



WHY YOUR STATE SHOULD ADOPT THE UNIFORM TRUST CODE

Before the Uniform Trust Code (UTC) was approved in 2000, most states relied on a patchwork of case law to govern trusts. Drawing from common law sources and existing statutory law, the UTC is a national codification of the law of trusts, and also contains reforms to modernize the law of trusts. The code is divided into 11 articles containing important provisions every state should adopt, because:

- ***The UTC standardizes the law of trusts.*** In our modern, mobile society, it is more common than ever for settlors, trustees, and beneficiaries to live in different states. The UTC provides a national standard so that all parties can rely on the same governing principles.
- ***The UTC is flexible.*** Except for the few provisions listed in UTC § 105, the UTC consists of default rules that may be freely overridden in the trust document when circumstances call for a different rule. However, the UTC's comprehensive default rules apply when a trust does not address a particular subject, which will fill many gaps in trust instruments and help to prevent unnecessary litigation.
- ***The UTC expressly recognizes charitable trusts.*** The UTC recognizes that charitable trusts can be created and allows for enforcement of the trust's terms by the settlor, the state attorney general, or other interested parties.
- ***The UTC provides statutory duties and powers for trustees.*** The UTC codifies some of the basic fiduciary obligations of a trustee to a beneficiary, such as the trustee's duty of loyalty, duty of impartiality, and obligation of prudent administration. A trustee may delegate certain powers, which was generally prohibited under common law.
- ***The UTC includes detailed representation provisions.*** Under the common law, principles of representation are not well established. The UTC clarifies and codifies the law, specifying who can be represented under what circumstances. If the representative meets the statutory requirements, notice to the representative has the same legal effect as notice to the represented person, and a representative's consent is binding on the represented person.
- ***Trusts are more common than ever before.*** Trusts are a very popular tool for estate planners and their clients. Clear statutory law is needed to give all parties confidence that the trust terms are valid and enforceable. The UTC provides certainty not available under the common law.

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