

OKLAHOMA'S ADOPTION OF THE UNIFORM TRUST CODE REVISED AS OF 10/8/2025

James C. Milton
Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C.
Tulsa and Oklahoma City

INTRODUCTION

Effective on November 1, 2025, Oklahoma will be a Uniform Trust Code (“UTC”) state. Oklahoma House Bill 1850 (“HB1850”) passed the House (79 to 19). The Senate then passed the measure (39 to 3) with some amendments. The amended measure again passed the House (60 to 23), and was submitted to the Governor’s office. The Governor approved the measure on May 21, 2025.

You may recall that we were going to be a UTC state back in 2008, but Senate Bill No. 1708 (“SB1708”)¹ was struck down as violative of the Oklahoma Constitution’s logrolling provision.² SB1708 would have added nine new provisions to Title 60, but did not repeal any existing provisions.³ These nine new provisions corresponded to UTC Sections 103, 104, 106, 108, 109, 201, 202, 203, and 204.

With 2008’s successful constitutional challenge, those who worked on Oklahoma’s adoption of the UTC were hesitant to make another run at the process. That said, several UTC provisions made their way into Title 60 through a piecemeal adoption. More specifically, some provisions of Article 10 of the UTC were adopted (and subsequently revised) as part of 60 O.S. § 175.57. These provisions will be addressed in more detail below. Likewise, Oklahoma previously adopted the Uniform Prudent Investor Act (“UPIA”), in 1995, as 60 O.S. §§ 175.60-175.72. The UTC placed the UPIA at Article 9 of the UTC, with instructions that this Article could be omitted if the UPIA is previously enacted. Accordingly, Article 9 was not included in HB1850.

Last year, the Oklahoma commissioners of the Uniform Laws Commission (“ULC”) asked for help replacing directed trust language in a pending bill with the Uniform Directed Trust Act. This was accomplished, with some additional trust reform statutes included as well. (These were covered in my April 10, 2025 presentation.) The process went more smoothly than previous efforts to amend Oklahoma trust laws. As a result, the ULC asked us to make a run at adoption of the UTC in Oklahoma.

THE PROCESS

The Oklahoma commissioners of the ULC reached out in 2024, during the days leading up to initial bill introduction for the 2025 legislative session. Due to the size of the UTC project, a number of Oklahoma attorneys were recruited to assist in the project. The group included attorneys from small firms and large firms, private practice and corporate trustees. We held our first meeting

¹ S.B. 1708, 51st Leg., 2d Sess. (Okla. 2008).

² *Weddington v. Henry*, 2008 OK 102, 202 P.3d 143.

³ Michael L. Nemec, *Estate Planning, Probate, and Trust Section—Oklahoma’s New Trust Law*, 79 OKLA. B.J. 1809, 1809 (2008).

in September 2024, and endeavored to have our work completed in time for inclusion in HB1850, which had been reserved for the project.

The ten articles (omitting Article 9) were divided up and assigned to groups of the attorneys involved in the project. We went through each article and each section to determine which provisions should be left out and which provisions should be revised from the UTC text. One of our key goals was to avoid disrupting existing Oklahoma law. The ULC's general counsel's office pushed back on some of our omissions and revisions, but we had done the legwork to show why an omission or revision was needed to avoid disrupting existing Oklahoma law.

During the process, there was discussion of whether to repeal the existing Uniform Trust Act ("UTA") – 60 O.S. §§ 175.1 through 175.57. As noted above, the 2008 effort did not repeal any existing provisions of Title 60. It was determined that we would not include a repealer because we were seeking to avoid disrupting existing Oklahoma law, and because some portions of the UTC were already in existence in Oklahoma.

We also spent significant time reviewing the UTC provision on effective date of the statute, and how best to address settled expectations and existing relationships. After reviewing the UTC text and comments on the issue, we arrived at an approach that we believe will provide a suitable transition from the UTA to the UTC.

In the end, we arrived at a version of the UTC that fit Oklahoma, and which would allow Oklahoma to enhance its competitive position among other states with regard to attracting trusts and trustees.

