



Probate and Family Court Department

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Procedural Advisory

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The Massachusetts Uniform Trust Code, G. L. c. 203E:

The adoption of the Massachusetts Uniform Trust Code (MUTC), G. L. c. 203E¹, repeals all but Part 5 of Article VII of the Massachusetts Uniform Probate Code (MUPC), G. L. c. 190B². Other sections of the MUPC that have not been repealed and remain applicable to trusts include many of the rules of construction in Article II and the provisions relating to compromise proceedings in Part 11 of Article III. Additionally, G. L. c. 203, §§ 1 - 3A, §§ 4 - 4B and §§ 40 - 42 remain applicable to trusts, as are the statutory provisions related to equitable remedies, declaratory judgments and cy pres actions. See generally, G. L. c. 215, § 6, G. L. c. 231A and G. L. c. 214, § 10B.

Overall, the MUTC, like the MUPC, is based on the premise that the jurisdiction of a court is invoked only when there is a problem or dispute relating to a trust's administration or when a remedy is sought by a person interested in the trust. Most aspects of trust administration, including accounting to beneficiaries, payment of trustee fees and the acceptance and change of trusteeship, will take place consistent with the terms of the trust and will not require judicial intervention, approval or action by any court. MUTC at § 201. For a copy of the Report of the Ad Hoc Massachusetts Uniform Trust Code Committee see

<http://www.mass.gov/courts/court-info/trial-court/pfc/mupc-general-resources-lc.html>

Article 1: General Provisions and Definitions

Article 1 of the MUTC contains General Provisions and Definitions. Section 102 outlines the scope of the MUTC and provides that the MUTC applies to both testamentary and inter vivos trusts of a donative nature. MUTC at § 102. The MUTC does not apply to business trusts or other non-donative trust arrangements.

¹ For ease of the reader, all further citations to the MUTC will be as follows: MUTC at § ____.

² For ease of the reader, all further citations to the MUPC will be as follows: MUPC at § ____.

Section 103 provides important definitions applicable to terms referenced in the MUTC. For example, under the MUTC, a person with a beneficial interest in a trust may be defined as either a beneficiary or a qualified beneficiary.

A beneficiary is defined as “a person who has a present or future beneficial interest in a trust, vested or contingent.” MUTC at § 103.

A qualified beneficiary, however, is “a beneficiary who, on the date the beneficiary’s qualification is determined: (i) is a distributee or permissible distributee of trust income or principal; or (ii) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.” MUTC at § 103. See also, MUTC at § 110(b).

The distinction may be relevant. Qualified beneficiaries are a subset of beneficiaries. In some sections of the MUTC, qualified beneficiaries are required to act and in other sections, the larger “beneficiary” group must act. For example, the court may remove a trustee if removal is requested by all of the qualified beneficiaries. See MUTC at § 706(b)(4). Conversely, the court may terminate a non-charitable irrevocable trust if all beneficiaries consent and the continuance of the trust is not necessary to achieve any material purpose. See MUTC at § 411(b). Keep in mind that the definition section in the MUPC has not been amended since the enactment of the MUTC. The MUPC itself does not distinguish between types of beneficiaries. See MUPC at § 1-201(3). This may be relevant in terms of a compromise proceeding relating to a trust brought under the MUPC. See MUPC at § 3-1101.

The MUTC contains both default and mandatory rules. Generally speaking, the terms of the trust prevail over the statutory provisions of the MUTC. MUTC at § 105. There are exceptions to this general rule outlined in § 105. As noted in § 106, the common law of trusts and principles of equity apply except to the extent modified by the MUTC.

The following summary highlights the general procedural changes in the Probate and Family Court as a result of the enactment of the MUTC.

Article 2: Judicial Proceedings

Article 2 includes general principles related to judicial proceedings commenced under the MUTC. Pursuant to applicable statutory authority, proceedings involving trusts may continue to be brought in the Supreme Judicial Court, Superior Court, Probate and Family Court, and, if applicable, Land Court. See generally, G. L. c. 215, G. L. c. 214, G. L. c. 185, § 1(k) and MUPC at § 1-302.

Section 201. Role of court in administration of trust

A proceeding brought under the MUTC in the Probate and Family Court to appoint or remove a trustee, to approve a resignation of a trustee, to review and settle accounts of a trustee, or concerning any other matter relating to the administration of a trust may be

initiated by filing a petition and giving notice to interested persons as provided in § 109. See MUTC at § 201(d).

Form Update: For proceedings brought under the MUTC, a General Trust Petition (MPC 201), **revised and dated 1/16/13**, may be used to initiate an action unless a specific form has been approved and promulgated by the Probate and Family Court. See G. L. c. 215, § 30.

