

RE: UTC definition of Qualified Beneficiary

Kevin D. Millard [kmillard@wadeash.com]

Sent: Saturday, January 21, 2017 1:42 PM**To:** Eugene Zuspann [ezuspann@zuspann.com]**Cc:** DennisN Whitmer

Gene and Dennis:

I agree that the Colorado definition should be conformed to the revised UTC definition. My preference would be for the “main” definition of qualified beneficiary to be in the Colorado version of the UTC, and for the other statutes that use that term to be modified to cross-reference that definition.

Please note my new contact information, below.

Regards,

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From: Eugene Zuspann [mailto:ezuspann@zuspann.com]

Sent: Friday, January 20, 2017 1:31 PM

To: Kevin D. Millard

Cc: DennisN Whitmer

Subject: UTC definition of Qualified Beneficiary

AND, because I started at the wrong place, the explanation is in the 2005 report. See the last paragraph of the official comments.

Now I believe we need to conform 15-1-402(10.5).

Gene

Kevin,

After researching the definition of a qualified beneficiary, I find the following.

1. The language in 15-1-402(10.5)(b) reads

“(b) Would be a distributee or permissible distributee of trust income or principal if the interest of the

distributees described in paragraph (a) of this subsection (10.5) terminated on that date; or”

We took this language from the 2001 final act. This is also the language in the 2006 final act.

2. In the 2004 revision to the UTC, the language changed to

“(B) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subparagraph (A) terminated on that date without causing the trust to terminate; or”

The underline is not mine – it is in the revision. There are no comments in my copy of the amendments explaining why this was done. This is apparently the version that the Colo committee used to do the 2005 version. This is also the version that Tom Morris used to draft the bill in 2013. This is also the language in the current version through 2010.

I do not know why the ULC changed the definition in the 2004 amendments, but did not incorporate them in the 2006 version, then put them back in the 2010 version.

I have two proposals:

- A. I believe that the definition in the UTC should reference 15-1-402(10.5). This makes sure our definition used for trust law is consistent.
- B. I would like to amend 10.5(b) to the language in the current version of the UTC with the highlighted language.

The problem with this is whether it would affect any of the other acts. I do not see any problem with the unitrust statute. I do not believe that the addition of the clause changes the meaning of the subsection – just clarifies it to be clear that the fact the distributee’s interest terminates is not to be construed that this is a trust termination.

Comments appreciated.

Gene