

Heads Up

The Massachusetts Uniform Trust Code

By Raymond H. Young and Leiha Macauley

As the Boston Bar Journal went to press, the Massachusetts Uniform Trust Code (“MUTC”) was pending in the legislature. The MUTC will be a comprehensive codification of trust law that consolidates and clarifies existing trust law, simplifies the administrative process for routine trust matters, and modernizes the laws governing Massachusetts trusts.

The MUTC will likely be effective at the time it is signed into law. The MUTC will apply to pre-existing trust instruments and to any proceedings in court pending on, or commenced after, its effective date, regardless of the date of the death of the decedent, unless the court finds the former procedure or law should apply in a particular matter.

Significant Changes for Trustees, Beneficiaries and Practitioners

- The MUTC provides default rules, most of which may be modified by the settlor in the instrument.
- The MUTC repeals most of the Massachusetts Uniform Probate Code (“MUPC”) provisions applying to trusts, primarily found in Article VII of the MUPC.
- The MUTC does not replace the Massachusetts common law of trusts except where the common law is specifically modified by the MUTC.



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The Court's Role

Unless ordered by the court, many testamentary trusts will no longer be subject to ongoing court supervision.

A non-judicial dispute settlement among interested parties is permissible, such as interpretation of trust terms, approval of accountings, trustee resignation or appointment and change of the trust's situs, so long as a court could have approved such settlement.

A Trust's Creation

The requirement of an identifiable definite beneficiary may now be met if the beneficiary can be ascertained presently or in the future within any applicable rule against perpetuities, and a power in a trustee to select a beneficiary from an indefinite class is likewise valid.

The existing Massachusetts Pet Trust statute is repealed and replaced with very similar pet trust provisions.

Purpose trusts (non-charitable trusts without an identifiable beneficiary) are now authorized.

Virtual Representation

Provided there is no conflict of interest, virtual representation is available for notice and consent in non-judicial settlements and judicial proceedings, likely reducing the need for guardians ad litem.

A guardian may represent and bind a protected person or ward, and a parent may represent and bind the parent's minor or unborn child if a conservator or guardian for the child has not been appointed, to the extent there is no conflict of interest.

To facilitate virtual representation, the court may appoint a guardian ad litem to bind the interests of unrepresented persons, and the guardian ad litem may consider benefits accruing to the living members of the individual's family instead of advocating solely for the person represented.

Trust Modification

A court may now modify dispositive provisions of a non-charitable trust in the case of unanticipated circumstances or impracticality.

A trustee may terminate a trust with a value of less than \$200,000 if administrative costs do not warrant continuation of the trust. A court may terminate a trust of any value, or order a change in trustee, if it determines the administrative costs support such an order.

Reformation of testamentary trusts and inter vivos trusts is permitted to correct mistakes of fact or law, even if the trust is unambiguous, subject to a heightened proof standard of clear and convincing evidence.

At long last, trust division or combination is permissible without court action, whether for tax reasons or administrative convenience.

Consistent with current Massachusetts practice, a non-charitable irrevocable trust may be terminated or modified with consent of all the beneficiaries and with court approval, so long as the modification or termination is not inconsistent with a material purpose of the trust.

Broadening current Massachusetts law, a trust now may be modified or terminated even if the modification or termination is inconsistent with a material purpose of the trust if the beneficiaries, the settlor and the court consent. If all beneficiaries do not consent, the court may still approve the proposed modification or termination if the court is satisfied that the interests of non-consenting beneficiaries are protected.

The MUTC does not include the Uniform Code provision allowing trust termination upon beneficiary agreement, nor may an agent assent to modification or termination on behalf of an incompetent settlor.

Creditor Rights and Spendthrift Provisions

The court may now consider equitable principles and limit the creditor/assignee relief as is appropriate under the circumstances, e.g., the needs of the beneficiary.

Effective only for instruments executed after the MUTC effective date, a spendthrift provision is valid only if it prohibits both voluntary and involuntary transfers.

To the extent the probate estate is insufficient, and subject to the settlor's right to direct the source from which liabilities will be paid, creditor recovery is permitted from the assets of a trust revocable at the date of death for claims of the settlor's creditors, funeral expenses and statutory allowances.

A creditor may reach an overdue mandatory distribution, including a termination distribution, if the trustee has not made the distribution within a reasonable time after the designated distribution date.

Changes for Trustees

Within 30 days of accepting a trustee appointment, or when the trust becomes irrevocable, the trustee must notify all qualified beneficiaries (actual or permissible income or principal distributees, and those who would be actual or permissible income or principal distributees if the trust terminated on that date) of the trustee's name and address.

A trustee is required to provide annual accountings to all qualified beneficiaries who have not waived their right to receive statements, as well as any other beneficiary who makes a request.

Unless the trustee knows of a pending judicial proceeding contesting the validity of the trust or has been notified of a possible judicial contest which is in fact commenced within 60 days after the notification, a beneficiary of what turns out to be an invalid trust is obliged to return any distribution received.

Reversing the current presumption, trustees of non-charitable trusts created after the MUTC effective date may now act by majority.

Broadening the beneficiaries' power of removal, if the qualified beneficiaries unanimously agree to removal or there has been a substantial change of circumstances, the court is authorized to remove the trustee if satisfied that (1) removal serves the best interests of all the beneficiaries, (2) removal is not inconsistent with a material purpose of the trust, and (3) a suitable co-trustee or successor trustee is available.

New tax savings provisions, including a default ascertainable standard for trustee distributions to the trustee personally, and a prohibition on trustee discretionary distributions to satisfy a trustee obligation of support.

Beneficiary Claims

A beneficiary has six months after receiving a final account or statement showing the trust termination or termination of the trustee's appointment to commence a breach of trust claim. Such receipt by a minor beneficiary's parent will likewise bar a claim commencing more than six months after receipt.

A person has only one year from the settlor's death to contest the validity of a trust revocable during settlor's life or, if sooner, 60 days after the trustee has sent the person a copy of the trust instrument and notice informing the person of the trust's existence, the trustee's name and address, and the time allowed for commencing the proceeding.

On full or partial trust termination, the trustee may send the beneficiaries a proposal for distribution. The right of any beneficiary to object is precluded unless acted on within 30 days. ■