The Unsung Heroes of the CT Trust Code: Directed and Domestic Asset Protection Trusts

November 7, 2019

9:00 a.m. – 12:30 p.m.

CT Bar Association

New Britain, CT

CT Bar Institute, Inc.

CT: 3.25 CLE Credits (General)
NY: 3.5 CLE Credits (AOP)

Lawyers' Principles of Professionalism

As a lawyer I must strive to make our system of justice work fairly and efficiently. In order to carry out that responsibility, not only will I comply with the letter and spirit of the disciplinary standards applicable to all lawyers, but I will also conduct myself in accordance with the following Principles of Professionalism when dealing with my client, opposing parties, their counsel, the courts and the general public.

Civility and courtesy are the hallmarks of professionalism and should not be equated with weakness;

I will endeavor to be courteous and civil, both in oral and in written communications;

I will not knowingly make statements of fact or of law that are untrue;

I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;

I will refrain from causing unreasonable delays;

I will endeavor to consult with opposing counsel before scheduling depositions and meetings and before rescheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested;

When scheduled hearings or depositions have to be canceled, I will notify opposing counsel, and if appropriate, the court (or other tribunal) as early as possible;

Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the court (or other tribunal) and opposing counsel of any likely problem in that regard;

I will refrain from utilizing litigation or any other course of conduct to harass the opposing party;

I will refrain from engaging in excessive and abusive discovery, and I will comply with all reasonable discovery requests;

In depositions and other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and refrain from engaging I acts of rudeness or disrespect;

I will not serve motions and pleadings on the other party or counsel at such time or in such manner as will unfairly limit the other party's opportunity to respond;

In business transactions I will not quarrel over matters of form or style, but will concentrate on matters of substance and content;

I will be a vigorous and zealous advocate on behalf of my client, while recognizing, as an officer of the court, that excessive zeal may be detrimental to my client's interests as well as to the proper functioning of our system of justice;

While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation;

Where consistent with my client's interests, I will communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;

I will withdraw voluntarily claims or defense when it becomes apparent that they do not have merit or are superfluous;

I will not file frivolous motions;

I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;

I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;

In civil matters, I will stipulate to facts as to which there is no genuine dispute;

I will endeavor to be punctual in attending court hearings, conferences, meetings and depositions;

I will at all times be candid with the court and its personnel;

I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;

I will endeavor to keep myself current in the areas in which I practice and when necessary, will associate with, or refer my client to, counsel knowledgeable in another field of practice;

I will be mindful of the fact that, as a member of a self-regulating profession, it is incumbent on me to report violations by fellow lawyers as required by the Rules of Professional Conduct;

I will be mindful of the need to protect the image of the legal profession in the eyes of the public and will be so guided when considering methods and content of advertising;

I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance;

I will endeavor to ensure that all persons, regardless of race, age, gender, disability, national origin, religion, sexual orientation, color, or creed receive fair and equal treatment under the law, and will always conduct myself in such a way as to promote equality and justice for all.

It is understood that nothing in these Principles shall be deemed to supersede, supplement or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which lawyer conduct might be judged or become a basis for the imposition of civil liability of any kind.

--Adopted by the Connecticut Bar Association House of Delegates on June 6, 1994

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The Unsung Heroes of the CT Trust Code: Directed and Domestic Asset Protection Trusts (EEP191107)

Agenda

9:00 – 10:40 a.m.	Domestic Asset Protection Trusts Speaker: **Kelley G. Peck**, Cummings & Lockwood LLC, West Hartford
10:40 – 10:55 a.m.	Break
10:55 – 12:30 p.m.	Directed Trusts Speakers: **Christiana N. Gianopulos**, Day Pitney LLP, West Hartford **Margaret St. John Meehan**, Day Pitney LLP, Stamford

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Christiana "Tiana" Gianopulos, a partner at Day Pitney LLP, works extensively in the areas of estate and tax planning, contested probate matters, and the representation of individual and professional fiduciaries. She also assists clients with planning and compliance for their offshore assets.

Prior to joining Day Pitney, Tiana spent nearly 20 years at a “top ten” bank. As senior vice president and regional fiduciary officer, she co-chaired its regional trust committee, managed its fiduciary litigation portfolio, and developed policies and procedures relating to many aspects of its trust and estate administration business. Tiana also analyzed proposed legislation and coordinated the bank’s response to new statutory and case law.

Tiana is an adjunct faculty member at the University of Connecticut School of Law, where she teaches Trusts and Estates. She has written and lectured on Connecticut’s Uniform Trust Code, Uniform Directed Trust Act, Prudent Investor Act and Principal and Income Act, as well as common drafting errors and offshore disclosure by executors. In 2003, when the Appellate Court ruled that same-sex couples had the right to marry in Massachusetts in *Goodridge v. Dept. of Public Health*, Tiana helped to establish Day Pitney's LGBT Planning practice group.

In 2014, Tiana was appointed to Connecticut’s State Tax Panel which was charged with a comprehensive review of the State’s tax policy.

Deeply committed to the Greater Hartford community, Tiana has served on more than a dozen non-profit boards, often as board chair. She currently serves as treasurer of the Alumni Association of the University of Connecticut School of Law and is a member of the Professional Advisory Committee of the Hartford Foundation for Public Giving. In 2011, while chair of the Harriet Beecher Stowe Center board of trustees, she received the Maria Miller Stewart "One Woman Makes a Difference" Award from the Connecticut Women's Education and Legal Fund. Tiana has also received awards for her volunteer efforts from *The Hartford Courant*, Shawmut National Corporation and the Junior League of Hartford, Inc.

A graduate of Mount Holyoke College and the University of Connecticut School of Law, Tiana is a member of the American Bar Association and Connecticut Bar Association. Tiana serves on the leadership committees of the firm’s LGBT affinity and ally group, Day Pitney Alliance, and its firm-wide women’s initiative, Women Working Together (WWT®).

Since 2017, Tiana has been chosen for inclusion in *Chambers HNW Guide* (Chambers & Partners) as a leading lawyer for wealthy individuals and families in Connecticut. She is rated AV Preeminent by Martindale-Hubbell (LexisNexis).

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RELATED SERVICES
Trusts and Estates

RELATED INDUSTRIES
Tax-Exempt Organizations and Charitable Giving

OVERVIEW

Margaret "Meg" St. John Meehan assists high net worth individuals and their families with estate planning, with an emphasis on minimizing gift, estate and generation-skipping transfer taxes. She also manages all phases of estate administration, including probate, preparation of estate tax returns, and estate tax audits. Meg also advises donors on planned giving, and advises private foundations and public charities on formation, qualification and governance matters.

INSIGHTS

- Co-author, "“The ‘ART’ of Estate Planning: Assisted Reproductive Technology Issues to Consider,” *Bloomberg BNA’s Tax Management, Estates, Gifts and Trusts Journal,* May 10, 2018
- Author, " Easy Mistakes – Denials of Charitable Contribution Deductions for Lack of Substantiation Letters and Complete Appraisals," *Day Pitney Nonprofit Newsletter*, Fall 2016
- Co-author, "New Cross-Border Planning Issues: New York Estate Taxation for the Connecticut Resident," *Connecticut Bar Association Estates & Probate Section Newsletter*, June 2016
- Co-author, "FLP Transfer Runs Afoul of IRC Section 2036(a)," *Wealthmanagement.com*, March 22, 2016
- Panelist, "Estate Planning, Charitable Gift Annuities and Other Creative Financial Planning for Land Trusts," *Connecticut Land Conservation Conference*, March 19, 2016
- Author, "In Land We Trust: Conservation Tax Incentives Made Permanent," *Wealthmanagement.com*, February 8, 2016
- Author, "Estate Planning with Digital Assets," *Connecticut Bar Association Estates & Probate Section Newsletter*, June 2015
- Co-author, "Termination of Charitable Remainder Trusts," *Trusts and Estates Magazine,* October 2014

EDUCATION AND CREDENTIALS

EDUCATION

- Quinnipiac University School of Law, J.D., *magna cum laude*, 2011; *Quinnipiac Probate Law Journal*, Editor-in-Chief
- Marist College, B.A., *magna cum laude*, 2006

ADMISSIONS

- State of Connecticut

- State of New York

AFFILIATIONS

- Connecticut Bar Association, Estate and Probate Section, Executive Committee
- Fairfield County Bar Association
- New Haven Bar Association, Young Lawyers Section
- Waterbury Bar Association

RECOGNITION AND COMMUNITY

RECOGNITION

- Quinnipiac University School of Law Academic Excellence Award, 2011
- Quinnipiac University School of Law Outstanding Legal Scholarship Award, 2011
- Quinnipiac University School of Law Service to the Law School Award, 2011

COMMUNITY

- Fairfield County's Community Foundation, Rising Professional Advisors Council

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Attorney Kelley Galica Peck focuses her practice in the areas of estate and trust planning and probate law. Kelley has significant experience working with individuals and families to plan for the management, protection, and transfer of wealth, including succession planning for owners of closely-held businesses. She handles planning for protection and preservation of assets, and estate, gift and income tax return preparation and review, complex charitable gift planning, estate planning for nontraditional families,. Kelley also represents individual and professional fiduciaries and beneficiaries in contested and uncontested probate courts.

Kelley is a Fellow of the American College of Trust and Estate Counsel (ACTEC) and is AV® Preeminent™ Peer Review Rated in Martindale-Hubbell™ in the areas of Trusts and Estates, Asset Protection, Elder Law, Guardianship and Conservatorship, Probate, Taxation, and Nonprofit and Charitable Organizations (Martindale-Hubbell Peer Review Ratings is a trademark.. AV Preeminent is a certification mark of Reed Elsevier Properties, Inc.). Kelley also is recognized as a Notable Practitioner by Chambers and Partners in the inaugural issue of its *High Net Worth Guide* and was named among the *Best Lawyers in America* for Trusts and Estates since 2017, including as “Lawyer of the Year-2019” for Litigation in Trusts & Estates. She is the Chair of the Estates & Probate Section of the Connecticut Bar Association.

Kelley earned her Master of Laws (LL.M.) degree from Western New England University School of Law in Estate Planning and Elder Law, her Juris Doctorate (J.D.) degree, *summa cum laude*, from Western New England University School of Law, and her Bachelor of Science in Political Science (B.S.), *magna cum laude*, from Florida Southern College. Kelley is admitted to practice in Connecticut and before the US Tax Court. Kelley is the author of a number of books and articles related to estate and trust planning and administration and is a frequent lecturer on these topics. She also served as an adjunct professor of law at Western New England University School of Law in the Master of Laws (LLM) program.

A BRAVE NEW WORLD
Connecticut Qualified Dispositions in Trust Act[1]

Connecticut Bar Association

Kelley Galica Peck, JD. LLM[2]

November 7, 2019

I. Overview and Rationale of CQDTA

A. Public Act 19-137 establishes an omnibus trust code including the Connecticut Qualified Dispositions in Trust Act ("CQDTA"), Sections 99 - 108. It establishes a framework by which individuals may create self-settled, spendthrift, domestic assets protection trusts (DAPTs). A DAPT is an irrevocable trust under which the grantor may retain rights as a beneficiary while preventing claims against the trust by the grantor's creditors. The Act statutorily overrules the case of *Greenwich v. Tyson*, 129 Conn. 211 (1942), which stood for the proposition that creditors may reach the assets in a trust established by the debtor for his own benefit.

B. DAPT legislation is becoming mainstream and is an essential aspect of planning for individual clients. Connecticut is the 19th state to adopt DAPT legislation since Alaska adopted the first act in 1997. States enacting this law want to remain competitive among other states offering modern trust laws. States without DAPT legislation place their residents at risk when they use DAPTs in other states. There is a potential for positive economic impact on state's trust and financial services industries.

