| ARTICLE 7: EXISTING CODE LANGUAGE | Bill # S. 1243 |
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| Article 7.Part 1. General Provisions and | Article 7.Part 1. |
| Definitions | |

GENERAL COMMENT

The Uniform Trust Code is primarily a default statute. Most of the Code's provisions can be overridden in the terms of the trust. The provisions not subject to override are scheduled in Section 105(b). These include the duty of a trustee to act in good faith and with regard to the purposes of the trust, public policy exceptions to enforcement of spendthrift provisions, the requirements for creating a trust, and the authority of the court to modify or terminate a trust on specified grounds.

The remainder of the article specifies the scope of the Code (Section 102), provides definitions (Section 103), and collects provisions of importance not amenable to codification elsewhere in the Uniform Trust Code. Sections 106 and 107 focus on the sources of law that will govern a trust. Section 106 clarifies that despite the Code's comprehensive scope, not all aspects of the law of trusts have been codified. The Uniform Trust Code is supplemented by the common law of trusts and principles of equity. Section 107 addresses selection of the jurisdiction or jurisdictions whose laws will govern the trust. A settlor, absent overriding public policy concerns, is free to select the law that will determine the meaning and effect of a trust's terms.

Changing a trust's principal place of administration is sometimes desirable, particularly to lower a trust's state income tax. Such transfers are authorized in Section 108. The trustee, following notice to the "qualified beneficiaries," defined in Section 103(12), may

GENERAL COMMENT

The South Carolina version of the Uniform Trust Code is referred to as the South Carolina Trust Code or sometimes the SCTC or sometimes the Code throughout this Article. The Uniform Trust Code is sometimes referred to as the UTC. The South Carolina Probate Code, South Carolina Code Ann. Section 62-1-100 et seq., is sometimes referred to as the SCPC. The sections of the South Carolina Trust Code are codified at Title 62, Article 7 and consequently are a part of the comprehensive South Carolina Probate Code. Depending on context, general references to "Article" in the UTC Comments may correlate to "Part" in the SCTC.

As with the UTC, the SCTC is primarily a default statute. Most of the Code's provisions can be overridden in the terms of the trust. The provisions not subject to override are scheduled in Section 62-7-105(b). These include the duty of a trustee to act in good faith and with regard to the purposes of the trust, public policy exceptions to enforcement of spendthrift provisions, the requirements for creating a trust, and the authority of the court to modify or terminate a trust on specified grounds.

The remainder of the article specifies the scope of the Code (Section 62-7-102), provides definitions (Section 62-7-103), and collects provisions of importance not amenable to codification elsewhere in the SCTC. Sections 62-7-106 and 62-7-107 focus on the sources of law that will govern a trust. Section 62-7-106 clarifies that despite the Code's comprehensive scope, not all aspects of the law of trusts have been codified. The SCTC is supplemented by the common law of trusts and principles of equity. Section 62-7 107 addresses

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| without approval of court transfer the principal | selection of the jurisdiction or jurisdictions whose |
| place of administration to another State or | laws will govern the trust. A settlor, absent |
| country if a qualified beneficiary does not | overriding public policy concerns, is free to select |
| object and if the transfer is consistent with the | the law that will determine the meaning and effect of |
| trustee's duty to administer the trust at a place | a trust's terms. |
| appropriate to its purposes, its administration, | Changing a trust's principal place of |
| and the interests of the beneficiaries. The | administration is sometimes desirable, particularly to |
| settlor, if minimum contacts are present, may | lower a trust's state income tax. Such transfers are |
| also designate the trust's principal place of | authorized in Section 62-7-108. The trustee, |
| administration. | following notice to the "qualified beneficiaries," |
| Sections 104 and 109 through 111 address | defined in Section 62-7-103(12), may without |
| procedural issues. Section 104 specifies when | approval of court transfer the principal place of |
| persons, particularly persons who work in | administration to another State or country if a |
| organizations, are deemed to have acquired | qualified beneficiary does not object and if the |
| knowledge of a fact. Section 109 specifies the | transfer is consistent with the trustee's duty to |
| methods for giving notice and excludes from | administer the trust at a place appropriate to its |
| the Code's notice requirements persons whose | purposes, its administration, and the interests of the |
| identity or location is unknown and not | beneficiaries. The settlor, if minimum contacts are |
| reasonably ascertainable. Section 110 allows | present, may also designate the trust's principal |
| beneficiaries with remote interests to request | place of administration. |
| notice of actions, such as notice of a trustee | Sections 62-7-104 and 62-7-109 through 62-7-111 |
| resignation, which are normally given only to | address procedural issues. Section 62-7-104 |
| the qualified beneficiaries. | specifies when persons, particularly persons who |
| Section 111 ratifies the use of nonjudicial | work in organizations, are deemed to have acquired |
| settlement agreements. While the judicial | knowledge of a fact. Section 62-7-109 specifies the |
| settlement procedures may be used in all court | methods for giving notice and excludes from the |
| proceedings relating to the trust, the nonjudicial | Code's notice requirements persons whose identity |
| settlement procedures will not always be | or location is unknown and not reasonably |
| available. The terms of the trust may direct that | ascertainable. Section 62-7-110 allows beneficiaries |
| the procedures not be used, or settlors may | with remote interests to request notice of actions, |
| negate or modify them by specifying their own | such as notice of a trustee resignation, which are |
| | C |
| methods for obtaining consents. Also, a | normally given only to the qualified beneficiaries. |
| nonjudicial settlement may include only terms | Section 62-7-111 ratifies the use of nonjudicial |
| and conditions a court could properly approve. | settlement agreements. While the judicial settlement |
| The Uniform Trust Code does not prescribe the | procedures may be used in all court proceedings |
| rules of construction to be applied to trusts | relating to the trust, the nonjudicial settlement |
| created under the Code. The Code instead | procedures will not always be available. The terms |
| recognizes that enacting jurisdictions are likely | of the trust may direct that the procedures not be |
| to take a diversity of approaches, just as they | used, or settlors may negate or modify them by |

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| have with respect to the rules of construction applicable to wills. Section 112 accommodates this variation by providing that the State's specific rules on construction of wills, whatever they may be, also apply to the construction of trusts. | specifying their own methods for obtaining consents. Also, a nonjudicial settlement may include only terms and conditions a court could properly approve. Section 62-7-112 provides that South Carolina's specific rules on construction of wills, whatever they may be, also apply to the construction of trusts. |
| SOUTH CAROLINA COMMENT The South Carolina version of the Uniform Trust Code is referred to as the South Carolina Trust Code or sometimes the SCTC throughout this article. The Uniform Trust Code is sometimes referred to as the UTC. The South Carolina Probate Code, South Carolina Code Ann. Section 62-1-100 et seq., is sometimes referred to as the SCPC. The sections of the South Carolina Trust Code are codified at Title 62, Article 7 and consequently become a part of the comprehensive South Carolina Probate Code. By rule, the Comments to the Uniform Trust Code cannot be changed. However, because the South Carolina Trust Code differs in some respects from the Uniform Trust Code, the Uniform Trust Code Comments, although included, are not always appropriate for South Carolina. Consequently, when appropriate, the South Carolina Comments include guidance to those portions of the Uniform Trust Code Comments not appropriate for South Carolina. However, portions of the UTC Comments may nevertheless be inappropriate for the SCTC, especially with respect to cross-references. Depending on context, general references to "article" in the UTC Comments may correlate to "Part" in the SCTC. | |
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| SECTION 62-7-101. Short title. | SECTION 62-7-101. |
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| This article may be cited as the South Carolina | This article may be cited as the South Carolina Trust |
| Trust Code. In this article, unless the context | Code. In this article, unless the context clearly |
| clearly indicates otherwise, "Code" shall mean | indicates otherwise, 'Code' shall mean means the |
| the South Carolina Trust Code. | South Carolina Trust Code. |
| SECTION (2 7 102 S | SECTION (2.7. 102 |
| SECTION 62-7-102. Scope. | SECTION 62-7-102. |
| This article applies to express trusts, charitable | This article applies to express trusts, charitable or |
| or noncharitable, and trusts created pursuant to | noncharitable, and trusts created pursuant to a |
| a statute, judgment, or decree that requires the | statute, judgment, or decree that requires the trust to |
| trust to be administered in the manner of an | be administered in the manner of an express trust. |
| express trust. The term ' 'express trust" | The term 'express trust' includes both testamentary |
| includes both testamentary and inter vivos | and inter vivos trusts, regardless of whether the |
| trusts, regardless of whether the trustee is | trustee is required to account to the probate court, |
| required to account to the probate court, and | and includes, but is not limited to, all trusts defined |
| includes, but is not limited to, all trusts defined | in Section 62-1-201(49). This article does not apply |
| in Section 62-1-201(44). This article does not | to constructive trusts, resulting trusts, |
| apply to constructive trusts, resulting trusts, | conservatorships administered by conservators as |
| conservatorships administered by conservators | defined in Section 62-1-201(6), administration of |
| as defined in Section 62-1-201(6), | decedent's estates, all multiple party accounts |
| administration of decedent's estates, all multiple | referred to in Section 62-6-101 et seq., custodial |
| party accounts referred to in Section 62-6-101 | arrangements, business trusts providing for |
| et seq., custodial arrangements, business trusts | certificates to be issued to beneficiaries, common |
| providing for certificates to be issued to | trust funds, voting trusts, security arrangements, |
| beneficiaries, common trust funds, voting trusts, | liquidation trusts, and trusts for the primary purpose |
| security arrangements, liquidation trusts, and | of paying debts, dividends, interest, salaries, wages, |
| trusts for the primary purpose of paying debts, | profits, pensions, or employee benefits of any kind, |
| dividends, interest, salaries, wages, profits, | or any arrangement under which a person is nominee |
| pensions, or employee benefits of any kind, or | or escrowee for another. |
| any arrangement under which a person is | REPORTER'S COMMENT |
| nominee or escrowee for another. | This section provides a concise statement of the |
| COMMENT | positive inclusion of express trusts within the scope |
| The Uniform Trust Code, while comprehensive, | of the SCTC. |
| applies only to express trusts. Excluded from | South Carolina has another comprehensive |
| the Code's coverage are resulting and | statement of the scope of applicable South Carolina |
| constructive trusts, which are not express trusts | trust law, contained in the definition paragraph of |
| | a contraction of the contraction paragraph of |

constructive trusts, which are not express truststrust law, contained in the definition paragraph ofbut remedial devices imposed by law. For thethe South Carolina Probate Code Sectionrequirements for creating an express trust and62-1-201(49), which contains an expanded statement

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| the methods by which express trusts are created, | of the inclusion of express trusts and further contains |
| see Sections 401-402. The Code does not | detailed statements of the trusts and trust type |
| attempt to distinguish express trusts from other | arrangements that are excluded from the scope. This |
| legal relationships with respect to property, | statement is now included in Section 62-7-102 with |
| such as agencies and contracts for the benefit of | reference to Section 62-1-201(49). Former Section |
| third parties. For the distinctions, see | 62-7-702(1), in the South Carolina Uniform |
| Restatement (Third) of Trusts Sections 2, 5 | Trustee's Powers Act, which was repealed by the |
| (Tentative Draft No. 1, approved 1996); | SCTC, also contained a comprehensive statement of |
| Restatement (Second) of Trusts Sections 2, | applicable South Carolina trust law. |
| 5-16C (1959). | Excluded from the Code's coverage are resulting |
| The Uniform Trust Code is directed primarily at | and constructive trusts, which are not express trusts |
| trusts that arise in an estate planning or other | but remedial devices imposed by law. For the |
| donative context, but express trusts can arise in | requirements for creating an express trust and the |
| other contexts. For example, a trust created | methods by which express trusts are created, see |
| pursuant to a divorce action would be included, | Sections 62-7-401 and 62-7-402. The Code does not |
| even though such a trust is not donative but is | attempt to distinguish express trusts from other legal |
| created pursuant to a bargained-for exchange. | relationships with respect to property, such as |
| Commercial trusts come in numerous forms, | agencies and contracts for the benefit of third |
| including trusts created pursuant to a state | parties. For the distinctions, see Restatement (Third) |
| business trust act and trusts created to | of Trusts Sections 2, 5 (Tentative Draft No. 1, |
| administer specified funds, such as to pay a | approved 1996); Restatement (Second) of Trusts |
| pension or to manage pooled investments. | Sections 2, 5-16C (1959). |
| Commercial trusts are often subject to special- | The SCTC is directed primarily at trusts that arise |
| purpose legislation and case law, which in some | in an estate planning or other donative context, but |
| respects displace the usual rules stated in this | express trusts can arise in other contexts. For |
| Code. See John H. Langbein, The Secret Life | example, a trust created pursuant to a divorce action |
| of the Trust: The Trust as an Instrument of | would be included, even though such a trust is not |
| Commerce, 107 Yale L.J. 165 (1997). | donative but is created pursuant to a bargained-for |
| Express trusts also may be created by means of | exchange. Commercial trusts come in numerous |
| court judgment or decree. Examples include | forms, including trusts created pursuant to a state |
| trusts created to hold the proceeds of personal | business trust act and trusts created to administer |
| injury recoveries and trusts created to hold the | specified funds, such as to pay a pension or to |
| assets of a protected person in a conservatorship | manage pooled investments. Commercial trusts are |
| proceeding. See, e.g., Uniform Probate Code | often subject to special-purpose legislation and case |
| Section 5-411(a) (4). | law, which in some respects displace the usual rules |
| | stated in this Code. See John H. Langbein, The |
| SOUTH CAROLINA COMMENT | Secret Life of the Trust: The Trust as an Instrument |
| This section provides a concise statement of the | of Commerce, 107 Yale L.J. 165 (1997). |
| positive inclusion of express trusts within the | Express trusts also may be created by means of |

