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October 29, 2014

VIA E-MAIL (SBART@SIDLEY.COM)

Susan T. Bart, Esq.
Sidley Austin LLP
One South Dearborn
Chicago, IL 60603

Re: Charitable Trusts and the Uniform Trust Decanting Act

Dear Ms. Bart:

I have reviewed the materials on the Uniform Trust Decanting Act now under consideration as a free standing act or an amendment to the Uniform Trust Code at www.uniformlaws.org/shared/docs/trustdecanting/2014am_tda_draft.pdf.

I urge in the strongest way that charitable trusts be expressly excluded from the Uniform Trust Decanting Act. Donors of charitable trusts typically devote significant attention to the terms of their trusts, notably the identity of the specific charity that is to hold the trust and manage it, the purposes of the trust, and the manner in which it is to be administered. These individuals may have their quirks and idiosyncrasies, but they also have their assets and the right to decide what to do with their assets. If trustees of charitable gifts are permitted to change the terms of gifts by decanting, many future donors will elect not to make charitable gifts.

One example, well known to me, is that of Giles W. Mead, Jr. Giles donated two cash gifts of $1 million each and a conservation easement on the 1318-acre Mead Ranch situated in the eastern mountains outside Napa, California, to the Land Trust of Napa County (LTNC). Before he retired, Giles was an ichthyologist and director of the Los Angeles County Natural History Museum. His large cash donations were given with specific written directions as to their purposes after grilling LTNC officers and staff at length about their understanding of and commitment to the meaning of the term "endowment." I was the LTNC president at the time of his first $1 million gift. Giles created a flywheel endowment fund intended to ensure the continued strength of LTNC and its ability to monitor, protect, and enforce its conservation easements. His conservation easement, given some years earlier, expressly protects endangered species in vernal pools and other special places he loved in the "forever wild" portion of the land, as well as a 60-acre vineyard that produces extraordinary red wines.

Negotiating the terms of the cash gifts and the conservation easement was not an easy task. I was most closely involved with the first $1 million gift, but I learned much about the

other donations; Giles approached all of them with the same intensity. He was determined to understand everything related to what he was giving and to ensure that LTNC understood the importance of his donations and their specific terms and purposes. All three gifts are charitable trusts under any concept of the term. Would Giles have given these gifts if he had realized a later law might permit their decanting and the removal of his carefully crafted restrictions? I am certain the answer is no. I was present the day he told his daughter living in California that he was instructing his broker to transfer the first $1 million endowment to LTNC and that his purpose was to start a permanent fund to ensure the long-term survival of the organization. Giles would not have made these donations if he had not grilled me and others at length on LTNC's understanding of an endowment and included specific terms in the deeds of gift that he believed would be legally binding on LTNC. He did all he could to ensure the absolute certainty and perpetuity of the terms of his gifts. He is gone now, http://napavalleyregister.com/news/opinion/giles-mead-leaves-legacy/article_7dcea5e9-e554-588f-b0d0-d13798fd27c8.html, but not forgotten.

As LTNC president for well over three years and a member of its board of trustees for some fourteen years, I have had the pleasure of interacting with many generous charitable donors of land and funds. Virtually all of them felt as Giles did when making their gifts. I believe they would be shocked, dismayed, and discouraged from making future charitable gifts if the law were changed to authorize donee organizations, as trustees, to "decant" such gifts to change their terms. I also have to believe that such a fundamental change in the law cannot be applied to existing charitable gifts. Donors believed their gifts made in past years would be used for the purposes for which the gifts were expressly given. Accordingly, I urge you to expressly exclude charitable trusts from the Act.

If I can answer any questions or provide you with additional examples of charitable donors who care deeply about the purposes to which their gifts are devoted, please feel free to contact me.

Sincerely,

Ann Taylor Schwing
nop

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