COMPARISON OF OKLAHOMA'S VERSION TO THE UNIFORM VERSION AND EXISTING OKLAHOMA LAW

This paper will examine certain key differences between the Oklahoma UTC and the UTC itself, and changes to Oklahoma law resulting from adoption of the Oklahoma UTC. Not all provisions of the Oklahoma UTC will be addressed here, but this paper may be expanded over time to include an even more thorough analysis.

Article 1

Section 1601.3 of the Oklahoma UTC, corresponding to UTC Section 103, provides definitions as used in the act. One of the more important definitions in the Oklahoma UTC is the definition of "qualified beneficiary." The term is defined as:

... a beneficiary who, on the date the beneficiary's qualification is determined:

- a. is a distributee or permissible distributee of a present interest in the trust income or principal, or has a vested remainder in the trust,
- b. is a charitable organization expressly entitled to receive benefits under the terms of a charitable trust, or

c. is the Attorney General of this state with respect to a charitable trust having its principal place of administration in this state

60 O.S. § 1601.3(13).

The term “qualified beneficiary” was first introduced to Oklahoma law as part of the Oklahoma Nonjudicial Settlement Agreement (“NJSA”) Act (“NJSAA”), which was adopted last year, effective November 1, 2024. Under the NJSAA, a NJSA must be joined by the trustee and the qualified beneficiaries. 60 O.S. § 1402(A). The NJSAA does not define the term “qualified beneficiaries.” This left a gap in the statutory law. The text of the NJSA is derived from the Uniform Trust Code, which defines the term “qualified beneficiaries” as including (i) “a distributee or permissible distributee of trust income or principal,” (ii) a person who “would be a distributee or permissible distributee of trust income or principal” if the interests of those identified above in (i) were terminated, and (iii) a person who “would be a distributee or permissible distributee of trust income or principal” if the trust were to terminate. UTC § 103(12).

The Oklahoma UTC uses a modified definition of the term “qualified beneficiary,” including (i) “a distributee or permissible distributee of a present interest in the trust income or principal,” (ii) a person who has a vested remainder in the trust, (iii) a charitable organization expressly entitled to receive benefits under the terms of a charitable trust, or (iv) the Attorney General “with respect to a charitable trust having its principal place of administration in this state.”

Here, it is necessary to evaluate the term “charitable trust.” The Oklahoma UTC defines “charitable trust” as “a trust, or portion of a trust, created for a charitable purpose described in subsection A of Section 24 of this act.”

This term, and definition, could result in some level of disagreement among Oklahoma trust attorneys. Based on the above, a “qualified beneficiary” under the Oklahoma UTC would include not only beneficiaries entitled to or permitted to receive distribution at the current time, but also vested remaindermen and charitable remaindermen.

While the term “qualified beneficiary” may be new to Oklahoma, this concept is not new. The Oklahoma Decanting Act, enacted in 2021, uses the phrase “presumptive remainder beneficiary” when identifying those persons entitled to notice of a decanting. This term is defined as follows:

“Presumptive remainder beneficiary,” with respect to a particular date, means a beneficiary of a trust on that date who, in the absence of notice to the trustee of the exercise of the power of appointment and assuming that any other powers of appointment under the trust are not exercised, would be eligible to receive a distribution from the trust if:

- a. the trust terminated on that date, or
- b. the interests of all current beneficiaries ended on that date without causing the trust to terminate

60 O.S. § 175.702(7).

The term “vested remaindermen,” as used in the Oklahoma UTC, is likely to be viewed as more limited than the corresponding language used in the UTC, and likewise more limited than the term “presumptive remainder beneficiary” used in the Oklahoma Decanting Act. We may find that litigants will debate the difference between a contingent remainder interest and a vested remainder subject to divestment or defeasement.

The term “qualified beneficiary” is used extensively in the Oklahoma UTC, with requirements imposed on trustees to keep qualified beneficiaries reasonably informed regarding the administration of the trust, and to provide a copy of the trust instrument upon request. 60 O.S. § 1608.12.