The following specific forms have been created for proceedings under the MUTC:

- Statement of Confirmation of a Testamentary Trustee (MPC 275) **New**
- Bond (MPC 801), dated 10/23/12
- General Trust Petition for Appointment of a Guardian ad Litem (MPC 351) **New**
- Decree and Order on General Trust Petition Appointing a Guardian ad Litem (MPC 777) **New**
- Petition for Allowance of Account (MPC 857), **revised and dated 1/16/13**
- Decree and Order of Allowance of Account (MPC 791) **revised and dated 1/16/13**
- Trust Account (MPC 859)
- Petition to Modify Bond (MPC 295), **revised and dated 1/16/13**
- Decree and Order to Modify Bond (MPC 776), **revised and dated 1/16/13**
- Petition for Resignation/Removal/Appointment of Successor Trustee (MPC 266) **New**
- Decree and Order on Petition for Resignation/Removal/Appointment of Successor Trustee (MPC 782) **New**
- Petition to Terminate a Trust (MPC 267) **New**
- Decree and Order to Terminate a Trust (MPC 783) **New**

The following specific form has been replaced by the new Statement of Confirmation of a Testamentary Trustee (MPC 275) and will no longer be accepted for filing after January 24, 2013:

- Petition for Appointment of Testamentary Trustee (MPC 275)

Notice Under the MUTC:

(A) Notice by Citation

Notice of proceedings under the MUTC brought by petition in the Probate and Family Court shall be given as provided in § 1-401 of the MUPC. See MUTC at § 109(d). Section 1-401 of the MUPC requires the Probate and Family Court to fix a return date and issue a citation. See Rule 6 of the Supplemental Rules of the Probate and Family Court.

The petitioner shall be responsible for providing notice to all interested persons. See MUPC at § 1-401(a). The MUTC however does not define "interested person". The MUPC may provide guidance, as the MUPC definition includes beneficiaries and others having a property right in or claims against a trust estate, as well as fiduciaries

representing interested persons. See MUPC at § 1-201 (24). The petitioner remains responsible for identifying persons interested in a trust proceeding. Failure to notify proper parties may result in a final decree/judgment being vacated. See MUTC at § 201(d).

Form Update: A general trust citation has been created for use with most trust petitions and will issue from the court, if requested. The fee for a citation is an additional \$15.00.

(B) Representation:

Like the MUPC, the MUTC provides for representation by others for notice and consent purposes in both non-judicial (e.g., out of court settlements) and judicial proceedings. See MUTC at §§ 301-304.

(1) Representation by fiduciaries and parents

Section 303 provides:

To the extent there is no conflict of interest between the representative and the person represented or among those being represented with respect to a particular question or dispute:

- (1) a conservator may represent and bind the estate that the conservator controls;
- (2) a guardian may represent and bind the ward or protected person if a conservator has not been appointed;
- (3) an agent having authority to act with respect to the particular question or dispute may represent and bind the principal;
- (4) a trustee may represent and bind the beneficiaries of the trust;
- (5) a personal representative of the decedent's estate may represent and bind persons interested in the estate; and
- (6) a parent may represent and bind the parent's minor or unborn child if a conservator or guardian for the child has not been appointed.

MUTC at § 303 (Emphasis added).

(2) Representation by a person having substantially identical interest

Section 304 provides:

Unless otherwise represented, a minor, incapacitated or unborn individual, or person whose

identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.

MUTC at § 304 (Emphasis added).

PRACTICE ALERT: A determination of whether or not there is adequate representation is one made by the court. A request to accept such representation in lieu of the appointment of a guardian ad litem (öGALö), for notice purposes, may be requested by filing a motion and affidavit prior to the appointment of a GAL.

(C) Waiver of Notice

The notice required in any proceeding in the Probate and Family Court may be dispensed with if all parties entitled thereto assent in writing to such proceeding or waive notice. See G. L. c. 215, § 47.

Contesting a Trust Petition:

Any party to a formal proceeding, who opposes the proceeding, shall before 10:00 a.m. of the return date enter a Notice of Appearance and Objection in writing. See Notice of Appearance and Objection form (MPC 505a).

PRACTICE ALERT: Objecting to a formal petition is time sensitive and requires two steps: (1) filing a written Notice of Appearance and Objection before 10:00 a.m. of the return date and (2) filing a written affidavit of objections within 30 days after the return date. Copies of both the Notice of Appearance and Objection and the written affidavit of objections must be sent to the petitioner and all interested persons.

Equitable Relief:

If applicable, equitable and declaratory relief continue to be available in the Probate and Family Court under G. L. c. 215, § 6 or G. L. c. 231A. These proceedings shall continue to be governed by the Massachusetts Rules of Civil Procedure.

Section 202. Jurisdiction over trustee and beneficiary

Section 202 governs personal jurisdiction over the trustee and others and provides:

(a) By accepting the trusteeship of a trust having its principal place of administration in the commonwealth or by moving the principal place of administration to the commonwealth, the trustee submits personally to the jurisdiction of the courts

of the commonwealth__regarding any matter involving the trust.

(b) With respect to their interests in the trust, the beneficiaries of a trust with its principal place of administration in the commonwealth shall be subject to the jurisdiction of the courts of the commonwealth regarding any matter involving the trust. By accepting a distribution from such a trust, the recipient submits personally to the jurisdiction of the courts of the commonwealth regarding any matter involving the trust.

(c) This section shall not preclude other methods of obtaining jurisdiction over a trustee, beneficiary or other person receiving property from the trust.

MUTC at § 202.

