

**Missouri Bar
Probate and Trust Committee**

**Missouri Uniform Trust Code
Remaining Issues
For
Discussion at the Spring 2003 Committee Meeting
And
Technical Corrections to
Revised Missouri Principal and Income Act (2001)
(4-14-03)**

IMPORTANCE

It is the intent of the subcommittee on Trust Law Revision to obtain final and full approval of the Missouri Uniform Trust Code (MUTC) and revisions to the Missouri Principal and Income Act (2001) at the Spring Committee meeting on May 9, 2003 in Jefferson City. While a lot was accomplished at the 2002 Fall meeting, much work remains.

This document summarizes the primary issues that will face the full Probate and Trust Committee at the Spring Meetings. If you are interested in participating in the Spring Meeting please read and consider this document, along with the latest draft of the MUTC and other materials posted on the MOBAR Probate and Trust Committee web page. Written comments and questions received by the chair, Scot W. Boulton (scot.w.boulton@usbank.com) before April 15, 2003 will really help the Committee finalize the MUTC and smooth the full Committee's discussion on May 9th.

PASSED SECTIONS

At the Meeting of the Missouri Bar Probate and Trust Committee on November 22, 2002 the full committee passed many of the uncontroversial sections of the proposed Missouri Uniform Trust Code. These were sections 101, 102, 104, 105.1, 105.2(1)-(3), 105.2(5)-(7), 105.2(10)-(14), 106, 107, 108.1, 108.3-6, 109, 111, 201, 202, 204 amended, 301, 302, 304, 401, 403, 404, 405, 406, 407, 408, 409, 410, 412, 413, 414, 415, 416, 417, 502, 504, 506, 507, 601, 603, 701 amended, 702, 703, 704, 705, 707, 708, 709, 801, 803, 804, 805, 806, 807, 808 amended, 809, 810, 811, 812, 814, 815, 816, 817, 1001, 1002 amended, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1011, 1012, 1013, 1101, 1102, 1103, and 1104.

PENDING SECTIONS

The subcommittee could not resolve some MUTC issues, and those sections were passed for discussion and decision by the full Committee at the Spring 2003 Committee Meeting. Those sections are sections 103, 105.2(4), (8) & (9), 108.2, 110, 112, 303, 305, 402, 411, 501, 503, 505, 602, 604, 706, 802, 813, 1105, & 1106. The remainder of this memo is a discussion of the pending sections.

1. Definition of Qualified Beneficiary and Notice, MUTC sections 103, 105.2(8)(9), 110, and 813.

Background. The MUTC has incorporated many changes with respect to the various definitions affecting beneficiaries and the notice requirements of Uniform Trust Code (UTC) section 813. Concern has been expressed that the definition of **qualified beneficiary** in the UTC is too broad as it controls many things in the UTC, such as giving notice.

UTC Provisions. The definition of qualified beneficiary is really an issue about the notice provisions of section 813 and the way that those notice provisions interact with other UTC provisions. UTC section 105(b)(8) provides that the governing instrument cannot override the duty of a trustee under UTC section 813 to notify a qualified beneficiary of an irrevocable trust over age 25 of the existence of a trust and their right to other information. In UTC section 103(12) a “qualified beneficiary” is defined as a current beneficiary or a remainder beneficiary who would take if the trust terminated at the time qualification is determined (referred to in this document as a “first line remainder beneficiary”). In UTC section 103(2) a “beneficiary” is defined as any person with any beneficial interest in the trust, no matter how remote.

UTC section 110(a) provides that any beneficiary who requests it can also be treated as a qualified beneficiary. UTC section 110(b) provides that any charitable organization expressly entitled to receive benefits from a trust is treated as a qualified beneficiary, no matter how remote that charitable organization’s interest. The Attorney General is treated as a qualified beneficiary of all charitable trusts and interests, no matter how remote or contingent.

UTC section 813 gives different types of beneficiaries the power to request different types of information and also requires a trustee to give information to certain classes of beneficiaries. The trustee has the greatest obligation to qualified beneficiaries.

A trustee has duty to keep all qualified beneficiaries reasonably informed about the administration of the trust, and all material facts necessary for the protection of their interests, UTC section 813(a). Under UTC section 813(b) a trustee must contact all qualified beneficiaries within 60 days of accepting a trusteeship. Within 60 days of the trustee knowing that an irrevocable trust has come into existence, the trustee must notify all qualified beneficiaries of the trust’s existence, the identity of the settlor(s), the right to request a copy of the trust instrument, and the right to request annual trust reports.

