

**ORANGE BOOK FORMS COMMITTEE MEETING
MEETING MINUTES
December 1, 2021**

To: Trust and Estate Section — Orange Book Forms Committee
From: Hayley Lambourn; Rikke M. Liska; Kate Noble

The next meeting of the Orange Book Forms Committee of the Trust and Estate Section will be on January 5, 2022, from 12:00 – 1:30 p.m. via Zoom.

- 1) Welcome and Call to Order. Hayley Lambourn, the Orange Book Forms Committee Chair, began the meeting at 12:00 p.m. via Zoom.
- 2) Attendance and Introductions. Hayley Lambourn began general introductions. The sign-in/attendance was taken via Zoom. The following members were present for the meeting:

-Kate Noble	-Lori Kalata	-Rikke M. Liska
-Hayley Lambourn	-John Valentine	-Amy Symons
-Kim Raemdonck	-Susan Fox	-Jared Bove
-Julie Rosen	-Eugene Zuspann	-William Carew
-Dan Rich	-Elizabeth Meck	-Heidi Gassman
-Eugene Zuspann	-Paul Hart	-Marianne Luu-Chen
-Gordan Williams	-Tim Bounds	-Carolyn Wiley
-Frank Hill	-Tony Vaida	
-Sal Quintana	-Bette Heller	

- 3) Reminders.
 - a) Reminder that in order to receive complimentary supplements, committee members must attend 5 entire meetings in a season and participate on at least one subcommittee, and to receive a discount on the supplement, members must attend 5 entire meetings.
 - b) Please state your name before speaking and speak one at a time so that other members can hear and co-chair can take accurate meeting minutes.
- 4) Review and Approval of Previous Minutes. Hayley introduced the minutes from the November 3, 2021 meeting and noted that her last name was spelled incorrectly. Susan Fox moved to approve the minutes with Hayley's name corrected, Gordon Williams seconded the motion. Motion passes.
- 5) Chairperson's Reports
 - a) Legislative Liaison Report. Gordon Williams explained there is nothing to report.

6) Committee Reports Active Matters

a) In Progress

- (1) Retirement Accounts. Tim Bounds reported that the committee is making progress reviewing drop in provisions and then will move on to additional parts of the project. Mr. Bounds did not have an estimate on when the committee would be ready to present.
- (2) Impact of 2011 Federal Tax Legislation/Marital Formula Issues/Clayton Election/Family By-Pass Trust: Frank Hill reported that progress on this has been limited this month but the sub-committee is looking forward at legislation and will continue to move forward.
- (3) Beneficiary Deed to Trust. No Report.
- (4) CUTC. Frank Hill explained the committee was able to meet this month and is moving forward with forms, including provisions in the trusts for the trustee to monitor situs.
- (5) Special Needs Committee. Amy Symons reported that the committee is moving along but does not have a presentation date yet.
- (6) Medical Durable Power of Attorney Subcommittee. Kate Noble reported that an email was sent out to form a committee and they are moving forward to set a meeting time for form review.

b) Active Consideration.

- i) Revision of Form 1520. John Valentine explained that this form will allow for a novice to begin drafting for this arrangement. There are two versions of sections 1 and 2 and that have been revised.
 - (1) Language for Multiple Trust Directors. John Valentine discussed addition of language that allows for multiple trust directors since this is the discussion we were having at the end of the last meeting. Bette Heller talked about her previous suggestion on adding language to allow for multiple directors. John Valentine pointed out that Bette's suggestion is taken into account in language suggested by Eugene Zuspan where there are directors that are appointed for specific duties. Bette moves to incorporate Eugene's proposed language listed as A.1 with subparagraphs 1 and 2 and A.2 with subparagraph 1. Discussion of whether language about multiple trust directors should be included in the content of the form or the note on use. Frank Hill brought up an additional warning about use of this form in the grey box generally. Bette moves to accept note on use 4 with the amendments made during the meeting. Frank Hill seconded the motion. Motion passes.
 - (2) Request for further comments in Paragraphs 1 (Appointment) and 2 (Powers and Duties of Trust Director). Bette moves to approve paragraphs 1 and 2 with the insert on note on use 4, previously approved, before paragraph 1. John Valentine seconded. Motion passes.

