

SENATE FILE NO. SF0002

Wyoming Unitrust Act.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to fiduciaries; creating the Wyoming
 2 Unitrust Act; authorizing the creation of or the conversion
 3 of an income trust to a unitrust; authorizing trustees
 4 latitude to invest trust funds for the benefit of current
 5 and future beneficiaries; and providing for an effective
 6 date.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 **Section 1.** W.S. 2-3-901 through 2-3-917 are created
 11 to read:

12

13

ARTICLE 9

14

WYOMING UNITRUST ACT

15

16 **2-3-901. Short title.**

17

1 This act shall be known and may be cited as the "Wyoming
2 Unitrust Act".

3

4 **2-3-902. Definitions.**

5

6 (a) As used in this act:

7

8 (i) "Beneficiary" means a person as defined in
9 W.S. 2-3-802(a)(ii);

10

11 (ii) "Disinterested person" means a person who
12 is not a "related or subordinate party" as defined in §
13 672(c) of the Internal Revenue Code, with respect to the
14 person then acting as trustee of the trust and excludes the
15 settlor of the trust and any interested trustee;

16

17 (iii) "Income trust" means a trust, created by
18 either an inter vivos or a testamentary instrument, which
19 directs or permits the trustee to distribute the net income
20 of the trust to one (1) or more persons, either in fixed
21 proportions or in amounts or proportions determined by the
22 trustee. Notwithstanding the foregoing, no trust that
23 otherwise is an "income trust" shall qualify under this
24 act, if it may be subject to taxation under Internal

1 Revenue Code §§ 2001 or 2501, until the expiration of the
2 period for filing the return therefore, including
3 extensions;

4

5 (iv) "Interested distributee" means a person to
6 whom distributions of income or principal can currently be
7 made who has the power to remove the existing trustee and
8 designate as successor a person who may be a "related or
9 subordinate party", as defined in Internal Revenue Code §
10 672(c) with respect to the distributee;

11

12 (v) "Interested trustee" means:

13

14 (A) An individual trustee to whom the net
15 income or principal of the trust can currently be
16 distributed or would be distributed if the trust were then
17 to terminate and be distributed;

18

19 (B) Any trustee who may be removed and
20 replaced by an interested distributee; or

21

22 (C) An individual trustee whose legal
23 obligation to support a beneficiary may be satisfied by
24 distributions of income and principal of the trust.

1

2 (vi) "Total return unitrust" means an income
3 trust which has been created or converted under and meets
4 the provisions of this act;

5

6 (vii) "Trustee" means all persons acting as
7 trustee of the trust, except where expressly noted
8 otherwise, whether acting in their discretion or on the
9 direction of one (1) or more persons acting in a fiduciary
10 capacity;

11

12 (viii) "Settlor" means a person as defined in
13 W.S. 4-10-103(a)(xviii);

14

15 (ix) "Unitrust amount" means an amount computed
16 as a percentage of the fair market value of the trust;

17

18 (x) "This act" means W.S. 2-3-901 through
19 2-3-917.

20

21 **2-3-903. Unitrust election by trustee; requirements**
22 **to make unitrust election.**

23

1 (a) A trustee, other than an interested trustee, or
2 where two (2) or more persons are acting as trustees, a
3 majority of the trustees who are not interested trustees
4 may, in its sole discretion and without the approval of the
5 district court:

6

7 (i) Elect to release the power to adjust
8 described in W.S. 2-3-804 and to convert an income trust to
9 a total return unitrust;

10

11 (ii) Reconvert a total return unitrust to an
12 income trust and reinstate the power to adjust described in
13 W.S. 2-3-804; or

14

15 (iii) Change the percentage used to calculate
16 the unitrust amount or the method used to determine the
17 fair market value of the trust if the following
18 requirements are completed:

19

20 (A) The trustee adopts a written policy for
21 the trust providing:

22

23 (I) In the case of a trust being
24 administered as an income trust, that future distributions

1 from the trust will be unitrust amounts rather than net
2 income;

3

4 (II) In the case of a trust being
5 administered as a total return unitrust, that future
6 distributions from the trust will be net income rather than
7 unitrust amounts; or

8

9 (III) That the percentage used to
10 calculate the unitrust amount or the method used to
11 determine the fair market value of the trust will be
12 changed as stated in the policy.

13

14 (b) The trustee shall mail notice of the proposed
15 action to all beneficiaries who are receiving, or are
16 entitled to receive, income under the trust or to receive a
17 distribution of principal if the trust were terminated at
18 the time the notice is given assuming nonexercise of all
19 powers of appointment.

20

21 (c) Notice of proposed action need not be given to
22 any person who consents in writing to the proposed action.
23 The consent may be executed at any time before or after the
24 proposed action is taken.

