

D R A F T

FOR APPROVAL

AMENDMENTS TO THE UNIFORM TRUST CODE

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ON UNIFORM STATE LAWS

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AMENDMENTS TO THE UNIFORM TRUST CODE

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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AMENDMENTS TO THE UNIFORM TRUST CODE

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1 **AMENDMENTS TO THE UNIFORM TRUST CODE**

2 **SECTION 105. DEFAULT AND MANDATORY RULES.**

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

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

6 (1) the requirements for creating a trust;

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

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

11 (4) the power of the court to modify or terminate a trust under Sections 410 through
12 416;

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

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

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

19 (8) ~~except for a qualified beneficiary who has not attained 25 years of age,~~ the duty
20 under Section 813(b)(2) and (3) to notify qualified beneficiaries of an irrevocable trust who have
21 attained 25 years of age of the existence of the trust, of the identity of the trustee, and of their

1 right to request trustee's reports;

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

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

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

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

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

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

13 Preliminary Comments

14 The presence of two "excepts" in the same sentence, the first in the introductory language to
15 subsection (b) and the second at the beginning of subsection (b)(8), has caused considerable
16 confusion. Three of the five states that have enacted the UTC to date have rewritten (b)(8) to
17 eliminate the second "except." The above amendment follows the lead of these states. There is
18 no change in meaning.

19 SECTION 411. MODIFICATION OR TERMINATION OF NONCHARITABLE 20 IRREVOCABLE TRUST BY CONSENT.

21 (a) A noncharitable irrevocable trust may be modified or terminated upon consent of the
22 settlor and all beneficiaries, even if the modification or termination is inconsistent with a material
23 purpose of the trust. A settlor's power to consent to a trust's modification or termination may be

1 exercised by an agent under a power of attorney only to the extent expressly authorized by the
2 power of attorney or the terms of the trust; by the settlor's [conservator] with the approval of the
3 court supervising the [conservatorship] if an agent is not so authorized; or by the settlor's
4 [guardian] with the approval of the court supervising the [guardianship] if an agent is not so
5 authorized and a conservator has not been appointed.

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

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

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

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

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

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

21 **Preliminary Comments**

22 The amendment, which adds the language "modification or" to subsection (a), fixes an
23 inadvertent omission. It was the intent of the drafting committee that a representative of the

1 settlor be able to participate not only in a decision to terminate a trust but also in a decision to
2 modify it.

3 **SECTION 602. REVOCATION OR AMENDMENT OF REVOCABLE TRUST.**

4 (a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor
5 may revoke or amend the trust. This subsection does not apply to a trust created under an
6 instrument executed before [the effective date of this [Code]].

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

8 (1) to the extent the trust consists of community property, the trust may be revoked by
9 either spouse acting alone but may be amended only by joint action of both spouses; ~~and~~

10 (2) to the extent the trust consists of property other than community property, each
11 settlor may revoke or amend the trust with regard to the portion of the trust property attributable
12 to that settlor's contribution; and

13 (3) upon the revocation or amendment of the trust by fewer than all of the settlors, the
14 trustee shall promptly notify the other settlors of the revocation or amendment.

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

16 (1) by substantial compliance with a method provided in the terms of the trust; or

17 (2) if the terms of the trust do not provide a method or the method provided in the
18 terms is not expressly made exclusive, by:

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

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

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

3 (e) A settlor's powers with respect to revocation, amendment, or distribution of trust
4 property may be exercised by an agent under a power of attorney only to the extent expressly
5 authorized by the terms of the trust or the power.

6 (f) A [conservator] of the settlor or, if no [conservator] has been appointed, a [guardian]
7 of the settlor may exercise a settlor's powers with respect to revocation, amendment, or
8 distribution of trust property only with the approval of the court supervising the [conservatorship]
9 or [guardianship].

10 (g) A trustee who does not know that a trust has been revoked or amended is not liable to
11 the settlor or settlor's successors in interest for distributions made and other actions taken on the
12 assumption that the trust had not been amended or revoked.

13 Preliminary Comments

14 The amendment, which adds a new subsection (b)(3), requires that in the case of a joint trust
15 that is revoked or amended by fewer than all of its settlors, that the trustee must give prompt
16 notice of the change to the other settlors. This new subsection is a substitute for Section 603(b),
17 which is repealed by this amendment.

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

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

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

(e) 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.

Preliminary Comments

The purpose of subsection (b), which is being repealed, was to make certain that upon revocation of amendment of a joint trust by fewer than all of its settlors, that the trustee would notify the nonparticipating settlor or settlors. Explaining how subsection (b) achieved this result, however, required considerable verbiage in the comments. Also, subsection (b) imposed other duties on the trustee. The drafter's original intent is restored, and in a much clearer form, by repealing subsection (b) of this section, and by adding language to Section 602 that states explicitly what subsection (b) was trying to achieve.

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

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

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

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

12 (d) A transaction between a trustee and a beneficiary that does not concern trust property
13 but that occurs during the existence of the trust or while the trustee retains significant influence
14 over the beneficiary and from which the trustee obtains an advantage is voidable by the
15 beneficiary unless the trustee establishes that the transaction was fair to the beneficiary.

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

19 (f) An investment by a trustee in securities of an investment company or investment trust
20 to which the trustee, or its affiliate, provides services in a capacity other than as trustee is not
21 presumed to be affected by a conflict between personal and fiduciary interests if the investment
22 complies with the prudent investor rule of [Article] 9. In addition to its compensation for acting

1 as trustee, The the trustee may be compensated by the investment company or investment trust
2 for providing those services out of fees charged to the trust. If the trustee receives compensation
3 from the investment company or investment trust for providing investment advisory or
4 investment management services, if the trustee must at least annually ~~notifies~~ notify the persons
5 entitled under Section 813 to receive a copy of the trustee's annual report of the rate and method
6 by which ~~the~~ that compensation was determined.

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

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

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

15 (2) payment of reasonable compensation to the trustee;

16 (3) a transaction between a trust and another trust, decedent's estate, or
17 [conservatorship] of which the trustee is a fiduciary or in which a beneficiary has an interest;

18 (4) a deposit of trust money in a regulated financial-service institution operated by the
19 trustee; or

20 (5) an advance by the trustee of money for the protection of the trust.

21 (i) The court may appoint a special fiduciary to make a decision with respect to any
22 proposed transaction that might violate this section if entered into by the trustee.

1 **Preliminary Comments**

2 This amendment revises subsection (f) to clarify that compensation received from a mutual
3 fund for providing services to the fund is in addition to the trustee's regular compensation. It
4 also clarifies that the trustee obligation to notify certain of the beneficiaries of compensation
5 received from the fund applies only to compensation received for providing investment
6 management or advisory services. The amendment conforms subsection (f) to the drafters'
7 original intent.

8 **SECTION 815. GENERAL POWERS OF TRUSTEE.**

9 (a) A trustee, without authorization by the court, may exercise:

10 (1) powers conferred by the terms of the trust; ~~or~~ and

11 (2) except as limited by the terms of the trust:

12 (A) all powers over the trust property which an unmarried competent owner has
13 over individually owned property;

14 (B) any other powers appropriate to achieve the proper investment, management,
15 and distribution of the trust property; and

16 (C) any other powers conferred by this [Code].

17 (b) The exercise of a power is subject to the fiduciary duties prescribed by this [article].

18 **Preliminary Comments**

19 This amendment corrects an inadvertent style glitch. As the comments to this section make
20 clear, the drafters intended that the trustee have both the powers stated in the terms of the trust
21 and the powers specified in this Act, not that they be alternatives.