

1 AN ACT relating to the disposition of property.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 391.010 is amended to read as follows:

4 When a person having right or title to any real estate or inheritance dies intestate as to
5 such estate, it shall descend in common to his or her kindred, male and female, in the
6 following order, except as otherwise provided in this chapter:

7 **(1) (a) To his or her surviving spouse as follows:**

8 **1. If there is no surviving descendant of the decedent, the entirety;**

9 **2. If the decedent is survived by one (1) or more descendants, all of**
10 **whom are also descendants of the surviving spouse, the entirety;**

11 **3. If the decedent is survived by one (1) or more descendants who are not**
12 **lineal descendants of the surviving spouse, one-half (1/2); or**

13 **4. If the decedent is survived by one (1) or more descendants, all of**
14 **whom are also descendants of the surviving spouse, and the surviving**
15 **spouse has one (1) or more descendants who are not descendants of**
16 **the decedent, one-half (1/2); and**

17 **(b) Any interest in property not passing to his or her surviving spouse under**
18 **this subsection, or if there is no surviving spouse, as provided in subsections**
19 **(2) to (6) of this section.**

20 ~~(2)(1)~~ To his or her children and their descendants; if there are none, then

21 ~~(3)(2)~~ To his or her father and mother, if both are living, one (1) moiety each; but if
22 the father is dead, the mother, if living, shall take the whole estate; if the mother is
23 dead, the whole estate shall pass to the father; if there is no father or mother, then

24 ~~(4)(3)~~ To his or her brothers and sisters and their descendants; if there are none, then
25 ~~[(4) To the husband or wife of the intestate; if there are none surviving, then]~~

26 (5) (a) One (1) moiety of the estate shall pass to the paternal and the other to the
27 maternal ~~kindred, in the following order:~~

- 1 (a) ~~The~~ grandfather and grandmother equally, if both are living; but if one is
2 dead, the entire moiety shall go to the survivor; if there is no grandfather or
3 grandmother, then
- 4 (b) To the uncles and aunts and their descendants; if there are none, then
- 5 (c) To the stepchildren of the decedent ~~great-grandfathers and great-~~
6 ~~grandmothers, in the same manner prescribed for grandfather and~~
7 ~~grandmother by subsection (a); if there are none, then~~
- 8 (d) ~~To the brothers and sisters of the grandfathers and grandmothers and their~~
9 ~~descendants; and so on in other cases without end, passing to the nearest lineal~~
10 ~~ancestors and their descendants].~~
- 11 (6) If there is no ~~such~~ kindred ~~to one of the parents~~ as is described in subsection (5)
12 of this section, the whole shall vest in the state under KRS 393.020 ~~to go to the~~
13 ~~kindred of the other. If there is neither paternal nor maternal kindred, the whole~~
14 ~~shall go to the kindred of the husband or wife, as if he or she had survived the~~
15 ~~intestate and died entitled to the estate].~~
- 16 ➔ Section 2. KRS 392.020 is amended to read as follows:
- 17 **(1) (a)** After the death of the husband or wife intestate, the survivor shall have, in
18 addition to his or her share under Section 1 of this Act, an estate ~~in fee of~~
19 ~~one half (1/2) of the surplus real estate of which the other spouse or anyone~~
20 ~~for the use of the other spouse, was seized of an estate in fee simple at the~~
21 ~~time of death, and shall have an estate]~~ for his or her life in one-third (1/3) of
22 any real estate of which the other spouse or anyone for the use of the other
23 spouse, was seized of an estate in fee simple during the coverture but not at
24 the time of death, unless the survivor's right to the ~~such~~ interest has been
25 barred, forfeited, or relinquished.
- 26 **(b)** The survivor shall also have an absolute estate in one-half (1/2) of the surplus
27 personalty left by the decedent. Unless the context otherwise requires, any

reference in the statutes of this state to "dower" or "curtesy" shall be deemed to refer to the surviving spouse's interest created by this section.

(2) Except as otherwise provided in subsection (4) of this section, surplus personalty includes personal property owned by the decedent at death that is:

(a) Payable pursuant to a:

1. Beneficiary designation;

2. Transfer on death designation; or

3. Payable on death designation, including retirement accounts whether designated as an individual retirement account or otherwise; or

(b) Jointly owned with right of survivorship to another person.

(3) The surviving spouse's share of the decedent's surplus personalty shall be credited with any property described in subsection (2) of this section received by the surviving spouse at the decedent's death, less the amount of payment made for the decedent's funeral and burial expenses as confirmed by receipt of payment, or by contract or other written document of obligation for payment.

(4) (a) Surplus personalty shall not include the death benefit payable on any life insurance policy insuring the life of the decedent;

(b) Life insurance proceeds payable to the surviving spouse shall be credited against the surviving spouse's share of the decedent's surplus personalty; and

(c) Life insurance proceeds payable to a trust of which the surviving spouse is a beneficiary shall be credited against the surviving spouse's share of the decedent's surplus personalty in an amount determined under subsection (7) of this section.

(5) Surplus real estate and surplus personalty include all property held by or payable at the decedent's death:

(a) To a trust over which the decedent held at the time of death a power of

1 revocation; and

2 (b) Over which the decedent held at the time of death a general power of
3 appointment as defined in KRS 390.020.

4 (6) Property of any kind transferred by the decedent to a person or trust, other than a
5 trust for the benefit of the surviving spouse, the decedent, or a qualified
6 charitable organization two (2) years or more prior to death, is not surplus
7 personalty and is not surplus real estate. Property of any kind transferred by the
8 decedent to a person or trust less than two (2) years prior to death is surplus
9 personalty or surplus real estate.

10 (7) Property of any kind transferred prior to the decedent's death and held at the
11 decedent's death by a trust created by the decedent and of which the surviving
12 spouse is a beneficiary shall be:

13 (a) Deemed surplus personalty or surplus real estate as applicable; and

14 (b) Credited against the surviving spouse's share of the decedent's surplus real
15 estate and surplus personalty, in an amount computed under 26 U.S.C. sec.
16 7520.

17 (8) The surviving spouse may bring an action against any person receiving property
18 that is part of the surplus real estate or surplus personalty as necessary to satisfy
19 the dower or curtesy claim of the surviving spouse with respect to that property.

20 ➔ Section 3. KRS 394.300 is amended to read as follows:

21 (1) (a) Every will~~[- or authenticated copy]~~ admitted to probate~~[- record]~~ by any court
22 shall be recorded by the county clerk, and shall remain in the~~[- his]~~ office of
23 the county clerk~~[-]~~ except:

24 1. During such time as it may be carried to another court under subpoena
25 duces tecum; or

26 2. As provided in paragraph (d) of this subsection.

27 (b) For any will recorded on or after January 1, 2027, the county clerk shall

1 return the will to the person designated in the order admitting the will to
2 probate no earlier than two (2) years after it has been recorded by the
3 county clerk.

4 (c) Any will recorded with the county clerk after January 1, 1978, and prior to
5 January 1, 2027, that remains in the office of the county clerk may be
6 destroyed or returned to either the person designated in the order admitting
7 the will to probate or the person appointed as the executor or executrix of
8 the decedent's estate no earlier than ten (10) years after the date of
9 recording.

10 (d) Upon receipt of any notice required under KRS 394.240, the county clerk
11 shall not return a will under paragraph (b) or (c) of this subsection until:

12 1. The adversarial proceeding is final and nonappealable; or

13 2. Authorized by a court of competent jurisdiction.

14 (e) Any attempted return of a will under paragraph (b) or (c) of this subsection
15 that is:

16 1. Returned to the county clerk as undeliverable; or

17 2. Precluded due to insufficient information regarding an address or to
18 whom the will should be returned;

19 may be destroyed.

20 (2) (a) A will probated in the court of one Kentucky county and recorded in the
21 office of the county clerk for that county may be recorded in the office of the
22 county clerk for other counties without the process of probate in the other
23 county.

24 (b) Production of an attested copy of the will together with an attested copy of the
25 order of probate shall be required by the county clerk of the other county
26 before recordation.

27 (c) The clerk shall make the same charge for recordation as is otherwise provided

1 for recording a will.

2 ➔ Section 4. KRS 395.015 is amended to read as follows:

- 3 (1) Before being appointed as executor, administrator, curator, or administrator with
4 the will annexed, every person shall make and file in duplicate a written application
5 for appointment under oath, which shall include:~~[must state]~~
- 6 (a) The names of the deceased's surviving spouse and all of his or her heirs-at-
7 law~~[or such]~~ as are known, and the United States postal address and
8 electronic mail~~[their post office]~~ address of each if known;~~[,]~~
- 9 (b) The date of death;~~[and also a statement in general terms as to what the estate~~
10 ~~consists of and the probable value of the personal and real estate and also]~~
- 11 (c) A statement of any indebtedness owing by the applicant to the deceased;
- 12 (d) If the decedent died testate, the name and address of the person to whom
13 any will admitted to probate and recorded with the county clerk is to be
14 returned under Section 3 of this Act; and
- 15 (e) An acknowledgment by the person seeking appointment as executor,
16 administrator, curator, or administrator with the will annexed in
17 substantially the following form:
- 18 "Upon appointment, I agree to faithfully execute the duties required by law,
19 and such additional duties ordered by the court, and that I am subject to
20 removal as a fiduciary if I fail to perform the required duties, and subject to
21 possible civil and criminal penalties for improper conversion of any
22 property I hold as a fiduciary."
- 23 (2) (a) If the decedent died testate, the decedent's will shall be presented to the
24 court prior to or at the time of any appointment.
- 25 (b) After the will is admitted to probate, the clerk of the court shall:
- 26 1. Beginning January 1, 2028, collect the fee required by the county
27 clerk under Section 56 of this Act for the filing of a will and the tax

1 required under Section 57 of this Act; and

2 2. Deliver the following to the county clerk:

3 a. The will and a certified copy of the order admitting the will to
4 probate, which shall include the name and address of the person
5 to whom the will is to be returned as provided under Section 3 of
6 this Act; and

7 b. The filing fee and tax collected under subparagraph 1. of this
8 paragraph.

9 (3) (a) A written general financial disclosure statement of the property of the
10 decedent, to the extent known, shall be filed separately at the time of filing
11 the application for appointment.

12 (b) The general financial disclosure statement shall comply with the
13 requirements in subsection (4) of this section and shall include the
14 approximate value, determined in good faith, of all real and personal
15 property known by the applicant which may include:

16 1. Furniture and household goods;

17 2. Personal effects, including jewelry and collectibles;

18 3. Stocks, bonds, bank accounts, and retirement accounts that do not
19 constitute a nontestamentary transfer on death as provided in KRS
20 391.360;

21 4. Insurance policies if payable to the estate of the decedent;

22 5. Real property that is not held in joint ownership with another with
23 right of survivorship; and

24 6. Any other personal property accurately identified, including the
25 decedent's share in any partnership or ownership in any other entity.

26 (c) The general financial disclosure statement shall be confidential, placed
27 under seal when filed, and disclosed only:

- 1 1. To the personal representative;
- 2 2. To the personal representative's attorney;
- 3 3. To any beneficiary or heir at law;
- 4 4. As required under subsection (9) of this section and Section 13 of this
5 Act; or
- 6 5. By order of the court upon a showing of good cause that shall include
7 a creditor who has filed a verified statement of claim against the
8 estate.
- 9 (d) As used in paragraph (c) of this subsection, and in subsection (7) of Section
10 13 of this Act, a finding of good cause shall not:
 - 11 1. Be based solely on the position of the decedent as a public official,
12 public figure, or other person who has drawn substantial public
13 attention due to the person's official acts, fame, notoriety, or celebrity;
14 or
 - 15 2. Be made if the release of the protected information would constitute a
16 clearly unwarranted invasion or exploitation of personal privacy or
17 proprietary interests of a beneficiary of the estate or an heir at law
18 without substantial evidence of irreparable harm or material financial
19 loss if release of the requested information to the requesting party is
20 denied.
- 21 (4) The application for appointment and the general financial disclosure statement
22 shall be signed and dated by the person seeking the appointment and the
23 acknowledgment required under subsections (1) and (3) of this section may be
24 satisfied, with like force and effect, by a written and dated declaration under the
25 penalty of perjury, in substantially the following form:
26 "I declare under the penalties of perjury of the laws of the Commonwealth of
27 Kentucky, which may include a fine or imprisonment, that the foregoing is true

1 and correct."

2 (5) If~~The foregoing requirement in respect to names and addresses of heirs at law may~~
3 ~~be omitted when~~ the application for appointment is being made by the executor
4 named in the will, the names and addresses of the heirs at law may be omitted
5 unless requested by the court.

6 (6) The application of a nonresident shall include the designation of a resident of the
7 county where probate or administration is pending as his or her agent for the
8 service of process in any action against him or her as personal representative or
9 personally, provided that ~~the~~~~such~~ personal action must have accrued in the
10 administration of the estate~~. A duplicate copy of said application shall be mailed by~~
11 ~~the clerk to the secretary of revenue of the State of Kentucky~~.

12 (7) (a) Except as provided in paragraph (b) of this subsection, the court shall set a
13 time for hearing the application for appointment when:

14 1. ~~[(2) In the case of intestacy, or where]~~An administrator with will
15 annexed or de bonis non is to be appointed and there is~~, if there be]~~ no
16 surviving spouse; or~~, or if such]~~

17 2. The surviving spouse waives the right of appointment or is not qualified
18 to act and does not nominate a suitable administrator, and there is more
19 than one (1) resident heir-at-law entitled to appointment~~, the court shall~~
20 ~~thereupon set a time for hearing such application~~.

21 (b) No hearing shall be required under paragraph (a)2. of this subsection if the
22 surviving spouse and all of the known heirs at law have executed a waiver
23 of the right to a hearing.

24 (c) Notice of ~~any~~~~said~~ hearing set under this subsection shall be given to the
25 surviving spouse and all known heirs of the deceased residing in the state, or
26 elsewhere, in the manner provided in KRS 395.016.

27 (8) Upon receipt of the filings and presentation of the will as required under this

1 section, the court, in its discretion, shall determine if a hearing on the application
2 for the appointment of a fiduciary is required.

3 (9) The clerk of the court shall transmit a copy of the application and general
4 financial disclosure statement to the commissioner of the Department of
5 Revenue.

6 ➔ Section 5. KRS 395.016 is amended to read as follows:

7 (1) (a) When a hearing is ordered by the court, notice of the hearing ~~on~~~~of~~ an
8 application for the appointment of a fiduciary, or petition for the probate of a
9 will, ~~an administrator, administrator with will annexed or guardian is required~~
10 ~~, it~~ shall be given by mailing written notice of the time, place, and purpose of
11 ~~the~~~~such~~ hearing at least five (5) days before ~~the~~~~said~~ hearing.

12 (b) Proof of ~~such~~ notice shall be by:

13 1. Certified mail, return receipt requested; ~~or by~~

14 2. The applicant's written and dated declaration in conformity with the
15 requirements of a declaration under subsection (4) of Section 4 of this
16 Act~~affidavit~~ that notice of the hearing~~the same~~ was mailed to each
17 of the parties~~entitled thereto~~ in a sealed envelope, postage prepaid,
18 and the date when posted, ~~which~~

19 (c) Proof of notice shall be filed at the time of the hearing.

20 (2) If all parties entitled to notice are under no disability and waive notice in writing,
21 the court may hear ~~the~~~~such~~ application as if notice had been given. The waiver of
22 notice may be filed before or at the time of the hearing.

23 (3) A minor over fourteen (14) years of age may waive notice of the hearing if he or
24 she is present in person at the ~~time of~~ hearing, ~~of application for appointment of~~
25 ~~his guardian; provided, however~~

26 (4) In any estate where the gross amount involved is less than five thousand dollars
27 (\$5,000) the court, in its discretion, may dispense with the notice requirements of

1 this section~~[relating to notice]~~.

2 ➔Section 6. KRS 395.020 is amended to read as follows:

3 **(1)** The person named in a will as executor shall not act as executor to any extent until:

4 **(a)** The will or an authenticated copy of the will is admitted to **probate**~~;~~~~record,~~
5 ~~and~~

6 **(b)** He **or she** has **presented an** executed **surety** bond **when required under**
7 **Section 11 of this Act**; and

8 **(c)** **He or she has** taken **an** oath in the court in which the record is made, **or if no**
9 **hearing is required by the court for appointment, has filed with the court in**
10 **which the record is made the declaration executed under penalty of perjury**
11 **in accordance with Section 10 of this Act.**

12 **(2)** **The person named in a will as executor**~~[He]~~ may, however, provide for the burial
13 of the testator, pay the reasonable funeral expenses, and take care of and preserve
14 the estate.

15 ➔Section 7. KRS 395.050 is amended to read as follows:

16 (1) If no executor is appointed by the will, or if all the executors named in the will die,
17 refuse the executorship, or fail to **provide surety**~~[give]~~ bond **if required by the**
18 **court**, the court may grant administration with the will annexed to the person who
19 would have been entitled to administration if there had been no will, but ~~a~~~~no~~
20 person **whose interests are antagonistic to the provisions of the will** shall **not** be
21 eligible to appointment as administrator with the will annexed~~[whose interests are~~
22 ~~antagonistic to the provisions of the will]~~. Failure to **provide surety**~~[give]~~ bond
23 **when required by the court** shall amount to refusal to act as executor.

24 (2) An administrator with the will annexed shall possess and exercise all power and
25 authority, have the same rights and interest, and be responsible in like manner as the
26 executors named in it.

27 ➔Section 8. KRS 395.080 is amended to read as follows:

1 If all the persons nominated as executors are under the age of eighteen (18) at the time of
2 probating the will, or those who are of age fail to qualify, administration with the will
3 annexed may be granted during~~[such]~~ minority. ~~[But]~~ If a testator, by his or her will, so
4 directs, however, then the~~[such]~~ infant executor may qualify and, if required by the
5 court, give surety bond as an adult.

6 ➔ Section 9. KRS 395.105 is amended to read as follows:

7 (1) Every fiduciary, before entering upon the execution of the trust, shall receive letters
8 of appointment from the District Court having jurisdiction as~~[now]~~ fixed by law.

9 (2) The duties of a fiduciary shall be those~~[such as are]~~ required by law, and any~~[such]~~
10 additional duties~~[not inconsistent therewith]~~ as the court may order.

11 (3) The appointment of the personal representative shall be effective upon~~[with]~~ the
12 signing of an order by the judge, the presentation to the clerk of an executed
13 surety bond when required under Section 11 of this Act, and either the
14 administration of any oaths required in Section 10 of this Act, or the filing of the
15 declaration in Section 10 of this Act if no hearing is required.

16 ➔ Section 10. KRS 395.120 is amended to read as follows:

17 (1) If the court requires a hearing for the appointment of the fiduciary, each
18 executor, administrator,~~[and]~~ curator, and administrator with the will annexed or
19 de bonis non shall take an oath before the court in which the application for
20 appointment is made to faithfully perform the duties of his or her office to the best
21 of his or her judgment.

22 (2) (a) The oaths required of the executor, administrator, curator, and
23 administrator with the will annexed or de bonis non may be satisfied by
24 execution of the following declaration:

25 "1. I, the undersigned, agree to faithfully perform the duties of the office
26 as required by law, including but not limited to:

27 a. Deposit all funds which come into my hands in a lawful

1 depository located within this Commonwealth and provide
2 canceled checks as may be required to prove accounts;

3 b. Keep estate funds in separate estate accounts at all times during
4 the administration of the estate;

5 c. Invest all funds in a lawful manner;

6 d. Make and file all required documents when due as required by
7 law;

8 e. File all tax documents as required by law;

9 f. Maintain adequate insurance to reasonably protect any property
10 that I may hold as a fiduciary; and

11 g. Obey all orders of the court;

12 2. I, the undersigned, understand I am subject to removal as the
13 fiduciary if I fail to perform the duties required of me under the laws
14 of this state and that I am subject to possible fines, and civil and
15 criminal penalties for improper conversion of the property that I hold
16 as fiduciary; and

17 3. If applicable, I, the undersigned, declare that my intestate, so far as I
18 know or believe, died without leaving a will."

19 (b) The oath sworn or affirmed in the presence of a notary public, or the
20 declaration if authorized by the court, shall be presented to the appropriate
21 clerk of the court with the fiduciary's application for appointment

22 ~~administrator shall also take an oath that his intestate, so far as he knows or~~
23 ~~believes, died without leaving a will].~~

24 ➔ Section 11. KRS 395.130 is amended to read as follows:

25 (1) No bond shall be required of a personal representative appointed under this
26 chapter except as provided in subsection (2) of this section.

27 (2) The court shall order a surety bond of a personal representative appointed under

1 this chapter when the:

2 (a) Appointment is of a public administrator under Section 16 of this Act or a
3 curator under Section 19 of this Act; or

4 (b) Court, in its discretion, determines that a surety bond is required to
5 adequately protect all interests in the estate. In exercising its discretion
6 under this paragraph, the court may consider the:

7 1. Expression of intent of the testator under a will or trust; however,
8 notwithstanding any other law to the contrary, the court shall not be
9 bound by the expressed intent; and

10 2. Experience of the personal representative, including whether or not
11 the personal representative is acting as a fiduciary in any other matter.

12 (3) (a) Every fiduciary of whom surety bond is required under subsection (2) of this
13 section~~[, except as provided in KRS 286.3-220 and 386B.7-020,]~~ shall
14 provide the surety bond as ordered by the court~~[on his bond unless, on the~~
15 ~~petition of any interested party, the court upon being satisfied that all interests~~
16 ~~are adequately protected excuses the requirement of a surety, or unless, by the~~
17 ~~terms of the will or trust, surety is not required. Subsequent to the~~
18 ~~qualification of a fiduciary and]~~

19 (b) On motion of any interested party the court may:

20 1. Reduce or increase the amount of the surety bond~~;~~~~[, release the surety,]~~
21 or

22 2. Permit the substitution of another surety bond with the same or different
23 sureties.

24 (4) If an executor does not give surety bond when required to do so, he or she shall not
25 be authorized to act as executor~~[permitted to qualify]~~, and, if he or she has already
26 been appointed~~[qualified, he]~~ shall be removed.

27 (5)~~(2)~~ Whenever any personal representative, guardian, conservator, or fiduciary

1 who is required by law to execute a surety bond for the faithful discharge of his or
2 her duties or fulfillment of his or her trust, procures as surety on his or her bond an
3 incorporated surety company authorized to do business in this state, the necessary
4 and reasonable cost incident to the surety bond shall be a lawful charge against the
5 estate in the hands of the fiduciary, as other expenses of administration, and in his
6 or her settlement the fiduciary shall be entitled to credit by the amount actually paid
7 by him or her for that purpose, subject to the approval of the court which has
8 approved the surety bond.

9 ➔ Section 12. KRS 395.140 is amended to read as follows:

10 (1) *A fiduciary required to execute a surety bond shall deliver to the clerk of the*
11 *court of the county in which he or she is appointed a surety bond payable to and*
12 *with the Commonwealth, subscribed to by the principal and sureties in the*
13 *presence of a notary, in the amount, and with sufficient sureties, as may be*
14 *approved by the court in its order of appointment.*

15 (2) The District Court shall not accept as surety, in any surety bond of a personal
16 representative, any master or other commissioner whose duty is to settle the
17 accounts of personal representatives, or any judge or clerk of a District Court or
18 practicing attorney of that court.

19 (3)(2) The surety bond shall be filed~~[subscribed by the principal and sureties,~~
20 ~~approved by the court, attested by the clerk of the court and carefully kept]~~ by the
21 clerk in his or her office in a record maintained~~[book to be provided]~~ for that
22 purpose.

23 ➔ Section 13. KRS 395.250 is amended to read as follows:

24 (1) (a) It shall be the duty of a personal representative of a decedent to file~~[return]~~ an
25 inventory~~[in duplicate]~~ no later than ninety (90) days~~[within two (2) months]~~
26 from the time of qualifying as personal representative.~~[such, to the clerk's~~
27 ~~office of the court in which he qualified,]~~

1 **(b)** The inventory~~[original of which]~~ shall be confidential except as provided in
2 subsection (2)(a) of this section, and shall be placed under seal when filed.
3 The clerk of the court shall transmit a copy of the inventory~~[recorded by the~~
4 ~~clerk and the duplicate shall be mailed by the clerk]~~ to the
5 commissioner~~[secretary]~~ of the Department of Revenue.

6 **(2) (a)** It shall be the duty of the personal representative of a decedent to furnish a
7 filed copy of the inventory required under subsection (1) of this section to
8 any person authorized under subsection (3)(c) of Section 4 of this Act who
9 has requested a copy, or to whom the court has ordered disclosure of assets
10 and liabilities.

11 **(b)** No person or entity authorized under subsection (3)(c) of Section 4 of this
12 Act or by the court to receive records under seal, including the inventory
13 filed under this section, shall copy, reproduce, or in any way release any
14 information contained in the records without specific authorization from
15 the court in which the personal representative qualified. Violation of this
16 paragraph shall be a basis for a finding of contempt of court.

17 **(3)** Copies from the record of the inventory or appraisal shall be prima facie
18 evidence for or against the personal~~[such]~~ representative when required and
19 approved for release by the court for that purpose.

20 **(4)** If any property not included in the initial inventory comes to the knowledge of the
21 personal representative, or if the personal representative learns that the value or
22 description of any item listed in the initial inventory is erroneous or misleading,
23 the personal representative shall file an amended inventory with the court.

24 **(5) (a)** If the personal representative has cause to believe that any of the assets of
25 the estate are concealed or wrongfully withheld from the personal
26 representative, or that any person has in his or her possession or under his
27 or her control any records, books, documents, or related information

1 concerning withheld assets or the ownership of withheld assets, the personal
2 representative shall petition the court before which the estate action is
3 pending for an order compelling discovery of the required information.

4 (b) All parties named in the petition may be compelled to provide under oath
5 either by response to the petition or by personal testimony to the court, all
6 the facts known to them concerning the assets of the estate and any adverse
7 claims relating to the assets of the estate.

8 (c) If the court finds that any person has property or assets of the estate to
9 which there is no adverse claim, the court shall direct the property or asset
10 be delivered to the personal representative who shall account for the
11 property or asset in an amended inventory filed with the court no later than
12 twenty (20) days following entry of the court's order.

13 (6) Any settlement ordered or filed under this chapter shall be filed in compliance
14 with the confidentiality provisions in subsections (1) and (2) of this section.

15 (7) Additional documents containing information regarding the assets or value of the
16 decedent's estate shall not be ordered to be filed except upon motion with good
17 cause shown, and any document filed under this section shall be in compliance
18 with the confidentiality provisions in subsections (1) and (2) of this section.

19 (8) Failure to timely file any inventory when due shall be subject to the penalties in
20 Sections 14 and 30 of this Act.

21 ➔Section 14. KRS 395.255 is amended to read as follows:

22 (1) It shall be the duty of the clerk of the court to report to the judge once each
23 month the names and addresses of all fiduciaries who failed to submit an
24 inventory or settlement due according to law during the previous calendar month.

25 (2) The judge shall notify the fiduciaries reported under subsection (1) of this section
26 of their failure to file an inventory or settlement and shall warn them of the
27 penalties provided by law.

1 **(3)** If a fiduciary neglects or refuses to file an inventory or **settlement**~~[account]~~ when
2 due according to law, or when ordered by the court, the court shall notify the
3 fiduciary of his **or her** delinquency and fix a date when **the**~~[such]~~ inventory or
4 **settlement shall**~~[account must]~~ be filed.~~[Unless there is pending in the circuit court~~
5 ~~a suit to settle the estate such neglect or refusal shall be grounds for removal by the~~
6 ~~court.]~~

7 **(4) (a)** If the fiduciary fails to file **the inventory or settlement by the extended date**
8 **ordered by the court**~~[such account within thirty days after the date fixed in~~
9 ~~said notice],~~ **the court shall enter an order for the fiduciary to appear before**
10 **the court to show cause why he or she should not be found to have breached**
11 **his or her fiduciary duty and be:**

- 12 **1. Removed from service as a fiduciary;**
- 13 **2. Found in contempt of court;**
- 14 **3. Fined in accordance with Section 30 of this Act;**
- 15 **4. Denied any**~~[no]~~ allowance~~[shall be made]~~ for his **or her** services; **or**
- 16 **5. Be subject to any other penalty authorized by law for breach of a**
17 **fiduciary duty**~~[unless the court enters upon its minutes an order that~~
18 ~~such delay was justified].~~

19 **(b) Failure to appear at a show cause hearing under this subsection shall result**
20 **in automatic removal from service as a fiduciary.**

21 **(5) The time for filing an inventory or settlement under this section shall not be**
22 **extended by more than thirty (30) days following a hearing:**

- 23 **(a) Unless there is pending in Circuit Court a suit to settle the estate; or**
- 24 **(b) Upon good cause shown by the fiduciary.**

25 ➔Section 15. KRS 395.300 is amended to read as follows:

26 An administrator de bonis non or any other successor appointed in the place of a personal
27 representative who has resigned,~~[or]~~ has been removed,~~[or]~~ whose letters have been

1 revoked,~~[or who]~~ has ceased to act, or has died, may maintain an action against the
2 former personal representative and the sureties on the administration surety bond, if any,
3 and against the predecessor's real and personal representatives, for all damages or debts
4 arising from the maladministration or omission of the predecessor.

