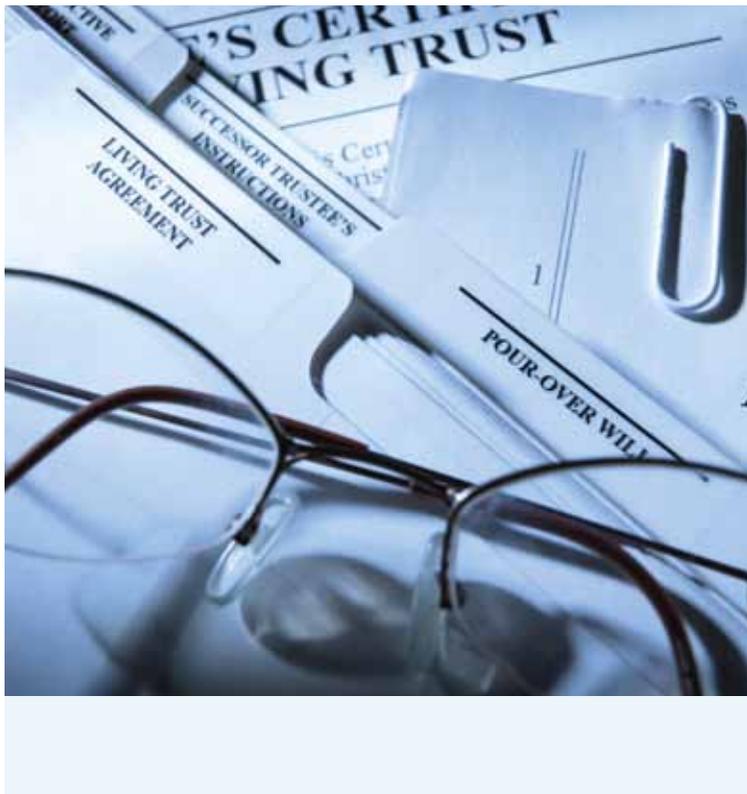


10 Things You Should Know

Big Changes to Tennessee's Uniform Trust Code



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"Everything is in a state of flux, including the status quo."

— Robert Byrne

Sweeping changes to Tennessee's trust law, effective July 1, 2013, "... will serve to further establish Tennessee as the best and most attractive legal environment in the nation for trusts and trust services." So begins the unofficial "Reason for Drafting" of the most comprehensive changes to our state's trust laws since the adoption of

the Tennessee Uniform Trust Code (TUTC) in 2004.¹ The explicit goal of these changes is to make Tennessee a leading contender in the national race for trust business by keeping up with, or staying ahead of "Competitor States" whose aggressive law changes have successfully attracted out-of-state business.

As practitioners strive to keep up with this ever-changing competitive environment, consider the following 10 key changes to Tennessee trust law as you advise clients.

1. The New Legislation Is a Study in Separation of Powers

In many sections of the recent changes to the TUTC, the legislature has limited our courts' discretion to construe trusts. In particular, affected sections include amended *Tenn Code Ann.* sections 35-15-404 (trust purposes), 35-15-107 (choice of law), and 35-15-1101 (disregard uniformity of law) and new sections 35-15-1104 (alter egos of settlors) and 35-15-1105 (dominion and control over a trust).

Trust purposes can be contrary to public

policy. Tennessee common law has always provided that a trust purpose cannot violate public policy,² and the TUTC codified that requirement.³ Effective July 1, 2013, however, the statutory mandate that a trust purpose comport with public policy is deleted. The legislature expressly removed the prohibition with the apparent intent of preventing out-of-state courts from applying their own public policy considerations to Tennessee trusts, thus increasing asset protection for trust beneficiaries by reducing the risk of collection from out-of-state creditors. But the statute's plain language does not appear so limited and nothing in this legislative pronouncement prevents Tennessee courts from returning to the common law rule that a trust's purpose must align with Tennessee's public policies.