II. Purpose of the Act

A. CQDTA is designed to dovetail with and complement the Uniform Fraudulent Conveyance Act, Conn. Gen. Stat. § 52-552, et. seq., which was adopted in Connecticut in 1991.

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1 The Connecticut Uniform Trust Code was enacted in June, 2019 and became Public Act 19-137. All section references are to that Act. The LCO has not yet assigned statute references to the Act. It contains the Uniform Trusts Code, the Uniform Directed Trust Act, the Qualified Dispositions in Trust Act and a modification to the Uniform Rule Against Perpetuities to increase the permissive duration of trusts to 800 years. The Act also repeals and modifies a number of existing state statutes as a result of the changes brought about by P.A. 19-137. This outline focuses only on the sections 99 to 100 of P.A. 19-137, which are Connecticut's version of the Qualified Dispositions in Trust Act.

2 Kelley Galica Peck is a Partner in the law firm of Cummings & Lockwood, LLC, resident in West Hartford, Connecticut. As chair of the Legislative Subcommittee of the Executive Committee of the Connecticut Bar Association, Estates and Probate Section for the 2017 to 2019 term, Kelley and members the Legislative Subcommittee drafted the Connecticut Uniform Trust Code and advocated for its passage. They received substantial input in drafting from other stakeholders, including the Office of Probate Court Administration, the charities division of the Office of the Attorney General and the Connecticut Bankers Associations.

B. Under UFCA, a conveyance is fraudulent when there is an actual or constructive intent by the debtor to hinder, defraud and delay creditors. Constructive intent exists when the debtor already is "balance sheet insolvent" or would render himself so by making the transfer.

C. Federal bankruptcy law takes priority over any state law when a debtor files for bankruptcy. The bankruptcy rule regarding fraudulent conveyance contains a similar requirement that a conveyance may be set aside as fraudulent if there is an actual intent to hinder, defraud and delay creditors. 11 USC § 548. See *In re Huber*, 493 B.R. 798 (Bankr. W.D.WA., May 17, 2013). Subsection (e) of that section allows the bankruptcy trustee to void a transfer into a self-settled trust of the debtor if the transfer occurred within ten years prior to the date the debtor files a petition for bankruptcy:

> "In addition to any transfer that the trustee may otherwise avoid, the trustee may avoid any transfer of an interest of the debtor in property that was made on or within 10 years before the date of the filing of the petition, if—
> (A) such transfer was made to a self-settled trust or similar device;
> (B) such transfer was by the debtor;
> (C) the debtor is a beneficiary of such trust or similar device; and
> (D) the debtor made such transfer with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made, indebted."

D. A creditor's claim to attach an asset based on fraudulent conveyance under CUFCA has the same statutes of limitation as CQDTA. Note, however, that a transfer is voidable under CQDTA within the first four years even if there was no intent to hinder, defraud or delay creditors.

E. If the creditor can prove a fraudulent conveyance, i.e., there were known and existing creditors at the time of the transfer, the creditor has the same remedy against DAPT property as with any other fraudulent conveyance. But if it is within the first four years, there is no need to prove that it was a fraudulent conveyance or that the creditor was known or in existence at the time of transfer.

III. <u>Ethical Considerations in Preparing DAPTs</u>

A. **Rules of Professional Conduct.** Lawyers are bound by the rules of Professional Conduct, which generally prohibit an attorney from assisting a client to perpetrate a fraud. Connecticut Informal Ethics Opinion - 91-22 addresses this issue:

1. Conclusion: An attorney may not knowingly assist a client to transfer or hide assets to the detriment of known creditors.

2. Facts: Husband and Wife owned joint property and Husband had debts he could not pay.

3. Question presented: Whether the lawyer may recommend to client that he transfer his interest in the property to Wife or, if he does not recommend it, but client wishes to do so, can the lawyer perform the ministerial acts of preparing the deed and recording it. Lawyer recognized the transaction would constitute a "fraudulent transfer" but the question relates to whether that conduct would fall within the prohibition under the Rules of Professional Conduct.

4. Opinion concludes that a lawyer may NOT, consistent with the Rules of Professional Conduct, recommend the transaction and may NOT advise or assist the client to complete the transaction. Reasoning is not because it does or may constitute a fraudulent transfer, but rather because a lawyer cannot ethically assist a client to take an action "having a purpose to deceive (Rule 1.2(d))" or having "no substantial purpose other than to embarrass, delay or burden third parties (Rule 4.4)."

5. Opinion further concludes that not all fraudulent transfers implicate the Rules of Professional Conduct. The Rules are not implicated if the lawyer does not have actual knowledge of intent to deceive, hinder or delay and where there is some other purpose to the transaction. For example, if the primary purpose is for estate planning and there is a tangential impact of creditor protection, it may not be a violation of the Rules.

6. Is There a Duty to Inquire Regarding Client's Purpose: Opinion provides a lawyer has a duty to ascertain from the client such information as is necessary under the circumstances to provide competent advice. A lawyer is entitled to believe his or her client unless it is unreasonable to do so. The lawyer cannot "turn a blind eye to the obvious." If the circumstances are such that fraudulent transfer might be an issue, then the lawyer MUST obtain sufficient information from the client to provide advice regarding the consequences.

7. CQDTA does not permit transfers that will impact existing creditors so there is no real advantage to doing a DAPT as against a known creditor because those transfers can be set aside. The lawyer must be able to advise regarding that issue. Rigorous due diligence during the in-take process will allow attorneys to weed out those clients who intend to make fraudulent transfers. Connecticut does not require the client to provide an Affidavit of Solvency as is required in some DAPT states. However, obtaining one from the client might be prudent.

B. Lawyer Liability for Assisting in a Fraudulent Conveyance. Beyond the risk of disciplinary action under the Rules, the equally serious concern is whether the lawyer is legally liable to the client's creditors for legal advice related to establishing a DAPT that is, in fact, a fraudulent conveyance.

1. CQDTA specifically prohibits claims by creditors against an attorney (and others, including the trustee) who counsels a client in establishing and funding a DAPT. See Sec. 105(d). Such a provision, however, should not be seen as waiving an attorney's obligation to comply with the law regarding fraudulent conveyances, nor does it override the lawyer's obligations under the Rules of Professional Conduct.

2. A lawyer also may be sued by his own client for inadequate advice if the transfer to the DAPT ultimately is set aside in favor of a creditor for fraudulent conveyance reasons. The question, of course, relates to what damages the client may collect since there would seem to be no greater harm than if the transfer never occurred (other than costs of the transaction).

IV. <u>How To Create A DAPT (§100)</u>

A. Elements: CQDTA establishes three necessary elements to establish a DAPT, each of which is extensively and carefully defined in CQDTA:

1. A <u>qualified disposition</u>

2. To a <u>qualified trustee</u>

3. Under a <u>trust instrument</u>

B. Qualified Disposition (§100 (4) (6) & (8))

1. A "<u>qualified disposition</u>" is:

   (a) A transfer, conveyance or assignment of property

   (b) With or without consideration

      (i) By a transferor (who may be a trustee of another trust)

      (ii) To a "qualified trustee" as defined in CQDTA

      (iii) By means of a "trust instrument" as defined in CQDTA.

2. Note that the transfer cannot be used to circumvent state or federal Medicaid laws.

C. Trust Instrument (§ 100(10))

1. The "trust instrument" must be must meet ALL of the following requirements:

      (a) It must be in writing;

(b) Provide that Connecticut law governs the validity, construction and administration of the trust;

(c) Be irrevocable;

(d) Contain a spendthrift clause that is enforceable under applicable nonbankruptcy law[3]; and

(e) Appoint at least one “qualified trustee.”

D. Qualified Trustee (§ 100(9))

1. Requirements to be a “qualified trustee”:

(a) An individual who is a resident of the State of Connecticut (other than the transferor); or

(b) A bank or trust company that:

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[3] Connecticut’s current spendthrift law is found in Title 52 of the general statutes:

> **Sec. 52-321. Liability of income of trust fund to creditors. Expenses of trustee.** Except as provided in sections 52-321a and 52-352b:
>
> (a) If property has been given to trustees to pay over the income to any person, without provision for accumulation or express authorization to the trustees to withhold the income, and the income has not been expressly given for the support of the beneficiary or his family, the income shall be liable in equity to the claims of all creditors of the beneficiary.
>
> (b) Any creditor of the beneficiary who has secured a judgment against the beneficiary may bring an action against him and serve the trustees with garnishee process, and the court to which the action is returnable may direct the trustees to pay over the net income derived from the trust estate to the judgment creditor, as the income may accrue, until the creditor's debt is satisfied.
>
> (c) The court having jurisdiction over the fund may make such an order for payment pursuant to subsection (b) when the beneficiary is a nonresident of this state, as well as when the beneficiary is a resident, but in the case of a nonresident beneficiary notice shall be given to the nonresident of the action against him as provided in section 52-87. The nonresidence of the beneficiary shall not deprive the court of authority to make such an order.
>
> (d) If any such trust has been expressly provided to be for the support of the beneficiary or his family, a court of equity having jurisdiction may make such order regarding the surplus, if any, not required for the support of the beneficiary or his family, as justice and equity may require.
>
> (e) The defendant trustee in any such action shall be entitled to charge in the administration account of the trust such expenses and disbursements as the court to which the action is brought determines to be reasonable and proper.”

In addition, CUTC Section 3(26) provides that a “spendthrift provisions” means the term of a trust that restrains voluntary and involuntary transfer of a beneficiary’s interest.”

(c) has a place of business in Connecticut; and

(d) is authorized to engage in a trust business in Connecticut; and

(e) (i) Maintains or arranges for custody in Connecticut of some or all of the trust property that is subject to the qualified disposition; (ii) Maintains records in Connecticut for the trust; (iii) Prepares or arranges for the Connecticut fiduciary income tax returns for the trust; or (iv) Otherwise materially participates in administration of the trust.

E. Appointment of Trust Directors for DAPTs

1. PA 19-137 also adopted the Uniform Directed Trust Act ("UDTA"), which establishes the concept of "trust director" (essentially a trust protector or advisor). A trust director is subject to fiduciary duties and liability. (PA 19-137 § 3, 81-97)

2. Under CQDTA, a trust director is any non-trustee who holds "one or more trust powers." A DAPT trust instrument may vest broad powers in a trust director (§ 101).

F. Powers of Trust Directors

1. Examples of trust director powers:

    (a) Power to remove and appoint qualified trustees or other directors;

    (b) Power to direct, consent to or disapprove of (veto) trust distributions.

2. Transferor may serve as a trust director, however:

    (a) The only trust director power that may be vested in the transferor is a right to veto a distribution from a trust.

    (b) Transferor may retain other powers that could be given to a trust director, but not in the capacity of a trust director (see scope of grantor retained powers under §103).

G. Trustee Succession (§102)

1. If a qualified trustee <u>ceases</u> to be a qualified trustee (e.g., by change of residency, no business in Connecticut, etc.), the qualified trustee is automatically <u>deemed to resign</u>.

2. Successor qualified trustee:

    (a) If the trust instrument names a successor, that successor automatically becomes the qualified trustee.

    (b) If no successor is named, any interested party may petition the probate court or superior court to appoint a successor qualified trustee, and court must appoint a successor with the purposes of the trust in mind.

H. Non-Qualified Trustees

1. Not all trustees must be "qualified trustees." A disposition may still constitute a "qualified disposition" even if less than all trustees are qualified trustees.

2. A non-qualified trustee may transfer the assets to the qualified trustee.

    (a) Under §105(c), a disposition may be a "qualified disposition" even if the original trust document did not require that it be governed by Connecticut law if the non-qualified trustee transfers the trust property to a "qualified trustee."

    (b) This rule permits trusts from other states to migrate to Connecticut. This will be beneficial for Connecticut residents who created DAPTs in another state and want to migrate them back to Connecticut in light of the change in Connecticut public policy.