Section 204. Venue

Venue refers to the county where a case should be filed. A trust shall be subject to the jurisdiction of the Probate and Family Court in the county where its principal place of administration is located. The principal place of administration of a trust under the MUTC is as follows:

Testamentary Trust:

The principal place of administration of a testamentary trust shall be the location of the Probate and Family Court in which the will creating the trust was granted informal or formal probate. See MUTC at § 204.

Inter vivos Trust:

The principal place of administration of an inter vivos trust shall be the trustee's usual place of business where the records pertaining to the trust are kept or at the trustee's residence if the trustee has no such place of business, unless otherwise designated in the trust instrument. See MUTC at § 204.

Inter vivos Trust with more than one Trustee:

If there are co-trustees, the principal place of administration, if not otherwise designated in the trust instrument, shall be: (1) the usual place of business of the corporate trustee if there is one such corporate co-trustee; (2) the usual place of business or residence of the individual trustee, who is a professional fiduciary, if there is one such professional fiduciary and no corporate co-trustee; or (3) the usual place of business or residence of any of the co-trustees as agreed upon by them. See MUTC at § 204.

Practice Note: See also G. L. c. 215, § 8A (Change of Venue) and MUPC at § 1-303 (Venue; Multiple Proceedings; Transfer).

Article 3: Representation

Under the MUTC, to the extent there is no conflict of interest, a conservator, guardian, parent or person with a substantially identical interest may represent and bind persons interested in a trust proceeding who lack legal capacity (i.e., minors, incapacitated or protected persons and persons unborn or unknown). A trustee may represent and bind the beneficiaries of the trust. A personal representative of a decedent's estate may represent and bind persons interested in the estate. An agent, under a durable power of attorney, may bind the principal (whether or not the principal has capacity) if the agent has been given authority as to the particular question in the durable power of attorney. See MUTC at §§ 301 to 304 and Notice under the MUTC above.

Section 305. Appointment of guardian ad litem

Section 305 provides:

- (a) If the court determines that an interest is not represented under this article or that the otherwise available representation might be inadequate, the court may appoint a guardian ad litem to receive notice, give consent and otherwise represent, bind and act on behalf of a minor, incapacitated or unborn individual or a person whose identity or location is unknown. A guardian ad litem may be appointed to represent several persons or interests.
- (b) A guardian ad litem may act on behalf of the individual represented with respect to any matter arising under this chapter, whether or not a judicial proceeding concerning the trust is pending.
- (c) In making decisions, a guardian ad litem may consider general benefit accruing to the living members of the individual's family.

MUTC at § 305.

Practice Note: Subsections (b) and (c) above are new concepts and new law. Subsection (b) provides that a proceeding may be commenced for the sole purpose of requesting the appointment of a GAL to represent persons who lack legal capacity regardless of whether or not a judicial proceeding is pending.

Subsection (c) represents a substantial change to current Massachusetts practice for an appointed GAL. In making decisions, a GAL appointed under the MUTC may now

consider interests beyond that of the person he or she represents. For a list of fee generating categories, including category D appointments under this section, see <http://www.mass.gov/courts/court-info/trial-court/pfc/pfc-fee-appointments-gen.html>

Form Update: To request the appointment of a GAL under § 305(b) when a petition is not otherwise pending, a General Trust Petition for Appointment of a Guardian ad Litem (MPC 351) and a proposed Decree and Order on General Trust Petition Appointing a Guardian ad Litem (MPC 777) may be filed. The filing fee for the petition is \$375.00. If the petition is the first or initial action filed in the court, a surcharge of \$15.00 shall also be assessed. A citation is not required unless a minor, incapacitated or protected person is the subject of the appointment or unless ordered by the court. A citation shall be served upon a minor, incapacitated or protected person and his/her guardian or conservator, if appointed, or parent if no guardian or conservator is appointed to represent a minor's interest, but need not be served on other interested persons. The filing fee for a citation is an additional \$15.00.

If a petition is pending, a motion requesting the appointment of a GAL may be filed. There is no fee for the filing of a motion.

A GAL appointed under § 305(b) shall be appointed in accordance with the procedure in place for fee generating appointments. See generally, Supreme Judicial Court Rule 1:07. Upon allowance of the petition or motion, the court shall issue an Appointment of a Guardian ad Litem form (PFC) to the appointee.

Practice Note: A GAL appointed under § 305(b) shall not be required to file a report with the court unless otherwise ordered. A GAL shall accept an appointment by acknowledging his/her acceptance on the Appointment of Guardian ad Litem form (PFC). A GAL appointed under § 305(b) shall be required to adhere to Supreme Judicial Court Rule 1:07(7) by the filing of a Statement of Payment prior to payment. A GAL appointed under § 305(b) shall be paid from the trust estate.

Article 4: Creation, Validity, Modification and Termination of Trust

Section 405. Charitable Purposes; enforcement

The settlor of a charitable trust may now maintain a proceeding to enforce the terms of the trust. MUTC at § 405(c).

Practice Note: Under prior law, only the Attorney General had standing to enforce the terms of a charitable trust. See G. L. c. 12, § 8. The Attorney General is a necessary party to any action brought by a settlor. See G. L. c. 12, § 8 and Uniform Probate Practice XXXIV.

Section 408. Trust for Care of an Animal

Section 3C of G. L. c. 203 (Pet Trusts) has been repealed and inserted in the MUTC as § 408. A trust for the care of animals alive during the settlor's lifetime is a valid trust in Massachusetts. See MUTC at § 408(a).