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| court judgment or decree. Examples include trusts created to hold the proceeds of personal injury |
| recoveries and trusts created to hold the assets of a |
| protected person in a conservatorship proceeding. |
| protected person in a conservatorship proceeding. |
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| SECTION 62-7-103. |
| In this article: |
| (1) 'Action,' with respect to an act of a trustee, |
| includes a failure to act. |
| (2) 'Beneficiary' means a person that: |
| (A) has a present or future beneficial interest in |
| a trust, vested or contingent; or |
| (B) in a capacity other than that of trustee, |
| holds a power of appointment over trust property; or |
| (C) In the case of a charitable trust, has the |
| authority to enforce the terms of the Trust. |
| (3) 'Charitable trust' means a trust, or portion of a trust, created for a charitable purpose described in |
| Section 62-7-405(a). |
| (4) 'Conservator' means a person appointed by |
| the court to administer the estate of a protected |
| person. |
| (5) 'Environmental law' means a federal, state, or |
| local law, rule, regulation, or ordinance relating to |
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| protection of the environment. |
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| court to make decisions regarding the support, | court to make decisions regarding the support, care, |
| care, education, health, and welfare of a minor | education, health, and welfare of a minor or adult |
| or adult individual. The term does not include a | individual. The term does not include a guardian ad |
| guardian ad litem or a statutory guardian. | litem or a statutory guardian. |
| (7) "Interests of the beneficiaries" means the | (7) 'Interests of the beneficiaries' means the |
| beneficial interests provided in the terms of the | beneficial interests provided in the terms of the trust. |
| trust. | (8) 'Jurisdiction', with respect to a geographic |
| (8) "Jurisdiction", with respect to a geographic | area, includes a State or country. |
| area, includes a State or country. | (9) 'Person' means an individual, corporation, |
| (9) "Person" means an individual, corporation, | business trust, estate, trust, partnership, limited |
| business trust, estate, trust, partnership, limited | liability company, association, joint venture, |
| liability company, association, joint venture, | government, governmental subdivision, agency, or |
| government, governmental subdivision, agency, | instrumentality, public corporation, or any other |
| or instrumentality, public corporation, or any | legal or commercial entity. |
| other legal or commercial entity. | (10) 'Power of withdrawal' means a presently |
| (10) "Power of withdrawal" means a presently | exercisable general power of appointment other than |
| exercisable general power of appointment other | a power exercisable by a trustee which is limited by |
| than a power exercisable by a trustee which is | an ascertainable standard, or which is exercisable by |
| limited by an ascertainable standard, or which is | another person only upon consent of the trustee or |
| exercisable by another person only upon | the person holding an adverse interest. |
| consent of the trustee or the person holding an | (11) 'Property' means anything that may be the |
| adverse interest. | subject of ownership, whether real or personal, legal |
| (11) "Property" means anything that may be the | or equitable, or any interest therein. |
| subject of ownership, whether real or personal, | (12) 'Qualified beneficiary' means a living |
| legal or equitable, or any interest therein. | beneficiary who, on the date the beneficiary's |
| (12) "Qualified beneficiary" means a living | qualification is determined: |
| beneficiary who, on the date the beneficiary's | (A) is a distributee or permissible distributee of |
| qualification is determined: | trust income or principal; |
| (A) is a distributee or permissible distributee of | (B) would be a distributee or permissible |
| trust income or principal; | distributee of trust income or principal if the |
| (B) would be a distributee or permissible | interests of the distributees described in |
| distributee of trust income or principal if the | subparagraph (A) terminated on that date, but the |
| interests of the distributees described in | termination of those interests would not cause the |
| subparagraph (A) terminated on that date, but | trust to terminate; or |
| the termination of those interests would not | (C) would be a distributee or permissible |
| cause the trust to terminate; or | distributee of trust income or principal if the trust |
| (C) would be a distributee or permissible | terminated on that date. |
| distributee of trust income or principal if the | (13) 'Revocable', as applied to a trust, means |
| trust terminated on that date. | revocable by the settlor without the consent of the |
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| (13) "Revocable", as applied to a trust, means | trustee or a person holding an adverse interest. |
| revocable by the settlor without the consent of | (14) 'Settlor' means a person, including a testator, |
| the trustee or a person holding an adverse | who creates, or contributes property to, a trust. If |
| interest. | more than one person creates or contributes property |
| (14) "Settlor" means a person, including a | to a trust, each person is a settlor of the portion of |
| testator, who creates, or contributes property to, | the trust property attributable to that person's |
| a trust. If more than one person creates or | contribution except to the extent another person has |
| contributes property to a trust, each person is a | the power to revoke or withdraw that portion. |
| settlor of the portion of the trust property | Neither the possession of, nor the lapse, release, or |
| attributable to that person's contribution except | waiver of a power of withdrawal shall cause a holder |
| to the extent another person has the power to | of the power to be deemed to be a settlor of the trust, |
| revoke or withdraw that portion. | and property subject to such power is not susceptible |
| (15) "Spendthrift provision" means a term of a | to the power holder's creditors. |
| trust which restrains both voluntary and | (15) 'Spendthrift provision' means a term of a |
| involuntary transfer of a beneficiary's interest. | trust which restrains both voluntary and involuntary |
| (16) "State" means a State of the United States, | transfer of a beneficiary's interest. |
| the District of Columbia, Puerto Rico, the | (16) 'State' means a State of the United States, the |
| United States Virgin Islands, or any territory or | District of Columbia, Puerto Rico, the United States |
| insular possession subject to the jurisdiction of | Virgin Islands, or any territory or insular possession |
| the United States. The term includes an Indian | subject to the jurisdiction of the United States. The |
| tribe or band recognized by federal law or | term includes an Indian tribe or band recognized by |
| formally acknowledged by a State. | federal law or formally acknowledged by a State. |
| (17) "Terms of a trust" means the manifestation | (17) 'Terms of a trust' means the manifestation of |
| of the settlor's intent regarding a trust's | the settlor's intent regarding a trust's provisions as |
| provisions as expressed in the trust instrument | expressed in the trust instrument or as may be |
| or as may be established by other evidence that | established by other evidence that would be |
| would be admissible in a judicial proceeding. | admissible in a judicial proceeding. |
| (18) "Trust instrument" means an instrument | (18) 'Trust instrument' means an instrument |
| executed by the settlor that contains terms of the | executed by the settlor that contains terms of the |
| trust, including any amendments thereto. | trust, including any amendments thereto. |
| (19) "Trustee" includes an original, additional, | (19) 'Trustee' includes an original, additional, and |
| and successor trustee, and a cotrustee, whether | successor trustee, and a cotrustee, whether or not |
| or not appointed or confirmed by a court. | appointed or confirmed by a court. |
| (20) "Ascertainable standard" means an | (20) 'Ascertainable standard' means an |
| ascertainable standard relating to a trustee's | ascertainable standard relating to a trustee's |
| individual's health, education, support, or | individual's health, education, support, or |
| maintenance within the meaning of Section | maintenance within the meaning of Section |
| 2041(b)(1(A) or 2514(c)(1) of the Internal | 2041(b)(1)(A) or $2514(c)(1)$ of the Internal Revenue |
| Revenue Code, as amended. | Code, as amended. |

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| (21) "Distributee" means any person who | (21) 'Distributee' means any person who receives |
| receives property of a Trust from a Trustee, | property of a trust from a trustee, other than as |
| other than as creditor or purchaser. | creditor or purchaser. |
| (22) "Interested person" or "interested party" | (22) 'Interested person' or 'interested party' means |
| means any person or party deemed to be a | any person or party deemed to be a necessary or |
| necessary or proper party under Rule 19 of the | proper party under Rule 19 of the South Carolina |
| South Carolina Rules of Civil Procedure. | Rules of Civil Procedure. |
| (23) "Internal Revenue Code" means the | (23) 'Internal Revenue Code' means the Internal |
| Internal Revenue Code, as amended from time | Revenue Code, as amended from time to time. Each |
| to time. Each reference to a provision of the | reference to a provision of the Internal Revenue |
| Internal Revenue Code shall include any | Code shall include any successor or amendment |
| successor or amendment thereto. | thereto. |
| (24) "Serious breach of trust" means either: a | (24) 'Serious breach of trust' means either: a |
| single act that causes significant harm or | single act that causes significant harm or involves |
| involves flagrant misconduct, or a series of | flagrant misconduct, or a series of smaller breaches, |
| smaller breaches, none of which individually | none of which individually justify removal when |
| justify removal when considered alone, but | considered alone, but which do so when considered |
| which do so when considered together. | together. |
| The terms and definitions contained in the | (25) 'Permissible distributee' means any person |
| South Carolina Probate Code that do not | who or which on the date of qualification as a |
| conflict with the terms defined in this section | beneficiary is eligible to receive current distributions |
| shall remain in effect for the South Carolina | of property of a trust from a trustee, other than as a |
| Trust Code. | creditor or purchaser. |
| | (26) 'Trust investment advisor' is a person, |
| COMMENT | committee of persons, or entity who is or who are |
| A definition of "action" (paragraph (1)) is | given authority by the terms of a trust instrument to |
| included for drafting convenience, to avoid | direct, consent to or disapprove a trustee's actual or |
| having to clarify in the numerous places in the | proposed investment decisions. |
| Uniform Trust Code where reference is made to | (27) 'Trust protector' is a person, committee of |
| an "action" by the trustee that the term includes | persons or entity who is or who are designated as a |
| a failure to act. | trust protector whose appointment is provided for in |
| "Beneficiary" (paragraph (2)) refers only to a | the trust instrument. |
| beneficiary of a trust as defined in the Uniform | The terms and definitions contained in the South |
| Trust Code. In addition to living and | Carolina Probate Code that do not conflict with the |
| ascertained individuals, beneficiaries may be | terms defined in this section shall remain in effect |
| unborn or unascertained. Pursuant to Section | for the South Carolina Trust Code. |
| 402(b), a trust is valid only if a beneficiary can | REPORTER'S COMMENT |
| be ascertained now or in the future. The term | There are a number of definitions in Section |
| "beneficiary" includes not only beneficiaries | 62-7-103 referred to throughout the South Carolina |

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| who received their interests under the terms of | Trust Code that have no equivalent in other portions |
| the trust but also beneficiaries who received | of the South Carolina Code. These include |
| their interests by other means, including by | "Action," "Charitable trust," "Environmental law," |
| assignment, exercise of a power of appointment, | "Interests of the beneficiaries," "Jurisdiction," |
| resulting trust upon the failure of an interest, | "Power of withdrawal," "Qualified beneficiary," |
| gap in a disposition, operation of an antilapse | "Revocable," "Settlor," "Spendthrift provision," |
| statute upon the predecease of a named | "Terms of a trust," and "Trust instrument." In the |
| beneficiary, or upon termination of the trust. | interest of uniformity, such terms are included in the |
| The fact that a person incidentally benefits from | South Carolina Trust Code except as noted below. |
| the trust does not mean that the person is a | A definition of "action" (paragraph (1)) is |
| beneficiary. For example, neither a trustee nor | included for drafting convenience, to avoid having |
| persons hired by the trustee become | to clarify in the numerous places in the SCTC where |
| beneficiaries merely because they receive | reference is made to an "action" by the trustee that |
| compensation from the trust. See Restatement | the term includes a failure to act. |
| (Third) of Trusts Section 48 cmt. c (Tentative | "Beneficiary" (paragraph (2)) refers only to a |
| Draft No. 2, approved 1999); Restatement | beneficiary of a trust as defined in the SCTC. In |
| (Second) of Trusts Section 126 cmt. c (1959). | addition to living and ascertained individuals, |
| While the holder of a power of appointment is | beneficiaries may be unborn or unascertained. |
| not considered a trust beneficiary under the | Pursuant to Section 62-7-402(c), a trust is valid only |
| common law of trusts, holders of powers are | if a beneficiary can be ascertained now or in the |
| classified as beneficiaries under the Uniform | future. The term "beneficiary" includes not only |
| Trust Code. Holders of powers are included on | beneficiaries who received their interests under the |
| the assumption that their interests are significant | terms of the trust but also beneficiaries who received |
| enough that they should be afforded the rights | their interests by other means, including by |
| of beneficiaries. A power of appointment as | assignment, exercise of a power of appointment, |
| used in state trust law and this Code is as | resulting trust upon the failure of an interest, gap in a |
| defined in state property law and not federal tax | disposition, operation of an antilapse statute upon |
| law although there is considerable overlap | the predecease of a named beneficiary, or upon |
| between the two definitions. | termination of the trust. The fact that a person |
| A power of appointment is authority to | incidentally benefits from the trust does not mean |
| designate the recipients of beneficial interests in | that the person is a beneficiary. For example, |
| property. See Restatement (Second) of | neither a trustee nor persons hired by the trustee |
| Property: Donative Transfers Section 11.1 | become beneficiaries merely because they receive |
| (1986). A power is either general or nongeneral | compensation from the trust. See Restatement |
| and either presently exercisable or not presently | (Third) of Trusts Section 48 cmt. c (Tentative Draft |
| exercisable. A general power of appointment is | No. 2, approved 1999); Restatement (Second) of |
| a power exercisable in favor of the holder of the | Trusts Section 126 cmt. c (1959). |
| power, the power holder's creditors, the power | While the holder of a power of appointment is not |
| holder's estate, or the creditors of the power | necessarily considered a trust beneficiary under the |

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| holder's estate. See Restatement (Second) of | common law of trusts, holders of powers are |
| Property: Donative Transfers Section 11.4 | classified as beneficiaries under the SCTC. Holders |
| (1986). All other powers are nongeneral. A | of powers are included on the assumption that their |
| power is presently exercisable if the power | interests are significant enough that they should be |
| holder can currently create an interest, present | afforded the rights of beneficiaries. A power of |
| or future, in an object of the power. A power of | appointment as used in state trust law and this Code |
| appointment is not presently exercisable if | is as defined in state property law and not federal tax |
| exercisable only by the power holder's will or if | law although there is considerable overlap between |
| its exercise is not effective for a specified | the two definitions. |
| period of time or until occurrence of some | A power of appointment is authority to designate |
| event. See Restatement (Second) of Property: | the recipients of beneficial interests in property. See |
| Donative Transfers Section 11.5 (1986). | Restatement (Second) of Property: Donative |
| Powers of appointment may be held in either a | Transfers Section 11.1 (1986). A power is either |
| fiduciary or nonfiduciary capacity. The | general or nongeneral and either presently |
| definition of "beneficiary" excludes powers | exercisable or not presently exercisable. A general |
| held by a trustee but not powers held by others | power of appointment is a power exercisable in |
| in a fiduciary capacity. | favor of the holder of the power, the power holder's |
| While all categories of powers of appointment | creditors, the power holder's estate, or the creditors |
| are included within the definition of | of the power holder's estate. See Restatement |
| "beneficiary," the Uniform Trust Code | (Second) of Property: Donative Transfers Section |
| elsewhere makes distinctions among types of | 11.4 (1986). All other powers are nongeneral. A |
| powers. A "power of withdrawal" (paragraph | power is presently exercisable if the power holder |
| (10)) is defined as a presently exercisable | can currently create an interest, present or future, in |
| general power of appointment other than a | an object of the power. A power of appointment is |
| power exercisable only upon consent of the | not presently exercisable if exercisable only by the |
| trustee or a person holding an adverse interest. | power holder's will or if its exercise is not effective |
| Under Section 302, the holder of a testamentary | for a specified period of time or until occurrence of |
| general power of appointment may represent | some event. See Restatement (Second) of Property: |
| and bind persons whose interests are subject to | Donative Transfers Section 11.5 (1986). Powers of |
| the power. | appointment may be held in either a fiduciary or |
| The definition of "beneficiary" includes only | nonfiduciary capacity. The definition of |
| those who hold beneficial interests in the trust. | "beneficiary" excludes powers held by a trustee but |
| Because a charitable trust is not created to | not powers held by others in a fiduciary capacity. |
| benefit ascertainable beneficiaries but to benefit | Under Section 62-7-302, the holder of a |
| the community at large (see Section 405(a)), | testamentary general power of appointment may |
| persons receiving distributions from a charitable | represent and bind persons whose interests are |
| trust are not beneficiaries as that term is defined | subject to the power. |
| in this Code. However, pursuant to Section | The definition of "beneficiary" includes only |
| 110(b), charitable organizations expressly | those who hold beneficial interests in the trust. |

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| designated to receive distributions under the | Because a charitable trust is not created to benefit |
| terms of a charitable trust, even though not | ascertainable beneficiaries but to benefit the |
| beneficiaries as defined, are granted the rights | community at large (see Section 62-7-405(a)), |
| of qualified beneficiaries under the Code. | persons receiving distributions from a charitable |
| The Uniform Trust Code leaves certain issues | trust are not beneficiaries as that term is defined in |
| concerning beneficiaries to the common law. | this Code. However, pursuant to Section |
| Any person with capacity to take and hold legal | 62-7-110(b), charitable organizations expressly |
| title to intended trust property has capacity to be | designated to receive distributions under the terms of |
| a beneficiary. See Restatement (Third) of | a charitable trust, even though not beneficiaries as |
| Trusts Section 43 (Tentative Draft No. 2, | defined, are granted the rights of qualified |
| approved 1999); Restatement (Second) of | beneficiaries under the Code. |
| Trusts Sections 116-119 (1959). Except as | The SCTC leaves certain issues concerning |
| limited by public policy, the extent of a | beneficiaries to the common law. Any person with |
| beneficiary's interest is determined solely by | capacity to take and hold legal title to intended trust |
| the settlor's intent. See Restatement (Third) of | property has capacity to be a beneficiary. See |
| Trusts Section 49 (Tentative Draft No. 2, | Restatement (Third) of Trusts Section 43 (Tentative |
| approved 1999); Restatement (Second) of | Draft No. 2, approved 1999); Restatement (Second) |
| Trusts Sections 127-128 (1959). While most | of Trusts Sections 116-119 (1959). Except as |
| beneficial interests terminate upon a | limited by public policy, the extent of a beneficiary's |
| beneficiary's death, the interest of a beneficiary | interest is determined solely by the settlor's intent. |
| may devolve by will or intestate succession the | See Restatement (Third) of Trusts Section 49 |
| same as a corresponding legal interest. See | (Tentative Draft No. 2, approved 1999); Restatement |
| Restatement (Third) of Trusts Section 55(1) | (Second) of Trusts Sections 127-128 (1959). While |
| (Tentative Draft No. 2, approved 1999); | most beneficial interests terminate upon a |
| Restatement (Second) of Trusts Sections 140, | beneficiary's death, the interest of a beneficiary may |
| 142 (1959). | devolve by will or intestate succession the same as a |
| Under the Uniform Trust Code, when a trust has | corresponding legal interest. See Restatement |
| both charitable and noncharitable beneficiaries | (Third) of Trusts Section 55(1) (Tentative Draft No. |
| only the charitable portion qualifies as a | 2, approved 1999); Restatement (Second) of Trusts |
| "charitable trust" (paragraph (3)). The great | Sections 140, 142 (1959). |
| majority of the Code's provisions apply to both | Under the SCTC, when a trust has both charitable |
| charitable and noncharitable trusts without | and noncharitable beneficiaries only the charitable |
| distinction. The distinctions between the two | portion qualifies as a "charitable trust" (paragraph |
| types of trusts are found in the requirements | (3)). The great majority of the Code's provisions |
| relating to trust creation and modification. | apply to both charitable and noncharitable trusts |
| Pursuant to Sections 405 and 413, a charitable | without distinction. The distinctions between the |
| trust must have a charitable purpose and | two types of trusts are found in the requirements |
| charitable trusts may be modified or terminated | relating to trust creation and modification. Pursuant |
| under the doctrine of cy pres. Also, Section 411 | to Sections 62-7-405 and 62-7-413 of the SCTC, a |

