

**AMENDMENTS TO THE UNIFORM TRUST CODE
(2000)***

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-THIRTEENTH YEAR
PORTLAND, OREGON

JULY 30 - AUGUST 6, 2004

**AMENDMENTS TO THE UNIFORM TRUST CODE
(2000)**

WITHOUT PREFATORY NOTE OR COMMENTS

Copyright © 2004
By
National Conference of Commissioners
on Uniform State Laws

* The following text is subject to revision by the Committee on Style of the National Conference of Commissioners on Uniform State Laws.

DRAFTING COMMITTEE TO AMEND UNIFORM TRUST CODE (2000)

MAURICE A. HARTNETT, III, Delaware Supreme Court, 144 Cooper Road, Dover, DE 19901,
Chair

FRANK W. DAYKIN, 4745 Giles Way, Carson City, NV 89704, *Committee Member and
Committee on Style Liaison*

E. EDWIN ECK, II, University of Montana, School of Law, Missoula, MT 59812

JOHN H. LANGBEIN, Yale Law School, P.O. Box 208215, New Haven, CT 06520

GLEE S. SMITH, P.O. Box 360, 111 E. 8th, Larned, KS 67550

NATHANIEL STERLING, Law Revision Commission, Suite D-1, 4000 Middlefield Road, Palo
Alto, CA 94303

RICHARD V. WELLMAN, University of Georgia, School of Law, Athens, GA 30602

DAVID M. ENGLISH, University of Missouri School of Law, Missouri and Conley Avenues,
Columbia, MO 65211, *Reporter*

EX OFFICIO

FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Rd., Room 3056,
Norman, OK 73019, *President*

REX BLACKBURN, 1673 West Shoreline Dr., Suite 200, P.O. Box 7808, Boise, ID 83702,
Division Chair

AMERICAN BAR ASSOCIATION ADVISOR

JOSEPH KARTIGANER, 812 Fifth Ave., New York, NY 10021, *American Bar Association
Advisor*

EXECUTIVE DIRECTOR

WILLIAM H. HENNING, University of Alabama School of Law, Box 870382, Tuscaloosa, AL
35487-0382, *Executive Director*

WILLIAM J. PIERCE, 1505 Roxbury Rd., Ann Arbor, MI 48104, *Executive Director Emeritus*

Copies of this Code may be obtained from:
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
211 E. Ontario Street, Suite 1300
Chicago, Illinois 60611
312/915-0195
www.nccusl.org

AMENDMENTS TO THE UNIFORM TRUST CODE (2000)

SECTION 103. DEFINITIONS. In this [Code]:

(1) “Action,” with respect to an act of a trustee, includes a failure to act.

(2) “Ascertainable standard” means a standard relating to an individual’s health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on [the effective date of this [Code]] [, or as later amended]].

~~(2)~~ (3) “Beneficiary” means a person that:

(A) has a present or future beneficial interest in a trust, vested or contingent; or

(B) in a capacity other than that of trustee, holds a power of appointment over trust property.

~~(3)~~ (4) “Charitable trust” means a trust, or portion of a trust, created for a charitable purpose described in Section 405(a).

~~(4)~~ (5) “[Conservator]” means a person appointed by the court to administer the estate of a minor or adult individual.

~~(5)~~ (6) “Environmental law” means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

~~(6)~~ (7) “[Guardian]” means a person appointed by the court [, a parent, or a spouse] to make decisions regarding the support, care, education, health, and welfare of a minor or adult individual. The term does not include a guardian ad litem.

~~(7)~~ (8) “Interests of the beneficiaries” means the beneficial interests provided in the

terms of the trust.

~~(8)~~ (9) “Jurisdiction,” with respect to a geographic area, includes a State or country.

~~(9)~~ (10) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

~~(10)~~ (11) “Power of withdrawal” means a presently exercisable general power of appointment other than a power exercisable by a trustee which is limited by an ascertainable standard, or which is exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

~~(11)~~ (12) “Property” means anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

~~(12)~~ (13) “Qualified beneficiary” means a living beneficiary who, on the date the beneficiary’s qualification is determined:

(A) is a distributee or permissible distributee of trust income or principal;

(B) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subparagraph (A) terminated on that date, but the termination of those interests would not cause the trust to terminate; or

(C) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

~~(13)~~ (14) “Revocable,” as applied to a trust, means revocable by the settlor without the consent of the trustee or a person holding an adverse interest.

