

the proposed Uniform Statutory Trust Act

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background

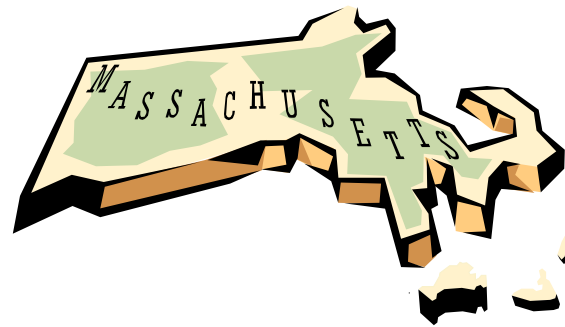
- the entity formerly known as a “Massachusetts trust” or “business trust”



TAFKAP

background (cont.)

- originally called a “Massachusetts trust” because it was widely used in Massachusetts in the 1800’s
 - at the time, the MA constitution prohibited a corporation from owning real estate
- the term “statutory” trust was coined in Delaware to make clear that these entities are not eligible to be “debtors” under the federal bankruptcy code



background (cont.)

- form is currently used particularly for mutual funds and asset securitization vehicles
 - may also be used for real estate investment trusts
- uniform act will not be final until at least next summer
- over half the states have business (or statutory) trust statutes
- universal adoption of state statutes is important to confirm recognition of the form



background (cont.)

- these entities differ from other entities because they are governed by trust law
- one final bit of possible future terminological confusion:

the name of the act is likely to change to

“Uniform Statutory Trust Entity Act”



issues for filing officers

- statutory trusts are “filing entities” and thus raise the same set of issues as corporations, LLCs, etc.:
 - name availability
 - filings
 - service of process
 - good standing
 - foreign qualification
- provisions generally follow ULPA (2001)

names

- must be distinguishable on the records of the filing officer from the names of other entities
- is not required to include a designator
 - but may include:

“company”	“association”
“club”	“foundation”
“fund”	“institute”
“society”	“union”
“syndicate”	“limited”
“trust”	

names (cont.)

- act will contain customary provisions:
 - making a conflicting name available
 - when the current holder is going out of existence
 - pursuant to court order
 - when the current holder has merged or converted into the applicant, or sold the name to the applicant
 - for reservation of a name
 - reservation period is 120 days
 - subsequent reservations permitted
 - reservation may be transferred to another party

filings

- certificate of trust
 - creates the statutory trust
- statement of cancellation
 - confirms completion of winding up
- statement of correction
 - corrects a previous filing
- annual report

filings (cont.)

- statement of change (of registered office or agent)
- statement of resignation by registered agent
 - is filed by the registered agent
 - filing office must mail a copy to the trust
- articles of conversion
- articles of merger

service of process

- service is usually made on registered agent
- if a trust does not have a registered agent who can be served, service is made by delivering two copies to the Secretary of State
 - if service is made in this manner, the Secretary of State must mail one of the copies to the trust at its designated office (which is one of the required items in the certificate of trust)
- but see MoRAA

good standing

- act will provide for issuance of:
 - certificate of existence for domestic statutory trusts
 - certificate of registration for qualified foreign statutory trusts
- certificate will be issued if:
 - all fees and penalties due to Secretary of State have been paid
 - entity is still active