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| allows a noncharitable trust to in certain | charitable trust must have a charitable purpose and |
| instances be terminated by its beneficiaries | charitable trusts may be modified or terminated |
| while charitable trusts do not have beneficiaries | under the doctrine of equitable deviation. Although |
| in the usual sense. To the extent of these | South Carolina courts have previously refused to |
| distinctions, a split-interest trust is subject to | recognize the doctrine of cy pres (see Section |
| two sets of provisions, one applicable to the | 62-7-413 comment), a charitable trust in South |
| charitable interests, the other the noncharitable. | Carolina could be modified or terminated under the |
| For discussion of the definition of "conservator" | doctrine of equitable deviation. Also, Section |
| (paragraph (4)), see the definition of "guardian" | 62-7-411 allows a noncharitable trust to in certain |
| (paragraph (6)). | instances be terminated by its beneficiaries while |
| To encourage trustees to accept and administer | charitable trusts do not have beneficiaries in the |
| trusts containing real property, the Uniform | usual sense. To the extent of these distinctions, a |
| Trust Code contains several provisions designed | split-interest trust is subject to two sets of |
| to limit exposure to possible liability for | provisions, one applicable to the charitable interests, |
| violation of "environmental law" (paragraph | the other the noncharitable. |
| (5)). Section 701(c)(2) authorizes a nominated | Subsection (4) reflects the definition of |
| trustee to investigate trust property to determine | "conservator" contained in South Carolina Probate |
| potential liability for violation of environmental | Code Section 62-1-201(6).See the definition of |
| law or other law without accepting the | "guardian" (paragraph (6)). |
| trusteeship. Section 816(13) grants a trustee | To encourage trustees to accept and administer |
| comprehensive and detailed powers to deal with | trusts containing real property, the SCTC contains |
| property involving environmental risks. Section | several provisions designed to limit exposure to |
| 1010(b) immunizes a trustee from personal | possible liability for violation of "environmental |
| liability for violation of environmental law | law" (paragraph (5)). Section 62-7-701(c)(2) |
| arising from the ownership and control of trust | authorizes a nominated trustee to investigate trust |
| property. | property to determine potential liability for violation |
| Under the Uniform Trust Code, a "guardian" | of environmental law or other law without accepting |
| (paragraph (6)) makes decisions with respect to | the trusteeship. Section 62-7-816(13) grants a |
| personal care; a "conservator" (paragraph (4)) | trustee comprehensive and detailed powers to deal |
| manages property. The terminology used is that | with property involving environmental risks. |
| employed in Article V of the Uniform Probate | Section 62-7-1010(b) immunizes a trustee from |
| Code, and in its free-standing Uniform | personal liability for violation of environmental law |
| Guardianship and Protective Proceedings Act. | arising from the ownership and control of trust |
| Enacting jurisdictions not using these terms in | property. |
| the defined sense should substitute their own | Under the SCTC, a "guardian" (paragraph (6)) |
| terminology. For this reason, both terms have | makes decisions with respect to personal care; a |
| been placed in brackets. The definition of " | "conservator" (paragraph (4)) manages property. |
| guardian" accommodates those jurisdictions | The terminology used in the SCTC is that employed |
| which allow appointment of a guardian by a | in Article V of the South Carolina Probate Code. |

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| parent or spouse in addition to appointment by a | Further, the South Carolina Probate Code (Section |
| court. Enacting jurisdictions which allow | 62-1-201(18)) specifically excludes "a statutory |
| appointment of a guardian solely by a court | guardian" and this modification was incorporated |
| should delete the bracketed language "a parent, | into the SCTC definition. |
| or a spouse." | The phrase "interests of the beneficiaries" |
| The phrase "interests of the beneficiaries" | (paragraph (7)) is used with some frequency in the |
| (paragraph (7)) is used with some frequency in | SCTC. The definition clarifies that the interests are |
| the Uniform Trust Code. The definition | as provided in the terms of the trust and not as |
| clarifies that the interests are as provided in the | determined by the beneficiaries. Section 62-7-108 |
| terms of the trust and not as determined by the | dictates that a trustee is under a continuing duty to |
| beneficiaries. Absent authority to do so in the | administer the trust at a place appropriate to the |
| terms of the trust, Section 108 prohibits a | interests of the beneficiaries. Section 62-7-706(b) |
| trustee from changing a trust's principal place | conditions certain of the grounds for removing a |
| of administration if the transfer would violate | trustee on the court's finding that removal of the |
| the trustee's duty to administer the trust at a | trustee will best serve the interests of the |
| place appropriate to the interests of the | beneficiaries. Section 62-7-801 requires the trustee |
| beneficiaries. Section 706(b) conditions | to administer the trust in the interests of the |
| certain of the grounds for removing a trustee on | beneficiaries, and Section 62-7-802 makes clear that |
| the court's finding that removal of the trustee | a trustee may not place its own interests above those |
| will best serve the interests of the beneficiaries. | of the beneficiaries. Section 62-7-808(d) requires |
| Section 801 requires the trustee to administer | the holder of a power to direct who is subject to a |
| the trust in the interests of the beneficiaries, and | fiduciary obligation to act with regard to the |
| Section 802 makes clear that a trustee may not | interests of the beneficiaries. Section 62-7-1002(b) |
| place its own interests above those of the | may impose greater liability on a cotrustee who |
| beneficiaries. Section 808(d) requires the | commits a breach of trust with reckless indifference |
| holder of a power to direct who is subject to a | to the interests of the beneficiaries. Section |
| fiduciary obligation to act with regard to the | 62-7-1008 invalidates an exculpatory term to the |
| interests of the beneficiaries. Section 1002(b) | extent it relieves a trustee of liability for breach of |
| may impose greater liability on a cotrustee who | trust committed with reckless indifference to the |
| commits a breach of trust with reckless | interests of the beneficiaries. |
| indifference to the interests of the beneficiaries. | "Jurisdiction" (paragraph (8)), when used with |
| Section 1008 invalidates an exculpatory term to | reference to a geographic area, includes a state or |
| the extent it relieves a trustee of liability for | country but is not necessarily so limited. Its precise |
| breach of trust committed with reckless | scope will depend on the context in which it is used. |
| indifference to the interests of the beneficiaries. | "Jurisdiction" is used in Sections 62-7-107 and |
| "Jurisdiction" (paragraph (8)), when used with | 62-7-403 to refer to the place whose law will govern |
| reference to a geographic area, includes a state | the trust. The term is used in Section 62-7-108 to |
| or country but is not necessarily so limited. Its | refer to the trust's principal place of administration. |
| precise scope will depend on the context in | The term is used in Section 62-7-816 to refer to the |

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| which it is used. "Jurisdiction" is used in | place where the trustee may appoint an ancillary |
| Sections 107 and 403 to refer to the place | trustee and to the place in whose courts the trustee |
| whose law will govern the trust. The term is | can bring and defend legal proceedings. |
| used in Section 108 to refer to the trust's | The definition of "property" (paragraph (11)) is |
| principal place of administration. The term is | intended to be as expansive as possible and to |
| used in Section 816 to refer to the place where | encompass anything that may be the subject of |
| the trustee may appoint an ancillary trustee and | ownership. Included are choses in action, claims, |
| to the place in whose courts the trustee can | and interests created by beneficiary designations |
| bring and defend legal proceedings. | under policies of insurance, financial instruments, |
| The definition of "property" (paragraph (11)) is | and deferred compensation and other retirement |
| intended to be as expansive as possible and to | arrangements, whether revocable or irrevocable. |
| encompass anything that may be the subject of | Any such property interest is sufficient to support |
| ownership. Included are choses in action, | creation of a trust. <i>See</i> Section 62-7-401 comment. |
| claims, and interests created by beneficiary | Due to the difficulty of identifying beneficiaries |
| designations under policies of insurance, | whose interests are remote and contingent, and |
| financial instruments, and deferred | because such beneficiaries are not likely to have |
| compensation and other retirement | much interest in the day-to-day affairs of the trust, |
| arrangements, whether revocable or irrevocable. | the SCTC uses the concept of "qualified |
| Any such property interest is sufficient to | beneficiary" (paragraph (12)) to limit the class of |
| support creation of a trust. See Section 401 | beneficiaries to whom certain notices must be given |
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| comment. | or consents received. The definition of qualified |
| Due to the difficulty of identifying beneficiaries | beneficiaries is used in Section 62-7-705 to define |
| whose interests are remote and contingent, and | the class to whom notice must be given of a trustee |
| because such beneficiaries are not likely to have | resignation. The term is used in Section 62-7-813 to |
| much interest in the day-to-day affairs of the | define the class to be kept informed of the trust's |
| trust, the Uniform Trust Code uses the concept | administration. Section 62-7-417 requires that |
| of "qualified beneficiary" (paragraph (12)) to | notice be given to the qualified beneficiaries before |
| limit the class of beneficiaries to whom certain | a trust may be combined or divided. Actions which |
| notices must be given or consents received. | may be accomplished by the consent of the qualified |
| The definition of qualified beneficiaries is used | beneficiaries include the appointment of a successor |
| in Section 705 to define the class to whom | trustee as provided in Section 62-7-704. Prior to |
| notice must be given of a trustee resignation. | transferring a trust's principal place of |
| The term is used in Section 813 to define the | administration, SCTC Section 62-7-108(e) (UTC |
| class to be kept informed of the trust's | Section 108(d)) requires that the trustee give at least |
| administration. Section 417 requires that notice | 60 days notice to the qualified beneficiaries. |
| be given to the qualified beneficiaries before a | The qualified beneficiaries consist of the |
| trust may be combined or divided. Actions | beneficiaries currently receiving a distribution from |
| which may be accomplished by the consent of | the trust together with those who might be termed |
| the qualified beneficiaries include the | the first-line remaindermen. These are the |
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| appointment of a successor trustee as provided | beneficiaries who would receive distributions were |
| in Section 704. Prior to transferring a trust's | the event triggering the termination of a |
| principal place of administration, Section | beneficiary's interest or of the trust itself to occur on |
| 108(d) requires that the trustee give at least 60 | the date in question. Such a terminating event will |
| days notice to the qualified beneficiaries. | typically be the death or deaths of the beneficiaries |
| The qualified beneficiaries consist of the | currently eligible to receive the income. Should a |
| beneficiaries currently eligible to receive a | qualified beneficiary be a minor, incapacitated, or |
| distribution from the trust together with those | unknown, or a beneficiary whose identity or location |
| who might be termed the first-line | is not reasonably ascertainable, the representation |
| remaindermen. These are the beneficiaries who | and virtual representation principles of Part 3 may |
| would become eligible to receive distributions | be employed, including the possible appointment by |
| were the event triggering the termination of a | the court of a representative to represent the |
| beneficiary's interest or of the trust itself to | beneficiary's interest. |
| occur on the date in question. Such a | The qualified beneficiaries who take upon |
| terminating event will typically be the death or | termination of the beneficiary's interest or of the |
| deaths of the beneficiaries currently eligible to | trust can include takers in default of the exercise of a |
| receive the income. Should a qualified | power of appointment. The term can also include |
| beneficiary be a minor, incapacitated, or | the persons entitled to receive the trust property |
| unknown, or a beneficiary whose identity or | pursuant to the exercise of a power of appointment. |
| location is not reasonably ascertainable, the | Because the exercise of a testamentary power of |
| representation and virtual representation | appointment is not effective until the testator's death |
| principles of Article 3 may be employed, | and probate of the will, the qualified beneficiaries do |
| including the possible appointment by the court | not include appointees under the will of a living |
| of a representative to represent the beneficiary's | person. Nor would the term include the objects of |
| interest. | an unexercised inter vivos power. |
| The qualified beneficiaries who take upon | Charitable trusts and trusts for a valid |
| termination of the beneficiary's interest or of | noncharitable purpose do not have beneficiaries in |
| the trust can include takers in default of the | the usual sense. However, certain persons, while not |
| exercise of a power of appointment. The term | technically beneficiaries, do have an interest in |
| can also include the persons entitled to receive | seeing that the trust is enforced. Section 62-7-110 |
| the trust property pursuant to the exercise of a | expands the definition of qualified beneficiaries to |
| power of appointment. Because the exercise of | encompass this wider group. UTC Section 110 |
| a testamentary power of appointment is not | grants the rights of qualified beneficiaries to the |
| effective until the testator's death and probate | attorney general of the state and charitable |
| of the will, the qualified beneficiaries do not | organizations expressly designated to receive |
| include appointees under the will of a living | distributions under the terms of a charitable trust; |
| person. Nor would the term include the objects | SCTC Section 62-7-110 grants the rights of qualified |
| of an unexercised inter vivos power. | beneficiaries only to charitable organizations |
| Charitable trusts and trusts for a valid | expressly designated to receive distributions under |

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by the terms of the trust is not necessarily

determinative. For example, the person who

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| executes the trust instrument may be acting as the |
| agent for the person who will be funding the trust. |
| In that case, the person funding the trust, and not the |
| person signing the trust instrument, will be the |
| settlor. Should more than one person contribute to a |
| trust, all of the contributors will ordinarily be treated |
| as settlors in proportion to their respective |
| contributions, regardless of which one signed the |
| trust instrument. See Section 62-7-602(b). |
| In the case of a revocable trust employed as a will |
| substitute, gifts to the trust's creator are sometimes |
| made by placing the gifted property directly into the |
| trust. To recognize that such a donor is not intended |
| to be treated as a settlor, the definition of "settlor" |
| excludes a contributor to a trust that is revocable by |
| another person or over which another person has a |
| power of withdrawal. Thus, a parent who |
| contributes to a child's revocable trust would not be |
| treated as one of the trust's settlors. The definition |
| of settlor would treat the child as the sole settlor of |
| the trust to the extent of the child's proportionate |
| contribution |
| Ascertaining the identity of the settlor is important |
| for a variety of reasons. It is important for |
| determining rights in revocable trusts. See Sections |
| 62-7-505(a)(1), (3) (creditor claims against settlor of |
| revocable trust), 62-7-602 (revocation or |
| modification of revocable trust), and 62-7-604 |
| (limitation on contest of revocable trust). It is also |
| important for determining rights of creditors in |
| irrevocable trusts. See Section 62-7-505(a)(2) |
| (creditors of settlor can reach maximum amount |
| trustee can distribute to settlor). While the settlor of |
| an irrevocable trust traditionally has no continuing |
| rights over the trust except for the right under |
| Section 62-7-411 to terminate the trust with the |
| beneficiaries' consent, the SCTC also authorizes the |
| settlor of an irrevocable trust to petition for removal |
| of the trustee and to enforce or modify a charitable |
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| withdrawal. Thus, a parent who contributes to a | trust. See Sections 62-7-405(c) (standing to enforce |
| child's revocable trust would not be treated as | charitable trust), 62-7-413 (South Carolina, doctrine |
| one of the trust's settlors. The definition of | of equitable deviation), and 62-7-706 (removal of |
| settlor would treat the child as the sole settlor of | trustee). |
| the trust to the extent of the child's | "Spendthrift provision" (paragraph (15)) means a |
| proportionate contribution. Pursuant to Section | term of a trust which restrains the transfer of a |
| 603(c), the child's power of withdrawal over the | beneficiary's interest, whether by a voluntary act of |
| trust would also result in the child being treated | the beneficiary or by an action of a beneficiary's |
| as the settlor with respect to the portion of the | creditor or assignee, which at least as far as the |
| trust attributable to the parent's contribution. | beneficiary is concerned, would be involuntary. A |
| Ascertaining the identity of the settlor is | spendthrift provision is valid under the SCTC only if |
| important for a variety of reasons. It is | it restrains both voluntary and involuntary transfer. |
| important for determining rights in revocable | For a discussion of this requirement and the effect of |
| trusts. See Sections 505(a)(1), (3) (creditor | a spendthrift provision in general, see Section |
| claims against settlor of revocable trust), 602 | 62-7-502. The insertion of a spendthrift provision in |
| (revocation or modification of revocable trust), | the terms of the trust may also constitute a material |
| and 604 (limitation on contest of revocable | purpose sufficient to prevent termination of the trust |
| trust). It is also important for determining | by agreement of the beneficiaries under Section |
| rights of creditors in irrevocable trusts. See | 62-7-411, although the Code does not presume this |
| Section 505(a)(2) (creditors of settlor can reach | result. |
| maximum amount trustee can distribute to | "Terms of a trust" (paragraph (17)) is a defined |
| settlor). While the settlor of an irrevocable trust | term used frequently in the SCTC. While the |
| traditionally has no continuing rights over the | wording of a written trust instrument is almost |
| trust except for the right under Section 411 to | always the most important determinant of a trust's |
| terminate the trust with the beneficiaries' | terms, the definition is not so limited. Oral |
| consent, the Uniform Trust Code also | statements, the situation of the beneficiaries, the |
| authorizes the settlor of an irrevocable trust to | purposes of the trust, the circumstances under which |
| petition for removal of the trustee and to | the trust is to be administered, and, to the extent the |
| enforce or modify a charitable trust. See | settlor was otherwise silent, rules of construction, all |
| Sections 405(c) (standing to enforce charitable | may have a bearing on determining a trust's |
| trust), 413 (doctrine of cy pres), and 706 | meaning. See Restatement (Third) of Trusts Section |
| (removal of trustee). | 4 cmt. a (Tentative Draft No. 1, approved 1996); |
| "Spendthrift provision" (paragraph (15)) means | Restatement (Second) of Trusts Section 4 cmt. a |
| a term of a trust which restrains the transfer of a | (1959). If a trust established by order of court is to |
| beneficiary's interest, whether by a voluntary | be administered as an express trust, the terms of the |
| act of the beneficiary or by an action of a | trust are determined from the court order as |
| beneficiary's creditor or assignee, which at least | interpreted in light of the general rules governing |
| as far as the beneficiary is concerned, would be | interpretation of judgments. See Restatement |
| involuntary. A spendthrift provision is valid | (Third) of Trusts Section 4 cmt. f (Tentative Draft |

