

# **Fundamentals of Trusts and Estates**

**SIXTH EDITION**

**2025 SUPPLEMENT**

Prepared by

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## **Preface**

This Supplement primarily updates noteworthy cases and statutory developments since the manuscript for the Sixth Edition was submitted in late 2021. Specifically, this Supplement provides updates from December 1, 2021 to July 25, 2025. During this period there were no new major Uniform laws. Inflation-adjusted tax items for 2025 are included in this Supplement. Federal tax legislation in 2025 ensures the continuation of higher exemption levels for federal transfer tax purposes.

I express my appreciation to William Gaskill, Research, Instructions and Scholarly Communications Librarian, Albany Law School for his help in preparing this Supplement.

Ira Mark Bloom

August 2025

## **Chapter 1: LAWYERS, ESTATES, AND TRUSTS**

### **§ 1.02 AN OVERVIEW OF INTER-GENERATIONAL WEALTH TRANSFER**

#### **A. Probate**

**Page 11.** Add to *Selected References*:

**Dave Fagundes** *Anna Nicole’s Constitutional Estates Law Legacy*, 50 ACTEC L. J. 17 (2024).

**Note**, *Federal Questions and the Probate Exception*, 137 Harv. L. Rev. 1226 (2024).

#### **D. The Uniform Codes and the Restatements**

**Page 16.** Add in the context of Restatements before “Noveletsky” cite:

*Lonely Maiden Productions, LLC v. GoldenTree Asset Management, LP*, 135 Cal. Rptr.3d 69,78 (Cal. App. 2011) (“California trust law is derived from the Restatement Second of Trusts. Over a number of years, the Restatement Second of Trusts has been superseded by the Restatement Third of Trusts . . . As a result, we may look to the Restatement Third of Trusts for guidance.”) and

### **§ 1.03 FEDERAL WEALTH TRANSFER TAXES**

**Page 19.** In 1<sup>st</sup> full paragraph, delete sentence about exemption amount and replace with:

For 2025, the exemption amount is \$ 13,990,000.

Delete the 2d paragraph and replace with:

Although federal transfer tax legislation, including high exemption levels, was due to expire on January 1, 2026, 2025 tax legislation ensures that high exemption levels will continue indefinitely. For 2026, the exemption amount-technically the exclusion amount-for estate, gift and GST purposes will be \$15,000,000, which will be indexed for inflation starting in 2027.

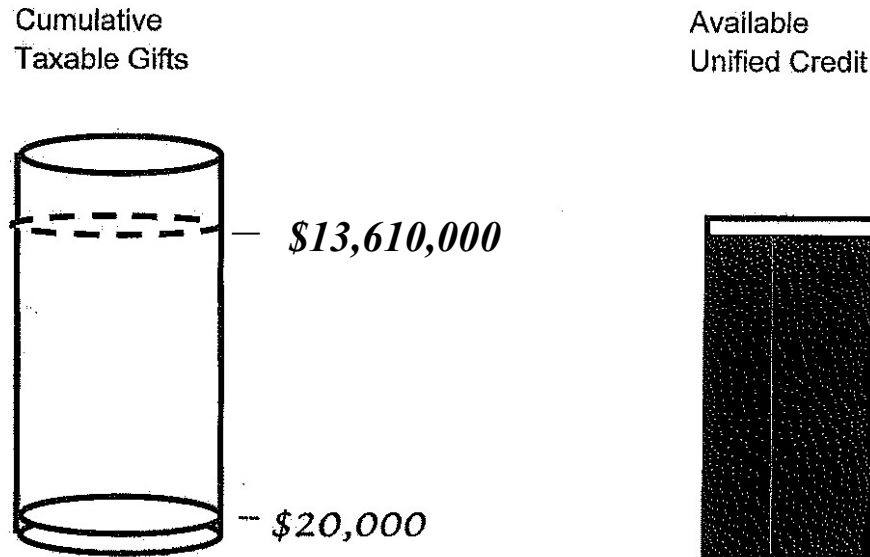
#### **A. A Unified System**

**Page 20.** In 2d paragraph, delete “For 2022, the exemption amount is \$12,060,000.” and replace with:

For 2025, the exemption amount is \$13,990,000.

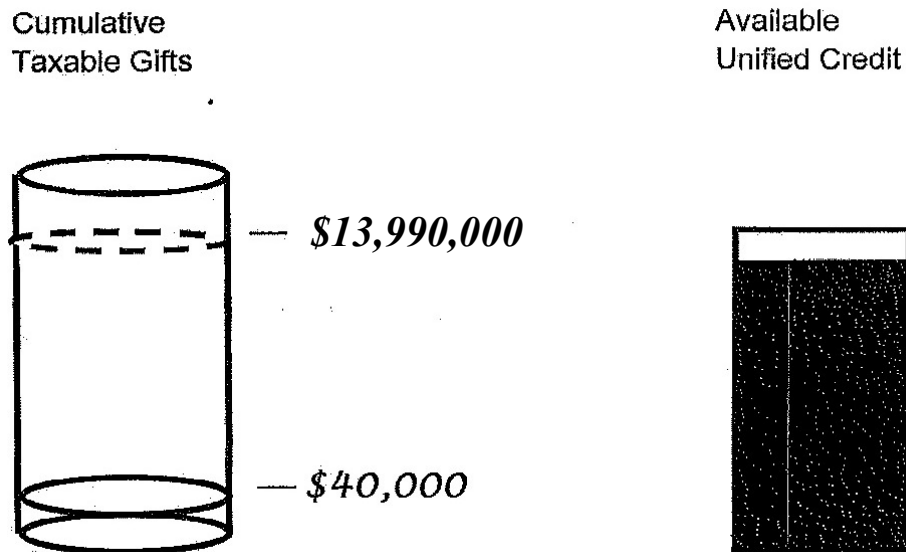
To see how the unified credit works, imagine Marc, who has incurred no prior transfer tax liability. Because his son, Ben, needed a down payment for his first house, in 2024 Marc gave Ben \$38,000, \$18,000 of which was exempt from taxation under an annual exclusion designed to reduce the gift tax consequences of lifetime transfers. The other \$20,000 was subject to gift tax. *See* IRC § 2501. Rather than paying any tax, however, Marc used up a small piece of his unified credit. Figure 1-2 on the next page illustrates Marc's situation after making the gift.

Figure 1-2 Marc's First Gift in 2024



Suppose further that in early 2025, Ben's house was seriously damaged in a storm, so Marc gave him \$39,000 for repairs, \$19,000 of which was exempt from taxation under an annual exclusion designed to reduce the gift tax consequences of lifetime transfers and which was increased from \$18,000 in 2024 to \$19,000 in 2025. The other \$20,000 is subject to tax. This second gift, however, was taxed at a higher rate, because it comes on top of Marc's earlier gift. To achieve that result as an accounting matter, we add in the prior gift for the purpose of figuring the tax on the new gift. Marc is not taxed twice on the first gift. The earlier gift only served to push the second gift into a higher bracket. Marc still used his unified credit and pays no tax. See Figure 1-3.

