

UNIFORM TRUST CODE

The Uniform Trust Code was adopted by the Kansas Legislature and became effective on January 1, 2003. Kansas was the first state to adopt this proposed “uniform” act.

What is necessary to create a trust? The new Uniform Trust Code recognizes that a trust is the functional equivalent of a will. Let’s discuss the requirements for an effective trust in the context of the most common form of trust, the revocable living trust (will substitute). The Uniform Trust Code provides the following:

1. The person creating the trust (known by several different terms: grantor, settlor, trustor, donor, etc.) must have the capacity to make a trust. This means that the person creating the trust must be of the age of majority and of sound mind. This capacity is further defined as being the same capacity as is required to make a will under Kansas law.
2. There must be an expressed intention to create the trust. Since revocable living trusts are written documents, this is expressed within the document.
3. There must be a definite (or ascertainable) beneficiary or beneficiaries. A person looking at the document must be able to determine who the beneficiary or beneficiaries are, either currently or in the future. Typically, the lifetime beneficiary is the person who created the trust and then there are “vested” remainder beneficiaries. Beneficiaries must be ascertainable individuals, unless the trust instead has been created for charitable purposes, for the care of an animal, or for other recognized non-charitable purposes.
4. The Trustee has duties to perform.
5. The same person cannot be the sole trustee and the sole beneficiary. Most revocable living trusts are established with vested remainder interests and therefore the creator of the trust can serve as a sole trustee and be the sole lifetime beneficiary.

How and when can a trust be changed or amended? The new Kansas law creates a presumption that for trusts created after January 1, 1993, that “unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust.” For trusts written before January 1, 1993, this presumption does not arise and the document must expressly provide for the write to amend or revoke or it is presumed to be irrevocable.

An amendment to a revocable living trust should typically be in writing and the document or a copy of it should be delivered to the acting Trustee. It is very common to have written amendments that address a change in who should act as successor Trustees, or which modify how assets are to be distributed. Sometimes an amendment is so

encompassing that it is necessary to “restate” the entire trust as amended, so that the new document supersedes the original trust. The manner in which the amendment should be accomplished should be set forth in the terms of the trust agreement. The purpose of the law is to provide that a clear expression of the settlor’s intent should be followed. The law provides that a trust can even be amended by the terms of a later will, however the intent of the testator (person who has made a will) must be clear. A residuary clause in a will disposing of the estate differently than what has been provided in the trust is alone insufficient to revoke or amend a trust. The provision in the will must either be express in terms of the intent of the testator to amend the terms of the trust, or it must dispose of specific assets contrary to the terms of the earlier trust.

We hope that you find this information helpful.

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