Notably, Section 111 of the UTC was omitted from HB1850. Section 111 deals with nonjudicial settlement agreements. The Oklahoma Nonjudicial Settlement Agreement Act was adopted in 2024.

Article 2

Article 2 of the Oklahoma UTC addresses court proceedings. The provisions of Article 2 are largely similar to 60 O.S. § 175.23, although some changes appear regarding venue of court actions (addressing venue in the absence of a trustee). Other provisions of the Oklahoma UTC appear consistent with what many of us view as the state of the law in Oklahoma. For example, Section 1602.2 describes Oklahoma courts’ jurisdiction over trustees and beneficiaries, in a manner largely consistent with common understanding.

Article 3

Article 3 codifies various principles of the doctrine of representation. To briefly summarize the doctrine,

Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may be represented by and bound by another having a substantially identical interest with respect to the particular question or dispute, but only to the extent there is no conflict of interest between the representative and the person represented.

60 O.S. § 1603.4. Article 3 has various other nuances that deserve study. Prior to the enactment of Article 3 of the Oklahoma UTC, the doctrine of representation, or virtual representation, has generally been a creature of common law in Oklahoma. *Doyle v. Smith*, 2009 OK CIV APP 5, ¶¶ 47-51, 202 P.3d 856.

Article 4

Article 4 addresses the creation, validity, modification, and termination of trusts.

Analysis to follow.

Article 5

Article 5 of the UTC addresses, broadly, creditor claims, and spendthrift and discretionary trusts. Some provisions of Article 5 were found to be inconsistent with existing Oklahoma statutory schemes on asset protection trusts, including without limitation the Oklahoma Family Wealth Preservation Trust Act, 31 O.S. §§ 10-18, adopted in 2004, and Oklahoma Qualified Dispositions into Trust Act, enacted in 2024 at 60 O.S. §§ 1301-1319. As a result, Article 5 of the Oklahoma UTC is described more simply as dealing with creditor claims.

UTC Sections 501 through 504 were omitted as inconsistent with existing Oklahoma statutory law.

UTC Section 505 addresses creditor's claims against a trust settlor. This text now appears at 60 O.S. § 1605.1, and provides as follows:

A. Whether or not the terms of a trust contain a spendthrift provision, the following rules apply:

1. Except as provided by the laws of this state, during the lifetime of the settlor, the property of a revocable trust is subject to claims of the settlor's creditors; and

2. Except as provided by the laws of this state, after the death of a settlor, and subject to the settlor's right to direct the source from which liabilities will be paid, the property of a trust that was revocable at the settlor's death is subject to claims of the settlor's creditors, costs of administration of the settlor's estate, the expenses of the settlor's funeral and disposal of remains, and statutory allowances to a surviving spouse and children to the extent the settlor's probate estate is inadequate to satisfy those claims, costs, expenses, and allowances.

B. For purposes of this section:

1. During the period the power may be exercised, the holder of a power of withdrawal is treated in the same manner as the settlor of a revocable trust to the extent of the property subject to the power; and

2. Upon the lapse, release, or waiver of the power, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greater of the amount specified in Section 2041(b)(2) or 2514(e) of the Internal Revenue Code of 1986, or Section 2503(b) of the Internal Revenue Code of 1986, in each case as in effect on the effective date of this act, or as later amended.

This text omits UTC Section 505(a)(2), which addresses creditors of settlors of irrevocable trusts, on the basis that existing Oklahoma statutory law addresses this issue.

UTC Sections 506 and 507 were omitted from HB1850.

Article 6

Article 6 addresses revocable trusts.

Analysis to follow.

Article 7

Article 7 addresses the office of trustee.

UTC Section 703 addresses co-trustees. This statutory text now appears at 60 O.S. § 1607.3. Notably, UTC Section 703(h), appearing at Section 1607.3(H), is largely the same as 60 O.S. § 175.57(H)(3).

More complete analysis to follow.

Article 8

Article 8 addresses the duties and powers of trustees.