Other states are also largely forbidden from applying their public policy. The amendments to the TUTC in effect promise trust settlors certain results, which is why the proponents expect to attract more trust business to Tennessee. However, potential settlors must feel reasonably assured that Tennessee law will indeed apply. As *Where There's a Will* columnist Eddy R. Smith explained in his last column, "It's Trust Time in Tennessee," even when the document specifies which law governs, the courts of each state can often independently determine which state's trust law governs for which purposes.⁴ The recent amendments to TUTC make it far more difficult for another state to deny the application of Tennessee state law.

Former section 35-15-107 (choice of law) provided that where the trust instrument specifies that Tennessee law governs, that election will govern unless contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue. As amended in 2013, the legislature deleted any reference to the application of any other state's public policy; grants Tennessee courts automatic jurisdiction over the trust; and lists the types of trust activities that Tennessee law covers so broadly as to preclude any other activity

that could be covered by any other state's laws. In addition, amended section 35-15-108 (principal place of administration) creates a list of potential contacts with Tennessee that alone will create a sufficient nexus for the continued application of Tennessee law. These include merely maintaining trust records in Tennessee, wholly or partly, preparing or arranging for preparation of an income tax return, or having any investment asset located in Tennessee. Will this bold attempt to preclude the courts of other states from applying their laws succeed? Only time will tell.

The Tennessee Uniform Trust Code is no longer "uniform." Section 35-15-1101 (uniformity of application and construction), as amended, explicitly states that the TUTC is not to be considered uniform with other states' laws in any way, and that "... courts shall not consult, rely on or give any persuasive value to such uniform acts or any respective other state's acts based on or similar to such uniform acts ...; none of which have any force or effect relative to trusts governed by the laws of this state." The same non-uniformity also applies to the Tennessee Uniform Principal and Income Act, and the Tennessee Uniform Prudent Investor Act. It remains to be seen whether courts will respect this legislative attempt to limit the tools available to the judiciary on TUTC interpretive issues of first impression.

Tennessee courts cannot consider certain factors in determining the extent of a settlor's or beneficiary's influence over a trust. New section 35-15-1104 (alter ego) provides that absent clear and convincing evidence beyond the listed factors, including the factors listed in new section 35-15-1105 (dominion and control over a trust), the settlor of an irrevocable trust will not be deemed to be the alter ego of the trustee of such trust. In new section 35-15-1105, the legislature prohibits the consideration of the listed factors, "alone or in combination," in determining whether a settlor or beneficiary has dominion and control over a trust. These factors include

Continued on page 22

Uniform Trust Code

continued from page 21

whether the settlor or a beneficiary or a person related by blood to the settlor or a beneficiary is serving as a fiduciary, whether a beneficiary holds any power of appointment over any or all of the trust property, and whether the settlor has the power to substitute property of equivalent value for property held by the trust.

The legislature's intent in adding these new provisions is likely to invite trust business to Tennessee by clearly defining the acceptable level of control for a settlor or a beneficiary. However, the imposition of these new statutes limits judicial discretion in determining whether a settlor or a beneficiary has an unacceptable level of influence over a trust. The doctrine of separation of powers, as set forth in Articles I and II of the Tennessee Constitution, "is a fundamental principle of American constitutional government."⁵ According to the Tennessee Court of Appeals, "to the extent that any one branch of government become subservient to another, its ability to act in its role of providing a 'check and balance' is curtailed and the effective concept of government ordained by our constitution rapidly loses its viability as envisioned by the founding fathers."⁶

In this tug-of-war between the legislative and judicial branches, the constitutional doctrines of separation of powers suggest that Tennessee courts may not feel bound by the mandates in these

new and revised sections of the TUTC, but rather will insist that inherent equity jurisdiction will always apply, so that, for example, a trust will never be permitted to be contrary to public policy regardless of the legislature's attempt to remove public policy from consideration. Perhaps the legislature will feel pressure to reconsider these provisions, or perhaps these provisions invite litigation to test their constitutionality.

2. A 'Material Purpose' of the Trust Will Always Be Whatever the Grantor Says It Is

This may not initially seem so important, but it dramatically changes the balance of power.