Section 408 provides, *inter alia*, that a court may:

- (1) reduce the amount of property held by the trust if the court determines that the amount substantially exceeds the amount required for the intended use and the court finds that there will be no substantial adverse impact in the care, maintenance, health or appearance of the covered animal;
- (2) order the transfer of property to another trustee if the transfer is necessary to ensure that the intended use of the trust is carried out;
- (3) make orders to carry out the intent of the settlor and intended use of the trust;
- (4) appoint an individual to enforce the intended use of the principal or income of the trust upon application of an individual or a charitable organization.

See MUTC at § 408.

The court shall name a trustee if a trustee is not designated by the trust instrument or no designated trustee is willing or able to serve. See MUTC at § 408.

Form Update: To request the appointment of a trustee when a trustee is not designated by the trust instrument or no designated trustee is willing or able to serve, a Petition for Resignation/Removal/Appointment of Successor Trustee (MPC 266) (to fill the vacancy) and a proposed Decree and Order on Petition for Resignation/Removal/Appointment of Successor Trustee (MPC 782) may be filed.

Practice Note: To request the appointment of an individual to enforce a trust under § 408 (e), a General Trust Petition (MPC 201) and proposed Decree and Order of General Probate/Trust Petition (MPC 792) may be filed. Notice shall be as provided in § 109 of the MUTC.

Section 409. Non-charitable trust without ascertainable beneficiary

Section 409 now authorizes *purpose trusts*. A purpose trust has no named beneficiaries, but instead serves to further one or more valid purposes of the settlor.

A trust authorized by § 409 may be enforced by a person appointed by the terms of the trust, or if no person is appointed by the trust instrument, by a person appointed by the court. See MUTC at § 409(2).

Form Update: To request the appointment of a trustee to fill a vacancy in the trust instrument, a Petition for Resignation/Removal/Appointment of Successor Trustee (MPC 266) and a proposed Decree and Order on Petition for Resignation/Removal/Appointment

of Successor Trustee (MPC 782) may be filed. See § 704 of the MUTC. Notice shall be as provided in § 109 of the MUTC.

Practice Note: To request the appointment of an individual to enforce a trust under § 409(2), a General Trust Petition (MPC 201) and a proposed Decree and Order of General Probate/Trust Petition (MPC 792) may be filed. Notice shall be as provided in § 109 of the MUTC.

Section 411. Modification or termination of non-charitable irrevocable trust by consent

Under § 411, a non-charitable irrevocable trust (öNCITö) may be either modified or terminated, if:

- (a) the court finds that the settlor and all beneficiaries consent to the modification or termination of the trust even if the modification or termination is inconsistent with a material purpose of the trust. See MUTC at § 411(a).
- (b) all of the beneficiaries consent to the termination or modification of the trust and the court concludes that, in the case of a proposed termination, continuance of the trust is not necessary to achieve any material purpose of the trust or, in the case of a proposed modification, the modification is not inconsistent with a material purpose of the trust. See MUTC at § 411(b).
- (c) all of the beneficiaries do not consent to the proposed modification or termination, but the court is satisfied that, if all of the beneficiaries had consented, the trust could have been modified or terminated and the interests of the non-consenting beneficiary are adequately protected. See MUTC at § 411(c)(1)-(2).

Form Update: To terminate a trust under this section, a Petition to Terminate a Trust (MPC 267) and a proposed Decree and Order to Terminate a Trust (MPC 783) may be filed. A General Trust Petition (MPC 201) and a proposed Decree and Order of General Probate/Trust Petition (MPC 792) may be used to initiate an action to modify a trust. Notice shall be as provided in § 109 of the MUTC.

Section 412. Modification or termination because of unanticipated circumstances or inability to administer trust effectively

Under § 412, the court may now modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. See MUTC at § 412(a).

The court may also modify the administrative terms of a trust if continuation of the trust under such terms would be impracticable, wasteful or impair a trust's administration. See MUTC at § 412(b).

Form Update: To terminate a trust under § 412(a), a Petition to Terminate a Trust (MPC 267) and a proposed Decree and Order to Terminate a Trust (MPC 783) may be filed. A General Trust Petition (MPC 201) and a proposed Decree and Order of General Probate/Trust Petition (MPC 792) may be used to initiate an action to modify a trust. Notice shall be as provided in § 109 of the MUTC.

Section 414. Modification or termination of uneconomic trust

The trustee of a trust containing assets having a value of less than \$200,000 may, after notice to qualified beneficiaries, proceed without court approval to terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the costs of administration. See MUTC at § 414(a).

The court may also modify or terminate a trust or remove the trustee and appoint a different trustee if the court determines that the value of the trust property is insufficient to justify the cost of administration. See MUTC at § 414(b).

Upon termination of the trust, the trustee shall distribute the trust property in a manner consistent with the terms of the trust. See MUTC at §§ 414(c) and (e).

Action may be taken under § 414 despite a spendthrift or similar protective provision. See MUTC at § 414(e).

