

D R A F T  
FOR DISCUSSION ONLY

# **MANAGEMENT OF FUNDS RAISED THROUGH CROWDFUNDING EFFORTS ACT**

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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April 13-14, 2018 Drafting Committee Meeting

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April 5, 2018

## **MANAGEMENT OF FUNDS RAISED THROUGH CROWDFUNDING EFFORTS ACT**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this act consists of the following individuals:

TERRY J. CARE, 10284 Garden Glen Ln., Las Vegas, NV 89135, *Chair*

LEVI J. BENTON, 3417 Milam St., Houston, TX 77002

TURNEY P. BERRY, 500 W. Jefferson St., Suite 2800, Louisville, KY 40202

LARRY T. GARVIN, Ohio State University, Moritz College of Law, 55 W. 12th Ave.,  
Columbus, OH 43210-1391

MARTIN W. HEALY, 20 West St., Boston, MA 02111-1204

STEVEN N. LEITESS, 201 N. Charles St., 26th Floor, Baltimore, MD 21201-4149

KIMBERLY LOWE, 766 Holly Ave., Saint Paul, MN 55104-7134

CASSANDRA B. ROBERTSON, Case Western Reserve University School of Law, 11075 East  
Blvd., Cleveland, OH 44106-5409

KEVIN P. SUMIDA, 735 Bishop St., Suite 411, Honolulu, HI 96813

DAVID S. WALKER, Drake University Law School, 2507 University Ave., Des Moines, IA  
50311

ANTHONY WENDTLAND, 2161 Coffeen Ave., Suite 301, Sheridan, WY 82801

KAREN E. BOXX, University of Washington, 316 William H Gates Hall, P.O. Box 353020  
Seattle, WA 98195-3020, *Reporter*

### **EX OFFICIO**

ANITA RAMASASTRY, University of Washington School of Law, William H. Gates Hall, Box  
353020, Seattle, WA 98195-3020, *President*

CAM WARD, 124 Newgate Rd., Alabaster, AL 35007, *Division Chair*

### **AMERICAN BAR ASSOCIATION ADVISOR**

MARY ELIZABETH ANDERSON, 500 W. Jefferson St., Suite 2800, Louisville, KY 40202-  
2813, *ABA Advisor*

### **EXECUTIVE DIRECTOR**

LIZA KARSAI, Uniform Law Commission, 111 N. Wabash, Suite 1010, Chicago, IL 60602

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS  
111 N. Wabash Ave., Suite 1010  
Chicago, Illinois 60602  
312/450-6600  
[www.uniformlaws.org](http://www.uniformlaws.org)

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1     **MANAGEMENT OF FUNDS RAISED THROUGH CROWDFUNDING EFFORTS ACT**

2                     **ARTICLE 1**

3                     **GENERAL PROVISIONS AND DEFINITIONS**

4             **SECTION 101. SHORT TITLE.** This [act] may be cited as the Management of Funds  
5     Raised through Crowdfunding Efforts Act.

6                     **Discussion Notes**

7  
8     The Act was originally conceived as an approach to deal with funds raised for humanitarian and  
9     benevolent purposes through online platforms. The term “crowdfunding” is defined by  
10    Merriam-Webster as “the practice of obtaining needed funding (as for a new business) by  
11    soliciting contributions from a large number of people especially from the online community.”  
12    The term therefore may be both overbroad and too restrictive for the appropriate scope of the  
13    Act. First, we have determined that the Act will only address funds raised for humanitarian or  
14    benevolent purposes, not for commercial purposes. Second, the drafting committee has also  
15    discussed extending the Act’s scope to include fundraising done via more traditional avenues,  
16    such as pleas for funds communicated through television, radio or print media, in addition to  
17    online campaigns. We can consider requesting a name change, or we can clarify the scope of the  
18    Act either through a definition of crowdfunding or a statement of the scope of the Act. The  
19    Canadian uniform act addressing these topics is entitled “Uniform Informal Public Appeals Act.”  
20

21           **SECTION 102. DEFINITIONS.** In this [act]:

22           (1) “Fund” means a fund of money or other property raised through a public appeal for a  
23     humanitarian or benevolent purpose.

