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# A Brave New World: Nonjudicial Dispute Resolution Procedures Under the Uniform Trust Code and Washington's and Idaho's Trust and Estate Dispute Resolution Acts

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*Editor's Synopsis: Nonjudicial dispute resolution procedures for trust and estate matters are increasingly popular to minimize the expense, complexity, and publicity of court procedures. This article addresses the nonjudicial resolution procedures in the Uniform Trust Code, which has now been adopted in almost half the states, as well as provisions in Washington, Oregon, and Idaho that appear to reach the farthest into this "brave new world" of trust and estate nonjudicial dispute resolution. The article addresses various practical issues, including the availability of virtual representation or special representatives to bind certain parties. The article addresses how the procedures apply in differing contexts, such as modifying or terminating trusts or streamlining trust administration. The article concludes with helpful practice tips in using nonjudicial resolution procedures.*

O wonder!  
How many goodly creatures are there here!  
How beauteous mankind is!  
O brave new world  
That hath such people in't!

## Scope of Article

As of the date this article was completed, twenty-two states<sup>2</sup> and the District of Columbia have adopted the Uniform Trust Code. In 2008 and 2009, the Uniform Trust Code was introduced in several other states (Connecticut, Massachusetts, New Jersey, and Oklahoma) and is under active consideration in several other states, including the authors' home state of

Washington. Washington, like its neighbor Idaho, has not yet adopted the Uniform Trust Code, but has instead adopted its own trust and estate dispute resolution act ("TEDRA").<sup>3</sup> Washington's other neighbor, Oregon, has adopted the Uniform Trust Code, but has also incorporated nonjudicial dispute resolution procedures into its act that are similar to Washington's and Idaho's TEDRA.

The Uniform Trust Code and TEDRA each provide a mechanism to use nonjudicial dispute resolution procedures to address trust disputes, modify and terminate trusts, and streamline trust administration. The nonjudicial dispute resolution procedures set forth in the Uniform Trust Code and TEDRA have launched estate planning and trust administration practitioners into a brave new world, giving them practical tools to assist clients (beneficiaries and fiduciaries alike) in reaching their goals, administering trusts more efficiently, dealing with the issues that trustors and testators never anticipated, and addressing the ever changing landscape of federal and state estate tax laws. These comprehensive statutory schemes also provide practitioners throughout the United States with a set of judicial procedures for resolving disputes that cannot be resolved through nonjudicial measures and to confirm or validate nonjudicial dispute resolution agreements. Although several Uniform Trust Code states have adopted provisions that expand the powers of trustors, beneficiaries, and trustees to address trust disputes with both judicial and nonjudicial procedures, there does not appear to be any particular regional flavor with respect to these expanded powers. The nonjudicial dispute resolution procedures adopted by

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<sup>1</sup> William Shakespeare, *The Tempest*, Act V, Scene I.

<sup>2</sup> Alabama, Arizona, Arkansas, Florida, Kansas, Maine, Michigan (the Michigan Uniform Trust Code does not go into

effect until April 1, 2010), Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Vermont (the Vermont Trust Code went into effect on July 1, 2009), Virginia, and Wyoming.

<sup>3</sup> Several other states have adopted portions of the Uniform Trust Code or other statutes addressing the modification and termination of trusts (some of which are based on the Restatement of Trusts). These state statutes are not addressed in this article.