



WHY YOUR STATE SHOULD ADOPT THE UNIFORM TRUST DECANTING ACT

“Decanting” is when a trustee distributes assets from one trust to a second trust, like pouring wine from the bottle to another vessel. Its use has been growing in recent years as trustees search for ways to modify the terms of an otherwise irrevocable trust due to changed circumstances that the settlor did not anticipate. The Uniform Trust Decanting Act (UTDA) provides a set of decanting rules that are designed to further the settlor’s intent, protect the beneficiaries’ interests, and prevent abuses by the decanting trustee. It should be enacted in every state because:

- ***UTDA provides certainty of law.*** Trusts are already being decanted in every state, sometimes under questionable authority based on obscure common-law decisions. The UTDA provides clear statutory rules.
- ***UTDA provides appropriate limits on a trustee’s ability to decant.*** The UTDA contains different decanting rules that ensure the settlor’s intent will not be defeated. One stricter set of rules applies to trustees with limited discretion, and one more lenient set of rules applies to trustees with expanded discretion. All trustees are subject to fiduciary duties and required to act in accordance with the purposes of the first trust.
- ***UTDA protects beneficiaries.*** Under the UTDA, all qualified beneficiaries must receive notice 60 days before a proposed decanting. Anyone who objects to the decanting may ask a court to intervene. Vested interests may not be reduced or eliminated.
- ***UTDA protects charitable interests.*** Under the UTDA, a trust held solely for charitable purposes may not be decanted. If the trust contains any determinable charitable interest, that interest may not be reduced or eliminated by a decanting. The Attorney General must be notified of any proposed decanting and may object on behalf of the charity or charities that stand to benefit.
- ***UTDA protects trustees from liability for a previous trustee’s decanting.*** The UTDA allows a trustee that assumes management of a previously decanted trust to rely on the validity of the previous decanting without risk of incurring liability for the previous trustee’s actions.
- ***UTDA makes decanting easier and safer.*** Under the UTDA, a trustee may “decant” by restating the existing trust document, avoiding the need to draft an entirely new trust when only a small administrative change is intended. The UTDA also contains an innovative savings provision that gives effect to valid provisions of a decanting despite any technical violations that are later deemed invalid.

For further information about the Uniform Trust Decanting Act, please contact ULC Chief Counsel Benjamin Orzeske at (312) 450-6621 or borzeske@uniformlaws.org.