    (c) The "date of disposition" relates back to the original transfer if the original transfer was to a "trust instrument" despite the fact that the instrument did not make the trust subject to Connecticut law.

V. <u>Rights The Transferor May Retain (§103, 104)</u>

A. Self-Settled Aspects of DAPT. Transferor may retain rights, powers and interests over the property transferred to the trust so long as such rights, powers and interests are set forth in the trust instrument (which is irrevocable).

1. The statute sets out non-exhaustive list of rights and powers a transferor may retain (see B below).

2. The retention of rights and powers by the transferor does NOT negate the irrevocable nature of the trust and does NOT undermine the creditor protection afforded by CQDTA.

3. Side agreements / implied agreements between transferor and qualified trustee(s) are deemed void. This is important because a creditor could argue that the settlor and trustee had an agreement whereby the trustee would make distributions to the settlor, thereby undermining the creditor protections. Even if such an agreement existed, it would be void and unenforceable.

B. **Statutory List of Approved Powers (§103)** The express statutory list of rights and interests that the transferor may retain include the right to:

1. Veto a trust distribution (this is an essential right if the goal is to make funding an incomplete gift so that trust property will be subject to estate tax at the transferor's death).

2. Retain a limited power of appointment, exercisable by will or other written instrument, and effective only upon the transferor's death (this also is an essential right if the goal is to make funding an incomplete gift so that trust property will be subject to estate tax at the transferor's death).

3. Receive discretionary income from the trust.

4. Receive income/principal from a CRT and release the retained interest in a CRT.

5. Annually receive up to 5% of the value of the trust property (a unitrust interest).

6. Receive (or potentially receive) principal as a result of (i) the trustee's exercise of discretion; (ii) the trustee's compliance with a distribution standard(e.g., health, education and support); or (iii) the trust director's exercise of discretion or compliance with a distribution standard.

7. Remove a trustee or trust director and appoint a new one, other than someone who is a related or subordinate party to the transferor.

8. Use real property held under a QPRT.

9. Receive income or principal to pay, in whole or in part, income taxes due on income of the trust if the potential or actual receipt is pursuant to a provision in the trust instrument that expressly provides for the payment of the taxes and if such receipt would be the result of a qualified trustee acting in its discretion or at the direction of a trust director acting in such trust director's discretion.

VI. Limitations on Claims and Creditors (§105)

A. Statutory Protection. Section 105 provides the substance of the DAPT protections of trust property against creditors but setting forth the limitations of how and when creditors may make claims against the trust.

1. Subsection (a) provides how a claim must be brought.

2. Subsections (b), (c) and (f) provide for when a claim must be brought.

3. Subsections (d), (e) and (g) provide who a claim can be brought against.

B. How to Make Claims Against a DAPT (§105(a))

1. An action against a DAPT must be brought pursuant to C.G.S. §52-552h, which is part of Connecticut's Uniform Fraudulent Transfers Act governing remedies for creditors. (Copy attached)

   (a) Allows a creditor to obtain an avoidance, an attachment, an injunction, an appointment of receiver, or any other relief the circumstances require.

   (b) A court may also order a levy of execution on the transferred assets or its proceeds.

2. CUFTA §52-552e regarding transfers fraudulent as to present creditors provides that a transfer is considered fraudulent if it is made by the debtor after the creditor's claim arose and if the debtor made the transfer with actual intent to hinder, delay or defraud any creditor.

   (a) Under §105(a), a claim can only be brought against a DAPT if the transferor actually intended to hinder, delay or defraud any creditor (subject to some exceptions regarding Exception Creditors.

   (b) §105(a) requires the creditor to prove each element by clear and convincing evidence.

C. When to Make Claims Against a DAPT (§105(b))

1. If the Creditor's claim arose <u>before</u> the qualified disposition was made:

   (a) Action must be brought within 4 years after the qualified disposition was made, or

   (b) If later, within 1 year after the qualified disposition was or reasonably could have been discovered by the creditor.

2. If the Creditor's claim arose after the qualified disposition was made, action must be brought within 4 years after the qualified disposition was made.

D. More on Timing of Claims (§105(c) and (f))

1. A qualified disposition made by a trustee is deemed to have been made when the property was originally transferred to the trustee, or any predecessor trustee, in a form that conforms with the requirements of §100(10) (defining a "Trust Instrument").

2. If the trust would not conform to §100(10) because of the original transferor's nonconforming power of appointment, upon the trustee's delivery to the qualified trustee of an irrevocable, written election to apply this subsection, the nonconforming powers shall be deemed modified to conform (Relation back to original date for migrating trusts).

3. Section 105 sets the start of the statute of limitations at the very first qualified disposition (e.g. when grantor initially funding the DAPT). Any subsequent qualified dispositions from that trust to another trust or trustee (e.g. distribution to separate trusts at Grantor's death) does NOT reset the statute of limitations.

4. If multiple qualified dispositions are made by the same trust:

   (a) The subsequent qualified disposition is disregarded in determining whether a claim to the earlier qualified disposition has been extinguished - i.e. a second qualified disposition does not restart the statute of limitations on the first qualified disposition.

   (b) Any distribution to a beneficiary comes from the most recent qualified disposition.

E. Limitations on Claims (§105(d) and (e))

1. A creditor or any other person making a claim against trust assets has only those rights to a qualified disposition as are provided in CQDTA. That is, there are no common law rights or equitable claims that can be made if not expressly provided by the statute.

2. No person has any claim against a trustee, trust director, or person involved in counseling, drafting, preparation, execution or funding of a trust that is the subject of a qualified disposition. (See Part III above regarding liability for creating a DAPT)

3. No action of any kind, including an action to enforce a judgement by a court, may be brought against a trustee, trust director, or person involved

in the counseling, drafting, preparation, execution or funding of a trust that is the subject of a qualified disposition, if, at the date the action is brought, an action by a creditor would be barred by this section.

F. Ejection of Trustee When Claims Made §105(g)

1. If an action is brought against a trustee of a trust funded by a qualified disposition and the court declines to apply Connecticut law to determine the validity, construction or administration of the trust, or the effect of the spendthrift provision, the trustee immediately ceases to be a trustee of the trust and a successor trustee succeeds as trustee.

2. The previous trustee will have no power or authority other than to convey the trust property to the successor trustee. This prevents a court from being able to order a DAPT trustee to take any action or make any distribution that is not under Connecticut law.

3. For example: If a creditor in NY brings an action against a trustee of a CT DAPT and the NY court, declining to apply CT law, finds the DAPT invalid in order to invade the trust, then under this subsection, the moment NY makes that decision, the trustee ceases to be a trustee and has no power over the trust except to transfer assets to a successor trustee. If an action is then brought against the successor, the process repeats.

4. Might this violation of the Full Faith and Credit Clause of the Constitution? See *Toni 1 Trust v. Wacker*, 413 P.3d 1199 (Ala. 2018).

G. **Exemption Creditors (§106)** There are some creditors who may make a claim against the trust even after the 4 and 1 year statutes of limitation have expired and they are not precluded from doing so by CQDTA.

1. A claim under a contractual obligation or court order to pay child support, alimony or property settlement in divorce which was in force <u>prior to</u> a qualified disposition is not restricted by this act.

2. A claim for liability for a tortious act resulting in death or bodily injury that occurred <u>prior to</u> a qualified disposition is not restricted by this act.

3. In both circumstances, the claims are limited to the extent of the debt. Note that in both cases they are pre-existing creditors at the time of the transfer, but they are not limited by the requirement to bring a claim within 4 years of the transfer or 1 year of when the transfer reasonably could have been discovered, if later.

H. Protection for Trustees and Beneficiaries Against Successful Claims (§107)

1. If a creditor is successful in bringing a claim, the qualified disposition will be avoided only to the extent necessary to satisfy the debt to the creditor bringing the claim and any costs allowed by the court.

2. If a qualified disposition is avoided and the Trustee has not acted in bad faith:

   (a) The Trustee has a first and paramount lien against the property in an amount equal to the entire cost incurred in the defense of the action.

   (b) The avoidance is subject to the proper fees, costs, and preexisting rights, claims and interest of the trustee and any predecessor trustee that has not acted in bad faith.

   (c) There is a presumption that the trustee did not act in bad faith by accepting the property.

3. If a qualified disposition is avoided and the beneficiary has not acted in bad faith: The avoidance is subject to the right of the beneficiary to retain any distribution made by a properly exercised trust power prior to the creditor's commencement of an action.

4. The creditor bears the burden of proving <u>by clear and convincing evidence</u> that a trustee or beneficiary acted in bad faith, except in the case of a beneficiary who is also the transferor, in which case the creditor's burden of proof to show bad faith is only by a preponderance of the evidence.

I. Effective Date (§108) The provisions of sections 99-109 apply to qualified dispositions made on or after January 1, 2020.

VII. <u>Two Important Cases in DAPT Law</u>

*A. In re Huber*493 B.R. 798 (Bankr. W.D.WA., May 17, 2013).

Donald Huber, a resident of Washington, created a DAPT in Alaska in late 2008. Huber, a large real estate developer, was in financial distress at the time due to the 2008 financial crisis. In 2011 he filed for bankruptcy. Alaska recognizes self-settled asset protection trusts, but Washington does not. The Bankruptcy Court held that in federal question cases with exclusive jurisdiction in federal court, the federal court should apply federal law. That is to say, in a bankruptcy action involving a DAPT state and non-DAPT state and faced with a choice of law question, federal law will apply.

The court applied the Second Restatement of Conflict of Laws which provides that an *inter vivos* trust is valid if it is valid, "under the local law of the state designated by the settlor to govern the validity of the trust, *provided that this state has a substantial relation to the trust* and that the application of its law *does not violate a strong public policy of the state with which… the trust has its most significant relationship…*" At the time the trust was created, neither the settlor nor the beneficiaries were domiciled in Alaska and the assets were not located in Alaska. The only connection to Alaska was as a place of administration of the trust and the "residence" of a single trustee. The court concluded that these minimal contacts with Alaska, coupled with the strong public policy of Washington against DAPTs rendered the trust invalid under the test set forth in the Second Restatement.

Additionally, the court considered whether the transfer of assets was void under 11 USC 548(e)(1) (i.e., federal bankruptcy law). "In assessing the evidence, courts consider 'badges of fraud,' which are 'circumstances so commonly associated with fraudulent transfer that their presence gives rise to an inference of intent.'" The parties presented more than a hundred documents evidencing Huber's intent to hinder, delay, or defraud his creditors. The court found this to be a fraudulent transfer under both the bankruptcy code and the Uniform Fraudulent Transfer Act.

B. *Toni 1 Trust v. Wacker* 413 P.3d 1199 (Ala. 2018).

Donald Tangwall sued his neighbors, the Wackers. The Wackers counterclaimed and obtained a judgment not only against Donald, but also against his wife, and his wife's mother, Toni. Before the judgment was entered, Toni, a Montana resident, transferred real property in Montana to an Alaskan DAPT. Toni then filed for bankruptcy. Montana held the transfers to be fraudulent.

The Alaska Supreme Court recognized that Donald's interpretation of the Alaska statute is correct, but it ultimately ruled against him because the court recognized that Alaska law cannot "prevent other state and federal courts from exercising subject matter jurisdiction over fraudulent transfer actions against [an Alaska DAPTs]." Alaska's Supreme Court cited the United States Supreme Court ruling in *Tennessee Coal, Iron, & R.R. Co. v. George*, 233 U.S. 354 (1914), for the proposition that "the Full Faith and Credit Clause does not compel states to follow another state's statute claiming exclusive jurisdiction over suits based on a cause of action 'even though [the other state] created the right of action'" The Alaska Supreme Court concluded that the Montana judgment was NOT void for lack of jurisdiction. The court also referenced the Supremacy Clause of the U.S. Constitution to conclude that the federal bankruptcy court judgements were not void for lack of jurisdiction.

