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The case citations in this book were Shepardized through January 2007. The ORS citations were checked through 2005. All URLs cited were accurate as of February 5, 2007.

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EDITORS’ PREFACE

When Administering Trusts in Oregon was first published in 1995, the law of trust administration in Oregon was relatively unregulated by statute. The enactment of the Oregon Uniform Trust Code in 2005 made changes to and codified the law regarding administering trusts in Oregon. This revised edition of Administering Trusts in Oregon reflects changes to trust law brought about by the enactment of the UTC, including significant changes with regard to modifying or terminating a trust.

Lawyers often use trusts as an estate planning tool, and trusts are frequently administered by individual trustees. Administering Trusts in Oregon offers practical guidance to the lawyer who is counseling the trustee concerning the trustee’s rights and responsibilities in the trust administration process. In general, the book focuses on the individual trustee rather than the corporate trustee, and includes discussion of the trustee’s responsibilities to beneficiaries, settlors, and government entities.

The contributing authors deserve much appreciation for their dedication to revising and updating Administering Trusts in Oregon. As editors, we thank them for their commitment to seeing the project through and for their willingness to draft and redraft their chapters. As Oregon lawyers, we most especially thank them for generously sharing their knowledge of trust administration with other members of the bar.

We also wish to thank the OSB CLE staff for their assistance in coordinating the production aspects of the excellent work of the authors.

CAROLYN W. MILLER
STEPHEN E. KANTOR
Editors

January 2007
# Administering Trusts in Oregon

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I. INTRODUCTION

A. (§2.1) Trust Law Before the Uniform Trust Code

The use of trusts for estate planning and commercial purposes has grown dramatically in recent years, both in the United States and internationally. Unfortunately, the statutes and case law of Oregon and many other states failed to answer important questions about the law that applies to trusts. As a result, lawyers, trustees, trust beneficiaries, and others seeking answers to these questions had to resort to secondary authorities such as the Restatement of Trusts and the Bogert and Scott treatises on trust law (THE LAW OF TRUSTS AND TRUSTEES and SCOTT ON TRUSTS). This problem became especially acute because today trusts often have connections with more than one state.

B. (§2.2) Adoption of the Uniform Trust Code at the National Level


Since 2000, virtually every state has considered either adopting the UTC or modifying the state’s existing trust code. As of February 2007, 19 jurisdictions had enacted some version of the UTC: Alabama, Arkansas, District of Columbia, Florida, Kansas, Maine, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Virginia, and Wyoming. NCCUSL has developed a UTC Web site (<www.utcproject.org>) that compares the statutes of the enacting jurisdictions and reports on recent developments regarding the UTC.

Texas and Iowa incorporated many UTC provisions into their trust statutes, but NCCUSL does not list these two states as adopting states because their trust codes do not meet NCCUSL’s standard requiring state statutes to be “substantially similar” to the UTC. Arizona enacted the UTC in 2003 but repealed the legislation the next year.
C. Drafting the Oregon Uniform Trust Code

1. (§2.3) The Study Process

The Oregon Uniform Trust Code (“Oregon UTC”) was developed during a two-year period by the Oregon Uniform Trust Code Study Committee, a 12-member study committee organized by Professor Valerie J. Vollmar in September 2002 and chaired by Professor Vollmar and Professor Susan N. Gary. Committee members represented probate judges, the Oregon Bankers Association, and the Oregon State Bar Estate Planning and Administration, Elder Law, and Taxation sections. In addition, the committee included a representative of the Oregon State Bar with legislative expertise. The study committee consulted with several Oregon State Bar sections and with representatives of the Oregon Department of Justice. Subcommittees that reviewed portions of the UTC in depth included many members with relevant experience who were not on the study committee itself.

After receiving the subcommittees’ recommendations, the study committee compared the UTC (including its amendments) to existing Oregon law, studied modifications made to the UTC in other jurisdictions, considered the subcommittees’ reports, and discussed potential concerns with various interest groups. The study committee finished drafting the proposed Oregon UTC in July 2004. All 12 members of the study committee unanimously agreed on the provisions contained in the draft.

