

HOUSE BILL 3863

By Coleman

AN ACT to amend Tennessee Code Annotated, Title 35,
relative to the Tennessee Community Property
Trust Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 35, is amended by adding the following language as a new, appropriately designated chapter:

§ 35-17-101.

This chapter shall be known as the "Tennessee Community Property Trust Act of 2010".

§ 35-17-102.

As used in this chapter:

- (1) "Community property" means property owned by a community property trust during the marriage of the settlor spouses;
- (2) "Community property trust" means an express trust that complies with § 35-17-103;
- (3) "Decree" means a judgment or other order of a court;
- (4) "Dissolution" means either:
 - (A) Termination of a marriage by a decree of dissolution, divorce, annulment or declaration of invalidity; or
 - (B) Entry of a decree of legal separation maintenance;
- (5) "During marriage" means a period that begins at marriage and ends at dissolution or the death of a spouse;
- (6) "Qualified trustee" means either:

(A) A natural person who is a resident of this state; or

(B) A company authorized to act as a fiduciary in this state pursuant to § 45-2-1001; and

(7) "Settlor spouses" means a married couple that establishes a community property trust.

§ 35-17-103.

An arrangement is a community property trust if one (1) or both spouses transfer property to a trust, that:

(1) Expressly declares that the trust is a Tennessee community property trust;

(2) Has at least one (1) trustee who is a qualified trustee whose powers include, or are limited to, maintaining records for the trust on an exclusive or a nonexclusive basis and preparing or arranging for the preparation of, on an exclusive or a nonexclusive basis, any income tax returns that must be filed by the trust. Both spouses or either spouse may be a trustee;

(3) Is signed by both spouses; and

(4) Contains the following language in capital letters at the beginning of the trust:

THE CONSEQUENCES OF THIS TRUST MAY BE VERY EXTENSIVE, INCLUDING, BUT NOT LIMITED TO, YOUR RIGHTS WITH YOUR SPOUSE BOTH DURING THE COURSE OF YOUR MARRIAGE AND AT THE TIME OF A DIVORCE. ACCORDINGLY, THIS AGREEMENT SHOULD ONLY BE SIGNED AFTER CAREFUL CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT THIS AGREEMENT, YOU SHOULD SEEK COMPETENT ADVICE.

§ 35-17-104.

(a) In the agreement establishing a community property trust, spouses may agree on:

(1) The rights and obligations in the property transferred to the trust, notwithstanding when and where the property is acquired or located;

(2) The management and control of the property transferred to the trust;

(3) The disposition of the property transferred to the trust on dissolution, death, or the occurrence or nonoccurrence of another event;

(4) The choice of law governing the interpretation of the trust; and

(5) Any other matter that affects the property transferred to the trust and does not violate public policy or a statute imposing a criminal penalty.

(b)

(1) Either spouse may amend a community property trust regarding the disposition of that spouse's one-half (1/2) share of the community property in the occurrence of such spouse's death.

(2) Except as provided in subdivision(b)(1), a community property trust may not be amended or revoked unless the agreement itself provides for amendment or revocation.

§ 35-17-105.

(a) Whether or not both, one (1), or neither is domiciled in this state, spouses may classify any or all of their property as community property by

transferring property to a community property trust and providing in the trust that the property is community property.

(b) A community property trust is enforceable without consideration.

(c) All property owned by a community property trust will be community property during marriage.

(d) The right to manage and control property that is transferred to a community property trust is determined by the terms of the trust.

(e) When property is distributed from a community property trust, it shall no longer constitute community property.

§ 35-17-106.

(a) An obligation incurred by only one (1) spouse before or during marriage may be satisfied from that spouse's one-half (1/2) share of a community property trust.

(b) An obligation incurred by both spouses during marriage may be satisfied from a community property trust of the spouses.

§ 35-17-107.

Upon the death of a spouse, one-half (1/2) of the aggregate value of the property owned by a community property trust established by the spouses reflects the share of the surviving spouse and the other one-half (1/2) reflects the share of the decedent. Unless provided otherwise in the trust agreement, the trustee has the power to distribute assets of the trust in divided or undivided interests and to adjust resulting differences in valuation. A distribution in kind may be made on the basis of a non pro rata division of the aggregate value of the trust assets, on the basis of a pro rata division of each individual asset, or by using both methods.

§ 35-17-108.

Upon the dissolution of the marriage of the settlor spouses, the community property trust shall terminate and the trustee shall distribute one-half (1/2) of the trust assets to each spouse, with each spouse receiving one-half (1/2) of each asset, unless otherwise agreed to in writing by both spouses.

SECTION 2. This act shall take effect on July 1, 2010, the public welfare requiring it.