

HOUSE BILL NO. 471

INTRODUCED BY R. JOHNSON, HALLIGAN

IN THE HOUSE

JANUARY 30, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON BUSINESS & ECONOMIC DEVELOPMENT.

JANUARY 31, 1991                   FIRST READING.

FEBRUARY 6, 1991                   COMMITTEE RECOMMEND BILL  
DO PASS. REPORT ADOPTED.

FEBRUARY 7, 1991                   PRINTING REPORT.

FEBRUARY 9, 1991                   SECOND READING, DO PASS.

FEBRUARY 11, 1991                  ENGROSSING REPORT.

FEBRUARY 12, 1991                  THIRD READING, PASSED.  
AYES, 95; NOES, 1.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 13, 1991                  INTRODUCED AND REFERRED TO COMMITTEE  
ON JUDICIARY.

FIRST READING.

MARCH 18, 1991                    COMMITTEE RECOMMEND BILL BE  
CONCURRED IN. REPORT ADOPTED.

MARCH 20, 1991                    SECOND READING, CONCURRED IN.

MARCH 21, 1991                    THIRD READING, CONCURRED IN.  
AYES, 49; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 22, 1991                    RECEIVED FROM SENATE.

SENT TO ENROLLING.

MARCH 26, 1991                    REPORTED CORRECTLY ENROLLED.

MARCH 27, 1991                    SIGNED BY PRESIDENT.

SIGNED BY SPEAKER.

MARCH 27, 1991

DELIVERED TO GOVERNOR.

APRIL 1, 1991

RETURNED FROM GOVERNOR WITH  
RECOMMENDED AMENDMENTS.

APRIL 8, 1991

SECOND READING, GOVERNOR'S  
AMENDMENTS CONCURRED IN.

APRIL 9, 1991

THIRD READING, GOVERNOR'S  
AMENDMENTS CONCURRED IN.

IN THE SENATE

APRIL 17, 1991

SECOND READING, GOVERNOR'S  
AMENDMENTS CONCURRED IN.

APRIL 18, 1991

THIRD READING, GOVERNOR'S  
AMENDMENTS CONCURRED IN.

IN THE HOUSE

APRIL 19, 1991

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 471  
 2 INTRODUCED BY John A. Berg  
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 5 LAW RELATING TO TRUSTS TO CLARIFY THAT A TRUST INCLUDES A  
 6 TRUST CREATED IN CONNECTION WITH CERTAIN BONDS; CLARIFYING  
 7 THAT THE DESIGNATION OF A TRUST IN A CONVEYANCE VESTS THE  
 8 ESTATE IN THE TRUSTEE; AMENDING SECTIONS 72-33-108 AND  
 9 72-36-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10  
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 **Section 1.** Section 72-33-108, MCA, is amended to read:

13 "72-33-108. Definitions. As used in chapters 33 through  
 14 36, unless the context requires otherwise, the following  
 15 definitions apply:

16 (1) "Beneficiary" means a person who has any present or  
 17 future interest, vested or contingent, and also includes the  
 18 owner of an interest by assignment or other transfer and, as  
 19 it relates to a charitable trust, includes any person  
 20 entitled to enforce the trust.

21 (2) "Person" means an individual, a corporation, an  
 22 organization, or other legal entity.

23 (3) "Property" includes both real and personal property  
 24 or any interest therein and means anything that may be the  
 25 subject of ownership.

1 (4) "Trust" when not qualified by the word "resulting"  
 2 or "constructive", includes any express trust, private or  
 3 charitable, with additions thereto, wherever and however  
 4 created. It also includes a trust created or determined by  
 5 judgment or decree under which the trust is to be  
 6 administered in the manner of an express trust and, unless  
 7 otherwise provided in the trust instrument, a trust  
 8 established in connection with bonds issued under Title 90,  
 9 chapters 2 and 4 through 7. The term does not include  
 10 conservatorships, personal representatives, custodial  
 11 arrangements pursuant to chapter 26 of this title, business  
 12 trusts providing for certificates to be issued to  
 13 beneficiaries, common trust funds, voting trusts, security  
 14 arrangements, liquidation trusts, and trusts for the primary  
 15 purpose of paying debts, dividends, interest, salaries,  
 16 wages, profits, pensions, or employee benefits of any kind  
 17 and any arrangement under which a person is nominee or  
 18 escrowee for another.