Figure 1-3 Marc's Second Gift in 2025



Other taxable gifts will be treated the same way. Suppose that Marc died at the end of 2025 having given away a combined total of \$100,000 in taxable gifts none of which were includable as part of his taxable estate. Now the value of his taxable estate will be added in just like the gifts. If the taxable estate was \$13,890,000 or less, the rest of his unified credit could cover the tax.<sup>1</sup> If the taxable estate pushed his lifetime-plus-death total over \$13,990,000 his estate will be able to use the rest of his available credit to offset some of the tax, but his estate will be liable for the excess over \$13,990,000, all of which will be taxed at a 40% rate.

## B. The Gift Tax

**Page 22.** Add after” \$16,000 for 2022”:

and to \$17,000 in 2023, \$18,000 for 2024 and \$19,000 for 2025

## C. The Estate Tax

### 2. *The Marital Deduction*

**Page 25.** In the second paragraph of the boxed text, replace 2022 with 2025 and replace \$11,060,000 with \$12,990,000.

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<sup>1</sup> Although no federal estate tax will be payable if the combined lifetime transfers and the taxable estate is \$13,990,000 or less, state death taxes may be payable in over 10 states which set the exemption or threshold level lower. For example, in Massachusetts only estates up to \$2 million are effectively exempt from estate taxation.

## **D. The Generation-Skipping Transfer Tax**

**Page 27.** At end of 1<sup>st</sup> full paragraph:

Replace 2022 with 2025 and \$12,060,000 with \$13,990,000.

### **§ 1.04 Duties Lawyers Owe Clients (And Others)**

**Page 36.** Add before *Baker* cite in Note 1:

*Bennett v. Gentile*, 321 A.3d 34 (Md. 2024) (strict privity for negligence but possible to claim relief under third party beneficiary theory) and

Add new Note 2A:

2A. The New Mexico Supreme Court rejected the contention that the Rules of Professional Conduct for Attorneys imposes a duty of care for non-clients. *See Waterbury v. Nelson*, 557 P.3d 96 (N.M. 2024).

Add new Note 2B:

2B. The Connecticut Supreme Court held that an attorney may be liable for malpractice for failing to advise client that he needed to change beneficiary designation in nonprobate instrument for will beneficiaries to receive benefits, but that attorney had no duty to ensure that client changed the designation. *See Wisniewski v. Palermino*, 330 A.3d 857 (Conn. 2025).

## **Chapter 2: INTESTACY**

### **§ 2.01 OVERVIEW**

#### **B. Survivorship**

**Page 42.** Add as new *Selected Reference* after 2d line:

**Emily Gootzeit, *The Evolution of the Uniform Simultaneous Death Act and Its Shortcomings*, 16 Univ. St. Thomas J.L. & Pub. Pol’y 464 (2023).**

#### **C. Choice of Law**

**Page 42.** Add as new last paragraph:

The Uniform Law Commission is working on a Uniform Conflict of Laws in Trusts and Estates Act, which will include a section on intestacy; the in- progress Third Restatement of Conflict of Laws will also provide for intestacy issues.

### **§ THE STRUCTURE OF INTESTATE SCHEMES**

**Page 51.** Add to *Selected References*:

**Adam J. Hirsch, *Beyond Privity of Blood: Intestacy and Charity*, 76 U.C.L.J. 353 (2025).**

### **§ 2.02 QUALIFYING TO TAKE**

#### **A. Spouses and Partners**

**Page 54.** Add to FN 12:

*In re Estate of Jenkins*, 290 A.3d 524 (D.C. 2023), is an interesting case involving aspects of common-law marriages.

**Page 55.** Add to *Selected References*:

**Gary E. Spitko, *Integrated Nonmarital Property Rights*, 75 SMU L. Rev. 151 (2022).**

#### **C. Categories of Descendants Based on Parentage**

#### **3. Adopted Persons**

**Page 64.** Add after *See also* in last line:

*In re Estate of Schappell*, 2024, 2025 WL 453174 (Md. 2025) (claimant must prove by clear and convincing evidence that decedent intended to adopt claimant and acted to manifest intent that claimant was to be treated as his or her child) and



#### **4. Children of Assisted Reproduction**

**Page 73.** Add before “Sharon L. Klein” in Note 3:

Kristine S. Knaplund, *Reimagining Postmortem Conception*, 37 Ga. St. U. L. Rev. 905 (2021).  
(surveys all states treatment on rights of posthumously conceived individuals) and

**Page 78.** Add to *Selected References*:

Naomi Cahn, *Functional Siblings, Donor-Conceived People and Intestacy*, 48 ACTEC L.J. 5 (2022).

Thomas Gallanis, *Posthumous Pregnancy and Uniform Law*, 59 Real Prop. Tr. & Est. L. J. 377 (2024).

#### **6. Stepchildren**

**Page 81.** Add at end of paragraph:

See generally Amy Armstrong-Reyes, *Standing in Place: Why De Facto Parenting Obligations May Be the Answer for Non-Traditional Families under Intestacy Laws*, 63 U. Louisville L. Rev. 113 (2024).

## Chapter 3: WILLS

### § 3.01 THE PLANNING PROCESS

**Page 98.** Add after 1<sup>st</sup> sentence in *the Client's property*:

Digital assets are becoming increasingly common and important. *See generally* Gerry W. Beyer and Kerri Nipp, *Estate Planning for Cyber Property – Electronic Communications, Cryptocurrency, Non-Fungible Tokens, and the Metaverse*, 16 Est. Plan. & Cmty. Prop. L. J. 1 (2023).

**Page 99.** Add to *Selected References*:

**Kristine Knaplund, *Is a Will Better Than Intestacy?*, 92 U. Cin. L. Rev. 631 (2024).**

### § 3.02 CREATION OF WILLS

#### A. What's a Will?

**Page 100.** Add after “unusual”:

apart from UPC 1-201(56), albeit a few non-UPC states including New York and Pennsylvania will recognize negative will provisions. *See In re Will of Beu*, cited in Note 1 and *In re Estate of Bebout*, 2024 WL 47939 (Pa. Supr. Ct. 2024).

**Page 101.** Add to FN 3:

Other states are following suit to allow natural organic reduction. *See, e.g.*, New York Public Health Law § 4202 and 18 Vt. Stat. Ann. § 5224.

**Page 102.** Add at end of the 3d line:

*See generally* Yvette Liebesman, *The Rule Against Perpetual Celebrity*, 74 Am. U. L. Rev. 419 (2024) and Sharon Klein and Jenna Cohn, *The Post-Mortem Right of Publicity: Defining It, Valuing It, Defending It, and Planning for It*, 48 ACTEC L.J. 63 (2022).

Add Note 3:

3. An interesting question involves the misuses of artificial intelligence once an individual is dead and the potential remedies. *See generally* Mark Bartholomew, *A Right to Be Left Dead*, 112 Cal. L. Rev. 1591 (2024).

## **B. The Mental Element**

### ***1. Intention***

**Page 102.** Add after sentence ending with “may be unclear”:

*See, e.g., In re Estate of Evensen*, 531 P.3d 969 (Alaska 2023).

**Page 106.** Delete *Ellerbeck* cite in Note 3 and replace with:

*Estate of Rick*, 2024 WL 412253 (La. Ct. App. 2024) and

**Page 111.** Add Note 1A:

1A. Because capacity is determined at time of will execution even if the decedent had dementia, the decedent may have had a lucid interval at time of will execution, which may be proved by a physician’s testimony. *See Estate of Spofford*, 331 A.3d 406 (Me. 2025).

