

D R A F T

FOR DISCUSSION ONLY

MANAGEMENT OF FUNDS RAISED THROUGH CROWDFUNDING EFFORTS ACT

**[TENTATIVE NEW NAME: MANAGEMENT OF FUNDS
RAISED THROUGH PUBLIC APPEALS ACT]**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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November 5, 2018

MANAGEMENT OF FUNDS RAISED THROUGH CROWDFUNDING EFFORTS ACT

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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 [Public Appeals] 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 specific donative
14 purposes, not for commercial purposes. Second, the drafting committee has also discussed
15 extending the Act’s scope to include fundraising done via more traditional avenues, such as pleas
16 for funds communicated through television, radio or print media, in addition to online
17 campaigns. We can consider requesting a name change, or we can clarify the scope of the Act
18 either through a definition of crowdfunding or a statement of the scope of the Act. The Canadian
19 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.

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

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

29 (4) “Public appeal” means a solicitation directed at the general public or a section of the
30 public for contributions to a fund for a specified noncommercial purpose, and includes
31 solicitations communicated through media outlets, social media, and online fundraising

platforms.

(5) “Public Appeal Solicitor” means the person or organization, entity or association, whether or not for profit, that engages in the solicitation of funds by means of a public appeal.

(6) “Qualified Entity” means a charitable entity, organization or association registered with this state or that qualifies as a tax-exempt entity, organization, or association under section 501 of the Internal Revenue Code.

(7) “Intended Object” means the person or purpose which is intended to benefit from funds raised through a public appeal.

(8) “Surplus” means assets remaining in a fund that are no longer needed or that cannot be used for the purpose of the public appeal.

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.

Specific donative purpose. This definition was deleted; the next section addresses the exclusions from the act.

Public appeal. This definition includes more traditional media outlets but may not include, for example, fundraising done in a church congregation for a member of the community in need. The reaches of the act need to be defined to clarify whether smaller, more informal fundraising efforts are included.

SECTION 103. SCOPE. This [act] applies to informal public appeals for contributions to funds for a specific donative purpose. The [act] does not apply to:

(1) Funds raised through a public appeal by a qualified entity;

(2) Funds raised through a public appeal in which the Public Appeal Organizer has entered into written agreements with all donors specifying distribution of the funds raised and distribution of any surplus.

1 (3) Funds raised through a public appeal in which the Public Appeal terms require that
2 the funds be placed in trust with an independent trustee for the benefit of the Intended Object.

3 (4) a purpose that is predominantly commercial and intended by the fund organizer as a
4 business opportunity for the fund organizer; and a purpose for which fundraising is open on a
5 permanent or continuing basis.

6 **Discussion Notes**

7
8 The Uniform Trust Code includes a scope provision, and a scope provision may be appropriate in
9 this act, in addition to the definitions section. We think that some platforms, like Kickstarter,
10 require an organizer to enter into a contract with each donor regarding distribution. This section
11 is intended to exclude from the Act well-organized campaigns that have built in protections, such
12 as those that have contracted for terms or set up formal trusts for the fund beneficiary.

13
14 **SECTION 104. APPLICATION; GOVERNING LAW.** This [act] applies to a fund
15 created on, or after [the effective date of this [act]] by a campaign organizer who is a resident of
16 this state or an entity organized under the laws of this state or whose principal place of business
17 is in this state or whose purpose is intended to benefit a resident of this state.

18 **Discussion Notes**

19
20 The choice of law issue is one of the thorniest and this provision is a beginning point for this
21 discussion.

22
23 **SECTION 105. PRINCIPLES OF LAW AND EQUITY.** Unless displaced by a
24 provision of this [act], the principles of law and equity of this state supplement this [act].

25 **Discussion Notes**

26
27 This section is based on Uniform Premarital and Marital Agreements Act §5 and is similar to
28 Uniform Trust Code §106. The purpose is to confirm that the law of an enacting state other than
29 this act remains applicable to crowdfunding campaigns except as displaced by this act.

1 **ARTICLE 2**

2 **THE TRUST**

3 **SECTION 201. TERMS OF THE TRUST.** A fund is subject to a trust for the benefit
4 of the intended object or purpose for which the public appeal was conducted. The trust is
5 governed by the following terms:

6 (1) The trust is enforceable regardless of whether a trust with the intended object or
7 purpose would be enforceable under other law.

8 (2) The trust is governed by the laws of this state if any funds or surplus are held in any
9 account of any kind in this state or if any trustee is a resident of this state.

10 (3) The trust shall be held, administered and distributed for the sole benefit of the
11 Intended Object.

12 (4) The trust shall terminate no later than ___ after the date of the first appeal.

13 **SECTION 202. THE TRUSTEE.**

14 (1) A person who directs the solicitation, management and disbursement of a fund, or
15 who has the authority to do so, is a trustee of the trust.

16 (2) A bank, credit union, trust company or similar savings institution in which a fund or
17 surplus is held is not, for that reason, a trustee.

18 (3) An online platform which aids in organizing the public appeal, holds a fund or surplus
19 or which a fund or surplus passes through, and which acts at the direction of a public appeal
20 solicitor or trustee, is not, for those reasons, a trustee.

21 **SECTION 203. TRUSTEE'S DUTIES.**

22 (1) Subject to the provisions to refund any surplus under Article ___, a trust does not arise
23 in favor of a donor in relation to a surplus.

