

Preface

Once again this year, our updates focus on internal revisions to the treatise. We have substantially revised and updated the material on several subjects, including the law of no-contest clauses as they apply to trusts and the extent to which a surviving spouse may invade or invalidate a trust created by a deceased spouse under surviving spouse's elective share statutes. We hope that these revisions provide an accurate summary of the current state of the law in areas that have undergone rapid change in recent years.

Over the past thirty-five years, law of trusts and fiduciary duty has undergone a transformation from a body of law governed almost entirely by judicial decisions to one governed largely by state enactments of several uniform statutes. Substantial portions of the uniform acts codify settled law. But each state legislature has modified the uniform prototypes to suit its unique political and social context. In addition, the change to statute-based law has brought a change in the subject matter of judicial decisions in this area of the law. We now see more cases that involve statutory interpretation rather than application of judicial precedents and principles. In addition to reporting on these cases, we have attempted to identify common trends in the decisions interpreting uniform acts as well as the effects of the uniform acts on decision-making in the states that have not yet adopted them. We have also included citations to law review articles and other commentary that identify and evaluate trends in the development of the law.

The shift to statute-based law began in the 1990s with the widespread adoption of the Uniform Prudent Investor Act and a new Uniform Principal and Income Act. The first decade of the twenty-first century brought the Uniform Trust Code, now in effect in approximately three-quarters of the states, and the Uniform Prudent Management of Institutional Funds Act, which has been enacted in all but two United States jurisdictions. A Revised Uniform Fiduciary Access to Digital Assets Act was introduced in 2015 and has now been enacted in virtually all states. Between 2013 and 2018, Uniform Law Commission completed acts on trust

decanting, directed trusts, and powers of appointment, and an updated act governing allocations between income and principal. About one-third of the states have enacted the first three of these acts and one-fifth have adopted the fourth. In addition, a number of states have enacted changes to earlier statutes that appear to have been influenced by the new uniform acts.

Two new projects involving the law of trusts are nearing completion: First, the American Law Institute is preparing a Fourth Restatement of Property. Several chapters relevant to the law of trusts, including those on future interests and the system of estates, are now in draft form. We will add references to them to the treatise when they are finalized. In addition, a committee of the Uniform Law Commission has completed a draft of a Uniform Conflict of Laws in Trusts and Estates Act. Once a final version is approved, we will include references to it in the treatise.

The 2026 supplements benefited from the work of a number of people. I would like to acknowledge their contributions here and thank them publicly for their efforts. I wish to express my sincere gratitude to Barbara W. Johnson now retired from the Knoxville, Tennessee, bar, who has worked on the treatise since 1994, and John L. Grigsby, now retired from the Barbourville, Kentucky, bar, who has been with us since 1996. They have worked with me on all aspects of the organization, research, and writing of these supplements, including supervising the law students and younger lawyers who do our preliminary research.

No acknowledgement would be complete without recognition of Professor Sibyl Marshall, Associate Director for the Joel A. Katz Law Library of the University of Tennessee Winston College of Law for her patience and knowledge in tracking down unusual sources, keeping us informed of new sources both in print and electronic media, and training new law students in efficient research techniques, especially in the use of electronic sources.

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