

In the Uniform Code We Trust: Basic Provisions of Kentucky's Uniform Trust Code

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Kentucky recently followed 27 other states in enacting the Uniform Trust Code ("UTC"), which went into effect on July 15th of last year. The sweeping provisions of the UTC will apply to all types of express trusts, even those created prior to the effective date of the law, so it is important for trustees, settlors and beneficiaries to have a thorough understanding of the new law.

Modification and Termination

First and foremost, the UTC provides new possibilities for modifying or terminating certain trusts. Depending on the circumstances, these modifications can take place in or out of court. The purpose of these provisions is to give the trust flexibility while still serving the purposes of the trust or the settlor's intentions. For instance, trusts with up to \$100,000 in assets may now be terminated once notice has been given to "qualified beneficiaries" ^[1] that the trustee believes the value of the trust won't justify the cost. Beneficiaries of trusts with less than \$100,000 can also petition the court to terminate the trust and distribute trust assets. Noncharitable irrevocable trusts of any amount may be modified or terminated if the settlor and all beneficiaries consent. Court approval was required previously to make any changes to trusts.

Trustee Duties and Investments

Kentucky's adoption of the UTC thoroughly maps out the powers and responsibilities of trustees. Trustees may now delegate certain aspects of trust administration to agents as long as the trustee exercises reasonable care, skill and caution in selecting the agent, determining the scope of agency, and reviewing the agent's actions periodically. The UTC also provides a roadmap for the trustee to provide reports, delineating what parties are owed what information and when.

One of the newer provisions is the application of the "prudent investor" rules to non-corporate trustee investments, bringing them in line with rules that were only applicable to corporate trustees prior to the UTC.

Subject Matter Jurisdiction

The UTC clarifies that legal proceedings concerning trusts can be brought in either District Court or Circuit Court unless a statutory provision specifically gives either court exclusive jurisdiction. Prior law was murky as to where this should take place.

Revocable Trusts and Estate Planning/Administration

The capacity now required to "create, amend, revoke or add property" to a revocable trust is now the same as that required to make a will. This is by design, as revocable trusts are often used in conjunction with or instead of a will. The property of revocable trust is subject to claims of the settlor's creditors during the life of the settlor; on the death of the settlor, the property in the revocable trust is subject to the settlor's creditors, funeral expenses and any expenses of the estate to the extent that they are not covered by the probate estate.

Pet Trusts

Finally, the UTC authorizes and provides rules for trusts created for the benefit of pets to make sure puppies and kittens across the commonwealth stay in kibble and catnip.

^[1] KRS 386B.4-140