**Page 112.** Add Note 8:

8. Although both the attorney-client and doctor-patient privileges survive the decedent’s death, a probate exception to allow for the proper administration of an estate may apply. *See In re Estate of Ashworth*, 549 P.3d 1003 (Colo. 2024).

### ***2. Testamentary Capacity***

**Page 112.** Add as new Note 8:

For capacity contests, the Colorado Supreme Court in *In re Estate of Ashworth*, 549 P.3d 1003 (Colo. 2024), held that “the physician-patient privilege survives the privilege holder's death, but the testamentary exception provides for disclosure of the decedent's privileged medical records if they are required to administer the estate.” The same conclusion applies for the attorney-client privilege.

**Page 113.** Add to *Selected References*:

Reid Kress Weisbord and David Horton, *The Future of Testamentary Capacity*, 79 Wash. & Lee L. Rev. 609 (2022).

### 3. *Undue Influence*

**Page 120.** Add new paragraph at end of Note 1:

There may be an issue whether the preponderance of the evidence or clear and convincing evidence standard applies. *Compare In re Estate of Colanton*, 324 A.3d 967 (N.H. 2024) (preponderance of evidence required to overcome inference of undue influence) *with In re Moore*, 448 P.3d 425 (Ks. 2019) (applying clear and convincing evidence standard).

Add as new Note 2A:

2A. For undue influence contests, the Colorado Supreme Court in *In re Estate of Ashworth*, 549 P.3d 1003 (Colo. 2024), held that “the physician-patient privilege survives the privilege holder's death, but the testamentary exception provides for disclosure of the decedent's privileged medical records if they are required to administer the estate.” The same conclusion applies for the attorney-client privilege.

Add before *Grenz* citation in Note 3:

*Matter of Crofut*, 312 A.3d 1002 (Vt. 2024)(partial will invalidity for undue influence upheld);

**Page 126.** Add to *Selected References*:

**Payton Yahn, *Conspiracy Theory Belief and the Case for Abolishing Insane Delusion Doctrine*, 16 Univ. St. Thomas J.L. & Pub. Pol’y 516 (2023).**

**Reid Weisbord and David Horton, *The New Undue Influence*, 2 Utah L. Rev. 231 (2024),**

### 4. *Tortious Interference with Expectancy*

**Page 128.** Add at end of 3d line:

*See, e.g., Dewdney v. Duncan*, 2025 WL 1479261 (Vt. 2025).

**Page 133.** In Note 5, add after *Accord*:

*Nelsen v. Nelsen*, 508 P.3d 301 (Idaho 2022) and

## C. Will Execution

### 2. *A Typical “Statute of Wills”*

**b. Signed**

**Page 138.** Add after “necessary” in 2d line:

; probate denied because signature of predeceased witness could not be proved. *See In re Will of Beard*, 334 So. 3d 1154 (Miss. 2022).

**d. By Competent Witnesses**

**Page 145.** Add after 2d line:

***Selected Reference***

Mark Glover, *Conditional Purging of Wills*, 54 U. Rich. L. Rev. 275 (2023).

**e. Some Other Rules**

Add before “*Selected Reference*”:

The Uniform Law Commission is working on a Uniform Conflict of Laws in Trusts and Estates Act, which will include provisions on will execution; the in-progress 3d Restatement of Conflict of Laws will also contain provisions on will execution.

**f. Attestation and Self-Proving Affidavits**

**Page 148.** Add before *Dellinger* cite in 1<sup>st</sup> full paragraph:

*In re Harris*, 282 A.3d 467 (Conn. App. Ct. 2022) and

**3. *Electronic Wills***

**Page 149.** District of Columbia, Idaho, Minnesota, Missouri, and Oklahoma have also enacted the Uniform Electronic Wills Act.

**Page 150.** Add as new last paragraphs:

A phone video recording was not a “document” as required under Montana law so probate not allowed. *See Estate of Beck*, 557 P.3d 1255 (Mont. 2025).

In 2022, the Uniform Law Commission approved the Uniform Electronic Estate Planning Documents Act. The Act, which has been enacted in Colorado, Illinois, Missouri, North Dakota, Oklahoma, and Washington, authorizes the use of electronic use of non-testamentary documents such as lifetime trusts and powers of attorney.

#### **4. Holographic Wills**

**Page 150.** Add after last sentence in paragraph 2:

*In re Estate of Evensen*, 531 P.3d 969 (Alaska 2023) (probate allowed because material portion of will was proved to be in the testator's handwriting) *with Estate of Beach*, 969 N.W.2d 198 (N.Dak. 2022) (probate denied because material portion of will was not proved to be in the testator's handwriting).

#### **5. Mistake in Execution**

**Page 162.** Add in Note 2 before “*But cf. Pomar*”:

*See, e.g. In re Estate of Brockbank*, 555 P.3d 258 (Mont. 2024) (text message did not evidence intent to be a will).

### **D. Protective Planning**

#### **2. Structural Elements**

**Page 166.** Add as new last sentence before box:

*See also Salce v. Cardello*, 348 Conn. 90 (Conn. 2023) (because actions against executor made in good faith no-contest clause not applied).

Add before *Cook v. Cook* in Note 24:

*In re Estate of Poston*, 514 P.3d 1073 (Mont. 2023) (challenge to common-law marriage violated no contest clause),

### **§ 3.04 INTERPRETING WILLS: EXTRINSIC EVIDENCE**

#### **D. Interpretation or Reformation?.**

**Page 183.** Add before Notes:

#### ***Uniform Probate Code***

#### **§ 2-805 Reformation to Correct Mistakes.**

The court may reform the terms of a governing instrument, even if unambiguous, to conform the terms to the transferor's intention if it is proved by clear and convincing evidence what the transferor's intention was and that the terms of the governing instrument were affected by a mistake of fact or law, whether in expression or inducement.

Add at end of Note 1:

Similarly, UPC § 2-805 applies to governing instruments, which can include a whole range of documents. However, reformation under UPC § 2-805 will not be applied simply because a will does not provide for a contingency in a residuary clause that results in intestacy. *See In re Estate of Giguere*, 315 A.3d 737 (Maine 2024).

Add at end of Note 2:

Based on unique facts, court found a mistake was made in will and allowed reformation of unambiguous will based on Restatement (Third) of Property § 12.1. *See Terteling v. Terteling*, 558 P.3d 705 (Idaho 2024). *But cf. In re Estate of Moe*, 16 N.W.3d 193 (N. Dak. 2025) (post-execution evidence not admissible to show testator's mistaken intention mistake so will reformation not allowed).

### § 3.05 REVOCATION

#### A. By a Writing or Physical Act

**Page 195.** Add after 1<sup>st</sup> sentence in 2d paragraph of Note 4:

*See, e.g., In re Estate of Nicholas N. Kittrie*, 2024 D.C. App. LEXIS 269 (D.C. 2024) and *In re Estate of Evensen*, 531 P.3d 969 (Alaska 2023).

