
NONJUDICIAL TRANSFER OF TRUST SITUS CHART¹

This chart provides a survey of the State statutory provisions for all States and the District of Columbia relating to the nonjudicial transfer of the principal place of administration or the situs of a trust to another jurisdiction and the governing law upon such transfer.

STATES THAT HAVE ADOPTED THE UNIFORM TRUST CODE:

The following states (“UTC States”) have adopted the Uniform Trust Code (“UTC”), in whole or in part. Except as otherwise provided below, the statutes of the UTC States track the UTC and provide for the nonjudicial transfer of the principal place of administration or the situs of a trust as follows:

1. A Trustee, in furtherance of its duty to administer a trust at a place appropriate to its purposes, its administration and the interests of the beneficiaries, may transfer a trust’s principal place of administration to another State or to a jurisdiction outside of the United States upon notice to the “qualified beneficiaries” not less than 60 days before initiating the transfer. The notice must provide the date, not less than 60 days after the giving of the notice, by which the qualified beneficiary must notify the Trustee of an objection to the proposed transfer, and the authority of a Trustee to transfer a trust’s principal place of administration will terminate if a qualified beneficiary notifies the Trustee of an objection to the proposed transfer on or before the proposed date specified in the notice. UTC § 108.

A “qualified beneficiary” means a beneficiary who, on the date the beneficiary’s qualification is determined, (i) is a distributee or permissible distributee of trust income or principal, (ii) would be a distributee or permissible distributee of trust income or principal if the interests of the distributee described in (i), above, terminated on that date, or (iii) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

2. All “interested persons” may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust, so long as the settlement agreement does not violate a material purpose of the trust and includes terms and conditions that

¹ This chart was prepared at the direction of Peter S. Gordon, Esquire by Monique Z. Valbuena, Esquire and Daniel F. Hayward, Esquire of the law firm of Gordon, Fournaris & Mammarella, P.A., Wilmington, Delaware.

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could be properly approved by the appropriate court or other applicable law. A transfer of a trust's principal place of administration is a proper matter to be resolved by a nonjudicial settlement agreement. UTC § 111.

“Interested persons” means persons whose consent would be required in order to achieve a binding settlement were the settlement to be approved by the court.

In general, the statutes of the UTC States provide that the meaning and effect of the terms of a trust are determined by (i) the law of the jurisdiction designated in the terms of the trust, unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue; or (ii) in the absence of a controlling designation in the terms of the trust, the law of the jurisdiction having the most significant relationship to the matter at issue. UTC § 107. The notes to Section 107 state that factors to consider in determining the governing law include the place of the trust's creation, the location of the trust property, and the domiciles of the settlor, the trustee and the beneficiaries, and that usually, the law of the trust's principal place of administration will govern administrative matters and the law of the place having the most significant relationship to the trust's creation will govern the dispositive provisions.

State

**Transfer of Principal Place of
Administration**

**Nonjudicial Settlement
Agreement**

Governing Law

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<u>State</u>	<u>Transfer of Principal Place of Administration</u>	<u>Nonjudicial Settlement Agreement</u>	<u>Governing Law</u>
1. Alabama	Ala. Code § 19-3B-108 Requires only 30 days' notice to qualified beneficiaries. In addition, adds subsection 108(g), which states, in part, that unless otherwise designated in the trust instrument, the principal place of administration of a trust is the usual place where the day-to-day activity of the trust is carried on by the trustee.	Ala. Code § 19-3B-111	Ala. Code § 19-3B-107
2. Arizona	Ariz. Rev. Stat. §14-10108	Ariz. Rev. Stat. §14-10111	Ariz. Rev. Stat. §14-10107 In the absence of a controlling designation in the terms of the trust, the laws of the jurisdiction where the trust was executed determine the validity of the trust, and the laws of descent and the law of the principal place of administration determine the administration of the trust.

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3. Arkansas	Ark. Code Ann. § 28-73-108 Applies only to irrevocable trusts created on or after September 1, 2005, and to revocable trusts which become irrevocable on or after September 1, 2005.	Ark. Code Ann. § 28-73-411 Provides for (i) modification or termination of a noncharitable irrevocable trust by consent of the settlor and all beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust, and (ii) modification upon consent of all of the beneficiaries if a court concludes that modification is not inconsistent with a material purpose of the trust.	Ark. Code Ann. § 28-73-107
4. District of Columbia	D.C. Code Ann. § 19-1301.08	D.C. Code Ann. § 19-1301.11	D.C. Code Ann. § 19-1301.07