19 (5) "Trustee" means the person holding property in  
 20 trust. The term includes an original, additional, or  
 21 successor trustee, whether or not appointed or confirmed by  
 22 a court.

23 (6) "Trustor" means the person who creates a trust.

24 (7) "Trust company" means an entity which has qualified  
 25 to engage in and conduct a trust business in this state.

1 (8) "Trust property" means the property held in trust."

2 **Section 2.** Section 72-36-206, MCA, is amended to read:

3 **"72-36-206. Effects on real property transactions.** (1)

4 This section relates only to conveyances of real property to  
5 or from a trust, and supplements, but does not modify other  
6 substantive provisions of chapters 33 through 36 relating to  
7 the creation or validity of trusts. This section does not  
8 affect conveyances recorded prior to October 1, 1989.

9 (2) Except as otherwise provided in chapters 33 through  
10 36, a conveyance of real property to a trustee designated as  
11 such in the conveyance vests the whole estate conveyed in  
12 the trustee, subject only to the trustee's duties. The  
13 beneficiaries of the trust take no estate or interest in the  
14 real property, but may determine or enforce the terms of the  
15 trust as provided in chapters 33 through 36.

16 (3) An instrument creating or amending a trust need not  
17 be recorded, but may be if properly acknowledged.

18 (4) If there is no clear reference to or designation of  
19 a grantee as trustee in a conveyance (nor in a separately  
20 recorded instrument recorded in the same county as the  
21 conveyance and describing the same property as described in  
22 the conveyance), the conveyance shall be considered to be  
23 absolute to the grantee, in favor of purchasers or  
24 encumbrancers from the grantee, who were without actual  
25 knowledge and who acted for a valuable consideration,

1 despite any valid trust which may exist.

2 (5) Unless limitations upon a trustee's power or  
3 authority are set forth in the recorded conveyance of real  
4 property to the trustee or in a separate trust instrument  
5 (or portion thereof, or abstract thereof) recorded in the  
6 same county, there are no limitations upon the trustee's  
7 power or authority to convey or encumber the real property  
8 in favor of third persons who were without actual knowledge  
9 and who acted for a valuable consideration. A separate trust  
10 instrument incorporated by reference in a conveyance to a  
11 trustee cannot limit the trustee's power or authority to  
12 convey or encumber unless the limitations are set forth in  
13 the trust instrument (or portion thereof or abstract  
14 thereof) which is also recorded in the county where the real  
15 property is located. An amendment to a recorded trust  
16 instrument may not affect the power or authority of a  
17 trustee to convey or encumber unless it is also recorded in  
18 the same place.

19 (6) A subsequent conveyance from a person designated in  
20 the original conveyance as trustee (or from his successor  
21 trustee) conveys the whole estate vested in the trustee,  
22 except as limited by the terms of the conveyance. The  
23 identity of any successor trustee may be established by a  
24 recorded affidavit of the successor trustee specifying his  
25 name and address and the date and circumstances of his

1 succession, and confirming that he is currently lawfully  
2 serving in such capacity.

3 (7) In an action or proceeding by a third person  
4 involving the real property granted to a trustee, the person  
5 designated as trustee in the original conveyance, or the  
6 successor trustee as established in subsection (6), or, if  
7 none, the person then actually serving as trustee, or, if  
8 none, any beneficiary designated by the court to represent  
9 the interests of the beneficiaries, shall be considered the  
10 only necessary representative of the trust and of all  
11 persons with an interest therein. A judgment is binding upon  
12 and conclusive against the trust and all persons interested  
13 therein as to all matters finally adjudicated in the  
14 judgment.

15 (8) The designation of the name of a trust in a  
16 recorded conveyance vests the estate in the trustee of the  
17 trust. A subsequent conveyance may be made by the trustee.  
18 The identity of a party serving as trustee may be  
19 established by a recorded affidavit of the party, specifying  
20 his name and address and confirming that he is currently  
21 serving as the trustee."