**Page 196.** Add to *Selected Reference*:

**David Horton, *Revoking Wills*, 97 Notre Dame L. Rev. 563 (2022).**

### § 3.06 REVIVAL

**Page 197.** Add after “split of opinion” in 4<sup>th</sup> paragraph:

*See generally* Richard Storrow, *Reviving Revival in the Law of Wills*, 55 Tex. Tech L. Rev. 501 (2023),

### § 3.09 CONTRACTS REGARDING WILLS

**Page 206.** Add after last sentence in the 1<sup>st</sup> paragraph:

*See White v. White*, 6 N.W.3d 204 (Neb. 2024) (party to contract to leave property by will treated as beneficiary not creditor of estate so nonclaim statute irrelevant).

Add before *Leonard* cite in 3d paragraph:

*Tremblay v. Bald*, 2024 WL 332101 (N.H. 2024) (continued cohabitation by unmarried partner furnished contractual consideration for promise to leave property by will) and

**Page 211.** Add new 2d paragraph to Note 2:

Once contract not to revoke wills was created, one spouse could not rescind the contract by simply giving notice to the other spouse. See *Inouye v Estate of McHugo*, 328 A.3d 1229 (Vt. 2024).



## **Chapter 4: LIFETIME ALTERNATIVES TO WILLS**

### **§ 4.01 LIFETIME GIFTS**

**Page 224.** South Carolina has enacted the Uniform Transfers to Minors Act.

### **§ 4.03 TRANSFER ON DEATH DEEDS**

**Page 227.** After 1<sup>st</sup> sentence, add:

*See generally* Danaya C. Wright and Stephanie L. Emric, *Tearing Down the Wall: How Transfer-on-Death Real-Estate Deeds Challenge the Inter Vivos/Testamentary Divide*, 78 Md. L. Rev. 511 (2019).

Add to 1<sup>st</sup> sentence of FN 6: Maine, Montana, New Hampshire, and Utah

Add to last sentence of FN 6: Ga. Ann. Code §§ 44-17-1-6 (2024) and N.Y. Real Prop. § 424 (2024)

**Page 228.** Add at end of Note 3:

and S. Dak. Cons. Laws § 32-3-80 (motor vehicle, off-road vehicle, snowmobile, or boat).

### **§ 4.05 LIFETIME TRUSTS**

#### **A. Validity of Revocable Trusts**

**Page 236.** Add after the last sentence in Note 4:

*But cf. Sacks v. Dissinger*, 178 N.E.3d 388 (Mass. 2022) (undue influence claim can be asserted beyond time limits for contesting validity of revocable trust because based on tort of intentional interference with expectancy which Massachusetts recognizes).

Add before *DelFosse* cite in 1<sup>st</sup> paragraph of Note 6:

*Diaz v. Zuniga*, 91 Cal.App.5<sup>th</sup> 916 (Ca. App 2023) (amendment not made by required certified letter);

In 1<sup>st</sup> paragraph of Note 6, add as last sentence:

Revocation may be effective based on substantial compliance with a required revocation method but not all acts may be treated as substantial compliance. *See Grassfield v. Grassfield*, 2023 WL 8608324 (Fla. Dist. Ct. App. 2023).

In 2d paragraph of Note 6, add as the last sentence:

*But see In re Omega Trust*, 2024 WL 5200550 (N.H. 2024), (email between settlor and settlor's lawyer did not effectuate amendment).

At end of 2d paragraph, add:

Trust modification, as opposed to trust revocation, can be made following the rules for trust revocation. *See Haggerty v. Thorton*, 542 P.3d 645 (Cal. 2024). Accord 3d. Rest. Trusts §63, cmt i.

**Page 238.** Add as last sentence in 2d paragraph re **Note: Pour-Over Wills:**

The trustee of a revocable trust who is the beneficiary of the settlor's residuary estate may have a duty to collect and protect property in the residuary estate that is to be transferred to the trustee. *See Barash v. Lembo*, 301 A.3d 577 (Conn. 2023).

## **Chapter 5: CHANGED CIRCUMSTANCES**

### **§ 5.01 ACTS OF THE PROPERTY HOLDER**

#### **C. Divorce**

**Page 270.** Add after 2d sentence in Note 1:

Although Minnesota's revocation on divorce statute, unlike UPC § 2-804, does not bar relatives of a former spouse from taking under a will, those relatives, do not take because by divorcing the class of his spouse's heirs does not exist. *See Matter of Estate of Tomczik*, 2023 Westlaw 4340196 (Minn. 2023), *rev'g* 976 N.W.2d 143 (Minn. App. Ct. 2022).

Add at end of Note 4:

*Cf. Estate of Meier*, 914 S.E.2d 130 (S.C. 2025) (statute applies to life insurance policy even if divorce occurs before enactment of statute so not necessary to decide whether statute was being applied retroactively).

**Page 271.** Add Note 7A:

7A. POD designation in favor of former spouse in U.S. Savings Bonds subject to federal rules so state law did not revoke designation on divorce. *See In re Estate of Jones*, 328 A.3d 923 (N.J. 2025),

#### **E. Misconduct**

**Page 281.** Add at end of Note 13:

Child can take by intestacy in Nebraska even though parent whose parental rights were terminated cannot inherit from child. *See In re Estate of McCormick*, 12 N.W.3d 802 (Neb. 2024).

**Page 289.** Add at end of Note 8:

*But cf. Standard Insurance Company v. Guy*, 115 F.4th 518 (7th Cir. 2024) (ERISA preemption issue unnecessary for decision because federal common law that slayer forfeits benefits applies).

Add new Note 9:

9. Should relatives of a slayer be allowed to take even though the slayer would be barred from taking? *See Matter of Estate of Cordray*, 294 A.3d 99 (Del.Ch. 2023) (yes).

**Page 290.** Add to *Selected References*:

**David Horton and Reid Kress Weisbord, *Inheritance Crimes*, 96 Wash. L. Rev. 561 (2021).**

**Fredrick Vars, *The Slayer Rule: An Empirical Examination*, 48 ACTEC L.J. 201 (2023).**

**Jamie McWilliam, *Toward a Generation of Caregiver Statutes*, 31 Elder L.J. 239 (2024).**

## **§ 5.03 CHANGES IN PROPERTY**

### **A. Classification of gifts**

**Page 291.** Add after *Demonstrative gifts* are rare.:

*See, e.g., Bruno v. Knippen*, 2023 WL 2155408 (Ill. App. Ct. 2023) (gift of proceeds of sale specific, not demonstrative gift).

Add after 1<sup>st</sup> sentence in the 3d paragraph:

*See, e.g., In Connery v. Shea*, 259 A.3d 118 (Me. 2021) (trust disposition of “all Bank stock” treated as a specific disposition).

### **C. Ademption**

**Page 297.** Add before “Courts sometimes”:

*But cf. In re Estate of Cone*, 652 S.W.3d 822 (Tenn. Ct. App. 2022) (change of form exception did not apply when bequeathed stock in corporation which was sold to LLC).

### **F. Abatement and Exoneration**

**Page 300.** Add before “Most likely” in 1<sup>st</sup> paragraph:

*Contra Davis v. Goforth*, 909 S.E.2d 15 (Va. Ct. App. 2024).

## **§ 5.04 LAPSE**

**Page 302.** Add as last sentence in 2d full paragraph:

*See generally Adam Hirsch, When Beneficiaries Predecease: An Empirical Analysis*, 72 Emory L.J. 307 (2022).

