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CONNECTICUT TRUST ASSOCIATION

March 3, 2008

WRITTEN TESTIMONY OF ATTORNEY BARRY D. HOROWITZ BEFORE THE  
JUDICIARY COMMITTEE OF THE CONNECTICUT GENERAL ASSEMBLY  
REGARDING THE UNIFORM TRUST CODE

Dear 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 but primarily Clients dedicated to seeing that living trusts remain a cost effective alternative to probate in Connecticut. The Connecticut Trust Association has approximately fifteen thousand members. I am before you to express our concerns regarding aspects of Raised Bill No 508, commonly referred to as the 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 approach is beneficial because it allows clients to create a trust that is specific to their circumstances 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, Section 5 expands the ability of creditors to attack the trust, interferes with the clients' rights of privacy and subjects the trust to potential probate court supervision.

Section 5(5) the Code expands the rights of creditors to attach clients' assets by allowing creditors of mandatory beneficiaries to attach the beneficiary's interest, even if the trust would allow the trustee to withhold distribution for some other reason. This is not current law in Connecticut and would interfere with the rights of trust clients to dispose of their assets as they would otherwise wish.

Section 5(7) the Code allows current beneficiaries to receive all information reasonably related to the administration of the trust. While subsection (c) of Section 5 of the act allows the trustee to appoint a beneficiary surrogate to receive information, which is an improvement over prior versions of the Code, the phrase "reasonably related to the administration of the trust" is not an improvement over prior versions and could mean almost anything. In prior versions of the Code the drafters have enumerated exactly what information the trustee must disclose. This recent change in language is very troubling.

An example will illustrate the problem. An elderly couple with children decide that to avoid probate, a conservatorship of their assets and estate taxes they will hold their assets in a living trust. The father dies and his wife is now in charge of Dad's trust. To save estate taxes Dad's trust is written to become irrevocable upon Dad's death. Mom is the sole trustee of Dad's trust and has the right if she wishes to distribute amounts to any of their children. Upon Mom's death the assets go equally to the kids. Mom and Dad are private people and while either of them are alive they never wanted to share information about their personal finances with anyone. Yet, that is exactly what the Code would require them to do. How Mom spends their money, what she does with it and who she gives it to would now be available to all the kids, or if not all the kids, a surrogate. Both Mom and Dad would be irate upon learning of this requirement and would see this as an invasion of their privacy.

Section 5(11) allows the probate a court to exercise jurisdiction any time it feels it is necessary in the interests of justice. This is a completely open-ended provision and goes way beyond current law in Connecticut. Currently, only Section 45a-175 of the Connecticut General Statutes would allow a court to assume control over an inter vivos trust, and that section is balanced, provides protection and is limited in scope. Under a Section 175 petition probate court jurisdiction is limited to an accounting and does not subject the trust to the continuing jurisdiction of the probate court. Furthermore, the petitioning beneficiary must first prove to the court that the beneficiary has an interest that is sufficient to entitle the beneficiary to an accounting, that the accounting is necessary and that the petition is not for the purpose of harassment. Section 5(11) is not balanced and does not contain any of these protections or limitations.

These three issues need to be addressed before this massive overhaul of trust law leaves the Judiciary Committee. The Uniform Trust Code has been very controversial. After seven years of debate only 20 states have passed it and one state has actually repealed it. Even the states that have passed the Code have made such extensive changes that many consider even calling the Code a uniform law is a misnomer. Interfering with the rights of people to plan out their estates, their rights of privacy and subjecting their estates to unwanted probate court supervision should not be done, and if we take this approach there will be an uproar from the many clients and constituents who have living trusts or are contemplating living trusts and what their rights protected.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Barry D. Horowitz". The signature is fluid and cursive, with a large initial "B" and "H".

Barry D. Horowitz, JD, LLM