

Real Property, Probate and Trust Law Section Recommendation and Report for Proposed Amendments to the Pennsylvania Uniform Trust Act (S.B. 1203)

Recommendation

For the reasons described below, the Real Property, Probate and Trust Law Section recommends that the Pennsylvania Bar Association support the enactment of amendments to the Pennsylvania Uniform Trust Act and certain other provisions of the Probate, Estates, and Fiduciaries Code that have been proposed by the Advisory Committee on Decedents' Estates Laws of the Joint State Government Commission and introduced into the Pennsylvania legislature as S.B. 1203, or any similar legislation consistent with those proposed amendments.

Report

Most of the provisions of S.B. 1203 consist of technical corrections to the Pennsylvania Uniform Trust Act, Chapter 77 of Title 20 of the Pennsylvania Consolidated Statutes, which was enacted as part of the Act July 7, 2006, No. 98 of 2006. The legislation also contains amendments to the repeal of the rule against perpetuities, federal estate tax apportionment, the Uniform Principal and Income Act, the effect of a death during divorce proceedings, powers of attorney, and certain cross-references in Title 15, the Associations Code.

A complete explanation and summary of the proposed amendments can be found in the report of the Advisory Committee on Decedents' Estates Laws of the Joint State Government Commission (October 2007), a copy of which can be found at <http://jsg.legis.state.pa.us/DEL%20Report%202007.pdf>

Summary of Amendments

Uniform Trust Act Amendments

The proposed amendments to the UTA can be briefly summarized as follows:

- The procedure for declining representation of trust beneficiaries (§7725) is clarified, and the time within which to decline is shortened, by changing the statement that the person receiving the notice may decline within 60 days to a statement that the person is presumed to have accepted the representation unless it is declined in writing within 30 days.
- The circumstances under which a creditor of the settlor of an irrevocable trust can attach the assets of the trust (§7745(2)) are amended to state that the assets of an irrevocable trust are not subject to the claims of a creditor merely because the trustees have the discretion to pay income taxes of the settlor that are attributable to the income of the trust.

- To further conform the rules for contesting revocable trusts to the rules for contesting wills, a new §7754(d) is added to provide that the competency of a witness in a contest of a revocable trust is governed by the same rules as in actions contesting the validity of a will.
- The rules for advertisement by the trustee of a revocable trust to clear trust property of claims of creditors are amended in §7755(c) to specify that a trustee may advertise at any time and shall advertise if no letters are granted within 90 days, the contents of the advertisement, and the duty of a personal representative to give proofs of publications of advertisements to the trustee. A conforming amendment is made to §3162 by adding a subsection (b) to provide that a personal representative who has advertised the grant of letters shall promptly send copies of the proofs of that advertisement to the trustee.
- The notice requirements of §7780.3 is amended in several ways. The obligation of the trustee to respond to reasonable requests for information (§7780.3(a)) is amended to include requests from the settlor, and to exclude beneficiaries of revocable trusts. For notices of trust existence to current beneficiaries (§7780.3(f)), the time for the notice begins to run for a testamentary trust when the trust is first funded. Notice of each change of trustees (§7780.3(g)) must be given to the settlor and, if the settlor is deceased or incapacitated, to the current beneficiaries, each notice shall include the trustee's name, address and telephone number. The notices of trust existence (§7780.3(i)) is amended to provide that a copy of the trust instrument will be provided upon request and current beneficiaries are entitled to annual reports on request. Finally, the appointee for notices to beneficiaries (§7780.3(k)(2)) may decline within 30 days and not 60 days, and no notices are required by reason of the death the settlor of a revocable trust before the effective date of the act (§7780.3(l)(2)).
- The powers of trustees (§7780.6(a)(33)) are expanded to include the power to exercise federal, state and local tax elections.
- The reports that trustees may give to beneficiaries to preclude future actions against the trustees (§7785) is amended to clarify that the report must cover the entire calendar year.

Repeal of Rule Against Perpetuities

The repeal of the rule against perpetuities (§6107.1) is modified to provide a special rule for the exercise of a power of appointment in order to create a new power of appointment, which can sometimes trigger what is called the “Delaware tax trap” and inadvertently result in federal transfer tax.

Federal Estate Tax Apportionment

The rules for federal estate tax apportionment (§3706) are amended to clarify that the obligation to contribute arises when the tax is due, that a fiduciary who pays the apportioned tax may recover the tax from a recipient of estate property along with interest at 5%, and that a fiduciary is not required to distribute property until the distributee has paid the apportioned tax, although a court will still have the power to issue decrees equitably enforcing apportionment.

Uniform Principal and Income Act

The proposed legislation would make two changes to the Uniform Principal and Income Act:

- The provisions for unitrust conversions (§8105) are amended to give trustees the discretion to average the values of trust assets over three, four, or five years.
- The provisions for determining the income from a retirement fund (§8149(c)) are amended to allow the trustee to determine the “internal net income” of the retirement fund in accordance with the trustee’s powers under §§8104, 8105 and 8107 independently of the income of the trust itself, as permitted by federal tax law.

Death During Divorce Proceedings

Amendments to the Divorce Code specify that a party to a divorce proceeding is nevertheless entitled to equitable division of marital property if death occurs after divorce proceedings are initiated and before a divorce decree is entered but after grounds for divorce have been established. See 23 Pa.C.S. §3323(d.1), as added by Act 175 of 2004. The same act modified the surviving spouse’s right of election (§2203(c)), but did not make any other conforming amendments to the PEF Code. The following provisions of the PEF Code are being made to conform to the change in the Divorce Code, so that the surviving spouse is entitled to equitable division under the Divorce Code and not the rights of inheritance under the PEF Code.

- A surviving spouse’s intestate share is forfeit (§2106) if the other spouse dies during the course of divorce proceedings, no divorce decree has been entered, and grounds have been established.
- Provisions in a testator’s will in favor of the surviving spouse are modified by circumstances (§2507(2)) in the same manner as a divorce decree unless it appears from the will that the provision was intended to survive a divorce.
- Provisions for a surviving spouse in a revocable conveyance (§ 6111.1) are similarly modified by circumstances unless it appears in the governing instrument that the provision was intended to survive a divorce.
- The designation of a surviving spouse as a beneficiary of a life insurance policy or other contract (§6111.2) is similarly modified by circumstances unless it appears that the designation was intended to survive the divorce, based on the wording of the designation, a court order or a written contract between the individual and the spouse or former spouse.

Power of Attorney

The definition of a power to “engage in insurance transactions” (§5603(p)) is amended to provide that an agent and a beneficiary of a life insurance policy are liable to the extent that a beneficiary designation made by the agent is inconsistent with the known or probable intent of the principal. Similarly, the power to “engage in retirement plan transactions” (§5603(q)) is amended to provide that (1) the agent cannot designate himself beneficiary of a retirement plan unless the agent is the spouse, child, grandchild, parent or sibling of the principal and (2) an agent and a beneficiary of a retirement plan are liable to the extent that a beneficiary designation made by the agent is inconsistent with the known or probable intent of the principal.

Amendments to Title 15

Amendments are also made to §§5547 and 5548 of Title 15, the Associations Code, to correct certain cross-references to Title 20.

Benefits of the Proposed Amendments

Although often technical in nature, these proposed amendments will clarify and improve Pennsylvania law to the benefit of both the public and the members of the bar by removing uncertainties and inconsistencies, and making other changes that will improve the administration of estates and trusts and reduce conflicts that might otherwise arise.

Respectfully submitted,

Chair