5 ➔Section 16. KRS 395.380 is amended to read as follows:

6 (1) The District Court of each county shall appoint a discreet, qualified~~[fit]~~ person to
7 act as administrator of decedents' estates of which there is no personal
8 representative, and as guardian of orphans who have no guardian.

9 (2) The public administrator or guardian appointed under this section:~~[He]~~

10 (a) Shall serve at the discretion of the District Court;~~[.]~~

11 (b)~~(3) — [He]~~ Shall be sworn and execute bond with good surety to the state for
12 the faithful discharge of his or her duties;~~[.]~~ and

13 (c) Upon being duly sworn and executing surety bond~~[when so sworn with bond~~
14 ~~so executed]~~, shall be accepted by the court in every estate in which the public
15 administrator is appointed without the necessity of additional surety.

16 ➔Section 17. KRS 395.390 is amended to read as follows:

17 (1) (a) The District Court of a county which has a public administrator and guardian
18 shall, after the expiration of sixty (60) days from the death of the decedent,
19 order the public administrator and guardian to administer the estate of the
20 decedent where:

21 1. The surviving spouse and heirs waive their right to be appointed;~~[or if]~~

22 2. The surviving spouse does not nominate a suitable administrator;~~[or in~~
23 ~~the event]~~

24 3. Any of the persons designated in KRS 395.040 are unable~~[.]~~ or found to
25 be incapable of handling or managing the estate;~~[.]~~ or

26 4. ~~[If]~~From any other cause there is no personal representative.

27 (b) If there is no public administrator and guardian, the court shall use its

1 **discretion to appoint an administrator**~~[order the sheriff]~~ to administer the
2 estate.

3 (2) **(a)** The District Court shall also confide to the public administrator and guardian
4 the care and control of the persons and estates of all minors when it appears
5 that a minor has no testamentary guardian and no one will apply for
6 appointment, or serve, as guardian.

7 **(b) If there is no public administrator and guardian, the court shall use its**
8 **discretion to appoint a guardian to serve under this subsection.**

9 ➔Section 18. KRS 395.400 is amended to read as follows:

10 **(1)** The public administrator and guardian or **person appointed under Section 17 of**
11 **this Act**~~[sheriff]~~ shall, by~~[virtue of his office and the]~~ order of **the** court, be the
12 administrator or administrator de bonis non, or if there is a will, administrator with
13 the will annexed, and shall have all the rights and powers,~~[and]~~ be subjected to the
14 same liabilities, and be governed by the same laws prescribed for administrators
15 and guardians.~~[If the sheriff is acting, his powers, rights, duties and liabilities shall~~
16 ~~not expire with his office of sheriff.]~~

17 **(2)** The court may, however, at any time, set aside the order entrusting the estate to the
18 public administrator and guardian or **person appointed under Section 17 of this**
19 **Act**~~[sheriff]~~ and allow an executor or administrator to qualify.

20 ➔Section 19. KRS 395.410 is amended to read as follows:

21 (1) During the contest about the probate of a will, or when the court for any valid cause
22 is delayed in granting letters testamentary or **of** administration, it may appoint a
23 curator to collect and preserve the estate of the decedent until probate of the will is
24 granted, or until the cause for which the order was made is removed.

25 (2) When any resident of this state or person owning property in this state has been
26 absent from his **or her** last known place of residence for a period of one (1) year
27 and is not known to have been living during that time, the District Court of any

1 county in which a personal representative could be appointed for that person's estate
2 if deceased, may appoint a curator to collect and preserve the estate of that absent
3 person.

4 (3) The court shall take a surety bond payable to and with the Commonwealth~~[with~~
5 ~~good surety]~~ from the person appointed curator. The surety bond shall be
6 subscribed to by the principal and sureties in the presence of a notary or as may
7 be otherwise authorized by the court, for the full and faithful performance of the
8 trust confided in him or her.

9 (4) The surety bond shall be kept by the clerk of the court in his or her office in a
10 record to be maintained for that purpose.

11 ➔Section 20. KRS 395.455 is amended to read as follows:

12 (1) Where the exemption ~~for~~~~[of]~~ the surviving spouse or children, alone~~[,]~~ or together
13 with preferred claims, paid by either the surviving spouse or children or by the
14 surviving spouse where the surviving spouse's~~[a widow or by the widower where~~
15 ~~the wife's]~~ estate is legally liable for payment, equals or exceeds the amount of
16 distributable~~[probable]~~ assets, the court may order that administration of the
17 estate be dispensed with and the~~[such]~~ assets be transferred to the surviving spouse
18 or, if there is no surviving spouse, to the surviving children, or to a person
19 designated by the~~[such]~~ surviving spouse~~[to receive all or part of such assets]~~. The
20 court may~~[so]~~ order that administration of the estate be dispensed with in both
21 testate and intestate estates~~[and]~~ without requiring the renunciation of a will~~[or the~~
22 ~~giving of bond]~~.

23 (2) If the court is satisfied that no distributable~~[probable]~~ estate will pass through the
24 hands of the personal representative, it may order that no letters of administration
25 be issued and in the case of a testate estate, order that the will be probated only.

26 (3) The court may order that the administration of the estate be dispensed with and
27 the assets transferred in favor of a preferred creditor or other person where:

1 **(a)** A surviving spouse **or, if there is no surviving spouse, the surviving children**
 2 **have**~~[has]~~ waived~~[his or her right to]~~ the exemption accorded by law in favor
 3 of a person who has paid preferred claims in an amount **equaling**~~[equalling]~~
 4 or exceeding the amount of **distributable**~~[probable]~~ assets or who is legally
 5 entitled to~~[such]~~ payment~~;~~~~[,]~~ or

6 **(b)** ~~[where]~~ There is no surviving spouse **or surviving children,** and
 7 **another**~~[such]~~ person has **paid preferred claims**~~[made such payment]~~ or is
 8 legally entitled **to payment**~~[thereto, the court may order that the~~
 9 ~~administration of the estate be dispensed with and such assets transferred to~~
 10 ~~such person. The court may so order without requiring the giving of bond].~~

11 (4) For purpose of this section, the exemption ~~for~~~~[of]~~ the surviving spouse **and**
 12 **children shall be the**~~[is such]~~ exemption~~[as has been]~~ created by KRS 391.030,
 13 and preferred claims **shall be**~~[are]~~ those listed in KRS 396.095 and in the order
 14 **listed**~~[thereof]~~.

15 ➔ Section 21. KRS 395.470 is amended to read as follows:

16 (1) Administration of the estate of a person dying **testate or** intestate may be dispensed
 17 with by agreement if:

18 **(a)** There are no debts owing by the estate;

19 **(b)** All **beneficiaries**~~[persons beneficially]~~ entitled to the personal estate have
 20 agreed in writing, **under penalty of perjury,** that there shall be no **further**
 21 administration, **and if applicable, have designated a trustee with power to**
 22 **collect claims and demands;**

23 **(c)** **Advertisement has occurred as required in subsection (7) of this section, as**
 24 **evidenced by an acknowledgment under penalty of perjury;**

25 **(d)** **Provision has been made for the state inheritance tax and the federal estate**
 26 **tax, if any;** and

27 **(e)** ~~[Either]~~ There are no claims or demands due the estate, **if no trustee has been**

1 ~~designated by agreement~~~~[or the written agreement to dispense with~~
2 ~~administration designates a trustee with power to collect claims and~~
3 ~~demands]~~.

4 (2) (a) The written agreement ~~required~~~~[provided]~~ in subsection (1)~~(b) of this section~~
5 shall be acknowledged under penalty of perjury by the beneficiaries; and
6 (b) The agreements of all beneficiaries shall be~~[parties and]~~ filed in the District
7 Court together with the motion~~[of the parties]~~ for an order dispensing with
8 administration by agreement.

9 (3) An agreement prescribed in subsection (1)(b) of this section shall be effective if it
10 is executed by a person who had authority to contract on behalf of a beneficiary
11 when signed.

12 (4) A motion to dispense with administration by agreement may be filed at any time
13 after:

14 (a) Probate of the will, if any;

15 (b) Appointment of a personal representative; and

16 (c) Advertisement for creditors as required under this section.

17 (5) If the court is satisfied by the agreements~~[affidavit or otherwise]~~ that the conditions
18 prescribed in subsection (1) of this section exist, the court~~[it]~~ shall enter an order
19 dispensing with any further administration by agreement.

20 (6) If the motion and the agreements~~[written agreement]~~ of the beneficiaries
21 designate~~[designates]~~ a trustee to collect claims or demands, the order shall confirm
22 the designation, and the person~~[so]~~ designated as the trustee shall have the same
23 right to sue for and collect claims and demands as~~[that]~~ an administrator appointed
24 under this chapter~~[has]~~.

25 ~~(3) The District Court shall be satisfied that provision has been made for the state~~
26 ~~inheritance tax and the United States estate tax].~~

27 (7) (a)(4) Prior to moving to dispense with administration by agreement, the

1 beneficiaries~~[persons applying for an order dispensing with administration]~~
2 shall advertise for creditors of the estate~~[intestate]~~ to appear and present
3 any~~[their]~~ claims to some person at the county seat. The person and place
4 shall be designated in the advertisement.

5 **(b)** The advertisement shall also give notice of when, where, and by whom the
6 order dispensing with administration by agreement will be applied for.

7 **(c)** The advertisement shall be posted at the courthouse door for six (6) weeks~~[,]~~
8 and published pursuant to KRS Chapter 424.~~[The order dispensing with~~
9 ~~administration shall not be granted until the persons applying for the order file~~
10 ~~in the District Court the affidavit of one (1) of them showing that~~
11 ~~advertisement for creditors has been made.]~~

12 **(8)**~~(5)~~ The court may order that the beneficiaries~~[persons]~~ applying for the order
13 dispensing with administration by agreement~~[shall]~~, before the order is entered,
14 execute a surety~~[give]~~ bond~~[with surety]~~ in the amount of the personal estate for
15 the benefit of any creditors who, within six (6) months from the order dispensing
16 with administration by agreement, appear and file their claims with the court clerk.
17 This surety bond shall be approved by the District Court and shall run to the state
18 for the benefit of those creditors and be conditioned to be void if none of them files
19 a~~[his]~~ claim with the clerk within six (6) months from the date of the order
20 dispensing with administration by agreement.

21 ➔ Section 22. KRS 395.605 is amended to read as follows:

22 (1) Upon the~~[sworn]~~ application of any fiduciary, under penalty of perjury, that the
23 fiduciary is the sole beneficiary of any estate, the court may dispense with the
24 requirements of this chapter regarding~~[periodic or final]~~ settlement of fiduciaries'
25 accounts~~[and may dispense with the requirements of a surety for the fiduciary]~~ and
26 shall accept from the fiduciary an informal final settlement if:

27 **(a)** ~~[The informal settlement shall be made, under oath, by the fiduciary and~~

1 ~~shall state that } The estate was solvent; { that }~~

2 **(b)** All legal claims and debts have been paid, or if not paid, the manner in which
3 the claims and debts have been provided for;

4 **(c)** ~~{ that, for final settlement, }~~ The requirements of the inheritance, estate, or
5 similar death statutes have been met and the tax paid, if due and payable;

6 **(d)** ~~{ that }~~ All court costs have been paid;

7 **(e)** The name of the attorney(s), if any, representing the fiduciary, and the amount
8 of the attorney's fee **have been provided;** ~~{, }~~ and

9 **(f)** ~~{ that }~~ The beneficiary has received his or her share ~~{. An informal settlement~~
10 ~~may be filed at any time after expiration of six (6) months from the fiduciary's~~
11 ~~appointment. Upon the filing of the informal final settlement, the court may~~
12 ~~enter an order discharging the fiduciary, and his or her surety, if any. When a~~
13 ~~settlement is effected in the informal manner, no notice to any person shall be~~
14 ~~required nor shall the court be compelled to inquire into detailed items of~~
15 ~~income or disbursements}.~~

16 (2) **(a)** **Upon application of any fiduciary, under penalty of perjury,** ~~{If a proposed~~
17 ~~periodic or final settlement of a fiduciary is }~~ accompanied by ~~{ a }~~ verified
18 **waivers** ~~{waiver }~~ executed by all of the beneficiaries of an estate, ~~{ and }~~ none of
19 **whom is** ~~{the beneficiaries is }~~ under a disability, the court shall accept from the
20 fiduciary an informal **final** settlement which meets the requirements of
21 subsection (1) of this section.

22 **(b)** **Any beneficiary** ~~{Said beneficiaries }~~ may request an accounting of the assets
23 of the estate prior to execution of the waiver.

24 **(c)** ~~A {No }~~ verified waiver **shall not be required** ~~{need be obtained }~~ from a
25 nonresiduary legatee who has received and receipted for his or her legacy,
26 **and** the canceled check or signed receipt attached to the proposed settlement
27 **shall be** ~~{being }~~ sufficient evidence of satisfaction. ~~{ The court may require the~~

1 ~~fiduciary to execute bond with or without surety to insure the application of~~
2 ~~the estate assets to the debts of the decedent.]~~

3 (3) **An informal final settlement may be filed at any time after expiration of six (6)**
4 **months from the date of the fiduciary's appointment.**

5 (4) **The court shall not require notice to any person or a hearing prior to approval**
6 **and confirmation of an informal final settlement.**

7 (5) **Upon approval and confirmation of the informal final settlement, the court may**
8 **enter an order discharging the fiduciary, and his or her surety, if any.**

9 (6) In the event that one (1) or more of the beneficiaries of the estate is under a
10 disability, the court may allow the filing of an informal **final** settlement if the court
11 is of the opinion that the best interests of the person under the disability would be
12 served.

13 ➔Section 23. KRS 395.610 is amended to read as follows:

14 (1) Two (2) years after appointment and annually thereafter, unless otherwise provided
15 by law, every fiduciary as defined in KRS 395.001, other than a guardian or
16 conservator of a mentally disabled person, shall render an account of the execution
17 of his **or her** trust **and file it with**~~to~~ the court by which he **or she** was appointed~~,~~
18 ~~including in the account an itemized statement of receipts and disbursements~~
19 ~~supported by vouchers accompanying the account and a statement of all~~
20 ~~investments on hand and changes in investments since the filing of his last account.~~
21 ~~The settlements, when approved and confirmed by the court, shall be recorded and~~
22 ~~indexed by the clerk, and the original and the vouchers carefully kept by him in his~~
23 ~~office].~~

24 (2) **A periodic settlement shall be filed until all trust assets and investments have**
25 **been fully distributed and all debts, costs, fees, and taxes have been paid or**
26 **accounted for.**

27 (3) **A periodic settlement shall identify all assets and investments of the trust estate**

1 on hand, including a beginning and current value, and shall account for all
2 receipts and disbursements occurring since the last inventory or settlement with
3 supporting documentation.

4 (4) Notwithstanding subsection (1) of this section~~[An account shall be rendered by a~~
5 ~~fiduciary], at any other time upon order of the court either on~~~~[upon]~~ its own
6 motion, or upon the motion~~[that]~~ of any person interested in the trust, for good
7 cause shown, a fiduciary shall file a periodic settlement that meets the
8 requirements of subsection (3) of this section and as otherwise ordered by the
9 court.

10 (5) In addition to the requirements of subsection (3) of this section, all final
11 settlements shall include:

12 (a) A complete accounting~~[on affidavit. At the expiration of his trust, the~~
13 ~~fiduciary shall fully account] for and distribution of~~~~[pay over]~~ the trust estate
14 assets and investments, including whether the distribution was:

15 1. In kind and if so to whom; or

16 2. Liquidated for cash for payment of debts, costs of administration, or
17 pecuniary legacies;

18 (b) A~~[to the person or persons entitled thereto. Every such account shall]~~ list of all
19 unpaid creditors whose claims have been allowed and all creditors whose
20 claims have been disallowed;

21 (c) Fees and commissions paid to the fiduciary and his or her attorney; and

22 (d) Provision for state inheritance tax and federal estate tax, if any.

23 (6) No settlement~~[account]~~ of a fiduciary, except of corporate fiduciaries under the
24 supervision of state or federal banking authorities, shall be approved until there are
25 exhibited to the court, for its examination, the security or securities shown in the
26 account as being in the hands of the fiduciary, or the certificate of a bank having
27 possession thereof or in which they have been deposited for safekeeping, and a

certified bank statement showing the funds to the credit of the trust.

(7) The clerk of the court shall record all settlements that are approved and confirmed by the court.

(8)~~[(2)]~~ Guardians and conservators of mentally disabled persons may be required to render accountings to the court under the provisions of this section. Guardians and conservators of mentally disabled persons shall comply with the reporting requirements of KRS Chapter 387.

➔Section 24. KRS 395.617 is amended to read as follows:

(1) A fiduciary may, prior to filing a periodic or final settlement and prior to a distribution of assets, file with the court a proposed **periodic or final** settlement **within the time prescribed for filing settlements in Section 23 of this Act.**

(2) The proposed settlement shall be set for hearing, and **in addition to the** notice given as **provided in Section 26 of this Act as** for any other settlement, **the fiduciary shall notify all**~~[-except that]~~ beneficiaries of the estate, other than nonresiduary legatees who have received and receipted for their legacies,~~[-shall also receive notice from the fiduciary]~~ by certified mail, return receipt requested, at least twenty (20) days prior to the hearing date.

(3) The proposed settlement shall **comply with the requirements for periodic and final settlements in Section 23 of this Act, except the proposed settlement**~~[-set forth all assets and disbursements previously made,]~~ shall **also** indicate **any** assets~~[-on hand and]~~ anticipated to be received subsequent to **filing**~~[-the date of]~~ the proposed settlement and prior to the filing of the periodic or final settlement **and the proposed distribution of all or a portion of the assets. Documentation supporting receipts and past disbursements shall not be required to be filed with the proposed settlement unless ordered by the court if exceptions are filed**~~[-, and shall further indicate the manner in which the remaining and anticipated assets are proposed to be distributed. The proposal may set forth which assets are to be distributed in kind~~

1 and to whom and which assets may be liquidated for distribution of cash or for
2 payment of debts, costs of administration, or pecuniary legacies. The proposal may
3 also indicate claims proposed to be allowed or disallowed, in whole or in part, and
4 may also indicate fees and commissions proposed to be paid to the fiduciary and his
5 attorney. The inclusion of evidence and vouchers to accompany the proposal shall
6 not be necessary unless required by the court upon exceptions filed].

7 **(4)** At the hearing, if no exceptions are filed, the proposal, if made according to law,
8 shall be approved. If exceptions are filed, other evidence besides that reported may
9 be heard, and the court shall, upon the whole case, reject, confirm, alter, or amend
10 the proposal.

11 **(5)** Following the entry of an order **approving, confirming, or amending the proposed**
12 **settlement**~~[of approval or of an order of amendment]~~, the fiduciary shall disburse
13 the assets in accordance **with the order**~~[therewith]~~. Following the distribution, the
14 fiduciary shall file a settlement accompanied by **documentation**~~[evidence and~~
15 ~~vouchers]~~ showing that distribution was effected in conformity with the~~[court]~~
16 order **approving, confirming, or amending**~~[. If it appears to the court that the~~
17 ~~distribution was in conformity, the court shall confirm the settlement and, if the~~
18 ~~settlement is final, discharge the fiduciary and his surety without further hearing or~~
19 ~~notice to any person]~~.

20 **(6)** ~~[(2)]~~ An aggrieved party may, no later than thirty (30) days from the entry of the
21 order upon the proposed settlement, institute an adversary proceeding in Circuit
22 Court pursuant to KRS 24A.120(2).

23 ➔Section 25. KRS 395.620 is amended to read as follows:

24 (1) The District Judge shall **review a periodic or final settlement filed by a fiduciary,**
25 **accompanied by documentation showing receipts, payments, and distribution.**

26 **(2) If the settlement is not submitted as provided in subsection (5) of Section 24 of**
27 **this Act and otherwise found by the court to be complete, the court shall direct the**

clerk of the court to~~make a written report of the settlement, showing each item of~~
~~debit and credit, and the general result, and return it, with all evidence heard and~~
~~vouchers filed, to the Circuit Clerk. The clerk shall note it of record, and indorse on~~
~~it the time of filing, and~~ set a date for a hearing on the settlement and give notice
as required in Section 26 of this Act~~report~~.

~~(3)~~~~(2)~~ If the settlement is found to be~~A hearing on a settlement filed~~ in conformity
 with an order approving, confirming, or amending a~~approved~~ proposed
 settlement made under KRS 395.617, the court shall confirm the settlement
without further hearing or notice to any person and, if the settlement is final,
discharge the fiduciary and his or her surety, if any~~shall not be necessary~~.

➔ Section 26. KRS 395.625 is amended to read as follows:

(1) Except as provided in subsection (5) of this section, not less than ten (10) days
 prior to the date of the settlement hearing under Section 25 of this Act, the clerk of
the court shall publish~~cause~~ notice of the ~~filing of a~~ settlement ~~to be published~~
 pursuant to KRS Chapter 424.

(2) The notice required under subsection (1) of this section shall include the:

(a) ~~stating the~~ Name of the fiduciary; ~~the~~

(b) Name of the trust; ~~the~~

(c) Nature of the account; and ~~the~~

(d) Date of hearing, with a statement that exceptions shall~~must~~ be filed before
the hearing~~that time; except that~~

(3) (a) Notwithstanding the publication requirement under subsection (1) of this
section, with the court's approval the fiduciary may, in lieu of the~~such~~
 publication, send a written notice of the hearing~~thereof~~ to all unpaid
 creditors and distributees; ~~which~~

(b) The notice shall be mailed at least ten (10) days before the~~said~~ date of
 hearing; and~~.~~

1 (c) The fiduciary~~[in such cases]~~ shall file his or her affidavit that the~~[such]~~
2 notice has been mailed.

3 (4) The actual cost of the notice, or the proportionate part of the notice~~[thereof]~~, if
4 more than one (1) settlement, shall be taxed as costs.

5 (5) The provisions of this section shall not apply if the value of the trust or estate is~~[~~
6 ~~not more than]~~ two thousand five hundred dollars (\$2,500) or less and the assets of
7 the trust or estate are held in an account that may be accessed only upon order of
8 the court~~[, the provisions of this section shall not apply to settlements involving that~~
9 ~~trust or estate]~~.

10 ➔ Section 27. KRS 395.630 is amended to read as follows:

11 (1) At the settlement hearing, if no exceptions are filed, the settlement~~[report]~~, if made
12 according to law, shall be approved~~[and recorded]~~.

13 (2) If exceptions are filed, other evidence~~[besides that reported]~~ may be heard, and the
14 court shall upon the whole case, reject, confirm, alter, or amend the
15 settlement~~[report, and, if confirmed, order it to be recorded. The vouchers~~
16 ~~accompanying the report shall not be recorded, but must be carefully kept on file~~
17 ~~with the report in the clerk's office]~~.

18 (3) Any~~[new]~~ evidence given in court must be electronically recorded and filed in the
19 court record~~[with the report]~~.

20 (4) Settlements confirmed~~[so made]~~ and filed in the court record~~[recorded]~~ shall be
21 prima facie evidence between the interested parties~~[interested]~~.

22 ➔ Section 28. KRS 395.640 is amended to read as follows:

23 (1) The district judge shall at least once each year carefully inquire into the solvency of
24 all the sureties upon the bond of each fiduciary that is required by law, or has been
25 ordered by the court to post surety bond.

26 (2) ~~[, and]~~ If there is reason to believe that any bond is not amply sufficient to protect
27 those interested, the district judge~~[he]~~ shall at once give notice to the fiduciary that

1 a new bond, or additional surety on the old bond~~[one]~~, is required, and upon the
2 failure of the fiduciary to give the required bond or surety within a reasonable time
3 fixed by the court, the court shall remove the fiduciary~~[him]~~.

4 ➔Section 29. KRS 395.645 is amended to read as follows:

5 When the court directs, settlements of the accounts of fiduciaries made before and
6 reported by any trial commissioner, and all settlements~~[reports]~~ of estates or funds
7 received or disbursed, under order of the court, by its trial commissioner, after they have
8 been confirmed by the court, shall be filed in the court record with the documentation
9 showing receipts, payments, and distributions~~[recorded by the clerk of the court in a~~
10 ~~book to be provided for that purpose. The vouchers accompanying the settlements or~~
11 ~~reports shall not be recorded].~~

12 ➔Section 30. KRS 395.990 is amended to read as follows:

13 Any fiduciary failing, without good cause~~[therefor]~~, to file his or her inventory or
14 account as required by notice given pursuant to KRS 395.255 shall be fined by the court,
15 for each day he or she neglects or refuses after the date fixed in the~~[said]~~ notice, the sum
16 of one hundred~~[ten]~~ dollars (\$100)~~[\$10]~~, to be collected by rule or other process.

17 ➔Section 31. KRS 199.520 is amended to read as follows:

18 (1) (a) After hearing the case, the court shall enter a judgment of adoption~~[,]~~ if it
19 finds that:

20 1. The facts stated in the petition were established;

21 2. ~~[that]~~ All legal requirements, including jurisdiction, relating to the
22 adoption have been complied with;

23 3. ~~[that]~~ The petitioners are of good moral character, of reputable standing
24 in the community and of ability to properly maintain and educate the
25 child; and

26 4. ~~[that]~~ The best interest of the child will be promoted by the adoption and
27 that the child is suitable for adoption.

1 **(b)** In the judgment, the name of the child shall be changed to conform with the
2 prayer of the petition. The judgment and all orders required to be entered and
3 recorded in the order book, including the caption, shall contain only the names
4 of the petitioners and the proposed adopted name of the child, without any
5 reference to its former name or the names of its birth parents.

6 (2) **(a)** Upon entry of the judgment of adoption, from and after the date of the filing
7 of the petition, the child shall be:

8 **1.** Deemed the child of petitioners; and

9 **2. Except as provided in paragraph (b) of this subsection,** ~~shall be~~
10 ~~considered for purposes of inheritance and succession and~~ for all
11 ~~other~~ legal considerations, the natural child of the parents adopting it
12 the same as if born of their bodies.

13 **(b) For purposes of inheritance and succession, the child shall only be deemed**
14 **the child of the petitioners if the child was adopted and resided in the**
15 **household of the petitioners prior to eighteen (18) years of age.**

16 **(c)** Upon granting an adoption, all legal relationship between the adopted child
17 and the biological parents shall be terminated except the relationship of a
18 biological parent who is the spouse of an adoptive parent.

19 (3) The clerk of the court shall notify the cabinet of any action of the court with respect
20 to entering a judgment granting an adoption, the amendment of an adoption, or the
21 denial or dismissal of a petition for adoption.

22 (4) (a) The **cabinet or other child-placing agency shall provide to the adoptive**
23 **parents and the Circuit Court,** ~~health history and other nonidentifying~~
24 ~~background information of biological parents and blood relatives of the~~
25 ~~adopted person,~~ in writing, on a standardized form~~[-]~~ provided by the cabinet,
26 **the health history and other nonidentifying background information of**
27 **biological parents and blood relatives of the adopted person to the extent** ~~[-]~~

known, ~~shall be given by the cabinet or child-placing agency which has the~~
~~information to the adoptive parents and to the Circuit Court~~ not later than the
date of finalization of the adoption proceedings. This information shall
include the results of any tests for HIV or hepatitis A, B, and C; and

- (b) The information provided for in paragraph (a) of this subsection, if known,
shall, upon the request in person or in writing of the adult adopted person, be
made available in writing to that person. The information shall not be made
available if it ~~is of a nature that~~ would ~~tend to~~ identify the biological
parents of the adopted person, except as provided in KRS 199.570 and
199.572.

➔SECTION 32. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
READ AS FOLLOWS:

As used in Sections 32 to 40 of this Act:

**(1) "Electronic" means relating to technology having electrical, digital, magnetic,
wireless, optical, electromagnetic, or similar capabilities;**

**(2) "Electronic presence" means the relationship of two (2) or more individuals in
different locations communicating in real time to the same extent as if the
individuals were physically present in the same location;**

**(3) "Electronic will" means a will executed electronically in compliance with the
requirements of Section 35 of this Act;**

**(4) "Record" means information that is inscribed on a tangible medium or that is
stored in an electronic or other medium and is retrievable in perceivable form;**

(5) "Sign" means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

**(b) To affix to or logically associate with the record an electronic symbol or
process;**

(6) "State" has the same meaning as in Section 116 of this Act; and

1 (7) "Will" has the same meaning as in Section 123 of this Act.

2 ➔SECTION 33. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
3 READ AS FOLLOWS:

4 An electronic will is a will for all purposes of the law of this Commonwealth. The law
5 of this Commonwealth applicable to wills and principles of equity apply to an
6 electronic will, except as modified by Sections 32 to 40 of this Act.

7 ➔SECTION 34. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
8 READ AS FOLLOWS:

9 A will executed electronically but not in compliance with Section 35 of this Act is an
10 electronic will if executed in compliance with the law of the jurisdiction where the
11 testator is:

12 (1) Physically located when the will is signed; or

13 (2) Domiciled or residing when the will is signed or when the testator dies.

