relative to the costs of administering the trust, continuance pursuant to its existing terms will defeat or substantially impair the accomplishment of its purposes, the trustee may, in the trustee's sole discretion, terminate the trust and distribute the trust property, including principal and undistributed income, to the beneficiaries in a manner which conforms as nearly as possible to the intention of the settlor. The trustee may enter into agreements or make such other provisions that it deems necessary or appropriate to protect the interests of the beneficiaries and the trustee and to carry out the intent and purpose of the trust. The existence of a spendthrift or similar protective provision in the trust does not make this subsection inapplicable unless the trust instrument expressly provides that the trustee may not terminate the trust pursuant to this subsection.

(4)(a) Due to the inherent conflict of interest that exists between a trustee who is a beneficiary and other beneficiaries of the trust, unless the terms of a trust refer specifically to this subsection and provide expressly to the contrary, any power conferred upon a trustee (other than the settlor of a revocable or amendable trust or a decedent's or settlor's spouse who is the trustee of a testamentary or an inter vivos trust for which a marital deduction has been allowed):

1. To make discretionary distributions of either principal or income to or for the benefit of such trustee, except to provide for that trustee's health, education, maintenance, or support as described under Internal Revenue Code ss. 2041 and 2514;

2. To make discretionary allocations of receipts or expenses as between principal and income, unless such trustee acts in a fiduciary capacity whereby such trustee has no power to enlarge or shift any beneficial interest except as an incidental consequence of the discharge of such trustee's fiduciary duties;

3. To make discretionary distributions of either principal or income to satisfy any legal support obligations of such trustee; or

4. To exercise any other power, including the right to remove or to replace any trustee, so as to cause the powers enumerated in subparagraph 1., subparagraph 2., or subparagraph 3. to be exercised on behalf

of, or for the benefit of, a beneficiary who is also a trustee, cannot be exercised by such trustee. Any of the foregoing proscribed powers that are conferred upon two or more trustees may be exercised by the trustees who are not so disqualified. If there is no trustee qualified to exercise such power, any party in interest, as defined in paragraph (c), may apply to a court of competent jurisdiction to appoint an independent trustee and such power may be exercised by the independent trustee appointed by the court.

(b) This subsection applies to:

1. Any trust executed after June 30, 1991, unless the terms of the trust refer specifically to this subsection and provide expressly to the contrary;

2. Any testamentary trust created under a will executed after June 30, 1991, unless the terms of the trust refer specifically to this subsection and provide expressly to the contrary; and

3. Any trust created under a document executed before July 1, 1991, unless:

a. If the trust is revocable or amendable, the settlor revokes or amends the trust at any time to provide otherwise; or

b. If the trust is irrevocable, all parties in interest, as defined in paragraph (c), elect affirmatively, in the manner prescribed in paragraph (d), not to be subject to the application of this subsection. Such election must be made on or before the later of July 1, 1994, or 3 years after the date on which the trust becomes irrevocable.

However, the provisions of this subsection neither create a new cause of action nor impair any existing cause of action which, in either case, relates to any power proscribed by paragraph (a) that was exercised before July 1, 1991.

(c) For the purpose of paragraph (a) or paragraph (b):

1. If the trust is revocable or amendable and the settlor is not incapacitated, the party in interest is the settlor.

2. If the trust is revocable or amendable and the settlor is incapacitated, the party in interest is the settlor's legal representative under applicable law or the settlor's donee under a durable power of attorney that is sufficient to grant such authority.

3. If the trust is not revocable or amendable, the parties in interest are:

a. Each trustee then serving;

b. Each income beneficiary then in existence or, if any such beneficiary has not attained majority or is otherwise incapacitated, the beneficiary's legal representative under applicable law or the beneficiary's donee under a durable power of attorney that is sufficient to grant such authority; and

c. Each remainder beneficiary then in existence or, if any such remainder beneficiary has not attained majority or is otherwise incapacitated, the beneficiary's legal representative under applicable law or the beneficiary's donee under a durable power of attorney that is sufficient to grant such authority.

(d) The affirmative election required under paragraph (b) must be made:

1. If the settlor is not incapacitated and the trust is revocable or amendable, through a

revocation of or an amendment to the trust;

2. If the settlor is incapacitated and the trust is revocable or amendable, through a written declaration executed in the manner prescribed for the recordation of deeds in this state and delivered to the trustee; or

3. If the trust is not revocable or amendable, through a written declaration executed in the manner prescribed for the recordation of deeds in this state and delivered to the trustee.

(e) A person who has the right to remove or to replace a trustee does not possess nor may that person be deemed to possess, by virtue of having that right, the powers of the trustee that is subject to removal or to replacement.