22 NEW SECTION. Section 3. Effective date. [This act] is  
23 effective on passage and approval.

-End-

APPROVED BY COMM. ON BUSINESS AND ECONOMIC DEVELOPMENT

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

*House* BILL NO. *471*  
INTRODUCED BY *[Signature]*

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAW RELATING TO TRUSTS TO CLARIFY THAT A TRUST INCLUDES A TRUST CREATED IN CONNECTION WITH CERTAIN BONDS; CLARIFYING THAT THE DESIGNATION OF A TRUST IN A CONVEYANCE VESTS THE ESTATE IN THE TRUSTEE; AMENDING SECTIONS 72-33-108 AND 72-36-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 72-33-108, MCA, is amended to read:

**\*72-33-108. Definitions.** As used in chapters 33 through 36, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" means a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and, as it relates to a charitable trust, includes any person entitled to enforce the trust.

(2) "Person" means an individual, a corporation, an organization, or other legal entity.

(3) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

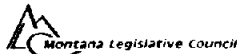
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(4) "Trust" when not qualified by the word "resulting" or "constructive", includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust and, unless otherwise provided in the trust instrument, a trust established in connection with bonds issued under Title 90, chapters 2 and 4 through 7. The term does not include conservatorships, personal representatives, custodial arrangements pursuant to chapter 26 of this title, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind and any arrangement under which a person is nominee or escrowee for another.

(5) "Trustee" means the person holding property in trust. The term includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

(6) "Trustor" means the person who creates a trust.

(7) "Trust company" means an entity which has qualified to engage in and conduct a trust business in this state.



1 (8) "Trust property" means the property held in trust."

2 **Section 2.** Section 72-36-206, MCA, is amended to read:

3 **"72-36-206. Effects on real property transactions.** (1)

4 This section relates only to conveyances of real property to  
5 or from a trust, and supplements, but does not modify other  
6 substantive provisions of chapters 33 through 36 relating to  
7 the creation or validity of trusts. This section does not  
8 affect conveyances recorded prior to October 1, 1989.

9 (2) Except as otherwise provided in chapters 33 through  
10 36, a conveyance of real property to a trustee designated as  
11 such in the conveyance vests the whole estate conveyed in  
12 the trustee, subject only to the trustee's duties. The  
13 beneficiaries of the trust take no estate or interest in the  
14 real property, but may determine or enforce the terms of the  
15 trust as provided in chapters 33 through 36.

16 (3) An instrument creating or amending a trust need not  
17 be recorded, but may be if properly acknowledged.

18 (4) If there is no clear reference to or designation of  
19 a grantee as trustee in a conveyance (nor in a separately  
20 recorded instrument recorded in the same county as the  
21 conveyance and describing the same property as described in  
22 the conveyance), the conveyance shall be considered to be  
23 absolute to the grantee, in favor of purchasers or  
24 encumbrancers from the grantee, who were without actual  
25 knowledge and who acted for a valuable consideration,

1 despite any valid trust which may exist.

2 (5) Unless limitations upon a trustee's power or  
3 authority are set forth in the recorded conveyance of real  
4 property to the trustee or in a separate trust instrument  
5 (or portion thereof, or abstract thereof) recorded in the  
6 same county, there are no limitations upon the trustee's  
7 power or authority to convey or encumber the real property  
8 in favor of third persons who were without actual knowledge  
9 and who acted for a valuable consideration. A separate trust  
10 instrument incorporated by reference in a conveyance to a  
11 trustee cannot limit the trustee's power or authority to  
12 convey or encumber unless the limitations are set forth in  
13 the trust instrument (or portion thereof or abstract  
14 thereof) which is also recorded in the county where the real  
15 property is located. An amendment to a recorded trust  
16 instrument may not affect the power or authority of a  
17 trustee to convey or encumber unless it is also recorded in  
18 the same place.