Analysis to follow.

Article 9

As noted above, Article 9 of the UTC consists of the Uniform Prudent Investor Act (“UPIA”), which Oklahoma previously adopted in 1995, as 60 O.S. §§ 175.60-175.72. Accordingly, Article 9 was omitted from HB1850.

Article 10 (referenced in the Oklahoma UTC as Article 9)

Article 10 of the UTC contains thirteen provisions dealing with liability of trustees and rights of persons dealing with trustees. Many of the provisions of Article 10 were previously adopted in Oklahoma as part of 60 O.S. § 175.57. Further, some of the UTC-based provisions of Section 175.57 have been amended. These existing statutes were left intact. The duplicative provisions of Article 10 were not included in HB1850.

More specifically, UTC Section 1001, on remedies for breach of trust, is duplicative of 60 O.S. § 175.57(A), (B), and was therefore excluded from HB1850.

On damages for breach of trust, UTC Section 1002(a) is largely the same as 60 O.S. § 175.57(C), and was therefore excluded from HB1850. UTC Section 1002(b), however, provides useful text on availability of joint and several liability of co-trustees. This text can be found in 60 O.S. § 1609.1.

UTC Section 1003 addresses damages in the absence of breach of trust, and can now be found in 60 O.S. § 1609.2. In particular, Section 1003(a) provides that “[a] trustee is accountable to an affected beneficiary for any profit made by the trustee arising from the administration of the trust, even absent a breach of trust.” This text is aimed at enforcement of the trustee’s duty of loyalty, “that a trustee should not be allowed to use the trust as a means for personal profit other

than for routine compensation earned.” UTC § 1003 cmt. This doctrine can also be found in Restatement (Second) of Trusts § 203. UTC Section 1003(b) clarifies that “[a]bsent a breach of trust, a trustee is not liable to a beneficiary for a loss or depreciation in the value of trust property or for not having made a profit.”

UTC Section 1004 addresses the court’s authority to shift attorney fees and costs in a legal action regarding the administration of a trust. Oklahoma’s version of this provision appears at 60 O.S. § 175.57(E). Accordingly, UTC Section 1004 does not appear in HB1850.

UTC Section 1005 provides a statute of limitations on actions against a trustee. Oklahoma’s version of this provision appears at 60 O.S. § 175.57(E). Accordingly, UTC Section 1004 does not appear in HB1850. As noted in my presentation on April 10, 2025, the Oklahoma Trust Reform Act of 2024, HB3962, amended Section 175.57(E), adding clarity on the issue of limitations. The new text added to Section 175.57(E) was drawn from South Dakota law, S.D.C.L. §§ 21-22-30, 55-3-45, 15-2-36.

UTC Section 1006 provides protection to trustees who act “in reasonable reliance on the terms of the trust as expressed in the trust instrument.” This provision appears in the Oklahoma UTC at 60 O.S. § 1609.3.

UTC Section 1007 provides protection to trustees who are unaware of an event despite using reasonable care to learn of the event. This provision appears in the Oklahoma UTC at 60 O.S. § 1609.4. “This section, which is based on Washington Revised Code Section 11.98.100, is designed to encourage trustees to administer trusts expeditiously and without undue concern about liability for failure to ascertain external facts, often of a personal nature, that might affect administration or distribution of the trust. The common law, contrary to this section, imposed absolute liability against a trustee for misdelivery regardless of the trustee’s level of care. *See* Restatement (Second) of Trusts Section 226 (1959). The events listed in this section are not exclusive. A trustee who has exercised reasonable care to ascertain the occurrence of other events, such as the attainment by a beneficiary of a certain age, is also protected from liability.” UTC Section 1007 cmt.

UTC Section 1008, addressing exculpation provisions of trusts, is duplicative of 60 O.S. § 175.57(F). Accordingly, this section of the UTC was omitted from HB1850.

UTC Section 1009 protects trustees when beneficiaries consent, release, or ratify a trustee’s actions or inactions. Oklahoma’s version of this provision appears at 60 O.S. § 175.57(G). Accordingly, UTC Section 1009 was not included in HB1850.