Both cases involve blatant fraudulent transfers, and may fall under the heading of "bad facts make bad law" but they are the two most prominent DAPT cases and they both concluded that non-residents who try to utilize the DAPT laws of another state do so at their peril. Certainly whether the client is a resident or non-resident, they will be subject to the more strenuous bankruptcy laws on transfers to self-settled trusts.

the uniform provisions of sections 81 to 98, inclusive, of this act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 97. (NEW) (*Effective January 1, 2020*) Sections 81 to 98, inclusive, of this act modify, limit and supersede the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 et seq., but do not modify, limit or supersede Section 101(c) of said act, 15 USC 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of said act, 15 USC 7003(b).

Sec. 98. (NEW) (*Effective January 1, 2020*) The provisions of this section and sections 81 to 97, inclusive, of this act governing the legal effect, validity or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of the records or signatures, conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, 15 USC 7002 and supersede, modify and limit the requirements of that act.

Sec. 99. (NEW) (*Effective January 1, 2020*) This section and sections 100 to 108, inclusive, of this act may be cited as the "Connecticut Qualified Dispositions in Trust Act".

Sec. 100. (NEW) (*Effective January 1, 2020*) As used in this section and sections 101 to 108, inclusive, of this act:

(1) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

(2) "Creditor" means, with respect to a transferor, a person who has a claim.

(3) "Debt" means liability on a claim.

(4) "Disposition" means a transfer, conveyance or assignment of

property, including a change in the legal ownership of property occurring upon the substitution of one trustee for another or the addition of one or more new trustees, or the exercise of a power so as to cause a transfer of property, to a trustee or trustees. "Disposition" does not include the release or relinquishment of an interest that was the subject of a qualified disposition.

(5) "Property" includes real property, tangible and intangible personal property, and interests in real or personal property, tangible and intangible.

(6) "Qualified disposition" means a disposition by or from a transferor to a trustee, with or without consideration, by means of a trust instrument. "Qualified disposition" does not include a disposition: (A) In derogation of any state or federal agency claim or right of recovery under 42 USC Chapter 7, Subchapter XIX against a trust established by a transferor or such transferor's spouse, or (B) in respect to a state or federal agency treatment of the trust instrument in a determination of a transferor's eligibility under a state plan under 42 USC Chapter 7, Subchapter XIX.

(7) "Spouse" and "former spouse" means only persons to whom the transferor was married at, or before, the time the qualified disposition is made.

(8) "Transferor" means an individual who, or entity which, as an owner of property or as a holder of a general power of appointment, which authorizes the holder to appoint in favor of the holder, the holder's creditors, the holder's estate or the creditors of the holder's estate, or as a trustee, directly or indirectly, makes a disposition or causes a disposition to be made.

(9) "Qualified trustee" means:

(A) Any person, other than the transferor, who in the case of an individual, is a resident of this state or who, in all other cases, is a state or federally chartered bank or trust company having a place of business in this state, is authorized to engage in a trust business in this state, and maintains or arranges for custody in this state of some or all of the property that is the subject of the qualified disposition, maintains records in this state for the trust on an exclusive or nonexclusive basis, prepares or arranges for the preparation in this state of fiduciary income tax returns for the trust, or otherwise materially participates in this state in the administration of the trust.

(B) "Qualified trustee" does not include (i) the transferor, (ii) any other individual who is a nonresident of this state, or (iii) an entity that is not authorized by the laws of this state to act as a trustee or whose activities are not subject to supervision as provided in subparagraph (A) of this subdivision.

(10) "Trust instrument" means an instrument, in writing, appointing at least one qualified trustee for the property that is the subject of a disposition, which instrument:

(A) Expressly provides that the laws of this state govern the validity, construction and administration of the trust;

(B) Is irrevocable; and

(C) Provides that the interest of the transferor or other beneficiary in the trust property or the income from the trust property may not be transferred, assigned, pledged or mortgaged, whether voluntarily or involuntarily, before the qualified trustee or qualified trustees actually distribute the property or income from the trust property to the beneficiary, and the provision of the trust instrument shall be deemed to be a restriction on the transfer of the transferor's beneficial interest in the trust that is enforceable under applicable nonbankruptcy law within the meaning of 11 USC 541(c)(2), as amended from time to time.

Sec. 101. (NEW) (*Effective January 1, 2020*) (a) Nothing in sections 99 to 108, inclusive, of this act shall be construed to preclude a transferor from appointing one or more trust directors, including, but not limited to:

(1) Trust directors who have authority under the terms of the trust instrument to remove and appoint qualified trustees or trust directors; and

(2) Trust directors who have authority under the terms of the trust instrument to direct, consent to or disapprove distributions from the trust.

(b) A transferor may serve as trust director, but the power of a trust director, who is the transferor shall be limited to the retention of the veto right permitted by subdivision (1) of section 103 of this act.

(c) For purposes of this section, "trust director" includes a trust director, as defined in section 3 of this act, a trust protector, a trust advisor or any other person who, in addition to a qualified trustee, holds one or more trust powers.

Sec. 102. (NEW) (*Effective January 1, 2020*) (a) If a qualified trustee of a trust ceases to meet the requirements of subparagraph (A) of subdivision (9) of section 100 of this act and no remaining trustee meets the requirements of said subparagraph, the qualified trustee shall be deemed to have resigned at the time of the cessation and the successor qualified trustee provided for in the trust instrument shall become a qualified trustee of the trust. In the absence of any successor qualified trustee provided for in the trust agreement, the court may, upon application of any interested party, appoint a successor qualified trustee.

(b) In the case of a disposition to more than one trustee, at least one of whom is a qualified trustee, a disposition that is otherwise a qualified disposition shall not be treated as other than a qualified disposition solely because not all of the trustees are qualified trustees.

(c) A trustee of a trust who is not a qualified trustee may transfer the assets of a trust to a qualified trustee. Notwithstanding the provisions of subparagraph (A) of subdivision (9) of section 100 of this act, a disposition by a trustee who is not a qualified trustee to a trustee who is a qualified trustee will not fail to qualify as a qualified disposition solely because the trust instrument does not contain an express provision that the laws of this state govern the validity, construction and administration of the trust.

Sec. 103. (NEW) (*Effective January 1, 2020*) For purposes of subparagraph (B) of subdivision (10) of section 100 of this act, a trust instrument is irrevocable regardless of whether the transferor retained any of the following rights, powers and interests:

(1) A transferor's power to veto a distribution from the trust;

(2) A power of appointment, other than a power to appoint to the transferor, the transferor's creditors, the transferor's estate or the creditors of the transferor's estate, exercisable by will or other written instrument of the transferor and effective only upon the transferor's death;

(3) The transferor's potential or actual receipt of income, including rights to such income retained in the trust instrument;

(4) The transferor's potential or actual receipt of income or principal from a charitable remainder unitrust or charitable remainder annuity trust, as such terms are defined in 26 USC 664, as amended from time to time; and the transferor's right, at any time and from time to time by written instrument delivered to the trustee, to release such transferor's retained interest in the trust, in whole or in part, in favor of a charitable organization that has or charitable organizations that have a succeeding beneficial interest in the trust;

(5) The transferor's receipt each year of a percentage, not to exceed five per cent, specified in the trust instrument of the initial value of the trust assets on their value determined from time to time pursuant to the trust instrument or of a fixed amount that, on an annual basis, does not exceed five per cent of the initial value of the trust assets;

(6) The transferor's potential or actual receipt or use of principal if the potential or actual receipt or use of principal would be the result of

a qualified trustee acting:

(A) In the discretion of the qualified trustee;

(B) Pursuant to a standard that governs the distribution of principal and does not confer upon the transferor a substantially unfettered right to the receipt or use of the principal; or

(C) At the direction of a trust director described in section 101 of this act who is acting in the director's discretion, or pursuant to a standard that governs the distribution of principal and does not confer upon the transferor a substantially unfettered right to the receipt of or use of principal. For purposes of this subparagraph, a qualified trustee is presumed to have discretion with respect to the distribution of principal unless such discretion is expressly denied to the trustee by the terms of the trust instrument;

(7) The transferor's right to remove a trustee or director and to appoint a new trustee or director, other than a person who is a related or subordinate party with respect to the transferor within the meaning of 26 USC 672(c), as amended from time to time;

(8) The transferor's potential or actual use of real property held under a qualified personal residence trust within the meaning of the term as described in 26 USC 2702(c), as amended from time to time, or the transferor's possession and enjoyment of a qualified annuity interest within the meaning of the term as described in 26 CFR 25.2702-5(c)(8), as amended from time to time; and

(9) The transferor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on income of the trust if the potential or actual receipt of income or principal is pursuant to a provision in the trust instrument that expressly provides for the payment of the taxes and if such potential or actual receipt of income or principal would be the result of a qualified trustee acting:

(A) In the qualified trustee's discretion; or

(B) At the direction of a trust director described in section 101 of this act who is acting in the director's discretion.

Sec. 104. (NEW) (*Effective January 1, 2020*) A qualified disposition shall be subject to sections 99 to 108, inclusive, of this act notwithstanding a transferor's retention of any of the powers and rights described in section 103 of this act and the transferor's service as investment director or advisor pursuant to section 101 of this act. The transferor shall have only such powers and rights as are conferred by the trust instrument. Except as provided in the trust instrument, and permitted by section 101 of this act and in section 103 of this act, a transferor has no rights or authority with respect to the property that is the subject of a qualified disposition or the income therefrom, and any agreement or understanding purporting to grant or permit the retention of any greater rights or authority is void.

Sec. 105. (NEW) (*Effective January 1, 2020*) (a) Notwithstanding any provision of the general statutes, no action of any kind, including, without limitation, an action to enforce a judgment entered by a court or other body having adjudicative authority, shall be brought at law or in equity for an attachment or other provisional remedy against property that is the subject of a qualified disposition or for avoidance of a qualified disposition, unless the action is brought pursuant to section 52-552h of the general statutes. In any such action, the creditor has the burden to prove each element by clear and convincing evidence.

(b) Notwithstanding the provisions of section 52-552j of the general statutes, a creditor may not bring an action under subsection (a) of this section if:

(1) The creditor's claim against the transferor arose before the qualified disposition was made, unless the action is brought within four years after the qualified disposition is made or, if later, within one year after the qualified disposition was or could reasonably have been discovered by the creditor; or

(2) The creditor's claim against the transferor arose subsequent to the qualified disposition, unless the action is brought within four years after the qualified disposition is made.

(c) For the purposes of sections 99 to 108, inclusive, of this act, a qualified disposition that is made by means of a disposition by a transferor who is a trustee shall be deemed to have been made as of the time the property that is the subject of the qualified disposition was originally transferred to the transferor, or any predecessor trustee, making the qualified disposition in a form that conforms with the requirements set forth in subdivision (10) of section 100 of this act. If a trustee of an existing trust proposes to make a qualified disposition pursuant to this subsection, but the trust would not conform to the requirements of subdivision (10) of section 100 of this act as a result of the original transferor's nonconforming powers of appointment, upon the trustee's delivery to the qualified trustee of an irrevocable written election to have this subsection apply to the trust, the nonconforming powers of appointment shall be deemed modified to the extent necessary to conform with the requirements of subdivision (10) of section 100 of this act. For purposes of sections 99 to 108, inclusive, of this act, an irrevocable written election includes a description of the original transferor's powers of appointment as modified together with the original transferor's written consent to the election but no such consent of the original transferor shall be considered a disposition within the meaning of subdivision (4) of section 100 of this act.

(d) Notwithstanding any provision of the general statutes, a creditor, including a creditor whose claim arose before or after a qualified disposition, or any other person shall have only such rights with respect to a qualified disposition as are provided in this section and sections 106 and 107 of this act, and no such creditor nor any other person shall have any claim or cause of action against the trustee, or trust director, as described in section 101 of this act, of a trust that is the subject of a qualified disposition, or against any person involved in the counseling, drafting, preparation, execution or funding of a trust that is the subject of a qualified disposition.