Form Update: To terminate a trust under § 414(b), a Petition to Terminate a Trust (MPC 267) and a proposed Decree and Order to Terminate a Trust (MPC 783) may be filed by any person interested in the trust. A trustee may terminate a trust under § 414(a) without court action. A General Trust Petition (MPC 201) and a proposed Decree and Order of General Probate/Trust Petition (MPC 792) may be used to initiate an action to modify a trust. Notice shall be as provided in § 109 of the MUTC.

Section 415. Reformation to correct mistakes

Section 415 empowers the court to reform the terms of a trust, even if those terms are unambiguous, in order to conform the trust to the settlor's intention if it is proved by clear and convincing evidence that the settlor's intent or the terms of the trust were affected by a mistake of fact or law, whether in expression or inducement. This provision is consistent with present Massachusetts practice with respect to inter vivos trusts, and clarifies that the same principles apply to testamentary trusts.

Section 417. Combination and division of trusts

Section 417 provides:

After notice to the qualified beneficiaries, a trustee may combine 2 or more trusts into a single trust or

divide a trust into 2 or more separate trusts, if the result does not impair the rights of any beneficiary or adversely affect achievement of the purposes of the trusts.

MUTC at § 417.

Practice Note: Pursuant to § 410(b), a proceeding under § 417 may be commenced by either a trustee or beneficiary but court action is not required under § 417.

Article 5: Creditor's Claims; Spendthrift and Discretionary Trusts

Section 501. Rights of beneficiary's creditor or assignee

Section 501 provides:

To the extent a beneficiary's interest is not subject to a spendthrift provision, the court may authorize a creditor or assignee of the beneficiary to reach the beneficiary's interest by attachment of present or future distributions to or for the benefit of the beneficiary or other means. The court may limit the award to such relief as is appropriate under the circumstances.

MUTC at § 501 (Emphasis added).

PRACTICE ALERT: Interim remedies of attachment or trustee process are currently only provided by the Massachusetts Rules of Civil Procedure. To request such interim relief, a proceeding under this section may be initiated by filing a complaint in accordance with the Massachusetts Rules of Civil Procedure. See generally, Rule 1, Rule 4.1 and Rule 4.2 of the Massachusetts Rules of Civil Procedure; G. L. c. 215, § 6; see also, Foster v. Evans, 384 Mass. 687 (1981).

Section 502. Spendthrift provision

See generally § 502 for substantive changes to Massachusetts law.

Article 6: Revocable Trusts

Section 602. Revocation or amendment of revocable trust

Section 602(a) provides, *inter alia*, that trusts established after the effective date of the MUTC are now presumed revocable unless the instrument expressly provides otherwise. Section 602 reverses the prior default rule. See MUTC at § 602(a).

Section 604. Limitation on action contesting validity of revocable trust; distribution of trust property

Section 604 provides:

(a) A person may commence a judicial proceeding to contest the validity of a trust that was revocable at the settlor's death within the earlier of:

(1) 1 year after the settlor's death; or

(2) 60 days after the trustee has sent the person a copy of the trust instrument and a notice informing the person of the trust's existence, the trustee's name and address and the time allowed for commencing a proceeding.

(b) Upon the death of the settlor of a trust that was revocable at the settlor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust. The trustee shall not be subject to liability for doing so unless:

(1) the trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(2) a potential contestant has notified the trustee of a potential judicial proceeding to contest the validity of the trust and such proceeding is commenced within 60 days of the notification.

(c) A beneficiary of a trust that is determined to have been invalid shall be liable to return any distribution received.

MUTC at § 604.

Practice Note: A trustee may be liable to creditors of the settlor or other claimants if he or she distributes the trust property before the time set forth in § 3-803 of the MUPC for the expiration of claims against an estate.

Article 7: Office of Trustee

Section 702. Duty to provide bond- Testamentary Trustees Only

Section 702 provides:

In the case of a testamentary trust, a trustee shall furnish a bond for the performance of the trustee's fiduciary duties and a surety shall be required unless waived by the terms of the trust or found by the probate and family court department of the trial court to be not necessary to protect the interests of the beneficiaries. . . . If the instrument creating the trust exempts the trustee from furnishing a [surety] bond or limits the amount thereof, or the probate court determines that the bond is insufficient, the probate court may, if it concludes that a [surety] bond is necessary or that a bond of a larger amount is necessary, require the furnishing of such bond. The terms and conditions of the bond shall be as set forth in section 3-606 of chapter 190B.

MUTC at § 702 (Emphasis added).

PRACTICE ALERT: Unless otherwise ordered by the court, a bond shall not be required if the petitioner is seeking the appointment of a non-testamentary trustee. Only a testamentary trustee is required to file a bond under the MUTC.

Confirming Appointment of a Testamentary Trustee:

Form Update: A trustee of a testamentary trust shall file a Bond (MPC 801) along with a Statement of Confirmation of Appointment of Testamentary Trustee (MPC 275). The forms shall be filed with the same court where the will was probated. A bond with sureties shall be required unless: (1) sureties are waived by the terms of the trust or (2) found by the court, in a prior formal proceeding, to not be necessary (see part A, "Modifying a Bond Prior to Approval by the Court", below). The Statement of Confirmation of Appointment of Testamentary Trustee (MPC 275) replaces the Petition for Appointment of Testamentary Trustee (MPC 275) and Decree and Order on Petition for Appointment of Testamentary Trustee (MPC 781) forms. The filing fee is \$75.00 for the bond. There is no separate filing fee for the Statement of Confirmation of a Testamentary Trustee. Upon payment of an attested copy fee of \$2.50 per page, the Register shall issue an attested copy of the Statement form provided the bond is examined and approved by the court. Letters no longer issue to a testamentary trustee appointed under the MUTC.