~~(14)~~ (15) “Settlor” means a person, including a testator, who creates, or contributes

property to, a trust. If more than one person creates or contributes property to a trust, each person is a settlor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

~~(15)~~ (16) "Spendthrift provision" means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary's interest.

~~(16)~~ (17) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a State.

~~(17)~~ (18) "Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

~~(18)~~ (19) "Trust instrument" means an instrument executed by the settlor that contains terms of the trust, including any amendments thereto.

~~(19)~~ (20) "Trustee" includes an original, additional, and successor trustee, and a cotrustee.

SECTION 105. DEFAULT AND MANDATORY RULES.

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

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

(1) the requirements for creating a trust;

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

the trust;

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

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

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

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

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

[(8) the duty under Section 813(b)(2) and (3) to notify qualified beneficiaries of an irrevocable trust who have attained 25 years of age of the existence of the trust, of the identity of the trustee, and of their right to request trustee's reports;]

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

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

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

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

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

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

SECTION 110. OTHERS TREATED AS QUALIFIED BENEFICIARIES.

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

(b) A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this [Code] if the charitable organization, on the date the charitable organization's qualification is being determined:

(A) is a distributee or permissible distributee of trust income or principal;

(B) would be a distributee or permissible distributee of trust income or principal upon the termination of the interests of other distributees or permissible distributees then receiving or eligible to receive distributions; or

(C) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date. ~~or a~~

(c) A person appointed to enforce a trust created for the care of an animal or another noncharitable purpose as provided in Section 408 or 409 has the rights of a qualified beneficiary under this [Code].

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

SECTION 301. REPRESENTATION: BASIC EFFECT.

(a) Notice to a person who may represent and bind another person under this [article] has the same effect as if notice were given directly to the other person.

(b) The consent of a person who may represent and bind another person under this [article] is binding on the person represented unless the person represented objects to the representation before the consent would otherwise have become effective.

(c) Except as otherwise provided in Sections [411 and] 602, a person who under this [article] may represent a settlor who lacks capacity may receive notice and give a binding consent on the settlor's behalf.

[(d) A settlor may not represent and bind a beneficiary under this article with respect to the termination or modification of a trust under Section 411(a).]

SECTION 410. MODIFICATION OR TERMINATION OF TRUST; PROCEEDINGS FOR APPROVAL OR DISAPPROVAL.

(a) In addition to the methods of termination prescribed by Sections 411 through 414, a trust terminates to the extent the trust is revoked or expires pursuant to its terms, no purpose of the trust remains to be achieved, or the purposes of the trust have become unlawful, contrary to public policy, or impossible to achieve.

(b) A proceeding to approve or disapprove a proposed modification or termination under Sections 411 through 416, or trust combination or division under Section 417, may be commenced by a trustee or beneficiary, [and a proceeding to approve or disapprove a proposed modification or termination under Section 411 may be commenced by the settlor]. The settlor of a charitable trust may maintain a proceeding to modify the trust under Section 413.

SECTION 411. MODIFICATION OR TERMINATION OF NONCHARITABLE IRREVOCABLE TRUST BY CONSENT.

[(a) [A noncharitable irrevocable trust may be modified or terminated upon consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust.] [If upon petition the court finds that the settlor and all beneficiaries consent to the modification or termination of an irrevocable trust, the court shall enter an order approving the modification or termination even if the modification or termination is inconsistent with a material purpose of the trust.] A settlor's power to consent to a trust's modification or termination may be exercised by an agent under a power of attorney only to the extent expressly authorized by the power of attorney or the terms of the trust; by the settlor's [conservator] with the approval of the court supervising the [conservatorship] if an agent is not so authorized; or by the settlor's [guardian] with the approval of the court supervising the [guardianship] if an agent is not so authorized and a conservator has not been appointed. [This subsection applies only to irrevocable trusts created on or after [the effective date of this [Code]], and to revocable trusts which become irrevocable on or after [the effective date of this [Code]].]

(b) A noncharitable irrevocable trust may be terminated upon consent of all of the beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust. A noncharitable irrevocable trust may be modified upon consent of all of the beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

[(c) A spendthrift provision in the terms of the trust is not presumed to constitute a material purpose of the trust.]

~~(d)~~ Upon termination of a trust under subsection (a) or (b), the trustee shall distribute the trust property as agreed by the beneficiaries.