24           (2) “Person” means an individual, estate, trust, business or nonprofit entity, public  
25     corporation, government or governmental subdivision, agency, or instrumentality, or other legal  
26     entity.

27           (3) “State” means a state of the United States, the District of Columbia, Puerto Rico, the  
28     United States Virgin Islands, or any other territory or insular possession subject to the  
29     jurisdiction of the United States.

30           (4) “Humanitarian or benevolent purpose” means a purpose benefiting a specific person  
31     or project, whether or not such purpose qualifies as charitable, that does not confer a benefit to

the persons contributing funds or property to the purpose, but does not include a purpose to raise funds payable to a charitable organization registered as a charitable organization with the state and does not include a purpose for which fundraising is open on a permanent or continuing basis.

(5) “Public appeal” means an open request directed at the general public requesting contributions to a fund intended for a humanitarian or benevolent purpose, and includes requests communicated through media outlets, social media, and online fundraising platforms.

(6) “Surplus funds” means assets remaining in a fund that are no longer needed or that cannot be used for the humanitarian or benevolent purpose.

(7) “Campaign organizer” means the person or persons who initiate the public appeal for contribution to a fund.

(8) “Fund beneficiary” means the individual or individuals who are intended to receive the benefit of the fund.

(9) “Trust instrument” means the instrument governing the trust required to be created under section \_\_\_\_\_.

(10) “Trustee” includes an original, additional, and successor trustee, and a cotrustee.

### **Discussion Notes**

The style rules call for definitions of terms that recur throughout the act to be put into a separate section early in the act. We may determine that other terms require a definition in this section. When appropriate, these definitions were based on definitions from the Uniform Trust Code or other uniform acts.

*Humanitarian or benevolent purpose.* In order to limit scope, this definition identifies the types of purposes that will fall within the Act. The terms “humanitarian” and “benevolent” are an initial proposal, and together are defined as any purpose that would not benefit the donors. This limitation is intended to eliminate fundraising for commercial purposes that offer donors a product or an interest in the enterprise. We should discuss whether this provision should be qualified by incidental benefits, like a t-shirt or other token award for donating. The definition also excludes purposes that would directly benefit an established charitable enterprise. This is defined as an organization that registers with the state for solicitation purposes, but could be defined alternatively as an organization exempt from federal taxes. It also excludes open-ended

1 fundraising efforts. Identification of the type of fundraising that the act is intended to reach is a  
2 difficult task, and the definition does so in the negative, basically describing what is not covered  
3 by the act. The definition could also include positive terms as to what is covered.  
4 *Public appeal.* This definition includes more traditional media outlets but may not include, for  
5 example, fundraising done in a church congregation for a member of the community in need.  
6 The reaches of the act needs to be defined to clarify whether smaller, more informal fundraising  
7 efforts are included.  
8

9 **SECTION 103. SCOPE.** This [act] applies to public appeals for contributions to funds  
10 for a humanitarian or benevolent purpose. It does not apply to fundraising efforts for  
11 commercial purposes, such as funding for a business or product development.

#### 12 **Discussion Notes**

13  
14 The Uniform Trust Code includes a scope provision, and a scope provision may be appropriate in  
15 this act, in addition to the definitions section.  
16

17 **SECTION 104. APPLICATION; GOVERNING LAW.** This [act] applies to a fund  
18 created on, or after [the effective date of this [act]] by a campaign organizer who is a resident of  
19 this state or whose purpose is intended to benefit a resident of this state.

#### 20 **Discussion Notes**

21  
22  
23 The choice of law issue is one of the thorniest and this provision is a beginning point for this  
24 discussion.  
25

26 **SECTION 105. PRINCIPLES OF LAW AND EQUITY.** Unless displaced by a  
27 provision of this [act], the principles of law and equity of this state supplement this [act].

