

# PUBLICATION

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## Alabama Uniform Trust Code Update

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Clients in Alabama who are considering the use of a trust in their estate plans, as well as clients whose plans already include a trust, whether a current trust or a trust under the client's Will, should be aware of recent changes in Alabama's trust laws. These changes are included in Alabama's version of the Uniform Trust Code (UTC), which became effective on January 1, 2007. Nineteen states have now adopted the UTC, including Tennessee, Florida, South Carolina, North Carolina, Virginia and Arkansas. In adopting the UTC, the Alabama legislature sought to clarify existing law. However, the following significant changes were also incorporated into the legislation:

- **Termination and Modification of Irrevocable Trusts.** Under prior law, an irrevocable trust could be terminated or modified only in very limited situations. The UTC liberalizes the law by providing that a court may terminate or modify an irrevocable trust if the settlor and all beneficiaries consent to such action. In addition, a non-charitable irrevocable trust may be terminated with the consent of all the beneficiaries if the court concludes that there is no remaining "material purpose" for the trust to fulfill. At present we are awaiting judicial guidance on the definition of "material purpose."

An irrevocable trust may also be modified due to unanticipated circumstances or to correct mistakes in order to achieve the settlor's tax objectives, and for uneconomical trusts.

These provisions of the UTC regarding termination and modification are perhaps the most noteworthy provisions. The extent to which courts will modify or terminate trusts upon requests by beneficiaries remains to be seen.

- **Spendthrift Exceptions.** Most trusts contain a so-called "spendthrift" provision prohibiting a beneficiary from voluntarily or involuntarily transferring future right to distributions. In addition, under prior law creditors of the beneficiary could not reach the beneficiary's interest in future distributions. The UTC changes the law in several respects. Most noteworthy, claims for alimony and child support are not defeated by a spendthrift provision. Thus, while trusts are still not subject to division by a domestic relations court in a divorce proceeding, the distributions actually made to a beneficiary may be reached by such a creditor who has a judgment for support and maintenance against the beneficiary.
- **Trustee's Duty to Inform and Report.** The UTC contains provisions requiring a trustee to provide certain beneficiaries with various information, including but not limited to: (i) a copy of the trust instrument; (ii) notice of a change in a trustee's address; (iii) change in a trustee's compensation; and (iv) annual reports regarding the trust assets, its receipts and disbursements. Most of these rules may be waived by the trust instrument itself with one exception: if a "qualified beneficiary" requests information relating to administration of the trust, a trustee must respond to such request. A "qualified beneficiary" is a current permissible distributee of trust assets, as well as one who would receive trust assets if the interest of the current permissible distributees ended or the trust terminated.

These noted provisions will become a source of concern for settlors who wish information regarding trusts to remain private. Fortunately, the UTC permits the settlor to relinquish most (but not all) waiver requirements by specific direction in the trust instrument.

- **Revocable Trusts.** There are two significant provisions in the UTC regarding revocable trusts. First, the UTC provides that a person may contest the validity of a revocable trust that became irrevocable upon the settlor's death. The grounds for testing the validity of a trust would be the same as those permitted under present law for contesting the validity of a will. In addition, the UTC clarifies the statute of limitations for such a contest by providing that the contest must be brought within the earlier of (i) two years after the settlor's death, or (ii) six months after the trustee sends notice of the trust's existence and the time period for contesting the trust. In addition, trusts that were revocable upon the settlor's death are now subject to creditor claims in a manner similar to the assets of an estate. However, a creditor can reach the assets of the trust only to the extent the estate is inadequate to satisfy such claims and liabilities. The UTC also provides a statute of limitations scheme similar to that in effect for filing claims against a decedent's estate.

This new law is complex in many respects. Creditors now have greater access to trust assets, beneficiaries have greater access to information regarding trusts, and beneficiaries have greater ability to terminate or modify trusts. Subject to applicable law, anyone with a will in Alabama that includes a trust should take note of these changes, as well as persons who are creating trusts after January 1, 2007. As always, it is extremely important to review your existing estate planning documents from time to time to make sure they are still functional, and are in keeping with your goals or changing circumstances. When you review your documents, you may want to consider how these changes in Alabama law affect you and your estate planning.