

Pennsylvania's New Uniform Trust Act:

What Every Advisor Must Know to Assist Their Clients

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Introduction: Uniform Trust Act

- Codification of Pennsylvania Trust Law
- Act 98 of 2006 Signed by Governor Rendell July 7, 2006
- Adds New Chapter 77 to P.E.F. Code
- UTA vs. UTC – state to state



Introduction: Uniform Trust Act

- Effective Date: **November 6, 2006**
- R.A.P. Repealed – Effective **January 1, 2007**
- Applies to **Existing Trusts (Retroactive)** and Those Settled After November 5, 2006



Today's Objectives:

- **Summary of Important UTA Provisions:**

- Notice Requirements
- Mandatory Provisions
- Revocable Trusts as Will Substitutes
- Claims Against Settlers or Beneficiaries
- Contests
- Modification and Termination

- **Eye Towards Practical Application**



Revocable Trust as Will Substitute:

- Act places RLTs on same footing as Wills, while continuing their privacy edge over Wills

- **Formalities for Creation:**
 - Must be in **writing** (cannot have Oral Trust) and exhibit **intent** to create trust
 - Must have testamentary **capacity** (same test as Will)
 - Must have **Definite beneficiary** (ascertainable now or in future) or be (1) **charitable trust** or (2) trust for care of an **animal**



Revocable Trust as Will Substitute:

- **Mandatory Provisions: § 7705**

- Terms of Trust can Supercede UTA, except:
 - **Formalities for Creation**
 - Duties of Good Faith
 - Trust purposes must be Lawful
 - Power of Court to Modify or Terminate
 - **Effect of Spendthrift Provision**
 - **Trustee Compensation** and Bond
 - **Notice** and Trustee Duties to Inform and Report
 - Trustee Liability
 - **Periods of Limitation**
 - Jurisdiction and Venue



Hypothetical 1:

- Baby boomer client approaches you with concerns for Dad and brother. Dad is 89 and has severe dementia and a terminal illness. Brother has significant disabilities stemming from car accident. Brother needs long term care. Dad named you POA and gave you power to revoke his trust and engage in estate planning on his behalf. Dad's RLT passes his estate equally to you and brother. You are concerned this would disqualify brother for government disability assistance and you want a SNT in place.

- As power of attorney, what do you do?
 - Revoke the RLT?
 - Create new RLT with SNT provisions?



Revocable Trust as Will Substitute:

- **§7752** -- All Trusts presumed **Revocable** unless expressly state **Irrevocable**
- Revoke pursuant to terms of trust; or by later writing *other than* Will or Codicil
- **Can a Power of Attorney Revoke? Yes:**
 - **Nondispositive:** Only if expressly authorized by trust or POA
 - **Dispositive:** Only with **Court** Supervision and Approval



Hypothetical 2:

- **You represent Elderly Mom and have handled her finances for 25 years. You have done some planning for her two sons A and B over the years as well. Mom has a RLT. Son B -- the black sheep -- is on the outs with Mom. Son B comes to you and says “I know A is a beneficiary of Mom’s Trust, but what about me? I want to do some planning of my own and need to know if I have a power of appointment under the trust.” You know the trustee.**
- **Can you assist B in finding out what is in Mom’s trust?**



Notice:

- **During Life** -- Trustee of RLT is beholden to settlor alone and beneficiaries have no rights while Settlor alive to learn the contents or terms of the trust.
 - No Notice § 7753
 - Beneficiary B cannot find out – unless he finds out from Settlor or Trustee is otherwise allowed to disclose pursuant to instrument

- **Settlor's Death** -- Notice Required



Notice:

- Trustee Duty to Send Notice: § 7780.3(c)
 - **When:** within **30 days** Trustee learns of Death

 - **Who Receives:**
 - **Personal Representative** of Settlor
 - **Spouse** of Settlor
 - Settlor's **Children** who are *sui juris* (over 18)
 - Trust's "**Current Beneficiaries**"
 - **18+** who **Income + Principal MUST** be distributed
 - **25+** who **Income + Principal** be dist. in Trustee Discretion



Notice:

- **What:** Notice shall be written and state:
 - Fact of trust's existence
 - Identity of Settlor
 - Trustee Name, Address, Telephone Number
 - Recipient's Right to Receive Copy of Trust
 - **Recipient's Right to Receive Annual Written Reports of Trust Assets (with Market Values), Liabilities, Receipts and Disbursements**



Notice:

- **Ongoing Duty:**

“A trustee shall promptly respond to a beneficiary’s reasonable request for information related to the trust’s administration.”