~~(e)~~ (d) If not all of the beneficiaries consent to a proposed modification or termination of the trust under subsection (a) or (b), the modification or termination may be approved by the court if the court is satisfied that:

(1) if all of the beneficiaries had consented, the trust could have been modified or terminated under this section; and

(2) the interests of a beneficiary who does not consent will be adequately protected.

SECTION 504. DISCRETIONARY TRUSTS; EFFECT OF STANDARD.

(a) In this section, “child” includes any person for whom an order or judgment for child support has been entered in this or another State.

(b) Except as otherwise provided in subsection (c), whether or not a trust contains a spendthrift provision, a creditor of a beneficiary may not compel a distribution that is subject to the trustee’s discretion, even if:

(1) the discretion is expressed in the form of a standard of distribution; or

(2) the trustee has abused the discretion.

(c) To the extent a trustee has not complied with a standard of distribution or has abused a discretion:

(1) a distribution may be ordered by the court to satisfy a judgment or court order against the beneficiary for support or maintenance of the beneficiary’s child, spouse, or former spouse; and

(2) the court shall direct the trustee to pay to the child, spouse, or former spouse such

amount as is equitable under the circumstances but not more than the amount the trustee would have been required to distribute to or for the benefit of the beneficiary had the trustee complied with the standard or not abused the discretion.

(d) This section does not limit the right of a beneficiary to maintain a judicial proceeding against a trustee for an abuse of discretion or failure to comply with a standard for distribution.

(e) A creditor may not reach the interest of a beneficiary who is also a trustee or co-trustee, or otherwise compel a distribution, if the trustee's discretion to make distributions for the trustee's own benefit is limited by an ascertainable standard.

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

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

(b) 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.

SECTION 704. VACANCY IN TRUSTEESHIP; APPOINTMENT OF SUCCESSOR.

(a) A vacancy in a trusteeship occurs if:

- (1) a person designated as trustee rejects the trusteeship;
- (2) a person designated as trustee cannot be identified or does not exist;
- (3) a trustee resigns;
- (4) a trustee is disqualified or removed;

(5) a trustee dies; or

(6) a [guardian] or [conservator] is appointed for an individual serving as trustee.

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

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

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

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

(3) by a person appointed by the court.

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

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

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

(3) by a person appointed by the court.

(e) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

SECTION 802. DUTY OF LOYALTY.

(a) A trustee shall administer the trust solely in the interests of the beneficiaries.

(b) Subject to the rights of persons dealing with or assisting the trustee as provided in

Section 1012, a sale, encumbrance, or other transaction involving the investment or management of trust property entered into by the trustee for the trustee's own personal account or which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is voidable by a beneficiary affected by the transaction unless:

- (1) the transaction was authorized by the terms of the trust;
- (2) the transaction was approved by the court;
- (3) the beneficiary did not commence a judicial proceeding within the time allowed by Section 1005;

- (4) the beneficiary consented to the trustee's conduct, ratified the transaction, or released the trustee in compliance with Section 1009; or

- (5) the transaction involves a contract entered into or claim acquired by the trustee before the person became or contemplated becoming trustee.

(c) A sale, encumbrance, or other transaction involving the investment or management of trust property is presumed to be affected by a conflict between personal and fiduciary interests if it is entered into by the trustee with:

- (1) the trustee's spouse;
- (2) the trustee's descendants, siblings, parents, or their spouses;
- (3) an agent or attorney of the trustee; or
- (4) a corporation or other person or enterprise in which the trustee, or a person that owns a significant interest in the trustee, has an interest that might affect the trustee's best judgment.

(d) A transaction between a trustee and a beneficiary that does not concern trust property but that occurs during the existence of the trust or while the trustee retains significant influence

over the beneficiary and from which the trustee obtains an advantage is voidable by the beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

(e) A transaction not concerning trust property in which the trustee engages in the trustee's individual capacity involves a conflict between personal and fiduciary interests if the transaction concerns an opportunity properly belonging to the trust.

(f) An investment by a trustee in securities of an investment company or investment trust to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not presumed to be affected by a conflict between personal and fiduciary interests if the investment otherwise complies with the prudent investor rule of [Article] 9. In addition to its compensation for acting as trustee, the trustee may be compensated by the investment company or investment trust for providing those services out of fees charged to the trust. If the trustee receives compensation from the investment company or investment trust for providing investment advisory or investment management services, the trustee must at least annually notify the persons entitled under Section 813 to receive a copy of the trustee's annual report of the rate and method by which that compensation was determined.