UTC Section 1010 provides further protection against personal liability of trustees. Most if not all provisions of Section 1010 were previously adopted in Oklahoma, and are found in 60 O.S. § 175.57(H). The corresponding provisions of 60 O.S. § 175.57(H) are acknowledged in 60 O.S. § 1609.5(A), together with a similar provision that appears at UTC Section 703(h), appearing at 60 O.S. § 1607.3(H), Section 1609.5(B). Section 1609.5(B) contains a duplication of 60 O.S. § 175.57(H)(4). As a result, Section 1609.5 might have been altogether unnecessary.

UTC Section 1011 addresses trustee exposure when acting as a general partner. As the comments explain, “Section 1010 protects a trustee from personal liability on contracts that the

trustee enters into on behalf of the trust. Section 1010 also absolves a trustee from liability for torts committed in administering the trust unless the trustee was personally at fault. It does not protect a trustee from personal liability for contracts entered into or torts committed by a general or limited partnership of which the trustee was a general partner. That is the purpose of this section, which is modeled after Ohio Revised Code Section 1339.65.” This text now appears at 60 O.S. § 1609.6.

UTC Section 1012 addresses protection of persons dealing with a trustee. Oklahoma previously adopted this provision, as found in 60 O.S. § 175.57(i).

UTC Section 1013 provides for certificates of trusts. Oklahoma’s corollary is found at 60 O.S. § 175.6a, providing for memoranda of trusts. The text of UTC Section 1013 was brought into HB1850, at 60 O.S. § 1609.7, to provide an alternative to Section 175.6a with more specificity as to contents. Please note that Section 1609.7 contains a typographical error, citing 60 O.S. § 175.6 rather than Section 175.6a.

Article 11 (referenced in the Oklahoma UTC as Article 10)

Article 11 of the UTC, with “miscellaneous provisions,” is important in several respects.

First, Section 1101 of the UTC contemplates uniformity of application and construction of UTC provisions among the states that enact it. This section was omitted from the Oklahoma UTC, on the basis that Oklahoma tends not to want to be bound by “uniformity” provisions of uniform acts.

Section 1102 of the UTC, appearing at 60 O.S. § 1610.1 of the Oklahoma UTC, contains language allowing state law to preempt federal law on the procedures for obtaining and validating electronic signatures. Aside from Section 1102, neither the UTC nor the Oklahoma UTC spend much time discussing electronic records, but neither contain requirements of “hard copy” documents or “wet” signatures. More notably on this topic, in 2024, Oklahoma adopted the Uniform Electronic Wills Act (“UEWA”) and the Uniform Electronic Estate Planning Documents Act (“UEEPDA”), with SB0468. This was discussed during my April 10, 2025 presentation. Briefly, the Uniform Electronic Transactions Act (“UETA”) from 2000 left an intentional gap for testamentary and non-testamentary estate planning instruments, allowing both the ULC and the states to study the issue. The result of this study was promulgation of the UEWA, allowing for digital wills so long as special execution requirements are used. The UEWA left a gap for non-testamentary estate planning instruments, which was filled with the UEEPDA. The two uniform acts were drafted so that they could be adopted together. These provisions now appear at 84 O.S. §§ 901-927.

Section 1103 of the UTC, appearing at 60 O.S. § 1610.2 of the Oklahoma UTC, is a severability clause.

Section 1104 of the UTC, omitted from Oklahoma’s version, recites an effective date. The Oklahoma legislature includes a separate provision in its bills stating the effective date. The Oklahoma UTC is effective on November 1, 2025.

Section 1105 of the UTC, omitted from Oklahoma’s version, is a repealer. As discussed above, HB1850 did not repeal the Oklahoma UTA. It is likely that certain provisions of the

Oklahoma UTA will be repealed over time, but the intention was that the Oklahoma UTC would be consistent with existing Oklahoma law, such that immediate repeal of existing statutes would not be necessary. We made a conscious choice to wait on repealing the Oklahoma Uniform Trust Act. We are using several sections of the Oklahoma Uniform Trust Act, which were added much later and which conform to the UTC. Notably, 60 O.S. § 175.57 is modeled after certain provisions of the UTC, and you will find cross references within the Oklahoma Uniform Trust Code to that section.

