

## THE MASSACHUSETTS UNIFORM TRUST CODE

July 10, 2012

On July 8, 2012, Governor Patrick signed into law the Massachusetts Uniform Trust Code (the “MUTC”). The new law repeals the trust provisions of the Massachusetts Uniform Probate Code, which went into effect earlier this year. The MUTC takes effect immediately and, apart from a few exceptions, applies to all trust instruments, whenever created. In general, the MUTC will serve as default trust rules, as most of the provisions of the MUTC can be overridden by the terms of a trust instrument.

### Key Features:

**Non-Judicial Settlement Agreements:** The MUTC allows interested parties to enter into binding non-judicial settlement agreements regarding matters such as trust interpretation, approval of accounts, directions to trustees, trustee liability and trustee powers. In addition, the MUTC allows trustees to resign and successor trustees to be appointed without court approval. These new improvements simplify the process of trust administration and encourage out-of-court resolution of disputes.

**Virtual Representation:** The MUTC alters prior law to allow persons who lack legal capacity to be represented by others where there is no conflict of interest. For example, parents can represent the interests of minor or unborn children and conservators and guardian may represent the interests of a ward or protected individual. Previously, if a probate or trust matter could potentially impact the interests of minor, unborn, incapacitated or unascertainable beneficiaries, the court would appoint a *guardian ad litem* to represent the interests of such persons, which would often entail additional delay and cost in the resolution of the matter. These new rules should reduce or eliminate the need for *guardians ad litem* and further facilitate out of court settlement agreements.

**Trust Revocability:** Trusts established after the effective date of the MUTC are now presumed revocable unless the instrument expressly provides otherwise, which reverses the longstanding default rule in Massachusetts.

**Trust Modification:** Consistent with current Massachusetts law, a court may approve the modification or termination of an irrevocable, non-charitable trust with the consent of all of the beneficiaries if the modification or termination is not inconsistent with a material purpose of the trust. In addition, a trust can now be modified or terminated even if it is inconsistent with a material purpose of the trust with the consent of the settlor and beneficiaries. Trusts may now be combined or divided for tax or other administrative reasons without court approval and Trustees may terminate a trust with a value of less than \$200,000 if the administrative costs do not warrant continuing to administer the trust.

**Majority Rule:** Trustees may now act by majority decision. Massachusetts law previously required Trustees to reach a unanimous decision absent a contrary provision in the trust instrument. This change is prospective only.

**Duty to Inform and Report to Beneficiaries:** Trustees must now keep certain qualified beneficiaries reasonably informed of trust administration. Within 30 days of accepting a trusteeship (or of the date on which a trust became irrevocable), a trustee must inform the beneficiaries) in writing of the trustee's name and address. A Trustee is required to provide information about the trust to the beneficiaries upon request. In addition, unless the trust provides otherwise, a Trustee must send annual accounts to current beneficiaries, and upon request to other qualified beneficiaries.

**Trustee Removal:** Under prior law, a Trustee could only be removed for cause. Under the MUTC, a Trustee may now be removed (1) for serious breach of trust, (2) because of lack of cooperation among co-trustees that substantially impairs trust administration, (3) where because of unfitness or persistent failure to administer the trust effectively, removal is in the trustees' best interests, or (4) where there is a substantial change of circumstances or removal is requested by all qualified beneficiaries and removal is in the best interests of the beneficiaries and is not inconsistent with a material purpose of the trust.

**Pet and Purpose Trusts:** The MUTC repeals and replaces the current Massachusetts Pet Trust statute allowing for trusts for the care of one or more animals. Additionally, "purpose trusts" are now authorized. A purpose trust has no beneficiaries, but instead serves to further one or more valid purposes of the settlor.