19 (6) A subsequent conveyance from a person designated in  
20 the original conveyance as trustee (or from his successor  
21 trustee) conveys the whole estate vested in the trustee,  
22 except as limited by the terms of the conveyance. The  
23 identity of any successor trustee may be established by a  
24 recorded affidavit of the successor trustee specifying his  
25 name and address and the date and circumstances of his

1 succession, and confirming that he is currently lawfully  
2 serving in such capacity.

3 (7) In an action or proceeding by a third person  
4 involving the real property granted to a trustee, the person  
5 designated as trustee in the original conveyance, or the  
6 successor trustee as established in subsection (6), or, if  
7 none, the person then actually serving as trustee, or, if  
8 none, any beneficiary designated by the court to represent  
9 the interests of the beneficiaries, shall be considered the  
10 only necessary representative of the trust and of all  
11 persons with an interest therein. A judgment is binding upon  
12 and conclusive against the trust and all persons interested  
13 therein as to all matters finally adjudicated in the  
14 judgment.

15 (8) The designation of the name of a trust in a  
16 recorded conveyance vests the estate in the trustee of the  
17 trust. A subsequent conveyance may be made by the trustee.  
18 The identity of a party serving as trustee may be  
19 established by a recorded affidavit of the party, specifying  
20 his name and address and confirming that he is currently  
21 serving as the trustee."

22 NEW SECTION. Section 3. Effective date. [This act] is  
23 effective on passage and approval.

-End-



1 *House* BILL NO. *471*  
 2 INTRODUCED BY *[Signature]*  
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 5 LAW RELATING TO TRUSTS TO CLARIFY THAT A TRUST INCLUDES A  
 6 TRUST CREATED IN CONNECTION WITH CERTAIN BONDS; CLARIFYING  
 7 THAT THE DESIGNATION OF A TRUST IN A CONVEYANCE VESTS THE  
 8 ESTATE IN THE TRUSTEE; AMENDING SECTIONS 72-33-108 AND  
 9 72-36-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10  
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 **Section 1.** Section 72-33-108, MCA, is amended to read:

13 **\*72-33-108. Definitions.** As used in chapters 33 through  
 14 36, unless the context requires otherwise, the following  
 15 definitions apply:

16 (1) "Beneficiary" means a person who has any present or  
 17 future interest, vested or contingent, and also includes the  
 18 owner of an interest by assignment or other transfer and, as  
 19 it relates to a charitable trust, includes any person  
 20 entitled to enforce the trust.

21 (2) "Person" means an individual, a corporation, an  
 22 organization, or other legal entity.

23 (3) "Property" includes both real and personal property  
 24 or any interest therein and means anything that may be the  
 25 subject of ownership.

1 (4) "Trust" when not qualified by the word "resulting"  
 2 or "constructive", includes any express trust, private or  
 3 charitable, with additions thereto, wherever and however  
 4 created. It also includes a trust created or determined by  
 5 judgment or decree under which the trust is to be  
 6 administered in the manner of an express trust and, unless  
 7 otherwise provided in the trust instrument, a trust  
 8 established in connection with bonds issued under Title 90,  
 9 chapters 2 and 4 through 7. The term does not include  
 10 conservatorships, personal representatives, custodial  
 11 arrangements pursuant to chapter 26 of this title, business  
 12 trusts providing for certificates to be issued to  
 13 beneficiaries, common trust funds, voting trusts, security  
 14 arrangements, liquidation trusts, and trusts for the primary  
 15 purpose of paying debts, dividends, interest, salaries,  
 16 wages, profits, pensions, or employee benefits of any kind  
 17 and any arrangement under which a person is nominee or  
 18 escrowee for another.

19 (5) "Trustee" means the person holding property in  
 20 trust. The term includes an original, additional, or  
 21 successor trustee, whether or not appointed or confirmed by  
 22 a court.

23 (6) "Trustor" means the person who creates a trust.

24 (7) "Trust company" means an entity which has qualified  
 25 to engage in and conduct a trust business in this state.



1 (8) "Trust property" means the property held in trust."