Section 1106 of the UTC, appearing at 60 O.S. § 1610.3 of the Oklahoma UTC, is an important provision worthy of discussion. Section 1610.3 provides:

A. Except as otherwise provided in this act, on the effective date of this act:

1. This act applies to all trusts created before, on, or after its effective date;

2. This act applies to all judicial proceedings concerning trusts commenced on or after its effective date;

3. This act applies to judicial proceedings concerning trusts commenced before its effective date unless the court finds that application of a particular provision of this act would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the particular provision of this act does not apply and the superseded law applies;

4. Any rule of construction or presumption provided in this act applies to trust instruments executed before the effective date of this act unless there is a clear indication of a contrary intent in the terms of the trust; and

5. An act enacted [*sic*] before the effective date of this act is not affected by this act.

B. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of this act, that statute continues to apply to the right even if it has been repealed or superseded.

C. The applicable provisions of the Oklahoma Trust Act shall continue to apply, unless such provision is inconsistent with an express provision of this act and, further, except as expressly provided in this act.

These provisions are designed to guide both bench and bar in applying the Oklahoma UTC to existing relationships and court proceedings. Section 1610.3(A)(1) provides that the Oklahoma UTC applies to trusts created on, before, or after its effective date. With regard to court proceedings, as a baseline, the Oklahoma UTC applies to court proceedings commenced on or after November 1, 2025. 60 O.S. § 1610.3(A)(2). As it relates to court proceedings pending at the time the Oklahoma UTC is enacted, the Oklahoma UTC applies “unless the court finds that application of a particular provision of this act would substantially interfere with the effective conduct of the judicial proceedings or prejudice the rights of the parties, in which case the

particular provision of this act does not apply and the superseded law applies.” 60 O.S. § 1610.3(A)(3).

Presumptions and rules of construction are treated similarly. “Any rule of construction or presumption provided in this act applies to trust instruments executed before the effective date of this act unless there is a clear indication of a contrary intent in the terms of the trust.” 60 O.S. § 1610.3(A)(4).

As shown above, there is some level of protection incorporated into provisions regarding the retroactive application of the Oklahoma UTC. To add even more protection, Section 1610.3(B) provides that “[i]f a right is acquired, extinguished, or barred upon the expiration of a prescribed period that has commenced to run under any other statute before the effective date of this act, that statute continues to apply to the right even if it has been repealed or superseded.”

Section 1601.3(A)(5) and (C), taken together, should preserve most of the settled expectations of estate planners and their clients who drafted estate plans under the Oklahoma Uniform Trust Code. Further, the UTC was based largely on updated views of the Uniform Trust Code as well as the Restatement (Second) and (Third) of the Law on Trusts. The Oklahoma Supreme Court often relies on the Restatement to fill in areas of common law where the Oklahoma Uniform Trust Code does not provide an answer. We believe that this background is supportive of the approach of adoption of the UTC in Oklahoma, and a gradual transition.

The UTC “is intended to have the widest possible effect within constitutional limitations.” UTC § 1106 cmt. “This Code cannot be fully retroactive, however. Constitutional limitations preclude retroactive application of rules of construction to alter property rights under trusts that became irrevocable prior to the effective date. Also, rights already barred by a statute of limitation or rule under former law are not revived by a possibly longer statute or more liberal rule under this Code. Nor is an act done before the effective date of the Code affected by the Code’s enactment.” *Id.*

Now, regarding the last sentence of the preceding paragraph, you will notice a difference in wording between that sentence and 60 O.S. § 1610.3(A)(5). There is a clear and distinct difference between “an act done” and “an act enacted.” This was a clear error in the drafting and editing of HB1850, and is bound to cause some level of confusion until a corrective measure is passed in the upcoming legislative term.