

Minnesota's New Uniform Trust Code

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Bios and Contact Information

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New Minnesota Trust Code

- 1) Broad Overview – Same vs. New
- 2) Directed Trusts – 501C.0808
- 3) Trust Decanting – 502.851
- 4) Expanded Modification and Termination -
501C.014 – 501C.017

New Minnesota Trust Code

- Proposal approved by Probate & Trust Law Section Council and submitted to MSBA.
- Bill introduced by Uniform Law Commissioners in the 2015 legislative session.
- Bill passed both unanimously in both chambers and will be effective January 1, 2016.

Still the Same

- 501B.16 is now 501C.0202 Subject Matter of Judicial Proceedings
- In rem jurisdiction for trust proceedings
- Court continues to represent unborn or unascertained beneficiaries
- The same agency rules apply (agents held to fiduciary standard)

Still the Same

- Principal and Income Act and Prudent Investor Act are unchanged
- Charitable trusts are the same (still in 501B)
- Duties of Loyalty, Prudence, and Impartiality still apply
- Beneficiaries can sign consents and releases
- Statute of Limitations on proceeds- shortened to 3 years instead of 6

New and Improved

- Defined terms
- In personam jurisdiction with virtual representation now an option
- Standard of capacity to create a revocable trust now defined (same as will)
- Tangible Personal Property lists are authorized
- Default- trustees must act by majority (not unanimously)

Directed Trusts – 501C.0808

- Definitions
 - “Directing party”
 - Investment trust advisor (powers Subd. 2)
 - Distribution trust advisor (powers Subd. 3)
 - Trust protector (non-exhaustive list of 12 powers in Subd. 4)
 - “Excluded fiduciary” - think administrative, directed to act by directing party

Directed Trusts – 501C.0808

- **A DIRECTING PARTY IS A FIDUCIARY** of the trust subject to the same standards applicable to a trustee, unless the governing instrument provides otherwise
- But the directing party must still act in good faith and in accordance with the best interests of the trust

Investment Trust Advisor

- Settlor wants trust to hold concentrated asset
- Unique asset(s)- art, wine, golf course
- Settlor wants to create an irrevocable trust and fund with family company and is concerned about voting of stock
- Long-standing relationship with Registered Investment Advisory firm

Distribution Trust Advisor

- Special circumstances require someone other than trustee to determine when to make income and principal distributions to beneficiaries
 - Beneficiary with addiction issues
 - Monitoring compliance with education requirements

Trust Protector

1. Modify or amend to achieve favorable tax purposes
2. Increase, decrease, modify interests of any beneficiary
3. Modify terms of any power of appointment granted by the trust
4. Remove and replace trustee; investment trust advisor; distribution trust advisor; or other directing party

Trust Protector

5. Terminate the trust
6. Change situs, governing law, or both
7. Appoint one or more successor trust protectors
8. Interpret terms of trust

Trust Protector

9. Advise trustee on matters concerning beneficiary
10. Amend or modify to improve administration
11. Veto or direct trust distributions
12. Provide direction regarding notification of qualified beneficiaries

Excluded Fiduciary

- Protections:
 - Unless otherwise provided, no duty to monitor, review, inquire, investigate, recommend, evaluate, or warn with respect to a directing party's exercise or failure to exercise any power granted to the directing party by the governing instrument.
 - Also, no liability for offering opinions or providing information on how the excluded fiduciary would act in similar circumstances.

Excluded Fiduciary Protections Continued

- If governing instrument provides excluded fiduciary is to follow direction of directing party, excluded fiduciary liable ONLY for WILFUL MISCONDUCT on part of excluded fiduciary.
- No duty for excluded fiduciary to warn beneficiaries.

Article 14 – Decanting 502.851

- **Unlimited discretion** - allows an authorized trustee to appoint part or all of the principal to a trustee of an appointed trust for, and only for the benefit of:
 - one,
 - more than one, or
 - all of the current beneficiaries of the invaded trust to the exclusion of any one or more of the current beneficiaries.

Decanting 502.851

- **Without unlimited discretion** - allows an authorized trustee with the power to invade trust principal but without unlimited discretion may appoint part or all of the principal of the trust to a trustee of an appointed trust, provided the **current beneficiaries** of the appointed trust shall **be the same** as the current beneficiaries.

Decanting 502.851- Process and Notice Subd. 11

- Exercise of power must be in writing, signed, dated and acknowledged by authorized trustee
- Exercise may be made without court approval, but authorized trustee may seek court approval

Decanting 502.851- Process and Notice Subd. 11

- A copy of the instrument exercising the power, the appointed trust, and the invaded trust shall be provided to any person having the right to remove and replace an authorized trustee of the invaded trust and all persons interested in the invaded trust.

Decanting 502.851- Process and Notice Subd. 11

- The instrument exercising the power must state whether all or only a part of the assets of the invaded trust will be appointed and, if part, the approximate percentage of the value of the principal of the invaded trust that is subject to the appointment.

Decanting 502.851- Process and Notice Subd. 11

- Exercise effective 60 days after the date of the delivery of notice, unless all persons entitled to notice agree in writing to an earlier effective date of the exercise or waive in writing the right to object to the exercise of the power

Decanting 502.851- Process and Notice Subd. 11

- A person entitled to notice may object by serving written notice of objection upon the authorized trustee prior to the effective date of the exercise of the power. Failure to object shall not constitute consent.
- If authorized trustee does not receive written objection, the authorized trustee is not liable for such exercise.

Decanting 502.851- Process and Notice Subd. 11

- If an authorized trustee receives a timely written objection, the authorized trustee or any person entitled to notice may petition a court to have the exercise of the power performed as proposed, performed with modifications or denied. If authorized trustee decides not to implement the proposed exercise, the trustee shall notify all persons entitled to notice of the decision not to exercise and the reasons for the decision.

Article 4 – Modification, and Termination

- 501C.0410 – Judicial Proceedings for modification or termination of a trust may be commenced by a trustee or beneficiary, and proceedings for the modification or termination of a non-charitable trust may be commenced by the settlor.
- 501C.0411 – A Non-Charitable Irrevocable Trust may be modified or revoked with consent of settlor and all beneficiaries, even if inconsistent with a material purpose of the trust.
- A Non-Charitable Irrevocable Trust may be modified or terminated by the court if all beneficiaries consent and continuation not required or modification not inconsistent with a material purpose of the trust.

Article 4 – Continued

- 501C.0412 – Modification or Termination because of unanticipated circumstances or inability to administer trust effectively
- 501C.0414 – Modification or Termination of uneconomic trust: After notice to the beneficiaries, trustee may terminate a trust with less than \$50,000 of assets if value is insufficient to justify the cost of administration. Court may modify or terminate *or remove and replace the trustee* to reduce the cost.

Article 4 – Continued

- 501C.0415 – Reformation is permitted to correct mistakes of law or fact if settlor's intention is proved by clear and convincing evidence. No requirement that language be ambiguous.
- 501C.0416 – The Court may modify the terms of a trust to achieve the settlor's tax objectives "in a manner that is not contrary to settlor's probable intention." No clear and convincing standard.
- 501C.0417 – After notice to qualified beneficiaries, the trustee may combine or divide trusts if the result does not impair rights of any beneficiary or adversely affect achievement of the purposes of the trust. (Terms need not be identical.)

Questions?

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