**Page 304.** In Note 2, add before “One might ...”:

*See also In re Estate of Thurrell*, 2024 WL 5049387 (N.H. 2024) and *Shirley v. Dawkins*, 2022 WL 2286416 (Ala. 2022) (Will that excluded relatives not mentioned in the will did not prevent application of New Hampshire and Alabama’s anti-lapse statute).

**Page 305.** In Note 2, 1<sup>st</sup> line, add after “statute not apply”:

*see, e.g., Johnson v. Mayers*, 2025 WL 1775867 (Ala. 2025) and *Gibney v. Hossack*, 230 N.E.3d 1009 (Mass. 2024).

## **Chapter 6: PROTECTING THE FAMILY**

### **§ 6.01 DISINHERITED SPOUSES**

#### **B. Dower**

**Page 322.** Add before “There is” in 3<sup>rd</sup> line of 2d paragraph:

*But cf. Simpson v. Wethington*, 641 S.W.3d 124 (Ky. 2022) (dower rights in Kentucky, which includes personal property, may be violated by fraudulent lifetime conveyance).

#### **C. The Right to Elect**

##### **6. Exceptions**

**Page 325.** Add after 1<sup>st</sup> sentence:

Nor will the existence of a revocable trust in favor of a surviving spouse affect nor prevent her from exercising her right to elect against property which is subject to disposition under a will. *See Matter of Estate of Tokowitz*, 541 P.3d 446 (Wyo. 2024).

### **§ 6.02 FORGOTTEN SPOUSES AND CHILDREN**

**Page 362.** Add at end of Note 1:

However, UPC § 2-301’s entitlement to an intestate share will not apply if the deceased spouse intended that lifetime transfers were in lieu of testamentary provisions. *See, e.g., In re Estate of Simon*, 11 N.W.3d 36 (S. Dak. 2024).

Add Note 2A:

2A. Alaska’s omitted spouse (after-married spouse) statute will apply if the testator provides in his will that Alaska law governs the administration of his estate based on Alaska’s choice of law provision. even though the testator was domiciled in the state of Washington at the time of his death. *See Estate of Bentley*, 556 P.3d 244 (Alaska 2024).

**Page 364.** Add after 1<sup>st</sup> sentence in Note 5:

*See, e.g., Johnson v. Johnson*, 2023 Ill.App.LEXIS 134 (Ill. App. 2023) (after-adopted adults allowed to take under Illinois statute).

## § 6.04 PUBLIC POLICY LIMITS

**Page 372.** Add before “Julian Valdes cite:

Christian Poppe, *Testamentary Restrictions on Marriage: A Reexamination of In re Estate of Feinberg in Light of Obergefell v. Hodges*, 16 Univ. St. Thomas J.L. & Pub. Pol’y 481 (2023) and

**Page 379.** Add to *Selected References*:

**William A. Drennan, *Buried with Property*, 76 Rutgers L. Rev. 497 (2024).**

## **Chapter 7: PLANNING FOR INCAPACITY**

**Page 381.** Add before “Katherine C. Pearson”:

Amelia Tidwelli, *Everyone Deserves Autonomy: Making Advance Care Planning Accessible for All*, 59 Real Prop. Tr. & Est. L. J. 241 (2024) and

### **§ 7.01 PROPERTY MANAGEMENT AND PRESERVATION**

#### **A. Durable Powers of Attorney**

**Page 395.** Add as 2d sentence in Note 8:

However, under Section 201(a)(1) of the Uniform Act and in non-Uniform states, the principal must expressly authorize the agent to create a trust. *See, e.g., Barbetti v. Stempniewicz*, 189 N.E.3d 264 (Mass. 2022).

Even if an agent is granted the power to amend a trust, is allowed to self-deal and is to be exculpated for his or her wrongful actions, “the common law imposes an external, non-waivable duty to act in good faith, in accordance with the reasonable expectations of the principal to the extent known or otherwise in the principal's best interest, and within the scope of the authority granted by the principal.” *Garner v. University of Texas at Austin*, 317 A.3d 333, 339 (D.C. Ct. App. 2024). Section 114(a) of the Uniform Powers of Attorney Act imposes the same duty as the common law.

### **§ 7.02 HEALTH CARE DECISIONMAKING**

**Page 410.** Correction for Note 1: Alaska not Arkansas has enacted the Act.



## **Chapter 8: TRUSTS**

### **§ 8.01 AN OVERVIEW**

#### **B. Modern Trust Law**

**Page 417.** Add before “In addition” in the full paragraph:

Although Comment a to Section 2 of the Restatement (Third) would recognize a trust as a juridical entity, the prevailing view is that a trust is not a juridical entity so that suit must be brought by or against the trustee not the trust. *See, e.g., Jo Redland Trust, U.A.D. 4-6-05 v. CITI Bank*, 95 Cal. App.5<sup>th</sup> 142 (Ca. App. 2023).

Add in Note 3:

Oklahoma

#### **C. Express, Resulting and Constructive Trusts**

**Page 418.** Add in 2d full paragraph before last sentence:

In *Indianapolis Museum of Art v. Hurley*, 206 N.E.3d 488 (Ind. Ct. App. 2023), a resulting trust was created in favor of the deceased trust creator’s estate).

Add in 3d full paragraph before *Marriage of Kendra*:

*Wilson v. United States*, 644 F.Supp.3d 1344 (N.D. Ga. 2022) and

Add in 4<sup>th</sup> full paragraph before “Indeed”:

*See, e.g., JPMorgan Chase Bank, N.A. v. Winget*, 2022 U.S. App. LEXIS 18332 (6<sup>th</sup> Cir. 2022) (constructive trust imposed in context of loan guarantee).

#### **F. Choice of Law**

**Page 422.** Add before Section 107 of the UTC:

The American Law Institute is working on a Third Restatement involving conflict of laws, which includes issues involving trusts. *See* 3d Rest. Conflict of Laws Ch.7, Topic 4 (§§ 7.31-7.36) (Preliminary Draft). The most significant change from the provisions on conflict of laws involving trusts is the adoption of the unitary principle whereby both real and personal property are treated in the same manner.

As explained in the Introductory Note to 3d Rest. Conflict of Laws ch. 7, Topic 4 (Preliminary Draft): This Topic’s unitary approach contrasts with the traditional approach to

choice of law for issues about trusts, which is fragmented (or “scissionist”). According to the traditional approach, courts must characterize each item of trust property as either personal property or real property; the law of the state where real property is located (the “situs”) is then applied to govern trusts issues related to each item of property characterized as real property; and the law of a different state, such as the law of the settlor’s domicile at a specified time or the law of the state of administration, is applied to govern trusts issues relating to personal property.

The unitary approach follows the approach taken in the UTC and in the draft of the Uniform Conflict of Laws in Trusts and Estates Act (UCLTEA) in Article 2.