One of the most powerful and beneficial contributions of the TUTC in 2004 was section 35-15-411 (modification or termination), which granted courts the power to modify or terminate an irrevocable trust after the settlor died. Although changes could be made under the common law, the process was limited and cumbersome. The adoption of section 35-15-411 streamlined the process by outlining a specific mechanism to effectuate changes to inefficient and uneconomical trusts. This provision became a powerful tool to add flexibility to long-term trusts whose provisions had become obsolete or whose beneficiaries agreed their interests would be better served if changes were made, especially in response to circumstances that could not have been anticipated by the settlor.

The only effective limitation was "material purpose," *i.e.*, in order to terminate, the court had to make an affirmative finding that "continuance of the trust is not necessary to achieve any material purpose of the trust," and in order to modify, the court had to make an affirmative finding that "modification is not inconsistent with a material purpose of the trust."⁷ Rarely were any material purposes explicit in the trust instrument, and even if present, such purposes could often be deemed non-controlling on account of changes in circumstance.

With the addition of new subparagraph (c) of section 35-15-105 (default and mandatory rules), "[a]ny purpose enunciated as a material purpose . . . shall be treated as a material purpose . . . for all purposes . . ." In other words, all power has shifted to the settlor's "dead hand control," whose material purpose statements, no matter how obsolete or even harmful, must presumably now be given effect. For example, a settlor may state that it is her material purpose that the trust last for the duration of the rule against perpetuities, thus precluding any earlier termination, no matter how advisable a termination or modification may appear to all parties, including the court, decades or even centuries later.

3. No Contest Clauses Will Be Enforced Regardless of a Beneficiary's Good (or Bad) Faith Challenge

Concerned that a beneficiary may challenge the terms of your client's trust or the actions of the trustee? New section 35-15-1014 (no contest) adds teeth to no-contest, *in terrorem*, or forfeiture provisions in trusts by providing that such provisions will be enforced according to the provision's express terms regardless of whether a beneficiary brings an action in good (or bad) faith and regardless of whether such action is successful. The new statute does, however, provide a safe harbor for challenges in limited circumstances by listing a number of actions that will not trigger enforcement of a no-contest clause, such

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as actions brought against a trustee for breach of fiduciary duty and actions brought for a construction or interpretation of the terms of a trust. Furthermore, the statute provides a broad exception for any actions in which a beneficiary can demonstrate that “probable cause” exists for such action on certain listed grounds, such as fraud, lack of testamentary capacity, and undue influence.

While this provision may appeal to a settlor concerned about the preservation of his or her intent, this provision may actually frustrate a settlor’s intent by disinheriting a beneficiary bringing a valid action in good faith.

4. Hi, I’m an Excluded Fiduciary

Revised section 35-15-103(12) (definitions) and new section 35-15-1205 (fiduciary liability) create a new classification of fiduciary: “excluded fiduciary.” An excluded fiduciary is defined as any trustee, trust advisor, or trust protector who is excluded from exercising a power or relieved of a duty and the power or duty is granted or reserved to another person. A fiduciary can become an excluded fiduciary under the terms of the trust agreement, an agreement of the qualified beneficiaries, or court order. Once the excluded label attaches, the excluded fiduciary cannot be held liable, individually or as a fiduciary, for losses resulting from (1) following the directions of a trustee, trust advisor, or trust protector; (2) actions or inactions of a trustee, trust advisor, or trust protector; or (3) the failure of a trustee, trust advisor, or trust protector to “take any action proposed by the excluded fiduciary where such action requires the authorization of the trustee, trust advisor, or trust protector.” Under the second prong, the protections afforded excluded fiduciaries extend to those stemming from the trustee, trust advisor, or trust protector breaching their fiduciary duties or acting beyond their scope of authority. Under the third prong, the excluded fiduciary must have owed a duty to propose the action and he or she must have timely done so. This new classification is an integral part of

directed trusts and allows for greater flexibility when crafting trusts and may be a sufficient incentive for reticent persons to agree to serve as fiduciaries in a limited capacity.