The trustee also has a duty to provide beneficiaries certain information on request. Any beneficiary is entitled to a copy of the trust instrument on request, UTC section 813(b)(1). Any Beneficiary is entitled to information related to administration of the trust upon request, unless unreasonable under the circumstances, UTC section 813(a).

A trustee’s duty to provide annual accountings is relatively limited. A current beneficiary is entitled without request to an annual accounting and an accounting on termination. Any beneficiary (whether qualified or unqualified) can request and receive annual accountings.

Another concern is that UTC section 813 could create a fishing expedition where a beneficiary requests notice for “all trusts of which I’m a beneficiary.” The UTC is not clear that the UTC section 813 notice requirements have prospective effect only. Would notice have to be given with respect to all existing irrevocable trusts?

MUTC Provisions. MUTC section 105.2(8) provides that notice to qualified beneficiaries should only be mandatory as to permissible distributees who are over age 21. A definition of permissible distributee is added in MUTC section 103(12) and “means a beneficiary who is a current distributee of trust income or principal, whether mandatory or discretionary.” Unlike the UTC, the MUTC would accommodate a settlor’s desire to retain the identity of a current income beneficiary private from remainder Beneficiaries if the settlor so provided in the governing instrument.

The MUTC has also been altered in that the UTC right of a non-qualified beneficiary to be treated as a qualified beneficiary under section 110(a) has been eliminated. The subcommittee felt that UTC section 110(a) was unnecessary. MUTC 813.1 (UTC section 813(a)) gives any beneficiary a right to receive a reasonable amount of information necessary to protect his or her interest, and any beneficiary can receive current accountings on request.

In addition, the subcommittee significantly restricted the rights of charitable beneficiaries to receive information in UTC section 110(b) & (c). The subcommittee decided that charitable beneficiaries should only be treated as qualified beneficiaries if their interests are the same as an individual qualified beneficiary, e.g. a current beneficiary, a contingent current beneficiary, or a first line remainder beneficiary. MUTC section 110.1 now provides that a “specified charitable organization” has the same rights as a qualified beneficiary.

The basic notice requirements of the UTC have been kept intact in MUTC section 813. However, the MUTC adds three new subsections: First, MUTC section 813.5 provides that a trust may charge a reasonable fee for providing information under section 813. Second, the last sentence of section MUTC 813.2 provides that section 813.2(2) and 813.2(3) are prospective only and do not apply to a trust that is irrevocable on the effective date of the MUTC. Third, section 813.6 provides that any request for information has to be made with respect to a specific trust.

Summary of MUTC Notice Provisions:

- Any beneficiary has the right under MUTC section 813.1 to request information related to the trust, including a right to a copy of the trust instrument upon request (MUTC section 813.2(1)).
- Any qualified beneficiary (current beneficiaries and first line remaindermen) has the right under MUTC section 813.1 to be kept informed about the administration of the trust.
- Any qualified beneficiary has the right under MUTC section 813.2 (2) & (3) to be provided specific information upon the acceptance of a trusteeship or a trust becoming irrevocable (this information is the same as required by UTC section 813(b) & (c) described above).
- Any qualified beneficiary must be notified of a change in the method or rate of the trustee’s compensation under MUTC 813.2(4).
- Any permissible distributee (a beneficiary with a current trust interest) has an automatic right to receive trust accountings under MUTC 813.3.
- Any beneficiary has the right to request and receive trust accountings under MUTC section 813.3.
- Any of these above notice requirements can be waived by the settlor in the governing document except:

- ◆ the right of a permissible distributee (current beneficiary) of an irrevocable trust over age 21 to be informed of the existence of the trust and the right to request trustee's reports and other information reasonably related to the administration of the trust (MUTC section 105.2(8)), and
- ◆ the duty to respond to the request of a beneficiary of an irrevocable trust for accountings and other information reasonably related to the administration of the trust (MUTC section 105.2(9)).
- The beneficiaries of charitable interest in trust have the same rights as qualified beneficiaries if the interest is the same as that of a qualified beneficiary, MUTC section 110.
- The right of a qualified beneficiary under MUTC section 813.2 (2) & (3) to be provided specific information upon the acceptance of a trusteeship or a trust becoming irrevocable will only apply to trusts that become irrevocable after the effective date of the UTC).
- Any request for information under MUTC section 813 must be made with respect to a specific trust and must identify the trust to the extent necessary for the trustee to locate the trust records, MUTC section 813.6.