#### 28 **Discussion Notes**

29  
30 This section is based on Uniform Premarital and Marital Agreements Act §5 and is similar to  
31 Uniform Trust Code §106. The purpose is to confirm that the law of an enacting state other than  
32 this act remains applicable to crowdfunding campaigns except as displaced by this act.  
33

1 **ARTICLE 2**

2 **MANAGEMENT OF FUNDS**

3 **SECTION 201. FUNDS RAISED FOR CAMPAIGN ORGANIZERS.** If the purpose  
4 of the fund is to benefit the campaign organizer or organizers who are all adult individuals with  
5 legal capacity, then the provisions of Article 4 do not apply and the campaign organizer or  
6 organizers shall have full authority, subject to the terms of the public appeal and the remaining  
7 provisions of this [act], to manage and distribute the fund.

8 **SECTION 202. FUNDS RAISED FOR MINOR OR INCAPACITATED**  
9 **INDIVIDUALS.** If the purpose of the fund is to benefit a minor or incapacitated individual or  
10 individuals, then the fund shall be placed in a trust for the benefit of such individual or  
11 individuals, subject to the provisions of Article 4 and the remaining provisions of this [act].

12 **SECTION 203. FUNDS RAISED FOR A PARTICULAR PROJECT.** If the purpose  
13 of the fund is provide funds for a particular project, rather than a specific fund beneficiary, then  
14 the fund shall be placed in a trust, subject to the provisions of Article 4 and the remaining  
15 provisions of this [act] and [Section 409 of the Trust Code].

16 **SECTION 204. FUND MANAGER.** The Fund Manager shall be the trustee of the  
17 trust established for funds described in [sections 202 and 203 of this act], and shall be the  
18 campaign organizer for funds described in [section 201 of this act].

19 **Discussion Notes**

20  
21 This article divides the funds into three types: (1) a fund to benefit the campaign organizer, such  
22 as a person who is raising money to cover expenses for education; (2) a fund to benefit a minor  
23 or incapacitated person, for example a fund to cover medical expenses for an ill child, and (3) a  
24 fund for a particular purpose, such as a fund to offer a reward for information about a crime. The  
25 issue here is one previously discussed: should the campaigns be subject to different levels of  
26 regulation depending on the vulnerability of the intended recipient of the funds. Under the  
27 proposed terms, a trust would be required only if the intended beneficiary or beneficiaries were  
28 minors or incapacitated or if the purpose of the fund is to finance a project without a specific



beneficiary. One type of fund left out of these categories is the fund set up by a friend or relative for a competent adult, such as a fund set up by a friend for a competent adult going through a medical crisis. This was deliberately left out of this draft, because a decision needs to be made whether such funds should be automatically placed into trust, with the campaign organizer as trustee, or whether the beneficiary of the fund should be given control over the funds. The rules of the platform being used for the fundraising may also factor into the management issue. One possibility is to allow an option for a trust format, if the beneficiary or campaign organizer so elects or chooses not to be in control of the fund management.

Another open issue is the determination of when the fund falls within category (2). Minors are easily identifiable but the term “incapacitated” needs to be defined. One possibility is that an adjudication of incapacity in a guardianship or conservatorship proceeding is necessary.

The term “fund manager” perhaps should be included as a defined term in Article 1.

### **ARTICLE 3**

#### **SURPLUS FUNDS AND REFUNDS**

##### **SECTION 301. DETERMINATION OF SURPLUS FUNDS.** At appropriate

intervals, the fund manager shall determine whether the humanitarian or benevolent purpose of the fund has been completed to the extent possible and shall identify any surplus funds remaining in the fund. Such determination shall be made pursuant to the terms of the public appeal or the terms of the trust established under [Article 4 of this act], and if the terms of the public appeal are silent as to the timing and circumstances of such determination, the fund manager shall make such determinations on an [annual] basis.

##### **SECTION 302. REPORT ON DETERMINATION OF SURPLUS FUNDS.** If the

fund manager determines that the humanitarian or benevolent purpose of the fund has been completed to the extent possible, the fund manager shall prepare a report describing such determination and the extent of any surplus funds, and the proposed distribution of such surplus funds, and shall provide a copy of such report to the campaign organizer, the fund beneficiary or in the alternative to the Attorney General if there is no fund beneficiary, and to any donor who has requested notice of determination of the termination of the fund and distribution of surplus.

