

## Chapter 7 Utah Unitrust Act

### **22-7-101 Title.**

This chapter is known as the "Utah Unitrust Act."

Enacted by Chapter 244, 2013 General Session

### **22-7-102 Definitions.**

As used in this chapter:

- (1) "Disinterested person" means a person who is not a related or subordinate party, as defined in Section 672(c), Internal Revenue Code, with respect to the person then acting as trustee of the trust, and excludes the settlor of the trust and any interested trustee.
- (2) "Generation-skipping transfer tax" is defined in Section 2611, Internal Revenue Code.
- (3) "Income trust" means a trust, created by either an inter vivos or a testamentary instrument, which directs or permits the trustee to distribute the net income of the trust to one or more persons, either in fixed proportions or in amounts or proportions determined by the trustee. Notwithstanding the foregoing, a trust that otherwise is an income trust may not qualify under this chapter, if it may be subject to taxation under Sections 2001 or 2501, Internal Revenue Code, until the expiration of the period for filing the return, including extensions.
- (4) "Interested distributee" means a person to whom distributions of income or principal can currently be made and who has the power to remove the existing trustee and designate as successor a person who may be a related or subordinate party, as defined in Section 672(c), Internal Revenue Code, with respect to the interested distributee.
- (5) "Interested trustee" means:
  - (a) an individual trustee to whom the net income or principal of the trust can currently be distributed or would be distributed if the trust were to terminate and be distributed;
  - (b) any trustee who may be removed and replaced by an interested distributee; or
  - (c) an individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.
- (6) "Settlor" means a person as defined in Section 75-7-103.
- (7) "Total return unitrust" means an income trust that has been created in or converted under, meets the provisions of this chapter, and is invested and managed under the prudent investor rule of Title 75, Chapter 7, Part 9, Utah Uniform Prudent Investor Act.
- (8) "Trustee" means all persons acting as trustee of the trust, except where expressly noted otherwise, whether acting within their discretion or on the direction of one or more persons acting in a fiduciary capacity.
- (9) "Unitrust amount" means an amount computed as a percentage of the net fair market value of the trust.
- (10) "Year" means a calendar year.

Enacted by Chapter 244, 2013 General Session

### **22-7-103 Trustee powers to convert trusts -- Requirements to make unitrust election.**

- (1) A trustee, other than an interested trustee, or, when two or more persons are acting as trustee, a majority of the trustees who are not interested trustees may, in the trustee's sole discretion and without the approval of the district court:

- (a) elect to release the power to adjust described in Section 22-3-104 and to convert an income trust to a total return unitrust;
- (b) reconvert a total return unitrust to an income trust and reinstate the power to adjust described in Section 22-3-104; or
- (c) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if the trustee adopts a written policy for the trust providing that:
  - (i) in the case of a trust administered as an income trust, future distributions from the trust will be unitrust amounts rather than net income;
  - (ii) in the case of a trust administered as a total return unitrust, future distributions from the trust will be net income rather than unitrust amounts; or
  - (iii) the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust will be changed as stated in the policy.
- (2) The trustee shall mail notice of the proposed action to the settlor of the trust, if the settlor is living, and to all adult qualified beneficiaries, as defined in Section 75-7-103, who, on the date of the unitrust conversion, are current distributees or permissible distributees of trust income or principal, or would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date, assuming nonexercise of all powers of appointment.
- (3) Notice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.
- (4) The trustee's written notice of the trustee's intention to take the proposed action shall include:
  - (a) the name and mailing address of the trustee;
  - (b) the name and telephone number of a person who may be contacted for additional information;
  - (c) a description of the action proposed to be taken and an explanation of the reasons for the action;
  - (d) a copy of the trustee's written policy described in Subsection (1)(c);
  - (e) the time within which objections to the proposed action can be made, which shall be at least 30 days from the mailing of the notice of proposed action; and
  - (f) the date on or after which the proposed action may be taken or is effective.
- (5) A beneficiary may object to the proposed action by mailing a written objection to the trustee stating the objection and the basis or reason for the objection at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.
- (6) If the trustee receives a written objection stating the basis or reason for the objection within the applicable time period, and within 60 days the objecting beneficiary does not subsequently consent in writing, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied.
- (7) A beneficiary who does not object is not estopped from opposing the proposed action in the proceeding.
- (8) If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the proposed action and the reasons for the decision. The trustee's decision not to implement the proposed action may not give rise to liability to any current or future beneficiary.