Hypothetical 3:

- Uncle Charlie's prized possession – his riverfront fishing cabin on the Monongahela – was your favorite place to be growing up. Dad passed away recently, and you have been serving as successor trustee of the Family Trust. To your surprise, Uncle Charlie just passed away, leaving the cabin to you as trustee in order to keep the property in the family.
- BUT, what about that leaking underground fuel tank he put in thirty years ago for ease in filling up the boat. What if DEP finds out?



Trustee Powers:

- **Environmental Issues: § 7780.6(a)(18)**
- Trustee has power to:
 - Inspect property that it has been asked to hold for purpose of determining application of environmental law
 - Take action to prevent or remedy an environmental violation
 - Decline to accept property into trust or disclaim it if it is or may be burdened with liability for violation of environmental law



Administration:

■ Trust Contests: § 7754

- Person may contest validity of RLT by filing **Petition with Orphans' Court**
- Must file **within one (1) year** after Trustee gave Notice pursuant to 7780.3(c)
 - **Keep accurate records of Notice (cert. mail)!!**
- **Grounds** are same as contesting a Will
 - Capacity
 - Undue Influence
 - Failure of Formalities



Administration:

■ Distribution & Claims: § 7755

- Settlor's creditors have same rights against trust assets as have against estate, but assets of estate shall be applied first
 - BUT – rule does NOT expose trust assets that would otherwise be exempt (IRA, etc.)

- Creditor must give **Notice** of claim to PR or Trustee. If PR receives Notice, PR must give Trustee Notice in writing **within 20 days**

- If no PR is appointed within 90 days of death of settlor, Trustee must **Advertise** name and address of Trustee in same manner as in an estate (e.g. the granting of letters).

- Creditor is barred unless files claim within **thirteen (13) months** of advertisement of grant of letters or advertisement of trust



Spendthrift:

- **Subchapter E - § 7741-7748**

- Spendthrift clauses traditionally recognized by state case law, but now formally codified in statute

- **7741: Rights of Beneficiary's Creditor:**

- A judgment creditor or assignee of the beneficiary may reach the beneficiary's interest by attachment of present or future distributions...to the extent the beneficiary's interest is not subject to a spendthrift provision.

- **7742: Spendthrift Provision:**

- Created by use of words "spendthrift trust" or similar term
- Effect
 - BF cannot transfer his or her interest in trust
 - Creditor cannot reach the interest or distribution by trustee before it is received by BF

- **BUT...**



Spendthrift:

- **§ 7743: Exceptions to Spendthrift Provision:**
 - **Children:** beneficiary's child who has court order for support or maintenance to the extent of **interest and principal**
 - **Spouse:** Beneficiary's spouse or another who has court order for support or maintenance to the extent of **interest Only**
 - **Government: A claim of the United States or the Commonwealth**



Spendthrift:

- Remember...mandatory provisions includes recognition of effect of Spendthrift clauses -- § 7705
- **Choice of Law:** Cannot choose law of another state and overcome Spendthrift Clause exceptions when a PA trust
 - **Delaware: Asset Protection Trusts???**



Situs:

- **§ 7708: Provisions of irrevocable trust that designate situs are valid if:**

- Trustee located or principal place of business of Trustee is in that jurisdiction;
- Trust administration occurs in that jurisdiction;
- One or more BFs resides in that jurisdiction.

- If do not designate situs in instrument, generally law where settlor domiciled governs



Conclusion:

- The UTA has attempted to codify the law of trusts in Pennsylvania all in one place, for ease of judges, lawyers, trustees and the public.
- As our population ages, we will see more and more trusts requiring administration.
- It will be interesting to see how effective the Act proves to be in streamlining administration.
- As more of our elderly clients pass away with RLTs, we need to be prepared to face some of these issues discussed today.



The End.

Thank you for attending!

Please fill out your evaluation forms.