

February 15, 2019

**WRITTEN TESTIMONY OF ATTORNEY JOHN MCCANN BEFORE THE JUDICIARY
COMMITTEE OF THE GENERAL ASSEMBLY REGARDING AN ACT CONCERNING
ADOPTION OF THE UNIFORM TRUST CODE, RAISED BILL NUMBER 7104**

Dear Honorable Committee Members:

My name is John McCann, and I am a member of the Connecticut Bar Association, Hartford Bar Association and the Connecticut Chapter of the National Association of Elder Law Attorneys. I am writing to express my thoughts regarding an Act Concerning Adoption of the Uniform Trust Code, Raised Bill No. 7104 (hereinafter referred to as the "Act").

The Act as it is presently drafted raises a number of issues that warrant the further consideration of the committee. These issues arise primarily in the area of those mandatory aspects of the duty to inform and report as set forth in Sec. 63 of the Act. The following lays out the arguments in favor of allowing the settlor to waive such reporting requirements, and suggests possible limits to the mandatory duty to inform and report that would satisfy those arguments while continuing to address the basic need as expressed in the Act to make the duties to inform certain beneficiaries of the existence of the trust and to respond to requests for information nonwaivable and mandatory.

1. Arguments in Favor of Allowing the Settlor to Waive Notice and Reporting Requirements.

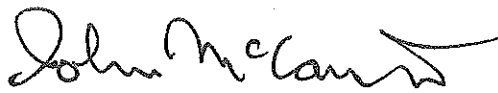
- First, the settlor's intent ought to prevail over the beneficiary's desire for information about the trust, in recognition of the settlor's property rights and desire for privacy. The settlor's reluctance to have information disclosed to the beneficiaries may be especially great in a second marriage situation, where the settlor does not want children from a prior marriage or, worse yet, the settlor's former spouse to receive information about the trust.
- Second, knowledge of the trust might be harmful to the beneficiaries, especially if those beneficiaries are minors or young adults, and it is appropriate to allow the settlor to limit the amount of information provided to certain beneficiaries or even to require that no information be provided to those beneficiaries.

2. Limit Notice and Reporting Requirements to Spouse Rather than All Qualified Beneficiaries and Restore Ability of Settlor to Waive Duty to Inform and Report for Beneficiaries Under the Age of 25.

- The settlor's property rights and desire for privacy rights can be largely restored if the Act were to limit the trustee's duty to inform and report to a duty owed to the surviving spouse if both the surviving spouse and any of the spouse's issue are qualified beneficiaries, or if any of the spouse's issues are qualified beneficiaries and the spouse has a power of appointment over the trust. This change would apply to a typical trust created for the benefit of a surviving spouse, with the remainder to ultimately pass to the descendants of the settlor and the settlor's spouse. The settlor and the settlor's spouse often may not want their children or other descendants to know about their trust until after the death of both spouses. This would be an appropriate change because, in at least most cases, the spouse is likely to protect the interests of the descendants.
- The settlor should be allowed to waive the trustee's duty to inform a qualified beneficiary under the age of twenty-five of the existence of the trust, the identity of the trustee, and the qualified beneficiary's right to request trustee reports. Certainly there is room for disagreement about the minimum age at which a beneficiary should be notified, but to not allow the settlor to set any minimum does not seem appropriate or in accord with the provisions of the uniform trust code.

Due to the foregoing we recommend that until the issues raised here are adequately addressed that the proposed bill not be allowed to leave the Judiciary Committee. Thank you for your consideration and attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "John McCann". The signature is written in black ink and is positioned above the typed name.

John McCann, Esq.