Executive Summary of Proposed Minnesota Trust Code

The Probate & Trust Law Section of the Minnesota State Bar Association, in cooperation with the Uniform Law Commissioners, prepared and introduced a Minnesota-specific version of the Uniform Trust Code in the 2015 legislative session. The bill has been passed by both houses of the Minnesota Legislature and has been signed by the Governor. The bill will be effective January 1, 2016, and (with a few exceptions) will apply to all trusts administered under Minnesota law, whenever created.

The bill is the result of more than 4 years of work by a sub-committee formed by the Probate & Trust Law Section to create a Minnesota-specific version of the Uniform Trust Code. The sub-committee, formed in 2010, focused its efforts on marrying the best of Minnesota’s current trust law with the best of the Uniform Trust Code.

Of primary practical significance to Minnesotans is the clear organizational structure of the UTC, along with its definitions and codifications of settled common law principles. This should make Minnesota’s trust law more user-friendly for clients, trustees, beneficiaries, lawyers, and courts.

From a substantive standpoint, the proposed bill is intended to bring Minnesota trust law into the 21st century and in line with national trends in the law of trusts that have developed over the 25 years since Minnesota trust law, enacted as Chapter 501B, was last overhauled. Trustees and beneficiaries alike will benefit from greater flexibility through new or enhanced procedures like decanting, trust modifications, non-judicial settlement agreements, reformation of trusts to correct mistakes and achieve tax objectives, and the ability to create directed trusts, to name the most significant.

The bill also recognizes the growing use of revocable trusts as will substitutes and codifies rules of construction that are consistent with that development – for example, it clarifies the mental capacity required to make a revocable trust (same as a will), the ability to use a written list to dispose of tangible personal property in a revocable trust (parallel to the rule already in place for wills), and the time limit for contesting the validity of a revocable trust (now in line with the rule for contesting wills). The bill also preserves Minnesota’s unique *in rem* jurisdiction for trust proceedings and its historically strong spendthrift law.

Detailed Summary of Proposed Minnesota Trust Code

ARTICLE ONE – Sections 501C.0101-0112

Article One sets forth general provisions and definitions that apply to the remaining provisions in the UTC. Section 102, based largely on existing language in Minnesota Statute § 501B.25, describes the scope of the new chapter. One of the key additions is the provision of twenty definitions that apply to the UTC, which will provide clarity for both interested parties and courts. Section 105 contains the default and mandatory rules. The terms of the trust instrument itself may prevail over many provisions in law, except for those listed in subsection b. This will give the settlor (i.e., the individual who creates the trust) extensive flexibility in creating the rules that apply to the trust instrument with certain exceptions based on public policy considerations. Section 111 substantially expands the scope of non-judicial settlement agreements, allowing parties to agree regarding the interpretation or construction of the terms of the trust, the approval of a trustee’s accounting, the appointment of a trustee, and the liability of a trustee. Section 112 also extends the rules of construction applicable to wills to the interpretation of trusts.

ARTICLE TWO – Sections 501C.0201-0208

Article Two provides rules governing jurisdiction and judicial proceedings. Any interested person—defined broadly—may invoke the jurisdiction of the court for a determination or instruction concerning a matter involving the trust. One of the most noteworthy provisions in Article Two is the creation of a dual track system for jurisdiction in Section 203: *in rem* and *in personam*. Based on existing Minnesota law, the default is *in rem* jurisdiction. The UTC mirrors current Minnesota law for *in rem* proceedings. Parties may specifically elect *in personam* jurisdiction. However, any interested person may override this by requesting *in rem* jurisdiction. The *in personam* track mirrors the procedure under Rule 4 of the Rules of Civil Procedure. In an *in personam* hearing, the court’s order is binding on any party served with notice, any party who appears in the proceeding, and any party who could be bound under the virtual representation rules of Article Three. The court does not retain jurisdiction over the trust unless otherwise ordered by the court. Section 207 establishes the proper venue for judicial proceedings involving a trust and also includes a new long-arm statute that grants jurisdiction over trustees and beneficiaries of trusts having a principal place of administration in Minnesota.