2 **Section 2.** Section 72-36-206, MCA, is amended to read:

3 **"72-36-206. Effects on real property transactions. (1)**

4 This section relates only to conveyances of real property to  
5 or from a trust, and supplements, but does not modify other  
6 substantive provisions of chapters 33 through 36 relating to  
7 the creation or validity of trusts. This section does not  
8 affect conveyances recorded prior to October 1, 1989.

9 (2) Except as otherwise provided in chapters 33 through  
10 36, a conveyance of real property to a trustee designated as  
11 such in the conveyance vests the whole estate conveyed in  
12 the trustee, subject only to the trustee's duties. The  
13 beneficiaries of the trust take no estate or interest in the  
14 real property, but may determine or enforce the terms of the  
15 trust as provided in chapters 33 through 36.

16 (3) An instrument creating or amending a trust need not  
17 be recorded, but may be if properly acknowledged.

18 (4) If there is no clear reference to or designation of  
19 a grantee as trustee in a conveyance (nor in a separately  
20 recorded instrument recorded in the same county as the  
21 conveyance and describing the same property as described in  
22 the conveyance), the conveyance shall be considered to be  
23 absolute to the grantee, in favor of purchasers or  
24 encumbrancers from the grantee, who were without actual  
25 knowledge and who acted for a valuable consideration,

1 despite any valid trust which may exist.

2 (5) Unless limitations upon a trustee's power or  
3 authority are set forth in the recorded conveyance of real  
4 property to the trustee or in a separate trust instrument  
5 (or portion thereof, or abstract thereof) recorded in the  
6 same county, there are no limitations upon the trustee's  
7 power or authority to convey or encumber the real property  
8 in favor of third persons who were without actual knowledge  
9 and who acted for a valuable consideration. A separate trust  
10 instrument incorporated by reference in a conveyance to a  
11 trustee cannot limit the trustee's power or authority to  
12 convey or encumber unless the limitations are set forth in  
13 the trust instrument (or portion thereof or abstract  
14 thereof) which is also recorded in the county where the real  
15 property is located. An amendment to a recorded trust  
16 instrument may not affect the power or authority of a  
17 trustee to convey or encumber unless it is also recorded in  
18 the same place.

19 (6) A subsequent conveyance from a person designated in  
20 the original conveyance as trustee (or from his successor  
21 trustee) conveys the whole estate vested in the trustee,  
22 except as limited by the terms of the conveyance. The  
23 identity of any successor trustee may be established by a  
24 recorded affidavit of the successor trustee specifying his  
25 name and address and the date and circumstances of his

1 succession, and confirming that he is currently lawfully  
2 serving in such capacity.

3 (7) In an action or proceeding by a third person  
4 involving the real property granted to a trustee, the person  
5 designated as trustee in the original conveyance, or the  
6 successor trustee as established in subsection (6), or, if  
7 none, the person then actually serving as trustee, or, if  
8 none, any beneficiary designated by the court to represent  
9 the interests of the beneficiaries, shall be considered the  
10 only necessary representative of the trust and of all  
11 persons with an interest therein. A judgment is binding upon  
12 and conclusive against the trust and all persons interested  
13 therein as to all matters finally adjudicated in the  
14 judgment.

15 (8) The designation of the name of a trust in a  
16 recorded conveyance vests the estate in the trustee of the  
17 trust. A subsequent conveyance may be made by the trustee.  
18 The identity of a party serving as trustee may be  
19 established by a recorded affidavit of the party, specifying  
20 his name and address and confirming that he is currently  
21 serving as the trustee."

