



**Rules of**  
**Missouri Family Trust**  
**Division 10—Director and Board of Trustees**  
**Chapter 2—Missouri Family Trust**

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## Title 21—MISSOURI FAMILY TRUST

### Division 10—Director and Board of Trustees

#### Chapter 2—Missouri Family Trust

#### 21 CSR 10-2.010 Terms and Conditions of the Missouri Family Trust

*PURPOSE: This rule sets forth the terms and conditions of the Missouri Family Trust.*

(1) Contribution to the Missouri Family Trust. In order to establish a Trust Account with the Missouri Family Trust Board of Trustees, a donor shall contribute the property described in the Missouri Family Trust Agreement (the Agreement) signed by the donor and an authorized representative on behalf of the board of trustees.

(A) The board of trustees shall establish and from time to time review the minimum contribution necessary to establish a Trust Account. Upon receipt of the required contribution, documents and fees, the board of trustees shall establish a Trust Account for the benefit of the beneficiary designated in the Agreement (referred to as the beneficiary). No Trust Account shall list more than two (2) donors, although contributions may be made to any particular account by an unlimited number of contributors. Additional contributions may be made at any time. The Missouri Family Trust may accept contributions to a Trust Account from any source, including trustees, personal representatives, personal custodians under Chapter 404, RSMo and other fiduciaries. The Missouri Family Trust may also accept contributions from life beneficiaries and their respective spouses, subject to the provisions of section 402.215(11), RSMo.

(B) Separate Trust Account for Beneficiary. The board of trustees shall hold the Trust Account, in trust for the benefit of the beneficiary as part of the Missouri Family Trust (the Trust) on the terms and conditions described in this rule, in the Agreement and as provided in sections 402.199–402.225, RSMo. The board of trustees shall maintain the Trust Account as a separate account.

(C) The beneficiary shall not have the power to assign, convey, alienate or otherwise encumber any interest acquired in the income or principal of the Trust Account, nor shall that income or the principal or any interest of the beneficiary therein be liable for any debt incurred by the beneficiary, nor shall the principal or income of a Trust Account be subject to seizure by any creditor of the beneficiary under any writ or proceeding in law or in equity, until that income or principal

shall have been actually paid over and delivered to the beneficiary (section 402.217(1), RSMo).

(D) Except for the right of a donor pursuant to section 402.215.2(4), RSMo, and the right of any acting cotrustee pursuant to section 402.215.2(5), RSMo, to withdraw all or a portion of the Trust Account, neither the donor nor any acting cotrustee shall have the right to sell assign, convey, alienate or otherwise encumber, for consideration or otherwise, any interest in the income or principal of the Trust Account, nor shall such income or the principal or any interest of any beneficiary thereunder be liable for any debt incurred by the donor or any acting cotrustee, nor shall the principal or income of the Trust Account be subject to seizure by any creditor of any donor or any acting cotrustee under any writ or proceeding in law or in equity (section 402.217(2), RSMo).

(2) Designation of Beneficiary, Cotrustee and Successor. The donors must designate a specific person as the beneficiary of the Trust Account. In addition, the donor may name a cotrustee, including the donor, and a successor or successors to the cotrustee, to act with the trustees on behalf of the beneficiary, provided, however, a beneficiary shall not be eligible to be a cotrustee or a successor cotrustee; provided, however, that court approval of the specific person designated as the beneficiary and as cotrustee or successor trustee shall be required in connection with any Trust Account created pursuant to section 473.657 or 475.093, RSMo.

(3) Annual Agreement on Use of Funds. The designated cotrustee with the consent of the board of trustees shall, from time to time but not less than annually, determine the amount of income or principal or both to be used to provide benefits and the nature and type of benefits to be provided for the beneficiary from the Trust Account.

(A) It is the purpose of the Trust Account and the Missouri Family Trust to supplement, not replace, any government benefits for the beneficiary's basic support to which that beneficiary may be entitled and to improve the quality of that beneficiary's life by providing him/her with those amenities which cannot otherwise be provided by public assistance or entitlement or other available sources.

