

# The UDTA Paves the Way for Creative and Thoughtful Divided Trusteeship

February 1, 2023 | 3:15 – 4:15 p.m.

The New England Fellows Institute

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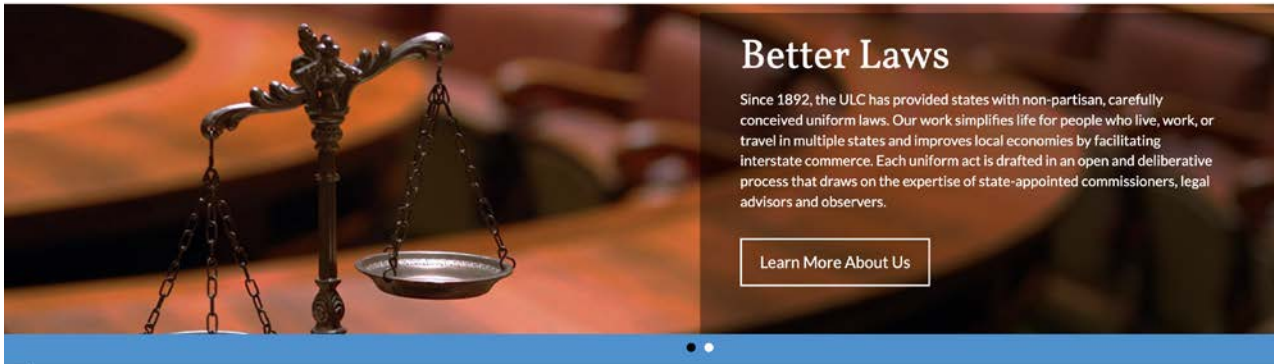
# Overview

- **Uniform Laws and Trusts and Estates**
- **Four Contributions of the UDTA**
  - Scope and Exclusions
  - Fiduciary Duties
  - Nonfiduciary Matters
  - Reconciling Cotrusteeship
- **Use of UDTA as Checklist for Drafting**

# The Uniform Law Commission



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## Better Laws

Since 1892, the ULC has provided states with non-partisan, carefully conceived uniform laws. Our work simplifies life for people who live, work, or travel in multiple states and improves local economies by facilitating interstate commerce. Each uniform act is drafted in an open and deliberative process that draws on the expertise of state-appointed commissioners, legal advisors and observers.

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### New Acts

Ready for Enactment

The ULC approved five new acts at the Annual Meeting on July 26, 2023. Enactment kits are available for download.

[View New Acts](#)

### Upcoming Events

#### Tenants in Common Transactions Act

Drafting Committee - Online

Tuesday, October 17, 2023, 01:00 PM - 03:00 PM CT

#### Uniform Family Law Arbitration Act: Expanding Avenues of Dispute Resolution

Legislative Webinar

Wednesday, October 18, 2023, 12:00 PM - 01:00 PM CT

#### Probate and Non-Probate Transfer Integration

Study Committee - Online

Wednesday, October 18, 2023, 12:00 PM - 02:00 PM CT

[View All Events](#)

# Uniform Trust and Estate Acts

- Uniform Trustee Powers Act (1964)
- Uniform Probate Code Article VII (1969)
- Uniform Statutory Rule Against Perpetuities (1986)
- Uniform Prudent Investor Act (1994)
- Uniform Principal and Income Act (1931, 1962, 1997)
- Uniform Trust Code (2000)
- Uniform Trust Decanting Act (2015)
- Uniform Directed Trust Act (2017)
- Uniform Fiduciary Income and Principal Act (2018)
- Conflict of Laws in Trusts and Estates (in progress)

# Uniform Directed Trust Act

- **From the Prefatory Note**
  - “The main contribution of the act is to address the many complications created by giving a power of director to a trust director, including the fiduciary duty of a trust director and the fiduciary duty of a directed trustee.”

