

**AMENDMENTS TO SECTIONS 105, 110,  
506, 602, 603, 704, 705, AND 1009  
OF THE UNIFORM TRUST CODE**

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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AS APPROVED BY THE EXECUTIVE COMMITTEE OF THE NATIONAL  
CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS  
PURSUANT TO SECTION 4.3(3) OF ITS CONSTITUTION

June 1, 2001

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# UNIFORM TRUST CODE

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1 **UNIFORM TRUST CODE**

2 **Prefatory Note**

3 The Uniform Trust Code was approved at the Conference’s 2000 Annual Meeting. The  
4 following technical amendments correct for minor inconsistencies in language within and among  
5 sections which have been discovered as states have begun considering enactment.

6 **SECTION 105. DEFAULT AND MANDATORY RULES.**

7 (a) Except as otherwise provided in the terms of the trust, this [Code] governs the duties  
8 and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

9 (b) The terms of a trust prevail over any provision of this [Code] except:

10 (1) the requirements for creating a trust;

11 (2) the duty of a trustee to act in good faith and in accordance with the purposes of  
12 the trust;

13 (3) the requirement that a trust and its terms be for the benefit of its beneficiaries,  
14 and that the trust have a purpose that is lawful, not contrary to public policy, and possible to  
15 achieve;

16 (4) the power of the court to modify or terminate a trust under Sections 410  
17 through 416;

18 (5) the effect of a spendthrift provision and the rights of certain creditors and  
19 assignees to reach a trust as provided in [Article] 5;

20 (6) the power of the court under Section 702 to require, dispense with, or modify  
21 or terminate a bond;

22 (7) the power of the court under Section 708(b) to adjust a trustee’s compensation  
23 specified in the terms of the trust which is unreasonably low or high;

24 (8) with respect to the qualified beneficiaries of an irrevocable trust who have

1 attained 25 years of age, the duty under Section 813(b)(2)-(3) to notify the qualified beneficiaries  
2 of an irrevocable trust who have attained 25 years of age them of the existence of the trust, of the  
3 identity of the trustee, and of their right to request trustee's reports ~~and other information~~  
4 ~~reasonably related to the administration of the trust;~~

5 (9) the duty under Section 813(a) to respond to the request of a beneficiary of an  
6 irrevocable trust for trustee's reports and other information reasonably related to the  
7 administration of a trust;

8 (10) the effect of an exculpatory term under Section 1008;

9 (11) the rights under Sections 1010 through 1013 of a person other than a trustee  
10 or beneficiary;

11 (12) periods of limitation for commencing a judicial proceeding; [and]

12 (13) the power of the court to take such action and exercise such jurisdiction as  
13 may be necessary in the interests of justice [; and

14 (14) the subject-matter jurisdiction of the court and venue for commencing a  
15 proceeding as provided in Sections 203 and 204].

#### 16 Comment

17 Subsection (b)(3) is revised to clarify that a settlor cannot override the requirement that a  
18 trust must have a legal and valid purpose. Subsections (b)(8)-(9) are revised to make clear that  
19 the requirements that may be waived under these two subsections are those imposed by Section  
20 813.

### 21 **SECTION 110. OTHERS TREATED AS QUALIFIED BENEFICIARIES.**

22 (a) Whenever notice to qualified beneficiaries of a trust is required under this [Code] ,  
23 the trustee must also give notice to any other beneficiary who has sent the trustee a request for  
24 notice.

1 (b) A charitable organization expressly ~~entitled~~ mandated to receive ~~benefits~~ distributions  
2 under the terms of a charitable trust or a person appointed to enforce a trust created for the care  
3 of an animal or another noncharitable purpose as provided in Section 408 or 409 has the rights of  
4 a qualified beneficiary under this [Code].

5 (c) The [attorney general of this State] has the rights of a qualified beneficiary with  
6 respect to a charitable trust having its principal place of administration in this State.

7 Comment

8 Subsection (b) revised to avoid an implication that a charitable organization with a  
9 remote interest in the trust has the rights of a qualified beneficiary.

10 **SECTION 506. OVERDUE DISTRIBUTION.** Whether or not a trust contains a  
11 spendthrift provision, a creditor or assignee of a beneficiary may reach a mandatory distribution  
12 of income or principal, including a distribution upon termination of the trust, if the trustee has  
13 not made the distribution to the beneficiary within a reasonable time after the ~~required~~ mandated  
14 distribution date.