1 (2) The trustee must hold the fund for the duration of the trust, and use the income and
2 principle for the sole benefit of the intended object or purpose.

3 (3) If the trustee determines, after all public appeals have ceased for a period of thirty
4 (30) days, that the purpose of the public appeal has been satisfied such that there is no surplus,
5 then the trust will terminate.

6 (4) If the trust is to terminate pursuant to Article 2 above, and there are funds remaining
7 in the trust, then the trustee must determine whether the purpose of the public appeal has been
8 satisfied. If it has been satisfied, then the trustee must determine how to distribute the surplus
9 under Article __ below. If the purpose has not been satisfied, then the trustee must distribute the
10 remaining funds to a trustee of a trust created for the benefit of the Intended Object with trust
11 purposes consistent with the purpose of the Public Appeal.

12 **SECTION 204. SURPLUS.** If at any time, whether or not all public appeals have
13 ceased, that the purpose of the public appeal has been satisfied or can no longer be satisfied, then
14 the trustee shall, in the following order:

15 (1) Distribute the surplus, and any money or other property subsequently contributed to
16 the fund, in accordance with the terms, if any, contained in the public appeal which addresses
17 distribution of a surplus.

18 (2) Distribute the surplus to one or more public appeal or qualified entity that, in the
19 trustee's sole discretion, benefits an object or person that the trustee believe to be similar to that
20 intended by the public appeal solicitor.

21 (3) If real property forming part of a fund:

22 (A) is no longer needed or cannot be used for the intended object of the public
23 appeal; and

1 (B) has not been converted into money or another form of property, the trustee
2 must return the real property to the donor, or dispose of it as the donor may direct.

3 (4) If, after due diligence, the trustee cannot locate a donor to whom real property must
4 be returned, the trustee may dispose of the real property and deal with the proceeds as if it were
5 surplus for which a refund is not required.

6 (5) If the trustee, after due diligence, cannot satisfy the provisions of 5(4)(c) and (f), the
7 trustee shall treat the surplus as unclaimed property under the laws of this state.

8 **SECTION 205. TRUSTEE'S POWERS.**

9 (1) A trustee may make payments from a fund without having to distinguish between
10 principal and income:

11 (A) in the amounts and at times the trustee considers appropriate for the benefit of
12 the intended object or purpose;

13 (B) to pay expenses, taxes, or charges for the intended object or purpose arising in
14 respect to the fund; or

15 (C) make a refund to a donor or return donated property if required by Article 4.

16 (2) A trustee may invest any part of the fund that is not needed immediately for
17 payments.

18 (3) In relation to any matter concerning the fund, a trustee may arrange for a person, firm,
19 organization, or corporation engaged in any profession, trade or business to give advice or
20 perform services on the trustee's behalf.

21 (4) A trustee is not liable for any loss arising from the trustee's reliance in good faith on
22 the advice or services obtained under Section (3) above

23 (5) A trustee may seek the opinion of:

1 (A) a person whose benefit is the fund's intended object; or

2 (B) a parent, guardian or legal representative of a person referred to in Section

3 (5)(1);

4 on a matter affecting the administration of the fund or exercise of the trustee's powers, but the
5 trustee is not bound by the opinion.

6 (6) A trustee is not liable for any loss incurred in respect of a fund unless the loss is due
7 to that trustee's own:

8 (A) dishonesty; or

9 (B) willful misconduct which the trustee knows to be inconsistent with this Act.

10 (7) If there are at least two trustees of the fund, a trustee may retire by delivering a signed
11 notice of retirement to the remaining trustees, either personally or by registered mail. The
12 retiring trustee ceases to be a trustee for all purposes upon personal delivery or the mailing of the
13 signed notice.

14 (8) Following retirement of a trustee, the remaining trustee or trustees may appoint, in
15 writing, a person to replace the retiring trustee. The appointment of the replacement trustee takes
16 effect when he or she signs a written acceptance of appointment.

17 (9) State law concerning the appointment, retirement and removal of a trustee applies to
18 the fund except as otherwise provided in this section.

19 **SECTION 206. ENFORCEMENT OF THE TRUST.** Any of the following persons
20 has standing to enforce a trust established by a fund or to enforce a duty imposed by the Act:

21 (1) A trustee

22 (2) An Intended Object for whose benefit a public appeal is created;

23 (3) The attorney general.

1 **Discussion Notes**

2
3 The purpose of this article is to require that all funds (unless exempt) will be very short term
4 trusts. If the purpose needs a longer period, such as funds raised for an incapacitated person or a
5 minor, then the funds have to be distributed to a formal trust set up for that purpose.
6

7 The provisions regarding real property are intended to make life easier for the trustee. The
8 suggestion as to treating surplus as unclaimed property actually came from Carl Lisman who sat
9 in on the Denver meeting for awhile. A handful of commissioners thought there should be no
10 refund at all; once a donor makes a contribution that's it. Anything fraudulent and the AG can
11 handle it.
12

13 **ARTICLE 3**

14 **MISCELLANEOUS PROVISIONS**

15 **SECTION 301. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

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

18 **SECTION 302. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**

19 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the
20 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but
21 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
22 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
23 U.S.C. Section 7003(b)

24 **SECTION 303. REPEALS; CONFORMING AMENDMENTS.**

25 (a)

26 (b)

27 (c)

28 **SECTION 304. EFFECTIVE DATE.** This [act] takes effect