5. Fiduciaries Must Inform and Report

Section 35-15-813 (duty to inform and report) expands the trustee’s previous default duty to inform and report to anyone who holds a power of appointment (other than a fiduciary).⁸ The amendment also clarifies that where applicable, all fiduciaries, not just trustees, are bound and/or relieved of this duty as described in the trust and/or statute. The result is that unless the settlor states otherwise in the trust instrument, the trustee, or whoever else may have a duty to inform and report to beneficiaries, must read and understand the provisions of the trust instrument well enough to determine whether anyone holds a power of appointment, and must keep such person informed as

if such person were a beneficiary.

6. The Legislation Clarifies Trustee’s Discretion and Related Liability

Section 35-15-814, formerly entitled “Discretionary powers — tax savings” and now labeled “Exercise of Powers Over Discretionary and Other Interests; Tax Savings,” clarifies when a trustee may use discretion in making distributions and more clearly specifies when a trustee shall and shall not be held liable for such actions.

“Improper Motive” and “Consideration of Other Resources” clarified. As a preliminary matter, revised section 35-15-814(a)(1) defines “improper motive” as denial or restriction of distributions to beneficiaries “due to the trustee’s self interest when the trustee also holds a beneficial interest subject to a discretionary interest” or if the trustee makes a distribution “in excess of an ascertainable standard to himself or herself as

Continued on page 24



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beneficiary when the trustee is restricted by an ascertainable standard in the trust.” This definition is fairly narrow, limiting a beneficiary’s course of action if, for instance, the beneficiary believes that the trustee is restricting or withholding discretionary distributions because the trustee personally disapproves of the beneficiary or the beneficiary’s lifestyle. However, a trustee may now feel more confident in making good faith decisions regarding whether a distribution is in the best interest of a spendthrift beneficiary or if a distribution contradicts a material purpose of the trust. Subsection (a)(2) helpfully clarifies that a trustee does not need to consider a beneficiary’s other resources when deciding whether a distribution should be made to or for that beneficiary unless the trust states otherwise or in the case of a spousal “support trust.” As with many of the changes, these provisions encourage trust business in Tennessee by creating clear expectations for trustees.

Discretionary distributions are mere expectancies. Subsection (b) explains the trustee’s responsibilities and resulting liabilities when making “discretionary” distributions. A discretionary interest in a trust is not “an enforceable right; it is a mere expectancy,” and a court’s authority to review discretionary distributions is limited to a trustee acting “dishonestly,” with “improper motive,” or failing to act “if under a duty to do so.” In addition, the trustee is not required to adhere to “a reasonableness standard” and has express permission to make unequal distributions even to the exclusion of other beneficiaries, unless the trust expressly states otherwise. Together, these provisions relieve the trustee from potential liability for favoring one beneficiary over another when making discretionary distributions.

Mandatory or support distributions are enforceable. Subsection (c) elucidates the trustee’s responsibilities and resulting liabilities when making “mandatory or support” distributions. A

beneficiary of a mandatory or support trust does have “an enforceable right to a distribution,” and a court’s review includes judgment on whether a trustee is being reasonable, in addition to whether a trustee is acting “dishonestly,” with “improper motive,” or failing to act “if under a duty to do so.”

7. Safety Check, Reduced Liability Exposure, and Expansion for Authority for Decanting

Changes to section 35-15-816 (specific powers of trustees) reduce trustee liability in two important ways. The first reduction is a safety check, prohibiting any transfer that causes loss of qualification(s) for (federal) annual exclusions, marital or charitable deduction, or causes generation-skipping transfer tax. Similarly, transfer is barred if such action causes an S corporation to lose its special status. These restrictions remind the trustee of these issues, and actively prevent what could be catastrophic loss of favorable tax status.

Second and less obvious is the legislative pronouncement that the trustee’s authority to decant “shall be considered an exercise of a power of appointment, other than a power to appoint to the trustee, the trustee’s creditors, the trustee’s estate, or the creditors of the trustee’s estate.”

Because such a power of appointment is not a fiduciary action, it is not subject to fiduciary duties. Thus, the indirect result is that trustees may now decant in appropriate situations without fear that such action could be a breach of fiduciary duty.

