Uniform Law Commission
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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THE UNIFORM STATUTORY TRUST ENTITY ACT (2009) (LAST AMENDED 2013)

- A Summary -

The Uniform Statutory Trust Entity Act (USTEA) was drafted in response to the increasing popularity of statutory trust entities, chiefly in the mutual fund and structured finance industries. Increasing use of the statutory trust as a mode of business organization has led to a recognition that in many states the status of such trusts is unclear and that the existing legislation is largely out-of-date or unclear. Practitioners, entrepreneurs, and scholars struggle to understand the law governing statutory trusts, and case law on the topic is sparse. The USTEA brings clarity and uniformity to the law pertaining to statutory trusts.

Relationship to Common-Law Trusts and the Uniform Trust Code. A statutory trust differs from a common-law trust in several important respects. A common-law trust arises from a private action without the involvement of a public official. Because a common-law trust is not a juridical entity, it must sue, be sued, and transact in the name of the trustee and in the trustee's capacity as such. By contrast, a statutory trust is a juridical entity, separate from its trustees and beneficial owners. It has the capacity to sue, be sued and transact on its own. The USTEA validates the statutory trust as a permissible form of business organization, resolving the uncertainty surrounding such trusts in states with inadequate or no statutory rules, and it brings the disparate state laws into uniformity.

Common law trusts, including those that have a business or commercial purpose, are subject to the common law of trusts and the Uniform Trust Code to the extent that neither the trust instrument nor other legislation displaces the common law or UTC. There is no separate body of general business law that applies to a common law trust that has a business purpose. The USTEA is not a codification of general business law principles applicable to common-law business trusts. Therefore, nothing in this Act displaces the common law of trusts, or the UTC, with respect to such trusts. Instead the USTEA recognizes the statutory trust as a separate and permissible form of organization.

The USTEA will be used primarily as a mode of business organization, but could also be used, in limited circumstances (see Section 603(a)), as a substitute for the common-law trust in noncommercial contexts. To ensure that a statutory trust is not used to evade mandatory rules under the common-law or the UTC applicable to common-law trusts, the USTEA provides that a statutory trust may not have a predominantly donative purpose.

Innovative Provisions. The USTEA contains several innovations including:

1. Specified rules that cannot be overridden in the statutory trust's governing instrument;
2. Clearer guidance on the applicability of ordinary trust law to a statutory trust;
3. Prohibition against a statutory trust having a predominantly donative purpose;
4. An entire article on series trusts;

5. A charging order provision;
6. Systematic treatment of conversion and merger, as well as dissolution; and
7. Clearer guidance on the relationship between the common-law trust and statutory trust entities.

Default and Mandatory Rules. Most of the USTEA consists of default rules that apply only if the governing instrument does not address a particular issue.

Uniformity of Application and Construction. Consideration must be given to the need to promote uniformity in this area of law, which USTEA satisfies.

For more information on USTEA, please contact Libby Snyder at (312) 450-6619 or by email at lsnyder@uniformlaws.org.