



DELBERT HOSEMANN
Secretary of State

2009 Business Reform Committees
Minutes of the Trust Laws Study Group, Meeting # 2
August 25, 2009

The second meeting of the Trust Laws Study Group was called to order on Tuesday, August 25, 2009, at 11:00 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 noted that this was one of the larger groups that the Division was hosting this year.

Approval of minutes

The members unanimously approved the minutes of the July 22, 2009, meeting.

Sub-Group reports

Doug Jennings, Senior Attorney, Policy and Research Division, stated that the meeting's purpose was to discuss the progress the sub-groups were making and to identify any issues that the group could foresee arising. Mr. Jennings then asked each sub-group chair to give his or her report.

Asset-Protection Trusts Sub-group: Chairman Len Martin reported that the sub-group had looked closely at the laws of Alaska, Tennessee, Delaware, Utah, Nevada, and Wyoming regarding self-settled asset-protection trusts (hereinafter "APTs"). Martin also reported that the sub-group had not yet come to a firm decision on the initial question of whether Mississippi *should* validate self-settled APTs. Several members expressed the view that adopting laws validating self-settled APTs would be a positive move for Mississippi, if only to keep Mississippi dollars from escaping to other states with more favorable trust laws.

Mr. Martin then went through the specific exceptions that the sub-group agreed would need to be included in legislation should the sub-group decide to recommend validation of self-settled APTs. Martin reported that the sub-group members were most comfortable with following the approach taken by Delaware and Tennessee, both which allow a claimant to invade the assets of a self-settled APT if those assets were placed there fraudulently (i.e., to hinder or

delay a creditor, or placed in trust while the trustor was insolvent). The sub-group also decided to follow Delaware's lead in adopting an exception providing that when an event giving rise to liability occurs before the assets are placed into a self-settled APT, creditors may reach those assets. Lastly, Martin said, the sub-group decided to allow exceptions allowing child support and alimony payments to be taken out of a self-settled APT.

Mr. Martin said that the sub-group also recommended following the Delaware and Tennessee rules regarding creation of a self-settled APT. Under the sub-group's proposal, in order to create a self-settled APT in Mississippi, the trust instrument must state that it is irrevocable, that Mississippi law governs the validity, construction, and administration of the trust, and must contain a spendthrift clause. In addition, Martin said, a settlor would have to sign an affidavit stating that he or she is solvent at the time the trust is created.

Dynasty Trusts and Virtual Representation Sub-group: Chairman Barry Jones was unable to attend the meeting and asked Mr. Jennings to give his sub-group's status report. Jennings said that there was consensus among the sub-group's members that the Rule Against Perpetuities (RAP) need not be repealed, only modified. The sub-group's initial proposal would allow an attorney drafting a trust instrument to opt out of the RAP by inserting a provision allowing the suspension of alienation for a maximum of 150 years, but also stating that the trustee would at all times retain the power to sell the trust assets. This rule would apply to both personal and real property, Jennings said.

Further discussion about the RAP contemplated a further option considered by the sub-group. This approach would allow a trustor to opt out of the RAP and suspend the alienation of the trust property for a period of longer than 150 years. Some members questioned how the generation-skipping tax would affect these dispositions, and what should be the maximum additional period of time. The members also questioned the sub-group's proposal of repealing the fiduciary income tax and what effect its repeal would have on revenue for the state. Other concerns that arose from that topic were how to separate dynasty trusts from all other trusts and how to secure legislative approval in the present economy to eliminate a currently existing tax. Mr. Jennings stated that he would research these issues before the next meeting.

The sub-group also reported its unanimous agreement that a virtual representation statute should be adopted in Mississippi. Mr. Jennings informed the group that the open issues were whether to explicitly require that virtual representation be "adequate" and whether virtual representation by remaindermen should also apply to contingent remaindermen. See Exhibit B for the memorandum to the Trust Laws Study Group from the Dynasty Trust and Virtual Representation sub-group.

Uniform Principal and Income Act (UPIA) Sub-group: Chair Lynne Green reported on this sub-group's progress, stating that the group looked favorably on adopting the UPIA. Ms. Green said the sub-group had also considered the viability of "safe harbor" provisions, which would protect a trustee from liability for making an adjustment between principal and income within a certain range. A number of other states have adopted this type of provision, Green said, and the range is typically 4% to 6%. Ms. Green also reported that the sub-group was contemplating whether to adopt the UPIA's provisions regarding receipt of mineral and timber revenues and how this change would affect current beneficiaries of trusts with mineral or timber interests. Ms. Green asked for more information on how states that have adopted the UPIA

define the term “delay” for payment of interest on a delayed pecuniary gift; the types and volume of litigation such states had seen since adopting the act; and whether the act should be revised by replacing the term “trustee” with “fiduciary.”

Uniform Prudent Management of Institutional Funds Act (UPMIFA) Sub-group:

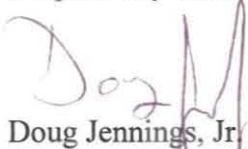
Chairman Mark McCrary stated the group’s unanimous recommendation that the optional Section 4(d), which provides a rebuttable presumption of imprudence for spending over a certain percentage of a fund in a given year, should be omitted from any proposed adoption of UPMIFA in Mississippi. McCrary also reported that the sub-group is considering modifying Section 6(d) of the act (which provides for expedited reformation of smaller, older funds) by changing the qualifications to be eligible for expedited reformation to raise the maximum value of the fund and lessen the required length of time by which the fund had been in existence. The group also recommended changing UPMIFA’s definition of charitable purpose to conform to the current definition in Mississippi’s Charitable Solicitations Act, Miss. Code Ann. § 79-11-501 et seq.

Reminder of upcoming meetings

Ms. Baker reminded the members of the next scheduled meeting slated to take place on September 15, 2009.

With no further business to discuss the meeting was adjourned at 12:02 P.M.

Respectfully submitted,



Doug Jennings, Jr.
Mississippi Secretary of State
Senior Attorney, Division of Policy & Research

EXHIBIT A

**Minutes of the Trust Laws Study Group, Meeting # 2
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In Attendance:

1. Jamie Houston (Co-Chair)
2. Jimmy Young (Co-Chair)
3. Pete Cajoleas
4. Charles Cleland
5. Rebecca Covington
6. Raleigh Cutrer
7. James Dossett, Jr.
8. Lynne Greene
9. Rusty Hawkins
10. Linda Keng
11. Michelle Mahoney
12. Len Martin
13. Mark McCrary
14. Caryn Quilter
15. Maureen Scott
16. Randy Shell
17. William Staggers
18. William Wilkins
19. Warren Wiltshire

Attending by Phone:

1. Charles Caldwell
2. Walton Dallas
3. Jeramie Fortenberry
4. Robert Paine
5. John Temple
6. Eric Wooten

Secretary of State's Staff:

1. Cheryn Baker, Assistant Secretary of State, Policy and Research
2. Doug Jennings, Senior Attorney, Policy and Research
3. Leann Hager, Legal Intern, Policy and Research