Modifying the Bond of a Testamentary Trustee:

A. Modifying a Bond Prior to Approval by the Court:

Section 702 further provides:

On petition of the trustee or other interested person the probate court may excuse a [surety] requirement of bond, reduce the amount of the bond . . .

If the instrument creating the trust exempts the trustee from furnishing a [surety] bond or limits the amount thereof, or the court determines that the bond is insufficient, the probate court may, if it concludes that a [surety] bond is necessary or that a bond of a larger amount is necessary, require the furnishing of such bond. The terms and conditions of the bond shall be as set forth in section 3-606 of chapter 190B.

MUTC at § 702.

Form Update: A General Trust Petition (MPC 201) and a proposed Decree and Order of General Probate/Trust Petition (MPC 792) may be filed prior to confirmation of the testamentary trustee's appointment in order to modify the bond prior to confirmation of the appointment by the court. Notice shall be by citation in accordance with § 109 of the MUTC.

B. Modifying a Bond After Approval by the Court:

In accordance with § 702, G. L. c. 205, §§ 14 & 18 and Standing Order 5-11 (as amended), the court may excuse the requirement of a surety bond, reduce the amount of a trustee's bond, release or discharge the surety, or permit the substitution of another bond with the same or different sureties. If the instrument creating the trust exempts the trustee from furnishing a surety bond or limits the amount thereof, or if the court determines that the bond is insufficient, the court may, if it concludes that a surety bond is necessary or that a bond of a larger amount is necessary, require the furnishing of such bond.

Form Update: To modify a bond after approval by the court, a Petition to Modify Bond (MPC 295) and a proposed Decree and Order to Modify Bond (MPC 776), may be filed. Notice shall be by citation in accordance with § 109 of the MUTC.

C. Modifying the Obligations of a Pre-MUPC Bond:

Trustees continue to have the obligations of their pre-MUPC bonds unless modified by petition. If a Petition to Modify Bond is filed requesting relief from the prior accounting

obligations of the bond, the trustee may or may not be required by the court to bring any and all accounts up to date before the allowance of the petition.

Section 704. Vacancy in trusteeship; appointment of successor

Section 704 provides:

(a) A vacancy in a trusteeship shall occur if:

- (1) a person designated as trustee rejects the trusteeship;
- (2) a person designated as trustee cannot be identified or does not exist;
- (3) a trustee resigns;
- (4) a trustee is disqualified or removed;
- (5) a trustee dies; or
- (6) a guardian or conservator is appointed for an individual serving as trustee.

(b) If 1 or more co-trustees remain in office, a vacancy in a trusteeship need not be filled. A vacancy in a trusteeship shall be filled if the trust has no remaining trustees.

(c) A vacancy in a trusteeship that is required to be filled shall be filled in the following order of priority:

- (1) by a person designated by the terms of the trust to act as successor trustee;
- (2) by a person appointed by unanimous agreement of the qualified beneficiaries; or
- (3) by a person appointed by the court.

(d) Whether or not a vacancy in a trusteeship exists or is required to be filled, the court may appoint an additional trustee or special fiduciary whenever the court considers the appointment necessary for the administration of the trust.

MUTC at §704 (Emphasis added).

Practice Note: G. L. c. 203, § 4 [Testamentary trustee; appointment] was not repealed. If a testator has neglected in his will to appoint a trustee in this Commonwealth and such appointment is necessary to carry into effect the provisions of the will, the Probate and Family Court may, after notice to all persons interested, appoint a trustee to fill the vacancy. See G. L. c. 203, § 4.

Form Update: A Petition for Resignation/Removal/Appointment of Successor Trustee (MPC 266) and proposed Decree and Order on Petition for Resignation/Removal/Appointment of Successor Trustee (MPC 782) may be filed to fill a vacancy in a trusteeship under the MUTC or under G. L. c. 203, § 4. Notice shall be by citation in accordance with § 109 of the MUTC. The filing fee to request the appointment of a trustee to fill a vacancy is \$375.00. The filing fee for a citation, if necessary, is \$15.00. Note: If the petition is the first or initial action filed in the court (e.g., an action to fill a vacancy for a non-testamentary trust) a surcharge of \$15.00 shall also be assessed.

Section 705. Resignation of trustee

Section 705 provides:

- (a) A trustee may resign:
 - (1) upon at least 30 days notice to: (i) the settlor and all co-trustees of the trust, in the case of a revocable trust, and (ii) the qualified beneficiaries and all co-trustees of the trust, in the case of any other trust; or
 - (2) with the approval of the court.
- (b) In approving a resignation, the court may issue orders and impose conditions reasonably necessary for the protection of the trust property.
- (c) Any liability of a resigning trustee or of any sureties on the trustee's bond for acts or omissions of the trustee shall not be discharged or affected by the trustee's resignation.

