

MEMORANDUM

FROM: Karen E. Boxx, Reporter

TO: Terry Care, Chair
Members, Advisors and Observers
Drafting Committee for an Act on Management of Funds Raised Through
Crowdfunding Efforts

RE: Issues list for first meeting

DATE: April 6, 2018

The first draft of the act identifies several issues that need resolution. In addition, and as a highlight to critical issues, I hope to discuss the following:

1. Scope of Act. An issue discussed during our call is whether the Act applies only to funds raised through web-based platforms such as GoFundMe, or whether it also applies to more traditional fundraising such as public appeals to make donations directly to dedicated bank accounts. If we make the scope more broad, then we we have to approach the Scope and Program committee. In addition, we need to consider whether the act is sufficiently flexible to cover all types of campaigns and whether the provisions of the act unduly restrict relatively modest, focused campaigns. I propose that we have a working list of types of campaigns that illustrate the range of possibilities, and test the act's provisions against that list. There are gaps in the coverage of the act that could be discovered by such testing.
2. Coordination with other uniform acts. We can rely on other state law on trusts, and in particular, other uniform acts such as the Uniform Trust Code, to fill in the details of administering any trusts required by the act. However, we should consider the circumstances where formalities and duties should be loosened. For example, the Canadian act limits the liability of trustees of funds created under the act and loosens the duties with respect to investment of the funds. In some circumstances this would be appropriate but not for trusts set up for minors that may last over several years. The committee will also have to consider whether there are any mandatory provisions for these trusts.

3. Enforcement of the Trust. The draft limits who can enforce the terms of a campaign. If the act requires a trust, general trust law would apply to specify enforcement. The need for an overall enforcement provision for all fundraising campaigns should be considered in light of the types of campaigns that are included.
4. Tax issues. The current draft does not directly involve the tax issues previously identified.
5. Model trust instrument. The current draft does not include a model trust instrument. My intention is to have this article drafted for the next meeting, once we address more of the basic structural issues. It will need to include provisions allowing for treatment as a special needs trust and addressing the tax issues. My intention is to get assistance from disability lawyers for the special needs trust provisions.