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Making a Difference One Family at a Time

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WRITTEN TESTIMONY OF ATTORNEY BARRY D. HOROWITZ BEFORE THE JUDICIARY COMMITTEE OF THE CONNECTICUT GENERAL ASSEMBLY REGARDING AN ACT CONCERNING ADOPTION OF THE CONNECTICUT UNIFORM TRUST CODE, RAISED BILL NO. 7104

Honorable Committee Members:

My name is Attorney Barry D. Horowitz and I am a founding member of the Glastonbury law firm of Nirenstein, Horowitz and Associates, P.C., a firm that exclusively does estate planning. I am also a member of the Connecticut Trust Association, an association primarily of trust clients, dedicated to ensuring that living trusts remain a cost-effective alternative to probate in Connecticut. The Connecticut Trust Association has approximately 15,000 members. I am also a member of the Estate Planning and Probate Section, the Elder Law Section and the Ethics Committee for the Connecticut Bar Association. I am also a Fellow in the American Academy of Estate Planning Attorneys and an author of two books on estate planning: Guiding Those Left Behind in Connecticut, and Estate Planning for What Matters Most. I am before you today to express my concerns regarding aspects of Raised Bill No. 7104, 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. It is designed to supplement a trust document. This approach allows individuals, with the help of a qualified estate planning attorney, to create a trust that is specific to their circumstances, but still provides laws in areas the trust may not have covered. However, in one section of the Code, Section 5, the Code deviates from this approach, imposing mandatory rules on trust clients that are not to their benefit. Specifically, in Section 5, subsections (7), (8) and (11) the Code places the rights of beneficiaries ahead of the rights of trust clients, and grants the Probate Court unfettered discretion to interfere with a trust that is supposed to be primarily outside of probate court jurisdiction.

Section 5(11) of the Code allows the Probate Court to "take the action and exercise the jurisdiction necessary in the interests of justice". This would potentially subject all living trusts to probate court jurisdiction. The primary reason individuals create a trust is to avoid probate court involvement in their affairs.

Section 5 (7) and (8) require the trustee of an irrevocable trust to notify any qualified beneficiary of information reasonably related to the administration of a trust. These sections become troublesome when considering how modest estates are planned and the Code's definition of "Qualified Beneficiary".

"Qualified Beneficiary" is defined by the Code as a beneficiary that, 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. Section 3(22) of the Code.

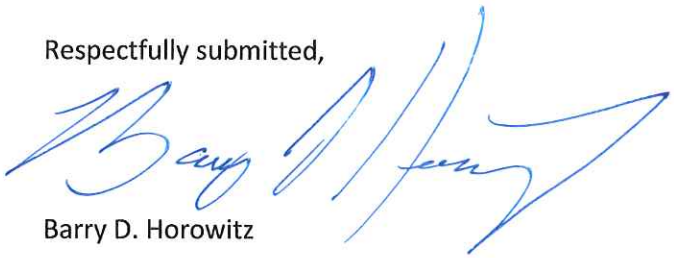
The troubling issue is very apparent when applying this Section of the Code to the usual situation of a family of modest means doing a living trust. For example, let's say Mom and Dad decide that to avoid the probate process, conservatorships of their assets and estate taxes, they decide to hold their assets in a living trust. Dad dies and mom is now in charge of her spouse's trust. To save estate taxes and other goals 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 unable to handle their affairs themselves. They never wanted to share information about their personal finances with their children. But under the Code's definition of "Qualified Beneficiary" above, the children are Qualified Beneficiaries of Dad's trust, even though Mom is still alive and the children are not currently beneficiaries. Mom now has to provide her children, as Qualified Beneficiaries, with any information they request that is "reasonably related to the administration" of the trust. 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 and competent, 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 when they are still competent? Would you want to be forced to do so to your children with your assets? To force clients to do so in an invasion of their privacy. Under Connecticut law, without court order, no one has ever had to do this.

These provisions are **so controversial** that they were made entirely optional by the Uniform Law Commission in a 2004 amendment to the Uniform Trust Code, and were not even included in the proposed legislation when the Judiciary Committee considered adopting a version of the Code in 2008 and 2018. See Comment to Section 105 of the Uniform Trust Code.

The drafters of this uniform legislation, the members of the Connecticut Bar Association's Estate Planning and Probate Section's Executive Committee and the various probate judges, all of whom spent so much time and effort modifying this proposed legislation are aware of this. It is my understanding that it was done at the request of the Probate Court. However, this proposed 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 should be amended to limit the class of beneficiaries to those that are Current Beneficiaries as defined by section 3(8) 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 might opine saying "but by that time it may be too late, Mom may have improperly absconded with the money". 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. 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,



Barry D. Horowitz