

UNIFORM TRUST CODE

During the term of the 2002 Kansas Legislature, Kansas adopted a comprehensive new set of laws affecting trusts, both revocable trust and irrevocable trusts, and both those created during the maker's lifetime and those created at death through a will. The new law is known as "The Uniform Trust Code." Although someday it may truly be adopted on a widespread basis by many states, Kansas is the only state in the nation to have adopted the act in any form. Therefore, to recognize it as a uniform law as applied to all states is certainly inaccurate at this time. The new law becomes effective in Kansas on January 1, 2003.

For many years there has been a National Conference of Commissioners on Uniform State Laws that has recommended various Uniform Sets of Laws for all fifty states. Regarding this new law affecting trusts, only ten states have considered the enactment of the "Uniform Trust Code," with Kansas being the only state to adopt the proposed set of laws affecting trusts. Further, as is common with many proposed Uniform State Laws, the Kansas legislature adopted the proposed set of laws after amending parts of the proposed act based on recommendations from various interested groups.

In part, the new law sets forth as codified law much of the existing "case law" as has been determined in Kansas as a result of our appellate courts' interpreting documents and applying the law to the facts of individual cases. Further, it encompasses and includes certain other laws previously adopted in the State of Kansas regarding trusts.

Highlights of the Uniform Trust Code include the following:

1. It encourages non-judicial resolution of disputes, while at the same time it gives Kansas Courts greater discretion in approving the acts of a Trustee, settling disputes, and for modifying and terminating the trust.
2. It sets forth the requirements for establishing a valid trust agreement and when and how it can be moved from one state's jurisdiction to another.
3. It sets forth creditor rights as to the interests of beneficiaries and outlines when and how spendthrift protection of beneficiaries' interest is effective.
4. It sets forth the policy that a revocable living trust is the functional equivalent of a will, sets forth a standard of capacity for those making revocable living trusts, and prescribes the procedure for revocation or amendment of trust documents. This includes direction as to when a trust can be modified or terminated other than by its express terms.
5. The Uniform Trust Code sets forth those particular provisions of the law that cannot be overridden by the express terms of a written trust, including the

power of a court to adjust a trustee's compensation that is determined to be "unreasonably low" or "unreasonably high."

6. It covers in some length the rules governing trustees, including duties and powers as well as responsibility under an included uniform law, the "Uniform Prudent Investor Act." The liability of those acting in a fiduciary capacity as Trustee and the rights of those dealing with Trustees are also part of the new law.
7. It provides how and when notice and information is required to be provided by a Trustee to beneficiaries, when such information is requested. It also sets forth time limitations for bringing actions against a Trustee (Statute of limitations).
8. It provides for how the trust is to be certified and how and when information should be provided to those who are requesting specific information from the Trustee. Further, it sets forth when creditors and others have the right to rely on such information.

Tim J. Larson, JD, PA, has its offices in Wichita, Kansas. Tim J. Larson and Logan M. Brown are members of Wealth Counsel, the Wichita Estate Planning Council, and *e.Planners*, a select group of nationally known and recognized Estate-planning Attorneys.