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

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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

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UNIFORM TRUST CODE

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Prefatory Note

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

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) with respect to the qualified beneficiaries of an irrevocable trust who have
attained 25 years of age, the duty under Section 813(b)(2)-(3) to notify the 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 and other information reasonably related to the administration of the trust;

(9) the duty under Section 813(a) to respond to the request of a 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].

Comment

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

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 entitled mandated to receive benefits distributions under the terms of a charitable trust or 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].

(c) 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.

Comment

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

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

Comment

Revised to assure consistent use of language..

SECTION 602. REVOCATION OR AMENDMENT OF REVOCABLE TRUST.

(a) 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 [the effective date of this [Code]].

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

(1) 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;
and

(2) 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.

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

(1) by substantially complying with a method provided in the terms of the trust; or

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

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

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

(e) 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.

(f) 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].
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.

Comment

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

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

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

(c) 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.

Comment

Former subsection (b) dropped as unnecessary surplusage.

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.
(d) (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.

Comment

Subsection (d) added to clarify procedure for appointing successor trustee of a charitable trust.

SECTION 705. RESIGNATION OF TRUSTEE.

(a) A trustee may resign:

(1) upon at least 30 days’ notice to the qualified beneficiaries, the settlor, if living, and all cotrustees; or

(2) with the approval of the court.

(b) In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.

(c) Any liability of a resigning trustee or of any sureties on the trustee’s bond for acts or omissions of the trustee is not discharged or affected by the trustee’s resignation.

Comment

Subsection (a)(1) revised to clarify that a living settlor must receive notice of a trustee’s resignation.

SECTION 1009. BENEFICIARY’S CONSENT, RELEASE, OR RATIFICATION.

A trustee is not liable to a beneficiary for breach of trust if the beneficiary, while having capacity, consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach, unless:

(1) the consent, release, or ratification of the beneficiary was induced by improper conduct of the trustee; or
(2) at the time of the consent, release, or ratification, the beneficiary did not know
of the beneficiary’s rights or of the material facts relating to the breach.

Comment

Lead-in language revised to avoid implication that Article 3 representation rules cannot
be applied to represent an incapacitated beneficiary with respect to a beneficiary consent.