**SECTION 303. DISTRIBUTION OF SURPLUS FUNDS PURSUANT TO THE TERMS OF THE PUBLIC APPEAL OR TRUST.** Upon determination of surplus funds, the fund manager distribute the surplus fund pursuant to the terms of the public appeal or the trust established under [Article 4 of this act], provided that such terms must provide for distribution of such surplus in a manner consistent with the original humanitarian or benevolent purpose.

## Discussion Notes

The comments will need to define what is meant by “consistent” with the original purpose. For example, if the fund was intended to cover a person’s medical bills, surplus funds could be distributed to an organization supporting persons with a similar medical condition.

**SECTION 304. DISTRIBUTION OF SURPLUS FUNDS IF PUBLIC APPEAL OR TRUST IS SILENT ON DISTRIBUTION OF SURPLUS FUNDS.** If the public appeal or the trust established under [Article 4 of this act] does not address the distribution of surplus funds in a manner that complies with [section 302 of this act], then the fund manager shall petition the court for authority to distribute the surplus funds in a manner consistent with the original humanitarian or benevolent purpose.

**SECTION 305. DISTRIBUTION OF SURPLUS FUNDS LESS THAN [\$20,000].** If the surplus funds are less than [\$20,000], the fund manager may distribute the surplus funds in a manner determined by the fund manager to be consistent with the original humanitarian or benevolent purpose.

**SECTION 306. DISTRIBUTION TO FUND BENEFICIARY.** Notwithstanding [Sections 301 to 305 of this act], if the contributions to the fund were treated as completed gifts to the fund beneficiary for purposes of federal [and state] gift tax, then surplus funds shall be distributed to the fund beneficiary. If a fund beneficiary is under the age of [twenty-one] years, then such surplus funds shall instead be distributed to a custodian under the [Uniform Transfers

to Minors Act], to be selected by the fund manager, for the benefit of such fund beneficiary.

**SECTION 307. NO REFUNDS TO DONORS.** Donors to a fund are not entitled to any part of surplus funds unless refunds and the terms of such refunds are provided for in the terms of the public appeal.

## Discussion Notes

The Canadian Act allows for donors of at least \$500 to specify, at the time of donation, that they want a refund if there are any surplus funds. This seems problematic from a gift tax standpoint, so it was omitted here. We may want to revisit the rights of donors to a refund.

## ARTICLE 4

## FUND IN TRUST

## SECTION 401. FUND FOR MINOR OR INCAPACITATED FUND

**BENEFICIARY.** If a fund is established for a minor or incapacitated beneficiary, then the fund will be held in trust for such beneficiary.

**SECTION 402. FUND FOR SPECIFIC PURPOSE.** If a fund is created for a humanitarian or benevolent purpose but does not have an identifiable fund beneficiary, then the fund will be held in a noncharitable purpose trust without ascertainable beneficiary under [Section 409 of the Trust Code].

## Discussion Notes

If the jurisdiction has not adopted UTC section 409, provisions will need to be added authorizing a trust for a noncharitable purpose without ascertainable beneficiaries.

**SECTION 403. TRUSTEE.** The trustee of the fund shall be the campaign organizer, or an individual or corporate trustee designated by the campaign organizer who has accepted trusteeship of the fund. Notwithstanding the foregoing, if the fund beneficiary is a minor, at least one trustee of the fund must be a person who is not a parent of the fund beneficiary.

1 **Discussion Notes**

2  
3 This section puts the burden on the campaign organizer to either serve as trustee or designate a  
4 trustee of the fund. This needs to be consistent with terms of service of the various platforms.

5  
6 **SECTION 404. FUND CUSTODIANS AND FACILITATORS.** Fundraising

7 platforms or services that aid in organizing the public appeal, and financial institutions that have  
8 custody of funds, are not trustees of the fund by virtue of such involvement.

9 **SECTION 405. TRUST INSTRUMENT.** The fund manager or the trustee of a fund  
10 shall execute a trust instrument for the administration of the trust. The terms of the trust shall be  
11 consistent with the terms of the public appeal. The terms of the public appeal shall contain all  
12 the substantive terms of the trust instrument in order to give notice to the donors of the use of the  
13 fund.

14 **Discussion Notes**

15  
16 Generally, a trust has a settlor that executes a trust agreement. In this scenario, the true settlors  
17 are the donors but for convenience the agreement will only be executed by the fund manager or  
18 trustee.