Finally, the new changes expand flexibility in adding potential trust beneficiaries. The new subsection 35-15-816(b)(27)(F) allows the “new” trust to grant a beneficiary (of the original trust) a power of appointment to “persons who are not beneficiaries of the original or second trust.” This authority allows expansion of the class of beneficiaries at the discretion of the individual holding the power of appointment. The only prohibition being that the power of appointment must “preclude any exer-

cise that would extend the permissible period of the rule against perpetuities that applies to the trust.”

8. Creditors of Trust Beneficiaries Are Largely Out of Luck Trying to Collect Against Trust Assets

Revised section 35-15-501 (creditor’s rights) provides a general rule that creditors can reach a beneficiary’s interest by attachment of present or future distributions or other means. However, the general rule is rendered toothless by its exceptions. Section 35-15-502 (spendthrift provisions) now says if a trust has a spendthrift provision, a creditor cannot reach anything in the trust, even mandatory distributions, with the trustee explicitly allowed to withhold “mandatory” distributions or to make mandatory distributions to third parties on the beneficiary’s behalf, rather than to the beneficiary. Revised section 35-15-506 (distributions relative to support) goes further by saying, even if the trust contains no spendthrift provision, a beneficiary’s mandatory interest is not a property right (so a creditor cannot reach it) and the trustee may make distributions on the beneficiary’s behalf rather than to the beneficiary. Under revised section 35-15-504, if the trustee has discretion whether to make distributions to a beneficiary, the beneficiary’s creditor cannot reach trust assets whether or not the trust includes a spendthrift provision.⁹ Revised section 35-15-506 says if a beneficiary’s interest is a support interest, meaning the trustee is directed or has discretion to distribute for some combination of health, support, maintenance, and education, then whether or not the trust contains a spendthrift provision the beneficiary’s creditor cannot force distributions and cannot reach amounts distributed for those purposes even after the beneficiary receives them. Sections 35-15-508 (removal powers are not reachable by creditors) and -509 (judicial foreclosures of beneficial interests prohibited) provide that a creditor cannot reach trust assets solely because the debtor-

Continued on page 25

Uniform Trust Code

continued from page 24

beneficiary is a fiduciary, may remove and replace a fiduciary, has a power of appointment, or has reserved a power over the trust. So, what is left of the general rule? If the trust has no spend-thrift provision, a creditor can reach (1) amounts actually distributed to a beneficiary other than pursuant to a support standard, (2) a remainder interest guaranteed to be distributed within one year, and (3) amounts contributed by the beneficiary in certain circumstances.

9. Nothing Is Perfect

This legislation moved quickly through both houses of the legislature. The time between introduction of the final amended legislation and its unanimous passage in both chambers was less than thirty days. This quickened pace gave interested groups, such as the Tennessee Bar Association's Estate Planning and Probate Section or the Tennessee Probate Study Group,¹⁰ little opportunity to study the proposed legislation and digest its potential impact. Calls to defer the legislation until a more thorough review was possible were trumped by the goal of quick passage.¹¹

The changes to section 35-15-505 (creditor's claims against settlor) offer an example of the problems such a process can produce. First, new paragraph (a)(5) reads:

Notwithstanding any law to the contrary, neither a creditor nor any other person shall have any claim or cause of action against the trustee or other fiduciary, or an advisor of an irrevocable special needs trust. . . .

This provision is hard to decipher. Does "of an irrevocable special needs trust" modify "trustee or other fiduciary" or only "an advisor?" The comma after "fiduciary" makes it appear the latter, but that would mean no one could sue a trustee or other fiduciary of any trust for anything. Even if the former, does this mean no one can sue a trustee or other fiduciary of a special needs trust (SNT)

under any theory? Can a beneficiary of an SNT sue the trustee for breach of fiduciary duty? Can the settlor ("any other person") of an SNT sue the drafter (an "advisor") for drafting an SNT that flunks the SNT tests?¹²