14 ➔SECTION 35. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
15 READ AS FOLLOWS:

16 (1) Subject to subsection (3) of Section 37 of this Act, an electronic will shall be:

17 (a) A record that is readable as text at the time of signing under paragraph (b)
18 of this subsection;

19 (b) Signed by:

20 1. The testator; or

21 2. Another individual in the testator's name, in the testator's physical
22 presence, and by the testator's direction; and

23 (c) Signed in the physical or electronic presence of the testator by at least two
24 (2) individuals, each of whom is a resident of this Commonwealth and
25 physically located in this Commonwealth at the time of signing and within a
26 reasonable time after witnessing;

27 1. The signing of the will under paragraph (b) of this subsection; or

1 2. The testator's acknowledgment of the signing of the will under
2 paragraph (b) of this subsection or acknowledgment of the will.

3 (2) An electronic symbol of a testator or witness shall consist of an electronic image
4 of the testator's or witness's signature in his or her handwriting affixed to the
5 electronic will.

6 (3) A testator's intent that the record under subsection (1)(a) of this section be the
7 testator's electronic will may be established by extrinsic evidence.

8 ➔SECTION 36. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
9 READ AS FOLLOWS:

10 (1) An electronic will may revoke all or part of a previous will.

11 (2) All or part of an electronic will may be revoked by:

12 (a) A subsequent will that revokes all or part of the electronic will expressly or
13 by inconsistency; or

14 (b) A physical act, if it is established by clear and convincing evidence that the
15 testator, with the intent of revoking all or part of the will, performed the act
16 or directed another individual who performed the act in the testator's
17 physical presence.

18 ➔SECTION 37. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
19 READ AS FOLLOWS:

20 (1) An electronic will may be simultaneously executed, attested, and made self-
21 proving by acknowledgment of the testator and affidavits of witnesses.

22 (2) The acknowledgment and affidavits under subsection (1) of this section shall be:

23 (a) Made before a notary public authorized to administer oaths under the law
24 of the state in which execution occurs or, if fewer than two (2) attesting
25 witnesses are physically present in the same location as the testator at the
26 time of signing under subsection (1)(b) of Section 35 of this Act, before a
27 notary public authorized under KRS 423.455;

1 **(b) Evidenced by the notary public's certificate under official seal affixed to or**
2 **logically associated with the electronic will; and**

3 **(c) In a form substantially similar to subsections (1) and (2) of KRS 394.225.**

4 **(3) A signature physically or electronically affixed to an affidavit that is affixed to or**
5 **logically associated with an electronic will under Sections 32 to 40 of this Act is**
6 **deemed a signature of the electronic will under subsection (1) of Section 35 of**
7 **this Act.**

8 ➔SECTION 38. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
9 READ AS FOLLOWS:

10 **An individual may create a certified paper copy of an electronic will by affirming under**
11 **penalty of perjury that a paper copy of the electronic will is a complete, true, and**
12 **accurate copy of the electronic will. If the electronic will is made self-proving, the**
13 **certified paper copy of the will shall include the self-proving affidavits.**

14 ➔SECTION 39. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
15 READ AS FOLLOWS:

16 **In applying and construing Sections 32 to 40 of this Act, consideration shall be given**
17 **to the need to promote uniformity of the law with respect to its subject matter among**
18 **states that enact it.**

19 ➔SECTION 40. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
20 READ AS FOLLOWS:

21 **Sections 32 to 40 of this Act shall apply to the will of a decedent who dies on or after**
22 **the effective date of this Act.**

23 ➔SECTION 41. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
24 READ AS FOLLOWS:

25 **As used in Sections 41 to 55 of this Act:**

26 **(1) "Electronic" has the same meaning as in Section 32 of this Act;**

27 **(2) "Electronic record" means a record created, generated, sent, communicated,**

1 received, or stored by electronic means;

2 (3) "Electronic signature" means an electronic symbol or process attached to or
3 logically associated with a record and executed or adopted by a person with the
4 intent to sign the record;

5 (4) "Information" includes data, text, images, codes, computer programs, software,
6 and databases;

7 (5) "Nontestamentary estate planning document" means a record relating to estate
8 planning that is readable as text at the time of signing and is not a will or
9 contained in a will. The term:

10 (a) Includes a record readable as text at the time of signing that creates,
11 exercises, modifies, releases, or revokes:

12 1. A trust instrument;

13 2. A trust power that under the terms of the trust requires a signed
14 record;

15 3. A certification of a trust under KRS 386B.10-120;

16 4. A power of attorney that is durable under KRS Chapter 457;

17 5. An agent's certification under KRS 457.430;

18 6. A power of appointment;

19 7. An advance directive or medical order for scope of treatment under
20 KRS 311.621 to 311.643;

21 8. A record directing disposition of an individual's body after death;

22 9. A nomination of a guardian for the signing individual;

23 10. A nomination of a guardian for a minor child or disabled adult child;

24 11. An advance directive for mental health treatment under KRS
25 202A.420 to 202A.432;

26 12. A community property survivorship agreement;

27 13. A disclaimer under KRS 394.035 or KRS 394.610 to 394.670; and

- 1 14. Any other record intended to carry out an individual's intent
2 regarding property or health care while incapacitated or on death; and
3 (b) Does not include a deed of real property or certificate of title for a motor
4 vehicle, watercraft, or aircraft;
- 5 (6) "Person" has the same meaning as in Section 116 of this Act;
6 (7) "Power of attorney" means a record that grants authority to an agent in place of
7 the principal, even if the term is not used in the record;
8 (8) "Record" has the same meaning as in Section 32 of this Act;
9 (9) "Security procedure" means a procedure to verify that an electronic signature,
10 record, or performance is that of a specific person or to detect a change or error
11 in an electronic record. The term includes a procedure that uses an algorithm,
12 code, identifying word or number, encryption, or callback or other
13 acknowledgment procedure;
14 (10) "Settlor" has the same meaning as in Section 116 of this Act;
15 (11) "Sign" has the same meaning as in Section 32 of this Act;
16 (12) "State" has the same meaning as in Section 116 of this Act;
17 (13) "Terms of a trust" has the same meaning as in Section 116 of this Act;
18 (14) "Trust instrument" has the same meaning as in Section 116 of this Act; and
19 (15) "Will" has the same meaning as in Section 123 of this Act.

20 ➔SECTION 42. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
21 READ AS FOLLOWS:

22 Sections 41 to 55 of this Act shall be construed and applied to:

- 23 (1) Facilitate electronic estate planning documents and signatures consistent with
24 other law; and
25 (2) Be consistent with reasonable practices concerning electronic documents and
26 signatures and continued expansion of those practices.

27 ➔SECTION 43. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO

1 READ AS FOLLOWS:

2 (1) Except as provided in subsection (2) of this section, Sections 41 to 55 of this Act
3 apply to an electronic nontestamentary estate planning document and an
4 electronic signature on a nontestamentary estate planning document.

5 (2) Sections 41 to 55 of this Act do not apply to a nontestamentary estate planning
6 document if the document precludes use of an electronic record or electronic
7 signature.

8 (3) Sections 41 to 55 of this Act do not affect the validity of an electronic record or
9 electronic signature that is valid under:

10 (a) The Uniform Electronic Transactions Act, KRS 369.101 to 369.120; or

11 (b) The Uniform Electronic Wills Act, Sections 32 to 40 of this Act.

12 ➔SECTION 44. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO

13 READ AS FOLLOWS:

14 The law of this Commonwealth and principles of equity applicable to a
15 nontestamentary estate planning document apply to an electronic nontestamentary
16 estate planning document except as modified by Sections 41 to 55 of this Act.

17 ➔SECTION 45. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO

18 READ AS FOLLOWS:

19 (1) Sections 41 to 55 of this Act do not require a nontestamentary estate planning
20 document or signature on a nontestamentary estate planning document to be
21 created, generated, sent, communicated, received, stored, or otherwise processed
22 or used by electronic means or in electronic form.

23 (2) A person is not required to have a nontestamentary estate planning document in
24 electronic form or signed electronically even if the person previously created or
25 signed a nontestamentary estate planning document by electronic means.

26 (3) A person may not waive the provisions of this section.

27 ➔SECTION 46. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO

1 READ AS FOLLOWS:

2 (1) A nontestamentary estate planning document or signature on a nontestamentary
3 estate planning document shall not be denied legal effect or enforceability solely
4 because it is in electronic form.

5 (2) If any other law of this Commonwealth requires a signature on a
6 nontestamentary estate planning document to be in writing, an electronic record
7 of the document satisfies the requirement.

8 (3) If other law of this Commonwealth requires a signature on a nontestamentary
9 estate planning document, an electronic signature satisfies the requirement.

10 ➔SECTION 47. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
11 READ AS FOLLOWS:

12 (1) An electronic nontestamentary estate planning document or electronic signature
13 on an electronic nontestamentary estate planning document is attributable to a
14 person if it was the act of the person. The act of the person may be shown in any
15 manner, including by showing the efficacy of a security procedure applied to
16 determine the person to which the electronic record or electronic signature was
17 attributable.

18 (2) The effect of attribution to a person under subsection (1) of this section of a
19 document or signature is determined from the context and surrounding
20 circumstances at the time of its creation, execution, or adoption and as provided
21 by other law.

22 ➔SECTION 48. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
23 READ AS FOLLOWS:

24 If other law of this Commonwealth requires a signature or record to be notarized,
25 acknowledged, verified, or made under oath, the requirement is satisfied with respect to
26 an electronic nontestamentary estate planning document if an individual authorized to
27 perform the notarization, acknowledgment, verification, or oath attaches or logically

1 associates the individual's electronic signature on the document together with all other
2 information required to be included under the other law.

3 ➔SECTION 49. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) If any other law of this Commonwealth bases the validity of a nontestamentary
6 estate planning document on whether it is signed, witnessed, or attested by
7 another individual, the signature, witnessing, or attestation of that individual may
8 be electronic.

9 (2) If other law of this Commonwealth bases the validity of a nontestamentary estate
10 planning document on whether it is signed, witnessed, or attested by another
11 individual in the presence of the individual signing the document, the presence
12 requirement is satisfied if the individuals are in each other's electronic presence.

13 ➔SECTION 50. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
14 READ AS FOLLOWS:

15 (1) Except as provided in subsection (2) of this section, if other law of this
16 Commonwealth requires an electronic nontestamentary estate planning
17 document to be retained, transmitted, copied, or filed, the requirement is satisfied
18 by retaining, transmitting, copying, or filing an electronic record that:

19 (a) Accurately reflects the information in the document after it was first
20 generated in final form as an electronic record or under Section 51 of this
21 Act; and

22 (b) Remains accessible to the extent required by the other law.

23 (2) A requirement under subsection (1) of this section to retain a record does not
24 apply to information the sole purpose of which is to enable the record to be sent,
25 communicated, or received.

26 (3) A person may satisfy subsection (1) of this section by using the services of
27 another person.

1 (4) If other law of this Commonwealth requires a nontestamentary estate planning
2 document to be presented or retained in its original form, or provides
3 consequences if a nontestamentary estate planning document is not presented or
4 retained in its original form, an electronic record retained in accordance with
5 subsection (1) of this section satisfies the other law.

6 (5) This section does not preclude a governmental agency from specifying
7 requirements for the retention of a record subject to the agency's jurisdiction in
8 addition to those in this section. In this subsection, "governmental agency"
9 means an executive, legislative, or judicial agency, department, board,
10 commission, authority, institution, or instrumentality of the federal government
11 or of a state or of a county, municipality, or other political subdivision of a state.

12 ➔SECTION 51. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
13 READ AS FOLLOWS:

14 An individual may create a certified paper copy of an electronic nontestamentary estate
15 planning document by affirming under penalty of perjury that the paper copy is a
16 complete and accurate copy of the document.

17 ➔SECTION 52. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
18 READ AS FOLLOWS:

19 Evidence relating to an electronic nontestamentary estate planning document or an
20 electronic signature on the document may not be excluded in a proceeding solely
21 because it is in electronic form.

22 ➔SECTION 53. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
23 READ AS FOLLOWS:

24 In applying and construing Sections 41 to 55 of this Act, a court shall consider the
25 promotion of uniformity of the law among the jurisdictions that enact it.

26 ➔SECTION 54. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO
27 READ AS FOLLOWS:

Sections 41 to 55 of this Act modify, limit, or supersede the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. sec. 7001 et seq., as amended, but do not modify, limit, or supersede 15 U.S.C. sec. 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. sec. 7003(b).

➔SECTION 55. A NEW SECTION OF KRS CHAPTER 394 IS CREATED TO READ AS FOLLOWS:

Sections 41 to 55 of this Act apply to an electronic nontestamentary estate planning document created, signed, generated, sent, received, or stored before, on, or after the effective date of this Act.

➔Section 56. KRS 64.012 is amended to read as follows:

(1) The county clerk shall receive for the following services the following fees:

(a) 1. Recording and indexing of a:

- a. Deed of trust or assignment for the benefit of creditors;
- b. Deed;
- c. Deed of assignment;
- d. File-stamped copy of documents set forth in KRS 14A.2-040(1) or (2) that have been filed first with the Secretary of State;
- e. Real estate option;
- f. Power of attorney;
- g. Revocation of power of attorney;
- h. Lease which is recordable by law;
- i. Deed of release of a mortgage or lien under KRS 382.360;
- j. United States lien;
- k. Release of a United States lien;
- l. Release of any recorded encumbrance other than state liens;
- m. Lis pendens notice concerning proceedings in bankruptcy;
- n. Lis pendens notice;

- 1 o. Mechanic's and artisan's lien under KRS Chapter 376;
- 2 p. Assumed name;
- 3 q. Notice of lien issued by the Internal Revenue Service;
- 4 r. Notice of lien discharge issued by the Internal Revenue Service;
- 5 s. Original, assignment, amendment, or continuation financing
- 6 statement;
- 7 t. Making a record for the establishment of a city, recording the plan
- 8 or plat thereof, and all other service incident;
- 9 u. Survey of a city, or any part thereof, or any addition to or
- 10 extensions of the boundary of a city;
- 11 v. Recording with statutory authority for which no specific fee is set,
- 12 except a military discharge;
- 13 w. Will or other probate document pursuant to KRS Chapter 392 or
- 14 394;
- 15 x. Court ordered name change pursuant to KRS Chapter 401;
- 16 y. Land use restriction according to KRS 100.3681; and
- 17 z. Filing with statutory authority for which no specific fee is set.
- 18 For all items in this subsection if the entire thereof does not exceed
- 19 five (5) pages\$33.00
- 20 And, for all items in this subsection exceeding five (5) pages,
- 21 **except any will or other probate document pursuant to KRS**
- 22 **Chapter 392 or 394 under subdivision w. of this subparagraph,**
- 23 **or any court-ordered name change pursuant to KRS Chapter 401**
- 24 **under subdivision x. of this subparagraph,**
- 25 for each additional page\$3.00
- 26 And, for all items in this subsection for each additional reference
- 27 relating to same instrument\$4.00

- 1 2. The thirty-three dollar (\$33) fee imposed by this subsection shall be
2 divided as follows:
- 3 a. Twenty-seven dollars (\$27) shall be retained by the county clerk;
4 and
- 5 b. Six dollars (\$6) shall be paid to the affordable housing trust fund
6 established in KRS 198A.710 and shall be remitted by the county
7 clerk within ten (10) days following the end of the quarter in
8 which the fee was received. Each remittance to the affordable
9 housing trust fund shall be accompanied by a summary report on a
10 form prescribed by the Kentucky Housing Corporation.
- 11 (b) For noting a security interest on a certificate of title pursuant to
12 KRS Chapter 186A\$12.00
- 13 (c) For filing the release of collateral under a financing statement
14 and noting same upon the face of the title pursuant to KRS Chapter
15 186 or 186A\$5.00
- 16 (d) Filing or recording state tax or other state liens\$5.00
- 17 (e) Filing release of a state tax or other state lien\$5.00
- 18 (f) Acknowledging or notarizing any deed, mortgage, power of attorney,
19 or other written instrument required by law for recording and certifying
20 same\$5.00
- 21 (g) Recording plats, maps, and surveys, not exceeding 24 inches by
22 36 inches, per page\$40.00
- 23 (h) Recording a bond, for each bond\$10.00
- 24 (i) Each bond required to be taken or prepared by the clerk\$4.00
- 25 (j) Copy of any bond when ordered\$3.00
- 26 (k) Administering an oath and certificate thereof\$5.00
- 27 (l) Issuing a license for which no other fee is fixed by law\$8.00

1	(m) Issuing a solicitor's license	\$15.00
2	(n) Marriage license, indexing, recording, and issuing certificate thereof	\$26.50
3	(o) Every order concerning the establishment, changing, closing, or	
4	discontinuing of roads, to be paid out of the county levy when	
5	the road is established, changed, closed, or discontinued, and by	
6	the applicant when it is not	\$3.00
7	(p) Registration of licenses for professional persons required to register	
8	with the county clerk	\$10.00
9	(q) Certified copy of any record	\$5.00
10	Plus fifty cents (\$.50) per page after three (3) pages	
11	(r) Filing certification required by KRS 65.070(2)(a)	\$5.00
12	(s) Filing notification and declaration and petition of candidates	
13	for Commonwealth's attorney.....	\$200.00
14	(t) Filing notification and declaration and petition of candidates for county	
15	and independent boards of education	\$20.00
16	(u) Filing notification and declaration and petition of candidates for	
17	boards of soil and water conservation districts	\$20.00
18	(v) Filing notification and declaration and petition of candidates for	
19	other office	\$50.00
20	(w) Filing declaration of intent to be a write-in candidate for office	\$50.00
21	(x) Filing petitions for elections, other than nominating petitions	\$50.00
22	(y) Notarizing any signature, per signature	\$2.00
23	(z) Filing bond for receiving bodies under KRS 311.310	\$10.00
24	(aa) Noting the assignment of a certificate of delinquency and recording	
25	and indexing the encumbrance under KRS 134.126 or 134.127	\$27.00
26	(ab) Filing a going-out-of-business permit under KRS 365.445	\$50.00
27	(ac) Filing a renewal of a going-out-of-business permit under KRS 365.445	\$50.00

- 1 (ad) Filing and processing a transient merchant permit under KRS 365.680 .\$.25.00
- 2 (ae) Recording and indexing a real estate mortgage:
- 3 1. For a mortgage that does not exceed thirty (30) pages.....\$63.00
- 4 2. And, for a mortgage that exceeds thirty (30) pages, for each additional
- 5 page\$3.00
- 6 (af) Filing or recording a lien or release of lien by a consolidated local
- 7 government, urban-county government, unified local government, or city of
- 8 any class\$20.00
- 9 (2) The sixty-three dollar (\$63) fee imposed by subsection (1)(ae) of this section shall
- 10 be divided as follows:
- 11 (a) Fifty-seven dollars (\$57) shall be retained by the county clerk; and
- 12 (b) Six dollars (\$6) shall be paid to the affordable housing trust fund established
- 13 in KRS 198A.710 and shall be remitted by the county clerk within ten (10)
- 14 days following the end of the quarter in which the fee was received. Each
- 15 remittance to the affordable housing trust fund shall be accompanied by a
- 16 summary report on a form prescribed by the Kentucky Housing Corporation.
- 17 (3) (a) For services related to the permanent storage of records listed in paragraphs
- 18 (a), (g), (n), and (ae) of subsection (1) of this section, the clerk shall be
- 19 entitled to receive a reimbursement of ten dollars (\$10).
- 20 (b) In counties or a county containing an urban-county government, charter
- 21 county government, or unified local government:
- 22 1. This fee shall:
- 23 a. Not be paid annually to the fiscal court under KRS 64.152;
- 24 b. Not be paid to the Finance and Administration Cabinet under KRS
- 25 64.345;
- 26 c. Be accumulated and transferred to the fiscal court or the legislative
- 27 body of an urban-county government on a monthly basis within

- 1 ten (10) days following the end of the month;
- 2 d. Be maintained by the fiscal court or the legislative body of an
- 3 urban-county government in a separate bank account and
- 4 accounted for in a separate fund; and
- 5 e. Not lapse to the general fund of the county or urban-county
- 6 government.
- 7 2. The moneys accumulated from this fee shall be held in perpetuity by the
- 8 fiscal court or the legislative body of an urban-county government for
- 9 the county clerk's exclusive use for:
- 10 a. Equipment related to the permanent storage of and access to
- 11 records, including deed books, binders, shelves, microfilm
- 12 equipment, and fireproof equipment;
- 13 b. Hardware for the permanent storage of and access to records,
- 14 including computers, servers, and scanners;
- 15 c. Software for the permanent storage of and access to records,
- 16 including vendor services and consumer subscription fees;
- 17 d. Personnel costs for the permanent storage of and access to records,
- 18 including overtime costs for personnel involved in the digitization
- 19 of records; and
- 20 e. Cloud storage and cybersecurity services for the permanent storage
- 21 of and access to records.
- 22 3. Notwithstanding KRS 68.275, claims by a county clerk that are for the
- 23 approved expenditures in subparagraph 2. of this paragraph shall be paid
- 24 by the county judge/executive or the chief executive officer of an urban-
- 25 county government by a warrant drawn on the fund and co-signed by the
- 26 treasurer of the county or urban-county government.
- 27 4. No later than July 1 of each year, each county fiscal court or legislative

1 body of an urban-county government shall submit a report to the
2 Legislative Research Commission detailing the receipts, expenditures,
3 and any amounts remaining in the fund.

4 (c) In a county containing a consolidated local government:

5 1. The fee shall not:

6 a. Be paid to the Finance and Administration Cabinet under KRS
7 64.345; or

8 b. Lapse to the general fund of the consolidated local government.

9 2. The moneys accumulated from this fee shall be held in perpetuity by the
10 county clerk in a separate fund to be used exclusively for:

11 a. Equipment related to the permanent storage of and access to
12 records, including deed books, binders, shelves, microfilm
13 equipment, and fireproof equipment;

14 b. Hardware for the permanent storage of and access to records,
15 including computers, servers, and scanners;

16 c. Software for the permanent storage of and access to records,
17 including vendor services and consumer subscription fees;

18 d. Personnel costs for the permanent storage of and access to records,
19 including overtime costs for personnel involved in the digitization
20 of records; and

21 e. Cloud storage and cybersecurity services for the permanent storage
22 of and access to records.

23 3. No later than July 1 of each year, the county clerk shall submit a report
24 to the consolidated local government and the Legislative Research
25 Commission detailing the receipts, expenditures, and any amounts
26 remaining in the fund.

27 ➔Section 57. KRS 142.010 is amended to read as follows:

- 1 (1) The following taxes shall be paid:
- 2 (a) A tax of four dollars and fifty cents (\$4.50) on each marriage license;
- 3 (b) A tax of four dollars (\$4) on each power of attorney to convey real or personal
- 4 property;
- 5 (c) A tax of four dollars (\$4) on each mortgage, financing statement, or security
- 6 agreement and on each notation of a security interest on a certificate of title
- 7 under KRS 186A.190;
- 8 (d) A tax of four dollars (\$4) on each conveyance of real property;~~and~~
- 9 (e) A tax of four dollars (\$4) on each lien or conveyance of coal, oil, gas, or other
- 10 mineral right or privilege; and
- 11 (f) A tax of four dollars (\$4) on each recorded will.
- 12 (2) Except as provided in Section 4 of this Act, the tax imposed by this section shall be
- 13 collected by each county clerk as a prerequisite to the issuance of a marriage license
- 14 or the original filing of an instrument subject to the tax. Subsequent assignment of
- 15 the original instrument shall not be cause for additional taxation under this section.
- 16 This section shall not be construed to require any tax upon a deed of release of a
- 17 lien retained in a deed or mortgage.
- 18 (3) Taxes imposed under this section shall be reported and paid to the Department of
- 19 Revenue by each county clerk within ten (10) days following the end of the
- 20 calendar month in which instruments subject to tax are filed or marriage licenses
- 21 issued. Each remittance shall be accompanied by a summary report on a form
- 22 prescribed by the department.
- 23 (4) Any county clerk who violates any of the provisions of this section shall be subject
- 24 to the uniform civil penalties imposed pursuant to KRS 131.180. In every case, any
- 25 tax not paid on or before the due date shall bear interest at the tax interest rate as
- 26 defined in KRS 131.010(6) from the date due until the date of payment.
- 27 (5) (a) One dollar (\$1) of the amount collected under each paragraph of subsection

1 (1) of this section shall be placed in an agency fund in the Department for
2 Libraries and Archives to be used exclusively for the purpose of preserving
3 and retaining public records by continuing the local records grant program
4 active in the Department for Libraries and Archives.

5 (b) Ninety percent (90%) of all funds allocated to the Department for Libraries
6 and Archives under paragraph (a) of this subsection for the local records grant
7 program shall be set aside for grants to county clerks and distributed annually,
8 except as provided in paragraph (c) of this subsection.

9 (c) If there are insufficient grant applications from county clerks for the
10 Department for Libraries and Archives to distribute ninety percent (90%) of
11 all funds allocated under paragraph (a) of this subsection, the Department for
12 Libraries and Archives may grant those funds to other agencies.

13 ➔Section 58. KRS 401.040 is amended to read as follows:

14 (1) (a) If the District Court, Family Court, or Circuit Court, as authorized by KRS
15 401.020, orders any person's name to be changed under this chapter, a copy of
16 the order shall be certified by the clerk of that court to the county clerk, for
17 record, unless the court has ordered the record sealed or otherwise restricted
18 from public inspection.

19 (b) Beginning January 1, 2028, the clerk of the court shall collect the fee
20 required under Section 56 of this Act for the filing of a court-ordered name
21 change under subsection (2) of this section and forward the fee with the
22 copy of the order to the county clerk, except as provided in paragraph (a) of
23 this subsection.

24 (2) The county clerk shall keep an alphabetical index for each book of records,
25 referring to the page on which each person's name change appears, and giving the
26 name from and to which it is changed.

27 ➔SECTION 59. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO

1 READ AS FOLLOWS:

2 As used in Sections 59 to 69 of this Act, unless the context otherwise requires:

3 (1) "Claim" means a right to payment, whether or not the right is reduced to
4 judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured,
5 disputed, undisputed, legal, equitable, secured, or unsecured;

6 (2) "Creditor" means, with respect to a transferor, a person who has a claim;

7 (3) "Debt" means liability on a claim;

8 (4) "Disposition":

9 (a) Means a transfer, conveyance, or assignment of property, including a
10 change in the legal ownership of property occurring upon the substitution
11 of one (1) trustee for another or the addition of one (1) or more new
12 trustees; and

13 (b) Includes the exercise of a power so as to cause a transfer of property to a
14 trustee or trustees, but shall not include the release or relinquishment of an
15 interest in property that, until the release or relinquishment, was the subject
16 of a qualified disposition;

17 (5) "Investment advisor" means a person given authority by the terms of a qualified
18 trust to direct, consent to, or disapprove a transferor's actual or proposed
19 investment decisions, distribution decisions, or other decisions of the transferor;

20 (6) "Investment decision" means the retention, purchase, sale, exchange, tender, or
21 other transaction affecting the ownership of or rights in investments;

22 (7) "Person" has the same meaning as in Section 116 of this Act;

23 (8) "Property" means anything that may be the subject of ownership, including real
24 property, personal property, and interests in real or personal property, but does
25 not include any property that is encumbered by a valid lien;

26 (9) "Qualified affidavit" means a sworn affidavit signed by the transferor before a
27 disposition of assets to a qualified trust that meets the requirements of Section 60

1 of this Act. In the event of a disposition by a transferor who is a trustee, the
2 affidavit shall be signed by the transferor who made the original disposition to the
3 trustee or a predecessor trustee in a form that meets the requirements of
4 paragraphs (b) and (c) of subsection (11) of this section and shall state facts as of
5 the time of the original disposition;

6 (10) "Qualified disposition" means a disposition by or from a transferor with or
7 without consideration to a qualified trust after the transferor executes a qualified
8 affidavit;

9 (11) "Qualified trust" means an instrument appointing a qualified trustee or qualified
10 trustees for property that is the subject of a disposition, which instrument:

11 (a) Expressly incorporates the law of this Commonwealth to govern the validity,
12 construction, and administration of the trust;

13 (b) Is irrevocable; and

14 (c) Provides that the interest of the transferor or other beneficiary in trust
15 property or income from trust property may not be transferred, assigned,
16 pledged, or mortgaged, whether voluntarily or involuntarily, before the
17 qualified trustee or qualified trustees actually distribute property or income
18 from the trust to the beneficiary;

19 (12) "Qualified trustee" means a person who:

20 (a) In the case of a natural person, is a resident of this Commonwealth, or in
21 all other cases, is authorized by the law of this Commonwealth to act as a
22 trustee and whose activities are subject to supervision by the Kentucky
23 Department of Financial Institutions, the Federal Deposit Insurance
24 Corporation, the Comptroller of the Currency, or any successor to those
25 entities;

26 (b) Maintains or arranges for custody in this Commonwealth of some or all of
27 the property that is the subject of the qualified disposition, maintains

1 records for the qualified trust on an exclusive or nonexclusive basis,
2 prepares or arranges for the preparation of required income tax returns for
3 the qualified trust, or otherwise materially participates in the administration
4 of the qualified trust; and

5 (c) Is not the transferor;

6 (13) "Spouse or former spouse" means only persons to whom the transferor was
7 legally married at or before the time the qualified disposition is made;

8 (14) "Transferor" means a person who, directly or indirectly, makes a disposition or
9 causes a disposition to be made in the person's capacity:

10 (a) As an owner of property;

11 (b) As a holder of a power of appointment that authorizes the holder to appoint
12 in favor of the holder, the holder's creditors, the holder's estate, or the
13 creditors of the holder's estate; or

14 (c) As a trustee; and

15 (15) "Trustee" means an original, additional, and successor trustee, and a cotrustee,
16 whether singular or plural, who is a fiduciary relative to any power or duty held
17 by that person that could otherwise be held by a trustee.