22 NEW SECTION. Section 3. Effective date. [This act] is  
23 effective on passage and approval.

-End-

## 1 HOUSE BILL NO. 471

2 INTRODUCED BY R. JOHNSON, HALLIGAN

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
5 LAW RELATING TO TRUSTS TO CLARIFY THAT A TRUST INCLUDES A  
6 TRUST CREATED IN CONNECTION WITH CERTAIN BONDS; CLARIFYING  
7 THAT THE DESIGNATION OF A TRUST IN A CONVEYANCE VESTS THE  
8 ESTATE IN THE TRUSTEE; AMENDING SECTIONS 72-33-108 AND  
9 72-36-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:12 **Section 1.** Section 72-33-108, MCA, is amended to read:13 "72-33-108. **Definitions.** As used in chapters 33 through  
14 36, unless the context requires otherwise, the following  
15 definitions apply:16 (1) "Beneficiary" means a person who has any present or  
17 future interest, vested or contingent, and also includes the  
18 owner of an interest by assignment or other transfer and, as  
19 it relates to a charitable trust, includes any person  
20 entitled to enforce the trust.21 (2) "Person" means an individual, a corporation, an  
22 organization, or other legal entity.23 (3) "Property" includes both real and personal property  
24 or any interest therein and means anything that may be the  
25 subject of ownership.

1 (4) "Trust" when not qualified by the word "resulting"  
2 or "constructive", includes any express trust, private or  
3 charitable, with additions thereto, wherever and however  
4 created. It also includes a trust created or determined by  
5 judgment or decree under which the trust is to be  
6 administered in the manner of an express trust and, unless  
7 otherwise provided in the trust instrument, a trust  
8 established in connection with bonds issued under Title 90,  
9 chapters 2 and 4 through 7. The term does not include  
10 conservatorships, personal representatives, custodial  
11 arrangements pursuant to chapter 26 of this title, business  
12 trusts providing for certificates to be issued to  
13 beneficiaries, common trust funds, voting trusts, security  
14 arrangements, liquidation trusts, and trusts for the primary  
15 purpose of paying debts, dividends, interest, salaries,  
16 wages, profits, pensions, or employee benefits of any kind  
17 and any arrangement under which a person is nominee or  
18 escrowee for another.

19 (5) "Trustee" means the person holding property in  
20 trust. The term includes an original, additional, or  
21 successor trustee, whether or not appointed or confirmed by  
22 a court.

23 (6) "Trustor" means the person who creates a trust.

24 (7) "Trust company" means an entity which has qualified  
25 to engage in and conduct a trust business in this state.

1 (8) "Trust property" means the property held in trust."

2 **Section 2.** Section 72-36-206, MCA, is amended to read:

3 **"72-36-206. Effects on real property transactions.** (1)

4 This section relates only to conveyances of real property to  
5 or from a trust, and supplements, but does not modify other  
6 substantive provisions of chapters 33 through 36 relating to  
7 the creation or validity of trusts. This section does not  
8 affect conveyances recorded prior to October 1, 1989.

9 (2) Except as otherwise provided in chapters 33 through  
10 36, a conveyance of real property to a trustee designated as  
11 such in the conveyance vests the whole estate conveyed in  
12 the trustee, subject only to the trustee's duties. The  
13 beneficiaries of the trust take no estate or interest in the  
14 real property, but may determine or enforce the terms of the  
15 trust as provided in chapters 33 through 36.

16 (3) An instrument creating or amending a trust need not  
17 be recorded, but may be if properly acknowledged.

18 (4) If there is no clear reference to or designation of  
19 a grantee as trustee in a conveyance (nor in a separately  
20 recorded instrument recorded in the same county as the  
21 conveyance and describing the same property as described in  
22 the conveyance), the conveyance shall be considered to be  
23 absolute to the grantee, in favor of purchasers or  
24 encumbrancers from the grantee, who were without actual  
25 knowledge and who acted for a valuable consideration,

1 despite any valid trust which may exist.

2 (5) Unless limitations upon a trustee's power or  
3 authority are set forth in the recorded conveyance of real  
4 property to the trustee or in a separate trust instrument  
5 (or portion thereof, or abstract thereof) recorded in the  
6 same county, there are no limitations upon the trustee's  
7 power or authority to convey or encumber the real property  
8 in favor of third persons who were without actual knowledge  
9 and who acted for a valuable consideration. A separate trust  
10 instrument incorporated by reference in a conveyance to a  
11 trustee cannot limit the trustee's power or authority to  
12 convey or encumber unless the limitations are set forth in  
13 the trust instrument (or portion thereof or abstract  
14 thereof) which is also recorded in the county where the real  
15 property is located. An amendment to a recorded trust  
16 instrument may not affect the power or authority of a  
17 trustee to convey or encumber unless it is also recorded in  
18 the same place.