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| under the Uniform Trust Code only if it | No. 1, approved 1996). |
| restrains both voluntary and involuntary | A manifestation of a settlor's intention does not |
| transfer. For a discussion of this requirement | constitute evidence of a trust's terms if it would be |
| and the effect of a spendthrift provision in | inadmissible in a judicial proceeding in which the |
| general, see Section 502. The insertion of a | trust's terms are in question. See Restatement |
| spendthrift provision in the terms of the trust | (Third) of Trusts Section 4 cmt. b (Tentative Draft |
| may also constitute a material purpose sufficient | No. 1, approved 1996); Restatement (Second) of |
| to prevent termination of the trust by agreement | Trusts Section 4 cmt. b (1959). See also |
| of the beneficiaries under Section 411, although | Restatement (Third) Property: Donative Transfers |
| the Code does not presume this result. | Sections 10.2, 11.1-11.3 (Tentative Draft No. 1, |
| "Terms of a trust" (paragraph (17)) is a defined | approved 1995). For example, South Carolina has |
| term used frequently in the Uniform Trust | chosen to recognize the creation of an oral trust, |
| Code. While the wording of a written trust | Section 62-7-407. Evidence otherwise relevant to |
| instrument is almost always the most important | determining the terms of a trust may also be |
| determinant of a trust's terms, the definition is | excluded under other principles of law, such as the |
| not so limited. Oral statements, the situation of | parol evidence rule. |
| the beneficiaries, the purposes of the trust, the | "Trust instrument" (paragraph (18)) is a subset of |
| circumstances under which the trust is to be | the definition of "terms of a trust" (paragraph (17)), |
| administered, and, to the extent the settlor was | referring to only such terms as are found in an |
| otherwise silent, rules of construction, all may | instrument executed by the settlor. Section 62-7-403 |
| have a bearing on determining a trust's | provides that a trust is validly created if created in |
| meaning. See Restatement (Third) of Trusts | compliance with the law of the place where the trust |
| Section 4 cmt. a (Tentative Draft No. 1, | instrument was executed. Pursuant to Section |
| approved 1996); Restatement (Second) of | 62-7-604(a)(2), the contest period for a revocable |
| Trusts Section 4 cmt. a (1959). If a trust | trust can be shortened by providing the potential |
| established by order of court is to be | contestant with a copy of the trust instrument plus |
| administered as an express trust, the terms of | other information. UTC Section 813(b)(1) and |
| the trust are determined from the court order as | SCTC Sections 62-7-813(b) requires that the trustee |
| interpreted in light of the general rules | upon request furnish a beneficiary with a copy of the |
| governing interpretation of judgments. See | trust instrument. To allow a trustee to administer a |
| Restatement (Third) of Trusts Section 4 cmt. f | trust with some dispatch without concern about |
| (Tentative Draft No. 1, approved 1996). | liability if the terms of a trust instrument are |
| A manifestation of a settlor's intention does not | contradicted by evidence outside of the instrument, |
| constitute evidence of a trust's terms if it would | Section 62-7-1006 protects a trustee from liability to |
| be inadmissible in a judicial proceeding in | the extent a breach of trust resulted from reasonable |
| which the trust's terms are in question. See | reliance on those terms. Section 62-7-1013 allows a |
| Restatement (Third) of Trusts Section 4 cmt. b | trustee to substitute a certification of trust in lieu of |
| (Tentative Draft No. 1, approved 1996); | providing a third person with a copy of the trust |
| Restatement (Second) of Trusts Section 4 cmt. b | instrument. Section 62-7-1106(a)(4) provides that |

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| (1959). See also Restatement (Third) Property: | unless there is a clear indication of a contrary intent, |
| Donative Transfers Sections 10.2, 11.1-11.3 | rules of construction and presumptions provided in |
| (Tentative Draft No. 1, approved 1995). For | the SCTC apply to trust instruments executed before |
| example, in many states a trust of real property | the effective date of the Code. |
| is unenforceable unless evidenced by a writing, | The definition of "trustee" (paragraph (19)) |
| although Section 407 of this Code does not so | includes not only the original trustee but also an |
| require, leaving this issue to be covered by | additional and successor trustee as well as a |
| separate statute if the enacting jurisdiction so | cotrustee. Section 62-1-201 of the South Carolina |
| elects. Evidence otherwise relevant to | Probate Code contains the language "whether or not |
| determining the terms of a trust may also be | appointed or confirmed by court" and the South |
| excluded under other principles of law, such as | Carolina Trust Code retains that language. Because |
| the parol evidence rule. | the definition of trustee includes trustees of all types, |
| "Trust instrument" (paragraph (18)) is a subset | any trustee, whether original or succeeding, single or |
| of the definition of "terms of a trust" (paragraph | cotrustee, has the powers of a trustee and is subject |
| (17)), referring to only such terms as are found | to the duties imposed on trustees under the SCTC. |
| in an instrument executed by the settlor. | Any natural person, including a settlor or |
| Section 403 provides that a trust is validly | beneficiary, has capacity to act as trustee if the |
| created if created in compliance with the law of | person has capacity to hold title to property free of |
| the place where the trust instrument was | trust. See Restatement (Third) of Trusts Section 32 |
| executed. Pursuant to Section 604(a)(2), the | (Tentative Draft No. 2, approved 1999); Restatement |
| contest period for a revocable trust can be | (Second) of Trusts Section 89 (1959). State banking |
| shortened by providing the potential contestant | statutes normally impose additional requirements |
| with a copy of the trust instrument plus other | before a corporation can act as trustee. |
| information. Section 813(b)(1) requires that the | Subsections (21) (defining "distributee"), (25) |
| trustee upon request furnish a beneficiary with a | (defining "permissible distributee"), (26) (defining |
| copy of the trust instrument. To allow a trustee | "Trust Investment Advisor"), and (27) (defining |
| to administer a trust with some dispatch without | "Trust Protector") are South Carolina additions to |
| concern about liability if the terms of a trust | the UTC. |
| instrument are contradicted by evidence outside | The South Carolina version of Section 62-7-103 |
| of the instrument, Section 1006 protects a | expresses the intent that the definitions contained in |
| trustee from liability to the extent a breach of | the South Carolina Probate Code that are not |
| trust resulted from reasonable reliance on those | otherwise defined within the South Carolina Trust |
| terms. Section 1013 allows a trustee to | Code and that do not conflict with the definitions |
| substitute a certification of trust in lieu of | contained in the South Carolina Trust Code shall |
| providing a third person with a copy of the trust | continue to apply to the law governing trusts in |
| instrument. Section 1106(a)(4) provides that | South Carolina. |
| unless there is a clear indication of a contrary | |
| intent, rules of construction and presumptions | |
| provided in the Uniform Trust Code apply to | |

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| trust instruments executed before the effective | |
| date of the Code. | |
| The definition of "trustee" (paragraph (19)) | |
| includes not only the original trustee but also an | |
| additional and successor trustee as well as a | |
| cotrustee. Because the definition of trustee | |
| includes trustees of all types, any trustee, | |
| whether original or succeeding, single or | |
| cotrustee, has the powers of a trustee and is | |
| subject to the duties imposed on trustees under | |
| the Uniform Trust Code. Any natural person, | |
| including a settlor or beneficiary, has capacity | |
| to act as trustee if the person has capacity to | |
| hold title to property free of trust. See | |
| Restatement (Third) of Trusts Section 32 | |
| (Tentative Draft No. 2, approved 1999); | |
| Restatement (Second) of Trusts Section 89 | |
| (1959). State banking statutes normally impose | |
| additional requirements before a corporation | |
| can act as trustee. | |
| | |
| SOUTH CAROLINA COMMENT | |
| There are a number of definitions in Section | |
| 62-7-103 referred to throughout the South | |
| Carolina Trust Code that have no equivalent in | |
| other portions of the South Carolina Code. | |
| These include "Action," " Charitable trust," | |
| "Environmental law," "Interests of the | |
| beneficiaries," "Jurisdiction," "Power of | |
| withdrawal," " Qualified beneficiary," | |
| "Revocable," "Settlor," "Spendthrift provision," | |
| "Terms of a trust," and "Trust instrument." In | |
| the interest of uniformity, such terms are | |
| included in the South Carolina Trust Code | |
| except as noted below. Subsection (4) is | |
| modified to reflect the definition of | |
| "conservator" contained in South Carolina | |
| Probate Code Section 62-1-201(6). Subsection | |
| (6) defines "guardian." The South Carolina | |

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| Probate Code (Section 62-1-201(16)) | |
| specifically excludes "a statutory guardian" and | |
| this modification was incorporated into the | |
| definition. Subsection (19) defines the term | |
| "trustee." Section 62-1-201 of the South | |
| Carolina Probate Code contains the additional | |
| language "whether or not appointed or | |
| confirmed by court" and the South Carolina | |
| Trust Code retains that additional language. | |
| Subsection (21) defining "distributee" is a | |
| South Carolina addition. The South Carolina | |
| version of Section 62-7-103 expresses the intent | |
| that the definitions contained in the South | |
| Carolina Probate Code that are not otherwise | |
| defined within the South Carolina Trust Code | |
| and that do not conflict with the definitions | |
| contained in the South Carolina Trust Code | |
| shall continue to apply to the law governing | |
| trusts in South Carolina. | |
| | |
| SECTION 62-7-104. Knowledge. | SECTION 62-7-104. |
| She How 02-7-104. Knowledge. | SEC 11011 02-7-104. |
| (a) Subject to subsection (b), a person has | (a) Subject to subsection (b), a person has |
| knowledge of a fact if the person: | knowledge of a fact if the person: |
| (1) has actual knowledge of it; | (1) has actual knowledge of it; |
| (2) has received a notice or notification of it; or | (2) has received a notice or notification of it; or |
| (3) from all the facts and circumstances known | (3) from all the facts and circumstances known |
| to the person at the time in question, has reason | to the person at the time in question, has reason to |
| to know it. | know it. |
| (b) An organization that conducts activities | (b) An organization that conducts activities |
| through employees has notice or knowledge of | through employees has notice or knowledge of a fact |
| a fact involving a trust only from the time the | involving a trust only from the time the information |
| information was received by an employee | was received by an employee having responsibility |
| having responsibility to act for the trust, or | to act for the trust, or would have been brought to |
| would have been brought to the employee's | the employee's attention if the organization had |
| attention if the organization had exercised | exercised reasonable diligence. An organization |
| reasonable diligence. An organization exercises | exercises reasonable diligence if it maintains |
| reasonable diligence if it maintains reasonable | reasonable routines for communicating significant |

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significant routines for communicating information to employee having the responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

COMMENT

This section specifies when a person is deemed to know a fact. Subsection (a) states the general rule. Subsection (b) provides a special rule dealing with notice to organizations. Pursuant to subsection (a), a fact is known to a person if the person had actual knowledge of the fact, received notification of it, or had reason to know of the fact's existence based on all of the circumstances and other facts known to the person at the time. Under subsection (b), notice to an organization is not necessarily achieved by giving notice to a branch office. Nor does the organization necessarily acquire knowledge at the moment the notice arrives in the organization's mailroom. Rather. the organization has notice or knowledge of a fact only when the information is received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention had the organization exercised reasonable diligence.

"Know" is used in its defined sense in Sections 109 (methods and waiver of notice), 305 (appointment of representative), 604(b) (limitation on contest of revocable trust), 812 (collecting trust property), 1009 (nonliability of trustee upon beneficiary's consent, release, or

information to the employee having responsibility to act for the trust and there is reasonable compliance with the routines. Reasonable diligence does not require an employee of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the trust would be materially affected by the information.

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This section specifies when a person is deemed to know a fact. Subsection (a) states the general rule. Subsection (b) provides a special rule dealing with notice to organizations. Pursuant to subsection (a), a fact is known to a person if the person had actual knowledge of the fact, received notification of it, or had reason to know of the fact's existence based on all of the circumstances and other facts known to the person at the time. Under subsection (b), notice to an organization is not necessarily achieved by giving notice to a branch office. Nor does the organization necessarily acquire knowledge at the moment the notice arrives in the organization's mailroom. Rather, the organization has notice or knowledge of a fact only when the information is received by an employee having responsibility to act for the trust, or would have been brought to the employee's attention had the organization exercised reasonable diligence.

"Know" is used in its defined sense in Sections 62-7-109 (methods and waiver of notice), 62-7-305 (appointment of representative), 62-7-604(b) (limitation on contest of revocable trust), 62-7-1009 (nonliability of trustee upon beneficiary's consent, release, or ratification), and 62-7-1012 (protection of person dealing with trustee). But as to certain actions, a person is charged with knowledge of facts the person would have discovered upon reasonable inquiry. *See* Section 62-7-1005 (limitation of action against trustee following report of trustee).

| This section is based on Uniform Commercial |
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| |
| Code Section 1-202 (2000 Annual Meeting Draft). |
| |
| SECTION 62-7-105. |
| (a) Except as otherwise provided in the terms of the trust, this article governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary. (b) The terms of a trust prevail over any provision of this article except: (1) the requirements for creating a trust; (2) the duty of a trustee to act in good faith and in accordance with the purposes of the trust; (3) the requirement that a trust and its terms be for the benefit of its beneficiaries, and that the trust have a purpose that is lawful and possible to achieve; (4) the power of the court to modify or terminate a trust under Sections 62-7-410 through 62-7-416; (5) the effect of a spendthrift provision and the rights of certain creditors and assignees to reach a |
| |

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| a trust as provided in Part 5; | trust as provided in Part 5; |
| (6) the limitations on the ability of a settlor's | (6) the limitations on the ability of a settlor's |
| agent under a power of attorney to revoke, | agent under a power of attorney to revoke, amend, or |
| amend, or make distributions from a revocable | make distributions from a revocable trust pursuant to |
| trust pursuant to Section 62-7-602(e); | Section 62-7-602(e) <u>62-7-602.1;</u> |
| (7) the power of the court under Section | (7) the power of the court under Section |
| 62-7-708(b) to adjust a trustee's compensation | 62-7-708(b) to adjust a trustee's compensation |
| specified in the terms of the trust which is | specified in the terms of the trust which is |
| unreasonably low or high; | unreasonably low or high; |
| (8) the effect of an exculpatory term under | (8) the effect of an exculpatory term under |
| Section 62-7-1008; | Section 62-7-1008; |
| (9) the rights under Sections 62-7-1010 through | (9) the rights under Sections 62-7-1010 |
| 62-7-1013 of a person other than a trustee or | through 62-7-1013 of a person other than a trustee or |
| beneficiary; | beneficiary; |
| (10) periods of limitation for commencing a | (10) periods of limitation for commencing a |
| judicial proceeding; | judicial proceeding; |
| (11) the power of the court to take such action | (11) the power of the court to take such action |
| and exercise such jurisdiction as may be | and exercise such jurisdiction as may be necessary |
| necessary in the interests of justice; and | in the interests of justice; and |
| (12) the subject matter jurisdiction of the court | (12) the subject matter jurisdiction of the court |
| and venue for commencing a proceeding as | and venue for commencing a proceeding as provided |
| provided in Sections 62-7-201 and 62-7-204. | in Sections 62-7-201 and 62-7-204. |
| | |
| COMMENT | REPORTER'S COMMENT |
| Subsection (a) emphasizes that the Uniform | Section 62-7-105(a) begins with the premise that |
| Trust Code is primarily a default statute. While | the provisions of the South Carolina Trust Code |
| this Code provides numerous procedural rules | govern trusts when the terms of a trust do not |
| on which a settlor may wish to rely, the settlor | otherwise direct. While this Code provides |
| is generally free to override these rules and to | numerous procedural rules on which a settlor may |
| prescribe the conditions under which the trust is | wish to rely, the settlor is generally free to override |
| to be administered. With only limited | these rules and to prescribe the conditions under |
| exceptions, the duties and powers of a trustee, | which the trust is to be administered. However, |
| relations among trustees, and the rights and | subsection (b) lists eleven separate requirements that |
| interests of a beneficiary are as specified in the | may not be waived and will be controlled by the |
| terms of the trust. | terms of the SCTC irrespective of the terms of the |
| Subsection (b) lists the items not subject to | trust. |
| override in the terms of the trust. Because | With only limited exceptions, the duties and |
| subsection (b) refers specifically to other | powers of a trustee, relations among trustees, and the |
| sections of the Code, enacting jurisdictions | rights and interests of a beneficiary are as specified |