When the legislature considered and passed the TUTC, proposed official comments were introduced with the legislation and adopted as the legislature's official comments. The 2013 Act included no comments but in Section 54 allowed for comments to be proposed

Another important change ... raises the evidentiary burden that a creditor must show to one of clear and convincing evidence.

by professional groups, such as the Tennessee Bar Association's Estate Planning and Probate Section, the Probate Study Group, and the Trust Committee of the Tennessee Bankers Association. The Bankers Association "elected to provide a comprehensive restatement of the comments to all of Title 35, Chapters 15 [Tennessee Uniform Trust Code] and 16 [Tennessee Investment Services Act] . . . intended to replace entirely the 'Comment to Official Text' in the current publication including '2007 Amendment' and '2010 Amendment.'" The Bankers Association presented comments styled "2013 Restated Comments to Official Text." The comments were submitted to the Code Commission with a letter stating they were submitted "[o]n behalf of," "in conjunction with," and "reflect the input of" the designated groups.

While drafts were provided to the TBA Estate Planning and Probate Executive Committee and the Probate Study Group, the fast pace did not allow time

for those groups to review the comments thoroughly. Much like the legislation itself, the comments were finalized and submitted without sufficient time to gauge their impact. The comments also raise a number of questions. Do the "Restated Comments" replace the comments produced by the legislature? Will the Code Commission continue to publish the Official Comments adopted by the General Assembly? Will lawyers and judges recognize the distinction?

10. Shorter Limitations Period Is Trap for the Unwary and Claims Require Higher Burdens of Proof

The legislature altered the time to file a claim to set aside transfers to Tennessee Investment Service Trusts (TISTs) as fraudulent by amending section 35-16-104(b). Prior to this change, creditors had to challenge qualified dispositions as fraudulent pursuant to the limitations period found in the Uniform Fraudulent Transfer Act, codified at section 66-3-310, which was essentially four years. With this revision, creditors have the longer of either (a) two years after the qualified disposition is made, or (b) six months after the creditor discovered or should have discovered the qualified disposition if the plaintiff was a creditor when the qualified disposition to the TIST was made. As part of this change, the legislature also states that a creditor is deemed to have discovered the existence of the qualified disposition whenever a deed or financing statement is recorded (or an equivalent document is recorded under the laws of another state). If a person becomes a creditor of the settlor after the qualified disposition is made, the action must be commenced within two years after the qualified disposition.

Unless a creditor knows that the limitations period in the Uniform Fraudulent Transfer Act is shortened by this revised subsection, parties may be caught unawares of the shorter limitations period. There is no cross-reference in the Uniform Fraudulent Transfer Act to alert counsel or parties to the short-

Continued on page 26

ened time frame in the context of TISTs.

Another important change is new subsection 35-16-104(b)(2)(B), which raises the evidentiary burden that a creditor must show to one of clear and convincing evidence. This is the highest evidentiary standard in our civil justice system.¹³ A creditor cannot bring a claim with respect to property comprising a qualified disposition unless he or she can prove by clear and convincing evidence that the settlor transferred the property with the intent to defraud that specific creditor.

Conclusion

This past legislative session has brought significant changes to Tennessee's trust landscape. Some are good, while others require further contemplation. This Top 10 list is designed to draw attention to these changes and their impact on Tennessee's practitioners. 

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Notes

1. "Reason for Drafting SB 713 / HB 713 and an Explanation of the Goals, Reasons and Source of the Provisions Contained Therein" was distributed to interested parties and legislators along with the draft legislation, but not officially made public. A copy is available at www.hpestatelaw.com/reasons.

2. For example, Tennessee law invalidated a trust containing an absolute restraint on marriage as being contrary to public policy. *Harbin v. Judd*, 340 S.W.2d 935 (Tenn. 1960).

3. Former *Tenn Code Ann.* section 35-15-

105(b) provided a list of mandatory trust provisions that a trust instrument cannot override, including the requirement that it not be contrary to public policy. Former section 35-15-404 provided that a trust cannot be created which is contrary to public policy and former section 35-15-410 permitted a trust to be terminated where its purposes have become contrary to public policy. All these references to public policy were deleted in the 2013 amendments.

