

Uniform Trust Act

Statement of Policy Issues and Sections to be Read Line by Line

The advice of the Conference is invited on the following policy issues:

Section 2-401. Spendthrift Provision Recognized. This provision, in accordance with traditional doctrine, requires that for a trust to be spendthrift, the settlor must insert an express provision to that effect into the terms of the trust. At least one member of the drafting committee is of the opinion that spendthrift ought to be the default rule, that is, that a trust is automatically spendthrift unless the terms of the trust provide to the contrary. The advice of the Conference is invited on which is the better approach.

Section 2-404. Discretionary Trusts and Trusts Subject to Standard. Subsection (b) of this section allows a spouse, former spouse, or child who has a judgment for support against a beneficiary to reach the beneficiary's interest in an appropriate judicial proceeding to the extent the trustee has abused a discretion with regard to distributions or has failed to comply with a standard for making distributions. The Advisors representing the Probate Division of the ABA Section of Real Property, Probate and Trust Law and the Advisor representing the American College of Trust and Estate Counsel are opposed to this provision. The advice of the Conference is invited on whether subsection (b) should be deleted or modified.

Section 2-405. Creditor's Claim Against Settlor. Subsection (a)(1) of this section restates common law doctrine by providing that a creditor or assignee of a settlor, notwithstanding a spendthrift provision, may reach the maximum amount that the trustee could pay to or for the settlor's benefit. Recently, the states of Alaska and Delaware have passed statutes abrogating the common law doctrine. In those two states, if the trust contains a spendthrift provision, the beneficial interest of a settlor is generally protected from creditor claims until and unless the trustee makes a distribution to the settlor. The drafting committee supports leaving subsection (a)(1) as is but invites the Conference's comments on this issue.

Section 3-102. Revocation or Modification of Revocable Trust. Subsection (a) of this section, following the lead of California, Montana, and Texas, provides that a trust is revocable unless the terms of the trust provide otherwise. The common law rule and the law of the other states is the opposite, that is, a trust is irrevocable absent contrary intent. At least one member of the drafting committee is of the view that the Act should follow the common law rule. The drafting committee invites the Conference's views on this issue.

Section 4-106. Removal of Trustee. Subsection (b) of this section lists the grounds for removal of a trustee. The subsection broadens the grounds for removal applicable in many states by listing such things as changed circumstances and substandard investment performance as possible bases for removal. Some question has also been raised, but not by the drafting committee, as to whether removal for "good cause" is the appropriate standard or whether the

Act should opt for the test in Massachusetts, which allows the court to remove the trustee whenever in “the interests of the beneficiaries of the trust.” The drafting committee invites the Conference’s comments on the appropriate standard for removal of a trustee.

Section 5-114. Duty to Inform and Report. Subsection (b)(1) requires that a trustee provide a beneficiary upon request with a copy of the complete trust instrument. The view has been expressed to the Reporter in his meetings with members of the ABA Section of Real Property, Probate and Trust Law and the American College of Trust and Estate Counsel that a beneficiary should be entitled to a copy of only those provisions which are relevant to the beneficiary’s interest. The drafting committee believes that subsection (b)(1) is correct as is but invites the Conference’s comments on this issue.

Subsection (e) provides that the terms of a trust may not dispense with the reporting and other information requirements of the section except as to information required to be furnished to the settlor (this exception as to the settlor ratifies the so called “blind” trust). The view has been expressed to the Reporter in his meetings with members of the ABA Section of Real Property, Probate and Trust Law and the American College of Trust and Estate Counsel that the settlor should be able to waive required reporting to a beneficiary. The drafting committee believes that subsection (e) is correct as is but invites the Conference’s comments on this issue.

Sections to be Read Line by Line

The following is a list of the sections of the Uniform Trust Act which will and will not be read line by line at the annual meeting.

Article 1, Part 1-General Provisions & Definitions

1-101	Short Title	Do Not read
1-102	Construction Against Implied Repeal	Do Not Read
1-103	Common Law of Trusts	Read
1-104	Choice of Law	Read
1-105	Definitions	Read
	(Excluding standard uniform law definitions, which will not be read)	

Article 1, Part 2 -Jurisdiction of Court

1-201	Role of Court in Administration	Read
1-202	Principal Place of Administration	Read
1-203	Jurisdiction Over Trustee and Beneficiary	Read
1-204	Dismissal of Matters Relating to Foreign Trusts	Read
1-205	Transfer of Jurisdiction	Read

[1-206 Subject Matter Jurisdiction]	Do Not Read
[1-207 Venue]	Do Not Read

Article 2, Part 1-Trust Creation & Validity

Read all sections in part (2-101 to 2-106).

Article 2, Part 2-Trust Termination & Modification

Read all sections in part (2-201 to 2-208).

Article 2, Part 3-Charitable Purposes

2-301 Charitable Purposes	Do Not Read
2-302 Application of Cy Pres	Read
2-303 Uneconomic Charitable Trust	Do Not Read

Article 2, Part 4-Spendthrift Provisions & Creditor Claims

Read all sections in part (2-401 to 2-406).

Article 3-Revocable Trust

Read all sections in part (3-101 to 3-104).

Article 4-Office of Trustee

4-101 Acceptance or Rejection of Trusteeship	Read
4-102 Trustee's Bond	Do Not Read
4-103 Cotrustees	Read
4-104 Vacancy in Trusteeship	Do Not Read
4-105 Resignation of Trustee	Read
4-106 Removal of Trustee	Read
4-107 Delivery of Property by Former Trustee	Read
4-108 Filling Vacancy	Read
4-109 Compensation of Trustee	Read
4-110 Repayment of Expenditures	Read

Article 5, Part 1-Duties & Powers of Trustee

5-101 Modification of Duties & Powers of Trustee	Read
5-102 Duty to Administer Trust	Read

5-103	Duty of Loyalty	Read
5-104	Impartiality	Do Not Read
5-105	Prudent Administration	Read
5-106	Costs of Administration	Do Not Read
5-107	Trustee's Skills	Read
5-108	Delegation by Trustee	Do Not Read
5-109	Powers to Direct	Read
5-110	Control & Safeguarding of Trust Property	Do Not Read
5-111	Separation & Identification of Trust Property	Read
5-112	Enforcement & Defenses of Claims	Do Not Read
5-113	Former Fiduciaries	Read
5-114	Duty to Inform & Report	Read
5-115	Duty With Regard to Discretionary Power	Read
5-116	General Powers of Trustee	Read
5-117	Specific Powers of Trustee	Do Not Read

Article 5, Part 2-Uniform Prudent Investor Act

This is recent uniform law. Do not read.

Article 6-Uniform Principal & Income Act (1997)

This is recent uniform law. Do not read.

Article 7, Part 1-Liability of Trustees to Beneficiaries

7-101	Breach of Trust for Violation of Duty	Do Not Read
7-102	Remedies for Breach of Trust	Read
7-103	Damages Against Trustee for Breach of Trust	Read
7-104	Limitation of Action Against Trustee After Final Report or Other Statement	Read
7-105	Exculpation of Trustee	Read
7-106	Nonliability of Trustee Upon Beneficiary's Consent, Release, or Ratification	Read

Article 7, Part 2-Rights of Third Persons

Read all sections in part.

Article 7, Part 3-Representation of Beneficiaries & Settlement Agreements

Read all sections in part.

Article 8-Transitional and Miscellaneous Provisions

Do not read any sections of article.