15 Comment

16 Revised to assure consistent use of language..

17 **SECTION 602. REVOCATION OR AMENDMENT OF REVOCABLE TRUST.**

18 (a) Unless the terms of a trust expressly provide that the trust is irrevocable, the  
19 settlor may revoke or amend the trust. This subsection does not apply to a trust created under an  
20 instrument executed before [the effective date of this [Code]].

21 (b) If a revocable trust is created or funded by more than one settlor:

22 (1) to the extent the trust consists of community property, the trust may be  
23 revoked by either spouse acting alone but may be amended only by joint action of both spouses;

1 and

2 (2) to the extent the trust consists of property other than community  
3 property, each settlor may revoke or amend the trust with regard the portion of the trust property  
4 attributable to that settlor's contribution.

5 (c) The settlor may revoke or amend a revocable trust:

6 (1) by ~~substantially complying~~ substantial compliance with a method  
7 provided in the terms of the trust; or

8 (2) if the terms of the trust do not provide a method or the method  
9 provided in the terms is not expressly made exclusive, by:

10 (A) ~~executing~~ a later will or codicil that expressly refers to the trust  
11 or specifically devises property that would otherwise have passed according to the terms of the  
12 trust; or

13 (B) any other method manifesting clear and convincing evidence of  
14 the settlor's intent.

15 (d) Upon revocation of a revocable trust, the trustee shall deliver the trust  
16 property as the settlor directs.

17 (e) A settlor's powers with respect to revocation, amendment, or distribution of  
18 trust property may be exercised by an agent under a power of attorney only to the extent  
19 expressly authorized by the terms of the trust or the power.

20 (f) A [conservator] of the settlor or, if no [conservator] has been appointed, a  
21 [guardian] of the settlor may exercise a settlor's powers with respect to revocation, amendment,  
22 or distribution of trust property only with the approval of the court supervising the  
23 [conservatorship] or [guardianship].

1 (g) A trustee who does not know that a trust has been revoked or amended is not  
2 liable to the settlor or settlor's successors in interest for distributions made and other actions  
3 taken on the assumption that the trust had not been amended or revoked.

4 Comment

5 Subsection (c)(2) revised to avoid an implication that a revocatory provision in a will or  
6 codicil is effective immediately upon execution of the testamentary document.

7 **SECTION 603. SETTLOR'S POWERS; POWERS OF WITHDRAWAL.**

8 (a) While a trust is revocable and the settlor has capacity to revoke the trust, rights  
9 of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively  
10 to, the settlor.

11 ~~(b) While a trust is revocable and the settlor does not have capacity to revoke the~~  
12 ~~trust, rights of the beneficiaries are held by the beneficiaries.~~

13 (e) If a revocable trust has more than one settlor, the duties of the trustee are  
14 owed to all of the settlors having capacity to revoke the trust.

15 ~~(d)~~ (c) During the period the power may be exercised, the holder of a power of  
16 withdrawal has the rights of a settlor of a revocable trust under this section to the extent of the  
17 property subject to the power.

18 Comment

19 Former subsection (b) dropped as unnecessary surplusage.

20 **SECTION 704. VACANCY IN TRUSTEESHIP; APPOINTMENT OF**  
21 **SUCCESSOR.**

22 (a) A vacancy in a trusteeship occurs if:

23 (1) a person designated as trustee rejects the trusteeship;

- 1 (2) a person designated as trustee cannot be identified or does not exist;  
2 (3) a trustee resigns;  
3 (4) a trustee is disqualified or removed;  
4 (5) a trustee dies; or  
5 (6) a [guardian] or [conservator] is appointed for an individual serving as  
6 trustee.

7 (b) If one or more cotrustees remain in office, a vacancy in a trusteeship need not  
8 be filled. A vacancy in a trusteeship must be filled if the trust has no remaining trustee.

9 (c) A vacancy in a trusteeship of a noncharitable trust that is required to be filled  
10 must be filled in the following order of priority:

11 (1) by a person designated in the terms of the trust to act as successor  
12 trustee;

13 (2) by a person appointed by unanimous agreement of the qualified  
14 beneficiaries; or

15 (3) by a person appointed by the court.

16 (d) A vacancy in a trusteeship of a charitable trust that is required to be filled must  
17 be filled in the following order of priority:

18 \_\_\_\_\_ (1) by a person designated in the terms of the trust to act as successor  
19 trustee;

20 \_\_\_\_\_ (2) by a person selected by the charitable organizations expressly  
21 designated to receive distributions under the terms of the trust if the [attorney general] concurs in  
22 the selection; or

23 \_\_\_\_\_ (3) by a person appointed by the court.