19  
20 The trust instrument may be in the form included in [article 6 of this act]. If a trust instrument  
21 has not been executed by the fund manager or trustee but is required by [this act], then a trust  
22 instrument in the form included in [article 5] of this act shall be deemed to have been executed to  
23 govern the trust, with incorporation of the terms of the public appeal.

24  
25 **SECTION 407. TRUSTEE DUTIES.** In addition to trustee duties required under  
26 [Uniform Trust Code] and the state's common law on trusts, the trustee of a fund shall have the  
27 following duties:

28 (1) As frequently as required by the terms of the public appeal or trust instrument, and at  
29 least [annually], the trustee shall make a determination as to whether the remaining property in  
30 the fund is still needed or can be used for the humanitarian or benevolent purpose of the fund,  
31 consistent with the terms of the public appeal.

1 (2) After making such determination, if the trustee determines that the remaining property  
2 is no longer needed or able to be applied to the purpose, then the trustee shall proceed to  
3 terminate the trust.

4 (3) Upon termination of the trust, either by paragraphs (1) and (2) above or by the  
5 expiration of the trust term, the trustee shall distribute any surplus funds pursuant to [Article 3 of  
6 this act].

### 7 **Discussion Notes**

8  
9 The duties of a trustee under the Uniform Trust Code should be considered because it may be  
10 appropriate to reduce or eliminate some of those duties for this type of trust.

11  
12 **SECTION 408. TRUSTEE POWERS.** In addition to the powers granted trustees  
13 under [the Uniform Trust Code] and common law, the trustee of a fund shall have the following  
14 powers:

15 (1) The power to make payments from the fund, from principal and income, at the  
16 trustee's discretion, to serve the humanitarian or benevolent purpose of the fund;

17 (2) The power to pay expenses or taxes relating to administration of the fund;

18 (3) The power to keep the property in cash or cash equivalents for a reasonable length of  
19 time if appropriate in light of the purpose of the fund and in light of the timing of the need for  
20 distributions from the fund;

21 (4) The power to issue further public appeals for contributions to the fund if the trustee  
22 deems it necessary or advisable; and

23 (5) The power to transfer the fund to another trust for the benefit of the fund beneficiary  
24 if the terms of the other trust can serve the purpose of the fund and the trustee deems it  
25 advantageous to the fund beneficiary to do so and deems it not inconsistent with the terms of the  
26 public appeal.

1 **Discussion Notes**

2  
3 Because of the unusual and varied nature of these funds, the usual investment duties of trustees  
4 may in some instances be overly burdensome, particularly for short term projects. On the other  
5 hand, a general release from investment requirements for all trustees under the act would not be  
6 appropriate for funds that will be held for minors for relatively long periods of time. We may  
7 want to add additional language making exceptions in some circumstances to general fiduciary  
8 duties.  
9

10 **SECTION 409. ENFORCEMENT OF THE TRUST.** Any of the following persons

11 has standing to enforce a trust established by a fund:

12 (1) A trustee

13 (2) A fund beneficiary

14 (3) The attorney general.

15 **Discussion Notes**

16  
17 The Canadian act also allows donors to enforce a trust. We could omit this section and allow  
18 underlying trust law to define who has standing to enforce the trust. Another possibility is to put  
19 a provision in the general sections, applicable to all funds, providing for enforcement of any  
20 public appeal.  
21

22 **ARTICLE 5**

23 **MODEL TRUST INSTRUMENT**

24 **[TO BE ADDED]**

25 **ARTICLE 6**

26 **MISCELLANEOUS PROVISIONS**

27 **SECTION 601. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

28 applying and construing this uniform act, consideration must be given to the need to promote  
29 uniformity of the law with respect to its subject matter among states that enact it.

1           **SECTION 602. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**  
2   **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the  
3   Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but  
4   does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or  
5   authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15  
6   U.S.C. Section 7003(b).

7           **SECTION 603. REPEALS; CONFORMING AMENDMENTS.**

8           (a) . . . .

9           (b) . . . .

10          (c) . . . .

11          **SECTION 604. EFFECTIVE DATE.** This [act] takes effect . . . .