

### PROPOSED MONTANA UNIFORM TRUST CODE (SB 251)

A committee of Montana trust officers and attorneys proposes a modified version of the Uniform Trust Code which clarifies a number of aspects of current law and will provide Montana trust creators, trust beneficiaries, trustees, and their advisors with the benefits of a uniform act.

Twenty-four states and the District of Columbia have enacted the UTC. The enacting jurisdictions include many of Montana's neighboring states and states where some retired Montanans spend their winters.

- Montana's courts and attorneys can take advantage of case law from these jurisdictions.
- Because the UTC is a product of the Uniform Law Conference, the ULC will, from time to time, propose revisions in response to new cases and other developments.
- The UTC includes substantial section-by-section comments, which help explain the law.

Advantages of the Montana UTC over existing law. Most trust law is "default" law. Under the UTC, trust creators and their advisers have great latitude to write provisions in trust instruments concerning the duties and powers of a trustee, relations among trustees, and the rights and interests of beneficiaries. Most of the UTC rules apply only if the terms of the trust fail to address, or insufficiently cover, a particular issue.

The Montana UTC represents a "state of the art" trust code, just as existing Montana law reflected a "state of the art" code one-quarter century ago. The changes are evolutionary.

1. The UTC recognizes that some trust beneficiaries hold more significant interests in a trust than other beneficiaries. For example, a deceased wife's trust might provide income to husband ("income beneficiary") for life, and the remainder to descendants by representation who survive the husband ("remainder beneficiaries"). During the husband's life, the wife's descendants might include one child and several grandchildren and great grandchildren. The husband and the child have greater stakes in a trust than remote, contingent remaindermen. The grandchildren and great grandchildren would only receive trust assets if their parent dies before the husband. Reflecting these differences, the UTC introduces the concept of "qualified beneficiaries" who have greater rights than other beneficiaries. Thus, the UTC specifies certain notices that need be given only to qualified beneficiaries. Such reduces the costs of trust administration to the advantage of the beneficiaries.
2. If there is a vacancy in the trusteeship and the trust instrument does not effectively designate a successor trustee, the qualified beneficiaries may unanimously appoint a successor trustee. There is no need for court action.
3. The Montana UTC also effectively eliminates the need for court action in other specified circumstances.
4. The UTC provides that a trust can acquire life insurance on the life of the trust creator and the lives of related individuals. There is no corresponding provision in existing Montana law.
5. The Montana UTC permits the trust creator of a charitable trust and other specified individuals to initiate a proceeding to enforce the trust. Existing Montana law precludes the trust creator from initiating such a proceeding.
6. The Montana UTC gives the trust creator standing to petition the court to modify a charitable trust if the charitable trust's purpose has become unlawful, impracticable, impossible to achieve, or wasteful.
7. The Montana UTC permits the trustee to terminate a trust if the trust contains less than \$100,000 of assets.

8. The Montana UTC permits a trustee to combine two or more trusts or to divide a trust into two or more separate trusts after notice to the qualified beneficiaries. If no objection is made, the trustee may undertake this action without a court order.
9. The Montana UTC provides that the required capacity to create, amend, or revoke a revocable trust is the same as that required for a will. The Montana UTC includes an express provision voiding a trust if its creation was induced by fraud, duress, or undue influence. Further, the Montana UTC applies the same rules for recovery of fees incurred in defending a revocable trust that currently apply in defending a will.
10. The Montana UTC includes an express provision for nonjudicial settlement agreements. Further, the Montana UTC has a provision that permits a trustee to notify beneficiaries of a proposed action. Thus, the trustee can ascertain in advance whether a beneficiary objects to the proposed action.
11. The Montana UTC clarifies the trustee's obligation to provide notice to beneficiaries.
12. The Montana UTC clarifies the roles of charities and expressly indicates that a charity may serve as trustee of a trust for the charity's benefit.

Many of the principles of Montana's existing law have been retained.

The Montana UTC retains:

- Montana's abbreviated judicial procedure for trust proceedings;
- Montana provisions concerning constructive and resulting trusts;
- Montana law concerning the effectiveness of spendthrift provisions;
- Montana Statute of Frauds provisions (The Montana UTC does not permit the oral creation of trusts); and
- Montana provisions concerning private foundations, charitable trusts, and split-interest trusts.

Members of the Montana Committee who drafted the Montana UTC. All members of the Business, Estates, Trust, Tax and Real Estate (BETTR) Section of the State Bar of Montana were invited to participate in a review of the UTC. The following attorneys responded to the call: Kurt Alme (Billings), Eric Anderson (Billings), Valerie Balukas (Helena), Rick Baskett (Missoula), Iris Basta (Helena), Bruce Bekkedahl (Billings), Marc Buyske (Helena), Pat Dougherty (Missoula), Ed Eck (Missoula), Elaine Gagliardi (Missoula), Tim Geiszler (Missoula), Jeff Glovan (Helena), Doug Harris (Missoula), Larry Johnson (Hamilton), Cecil Jones (Dillon), Mike Lawlor (Helena), Stuart Lewin (Great Falls), Dan McLean (Helena), Judy Peasley (Seeley Lake), Julie Sirrs (Missoula), Jim Thompson (Billings), Dirk Williams (Missoula), and Tim Wylder (Great Falls). The trust officer committee members include Penny Doak (Billings), Bruce Haswell (Helena), Martin Lewis (Helena), Kathleen Magone (Missoula), Sue O'Neil (Missoula), Steve Polhemus (Helena), and Art Sims (Great Falls). They were joined by BETTR Section chair, Chuck Willey (Missoula). Committee members actively participated in four day-long meetings and many additional telephone conferences and email exchanges during the last nine months.

Other matters. The Bill also covers updates to a few sections of the Uniform Probate Code. Additionally, the Bill includes an amendment to the Montana conservatorship statutes that would allow a conservator or another interested person to petition the court for an order authorizing exercise of "substituted judgment" on behalf of a protected person. Within specified limits of the statute, a court may authorize making gifts, exercising rights regarding insurance, and related actions. The provisions do not authorize making a will. The statute allows flexibility in dealing with unforeseen economic, tax, and other circumstances.