18 ➔SECTION 60. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
19 READ AS FOLLOWS:

20 A qualified affidavit shall state that:

21 (1) The transferor has full right, title, and authority to transfer the assets to the trust;

22 (2) The transfer of the assets to the trust will not render the transferor insolvent;

23 (3) The transferor does not intend to defraud a creditor by transferring the assets to
24 the trust;

25 (4) The transferor does not have any pending or threatened court actions against the
26 transferor, except for those court actions identified by the transferor on an
27 attachment to the affidavit;

1 (5) The transferor is not involved in any administrative proceedings, except for those
2 administrative proceedings identified on an attachment to the affidavit;

3 (6) The transferor does not contemplate filing for relief under the federal bankruptcy
4 code; and

5 (7) The assets being transferred to the trust were not derived from unlawful activities.

6 ➔SECTION 61. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
7 READ AS FOLLOWS:

8 (1) Notwithstanding any law to the contrary, including KRS 386B.5-020(7)(a), no
9 action of any kind, including but not limited to an action to enforce a judgment
10 entered by a court or other body having adjudicative authority, shall be brought
11 at law or in equity for an attachment or other provisional remedy against property
12 that is the subject of a qualified disposition to a qualified trust or for the
13 avoidance of a qualified disposition to a qualified trust, unless:

14 (a) The action is brought pursuant to the Kentucky Uniform Voidable
15 Transactions Act, KRS 378A.005 to 378A.140; and

16 (b) The qualified disposition was made with actual intent to defraud a creditor
17 whose claim arose after a qualified disposition.

18 (2) (a) Notwithstanding KRS 378A.090, a creditor's claim under subsection (1) of
19 this section shall be extinguished:

20 1. If the person is a creditor when the qualified disposition to a qualified
21 trust is made, unless the action is commenced within the later of two
22 (2) years after the qualified disposition is made or six (6) months after
23 the person discovers or reasonably should have discovered the
24 qualified disposition; or

25 2. If the person becomes a creditor after a qualified disposition to a
26 qualified trust is made, unless the action is commenced within two (2)
27 years after the qualified disposition is made.

1 **(b) Any valid lien attaching to property before a disposition of that property to a**
2 **trustee of a qualified trust shall survive the disposition, and the trustee shall**
3 **take title to the property subject to the valid lien and subject to any**
4 **agreements that created or perfected the valid lien. This chapter shall not be**
5 **construed to authorize any disposition that is prohibited by the terms of any**
6 **agreements, notes, guaranties, mortgages, indentures, instruments,**
7 **undertakings, or other documents. In the event of any conflict between this**
8 **subparagraph and any other provision of this chapter, this subparagraph**
9 **shall control.**

10 **(c) If paragraph (a) of this subsection applies:**

11 **1. A person shall be deemed to have discovered the existence of a**
12 **qualified disposition to a qualified trust at the time any public record**
13 **is made of any transfer of property relative to the qualified disposition,**
14 **including but not limited to the conveyance of real property that is**
15 **recorded in the office of the county clerk in which the property is**
16 **located, the filing of a financing statement under Article 9 of KRS**
17 **Chapter 355, or the equivalent recording or filing of either with the**
18 **appropriate person or official under the laws of a jurisdiction other**
19 **than this Commonwealth; and**

20 **2. No creditor shall bring an action with respect to property that is the**
21 **subject of a qualified disposition unless that creditor proves by clear**
22 **and convincing evidence that the settlor's transfer of the property was**
23 **made with intent to defraud that specific creditor.**

24 **(3) For purposes of Sections 59 to 69 of this Act, a qualified disposition that is made**
25 **by means of a disposition by a transferor who is a trustee shall be deemed to have**
26 **been made as of the time the property that is the subject of the qualified**
27 **disposition was originally transferred to the transferor acting in the capacity of**

1 trustee, or any predecessor trustee, in a form that meets the requirements of
2 subsection (11)(a) and (c) of Section 59 of this Act.

3 (4) Notwithstanding any law to the contrary:

4 (a) A creditor, including a creditor whose claim arose before or after a
5 qualified disposition, or any other person shall have only the rights with
6 respect to a qualified disposition that are provided in this section and
7 Section 63 of this Act;

8 (b) Neither a creditor nor any other person shall have any claim or cause of
9 action against the trustee, an advisor of a qualified trust, or any person
10 involved in the counseling, drafting, preparation, execution, or funding of a
11 qualified trust; and

12 (c) For purposes of this subsection, counseling, drafting, preparation,
13 execution, or funding of a qualified trust includes the counseling, drafting,
14 preparation, execution, or funding of a limited partnership or limited
15 liability company if interests in the limited partnership or limited liability
16 company are subsequently transferred to the qualified trust.

17 (5) Notwithstanding any law to the contrary, no action of any kind, including but not
18 limited to an action to enforce a judgment entered by a court or other body
19 having adjudicative authority, shall be brought at law or in equity against a
20 trustee or an advisor of a qualified trust, or against any person involved in the
21 counseling, drafting, preparation, execution, or funding of a qualified trust if, as
22 of the date the action is brought, an action by a creditor with respect to the
23 qualified trust would be barred under this section.

24 (6) In circumstances where more than one (1) qualified disposition is made by means
25 of the same qualified trust:

26 (a) The making of a subsequent qualified disposition shall be disregarded in
27 determining whether a creditor's claim with respect to a prior qualified

1 disposition is extinguished as provided in subsection (2) of this section; and
2 (b) Any distribution to a beneficiary shall be deemed to have been made from
3 the latest qualified disposition.

4 (7) (a) If, in any action brought against a qualified trust, a court takes any action
5 whereby the court declines to apply the law of this Commonwealth in
6 determining the effect of a spendthrift provision of the trust:

7 1. The trustee shall immediately, upon the court's action and without the
8 further order of any court, cease in all respects to be trustee and a
9 successor trustee shall succeed as trustee in accordance with the terms
10 of the trust; or

11 2. If the trust does not provide for a successor trustee and the trust would
12 otherwise be without a trustee, a court of this Commonwealth, upon
13 the application of any beneficiary of the trust, shall appoint a
14 successor trustee upon the terms and conditions it determines to be
15 consistent with the purposes of the trust and Sections 59 to 69 of this
16 Act.

17 (b) Upon the trustee's ceasing to be trustee, the trustee shall have no power or
18 authority other than to convey the trust property to the successor trustee
19 named in the trust in accordance with this subsection.

20 (8) A qualified trust shall be subject to this section whether or not the transferor
21 retains any or all of the powers and rights described in Section 68 of this Act or
22 serves as an investment advisor pursuant to Section 66 of this Act.

23 (9) (a) Notwithstanding subsection (1) or (2) of this section, the limitations on
24 actions by creditors in law or equity shall not apply, and such creditors'
25 claims shall not be extinguished, if the transferor is indebted on account of
26 an agreement, judgment, or order of a court for the payment of any of the
27 following:

1. Past due child support;
 2. Past due temporary or permanent maintenance to a spouse or former
3. spouse;
 3. A written agreement, judgment, or order of a court for division of
4. marital property of a spouse or former spouse, but only to the extent of
5. the debt, legally mandated interest on the debt, and the reasonable cost
6. of collection of the debt; or
 4. A valid note, mortgage, security interest, or debt instrument in
7. existence prior to the qualified disposition.
- (b) 1. A claim under this subsection shall be asserted against a trustee only:
- a. Upon a final, nonappealable determination of a Kentucky court
11. or a fully domesticated, final, nonappealable order of a court of
12. another state as defined by Section 116 of this Act that the debt is
13. past due; and
 - b. After the court has determined that the claimant has made
15. reasonable attempts to collect the debt from any other sources of
16. the transferor or that such attempts would be futile.
2. Nothing in this paragraph shall be construed to prohibit the court
18. from making the findings required in subparagraph 1. of this
19. paragraph in the same proceeding and order.
- (c) This subsection shall not apply to any claim for forced heirship, legitime, or
21. elective share.

23 ➔ SECTION 62. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
24 READ AS FOLLOWS:

25 A transferor shall only have the powers and rights conferred by the qualified trust. The
26 powers and rights conferred by the qualified trust upon the transferor are personal
27 powers and rights that may not be exercised by a creditor or any other person, except

1 as expressly permitted by the trust. Except as permitted by Sections 66 and 68 of this
2 Act, the transferor shall have no rights or authority with respect to the corpus of the
3 qualified trust or the income from the trust, and any agreement or understanding
4 purporting to grant or permit the retention of any greater rights or authority shall be
5 void.

6 ➔SECTION 63. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
7 READ AS FOLLOWS:

8 (1) A qualified disposition to a qualified trust shall be avoided only to the extent
9 necessary to satisfy the transferor's debt to the creditor at whose instance the
10 disposition was avoided, together with costs, including attorneys' fees, that the
11 court may allow.

12 (2) In the event any qualified disposition is avoided as described in subsection (1) of
13 this section:

14 (a) If the court is satisfied that a qualified trustee has not acted in bad faith in
15 accepting or administering the property that is the subject of the qualified
16 disposition:

17 1. The qualified trustee shall have a first and paramount lien against the
18 property that is the subject of the qualified disposition in an amount
19 equal to the entire cost, including attorneys' fees, properly incurred by
20 the qualified trustee in defense of the action or proceedings to avoid
21 the qualified disposition except any valid lien attaching to the property
22 before a disposition of that property to a trustee of a qualified trust
23 shall survive the disposition, and the trustee shall take title to the
24 property subject to the valid lien and subject to any agreements that
25 created or perfected the valid lien;

26 2. The qualified disposition shall be avoided subject to the proper fees,
27 costs, preexisting rights, claims, and interests of the qualified trustee

1 and of any predecessor qualified trustee that has not acted in bad
2 faith; and

3 3. For purposes of this paragraph, it shall be presumed that the qualified
4 trustee did not act in bad faith merely by accepting the property; and

5 (b) 1. If the court is satisfied that a beneficiary of a qualified trust has not
6 acted in bad faith, the avoidance of the qualified disposition shall be
7 subject to the beneficiary's right to retain any distribution made upon
8 the exercise of a trust power or discretion vested in the qualified
9 trustee or qualified trustees of the qualified trust, which power or
10 discretion was properly exercised prior to the creditor's
11 commencement of an action to avoid a qualified disposition.

12 2. For purposes of this paragraph, it shall be presumed that the
13 beneficiary, including a beneficiary who is also a transferor of the
14 trust, did not act in bad faith merely by creating the trust or by
15 accepting a distribution made in accordance with the terms of the
16 trust.

17 (3) A disposition by a trustee that is not a qualified trustee to a trustee that is a
18 qualified trustee shall not be treated as other than a qualified disposition solely
19 because the trust instrument fails to meet the requirements of subsection (11)(a)
20 of Section 59 of this Act.

21 (4) In the case of a disposition to more than one (1) trustee, a disposition that is
22 otherwise a qualified disposition shall not be treated as other than a qualified
23 disposition solely because not all of the recipient trustees are qualified trustees.

24 ➔SECTION 64. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
25 READ AS FOLLOWS:

26 A spendthrift provision as described in subsection (11)(c) of Section 59 of this Act shall
27 be deemed to be a restriction on the transfer of the transferor's beneficial interest in

1 the trust that is enforceable under applicable nonbankruptcy law within the meaning
2 of 11 U.S.C. sec. 541(c)(2) or any successor provision.

3 ➔SECTION 65. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
4 READ AS FOLLOWS:

5 (1) For purposes of Sections 59 to 69 of this Act, none of the following shall be
6 considered a qualified trustee:

7 (a) The transferor or any other natural person who is a nonresident of this
8 Commonwealth; or

9 (b) An entity:

10 1. That is not authorized by the law of this Commonwealth to act as a
11 trustee; or

12 2. Whose activities are not subject to supervision as provided in
13 subsection (12)(a) of Section 59 of this Act.

14 (2) (a) Nothing in Sections 59 to 69 of this Act shall preclude a transferor from
15 appointing one (1) or more advisors, including but not limited to:

16 1. Advisors who have authority under the terms of the trust instrument to
17 remove and appoint qualified trustees or trust advisors;

18 2. Advisors who have authority under the terms of the trust instrument to
19 direct, consent to, or disapprove distributions from the trust; or

20 3. Investment advisors, whether or not the advisors would meet the
21 requirements of subsection (12) of Section 59 of this Act.

22 (b) For purposes of this subsection, "advisor" includes a trust protector or any
23 other person who, in addition to a qualified trustee, holds one (1) or more
24 trust powers.

25 ➔SECTION 66. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
26 READ AS FOLLOWS:

27 A person may serve as an investment advisor notwithstanding that the person is the

1 transferor of the qualified disposition.

2 ➔SECTION 67. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
3 READ AS FOLLOWS:

4 In the event that a qualified trustee of a qualified trust ceases to meet the requirements
5 of subsection (12)(a) of Section 59 of this Act, and there remains no trustee that meets
6 the requirements, the qualified trustee shall be deemed to have resigned as of the time
7 of that cessation, and thereupon, the successor qualified trustee provided for in the
8 qualified trust shall become a qualified trustee of the qualified trust, or in the absence
9 of any successor qualified trustee provided for in the qualified trust, then a court of
10 this Commonwealth shall, upon application of any interested party, appoint a successor
11 qualified trustee.

12 ➔SECTION 68. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
13 READ AS FOLLOWS:

14 A qualified trust shall not be deemed revocable on account of its inclusion of one (1) or
15 more of the following:

16 (1) A transferor's power to veto a distribution from the trust;

17 (2) A power of appointment, other than a power to appoint to the transferor, the
18 transferor's creditors, the transferor's estate, or the creditors of the transferor's
19 estate, either exercisable by written instrument of the transferor during the
20 transferor's life or exercisable by will or other written instrument of the
21 transferor effective upon the transferor's death;

22 (3) The transferor's potential or actual receipt of income, including rights to the
23 income retained in the trust;

24 (4) The transferor's potential or actual receipt of income or principal from a
25 charitable remainder unitrust or charitable remainder annuity trust as those
26 terms are defined in 26 U.S.C. sec. 664 or any successor provision;

27 (5) The transferor's receipt each year of an amount specified in the trust, the amount

1 not to exceed five percent (5%) of the initial value of the trust or its value
2 determined from time to time pursuant to the trust;

3 (6) The transferor's potential or actual receipt or use of principal if the potential or
4 actual receipt or use of principal would be the result of a qualified trustee's or
5 qualified trustees' acting;

6 (a) In the qualified trustee's or trustees' discretion. For purposes of this
7 subsection, a qualified trustee is presumed to have discretion with respect to
8 the distribution of principal unless the discretion is expressly denied to the
9 trustee by the terms of the trust;

10 (b) Pursuant to a standard that governs the distribution of principal and does
11 not confer upon the transferor a power to consume, invade, or appropriate
12 property for the benefit of the transferor, unless the power of the transferor
13 is limited by an ascertainable standard relating to the health, education,
14 support, or maintenance within the meaning of 26 U.S.C. sec. 2041(b)(1)(A)
15 or 2514(c)(1), as amended; or

16 (c) At the direction of an advisor described in Section 65 of this Act who is
17 acting;

18 1. In the advisor's discretion; or

19 2. Pursuant to a standard that governs the distribution of principal and
20 does not confer upon the transferor a power to consume, invade, or
21 appropriate property for the benefit of the transferor, unless the power
22 of the transferor is limited by an ascertainable standard relating to the
23 health, education, support, or maintenance within the meaning of 26
24 U.S.C. sec. 2041(b)(1)(A) or 2514(c)(1), as amended;

25 (7) The transferor's right to remove a trustee or advisor and to appoint a new trustee
26 or advisor; provided, however, that the right shall not include the appointment of
27 a person who is a related or subordinate party with respect to the transferor

1 within the meaning of 26 U.S.C. sec. 672(c) or any successor provision;

2 (8) The transferor's potential or actual use of real property held under a qualified
3 personal residence trust within the meaning of the term as described in 26 U.S.C.
4 sec. 2702(c) or any successor provision;

5 (9) The transferor's potential or actual receipt of income or principal to pay, in
6 whole or in part, income taxes due on income of the trust if the potential or actual
7 receipt of income or principal is pursuant to a provision in the trust instrument
8 that expressly permits a distribution to the transferor as reimbursement for such
9 taxes and if the distribution would be the result of a qualified trustee's or
10 qualified trustees' acting;

11 (a) In the qualified trustee's or trustees' discretion or pursuant to a mandatory
12 direction in the trust instrument; or

13 (b) At the direction of an advisor described in Section 65 of this Act who is
14 acting in that advisor's discretion;

15 (10) The ability, whether pursuant to direction in the qualified trust or discretion of a
16 qualified trustee to pay, after the death of the transferor, all or any part of the
17 debts of the transferor outstanding at the time of the transferor's death, the
18 expenses of administering the transferor's estate, or any estate or inheritance tax
19 imposed on or with respect to the transferor's estate; or

20 (11) A qualified trustee's or qualified trustees' authority to make distributions to pay
21 taxes in lieu of or in addition to the power to make a distribution for taxes
22 pursuant to subsections (3), (6), (9), or (10) of this section by direct payment to
23 taxing authorities.

24 ➔SECTION 69. A NEW SECTION OF KRS CHAPTER 386 IS CREATED TO
25 READ AS FOLLOWS:

26 Sections 59 to 69 of this Act shall apply to qualified dispositions to qualified trusts and
27 dispositions by transferors who are trustees made on or after the effective date of this

1 Act.

2 ➔SECTION 70. SUBCHAPTER 12 OF KRS CHAPTER 386B IS
3 ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS
4 FOLLOWS:

5 As used in this subchapter:

6 (1) "Breach of trust" includes a violation by a trust director or trustee of a duty
7 imposed on that director or trustee by the terms of the trust, the provisions of
8 Sections 70 to 86 of this Act, or other law of this Commonwealth pertaining to
9 trusts;

10 (2) "Directed trust" means a trust for which the terms of the trust grant a power of
11 direction;

12 (3) "Directed trustee" means a trustee that is subject to a trust director's power of
13 direction;

14 (4) "Person" has the same meaning as in Section 116 of this Act;

15 (5) "Power of direction" has the same meaning as in Section 116 of this Act;

16 (6) "Settlor" has the same meaning as in Section 116 of this Act;

17 (7) "State" has the same meaning as in Section 116 of this Act;

18 (8) "Terms of a trust" has the same meaning as in Section 116 of this Act;

19 (9) "Trust director" has the same meaning as in Section 116 of this Act; and

20 (10) "Trustee" has the same meaning as in Section 116 of this Act.

21 ➔SECTION 71. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
22 386B IS CREATED TO READ AS FOLLOWS:

23 Sections 70 to 86 of this Act apply to a trust, whenever created, that has its principal
24 place of administration in this Commonwealth, subject to the following rules:

25 (1) If the trust was created before the effective date of this Act, Sections 70 to 86 of
26 this Act apply only to a decision or action occurring on or after the effective date
27 of this Act; and

1 (2) If the principal place of administration of the trust is changed to this
2 Commonwealth on or after the effective date of this Act, Sections 70 to 86 of this
3 Act apply only to a decision or action occurring on or after the date of the
4 change.

5 ➔SECTION 72. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
6 386B IS CREATED TO READ AS FOLLOWS:

7 The common law and principles of equity supplement the provisions of Sections 70 to
8 86 of this Act, except to the extent modified by Sections 70 to 86 of this Act or another
9 statute of this Commonwealth.

10 ➔SECTION 73. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
11 386B IS CREATED TO READ AS FOLLOWS:

12 (1) As used in this section, "power of appointment" means a power that enables a
13 person acting in a nonfiduciary capacity to designate a recipient of an ownership
14 interest in or another power of appointment over trust property.

15 (2) The provisions of Sections 70 to 86 of this Act shall not apply to a:

16 (a) Power of appointment;

17 (b) Power to appoint or remove a trustee or trust director;

18 (c) Power of a settlor over a trust to the extent the settlor has a power to revoke
19 the trust;

20 (d) Power of a beneficiary over a trust to the extent the exercise or nonexercise
21 of the power affects the beneficial interest of:

22 1. The beneficiary; or

23 2. Another beneficiary represented by the beneficiary under KRS
24 386B.3-010 to 386B.3-050 with respect to the exercise or nonexercise
25 of the power; or

26 (e) Power over a trust if:

27 1. The terms of the trust provide that the power is held in a nonfiduciary

1 capacity; and

2 2. The power must be held in a nonfiduciary capacity to achieve the
3 settlor's tax objectives under the United States Internal Revenue Code
4 of 1986, as amended, and regulations issued thereunder, as amended.

5 (3) Unless the terms of a trust provide otherwise, a power granted to a person to
6 designate a recipient of an ownership interest in or power of appointment over
7 trust property which is exercisable while the person is not serving as a trustee is a
8 power of appointment and not a power of direction.

9 ➔SECTION 74. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
10 386B IS CREATED TO READ AS FOLLOWS:

11 (1) Subject to Section 75 of this Act, the terms of a trust may grant a power of
12 direction to a trust director.

13 (2) Unless the terms of a trust provide otherwise:

14 (a) A trust director may exercise any further power appropriate to the exercise
15 or nonexercise of power of direction granted to the director under
16 subsection (1) of this section; and

17 (b) Trust directors with joint powers shall act by majority decision.

18 ➔SECTION 75. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
19 386B IS CREATED TO READ AS FOLLOWS:

20 A trust director is subject to the same rules as a trustee in a like position and under
21 similar circumstances in the exercise or nonexercise of a power of direction or further
22 power under subsection (2)(a) of Section 74 of this Act regarding:

23 (1) A payback provision in the terms of a trust necessary to comply with the
24 reimbursement requirements of Medicaid law in Section 1917 of the Social
25 Security Act, 42 U.S.C. sec. 1396p(d)(4)(A), as amended, and regulations issued
26 thereunder, as amended; and

27 (2) A charitable interest in the trust, including notice regarding the interest to the

1 Attorney General.

2 ➔SECTION 76. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
3 386B IS CREATED TO READ AS FOLLOWS:

4 (1) Subject to subsection (2) of this section, with respect to a power of direction or
5 further power under subsection (2)(a) of Section 74 of this Act:

6 (a) A trust director has the same fiduciary duty and liability in the exercise or
7 nonexercise of the power:

8 1. If the power is held individually, as a sole trustee in a like position and
9 under similar circumstances; or

10 2. If the power is held jointly with a trustee or another trust director, as a
11 cotrustee in like position and under similar circumstances; and

12 (b) The terms of the trust may vary the director's duty or liability to the same
13 extent the terms of the trust could vary the duty or liability of a trustee in a
14 like position and under similar circumstances.

15 (2) Unless the terms of a trust provide otherwise, if a trust director is licensed,
16 certified, or otherwise authorized or permitted by law other than the provisions of
17 Sections 70 to 86 of this Act to provide health care in the ordinary course of the
18 director's business or practice of a profession, to the extent the director acts in
19 that capacity, the director shall have no duty or liability under Sections 70 to 86
20 of this Act.

21 (3) The terms of a trust may impose a duty or liability on a trust director in addition
22 to the duties and liabilities under this section.

23 ➔SECTION 77. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
24 386B IS CREATED TO READ AS FOLLOWS:

25 (1) Subject to subsection (2) of this section, a directed trustee shall take reasonable
26 action to comply with a trust director's exercise or nonexercise of a power of
27 direction or further power under subsection (2)(a) of Section 74 of this Act, and

1 the trustee is not liable for the action.

2 (2) A directed trustee shall not comply with a trust director's exercise or nonexercise
3 of a power of direction or further power under Section 74 of this Act to the extent
4 that by complying, the trustee would engage in willful misconduct.

5 (3) An exercise of a power of direction under which a trust director may release a
6 trustee or another trust director from liability for breach of trust is not effective
7 if:

8 (a) The breach involved the trustee's or other director's willful misconduct;

9 (b) The release was induced by improper conduct of the trustee or other
10 director in procuring the release; or

11 (c) At the time of the release, the director did not know the material facts
12 relating to the breach.

13 (4) A directed trustee that has reasonable doubt about its duty under this section may
14 petition a court with jurisdiction under Subchapter 2 of KRS Chapter 386B for
15 instructions.

16 (5) The terms of a trust may impose a duty or liability on a directed trustee in
17 addition to the duties and liabilities under this section.

18 ➔SECTION 78. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
19 386B IS CREATED TO READ AS FOLLOWS:

20 (1) Subject to Section 79 of this Act, a trustee shall provide information to a trust
21 director to the extent the information is reasonably related to both:

22 (a) The powers or duties of the trustee; and

23 (b) The powers or duties of the director.

24 (2) Subject to Section 79 of this Act, a trust director shall provide information to a
25 trustee or another trust director to the extent the information is reasonably
26 related to both:

27 (a) The powers or duties of the director; and

1 **(b) The powers or duties of the trustee or other director.**

2 **(3) A trustee that acts in reliance on information provided by a trust director is not**
3 **liable for breach of trust to the extent the breach resulted from the reliance,**
4 **unless by so acting the trust director engages in willful misconduct.**

5 **(4) A trust director that acts in reliance on information provided by a trustee or**
6 **another trust director is not liable for a breach of trust to the extent the breach**
7 **resulted from the reliance, unless by so acting the trust director engages in willful**
8 **misconduct.**

9 ➔SECTION 79. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
10 386B IS CREATED TO READ AS FOLLOWS:

11 **(1) Unless the terms of a trust provide otherwise:**

12 **(a) The trustee shall not have a duty to:**

13 **1. Monitor a trust director; or**

14 **2. Inform or give advice to a settlor, beneficiary, trustee, or trust director**
15 **concerning an instance in which the trustee might have acted**
16 **differently than the director; and**

17 **(b) By taking an action described in paragraph (a) of this subsection, a trustee**
18 **does not assume the duty excluded by paragraph (a) of this subsection.**

19 **(2) Unless the terms of a trust provide otherwise:**

20 **(a) The trust director shall not have a duty to:**

21 **1. Monitor a trustee or another trust director; or**

22 **2. Inform or give advice to a settlor, beneficiary, trustee, or another trust**
23 **director concerning an instance in which the director might have**
24 **acted differently than a trustee or another director; and**

25 **(b) By taking an action described in paragraph (a) of this subsection, a trust**
26 **director does not assume the duty excluded by paragraph (a) of this**
27 **subsection.**

1 ➔ SECTION 80. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
2 386B IS CREATED TO READ AS FOLLOWS:

3 *The terms of a trust may relieve a cotrustee from duty and liability with respect to*
4 *another cotrustee's exercise or nonexercise of a power of the other cotrustee to the*
5 *same extent that in a directed trust a directed trustee is relieved from duty and liability*
6 *with respect to a trust director's power under Sections 77, 78, and 79 of this Act.*

7 ➔ SECTION 81. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
8 386B IS CREATED TO READ AS FOLLOWS:

9 *(1) An action against a trust director for breach of trust shall be commenced within*
10 *the same limitation period as under KRS 386B.10-050 for an action for breach of*
11 *trust against a trustee in a like position and under similar circumstances.*

12 *(2) A report or accounting has the same effect on the limitation period for an action*
13 *against a trust director for breach of trust that the report or accounting would*
14 *have under KRS 386B.10-050 in an action for breach of trust against a trustee in*
15 *a like position and under similar circumstances.*

16 ➔ SECTION 82. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
17 386B IS CREATED TO READ AS FOLLOWS:

18 *In an action against a trust director for breach of trust, the director may assert the*
19 *same defenses a trustee in a like position and under similar circumstances could assert*
20 *in an action for breach of trust against the trustee.*

21 ➔ SECTION 83. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
22 386B IS CREATED TO READ AS FOLLOWS:

23 *(1) By accepting appointment as a trust director of a trust subject to the provisions of*
24 *Sections 70 to 86 of this Act, the director submits to personal jurisdiction of the*
25 *courts of this Commonwealth regarding any matter related to a power or duty of*
26 *the director.*

27 *(2) This section shall not preclude other methods of obtaining jurisdiction over a*

1 trust director.

2 ➔SECTION 84. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
3 386B IS CREATED TO READ AS FOLLOWS:

4 Unless the terms of a trust provide otherwise, the rules applicable to a trustee apply to a
5 trust director regarding the following matters:

6 (1) Acceptance under KRS 386B.7-010;

7 (2) Giving of bond to secure performance under KRS 386B.7-020;

8 (3) Reasonable compensation under KRS 386B.7-080;

9 (4) Resignation under KRS 386B.7-050;

10 (5) Removal under KRS 386B.7-060; and

11 (6) Vacancy and appointment of successor under KRS 386B.7-040.

