

## **UNIFORM TRUST DECANTING ACT ERRATA**

### **2015 Annual Meeting**

#### **SECTION 2(5) TO BE ADDED (MOVED FROM SECTION 14; ALL SUBSEQUENT DEFINITIONS TO BE RENUMBERED)**

(5) “Charitable interest” means an interest in a trust which:

(A) is held by an ~~expressly~~ identified charitable organization and makes the organization a qualified beneficiary;

(B) benefits only charitable organizations and, if the interest were held by an ~~expressly~~ identified charitable organization, would make the organization a qualified beneficiary; or

(C) is held solely for charitable purposes and, if the interest were held by an ~~expressly~~ identified charitable organization, would make the organization a qualified beneficiary.

#### **SECTION 9(a) TO BE REVISED TO READ AS FOLLOWS:**

(a) On application of an authorized fiduciary a person entitled to notice under Section 7(c), a beneficiary, or with respect to a charitable interest the [Attorney General] or any other person who has standing to enforce the charitable interest, the court may:

#### **SECTION 14 TO BE REVISED TO READ AS FOLLOWS:**

##### **SECTION 14. PROTECTION OF CHARITABLE INTERESTS.**

(a) In this section:

(1) “Determinable charitable interest” means a charitable interest that is a right to a mandatory distribution currently, periodically, on the occurrence of a specified event, or after

the passage of a specified time and which is unconditional or which will in all events be held for charitable purposes.

(2) “Unconditional” means not subject to the occurrence of a specified event that is not certain to occur, other than a requirement in a trust instrument that a charitable organization be in existence or qualify under a particular provision of the United States Internal Revenue Code of 1986[, as amended,] on the date of the distribution if the charitable organization meets the requirement on the date of determination.

(b) If a first trust contains a determinable charitable interest, [the Attorney General] has the rights of a qualified beneficiary and may represent and bind the charitable interest.

(c) If a first trust contains a charitable interest, the second trusts, ~~in the aggregate~~ may not:

(1) diminish the charitable interest;

(2) diminish the interest of an ~~expressly~~ identified charitable organization that holds the charitable interest; ~~or~~

(3) alter any charitable purpose stated in the first-trust instrument; **or**

**(4) alter any condition or restriction related to the charitable interest.**

**(d) If there are more than one second trusts, the second trusts shall be treated as one trust for purposes of determining whether the exercise of the decanting power diminishes the charitable interest or diminishes the interest of an identified charitable organization for purposes of subsection (c).**

~~(d)~~ (e) If a first trust contains a determinable charitable interest, the second trusts that include charitable interests pursuant to subsection (c) must be administered under the law of this state unless:

(1) [the Attorney General], after receiving notice under Section 7, fails to object

in a signed record delivered to the authorized fiduciary within the notice period;

(2) [the Attorney General] consents in a signed record to the second trusts being administered under the law of another jurisdiction; or

(3) the court approves the exercise of the decanting power.

(f) **This [act] does not limit the powers and duties of the [Attorney General] under law of this state.**

### **TO BE ADDED TO COMMENTS TO SECTION 3:**

A wholly charitable trust is subject to different public policy concerns than a private trust. Private trusts have identifiable beneficiaries who may enforce their interests in the trust. Charitable trusts have as beneficiaries the community as a whole or charitable organizations, and enforcement may be left to the state's Attorney General or another public office. Further, charitable trusts often have particular charitable purposes, and conditions or restrictions on the use of the trust assets. Settlers of wholly charitable trusts often have particularly strong interests in seeing that these purposes, conditions and restrictions are not changed. Special legal doctrines, such as *cy pres* and administrative deviation, are available when it becomes unlawful, impossible, or impracticable to administer a wholly charitable trust according to its terms.

If an irrevocable trust that has noncharitable beneficiaries will in the future be used to fund a wholly charitable trust, the decanting power may be exercised over the irrevocable trust, subject to Section 14, but the decanting may not change the terms of the wholly charitable trust.

### **TO BE ADDED TO COMMENTS TO SECTION 14:**

Subsection (c)(1) prohibits any diminishment of a charitable interest. Subsection (c)(3) prohibits any change in the charitable purpose. If, pursuant to the first trust, the charitable interest is to be devoted to a particular purpose in perpetuity or, alternatively, only for a specified term of years, the second trust may not alter such provisions. Subsection (c)(4) prohibits altering any condition or restriction related to the charitable interest. For example, if the first trust requires that the trustee consult with certain persons before making distributions or provide reports to certain persons, or gives enforcement rights to certain persons to ensure the charitable purpose is fulfilled, the second trust may not change such provisions.

### **TO BE DELETED: SECTION 11(f)**

Section 11(f) is redundant of Section 11(d)(5).

**TO BE RENUMBERED: SECTION 11(g)**

Renumber Section 11(g) as 11(f).