Add after UTC § 107:

Section 204(b) of UCLTEA draft provides greater detail than UTC 107(b) regarding the default rule for the governing law absent the settlor’s designation:

(b) Absent a designation under subsection (a), a matter of trust duration, including matters subject to the rules governing perpetuities, accumulations of income, and suspension of the power of alienation is governed by:

- (1) in the case of a revocable trust, the law of the state in which the settlor was domiciled at the time of execution;
- (2) in the case of an irrevocable trust, the law of the state in which the settlor was domiciled at the time the trust became irrevocable; or
- (3) if application of the law in paragraph (1) or (2) violates a strong public policy of the state that has the most significant connection to the trust as to the matter at issue, the law of the state that has the most significant connection to the trust at to the matter at issue.

**Pages 422-423.** Add to *Selected References*:

**Thomas P. Gallanis, The Dark Side of Codifying U.S. Trust Law, 49 ACTEC L. J. 283 (2024).**

**Robert B. Niles-Weed & Robert H. Sitkoff, *The 39 Twenty-First Century Revolution in Conflict of Trust Laws*, 97 Tul. L. Rev. 1013 (2023).**

## **§ 8.02 CREATION**

### **A. Intent**

**Page 428.** Add after “UTC § 406”:

*See, e.g., In re Estate of Rousey*, 2025 WL 1416775 (Alaska 2025) (undue influence based on finding of confidential relationship).

Add at the end of Note 3:

*Gestner v. Divine*, 519 P.3d 439 (Idaho 2022), provides an excellent discussion of undue influence, including the court's adoption of the Restatement (Third)'s presumption, which is set forth on Text Pages 114-115.

**Page 429.**

Add before *Hunter v. Hunter* in Note 5:

*Carson v. Colangelo*, 2025 WL 1127765 (N.Y. 2025) (no violation by contesting whether asset was properly transferred to revocable trust in a 4-3 opinion); *Spurlock v. Wyo. Tr. Co.*, 542 P.3d 1071 (Wyo. 2024) (suit to remove trustee did not violate no contest clause);

**Note 6.** The no-contest clause in *Barger* was **unenforceable** because probable cause existed for the contest.

Add as last sentence to Note 6:

Of course, if a trust is invalidated because undue influence was exerted to create the trust, a no-contest provision in the trust necessarily has no effect. *See Slosberg v. Giller*, 858 S.E.2d 747 (Ga. 2022).

## **B. Property**

**Page 435.** Add as new Note 2A:

2A. The expected proceeds from a wrongful death action may be transferred into trust. *See In re Estate of Williams v. Welsh*, 538 P.3d 176 (Okla. 2023).

## **C. Trustee**

**Page 437.** Add to 1<sup>st</sup> paragraph before “Depending on the”:

In some states, however, based on Section 16 of the Restatement (Third) of Trusts, the “delivery” requirement to a third-party trustee for real property may be satisfied without the necessity of a deed. *See, e.g., Davies v. Codney*, 522 P.3d 427 (Nev. 2022) (trust recital that real property transferred into trust sufficient without necessity for deed of real property). *Contra* New York Estates, Powers and Trusts Law § 7-1.18.

**Page 438.** Add to *Selected References*:

**Richard Ausness, *Keeping it in the Family: The Pitfalls of Naming a Family Member as a Trustee*, 34 J. Am. Acad. Matrim. Law. 1 (2021).**

**David F. Johnson, *The More the Merrier? Issues Arising from Co-trustees Administering Trusts*, 15 Est. Plan. & Comm. Prop. L.J. 35 (2022).**

**R. Ethan Ward and Stephen Crofford, Jr., *Why Do We Ask the Court to Do Something That It Can't? Constitutional and Practical Issues with Judicial Appointment of Successor Trustees*, 50 ACTEC L. J. 85 (2024).**

#### **D. Beneficiaries**

**Page 445.** Add to *Selected References*:

**Alexander A. Bove, Jr. & Melissa Langa, *The Perpetual Business Purpose Trust: The Business Planning Vehicle for the Future, Starting Now*, 47 ACTEC L.J. 3 (2021).**

### **§ 8.03 THE NATURE OF A BENEFICIARY'S INTEREST**

#### **A. Mandatory Trusts**

##### **1. *Right to Income Trusts***

**Page 449.** Add after 2d sentence:

*See Holte v. Rigby*, 20 N.W.3d 122 (N. Dak. 2025) (no offset to recoup trust funds misappropriated by former income beneficiary as trustee).

#### **B. Discretionary and Support Trusts**

**Page 456.** Add after “station in life” in Note 2:

*See Matter of Katherine E. Reece Trust*, 2023 WL 6300306 (Colo. App. 2023) (standard of living surviving spouse enjoyed at decedent's time of death (and during period of legal separation) following 3d Rest. Trusts § 50 *cmt. d(2)*).

#### **C. Transfers of Beneficial Interests in Trust**

##### **2. *Spendthrift Provisions and Other Restraints on Alienation***

**Page 460.** Add after 1<sup>st</sup> sentence in 1<sup>st</sup> full paragraph:

*See, e.g., Haymond v. Haymond*, 900 S.E.2d 10 (W.Va. 2024) (transfer by beneficiaries of spendthrifted interest void ab initio).

Add new Question 1A as follows:

1A. If a trust includes a spendthrift provision which precludes a beneficiary from encumbering his interest, can a beneficiary in his capacity as sole trustee mortgage trust property

to obtain a personal loan? *See Plains Commerce Bank, Inc. v. Beck*, 986 N.W.2d 519 (S.D. 2023) (no).

#### **4. Medicaid Eligibility**

**Page 479.** Add after “*See*” in 2d to last line on Page:

*In re Trust Under the Will of Riessen*, 990 N.W.2d 683 (Iowa Ct. App. 2022) and

### **§ 8.04 REFORMATION, MODIFICATION, AND TERMINATION**

#### **A. Reformation and Modification Based on Ambiguity and Mistake**

**Page 482.** Add before *In re Jill Petrie*:

*In re Beebe*, 380 So.3d 905 (Miss. 2024) (reformation under UTC § 415 even though settlor did not read the trust);

Add as last sentences on page:

If, however, the settlor cannot show that he or she made a mistake or fraud was involved, trust reformation will not be allowed. *See In re Jeremy Paradise Dynasty Trust*, 2023 Del. Ch. LEXIS 28 (Del. Ch. Ct. 2023). And, if more than one settlor created a trust, both settlors must be shown to have made a mistake to allow for reformation under UTC § 415. *See Connary v. Shea*, 320 A.3d 429 (Me. 2024).b

**Page 483.** Add after “*see, e.g.*” in 2d line:

*Terteling. Terteling*, 558 P.3d 705 (Idaho 2024) and

#### **B. Termination and Modification Prescribed by Settlor**

**Page 483.** Add before “*See generally* Maureen”:

But see *Little v. Davis*, 974 N.W.2d 70 (Iowa 2022) (trust amendment is not allowed if one of the co-settlors has predeceased). In *In re Trust under Deed of Garrison*, 288 A.3d 866 (Pa. 2023), the settlor and beneficiaries were allowed to change original trust provision for removal of trustee.

**Page 484.** Add as last sentence of 1<sup>st</sup> paragraph under **Note on Decanting**:

Decanting is not permissible if the trustee of an irrevocable trust does not have the power to invade the trust principal. *See In re Niki & Darren Irrevocable Trust*, 2024 WL 3515556 (Del. Chan. Ct. 2024).

