

UTC Committee: January 19, 2017 Meeting Attendance

In Person:

Dennis Whitmer
Marc Darling
John Buckley
Mike Holder
Carl Stevens
Jeff Kadavy
Jonathan Haskell
Connie Wood
Gene Zuspann
Steve Brainerd
Darla Daniel
William Carew
Barbara Dalvano
Michael Kirtland
Dan McKenzie

On Phone:

Georgine Kryda
Bob Horen
Joe Hodges

UNIFORM TRUST CODE COMMITTEE
MINUTES
January 19, 2017

Minutes from December 16, 2016, meeting approved with changes. Gene was added to the “attendee” list.

1. Discussion about conforming amendments and effective date. Marc Darling spoke with Kevin Millard and he thought that Part 11 is consistent with other effective date provisions in the UPC.

2. Kevin is planning to review the entire UTC thoroughly and will be sending comments to us as he does his review. Each subcommittee should review Kevin’s comments and bring back to our committee any issues that need to be discussed further.

3. Dennis has spoken with Kelly Cooper regarding the timing of presenting the UTC to SRC. If we wanted the UTC to try to run this year, then we would need to present the Code to SRC next month. This committee consensus was that we won’t be ready to run the UTC so quickly. We want to be able to present it well and give everyone a chance to review. Gene suggests let’s try to finish in May. Introduce to SRC in September/October, and then be ready to present to Uniform Law Commissioners in December.

4. Discussion of summaries and Colorado comments. Each subcommittee will prepare a summary to be used when the statute is presented to SRC to help people who have not reviewed the statute in detail.

5. Discussion about whether we should produce Colorado comments to be published with the statute. The Colorado comments would be for the purpose of addressing three scenarios: (1) where we made a change to the uniform law, (2) where we made a change to preserve existing Colorado law, and (3) where we made a change for some other (such as a policy or clarity) reason. Concern, as expressed by Barbara and others, is that to make the comments of a caliber that will be appropriate for publication is a very lengthy and involved process. Steve Brainerd wonders if the comments could be done in a more truncated way – so that they are not so detailed but are still helpful? Goal is to have the statute finished by May, but could we finalize Colorado comments next fall?

Steve thinks he can make a push to the Colorado Uniform Law Commissioners, to publish the statute without the comments, but it is hard to predict what they will do. Steve thinks that if the Uniform Law Commissioners require publication of the Uniform Comments, then a compromise might be a bold statement that some of the uniform

comments do not apply. Steve will talk to Jeremy about initiating this conversation with the Uniform Law Commissioners in Colorado.

Some committee members would like the prior Colorado comments to be redlined when we review them, so that we can see the history. The redline version will not be published (or shown to the legislature). Mike Holder requested that if we do prepare Colorado comments that they not refer to “the committee.”

6. Connie will try to pull together the minutes for each Article and then send those to the Bar in a separate folder so that each subcommittee can review for the preparation of their Colorado comments.

7. Discussion of prepared summaries. Marc thinks it is not necessary to include the “goal” statement in each summary. He recommends that we say it only once and at the beginning:

“The goal of the Colorado UTC Subcommittee is to conform to the uniform law as originally drafted when possible, and only make substantive changes when necessary to retain consistency with existing and preferred Colorado law and its public policy.”

8. Summary prepared for Part 7 (Dennis). Committee reviewed the summary and made changes to make the comments clearer and which properly reference other statutes with consistent language. Dennis will revise and bring it back next month.

9. Summary prepared for Part 8 (Darla).

Meeting adjourned.

NEXT MEETING February 16, 2017

UTC ARTICLE 4 SUMMARY

Article 4, Creation, Validity, Modification and Termination of a Trust, has a self-evident set of rules. A trust is created when property is transferred to a trustee with the intent to create a trust relationship. There must be a definite beneficiary or the trust must be a charitable trust, a trust for animals (specially provided for as a kind of honorary trust), or a trust for a noncharitable purpose (also a kind of honorary trust).

It is not necessary to have a trust instrument to create a trust. Oral trusts are allowed, but the standard of proof for an oral trust is the higher "clear and convincing evidence" standard.

There are clear (default) rules that apply upon consent of the parties to the trust or that govern a court in modifying or terminating a trust. A court may apply the doctrine of cy pres to charitable trusts, when the charitable purpose is no longer obtainable. A comparable charitable purpose may be selected.

UTC ARTICLE 4 COLORADO VERSION SUMMARY

The Goal of the Colorado UTC Subcommittee is to conform to the uniform law as originally drafted when possible, and only make substantive changes when necessary to provide clarity for the State of Colorado and its citizens.

411(a) details the procedure when the settlor and all beneficiaries consent to the modification or termination of an irrevocable trust. 411(b) provides for modification or termination of an irrevocable trust without the settlor's involvement if all of the beneficiaries consent and the court concludes that either (1) continuance of the trust is not necessary to achieve any material purpose of the trust; or (2) is not inconsistent with a material purpose of the trust. As in the uniform law, a spendthrift provision is not presumed to constitute a material purpose.

In addition, the Subcommittee proposes migrating the provisions of C.R.S. § 15-11-901, which deals with Pet and Honorary Trusts, to UTC Sections 408, 409, and 409.5, in order for Colorado's version of the UTC to be similar to other states' UTC numbering system. The same applies to C.R.S. § § 15-11-806 and 15-11-807 relating to reformation to correct mistakes and modification to achieve the settlor's tax objectives, which would be migrated to UTC Sections 415 and 416.

ARTICLE 7 OFFICE OF TRUSTEE Colorado Comments

The Goal of the Colorado UTC Subcommittee is to conform to the uniform law as originally drafted when possible, and only make substantive changes when necessary to retain accepted Colorado law or to provide clarity for the State of Colorado and its citizens.

701(a) (2) Language was added to avoid the interpretation that a provision in the trust specifying a method to accept or decline trusteeship is not construed to be the only method to do so unless the document clearly states this requirement. This language is in response to the Colorado Appellate Court Case _____.

701 (c) (1) Adds language that a person designated as trustee may send a rejection of trusteeship to any other acting trustee.

702 (c) Language was added to allow the settlor to specify in the terms of the trust whether the cost of a bond is charged to the trust.

703 (g) (2) The language was changed by the Colorado Committee to allow a cotrustee to pursue a broad range of remedies to address a cotrustee's breach of duty. The committee was concerned that the UTC language would be interpreted to require a cotrustee to engage in litigation to address a cotrustee's breach of duty.

704 (d) (2) The language was changed to provide adequate notice of the selection of a trustee to the Attorney General rather than requiring that the Attorney General concur with the selection.

705 (b) Language was added to insure that this section is not construed too broadly.

708 **Compensation of trustee.** The language was changed by the Colorado Committee to incorporate the existing Colorado Law which was enacted after extensive consideration and work by members of the Colorado Bar several years ago.

709 (b) The term reasonable was added to insure that the section applied to only reasonable advances.