1

2 (d) The written notice of its intention to take
3 action shall include the following:

4

5 (i) The name and mailing address of the trustee;

6

7 (ii) The name and telephone number of a person
8 who may be contacted for additional information;

9

10 (iii) A description of the action proposed to be
11 taken and an explanation of the reasons for the action;

12

13 (iv) A copy of the trustee's written policy
14 discussed in subparagraph (a)(iii)(A) of this section;

15

16 (v) The time within which objections to the
17 proposed action can be made, which shall be at least thirty
18 (30) days from the mailing of the notice of proposed
19 action; and

20

21 (vi) The date on or after which the proposed
22 action may be taken or is effective.

23

1 (e) A beneficiary may object to the proposed action
2 by mailing a written objection to the trustee stating the
3 objection and the basis or reason for the objection at the
4 address stated in the notice of proposed action within the
5 time period specified in the notice of proposed action.

6

7 (f) If the trustee receives a written objection
8 stating the basis or reason for the objection within the
9 applicable period, either the trustee or a beneficiary may
10 petition the court to have the proposed action taken as
11 proposed, taken with modifications, or denied.

12

13 (g) A beneficiary who has not objected is not
14 estopped from opposing the proposed action in the
15 proceeding.

16

17 (h) If the trustee decides not to implement the
18 proposed action, the trustee shall notify the beneficiaries
19 of the decision not to take the action and the reasons for
20 the decision, and the trustee's decision not to implement
21 the proposed action shall not itself give rise to liability
22 to any current or future beneficiary.

23

1 2-3-904. Unitrust election where there is no trustee
2 other than an interested trustee; requirements to make
3 unitrust election.

4
5 (a) If there is no trustee of the trust other than an
6 interested trustee, the interested trustee, or where two
7 (2) or more persons are acting as trustees and are
8 interested trustees, a majority of the interested trustees,
9 in its sole discretion and without the approval of the
10 district court, may:

11
12 (i) Elect to release the power to adjust
13 described in W.S. 2-3-804 and to convert an income trust to
14 a total return unitrust;

15
16 (ii) Reconvert a total return unitrust to an
17 income trust and reinstate the power to adjust described in
18 W.S. 2-3-804; or

19
20 (iii) Change the percentage used to calculate
21 the unitrust amount or the method used to determine the
22 fair market value of the trust if the requirements of W.S.
23 2-3-903(a) through (f) are completed and the trustee
24 appoints a disinterested person who, in its sole discretion

1 but acting in a fiduciary capacity, determines for the
2 trustee:

3

4 (A) The percentage to be used to calculate
5 the unitrust amount;

6

7 (B) The method to be used in determining
8 the fair market value of the trust; and

9

10 (C) Which assets, if any are to be excluded
11 in determining the unitrust amount.

12

13 **2-3-905. Unitrust election by beneficiary; ability to**
14 **request trustee action.**

15

16 (a) A beneficiary, who is receiving, or is entitled
17 to receive, income under the trust or to receive a
18 distribution of principal if the trust were terminated,
19 may:

20

21 (i) Submit to the trustee a written request to
22 convert an income trust to a total return unitrust;

23

1 (ii) Reconvert a total return unitrust to an
2 income trust; or

3

4 (iii) Change the percentage used to calculate
5 the unitrust amount pursuant to W.S. 2-3-904.

6

7 (b) If the trustee declines or fails to act within
8 six (6) months of receipt of the written request, the
9 beneficiary may petition the district court to order the
10 conversion or adjustment.

11

12 **2-3-906. Settlor created unitrust.**

13

14 A settlor may create a trust instrument with terms
15 providing that the trust shall be administered as a total
16 return unitrust under this act. A settlor may also create
17 a trust instrument with terms providing that the trust may
18 be administered as either an income trust or as a total
19 return unitrust under this act in the discretion of the
20 trustee or a trust protector appointed in the trust
21 instrument.

22

23 **2-3-907. Valuations.**

24

1 (a) The fair market value of a trust subject to this
2 act shall be determined, at least annually, using a
3 valuation date or dates or averages of valuation dates as
4 are deemed appropriate except that:

5

6 (i) The trustee shall not include in the fair
7 market value the value of any residential property or any
8 tangible personal property that the income beneficiary has
9 the right to occupy or use; and

10

11 (ii) The trustee shall not limit or restrict any
12 right of the beneficiary to use the excluded property in
13 accordance with the governing instrument.

14

15 (b) Assets for which a fair market value cannot be
16 readily ascertained shall be valued using valuation methods
17 as are deemed reasonable and appropriate as determined in
18 the sole discretion of the trustee. The assets may be
19 excluded from valuation in the sole discretion of the
20 trustee, provided all income received with respect to the
21 assets is distributed to the extent distributable in
22 accordance with the terms of the governing instrument.

