THE UNIFORM TRUST CODE (2000)

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TABLE OF CONTENTS

I. Overview of Uniform Trust Code 287

I. Other Uniform Acts on Trusts 290

I. Relationship of UTC to Restatement of Trusts 292

I. Scope and Organization 294

I. Significant Policy Issues 296
I. OVERVIEW OF UNIFORM TRUST CODE

A. What is the Uniform Trust Code (UTC). The Uniform Trust Code (2000) is the first effort by the Uniform Law Commissioners to provide the states with a comprehensive model for codifying the law of trusts.

A. Current Status. The UTC was approved by the Uniform Law Commissioners on August 3, 2000. Following a review by the Commissioners’ Style Committee, the final text of the statute was completed on October 9, 2000. The comments to the UTC were completed on April 25, 2001. The UTC was approved by the American Bar Association’s House of Delegates at its mid-year meeting in February, 2001, and technical amendments to the Code were approved by the Commissioners in Summer 2001. The UTC without comments follows this outline. The Code with comments can also be accessed through the Commissioners’ website at www.nccusl.org.

The UTC has been enacted to date in five states. Kansas enacted the Code in 2002 (SB 297, effective January 1, 2003, codified at Kan. Stat. ch. 58a). The Code was enacted in 2003 in Arizona (SB 1351, effective January 1, 2004, to be codified at Ariz. Rev. Stat. §14-10101 et seq.), Nebraska (LB 130, effective January 1, 2005), New Mexico (HB 48, effective July 1, 2003), and Wyoming (HB 77, effective July 1, 2003, codified at Wyo. Stat. §4-10-101 et seq.). The UTC is currently under study for enactment by bar associations and other groups in over 30 other states.

Modifications made by the enacting jurisdictions are summarized below in connection with discussion of particular issues. Most modifications are minor. The most significant relate to the power of a settlor to restrict reporting to beneficiaries.

A. Who are the Uniform Law Commissioners? Uniform Law Commissioners are volunteer lawyers appointed by the Governors or Legislatures of their respective states to draft model state laws. Well known uniform acts in the probate area include the Uniform Probate Code, the Uniform Prudent Investor Act, and the Uniform Principal and Income Act. While new uniform acts are technically approved by the Commissioners meeting as a group, the heavy lifting is done by the drafting committee.

A. Who Drafted the Uniform Trust Code? The UTC was drafted by a committee chaired by Maurice Hartnett, a Judge of the Delaware Supreme Court and former Justice of the Delaware Chancery Court with long experience with trust cases. This writer served as Reporter with responsibility for carrying out the drafting committee’s decisions on a day-to-day basis and for preparing the various drafts. The drafting committee was assisted by numerous advisors, most of whom attended a majority of the twice annual drafting committee meetings. Groups represented included the American Bar...
A. What was Process Followed? The drafting of the UTC was a seven-year process. A Study Committee Chaired by Judge Hartnett was initially appointed in 1993. The function of the Study Committee was to decide whether the Commissioners should undertake the drafting of a comprehensive uniform law on trusts. The Study Committee recommended the appointment of a drafting committee, which was appointed in 1994. To gather as much input as possible, the drafting of the UTC was deliberately not placed on the fast track, but extended over a period of six years.

A. What Models Did the Drafting Committee Use? While the UTC is the first comprehensive uniform act on the subject of trusts, comprehensive trust statutes are already in effect in several states. Notable examples include California, Georgia, Indiana, and Texas. Most influential in the drafting process was the 1986 California statute, found at Division 9 of the California Probate Code (Section 15000 et seq.), which was used by the drafting committee as its initial model. However, during the drafting process, the trust statutes in all states were reviewed.

A. Why a Uniform Trust Code? There are several reasons why the drafting of a Uniform Trust Code was timely. The primary stimulus for the drafting of the UTC is the much greater use of the trust in recent years, both in family estate planning and in commercial transactions, in the United States and internationally. This greater use of the trust, and consequent rise in the number of day-to-day questions involving trusts, led to a recognition that the trust law in many states is thin. It also led to a recognition that the existing uniform acts relating to trusts, while numerous, are fragmentary. The primary source of trust law in most States is thus the Restatement (Second) of Trusts and the multivolume treatises by Scott and Bogert, sources that fail to address numerous practical issues and that on others sometimes provide insufficient guidance. The UTC will enable states which enact it to specify their rules on trust law with precision and in a readily available source. Finally, while much of the UTC codifies the common law, the UTC does make some significant changes.

A. What Process Should States Follow in Considering the UTC? For states considering the UTC, the following process is suggested:

1. Prepare State Law Study. The first step is to determine how enactment of the UTC would change existing law, both statutes and case law. With respect to case law, most courts rely heavily on the Restatement of Trusts, on which the UTC also places major reliance.

