

CONNECTICUT TRUST ASSOCIATION

Barry D. Horowitz, JD. LLM

March 14, 2006

WRITTEN TESTIMONY OF ATTORNEY BARRY D. HOROWITZ BEFORE THE
JUDICIARY COMMITTEE OF THE CONNECTICUT GENERAL ASSEMBLY
REGARDING THE CONNECTICUT UNIFORM TRUST CODE ON March 14, 2006

Honorable Committee Members:

My name is Attorney Barry Horowitz and I am a founding member of the Hartford Law Firm of Nirenstein, Horowitz & Associates, a law firm that does exclusively estate planning, and the Connecticut Trust Association, an association of Lawyers, Financial Advisors and Clients dedicated to seeing that living trusts remain a cost effective alternative to probate in Connecticut. I am before you to express our concerns regarding aspects of Raised Bill No 429, commonly referred to as the Connecticut Uniform Trust Code ("Code").

The Code is an attempt to provide uniform statutory laws for trusts. In this regard it is primarily a "default" statute, that is, it supplements the trust document. This is a beneficial approach because it allows clients to create a trust the way they want and still provides laws in areas they may not have covered. However, in one section of the Code, Section 5, it deviates from this approach, imposing mandatory rules on trust clients that are not to their benefit. Specifically, in subsection (10) of Section 5 the Code places the rights of beneficiaries ahead of the rights of trust clients and interferes with their rights of privacy.

To understand how this problem occurs we need to review a few sections of the Code. First, Section 5(b) states that "the terms of a trust prevail over any provision ... except ... (10) the duty under subdivision (2) of subsection (a) of section 67 of this act to respond to the request of a beneficiary [qualified beneficiary] of an irrevocable trust for information reasonably related to the administration of a trust." This section becomes troublesome when considering how modest estates are planned and the Code's definitions of "qualified beneficiary".

"Qualified beneficiary" is defined in Section 3(15) of the Code as "a beneficiary who, on the date the beneficiary's qualification is determined: (A) Is a distributee or permissible distributee of trust income or principal; (B) **would be a distributee or permissible**

distributee of trust income or principal if the interests of the distributees described in subparagraph (A) of this subdivision terminated on such date without causing the trust to terminate; or (C) would be a distributee or permissible distributee of trust income or principal if the trust terminated on such date" (emphasis added).

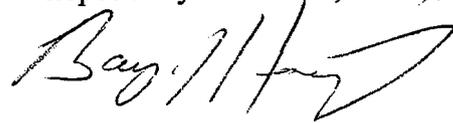
Applying these Sections of the Code to the usual situation of a family of modest means doing a living trust, that is, Mom and Dad decide that to avoid probate, conservatorships of their assets and federal estate taxes, they decide to hold their assets in a living trust, the following occurs under the Code: In our example Dad dies and Mom is now in charge of her spouse's trust. To save federal estate taxes Dad's trust is written to become irrevocable upon Dad's death. Mom is the sole beneficiary of Dad's trust until she dies, then the assets go equally to their children. The parents have no intention of involving their children in their personal financial affairs until they are both deceased or too feeble to handle their affairs themselves. They are private people and while they love their children, they have never wanted to share information about their personal finances with them. But under the Code's definition of "qualified beneficiary", the children now become qualified beneficiaries of Dad's trust, even though Mom is still alive! Mom now has to provide them with any information they request that is "reasonably related" to the trust's administration. This would by necessity include any information about what Mom was doing with what she and her husband always thought was their money. They did not want their children to have the right to review their finances when one of them is still alive, but under the Code they are **forced** to because it is a mandatory provision. Section 5. Would you want your parents to be forced to disclose their personal family finances to you? Who would? Would you want to be forced to do so with your assets? To force clients to do so is an invasion of their privacy. Under Connecticut law, without court order, no one ever had to do this, until now. As far as I am aware, in the six years the law has existed only roughly 1/4 of the states have passed some form of this legislation and the form has varied greatly (to the point that it should not even be called "uniform" legislation). A number of states have rejected it. One state, Arizona, has gone so far as to have passed the legislation and the subsequent year repeal it.

I am not suggesting any bad motives on the part of the drafters of this uniform legislation, or the members of the Connecticut Bar Association's Estate Planning and Probate Section's Executive Committee and the various Probate Judges who spent so much time and effort modifying this proposed legislation. What I am suggesting is that this legislation goes too far in advancing the rights of beneficiaries at the expense of the rights of the settlors, those that created the trust. To balance these interests, these provisions need to be amended to limit the class of beneficiaries to those that are Current Beneficiaries as defined in Section 3(3) of the Code. With this amendment, under our example Mom would still be able to maintain privacy, and upon Mom's death, the children would then become current beneficiaries and would then be entitled to financial information.

Some may object to this amendment saying, "but by that time it may be too late, Mom may have improperly absconded with the money". Our answer is yes, but if Mom and Dad are concerned about that possibility they have the right to have their trust drafted under the discretionary provisions of the Code that already contain these provisions. But to remove the right of people to protect their privacy by placing these provisions in the mandatory Section

of the Code is the wrong approach, and if we take such an approach there will be an uproar of the many clients and constituents who have living trusts or are contemplating living trusts and want their rights of privacy protected.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Barry D. Horowitz". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Barry D. Horowitz