ARTICLE THREE – Sections 501C.0301-305

Article Three addresses circumstances where one party may represent another—assuming no conflict of interest—in both judicial proceedings and in non-judicial settlement agreements. Current Minnesota law recognizes the concept of virtual representation in limited circumstances. The UTC expands Minnesota law to include representation in the following situations: (1) an agent may represent the principal if expressly authorized by the principal; (2) a fiduciary may represent a beneficiary; (3) a parent may represent an otherwise unrepresented minor or unborn child (Section 303(b) provides specific provisions to determine which parent possesses these representation rights when the parents are separated or divorced); and (4) under some circumstances, a person may be represented by another having a substantially identical interest in the trust. The UTC also preserves and expands the court’s ability to represent a beneficiary in *in rem* proceedings.

ARTICLE FOUR – Sections 501C.0401-0417

Article Four governs the creation, modification, and termination of trusts. Sections 401 through 409 specify the requirements for the creation of a trust. Sections 410 through 417 codify the provisions to terminate or modify a trust. In particular, section 402 prohibits passive trusts and provides that no trust is invalid if the trustees and beneficiaries are the same person(s) as under current Minnesota law. Section 411 permits the modification or termination of an irrevocable trust by either its terms or court action, and Section 412 permits the modification or termination of an irrevocable trust due to unanticipated circumstances or the inability to administer the trust efficiently. Sections 415 and 416 permit reformation of a trust to correct mistakes and modification to achieve the settlor’s tax objectives.

ARTICLE FIVE – Sections 501C.0502-0506

Article Five addresses issues relating to a creditor’s ability to reach a beneficiary’s interest in a trust and preserves Minnesota’s traditionally strong spendthrift protection. If the trust was created by someone other than the beneficiary, the creditor’s ability to reach the beneficiary’s interest in the trust is limited to amounts actually distributed to the beneficiary, unless a distribution is overdue, in which case the creditor may compel the distribution. In the case of a trust of which the beneficiary is also the settlor, a creditor can reach all of the property in the trust if it is revocable and the maximum amount that can be distributed to the settlor/beneficiary if the trust is irrevocable. Property held in a revocable trust at a settlor’s death is also subject to claims of the settlor’s creditors.

ARTICLE SIX – Sections 501C.0601-0605

Article Six contains provisions that apply to revocable trusts only. Section 601 clarifies that the capacity required to create, amend, or revoke a revocable trust is the same as that required to make a will. Sections 602 and 603 set forth conditions under which a trust may be amended, including amendments made by an attorney-in-fact or conservator, and authorizes a written statement regarding distribution of tangible personal property similar to that provided for in the Probate Code. Section 604 makes clear that so long as a trust is revocable, the trustee’s duties are owed solely to the settlor of the trust. Finally, Section 605 provides for limitations on the period during which the validity of a revocable trust may be challenged.

ARTICLE SEVEN – Sections 501C.0701-0709

Article Seven addresses such issues as accepting or declining a trusteeship, trustee’s bond, how vacancies in trusteeship are to be filled, resignation of a trustee, removal of a trustee, delivery of property by a former trustee to a successor trustee, and compensation of a trustee. All of the foregoing are consistent with current Minnesota law. Section 703 deals with actions by the trustee. In general, it is intended to help facilitate action by the trustees by providing that (1) cotrustees who are unable to reach a unanimous decision may act by majority vote, (2) if a cotrustee is unavailable to perform duties due to absence, illness or similar circumstances, the remaining trustees may act, and (3) allowing a trustee to delegate performance of duties to a cotrustee. Items (1) and (2) are changes from current Minnesota law. Finally, Section 703 provides that a trustee who does not join in an action taken by the other cotrustees is not liable for such action unless it is a serious breach of trust.

