

## Memorandum

To: POCAA Drafting Committee, Advisors and Observers

From: Susan Gary

Date: February 25, 2011

Re: Draft Prepared for April 2011 Meeting

The Section numbers in this memo refer to new numbers for the Sections. I have not yet made any significant revisions to the comments.

### Section 4 - Registration

We discussed whether to require the charity to include a copy of the articles, bylaws or trust instrument. The arguments in favor are that without at least the articles, there is no information about the charity other than the name until the annual report is filed. A second argument, for the bylaws, is that if the AG keeps an updated record of articles and bylaws it will be easy for future boards to find the bylaws (boards lose their bylaws). I've left it in for now.

We need to coordinate what is required and when. We require notice of amendments to these governing documents, but if the AG didn't get the articles in the first place, why require notice of amendments? We require both notice and inclusion in the annual report. It seems to me the annual report would be sufficient, but some at the meeting wanted notice (or so my notes suggest).

The FOIA section is still in because it will be necessary for records filed with the AG other than the registration. We will need a legislative note, at least, and we may need to rework this subsection.

### Section 5 – Annual Report

We talked about putting in something to keep information about embezzlement confidential. I wasn't sure where to do this, so there is nothing there yet. A charity reports embezzlement on the Annual Report so the confidentiality piece probably goes there, but maybe it is on the form or in the comments.

Subsection (a)6(B) – there are two options. John Sebert suggested the second.

### Section 6 – Notice

(c) At the meeting, we discussed requiring notice of an estate to include the value of the estate. The new draft includes a requirement that the personal representative provide an inventory, but we may not want to include that provision. If an

inventory is required, then the time period should be 3 months. If it's just the petition then we go back to 30 days. Both time periods conform to the UPC. The comment would note that a state would want the time period to conform to its own statute.

I initially changed the time period for trusts to 60 days to match the UTC. David English (reporter for the UTC) says many states have increased the time in their trust codes and there have been complaints about 60 days being too short. For that reason, and to be consistent with the requirement for a decedent's estate, I've made the time period 90 days.

(d) Revocable trust – I have put “because of the settlor's death” in brackets, because there was discussion about removing that clause. My own view is that notice should be provided only when the settlor of the trust dies, because at that moment the interests of the charity become fixed. If the settlor becomes incapacitated, a conservator may revoke the trust or the settlor may regain capacity. The trust may be irrevocable when the settlor loses capacity to revoke it, and yet it may later be revoked.

Do we need a section authorizing the AG to promulgate rules implementing the act, or are we assuming the AG has general rulemaking authority under other law? I have not included that yet, and we need to discuss what it would say.