

REPORT

Uniform Statutory Trust Entity Act

A Summary

The **Uniform Statutory Trust Entity Act (USTEA)** was drafted in response to the increasing popularity of statutory trust entities, chiefly in the mutual fund and structured finance industries. Increasing use of the statutory trust as a mode of business organization has led to a recognition that in many states the status of such trusts is unclear and that the existing legislation is largely out-of-date or unclear. Practitioners, entrepreneurs, and scholars struggle to understand the law governing statutory trusts, and case law on the topic is sparse. The **USTEA** brings clarity and uniformity to the law pertaining to statutory trusts.

A statutory trust differs from a common-law trust in several important respects. A common-law trust arises from a private action without the involvement of a public official. Because a common-law trust is not a juridical entity, it must sue, be sued, and transact business in the name of the trustee and in the trustee's capacity as such. By contrast, a statutory trust is a juridical entity, separate from its trustees and beneficial owners. It has the capacity to sue, be sued and transact business on its own. The **USTEA** validates the statutory trust as a permissible form of business organization, resolving the uncertainty surrounding such trusts in states with inadequate or no statutory rules, and it brings the disparate state laws into uniformity.

Common law trusts, including those that have a business or commercial purpose, are subject to the common law of trusts and the Uniform Trust Code to the extent that neither the trust instrument nor other legislation displaces the common law or UTC. There is no separate body of general business law that applies to a common law trust that has a business purpose. The **USTEA** is not a codification of general business law principles applicable to common-law business trusts. Therefore, nothing in this Act displaces the common law of trusts, or the UTC, with respect to such trusts. Instead the **USTEA** recognizes the statutory trust as a separate and permissible form of organization.

The **USTEA** will be used primarily as a mode of business organization, but could also be used, in limited circumstances (see Section 603(a)), as a substitute for the common-law trust in noncommercial contexts. To ensure that a statutory trust is not used to evade mandatory rules under the common-law or the UTC applicable to common-law trusts, the **USTEA** provides that a statutory trust may not have a predominantly donative purpose.

The **USTEA** contains several innovations including:

- specified rules that cannot be overridden in the statutory trust's governing instrument;
- clearer guidance on the applicability of ordinary trust law to a statutory trust;
- prohibition against a statutory trust having a predominantly donative purpose;
- an entire article on series trusts;
- a charging order provision;
- systematic treatment of conversion and merger, as well as dissolution; and

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- clearer guidance on the relationship between the common-law trust and statutory trust entities.

Most of the **USTEA** consists of default rules that apply only if the governing instrument does not address a particular issue. Consideration must be given to the need to promote uniformity in this area of law, which **USTEA** satisfies.

The work of the Drafting Committee is available at www.nccusl.org, the website of the Conference.

Respectfully submitted,

Robert A Stein
President
National Conference of Commissioners
On Uniform State Laws
February, 2010

GENERAL INFORMATION FORM

Submitting Entity: National Conference of Commissioners on Uniform State Laws

Submitted by: Michael Kerr, Legislative Director

1. Summary of Recommendation(s)

The National Conference of Commissioners on Uniform State Laws requests approval of the Uniform Statutory Trust Entity Act by the ABA House of Delegates. The Act was approved by the National Conference in 2009.

2. Approval by Submitting Entity

The National Conference of Commissioners on Uniform State Laws approved it in July, 2009.

3. Has this or a similar recommendation been submitted to the House or Board previously?

No

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

None.

5. What urgency exists which requires action at this meeting of the House

None.

6. Status of Legislation (If applicable.)

As of the submission of this report, the Uniform Statutory Trust Entity Act has not been enacted in any state legislature.

7. Cost to the Association (Both direct and indirect costs.)

None.

8. Disclosure of Interest (If applicable.)

None.

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9. Referrals

Pursuant to the agreement between the NCCUSL and the ABA, all members of the House of Delegates and Chairs of all ABA entities were advised of the drafting project and those that expressed interest were provided with tentative drafts, as well as the final Act and Report. The work of the Drafting Committee is available at www.nccusl.org, the website of the Conference.

The ABA Advisors for the Uniform Statutory Trust Entity Act were Ellisa Opstbaum Habbart, Thomas E. Rutledge, William H. Clark and Robert R. Keatinge.

The Report with Recommendation was referred to the Section of Business Law and the Section of Real Property, Trust and Estate Law.

10. Contact Person (Prior to the meeting.)

John A. Sebert, Executive Director, National Conference of Commissioners on Uniform State Laws, 111 North Wabash, Suite 1010, Chicago, IL. 60602, 312/450-6603

Michael R. Kerr, Legislative Director, National Conference of Commissioners on Uniform State Laws, 111 North Wabash, Suite 1010, Chicago, IL. 60602, 312/450-6620

11. Contact Person (Who will present the report to the House.)

Robert A Stein, President, National Conference of Commissioners on Uniform State Laws, University of Minnesota Law School, 229 19th Ave. S., Minneapolis, MN 55455
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EXECUTIVE SUMMARY

1. Summary of the Recommendation

That the ABA approves the Uniform Statutory Trust Entity Act promulgated by the National Conference of Commissioners on Uniform State Laws in 2009 as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. Summary of the issue which the recommendation addresses

The Uniform Statutory Trust Entity Act (USTEA) addresses the need for a uniform law to regulate statutory business trusts. This need arises from the increasing popularity of statutory trust entities, chiefly in the structured finance and mutual fund industries. Practitioners, entrepreneurs, and scholars struggle to understand the law governing statutory trusts. The case law on statutory trusts is sparse. USTEA validates the statutory trust as a permissible form of business organization and brings the disparate and often inadequate existing state laws into uniformity.

USTEA more closely resembles a generic corporate code or unincorporated entity law than it does the Uniform Trust Code (UTC). However, nothing in this Act displaces the common law of trusts, or the UTC, with respect to such trusts. The USTEA uses Delaware Statutory Trust Act as a starting point for the Act but adds several innovations. The USTEA will be used primarily as a business organization tool and will clarify this area of law.

3. Please explain how the proposed policy position will address the issue

Approval of the Uniform Statutory Trust Entity Act by the House of Delegates would indicate to states that the Act is an appropriate mechanism for addressing the issues described above.

4. Summary of any minority views or opposition which have been identified

None have been identified at this time.