Issues. The provisions of MUTC section 813 are generally in conformance with current Missouri law. Clearly any beneficiary, no matter how remote, has the right to a trust accounting and other trust information, *Siefert v. Leonard*, 975 S.W.2d 489 (Mo.App. E.D.1998). The one expansion of present law is probably contained in MUTC section 813.2(2) & (3) in that there is no present mandatory requirement to provide any information to any remainder beneficiary on the acceptance of a trust or when a trust becomes irrevocable.

The subcommittee believes that most concerns regarding the notice provisions have been addressed by expanding that ability of a settlor to waive the notice requirements, deleting the UTC section 110(a) right of any beneficiary to become a qualified beneficiary on request, and making the right of qualified beneficiaries to that type of information prospective only.

2. Duty of Appropriate Situs of Administration

MUTC section 108

Background. Section 1-108(b) of the UTC provides that “A trustee is under a continuing duty to administer the trust at a place appropriate to its purposes, its administration, and the interests of the beneficiaries.” The UTC comments to this section do not provide any authority from any jurisdiction for such a duty. The subcommittee has not found any common law authority to support the existence of such a duty, but 20 states have adopted a version of Section 7-305 of the Uniform Probate Code, which does impose such a duty. The cases seem to analyze this as a settlor's intent issue. The subcommittee believes that the creation of such a duty may place an inappropriate burden on a trustee to analyze the administration of each trust on a continuing basis. However, the subcommittee did feel that a trustee should move the situs of a trust only in the event that it was appropriate for trust purposes and its administration and in the interests of the beneficiary.

MUTC Provisions. The MUTC does not have a corresponding provision to UTC section 108(b). MUTC section 108.2 does provide a non-judicial mechanism for a trustee to

change the situs of a trust. The trustee does have to find that the new jurisdiction is appropriate.

Issue. Whether Missouri will enact a statute placing a new fiduciary duty on a trustee to analyze the administration of a trust to determine where the most appropriate place of administration might be.

The subcommittee believes that an affirmative duty of this nature should not be imposed on trustees. However, in moving the situs of a trust under MUTC section 108.2, the subcommittee felt that the trustee should determine whether the new situs should be “appropriate to its purposes, its administration, and the interests of the beneficiaries.”

3. Effect of Divorce on Trust Interests MUTC section 112

Background. UTC section 112 is an optional section whereby a state could make all rules of construction applicable to wills also applicable to trusts. Missouri law of testamentary document construction contains two sets of rules, those contained in Chapter 461 applicable to non-probate transfers and those contained in Chapter 474 applicable to wills. These rules are inconsistent.

The subcommittee concluded that a study should be made with a view toward creating one set of rules of construction applicable to trusts, wills, and non-probate transfers and that such a task was beyond the scope of its work. Moreover, there was no clear consensus as to what current rules of construction should be made applicable to trusts.

MUTC Provisions. The subcommittee did insert a provision disinheriting a spouse if the settlor’s marriage was dissolved or annulled finding that the rule from the non-probate transfer statute was the best model. This section is modeled on section 461.051, R.S.Mo.

MUTC section 112.1 provides that any beneficial terms or fiduciary appointment in favor of the settlor’s spouse or the spouse’s relatives are revoked upon divorce or annulment. For such purposes the spouse or relative is treated as dying on the date of the divorce or annulment. This rule may be waived or made ineffective by a court or by contract or other agreement.

Issue. Whether a rule similar to that already in effect for Wills and Non-probate transfers that revokes beneficial provisions and fiduciary appointments in favor of a spouse and the spouse’s relative on divorce, should become Missouri trust law.

4. Representation by Fiduciaries and Parents MUTC section 305

Background. MUTC Section 456.3-303 is essentially that same as the UTC section. However, some changes have been made for compliance with Missouri law.

MUTC Provisions. The Subcommittee inserted a provision that a conservator ad-litem can represent an estate in the event a conservator has not been appointed or cannot act

with respect to a particular matter. The order of the representation provisions has been altered to better reflect the priority.