Add Arkansas, Connecticut, District of Columbia Indiana, Maryland, Vermont, and Wisconsin to enacting states. Indiana’s legislation is substantially similar to the Act.

#### **D. Judicial Modification or Termination**

**Page 497.** Add as new Note 4:

4. UTC § 416 allows a court to modify a trust to achieve a settlor’s tax objectives as do non-UTC states such as New York. Applying UTC § 416, a trust was retroactively modified to allow compliance with federal tax requirements to retain tax exempt status. *See. Robinson Charitable See In re Marvin Trust*, 531 P.3d 1224 (Kan. 2023).

#### **§ 8.05 Charitable Trusts**

##### **A. Creation and Enforcement of Charitable Trusts**

**Page 505.** Add after 1<sup>st</sup> sentence in Note 1:

*See also, In the Matter of Wylie Street Emergency Fund*, 537 P.3d 30 (Idaho 2023).

**Page 506.** Add after “*But see*” in 2d line:

*In re Keeler Maintenance Fund*, 176 N.H. 87 (2023) (denying donor’s estate and contingent beneficiaries standing based on special interest status) and

##### **C. Modification (Cy Pres and Equitable Deviation)**

**Page 523.** Add as new last paragraph to Note 2:

*In re Keeler Maintenance Fund*, 176 N.H. 87 (2023), the court recognized that a finding of general charitable intent was unnecessary to apply the *cy pres* doctrine under UTC § 413 and UPMIFA.

**Page 529.** Add to *Selected References*:

Cheng-ch (Kirin) Chang and Yenpo Tseng, *AG Trust Issues: Navigating Donor Intent in a Changing World*, 17 Est. Plan. & Cmty Prop. L.J. 22 (2024).

Christopher J. Ryan, Jr., *Confusing Cy Pres*, 58 Ga. L. Rev. 17 (2023).

Christopher Ryan, *In Nearer to Thee: Cy Pres and Religious Discrimination*, 59 Real Prop. Tr. & Est. L.J. 93 (2024).

## **Chapter 9: PLANNING FOR THE FUTURE: SUCCESSIVE TRUST INTERESTS**

### **§ 9.01 Fundamentals**

#### **E. Trusts and Future Interests**

**Page 538.** Add as new last paragraph:

Persons having a future beneficial interest in a trust, as well as those who have a present beneficial interest in a trust, are deemed trust beneficiaries. *See* UTC § 103(3). For example, a person having the right to property after an income beneficiary has a remainder interest and is therefore a trust beneficiary even though the interest may be eliminated by the exercise of a power of appointment. *See Beck v. Pact*, 2023 Ill.App.LEXIS 241 (Ill. Ct App. 2023).

#### **G. The Restatement (Third) of Property’s Simplified Classification System**

**Page 541.** Add at end of 1<sup>st</sup> full paragraph:

In May 2022, the ALI membership approved Tentative Draft No. 3 for the Restatement (Fourth) of Property, which includes Volume 4, Division One: The Estate Tax System. This Division includes the simplification of present and future interests and follows the simplification made in the Restatement (Third) of Property. For example, possibilities of reverter and rights of entry are not recognized but are treated as reversions. Executory interests are not recognized as all interests in third parties are treated as remainders.

Add to last sentence after “(Third)”:

and (Fourth)

### **§ 9.03 Powers of Appointment**

**Page 585.** The District of Columbia and Wisconsin have also enacted the Act.

**Page 596.** Add a new paragraph at end of Note 11:

The Uniform Law Commission is working to modernize conflict of laws rules, including those involving powers of appointment. *See* Uniform Conflict of Laws in Trusts and Estates Act, Article 4 (June 2025 Informal Session Draft).

### **§ 9.04 The Rule Against Perpetuities**

#### **G. Perpetuities Repeal Movement**

**Page 628.** Indiana’s USRAP period has been extended from 90 years to 360 years. Florida’s USRAP period has been extended from 360 years to 1,000. Minnesota’s 90-year USRAP period

has been extended to 500 years and South Carolina's 90-year USRAP period has been extended to 300 years.

**Page 632.** Add to *Selected References*:

**Liam Cronin, *And the Heirs of His Trust Corpus: How the Fee Tail and Historical Limitations on Perpetuities Can Inform the Law of Perpetual Trusts*, 103 B.U. L. Rev. 659 (2023).**

**Eric Kades, *A New Feudalism: Selfish Genes, Great Wealth, and the Rise of the Dynastic Family Trust (DFT)*, 55 Conn. L. Rev. 19 (2022).**

**Jeffrey Pennell and Reid Weisbord, *Trust Alteration and the Dead Hand Paradox*, 48 ACTEC L.J. 147 (2023).**

**Jack Whiteley, *Perpetuities in an Unequal Age*, 177 Nw. Univ. L. Rev. 1477 (2023).**



## **Chapter 10: PROBLEMS IN ADMINISTRATION**

### **§ 10.01 An Overview**

**Page 637.** Add as new FN2 at end of 1<sup>st</sup> sentence in paragraph 2:

*Austin Trust Co. v. Houren*, 664 S.W.3d 35 (Tex. 2023), held that an executor does not owe fiduciary duties to estate creditors.

**Page 638.** Add before 4<sup>th</sup> full paragraph:

Both the American Law Institute and the Uniform Law Commission are working to modernize rules regarding the applicable law for the administration of trusts. *See* 3d Rest. Conflict of Laws ch.7, Topic 4, § 7.35 (Preliminary Draft) and Uniform Conflict of Laws in Trusts and Estates Act, Article 2 (June 2025 Informal Session Draft). An initial draft of Chapter 7, Topic 5 (Wills) of the 3d Rest. Conflict of Laws has yet to be published. Article 3 (Succession) of the Uniform Conflict of Laws in Trusts and Estates Act (Discussion Draft) provides treatment for wills and intestacy. *See generally* Thomas P. Gallanis, *Trusts and the Choice of Law: What Role for the Settlor's Choice and the Place of Administration?*, 97 Tul. L. Rev. 805, 825 (2023)

Add to 4<sup>th</sup> full paragraph after “over the trustee.”:

*See also Luongo v. Luongo*, 306 A.3d 610 (Me. 2023).

### **§ 10.02 Duty of Loyalty**

**Page 643.** Add in Note 5, 2d paragraph, before *Tigani* cite:

*Langbehn v. Langhehn*, 18 N.W.3d 634 (S. Dak. 2025);

**Page 644.** Add after 1<sup>st</sup> sentence in Note 3:

*See, e.g., Kleeberg v. Eber*, 665 F.Supp.3d 543 (S.D.NY. 2023).

**Page 645.** Add before “*In re Trust Created by Inman*” in Note 4:

*See also In re Otto Bremer Trust*, 2 N.W.3d 308 (Minn. 2024) (breach of duty of loyalty by appropriating trust assets and staff for own benefit); *Vouk v. Chapman*, 521 P.3d 712 (Idaho 2022) (breach of duty of loyalty by trustee distributing trust property only to himself); *Forbes v. Forbes*, 509 P.3d 888 (Wyo. 2022) (trustee breached duty of loyalty by buying stock in a sealed bid process controlled by trustee);

Add before *In re Estate of Stevenson* in Note 5:

*Hill v. Brinkman*, 2023 Ill. App 3d 220394 (Ill. App Ct. 2023) (trustee authorized to engage self to care for mother) and

Add at end of Note 5:

*See also Darrow v. White*, 531 P.3d 1169 (Id. 2023) (settlor can override duty to obtain court approval for sale involving conflict of interest but trustee must comply with specific trust requirements to do so).

