



DELBERT HOSEMANN
Secretary of State

**2009 Business Reform Committees
Minutes of the Trust Laws Study Group, Meeting # 1
July 22, 2009**

The first meeting of the Trust Laws Study Group was called to order on Wednesday, July 22, 2009 at 11:05 A.M. at the Secretary of State's Office, 700 North Street, Jackson, Mississippi. A list of the persons who were present is attached as Exhibit A.

Introduction

Cheryn Baker, Assistant Secretary of State, Policy and Research Division ("the Division"), welcomed everyone to the meeting and described the purpose of the study group. Secretary Hosemann also expressed his appreciation to everyone for serving on the study group.

Opening Remarks

Study Group Co-Chairs Jimmy Young and Jamie Houston explained the purpose of the group and thanked Secretary Hosemann and Ms. Baker. The co-chairs also noted their belief that support from the Division would drastically improve the group's effectiveness.

Presentation

Doug Jennings, Senior Attorney, Policy and Research Division, delivered a brief presentation on some of the topics to be addressed by the group: (1) asset-protection trusts, (2) dynasty trusts, (3) virtual representation; (4) the Uniform Principal and Income Act ("UPAIA"), and (5) the Uniform Prudent Management of Institutional Funds Act ("UPMIFA").

Asset-protection trusts. Mr. Jennings explained that asset-protection trusts ("APTs") were first recognized in the United States in 1997 by Alaska, and by Delaware shortly thereafter. Prior to this date, APTs were available only offshore. Mr. Jennings gave a summary of why a settlor (i.e., a person who creates a trust) would want to place assets into an APT: for tax benefits, protection from tort claims, protection for gifts and inheritances, assistance in pre-marital planning, and to protect estate-planning vehicles. Mr. Jennings stated that APT states generally prohibit creditors from accessing trust assets to satisfy a debt or judgment; however, states recognizing APTs have adopted various exceptions to this rule. Further, most APT states allow a former spouse to access trust assets to recover child support or alimony payments. Delaware also recognizes an exception allowing a tort claimant to recover against the trust assets

for claims arising before the creation of the trust. Mississippi currently does not recognize APTs, as its statutes expressly allow invasion of trust assets by a creditor when the settlor and beneficiary of a trust are the same person.

Dynasty trusts. Mr. Jennings explained that dynasty trusts are trusts which last longer than permitted by the traditional Rule Against Perpetuities and which are intended to benefit many successive generations. Many states have abolished the Rule outright, while most APT jurisdictions have merely modified it to allow trusts a greater duration. For example, some APT states have modified their laws to allow trusts to last for up to 1,000 years.

Virtual representation. Mr. Jennings stated that trust proceedings in Mississippi involving certain types of beneficiaries (such as minors, unborn children, or incompetent persons, to name a few) currently require the appointment of a guardian ad litem who must be an attorney. This requirement adds considerable expense and time to the proceedings. By adopting a statute allowing virtual representation of these types of beneficiaries (that is, allowing a person with an interest in the trust to represent all other parties with the same interest), trust proceedings involving these types of beneficiaries would be made more efficient and cost-effective. For example, such a statute would allow a parent to represent a child or unborn beneficiary with the same interest, rather than requiring that every potential beneficiary be represented separately by counsel or by a guardian ad litem. Mr. Jennings briefly outlined different approaches to virtual representation taken by the Uniform Probate Code, the Uniform Trust Code, and by state statutes in New York and Delaware. One study group member pointed out that the Mississippi Bar had considered virtual representation as part of its legislative agenda last year and that was a reason for including it on this year's study group agenda.

UPAIA. The UPAIA was enacted by the National Council of Commissioners on Uniform State Laws ("NCCUSL") in 1997 and is a modernization of the rules regulating how trustees may manage trust assets. Previous enactments of the act followed the "prudent person" rule, which required trustees to allocate assets to maximize present income, rather than to accumulate capital gains. Unfortunately, this rule required trustees to act in the interest of present beneficiaries at the expense of future beneficiaries. The UPAIA departs from this approach by allowing trustees to invest for total return and to allocate a certain amount of capital gains to income in each year as necessary to fulfill his or her duty of impartiality. Moreover, the UPAIA's investment rules give greater effectiveness to the Uniform Prudent Investor Act which was adopted by Mississippi in 2006 and which modernizes the law of trust investments.

UPMIFA. UPMIFA is a uniform act which provides rules for the investment and management of endowments and charitable funds. The former version of this act, the Uniform Management of Institutional Funds Act (adopted by Mississippi in 1998), prohibited an organization from spending money from any charitable fund below that fund's "historic dollar value," i.e., the dollar value at the time the fund was established. UPMIFA dispenses with the concept of historic dollar value and imposes, rather, the duty of prudent investing on trustees managing charitable funds. This approach gives trustees more flexibility in crafting investment strategies while still preventing excessive spending of trust assets. UPMIFA also provides a number of factors that trustees must consider when making investment decisions, as well as a

number of other minor provisions intended to make trust management easier and more efficient. UPMIFA has been adopted by 37 states since its adoption by NCCUSL in 2006.