Issues. Whether a guardian should be able to take any action with respect to the estate of a protectee. The subcommittee determined that a guardian should be able to represent financial interests in these limited circumstances so as to avoid the appointment of a conservator for the sole reason of representing a protectee in a trust matter.

Whether this section creates broad representation rules that apply outside the trust context. The subcommittee determined that these rules apply only to trusts (MUTC section 102).

5. Appointment of Representative MUTC section 305

Background. MUTC and UTC provisions are essentially the same.

Issue. At the Fall Probate and Trust Committee meeting a question was raised as to whether this statute should address the payment of fees of the representative and the representative's counsel. The subcommittee determined that this matter should be left to the discretion of the court, as is the common practice today with the appointment of guardians ad-litem. This should be addressed in the order appointing the representative, or in subsequent court orders.

6. Requirements for Creation of Trust MUTC 402

Background. UTC and MUTC provisions are the same, except that MUTC section 402.1 provides that this does not apply to trusts created for the benefit of prisoners.

Issue. There was a minority view on the subcommittee that more formality is needed in the execution of trusts because of their wide use as will substitutes and the consequent rise in fraud associated with their use. It was suggested that notarization or witnesses should be required for the valid creation of a trust. The subcommittee rejected all such proposals as possibly reducing the usefulness of trusts. There was also concern that the intent of a settlor might be frustrated where documents that clearly amend or revoke a trust failed to meet additional requirements.

7. Modification of Irrevocable Trusts on Consent MUTC section 411

Background. Trust modification or termination upon consent of all beneficiaries is allowed by UTC section 411(b) if "not inconsistent" with a material purpose of the trust. This is a variant of the so-called *Clafin* rule based on the case of *Clafin v. Clafin*, 149 Mass. 19, 20 N.E.454 (1889). In 1983 Missouri statutorily rejected the *Clafin* rule with the enactment of section 456.590.2 and chose to allow the beneficiaries to modify trusts by consent so long as beneficiaries not directly represented received benefit.

MUTC Provisions. There has not been significant opposition to current section 456.590.2 R.S.Mo. or support that the *Clafin* rule should be restored. Section 456.590.2 has been widely used, but its use has produced only two reported cases in 18 years. Thus the substance of section 456.590.2 has been incorporated into MUTC section 456.4-411B.1 continuing Missouri's rejection of the *Clafin* rule.

Experience with the statute, however, has raised practical concerns that are addressed in MUTC section 456.4-411.2. First, there is concern whether there is a true analysis of the benefit of the variation or termination to the minor, unborn, or unascertained beneficiaries in actions brought under section 456.590.2. Assuming all adult beneficiaries have consented, this is the only true statutory requirement for a successful action. Faced with the consent of all adult beneficiaries, a judge may view the matter as similar to the entry of a consent judgement.

Those classes of beneficiaries who are either unrepresented or deemed represented by others will almost invariably be the remainder beneficiaries whose interests may be extinguished by the termination. To address this concern MUTC section 456.4-411B.1 requires that a court find that the interests of the minor, unborn, and unascertained beneficiaries be adequately protected by any proposed variation or termination. This should give parties to a section 456.590.3 action and the court more flexibility in crafting remedies instead of applying a rigid test to terminations or modifications.

The last sentence of proposed 456.411B.1 provides another measure of protection for minor, unborn, and unascertained beneficiaries. The court is required to appoint a representative under 456.3-305 upon the motion of any party, unless the court finds good cause not to do so. Of course, a court should always have authority to appoint a representative on its own motion.

Issues. Whether Missouri should continue to reject the *Clafin* Doctrine in its UTC form and continue with its more liberal rule as now in effect in section 456.590.2

Whether more protection should be granted to non-consenting beneficiaries in that there will be a presumption of the appointment of a representative for those beneficiaries on motion of any party.

The subcommittee recommends that provisions similar to present section 456.590.2 should be retained in Missouri law but that protection for non-consenting beneficiaries should be increased.

8. Rights of Beneficiary's Creditor or Assignee **MUTC section 501**

Background. UTC section 501 provides that a creditor or an assignee of a beneficiary who levies on the interest of a beneficiary that is not protected by a spendthrift trust must go to court to do so. The point was made at the November 2002 Probate and Trust Committee meeting that this would change current Missouri law, where a judgement creditor or assignee can execute on assets without a formal court proceeding.

MUTC Provisions. The subcommittee agreed with this concern and has amended this section so that a separate court proceeding is not necessary. Court relief can be sought if relief from the levy is appropriate in the circumstances.

