



D I S T R I C T O F C O L U M B I A B A R  
*Estates, Trusts and Probate Law Section*

PUBLIC STATEMENT OF THE ESTATES, TRUSTS AND PROBATE LAW SECTION  
 ON THE UNIFORM TRUST CODE, D.C. BILL 14-211

*Summary*

The Estates, Trusts, and Probate Law Section endorses the proposed D.C. version of the Uniform Trust Code and supports its enactment by the District of Columbia Council rather than enactment of The Uniform Trust Act of 2001, Bill 14-211, as introduced in the Council on May 1, 2001. The proposed D.C. version of the Uniform Trust Code (UTC) was drafted and reviewed by leaders of the District of Columbia trusts and estates bar and amends and revises Bill 14-211 in the following ways:

- (1) the definition of terms has been expanded upon and further refined;
- (2) various mandatory rules which would prevail over the terms of the trust instrument have been either eliminated or limited in the D.C. version;
- (3) the criteria for determining the principal place of administration of the trust have been refined;
- (4) a provision giving the Superior Court of the District of Columbia exclusive jurisdiction of proceedings in the District brought by a trustee or beneficiary concerning the administration of a trust has been added;
- (5) the authority of a parent to represent the interests of minor and unborn children has been expanded to include the interests of incapacitated children for whom no legal representative has been appointed by a court;
- (6) specific authorization for the creation of trusts by the court for the benefit of an individual in lieu of a transfer of property to a guardianship or conservatorship, as well as authority for the creation of trusts by an agent under a power of attorney, has been added;
- (7) authority to title trust property (i) in the name of the trust; (ii) in the name of the current trustee as the trustee of such trust; or (3) in the name of "the trustee" as the trustee of such trust has been added;
- (8) judgements or court orders against a beneficiary for the *support of a spouse or former spouse* have been eliminated from the exceptions to spendthrift provisions contained in trusts;
- (9) while retaining the provisions to make a trust revocable at the death of the settlor, subject to the claims of the settlor's creditors, expenses of the settlor's funeral and burial, and the expenses of administration of the settlor's estate (to the extent that the settlor's probate estate is insufficient to satisfy such items), the additional provision subjecting the trust to statutory allowances against the probate estate has been eliminated from the D.C. version;
- (10) in addition to the provision in the UTC making claims against revocable trusts upon the death of the settlor subject to the provisions of Title 20 of the D.C. Code, a provision has been added to the D.C. version to provide that if there is no probate proceeding, or if only a small estate proceeding has been initiated, a trustee *may* publish a notice substantially similar to the notice to creditors published in a probate proceeding in order to obtain the same protection from claims as is provided in probate estates;
- (11) the D.C. version provides that unless the terms of a trust expressly provide that the trust is revocable or amendable, the settlor **may not** revoke or amend unless there is clear and convincing evidence to the contrary;
- (12) the D.C. version provides that an action to contest the validity of a revocable trust must be brought within 1 year (rather than 3) after the settlor's death and adds a provision that an action to contest the validity of an *inter vivos* trust named as a legatee under the will of the settlor must be brought within 6 months following the notice by publication in the probate proceeding ;
- (13) the duty of the trustee to report to 'contingent' beneficiaries has been eliminated and the trustee's duty to report to 'qualified beneficiaries' has been limited to the duty to provide the qualified beneficiary sufficient information to protect his or her interest in the trust and to expressly provide that if the trust terms request or direct the trustee to maintain the confidentiality with regard to the existence of the trust, or terms of the trust, or assets of the trust, then the trustee shall not be compelled to provide such information to a beneficiary.

*Testimony Prepared by William E. Davis*

The views expressed herein represent only those of the Estates, Trusts and Probate Law Section of the District of Columbia Bar and not those of the District of Columbia Bar or of its Board of Governors.

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PUBLIC STATEMENT OF THE  
D.C. BAR ESTATES, TRUSTS AND PROBATE LAW SECTION

On

THE UNIFORM TRUST ACT OF 2001, D.C. BILL 14-211

The Estates, Trusts and Probate Law Section of the District of Columbia Bar endorses the proposed D. C. version of the Uniform Trust Code which has been drafted and reviewed by leaders of the District of Columbia trusts and estates bar. The Estates, Trusts and Probate Law Section, which has a membership of approximately 1, 000 members of the District of Columbia Bar who practice in the area of trusts and estates, urges the Judiciary Committee to report the D. C. version of the bill to the full Council for further consideration rather than The Uniform Trust Act of 2001, Bill 14-211, as introduced on May 1, 2001. The views expressed herein represent only those of the Estates, Trusts and Probate Law Section of the District of Columbia Bar and not those of the District of Columbia Bar or of its Board of Governors.