MUTC at §705.

Form Update: A Petition for Resignation/Removal/Appointment of Successor Trustee (MPC 266) and proposed Decree and Order on Petition for Resignation/Removal/Appointment of Successor Trustee (MPC 782) may be filed to resign as trustee and may also be used to request the appointment of a successor trustee to fill a vacancy in a trusteeship caused by the resignation without filing a separate petition. Notice shall be by citation in accordance with § 109 of the MUTC. The filing fee to request court approval of a resignation is \$0. If the petition also requests the appointment of a successor trustee to fill a vacancy, the filing fee is an additional \$375.00. The filing fee for a citation, if necessary, is \$15.00. Note: If the petition is the first or initial action filed in the court (e.g., an action to resign as trustee of a non-testamentary trust with the request for a successor trustee), a surcharge of \$15.00 shall also be assessed. A surcharge shall not be assessed if the petitioner only requests to resign.

Section 706. Removal of trustee

Section 706 provides:

- (a) The settlor, a co-trustee, or a beneficiary may request the court to remove a trustee or a trustee may be removed by the court on its own initiative.
- (b) The court may remove a trustee if:
 - (1) the trustee has committed a serious breach of trust;
 - (2) there is a lack of cooperation among co-trustees that substantially impairs the administration of the trust;
 - (3) because of unfitness, unwillingness or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or
 - (4) there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust and a suitable co-trustee or successor trustee is available.
- (c) Pending a final decision on a request to remove a trustee, or in lieu of or in addition to removing a trustee, the court may order such appropriate relief under subsection (b) of § 1001 as may be necessary to protect the trust property or the interests of the beneficiaries.

MUTC at § 706.

Practice Note: An action to seek the removal of a trustee may now be commenced under the MUTC for reasons other than cause. In the absence of cause, the court must find that removal serves the best interests of all (not just qualified) beneficiaries, is not inconsistent with a material purpose of the trust, and that there is a suitable co-trustee or successor trustee available.

Form Update: A Petition for Resignation/Removal/Appointment of Successor Trustee (MPC 266) and a proposed Decree and Order on Petition for Resignation/Removal/Appointment of Successor Trustee (MPC 782) may be filed to seek the removal of a trustee and may also be used to request the appointment of a successor trustee to fill a vacancy in a trusteeship caused by the removal without filing a separate petition. Notice shall be by citation in accordance with § 109 of the MUTC. The filing fee to request removal of a trustee is \$100. If the petition also requests the appointment of a successor trustee to fill a vacancy, the filing fee is an additional \$375.00. The filing fee for a citation, if necessary, is \$15.00. Note: If the petition is the first or initial action filed in the court (e.g., an action to remove a trustee of a non-testamentary trust) a surcharge of \$15.00 shall also be assessed.

Article 8: Duties and Powers of Trustee

Section 813. Duty to inform and report

Under § 813, trustees must now keep qualified beneficiaries reasonably informed about administration of the trust. Within 30 days of accepting a trusteeship or the date the trust became irrevocable, whichever is later, a trustee must inform qualified beneficiaries in writing of the trustee's name and address. A trustee is required to provide information about the trust to the qualified beneficiaries upon request. Unless the trust provides otherwise, a trustee must send annual accounts to current qualified beneficiaries and to other qualified beneficiaries who request it and at the termination of the trust. A beneficiary may waive the right to a trustee's account or to any information required by section 813. A waiver may also be withdrawn.

Allowance of an Account:

A trustee appointed on a bond with the statutory conditions required by the MUPC is not required by law to render annual accounts with the court. See MUPC at § 3-606, see also MUTC at § 702. A trustee appointed on a bond with the statutory conditions required by G. L. c. 206, § 1 (repealed) continues to have the obligations of their pre-MUPC bond, including an obligation to render an annual account to the court, unless modified by petition. See § 702, part B, above (Modifying a bond after approval of the Court).

Form Update: Any trustee who seeks the allowance of his or her account may do so by filing both a Trust Account (MPC 859), with the appropriate filing fee for the account based on Schedule A, and either a Petition for Allowance of Account (MPC 857) or a complaint pursuant to G. L. c 215, § 6, if applicable. A copy of the trust must accompany the petition or complaint, unless otherwise on file with the court. The fee to file a Petition for Allowance of Account (MPC 857) is an additional \$75.00. The fee to file a complaint, if applicable, is an additional \$240. Unless assented to, an additional \$15.00 citation or \$5.00 summons fee shall also be required. A Petition for the Allowance of an Account (MPC 857) or a complaint may be used for both an interim and final account. Note: If the petition or complaint is the first or initial action filed in the court (e.g., an action to approve the account of a trustee of a non-testamentary trust) a surcharge of \$15.00 shall also be assessed.

Practice Note: The Supplemental Rules of the Probate and Family Court shall apply to actions commenced by petition. See Rule 72 and Rule 72A of the Supplemental Rules of the Probate and Family Court and Uniform Probate Practice XVIA and XVII. The Massachusetts Rules of Civil Procedure shall apply to actions brought by complaint. See G. L. c. 215, § 6; see also Uniform Probate Practice XVIA and XVII. Rule 72 and Rule 72A of the Supplemental Rules of the Probate and Family Court are not applicable to complaints brought under G. L. c. 215, § 6.