12 ➔SECTION 85. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
13 386B IS CREATED TO READ AS FOLLOWS:

14 In applying and construing Sections 75 to 86 of this Act, consideration shall be given
15 to the need to promote uniformity of the law with respect to its subject matter among
16 states that enact it.

17 ➔SECTION 86. A NEW SECTION OF SUBCHAPTER 12 OF KRS CHAPTER
18 386B IS CREATED TO READ AS FOLLOWS:

19 The provisions of Sections 70 to 86 of this Act modify, limit, or supersede the
20 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. sec. 7001 et
21 seq., but do not modify, limit, or supersede 15 U.S.C. sec. 7001(c) or authorize
22 electronic delivery of any of the notices described in 15 U.S.C. sec. 7003(b).

23 ➔SECTION 87. SUBCHAPTER 13 OF KRS CHAPTER 386B IS
24 ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS
25 FOLLOWS:

26 As used in this subchapter:

27 (1) "Appointive property" means the property or property interest subject to a power

1 of appointment;

2 (2) "Ascertainable standard" means the same as in Section 116 of this Act;

3 (3) "Authorized fiduciary" means:

4 (a) A trustee or other fiduciary, other than a settlor, that has discretion to
5 distribute or direct a trustee to distribute part or all of the principal of the
6 first trust to one (1) or more current beneficiaries;

7 (b) A special fiduciary appointed under Section 94 of this Act; or

8 (c) A special needs fiduciary under Section 98 of this Act;

9 (4) "Beneficiary" means a person that:

10 (a) Has a present or future, vested or contingent, beneficial interest in a trust;

11 (b) Holds a power of appointment over trust property; or

12 (c) Is an identified charitable organization that will or may receive distributions
13 under the terms of the trust;

14 (5) "Charitable interest" means an interest in a trust which:

15 (a) Is held by an identified charitable organization and makes the organization
16 a qualified beneficiary;

17 (b) Benefits only charitable organizations and, if the interest were held by an
18 identified charitable organization, would make the organization a qualified
19 beneficiary; or

20 (c) Is held solely for charitable purposes and, if the interest were held by an
21 identified charitable organization, would make the organization a qualified
22 beneficiary;

23 (6) "Charitable organization" means:

24 (a) A person, other than an individual, organized and operated exclusively for
25 charitable purposes; or

26 (b) A government or governmental subdivision, agency, or instrumentality, to
27 the extent it holds funds exclusively for a charitable purpose;

- 1 (7) "Charitable purpose" means the relief of poverty, the advancement of education
2 or religion, the promotion of health, a municipal or other governmental purpose,
3 or another purpose the achievement of which is beneficial to the community;
- 4 (8) "Court" means a court in this Commonwealth having jurisdiction in matters
5 relating to trusts under Subchapter 2 of this chapter;
- 6 (9) "Current beneficiary":
7 (a) Means a beneficiary that on the date of the beneficiary's qualification is
8 determined is a distributee or permissible distributee of trust income or
9 principal; and
10 (b) Includes the holder of a presently exercisable general power of appointment
11 but does not include a person that is a beneficiary only because the person
12 holds any other power of appointment;
- 13 (10) "Decanting power" or "the decanting power" means the power of an authorized
14 fiduciary under Sections 70 to 86 of this Act to distribute property of a first trust
15 to one (1) or more second trusts or to modify the terms of the first trust;
- 16 (11) "Expanded distributive discretion" means a discretionary power of distribution
17 that is not limited to an ascertainable standard or a reasonably definite standard;
- 18 (12) "First trust" means a trust over which an authorized fiduciary may exercise the
19 decanting power;
- 20 (13) "First-trust instrument" means the trust instrument for a first trust;
- 21 (14) "General power of appointment" means a power of appointment exercisable in
22 favor of a powerholder, the powerholder's estate, a creditor of the powerholder,
23 or a creditor of the powerholder's estate;
- 24 (15) "Jurisdiction" has the same meaning as in Section 116 of this Act;
- 25 (16) "Person" has the same meaning as in Section 116 of this Act;
- 26 (17) "Power of appointment":
27 (a) Means a power that enables a powerholder acting in a nonfiduciary

1 capacity to designate a recipient of an ownership interest in or another
2 power of appointment over the appointive property; and

3 (b) Does not include a power of attorney;

4 (18) "Powerholder" means a person in which a donor creates a power of
5 appointment;

6 (19) "Presently exercisable power of appointment" means a power of appointment
7 exercisable by the powerholder at the relevant time and:

8 (a) Includes a power of appointment exercisable only after the occurrence of a
9 specified event, the satisfaction of an ascertainable standard, or the passage
10 of a specified time only after:

11 1. The occurrence of the specified event;

12 2. The satisfaction of the ascertainable standard; or

13 3. The passage of the specified time; and

14 (b) Does not include a power exercisable only at the powerholder's death;

15 (20) "Qualified beneficiary" has the same meaning as in Section 116 of this Act;

16 (21) "Reasonably definite standard" means a clearly measurable standard under
17 which a holder of a power of distribution is legally accountable within the
18 meaning of 26 U.S.C. sec. 674(b)(5)(A), as amended, and any applicable
19 regulations;

20 (22) "Record" has the same meaning as in Section 32 of this Act;

21 (23) "Second-trust instrument" means the trust instrument for a second trust;

22 (24) "Settlor," except as otherwise provided in Section 110 of this Act, has the same
23 meaning as in Section 116 of this Act;

24 (25) "Sign" has the same meaning as in Section 32 of this Act;

25 (26) "State" has the same meaning as in Section 116 of this Act;

26 (27) "Terms of the trust" has the same meaning as in Section 116 of this Act; and

27 (28) "Trust instrument" has the same meaning as in Section 116 of this Act.

1 ➔ SECTION 88. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
2 386B IS CREATED TO READ AS FOLLOWS:

3 (1) Except as otherwise provided in subsections (2) and (3) of this section, the
4 provisions of Sections 87 to 114 of this Act shall apply to an express trust that is
5 irrevocable or revocable by the settlor only with the consent of the trustee or a
6 person holding an adverse interest.

7 (2) Sections 87 to 114 of this Act shall not apply to a trust held solely for charitable
8 purposes.

9 (3) Subject to Section 100 of this Act, a trust instrument may restrict or prohibit
10 exercise of the decanting power.

11 (4) Sections 87 to 114 of this Act do not limit the power of a trustee, powerholder, or
12 other person to distribute or appoint property in further trust or to modify a trust
13 under the trust instrument, statutes of this Commonwealth other than the
14 provisions of Sections 87 to 114 of this Act, common law, a court order, or a
15 nonjudicial settlement agreement.

16 (5) Sections 87 to 114 of this Act do not affect the ability of a settlor to provide in a
17 trust instrument for the distribution of the trust property or appointment in
18 further trust of the trust property or for modification of the trust instrument.

19 ➔ SECTION 89. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
20 386B IS CREATED TO READ AS FOLLOWS:

21 (1) In exercising the decanting power, an authorized fiduciary shall act in
22 accordance with its fiduciary duties, including the duty to act in accordance with
23 the purposes of the first trust.

24 (2) Sections 87 to 114 of this Act do not create or imply a duty to exercise the
25 decanting power or to inform the beneficiaries about the applicability of Sections
26 87 to 114 of this Act.

27 (3) Except as otherwise provided in a first-trust instrument, for purposes of Sections

70 to 86 of this Act and KRS 386B.8-010 and 386B.8-020, the terms of the first trust are deemed to include the decanting power.

➔SECTION 90. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

Sections 87 to 114 of this Act shall apply to a trust created before, on, or after the effective date of this Act which:

(1) Has its principal place of administration in this Commonwealth, including a trust whose principal place of administration has been changed to this Commonwealth; or

(2) Provides by its trust instrument that it is governed by the law of this Commonwealth or is governed by the law of this Commonwealth for the purpose of:

(a) Administration, including administration of a trust whose governing law for purposes of administration has been changed to the law of this Commonwealth;

(b) Construction of the terms of the trust; or

(c) Determining the meaning or effect of terms of the trust.

➔SECTION 91. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

A trustee or other person that reasonably relies on the validity of a distribution of part or all of the property of a trust to another trust, or a modification of a trust, under Sections 87 to 114 of this Act, statutes of this Commonwealth other than Sections 87 to 114 of this Act, or the law of another jurisdiction is not liable to any person for any action or failure to act as a result of the reliance.

➔SECTION 92. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

(1) A notice period in this section begins on the day notice is given under subsection

1 (3) of this section and ends fifty-nine (59) days after the day notice is given.

2 (2) Except as otherwise provided in Sections 87 to 114 of this Act, an authorized
3 fiduciary may exercise the decanting power without the consent of any person
4 and without court approval.

5 (3) Except as otherwise provided in subsection (6) of this section, an authorized
6 fiduciary shall give notice in a record of the intended exercise of the decanting
7 power not less than sixty (60) days before the exercise to:

8 (a) Each settlor of the first trust, if living or then in existence;

9 (b) Each qualified beneficiary of the first trust;

10 (c) Each holder of a presently exercisable power of appointment over any part
11 or all of the first trust;

12 (d) Each person that currently has the right to remove or replace the authorized
13 fiduciary;

14 (e) Each other fiduciary of the first trust;

15 (f) Each fiduciary of the second trust; and

16 (g) The Attorney General, if subsection (2) of Section 99 of this Act applies.

17 (4) An authorized fiduciary is not required to give notice under subsection (3) of this
18 section to a person that is not known to the fiduciary or is known to the fiduciary
19 but cannot be located by the fiduciary after reasonable diligence.

20 (5) A notice under subsection (3) of this section shall:

21 (a) Specify the manner in which the authorized fiduciary intends to exercise the
22 decanting power;

23 (b) Specify the proposed effective date for exercise of the power; and

24 (c) Include a copy of:

25 1. The first-trust instrument; or

26 2. All second-trust instruments.

27 (6) The decanting power may be exercised before the expiration of the notice period

1 under subsection (1) of this section if all persons entitled to receive notice waive
2 the period in a signed record.

3 (7) The receipt of notice, waiver of the notice period, or expiration of the notice
4 period does not affect the right of a person to file an application under Section 94
5 of this Act asserting that:

6 (a) An attempted exercise of the decanting power is ineffective because it did
7 not comply with the provisions of Sections 87 to 114 of this Act or was an
8 abuse of discretion or breach of fiduciary duty; or

9 (b) Section 107 of this Act applies to the exercise of the decanting power.

10 (8) An exercise of the decanting power is not ineffective because of the failure to give
11 notice to one (1) or more persons under subsection (3) of this section if the
12 authorized fiduciary acted with reasonable care to comply with subsection (3) of
13 this section.

14 ➔SECTION 93. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
15 386B IS CREATED TO READ AS FOLLOWS:

16 (1) Notice to a person with authority to represent and bind another person under a
17 first-trust instrument or the provisions of this chapter has the same effect as
18 notice given directly to the person represented.

19 (2) Consent of or waiver by a person with authority to represent and bind another
20 person under a first-trust instrument or the provisions of this chapter is binding
21 on the person represented unless the person represented objects to the
22 representation before the consent or waiver otherwise would become effective.

23 (3) A person with authority to represent and bind another person under a first-trust
24 instrument or the provisions of this chapter may file an application under Section
25 94 of this Act on behalf of the person represented.

26 (4) A settlor may not bind or represent a beneficiary under Sections 87 to 114 of this
27 Act.

1 ➔ SECTION 94. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
2 386B IS CREATED TO READ AS FOLLOWS:

3 (1) On application of an authorized fiduciary, a person entitled to notice under
4 subsection (3) of Section 92 of this Act, a beneficiary, or with respect to a
5 charitable interest, the Attorney General or other person that has standing to
6 enforce the charitable interest, the court may:

7 (a) Provide instructions to the authorized fiduciary regarding whether a
8 proposed exercise of the decanting power is permitted under Sections 87 to
9 114 of this Act and consistent with the fiduciary duties of the authorized
10 fiduciary;

11 (b) Appoint a special fiduciary and authorize the special fiduciary to determine
12 whether the decanting power should be exercised under Sections 87 to 114
13 of this Act and to exercise the decanting power;

14 (c) Approve an exercise of the decanting power;

15 (d) Determine that a proposed or attempted exercise of the decanting power is
16 ineffective because:

17 1. After applying Section 107 of this Act, the proposed or attempted
18 exercise does not or did not comply with the provisions of Sections 87
19 to 114 of this Act; or

20 2. The proposed or attempted exercise would be or was an abuse of
21 fiduciary's discretion or a breach of fiduciary duty;

22 (e) Determine the extent to which Section 107 of this Act applies to a prior
23 exercise of the decanting power;

24 (f) Provide instructions to the trustee regarding the application of Section 107
25 of this Act to a prior exercise of the decanting power; or

26 (g) Order other relief to carry out the purposes of Sections 87 to 114 of this Act.

27 (2) On application of an authorized fiduciary, the court may approve:

1 (a) An increase in the fiduciary's compensation under Section 101 of this Act;

2 or

3 (b) A modification under Section 103 of this Act of a provision granting a
4 person the right to remove or replace the fiduciary.

5 ➔SECTION 95. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
6 386B IS CREATED TO READ AS FOLLOWS:

7 An exercise of the decanting power shall be made in a record signed by an authorized
8 fiduciary. The signed record shall, directly or by reference to the notice required by
9 Section 92 of this Act, identify the first trust and the second trust or trusts and state the
10 property of the first trust being distributed to each second trust and the property, if any,
11 that remains in the first trust.

12 ➔SECTION 96. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
13 386B IS CREATED TO READ AS FOLLOWS:

14 (1) As used in this section:

15 (a) "Noncontingent right" means a right that is not subject to the exercise of
16 discretion or the occurrence of a specified event that is not certain to occur.
17 The term does not include a right held by a beneficiary if any person has
18 discretion to distribute property subject to the right to any person other than
19 the beneficiary or the beneficiary's estate;

20 (b) "Presumptive remainder beneficiary" means a qualified beneficiary other
21 than a current beneficiary;

22 (c) "Successor beneficiary" means a beneficiary that is not a qualified
23 beneficiary on the date the beneficiary's qualification is determined. The
24 term does not include a person that is a beneficiary only because the person
25 holds a nongeneral power of appointment; and

26 (d) "Vested interest" means:

27 1. A right to a mandatory distribution that is a noncontingent right as of

- 1 the date of the exercise of the decanting power;
- 2 2. A current and noncontingent right, annually or more frequently, to a
- 3 mandatory distribution of income, a specified dollar amount, or a
- 4 percentage of value of some or all of the trust property;
- 5 3. A current and noncontingent right, annually or more frequently, to
- 6 withdraw income, a specified dollar amount, or a percentage of value
- 7 of some or all of the trust property;
- 8 4. A presently exercisable general power of appointment; or
- 9 5. A right to receive an ascertainable part of the trust property on the
- 10 trust's termination which is not subject to the exercise of discretion or
- 11 to the occurrence of a specified event that is not certain to occur.
- 12 (2) Subject to subsection (3) of this section and Section 99 of this Act, an authorized
- 13 fiduciary that has expanded distributive discretion over the principal of a first
- 14 trust for the benefit of one (1) or more current beneficiaries may exercise the
- 15 decanting power over the principal of the first trust.
- 16 (3) Subject to Section 98 of this Act, in an exercise of the decanting power under this
- 17 section, a second trust shall not:
- 18 (a) Include as a current beneficiary a person that is not a current beneficiary of
- 19 the first trust, except as otherwise provided in subsection (4) of this section;
- 20 (b) Include as a presumptive remainder beneficiary or successor beneficiary a
- 21 person that is not a current beneficiary, presumptive remainder beneficiary,
- 22 or successor beneficiary of the first trust, except as otherwise provided in
- 23 subsection (4) of this section; or
- 24 (c) Reduce or eliminate a vested interest.
- 25 (4) Subject to subsection (3)(c) of this section and Section 99 of this Act, in an
- 26 exercise of the decanting power under this section, a second trust may be a trust
- 27 created or administered under the law of any jurisdiction and may:

- 1 (a) Retain a power of appointment granted in the first trust;
2 (b) Omit a power of appointment granted in the first trust, other than a
3 presently exercisable general power of appointment;
4 (c) Create or modify a power of appointment if the powerholder is a current
5 beneficiary of the first trust and the authorized fiduciary has expanded
6 distributive discretion to distribute principal to the beneficiary; and
7 (d) Create or modify a power of appointment if the powerholder is a
8 presumptive remainder beneficiary or successor beneficiary of the first
9 trust, but the exercise of the power may take effect only after the
10 powerholder becomes, or would have become if then living, a current
11 beneficiary.
- 12 (5) A power of appointment described in paragraphs (a) to (d) of subsection (4) of
13 this section may be general or nongeneral. The class of permissible appointees in
14 favor of which the power may be exercised may be broader than or different from
15 the beneficiaries of the first trust.
- 16 (6) If an authorized fiduciary has expanded distributive discretion over part but not
17 all of the principal of a first trust, the fiduciary may exercise the decanting power
18 under this section over that part of the principal over which the authorized
19 fiduciary has expanded distributive discretion.
- 20 ➔SECTION 97. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
21 386B IS CREATED TO READ AS FOLLOWS:
- 22 (1) As used in this section, "limited distributive discretion" means a discretionary
23 power of distribution that is limited to an ascertainable standard or a reasonably
24 definite standard.
- 25 (2) An authorized fiduciary that has limited distributive discretion over the principal
26 of the first trust for the benefit of one (1) or more current beneficiaries may
27 exercise the decanting power over the principal of the first trust.

1 (3) Under this section and subject to Section 99 of this Act, a second trust may be
2 created or administered under the law of any jurisdiction. Under this section, the
3 second trusts, in the aggregate, shall grant each beneficiary of the first trust
4 beneficial interests which are substantially similar to the beneficial interests of
5 the beneficiary of the first trust.

6 (4) A power to make a distribution under a second trust for the benefit of a
7 beneficiary who is an individual is substantially similar to a power under the first
8 trust to make a distribution directly to the beneficiary. A distribution is for the
9 benefit of a beneficiary if:

10 (a) The distribution is applied for the benefit of the beneficiary;

11 (b) The beneficiary is under a legal disability or the trustee reasonably believes
12 the beneficiary is incapacitated, and the distribution is made as permitted
13 under this chapter; or

14 (c) The distribution is made as permitted under the terms of the first-trust
15 instrument and the second-trust instrument for the benefit of the
16 beneficiary.

17 (5) If an authorized fiduciary has limited distributive discretion over part but not all
18 of the principal of a first trust, the fiduciary may exercise the decanting power
19 under this section over that part of the principal over which the authorized
20 fiduciary has limited distributive discretion.

21 ➔SECTION 98. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
22 386B IS CREATED TO READ AS FOLLOWS:

23 (1) As used in this section:

24 (a) "Beneficiary with a disability" means a beneficiary of a first trust who the
25 special needs fiduciary believes may qualify for governmental benefits based
26 on disability, whether or not the beneficiary currently receives those benefits
27 or is an individual who has been adjudicated incompetent;

1 (b) "Governmental benefits" means financial aid or services from a state,
2 federal, or other public agency;

3 (c) "Special needs fiduciary" means, with respect to a trust that has a
4 beneficiary with a disability:

5 1. A trustee or other fiduciary, other than a settlor, that has discretion to
6 distribute part or all of the principal of a first trust to one (1) or more
7 current beneficiaries;

8 2. If no trustee or fiduciary has discretion under subparagraph 1. of this
9 paragraph, a trustee or other fiduciary, other than a settlor, that has
10 discretion to distribute part or all of the income of the first trust to one
11 (1) or more current beneficiaries; or

12 3. If no trustee or beneficiary has discretion under subparagraphs 1. and
13 2. of this paragraph, a trustee or other fiduciary, other than a settlor,
14 that is required to distribute part or all of the income or principal of
15 the first trust to one (1) or more current beneficiaries; and

16 (d) "Special needs trust" means a trust that the trustee believes would not be
17 considered a resource for purposes of determining whether a beneficiary
18 with a disability is eligible for governmental benefits.

19 (2) A special needs fiduciary may exercise the decanting power in Section 96 of this
20 Act over the principal of the first trust as if the fiduciary had authority to
21 distribute principal to a beneficiary with a disability subject to expanded
22 distributive discretion if:

23 (a) A second trust is a special needs trust that benefits the beneficiary with a
24 disability; and

25 (b) The special needs fiduciary determines that exercise of the decanting power
26 will further the purposes of the first trust.

27 (3) In an exercise of the decanting power under this section, the following rules

1 apply:

2 (a) Notwithstanding subsection (3)(b) of Section 96 of this Act, the interest in
3 the second trust of a beneficiary with a disability may:

4 1. Be a pooled trust as defined by Medicaid law for the benefit of the
5 beneficiary with a disability under 42 U.S.C. sec. 1396p(d)(4)(A), as
6 amended; or

7 2. Contain payback provisions complying with reimbursement
8 requirements of Medicaid law under 42 U.S.C. sec. 1396p(d)(4)(A), as
9 amended;

10 (b) Subsection (3)(c) of Section 96 of this Act shall not apply to the interests of
11 the beneficiary with a disability; and

12 (c) Except as affected by any change to the interests of the beneficiary with a
13 disability, the second trust, or if there are two (2) or more second trusts, the
14 second trusts in the aggregate, shall grant each other beneficiary of the first
15 trust beneficial interests in the second trust which are substantially similar
16 to the beneficiary's beneficial interests in the first trust.

17 ➔SECTION 99. A NEW SECTION OF SUBCHAPTER 13 OF KRS CHAPTER
18 386B IS CREATED TO READ AS FOLLOWS:

19 (1) As used in this section:

20 (a) "Determinable charitable interest" means a charitable interest that is a
21 right to a mandatory distribution currently, periodically, on the occurrence
22 of a specified event, or after the passage of a specified time and which is
23 unconditional or will be held solely for charitable purposes; and

24 (b) "Unconditional" means not subject to the occurrence of a specified event
25 that is not certain to occur, other than a requirement in a trust instrument
26 that a charitable organization be in existence or qualify under a particular
27 provision of the United States Internal Revenue Code of 1986, as amended,

1 on the date of the distribution, if the charitable organization meets the
2 requirement on the date of determination.

3 (2) If a first trust contains a determinable charitable interest, the Attorney General
4 has the rights of a qualified beneficiary and may represent and bind the
5 charitable interest.

6 (3) If a first trust contains a charitable interest, the second trust or trusts shall not:

7 (a) Diminish the charitable interest;

8 (b) Diminish the interest of an identified charitable organization that holds the
9 charitable interest;

10 (c) Alter any charitable purpose stated in the first-trust instrument; or

11 (d) Alter any condition or restriction related to the charitable interest.

12 (4) If there are two (2) or more second trusts, the second trusts shall be treated as one
13 (1) trust for purposes of determining whether the exercise of the decanting power
14 diminishes the charitable interest or diminishes the interest of an identified
15 charitable organization for purposes of subsection (3) of this section.

16 (5) If a first trust contains a determinable charitable interest, the second trust or
17 trusts that include a charitable interest pursuant to subsection (3) of this section
18 shall be administered under the law of this Commonwealth unless:

19 (a) The Attorney General, after having received notice under Section 92 of this
20 Act, fails to object in a signed record delivered to the authorized fiduciary
21 within the notice period;

22 (b) The Attorney General consents in a signed record to the second trust or
23 trusts being administered under the law of another jurisdiction; or

24 (c) The court approves the exercise of the decanting power.

25 (6) Sections 87 to 114 of this Act do not limit the powers and duties of the Attorney
26 General under the law of this Commonwealth other than the provisions of
27 Sections 87 to 114 of this Act.

1 ➔SECTION 100. A NEW SECTION OF SUBCHAPTER 13 OF KRS
2 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

3 (1) An authorized fiduciary may not exercise the decanting power to the extent the
4 first-trust instrument expressly prohibits the exercise of:

5 (a) The decanting power; or

6 (b) A power granted by state law to the fiduciary to distribute part or all of the
7 principal of the trust to another trust or to modify the trust.

8 (2) Exercise of the decanting power is subject to any restriction in the first-trust
9 instrument that expressly applies to the exercise of:

10 (a) The decanting power; or

11 (b) A power granted by state law to a fiduciary to distribute part or all of the
12 principal of the trust to another trust or to modify the trust.

13 (3) A general prohibition of the amendment or revocation of a first trust, a
14 spendthrift clause, or a clause restraining the voluntary or involuntary transfer of
15 a beneficiary's interest does not preclude exercise of the decanting power.

16 (4) Subject to subsections (1) and (2) of this section, an authorized fiduciary may
17 exercise the decanting power under Sections 87 to 114 of this Act even if the first-
18 trust instrument permits the authorized fiduciary or another person to modify the
19 first-trust instrument or to distribute part or all of the principal of the first trust to
20 another trust.

21 (5) If a first-trust instrument contains an express prohibition described in subsection
22 (1) of this section or an express restriction described in subsection (2) of this
23 section, the provision shall be included in the second-trust instrument.

24 ➔SECTION 101. A NEW SECTION OF SUBCHAPTER 13 OF KRS
25 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

26 (1) If a first-trust instrument specifies an authorized fiduciary's compensation, the
27 fiduciary may not exercise the decanting power to increase the fiduciary's

1 compensation above the specified compensation unless:

2 (a) All qualified beneficiaries of the second trust consent to the increase in a
3 signed record; or

4 (b) The increase is approved by the court.

5 (2) If a first-trust instrument does not specify an authorized fiduciary's
6 compensation, the fiduciary may not exercise the decanting power to increase the
7 fiduciary's compensation above the compensation permitted by this chapter
8 unless:

9 (a) All qualified beneficiaries of the second trust consent to the increase in a
10 signed record; or

11 (b) The increase is approved by the court.

12 (3) A change in an authorized fiduciary's compensation which is incidental to other
13 changes made by the exercise of the decanting power is not an increase in the
14 fiduciary's compensation for purposes of subsections (1) and (2) of this section.

15 ➔SECTION 102. A NEW SECTION OF SUBCHAPTER 13 OF KRS
16 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

17 (1) Except as otherwise provided in this section, a second-trust instrument may not
18 relieve an authorized fiduciary from liability for breach of trust to a greater
19 extent than the first-trust instrument.

20 (2) A second-trust instrument may provide for indemnification of an authorized
21 fiduciary of the first trust or another person acting in a fiduciary capacity under
22 the first trust for any liability or claim that would have been payable from the first
23 trust if the decanting power had not been exercised.

24 (3) A second-trust instrument may not reduce fiduciary liability in the aggregate.

25 (4) Subject to subsection (3) of this section, a second-trust instrument may divide and
26 reallocate fiduciary powers among the fiduciaries, including one (1) or more
27 trustees, distribution advisors, investment advisors, trust protectors, or other

1 persons, and relieve a fiduciary from liability for an act or failure to act of
2 another fiduciary as permitted by law of this Commonwealth other than Sections
3 87 to 114 of this Act.

4 ➔SECTION 103. A NEW SECTION OF SUBCHAPTER 13 OF KRS
5 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

6 An authorized fiduciary may not exercise the decanting power to modify a provision in
7 a first-trust instrument granting another person power to remove or replace the
8 fiduciary unless:

9 (1) The person holding the power consents to the modification in a signed record and
10 the modification applies only to that person;

11 (2) The person holding the power and the qualified beneficiaries of the second trust
12 consent to the modification in a signed record and the modification grants a
13 substantially similar power to another person; or

14 (3) The court approves the modification and the modification grants a substantially
15 similar power to another person.