Mr. Jennings stated that UPMIFA was introduced in Mississippi in 2009 but died in committee. Ms. Baker pointed out that UPMIFA's failed adoption was not due to opposition in the legislature, but was rather a result of the lack of any organized advocacy on the act's behalf.

Discussion

A committee member asked whether the staff and co-chairs had considered having the Group review the Uniform Trust Code (the "UTC") for potential adoption in Mississippi. Mr. Jennings responded that other states which had adopted the UTC had studied it for a number of years before adopting it and that he and the co-chairs had decided that review and consideration of the entire UTC would not be possible in the study group's limited time frame. However, Mr. Jennings pointed out that the study group would be considering two topics that are set forth in portions of the UTC: Article 3, regarding virtual representation, and Article 8, regarding trustee powers.

Ms. Baker urged the members to submit to the group for discussion any changes that they, their colleagues, or clients would like to see in Mississippi's trust laws. She said the Division would be glad to conduct further research on these issues as necessary.

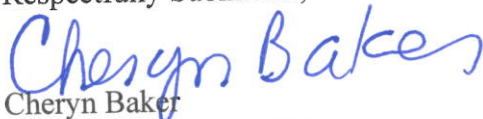
Mr. Jennings called for further comments or questions from the group members. There being no comments or questions, he announced the creation of four sub-groups and asked for volunteers: (1) asset-protection trusts; (2) dynasty trusts and virtual representation; (3) UPAIA and the trustee's powers provisions of Article 8 of the UTC; and (4) UPMIFA. Mr. Jennings explained that the sub-groups would meet as needed between the larger group meetings and that the sub-group chairs would present their reports and recommendations to the entire group.

Reminders about Upcoming Meetings and Other Business

Ms. Baker reminded the members of the remaining meetings scheduled for August 4th, August 25th, and September 15th. Mr. Jennings pointed out the suggested readings on page two of the agenda (see Exhibit B for a list of recommended reading) and stated that the Secretary of State's Office would be glad to provide a copy for any study group members without access to those materials.

With no further business to discuss the meeting was adjourned at 11:45 A.M.

Respectfully Submitted,



Cheryn Baker
Assistant Secretary of State
Policy and Research Division

EXHIBIT A

Minutes of the Trust Law Study Group, Meeting #1 July 22, 2009

In Attendance:

1. Jamie Houston (Co-Chair)
2. Jimmy Young (Co-Chair)
3. Bill Brown
4. Donna Bruce
5. Pete Cajoleas
6. Becky Covington
7. Greg Cronin
8. Joe Dick
9. Jeramie Fortenberry
10. Lynne Green
11. Mark Hartnett
12. Rusty Hawkins
13. Barry Jones
14. Linda Bounds King
15. Len Martin
16. Michelle Mahoney
17. Mark McCrary
18. James Pettis
19. Randy Shell
20. Julie Skipper
21. William Staggers
22. Jay Travis
23. Primus Wheeler
24. Warren Wiltshire

Attending by Phone:

1. Sen. Buck Clarke
2. David Cleland

3. Richard Courtney
4. Albert Delgadillo
5. Tony Edwards
6. Fred Hoff
7. Rob Jackson
8. Lee Murphy
9. Robert Paine
10. Brad Walsh
11. William Wilkins
12. Eric Wooten

Secretary of State's Staff:

1. Delbert Hosemann, Mississippi
Secretary of State
2. Martin Hegwood, Mississippi
Secretary of State, Executive
Division
3. Cheryn Baker, Assistant Secretary of
State, Policy and Research
4. Doug Jennings, Senior Attorney,
Policy and Research
5. Kay Earles, Division Coordinator,
Policy and Research
6. Michael Kelly, Legal Intern, Policy
and Research
7. Steven Corhern, Legal Intern, Policy
and Research

EXHIBIT B

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Recommended Reading for Trust Laws Study Group

1. Robert H Sitkoff and Max M. Schanzenbach, *Jurisdictional Competition for Trust Funds: an Empirical Analysis of Perpetuities and Taxes*, 115 YALE L.J. 356 (2005).
2. Garrett Morris, *Dynasty Trusts and the Rule Against Perpetuities*, 116 HARV. L. REV. 2588 (2003).
3. Martin D. Begleiter, *Serve the Cheerleader – Serve the World: An Analysis of Representation in Estate and Trust Proceedings and Under the Uniform Trust Code and Other Modern Trust Codes*, 43 REAL PROP. TR. & EST. L.J. 311 (2008).