Enacted by Chapter 244, 2013 General Session

**22-7-104 Trustee powers to convert trusts where there is no trustee other than an interested trustee -- Requirements to make unitrust election.**

If there is no trustee of the trust other than an interested trustee, the interested trustee, or when two or more persons are acting as trustees and are interested trustees, a majority of the interested trustees, in the trustee's sole discretion and without the approval of the district court, may:

- (1) elect to release the power to adjust described in Section 22-3-104 and to convert an income trust to a total return unitrust;
- (2) reconvert a total return unitrust to an income trust and reinstate the power to adjust described in Section 22-3-104; or
- (3) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust if the requirements of Subsections 22-7-103(4)(a) through (f) are completed and the trustee appoints a disinterested person who, in the person's sole discretion but acting in a fiduciary capacity, determines for the trustee:
  - (a) the percentage to be used to calculate the unitrust amount;
  - (b) the method to be used in determining the fair market value of the trust; and
  - (c) which assets, if any, are to be excluded in determining the unitrust amount.

Enacted by Chapter 244, 2013 General Session

**22-7-105 Unitrust election by beneficiary -- Ability to request trustee action.**

- (1) A trust beneficiary may:
  - (a) submit to the trustee a written request to convert an income trust to a total return unitrust;
  - (b) reconvert a total return unitrust to an income trust; or
  - (c) change the percentage used to calculate the unitrust amount pursuant to Section 22-7-108.
- (2) If the trustee declines or fails to act within six months of receipt of the written request, the beneficiary may petition the district court having jurisdiction to order the conversion, reconversion, or change in the unitrust rate, if the action would not alter any amount in the trust that is permanently set aside for charitable purposes unless both income and principal are set aside.
- (3) If the court finds that the conversion, reconversion, or change in the unitrust rate under this section will enable the trustee to better carry out the intent of the settlor, testator, or testatrix and the purposes of the trust, the court shall approve the conversion, reconversion, or change in the unitrust rate.

Enacted by Chapter 244, 2013 General Session

**22-7-106 Settlor created unitrust.**

A settlor may create a trust instrument with terms providing that the trust shall be administered as a total return unitrust under this chapter. A settlor may also create a trust instrument with terms providing that the trust may be administered as either an income trust or as a total return unitrust under this chapter in the discretion of the trustee or a trust protector appointed in the trust instrument.

Enacted by Chapter 244, 2013 General Session

**22-7-107 Valuations.**

- (1) The fair market value of a trust subject to this chapter shall be determined, at least annually, using a valuation date or dates, or averages of valuation dates, that are considered appropriate except that:

- (a) the trustee may not include in the fair market value the value of any residential property or any tangible personal property that the income beneficiary has the right to occupy or use;
  - (b) the trustee may not limit or restrict any right of the beneficiary to use the excluded property in accordance with the governing instrument; and
  - (c) where the terms of the trust do not provide contrary direction, the trustee shall include in the fair market value the value of:
    - (i) the portion of any private or commercial annuity from which the trustee is receiving distributions as a designated beneficiary; and
    - (ii) the portion of any individual retirement account and pension, profit-sharing, stock bonus, or stock ownership plan retirement account from which the trustee is receiving distributions as a designated beneficiary.
- (2) Assets for which a fair market value cannot be readily ascertained shall be valued using valuation methods that are considered reasonable and appropriate, as determined in the sole discretion of the trustee. The assets may be excluded from valuation, in the sole discretion of the trustee, provided all income received with respect to the assets is distributed to the extent distributable in accordance with the terms of the governing instrument.

Enacted by Chapter 244, 2013 General Session

**22-7-108 Unitrust percentages.**

The percentage to be used in determining the unitrust amount shall be a reasonable current return from the trust, which may not be less than 3% nor more than 5%, taking into account:

- (1) the intentions of the settlor of the trust as expressed in the governing instrument;
- (2) the needs of the beneficiaries;
- (3) general economic conditions;
- (4) projected current earnings and appreciation for the trust; and
- (5) projected inflation and its impact on the trust.

Enacted by Chapter 244, 2013 General Session

**22-7-109 Treatment and allocation of income.**

Following the conversion of an income trust to a total return unitrust or upon creation of a total return unitrust by a settlor, the trustee:

- (1) shall treat the unitrust amount as if it were net income of the trust for purposes of determining the amount available, from time to time, for distribution from the trust; and
- (2) may allocate to trust income for each taxable year of the trust, or portion of a taxable year:
  - (a) net short-term capital gain described in Section 1222(5), Internal Revenue Code, for the year, or portion of the year, but only to the extent that the amount allocated, together with all other amounts allocated to trust income for the year, or portion of the year, does not exceed the unitrust amount for the year, or portion of the year; and
  - (b) net long-term capital gain described in Section 1222(7), Internal Revenue Code, for the year, or portion of the year, but only to the extent that the amount allocated, together with all other amounts, including amounts described in Subsection (1), allocated to trust income for the year, or portion of the year, does not exceed the unitrust amount for the year, or portion of the year.