(B) Permissible expenditures include, but are not limited to, more sophisticated dental, medical and diagnostic work or treatment than is otherwise available from public assistance, private rehabilitative training, supplementary education aid, entertainment, periodic vacations and outings, the transportation

of the beneficiary or of friends or relatives of the beneficiary to visit him/her, expenditures to foster the interests, talents and hobbies of the beneficiary, and expenditures to purchase personal property and services which will make life more comfortable and enjoyable for the beneficiary but which will not defeat his/her eligibility for public assistance. The board of trustees, in its discretion, may make payments for a person to accompany the beneficiary on vacations and outings and for the transportation of the beneficiary or of friends and relatives of the beneficiary to visit him/her. Income or principal, or both, may be used to pay funeral and burial costs of the beneficiary.

(C) The board of trustees may make payments and distributions from the Trust Account in any one (1) or more of the following ways as the board of trustees may deem advisable, in those amounts and for those uses as will not defeat the beneficiary's eligibility for public assistance, namely:

1. Directly to the beneficiary;
2. To the legal guardian of the beneficiary;
3. To any adult relative of the beneficiary to be held and expended by that relative for the support, education and welfare of the beneficiary;
4. To any adult relative of the beneficiary as custodian for that beneficiary pursuant to the Missouri Transfers to Minors Law, the Missouri Personal Custodian Law or any other statute of similar import; or
5. By the board of trustees itself expending that income or principal for the support, education, welfare and comfort of the beneficiary and, to that end, the board of trustees may make payments to any person, firm, corporation or governmental agency.

(D) Notwithstanding the provisions of this section (3) to the contrary, expenditures shall not be made from the Trust Account for the primary support or maintenance of the beneficiary, including his/her basic food, shelter and clothing being provided by state government and other governmental programs if, as a result, the beneficiary would no longer be eligible to receive public benefits or assistance to which s/he is then entitled.

(E) In the event that the board of trustees and the designated cotrustee shall be unable to agree either on the amount of income, principal, or both, from the Trust Account, to be used or the benefits to be provided, then either the board of trustees or the cotrustee shall have the right to request that the matter be resolved by arbitration, which shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The requesting party



shall send a written request for arbitration to the responding party and shall in such request set forth the name, address and telephone number of such requesting party's arbitrator. The responding party shall, within ten (10) days after receipt of the request for arbitration, set forth in writing to the requesting party the name, address and telephone number of the responding party's arbitrator. Copies of the request for arbitration and response shall be sent to the director of the department. If the two (2) designated arbitrators shall be unable to agree upon a third arbitrator within ten (10) days after the responding party shall have identified such party's arbitrator, then the director of the department shall designate the third arbitrator by written notice to the requesting and responding parties' arbitrators. The three (3) arbitrators shall meet, conduct a hearing, and render a decision within thirty (30) days after the appointment of the third arbitrator. A decision of the majority of the arbitrators shall be binding upon the requesting and responding parties. Each party shall pay the fees and expenses of such party's arbitrator and the fees and expenses of the third arbitrator shall be borne equally by the parties. Judgment on the arbitrators' award may be entered in any court of competent jurisdiction.

(4) Donor May Revoke or Withdraw. Any donor, except for the donor of a Trust Account created pursuant to section 473.657 or 475.093, RSMo, or 402.215.2(11), RSMo, may revoke any contribution to a Trust Account, in whole or in part, unless the donor shall have waived the right to revoke.

(A) The donor shall give thirty (30) days' written notice to the board of trustees of the amount to be returned to the donor and, except in the case of revocation in whole, the amount remaining in the Trust Account, after a partial withdrawal, shall not be less than the current minimum contribution required to open a Trust Account for a beneficiary.

(B) In the event that at the time of revocation or withdrawal from the Trust Account the beneficiary shall not have received any benefits provided by use of Trust Account income or principal, then an amount equal to one hundred percent (100%) of the amount requested shall be returned to the donor. In the case of complete revocation, any undistributed net income of the Trust Account shall be distributed to the charitable trust established, maintained and administered by the board of trustees pursuant to sections 402.199–402.225, RSMo (referred to as the charitable trust).

(C) In the event that at the time of revocation or withdrawal from the Trust Account the beneficiary shall have received any benefits provided by the use of Trust Account income or principal, then an amount equal to ninety percent (90%) of the amount requested shall be returned to the donor. The balance of the amount requested, and in the case of complete revocation, any undistributed net income together with the balance of the principal balance of the Trust Account shall be distributed to the charitable trust.

(D) Every notice of revocation must be signed by the donor(s) of the Trust Account, unless either of the donors has died or become incapacitated, in which event the surviving donor shall have the right to revoke.