Issue. Whether a court proceeding should be required to levy on unprotected beneficial trust interests. The subcommittee determined that this is unnecessary and made the UTC provision consistent with present Missouri law.

9. Exceptions to Spendthrift Provision MUTC section 503

Background. UTC section 503.2 provides that trust principal or income can be reached by a spouse, former spouse, or a child for court ordered support or maintenance, even if the trust contains a spendthrift clause to the extent the beneficiary is entitled to a distribution. Present section 456.080.1 provides that a spouse, former spouse, or child can reach trust income in that situation, irrespective of the beneficiaries beneficial interest in the income, *Brandt v. Brandt*, 273 S.W.2d 734 (Mo. App. ED 1954)

MUTC Provisions. The subcommittee conformed UTC section 503 to Missouri law. Subsection .2 now provides that a spouse, former spouse, or child can receive trust income (but not principal) in proportion to the beneficiaries interest in the trust, depending upon the number of beneficiaries currently entitled to income distributions. For example, if a trust provides for discretionary income distributions to A and B, A's child can attach up to one-half of the income of that trust to satisfy a child support judgment.

Furthermore, MUTC section 504 was amended to delete references to the rights of children and spouse's of a discretionary income beneficiary to discretionary distributions.

Issue. Whether Missouri law should be altered so that trust principal from a spendthrift trust is available to provide maintenance and support for a child, spouse, or a former spouse. The subcommittee recommends that present Missouri law should continue in effect.

Whether a child, spouse, or former spouse be limited to only that distribution to which a beneficiary is entitled, or should the entire income be reachable, to the extent of the beneficiaries interest. The subcommittee recommends that present Missouri law should continue in effect.

10. Creditor's Claims Against Settlor MUTC section 505

Background. Under UTC section 5-505(a) a settlor cannot protect assets from creditors by the use of spendthrift provision in a trust. All assets of revocable trusts are subject to the claims of the settlor. Under the UTC approach, the creditors of a settlor of an irrevocable trust can reach "the maximum amount that can be distributed to or for the settlor's benefit." This is not in accord with the Missouri's present limited exception to that rule. Terms of a trust that prevent the interest of a beneficiary from being either voluntarily or involuntarily transferred are valid in Missouri, Mo.Rev.Stat. 456.080.2. Section 456.080.3 provides that a spendthrift provision does protect a settlor's retained interest in an irrevocable trust to the extent that the settlor is one of a class of beneficiaries entitled to trust income or principal in the trustee's discretion.

The UTC provides that assets of a trust that is revocable immediately prior to the settlor's death are subject to the claims of the settlor's creditors, UTC section 505(a)(3). Costs of administration of the settlor's estate, funeral and disposal of remains, and statutory

allowances to spouses and minor children are also payable from the assets of a revocable trust. However, these claims and other expenses are only recoverable “to the extent the settlor’s probate estate is inadequate to satisfy those claims, costs, expenses, and [allowances].” This UTC section fails to cover many issues.

Missouri currently has two statutes that apply to a creditor’s ability to reach trust assets which are more detailed than the UTC and cover issues not covered in the UTC. Section 456.610 allows a trustee to publish notice similar to the notice in a probate proceeding. Creditors who are owed a debt are barred from collecting that debt if they have not received payment or initiated collection proceedings within six months from the date of publication.

Section 461.300 establishes a rather elaborate procedure for the satisfaction of claims from non-probate property when the assets in the probate estate are insufficient. If an asset not subject to probate administration is subject to the satisfaction of a decedent’s debts immediately prior to death, it can be brought back into the probate estate to satisfy claims identified in the statute, section 461.300.1. This is accomplished by a separate action filed against the person holding title to the non-probate property. This action is completely derivative of a valid claim filed in the probate action.

There is a conflict between the provisions of current sections 456.610 and 461.300. Both statutes purport to cut off claims of creditors of a deceased settlor of a terminating revocable trust, yet each has different procedures and claim periods. It is not clear whether a valid probate claim can be satisfied from trust assets through the procedure set forth in section 461.300 if the trust non-claim period under section 456.610 has run.

MUTC Provisions. UTC provisions of section 505 were altered so that the MUTC incorporates Missouri’s limited exception for protection of a settlor’s retained discretionary interest as one of a class of beneficiaries presently in R.S.Mo 456.080.3. This exception should allow estate-planning techniques that would require a settlor to retain some interest in a trust that should not be included in the settlor’s gross estate for federal estate tax purposes.

