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May 24, 2012

Via Email ([rcassidy@hoffcurtis.com](mailto:rcassidy@hoffcurtis.com))

Commissioner Richard T. Cassidy, Chair  
Committee on Scope and Program  
Uniform Law Commission  
111 N. Wabash Avenue, Suite 1010  
Chicago, IL 60602

Re: Report of Study Committee  
Trust Decanting

Dear Commissioner Cassidy:

The Study Committee on trust decanting met by telephone conference on May 7, 2012.

Commissioners who are committee members and who were able to participate in the meeting were David M. English, Gorman Houston, Jr., Bradley Myers, Charles A. Trost, and Stanley C. Kent. The American Bar Association Advisor, Amy E. Heller, and staff liaisons, John A. Sebert, Katie Robinson and Benjamin Orzeske participated in the meeting as well.

You have seen the mid-year report of the Joint Editorial Board for Uniform Trust and Estate Acts (2011-2012) in which it was recommended that, among other things, the topic of trust decanting should be addressed by an amendment to the Uniform Trust Code.

The JEBUTEA noted that on December 21, 2011, the Internal Revenue Service had issued Notice 2011-101, requesting comments on the effect of decanting on a variety of income and transfer tax issues. Because of this, it was recommended that a drafting project be undertaken in coordination with the Service to avoid as much as possible unintended tax consequences.

The Committee on Scope and Program resolved on January 20, 2012, to recommend that the Executive Committee form a committee to study the need for and feasibility of state legislation on trust decanting.

On January 21, 2012, the Executive Committee approved the resolution.

With this as guidance, the Study Committee discussed: (i) whether a trust decanting Act is feasible; (ii) whether an Act is desirable in accordance with the Committee on Scope and Program Proposal Guidelines; (iii) whether an Act would be widely accepted by the states; (iv) whether an Act should be drafted as an amendment to the UTC, as a stand alone Act, or as an Act capable of both; and (v) whether there are, and the identity of, other interest groups that should be invited to participate in a drafting project.

At the conclusion of discussion on May 7, 2012, the consensus of the Study Committee was as follows:

1. Subject to paragraph 3, a uniform trust decanting Act is desirable because it would codify the common law on the topic, promote uniformity, and reduce uncertainty for practitioners and their clients and for fiduciaries;

2. Such an Act can, and should, be drafted as an amendment to the UTC but also capable of stand alone enactment; however

3. To promulgate an Act before the Internal Revenue Service had issued guidance on the income and transfer tax consequences of decanting would not be in the interest of the states and the public; and the imprimatur of the Uniform Law Commission on such an Act without an understanding of the Internal Revenue Service's position would affect the reputation of the Uniform Law Commission;

4. It is uncertain when the Internal Revenue Service will issue its guidance, and it is reasonable to conclude that when the Service does issue its guidance there will be a flurry of activity as states with trust decanting statutes amend theirs and states without statutes begin drafting their own. The Uniform Law Commission should be prepared to lead by immediately promulgating a uniform Act; and

5. There are interest groups that should receive invitations to send observers to the Drafting Committee including the American College of Trust and Estate Counsel, National Conference of Lawyers and Corporate Fiduciaries, and National Academy of Elder Law Attorneys.

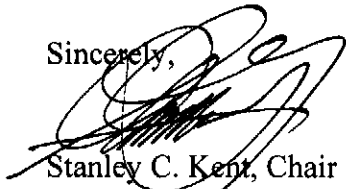
Accordingly, the Study Committee recommends that the Committee on Scope and Program consider:

May 24, 2012

Page 3

1. Authorizing the Study Committee to continue its work;
2. Authorizing the Study Committee to monitor the progress of the Internal Revenue Service in developing guidance as to the income and transfer tax consequences of decanting so that settlors, practitioners and fiduciaries acting in accordance with a uniform promulgation will not attract unintended adverse tax results; and
3. Authorizing the Study Committee to prepare a summary of the contents of a proposed uniform trust decanting Act including an outline of the provisions of such an Act which would enable a future drafting committee to expedite preparation of a draft uniform Act immediately after IRS guidance is issued.

Sincerely,



Stanley C. Kent, Chair  
Study Committee on Trust Decanting

SCK/bp

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