(5) Cotrustee (Other Than Donor) May Withdraw. Any acting cotrustee, except a cotrustee of a Trust Account created pursuant to section 473.657 or 475.093 or 402.215.2(11), RSMo other than the original donor, shall have the right, for good and sufficient reason stated in thirty (30) days' written notice to the board of trustees and the department, to withdraw all or a portion of the principal balance of the Trust Account. In that event, the applicable portion of principal balance shall be distributed as set forth in section 402.215.2(7), RSMo, to the Successor Trust created pursuant to and described in section 402.215.2(5), RSMo, and the balance of the principal balance together with all undistributed net income of the Trust Account, shall be distributed to the charitable trust. In the event that the board of trustees and the cotrustee shall be unable to agree upon whether the cotrustee has stated a good and sufficient reason to make that withdrawal, then either the board of trustees or the cotrustee shall have the right to request that the matter be resolved by arbitration, as described in section (3) of this rule.

(6) Termination by Board of Trustees.

(A) Except in the cast of a Trust Account created pursuant to section 473.657 or 475.093 or 402.215.2(11), RSMo, if the beneficiary shall cease to have a disability or cease to be eligible for services and neither the donor nor the then acting cotrustee shall exercise his/her right to revoke pursuant to either section (4) or (5) of this rule, then the board of trustees, upon not fewer than thirty (30) days' written notice, may terminate the Trust Account and the balance in the Trust Account shall be distributed in accordance with the provisions of subsection 402.215.2(7), RSMo to the trustee of the Successor Trust to be held, administered, and distributed by such trustee in accordance with

the provisions of the successor trust described in section (13) of this rule.

(B) In the event that extenuating circumstances shall arise which, in the reasonable opinion of the board of trustees, make the continuation of the Trust Account for the beneficiary impractical, then, in that event, the board of trustees upon thirty (30) days' notice to the cotrustee, may terminate the Trust Account and the balance in the Trust Account shall be distributed in accordance with the provisions of section 402.215.2(4), RSMo, if the donor is living, or in accordance with the provisions of section 402.215.2(7), RSMo if the donor is not living. In the event that the board of trustees and the acting cotrustee shall be unable to agree upon whether the continuation of the Trust Account for the benefit of the beneficiary is impractical, then either the board of trustees or the cotrustee shall have the right to request that the matter be resolved by arbitration, as provided in section (3) of this rule.

(7) Distribution of Principal Balance of Trust Account at Termination.

(A) Termination by Board of Trustees, beneficiary received no benefits from Trust Account. If at the time of withdrawal or termination the beneficiary has not received any benefits provided by the use of the Trust Account income or principal, then an amount equal to ninety percent (90%) of the principal balance shall be distributed to the Successor Trust, and the balance of the principal balance together with all undistributed net income of the Trust Account shall be distributed to the charitable trust as provided in section 402.215.2(6) and (7), RSMo.

(B) Termination by Board of Trustees, beneficiary received benefits from Trust Account in effect for not more than five (5) years. If at the time of withdrawal or termination the beneficiary received benefits provided by the use of the Trust Account income or principal and the Trust Account has been in effect for a period of not more than five (5) years from the date of the first contribution, then an amount equal to ninety percent (90%) of the principal balance shall be distributed to the Successor Trust, and the balance of the principal balance together with all undistributed net income of the Trust Account shall be distributed to the charitable trust as provided in section 402.215.2(6) and (7), RSMo.

(C) Termination by Board of Trustees or cotrustee, beneficiary received benefits from Trust Account in effect for more than five (5) years. If at the time of withdrawal or termination the beneficiary has received benefits provided by the use of the Trust Account income or principal, and provided that the



Trust Account has been in effect for more than five (5) years from the date of the first contribution made to the Trust Account, then an amount equal to seventy-five percent (75%) of the principal balance shall be distributed to the Successor Trust, and the balance of the principal balance together with all undistributed net income of the Trust Account shall be distributed to the charitable trust as provided in section 402.215.2(6) or (7), RSMo.

(8) Death of Beneficiary.

(A) Except for a Trust Account created pursuant to section 473.657 or 475.093 or 402.215.2(9), (10) or (11), RSMo if the beneficiary dies before receiving any benefits provided by the use of Trust Account income or principal, then an amount equal to one hundred percent (100%) of the principal balance shall be distributed to that person(s) the donor shall have designated in the Agreement and any undistributed net income of the Trust Account shall be distributed to the charitable trust. If at the time of death the beneficiary shall have received benefits provided by the use of Trust Account income, principal, or both, then in that event, an amount equal to seventy-five percent (75%) of the principal balance shall be distributed to the person(s) designated by the donor in the Agreement and the balance of the principal balance together with all undistributed net income of the Trust Account, shall be distributed to the charitable trust.