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| modifying these other sections may also need to | in the terms of the trust. |
| modify subsection (b). | Subsection (b) lists the items not subject to |
| Subsection (b)(1) confirms that the | override in the terms of the trust. |
| requirements for a trust's creation, such as the | Subsection (b)(1) confirms that the requirements |
| necessary level of capacity and the requirement | for a trust's creation, such as the necessary level of |
| that a trust have a legal purpose, are controlled | capacity and the requirement that a trust have a legal |
| by statute and common law, not by the settlor. | purpose, are controlled by statute and common law, |
| For the requirements for creating a trust, see | not by the settlor. For the requirements for creating |
| Sections 401-409. Subsection (b)(12) makes | a trust, see Sections 62-7-401 through 409. |
| clear that the settlor may not reduce any | Subsection (b)(10) makes clear that the settlor may |
| otherwise applicable period of limitations for | not reduce any otherwise applicable period of |
| commencing a judicial proceeding. See | limitations for commencing a judicial proceeding. |
| Sections 604 (period of limitations for | See Sections 62-7-604 (period of limitations for |
| contesting validity of revocable trust), and 1005 | contesting validity of revocable trust), and |
| (period of limitation on action for breach of | 62-7-1005 (period of limitation on action for breach |
| trust). Similarly, a settlor may not so negate | of trust). Similarly, a settlor may not so negate the |
| the responsibilities of a trustee that the trustee | responsibilities of a trustee that the trustee would no |
| would no longer be acting in a fiduciary | longer be acting in a fiduciary capacity. Subsection |
| capacity. Subsection (b)(2) provides that the | (b)(2) provides that the terms may not eliminate a |
| terms may not eliminate a trustee's duty to act | trustee's duty to act in good faith and in accordance |
| in good faith and in accordance with the | with the purposes of the trust. Subsection $(b)(3)$ |
| purposes of the trust. Subsection (b)(3) | provides that the terms may not eliminate the |
| provides that the terms may not eliminate the | requirement that a trust and its terms must be for the |
| requirement that a trust and its terms must be | benefit of the beneficiaries. Subsection (b)(3) also |
| for the benefit of the beneficiaries. Subsection | provides that the terms may not eliminate the |
| (b)(3) also provides that the terms may not | requirement that the trust have a purpose that is |
| eliminate the requirement that the trust have a | lawful and possible to achieve. Subsection |
| purpose that is lawful, not contrary to public | (b)(2)-(3) are echoed in Sections 62-7-404 (trust and |
| policy, and possible to achieve. Subsection | its terms must be for benefit of beneficiaries; trust |
| (b)(2)-(3) are echoed in Sections 404 (trust and | must have a purpose that is lawful and possible to |
| its terms must be for benefit of beneficiaries; | achieve), 62-7-801 (trustee must administer trust in |
| trust must have a purpose that is lawful, not | good faith, in accordance with its terms and |
| contrary to public policy, and possible to | purposes and the interests of the beneficiaries), |
| achieve), 801 (trustee must administer trust in | 62-7-802(a) (trustee must administer trust solely in |
| good faith, in accordance with its terms and | interests of the beneficiaries), 62-7-814 (trustee must |
| purposes and the interests of the beneficiaries), | exercise discretionary power in good faith and in |
| | • • • • |
| 802(a) (trustee must administer trust solely in interests of the heneficiaries) 814 (trustee must | accordance with its terms and purposes and the interests of the baneficiaries) and 62.7, 1008 |
| interests of the beneficiaries), 814 (trustee must | interests of the beneficiaries), and 62-7-1008 |
| exercise discretionary power in good faith and | (exculpatory term unenforceable to extent it relieves |

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| in accordance with its terms and purposes and | trustee of liability for breach of trust committed in |
| the interests of the beneficiaries), and 1008 | bad faith or with reckless indifference to the |
| (exculpatory term unenforceable to extent it | purposes of the trust and the interests of the |
| relieves trustee of liability for breach of trust | beneficiaries). SCTC Section 62-7-404 does not |
| committed in bad faith or with reckless | include the words "not contrary to public policy," |
| indifference to the purposes of the trust and the | found in UTC Section 404, recognizing that existing |
| interests of the beneficiaries). | South Carolina law would invalidate trusts that are |
| The terms of a trust may not deny a court | contrary to public policy. |
| authority to take such action as necessary in the | The UTC provides that the terms of a trust may |
| interests of justice, including requiring that a | not deny a court authority to take such action as |
| trustee furnish bond. Subsection (b)(6), (13). | necessary in the interests of justice, including |
| Additionally, should the jurisdiction adopting | requiring that a trustee furnish bond. UTC |
| this Code enact the optional provisions on | Subsections (b)(6), (13). The SCTC does not |
| subject-matter jurisdiction and venue, | include the UTC version of subsection 105(b)(6). |
| subsection (b)(14) similarly provides that such | Section 62-7-702 of the South Carolina Trust Code |
| provisions cannot be altered in the terms of the | provides the situations for which the trustee must |
| trust. The power of the court to modify or | provide bond. |
| terminate a trust under Sections 410 through | UTC subsection (b)(14) and SCTC subsection |
| 416 is not subject to variation in the terms of the | (b)(12) similarly provides that such provisions |
| trust. Subsection (b)(4). However, all of these | cannot be altered in the terms of the trust. The |
| Code sections involve situations which the | power of the court to modify or terminate a trust |
| settlor could have addressed had the settlor had | under Sections 62-7-410 through 62-7-416 is not |
| sufficient foresight. These include situations | subject to variation in the terms of the trust. |
| where the purpose of the trust has been | Subsection (b)(4). However, all of these Code |
| achieved, a mistake was made in the trust's | sections involve situations which the settlor could |
| creation, or circumstances have arisen that were | have addressed had the settlor had sufficient |
| not anticipated by the settlor. | foresight. These include situations where the |
| Section 813 imposes a general obligation to | purpose of the trust has been achieved, a mistake |
| keep the beneficiaries informed as well as | was made in the trust's creation, or circumstances |
| several specific notice requirements. | have arisen that were not anticipated by the settlor. |
| Subsections (b)(8) and (b)(9) specify limits on | Section 62-7-813 imposes a general obligation to |
| the settlor's ability to waive these information | keep the beneficiaries informed as well as several |
| requirements. With respect to beneficiaries age | specific notice requirements. UTC Subsections |
| 25 or older, a settlor may dispense with all of | (b)(8) and (b)(9) specify limits on the settlor's |
| the requirements of Section 813 except for the | ability to waive these information requirements. |
| duties to inform the beneficiaries of the | The South Carolina Trust Code does not include the |
| existence of the trust, of the identity of the | UTC version of subsections 105(b)(8)-(9). |
| trustee, and to provide a beneficiary upon | In conformity with traditional doctrine, the SCTC |
| request with such reports as the trustee may | limits the ability of a settlor to exculpate a trustee |

ARTICLE 7: EXISTING CODE Bill # S. 1243 LANGUAGE from liability for breach of trust. The limits are prepared. Among the specific have requirements that a settlor may waive include specified in Section 62-7-1008. UTC Subsection the duty to provide a beneficiary upon request (b)(10) and SCTC Subsection (b)(8) of this section with a copy of the trust instrument (Section provide a cross-reference. Similarly, subsection 813(b)(1)), and the requirement that the trustee (b)(7) provides a cross-reference to Section 708(b), provide annual reports to which limits the binding effect of a provision the qualified beneficiaries (Section 813(c)). The furnishing specifying the trustee's compensation. Finally, UTC subsection (b)(11) and SCTC of a copy of the entire trust instrument and preparation of annual reports may be required in subsection (b)(9) clarify that a settlor is not free to a particular case, however, if such information limit the rights of third persons, such as purchasers is requested by a beneficiary and is reasonably of trust property. Subsection (b)(5) clarifies that a related to the trust's administration. settlor may not restrict the rights of a beneficiary's Responding to the desire of some settlors that creditors except to the extent a spendthrift restriction younger beneficiaries not know of the trust's is allowed as provided in Article 5. bounty until they have reached an age of 2001 Amendment. By amendment in 2001, maturity and self-sufficiency, subsection (b)(8) subsection (b)(3), (8) and (9) were revised to read as allows a settlor to provide that the trustee need above. The language in subsection (b)(3) "that the not even inform beneficiaries under age 25 of trust have a purpose that is lawful and possible to achieve" is new. This addition clarifies that the the existence of the trust. However, pursuant to subsection (b)(9), if the younger beneficiary settlor may not waive this common law requirement, which is codified in the Code at Section 62-7-404. learns of the trust and requests information, the SCTC Section 62-7-404 does not include the words trustee must respond. More generally, subsection (b)(9) prohibits a settlor from "not contrary to public policy," found in UTC overriding the right provided to a beneficiary in Section 404, recognizing that existing South Carolina law would invalidate trusts that are Section 813(a) to request from the trustee of an irrevocable trust copies of trustee reports and contrary to public policy. As a result, SCTC subsection (b)(3) does not include the words "not other information reasonably related to the trust's administration. contrary to public policy." The SCTC does not include the UTC version of During the drafting of the Uniform Trust Code, the drafting committee discussed and rejected a Subsections 105 (b)(8) - (9) thus the 2001 proposal that the ability of the settlor to waive Amendment which applies to Subsections 105 required notice be based on the nature of the (b)(8)-(9) is not applicable. beneficiaries' interest and not on 2010 Amendment to the SCTC. The 2010 the beneficiaries' age. Advocates of this alternative amendment added subsection (b)(6) relating to approach concluded that a settlor should be able limitations on a settlor's agent; and redesignated to waive required notices to the remainder former subsections (b)(6) through (b)(11) as

beneficiaries, regardless of their age. Enacting

jurisdictions preferring this alternative should substitute the language "adult and current or

subsections (b)(7) through (b)(12), respectively.

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| permissible distributees of trust income or | |
| principal" for the reference to "qualified | |
| beneficiaries" in subsection (b)(8). They should | |
| also delete the reference to beneficiaries "who | |
| have attained the age of 25 years." | |
| Waiver by a settlor of the trustee's duty to keep | |
| the beneficiaries informed of the trust's | |
| administration does not otherwise affect the | |
| trustee's duties. The trustee remains | |
| accountable to the beneficiaries for the trustee's | |
| actions. | |
| Neither subsection (b)(8) nor (b)(9) apply to | |
| revocable trusts. The settlor of a revocable trust | |
| may waive all reporting to the beneficiaries, | |
| even in the event the settlor loses capacity. If | |
| the settlor is silent about the subject, reporting | |
| to the beneficiaries will be required upon the | |
| settlor's loss of capacity. See Section 603. | |
| In conformity with traditional doctrine, the | |
| Uniform Trust Code limits the ability of a | |
| settlor to exculpate a trustee from liability for | |
| breach of trust. The limits are specified in | |
| Section 1008. Subsection (b)(10) of this section | |
| provides a cross-reference. Similarly, | |
| subsection (b)(7) provides a cross-reference to | |
| Section 708(b), which limits the binding effect | |
| of a provision specifying the trustee's | |
| compensation. | |
| Finally, subsection (b)(11) clarifies that a settlor | |
| is not free to limit the rights of third persons, | |
| such as purchasers of trust property. Subsection | |
| (b)(5) clarifies that a settlor may not restrict the | |
| rights of a beneficiary' s creditors except to the | |
| extent a spendthrift restriction is allowed as | |
| provided in Article 5. | |
| 2001 Amendment. By amendment in 2001, | |
| subsection (b)(3), (8) and (9) were revised to | |
| read as above. The language in subsection | |
| (b)(3) "that the trust have a purpose that is | |

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| lawful, not contrary to public policy, and | |
| possible to achieve" is new. This addition | |
| clarifies that the settlor may not waive this | |
| common law requirement, which is codified in | |
| the Code at Section 404. | |
| Subsection (b)(8) and (9) formerly provided: | |
| (8) the duty to notify the qualified beneficiaries | |
| of an irrevocable trust who have attained 25 | |
| years of age of the existence of the trust, and of | |
| their right to request trustee's reports and other | |
| information reasonably related to the | |
| administration of the trust; | |
| (9) the duty to respond to the request of a | |
| beneficiary of an irrevocable trust for trustee's | |
| reports and other information reasonably related | |
| to the administration of a trust. | |
| The amendment clarifies that the information | |
| requirements not subject to waiver are | |
| requirements specified in Section 813 of the | |
| Code. | |
| | |
| SOUTH CAROLINA COMMENT | |
| Section 62-7-105(a) begins with the premise | |
| that the provisions of the South Carolina Trust | |
| Code govern trusts when the terms of a trust do | |
| not otherwise direct. However, subsection (b) | |
| lists eleven separate requirements that may not | |
| be waived and will be controlled by the terms of | |
| the SCTC irrespective of the terms of the trust. | |
| Subsection 105(b)(6) of the UTC prohibits a | |
| Settlor from forgoing a bond requirement of | |
| their Trustee. The reference to Uniform Trust | |
| Code subsection 105(b)(6) in the Uniform Trust | |
| Code Comment is inapplicable to the South | |
| Carolina Trust Code because the SCTC does | |
| not include the UTC version of subsection | |
| 105(b)(6). Section 62-7-702 of the South | |
| Carolina Trust Code provides the situations for | |
| which the Trustee must provide bond. The | |

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| references to Uniform Trust Code subsection | |
| 105(b)(8)-(9) in the Uniform Trust Code | |
| Comment are inapplicable to the South Carolina | |
| Trust Code because the SCTC does not include | |
| the UTC versions of subsection 105(b)(8)-(9). | |
| The other references to subsection 105(b) in the | |
| Uniform Trust Code Comment should be read | |
| to accommodate the SCTC's failure to include | |
| UTC subsection 105(b)(6), (8), and (9). For | |
| example, the reference to UTC subsection | |
| 105(b) (10) in the UTC Comment should be | |
| read to apply to SCTC Section 62-7-105(b)(7). | |
| EFFECT OF AMENDMENT | |
| The 2010 amendment added subsection (b)(6) | |
| | |
| relating to limitations on a settlor's agent; and | |
| redesignated former subsections (b)(6) through $(b)(12)$ | |
| (b)(11) as subsections (b)(7) through (b)(12), respectively. | |
| respectively. LIBRARY REFERENCES | |
| Trusts 7. | |
| | |
| Westlaw Topic No. 390. C.J.S. Trusts Section 143. | |
| RESEARCH REFERENCES | |
| Forms | |
| | |
| South Carolina Legal and Business Forms | |
| Section 16:2, Legal PrinciplesTypes of Trusts. Treatises and Practice Aids | |
| Bogert - The Law of Trusts and Trustees | |
| Section 222, Spendthrift Trusts in the United | |
| States. | |
| Bogert - The Law of Trusts and Trustees | |
| Section 323, The Creation of a Charitable Trust. | |
| Bogert - The Law of Trusts and Trustees | |
| Section 342, The Rule Against Remoteness of | |
| Vesting. | |
| Bogert - The Law of Trusts and Trustees | |
| Section 362, Charitable Trust | |
| | |
| PurposesRequisite Benefits to Flow from | |

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| Charitable Trust. | |
| Bogert - The Law of Trusts and Trustees | |
| Section 369, Definitions of Charity. | |
| | |
| SECTION 62-7-106. Common law of trusts; | SECTION 62-7-106. |
| principles of equity. | |
| | The common law of trusts and principles of equity |
| The common law of trusts and principles of | supplement this article, except to the extent modified |
| equity supplement this article, except to the | by this article or another statute of this State. |
| extent modified by this article or another statute | |
| of this State. | REPORTER'S COMMENT |
| | The SCTC codifies those portions of the law of |
| COMMENT | express trusts that are most amenable to codification. |
| The Uniform Trust Code codifies those portions | The Code is supplemented by the common law of |
| of the law of express trusts that are most | trusts, including principles of equity, particularly as |
| amenable to codification. The Code is | articulated in the Restatement of Trusts, Restatement |
| supplemented by the common law of trusts, | (Third) of Property: Wills and Other Donative |
| including principles of equity, particularly as | Transfers, and the Restatement of Restitution. The common law of trusts is not static but includes the |
| articulated in the Restatement of Trusts, Restatement (Third) of Property: Wills and | contemporary and evolving rules of decision |
| Other Donative Transfers, and the Restatement | developed by the courts in exercise of their power to |
| of Restitution. The common law of trusts is not | adapt the law to new situations and changing |
| static but includes the contemporary and | conditions. It also includes the traditional and broad |
| evolving rules of decision developed by the | equitable jurisdiction of the court, which the Code in |
| courts in exercise of their power to adapt the | no way restricts. |
| law to new situations and changing conditions. | The statutory text of the SCTC is also |
| It also includes the traditional and broad | supplemented by these Comments, which, like the |
| equitable jurisdiction of the court, which the | Comments to any Uniform Act, may be relied on as |
| Code in no way restricts. | a guide for interpretation. See Acierno v. Worthy |
| The statutory text of the Uniform Trust Code is | Bros. Pipeline Corp., 656 A.2d 1085, 1090 (Del. |
| also supplemented by these Comments, which, | 1995) (interpreting Uniform Commercial Code); |
| like the Comments to any Uniform Act, may be | Yale University v. Blumenthal, 621 A.2d 1304, 1307 |
| relied on as a guide for interpretation. See | (Conn. 1993) (interpreting Uniform Management of |
| Acierno v. Worthy Bros. Pipeline Corp., 656 | Institutional Funds Act); 2 Norman Singer, Statutory |
| A.2d 1085, 1090 (Del. 1995) (interpreting | Construction Section 52.05 (6th ed. 2000); Jack |
| Uniform Commercial Code) ; Yale University | Davies, Legislative Law and Process in a Nutshell |
| v. Blumenthal, 621 A.2d 1304, 1307 (Conn. | Section 55-4 (2d ed. 1986).See also South Carolina |
| 1993) (interpreting Uniform Management of | Probate Code Section 62-1-103. |
| Institutional Funds Act); 2 Norman Singer, | |

