

UNIFORM STATUTORY TRUST ENTITY ACT (2009)
(Last Amended 2013)

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

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IN ALL THE STATES

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WITH PREFATORY NOTE AND COMMENTS

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ON UNIFORM STATE LAWS

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UNIFORM STATUTORY TRUST ENTITY ACT

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UNIFORM STATUTORY TRUST ENTITY ACT (2009)
(Last Amended 2013)

PREFATORY NOTE

Introduction. In large part because of uncertainty over the legal status of the business trust at common law, use of the common-law trust as a mode of business organization declined over the course of the twentieth century. Today, most commercial enterprise that is not organized as a sole proprietorship makes use of the partnership, limited liability company, or corporate forms of organization.

To address the legal uncertainty surrounding the common-law business trust, at least thirty states have enacted legislation that validates the trust as a permissible form of business organization. But the entity that arises under the more recent of these statutes is better understood as a “statutory business trust,” “statutory trust entity,” or “statutory trust” than as a common-law business trust with statutory validation.

A statutory trust differs from a common-law trust in a host of important respects. A common-law trust, whether its purpose is donative or commercial, arises from private action without the involvement of a public official. Because a common-law trust is not a juridical entity, it must sue and be sued, own property, and transact in the name of the trustee and in the trustee’s capacity as such. *See* Jesse Dukeminier & Robert H. Sitkoff, *Wills, Trusts, and Estates* 393-94 (9th ed. 2013). By contrast, a statutory trust arising under the modern statutes is a juridical entity, separate from its trustees and beneficial owners, that has capacity to sue and be sued, own property, and transact in its own name. *See, e.g.*, Delaware Statutory Trust Act §§3803(a)-(b), 3804(a), 3810(a)(2) (2009). A statutory trust is formed by the filing of a certificate of trust by a public official, typically the Secretary of State, in the public record. *See, e.g., id.* §3810(a).

The modern business trust statutes do not prohibit use of a common-law trust for commercial purposes. Instead, these statutes offer transactional planners an additional option, a statutory trust entity, that is governed by the act. Common-law trusts, whether donative or commercial, abide in accordance with the principles of law and equity applicable to such trusts.

Since the 1980s, statutory trust entities have thrived in a variety of niches, particularly in the organization of mutual funds and in the practice of asset securitization. *See* Steven L. Schwarcz, *Commercial Trusts as Business Organizations: Unraveling the Mystery*, 58 *Bus. Law.* 559 (2003); John H. Langbein, *The Secret Life of the Trust: The Trust as an Instrument of Commerce*, 107 *Yale L.J.* 165 (1997); Sheldon A. Jones, Laura M. Moret & James M. Storey, *The Massachusetts Business Trust and Registered Investment Companies*, 13 *Del. J. Corp. L.* 421 (1988). The statutory trust has also come to be used in certain tax-advantaged real estate transactions. *See, e.g.*, Rev. Rul. 2004-86, 2004-2 *C.B.* 191.

The primary stimulus for the drafting of the Uniform Statutory Trust Entity Act has been the increasing popularity of statutory trust entities. Increasing use of the statutory trust as a mode of business organization has led to a recognition that in many states the status of such trusts is

unclear and that much of the existing legislation is out-of-date or incomplete. The case law on statutory trusts is sparse.

The Uniform Statutory Trust Entity Act validates the statutory trust as a permissible form of business organization and invites the states to bring the disparate and often inadequate existing state laws into uniformity.

Models for Drafting. Although the Uniform Statutory Trust Entity Act is the first Uniform Act on the subject of statutory business trusts, comprehensive statutory trust legislation exists in several states. Notable examples include the statutory trust acts of Connecticut, Delaware, Maryland, New Hampshire, Nevada, South Dakota, Wyoming, and Virginia, all of which were consulted in the drafting of this act.

In drafting the substantive provisions of the Uniform Statutory Trust Entity Act, the drafting committee was influenced primarily by the Delaware Statutory Trust Act. In choosing to take the Delaware Statutory Trust Act as its starting point, the drafting committee was strongly influenced by state-level data on statutory trust usage over the last few years. These data, first collected by the Reporter and then later updated by the International Association of Commercial Administrators, indicate that the Delaware Statutory Trust Act dominates the field, both in new statutory trust formations and in the aggregate number of statutory trusts.

For guidance on the law governing a common-law trust, the drafting committee took the Uniform Trust Code as its starting point and looked also to the Second and Third Restatements of Trusts. The public filing and other procedural provisions not unique to the statutory trust form follow the template of the harmonized uniform unincorporated entity acts as of 2013.

Observers and Advisors. The drafting committee benefited from regular consultation with a variety of expert observers and advisors, including representatives from the American Bankers Association, American Bar Association, and Investment Company Institute.

Innovative Provisions. Although much of the Uniform Statutory Trust Entity Act is a reorganization and refinement of provisions found in the Delaware Statutory Trust Act, the Uniform Act contains several innovations, including: (1) specification of rules that are not subject to override in the statutory trust's governing instrument (Section 104); (2) clearer guidance on the applicability of the common law of trusts to a statutory trust (Section 105); (3) prohibition against a statutory trust having a predominantly donative purpose (Section 303); (4) an entire article on series trusts (Article 4); and (5) clearer guidance on the relationship between common-law trusts and statutory trust entities (Section 108).

Default and Mandatory Rules. Most of the Uniform Statutory Trust Entity Act consists of default rules that apply only if the governing instrument does not address a particular issue. The governing instrument may override nearly all of the Act's provisions (see Section 103). The exceptions—that is, the mandatory rules that are not subject to override—are scheduled in Section 104.

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