(9) Trust Account Created by Distribution from a Personal Representative of an Estate.

(A) In the event the Trust Account is created as a result of a distribution from a personal representative of an estate of which the beneficiary is a distributee per section 473.657, RSMo, then if the beneficiary dies before receiving any benefits provided by the use of Trust Account income or principal, an amount equal to one hundred percent (100%) of the principal balance shall be distributed to such person or persons who are the beneficiary's heirs at law and the balance, if any, of the principal balance, together with all undistributed net income of the Trust Account, shall be distributed to the charitable trust.

(B) If at the time of death of the beneficiary the beneficiary shall have received benefits provided by the use of Trust Account income or principal or income and principal, then an amount equal to seventy-five percent (75%) of the principal balance, reduced by any distributions or encroachments of Trust Account principal previously made, shall be distributed to such person or persons who are the

beneficiary's heirs at law. The balance of the principal balance, together with all undistributed net income of the Trust Account, shall be distributed to the charitable trust.

(10) Trust Account Created as a Result of Recovery of Damages.

(A) In the event the Trust Account is created as a result of the recovery of damages by reason of a personal injury to the beneficiary, then if the beneficiary dies before receiving any benefits provided by the use of Trust Account income or principal, the state of Missouri shall receive all amounts remaining in the Trust Account up to an amount equal to the total medical assistance paid on behalf of such beneficiary under a state plan under Title 42 of the *United States Code*, and then to the extent there is any amount remaining in the Trust Account, an amount equal to one hundred percent (100%) of the principal balance shall be distributed to such person or persons who are the beneficiary's heirs at law. If there are no heirs, the balance, if any, of the principal balance, together with all undistributed net income of the Trust Account, shall be distributed to the charitable trust.

(B) If at the time of death of the beneficiary, the beneficiary shall have received benefits provided by the use of trust income or principal, or income and principal then the state of Missouri shall receive all amounts remaining in the Trust Account up to an amount equal to the total medical assistance paid on behalf of such beneficiary under a state plan under Title 42 of the *United States Code*, and then to the extent there is any amount remaining in the Trust Account, an amount equal to seventy-five percent (75%) of the principal balance shall be distributed to such person or persons who are the beneficiary's heirs at law. The balance of the principal balance, together with all undistributed net income of the Trust Account, shall be distributed to the charitable trust. If there are no heirs, the balance of the principal balance, together with all undistributed net income of the Trust Account, shall be distributed to the charitable trust.

(11) Trust Account Established with the Assets of the Beneficiary. In the event the Trust Account is established with the assets of the beneficiary by the beneficiary, a family member, the beneficiary's guardian, or pursuant to a court order, all in accordance with Title 42 of the *United States Code* section 1396p(d)(4)(C), then upon the death of the beneficiary the state of Missouri shall receive all amounts remaining in the Trust Account up to an amount equal to the total medical

assistance paid on behalf of such beneficiary under a state plan under Title 42 of the *United States Code*, and then to the extent there is any amount remaining in the Trust Account, an amount equal to seventy-five percent (75%) of the principal balance shall be distributed to such person or persons who are the beneficiary's heirs at law and the balance of the principal balance, together with all undistributed net income of the Trust Account, shall be distributed to the charitable trust. If there are no heirs, the balance of the principal balance, together with all undistributed net income of the Trust Account, shall be distributed to the charitable trust.

(12) Voluntary Agreement Regarding Distribution. Notwithstanding the provisions of section 402.215(4) to (8), RSMo to the contrary, the donor may voluntarily agree that a smaller percentage of the principal balance of the Trust Account established by such donor than is provided in this rule be returned to the donor or distributed to the Successor Trust, as the case may be; and may agree that a corresponding larger percentage of the principal balance in such Trust Account be distributed to the charitable trust or to a designated restricted account within the charitable trust.