(e) Notwithstanding any other provision of the general statutes, no action of any kind, including, without limitation, an action to enforce a judgment by a court or other body having adjudicative authority, shall be brought at law or in equity against the trustee, or trust director, as described in section 101 of this act, of a trust that is the subject of the qualified disposition, or against any person involved in the counseling, drafting, preparation, execution or funding of a trust that is the subject of a qualified disposition, if, as of the date the action is brought, an action by a creditor with respect to the qualified disposition would be barred under this section.

(f) If more than one qualified disposition is made by means of the same trust instrument:

(1) The making of a subsequent qualified disposition shall be disregarded in determining whether a creditor's claim with respect to a prior qualified disposition is extinguished as provided in subsection (b) of this section; and

(2) Any distribution to a beneficiary shall be deemed to have been made from the latest such qualified disposition.

(g) If, in any action brought against a trustee of a trust that is funded, in whole or in part, by a qualified disposition, a court takes any action whereby the court declines to apply the law of this state in determining the validity, construction or administration of the trust, or the effect of a spendthrift provision of the trust, the trustee shall immediately, upon the court's action and without the further order of any court, cease in all respects to be a trustee of the trust and (1) a successor trustee shall thereupon succeed as trustee in accordance with the terms of the trust instrument; or (2) if the trust instrument does not provide for a successor trustee and the trust would otherwise be without a trustee, the court having jurisdiction pursuant to sections 15 and 16 of this act, upon the application of any beneficiary of the trust, shall appoint a successor trustee upon such terms and conditions as it determines to be consistent with the purposes of the trust and the provisions of this section. The court shall have no continuing jurisdiction over the trust or trustee merely by reason of appointing the trustee. Upon the trustee's ceasing to be trustee, the trustee shall have no power or authority other than to convey the trust property to the successor trustee named in the trust instrument or appointed by the court having jurisdiction in accordance with the provisions of this section.

Sec. 106. (NEW) (*Effective January 1, 2020*) Notwithstanding the provisions of section 105 of this act, sections 99 to 108, inclusive, of this act, shall not apply to defeat a claim brought by:

(1) A person to whom the transferor is indebted on or before the date of a qualified disposition on account of an agreement or order of court for payment of support or alimony in favor of the transferor's spouse, former spouse or children, or for a division or distribution of property in favor of the transferor's spouse or former spouse, but only to the extent of the debt; or

(2) To any person who suffers death, personal injury or property damage on or before the date of a qualified disposition by a transferor, which death, personal injury or property damage is at any time determined to have been caused, in whole or in part, by the tortious act or omission of the transferor or by another person for whom the transferor is or was vicariously liable, but only to the extent of the claim against the transferor or other person for whom the transferor is or was vicariously liable.

Sec. 107. (NEW) (*Effective January 1, 2020*) (a) A qualified disposition shall be avoided only to the extent necessary to satisfy the transferor's debt to the creditor at whose instance the disposition had been avoided, together with any costs, including attorney's fees, that the court may allow.

(b) If any qualified disposition is avoided pursuant to subsection (a) of this section, the following rules apply:

(1) If the court is satisfied that the trustee has not acted in bad faith

in accepting or administering the property that is the subject of the qualified disposition:

(A) The trustee has a first and paramount lien against the property that is the subject of the qualified disposition in an amount equal to the entire cost, including attorney's fees, properly incurred by the trustee in the defense of the action or proceedings to avoid the qualified disposition;

(B) The qualified disposition shall be avoided subject to the proper fees, costs, preexisting rights, claims and interest of the trustee and of any predecessor trustee that has not acted in bad faith; and

(C) For purposes of this subdivision, it shall be presumed that the trustee did not act in bad faith merely by accepting the property.

(2) If the court is satisfied that a beneficiary of a trust has not acted in bad faith, the avoidance of the qualified disposition shall be subject to the right of the beneficiary to retain any distribution made upon the exercise of a trust power or discretion vested in the trustee of the trust, which power or discretion was properly exercised prior to the creditor's commencement of an action to avoid the qualified disposition. For purposes of this subdivision, it shall be presumed that the beneficiary, including a beneficiary who is also a transferor of the trust, did not act in bad faith merely by creating the trust or by accepting a distribution made in accordance with the terms of the trust.

(c) A creditor has the burden of proving by clear and convincing evidence that a trustee or beneficiary acted in bad faith as set forth in subsection (b) of this section, except, in the case of a beneficiary who is also the transferor, the burden on the creditor is to prove by a preponderance of the evidence that the transferor-beneficiary acted in bad faith. The provisions of this subsection shall be construed to provide substantive nonprocedural rights under state law.

(d) For purposes of sections 99 to 107, inclusive, of this act, attachment, garnishment, sequestration or other legal or equitable processes shall be permitted only in circumstances permitted by the express terms of said sections of this act.

(e) For purposes of this section, "court" means the Superior Court.

Sec. 108. (NEW) (*Effective January 1, 2020*) The provisions of this section and sections 100 to 107, inclusive, of this act, apply to qualified dispositions made on or after January 1, 2020.

Sec. 109. (NEW) (*Effective January 1, 2020*) (a) Except as otherwise provided in sections 1 to 108, inclusive, of this act, on January 1, 2020, the following rules apply:

(1) Sections 1 to 108, inclusive, of this act apply to all trusts created before, on or after January 1, 2020.

(2) Sections 1 to 108, inclusive, of this act apply to all judicial proceedings concerning trusts commenced on or after January 1, 2020.

(3) Sections 1 to 108, inclusive, of this act apply to judicial proceedings concerning trusts commenced before January 1, 2020, unless the court in which the judicial proceeding is pending finds that application of a particular provision of sections 1 to 108, inclusive, of this act would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties. If the court finds substantial interference or prejudice, the particular provision of sections 1 to 108, inclusive, of this act do not apply and the superseded law applies.

(4) Any rule of construction or presumption provided in sections 1 to 108, inclusive, of this act applies to trust instruments executed before January 1, 2020, unless there is a clear indication of a contrary intent in the terms of the trust.

(5) An act done before January 1, 2020, is not affected by sections 1 to 108, inclusive, of this act.

Sec. 52-552a. Short title: Uniform Fraudulent Transfer Act. Sections 52-552a to 52-552*l*, inclusive, may be cited as the "Uniform Fraudulent Transfer Act".

Sec. 52-552b. Definitions. As used in sections 52-552a to 52-552*l*, inclusive:

(1) "Affiliate" means: (A) A person who directly or indirectly owns, controls or holds with power to vote, twenty per cent or more of the outstanding voting securities of the debtor, other than a person who holds the securities (i) as a fiduciary or agent without sole discretionary power to vote the securities, or (ii) solely to secure a debt, if the person has not exercised the power to vote; (B) a corporation twenty per cent or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote, by the debtor or a person who directly or indirectly owns, controls or holds, with power to vote, twenty per cent or more of the outstanding voting securities of the debtor, other than a person who holds the securities (i) as a fiduciary or agent without sole power to vote the securities; or (ii) solely to secure a debt, if the person has not in fact exercised the power to vote; (C) a person whose business is operated by the debtor under a lease or other agreement or a person substantially all of whose assets are controlled by the debtor; or (D) a person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) "Asset" means property of a debtor, but the term does not include: (A) Property to the extent it is encumbered by a valid lien, (B) property to the extent it is generally exempt under nonbankruptcy law, or (C) an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured.

(4) "Creditor" means a person who has a claim.

(5) "Debt" means liability on a claim.

(6) "Debtor" means a person who is liable on a claim.

(7) "Insider" includes: (A) If the debtor is an individual, (i) a relative of the debtor or of a general partner of the debtor, (ii) a partnership in which the debtor is a general partner, (iii) a general partner in a partnership described in subparagraph (ii), or (iv) a corporation of which the debtor is a director, officer or person in control; (B) if the debtor is a corporation, (i) a director of the debtor, (ii) an officer of the debtor, (iii) a person in control of the debtor, (iv) a partnership in which the debtor is a general partner, (v) a general partner in a partnership described in subparagraph (iv), or (vi) a relative of a general partner, director, officer or person in control of the debtor; (C) if the debtor is a partnership, (i) a general partner in the debtor, (ii) a relative of a general partner in, a general partner of, or a person in control of the debtor, (iii) another partnership in which the debtor is a general partner, (iv) a general partner in a partnership described in subparagraph (iii), or (v) a person in control of the debtor; (D) an affiliate, or an insider of an affiliate as if the affiliate were the debtor; and (E) a managing agent of the debtor.

(8) “Lien” means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common law lien or a statutory lien.

(9) “Person” means an individual, partnership, corporation, limited liability company, association, organization, government or governmental subdivision or agency, business trust, estate, trust or any other legal or commercial entity.

(10) “Property” means anything that may be the subject of ownership.

(11) “Relative” means an individual related by consanguinity within the third degree as determined by the common law, a spouse or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(12) “Transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease and creation of a lien or other encumbrance.

(13) “Valid lien” means a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

Sec. 52-552c. Insolvency. (a) A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation.

(b) A debtor who is generally not paying his debts as they become due is presumed to be insolvent.

(c) A partnership is insolvent under subsection (a) of this section if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.

(d) Assets under this section do not include property that has been transferred, concealed or removed with intent to hinder, delay or defraud creditors or that has been transferred in a manner making the transfer voidable under sections 52-552a to 52-552*l*, inclusive.

(e) Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

Sec. 52-552d. Value. (a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.

(b) For the purposes of subdivision (2) of subsection (a) of section 52-552e and section 52-552f, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust or security agreement.

(c) A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

Sec. 52-552e. Transfers fraudulent as to present creditors. (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, if the creditor's claim arose before the transfer was made or the obligation was incurred and if the debtor made the transfer or incurred the obligation: (1) With actual intent to hinder, delay or defraud any creditor of the debtor; or (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor (A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

(b) In determining actual intent under subdivision (1) of subsection (a) of this section, consideration may be given, among other factors, to whether: (1) The transfer or obligation was to an insider, (2) the debtor retained possession or control of the property transferred after the transfer, (3) the transfer or obligation was disclosed or concealed, (4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit, (5) the transfer was of substantially all the debtor's assets, (6) the debtor absconded, (7) the debtor removed or concealed assets, (8) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred, (9) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred, (10) the transfer occurred shortly before or shortly after a substantial debt was incurred, and (11) the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

Sec. 52-552f. Transfers fraudulent as to present creditors. (a) A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(b) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time and the insider had reasonable cause to believe that the debtor was insolvent.

Sec. 52-552g. When transfer is made or obligation is incurred. For the purposes of sections 52-552a to 52-552*l*, inclusive:

(1) A transfer is made: (A) With respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good-faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset

that is superior to the interest of the transferee; and (B) with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under sections 52-552a to 52-552*l*, inclusive, that is superior to the interest of the transferee;

(2) If applicable law permits the transfer to be perfected as provided in subsection (1) of this section and the transfer is not so perfected before the commencement of an action for relief under sections 52-552a to 52-552*l*, inclusive, the transfer is deemed made immediately before the commencement of the action;

(3) If applicable law does not permit the transfer to be perfected as provided in subsection (1) of this section, the transfer is made when it becomes effective between the debtor and the transferee;

(4) A transfer is not made until the debtor has acquired rights in the asset transferred;

(5) An obligation is incurred: (A) If oral, when it becomes effective between the parties, or (B) if evidenced by a writing, when the writing executed by the obligor is delivered to or for the benefit of the obligee.

Sec. 52-552h. Remedies of creditors. (a) In an action for relief against a transfer or obligation under sections 52-552a to 52-552*l*, inclusive, a creditor, subject to the limitations in section 52-552i, may obtain: (1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim; (2) an attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by chapter 903a; (3) subject to applicable principles of equity and in accordance with applicable rules of civil procedure (A) an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property, (B) appointment of a receiver to take charge of the asset transferred or of other property of the transferee, or (C) any other relief the circumstances may require.