(g) In voting shares of stock or in exercising powers of control over similar interests in other forms of enterprise, the trustee shall act in the best interests of the beneficiaries. If the trust is the sole owner of a corporation or other form of enterprise, the trustee shall elect or appoint directors or other managers who will manage the corporation or enterprise in the best interests of the beneficiaries.

(h) This section does not preclude the following transactions, if fair to the beneficiaries:

(1) an agreement between a trustee and a beneficiary relating to the appointment or compensation of the trustee;

- (2) payment of reasonable compensation to the trustee;
 - (3) a transaction between a trust and another trust, decedent's estate, or [conservatorship] of which the trustee is a fiduciary or in which a beneficiary has an interest;
 - (4) a deposit of trust money in a regulated financial-service institution operated by the trustee; or
 - (5) an advance by the trustee of money for the protection of the trust.
- (i) The court may appoint a special fiduciary to make a decision with respect to any proposed transaction that might violate this section if entered into by the trustee.

SECTION 813. DUTY TO INFORM AND REPORT.

(a) A trustee shall keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust.

(b) A trustee:

- (1) upon request of a beneficiary, shall promptly furnish to the beneficiary a copy of the trust instrument;
- (2) within 60 days after accepting a trusteeship, shall notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number;
- (3) within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, shall notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to

request a copy of the trust instrument, and of the right to a trustee's report as provided in subsection (c); and

(4) shall notify the qualified beneficiaries in advance of any change in the method or rate of the trustee's compensation.

(c) A trustee shall send to the distributees or permissible distributees of trust income or principal, and to other qualified or nonqualified beneficiaries who request it, at least annually and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets and, if feasible, their respective market values. Upon a vacancy in a trusteeship, unless a cotrustee remains in office, a report must be sent to the qualified beneficiaries by the former trustee. A personal representative, [conservator], or [guardian] may send the qualified beneficiaries a report on behalf of a deceased or incapacitated trustee.

(d) A beneficiary may waive the right to a trustee's report or other information otherwise required to be furnished under this section. A beneficiary, with respect to future reports and other information, may withdraw a waiver previously given.

(e) Subsections (b)(2) and (b)(3) of this section apply only to a trustee who accepts a trusteeship on or after [the effective date of this [Code]], to an irrevocable trust created on or after [the effective date of this [Code]], and to a revocable trust which become irrevocable on or after [the effective date of this [Code]].

SECTION 814. DISCRETIONARY POWERS; TAX SAVINGS.

(a) Notwithstanding the breadth of discretion granted to a trustee in the terms of the trust, including the use of such terms as "absolute", "sole", or "uncontrolled", the trustee shall

exercise a discretionary power in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) Subject to subsection (d), and unless the terms of the trust expressly indicate that a rule in this subsection does not apply:

(1) a person other than a settlor who is a beneficiary and trustee of a trust that confers on the trustee a power to make discretionary distributions to or for the trustee's personal benefit may exercise the power only in accordance with an ascertainable standard ~~relating to the trustee's individual health, education, support, or maintenance within the meaning of Section 2041(b)(1)(A) or 2514(c)(1) of the Internal Revenue Code of 1986, as in effect on [the effective date of this [Code]] [, or as later amended];~~ and

(2) a trustee may not exercise a power to make discretionary distributions to satisfy a legal obligation of support that the trustee personally owes another person.

(c) A power whose exercise is limited or prohibited by subsection (b) may be exercised by a majority of the remaining trustees whose exercise of the power is not so limited or prohibited. If the power of all trustees is so limited or prohibited, the court may appoint a special fiduciary with authority to exercise the power.

(d) Subsection (b) does not apply to:

(1) a power held by the settlor's spouse who is the trustee of a trust for which a marital deduction, as defined in Section 2056(b)(5) or 2523(e) of the Internal Revenue Code of 1986, as in effect on [the effective date of this [Code]] [, or as later amended], was previously allowed;

(2) any trust during any period that the trust may be revoked or amended by its settlor; or

(3) a trust if contributions to the trust qualify for the annual exclusion under Section 2503(c) of the Internal Revenue Code of 1986, as in effect on [the effective date of this [Code]] [, or as later amended].