2. Decide on Drafting Model. One approach is to start with the UTC as a base
and then make modifications. The other approach is to begin with existing law and to add selected provisions of the uniform law. Relying on the UTC as the starting point will result in greater consistency with other states. It will also reduce the risk of gaps and inconsistencies.

3. Decide What to Do About Optional Provisions. Certain sections of the UTC are placed in brackets to signal that modifications may be appropriate. The reasons why modification of a section may be appropriate are then discussed in the comments to the bracketed sections. Sections of the UTC containing bracketed language include Sections 112 (rules of construction), 203 (subject-matter jurisdiction), 204 (venue), and 604 (contest of revocable trusts).

4. Decide on Key Local Law Issues. Certain existing local law provisions may be so well established that change may be unwise or impossible. For example, in Missouri, the State Bar Committee, while generally receptive to the UTC, has elected not to alter well-ingrained rules on trust termination.

5. Accommodate Variations in Local Court Systems. In many states, testamentary trusts are within the jurisdiction of the probate court, with one set of rules and procedures, while inter vivos trusts are within the jurisdiction of a court of equity, with yet another set of rules and procedures. The UTC, being a uniform act, cannot accommodate all local variations.

6. Decide What to do About “Fiduciary” Statutes. In many states, general provisions applicable to all types of fiduciaries have been enacted. The UTC only addresses actions by trustees. Repeal of one or more of these “fiduciary” statutes due to enactment of the UTC may require amendment of the enacting jurisdiction’s provisions with respect to other types of fiduciaries such as personal representatives or guardians.

7. Decide What to do about the Uniform Prudent Investor Act. Article 9 of the UTC provides a place for an enacting jurisdiction to insert its version of the Uniform Prudent Investor Act. The comment to that article provides instructions on how to eliminate overlap between the Uniform Prudent Investor Act and the provisions of UTC Article 8 describing the fiduciary duties of a trustee. An enacting jurisdiction will need to determine whether to leave its version of the Prudent Investor Act where is or codify it as part of the UTC.

8. Identify Other Policy and Political Issues. While much of the UTC simply codifies the common law, the UTC does make some changes. Many of these changes were decided on only following extensive discussion. Most were decided by consensus, others by close votes. On these close votes, some state committees may reach opposite conclusions. In the interests of
uniformity, the Commissioners ask that state committees at least start with the presumption that the uniform law approach is correct. The more significant policy issues are discussed in Part V of this outline.

II. OTHER UNIFORM ACTS ON TRUSTS

A. Introduction. There are numerous Uniform Acts on trusts and related subjects, but none provide comprehensive coverage on trust law issues. Certain of these acts are incorporated into the UTC; others must be repealed. Still others, addressing specialized topics, will continue to be available for enactment in free-standing form.

B. Uniform Acts Requiring Replacement or Other Action. The following Uniform Acts are incorporated into or otherwise superseded by the UTC:

1. Uniform Probate Code Article VII – Originally approved in 1969, Article VII has been enacted in about 15 jurisdictions. Article VII, although titled “Trust Administration,” is a modest statute, addressing only a limited number of topics. Except for its provisions on trust registration, Article VII is superseded by the UTC. The provisions of Article VII on jurisdiction are incorporated into Article 2 of the UTC, and its provision on trustee liability to persons other than beneficiaries are replaced by Section 1010.

2. Uniform Prudent Investor Act (1994) – This Act has been enacted in 39 jurisdictions. This Act, and variant forms enacted in a number of other states, has displaced the older “prudent man” standard, bringing trust law into line with modern investment practice. States that have enacted the Uniform Prudent Investor Act are encouraged to recodify it as part of their enactment of the UTC. A place for this is provided in Article 9.

3. Uniform Trustee Powers Act (1964) – This Act has been enacted in 16 states. The Act contains a list of specific trustee powers and deals with other selected issues, particularly relations of a trustee with persons other than beneficiaries. The Uniform Trustee Powers Act is outdated and is entirely superseded by the UTC, principally at Sections 815, 816 and 1012. States enacting the UTC should repeal their existing trustee powers legislation.

4. Uniform Trusts Act (1937) – This largely overlooked Act of similar name was enacted in only six states, none within the past several decades. Despite a title suggesting comprehensive coverage of its topic, this Act, like Article VII of the Uniform Probate Code, addresses only a limited number of topics. These include the duty of loyalty, the registration and voting of securities, and trustee liability to persons other than beneficiaries. States enacting the UTC should repeal this earlier namesake.

C. Uniform Acts Not Requiring Action. The following Uniform Acts are not affected by