# The Uniform Directed Trust Act

**2017** | Directed Trust Act

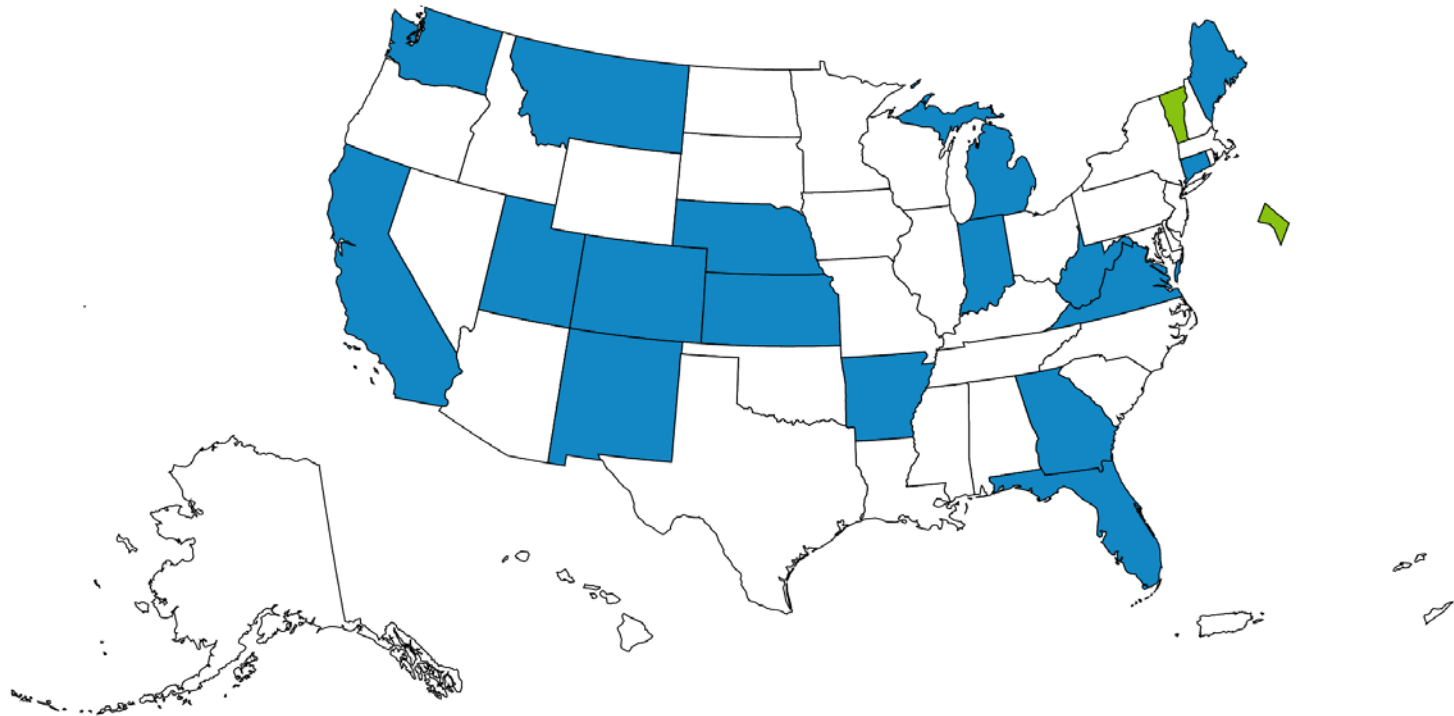
Probate, Trusts, & Estates

Map

Bill List

Summary

Enactment History



Enactment Map ● Introduced ● Enacted

# 1. Scope and Exclusions (1/2)

- **Capacious Scope Subject to Exclusions**
  - Defining a “Power of Direction”
    - Defining “directed trust,” “directed trustee,” and “Trust Director”
  - An Enabling Statute
    - Parameters of “power of direction” set by terms of the trust
  - Further Powers by Default
    - Further powers “appropriate” to exercise of power of direction

# 1. Scope and Exclusions (2/2)

- **The Exclusions**
  - Nonfiduciary Powers of Appointment
    - A nonfiduciary distribution committee?
  - Power to Appoint or Remove a Trustee or Trust Director
    - Preserves existing law
  - Power of Settlor over Revocable Trust
  - Power of Beneficiary
  - The Settlor's Tax Objectives
    - E.g., power to substitute assets for grantor trust



## 2. Fiduciary Duties (1/3)

- **Trust Directors: Absorption of Trustee Duties**
  - Default and Mandatory Rules
    - Apply the state's law applicable to a trustee
  - Sensitivity to Context
    - Power of direction can take many forms
  - Exclusion for Medical Professionals
    - E.g., power to determine capacity or sobriety
  - Further Rules for Charitable and Supplemental Needs Trusts
    - Areas of more intensive regulation

## 2. Fiduciary Duties (2/3)

- **Directed Trustees**
  - Existing Standards
    - Common law/UTC § 808
    - No Duty
    - Willful Misconduct
  - The UDTA's Willful Misconduct Rule
  - Reasonable Action
    - Differentiating decision to comply from executing on that decision
  - Limits on a Power to Release a Trustee

## 2. Fiduciary Duties (3/3)

- **Information Sharing Among Trustees and Trust Directors**
  - The UDTA Solution
  - Safe Harbor for Reliance on Information
- **Cross-Monitoring**
  - No Duties to Monitor, Inform, or Advise
  - Survival of General Duty of Disclosure
  - No Assumption of Duty

# 3. Nonfiduciary Matters

- **Adapting the Subsidiary Rules of Trusteeship**
  - Rule of Decision for Jointly Held Powers
  - Office of Trust Director
    - Acceptance, bond, compensation, resignation, removal, and vacancy
  - Litigation Issues
    - jurisdiction, limitations, and defenses
  - Continues Absorption Strategy

# 4. Directed Trust versus Cotrusteeship

- **Reconciling Cotrusteeship**
  - Traditional Law
  - Cotrusteeship under the UDTA
  - Law of Cotrusteeship by Default
  - Authorizing Opt-Out from Traditional Cotrusteeship Law
  - A Question of Construction
  - Title Holding and Third Party Rights

# Q&A

- Questions? Comments?