2. (§2.4) The Drafters’ Fundamental Goals

Two fundamental goals guided the study committee in drafting the proposed Oregon UTC: (1) to retain existing Oregon law absent a very good reason to change it, and (2) to promote uniformity among the states by adopting as much of the UTC as seemed desirable. In most instances, the drafters were able to achieve both goals. However, the drafters changed Oregon law in some respects because the drafters concluded that the UTC approach was better than the existing Oregon approach. Valerie J. Vollmar, The Oregon Uniform Trust Code and Comments: Introduction, 42 WILLAMETTE L REV 187, 188 (2006).

D. (§2.5) Controversial Issues

In Oregon, as in other states considering the UTC, two questions emerged as the most controversial. The first was the extent to which trust beneficiaries (other than the settlor of the trust) should be entitled to receive notice, information, and reports about the trust. The second was
whether a trust beneficiary’s former spouse or children should be able to satisfy a support order by reaching the beneficiary’s interest in a discretionary trust. Many states modified the UTC’s provisions on these questions. Other issues proved easier to resolve.

1. (§2.6) Beneficiary’s Right to Notice, Information, and Reports

The drafters of the Oregon UTC believed that the UTC did not adequately address the desire of many settlors to keep trust terms private. The Oregon UTC strikes a balance between a settlor’s wishes and the need to have someone who can protect the beneficiaries’ interests.

a. (§2.7) Revocable Trust

While the settlor of a revocable trust is alive, only the settlor has any right to notice, information, and reports. Other trust beneficiaries have no rights even if the settlor becomes incapacitated. Rather, the settlor’s agent or conservator has the right to act on behalf of an incapacitated settlor.

b. (§2.8) Irrevocable Trust

In the case of an irrevocable trust, only the qualified beneficiaries have any right to receive notice, information, and reports about the trust. Moreover, the settlor can place substantial restrictions on those rights. For the definition of a qualified beneficiary, see §2.22.

2. (§2.9) Rights of Beneficiary’s Former Spouse and Children

The most difficult issue to resolve in drafting the Oregon UTC was the extent to which a trust beneficiary’s interest in a discretionary trust should be available to the beneficiary’s former spouse or children to satisfy a support order. Under UTC §504, a court may compel a distribution from a discretionary trust if the trustee violated a distribution standard or abused the trustee’s discretion.

The interest groups involved in the drafting process disagreed not only about what the existing Oregon law was, but also about how the underlying policy issue should be resolved. The parties were unable to reach a compromise on this question. Finally, the only option was to leave UTC §504 out of the Oregon UTC entirely. However, a comment explains that the Oregon UTC does not change existing Oregon law.
§2.10 / Overview of the Oregon UTC

Oregon UTC omitted §504, comment (printed in 42 WILLAMETTE L REV 187, 289 (2006)).

3. (§2.10) Other Issues

Other issues generated debate during the drafting process but were easier to resolve. For example, the drafters decided to:

1. Give the attorney general various rights with respect to a charitable trust, “unless contingencies make the charitable interest negligible.” ORS 130.040(3), 130.200(1)–(2).

2. Include a rebuttable presumption that a spendthrift provision is a “material purpose” of the settlor, even though the presumption may prevent modification or termination in some cases. ORS 130.200(3).

3. Lower the capacity required for the settlor of a revocable trust to the standard of capacity required to make a will. ORS 130.500.

E. (§2.11) Enactment of the Oregon Uniform Trust Code

The proposed Oregon UTC underwent review by Legislative Counsel, becoming SB 275 and resulting in many changes to the initial draft. In its final form, SB 275 included several provisions in addition to the Oregon UTC itself, most merely making conforming amendments to other Oregon statutes. Ultimately, the bill passed in the senate and house of representatives with only two dissenting votes. After the governor signed it, SB 275 became chapter 348 of 2005 Oregon Laws.

F. (§2.12) Comments to the Oregon Uniform Trust Code

Testimony submitted to the Oregon Legislature in support of SB 275 included comments to the Oregon UTC, which were patterned after the comments to the UTC but modified to reflect the differences between the Oregon UTC and the UTC. Although the Oregon comments are not official legislative history, they are a useful tool for determining the meaning of the Oregon UTC’s provisions. The full text of the Oregon UTC and comments is found in 42 WILLAMETTE L REV 187 (2006).

G. Effective Date and Scope of Application

1. (§2.13) Effective Date

The provisions of the Oregon UTC, which are found in new ORS chapter 130, became effective on January 1, 2006. See 2005 Or Laws ch 348; ORS 171.022.