
OREGON UNIFORM TRUST CODE

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THE OREGON UNIFORM TRUST CODE AND COMMENTS

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INTRODUCTION

The use of trusts for estate planning and commercial purposes has grown dramatically in recent years, both in the United States and internationally. In Oregon, however, as in many other states, the existing statutes and case law failed to answer important questions about the law that applies to trusts.

In 2002, a 12-person committee¹ began to review existing Oregon trust law in light of the Uniform Trust Code (UTC) approved two years earlier by the National Conference of Commissioners on Uniform State Laws. The stated purpose of the UTC was to provide states with “precise, comprehensive, and easily accessible guidance

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1. Professor Valerie J. Vollmar of Willamette University College of Law and Professor Susan N. Gary of the University of Oregon School of Law served as co-chairs of the Oregon Uniform Trust Code Study Committee. Other members of the committee were Ron D. Bailey, Alan C. Bennett, Allyn E. Brown, Rita Batz Cobb, Penny L. Davis, Stephen O. Lane, David Nebel (who replaced Susan Evans Grabe), Tim O'Rourke, Kenneth Sherman, Jr., and Jennifer B. Todd.

on trust law questions.”² By the end of 2005, 15 states had adopted some version of the UTC and many others were considering doing so.

Before drafting proposed legislation, the Oregon committee compared the UTC to current Oregon law, studied modifications made to the UTC in other states, considered subcommittee reports, and discussed potential concerns with various interest groups. The committee had two fundamental goals in drafting the Oregon Uniform Trust Code (the Code): (1) retain current Oregon law absent a very good reason to change it; and (2) 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 when they concluded that the UTC approach was better than the current Oregon approach.

Two issues received particular attention during the drafting process. The first issue was the extent to which trust beneficiaries should be entitled to receive notice, information, and reports about the trust. This issue was resolved by limiting these rights to the settlor of a *revocable* trust as long as the settlor is alive. In the case of an *irrevocable* trust, these rights are extended only to the “qualified beneficiaries,” and the settlor may place substantial restrictions on their rights. The second issue was whether a trust beneficiary’s ex-spouse or children should be able to reach the beneficiary’s interest in a third-party *discretionary* trust to satisfy a support order. The drafters resolved this issue by omitting UTC § 504 and leaving existing Oregon law in effect.

Ultimately, the Oregon legislature voted almost unanimously in favor of the Code. On June 29, 2005, the governor signed Senate Bill 275, making the Code effective on January 1, 2006. The Code became Chapter 348 of the 2005 Oregon Laws, and now constitutes chapter 130 of the Oregon Revised Statutes (ORS). The caption of each section in ORS chapter 130 identifies the corresponding UTC section number, which will simplify comparison of the Code with the trust codes of other states. Senate Bill 275 incorporated or modified much of existing ORS chapter 128, but left out its provisions on employees’ trusts, business trusts, charitable trusts and corporations, and charitable solicitations.

The Code does not alter the traditional rule that the person who creates a trust generally is free to decide the trust’s terms. Thus, the Code is primarily a set of default rules that apply when the trust is si-

2. UTC Prefatory Note.

lent about a particular question. The only mandatory rules that may not be overridden by the drafter are found in ORS 130.120.

The application of the Code is governed by ORS 130.910:

1. The Code applies to all trusts, whenever created.
2. The Code does not apply to judicial, administrative, and other proceedings concerning trusts commenced before January 1, 2006.
3. Any rule of construction or presumption provided in the Code applies to trust instruments executed before January 1, 2006, unless there is a clear indication of a contrary intent in the terms of the trust.
4. The Code does not affect an act done before January 1, 2006.
5. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before January 1, 2006, that statute continues to apply to the right even if it has been repealed or superseded by the Code.

The Code recognizes three exceptions to the above rules on its application. First, the rule of ORS 130.505(1) (making a trust revocable unless its terms expressly provide that the trust is irrevocable) does not apply to a trust created under an instrument executed before January 1, 2006. Second, the rule of ORS 130.710(2)(b) (requiring a trustee to give notice to qualified beneficiaries within a reasonable time after accepting a trusteeship) does not apply to a trustee who accepted a trusteeship before January 1, 2006. Third, the rule of ORS 130.710(2)(c) (requiring a trustee to give notice to qualified beneficiaries within a reasonable time after the date the trustee acquires knowledge that an irrevocable trust has been created or that a formerly revocable trust has become irrevocable) does not apply to an irrevocable trust that was created or a revocable trust that became irrevocable before January 1, 2006.

This special issue of the WILLAMETTE LAW REVIEW contains not only the text of the Code itself, but also the final explanatory Comments to the Code, which are not available from any other source. These Comments serve as a tool to understanding what the provisions of the Code mean. The Comment for each section of the Code appears immediately after that Code section.