(b) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

Sec. 52-552i. Defenses, liability and protection of transferee. (a) A transfer or obligation is not voidable under subdivision (1) of subsection (a) of section 52-552e against a person who took in good faith and for a reasonably equivalent value.

(b) Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under subdivision (1) of subsection (a) of section 52-552h, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (d) of this section, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against: (1) The first transferee of the asset or the person for whose benefit the transfer was made, or (2) any subsequent transferee other than a good-faith transferee who took for value or from any subsequent transferee.

(c) If the judgment under subsection (b) of this section is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(d) Notwithstanding voidability of a transfer or an obligation under sections 52-552a to 52-552*l*, inclusive, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to (1) a lien on or a right to retain any interest in the asset transferred; (2) enforcement of any obligation incurred; or (3) a reduction in the amount of the liability on the judgment.

(e) A transfer is not voidable under subdivision (2) of subsection (a) of section 52-552e or section 52-552f if the transfer results from termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law.

(f) A transfer or obligation is not voidable under subdivision (2) of subsection (a) of section 52-552e or section 52-552f against an institution of higher education, as defined in 20 USC 1001, if the transfer was made or obligation incurred by a parent or guardian on behalf of a minor or adult child in furtherance of the child's undergraduate education.

(g) A transfer is not voidable under subsection (b) of section 52-552f: (1) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien, (2) if made in the ordinary course of business or financial affairs of the debtor and the insider, or (3) if made pursuant to a good-faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

Sec. 52-552j. Extinguishment of cause of action. A cause of action with respect to a fraudulent transfer or obligation under sections 52-552a to 52-552*l*, inclusive, is extinguished unless action is brought: (1) Under subdivision (1) of subsection (a) of section 52-552e, within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant; (2) under subdivision (2) of subsection (a) of section 52-552e or subsection (a) of section 52-552f, within four years after the transfer was made or the obligation was incurred; or (3) under subsection (b) of section 52-552f, within one year after the transfer was made or the obligation was incurred.

Sec. 52-552k. Supplementary provisions. Unless displaced by the provisions of sections 52-552a to 52-552*l*, inclusive, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency or other validating or invalidating cause, supplement the provisions of said sections.

Sec. 52-552*l*. Uniformity of application and construction. Sections 52-552a to 52-552k, inclusive, shall be applied and construed to effectuate their general purpose to make uniform the law with respect to the subject of said sections among states enacting them.

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THE UNSUNG HEROES OF THE CT TRUST CODE: DIRECTED AND ASSET PROTECTION TRUSTS

DIRECTED TRUSTS

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I. BACKGROUND

a. The Connecticut Uniform Trust Code[1] was signed into law July 12, 2019.

b. The Connecticut Uniform Trust Code contains three acts and an expanded rule against perpetuities:

   i. The Connecticut Uniform Trust Code (§1 to 98);

   ii. The expanded rule against perpetuities (§119);

   iii. Qualified Dispositions in Trust Act (§99 to 108); and

   iv. The Uniform Directed Trust Act (§81 to 98).

c. **Uniform Directed Trust Act**:

   i. Approved and recommended for enactment in 2017 by the National Conference of Commissioners on Uniform Laws, the Uniform Directed Trust Act as been enacted in ten states and has been introduced in Rhode Island.

      1. Enacted in 2018: Georgia and New Mexico

      2. Enacted in 2019: Arkansas, Colorado, Connecticut, Indiana, Maine, Michigan, Nebraska and Utah.

   ii. **Other States**: Other states such as Delaware, have developed statutory directed trust laws over the course of the last two decades.

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[1] All section references herein to a section of the Connecticut Uniform Trust Code or to a section of the Connecticut Uniform Directed Trust Act are to that section of Substitute House Bill No. 7104, Public Act No. 19-137, *An Act Concerning Adoption of the Connecticut Uniform Trust Code*, as signed into law by the Governor of the State of Connecticut on July 12, 2019.

iii. The Uniform Directed Trust Act was designed to accommodate enactment in both Uniform Trust Code states and non-Uniform Trust Code states.

d. **Existing Connecticut Law**: Under the Connecticut Uniform Prudent Investor Act ("CUPIA"), a trustee can delegate investment or other authorities but retains the obligation to monitor and oversee the performance of the delegate. Conn. Gen. Stat. §§ 45a–541a to 45a–541*l*.

i. Delegations can include investment and management functions.

ii. Distribution functions cannot be delegated.

iii. The agent owes a duty to the trust and to the trustee to exercise reasonable care in complying with the scope and terms of the delegation.

iv. The trustee is liable for failure to exercise reasonable care, skill and caution in selecting the agent, establishing the scope of the delegation consistent with the trust's terms, periodically monitoring the agent and confirming the agent's actions are consistent with the scope of the delegation.

v. Essentially, the trustee is fully responsible for oversight of the trust assets, investments and distributions.

vi. Note: these rules are not superseded by the enactment of the Connecticut Uniform Directed Trust Act.

e. **New Connecticut Law**: Beginning on January 1, 2020, under the new Connecticut Uniform Directed Trust Act (the "Act"), Connecticut law will permit a settlor to segregate a trustee's functions.

i. The Act can be found in Sections 81 through 98 of the new Connecticut Uniform Trust Code ("CT-UTC").

ii. The Act applies to a trust, wherever created, that has a *principal place of administration* in Connecticut.

iii. The Act is intended to be read together with the rest of the CT-UTC and makes numerous cross references thereto.

iv. The Act provides that a trust (inter vivos or testamentary) may grant a power of direction to a "trust director" and a trust director is empowered to exercise *further powers* appropriate to the exercise or non-exercise of such power of direction.[2] (§85)

v. The liability of a trustee is the crux of what has changed in the law with this Act. A trust instrument can now relieve the trustee of any and all liability/duty with respect to a trust director's powers. In fact, a complete carve-out of the trustee's fiduciary role can be accomplished and that carved-out piece can be given to a trust director.

vi. This new law does not affect the trustee's ability to delegate certain functions under the CUPIA, rather it permits the settlor to provide that the trustee be liable only for certain functions, while reserving other functions (for example, investments or distribution decisions) to a "trust director."

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[2] The commentary to the Uniform Directed Trust Act will be critical to interpreting the Act given the lack of case law available. The commentary notes that this Section does not provide default powers to a trust director and does not specify the scope of a power of direction. The drafting committee specifically contemplated that this Section would "validate terms of a trust that grants a power to a trust director to: acquire, dispose of, exchange, or retain an investment; make or take loans; vote proxies for securities held in trust; adopt a particular valuation of trust property or determine the frequency or methodology of valuation; adjust between principal and income or convert to a unitrust; manage a business held in the trust; select a custodian for trust assets; modify, reform, terminate, or decant a trust; direct a trustee's or another director's delegation of the trustee's or other director's powers; change the principal place of administration, situs, or governing law of the trust; ascertain the happening of an event that affects the administration of the trust; determine the capacity of a trustee, settlor, director, or beneficiary of the trust; determine the compensation to be paid to a trustee or trust director; prosecute, defend, or join an action, claim, or judicial proceeding relating to the trust; grant permission before a trustee or another director may exercise a power of the trustee or other director; or release a trustee or another trust director from liability for an action proposed or previously taken by the trustee or other director." Uniform Directed Trust Act § 6 cmt.

The commentary further provides that the term "appropriate" is drawn from the Uniform Trust Code, "[a]ppropriateness should be judged in relation to the purpose for which the power was granted and the function being carried out by the director." The following examples of further powers that might be appropriate are provided: (1) incur reasonable costs and direct indemnification for those costs; (2) make a report or accounting to a beneficiary or other interested party; (3) direct a trustee to issue a certification of trust; (4) prosecute, defend, or join an action, claim, or judicial proceeding relating to a trust; or (5) employ a professional to assist or advise the director in the exercise or nonexercise of the director's powers. *Id.*

f. **Applicable Definitions:**

i. *Directed Trust:* A trust for which the terms grant a power of direction. (§3(11))

ii. *Trust Director:* A person who is granted a power of direction by the terms of a trust instrument, to the extent it is exercisable while such person is not acting as trustee. (§3(29))

1. The term "trust director" is not required to be used.
2. Unless the trust instrument provides otherwise, trust directors must act by majority. (§85)
3. By accepting the position, a trust director submits to personal jurisdiction in Connecticut courts. (§94)

iii. *Power of Direction:* A power over a trust granted to a person by the trust terms, to the extent it is exercisable while such person is not acting as trustee.[3] (§3(20))

1. A power of direction includes a power over the investment, management or distribution of trust property or other matters of trust administration (including a power to release a trustee or other trust director from liability for breach of trust).
2. A power of direction is NOT: (§84(b))
   a. A power of appointment;
   b. A power to appoint or remove a trustee or trust director;

[3] The Uniform Directed Trust Act commentary describes the definition of "power of direction" as expansive: "It includes any 'power over a trust' to the extent the power is exercisable at a time the power holder is not serving as a trustee. A power of direction may be structured as a power to direct the trustee in the exercise of the trustee's powers--for example, a power to direct the trustee in the investment or management of the trust property. A power of direction may also be structured as a power to act independently--for example, by amending the terms of a trust or releasing a trustee from liability.
The definition includes a power only to the extent the power is exercisable at a time the power holder is not serving as a trustee. The purpose of this limitation is to exclude a person serving as trustee from the definition of a trust director, even though as trustee the person will inevitably have a 'power over a trust.' A trust director, in other words, is someone other than a trustee. The contribution of this act is to address the complications created by giving a person other than a trustee—that is, a trust director—a power over a trust. A power over a trust held by a trustee is governed by existing trust fiduciary law." Uniform Directed Trust Act § 2 cmt.

c. The settlor's power to revoke a trust;

d. A beneficiary's power to affect the beneficial interests of such beneficiary or a beneficiary represented by such beneficiary pursuant to the horizontal or vertical virtual representation rules of the CT-UTC;

e. A non-fiduciary power held in order to achieve the settlor's tax objectives (as provided by the trust instrument).

iv. *Directed Trustee:* A trustee subject to a trust director's power of direction.[4] (§3(12))

1. In a directed trust, the directed trustee can be relieved of any duty and liability with respect to a trust director's power of direction under a trust instrument. (§91)

v. *Qualified Beneficiary:* A beneficiary that, on the date of determination: (§3(23))

1. Is a distributee or permissible distributee of trust income/ principal; or

2. Would be a distributee or permissible distributee of trust income/ principal if the interests of all distributees described in (1) terminated on such date without causing the trust to terminate; or

3. Would be a distributee or permissible distributee of trust income/ principal if the trust terminated on such date.

g. **Types of Directed Trusts**

i. Trusts that are directed by trust directors as to investments ("investment directors").

1. Previously in Connecticut a settlor could delegate to another individual the power to direct trust investments, but the trustee

[4] The Uniform Directed Trust Act commentary states the definition of "directed trustee" refers only to a trustee that is subject to direction by a trust director. "A trustee that is subject to direction by a co-trustee is not for that reason a directed trustee. The term 'directed trustee' thus includes many but not all trustees that in practice are sometimes called 'administrative trustees.'" *Id.*

retained the fiduciary obligation to oversee that individual's performance.

2. Now trustees can be relieved of liability with respect to the direction of trust investments.

ii. Trusts that are directed by trust directors as to management ("management directors").

1. Management directors would take on managerial/administrative functions.

iii. Trusts that are directed by trust directors as to other matters (trust protector type role).