16 ➔SECTION 104. A NEW SECTION OF SUBCHAPTER 13 OF KRS
17 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

18 (1) As used in this section:

19 (a) "Grantor trust" means a trust as to which a settlor of a first trust is
20 considered the owner under 26 U.S.C. secs. 671 to 677, as amended, or 26
21 U.S.C. sec. 679, as amended;

22 (b) "Internal Revenue Code" means the United States Internal Revenue Code
23 of 1986, as amended;

24 (c) "Nongrantor trust" means a trust that is not a grantor trust; and

25 (d) "Qualified benefits property" means property subject to the minimum
26 distribution requirements of 26 U.S.C. sec. 401(a)(9), as amended, and any
27 applicable regulations, or to any similar requirements that refer to 26

1 U.S.C. sec. 401(a)(9) or the regulations.

2 (2) An exercise of the decanting power is subject to the following limitations:

3 (a) If a first trust contains property that qualified, or would have qualified but
4 for provisions of Sections 87 to 114 of this Act other than this section, for a
5 marital deduction for purposes of the gift or estate tax under the Internal
6 Revenue Code or a state gift, estate, or inheritance tax, the second-trust
7 instrument shall not include or omit any term that, if included in or omitted
8 from the trust instrument for the trust to which the property was
9 transferred, would have prevented the transfer from qualifying for the
10 deduction, or would have reduced the amount of the deduction, under the
11 same provisions of the Internal Revenue Code or state law under which the
12 transfer qualified;

13 (b) If the first trust contains property that qualified, or would have qualified but
14 for provisions of Sections 87 to 114 of this Act other than this section, for a
15 charitable deduction for purposes of the income, gift, or estate tax under the
16 Internal Revenue Code or a state income, gift, estate, or inheritance tax, the
17 second-trust instrument shall not include or omit any term that, if included
18 from or omitted from the trust instrument for the trust to which the property
19 was transferred, would have prevented the transfer from qualifying for the
20 deduction, or would have reduced the amount of the deduction, under the
21 same provisions of the Internal Revenue Code or state law under which the
22 transfer qualified;

23 (c) If the first trust contains property that qualified, or would have qualified but
24 for provisions of Sections 87 to 114 of this Act other than this section, for
25 the exclusion from the gift tax described in:

26 1. 26 U.S.C. sec. 2503(b), as amended, the second-trust instrument shall
27 not include or omit a term that, if included in or omitted from the trust

1 instrument for the trust to which the property was transferred, would
2 have prevented the transfer from qualifying under 26 U.S.C. sec.
3 2503(b), as amended; or

4 2. 26 U.S.C. sec. 2503(c), as amended, the second-trust instrument shall
5 not include or omit a term that, if included in or omitted from the trust
6 instrument for the trust to which the property was transferred, would
7 have prevented the transfer from qualifying under 26 U.S.C. sec.
8 2503(c), as amended;

9 (d) If the property of the first trust includes shares of stock in an S corporation
10 as defined in 26 U.S.C. sec. 1361, as amended, and the first trust is, or but
11 for provisions of Sections 87 to 114 of this Act other than this section would
12 be, a permitted shareholder under any provision of 26 U.S.C. sec. 1361, as
13 amended, an authorized fiduciary may exercise the power with respect to
14 part of all the S corporation stock only if any second trust receiving the
15 stock is a permitted shareholder under 26 U.S.C. sec. 1361(c)(2), as
16 amended. If the property of the first trust includes shares of stock in an S
17 corporation and the first trust is, or but for provisions of Sections 87 to 114
18 of this Act other than this section would be, a qualified subchapter S trust
19 within the meaning of 26 U.S.C. sec. 1361(d), as amended, the second-trust
20 instrument shall not include or omit a term that prevents the second trust
21 from qualifying as a qualified subchapter S trust;

22 (e) If the first trust contains property that qualified, or would have qualified but
23 for provisions of Sections 87 to 114 of this Act other than this section, for a
24 zero inclusion ratio for purposes of the generation-skipping transfer tax
25 under 26 U.S.C. sec. 2642(c), as amended, the second-trust instrument shall
26 not include or omit a term that, if included in or omitted from the first-trust
27 instrument, would have prevented the transfer to the first trust from

1 qualifying for a zero inclusion ratio under 26 U.S.C. sec. 2642(c), as
2 amended;

3 (f) If the first trust is directly or indirectly the beneficiary of qualified benefits
4 property, the second-trust instrument shall not include or omit any term
5 that, if included in or omitted from the first-trust instrument, would have
6 increased the minimum distributions required with respect to the qualified
7 benefits property under 26 U.S.C. sec. 401(a)(9), as amended, and any
8 applicable regulations, or any similar requirements that refer to 26 U.S.C.
9 sec. 401(a)(9), as amended, or the regulations. If an attempted exercise of
10 the decanting power violates the preceding sentence, the trustee is deemed to
11 have held the qualified benefits property and any reinvested distributions of
12 the property as a separate share from the date of the exercise of the power,
13 and Section 107 of this Act applies to the separate share;

14 (g) If the first trust qualifies as a grantor trust because of the application of 26
15 U.S.C. sec. 672(f)(2)(A), as amended, the second trust shall not include or
16 omit a term that, if included in or omitted from the first-trust instrument,
17 would have prevented the first trust from qualifying under 26 U.S.C. sec.
18 672(f)(2)(A), as amended;

19 (h) As used in this paragraph, "tax benefit" means a federal or state tax
20 deduction, exemption, exclusion, or other benefit not otherwise listed in this
21 section, except for a benefit arising from being a grantor trust. Subject to
22 paragraph (i) of this subsection, a second-trust instrument shall not include
23 or omit a term that, if included in or omitted from the first-trust instrument,
24 would have prevented qualification for a tax benefit if:

25 1. The first-trust instrument expressly indicates an intent to qualify for
26 the benefit or the first-trust instrument clearly is designed to enable
27 the first trust to qualify for the benefit; and

1 2. The transfer of property held by the first trust or the first trust
2 qualified, or but for the provisions of Sections 87 to 114 of this Act
3 other than this section, would have qualified for the tax benefit;

4 (i) Subject to paragraph (d) of this subsection:

5 1. Except as otherwise provided in paragraph (q) of this subsection, the
6 second trust may be a nongrantor trust, even if the first trust is a
7 grantor trust; and

8 2. Except as otherwise provided in paragraph (j) of this subsection, the
9 second trust may be a grantor trust, even if the first trust is a
10 nongrantor trust; and

11 (j) An authorized fiduciary may not exercise the decanting power if a settlor
12 objects in a signed record delivered to the fiduciary within the notice period
13 and:

14 1. The first trust and a second trust are both grantor trusts, in whole or
15 in part, the first trust grants the settlor or another person the power to
16 cause the first trust to cease to be a grantor trust, and the second trust
17 does not grant an equivalent power to the settlor or other person; or

18 2. The first trust is a nongrantor trust and a second trust is a grantor
19 trust, in whole or in part, with respect to the settlor, unless:

20 a. The settlor has the power at all times to cause the second trust to
21 cease to be a grantor trust; or

22 b. The first-trust instrument contains a provision granting the
23 settlor or another person a power that would cause the first trust
24 to cease to be a grantor trust and the second-trust instrument
25 contains the same provision.

26 ➔SECTION 105. A NEW SECTION OF SUBCHAPTER 13 OF KRS
27 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

1 (1) Subject to subsection (2) of this section, a second trust may have a duration that
2 is the same as or different from the duration of the first trust.

3 (2) To the extent that property of a second trust is attributable to property of the first
4 trust, the property of the second trust is subject to any rules governing maximum
5 perpetuity, accumulation, or suspension of the power of alienation which apply to
6 the property of the first trust.

7 ➔SECTION 106. A NEW SECTION OF SUBCHAPTER 13 OF KRS
8 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

9 An authorized fiduciary may exercise the decanting power whether or not under the
10 first trust's discretionary distribution standard the fiduciary would have made or could
11 have been compelled to make a discretionary distribution of principal at the time of the
12 exercise.

13 ➔SECTION 107. A NEW SECTION OF SUBCHAPTER 13 OF KRS
14 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

15 (1) If exercise of the decanting power would be effective under Sections 87 to 114 of
16 this Act except that the second-trust instrument in part does not comply with the
17 provisions of Sections 87 to 114 of this Act, the exercise of the power is effective
18 and the following rules shall apply with respect to the principal of the second
19 trust attributable to the exercise of the power:

20 (a) A provision in the second-trust instrument which is not permitted under
21 Sections 87 to 114 of this Act is void to the extent necessary to comply with
22 Sections 87 to 114 of this Act; and

23 (b) A provision required by Sections 87 to 114 of this Act to be in the second-
24 trust instrument which is not contained in the instrument is deemed to be
25 included in the instrument to the extent necessary to comply with Sections
26 87 to 114 of this Act.

27 (2) If a trustee or other fiduciary of a second trust determines that subsection (1) of

1 this section applies to a prior exercise of the decanting power, the fiduciary shall
2 take corrective action consistent with the fiduciary's duties.

3 ➔SECTION 108. A NEW SECTION OF SUBCHAPTER 13 OF KRS
4 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

5 (1) As used in this section:

6 (a) "Animal trust" means a trust or an interest in a trust created to provide for
7 the care of one (1) or more animals; and

8 (b) "Protector" means a person appointed in an animal trust to enforce the
9 trust on behalf of the animal or, if no such person is appointed in the trust,
10 a person appointed by the court for that purpose.

11 (2) The decanting power may be exercised over an animal trust that has a protector
12 to the extent the trust could be decanted under Sections 87 to 114 of this Act if
13 each animal that benefits from the trust were an individual, if the protector
14 consents in a signed record to the exercise of the power.

15 (3) A protector for an animal has the rights under Sections 87 to 114 of this Act of a
16 qualified beneficiary.

17 (4) Notwithstanding any other provision of Sections 87 to 114 of this Act, if a first
18 trust is an animal trust, in an exercise of the decanting power, the second trust
19 shall provide that trust property may be applied only to its intended purpose for
20 the period the first trust benefitted the animal.

21 ➔SECTION 109. A NEW SECTION OF SUBCHAPTER 13 OF KRS
22 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

23 A reference in KRS Chapter 386B to a trust instrument or terms of the trust includes a
24 second-trust instrument and the terms of the second trust.

25 ➔SECTION 110. A NEW SECTION OF SUBCHAPTER 13 OF KRS
26 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

27 (1) For purposes of law of this Commonwealth other than Sections 87 to 114 of this

1 Act and subject to subsection (2) of this section, a settlor of a first trust is deemed
2 to be the settlor of the second trust with respect to the portion of the principal of
3 the first trust subject to the exercise of the decanting power.

4 (2) In determining settlor intent with respect to a second trust, the intent of a settlor
5 of the first trust, a settlor of the second trust, and the authorized fiduciary may be
6 considered.

7 ➔SECTION 111. A NEW SECTION OF SUBCHAPTER 13 OF KRS
8 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

9 (1) Except as otherwise provided in subsection (3) of this section, if exercise of the
10 decanting power was intended to distribute all the principal of the first trust to
11 one (1) or more second trusts, later-discovered property belonging to the first
12 trust and property paid to or acquired by the first trust after the exercise of the
13 power is part of the trust estate of the second trust or trusts.

14 (2) Except as otherwise provided in subsection (3) of this section, if exercise of the
15 decanting power was intended to distribute less than all the principal of the first
16 trust to one (1) or more second trusts, later-discovered property belonging to the
17 first trust or property paid to or acquired by the first trust after exercise of the
18 power remains part of the trust estate of the first trust.

19 (3) An authorized fiduciary may provide in an exercise of the decanting power or by
20 the terms of a second trust for disposition of later-discovered property belonging
21 to the first trust or property paid to or acquired by the first trust after exercise of
22 the power.

23 ➔SECTION 112. A NEW SECTION OF SUBCHAPTER 13 OF KRS
24 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

25 A debt, liability, or other obligation enforceable against property of a first trust is
26 enforceable to the same extent against the property when held by the second trust after
27 exercise of the decanting power.

1 ➔SECTION 113. A NEW SECTION OF SUBCHAPTER 13 OF KRS
2 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

3 *In applying and construing Sections 87 to 114 of this Act, consideration shall be given*
4 *to the need to promote uniformity of the law with respect to its subject matter among*
5 *states that enact it.*

6 ➔SECTION 114. A NEW SECTION OF SUBCHAPTER 13 OF KRS
7 CHAPTER 386B IS CREATED TO READ AS FOLLOWS:

8 *The provisions of Sections 87 to 114 of this Act modify, limit, or supersede the*
9 *Electronic Signatures in Global and National Commerce Act, 15 U.S.C. sec. 7001 et*
10 *seq., but do not modify, limit, or supersede Section 101(c) of that Act, 15 U.S.C. sec.*
11 *7001(c), or authorize electronic delivery of any of the notices described in Section*
12 *103(b) of that Act, 15 U.S.C. sec. 7003(b).*

13 ➔Section 115. KRS 386.010 is amended to read as follows:

14 As used in KRS 386.010 to ~~386.170~~^{386.175}, unless the context requires otherwise:

15 (1) "Fiduciary" means any trustee, guardian, executor, administrator, conservator or
16 other individual or corporation holding funds or otherwise acting in a fiduciary
17 capacity.

18 (2) "Principal" means any person to whom a fiduciary, as such, owes an obligation.

19 ➔Section 116. KRS 386B.1-010 is amended to read as follows:

20 As used in this chapter, unless the context requires otherwise:

21 (1) "Action" with respect to an act of a trustee, includes a failure to act;

22 (2) "Ascertainable standard" means a standard relating to an individual's health,
23 education, support, or maintenance within the meaning of 26 U.S.C. sec.
24 2041(b)(1)(A) or 26 U.S.C. sec. 2514(c)(1), as amended;

25 (3) "Beneficiary" means a person that:

26 (a) Has a present or future beneficial interest in a trust, vested or contingent; or

27 (b) In a capacity other than that of trustee, holds a power of appointment over

1 trust property;

2 (4) "Charitable trust" means a trust, or part of a trust, established for a charitable
3 purpose as described in KRS 386B.4-050(1);

4 (5) "Conservator" means a person appointed by the court to administer the estate of a
5 minor or adult individual;

6 (6) "Environmental law" means a federal, state, or local law, rule, regulation, or
7 ordinance relating to protection of the environment;

8 (7) "Guardian" means a person appointed by the court, a parent, or a spouse to make
9 decisions regarding the support, care, education, health, and welfare of a minor or
10 adult individual. The term shall not include a guardian ad litem;

11 (8) "Interests of the beneficiaries" means the beneficial interests provided in the terms
12 of the trust;

13 (9) "Jurisdiction," with respect to a geographic area, includes a state or country;

14 (10) "Person" means any individual or entity as defined in KRS 446.010;

15 **(11) "Power of direction":**

16 **(a) Means a power over a trust granted to a person by the terms of the trust to**
17 **the extent the power is exercisable while the person is not serving as a**
18 **trustee;**

19 **(b) Includes a power over the investment, management, or distribution of trust**
20 **property or other matters of trust administration; and**

21 **(c) Excludes the powers described in subsection (2) of Section 73 of this Act;**

22 **(12)**~~(11)~~ "Power of withdrawal" means a presently exercisable general power of
23 appointment other than a power:

24 (a) Exercisable by a trustee and limited by an ascertainable standard; or

25 (b) Exercisable by another person only on the consent of the trustee or a person
26 holding an adverse interest;

27 **(13)**~~(12)~~ "Property" means anything that may be the subject of ownership, whether

1 legal or equitable, or any interest therein;

2 ~~(14)~~~~(13)~~ "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's
3 qualification is determined:

4 (a) Is a distributee or permissible distributee of trust income or principal;

5 (b) Would be a distributee or permissible distributee of trust income or principal
6 if the interests of the distributees described in paragraph (a) of this subsection
7 ended on that date without causing the trust to end; or

8 (c) Would be a distributee or permissible distributee of trust income or principal
9 if the trust ended on that date;

10 ~~(15)~~~~(14)~~ "Revocable," as applied to a trust, means revocable by the settlor without the
11 consent of the trustee or a person holding an adverse interest;

12 ~~(16)~~~~(15)~~ "Settlor" means a person, including a testator, who creates or contributes
13 property to a trust. If more than one (1) person creates or contributes property to a
14 trust, each person is a settlor of the part of the trust property attributable to that
15 person's contribution except to the extent another person has the power to revoke or
16 withdraw that part;

17 ~~(17)~~~~(16)~~ "Spendthrift provision" means a term of a trust which restrains both voluntary
18 and involuntary transfer of a beneficiary's interest;

19 ~~(18)~~~~(17)~~ "State" means a state of the United States, the District of Columbia, Puerto
20 Rico, the United States Virgin Islands, or any territory or insular possession subject
21 to the jurisdiction of the United States. The term includes an Indian tribe or band
22 recognized by federal law or formally acknowledged by a state;

23 ~~(19)~~~~(18)~~ "Terms of a trust" means:

24 (a) Except as otherwise provided in paragraph (b) of this subsection, the
25 manifestation of the settlor's intent regarding a trust's provisions as:

26 1. Expressed in the trust instrument; ~~or as may be~~

27 2. Established by other evidence that would be admissible in a judicial

1 proceeding; or

2 **(b) The trust's provisions as established, determined, or amended by:**

3 **1. A trustee or trust director in accordance with applicable law;**

4 **2. A court order; or**

5 **3. A nonjudicial settlement agreement under KRS 386B.1-090;**

6 ~~(20)~~~~(19)~~ (a) "Trust" means an express trust established by a trust instrument,
7 including a will, whereby a trustee has the duty to administer a trust asset for
8 the benefit of a named or otherwise described income or principal beneficiary,
9 or both. This definition includes oral trusts.

10 (b) "Trust" does not include a resulting or constructive trust, a business trust
11 which provides for certificates to be issued to the beneficiary, an investment
12 trust, a voting trust, a security instrument, a trust established by the judgment
13 of a court, a liquidation trust, or a trust for the primary purpose of paying
14 dividends, interests, interest coupons, salaries, wages, pensions or profits, or
15 employee benefits of any kind, an instrument in which a person is nominee or
16 escrowee for another, a trust established in deposits in any financial
17 institution, or other trust the nature of which does not admit of general trust
18 administration;

19 **(21) "Trust director" means a person that is granted power of direction by the terms**
20 **of a trust to the extent the power is exercisable while the person is not serving as**
21 **a trustee. The person is a trust director whether or not the terms of the trust refer**
22 **to the person as a trust director and whether or not the person is a beneficiary or**
23 **settlor of the trust;**

24 ~~(22)~~~~(20)~~ "Trust instrument" means an instrument signed by the settlor that contains
25 terms of the trust, including any amendments thereto; and

26 ~~(23)~~~~(21)~~ "Trustee" includes an original, additional, and successor trustee, and a
27 cotrustee.

1 ➔Section 117. KRS 386B.1-030 is amended to read as follows:

- 2 (1) Except as otherwise provided in the terms of the trust, this chapter governs the
3 duties and powers of a trustee, relations among trustees, and the rights and interests
4 of a beneficiary.
- 5 (2) The terms of a trust prevail over any provision of this chapter, except:
- 6 (a) The requirements for creating a trust;
- 7 (b) Subject to Sections 77, 79, and 80 of this Act, the duty of a trustee to act in
8 good faith and in the interests of the beneficiaries;
- 9 (c) The requirement that a trust and its terms be for the benefit of its
10 beneficiaries, and that the trust have a purpose that is lawful, not contrary to
11 public policy, and possible to achieve;
- 12 (d) The power of the court to change or terminate a trust under Subchapter 4 of
13 this chapter;
- 14 (e) The effect of a spendthrift provision and the rights of certain creditors and
15 assignees to reach a trust as provided in Subchapter 5 of this chapter;
- 16 (f) The power of the court under KRS 386B.7-020 to require, dispense with, or
17 modify or terminate a bond;
- 18 (g) The power of the court under KRS 386B.7-080(2) to adjust a trustee's
19 compensation as specified in the terms of the trust which is unreasonably low
20 or high;
- 21 (h) The duty to notify and report under KRS 386B.8-130(2);
- 22 (i) The effect of an exculpatory term under KRS 386B.10-080;
- 23 (j) The rights under KRS 386B.10-100, 386B.10-110, and 386B.10-120 of a
24 person other than a trustee or beneficiary;
- 25 (k) Periods of limitation for commencing a judicial proceeding;
- 26 (l) The power of the court to take such action and exercise such jurisdiction as
27 may be necessary in the interests of justice; and

1 (m) The subject-matter jurisdiction of the court and venue for commencing a
2 proceeding as provided in KRS 386B.2-030 and 386B.2-040.

3 ➔Section 118. KRS 386B.1-060 is amended to read as follows:

4 (1) Without precluding other means for establishing a connection with the designated
5 jurisdiction, terms of a trust designating the principal place of administration are
6 valid and controlling if:

7 (a) A trustee's principal place of business is located in or a trustee is a resident of
8 the designated jurisdiction;~~[-or]~~

9 **(b) A trust director's principal place of business is located in or a trust director**
10 **is a resident of the designated jurisdiction; or**

11 ~~(c)~~~~[-(b)]~~ All or part of the administration occurs in the designated jurisdiction.

12 (2) A trustee is under a continuing duty to administer the trust at a place appropriate to
13 its purposes, its administration, and the interests of the beneficiaries.

14 (3) Without precluding the right of the court to order, approve, or disapprove a transfer,
15 the trustee, in furtherance of the duty prescribed by subsection (2) of this section,
16 may transfer the trust's principal place of administration to another state or to a
17 jurisdiction outside of the United States.

18 (4) The trustee shall notify the qualified beneficiaries of a proposed transfer of a trust's
19 principal place of administration not less than sixty (60) days before initiating the
20 transfer. The notice of proposed transfer shall include:

21 (a) The name of the jurisdiction to which the principal place of administration is
22 to be transferred;

23 (b) The address and telephone number at the new location at which the trustee
24 can be contacted;

25 (c) An explanation of the reasons for the proposed transfer;

26 (d) The date on which the proposed transfer is anticipated to occur; and

27 (e) The date, not less than sixty (60) days after the giving of the notice, by which

1 the qualified beneficiary shall notify the trustee of an objection to the
2 proposed transfer.

3 (5) The authority of a trustee under this section to transfer a trust's principal place of
4 administration ends if a qualified beneficiary notifies the trustee of an objection to
5 the proposed transfer on or before the date specified in the notice.

6 (6) In connection with a transfer of the trust's principal place of administration, the
7 trustee may transfer some or all of the trust property to a successor trustee
8 designated in the terms of the trust or appointed under KRS 386B.7-040.

9 (7) The District Court shall have exclusive jurisdiction over matters under this section.

10 ➔Section 119. KRS 386B.3-010 is amended to read as follows:

11 (1) Notice to a person who may represent and bind another person under this
12 subchapter has the same effect as if notice were given directly to the other person.

13 (2) The consent of a person who may represent and bind another person under this
14 subchapter is binding on the person represented unless the person represented
15 objects to the representation before the consent would otherwise have become
16 effective.

17 (3) Except as otherwise provided under KRS 386B.4-110 and 386B.6-020, a person
18 who under this subchapter may represent a settlor who lacks capacity, may receive
19 notice and give a binding consent on the settlor's behalf.

20 (4) A settlor may not represent and bind a beneficiary under this subchapter with
21 respect to the termination or modification of a trust under KRS 386B.4-110(1).

22 (5) Provisions of this subchapter shall also be applicable to **Sections 87 to 114 of this**
23 **Act** ~~[KRS 386.175]~~ regarding a trustee's power to appoint principal and income in
24 favor of a trustee of a second trust and KRS 386.454 regarding a trustee's power to
25 adjust between principal and income and conversion to unitrust.

26 ➔Section 120. KRS 386B.6-030 is amended to read as follows:

27 (1) While a trust is revocable:

1 **(a)** And, in the reasonable belief of the trustee, the settlor has capacity to revoke
2 the trust, rights of the beneficiaries are subject to the control of, and the duties
3 of the trustee are owed exclusively to, the settlor; **and**

4 **(b) The trustee may follow a direction of the settlor that is contrary to the terms**
5 **of the trust.**

6 (2) During the period the power may be exercised, the holder of a power of withdrawal
7 has the rights of a settlor of a revocable trust under this section to the extent of the
8 property subject to the power.

9 ➔Section 121. KRS 386B.7-030 is amended to read as follows:

10 (1) Cotrustees who are unable to reach a unanimous decision may act by majority
11 decision.

12 (2) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the
13 trust.

14 (3) **Subject to Section 80 of this Act,** a cotrustee shall participate in the performance of
15 a trustee's function unless the cotrustee is unavailable to perform the function
16 because of absence, illness, disqualification under other law, or other temporary
17 incapacity or the cotrustee has properly delegated the performance of the function
18 to another trustee.

19 (4) If a cotrustee is unavailable to perform duties because of absence, illness,
20 disqualification under other law, or other temporary incapacity, and prompt action
21 is necessary to achieve the purposes of the trust or to avoid injury to the trust
22 property, the remaining cotrustee or a majority of the remaining cotrustees may act
23 for the trust.

24 (5) A trustee may not delegate to a cotrustee the performance of a function the settlor
25 reasonably expected the trustees to perform jointly. Unless a delegation was
26 irrevocable, a trustee may revoke a delegation previously made.

27 (6) Except as otherwise provided in subsection (7) of this section, a trustee who does

1 not join in an action of another trustee is not liable for the action.

2 (7) **Subject to Section 80 of this Act,** each trustee shall exercise reasonable care to:

3 (a) Prevent a cotrustee from committing a breach of trust; and

4 (b) Compel a cotrustee to redress a breach of trust.

5 (8) A dissenting trustee who joins in an action at the direction of the majority of the
6 trustees and who notified any cotrustee of the dissent at or before the time of the
7 action is not liable for the action unless the action is a breach of trust.

8 ➔Section 122. KRS 386B.8-180 is amended to read as follows:

9 (1) (a) When a trust terminates pursuant to the terms of the trust, the trustee may
10 follow the requirements for distribution upon termination as provided in KRS
11 386B.8-170 or, if proceeding under this section, within a reasonable amount
12 of time after such termination, the trustee shall provide to the qualified
13 beneficiaries a statement showing the fair market value of the net assets to be
14 distributed, a trust accounting for the prior five (5) years and an estimate for
15 any items reasonably anticipated but not yet received or disbursed, the amount
16 of any fees, including trustee fees, remaining to be paid, and notice that the
17 trust is terminating. The trustee may also provide such statement and notice to
18 any other person whom the trustee reasonably believes may have an interest in
19 the trust.

20 (b) If, after receiving the notice and trust information described in paragraph (a)
21 of this subsection, a qualified beneficiary objects to an action or omission
22 disclosed, he or she shall provide written notice of the objection to the trustee
23 within forty-five (45) days of the notice having been sent by the trustee. If no
24 written objection is provided within the forty-five (45) day time period, the
25 information provided pursuant to paragraph (a) of this subsection shall be
26 considered approved by the recipient and the trustee shall, within a reasonable
27 period of time following the expiration of such period, distribute the assets as

1 provided in the trust. If the trustee receives a written objection within the
2 applicable forty-five (45) day time period, the trustee may:

- 3 1. Submit the written objection to the District Court for resolution and
4 charge the expense of commencing such a proceeding to the trust; or
- 5 2. Resolve the objection with the qualified beneficiary, whether by
6 nonjudicial settlement agreement or otherwise. Any agreement entered
7 into pursuant to this paragraph may include a release, an indemnity
8 clause, or both on the part of the beneficiary against the trustee relating
9 to the trust. If the parties agree to a nonjudicial settlement agreement,
10 any related expenses shall be charged to the trust.

11 Upon a resolution of an objection pursuant to subparagraph 1. or 2. of this
12 paragraph, within a reasonable period of time thereafter the trustee shall
13 distribute the remaining trust assets as provided in the trust.

- 14 (c) The trustee may rely upon the written statement of a person receiving notice
15 that such person does not object.

- 16 (2) (a) When a trustee is removed or resigns pursuant to the terms of the trust, the
17 trustee may follow the requirements for distribution upon termination as
18 provided in KRS 386B.8-170 or, if proceeding under this section, the trustee,
19 within a reasonable time after such removal or resignation, shall provide to
20 the successor trustee a statement showing the net assets to be distributed, a
21 trust accounting for the prior five (5) years, an estimate for any items
22 reasonably anticipated but not yet received or disbursed, the amount of any
23 fees, including trustee fees, remaining to be paid, and notice that the trustee
24 has resigned or been removed. The trustee may also provide such statement
25 and notice to any other person whom trustee reasonably believes may have an
26 interest in the trust.

- 27 (b) Any person provided notice and trust information as described in paragraph

1 (a) of this subsection who objects to an action or omission disclosed shall
2 provide written notice of the objection to the trustee within forty-five (45)
3 days of the notice having been sent by the trustee. If no written objection is
4 provided within the forty-five (45) day time period, the information provided
5 pursuant to paragraph (a) of this subsection will be considered approved, and
6 the trustee shall, within a reasonable period following the expiration of such
7 forty-five (45) day period, distribute the assets to the successor trustee. If the
8 trustee receives a written objection within the applicable forty-five (45) day
9 time period, the trustee may:

- 10 1. Submit the written objection to the District Court for resolution and
11 charge the expense of commencing such a proceeding to the trust; or
12 2. Resolve the objection with the opposing party, whether by nonjudicial
13 settlement agreement or otherwise. Any agreement entered into pursuant
14 to this paragraph may include a release, an indemnity clause, or both on
15 the part of the opposing party against the trustee relating to the trust. If
16 the parties agree to a nonjudicial settlement agreement, any related
17 expenses shall be charged to the trust.

18 Upon a resolution of any objection raised by an opposing party pursuant to
19 subparagraph 1. or 2. of this paragraph, within a reasonable period of time
20 thereafter the trustee shall distribute the remaining trust assets as provided in
21 the trust.

- 22 (c) The trustee may rely upon the written statement of a person receiving notice
23 that such person does not object.

- 24 (3) When a trustee distributes assets of the trust pursuant to subsection (1) or (2) of this
25 section, the limitations in KRS 386B.6-040 and 386B.10-050 are waived by each
26 person who received notice and either consented or failed to object pursuant to this
27 section, and any such person is barred from bringing a claim against the trustee for

1 breach of trust or challenging the validity of the trust, to the same extent and with
2 the same preclusive effect as if the court had entered a final order approving the
3 trustee's final account.

4 (4) Notice provided under subsection (1) or (2) of this section shall clearly warn of the
5 impending bar of claims against a trustee under KRS 386B.6-040 and 386B.10-050
6 that will result if an objection is not timely made.

7 (5) No trustee trust shall request that any beneficiary indemnify the trustee against loss
8 in exchange for the trustee forgoing a request to the court to approve its accounts at
9 the time the trust terminates or at the time the trustee is removed or resigns, except
10 as agreed upon by the parties pursuant to paragraph (b)1. or 2. of subsections (1)
11 and (2) of this section.