The Uniform Trust Act of 2001, proposes enactment of the Uniform Trust Code ("UTC") drafted by the National Conference of Commissioners on Uniform State Laws ("NCCUSL"). Enactment by the Council of the UTC would not provide the best trust code achievable for the District of Columbia; rather, it would enact a trust code which has been enacted in no other jurisdiction and which has stimulated a great deal of controversy among practitioners who have reviewed it. Since the District of Columbia may very well be the first jurisdiction in which the Uniform Trust Code, or some version thereof, becomes law, this jurisdiction has the unique opportunity to address those provisions which have stimulated the most discussion and to improve

upon the other provisions drafted by NCCUSL. Enactment of the UTC merely for the sake of uniformity in the area of trust law is insufficient justification for enactment of a controversial trust code in this jurisdiction. There are other jurisdictions which are aware of the pendency of this legislation in the District of Columbia and are waiting to see the trust code enacted in the District of Columbia. This jurisdiction could become a model for other jurisdictions to follow or the District of Columbia Council could become a rubber stamp for the controversial code drafted by the NCCUSL.

District of Columbia trusts and estates attorneys welcome a trust code to our body of statutory law. The District of Columbia currently has very few statutory provisions which codify (1) the manner in which express trusts are created, modified, and terminated; (2) those classes of creditors exempt from spendthrift provisions and the rights of creditors, generally, of both the trust settlor and the trust beneficiaries, to property held in trust for the satisfaction of claims; (3) procedural rules for trust administration when the trust instrument is silent, such as rules on trustee acceptance, the rights and obligations of cotrustees, the procedure for resignation, grounds for removal, and methods for appointing successor trustees; (4) the duties and powers of trustees; or (5) the liability of trustees, remedies for breach of trust and the rights of beneficiaries. District of Columbia law on these issues is now embedded in our common law if, in fact, there is any common law existent applicable to any particular fact pattern.

The Uniform Prudent Investor Act was enacted in the District of Columbia and became effective on March 26, 1999. The Uniform Principal and Income Act was included in the Omnibus Trusts and Estates Amendment Act of 2000 which became law in the District on April 27, 2001. Our body of trust law which has been codified is increasing and a trust code is a logical and good

addition. As is the case with many of the uniform acts approved by NCCUSL, however, there are provisions in the Uniform Trust Code with which local practitioners who have studied it disagree and prefer an alternative or slightly different approach. Indeed, there are many areas where NCCUSL expected and anticipated that individual legislatures would vary from the approach taken in the UTC.

The *ad hoc* Task Force organized for the review of the Omnibus Trusts and Estates Amendment Act of 2000 reassembled and broadened its membership for the purpose of examining the Uniform Trust Code. Three members, in particular, of the local trusts and estates bar took the lead in the initial review of the proposed bill: Nancy G. Fax, Catherine V. Hughes, and Anne J. O'Brien. Other members of our local trusts and estates bar who actively participated in the review of Bill 14-211 and in drafting the attached bill which has been submitted to the Council Judiciary Committee for consideration as an amendment in the nature of a substitute to the bill as introduced included: Edward J. Beckwith, Michael Curtin, William E. Davis, Robert Gazzola, John M. Lynham, Jr., Suzanne V. Richards, G. Michael Richwine, Nicholas Ward and Edward Weidenfeld.

The proposed D.C. version of the Uniform Trust Code, which the Estates, Trusts and Probate Law Section urges the Council to enact, amends and revises Bill 14-211 in the following ways:

- (1) The terms defined in § 19-701.3 have been expanded upon, clarified and further refined in § 19-801.3 of the proposed D.C. version.
- (2) Several of the mandatory rules enumerated in § 19-701.5 which would prevail over the terms of the trust instrument, including the power of the court to adjust a trustee's compensation specified in the trust instrument, and the duty of the trustee to notify qualified beneficiaries of an irrevocable trust of the trust's existence and their right to request trustee's reports, have been either eliminated or limited in § 19-801.5 of the proposed D. C. version.
- (3) The criteria for determining the principal place of administration of the trust in § 19-701.8 have been refined in § 19-801.8 of the proposed D.C. version.