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| SECTION 62-7-107. |
| The meaning and effect of the terms of a trust are determined by: (1) the law of the jurisdiction designated in the terms of the trust; or (2) in the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue. |
| REPORTER'S COMMENT This section provides rules for determining the law that will govern the meaning and effect of particular trust terms. The law to apply to determine whether a trust has been validly created is determined under Section 62-7-403. Under prior South Carolina law, there was no statutory counterpart to this section; common law principles controlled. Paragraph (1) allows a settlor to select the law that will govern the meaning and effect of the terms of the trust. The jurisdiction selected need not have any other connection to the trust. The settlor is free to select the governing law regardless of where the trust property may be physically located, whether it consists of real or personal property, and whether the trust was created by will or during the settlor's lifetime. This section does not attempt to specify the strong public policies sufficient to invalidate a settlor's choice of governing law. These public policies will vary depending upon the locale and |
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| effect of the trust's terms are to be determined | Wachovia Bank, 353 S.C. 208, 578 S.E.2d 329 |
| by the law of the jurisdiction having the most | (2003), in which the South Carolina Supreme Court |
| significant relationship to the matter at issue. | cited language from the Restatement (Second) of |
| Factors to consider in determining the | Conflict of Laws Sections 268-270 (1971) in |
| governing law include the place of the trust's | adopting a rule similar to that of SCTC Section 107. |
| creation, the location of the trust property, and | Paragraph (2) provides a rule for trusts without |
| the domicile of the settlor, the trustee, and the | governing law provisions - the meaning and effect of |
| beneficiaries. See Restatement (Second) of | the trust's terms are to be determined by the law of |
| Conflict of Laws Sections 270 cmt. c and 272 | the jurisdiction having the most significant |
| cmt. d (1971). Other more general factors that | relationship to the matter at issue. Factors to |
| may be pertinent in particular cases include the | consider in determining the governing law include |
| relevant policies of the forum, the relevant | the place of the trust's creation, the location of the |
| policies of other interested jurisdictions and | trust property, and the domicile of the settlor, the |
| degree of their interest, the protection of | trustee, and the beneficiaries. See Restatement |
| justified expectations and certainty, and | (Second) of Conflict of Laws Sections 270 cmt. c |
| predictability and uniformity of result. See | and 272 cmt. d (1971). Other more general factors |
| Restatement (Second) of Conflict of Laws | that may be pertinent in particular cases include the |
| Section 6 (1971). Usually, the law of the trust's | relevant policies of the forum, the relevant policies |
| principal place of administration will govern | of other interested jurisdictions and degree of their |
| administrative matters and the law of the place | interest, the protection of justified expectations and |
| having the most significant relationship to the | certainty, and predictability and uniformity of result. |
| trust's creation will govern the dispositive | See Restatement (Second) of Conflict of Laws |
| provisions. | Section 6 (1971). Usually, the law of the trust's |
| This section is consistent with and was partially | principal place of administration will govern |
| patterned on the Hague Convention on the Law | administrative matters and the law of the place |
| Applicable to Trusts and on their Recognition, | having the most significant relationship to the trust's |
| signed on July 1, 1985. Like this section, the | creation will govern the dispositive provisions. |
| Hague Convention allows the settlor to | This section is consistent with and was partially |
| designate the governing law. Hague | patterned on the Hague Convention on the Law |
| Convention art. 6. Absent a designation, the | Applicable to Trusts and on their Recognition, |
| Convention provides that the trust is to be | signed on July 1, 1985. Like this section, the Hague |
| governed by the law of the place having the | Convention allows the settlor to designate the |
| closest connection to the trust. Hague | governing law. Hague Convention art. 6. Absent a |
| Convention art. 7. The Convention also lists | designation, the Convention provides that the trust is |
| particular public policies for which the forum | to be governed by the law of the place having the |
| may decide to override the choice of law that | closest connection to the trust. Hague Convention |
| would otherwise apply. These policies are | art. 7. The Convention also lists particular public |
| protection of minors and incapable parties, | policies for which the forum may decide to override |
| personal and proprietary effects of marriage, | the choice of law that would otherwise apply. These |

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| LANGUAGE succession rights, transfer of title and security interests in property, protection of creditors in matters of insolvency, and, more generally, protection of third parties acting in good faith. Hague Convention art. 15. For the authority of a settlor to designate a trust's principal place of administration, see Section 108(a). SOUTH CAROLINA COMMENT Under prior South Carolina law, there was no statutory counterpart to this section; common law principles controlled. Subsection (1) of UTC Section 107 was revised to give a settlor the ability to dictate applicable state law without restriction. See, however, Russell v. Wachovia Bank, 353 S.C. 208, 578 S.E.2d 329 (2003), in which the South Carolina Supreme Court cited language from the Restatement (Second) of Conflict of Laws Sections 268-270 (1971) in adopting a rule similar to that of UTC Section 107. Because SCTC Section 62-7-108 includes an additional paragraph not in the UTC, which is at SCTC | bill # S. 1243 policies are protection of minors and incapable parties, personal and proprietary effects of marriage, succession rights, transfer of title and security interests in property, protection of creditors in matters of insolvency, and, more generally, protection of third parties acting in good faith. Hague Convention art. 15. For the authority of a settlor to designate a trust's principal place of administration, see UTC Section 108(a) or SCTC Section 62-7-108(b). Because SCTC Section 62-7-108 includes an additional paragraph not in the UTC, which is at SCTC Section 62-7-108(a), the reference to UTC Section 108(a) in the UTC Comment is appropriate for SCTC Section 62-7-108(b). |
| Section 62-7-108(a), the reference to UTC Section 108(a) in the UTC Comment is appropriate for SCTC Section 62-7-108(b). | |
| SECTION 62-7-108. Principal place of administration. | SECTION 62-7-108. |
| (a) Unless otherwise designated by the terms of a trust, the principal place of administration of a trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if he has no such place of business. In the case of cotrustees, the principal place of administration, if not otherwise designated in the trust | (a) Unless otherwise designated by the terms of a trust, the principal place of administration of a trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if he has no such place of business. In the case of cotrustees, the principal place of administration, if not otherwise designated in the trust instrument, is: |
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| instrument, is (1) the usual place of business of | (1) the usual place of business of the corporate |
| the corporate trustee if there is but one | trustee if there is but one corporate cotrustee, or |
| corporate cotrustee, or (2) the usual place of | (2) the usual place of business or residence of |
| business or residence of the individual trustee | the individual trustee who is a professional fiduciary |
| who is a professional fiduciary if there is but | if there is but one such person and no corporate |
| one such person and no corporate cotrustee, and | cotrustee, and otherwise |
| otherwise (3) the usual place of business or | (3) the usual place of business or residence of |
| residence of any of the cotrustees as agreed | any of the cotrustees as agreed upon by them. |
| upon by them. | (b) Without precluding other means for |
| (b) Without precluding other means for | establishing a sufficient connection with the |
| establishing a sufficient connection with the | designated jurisdiction, terms of a trust designating |
| designated jurisdiction, terms of a trust | the principal place of administration are valid and |
| designating the principal place of administration | controlling if: |
| are valid and controlling if: | (1) a trustee's principal place of business is |
| (1) a trustee's principal place of business is | located in or a trustee is a resident of the designated |
| located in or a trustee is a resident of the | jurisdiction; or |
| designated jurisdiction; or | (2) all or part of the administration occurs in |
| (2) all or part of the administration occurs in the | the designated jurisdiction. |
| designated jurisdiction. | (c) A trustee is under a continuing duty to |
| (c) A trustee is under a continuing duty to | administer the trust at a place appropriate to its |
| administer the trust at a place appropriate to its | purposes, its administration, and the interests of the |
| purposes, its administration, and the interests of | beneficiaries. |
| the beneficiaries. | (d) Without precluding the right of the court to |
| (d) Without precluding the right of the court to | order, approve, or disapprove a transfer, the trustee, |
| order, approve, or disapprove a transfer, the | in furtherance of the duty prescribed by subsection |
| trustee, in furtherance of the duty prescribed by | (c), may transfer the trust's principal place of |
| subsection (c), may transfer the trust's principal | administration to another State or to a jurisdiction |
| place of administration to another State or to a | outside of the United States. |
| jurisdiction outside of the United States. | (e) Unless otherwise designated in the trust, the |
| (e) Unless otherwise designated in the trust, the | trustee shall notify the qualified beneficiaries of a |
| trustee shall notify the qualified beneficiaries of | proposed transfer of a trust's principal place of |
| a proposed transfer of a trust's principal place | administration not less than $\frac{60}{5}$ sixty days before |
| of administration not less than 60 days before | initiating the transfer. The notice of proposed |
| initiating the transfer. The notice of proposed | transfer must include: |
| transfer must include: | (1) the name of the jurisdiction to which the |
| (1) the name of the jurisdiction to which the | principal place of administration is to be transferred; |
| principal place of administration is to be | (2) the address and telephone number at the |
| transferred; | new location at which the trustee can be contacted; |
| (2) the address and telephone number at the new | (3) an explanation of the reasons for the |

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| location at which the trustee can be contacted; | proposed transfer; |
| (3) an explanation of the reasons for the | (4) the date on which the proposed transfer is |
| proposed transfer; | anticipated to occur; and |
| (4) the date on which the proposed transfer is | (5) the date, not less than $\frac{60}{5}$ sixty days after |
| anticipated to occur; and | the giving of the notice, by which the qualified |
| (5) the date, not less than 60 days after the | beneficiary must notify the trustee of an objection to |
| giving of the notice, by which the qualified | the proposed transfer. |
| beneficiary must notify the trustee of an | (f) The authority of a trustee under this section to |
| objection to the proposed transfer. | transfer a trust's principal place of administration |
| (f) The authority of a trustee under this section | terminates if a qualified beneficiary notifies the |
| to transfer a trust's principal place of | trustee of an objection to the proposed transfer on or |
| administration terminates if a qualified | before the date specified in the notice. |
| beneficiary notifies the trustee of an objection | (g) In connection with a transfer of the trust's |
| to the proposed transfer on or before the date | principal place of administration, the trustee may |
| specified in the notice. | transfer some or all of the trust property to a |
| (g) In connection with a transfer of the trust's | successor trustee designated in the terms of the trust |
| principal place of administration, the trustee | or appointed pursuant to Section 62-7-704. |
| may transfer some or all of the trust property to | |
| a successor trustee designated in the terms of | REPORTER'S COMMENT |
| the trust or appointed pursuant to Section | This section prescribes rules relating to a trust's |
| 62-7-704. | principal place of administration. Locating a trust's |
| | principal place of administration will ordinarily |
| COMMENT | determine which court has primary if not exclusive |
| This section prescribes rules relating to a trust's | jurisdiction over the trust. It may also be important |
| principal place of administration. Locating a | for other matters, such as payment of state income |
| trust's principal place of administration will | tax or determining the jurisdiction whose laws will |
| ordinarily determine which court has primary if | govern the trust. See Section 62-7-107 comment. |
| not exclusive jurisdiction over the trust. It may | Because of the difficult and variable situations |
| also be important for other matters, such as | sometimes involved, the SCTC does not attempt to |
| payment of state income tax or determining the | further define principal place of administration. A |
| jurisdiction whose laws will govern the trust. | trust's principal place of administration ordinarily |
| See Section 107 comment. | will be the place where the trustee is located. |
| Because of the difficult and variable situations | Determining the principal place of administration |
| sometimes involved, the Uniform Trust Code | becomes more difficult, however, when cotrustees |
| does not attempt to further define principal | are located in different states or when a single |
| place of administration. A trust's principal | institutional trustee has trust operations in more than |
| place of administration ordinarily will be the | one state. In such cases, other factors may become |
| place where the trustee is located. Determining | relevant, including the place where the trust records |
| the principal place of administration becomes | are kept or trust assets held, or in the case of an |

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| more difficult, however, when cotrustees are | institutional trustee, the place where the trust officer |
| located in different states or when a single | responsible for supervising the account is located. |
| institutional trustee has trust operations in more | Under the SCTC, the fixing of a trust's principal |
| than one state. In such cases, other factors may | place of administration will determine where the |
| become relevant, including the place where the | trustee and beneficiaries have consented to suit |
| trust records are kept or trust assets held, or in | (Section 62-7-202), and the rules for locating venue |
| the case of an institutional trustee, the place | within a particular state (Section 62-7-204). It may |
| where the trust officer responsible for | also be considered by a court in another jurisdiction |
| supervising the account is located. | in determining whether it has jurisdiction, and if so, |
| A concept akin to principal place of | whether it is a convenient forum. |
| administration is used by the Office of the | Because SCTC Section 62-7-108 includes an |
| Comptroller of the Currency. Reserves that | additional paragraph not in the UTC, which is at |
| national banks are required to deposit with state | SCTC Section 62-7-108(a), the references to the |
| authorities is based on the location of the office | subsections of UTC Section 108 in the UTC |
| where trust assets are primarily administered. | Comment have been adjusted correspondingly for |
| See 12 C.F.R. Section 9.14(b). | SCTC Section 62-7-108. |
| Under the Uniform Trust Code, the fixing of a | SCTC Section 62-7-108(a) incorporates the |
| trust's principal place of administration will | provisions of former SCPC Section 62-7-202 (which |
| determine where the trustee and beneficiaries | dealt with venue), except SCTC subsection 108(a) is |
| have consented to suit (Section 202), and the | not limited to matters of venue. |
| rules for locating venue within a particular state | A settlor expecting to name a trustee or cotrustees |
| (Section 204). It may also be considered by a | with significant contacts in more than one state may |
| court in another jurisdiction in determining | eliminate possible uncertainty about the location of |
| whether it has jurisdiction, and if so, whether it | the trust's principal place of administration by |
| is a convenient forum. | specifying the jurisdiction in the terms of the trust. |
| A settlor expecting to name a trustee or | Under UTC subsection (a) and SCTC subsection (b), |
| cotrustees with significant contacts in more than | a designation in the terms of the trust is controlling |
| one state may eliminate possible uncertainty | if (1) a trustee is a resident of or has its principal |
| about the location of the trust's principal place | place of business in the designated jurisdiction, or |
| of administration by specifying the jurisdiction | (2) all or part of the administration occurs in the |
| in the terms of the trust. Under subsection (a), a | designated jurisdiction. Designating the principal |
| designation in the terms of the trust is | place of administration should be distinguished from |
| controlling if (1) a trustee is a resident of or has | designating the law to determine the meaning and |
| its principal place of business in the designated | effect of the trust's terms, as authorized by Section |
| jurisdiction, or (2) all or part of the | 62-7-107. A settlor is free to designate one |
| administration occurs in the designated | jurisdiction as the principal place of administration |
| jurisdiction. Designating the principal place of | and another to govern the meaning and effect of the |
| administration should be distinguished from | trust's provisions. |
| designating the law to determine the meaning | UTC Subsection (b) and SCTC subsection (c) |

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| and effect of the trust's terms, as authorized by | provide that a trustee is under a continuing duty to |
| Section 107. A settlor is free to designate one | administer the trust at a place appropriate to its |
| jurisdiction as the principal place of | purposes, its administration, and the interests of the |
| administration and another to govern the | beneficiaries. "Interests of the beneficiaries," |
| meaning and effect of the trust's provisions. | defined in Section 62-7-103(7), means the beneficial |
| Subsection (b) provides that a trustee is under a | interests provided n the terms of the trust. |
| continuing duty to administer the trust at a place | Ordinarily, absent a substantial change or |
| appropriate to its purposes, its administration, | circumstances, the trustee may assume that the |
| and the interests of the beneficiaries. "Interests | original place of administration is also the |
| of the beneficiaries," defined in Section 103(7), | appropriate place of administration. The duty to |
| means the beneficial interests provided n the | administer the trust at an appropriate place may also |
| terms of the trust. Ordinarily, absent a | dictate that the trustee not move the trust. |
| substantial change or circumstances, the trustee | UTC Subsections (c)-(f) and SCTC subsections |
| may assume that the original place of | (d)-(g) provide a procedure for changing the |
| administration is also the appropriate place of | principal place of administration to another state or |
| administration. The duty to administer the trust | country. Such changes are often beneficial. A |
| at an appropriate place may also dictate that the | change may be desirable to secure a lower state |
| trustee not move the trust. | income tax rate, or because of relocation of the |
| Subsections (c)-(f) provide a procedure for | trustee or beneficiaries, the appointment of a new |
| changing the principal place of administration | trustee, or a change in the location of the trust |
| to another state or country. Such changes are | investments. The procedure for transfer specified in |
| often beneficial. A change may be desirable to | this section applies only in the absence of a contrary |
| secure a lower state income tax rate, or because | provision in the terms of the trust. See Section |
| of relocation of the trustee or beneficiaries, the | 62-7-105. To facilitate transfer in the typical case, |
| appointment of a new trustee, or a change in the | where all concur that a transfer is either desirable or |
| location of the trust investments. The procedure | is at least not harmful, a transfer can be |
| for transfer specified in this section applies only | accomplished without court approval unless a |
| in the absence of a contrary provision in the | qualified beneficiary objects. To allow the qualified |
| terms of the trust. See Section 105. To | beneficiaries sufficient time to review a proposed |
| facilitate transfer in the typical case, where all | transfer, the trustee must give the qualified |
| concur that a transfer is either desirable or is at | beneficiaries at least 60 days prior notice of the |
| least not harmful, a transfer can be | transfer. Notice must be given not only to qualified |
| accomplished without court approval unless a | beneficiaries as defined in Section 62-7-103(12) but |
| qualified beneficiary objects. To allow the | also to those granted the rights of qualified |
| qualified beneficiaries sufficient time to review | beneficiaries under Section 62-7-110. To assure that |
| a proposed transfer, the trustee must give the | those receiving notice have sufficient information |
| qualified beneficiaries at least 60 days prior | upon which to make a decision, minimum contents |
| notice of the transfer. Notice must be given not | of the notice are specified. If a qualified beneficiary |
| only to qualified beneficiaries as defined in | objects, a trustee wishing to proceed with the |

