

## **DRAFT SECTION 110B FOR TRUST DECANTING ACT**

### **SECTION 110B. TRUST FOR CARE OF ANIMAL.**

(a) In this section:

(1) “Animal trust” means a trust or an interest in a trust created for provide for the care of one or more animals.

(2) “Protector” means the person appointed in an animal trust to enforce the trust on behalf of the animals or, if no person is so appointed, the person appointed by the court.

(b) Decanting power may be exercised over an animal trust that has a protector to the extent the trust could be decanted under the [act] if each animal that benefits from the trust were a person and the protector consents to the exercise of decanting power in a signed record.

(c) For purposes of this section, the protector of an animal trust may receive notice and represent the interests of the animals that benefit from the trust.

(d) If the first trust is an animal trust, notwithstanding any other provision of this [act], in an exercise of decanting power, the second trusts must provide that the trust property may be applied only to its intended purpose for the period of time the first trust benefitted the animals.

### **Comment**

Section 408 of the Uniform Trust Code permits a trust to be created for one or more animals who are alive during the settlor’s lifetime. In this section, the term “animal” should be construed to mean nonhuman animals, including pets and domesticated animals.

The Uniform Trust Code provides that an animal trust may be enforced by a person appointed in the terms of the trust or, if no such person is appointed, by a person appointed by the court. Section 110B(a)(2) incorporates that concept in the definition of “protector.”

One impediment to applying decanting to an animal trust is that animal trusts often do not technically have a beneficiary because the definition of “beneficiary” is restricted to a person who has a particular interest in the trust. A definition of the term “person” does not include a nonhuman animal. This impediment is resolved by treating the animal as if it were a person so that the animal trust does have a beneficiary for purposes of the decanting power. The extent of

the decanting power would then depend upon the amount of discretion that the authorized trustee has to make distributions to the animal and to any other person. If the trustee has expanded discretion, then the decanting power could be exercised under Section 109 of the [act]. If the trustee only has limited discretion to make distributions to the animal, then the decanting power can be exercised under Section 110 of the [act].

The second impediment to exercising a decanting power over an animal trust is identifying a person who can receive notice of the decanting on behalf of the animal and challenge the decanting if appropriate. This impediment is resolved because an animal trust will usually have a person who is designated to enforce the trust on behalf of the animal. Section 408(b) of the Uniform Trust Code provides that such a trust may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. Thus if an animal trust did not designate a person to enforce the trust on behalf of the animal, the trustee could request that the court appoint such a person and then proceed with any exercise of the decanting power.

Section 408 of the Uniform Trust Code provides that the property of an animal trust may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Although Section 110B permits the decanting of an animal trust, it mirrors the requirement of the Uniform Trust Code that the property of the animal trust may be applied only to its intended use for the period of time the first trust was intended to benefit the animals (usually the lives of the animals). Therefore, the authorized trustee cannot, by decanting, reduce the value of the animal trust; such a power is reserved only to the court. Further, the authorized trustee cannot divert assets of the animal trust to other beneficiaries of the trust.

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## **SECTION 408 FROM UNIFORM TRUST CODE (*sans Comment*)**

### **SECTION 408. TRUST FOR CARE OF ANIMAL.**

(a) A trust may be created to provide for the care of an animal alive during the settlor's lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor's lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having

an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

(c) Property of a trust authorized by this section may be applied only to its intended use, except to the extent the court determines that the value of the trust property exceeds the amount required for the intended use. Except as otherwise provided in the terms of the trust, property not required for the intended use must be distributed to the settlor, if then living, otherwise to the settlor's successors in interest.