MUTC does not contain the UTC section 5-505.3 provisions governing the rights of a creditor of a deceased settlor to reach trust assets. Present Missouri section 461.300 and section 456.610 will continue to control. A new provision has been inserted as MUTC section 505.4(2) that resolves the present conflict between the provisions of current sections 456.610 and 461.300. A claim barred by published notice under MUTC section 456.5-505.4 cannot be subsequently satisfied through a later proceeding under section 461.300.

Issues. Whether the current exception in Missouri law for spendthrift protection for self settled trusts should be continued.

Whether publication of notice under MUTC section 505.4(2) (successor provisions to current section 456.610) should override the probate marshalling of assets action of section 461.300.

11. Amendment of Revocable Trust MUTC section 6-602.3

Background. UTC section 6-602(c) provides that a revocable trust can be amended or revoked by the settlor in substantial compliance with a method provided in the terms of the trust. If the terms of the trust don't provide a method of revocation or amendment or "the method provided in the terms is not expressly made exclusive" then the trust can be amended by merely executing a later will or codicil, specifically devising property "that would otherwise of passed according to the terms of the will or trust," or by any other clear and convincing manifestation of the settlor's intent.

Problems may arise by allowing a trust with an explicit mechanism of amendment to be amended in any expression of intent that is clear and convincing or by otherwise disposing of the property. This would seem inconsistent with Missouri case law. In *Love v. St. Louis Union Trust Company*, 497 S.W.2d 154, 159 (Mo.banc 1973), the Missouri Supreme Court held that the last will and testament could not amend the provisions of a prior intervivos trust established by the testator. Furthermore, few present trust documents explicitly make the method of amendment or revocation in the trust document "exclusive."

A question of intent would arise each time as to whether the settlor intended that method to be exclusive. UTC section 602(g) does provide some protection to a trustee that distributes assets without knowledge of an amendment or revocation. However, the subcommittee felt that this provision was too broad and would create uncertainty as to trust distributions.

MUTC Provisions. MUTC section 602.3 provides that the method of revocation or amendment provided by the terms of the document must be followed. If no method of revocation and amendment is specified in the document, then a trust can be amended or revoked by "any other method manifesting clear and convincing evidence of the settlor's intent" including a later duly probated will or codicil expressly referring to the trust.

Issue. Whether a trust with an explicit amendment and revocation clause should be amendable by the settlor's probated will.

12. Limitation on Action Contesting Validity of Revocable Trust MUTC section 604

Background. UTC section 604 provides that a judicial proceeding contesting the validity of a revocable trust must be brought within the earlier of three years of the settlors death or 120 days after the trustee sent the contestant a copy of the trust instrument and basic information regarding the trust. The time periods in the UTC were intended to be made consistent with probate practice in each state. While the Missouri self-executing statute of limitations for wills is one year, many subcommittee members felt that a one year period did not provide enough of an incentive for trustees to provide copies of the trust document and other basic information to non-beneficiaries, such as the settlor's heirs-at-law. This section is an attempt to balance the competing policies of allowing settlors to dispose of assets in a private manner, while giving persons with a property interest in the trust assets as heirs adequate notice that their interests are being foreclosed.

MUTC Provisions. MUTC section 604 adopts the UTC approach with a change of applicable time periods (2 YEARS after death or 6 MONTHS after trustee sends information) and adds a third time period barring trust contests. That time period expires at

the time the will contest period and expires with respect to the probate of the settlor's will if the trust is entitled to a distribution under the settlor's will and a copy of the trust instrument was filed with the probated division within 90 days of the first publication of notice of granting of letters.

This last requirement will affect the present practice of indirectly subjecting revocable trusts to the will contest statute of limitations by including an incorporation by reference clause in the pour-over provision of a probated will. This technique will not work under this statute, unless the trust instrument is filed in probate. A new subsection, MUTC section 604.2, was added to make it clear that a trustee that sends copies of trust documents and provides other required information is not violating any duty of privacy owed the settlor or the beneficiaries.

Issues. Whether MUTC section 604 provides a satisfactory period and method for foreclosing claims contesting the validity of a revocable trust.