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| Section 103(12) but also to those granted the | transfer must seek court approval. |
| rights of qualified beneficiaries under Section | SCTC Section 62-7-108(e), which corresponds to |
| 110. To assure that those receiving notice have | UTC subsection 108(d), adds to the UTC version the |
| sufficient information upon which to make a | introductory phrase "unless otherwise designated in |
| decision, minimum contents of the notice are | the trust." |
| specified. If a qualified beneficiary objects, a | In connection with a transfer of the principal place |
| trustee wishing to proceed with the transfer | of administration, the trustee may transfer some or |
| must seek court approval. | all of the trust property to a new trustee located |
| In connection with a transfer of the principal | outside of the state. The appointment of a new |
| place of administration, the trustee may transfer | trustee may also be essential if the current trustee is |
| some or all of the trust property to a new trustee | ineligible to administer the trust in the new place. |
| located outside of the state. The appointment of | UTC Subsection (f) and SCTC subsection (g) |
| a new trustee may also be essential if the | clarifies that the appointment of the new trustee |
| current trustee is ineligible to administer the | must comply with the provisions on appointment of |
| trust in the new place. Subsection (f) clarifies | successor trustees as provided in the terms of the |
| that the appointment of the new trustee must | trust or under Section 62-7-704. Absent an order of |
| comply with the provisions on appointment of | succession in the terms of the trust, Section |
| successor trustees as provided in the terms of | 62-7-704(c) provides the procedure for appointment |
| the trust or under Section 704. Absent an order | of a successor trustee of a noncharitable trust, and |
| of succession in the terms of the trust, Section | Section 62-7-704(d) the procedure for appointment |
| 704(c) provides the procedure for appointment | of a successor trustee of a charitable trust. |
| of a successor trustee of a noncharitable trust, | While transfer of the principal place of |
| and Section 704(d) the procedure for | administration will normally change the governing |
| appointment of a successor trustee of a | law with respect to administrative matters, a transfer |
| charitable trust. | does not normally alter the controlling law with |
| While transfer of the principal place of | respect to the validity of the trust and the |
| administration will normally change the | construction of its dispositive provisions. See 5A |
| governing law with respect to administrative | Austin W. Scott & William F. Fratcher, The Law of |
| matters, a transfer does not normally alter the | Trusts Section 615 (4th ed. 1989). |
| controlling law with respect to the validity of | |
| the trust and the construction of its dispositive | |
| provisions. See 5A Austin W. Scott & William | |
| F. Fratcher, The Law of Trusts Section 615 (4th | |
| ed. 1989). | |
| SOUTH CAROLINA COMMENT | |
| Because SCTC Section 62-7-108 includes an | |
| additional paragraph not in the UTC, which is at | |
| SCTC Section 62-7-108(a), the references to the | |

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| subsections of UTC Section 108 in the UTC | |
| Comment should be adjusted correspondingly | |
| for SCTC Section 62-7-108. | |
| SCTC Section 62-7-108(a) incorporates the | |
| provisions of former SCPC Section 62-7-202 | |
| (which dealt with venue), except SCTC | |
| subsection 108(a) is not limited to matters of | |
| venue. | |
| SCTC Section 62-7-108(e), which corresponds | |
| to UTC subsection 108(d), adds to the UTC | |
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| otherwise designated in the trust." | |
| SECTION 62-7-109. Methods and waiver of | SECTION 62-7-109. |
| notice. | SECTION 02-7-107. |
| notice. | |
| (a) Notice to a person under this article or the | (a) Notice to a person under this article or the |
| sending of a document to a person under this | sending of a document to a person under this article |
| article must be accomplished in a manner | must be accomplished in a manner reasonably |
| reasonably suitable under the circumstances and | suitable under the circumstances and likely to result |
| likely to result in receipt of the notice or | in receipt of the notice or document. Permissible |
| document. Permissible methods of notice or for | methods of notice or for sending a document include |
| sending a document include first-class mail, | first-class mail, personal delivery, delivery to the |
| personal delivery, delivery to the person's last | person's last known place of residence or place of |
| known place of residence or place of business, | business, or a properly directed electronic message. |
| or a properly directed electronic message. | (b) Notice otherwise required under this article or |
| (b) Notice otherwise required under this article | a document otherwise required to be sent under this |
| or a document otherwise required to be sent | article need not be provided to a person whose |
| under this article need not be provided to a | identity or location is unknown to and not |
| person whose identity or location is unknown to | reasonably ascertainable by the trustee. |
| and not reasonably ascertainable by the trustee. | (c) Notice under this article or the sending of a |
| (c) Notice under this article or the sending of a | document under this article may be waived by the |
| document under this article may be waived by | person to be notified or sent the document. |
| the person to be notified or sent the document. | (d) If notice of a hearing on any petition is |
| (d) If notice of a hearing on any petition is | required and, except for specific notice requirements |
| required and, except for specific notice | as otherwise provided, the petitioner shall cause |
| requirements as otherwise provided, the | notice of the time and place of hearing of any |
| petitioner shall cause notice of the time and | petition to be given to any interested person or his |
| place of hearing of any petition to be given to | attorney if he has appeared by attorney or requested |

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| that notice be sent to his attorney. Notice shall be |
| given: |
| (1) by mailing a copy thereof at least twenty |
| days before the time set for the hearing by certified, |
| registered, or ordinary first class mail addressed to |
| the person being notified at the post office address |
| given in his request for notice, if any, or at his office |
| or place of residence, if known: |
| • |
| (2) by delivering a copy thereof to the person |
| being notified personally at least twenty days before |
| the time set for the hearing; or |
| (3) if the address or identity of any person is |
| not known and cannot be ascertained with |
| reasonable diligence by publishing a copy thereof in |
| the same manner as required by law in the case of |
| the publication of a summons for an absent |
| defendant in the court of common pleas. |
| (e) The court for good cause shown may provide |
| for a different method or time of giving notice for |
| any hearing. |
| (f) Proof of the giving of notice shall be made on |
| or before the hearing and filed in the proceeding. |
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| REPORTER'S COMMENT |
| Subsection (a) clarifies that notices under the |
| SCTC may be given by any method likely to result |
| in its receipt by the person to be notified. The |
| specific methods listed in the subsection are |
| illustrative, not exhaustive. Subsection (b) relieves a |
| trustee of responsibility for what would otherwise be |
| an impossible task, the giving of notice to a person |
| whose identity or location is unknown and not |
| reasonably ascertainable by the trustee. The section |
| does not define when a notice is deemed to have |
| been sent or delivered or person deemed to be |
| unknown or not reasonably ascertainable, the |
| drafters preferring to leave this issue to the enacting |
| jurisdiction's rules of civil procedure. |
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| to have been sent or delivered or person deemed | upon unanimous consent of the beneficiaries or |
| to be unknown or not reasonably ascertainable, | qualified beneficiaries. See Sections 62-7-411 |
| the drafters preferring to leave this issue to the | (termination of noncharitable irrevocable trust) and |
| enacting jurisdiction's rules of civil procedure. | 62-7-704 (appointment of successor trustee). UTC |
| Under the Uniform Trust Code, certain actions | Subsection (b) of this section only authorizes waiver |
| can be taken upon unanimous consent of the | of notice. A consent required from a beneficiary in |
| beneficiaries or qualified beneficiaries. See | order to achieve unanimity is not waived because the |
| Sections 411 (termination of noncharitable | beneficiary is missing. But the fact a beneficiary |
| irrevocable trust) and 704 (appointment of | cannot be located may be a sufficient basis for a |
| successor trustee). Subsection (b) of this | substitute consent to be given by another person on |
| section only authorizes waiver of notice. A | the beneficiary's behalf under the representation |
| consent required from a beneficiary in order to | principles of Part 3. |
| achieve unanimity is not waived because the | In a nonjudicial context, SCTC Section |
| beneficiary is missing. But the fact a | 62-7-109(b) does not require notification of a person |
| beneficiary cannot be located may be a | whose identity or location is unknown or cannot be |
| sufficient basis for a substitute consent to be | reasonably ascertainable. |
| given by another person on the beneficiary's | To facilitate administration, subsection (c) allows |
| behalf under the representation principles of | waiver of notice by the person to be notified or sent |
| Article 3. | the document. Among the notices and documents to |
| To facilitate administration, subsection (c) | which this subsection can be applied are notice of a |
| allows waiver of notice by the person to be | proposed transfer of principal place of |
| notified or sent the document. Among the | administration (UTC Section 108(d) and SCTC |
| notices and documents to which this subsection | Section 62-7-108(e)) or of a trustee's report (Section |
| can be applied are notice of a proposed transfer | 62-7-813(e)). This subsection also applies to notice |
| of principal place of administration (Section | to qualified beneficiaries of a proposed trust |
| 108(d)) or of a trustee's report (Section 813(c)). | combination or division (Section 62-7-417), of a |
| This subsection also applies to notice to | temporary assumption of duties without accepting |
| qualified beneficiaries of a proposed trust | trusteeship (Section 62-7-701(c)(1)), and of a |
| combination or division (Section 417), of a | trustee's resignation (Section 62-7-705(a)(1)). |
| temporary assumption of duties without | Notices under the SCTC are nonjudicial. |
| accepting trusteeship (Section 701(c)(1)), and of | Previous South Carolina law had no precise |
| a trustee's resignation (Section 705(a)(1)). | counterpart. However, the South Carolina Probate |
| | Code contains various provisions respecting notice. |
| - | The general notice section, SCPC Section 62-1-401 |
| | provides that notice of a hearing or other petition |
| | shall be delivered at least twenty (20) days before |
| | the time set for the hearing by certified, registered, |
| | or ordinary first class mail, or by delivering a copy |
| SOUTH CAROLINA COMMENT | to the person being notified at least twenty (20) days |

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| LANGUAGE Previous South Carolina law had no precise counterpart. However, the South Carolina Probate Code contains various provisions respecting notice. The general notice section, SCPC Section 62-1-401 provides that notice of a hearing or other petition shall be delivered at least twenty (20) days before the time set for the hearing by certified, registered, or ordinary first class mail, or by delivering a copy to the person being notified at least twenty (20) days before the time set for hearing. That section also provides for the service of notice of hearing by publication if the address or identity of the person cannot be ascertained with reasonable diligence. SCTC Section 62-7-109(d) differs from the UTC version and incorporates the substance of SCPC Section 62-1-401. The SCTC adds Subsections 62-7-109(e) and (f), which are not in UTC Section 109. The references in the UTC Comment to the subsections of UTC Section 109 should be adjusted appropriately. In a nonjudicial context, SCTC Section 62-7-109(b) does not require notification of a person whose identity or location is unknown or cannot be reasonably ascertainable. | before the time set for hearing. That section also provides for the service of notice of hearing by publication if the address or identity of the person cannot be ascertained with reasonable diligence. SCTC Section 62-7-109(d) differs from the UTC version and incorporates the substance of SCPC Section 62-1-401. The SCTC adds Subsections 62-7-109(e) and (f), which are not in UTC Section 109. |
| SECTION 62-7-110. Requirement of notice to others. | SECTION 62-7-110. |
| (a) Whenever notice to qualified beneficiaries of a trust is required under this article, the trustee must also give notice to any other beneficiary who has sent the trustee a request for notice. (b) A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this article if the | (a) Whenever notice to qualified beneficiaries of a trust is required under this article, the trustee must also give notice to any other beneficiary who has sent the trustee a request for notice. (b) A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this article if the charitable organization, on the date the charitable |

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| charitable organization, on the date the | organization's qualification is being determined: |
| charitable organization's qualification is being | (A) is a distributee or permissible distributee of |
| determined: | trust income or principal; |
| (A) is a distributee or permissible distributee of | (B) would be a distributee or permissible |
| trust income or principal; | distributee of trust income or principal upon the |
| (B) would be a distributee or permissible | termination of the interests of other distributees or |
| distributee of trust income or principal upon the | permissible distributees then receiving or eligible to |
| termination of the interests of other distributees | receive distributions; or |
| or permissible distributees then receiving or | (C) would be a distributee or permissible |
| eligible to receive distributions; or | distributee of trust income or principal if the trust |
| (C) would be a distributee or permissible | terminated on that date. |
| distributee of trust income or principal if the | (c) A person appointed to enforce a trust created |
| trust terminated on that date. | for the care of an animal or another noncharitable |
| (c) A person appointed to enforce a trust created | purpose as provided in Section 62-7-408 or 62-7-409 |
| for the care of an animal or another | has the rights of a qualified beneficiary under this |
| noncharitable purpose as provided in Section | article. |
| 62-7-408 or 62-7-409 has the rights of a | |
| qualified beneficiary under this article. | REPORTER'S COMMENT |
| 1 5 | Former South Carolina law had no statutory |
| COMMENT | counterpart. |
| Under the Uniform Trust Code, certain notices | Under the SCTC, certain notices need be given |
| need be given only to the "qualified" | only to the "qualified" beneficiaries. For the |
| beneficiaries. For the definition of "qualified | definition of "qualified beneficiary," see Section |
| beneficiary," see Section 103(12). Among | 62-7-103(12). Among these notices are notice of a |
| these notices are notice of a transfer of the | transfer of the trust's principal place of |
| trust's principal place of administration (Section | administration (UTC Section 108(d) and SCTC |
| 108(d)), notice of a trust division or | Section 62-7-108(e)), notice of a trust division or |
| combination (Section 417), notice of a trustee | combination (Section 62-7-417), notice of a trustee |
| resignation (Section 705(a)(1)), and notice of a | resignation (Section 62-7-705(a)(1)), and notice of a |
| trustee's annual report (Section 813(c)). | trustee's annual report (Section 62-7-813(c)). |
| Subsection (a) of this section authorizes other | Subsection (a) of this section authorizes other |
| beneficiaries to receive one or more of these | beneficiaries to receive one or more of these notices |
| notices by filing a request for notice with the | by filing a request for notice with the trustee. |
| trustee. | Under the Code, certain actions, such as the |
| Under the Code, certain actions, such as the | appointment of a successor trustee, can be |
| appointment of a successor trustee, can be | accomplished by the consent of the qualified |
| accomplished by the consent of the qualified | beneficiaries. See, e.g., Section 62-7-704 (filling |
| beneficiaries. See, e.g., Section 704 (filling | vacancy in trusteeship). Subsection (a) addresses |
| vacancy in trusteeship). Subsection (a) only | only notice, not required consent. A person who |

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| addresses notice, not required consent. A | requests notice under subsection (a) does not thereby |
| person who requests notice under subsection (a) | acquire a right to participate in actions that can be |
| does not thereby acquire a right to participate in | taken only upon consent of the qualified |
| actions that can be taken only upon consent of | beneficiaries. |
| the qualified beneficiaries. | Charitable trusts do not have beneficiaries in the |
| Charitable trusts do not have beneficiaries in the | usual sense. However, certain persons, while not |
| usual sense. However, certain persons, while | technically beneficiaries, do have an interest in |
| not technically beneficiaries, do have an interest | seeing that the trust is enforced. In the case of a |
| in seeing that the trust is enforced. In the case | charitable trust, this includes the state's attorney |
| of a charitable trust, this includes the state's | general and charitable organizations expressly |
| attorney general and charitable organizations | designated to receive distributions under the terms of |
| expressly designated to receive distributions | the trust. Under subsection (b), charitable |
| under the terms of the trust, who under | organizations expressly designated in the terms of |
| subsections (b)-(c) are granted the rights of | the trust to receive distributions and who would |
| qualified beneficiaries. Because the charitable | qualify as a qualified beneficiary were the trust |
| organization must be named in the terms of the | noncharitable, are granted the rights of qualified |
| trust and must be designated to receive | beneficiaries. Because the charitable organization |
| distributions, excluded are organizations who | must be expressly named in the terms of the trust |
| may receive distributions only in the trustee's | and must be designated to receive distributions, |
| discretion and organizations holding remainder | excluded are organizations that might receive |
| interests subject to a contingency. | distributions in the trustee's discretion but that are |
| Subsection (b) similarly grants the rights of | not named in the trust's terms. Requiring that the |
| qualified beneficiaries to persons appointed by | organization have an interest similar to that of a |
| the terms of the trust or by the court to enforce a | beneficiary of a private trust also denies the rights of |
| trust created for an animal or other trust with a | a qualified beneficiary to organizations holding |
| valid purpose but no ascertainable beneficiary. | remote interests. For further discussion of the |
| For the requirements for creating such trusts, | definition of "qualified beneficiary," see Section |
| see Sections 408 and 409. | 62-7-103 comment. |
| "Attorney general" is placed in brackets in | Subsection (c) similarly grants the rights of |
| subsection (c) to accommodate jurisdictions | qualified beneficiaries to persons appointed by the |
| which grant enforcement authority over | terms of the trust or by the court to enforce a trust |
| charitable trusts to another designated official. | created for an animal or other trust with a valid |
| This section does not limit other means by | purpose but no ascertainable beneficiary. For the |
| which the attorney general or other designated | requirements for creating such trusts, see Sections |
| official can enforce a charitable trust. | 62-7-408 and 62-7-409. |
| 2001 Amendment. By amendment in 2001, | Section 62-7-110 does not include a counterpart to |
| "charitable organization expressly designated to | UTC subsection 110(d), in the 2004 UTC |
| receive distributions" was substituted for " | Amendments, which gives the state Attorney |
| charitable organization expressly entitled to | General the rights of a qualified beneficiary in |