- (4) A provision conferring upon the Superior Court of the District of Columbia exclusive jurisdiction of proceedings in the District brought by a trustee or beneficiary concerning the administration of a trust has been added at § 19-802.2 of the proposed D.C. version.
- (5) The authority of a parent to represent the interests of minor and unborn children at § 19-703.3 has been expanded to include the interests of incapacitated children for whom no legal representative has been appointed by a court in § 19-803(a)(6) of the proposed D.C. version.
- (6) Specific authorization for the creation of trusts by the court for the benefit of an individual in lieu of a transfer of property to a guardianship or conservatorship, as well as authority for the creation of trusts by an agent under a power of attorney, has been added to § 19-704.1 at § 19-804.1(4) and (5) of the proposed D.C. version.
- (7) Specific authority to title trust property (1) in the name of the trust by reference to the instrument creating the trust; (2) in the name of the current trustee as the trustee of such trust; or (3) in the name of “the trustee” as the trustee of such trust has been added in the D. C. Version at § 19-804.18.
- (8) Judgments or court orders against a beneficiary for the *support of a spouse or former spouse* in § 19-705.3 have been eliminated from the exceptions to trusts spendthrift provisions in § 19-805.3(b) of the D.C. version. The exception for child support orders, however, has been retained.
- (9) While retaining the provisions of § 19-705.5 which make trusts revocable at the death of the settlor subject to the claims of the settlor’s creditors, expenses of the settlor’s funeral and burial, and the expenses of administration of the settlor’s estate (to the extent that the settlor’s probate estate is insufficient to satisfy such items), § 19-805.2(a)(3) of the D.C. version eliminates the additional provision which subjects such trusts to statutory allowances against the probate estate (\$40,000 in the District of Columbia).
- (10) In addition to the provision in § 19-705.5 of the UTC which makes claims against revocable trusts upon the death of the settlor subject to the provisions of Title 20 of the D.C. Code (relating to claims against a decedent’s estate when a probate proceeding has been initiated), a provision has been added to the D.C. version at § 19-805.(d) which provides that if there is no probate proceeding, or if only a small estate proceeding has been initiated, a trustee *may* publish a notice substantially similar to the notice to creditors published in a probate proceeding in order to obtain the same protection from claims as is provided in probate estates.
- (11) The D. C. version provides at § 19-806.2 that unless the terms of a trust expressly provide that the trust is revocable or amendable, or that there is clear and convincing evidence that the settlor intended the trust to be revocable, the settlor may **not** revoke or amend (it shall be

deemed an irrevocable trust) as opposed to the UTC which provides at § 19-706.2 that a trust is revocable unless there are express trust terms making it irrevocable;

- (12) The D.C. version provides at § 19-806.4 that an action to contest the validity of a revocable trust must be brought within 1 year (rather than the 3 years provided in § 19-706.4 ) after the settlor's death and adds a provision that an action to contest the validity of an *inter vivos* trust named as a legatee under the will of the settlor must be brought within 6 months following the notice by publication in the probate proceeding.
- (13) Section 19-808.13 eliminates the duty of the trustee to report to 'contingent' beneficiaries required by § 19-708.13 of the UTC and, the trustee's duty to report to 'qualified beneficiaries' under the D.C. version has been limited to the duty to provide the qualified beneficiary sufficient information to protect his or her interest in the trust. The D.C. version also expressly provides that if the trust terms request or direct the trustee to maintain the confidentiality with regard to the existence of the trust, or terms of the trust, or assets of the trust, then the trustee shall not be compelled to provide such information to a beneficiary. The D.C. version also provides that a settlor may, in the trust instrument, waive any requirement to provide a report, or limit the beneficiaries' ability to request a report. Nevertheless, notwithstanding any provision of the trust instrument to the contrary, the trustee must send a report to each qualified beneficiary in the event of the termination of the trust.

These changes which have been incorporated into the D.C. Version of the Uniform Trust Code enhance the bill as introduced and address concerns of the District of Columbia trusts and estates bar. The proposed revisions and amendments to Bill 14-211 significantly improve the legislation consistent with existing District of Columbia common law and should be included in any bill enacted by the D.C. Council establishing a trust code for the District of Columbia. .

The Estates, Trusts and Probate Law Section of the District of Columbia Bar urges the Council to enact the D. C. version of The Uniform Trust Code rather than Bill 14-211 as introduced.

William E. Davis