13. Removal of Trustee on Consent MUTC section 706.2(4)

Background. UTC section 706(b)(4) provides that a court may remove a trustee if "removal is requested by all of the qualified beneficiaries" and the court finds that the removal of the trustee best serves the interests of all beneficiaries, is not inconsistent with a material purpose of the trust, and there is a suitable successor trust available. This section creates a significant new ground for trustee removal. At common law a trustee can be removed only for cause.

MUTC Provisions. MUTC section 706.2(4) has retained this new ground for trustee removal. However, this issue caused considerable discussion and the subcommittee could not agree on whether to remove the language "removal is requested by all of the qualified beneficiaries." The subcommittee will defer to a vote of the full Probate and Trust Committee on this issue.

Issue. Whether the words "removal is requested by all of the qualified beneficiaries" should be removed from MUTC section 706.2(4).

14. Exceptions to Duty of Loyalty MUTC section 802.6

Background. UTC section 802 states the common law fiduciary duty that a trustee must administer a trust solely in the interest of the beneficiaries. Narrow exceptions to that duty are authorized in UTC section 802(f), investments in proprietary mutual funds and UTC section 802(h), trustee compensation arrangements, transactions between other trusts and estates of which the trustee is a fiduciary, deposits in a financial institution operated by the trustee, and advances for the protection of the trust, so long as the transaction is fair to the beneficiaries of the trust.

Present Missouri law on the Duty of Loyalty is statutory and based on the Uniform Trustee Powers Act. Section 456.570.2 R.S.Mo. provides that a court may approve a conflict. However, other statutes authorize a number of potential self-dealing transactions

without court approval, such as the provisions of section 456.520.3(24) that provides that a trustee can employ or contract with persons in almost any capacity “even if they are associated or affiliated with the trustee” to provide a wide variety of specific services and to employ an agent to “perform any act of administration, whether or not discretionary....”

MUTC Provisions. MUTC attempts to strike a middle ground between present Missouri law and the UTC. One exception has been added to section 456.8-802.6 (UTC section 802(f)), placing of securities transactions through an affiliated broker. The subcommittee considered also including an exception for investment in an insurance contract purchased from an affiliate of the trust company. However, the subcommittee rejected that exception. The draft includes the exception in <<>>. The subcommittee feels that this is an item that should be voted on by the full committee.

Additional compensation can be paid to the trustee or the affiliate so long as notification of the fact of compensation and manner of calculating compensation is sent to certain beneficiaries on an annual basis. These investments also have to meet prudent investor standards. New sections have also been added to MUTC 802.8 regarding the delegation of duties to affiliated agents and authorizing loans to a trust from the trustee or an affiliate.

Issues. Whether there should there be an exception to the duty of loyalty for an investment in an insurance contract purchased from an affiliate of the trust company

Table of Repealed Sections

MUTC Section 1105 has been eliminated, as specific statutory sections in chapter 456 have been repealed or kept depending upon the effect of UTC on current law. The following is a table showing those current sections of Chapter 456 R.S.Mo. that will be repealed. The current statutory sections of Chapter 456 to be retained are also listed on the schedule and appear in the MUTC draft under Article Twelve.

MUTC Repeal of Present Chapter 456 Sections

Present Section number	Description of Statute	Disposition Under MUTC
456.010	Trusts of land in writing.	Repeal, portions of present Section 456.010 are incorporated into MUTC Section 407.
456.012, .013	Defines distributions from certain entities as income.	Repealed with UPIA act
456.015, .016	Coordinates Marital Formula bequests with Rev Proc. 64-19.	Retain.
456.020	Saves passive trusts.	Retain.
456.030	Makes a designation of life insurance enough to fund trust.	Retain
456.040, .050	Lease deposits.	Retain
456.055	Honorary Trusts.	Repeal, MUTC Section 406