Article 10: Liability of Trustees and Rights of Persons Dealing With Trustee

Section 1005. Limitation of action against trustee

Section 1005 provides:

(a) Unless previously barred by adjudication, consent or limitation, any claim against a trustee for breach of trust shall be barred as to any beneficiary who has received a final account or other statement fully disclosing the matter and showing termination of the trust relationship between the trustee and the beneficiary, unless a proceeding to assert the claim is commenced within 6 months after receipt of the final account or statement. Any claim against a trustee for breach of trust shall be barred in any event and notwithstanding lack of full disclosure, against a trustee who has issued a final account or statement received by the beneficiary and has informed the beneficiary of the location and availability of records for examination by the beneficiary after 3 years. A beneficiary is deemed to have received a final account or statement if, being an adult, it is received by the beneficiary personally or if, being a minor or disabled person, it is received by the beneficiary's representative as described in article 3.

(b) Where a claim is not barred by subsection (a), a beneficiary may not commence a proceeding against a trustee for breach of trust more than 3 years after the date the beneficiary or a representative of the beneficiary knew or reasonably should have known of the existence of a potential claim for breach of trust.

(c) If subsections (a) and (b) do not apply, a judicial proceeding against a trustee for breach of trust must be commenced within 5 years after the first to occur of:

- (1) the removal, resignation or death of the trustee;
- (2) the termination of the beneficiary's interest in the trust; or
- (3) the termination of the trust.

MUTC at § 1005 (Emphasis added).

Section 1010. Limitation on personal liability of trustee

Section 1010 provides:

(a) Except as otherwise provided in the contract, a trustee shall not be personally liable on a contract properly entered into in the trustee's fiduciary capacity in the course of administering the trust if the trustee in the contract disclosed the fiduciary capacity.

(b) A trustee shall be personally liable for torts committed in the course of administering a trust or for obligations arising from ownership or control of trust property, including liability for violation of environmental law, only if the trustee is personally at fault.

(c) A claim based on a contract entered into by a trustee in the trustee's fiduciary capacity, on an obligation arising from ownership or control of trust property or on a tort committed in the course of administering a trust, may be asserted in a judicial proceeding against the trustee in the trustee's fiduciary capacity, whether or not the trustee is personally liable for the claim.

MUTC at §1010.

Practice Note: The MUTC does not expand the jurisdiction of the Probate and Family Court to entertain an action on a contract under this section unless it is an action seeking specific performance. The Superior or District Court shall continue to be the proper forum.

Section 1013. Certification of trust

Section 1013 provides, *inter alia*, that:

(a) Instead of furnishing a copy of the trust instrument to a person other than a beneficiary, the trustee may furnish to the person a certification of trust . . .

. . . .

(f) A person who acts in reliance upon a certification of trust without knowledge that the representations contained in the certification are incorrect shall not be liable to any person for so acting and may assume without inquiry the existence of the facts contained in the certification. Knowledge of the terms of the trust may not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the certification.

(g) A person who in good faith enters into a transaction in reliance upon a certification of trust may enforce the transaction against the trust property as if the representations contained in the certification were correct.

(h) A person making a demand for the trust instrument, in addition to a certification of trust or excerpts, shall be liable for damages if the court determines that the person did not act in good faith in demanding the trust instrument.

(i) This section shall not limit the right of a person to obtain a copy of the trust instrument in a judicial proceeding concerning the trust.

MUTC at § 1013.

Practice Note: Section 1013 authorizes a trustee to furnish a certification of trust in lieu of providing a copy of the trust instrument to a person other than a beneficiary. A certification of trust is NOT sufficient when filing a trust petition with the court. A copy of the trust instrument, and any amendments, must be filed.

Additional Legislative Changes:

- **Amendment to Section 3 of Chapter 203A of the General Laws (Common Trust Fund Accounts):**

Section 3 of G. L. c. 203A has been amended to provide that the allowance of an account of a common trust fund brought in the Probate and Family Court may be initiated by filing a petition and giving notice as provided by §1-401 of the MUPC. The amendment also provides that § 1-403 and §1-404 of the MUPC shall apply to proceedings for the allowance of accounts of common trust funds.

PRACTICE ALERT: The procedure for the allowance of an account of a common trust fund is now governed by G. L. c. 203A, § 3, in addition to Rule 72 of the Supplemental Rules of the Probate and Family Court. Notice shall be by citation. Sections 1-403 (virtual representation) and 1-404 (appointment of GAL) of the MUPC shall apply to proceedings for the allowance of a common trust fund account filed in the Probate and Family Court.

Form Update: The allowance of a trust account may be initiated by filing both a Trust Account (MPC 859), with the appropriate filing fee for the Account based on Schedule A, and a Petition for Allowance of Account (MPC 857). A Petition for the Allowance of an Account (MPC 857) may be used for both an interim and final account. The fee for a Petition for Allowance of Account (MPC 857) is an additional \$75.00. Unless assented to, an additional \$15.00 citation fee shall also be required.

The contents of this Advisory are intended to provide general procedural guidance only. This Advisory is for education and informational purposes only and is not intended to provide legal advice.

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