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**TO: Senate Judiciary Committee**  
**FROM: Kansas Judicial Council – Mark Knackendoffel**  
**DATE: February 8, 2021**  
**RE: 2021 SB 141 enacting the Uniform Directed Trust Act**

The Kansas Judicial Council and its Probate Law Advisory Committee (PLAC) recommend SB 141, which contains the Uniform Directed Trust Act (UDTA). The Committee made no substantive changes from the Uniform version, only inserting appropriate cross-references to the Kansas Uniform Trust Code and required conforming amendments as needed.

The purpose of the UDTA is to provide a statutory framework for directed trusts. In a directed trust, a person other than the trustee is granted a power over some aspect of trust administration. This person is commonly referred to as a “trust protector,” “trust adviser” or, under the UDTA, a “trust director.” A trust director might be appointed to make investment decisions, to direct distributions to beneficiaries, or to amend or terminate the trust under certain conditions, as just a few examples.

The UDTA clearly delineates the powers, fiduciary duties and liabilities of trust directors and directed trustees. It has broad provisions regarding the powers that can be granted to a trust director and promotes uniformity in the use of terminology, which can vary widely from state to state. The UDTA has been adopted in 13 states, including Nebraska and Colorado.

Without the UDTA, Kansas law is inadequate to support clients who want to structure a directed trust with bifurcated trustee powers and duties. Although some Kansas trusts appoint cotrustees with bifurcated powers, under current Kansas law, cotrustees are responsible for and have a duty to monitor each other's actions. See K.S.A. 58a-703. Even if a trust says otherwise, there is no statutory authority to support that. The UDTA would provide the statutory framework to draft a directed trust that effectively bifurcates those powers and duties.

The attached document from the Uniform Law Commission, "Why Your State Should Adopt the Uniform Directed Trust Act," provides a helpful summary of the benefits of the UDTA. If you are interested in reviewing the explanatory comments to the Uniform Act drafted by the Uniform Law Commission, you can find those on the Uniform Law Commission's website at [www.uniformlaws.org](http://www.uniformlaws.org).

The members of the Judicial Council Probate Law Advisory Committee are:

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## WHY YOUR STATE SHOULD ADOPT THE UNIFORM DIRECTED TRUST ACT

The Uniform Directed Trust Act (UDTA) provides clear, practical answers to the challenges raised by the rise of directed trusts. The act offers a simple framework for allocating fiduciary power and duty between a trust director and a trustee and comprehensively addresses the many practical questions raised by the presence of a trust director. Although many states have already enacted statutes to govern directed trusts, the UDTA improves on these statutes by offering solutions that are simpler, more precise, and more complete. Because directed trusts are now standard in sophisticated trust drafting, a comprehensive directed trust statute is essential for every state.

- ***The UDTA balances settlor autonomy and beneficiary safeguards.*** The UDTA divides fiduciary duty between a trustee and a trust director by allocating primary duty to the director while maintaining a minimum core of duty for the trustee to avoid willful misconduct. This approach balances a settlor's freedom of disposition with a beneficiary's need for fiduciary protections. In allocating fiduciary duty in this way, the UDTA clarifies and extends the division of fiduciary duties that has already been pioneered by Delaware. Delaware's success in attracting directed trusts indicates that the UDTA approach is workable in practice.
- ***The UDTA is comprehensive.*** In addition to providing a sensible and clear allocation of fiduciary duty, the UDTA address a host of other issues that have been largely overlooked by existing state statutes. The UDTA provides rules to govern the flow of information between trustees and trust directors, for example, and offers solutions to important practical problems concerning trust directors, such as succession, compensation, and removal. The UDTA's comprehensiveness is driven by a coherent drafting philosophy that largely extends a state's existing law of trusteeship to trust directors.
- ***The UDTA offers many technical innovations.*** Because the UDTA is the product of an extensive drafting process aided by nationally recognized trust law experts, the UDTA offers many technical innovations that improve on existing state statutes. Some of these innovations fix errors and oversights in existing statutes. Unlike most state statutes, for example, the UDTA makes clear that the settlor of a revocable trust is not a trust director. The UDTA also offers a number of novel innovations. It provides tools to assist a settlor's tax planning, for example, and resolves doubt about ancillary areas of a trust director's authority. The UDTA further innovates by treating all trust directors similarly, thereby avoiding the artificial and overly rigid categories of trust directors that make many existing statutes difficult to work with.

For further information about the UDTA, please contact ULC Chief Counsel Benjamin Orzeske at (312) 450-6621 or [borzeske@uniformlaws.org](mailto:borzeske@uniformlaws.org).