(13) Successor Trust. Upon receipt of a notice of withdrawal from a designated cotrustee, other than the original donor, and a determination by the board of trustees that the reason for that withdrawal is good and sufficient, or upon issuance of notice of termination by the board of trustees, the board of trustees shall distribute and pay over to the designated trustee of the Successor Trust the applicable portion of the principal balance of the Trust Account as set forth in section (7), (10) or (11) of this rule, whichever is applicable, provided however, that court approval of distribution to a successor trustee shall be required with regard to any Trust Account created pursuant to section 473.657, or 475.093, RSMo.

(A) The designated trustee of the Successor Trust shall hold, administer and distribute the principal and income of the Successor Trust, in his/her discretion, for the maintenance, support, health, education and general well being of the beneficiary, recognizing that it is the purpose of the Successor Trust to supplement, not replace, any government benefits for the beneficiary's basic support to which that beneficiary may be entitled and to improve the quality of that beneficiary's life by providing him/her with those amenities which cannot otherwise be provided by public assistance or entitlement or other available sources. Permissible expenditures include,



but are not limited to, more sophisticated dental, medical and diagnostic work or treatment than is otherwise available from public assistance, private rehabilitative training, supplementary education aid, entertainment, periodic vacations and outings, expenditures to foster the interests, talents and hobbies of the beneficiary, and expenditures to purchase personal property and services which will make life more comfortable and enjoyable for the beneficiary but which will not defeat his/her eligibility for public assistance. The trustee of the Successor Trust, in his/her discretion, may make payments for a person to accompany the beneficiary on vacations and outings and for the transportation of the beneficiary or of friends and relatives of the beneficiary to visit him/her. Quarterly any undistributed income shall be added to the principal. Expenditures shall not be made for the primary support or maintenance of the beneficiary, including his/her basic food, shelter and clothing, if, as a result, the beneficiary would no longer be eligible to receive public benefits or assistance to which s/he is then entitled. On the death of the beneficiary, the entire balance of the Successor Trust shall be distributed to that person(s) as the donor shall have designated.

(B) Powers of the Trustee of the Successor Trust. The trustee of the Successor Trust shall have all powers granted to trustees acting pursuant to Chapter 456, RSMo and shall have any powers specifically granted to the trustee of Successor Trust under sections 402.199–402.225, RSMo.

(14) Compensation of Trustees.

(A) The board of trustees may charge a reasonable fee to pay the costs and expenses of administration and organization of the Trust Account in accordance with 21 CSR 10-4.010.

(B) The designated cotrustee of the Trust Account and the trustee of the Successor Trust shall be entitled to reasonable compensation for his/her services, unless otherwise provided in the Agreement. Any corporate trustee of the Trust Account or Successor Trust shall be entitled to compensation in accordance with its published schedule of fees in effect at the time services are rendered. No trustee shall be required to audit or examine the books of a prior trustee and no trustee shall be required to post bond as a condition of serving as a trustee.

(15) Responsibility for Investments. The responsibility and authority for investment and management of Trust Account funds shall be vested in the board of trustees. The board of trustees shall have full power and authori-

ty to manage and control the Trust Account funds except, if the Trust Account balance is ten thousand dollars (\$10,000) or more, the donor shall have the right to select investments, in accordance with the Investment Options Agreement executed by the donor and the board of trustees. The income earned, after deducting administrative expenses of the Trust Account and of the board of trustees, shall be credited to the accounts of the respective beneficiaries as provided in sections 402.199–402.225, RSMo.

(16) Powers of the Board of Trustees. The board of trustees shall have all powers granted to trustees acting pursuant to Chapter 456, RSMo and shall have any powers specifically granted to the board of trustees pursuant to sections 402.199–402.225, RSMo. The board of trustees shall have authority to appoint investment counselors, managers and advisors and to pay reasonable fees for those services. The provisions of section 456.8-813, RSMo regarding the duty to inform and report to beneficiaries shall not, except as mandated under section 456.1-105, RSMo, apply to the Missouri Family Trust or the Trust Account.

*AUTHORITY: sections 402.210.6, RSMo 2000 and 402.215.2(1), RSMo Supp. 2004.\* Original rule filed July 30, 1992, effective April 8, 1993. Amended: Filed Nov. 2, 1994, effective March 30, 1995. Amended: Filed April 11, 1997, effective Sept. 30, 1997. Amended: Filed April 29, 2005, effective Dec. 30, 2005.*

*\*Original authority: 402.210.6, RSMo 1989, amended 1991, 1993, 1999 and 402.215(1), RSMo 1989, amended 1991, 1993, 1996, 1998, 1999, 2004.*