23

24 **2-3-908. Unitrust percentages.**

1

2 The percentage to be used in determining the unitrust
3 amount shall be a reasonable current return from the trust,
4 in any event not less than three percent (3%) nor more than
5 five percent (5%), taking into account the intentions of
6 the settlor of the trust as expressed in the governing
7 instrument, the needs of the beneficiaries, general
8 economic conditions, projected current earnings and
9 appreciation for the trust, and projected inflation and its
10 impact on the trust.

11

12 **2-3-909. Treatment and allocation of income.**

13

14 (a) Following the conversion of an income trust to a
15 total return unitrust or upon creation of a total return
16 unitrust by a settlor, the trustee:

17

18 (i) Shall treat the unitrust amount as if it
19 were net income of the trust for purposes of determining
20 the amount available, from time to time, for distribution
21 from the trust; and

22

23 (ii) May allocate to trust income for each
24 taxable year of the trust, or portion thereof:

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2-3-910. Administration.

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(a) In administering a total return unitrust, the trustee may, in its sole discretion, but subject to the provisions of the governing instrument, determine:

1 (i) The effective date of the conversion;

2

3 (ii) The timing of distributions, including
4 provisions for prorating a distribution for a short year in
5 which a beneficiary's right to payments commences or
6 ceases;

7

8 (iii) Whether distributions are to be made in
9 cash or in kind or partly in cash and partly in kind;

10

11 (iv) If the trust is reconverted to an income
12 trust, the effective date of the reconversion; and

13

14 (v) Other administrative issues as may be
15 necessary or appropriate to carry out the purposes of this
16 act.

17

18 **2-3-911. Treatment of underpayments or overpayments.**

19

20 In the event of an underpayment to a beneficiary, the
21 trustee shall pay to a beneficiary within a reasonable
22 time, and in the event of an overpayment to a beneficiary,
23 the trustee shall recover from the beneficiary either by
24 repayment by the beneficiary or by withholding from future

1 distributions to the beneficiary, an amount equal to the
2 difference between the amount properly payable and the
3 amount actually paid.

4

5 **2-3-912. Effect of conversion on governing**
6 **instrument.**

7

8 Conversion to a total return unitrust under the provisions
9 of this act shall not affect any other provision of the
10 governing instrument, if any, regarding distributions of
11 principal.

12

13 **2-3-913. Situs.**

14

15 (a) This act shall be construed as pertaining to the
16 administration of a trust and shall be available to any
17 trust that is administered in Wyoming under Wyoming law
18 unless:

19

20 (i) The governing instrument reflects an
21 intention that the beneficiary or beneficiaries are to
22 receive an amount other than a reasonable current return
23 from the trust;

24

1 (ii) The trust is a trust described in Internal
2 Revenue Code §§ 170(f)(2)(B), 664(d), 2702(a)(3) or
3 2702(b); or

4
5 (iii) The governing instrument expressly
6 prohibits use of this act by specific reference to this
7 act.

8

9 **2-3-914. Trustee's liability.**

10

11 Any trustee or disinterested person who in good faith takes
12 or fails to take any action under this act shall not be
13 liable to any person affected by the action or inaction,
14 regardless of whether the person received written notice as
15 provided in this act and regardless of whether the person
16 was under a legal disability at the time of the delivery of
17 the notice. The person's exclusive remedy shall be to
18 obtain an order of the district court directing the trustee
19 to convert an income trust to a total return unitrust, to
20 reconvert from a total return unitrust to an income trust
21 or to change the percentage used to calculate the unitrust
22 amount.

23

24 **2-3-915. Judicial control of discretionary powers.**

1

2 (a) A court shall not change a trustee's decision to
3 exercise or not to exercise a discretionary power conferred
4 by this act unless it determines that the decision was an
5 abuse of the trustee's discretion. A court shall not
6 determine that a trustee abused its discretion merely
7 because the court would have exercised the discretion in a
8 different manner or would not have exercised the
9 discretion.

10

11 (b) Where a beneficiary elects to challenge an action
12 or nonaction by a trustee or disinterested party under the
13 powers and authority granted in the party under this act,
14 the beneficiary has the burden of establishing, by a
15 preponderance of the evidence, that the actions or
16 nonactions by a trustee or a disinterested party abused the
17 trustee's or the party's discretion. A beneficiary who
18 fails to state a basis or reason for an objection or fails
19 to prove by a preponderance of the evidence the proposed
20 action should be taken or should not be taken shall be
21 liable to all other beneficiaries for damages and costs
22 associated with the objection.

23

24 **2-3-916. Limitation of election.**

1

2 An action shall not be taken under W.S. 2-3-903, 2-3-904 or
3 2-3-905 more frequently than every two (2) years, unless
4 the district court orders otherwise.

5

6 **2-3-917. Application.**

7

8 This act applies to every trust or decedent's estate
9 existing on July 1, 2007 or created thereafter except as
10 otherwise expressly provided in the will or terms of the
11 trust or in this act.

12

13 **Section 2.** This act is effective July 1, 2007.

14

15

(END)