



STATE OF CONNECTICUT

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Honorable Members of the Judiciary Committee

From: Paul J. Knierim
Probate Court Administrator

Re: RB 6441 An Act Adopting the Connecticut Uniform Trust Code

Date: February 28, 2011

The Office of the Probate Court Administrator supports the concept of adopting a comprehensive trust code to better define the law of trusts in Connecticut. We have significant concerns, however, about certain sections of the bill as drafted. We are particularly concerned that certain provisions of the draft do not adequately safeguard the rights of trust beneficiaries.

Discussion about the adoption of a Connecticut Uniform Trust Code ("UTC") has continued for over a decade. Throughout that time, probate judges have offered input to improve the bill by strengthening the due process provisions for trust beneficiaries.

We respectfully request that the committee consider revisions in the following areas:

Section 3 Definition of Beneficiaries

Section 3 contains a list of definitions, including sections that define such key terms as "person," "beneficiary," "current beneficiary" and "qualified beneficiary." Our concern is that none of the provisions make any reference to unborn or

unascertained beneficiaries. In many cases, individuals establish trusts to continue for long periods of time with the intent that family members who are not yet born will benefit from their trusts. Connecticut law, as a consequence, has always required that the interests of such potential future beneficiaries be protected. Further refinements are required in this area to avoid undermining those protections.

Sections 5, 10 and 67 Rights of Beneficiaries to Receive Information

The draft legislation omits certain key provisions of the uniform act. The most significant omission relates to the duty of a trustee to provide notice to the beneficiaries of the existence of the trust and to respond to inquiries about it. The default rule, which is contained in § 67, requires a trustee to promptly notify beneficiaries with pertinent information about the trust, including the trustee's contact information and the right of beneficiaries to obtain a copy of the trust and periodic reports from the trustee. We believe that this rule, which gives beneficiaries the basic information that they need to protect their interests, should be mandatory, as it is in the uniform act.

Section 5, on the other hand, would allow the settlor of a trust to override this rule and even to permit a trustee to refuse to respond to a beneficiary's request for information about the trust. We believe that this presents significant due process issues, since a beneficiary who does not even know of the existence of a trust has no practical means to avail himself or herself of appropriate remedies. In the context of a judicial proceeding, this provision also raises a question as to whether it would prohibit a court from disclosing to the beneficiary the information that the trustee is excused from providing under the terms of the instrument.

Section 5(c) attempts to resolve some of the issues by authorizing the trustee to provide information to a "beneficiary surrogate" rather than the beneficiary. This provision raises additional questions. Is a beneficiary surrogate a fiduciary, owing fiduciary duties to the beneficiary? What information, if any, would the beneficiary surrogate be required to provide to the beneficiary? Is a beneficiary surrogate liable to a beneficiary for breach of duty? Who would appoint a successor in the event of a vacancy? Could a court remove a beneficiary surrogate who is not doing the job? Curiously, section 5(c) contemplates that a beneficiary who isn't entitled to information still has a right to pursue a trustee for breach of trust. How would this work if the beneficiary doesn't know what the trustee has been doing?

This draft also modifies the uniform act by limiting the right to information under § 67 to *current* beneficiaries, thereby excluding future beneficiaries from the required disclosures. It is our position that all beneficiaries, including remainder beneficiaries, should be entitled to information about a trust. Section 10(a) similarly deviates from the uniform act by enabling the trustee to refuse notice to remainder beneficiaries who specifically request it.

Section 5 Authority of Courts to Review Trustee Compensation

Section 5 of RB 6441 also omits a provision from the uniform act that ensures that courts are able to review a trustee's compensation. Connecticut law has long provided that a court must review trustee fees even when the trust instrument contains a compensation structure. We believe that there is considerable opportunity for abuse in fiduciary fees and that a reversal of Connecticut's longstanding precedent on this issue is not appropriate.

Probate Court Jurisdiction in Trust Matters

Numerous sections of the bill address the authority of courts with respect to trusts but contain no specific provision indicating whether those powers extend to the probate courts. Traditionally, Connecticut's probate courts have had exclusive initial jurisdiction over testamentary trusts and concurrent jurisdiction with the Superior Court over certain aspects of inter vivos trusts.

Earlier drafts of the UTC provided that all trust cases would be assigned to the probate courts, subject to de novo appeal in Superior Court, and we respectfully urge the committee to consider this approach. Probate courts regularly handle a large volume of trust cases, including both testamentary and inter vivos trusts. The resulting expertise of probate judges and staff enables probate courts to handle trust cases in a prompt and efficient manner, often at less expense to the parties.

Section 14 Transfers to Superior Court

Section 14 contains a provision that permits the citation of a special assignment probate judge to hear a contested trust proceeding. This is consistent with the statutory framework for special assignment probate judges, which authorizes the transfer of an unusually complex case to a probate judge with pertinent expertise. The statute and regulation contemplate that the decision whether to transfer an individual case to a special assignment judge is made in the discretion of the judge whose court has original jurisdiction over the matter or, in extraordinary circumstances, upon a determination by the Probate Court Administrator that transfer is necessary.

Section 14(b) alters that arrangement significantly. It provides that, if the parties do not agree to the matter being heard by a special assignment probate judge, it would automatically be transferred to the Superior Court. This provision is both unnecessary and contrary to fundamental judicial principles. It would, in effect, preclude every probate judge who is not a special assignment judge from hearing any contested trust matter. It would also encourage forum shopping by giving each party the absolute right to compel transfer to the Superior Court.

Section 14 Venue

Section 14(b)(1) would also modify existing law, embodied in § 45a-175, that determines which probate court has jurisdiction to hear a matter concerning an inter vivos trust. We believe that the current provisions, which provide more flexibility for trust beneficiaries who wish to initiate a proceeding, should be retained.

The bill seeks to pursue a laudable goal, insofar as it attempts to codify and clarify the law of trusts in this state. Nonetheless, there are a number of sections of the bill that should be amended, and we respectfully ask the committee to defer approval until agreement is reached in these areas. We would be happy to assist in resolving these issues.