

RECOMMENDATION AMEND U.C.A. § 75-7-103

The Uniform Trust Code provides the following definition of "Qualified Beneficiary:"

(13) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

- (A) is a distributee or permissible distributee of trust income or principal;
- (B) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subparagraph (A) terminated on that date without causing the trust to terminate; or
- (C) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

Of 25 UTC states, 13 have narrowed the scope of this definition, by for example:

- Excluding beneficiaries with interests "not reasonably expected to vest."
- Including only "living beneficiaries"
- Assuming the non-exercise of all powers of appointment
- Clarifying what type of trust termination is contemplated by subparagraph (B)
- Omitting (B) from the UTC definition

Utah, Kansas, and Mass. have opted to simply omit Subparagraph (B) as given in the UTC. However, Subparagraphs (B) and (C) have a natural overlap due to factors such as (1) powers of appointment, (2), trustee discretion, (3) events not reasonably expected to occur, etc. Thus, simply cutting out (B) leaves a ragged edge that is difficult for attorneys to work with and can lead to bizarre results. This ambiguity is ill-suited for a provision designed to give basic rights to lay persons. Conversely, Utah does not want to burden Trustees with excessive reporting duties.

I recommend to the Committee that Utah improve its statute by (1) reverting to the Uniform Trust Code, or in the alternative (2) Adopting a definition very similar to Wyoming's 4-10-103 (Wyoming is a UTC state with an updated definition adopted in 2013):

(xv) "Qualified beneficiary" means:

(A) A beneficiary who is currently entitled to mandatory distributions of income or principal from the trust or has a vested remainder interest in the residuary of the trust which is not subject to divestment;

(B) If a trust has no qualified beneficiary under subparagraph (A) of this paragraph, "qualified beneficiary" shall mean a beneficiary having a vested remainder interest in the residuary of the trust whose interest is subject to divestment only as a result of the beneficiary's death;

(C) If a trust has no qualified beneficiary under subparagraph (A) or (B) of this paragraph, "qualified beneficiary" shall mean a beneficiary currently eligible to receive discretionary distributions of income or principal from the trust, who has received one (1) or more distributions during the beneficiary's lifetime;

(D) If a trust has no qualified beneficiary under subparagraph (A), (B) or (C) of this paragraph, "qualified beneficiary" shall mean a beneficiary currently eligible to receive discretionary distributions of income or principal from the trust