Enacted by Chapter 244, 2013 General Session

**22-7-110 Administration.**

In administering a total return unitrust, the trustee may, in the trustee's sole discretion, but subject to the provisions of the governing instrument, determine:

- (1) the effective date of the conversion;
- (2) the timing of distributions, including provisions for prorating a distribution for a short year in which a beneficiary's right to payments commences or ceases;
- (3) whether distributions are to be made in cash, in kind, partly in cash, or partly in kind;
- (4) if the trust is reconverted to an income trust, the effective date of the reconversion; and
- (5) other administrative issues necessary or appropriate to carry out the purposes of this chapter.

Enacted by Chapter 244, 2013 General Session

**22-7-111 Treatment of underpayments or overpayments.**

In the event of an underpayment to a beneficiary, the trustee shall pay to a beneficiary within a reasonable time, and in the event of an overpayment to a beneficiary, the trustee shall recover from the beneficiary either by repayment by the beneficiary or by withholding from future distributions to the beneficiary, an amount equal to the difference between the amount properly payable and the amount actually paid.

Enacted by Chapter 244, 2013 General Session

**22-7-112 Effect of conversion or reconversion on governing instrument.**

Conversion to a total return unitrust under the provisions of this chapter may not affect any other provision of the governing instrument, if any, regarding distributions of principal. If a total return unitrust is reconverted to an income trust, the trustee's release of the trustee's power under Section 22-7-104, if it was given at the time the trust was converted to a total return unitrust, is void when the trust is reconverted.

Enacted by Chapter 244, 2013 General Session

**22-7-113 Situs.**

This chapter shall be construed as pertaining to the administration of a trust and shall be available to any trust that is administered in Utah under Utah law unless:

- (1) the governing instrument reflects an intention that the beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;
- (2) the trust is a trust described in Section 170(f)(2)(B), 664(d), 2702(a)(3), or 2702(b), Internal Revenue Code; or
- (3) the governing instrument expressly prohibits use of this chapter by specific reference to this chapter.

Enacted by Chapter 244, 2013 General Session

**22-7-114 Trustee's liability.**

Any trustee or disinterested person who in good faith takes or fails to take any action under this chapter may not be liable to any beneficiary or other person affected by the action or inaction, regardless of whether the beneficiary or person received written notice as provided in this chapter and regardless of whether the beneficiary or person was under a legal disability at the time of the delivery of the notice. The beneficiary's or any other person's exclusive remedy shall be to

obtain an order of the district court directing the trustee to convert an income trust to a total return unitrust, to reconvert from a total return unitrust to an income trust, or to change the percentage used to calculate the unitrust amount.

Enacted by Chapter 244, 2013 General Session

**22-7-115 Judicial control of discretionary powers.**

- (1) A court may not change a trustee's decision to exercise or not to exercise a discretionary power conferred by this chapter unless the court determines that the decision was an abuse of the trustee's discretion. A court may not determine that a trustee abused the trustee's discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.
- (2) Where a beneficiary elects to challenge an action or nonaction by a trustee or a disinterested party under the powers and authority granted to the party under this chapter, the beneficiary has the burden of establishing, by a preponderance of the evidence, that the actions or nonactions by a trustee or a disinterested party abused the trustee's or the party's discretion. A beneficiary who fails to state a basis or reason for an objection or fails to prove by a preponderance of the evidence the proposed action should be taken or should not be taken shall be liable to the trust or all other beneficiaries for damages and costs associated with the objection.

Enacted by Chapter 244, 2013 General Session

**22-7-116 Limitation of election.**

An action may not be taken under Section 22-7-103, 22-7-104, or 22-7-105 more frequently than every two years, unless the district court orders otherwise.

Enacted by Chapter 244, 2013 General Session

**22-7-117 Application.**

This chapter applies to every trust or decedent's estate existing on July 1, 2013, or created afterward, except as otherwise expressly provided in the will or terms of the trust or in this chapter.

Enacted by Chapter 244, 2013 General Session

**22-7-118 Trusts for which a marital deduction under the tax code has been taken -- Trusts for which the generation-skipping transfer tax does not apply.**

- (1) This section applies to the following trusts:
  - (a) a trust for which a marital deduction has been taken for federal tax purposes during the lifetime of the spouse for whom the trust was created under Section 2056 or 2523 of the Internal Revenue Code; and
  - (b) a trust to which the generation-skipping transfer tax due under Section 2601 of the Internal Revenue Code does not apply by reason of any effective date or transition rule.
- (2) To the extent necessary to satisfy a tax law requirement or to preserve a tax benefit, the unitrust amount may not be less than the net income of the trust. Net income of the trust shall be determined as if the trust were not a unitrust.

Enacted by Chapter 244, 2013 General Session