- (3) Paragraph 3 FIDUCIARY CAPACITY; QUALIFICATIONS was read by John Valentine as follows: Each trust director shall (a) serve in a fiduciary capacity, (b) be a person who is not then serving as a trustee of a trust to which the powers of direction relate, and (c) not be a beneficiary of the trust or a person who is a “related or subordinate party,” as defined in section 672(c) of the Internal Revenue Code, with respect to [the settlor] [me] or a beneficiary of the trust. John explained that capacity is not part of the statute but that other parts are included because they are part of the statute. Bette moved to approve the paragraph as written. Dan Rich pointed out we don’t want to be redundant on note on use inclusion. John Valentine seconded. Motion passes.
- a) Paragraph 4 DUTY AND LIABILITY OF DIRECTED TRUSTEE. John read paragraph 4 including sections a, b, and c. (a) Unless compliance with a trust director’s exercise or non-exercise of a power of direction would constitute willful misconduct by the trustee: (i) The trustee shall take reasonable action to comply with the trust director’s exercise or non-exercise of any power of direction described in Paragraph ____.2, and (ii) The trustee shall not be liable for taking such action. (b) If compliance with a trust director’s exercise or non-exercise of a power of direction would constitute willful misconduct by the trustee, the trustee shall not comply with such exercise or non-exercise of the power of direction but shall act in a manner consistent with the trustee’s fiduciary duties. (c) No directed trustee shall be responsible for the acts or omissions of any trust director or for allowing any trust director to have custody or control of the funds, securities, or property of the trust. Each directed trustee shall be responsible only for his, her, or its own willful misconduct.
- (a) John pointed out a typo in the paragraph and it was corrected. John explained that the directed trustee is the trustee taking direction from the trust director and that this position is defined in the statute.
- (b) Paragraph a comments: a(i) was amended to include a reference to a paragraph number that will change in the future.
- (c) Paragraph b comments: Change made by Kate Noble to paragraph b with a hyphen in non-exercise to make it consistent with Orange Book policies.
- (d) Paragraph c comments: None.
- (e) Bette moves to approve paragraph 4 a through c. Heidi Gassman second. Motion passes.
- (4) Paragraph 5 LIABILITY OF A TRUST DIRECTOR – paragraphs a and b read by John Valentine. (a) No person or corporation becoming a trust director will be under any duty to examine, verify, question, or audit the books, records, accounts, or transactions of any preceding trustee hereunder. (b) Each trust director and each successor trust director will be liable only for failure to exercise reasonable care, prudence, and due diligence in the discharge of his or her duties hereunder, but not for errors in judgment made in good faith.
- (a) Paragraph a comments. Frank suggests that we not use the word “shall” and change made to use “will be liable” instead of “shall be liable.”

- (b) Paragraph b comments. Change to ‘but not for errors.’
 - (c) Bette Heller moves to accept paragraph 5 as amended. Frank Hill seconds. Motion passes.
- (5) Paragraph 6 DUTY TO PROVIDE INFORMATION AND TO MONITOR OR INFORM AND ADVISE. John read paragraph a first.
- (a) NO DUTY TO MONITOR, INFORM, OR ADVISE. Neither a directed trustee nor a trust director has a duty to monitor the other, or to inform or give advice to a settlor, beneficiary, trustee, or trust director concerning an instance in which the directed trustee or the trust director might have acted differently than the other; but by so informing or advising, neither the trustee nor the trust director assumes any additional duties that have been excluded in this subparagraph.
 - (i) Bette moves to approve subparagraph a. Dan Rich seconded. Motion passes.
 - (b) Duty to Provide information. John Valentine read paragraph. (b) DUTY TO PROVIDE INFORMATION. Regardless of subparagraph (a), directed trustees and trust directors have a duty to provide information to each other that reasonably relates to the specific powers and duties of each. A trustee shall provide a copy of the terms of the trust to a trust director. A trustee or a trust director that acts in reliance on the information provided by the other is not liable for breach of trust to the extent the breach resulted from the reliance, unless the respective trustee or trust director engages in willful misconduct.
 - (i) “Subsection” was changed to “subparagraph.” Also changed to a Trustee “shall” provide a copy in the fourth line. Also changed third line to read “duties of each.” Bette moved to approve as adjusted. Frank seconded. Motion passes.
- (6) Paragraph 7 COMPENSATION. John Valentine read each section a through c –
- (a) COMPENSATION OF TRUST DIRECTORS. Each trust director is entitled to receive reasonable compensation in accordance with the law of the State of Colorado regarding compensation of fiduciaries in effect at the time of payment, unless the trust director waives compensation. If the trust director has an established hourly billing rate for professional services rendered, such hourly billing rate will be deemed to be just and reasonable in determining the compensation due to the trust director. A corporate trust director is entitled to be compensated by agreement with the trustees or, in the absence of such agreement, in accordance with its fee schedule as in effect at the time of payment. (b) REIMBURSEMENT. Regardless of whether a trust director is compensated, a trust director is entitled to reimbursement for all expenses incurred in the performance of its duties as trust director, including travel expenses and legal fees and expenses incurred to defend any action or claim brought against the trust director in the trust director’s role as such by any trustee, beneficiary, or other third party. (c) CONFLICTS OF INTEREST. A trust director or an affiliate of a trust director is not to be prohibited in any respect from participating in, or from receiving compensation for participating in, any transaction with respect to and on behalf of any trust held under