19 (6) A subsequent conveyance from a person designated in  
20 the original conveyance as trustee (or from his successor  
21 trustee) conveys the whole estate vested in the trustee,  
22 except as limited by the terms of the conveyance. The  
23 identity of any successor trustee may be established by a  
24 recorded affidavit of the successor trustee specifying his  
25 name and address and the date and circumstances of his

1 succession, and confirming that he is currently lawfully  
2 serving in such capacity.

3 (7) In an action or proceeding by a third person  
4 involving the real property granted to a trustee, the person  
5 designated as trustee in the original conveyance, or the  
6 successor trustee as established in subsection (6), or, if  
7 none, the person then actually serving as trustee, or, if  
8 none, any beneficiary designated by the court to represent  
9 the interests of the beneficiaries, shall be considered the  
10 only necessary representative of the trust and of all  
11 persons with an interest therein. A judgment is binding upon  
12 and conclusive against the trust and all persons interested  
13 therein as to all matters finally adjudicated in the  
14 judgment.

15 (8) The designation of the name of a trust in a  
16 recorded conveyance vests the estate in the trustee of the  
17 trust. A subsequent conveyance may be made by the trustee.  
18 The identity of a party serving as trustee may be  
19 established by a recorded affidavit of the party, specifying  
20 his name and address and confirming that he is currently  
21 serving as the trustee."

22 NEW SECTION. Section 3. Effective date. [This act] is  
23 effective on passage and approval.

-End-

GOVERNOR'S AMENDMENTS TO  
HOUSE BILL 471  
(REFERENCE COPY, AS AMENDED)  
APRIL 1, 1991

1. Page 5, line 19  
Following: "party"  
Insert: "or other recorded instrument"
  
2. Page 5, line 20  
Strike: "his"  
Insert: "the trustee's"

Gov. Amend.  
HB 471

## 1 HOUSE BILL NO. 471

2 INTRODUCED BY R. JOHNSON, HALLIGAN

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
5 LAW RELATING TO TRUSTS TO CLARIFY THAT A TRUST INCLUDES A  
6 TRUST CREATED IN CONNECTION WITH CERTAIN BONDS; CLARIFYING  
7 THAT THE DESIGNATION OF A TRUST IN A CONVEYANCE VESTS THE  
8 ESTATE IN THE TRUSTEE; AMENDING SECTIONS 72-33-108 AND  
9 72-36-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:12 **Section 1.** Section 72-33-108, MCA, is amended to read:13 **"72-33-108. Definitions.** As used in chapters 33 through  
14 36, unless the context requires otherwise, the following  
15 definitions apply:16 (1) "Beneficiary" means a person who has any present or  
17 future interest, vested or contingent, and also includes the  
18 owner of an interest by assignment or other transfer and, as  
19 it relates to a charitable trust, includes any person  
20 entitled to enforce the trust.21 (2) "Person" means an individual, a corporation, an  
22 organization, or other legal entity.23 (3) "Property" includes both real and personal property  
24 or any interest therein and means anything that may be the  
25 subject of ownership.

1 (4) "Trust" when not qualified by the word "resulting"  
2 or "constructive", includes any express trust, private or  
3 charitable, with additions thereto, wherever and however  
4 created. It also includes a trust created or determined by  
5 judgment or decree under which the trust is to be  
6 administered in the manner of an express trust and, unless  
7 otherwise provided in the trust instrument, a trust  
8 established in connection with bonds issued under Title 90,  
9 chapters 2 and 4 through 7. The term does not include  
10 conservatorships, personal representatives, custodial  
11 arrangements pursuant to chapter 26 of this title, business  
12 trusts providing for certificates to be issued to  
13 beneficiaries, common trust funds, voting trusts, security  
14 arrangements, liquidation trusts, and trusts for the primary  
15 purpose of paying debts, dividends, interest, salaries,  
16 wages, profits, pensions, or employee benefits of any kind  
17 and any arrangement under which a person is nominee or  
18 escrowee for another.