ARTICLE EIGHT – Section 501C.0801-0817

Article Eight addresses the duties and responsibilities of trustees. Sections 801 and 802 impose the duties of good faith, acting in accordance with the purposes and terms of a trust, and the common law duty of loyalty. Sections 803 and 804 further codify the trustee’s duties of impartiality and prudent administration. Section 807 clarifies the trustee’s ability to delegate duties and powers to an agent. Section 808 introduces a new concept to Minnesota law: the directed trust. In a directed trust, the trustee is required to follow the direction of an investment trust advisor, a distribution trust advisor, or a trust protector, and the trustee has no legal responsibility or liability for decisions it is directed to make by one of these individuals. The proposed language is based on a recently-enacted Illinois statute, with a few additions from the statutes of Delaware and South Dakota. Section 808 also clarifies the role and the powers of a trust protector. These powers include removing and replacing the trustee, modifying or terminating the trust, and advising the trustee on distributions to beneficiaries. A trust protector allows the trust to adapt to changing circumstances without the need for court intervention. Following the modern trend in U.S. trust law, section 813 allows the settlor greater control over the amount of information that must be provided to a beneficiary of an irrevocable trust. Sections 815 and 816 outline the trustee’s general and specific powers regarding trust property. Unlike current Minnesota law, these sections do not require the settlor to incorporate them by specific reference in the trust agreement. Instead, these powers are granted unless the trust instrument specifically provides otherwise. The remaining provisions of Article 8 deal primarily with the trustee’s duties to collect and manage trust assets and distribute them to the beneficiaries upon the termination of the trust.

ARTICLE NINE – Section 501C.0901

This is a renumbered version of current Section 501B.151, which is Minnesota’s version of the Uniform Prudent Investor Act.

ARTICLE TEN – Sections 501C.1001-1014

Article Ten addresses the liabilities of trustees and the rights of persons dealing with the trustee. Section 1001 lists the remedies for breach of trust and specifies when a breach of trust occurs. These remedies are broad and flexible. Section 1002 provides the method for calculating money damages for breach of trust. Section 1003 provides that a trustee is chargeable for profits made from the trust, even in the absence of a breach of trust. Section 1004 reaffirms the court’s power in equity to award costs and attorney’s fees. Section 1005 provides a statute of limitations on actions against a trustee. This section replaces Minnesota Statute § 541.05, subd. 1(7). Section 1005(c) retains the current six year statute of limitations and clarifies when the statute begins to run. Section 1005(a) is an addition to current Minnesota law and allows a trustee to shorten the statute of limitations by giving a beneficiary a report that adequately discloses the existence of a potential claim. After receiving a report, a beneficiary has three years to bring a claim. Sections 1006 and 1007 protect trustees who act in reasonable reliance on the written trust instrument and who have exercised reasonable care to ascertain the occurrence of events that might affect a distribution, such as a beneficiary’s death or marriage. Section 1008 establishes the effect and limits on exculpatory clauses. Section 1009 establishes the standards for recognizing a beneficiary’s approval of the trustee’s acts. Sections 1010 through 1013 address trustee relations with persons other than beneficiaries. These provisions seek to encourage third parties to engage in commercial transactions to the same extent as if the property were not held in trust. Sections 1010 and 1011 limit the trustee’s personal liability for obligations of the trust, while sections 1012 and 1013 protect the rights of third parties dealing with the trustee and the trust.

ARTICLE ELEVEN – Sections 501C.1101-1118

This is a renumbered version of current Sections 501B.59-76, Minnesota’s version of the Uniform Principal and Income Act.

ARTICLE TWELVE – Sections 501C.1201-1208

This Article captures the provisions of current Chapter 501B that were not addressed elsewhere in the Uniform Trust Code.

