CHAPTER 59-14
REVOCABLE TRUSTS

59-14-01. (601) Capacity of settlor of revocable trust.

The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

59-14-02. (602) Revocation or amendment of revocable trust.

1. Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before August 1, 2007.
2. If a revocable trust is created or funded by more than one settlor to the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses; to the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution; and upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.
3. The settlor may revoke or amend a revocable trust by substantial compliance with a method provided in the terms of the trust or, if the terms of the trust do not provide a method or the method provided in the terms is not expressly made exclusive, by a later will or codicil that expressly refers to the trust or any other method manifesting clear and convincing evidence of the settlor's intent.
4. Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.
5. A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust or the power, exercised in writing and delivered to the trustee.
6. A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.
7. A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

59-14-03. (603) Settlor's powers - Powers of withdrawal.

1. While a trust is revocable, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor.
2. During the period the power may be exercised, the holder of a power of withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the property subject to the power.

59-14-04. (604) Limitation on action contesting validity of revocable trust - Distribution of trust property.

1. A person shall commence a judicial proceeding to contest the validity of a trust that was revocable immediately before the settlor's death within the earlier of three years after the settlor's death or one hundred twenty days after the trustee sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.
2. Upon the death of the settlor of a trust that was revocable immediately before the settlor's death, the trustee may proceed to distribute the trust property in accordance

with the terms of the trust. The trustee is not subject to liability for doing so unless the trustee knows of a pending judicial proceeding contesting the validity of the trust or a potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within sixty days after the contestant sent the notification.

3. A beneficiary of a trust that is determined to have been invalid is liable to return any distribution received.
4. This section does not impose a duty upon the trustee to give notice under this section unless the notice is expressly required in the trust agreement.