1. Example 1: the power to release a trustee or other trust director from liability for breach of trust.

h. **Trust Director Duties and Interactions Between Trustees and Trust Directors**:

i. <u>Extent of Trust Director Duties</u> (§87)

1. Powers granted to the trust director can be segregated and carved-out entirely from powers granted to the trustee.
2. Duties can include investment, management or other matters.
3. A sole trust director with a power is liable to the same extent that a sole trustee with the same power would be under similar circumstances. A co-director with a power is liable to the same extent that a co-trustee with the same power would be under similar circumstances.

ii. <u>Trust Director Fiduciary Duties</u> (§87)

1. Generally, with respect to any such powers, the trust director is a fiduciary.
2. Fiduciary duty and liability is co-extensive with a trustee in like position, under similar circumstances. In other words, a trust

director’s liability is the same that a trustee’s would be if the trustee were exercising the same powers.[5]

3. A trust can vary (increase/decrease) the fiduciary duty and liability of a trust director to the same extent it could for a trustee.

iii. Trustee Duties Can Also be Carved-Out(§91)

1. A trust instrument can relieve a co-trustee from duty or liability with respect to another trustee’s power to the same extent a directed trustee can be relieved from duty or liability with respect to a trust director’s power.
2. As noted above, a complete carve-out of the trustee’s fiduciary role can be accomplished and that carved-out piece can be given to a trust director.

iv. Trustee’s Duty to Act on Trust Director’s Directions (§88)

1. Unless the trust instrument provides otherwise, a trustee must take reasonable action to comply with a trust director’s directions. A trustee is not liable for an action taken at the direction of a trust director, unless the trust instrument provides otherwise.[6]

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[5] Pursuant to the Uniform Directed Trust Act commentary, the theory behind this Section is that “if a trust director has a power of direction, the director is the most appropriate person to bear the duty associated with the exercise or nonexercise of that power. Put differently, in a directed trust, a trust director functions much like a trustee in a non-directed trust, and thus should have the same duties as a trustee.” Uniform Directed Trust Act § 8 cmt.

Further, this Section absorbs existing state law rather than inventing a new body of law. “Absorbing existing state law in this manner offers several advantages. First, it avoids the need to spell out the entirety of trust fiduciary law. That is, it avoids the need to replicate something like Article 8 of the Uniform Trust Code for trust directors. Second, absorbing the trust fiduciary law of each enacting state accommodates diversity across the states in the particulars of a trustee's default and mandatory fiduciary duties, such as the duties to diversify and to give information to the beneficiaries, both of which have become increasingly differentiated across the states. Third, absorption allows for changes to the law of a trustee's fiduciary duties to be absorbed automatically into the duties of a trust director without need for periodic conforming revisions to this act.” *Id.*

[6] The Uniform Directed Trust Act commentary provides that the duty of a trustee to take reasonable action depends on context. “A power of direction under which a trust director may give a trustee an express direction will require the trustee to comply by following the direction. A power that requires a trustee to obtain permission from a trust director before acting imposes a duty on the trustee to obtain the required permission. A power that allows a director to amend the trust imposes a duty on the trustee to

2. Exception: a trustee shall not comply with a trust director's directions if it would cause the trustee to engage in willful misconduct.[7]

v. Mutual Obligation to Keep Reasonably Informed (§89)

1. A trustee shall provide to a trust director information reasonably related to the powers or duties of the trust director and the trustee.[8]
2. A trust director shall provide to a trustee information reasonably related to the powers or duties of the trust director and the trustee.

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take reasonable action to facilitate the amendment and then comply with its terms." Uniform Directed Trust Act § 9 cmt.

The commentary further explains that this Section "requires a trustee to act reasonably as it carries out the acts necessary to comply with a trust director's exercise or nonexercise of the director's powers. If a trust director with a power to direct investments directs the trustee to purchase a particular security, for example, the trustee must take care to ensure that the security is purchased within a reasonable time and at reasonable cost and must refrain from self-dealing and conflicts of interest in doing so." *Id*.

It is important to note that the commentary states that the duty to take reasonable action "does not, however, impose a duty to ensure that the substance of the direction is reasonable." *Id.* However, if a director's power of direction does not include such a direction, the directed trustee should not comply. *Id.*

[7] The willful misconduct standard is a mandatory minimum. It is distinguishable from the duty to take reasonable action in that the duty to take reasonable action applies to a trustee's compliance with a power of direction whereas the willful misconduct standard applies to the decision of whether to comply with a power of direction. *Id*.

[8] The Uniform Directed Trust Act commentary provides that "[t]his section relies heavily on the concept of reasonableness. Information must be disclosed only if it is reasonably related both to the powers or duties of the person making the disclosure and to the powers or duties of the person receiving the disclosure. The information must be reasonably related to the powers or duties of the person making the disclosure, because otherwise that person cannot be expected to possess the information. The information must also be reasonably related to the powers or duties of the person receiving the disclosure, because otherwise that person would not need the information. Examples of matters that might require disclosure under this section include asset valuations, modifications to the terms of a trust, changes to investment policy or strategy, distributions, changes in accounting procedure or valuations, and removal or appointment of trustees and trust directors." Uniform Directed Trust Act § 10 cmt.

The Section also provides a safe harbor for a trustee acting in reliance on information from the trust director and vice versa. *Id.*

The trust terms may require more extensive duties of information sharing. *Id.*

3. Neither a trustee nor a trust director is liable for breach of trust resulting from the reliance on information provided by the other unless it involves willful misconduct of the relying party.

vi. Limitation on Trust Director's Power to Release From Liability (§88)

1. A trust director with the power to release a trustee or other trust director for breach of trust is not effective if:
    a. The breach involved willful misconduct on the part of the party seeking to be released; or
    b. The release was induced by improper conduct of the party seeking to be released; or
    c. At the time of the release, the trust director did not have the material facts relating to the breach.

vii. Duties to Monitor and Inform (§90)

1. Unless the terms of the trust provide otherwise, neither a trustee nor trust director has the duty to monitor the other, nor does either have the duty to give advice to a settlor, beneficiary, trustee or trust director about an instance in which such party would have acted differently.
2. Trustees and trust directors are relieved of the requirement of monitoring or of giving advice to a settlor/beneficiary/trustee/trust director about opinions or situations where they may have acted differently.[9]

[9] The Uniform Directed Trust Act commentary provides the following example: "if a trust director has a power to direct investments, this section would relieve a directed trustee of any duty to advise a beneficiary about the risks of the director's decision to concentrate the investment portfolio. The trustee would remain under a duty, however, to make periodic reports or accountings to the beneficiary and to answer reasonable inquiries by the beneficiary about the administration of the trust to the extent required by otherwise applicable law. The trustee would also remain under the duty imposed by [Section 89] to provide a trust director with information reasonably related to its powers and duties." Uniform Directed Trust Act § 11 cmt.

viii. Right to Petition (§88)

1. A directed trustee may petition the court to confirm its duties with respect to the trust director.

ix. Rules Regarding Charitable and Special Needs Trusts (§86)

1. A trust director is subject to the same rules that would apply to a trustee in a like position in the exercise or non-exercise of a power of direction regarding:

a. A payback provision in the terms of a trust necessary to comply with the reimbursement requirements of 42 USC 1396p(d)(4)(A) (with regard to certain supplemental needs trusts); and

b. A charitable interest in the trust, including notice to the Attorney General of such interest.

i. **Actions for Breach of Trust Against Trust Director**

i. Actions must be brought within the same statute of limitations period as an action for breach of trust against a trustee in a like position, under similar circumstances. (§92)

ii. Limitations Period: One year or three years. (§92 and §70)

1. One (1) year limitation period if:

a. The beneficiary (or the beneficiary's representative) was sent a report that adequately disclosed the existence of a potential claim for breach of trust; and

b. The trust director informed the beneficiary of the time allowed for commencing a proceeding.

2. Three (3) year limitation period if the requirements for a one year limitation period are not met.

a. Three years is measured from the first to occur of (1) the removal, resignation or death of the trust director, (2) the termination of the beneficiary's interest in the trust or (3) the termination of the trust.

iii. Trust Director Defenses: Defenses are co-extensive with the defenses a trustee could assert in an action for breach of trust. (§93)

j. **Acceptance, Resignation, Removal of Trust Directors:** Rules are identical to those rules governing trustees.

i. Acceptance: (§95(1) and §44)

1. Acceptance can be achieved by:
    a. Substantial compliance with method of acceptance provided in trust; or
    b. If the trust does not provide a method of acceptance, by accepting delivery of the trust property, exercising powers/ performing duties of a trust director or otherwise indicating acceptance; or
    c. For a testamentary trust only, by filing an acceptance of the trust in appropriate court.
2. Rejection of trust director designation is permissible and is deemed if acceptance does not occur within a reasonable period of knowing of the designation.
3. Without accepting the role, a designated trust director may:
    a. Preserve the trust property if, within reasonable period after acting, a rejection is sent to the settlor or, if deceased or lacks capacity, to a qualified beneficiary; and
    b. Inspect or investigate the property to determine potential environmental liability or for any other purpose.

ii. Resignation: (§95(4) and §48)

1. A trust director of an ***inter vivos trust*** may resign:
    a. With court approval; or
    b. Without court approval, with at least 30 days' notice to the qualified beneficiaries, settlor (if living), and all trustees/ other trust directors.

2. A trust director of a *testamentary trust* may resign only with court approval.

iii. Removal: A court can remove a trust director if requested or on its own initiative (§95(5) and §49)

1. Request for removal of a trust director can be made by:
    a. The settlor (if a non-charitable trust), if settlor has expressly retained the right to do so;
    b. The attorney general (if a charitable trust);
    c. A co-trustee;
    d. A beneficiary; or
    e. A surety on the trustee's probate bond.
2. A court can remove a trust director if:
    a. The trust director is incapable or neglects to perform its duties, wastes trust assets, fails to furnish required bond, or has committed a serious breach of trust;
    b. Lack of cooperation among the trust directors/trustees substantially impairs trust administration;
    c. Removal is in best interests of beneficiaries, because of unfitness, failure or unwillingness to administer the trust effectively;
    d. There is a substantial change in circumstances or removal is requested by all qualified beneficiaries and:
        i. Removal is in the best interests of the beneficiaries and not inconsistent with material purpose of the trust; and
        ii. A suitable successor is available.

iv. Vacancies: (§95(6) and §47)

1. For a non-charitable trust, if a co-holder of a power of direction remains, a vacancy need not be filled, unless the trust instrument requires it.

2. For charitable trusts, a vacancy must be filled unless the trust instrument excuses it.
3. Order of Priority of Individuals to Fill a Vacancy:
    a. A person designated in the trust instrument to act as successor holder of the power of direction or appointed pursuant to the trust terms (or, for a *testamentary trust*, as appointed by Probate Court); then
    b. For a non-charitable, *inter vivos trust*, a person appointed by unanimous agreement of the qualified beneficiaries; then
    c. A person appointed by the court.
4. Whether or not a vacancy exists, the court can always appoint an additional trust director to hold a power of direction, whether or not a vacancy exists.

v. Giving Bond: Bond is required only if court finds (1) it is necessary to protect beneficiaries' interests or (2) it is required by the trust instrument. (§95(2) and §45)

k. **Compensation of Trust Directors**: (§95(3) and §51)

i. Connecticut has not enacted a statutory trustee commission scheme, nor has it added statutory commissions for trust directors.

ii. If the trust instrument does not specify, a trust director is entitled to reasonable compensation.

iii. If the trust does specify, the court may allow more or less if the compensation is unreasonable or if duties are substantially different from those contemplated when trust was created.