ARTICLE THIRTEEN – Sections 501C.1301-1304

Article Thirteen contains provisions governing the application and construction of the UTC. Sections 1301 and 1303 are standard Uniform Law Commissioners provisions relating to uniformity of application and severability. Section 1302 allows Minnesota law, not the federal Electronic Signatures in Global and National Commerce Act, to govern electronic records and signatures. Section 1304 explains how the UTC will be applied to pre-existing trusts. Specifically, the Code applies to all trusts whenever created, to judicial proceedings concerning trusts commenced on or after its effective date, and unless the court otherwise orders, to judicial proceedings in progress on the effective date. In addition, any rules of construction or presumption provided in the Code apply to preexisting trusts unless there is a clear indication of a contrary intent in the trust’s terms. By applying the Code to preexisting trusts, the need to know two bodies of law will quickly diminish. In addition, rights already barred by a statute of limitations or a rule under former law are not revived by a possibly longer statute or more liberal rule under the UTC. Any acts done prior to the effective date of the UTC are not affected by the UTC’s enactment.

ARTICLE FOURTEEN – Chapter 502

Article Fourteen is an adaptation of the New York statutes governing powers of appointment which would replace current Chapter 502. After reviewing the laws of several states governing decanting (the distribution of assets from one trust into another trust), the Uniform Trust Code working group determined that New York’s decanting statute was the approach we wished to use as a template for Minnesota’s decanting statute. Because New York’s decanting provisions were contained in their larger chapter on powers of appointment, the committee took the opportunity look at our entire Chapter 502 and ultimately elected to adopt the remaining provisions of New York’s power of attorney statute in order to preserve the structure, as well as the defined terms and construction provisions that were necessary to support the decanting rules the committee wished to adopt.

Section 502.81 contains the defined terms used in the Chapter, except those which apply only to Section 502.851. Section 502.82 creates rules to classify powers of appointment – as, for example, general or special, exclusive or non-exclusive, presently exercisable, testamentary, or postponed. Section 502.83 sets for the rules for creation of a power of appointment, while Section 502.84 addresses the extent of a donee’s authority to appoint or contract to appoint property. Section 502.85 governs the exercise of powers of appointment.

Section 502.851 is the proposed statute governing decanting, including definitions that apply only to this section. The proposed statute incorporates a dual-track format, depending upon the discretion the trustee has to distribute trust principal under the terms of the governing trust instrument. Under the first track, in 502.851, subd. 2, an authorized trustee with “unlimited discretion” may appoint trust principal to a new trust (the “appointed trust”) for the benefit of one, more than one, or all of the current and remainder beneficiaries of the existing trust (the “invaded trust”), and the remainder beneficiaries of the appointed trust shall be one, more than one, or all of the remainder beneficiaries of the invaded trust. “Unlimited discretion” is defined as the unlimited power to distribute principal that includes words such as best interest, welfare, comfort or happiness.

Under the second track, in 502.851, subd. 3, an authorized trustee with unlimited discretion may appoint trust principal to a new trust as long as the current and remainder beneficiaries of the appointed trust are the same as the current and remainder beneficiaries of the invaded trust. Section 502.851, subd. 8. provides that the trustee is under a fiduciary duty in exercising the power. Section 502.851, subd. 10, sets forth how the power is exercised and the notice requirements. Section 502.851, subd. 14, sets forth a number of safeguards on the exercise of the decanting power. It provides that exercise of the power cannot limit or modify a beneficiary’s current right to mandatory distribution of income or principal, cannot decrease or indemnify against the trustee’s liability for failure to exercise reasonable care, diligence and prudence, cannot extend the terms of the appointed trust beyond any permissible rule against perpetuities of the invaded trust and cannot jeopardize other important tax features of the invaded trust.

The balance of Chapter 502 deals with creditors’ rights to appointive property (502.86), the revocation and release of powers of appointment (502.87), and the effect of powers of appointment on period of the Rule Against Perpetuities.

ARTICLE FIFTEEN

This Article contains the conforming changes identified by the Revisor that will need to be made elsewhere in the Minnesota Statutes to update cross references to the newly-renumbered provisions in Chapters 501C and 502.

ARTICLE SIXTEEN

This Article repeals the existing provisions of Chapter 501B, effective January 1, 2016. Only the provisions related to Charitable Trusts and their Supervision – 501B.31-45 – and real property court proceedings – 501B.46-.55 - will remain in Chapter 501B.

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