456.060, .070, .072, & .075.	Employee trusts, saving them from the rule v. Perpetuities and accumulations, & making them spendthrift trusts with respect to settlor.	Retain.
456.080	Spendthrift Statute.	Repeal, provisions incorporated into MUTC Sections 503 & 505.
456.090, .100, &.110.	County can be Trustee for Charitable purposes.	Repeal.
456.120	Trustee qualifications.	Repeal. MUTC Article 7.
456.130, .140, .150, .170, & .180	Trustee Bonds.	Repeal, MUTC Section 702
456.183, .185, .187, .190, .195, .200, .210	Trustee resignation and judicial and non-judicial appointment of successors.	Repeal, MUTC Sections 704 & 705.
456.220	Statute of Limitation for breach actions.	Repeal, MUTC Section 1006
456.225	Bond for Testamentary trusts.	Repeal, MUTC Section 702
456.230	Private Foundation Savings Language.	Retain.
456.232	Additions to trusts.	Retain MUTC Section 401.
456.233	Accountings.	Repeal, MUTC Section 813(c).
456.235	Exercise of Trust POA by Will.	Retain.
456.236	Perpetuities repeal	Retain
456.240, .250, .260, .270, .280 .290, .300, .310, .320, .330, 340, & .350	Uniform Fiduciaries Act.	Retain.
456.400, .410, .420, & .430	Registration of trusts.	Retain.
456.440		Repeal, MUTC Section 202
456.450, .460, .470, &.480	Judicial Proceedings.	Repeal, MUTC Article 2.
456.490	Holders of POA deemed to act for takers in default.	Repeal, MUTC Section 302
456.500	Start of Trustee Powers Act that runs to 456.670. .500 is definitions.	Repeal.
456.510	General powers of Trustee.	Repeal, MUTC Section 815.
456.520	Specific powers of Trustee.	Repeal, MUTC Section 816,
456.524	Trustee compensation	Retain
456.530	Trustee can't delegate duties unless authorized by governing instrument.	Repeal, MUTC Section 807.
456.535	Effect of powers of appointment	Repeal,
456.540	Co-Trustees.	Repeal, MUTC Section 703 and Section 814.
456.550	Prevents accidental creation of general power of appointment for tax purposes.	Repeal, MUTC Section 814
456.560	Protects third parties in dealing with Trustees.	Repeal, MUTC Section 1012.
456.570	Court power to remove restriction on trust power and authorize action where conflict.	Repeal, MUTC sections 802 & 201.

456.580	Transfer free of future interests.	Repeal
456.590	Power of court to vary terms of private trusts.	Repeal, provisions incorporate into MUTC Section 411B and 412,
456.610	Trust non-claim statute.	Repeal, provisions incorporated into MUTC 505.4
456.620	Proof of death and presumptions.	Retain.
456.630	Fraud	Repeal.
456.640, .650, & .660	Unclaimed Property	Retain.
456.670	Applies consistent principles of law and equity beyond statutes.	Repeal, MUTC 106.
456.700 to 456.820	Uniform Principal and Income act (62 version)	Repealed by adoption of UPIA
456.900 to 456. 913	Uniform Prudent Investor Act	Retain, move to Chapter 469.

**Application to existing Relationships
MUTC section 1106**

UTC section 1106 is the same as the UTC provision. The subcommittee urges enactment.

**Technical Corrections to
Revised Missouri Principal and Income Act (2001)**

Background. The Revised Missouri Principal and Income Act (2001) became effective on August 28, 2001. Several issues have arisen since that date regarding the Act. First, several statutory cross-references were incorrect.

Second, section 469.409, which provides a two year statute of limitations for claims that arise due to the trustee's exercise of the statutory power to adjust under section 469.405, was found not to bar claims of an individual that received notice of the adjustment unless an entire class of beneficiaries received notice.

Third, the Internal Revenue Service has indicated in proposed regulations issued under section 663, that a unitrust provision will be granted favorable tax treatment if kept in a range of three to five percent. Additionally, many more unitrust statutes have been adopted, none with Missouri's unique three year window to make the unitrust election. Finally, section 469.453 (based on the Uniform Act) was found to not have a provision specifying that capital expenditures are charged against principal.

Technical Corrections. These recommended changes will be part of the bill seeking enactment of the MUTC. The proposed bill makes the following corrections to the Revised Principal and Income act.

- As the MUTC will be enacted at the same time, the representation rules of Article Three of the MUTC are made applicable to the entire Revised Principal and Income Act.
- All incorrect statutory cross-references are corrected.

- Section 469.409, which provides a two year statute of limitations for claims that arise due to the trustee's exercise of the statutory power to adjust under section 469.405, will now bar claims of an individual that received notice, or whose representative received notice, of the adjustment.
- Any unitrust created under 469.411, whether by incorporation or election, must have a unitrust percentage of three to five percent.
- A unitrust election can be made at any time, not just prior to August 28, 2003.
- Section 469.453 now provides that capital expenditures are charged against principal.