**Page 646.** Add before “More controversial” in 1<sup>st</sup> line:

Recent cases hold that a provision allowing an executor or trustee to make non-pro rata distributions of property permitted fiduciary to distribute property to themselves and was not a breach of the duty of loyalty. *See Bennett v. Estate of King*, 875 S.E.2d 46 (S.C. 2022) (executor) and *In Culliss v. Culliss as Trustee of Julia A. Culliss Trust*, 514 P.3d 376 (Kan. Ct. App. 2022) (trustee).

**Page 648.** Add as Problem 4:

4. If a trustee allows one beneficiary to live rent free in a property pending its sale, does the trustee violate the duty of impartiality? *See J. Kent Kinniburgh Revocable Trust v. Moncur*, 530 P.3d 579 (Wyo. 2023) (no).

**Page 651.** Add after discussion of *McAleer*:

Assuming that the fiduciary exception applies in Pennsylvania, the Third Circuit held that the fiduciary exception does not apply to after-death emails between the testator’s spouse and the testator’s attorney. *See Kyriakopoulos v. Maigetter*, 121 F.3d 1017 (3d Cir. 2024).

## **§ 10.03 Managerial Issues**

### **A. Duties and Powers**

#### **1. In General**

**Page 653.** Add as new paragraph to *1. In General*:

In a UTC jurisdiction, a settlor may waive most fiduciary duties that are otherwise imposed on a trustee, *see* UTC § 105(a). For example, the duty to act prudently under UTC § 804 may be waived by a settlor. However, some duties, such as the duty to act in good faith, are mandatorily required of a trustee by the UTC. *See* UTC § 105(b). Absent a settlor’s permissible waiver of a duty- for example, the duty to act prudently-a trustee has common law duties and will be liable for breaching any such duty in a non-UTC state. *See Hillblom v. Wilmington Trust Co.*, 2022 Del. Ch. LEXIS 351 (Del. Ch. Ct. 2022).

## **B. Investments**

### **2. *The Prudent Investor***

**Page 677.** Add before *Carter v. Carter* in Note 2:

*Redlin v. First Interstate Bank*, 2 N.W.3d 729 (S.Dak. 2024) (because prudent investor duty waived, investment in low yield money market account was not a breach).

**Page 679.** Add to *Selected References*:

**Ian Ayres & Edward Fox, *Alpha Duties: The Search for Excess Returns and Appropriate Fiduciary Duties*, 97 Tex. L. Rev. 445 (2019).**

**Susan Gary, *Fiduciary Investment of Charitable Assets: From Legal Lists to ESG*, 59 Real Prop. Tr. & Est. L. J. 269 (2024).**

**Jennifer Goode and Andrea Kushn, *Fiduciary ESG Investing: Navigating the New Frontier*, 57 Real Prop., Tr. & Est. J. 3 (2022).**

**Jane Gorham Ditelberg, *Investing in and for the Future: ESG Investing for Trust Assets Under the Prudent Investor Rule*, 47 ACTEC L.J. 23 (2021).**

### **3. *Delegation and Direction***

#### **b. Direction**

**Page 685.** Add California, District of Columbia, Kansas, Pennsylvania, and Vermont in 1<sup>st</sup> line on page.

Add to *Selected References*:

**Timothy Ferges, Melisa Dibble, Adam Ansari, and Daniel Ebner, *Who's the Boss? Fiduciary Liability and Directed Trusts*, 57 Real Prop., Tr. & Est. J. 3 (2022).**

## **B. Principal and Income Issues**

### **1. Principal and Income Allocation Rules**

**Page 699.** California, Florida, and Missouri have also enacted the Act.

### **2. Trustee's Adjustment Power**

**Page 704.** Add Note 2A:

2A: A trustee's adjustment power in favor of income beneficiary upheld as provision allowing principal invasion only in the event of an emergency not sufficient to deny right to exercise adjustment power. *See Matter of Will of Kline*, 244 N.E.3d 1011 (Mass. 2024).

#### **D. Other Fiduciary Duties**

**Page 724.** Add as Note 42A after 1<sup>st</sup> sentence in Note 1:

FN 42A. *See, e.g., J. Kent Kinniburgh Revocable Trust v. Moncur*, 530 P.3d 579 (Wyo. 2023) (failure to provide information constituted breach of duty to inform and report).

**Page 725.** Add as last sentence to Note 2:

Nevada denies discretionary beneficiaries the right to an accounting but entitles such beneficiaries to other information. *See Nedder v. Deluca*, 521 P.3d 1190 (Nev. 2022).

**Page 726.** Add after “settlor” in line 2 of Note 6:

of a revocable trust

Add as last sentence of last paragraph in Note 3:

*See, e.g., In re Otto Bremer Trust*, 2 N.W.3d 308 (Minn. 2024) (breach by failure to provide name of successor trustee).

**Page 727. Note 8.** Add at end:

*Estate of Worrall by Worrall v. J. P. Morgan Bank, N.A.*, 645 S.W.3d 441 (Ky. 2022) contains a good discussion of breach of duty on trust termination including violation of Kentucky's adoption of UTC § 817.

**Page 728.** Add to *Selected References*:

*Jeffrey Schoenblum, Silent Trusts and the Conflict of Laws*, 50 ACTEC L. J. 187 (2025).

#### **§ 10.04 Remedies for Breach of Fiduciary Duties**

**Page 730.** Add before *Conte v. Ditta*:

*Haines v. Lamprecht*, 2 N.W.3d 81 (Neb. 2024) (removal of individual co-trustee based on hostile relations);

Add before *Tigani* cite:

*Martin v. Martin*, 888 S.E.2d 434 (W.Va. 2023) (no removal by requesting court clarification of trust); *J. Kent Kinniburgh Revocable Trust v. Moncur*, 530 P.3d 579 (Wyo. 2023) (no removal because breach did not show gross and willful misconduct);

Add before *McArthur* cite in 2d paragraph:

*Boyle v. Anderson*, 871 S.E.2d 226 (Va. 2022).

#### **A. Remedies in General**

**Page 737.** Add as new last paragraph in Note 7: A beneficiary has standing to sue for a trustee's breach of duty even if no monetary damages are recoverable. *See Trust Under Will of Augustus T. Ashton, Deceased Dated January 20, 1950*, 260 A.3d 81 (Pa. 2021).

**Page 738.** Add before *Goding v. Wilson* cite:

*Zahnleuter v. Mueller*, 88 Cal. App. 5th 1294 (Cal. App. 2023) (no reimbursement for trustee because the trustee did not participate in the litigation as a neutral trustee to defend the trust and protect its assets).

**Page 746.** Add to *Selected References*:

Rebecca O'Neill, *Too Cozy? The Ethical Case Against Allowing Attorney-Trustees to Shield Themselves from Personal Liability Through Blanket Exculpatory Clauses*, 59 Real Prop. Tr. & Est. L. J. 67 (2024).