12 (6) **For purposes of this section, a termination of a trust under Subchapter 4 of KRS**
13 **Chapter 386B shall be considered a termination pursuant to the trust terms.**

14 **(7)** The District Court shall have exclusive jurisdiction over matters under this section.

15 ➔Section 123. KRS 394.010 is amended to read as follows:

16 As used in this chapter, unless the context requires otherwise, "will":

17 **(1)** Means a last will or testament, codicil, appointment by will, writing in the nature of
18 a will in exercise of a power, and any other testamentary disposition; **and**

19 **(2)** **Includes a codicil and any testamentary instrument that merely appoints an**
20 **executor, revokes or revises another will, nominates a guardian, or expressly**
21 **excludes or limits the right of an individual or class to succeed to property of the**
22 **decedent passing by intestate succession.**

23 ➔SECTION 124. A NEW SECTION OF KRS CHAPTER 186A IS CREATED
24 TO READ AS FOLLOWS:

25 **(1) As used in this section:**

26 **(a) "Beneficiary" means a person designated to receive title to a vehicle upon**
27 **the death of the preceding owner or joint owners;**

1 (b) "Beneficiary designation form" means a form that contains the intention of
2 a present owner or joint owners of a vehicle to name one (1) beneficiary to
3 receive title to the vehicle upon the death of the owner or last surviving joint
4 owner of the vehicle;

5 (c) "Joint owner":

6 1. Means an individual who owns a vehicle with one (1) or more other
7 individuals as joint tenants with rights of survivorship; and

8 2. Does not include an individual who owns a vehicle with one (1) or
9 more other individuals as tenants in common;

10 (d) "Owner" means an individual who owns a vehicle; and

11 (e) "Vehicle" includes any motor vehicle, motorcycle, motor home, trailer, or
12 other item for which a certificate of title is issued by the cabinet.

13 (2) The cabinet shall promulgate administrative regulations in accordance with KRS
14 Chapter 13A to:

15 (a) Provide a beneficiary designation form that allows the owner or joint
16 owners of a vehicle to provide for the transfer of the vehicle's title to one (1)
17 named beneficiary upon the death of the owner or upon the death of all
18 joint owners of the vehicle. The form shall include but not be limited to
19 fields for the following information:

20 1. The manufacturer, model, year, and vehicle identification number of
21 the vehicle;

22 2. The name of the owner or every joint owner of the vehicle;

23 3. The words "transfer on death to," or the abbreviation "TOD,"
24 followed by the name of the beneficiary; and

25 4. The signature of the owner of the vehicle or of each joint owner of the
26 vehicle; and

27 (b) Require the county clerk to record the name of the beneficiary on the title

1 upon receipt of the fee under KRS 186A.130.

2 (3) The cabinet shall make beneficiary forms available:

3 (a) In each county clerk's office; and

4 (b) On the cabinet's public website.

5 (4) Upon the death of the owner, or the last surviving joint owner, of a vehicle for
6 which a beneficiary has been designated under subsection (2) of this section, the
7 beneficiary shall present to the county clerk:

8 (a) A death certificate of the owner or last surviving joint owner of the vehicle;

9 (b) Proof of payment of ad valorem taxes on the vehicle for the current year, or
10 if the taxes have not been paid, the beneficiary may elect to pay the taxes to
11 facilitate the transfer;

12 (c) The paper title, or duplicate title, if the title is not held in electronic format;
13 and

14 (d) The fee required under KRS 186A.130 for the certificate of title transfer.

15 (5) Upon presentation of the documents as required under subsection (4) of this
16 section, the county clerk, subject to any security interest in the vehicle, shall issue
17 a new certificate of title to the beneficiary.

18 (6) During the lifetime of the owner of the vehicle for which a beneficiary has been
19 designated or before the death of the last surviving joint owner of the vehicle:

20 (a) The signature or consent of the beneficiary shall not be required for any
21 transaction relating to the vehicle; and

22 (b) The owner or surviving joint owners of the vehicle may revoke or change
23 the beneficiary designation at any time by:

24 1. Selling the vehicle with proper transfer and delivery of the certificate
25 of title to another person; or

26 2. Properly executing a subsequent beneficiary designation form that
27 removes the current beneficiary or designates a new beneficiary in

1 conformity with subsection (2) of this section.

2 (7) Upon the death of the owner or the last surviving joint owner of a vehicle for
3 which a beneficiary has been designated, the interest of the beneficiary in the
4 vehicle shall be subject to any contract of sale, assignment, or ownership or
5 security interest to which the owner or joint owners of the vehicle were subject
6 during their lifetime.

7 (8) Except as provided in subsection (6)(b) of this section, the designation of a
8 beneficiary shall not be changed or revoked by will, codicil, or by other
9 instrument.

10 (9) A beneficiary may disclaim the interest in the motor vehicle on a form
11 promulgated by the Transportation Cabinet in accordance with KRS Chapter
12 13A.

13 (10) The transfer on death of a vehicle under this section shall be a nontestamentary
14 transfer and shall not be subject to any tax under KRS 138.460.

15 ➔Section 125. KRS 138.470 is amended to read as follows:

16 There is expressly exempted from the tax imposed by KRS 138.460:

- 17 (1) (a) Motor vehicles titled or registered to the United States, or to the
18 Commonwealth of Kentucky or any of its political subdivisions; and
19 (b) The gross rental or lease charges for the rental or lease of a motor vehicle paid
20 by the United States, or the Commonwealth of Kentucky or any of its political
21 subdivisions;
22 (2) Motor vehicles titled or registered to institutions of purely public charity and
23 institutions of education not used or employed for gain by any person or
24 corporation;
25 (3) Motor vehicles which have been previously titled in Kentucky on or after July 1,
26 2005, or previously registered and titled in any state or by the federal government
27 when being sold or transferred to licensed motor vehicle dealers for resale. The

- 1 motor vehicles shall not be leased, rented, or loaned to any person and shall be held
2 for resale only;
- 3 (4) Motor vehicles sold by or transferred from dealers registered and licensed in
4 compliance with the provisions of KRS 186.070 and KRS 190.010 to 190.080 to
5 members of the Armed Forces on duty in this Commonwealth under orders from
6 the United States government;
- 7 (5) Commercial motor vehicles, excluding passenger vehicles having a seating capacity
8 for nine (9) persons or less, owned by nonresident owners and used primarily in
9 interstate commerce and based in a state other than Kentucky which are required to
10 be registered in Kentucky by reason of operational requirements or fleet proration
11 agreements and are registered pursuant to KRS 186.145;
- 12 (6) Motor vehicles titled in Kentucky on or after July 1, 2005, or previously registered
13 in Kentucky, transferred between husband and wife, parent and child, stepparent
14 and stepchild, or grandparent and grandchild;
- 15 (7) Motor vehicles transferred when a business changes its name and no other
16 transaction has taken place or an individual changes his or her name;
- 17 (8) Motor vehicles transferred to a corporation from a proprietorship or limited liability
18 company, to a limited liability company from a corporation or proprietorship, or
19 from a corporation or limited liability company to a proprietorship, within six (6)
20 months from the time that the business is incorporated, organized, or dissolved, if
21 the transferor and the transferee are the same business entity except for a change in
22 legal form;
- 23 (9) Motor vehicles transferred by will, court order, or under the statutes covering
24 descent and distribution of property, if the vehicles were titled in Kentucky on or
25 after July 1, 2005, or previously registered in Kentucky;
- 26 (10) Motor vehicles transferred between a subsidiary corporation and its parent
27 corporation if there is no consideration, or nominal consideration, or in sole

- 1 consideration of the cancellation or surrender of stock;
- 2 (11) Motor vehicles transferred between a limited liability company and any of its
- 3 members, if there is no consideration, or nominal consideration, or in sole
- 4 consideration of the cancellation or surrender of stock;
- 5 (12) The interest of a partner in a motor vehicle when other interests are transferred to
- 6 him or her;
- 7 (13) Motor vehicles repossessed by a secured party who has a security interest in effect
- 8 at the time of repossession and a repossession affidavit as required by KRS
- 9 186.045(6). The reposessor shall hold the vehicle for resale only and not for
- 10 personal use, unless he or she has previously paid the motor vehicle usage tax on
- 11 the vehicle;
- 12 (14) Motor vehicles transferred to an insurance company to settle a claim. These
- 13 vehicles shall be junked or held for resale only;
- 14 (15) Motor carriers operating under a charter bus certificate issued by the Transportation
- 15 Cabinet under KRS Chapter 281;
- 16 (16) (a) 1. Motor vehicles registered under KRS 186.050 that have a declared gross
- 17 vehicle weight with any towed unit of forty-four thousand and one
- 18 (44,001) pounds or greater; and
- 19 2. Farm trucks registered under KRS 186.050(4) that have a declared gross
- 20 vehicle weight with any towed unit of forty-four thousand and one
- 21 (44,001) pounds or greater.
- 22 (b) To be eligible for the exemption established in paragraph (a) of this
- 23 subsection, motor vehicles shall be registered at the appropriate range for the
- 24 declared gross weight of the vehicle established in KRS 186.050(3)(b) and
- 25 shall be prohibited from registering at a higher weight range. If a motor
- 26 vehicle is initially registered in one (1) declared gross weight range and
- 27 subsequently is registered at a declared gross weight range lower than forty-

1 four thousand and one (44,001) pounds, the person registering the vehicle
2 shall be required to pay the county clerk the usage tax due on the vehicle
3 unless the person can provide written proof to the clerk that the tax has been
4 previously paid;

5 (17) Motor vehicles transferred to a trustee to be held in trust, or from a trustee to a
6 beneficiary of the trust, if a direct transfer from the grantor of the trust to all
7 individual beneficiaries of the trust would have qualified for an exemption from the
8 tax pursuant to subsection (6) or (9) of this section;

9 (18) Motor vehicles transferred to a trustee to be held in trust, if the grantor of the trust is
10 a natural person and is treated as the owner of any portion of the trust for federal
11 income tax purposes under the provisions of 26 U.S.C. secs. 671 to 679;

12 (19) Motor vehicles transferred from a trustee of a trust to another person if:

13 (a) The grantor of the trust is a natural person and is treated as the owner of any
14 portion of the trust for federal income tax purposes under the provisions of 26
15 U.S.C. secs. 671 to 679; and

16 (b) A direct transfer from the grantor of the trust to the person would have
17 qualified for an exemption from the tax pursuant to subsection (6) or (9) of
18 this section;~~and~~

19 (20) Motor vehicles under a manufacturer's statement of origin in possession of a
20 licensed new motor vehicle dealer that are titled and transferred to a licensed used
21 motor vehicle dealer and held for sale; and

22 **(21) Motor vehicles transferred under Section 124 of this Act.**

23 ➔Section 126. KRS 395.160 is amended to read as follows:

24 (1) If a personal representative moves out of the state and fails to designate a process
25 agent as required by KRS 395.015~~[(1)]~~, becomes insane or otherwise incapable to
26 discharge the trust, goes bankrupt or insolvent or is in failing circumstances, the
27 District Court shall remove him or her, and the other personal representative, if

1 there is another, shall discharge the trust. If he or she resides in the county of his or
2 her appointment or in an adjoining county, and is not insane, he or she shall have
3 ten (10) days' notice before the order of removal is made. If he or she is insane, the
4 notice shall be given to his or her committee, if he or her has one, and if there is no
5 committee, the court may appoint one.

6 (2) The district court may remove a personal representative for failing to give
7 additional security when required under KRS 62.060 and appoint another.

8 (3) The court shall require a personal representative who is removed to settle his
9 accounts, and deliver over the decedent's estate to the person appointed in his stead.

10 ➔Section 127. KRS 395.140 is amended to read as follows:

11 (1) **All fiduciaries required to execute a bond shall deliver to the clerk of the court of**
12 **the county in which he or she is appointed a bond payable to and with the**
13 **Commonwealth, subscribed to by the principal and sureties in the presence of a**
14 **notary, in the amount as may be approved by the court in the order of**
15 **appointment.**

16 **(2)** The District Court shall not accept as surety, in any bond of a personal
17 representative, any master or other commissioner whose duty is to settle the
18 accounts of personal representatives, or any judge or clerk of a District Court or
19 practicing attorney of that court.

20 **(3)**~~[(2)]~~ The bond shall be **filed**~~[subscribed by the principal and sureties, approved by~~
21 ~~the court, attested by the clerk of the court and carefully kept]~~ by the clerk in his or
22 her office in a **record maintained**~~[book to be provided]~~ for that purpose.

23 ➔Section 128. KRS 45A.045 is amended to read as follows:

24 (1) The Finance and Administration Cabinet shall serve as the central procurement and
25 contracting agency of the Commonwealth. **The cabinet shall:**

26 (a) ~~[The cabinet shall]~~Require all agencies to furnish an estimate of specific
27 needs for supplies, materials, and equipment to be purchased by competitive

- 1 bidding for the purpose of permitting scheduling of purchasing in large
2 volume. The cabinet shall establish and enforce schedules for purchasing
3 supplies, materials, and equipment. In addition, prior to the beginning of each
4 fiscal year all agencies shall submit to the Finance and Administration
5 Cabinet an estimate of all needs for supplies, materials, and equipment during
6 that year which will have to be required through competitive bidding;~~[-]~~
- 7 (b) ~~[The Finance and Administration Cabinet shall]~~Have the authority~~[power]~~,
8 with the approval of the secretary of the Finance and Administration Cabinet,
9 to transfer between departments, to salvage, to exchange, and to condemn
10 supplies, equipment, and real property;and~~[-]~~
- 11 (c) ~~[The Finance and Administration Cabinet shall]~~Attempt in every practicable
12 way to ensure that state agencies are fulfilling their business needs through the
13 application of the best value criteria.
- 14 (2) The Finance and Administration Cabinet shall recommend regulations, rules, and
15 procedures and shall have supervision over all purchases by the various spending
16 agencies, except as otherwise provided by law, and, subject to the approval of the
17 secretary of the Finance and Administration Cabinet, shall promulgate
18 administrative regulations to govern purchasing by or for all these agencies. The
19 cabinet shall publish a manual of procedures which shall be incorporated by
20 reference as an administrative regulation in accordance with~~[pursuant to]~~ KRS
21 Chapter 13A. This manual shall be distributed to agencies and shall be revised upon
22 issuance of amendments to these procedures. No purchase or contract shall be
23 binding on the state or any agency thereof unless approved by the Finance and
24 Administration Cabinet or made under general administrative regulations
25 promulgated by the cabinet.
- 26 (3) The Finance and Administration Cabinet shall purchase or otherwise acquire, or,
27 with the approval of the secretary, may delegate and control the purchase and

1 acquisition of the combined requirements of all spending agencies of the state,
2 including, but not limited to, interests in real property, contractual services, rentals
3 of all types, supplies, materials, equipment, and services.

4 (4) (a) The Finance and Administration Cabinet shall sell, trade, or otherwise dispose
5 of any interest in real property of the state which is not needed, or has become
6 unsuitable for public use, or would be more suitable to the public's interest if
7 used in another manner, as determined by the secretary of the Finance and
8 Administration Cabinet.

9 (b) The determination of the secretary of the Finance and Administration Cabinet
10 shall be set forth in an order and shall be reached only after review of a
11 written request by the agency desiring to dispose of the real property. This
12 request shall describe the real property and state the reasons why the agency
13 believes the real property should be disposed.

14 (c) Before the disposal of real property, the secretary of the Finance and
15 Administration Cabinet shall determine that:

16 1. No other state agency has a purpose for the real property; and

17 2. The city, county, urban-county government, or consolidated local
18 government where the real property is located does not have an
19 ownership interest in the real property.

20 (d) All instruments required by law to be recorded which convey any interest in
21 any real property so disposed of shall be executed and signed by the secretary
22 of the Finance and Administration Cabinet and approved by the Governor.

23 (e) Unless the secretary of the Finance and Administration Cabinet deems it in
24 the best interest of the state to proceed otherwise, all interests in real property
25 shall be sold either by invitation of sealed bids or by public auction. The
26 selling price of any interest in real property shall not be less than the appraised
27 value thereof as determined by the cabinet, or the Transportation Cabinet for

1 the requirements of that cabinet.

2 (f) A state agency notifying the Finance and Administration Cabinet of its
3 intent to dispose of any interest in real property assigned to the state agency
4 shall continue to provide maintenance and security of the existing
5 structures, buildings, and land included in the real property until the sale or
6 other disposition is complete.

7 (g) In the event the Finance and Administration Cabinet receives no responsive
8 bids for real property being disposed of, either by sealed bid or by public
9 auction, the real property may be disposed of, consistent with the public
10 interest, in any manner deemed appropriate by the secretary of the Finance
11 and Administration Cabinet. A written description of the real property, the
12 method of disposal, and the amount of compensation, if any, shall be made
13 by the secretary of the Finance and Administration Cabinet.

14 (5) (a) If state-owned real property is observed to be abandoned, or it has not been
15 substantially utilized for a public use, the chief executive officer of the city,
16 county, urban-county government, or consolidated local government where
17 the real property is located may:

18 1. Receive notice inquiring about the real property from a citizen,
19 developer, or consultant as described in paragraph (d) of this
20 subsection;

21 2. Develop a plan for public use of the real property; and

22 3. Submit a written notice to the secretary of the Finance and
23 Administration Cabinet and the Capital Planning Advisory Board:

24 a. Expressing interest in the use of the real property;

25 b. Requesting state utilization information from the Finance and
26 Administration Cabinet on the availability of the real property
27 for disposal; and

1 c. Requesting the real property to be considered for sale, trade, or
2 disposal.

3 (b) Within sixty (60) calendar days of receiving written notice under paragraph
4 (a)3. of this subsection, the secretary of Finance and Administration
5 Cabinet shall send a written response to the chief executive officer of the
6 city, county, urban-county government, or consolidated local government
7 and the Capital Planning Advisory Board that includes but is not limited to:

8 1. The current occupancy and use of the real property;
9 2. If the Finance and Administration Cabinet or other applicable state
10 agency intends to evaluate real property for disposal under subsection
11 (4) of this section or to maintain its ownership interest in the real
12 property for public use; and
13 3. Provide a description of the real property, current status, available and
14 planned occupancy, utilization, restrictions of use, and a timeline for
15 full utilization of the property.

16 (c) If the applicable state agency determines to request disposal of the real
17 property, the state agency and Finance and Administration Cabinet shall
18 proceed in accordance with subsection (4) of this section.

19 (d) A citizen, developer, or consultant may notify the chief executive officer of
20 the city, county, urban-county government, or consolidated local
21 government where state-owned real property is located if he or she observes
22 that the state-owned real property is abandoned or not substantially utilized
23 for public use.

24 (6) The Finance and Administration Cabinet shall sell, trade, or otherwise dispose of all
25 personal property of the state that is not needed, or has become unsuitable for
26 public use, or would be more suitable to the public's interest if used in another
27 manner, or, with the approval of the secretary, may delegate the sale, trade, or other

1 disposal of the personal property. In the event the authority is delegated, the method
2 for disposal shall be determined by the agency head, in accordance with
3 administrative regulations promulgated by the Finance and Administration Cabinet,
4 and shall be set forth in a document describing the property and stating the method
5 of disposal and the reasons why the agency believes the property should be
6 disposed of. In the event the authority is not delegated, requests to the Finance and
7 Administration Cabinet to sell, trade, or otherwise dispose of the property shall
8 describe the property and state the reasons why the agency believes the property
9 should be disposed of. The method for disposal shall be determined by the Division
10 of Surplus Properties, and approved by the secretary of the Finance and
11 Administration Cabinet or his or her designee.

12 ~~(7)(6)~~ The Finance and Administration Cabinet shall exercise general supervision
13 and control over all warehouses, storerooms, and stores and of all inventories of
14 supplies, services, and construction belonging to the Commonwealth. The cabinet
15 shall promulgate administrative regulations to require agencies to take and maintain
16 inventories of plant property, buildings, structures, other fixed assets, and
17 equipment. The cabinet shall conduct periodic physical audits of inventories.

18 ~~(8)(7)~~ The Finance and Administration Cabinet shall establish and maintain
19 programs for the development and use of purchasing specifications and for the
20 inspection, testing, and acceptance of supplies, services, and construction.

21 ~~(9)(8)~~ Nothing in this section shall prevent the Finance and Administration Cabinet
22 from negotiating with vendors who maintain a General Services Administration
23 price agreement with the United States of America or any agency thereof. No
24 contract executed under this provision shall authorize a price higher than is
25 contained in the contract between the General Services Administration and the
26 vendor affected.

27 ~~(10)(9)~~ Except as provided in KRS Chapters 175, 176, 177, and 180, and subject to

1 the provisions of this code, the Finance and Administration Cabinet shall purchase
2 or otherwise acquire all real property determined to be needed for state use, upon
3 approval of the secretary of the Finance and Administration Cabinet as to the
4 determination of need and as to the action of purchase or other acquisition. The
5 amount paid for this real property shall not exceed the appraised value as
6 determined by the cabinet or the Transportation Cabinet (for such requirements of
7 that cabinet), or the value set by eminent domain procedure. Subject to the
8 provisions of this code, real property or any interest therein may be purchased,
9 leased, or otherwise acquired from any officer or employee of any agency of the
10 state upon a finding by the Finance and Administration Cabinet, based upon a
11 written application by the head of the agency requesting the purchase, and approved
12 by the secretary of the Finance and Administration Cabinet and the Governor, that
13 the employee has not either himself or herself, or through any other person,
14 influenced or attempted to influence either the agency requesting the acquisition of
15 the property or the Finance and Administration Cabinet in connection with such
16 acquisition. Whenever such an acquisition is consummated, the request and finding
17 shall be recorded and kept by the Secretary of State along with the other documents
18 recorded pursuant to the provisions of KRS Chapter 56.

19 ~~(11)~~⁽¹⁰⁾ The Finance and Administration Cabinet shall maintain records of all
20 purchases and sales made under its authority and shall make periodic summary
21 reports of all transactions to the secretary of the Finance and Administration
22 Cabinet, the Governor, and the General Assembly. The Finance and Administration
23 Cabinet shall also report trends in costs and prices, including savings realized
24 through improved practices, to the above authorities. The Finance and
25 Administration Cabinet shall also compile an annual report of state purchases by all
26 spending agencies in the state's statewide accounting and reporting system. The
27 report format shall include, but not be limited to, dollar amount, volume, type of

1 purchase, and vendor.

2 ~~(12)~~~~(11)~~ For capital construction projects, subject to the provisions of this code and
3 KRS 45A.180, the procurement may be on whichever of the following alternative
4 project delivery methods, in the judgment of the secretary of the Finance and
5 Administration Cabinet after first considering the traditional design-bid-build
6 project delivery method, offers the best value to the taxpayer:

7 (a) A design-build basis; or

8 (b) A construction management-at-risk basis.

9 Proposals shall be reviewed by the engineering staff to assure quality and value, and
10 compliance with procurement procedures. All specifications shall be written to
11 promote competition. Nothing in this section shall prohibit the procurement of
12 phased bidding or construction manager-agency services.

13 ~~(13)~~~~(12)~~ The Finance and Administration Cabinet shall have control and supervision
14 over all purchases of energy-consuming equipment, supplies, and related equipment
15 purchased or acquired by any agency of the state as provided in this code, and shall
16 promulgate administrative regulations to designate the manner in which an energy-
17 consuming item will be purchased so as to promote energy conservation and
18 acquisition of energy efficient products. Major energy components shall be
19 amortized on a seven (7) to ten (10) years' recovery basis and shall take into
20 consideration the projected cost of fuel. The Finance and Administration Cabinet, in
21 consultation with the Cabinet for Economic Development, shall conduct a thorough
22 economic feasibility analysis on any major energy-using component of at least three
23 million (3,000,000) BTU's per hour heat input and shall issue a certificate of
24 economic feasibility prior to the Finance and Administration Cabinet's purchasing
25 or retrofitting any such component that utilizes any fuel other than coal. The
26 economic feasibility analysis shall consist of life-cycle cost comparisons of a
27 component that would utilize coal and one(s) that would utilize any fuel other than

1 coal. For the analysis, the Finance and Administration Cabinet shall provide
2 detailed estimates of equipment purchase price, installation cost, annual operation
3 and maintenance costs, and usage patterns of energy-using components.

4 ➔Section 129. KRS 56.463 is amended to read as follows:

5 The cabinet shall have the power and duty:

- 6 (1) To determine the comparative needs and demands of the various state agencies for
7 acquiring real estate and for building projects;
- 8 (2) To purchase or otherwise acquire all real property determined to be needed for state
9 use and upon the approval of the secretary of the Finance and Administration
10 Cabinet as to the determination of need and as to the action of purchase or other
11 acquisition, except as provided in KRS Chapters 175, 176, 177, and 180. All such
12 acquisitions of real property or interests therein shall be made in accordance with
13 KRS 45A.045;
- 14 (3) (a) To sell or otherwise dispose of all property, including any interest in real
15 property, of the state that is not needed or has become unsuitable for public
16 use or would be more suitable consistent with the public interest for some
17 other use as determined by the secretary of the Finance and Administration
18 Cabinet. All such sales or other disposition shall be made in accordance with
19 KRS 45A.045.~~[-]~~
- 20 (b) A state agency notifying the Finance and Administration Cabinet of its
21 intent to dispose of any interest in real property assigned to the state agency
22 shall continue to provide maintenance and security of the existing
23 structures, buildings, and land included in the real property until the sale or
24 other disposition is complete in accordance with Section 1 of this Act.
- 25 (4) (a) To control the use of any real property owned or otherwise held by the
26 Commonwealth, or any state agency, and to determine for what periods of
27 time and for what purposes any state agency may use the same, including the

1 agency for whose use it was initially acquired or improved, and to determine
2 what appropriate uses shall be made of such real property during periods that
3 the cabinet finds the same is not required for the purposes of any particular
4 state agency. The cabinet shall allocate to the General Assembly and the
5 Legislative Research Commission all space within the New State Capitol
6 Annex in the basement and on the first, second, third, and fourth floors,
7 excluding:

- 8 1. Mechanical areas, public entrances, vestibules, and restrooms; and
- 9 2. The following additional space, as allocated on January 1, 2023:
 - 10 a. Areas in the basement occupied by the Kentucky State Police and
11 Facilities Security;
 - 12 b. Areas in the basement operated as the snack bar and cafeteria, as
13 well as storage areas related to the operation of the snack bar and
14 cafeteria;
 - 15 c. The area in the basement operated as a nurse's station;
 - 16 d. The area in the basement used as an automated teller machine
17 (ATM);
 - 18 e. The office space in the basement occupied by the Secretary of
19 State;
 - 20 f. Utility spaces in the basement west wing and east wing
21 northernmost hallways occupied by janitorial, maintenance, and
22 mechanical staff;
 - 23 g. The loading dock in the rear of the annex basement, along with the
24 office space immediately adjacent to the loading dock on the back
25 wall of the annex, provided that the General Assembly and the
26 Legislative Research Commission shall be given access to and use
27 of the loading dock and the receiving areas adjacent to the loading

1 dock; and

2 h. Office and studio space on the first floor currently occupied and
3 used for broadcasting purposes by Kentucky Educational
4 Television.