4. Eddy R. Smith, "It's Trust Time in Tennessee," 49 *Tenn. Bar Journal* 29, 30-31 (Aug. 2013) (discussing *Waldron v. Huber (In re Huber)*, Ch. 7 Case No. 11-41013, Adv. No. 12-04171, 2013 Bankr. LEXIS 2038 (May 17, 2013)).

5. *State by South Carthage v. Barrett*, 840 S.W.2d 895, (Tenn. 1992) (quoting *Underwood v. State*, 529 S.W.2d 45, 47 (Tenn. 1975)); see also TENN. CONST. art. II, §§ 1-2. The doctrine of separation of powers "prohibits a person belonging to one of the three great departments of government from exercising the powers delegated to another department, except as the [Tennessee] Constitution itself directs or permits." *Mayhew v. Wilder*, 46 S.W.3d 760, 773 (Tenn. Ct. App. 2001).

6. *Anderson County Quarterly Court v. Judges of the 28th Judicial Circuit*, 579 S.W.2d 875, 878 (Tenn. Ct. App. 1978).

7. Under section 35-15-411(b), a court could modify a non-charitable irrevocable trust if all of the qualified beneficiaries agreed and it concluded that the modification was consistent with a material purpose of the trust. Similarly, even if a qualified beneficiary objected to a proposed modification, a court could still order the modification if it determined that all of the qualified beneficiaries had consented the trust could have been modified or terminated and the interests of the dissenting qualified beneficiaries were adequately protected. See *Tenn. Code Ann.* § 35-15-411(d).

8. Note that subsection (e) of the statute still provides that the terms of the trust can relieve or expand the trustee's duty to inform and report. See *Tenn. Code Ann.* § 35-15-813(e).

9. If the beneficiary is a fiduciary, the preceding rules apply if (1) the beneficiary-fiduciary does not have discretion to make or participate in making distributions to self; (2) the beneficiary-fiduciary's discretion to make or participate in making distributions to self is limited by an "ascertainable standard" (health, support, maintenance, or education); or (3) the

beneficiary-fiduciary's discretion to make or participate in making distributions to self is exercisable only with consent of someone holding an adverse interest. A creditor can compel or reach a distribution only to the extent the creditor "may" reach if the beneficiary was not also a fiduciary.

10. The Tennessee Probate Study Group was created as a joint American College of Trust and Estate Council and Tennessee Bar Association responsible for reviewing and drafting proposed state laws regarding estates, trusts, property, and inheritance, including related tax laws.

11. The authors wish to be clear that the concerns expressed herein are with the process, not with the drafters of the legislation. There is much good in the legislation and the drafters gave countless hours in an effort to improve the law.

12. Other changes to the section may lead to unexpected results. The statute states the general (common law) rule on self-settled trusts that, except as provided in Chapter 16 (Tennessee Investment Services Trusts) and in (a)(3) through (a)(5) of this section regarding irrevocable special needs trusts, a creditor or assignee of the settlor of an irrevocable trust may reach the maximum amount that can be distributed for the settlor's benefit. However, new paragraph (g) contains limitations on challenging a transfer to a spendthrift trust. Presumably, paragraph (g) is referring to self-settled trusts, because the caption to the section refers to the settlor's creditors. If that is the case, the relationship between paragraph (g) and Chapter 16 is unclear. Paragraph (g) is not part of the exception to the general rule, yet provides exceptions. In addition, the exceptions in this section mirror language in Chapter 16. Chapter 16 includes numerous requirements for the creditor protection offered there to be operative. Do the limitations in section 35-15-505(g) apply even if the requirements of Chapter 16 are not met? Lastly, (g)(2)(B) includes cross-reference errors and, as a result, is difficult to interpret.

13. "Clear and convincing evidence eliminates any serious or substantial doubt concerning the correctness of the conclusions to be drawn from the evidence." *Dep't of Children's Servs. v. K.B.*, 2008 Tenn. App. LEXIS 122 (Tenn. Ct. App. Mar. 3, 2008).