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| receive benefits" in subsection (b). The | certain cases. See, however, SCTC Section |
| amendment conforms the language of this | 62-7-405, which provides certain rights and powers |
| section to terminology used elsewhere in the | to the South Carolina Attorney General. |
| Code. | Subsection (d) does not limit other means by |
| | which the attorney general or other designated |
| SOUTH CAROLINA COMMENT | official can enforce a charitable trust. |
| Former South Carolina had no statutory | |
| counterpart. SCTC Section 62-7-110 includes | |
| provisions contained in the 2004 Amendments | |
| to the UTC, which are not discussed in the | |
| Comment to UTC Section 110. SCTC Section | |
| 62-7-110 does not include a counterpart to UTC | |
| subsection 110(d), in the 2004 UTC | |
| Amendments, which gives the state Attorney | |
| General the rights of a qualified beneficiary in | |
| certain cases. See, however, SCTC Section | |
| 62-7-405, which provides certain rights and | |
| powers to the South Carolina Attorney General. | |
| SECTION 62-7-111. Nonjudicial settlement | SECTION 62-7-111. |
| agreements. | |
| (a) For numbers of this section "interested | (a) For numbers of this spation (interested persons) |
| (a) For purposes of this section, "interested | (a) For purposes of this section, 'interested persons' |
| persons" means persons whose consent would | means persons whose consent would be required in |
| be required in order to achieve a binding settlement were the settlement to be approved | order to achieve a binding settlement were the settlement to be approved by the court. |
| by the court. | (b) Interested persons may enter into a binding |
| (b) Interested persons may enter into a binding | nonjudicial settlement agreement with respect to |
| nonjudicial settlement agreement with respect | only the following trust matters: |
| to only the following trust matters: | (1) the approval of a trustee's report or |
| (1) the approval of a trustee's report or | accounting; |
| accounting; | (2) direction to a trustee to perform or refrain |
| (2) direction to a trustee to perform or refrain | from performing a particular administrative act or |
| from performing a particular administrative act | the grant to a trustee of any necessary or desirable |
| or the grant to a trustee of any necessary or | administrative power; |
| desirable administrative power; | (3) the resignation or appointment of a trustee |
| (3) the resignation or appointment of a trustee | and the determination of a trustee's compensation; |
| and the determination of a trustee's | (4) transfer of a trust's principal place of |
| compensation; | administration; and |
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| (4) transfer of a trust's principal place of | (5) liability of a trustee for an action relating to |
| administration; and | the trust. |
| (5) liability of a trustee for an action relating to | (c) Any interested person may request the court |
| the trust. | to approve a nonjudicial settlement agreement, to |
| (c) Any interested person may request the court | determine whether the representation as provided in |
| to approve a nonjudicial settlement agreement, | Part 3 was adequate, and to determine whether the |
| to determine whether the representation as | agreement contains terms and conditions the court |
| provided in Part 3 was adequate, and to | could have properly approved. |
| determine whether the agreement contains | |
| terms and conditions the court could have | REPORTER'S COMMENT |
| properly approved. | While the SCTC recognizes that a court may |
| | intervene in the administration of a trust to the extent |
| COMMENT | its jurisdiction is invoked by interested persons or |
| While the Uniform Trust Code recognizes that a | otherwise provided by law (see Section |
| court may intervene in the administration of a | 62-7-201(a)), resolution of disputes by nonjudicial |
| trust to the extent its jurisdiction is invoked by | means is encouraged. This section facilitates the |
| interested persons or otherwise provided by law | making of such agreements by giving them the same |
| (see Section 201(a)), resolution of disputes by | effect as if approved by the court. To achieve such |
| nonjudicial means is encouraged. This section | certainty, however, subsection (c) requires that the |
| facilitates the making of such agreements by | nonjudicial settlement must contain terms and |
| giving them the same effect as if approved by | conditions that a court could properly approve. |
| the court. To achieve such certainty, however, | Under this section, a nonjudicial settlement cannot |

the court. To achieve such certainty, however, subsection (c) requires that the nonjudicial settlement must contain terms and conditions that a court could properly approve. Under this section, a nonjudicial settlement cannot be used to produce a result not authorized by law, such as to terminate a trust in an impermissible manner.

Trusts ordinarily have beneficiaries who are minors; incapacitated, unborn or unascertained. Because such beneficiaries cannot signify their consent to an agreement, binding settlements can ordinarily be achieved only through the application of doctrines such as virtual representation or appointment of a guardian ad litem, doctrines traditionally available only in the case of judicial settlements. The effect of this section and the Uniform Trust Code more manner. Trusts ordinarily have beneficiaries who are minors; incapacitated, unborn or unascertained. Because such beneficiaries cannot signify their consent to an agreement, binding settlements can ordinarily be achieved only through the application of doctrines such as virtual representation or appointment of a guardian ad litem, doctrines traditionally available only in the case of judicial settlements. The effect of this section and the SCTC more generally is to allow for such binding representation even if the agreement is not submitted for approval to a court. For the rules on representation, including appointments of representatives by the court to approve particular

be used to produce a result not authorized by law,

such as to terminate a trust in an impermissible

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| settlements, see Part 3. |
| The fact that the trustee and beneficiaries may |
| resolve a matter nonjudicially does not mean that |
| beneficiary approval is required. For example, a |
| trustee may resign pursuant to Section 62-7-705 |
| solely by giving notice to the qualified beneficiaries, |
| a living settlor, and any cotrustees. But a |
| nonjudicial settlement between the trustee and |
| beneficiaries will frequently prove helpful in |
| working out the terms of the resignation. |
| Because of the great variety of matters to which a |
| nonjudicial settlement may be applied, this section |
| does not attempt to precisely define the "interested |
| persons" whose consent is required to obtain a |
| binding settlement as provided in subsection (a). |
| However, the consent of the trustee would ordinarily |
| be required to obtain a binding settlement with |
| respect to matters involving a trustee's |
| administration, such as approval of a trustee's report |
| or resignation. |
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| subject to the rights of creditors and taxing | |
| authorities. Under SCPC Section 62-3-912, | |
| successors include testamentary trusts if the | |
| trustees thereof deem it prudent to enter such an | |
| agreement. However, "[n]othing herein relieves | |
| trustees of any duties owed to the beneficiaries | |
| of trust." Additionally, SCPC Sections | |
| 62-3-1101 and 62-3-1102 provide a mechanism | |
| for compromise of controversies approved in a | |
| formal proceeding in the Probate Court. The | |
| terms of the compromise are to be set forth in | |
| an agreement that is presented to the Probate | |
| Court for approval. Interested persons, | |
| including parents of minor children, are to sign | |
| the agreement. Joinder is not required in | |
| respect to interested persons whose identity | |
| cannot be reasonably ascertained. Such | |
| compromises are subject to the rights of | |
| creditors and to taxing authorities. Trustees of | |
| testamentary trusts, to the extent they enter the | |
| compromise, are bound by its terms. See also | |
| S. Alan Medlin, The Law of Wills and Trusts, | |
| Volume I, Estate Planning in South Carolina | |
| (2002) at Section 509 (modification and early | |
| termination of irrevocable and unamendable | |
| trusts). | |
| Uniform Trust Code Section 111 allows binding | |
| nonjudicial settlements for any trust matter, | |
| subject to certain limitations. SCTC Section | |
| 62-7-111 is more restrictive, authorizing | |
| binding nonjudicial settlements only for the | |
| enumerated matters. Consequently, the | |
| Comment to UTC Section 111 should be | |
| adjusted accordingly. | |
| SECTION 62-7-112. Rules of construction. | SECTION 62-7-112. |
| The rules of construction that apply in this State | The rules of construction that apply in this State to |
| to the interpretation of and disposition of | the interpretation of and disposition of property by |

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| property by will also apply as appropriate to the | will also apply as appropriate to the interpretation of | |
| interpretation of the terms of a trust and the | | |
| disposition of the trust property. | property. | |
| COMMENT | REPORTER'S COMMENT | |
| This section is patterned after Restatement | erned after Restatement This section is patterned after Restatement (Third | |
| (Third) of Trusts Section 25(2) and comment e | of Trusts Section 25(2) and comment e (Tentative | |
| (Tentative Draft No. 1, approved 1996), | Draft No. 1, approved 1996), although this section, | |
| although this section, unlike the Restatement, | unlike the Restatement, also applies to irrevocable | |
| also applies to irrevocable trusts. The revocable | trusts. The revocable trust is used primarily as a will | |
| trust is used primarily as a will substitute, with | substitute, with its key provision being the | |
| its key provision being the determination of the | determination of the persons to receive the trust | |
| persons to receive the trust property upon the | property upon the settlor's death. Given this | |
| settlor's death. Given this functional | functional equivalence between the revocable trust | |
| equivalence between the revocable trust and a | and a will, the rules for interpreting the disposition | |
| will, the rules for interpreting the disposition of | of property at death should be the same whether the | |
| property at death should be the same whether | individual has chosen a will or revocable trust as the | |
| the individual has chosen a will or revocable | individual's primary estate planning instrument. | |
| trust as the individual's primary estate planning | Over the years, the legislatures of the States and the | |
| instrument. Over the years, the legislatures of | courts have developed a series of rules of | |
| the States and the courts have developed a | construction reflecting the legislative or judicial | |
| series of rules of construction reflecting the | understanding of how the average testator would | |
| legislative or judicial understanding of how the wish to dispose of property in cases where the | | |
| average testator would wish to dispose of | silent or insufficiently clear. Few legislatures have | |
| property in cases where the will is silent or | yet to extend these rules of construction to revocable | |
| insufficiently clear. Few legislatures have yet | trusts, and even fewer to irrevocable trusts, although | |
| to extend these rules of construction to | a number of courts have done so as a matter of | |
| revocable trusts, and even fewer to irrevocable | judicial construction. See Restatement (Third) of | |
| trusts, although a number of courts have done | Trusts Section 25, Reporter's Notes to cmt. d and e | |
| so as a matter of judicial construction. See | (Tentative Draft No. 1, approved 1996). | |
| Restatement (Third) of Trusts Section 25, | Because of the wide variation among the States on | |
| Reporter's Notes to cmt. d and e (Tentative | the rules of construction applicable to wills, this | |
| Draft No. 1, approved 1996). | Code does not attempt to prescribe the exact rules to | |
| Because of the wide variation among the States | be applied to trusts but instead adopts the philosophy | |
| on the rules of construction applicable to wills, | of the Restatement that the rules applicable to trusts | |
| this Code does not attempt to prescribe the | ought to be the same, whatever those rules might be. | |
| exact rules to be applied to trusts but instead | Rules of construction are not the same as | |
| adopts the philosophy of the Restatement that | constructional preferences. A constructional | |
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the rules applicable to trusts ought to be the preference is general in nature, providing general

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| same, whatever those rules might be. | guidance for re |
| Rules of construction are not the same as | An example is |
| constructional preferences. A constructional | results in a con |
| preference is general in nature, providing | illegality. Rule |
| general guidance for resolving a wide variety of | are specific in |
| ambiguities. An example is a preference for a | resolving speci |
| construction that results in a complete | terms. Unlike |
| disposition and avoid illegality. Rules of | construction, w |
| construction, on the other hand, are specific in | result. See Res |
| nature, providing guidance for resolving | Donative Trans |
| specific situations or construing specific terms. | (Tentative Dra |
| Unlike a constructional preference, a rule of | Rules of con |
| construction, when applicable, can lead to only | individual don |
| one result. See Restatement (Third) of | intention. Rule |
| Property: Donative Transfers Section 11.3 and | enacted statute |
| cmt. b (Tentative Draft No. 1, approved 1995). | construction ca |
| Rules of construction attribute intention to | particular lang |
| individual donors based on assumptions of | meaning to be |
| common intention. Rules of construction are | construction al |
| found both in enacted statutes and in judicial | to anticipate. |
| decisions. Rules of construction can involve the | the predecease |
| meaning to be given to particular language in | source from w |
| the document, such as the meaning to be given | construction ca |
| to "heirs" or "issue." Rules of construction | a donor would |
| also address situations the donor failed to | light of certain |
| anticipate. These include the failure to | These include |
| anticipate the predecease of a beneficiary or to | divorce and wh |
| specify the source from which expenses are to | substitute gift i |
| be paid. Rules of construction can also concern | disposed of du |
| assumptions as to how a donor would have | The most di |
| revised donative documents in light of certain | South Carolina |
| events occurring after execution. These include | (Rules of Cons |
| rules dealing with the effect of a divorce and | section provide |
| whether a specific devisee will receive a | legal effect of |
| substitute gift if the subject matter of the devise | succeeding sec |
| is disposed of during the testator's lifetime. | rules of constru |
| Instead of enacting this section, a jurisdiction | will construction |
| enacting this Code may wish to enact detailed | South Carolina |
| rules on the construction of trusts, either in | Alan Medlin, 7 |

resolving a wide variety of ambiguities. is a preference for a construction that omplete disposition and avoids ules of construction, on the other hand, in nature, providing guidance for ecific situations or construing specific te a constructional preference, a rule of when applicable, can lead to only one Restatement (Third) of Property: ansfers Section 11.3 and cmt. b raft No. 1, approved 1995).

onstruction attribute intention to onors based on assumptions of common ules of construction are found both in ites and in judicial decisions. Rules of can involve the meaning to be given to nguage in the document, such as the be given to "heirs" or "issue." Rules of also address situations the donor failed These include the failure to anticipate se of a beneficiary or to specify the which expenses are to be paid. Rules of can also concern assumptions as to how ld have revised donative documents in in events occurring after execution. le rules dealing with the effect of a whether a specific devisee will receive a ft if the subject matter of the devise is during the testator's lifetime.

direct counterpart in the law of wills is ina Probate Code Section 62-2-601 onstruction and Presumption). That des that the testator's intent controls the of his dispositions, and it refers to ections, which contain some, but not all, struction with respect to wills. Other tion rules are left to the common law in na. As to construction of wills, see S. construction of trusts, either in Alan Medlin, The Law of Wills and Trusts, Volume

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| addition to its rules on the construction of wills | 1, Estate Planning in South Carolina (2002) at |
| or as part of one comprehensive statute | Section 330 et seq. South Carolina Trust Code |
| applicable to both wills and trusts. For this | Section 62-7-112 is in part analogous to SCPC |
| reason and to encourage this alternative, the | Sections 62-1-102 and 62-1-103. SCPC Section |
| section has been made optional. For possible | 62-1-102, entitled "Purposes; Rule of Construction," |
| models, see Uniform Probate Code, Article 2, | provides for a liberal interpretation of the SCPC in |
| Parts 7 and 8, which was added to the UPC in | furtherance of the policies set forth in that section. |
| 1990, and California Probate Code Sections | SCPC Section 62-1-103 provides that the provisions |
| 21101-21630, enacted in 1994. | of the SCPC supplement existing principles of law |
| | and equity. |
| SOUTH CAROLINA COMMENT | |
| The most direct counterpart in the law of wills | |
| is South Carolina Probate Code Section | |
| 62-2-601 (Rules of Construction and Intention). | |
| That section provides that the testator's intent | |
| controls the legal effect of his dispositions, and | |
| it refers to succeeding sections, which contain | |
| some, but not all, rules of construction with | |
| respect to wills. Other will construction rules | |
| are left to the common law in South Carolina. | |
| As to construction of wills, see S. Alan Medlin, | |
| The Law of Wills and Trusts, Volume 1, Estate | |
| Planning in South Carolina (2002) at Section | |
| 330 et seq. South Carolina Trust Code Section | |
| 62-7-112 is in part analogous to SCPC Sections | |
| 62-1-102 and 63-1-103. SCPC Section | |
| 62-1-102, entitled "Purposes; Rule of | |
| Construction,' ' provides for a liberal | |
| interpretation of the SCPC in furtherance of the | |
| policies set forth in that section. SCPC Section | |
| 62-1-103 provides that the provisions of the | |
| SCPC supplement existing principles of law and | |
| equity. | |
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