5 All space assigned to the legislative branch and plans, uses, furnishings, and
6 equipment therefor are subject to the specific approval of the Legislative
7 Research Commission;

8 (b) All additional space in the New State Capitol Annex, not specifically
9 allocated for use by the General Assembly and the Legislative Research
10 Commission in paragraph (a) of this subsection, shall be allocated for the use
11 of the legislative branch, with occupancy by the legislative branch to be
12 determined by the Legislative Research Commission, upon a vote of a
13 majority of the entire membership of the Legislative Research Commission;

14 (c) In order for the General Assembly and the Legislative Research Commission
15 to efficiently utilize the space provided by paragraphs (a) and (b) of this
16 subsection, the cabinet shall enter into a memorandum of understanding with
17 the Legislative Research Commission on or about February 1, 2024, and as
18 often as every two (2) years thereafter at the request of the Legislative
19 Research Commission, to establish tenancy terms, including but not limited to
20 building maintenance, repairs, renovations, and upgrades; facility security;
21 janitorial services; and applicable rental and utilities rates. The Legislative
22 Research Commission shall at any time, and upon at least sixty (60) days'
23 notice, be authorized to discontinue the cabinet's provision of janitorial
24 services for the New State Capitol Annex and to enter into a separate contract
25 for the provision of those services, with the applicable rental and utilities rates
26 to be proportionately reduced to reflect that separate contract, provided that
27 the Legislative Research Commission may also at any time, and upon at least

1 sixty (60) days' notice, elect to have the cabinet continue or reinstate the
2 provision of those janitorial services at the cabinet's expense;

3 (d) For the purposes of this subsection, real property shall include the parking
4 areas adjacent to the New State Capitol and the New State Capitol Annex, and
5 the cabinet shall allocate to the General Assembly and the Legislative
6 Research Commission all parking spaces within the Capitol campus parking
7 garage, all parking spaces in the east, south, and west parking lots of the New
8 State Capitol Annex, and all parking spaces in the west parking lot of the New
9 State Capitol, except for those spaces in the west parking lot of the New State
10 Capitol allocated, as of January 1, 2023, to the Supreme Court of Kentucky,
11 the Lieutenant Governor, the Attorney General, and the Secretary of State.
12 Any further allocation of any parking spaces allocated pursuant to this
13 paragraph shall be within the sole discretion of the Legislative Research
14 Commission or its designee; and

15 (e) To determine the housing and furnishings needs of the various state agencies
16 located in Frankfort and to establish and put into effect a permanent program
17 for housing them. Subject to paragraphs (a) and (b) of this subsection, the
18 cabinet is also authorized and directed to allocate office space and furnishings
19 in existing public buildings located in Frankfort, exclusive of the third and
20 fourth floors of the New State Capitol and the space in the New State Capitol
21 Annex allocated to the legislative branch, according to the needs of the
22 various agencies. When necessary, the cabinet is authorized to provide
23 additional office space and furnishings in Frankfort under any building
24 program the cabinet deems most advisable and economical for the state. The
25 permanent housing program shall include provisions for housing the General
26 Assembly and its related agencies, including the Legislative Research
27 Commission, and its subcommittees, the executive offices, the Supreme Court

1 and the clerk of the Supreme Court, the Department of Law and the law
2 library, in the New State Capitol, provided the General Assembly and the
3 Legislative Research Commission shall have complete control and exclusive
4 use of the third and fourth floors of the New State Capitol and shall have
5 exclusive use of the space in the New State Capitol Annex allocated to them
6 under paragraphs (a) and (b) of this subsection. If there be any additional
7 space in the Capitol, it shall be assigned to agencies whose activities are most
8 closely related to the agencies directed to be located permanently in the
9 Capitol;

10 (5) To acquire, by condemnation in the manner provided in the Eminent Domain Act of
11 Kentucky, any real estate necessary for use by the state or by any state agency,
12 when the cabinet is unable to agree with the owner thereof on a price for such real
13 estate;

14 (6) To lease any real property, or any interest in such real property, owned by the state
15 or any agency thereof, in accordance with KRS 45A.045;

16 (7) To provide for and adopt plans and specifications as may be necessary, to provide
17 adequate public notice for and receive bids for any expenditures proposed to be
18 made, to award contracts for the purpose authorized, to supervise construction and
19 make changes and revisions in plans and specifications or in construction as may
20 become necessary, and generally to do any and all other things as may become
21 necessary or expedient in order to effectively fulfill and carry out the purposes of
22 this chapter, including the right to employ clerks, engineers, statisticians, architects,
23 or other persons required to be employed in order to fulfill the functions of the
24 Commonwealth relating to state property and buildings provided in KRS 56.450 to
25 56.550; and

26 (8) To adopt rules and promulgate administrative regulations as may be necessary to
27 govern the acquisition, control, and disposition of the real property to which this

1 section is applicable.

2 ➔Section 130. KRS 27A.210 is amended to read as follows:

3 (1) The following books and records shall be maintained by the State Law Library:

4 (a) All copies of Volumes 1 to 77 of the Kentucky Reports;

5 (b) Twenty-five (25) copies each of Volumes 78 to 314 of the Kentucky Reports;

6 (c) Two (2) sets of all future publications of the journals and nine (9) sets of the
7 Acts of the General Assembly; and

8 (d) Two (2) sets of the official Kentucky statute publications.

9 (2) The state law librarian shall arrange with the proper official of each state of the
10 United States and of the United States and its territories for the exchanges of the
11 statutes and the acts of the legislatures of each state and of Congress. When an
12 exchange is agreed upon, the state law librarian shall send to the officer one (1)
13 copy of the Acts of the General Assembly and one (1) set of statutes as soon as they
14 are ready for distribution.

15 (3) Copies of acts, statutes, and other materials required to be kept by the state law
16 librarian and to be made available for exchange shall be furnished to the state law
17 librarian, without charge, by the agency or official responsible for the distribution
18 of same.

19 (4) The state law librarian may arrange for the distribution or disposal of materials held
20 by the State Law Library upon concurrence of the administrative assistant to the
21 Chief Justice responsible for law library operations.

22 (5) The state law librarian may acquire, by purchase, exchange, donation, or otherwise,
23 books and other materials the librarian deems suitable for the holdings of the State
24 Law Library.

25 (6) The state law librarian may, with the concurrence of the administrative assistant to
26 the Chief Justice responsible for law library operations, sell any surplus books in
27 the State Law Library that have a market value, collect the funds received therefor,

1 and deposit them in the ~~{"}state law library surplus books fund,{"} which is hereby~~
2 created in the State Treasury. The ~~{"}state law library surplus books fund{"} shall~~
3 not lapse. The state law librarian may reinvest the funds in other books and
4 materials that the librarian deems suitable for the holdings of the State Law Library.
5 The provisions of KRS 45A.045~~(6){(5)}~~ concerning the powers and duties of the
6 Finance and Administration Cabinet shall not apply to sales made by the state law
7 librarian under this section.

8 (7) The state law librarian may, with the concurrence of the administrative assistant to
9 the Chief Justice responsible for law library operations, offer and provide technical
10 and other assistance to county law libraries and to other publicly funded law
11 libraries.

12 (8) The state law librarian may, upon the request of a county law library or other
13 publicly funded law library and with the concurrence of the administrative assistant
14 to the Chief Justice responsible for law library operations, purchase books, supplies,
15 or other materials for the library. The funds used for these purposes shall be those
16 of the county law library or other publicly funded law library.

17 (9) The state law librarian shall issue, with the concurrence of the administrative
18 assistant to the Chief Justice responsible for law library operations, regulations for
19 the operation, management, and lending policy of the State Law Library.

20 ➔Section 131. KRS 45A.050 is amended to read as follows:

21 (1) Except as provided in KRS 45A.800 to 45A.835 and KRS Chapters 175, 176, 177,
22 and 180, all rights, powers, duties, and authority relating to the procurement of
23 supplies, services, and construction, and the management, control, warehousing,
24 sale, and disposal of supplies, services, and construction now vested in or exercised
25 by any state agency under the several statutes relating thereto, are hereby
26 transferred to the secretary of the Finance and Administration Cabinet as provided
27 in this code, subject to the provisions of subsection (2) of this section.

- 1 (2) Unless otherwise ordered by the secretary of the Finance and Administration
2 Cabinet, the acquisition of the following shall not be required through the Finance
3 and Administration Cabinet:
- 4 (a) Works of art for museum and public display;
5 (b) Published books, maps, periodicals, and technical pamphlets; and
6 (c) Services of visiting speakers, professors, and performing artists.
- 7 (3) The Finance and Administration Cabinet shall include in all state agency price
8 contracts for the purchase of materials or supplies a provision that, as approved by
9 the secretary of the Finance and Administration Cabinet, any political subdivision,
10 including cities of all classes, counties, school districts, or special districts, may
11 participate in these contracts to the same extent as the Commonwealth. Any
12 political subdivision may purchase materials and supplies in accordance with a
13 contract for supplies and materials entered into by the Finance and Administration
14 Cabinet for the Commonwealth, including those contracts negotiated by the cabinet
15 with vendors who maintain a General Services Administration price agreement as
16 provided in KRS 45A.045~~(9)~~~~(8)~~. Political subdivisions of the Commonwealth
17 must comply with other provisions of the Kentucky Revised Statutes which require
18 purchase by competitive bidding, before participating in the contract, unless the
19 state contract has been let by competitive bidding, or the contract was negotiated as
20 provided in KRS 45A.045~~(9)~~~~(8)~~.
- 21 (4) The Finance and Administration Cabinet shall inform the Department for Local
22 Government, which shall then inform the appropriate purchasing agent of each
23 political subdivision interested in participating under this section, of all state agency
24 contracts in effect between the Commonwealth and vendors.
- 25 (5) The secretary of the Finance and Administration Cabinet shall promulgate
26 administrative regulations necessary for the implementation of this section and
27 necessary to provide that the Commonwealth be reimbursed for any additional

1 expenses incurred by the Commonwealth in allowing political subdivisions to
2 participate in contracts with vendors.

3 (6) The Finance and Administration Cabinet shall comply with all provisions relating
4 to the methods of purchasing in the Kentucky Revised Statutes. This section is not
5 intended to repeal or otherwise affect any provision of the Kentucky Revised
6 Statutes regarding purchasing methods of the Finance and Administration Cabinet.

7 (7) Notwithstanding any other statute to the contrary, all public agencies as defined in
8 KRS 45A.490 shall comply with the provisions for reciprocal preference for
9 resident bidders in KRS 45A.490 to 45A.494.

10 ➔Section 132. KRS 45A.300 is amended to read as follows:

11 (1) Any public purchasing unit may either participate in, sponsor, conduct, or
12 administer a cooperative purchasing agreement for the acquisition of any supplies,
13 services, or construction with any other public purchasing unit or foreign
14 purchasing activity, in accordance with an agreement entered into between the
15 participants. This cooperative purchasing may include~~[-]~~ but is not limited to~~[-]~~ joint
16 contracts between public purchasing units and access by local public purchasing
17 units to open-ended state public purchasing unit contracts.

18 (2) Nothing in this code shall limit any public purchasing unit from selling to, acquiring
19 from, or using any property belonging to another public purchasing unit or foreign
20 purchasing activity independent of the requirements of KRS 45A.070 to 45A.180.

21 (3) Nothing in this code shall limit or restrict any public purchasing unit from entering
22 into an agreement, independent of the requirements of KRS 45A.045~~(6)~~~~(5)~~ and
23 KRS 45A.070 to 45A.165, with any other public purchasing unit or foreign
24 purchasing activity for the cooperative use of supplies or services.

25 (4) Any public purchasing unit may enter into an agreement for the joint or common
26 use of warehousing facilities or the lease or common use of capital equipment or
27 facilities with any other public purchasing unit or a foreign purchasing activity

1 subject to the terms as may be agreed upon between the parties.

2 (5) Nothing in this code shall limit or restrict the ability of local school districts to
3 acquire supplies outside of the public purchasing agreements when the supplies and
4 equipment meeting the same specifications as the contract items are available at a
5 lower price elsewhere and the purchase does not exceed two thousand five hundred
6 dollars (\$2,500).

7 (6) Nothing in this code shall limit any public purchasing unit from receiving notice of
8 or accepting a price reduction on supplies or equipment when the supplies or
9 equipment are being offered by the vendor with whom a price agreement has been
10 made; the supplies or equipment are being offered in accordance with all terms and
11 conditions that are specified in the price agreement, except those relating to price;
12 and the price reduction is offered to all of the participants in the price agreement.
13 Public purchasing units may accept special price reductions under this subsection
14 even if the reduced price requires the purchase of a specified quantity of units
15 different from the quantity stated in the original price agreement. Price reductions
16 under this subsection shall not be considered to permanently alter the price of the
17 supplies or equipment under the price agreement with the Commonwealth, except
18 where the price reductions are to be made permanent under the express terms of the
19 price agreement and where the purchasing agency which solicited the price
20 agreement determines that the enforcement of those terms serves the best interest of
21 the Commonwealth.

22 (7) The Finance and Administration Cabinet shall not exclude the Department of Fish
23 and Wildlife Resources from, or interfere with the department's participation in, any
24 contracts available to multiple state agencies for the procurement of goods or
25 services, including but not limited to interfering with the department's electronic
26 access to the statewide accounting system in any way.

27 ➔Section 133. KRS 45A.810 is amended to read as follows:

- 1 (1) (a) One (1) or more architectural services selection committees and one (1) or
2 more engineering or engineering-related services selection committees shall
3 be created in the Finance and Administration Cabinet.
- 4 (b) One (1) or more engineering and engineering-related services selection
5 committees shall be created in the Transportation Cabinet.
- 6 (c) One (1) or more engineering and engineering-related services selection
7 committees shall be created in the Department of Fish and Wildlife
8 Resources.
- 9 (2) Except when an emergency condition exists as defined by KRS 45A.095(1)(a),
10 when architectural, engineering, or engineering-related services are procured under
11 KRS 45A.837 and 45A.838, or when the project is constructed under KRS
12 45A.045~~(12)~~~~(11)~~(a) or (b):
- 13 (a) An architectural services selection committee created in the Finance and
14 Administration Cabinet shall participate in every instance of that cabinet's
15 procuring architectural services for its own needs and the needs of other
16 agencies, and upon request from the commissioner of the Department of Fish
17 and Wildlife Resources, shall assist and participate in that department's
18 procuring of architectural services;
- 19 (b) An engineering and engineering-related services selection committee created
20 in the Finance and Administration Cabinet shall participate in every instance
21 of that cabinet's procuring engineering or engineering-related services;
- 22 (c) An engineering and engineering-related services selection committee created
23 in the Transportation Cabinet shall participate in every instance of that
24 cabinet's procuring engineering or engineering-related services; and
- 25 (d) An engineering and engineering-related services selection committee created
26 in the Department of Fish and Wildlife Resources shall participate in every
27 instance of that department's procuring of engineering or engineering-related

1 services.

2 (3) An architectural services selection committee created in the Finance and
3 Administration Cabinet to perform its own procurement and assist other state
4 agencies with procuring architectural services shall consist of six (6) or more
5 members selected in the manner specified within each paragraph:

6 (a) Two (2) architects. The secretary of the Finance and Administration Cabinet
7 shall appoint a pool of at least six (6) architects who are employees of the
8 cabinet. At least three (3) of the architects shall be merit employees of the
9 cabinet. The secretary, or designee, under the supervision of the Auditor of
10 Public Accounts, or designee, shall randomly select architects from the pool.
11 The first employee selected shall be placed on the selection committee. If the
12 first employee selected is a merit employee, the second employee selected
13 shall be placed on the selection committee. If the first employee selected is a
14 nonmerit employee, the selection process shall continue until a merit
15 employee is selected. That merit employee shall be placed on the selection
16 committee;

17 (b) One (1) or more additional employees of the Department for Facilities
18 Management, appointed by the commissioner of the Department for Facilities
19 Management, to serve as a nonvoting technical adviser for a given project
20 selection. Advisory members shall serve on a project-by-project basis and
21 shall have the requisite knowledge, training, or experience pertaining to the
22 professional requirements of the project;

23 (c) Two (2) merit employees of the user agency appointed by the head of that
24 agency to serve for the duration of the selection committee's participation in
25 the project for which they were appointed by the user agency;

26 (d) An individual. The Kentucky Society of Architects shall nominate nine (9)
27 individuals, and the Governor shall appoint three (3) of these individuals to

1 serve in the pool from which the secretary of the Finance and Administration
2 Cabinet, or designee, under the supervision of the Auditor of Public Accounts,
3 or designee, shall randomly select one (1) individual to serve on the
4 committee;

5 (e) One (1) or more merit employees of the Auditor of Public Accounts,
6 appointed by the Auditor, who may, at the discretion of the Auditor, serve as
7 nonvoting members of the committee. If one (1) employee is appointed, then
8 that employee may attend any committee proceedings. If more than one (1)
9 employee is appointed, then either of the employees may attend any
10 committee proceeding; and

11 (f) Upon completion of the selection process set forth in this subsection, the
12 commissioner of the Department of Facilities Management shall submit a
13 statement to the Auditor of Public Accounts attesting to full compliance with
14 the selection process for each architectural firm appointed to provide
15 architectural services. In addition, a complete record of the selection process
16 for each project shall be maintained by the department and shall be subject to
17 audit by the Auditor of Public Accounts.

18 (4) The engineering and engineering-related services selection committee created in the
19 Finance and Administration Cabinet shall consist of six (6) or more members
20 selected in the manner specified in each paragraph:

21 (a) Two (2) engineers. The secretary of the Finance and Administration Cabinet
22 shall appoint a pool of at least six (6) engineers who are employees of the
23 cabinet. At least three (3) of the engineers shall be merit employees of the
24 cabinet. The secretary, or designee, under the supervision of the Auditor of
25 Public Accounts, or designee, shall randomly select engineers from the pool.
26 The first employee selected shall be placed on the selection committee. If the
27 first employee selected is a merit employee, the second employee selected

1 shall be placed on the selection committee. If the first employee selected is a
2 nonmerit employee, the selection process shall continue until a merit
3 employee is selected. That merit employee shall be placed on the selection
4 committee;

5 (b) Two (2) merit employees of the user agency appointed by the head of that
6 agency to serve for the duration of the selection committee's participation in
7 the project for which they were appointed by the user agency;

8 (c) An individual. The Kentucky Society of Professional Engineers and the
9 Kentucky Consulting Engineers Council shall together nominate nine (9)
10 individuals, and the Governor shall appoint three (3) of these individuals to
11 serve in the pool from which the secretary of the Finance and Administration
12 Cabinet, or designee, under the supervision of the Auditor of Public Accounts,
13 or designee, shall randomly select one (1) individual to serve on the
14 committee;

15 (d) One (1) or more merit employees of the Auditor of Public Accounts,
16 appointed by the Auditor, who may, at the discretion of the Auditor, serve as
17 nonvoting members of the committee. If one (1) employee is appointed, then
18 that employee may attend any committee proceedings. If more than one (1)
19 employee is appointed, then either of the employees may attend any
20 committee proceeding;

21 (e) One (1) or more additional employees of the Department for Facilities
22 Management to serve as nonvoting technical adviser for a specific project
23 selection. Advisory members shall serve on a project-by-project basis and
24 shall have the requisite knowledge, training, or experience pertaining to the
25 professional requirements of the project; and

26 (f) Upon completion of the selection process set forth in this subsection, the
27 commissioner of the Department of Facilities Management shall submit a

1 statement to the Auditor of Public Accounts attesting to full compliance with
2 the selection process for each firm appointed to provide engineering or
3 engineering-related services. In addition, a complete record of the selection
4 process for each project shall be maintained by the department and shall be
5 subject to audit by the Auditor of Public Accounts.

6 (5) The engineering and engineering-related services selection committee created in the
7 Transportation Cabinet shall consist of six (6) or more members selected in the
8 manner specified in each paragraph:

9 (a) Two (2) engineers. The secretary of the Transportation Cabinet shall appoint a
10 pool of six (6) engineers who are employees of the cabinet. At least three (3)
11 of the engineers shall be merit employees of the cabinet. The secretary, or
12 designee, under the supervision of the Auditor of Public Accounts, or
13 designee, shall randomly select engineers from the pool. The first employee
14 selected shall be placed on the selection committee. If the first employee
15 selected is a merit employee, the second employee selected shall be placed on
16 the selection committee. If the first employee selected is a nonmerit
17 employee, the selection process shall continue until a merit employee is
18 selected. That merit employee shall be placed on the selection committee;

19 (b) Two (2) engineers who are merit employees of the user division appointed by
20 the head of that division to serve for the duration of the selection committee's
21 participation in the project for which they were appointed by the user agency.
22 However, if two (2) user divisions have approximately equal responsibilities
23 or separate responsibilities for the project, each user division head shall
24 appoint one (1) member to the selection committee;

25 (c) An individual. The Kentucky Society of Professional Engineers and the
26 Kentucky Consulting Engineers Council shall together nominate nine (9)
27 individuals, and the Governor shall appoint three (3) of these individuals to

1 serve in the pool from which the secretary of the Transportation Cabinet, or
2 designee, under the supervision of the Auditor of Public Accounts, or
3 designee, shall randomly select one (1) individual to serve on the committee;

4 (d) One (1) or more merit employees of the Auditor of Public Accounts,
5 appointed by the Auditor, who may, at the discretion of the Auditor, serve as
6 nonvoting members of the committee. If one (1) employee is appointed, then
7 that employee may attend any committee proceedings. If more than one (1)
8 employee is appointed, then either of the employees may attend any
9 committee proceeding; and

10 (e) Upon completion of the selection process set forth in this subsection, the
11 commissioner of the Department of Highways shall submit a statement to the
12 Auditor of Public Accounts attesting to full compliance with the selection
13 process for each firm appointed to provide engineering or engineering-related
14 services. In addition, a complete record of the selection process for each
15 project shall be maintained by the department and shall be subject to audit by
16 the Auditor of Public Accounts.

17 (6) The engineering and engineering-related services selection committee created
18 within the Department of Fish and Wildlife Resources shall consist of six (6) or
19 more members selected as follows:

20 (a) The commissioner of the Department of Fish and Wildlife Resources shall
21 appoint five (5) members:

22 1. One (1) department employee in or designated to the job classification
23 of Department of Fish and Wildlife Resources Project Manager;

24 2. Two (2) Department of Fish and Wildlife Resources employees in the
25 Engineering and Geological series, at least one (1) of whom shall be a
26 merit employee;

27 3. One (1) merit employee of the Department of Fish and Wildlife

- 1 Resources designated by the division head for the project or by the
2 commissioner; and
- 3 4. One (1) employee of the Department of Fish and Wildlife Resources
4 who is an attorney;
- 5 (b) The Kentucky Society of Professional Engineers and the Kentucky Consulting
6 Engineers Council shall together nominate nine (9) individuals, and the
7 Governor shall select three (3) of these individuals to serve in a pool from
8 which the commissioner of the Department of Fish and Wildlife Resources, or
9 designee, under the supervision of the Auditor of Public Accounts, or
10 designee, shall randomly select one (1) individual to serve on the committee;
- 11 (c) One (1) or more merit employees of the Auditor of Public Accounts,
12 appointed by the Auditor, who may, at the discretion of the Auditor, serve as
13 nonvoting members of the committee. If one (1) employee is appointed, then
14 that employee may attend any committee proceedings. If more than one (1)
15 employee is appointed, then either of the employees may attend any
16 committee proceeding; and
- 17 (d) Upon completion of the selection process set forth in this subsection, the
18 commissioner of the Department of Fish and Wildlife Resources shall submit
19 a statement to the Auditor of Public Accounts attesting to full compliance
20 with the selection process for each firm appointed to provide engineering or
21 engineering-related services. A complete record of the selection process for
22 each project shall be maintained by the Department of Fish and Wildlife
23 Resources and shall be subject to audit by the Auditor of Public Accounts.
- 24 (7) (a) All selection committee members shall have experience which qualifies them
25 to serve on the committee.
- 26 (b) The same appointment procedures set out in this section apply to any user
27 agency or user division listed in subsection (3), (4), (5), or (6) of this section

1 that does not operate under a merit system.

2 (c) Any individual appointed to serve in a pool from which selection committee
3 members are drawn shall serve in the pool for an initial one (1) year term and
4 may be reappointed. He or she shall serve until his or her successor is
5 appointed and qualified. A successor or a replacement, in the case of a
6 vacancy in the pool, shall be appointed in the same manner as the initial
7 appointee. If a selection committee member, drawn from a pool, leaves a
8 selection committee, his or her replacement shall be drawn from the pool in
9 the same manner as he or she. The replacement shall have the merit or
10 nonmerit status of his or her predecessor.

11 (d) Any individual appointed by the Auditor of Public Accounts to serve on
12 selection committees shall serve an initial one (1) year term and may be
13 reappointed to succeed himself or herself. He or she shall serve until his or her
14 successor is appointed and qualified. A successor or a replacement, in the case
15 of a vacancy, shall be appointed in the same manner as the initial appointee.

16 (e) The selection committee members appointed by the head of a user agency or
17 user division shall serve on a project-by-project basis. These members shall
18 participate only in committee action related to the project for which they were
19 appointed. A replacement, in the case of a vacancy, shall be appointed in the
20 same manner as the initial appointee.

21 ➔Section 134. KRS 56.774 is amended to read as follows:

22 (1) The Energy Efficiency Program for State Government Buildings shall provide for
23 implementation of low cost/no cost energy conservation measures, engineering
24 analyses, energy efficiency measures, building improvements, and monitoring of
25 results for state-owned or state-leased buildings.

26 (2) Any engineering analysis conducted on a state-owned building shall assess the
27 energy efficiency of the building and make recommendations for improving the

1 efficient use of energy within the building. The analyses shall be performed by
2 qualified engineers, architects, or other persons trained in energy efficiency who
3 may be employees of the cabinet or employed pursuant to KRS Chapter 45A,
4 except that any engineers, architects or other persons trained in energy efficiency
5 and retained under a guaranteed energy savings performance contract, shall not be
6 subject to the provisions of KRS 45A.800 to 45A.835.

7 (3) Except as provided in subsection (5) of this section, measures to improve the energy
8 efficiency of a state-owned building, which have an aggregate simple payback
9 period of five (5) years or less, shall be implemented as general fund appropriations
10 become available. No more than five percent (5%) of the cost of energy
11 conservation measures for a building may be utilized for monitoring the results.

12 (4) If general fund appropriations are available for energy conservation improvements,
13 the cabinet shall prioritize projects among the various state-owned buildings to
14 determine which projects shall be implemented to best utilize the available funding.

15 (5) If general fund appropriations are unavailable, energy conservation measures for a
16 state-owned building may be financed by other means. These other means include
17 but are not limited to guaranteed energy savings performance contracts as defined
18 under KRS 56.770 entered into pursuant to KRS 45A.085 and KRS
19 45A.045~~(11)(10)~~. Guaranteed energy savings performance contracts shall not be
20 subject to the provisions of KRS 45A.800 to 45A.835. These energy conservation
21 measures shall not be limited to those that have an aggregate simple payback period
22 of five (5) years or less, but shall result in reasonable economic benefit to the
23 Commonwealth. Ownership of the energy conservation measures shall be
24 transferred to the Commonwealth upon completion of the guaranteed energy
25 savings performance contract or as otherwise agreed upon in the contract. Savings
26 from the implementation of the energy conservation measures under the guaranteed
27 energy savings performance contract shall be used to satisfy the obligations under

1 the guaranteed energy savings performance contract and to repay the cost of the
2 other means used to finance the energy conservation measures, and may be used to
3 repay expenses incurred by the cabinet to reimburse the cabinet for expenses related
4 to the guaranteed energy savings performance contract, including but not limited to
5 staff time for monitoring, overseeing, and managing the project. Notwithstanding
6 KRS 45.229, remaining savings shall remain in the state agency account and shall
7 not lapse. All savings projected under a guaranteed energy savings performance
8 contract shall be guaranteed to the Commonwealth.

9 (6) The savings in reduced expenditures that are specified as payment sources shall be
10 documented in the guaranteed energy savings performance contract. Savings shall
11 be determined by using one (1) of the measurement and verification methodologies
12 listed in the United States Department of Energy's "International Performance
13 Measurement and Verification Protocol." If specific data limitations or documented
14 unique characteristics of the project prevent use of the "International Performance
15 Measurement and Verification Protocol," an alternative method that is compatible
16 shall be adopted upon documentation and approval of the secretary of the cabinet.

17 ➔Section 135. KRS 56.782 is amended to read as follows:

18 The cabinet shall report on or before October 15, 2008, and on or before every October
19 15 thereafter to the Legislative Research Commission on progress made to maximize the
20 use of energy-efficiency measures in state government. The Legislative Research
21 Commission shall transmit the report to the appropriate interim joint committees and to
22 the General Assembly when it convenes. The report shall include but not be limited to:

- 23 (1) A summary of initiatives undertaken by the cabinet during the reporting period to
24 promote adoption of low cost/no cost energy-efficiency measures, including
25 employee training efforts;
- 26 (2) A summary of energy-efficiency measures installed and energy improvements
27 made during the reporting period;

- 1 (3) Energy consumption and expenditure data for facilities owned or leased by state
2 government and any documented savings made as a result of energy-efficiency
3 measures and improvements;
- 4 (4) Status report on the number of buildings newly constructed, renovated, or leased in
5 accordance with the high-performance building standards required under KRS
6 56.777 and the amount of savings realized based upon a life-cycle cost analysis;
- 7 (5) Any efforts made during the reporting period to promote acquisition of energy-
8 efficient products pursuant to KRS 45A.045~~(13)~~~~(12)~~ and the amount of savings
9 expected to be realized in the first year of operation from the purchase of ENERGY
10 STAR-qualified products pursuant to KRS 56.775;
- 11 (6) Any recommendations for future funding of energy improvements or other
12 measures needed to assure energy efficiency in state government; and
- 13 (7) Any improvements in energy efficiency planned or realized through the use of the
14 LEED rating system, the Green Globes rating system, ENERGY STAR-qualified
15 products, and guaranteed energy savings performance contracts.
- 16 ➔Section 136. Sections 32 to 40 of this Act may be cited as the Uniform
17 Electronic Wills Act.
- 18 ➔Section 137. Sections 41 to 55 of this Act may be cited as the Uniform
19 Electronic Estate Planning Documents Act.
- 20 ➔Section 138. Sections 59 to 69 of this Act may be cited as the Kentucky
21 Qualified Dispositions in Trust Act.
- 22 ➔Section 139. Sections 70 to 86 of this Act may be cited as the Uniform Directed
23 Trust Act.
- 24 ➔Section 140. Sections 87 to 114 of this Act may be cited as the Uniform Trust
25 Decanting Act.
- 26 ➔Section 141. Sections 124 and 125 of this Act take effect January 1, 2028.
- 27 ➔Section 142. The following KRS sections are repealed:

- 1 395.635 Certification of list of fiduciaries delinquent in accounting -- Notice -- Fees.
- 2 386B.8-080 Powers to direct.
- 3 386.175 Trustee's power to appoint principal or income in favor of trustee of second
- 4 trust -- Terms of second trust -- Special fiduciary -- Notice -- Judicial
- 5 proceedings.