19 (5) "Trustee" means the person holding property in  
20 trust. The term includes an original, additional, or  
21 successor trustee, whether or not appointed or confirmed by  
22 a court.

23 (6) "Trustor" means the person who creates a trust.

24 (7) "Trust company" means an entity which has qualified  
25 to engage in and conduct a trust business in this state.



1 (8) "Trust property" means the property held in trust."

2 **Section 2.** Section 72-36-206, MCA, is amended to read:

3 **"72-36-206. Effects on real property transactions.** (1)

4 This section relates only to conveyances of real property to  
5 or from a trust, and supplements, but does not modify other  
6 substantive provisions of chapters 33 through 36 relating to  
7 the creation or validity of trusts. This section does not  
8 affect conveyances recorded prior to October 1, 1989.

9 (2) Except as otherwise provided in chapters 33 through  
10 36, a conveyance of real property to a trustee designated as  
11 such in the conveyance vests the whole estate conveyed in  
12 the trustee, subject only to the trustee's duties. The  
13 beneficiaries of the trust take no estate or interest in the  
14 real property, but may determine or enforce the terms of the  
15 trust as provided in chapters 33 through 36.

16 (3) An instrument creating or amending a trust need not  
17 be recorded, but may be if properly acknowledged.

18 (4) If there is no clear reference to or designation of  
19 a grantee as trustee in a conveyance (nor in a separately  
20 recorded instrument recorded in the same county as the  
21 conveyance and describing the same property as described in  
22 the conveyance), the conveyance shall be considered to be  
23 absolute to the grantee, in favor of purchasers or  
24 encumbrancers from the grantee, who were without actual  
25 knowledge and who acted for a valuable consideration,

1 despite any valid trust which may exist.

2 (5) Unless limitations upon a trustee's power or  
3 authority are set forth in the recorded conveyance of real  
4 property to the trustee or in a separate trust instrument  
5 (or portion thereof, or abstract thereof) recorded in the  
6 same county, there are no limitations upon the trustee's  
7 power or authority to convey or encumber the real property  
8 in favor of third persons who were without actual knowledge  
9 and who acted for a valuable consideration. A separate trust  
10 instrument incorporated by reference in a conveyance to a  
11 trustee cannot limit the trustee's power or authority to  
12 convey or encumber unless the limitations are set forth in  
13 the trust instrument (or portion thereof or abstract  
14 thereof) which is also recorded in the county where the real  
15 property is located. An amendment to a recorded trust  
16 instrument may not affect the power or authority of a  
17 trustee to convey or encumber unless it is also recorded in  
18 the same place.

19 (6) A subsequent conveyance from a person designated in  
20 the original conveyance as trustee (or from his successor  
21 trustee) conveys the whole estate vested in the trustee,  
22 except as limited by the terms of the conveyance. The  
23 identity of any successor trustee may be established by a  
24 recorded affidavit of the successor trustee specifying his  
25 name and address and the date and circumstances of his

1 succession, and confirming that he is currently lawfully  
2 serving in such capacity.

3 (7) In an action or proceeding by a third person  
4 involving the real property granted to a trustee, the person  
5 designated as trustee in the original conveyance, or the  
6 successor trustee as established in subsection (6), or, if  
7 none, the person then actually serving as trustee, or, if  
8 none, any beneficiary designated by the court to represent  
9 the interests of the beneficiaries, shall be considered the  
10 only necessary representative of the trust and of all  
11 persons with an interest therein. A judgment is binding upon  
12 and conclusive against the trust and all persons interested  
13 therein as to all matters finally adjudicated in the  
14 judgment.

15 (8) The designation of the name of a trust in a  
16 recorded conveyance vests the estate in the trustee of the  
17 trust. A subsequent conveyance may be made by the trustee.  
18 The identity of a party serving as trustee may be  
19 established by a recorded affidavit of the party OR BY OTHER  
20 RECORDED INSTRUMENT, specifying his THE TRUSTEE'S name and  
21 address and confirming that he is currently serving as the  
22 trustee."

23 **NEW SECTION. Section 3. Effective date.** [This act] is  
24 effective on passage and approval.

-End-