this instrument due to its duty of loyalty or its duty to avoid conflicts of interest, and such duties are hereby waived for such purpose. — and then comments were made one paragraph at a time as follows:

- (a) Paragraph a Compensation of Trust Director. Paragraph read. Changes to speak about an individual trust and speak in the singular – “Each trust director is entitled to receive . . .” Removed “shall” throughout the paragraph.
 - (i) Bette moves to approve paragraph a as adjusted. Dan Rich seconded. Motion passes.
 - (b) Paragraph b Reimbursement. Paragraph read. The word “shall” was removed throughout the paragraph. Removed “him and her” and put in the title of trust director instead. Julie Rosen suggested a change to avoid saying “trust director” too many times in one sentence.
 - (i) John Valentine moved to approve paragraph b. Frank Hill seconded. Motion passes.
 - (c) Paragraph c Conflicts of Interest. Paragraph read. The word “shall” was removed throughout the paragraph. The word “agreement” in the fourth sentence did not need to be capitalized but then was changed to “instrument” instead of “agreement.” Kate Noble points out that this form mentions an “agreement” in several places throughout.
 - (i) Frank Hill moved to approve paragraph c. Bette Heller seconded. Motion passes
- (7) Paragraph 8 REMOVAL, REPLACEMENT, AND RESIGNATION OF TRUST DIRECTOR. John Valentine read the paragraphs a through C and then comments were given on paragraphs one at a time as follows:
- (a) Paragraph a REMOVAL. Paragraph was read. Frank talked about the first sentence needing to be amended depending on whether this is being used in a will document that is written in first person versus a trust document that is written in third person. Discussion of a note in the grey box for this form and Bette points out that we may need to offer alternative language and options in spaces like this that would need to be amended because of the first and third person writing. Agreement that the committee is going to look at language for a will that would be incorporated into this form and which provisions in the form need to be incorporated throughout. For now committee will flag the spaces with those issues and bring the language back.
 - (i) Paragraph a not approved — waiting until additional language is drafted by committee in the future.
 - (b) Paragraph b REPLACEMENT. Paragraph was read. Discussion of “may” instead of “shall” and change made. Change made in the last line to “majority of qualified beneficiaries” and “qualified beneficiaries” is defined in the statute. This was changed back because the language of “qualified beneficiaries” has not been approved. “Shall” was also removed.

- (i) Bette moved to approve paragraph b. Heid Gassman seconds. Motion passes.
 - (c) Paragraph c RESIGNATION. Paragraph was read. Bette mentioned that we might include language about when a resignation is effective. Discussion of proposed language changing paragraph to “resign by giving [at least 30 days’] written notice to the trustees.
 - (i) This paragraph will not be approved this meeting and will be addressed at the next meeting. The committee will take a look at this provision.
- (8) Paragraph 9 ADMINISTRATIVE PROVISIONS. John Valentine read subparagraph a.
 - (a) Moved to approve paragraph 9 with subparagraph a. seconded. Motion Passes.
- 7) New Matters. None. Haley Lambourn confirmed that no participant in the meeting has new matters to discuss.
- 8) Other. None.

Respectfully submitted by Rikke M. Liska