II. PROVISIONS OF THE CT-UTC THAT APPLY TO DIRECTED TRUSTS

a. **Notice and Reporting (§63)**

i. Current (pre-CT-UTC) Connecticut trust law generally has no statutory enumeration of trustees' duties to notify or report to beneficiaries. Duties can be pieced together or implied from such provisions as the duty of loyalty (partially stated in the Uniform Prudent Investor Act at Conn. Gen. Stat §45a-541e) and provisions to compel an accounting (Conn. Gen. Stat §45a-175) as well as common law. The duty of trustees to keep beneficiaries reasonably informed and respond to reasonable requests for information has not been readily questionable under pre-Uniform Trust Code law, absent special trust terms and circumstances.

ii. Section 63 of the CT-UTC systematizes, adds to, and modifies past assumptions by:

1. enumerating non-waivable duties about notice and reporting;
2. providing default notice and reporting provisions that govern absent special trust terms; and
3. permitting the use of designated representatives as a screen between a trustee and beneficiary, similar to existing practices in Delaware, if (and only if) authorized in the trust instrument.

b. **Trustee Powers (§66)**

i. Current (pre-CT-UTC) Connecticut trust law has no automatic list of powers granted to trustees. The CT-UTC adds one in Section 66.

ii. Connecticut has long had the Fiduciary Powers Act (Conn. Gen. Stat §§45a-233 - 236). Connecticut also has sporadic statutory provisions on particular trustee powers, such as the Prudent Investor Act, the Principal and Income Act, and the power to divide trusts (Conn. Gen. Stat §§45a-541ff, 542ff, and 488). Powers may also be provided under common law as stated in cases or the Restatement.

iii. The CT-UTC does <u>not</u> repeal or amend the Fiduciary Powers Act.

c. **Trustee Liability (§68 through §77)**

i. Pursuant to Section 3(4) and Section 68, a breach of trust is a trustee's violation of a duty owed to a beneficiary. The definition of breach of trust in Section 3(4) makes it clear that the term includes a breach by a trust director.

ii. Section 69 provides that absent a breach of trust, a trustee is not liable for loss or depreciation in value of trust property or for lack of profits.

iii. Section 71 relieves a trustee from liability for a breach of trust if the trustee was acting in reasonable reliance on the terms of a trust as expressed in the trust instrument to the extent the breach resulted from the reliance.

iv. Section 72 relieves a trustee from liability for loss resulting from lack of knowledge of an event (such as marriage, divorce, death, etc.) if the trustee exercised reasonable care to ascertain if the event happened.

v. Pursuant to Section 73, trust terms relieving a trustee of liability for breach of trust will be unenforceable to the extent the terms:

    1. Relieve the trustee for a breach of trust committed in bad faith or with reckless indifference to the purposes of the trust or interests of the beneficiaries; or
    2. The trust terms were included as the result of abuse by the trustee or a fiduciary.

    Section 73 further provides that exculpatory terms drafted by the trustee (except for terms intended to provide protection for carrying out a stated trust purpose) are invalid and an abuse of a fiduciary relationship unless the trustee proves the language is fair under the circumstances and that the existence of the language was adequately communicated to the settlor.

vi. Section 74 provides that a trustee is not liable for a breach of trust if the beneficiary consented to the breach, released the trustee with regard to the breach or ratified the transaction constituting the breach, unless such consent, release or ratification was induced through improper conduct or the beneficiary did not know of the beneficiary's rights or the material facts related to the breach.

vii. Section 75 relieves a trustee from personal liability on contracts properly entered into in the trustee's fiduciary capacity if the trustee disclosed the trustee's fiduciary capacity in the contract. Section 75 further provides that a trustee will be personally liable for torts committed in the course of the administration of a trust or arising from ownership/control of trust property only if the trustee is personally at fault.

viii. Section 76 relieves a trustee from personal liability on contracts entered into by a partnership where the trustee holds a general partnership interest if the trustee disclosed the trustee's fiduciary capacity in the contract. Section 76 further provides that a trustee will not be personally liable for torts committed by the partnership or for obligations arising from ownership/control of the general partnership interest unless the trustee is personally at fault (immunity does not apply if the trustee or someone in the trustee's family has a personal interest in the partnership).

ix. Section 77 provides that a person (other than a beneficiary) is protected from liability if he or she in good faith assists the trustee or deals with a trustee without knowledge that the trustee is exceeding or improperly exercising the trustee's powers. Such a person does not have the obligation to inquire into the extent of the trustee's powers, and is protected with regard to dealings with a former trustee if the person had no knowledge that the former trusteeship terminated.

d. **Termination and Modification Provisions (§31 and §32)**

i. Section 31(a) allows a court to modify or terminate a non-charitable trust if the settlor, the trustee and all beneficiaries consent <u>even</u> <u>if</u> the modification or termination is inconsistent with the material purposes of the trust.

ii. Section 31(b) allows a court to modify or terminate a non-charitable trust without settlor involvement if all beneficiaries consent provided that the modification or termination is <u>not</u> inconsistent with the material purposes of the trust.

iii. Section 32(a) allows a court to modify the administrative or dispositive terms of a trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust.

iv. Section 37 allows a court to modify the terms of a trust in a manner that is not contrary to the settlor's probable intention and to make the modification retroactive.

v. Under certain circumstances, these provisions could be used to potentially convert an existing trust to a directed trust.

e. **Rule Against Perpetuities (§119)**

i. New general rule: A non-vested property interest is not valid unless, when created, it is certain to vest or terminate no later than twenty-one years after the death of an individual then living or 800 years after its creation. Conn. Gen. Stat. §45a-491(b)

f. **Designated Representative (§21)**

i. The trust instrument may designate one or more persons other than the settlor to receive a notice, information, accounting, or report on behalf of a non-charitable beneficiary and to represent and bind the beneficiary.

ii. The trust instrument may also authorize someone other than the settlor or a trustee to designate such a representative.

iii. A designated representative cannot represent or bind a beneficiary:

1. While serving as trustee; (§ 21(b))
2. If the designated representative is also a beneficiary, unless named by the settlor; or the designated representative is the beneficiary's spouse, grandparent or descendant of a grandparent of the beneficiary. (§ 21(c))

iv. Designated representative is not liable to its beneficiary for any acts or omissions made in good faith. (§ 21(d))

g. **Virtual Representation (§17-20)**

i. Generally, unless otherwise represented, a minor, an incapacitated person, an unborn individual or a person whose identity or location is unknown may be represented/bound by another person having a substantially identical interest with respect to a particular question or dispute. There can be no conflict of interest between the representative and the person being represented. (Section 19(b)).

III. DRAFTING DIRECTED TRUSTS

a. **Applicability of the Act**

i. Effective Date

1. For trusts established before January 1, 2020, the Act applies to actions or decisions occurring thereafter.
2. If the principal place of administration is changed to Connecticut on or after January 1, 2020, the Act applies to actions or decisions occurring thereafter.
3. There is potential for a settlor to make gifts prior to January 1, 2020, to trusts that will ultimately be structured as directed trusts (a power of direction drafted into the trust instrument could spring into action upon the effective date of the Act).

ii. The Act applies to a trust, wherever created, that has a *principal place of administration* in Connecticut. (§82) A provision in the trust designating the principal place of administration as Connecticut is effective if:

1. A directed trustee resides in, and undertakes managerial and administrative functions within Connecticut.
2. A trust director resides in, and exercises *the trust director's* powers of direction within Connecticut.
3. All or part of the administration of the trust occurs in Connecticut.

b. **Delineation of Roles.**

i. In addition to ensuring that the Act applies to a directed trust based its principal place of administration, the trust instrument should carefully delineate the roles of the directed trustee and of the trust directors with regard to investment decisions, distribution decisions and management decisions. If the trust instrument is silent as to a power that could otherwise be held by a trust director, the directed trustee retains the fiduciary duty for that power and has the same responsibility and liability for that power as a non-directed trustee.

ii. If the trust instrument will name co-trustees, co-directed trustees and/or co-trust directors, their roles must also be carefully delineated, particularly if those with the same role will have different responsibilities and liability.

c. **Exculpation.**

i. The CT-UTC prevents drafting attorneys who will also serve in a fiduciary capacity from exculpating themselves in the trust instrument unless the exculpation is fair under the circumstances and its existence and contents were adequately communicated to the settlor. This holds true for attorneys drafting directed trusts as well as non-directed trusts.

IV. ETHICAL, PRACTICAL AND POLICY CONSIDERATIONS

a. **Benefits of Using Directed Trusts**

i. The segregation of investment responsibilities from a trustee's other functions can afford protection and insulation to a trustee who might otherwise be disinclined to act for any of the following reasons:

1. Lack of diversification and/or highly-concentrated holdings of trust assets;
2. Trust investment in risky assets;
3. Family business held in trust;
4. Real estate or oil and gas interests held in the trust; and
5. Complicated relationships of beneficiaries.

ii. While it was always possible for a settlor to provide that a trust's investment in a particular asset is a material purpose of the trust, that can be of little solace to a trustee who watches the trust's portfolio value decline. The segregation of investment responsibilities from a trustee's other functions can afford protection and insulation to a trustee who might otherwise be disinclined to act.

iii. Often the individual or entity best suited to act as trustee is not best suited to make distribution decisions (for example with complicated beneficiary relationships and/or where certain beneficiaries may have differing needs or deficits such as creditor issues or additional problems).

b. **Other Considerations**

i. The new Act is untested whereas other jurisdictions such as Delaware have a robust history of the use of directed trusts.

ii. Practitioners should consider when to recommend a directed trust to a client in terms of:

1. Establishing new directed trusts; and
2. Converting existing trusts to directed trusts.

iii. There are several thorny issues to consider when a practitioner is deciding whether to act as a directed trustee and/or trust director:

1. The differing roles and in which roles the practitioner is willing to serve (Distributions/Investments/Other).
2. When acting (particularly if the practitioner drafted the instrument), how to handle exculpatory language.
3. When acting (particularly if practitioner drafted the instrument), how to handle compensation. More discreet roles may mean less compensation, but not less risk.

iv. In establishing directed trusts, clients should be counseled to select parties for various roles who are expected to work well together.

V. HYPOTHETICALS FOR DISCUSSION

<u>The Players</u>

- Settlor: founder, president and sole owner of Company.
- Spouse: Settlor's spouse and not the parent of Settlor's children
- Favorite: Settlor's child who is second in command at Company
- Criminal: Settlor's child who has a troubled life but is beloved by Settlor
- Attorney C: Settlor's long-time business lawyer for Company
- Attorney T&E: Settlor's long-time trusts and estates attorney
- Bank: a national bank with trust powers

<u>Settlor's Planning Goals During Settlor's Lifetime:</u>

- Create an irrevocable trust for Settlor's descendants
- Fund the trust with a gift of Company shares
- Retain management control of Company
- Trust to retain concentrated position in Company

<u>Scenarios During Settlor's Lifetime</u>

1. Settlor wishes to name:
    a. Spouse = directed trustee
    b. Settlor = management/investment trust director
    c. No one = distribution trust director

2. Settlor wishes to name:
    a. Spouse = directed trustee
    b. Settlor = management/investment trust director
    c. Attorney T&E = distributions trust director.

3. Settlor wishes to name:
    a. Attorney C = directed trustee
    b. Settlor = investment/management trust director

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    c. Favorite = distributions trust director

4. Settlor wishes to name:
    a. Attorney C = directed trustee
    b. Favorite = investment/management trust director
    c. Favorite = distributions trust director

Settlor's Planning Goals after Settlor's Death

- Favorite to control management of Company
- Relationship between Favorite and Criminal to be preserved and protected
- Bank to manage investments

Scenarios after Settlor's Death

- Which pre-death scenarios will change?
- How will trustee, directed trustee and trust director succession planning be impacted by the Settlor's post-death planning goals?

Other Considerations

- If Attorney T&E drafts the trust and Attorney C serves as directed trustee or trust director, how will this impact the drafting of the trust instrument and advice given to Settlor?
- What will change if Attorney T&E is both drafter and will serve as directed trustee or trust director?
- If any of Attorney T&E, Attorney C, Settlor, Favorite or Spouse are not Connecticut residents, how would this impact Settlor's planning?