

OREGON STATE BAR
Legislative Proposal

RE: Oregon Uniform Trust Code

FROM: Study Committee on the Uniform Trust Code, in consultation with the Oregon Bankers Association, the Estate Planning and Administration Section and the Elder Law Section, and with input from several other sections of the OSB

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This bill would adopt a version of the Uniform Trust Code (“UTC”) that incorporates concepts covered by the Oregon statutes on trusts and trust administration currently in ORS Chapter 128. The proposal makes changes to Oregon statutory language to conform with the uniform act. The proposal adds a set of default provisions to aid in interpretation and administration when a trust does not address significant issues, such as notice to beneficiaries. The UTC has been adopted in Kansas, Maine, Nebraska, New Mexico, Tennessee, Utah, Wyoming, and the District of Columbia. The UTC has also passed both houses in New Hampshire and is waiting for the Governor’s signature there.

1. PROBLEM PRESENTED

Trust law in Oregon, as in many states, is thin. Oregon has a few statutes that treat issues related to trusts. Relatively few reported cases on trust matters exist, so Oregon lawyers must rely on the Restatement of Trusts or on trust law treatises to interpret the common law. Testamentary trusts and revocable living trusts are common estate planning tools. Charitable trusts, special needs trusts, and other types of trusts are also being used. Increasingly, the trusts involve assets, beneficiaries, or activities in more than one state.

2. SOLUTION

The proposed Oregon Uniform Trust Code follows the UTC to a significant degree to add consistency for parties, trustees, and lawyers dealing with trust issues that cross state boundaries. However, it modifies a number of sections of the UTC to conform to existing Oregon law. Having a comprehensive and easily available source of Oregon trust law would benefit the people creating trusts, the trustees, the beneficiaries, and the lawyers who work in the area. Creating a level of uniformity will aid in the efficient administration of trusts that have property, beneficiaries, or activities in more than one state.

3. PUBLIC POLICY IMPLICATION

Most of the proposed Oregon Uniform Trust Code consists of default rules that apply only if the terms of a trust fail to address or insufficiently cover a particular issue. The exceptions --

fiduciary duties that are not waivable -- are detailed in Section 105. The Oregon Uniform Trust Code also contains several innovative provisions that will provide for easier representation of beneficiaries and greater flexibility in trust modification. A document titled "Key Possible Changes to Oregon Law" specifies changes the proposed statute would make to current law.