



Uniform Law Commission

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

SUITE 1010
 Chicago, IL 60602
 (312) 450-6600 tel
 (312) 450-6601 fax
www.uniformlaws.org

WHY YOUR STATE SHOULD ADOPT THE UNIFORM DIRECTED TRUST ACT

The Uniform Directed Trust Act (UDTA) provides clear, practical answers to the challenges raised by the rise of directed trusts. The act offers a simple framework for allocating fiduciary power and duty between a trust director and a trustee and comprehensively addresses the many practical questions raised by the presence of a trust director. Although many states have already enacted statutes to govern directed trusts, the UDTA improves on these statutes by offering solutions that are simpler, more precise, and more complete. Because directed trusts are now standard in sophisticated trust drafting, a comprehensive directed trust statute is essential for every state.

- ***The UDTA balances settlor autonomy and beneficiary safeguards.*** The UDTA divides fiduciary duty between a trustee and a trust director by allocating primary duty to the director while maintaining a minimum core of duty for the trustee to avoid willful misconduct. This approach balances a settlor's freedom of disposition with a beneficiary's need for fiduciary protections. In allocating fiduciary duty in this way, the UDTA clarifies and extends the division of fiduciary duties that has already been pioneered by Delaware. Delaware's success in attracting directed trusts indicates that the UDTA approach is workable in practice.
- ***The UDTA is comprehensive.*** In addition to providing a sensible and clear allocation of fiduciary duty, the UDTA address a host of other issues that have been largely overlooked by existing state statutes. The UDTA provides rules to govern the flow of information between trustees and trust directors, for example, and offers solutions to important practical problems concerning trust directors, such as succession, compensation, and removal. The UDTA's comprehensiveness is driven by a coherent drafting philosophy that largely extends a state's existing law of trusteeship to trust directors.
- ***The UDTA offers many technical innovations.*** Because the UDTA is the product of an extensive drafting process aided by nationally recognized trust law experts, the UDTA offers many technical innovations that improve on existing state statutes. Some of these innovations fix errors and oversights in existing statutes. Unlike most state statutes, for example, the UDTA makes clear that the settlor of a revocable trust is not a trust director. The UDTA also offers a number of novel innovations. It provides tools to assist a settlor's tax planning, for example, and resolves doubt about ancillary areas of a trust director's authority. The UDTA further innovates by treating all trust directors similarly, thereby avoiding the artificial and overly rigid categories of trust directors that make many existing statutes difficult to work with.

For further information about the UDTA, please contact ULC Chief Counsel Benjamin Orzeske at (312) 450-6621 or borzeske@uniformlaws.org.

The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.



THE UNIFORM DIRECTED TRUST ACT

- A Summary -

The Uniform Directed Trust Act (UDTA) addresses the rise of directed trusts. In a directed trust, a person other than a trustee has a power over some aspect of the trust's administration. Such a person may be called a "trust protector," "trust adviser," or in the terminology of the UDTA, a "trust director." This division of authority between a trust director and a trustee raises a host of difficult questions for which the UDTA provides clear, practical answers.

In a traditional trust, the responsibility for all aspects of the trust's administration—including custody, investment, and distribution—belongs to the trustee. For centuries, this allocation of authority to a trustee has been a foundation of trust law. In a directed trust, however, this foundation may be modified by a grant of power over some aspect of trust administration to a trust director. A trust director is not a trustee, but has the power either to direct the trustee in the trust's administration or to administer the trust directly. A trust director can have virtually any power over a trust, including the power to direct the trustee in the investment and distribution of trust property and the power to amend or terminate the trust.

The rise of directed trusts raises numerous unsettled questions of law. The most obvious question is how to allocate fiduciary responsibility between a trust director and a trustee. If a trust director exercises a power of direction and the trustee acts accordingly, a court must decide how much responsibility for the action belongs to the director and how much belongs to the trustee. In addition, a directed trust creates a host of further problems about how to govern a trust director, such as how to discern whether a trust director has duly accepted appointment and how to differentiate between a fiduciary power belonging to a trust director and a nonfiduciary power belonging to the holder of a power of appointment.

The purpose of the UDTA is to address these complications. The UDTA expressly validates terms of a trust that provide for a trust director and prescribes a simple set of rules for directed trusts. The UDTA's basic strategy for allocating fiduciary duty is to impose primary fiduciary responsibility for a trust director's actions on the director, while preserving a minimum core of duty in a trustee. A trust director has the same fiduciary duties as a trustee would have in a like position and under similar circumstances, but a trustee that acts subject to a trust director's direction is generally liable only for the trustee's own willful misconduct. The UDTA authorizes a similar allocation of power and duty among cotrustees.

In addition to this modified fiduciary scheme, the UDTA also offers solutions to the many practical problems created by the presence of a trust director. Among other things, the UDTA deals with the sharing of information among a trustee and a trust director and the compensation, succession, and appointment of a trust director.

The Uniform Directed Trust Act is appropriate for consideration in every state, whether or not the state has enacted the Uniform Trust Code or other legislation addressing directed trusts. For further information about the UDTA, please contact ULC Chief Counsel Benjamin Orzeske at (312) 450-6621 or borzeske@uniformlaws.org.