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<u>State</u>	<u>Transfer of Principal Place of Administration</u>	<u>Nonjudicial Settlement Agreement</u>	<u>Governing Law</u>
5. Florida	Fla. Stat. Ann. § 736.0108	Fla. Stat. Ann. § 736.0111 In addition, § 736.0412 provides for nonjudicial modification of an irrevocable trust after the settlor’s death to amend or change the terms of the trust, including terms governing administration of the trust, upon the unanimous agreement of the trustee and all qualified beneficiaries. Does not apply to (i) any trust created prior to January 1, 2001, (ii) any trust created after December 31, 2000, if all beneficial interests in the trust must vest or terminate within the period prescribed by the rule against perpetuities, unless the terms of the trust expressly authorize nonjudicial modification or (iii) trusts allowing for a charitable deduction.	Fla. Stat. Ann. § 736.0107 The meaning and effect of the terms of a trust are determined by the law of the jurisdiction designated in the terms of the trust, provided there is a sufficient nexus to the designated jurisdiction at the time of the creation of the trust or during the trust administration, including, but not limited to, the location of real property held by the trust or the residence or location of an office of the settlor, trustee, or any beneficiary.
6. Kansas	Kan. Stat. Ann. § 58a-108	Kan. Stat. Ann. § 58a-111	Kan. Stat. Ann. § 58a-107

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7. Maine	Me. Rev. Stat. Ann. tit. 18-B § 108	Me. Rev. Stat. Ann. tit. 18-B § 111	Me. Rev. Stat. Ann. tit. 18-B § 107
8. Michigan	Mich. Comp. Laws Ann. § 7108 Requires 63 days' notice to qualified beneficiaries.	Mich. Comp. Laws Ann. § 7111	Mich. Comp. Laws Ann. § 7107
9. Missouri	Mo. Rev. Stat. § 456.1-108	Mo. Rev. Stat. § 456.1-111	Mo. Rev. Stat. § 456.1-107
10. Nebraska	Neb. Rev. Stat. § 30-3808	Neb. Rev. Stat. § 30-3811	Neb. Rev. Stat. § 30-3807
11. New Hampshire	N.H. Rev. Stat. Ann. § 564-B:1-108	N.H. Rev. Stat. Ann. § 564-B:1-111	N.H. Rev. Stat. Ann. § 564-B:1-107
12. New Mexico	N.M. Stat. Ann. § 46A-1-108	N.M. Stat. Ann. § 46A-1-111	N.M. Stat. Ann. § 46A-1-107
13. North Carolina	N.C. Gen. Stat. § 36C-1-108	N.C. Gen. Stat. § 36C-1-111	N.C. Gen. Stat. § 36C-1-107
14. North Dakota	N.D. Cent. Code § 59-09-08	N.D. Cent. Code § 59-09-11	N.D. Cent. Code § 59-09-07

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<u>State</u>	<u>Transfer of Principal Place of Administration</u>	<u>Nonjudicial Settlement Agreement</u>	<u>Governing Law</u>
15. Ohio	Ohio Rev. Code Ann. § 5801.07	Ohio Rev. Code Ann. § 5801.10 (Agreement among interested parties regarding trust matters) Provides that all of the settlors, if living, all beneficiaries, all currently serving trustees and any creditors, if their interest is to be affected, may enter into an agreement with respect to any matter concerning the construction of, administration of, or distributions under the terms of the trust.	Ohio Rev. Code Ann. § 5801.06 Subsection B provides that the administration of a trust is governed by the law designated in the terms of the trust to govern trust administration. If the terms of the trust do not designate the governing law and the trust's principal place of administration is transferred to another jurisdiction under section 5801.07 of the Ohio Revised Code, the law of the new principal place of administration of the trust governs the administration of the trust from the time of the transfer.
16. Oregon	Or. Rev. Stat. § 130.022	Or. Rev. Stat. § 130.045	Or. Rev. Stat. § 130.030

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<u>State</u>	<u>Transfer of Principal Place of Administration</u>	<u>Nonjudicial Settlement Agreement</u>	<u>Governing Law</u>
17. Pennsylvania	20 Pa.C.S.A. § 7708 Trustee may transfer the trust's situs to another jurisdiction if either immediately before or immediately after the proposed transfer: (i) a trustee's principal place of business is located in or a trustee is a resident of the proposed jurisdiction; (ii) all or part of the trust administration occurs in the proposed jurisdiction; or (iii) one or more of the beneficiaries reside in the proposed jurisdiction. Court approval is not required if all qualified beneficiaries of the trust consent in writing.	20 Pa.C.S.A. § 7710.1 Requires consent of all trustees and all beneficiaries only.	20 Pa.C.S.A. § 7707
18. South Carolina	S.C. Code Ann. § 62-7-108	S.C. Code Ann. § 62-7-111	S.C. Code Ann. § 62-7-107

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<u>State</u>	<u>Transfer of Principal Place of Administration</u>	<u>Nonjudicial Settlement Agreement</u>	<u>Governing Law</u>
19. Tennessee	Tenn. Code Ann. § 35-15-108	Tenn. Code Ann. § 35-15-111 Trustee and qualified beneficiaries may enter into nonjudicial settlement agreement.	Tenn. Code Ann. § 35-15-107
20. Utah	Utah Code Ann. § 75-7-108	Utah Code Ann. § 75-7-110	Utah Code Ann. § 75-7-107 If a trust specifies that the validity, construction, and administration of the trust are to be governed by the laws of Utah, then Utah law governs if any administration of the trust is done in Utah. For all trusts created on or after December 31, 2003, if a trust does not have a state law provision, the validity, construction, and administration of the trust are to be governed by the laws of Utah if the trust is administered in Utah.
21. Vermont	Vt. Stat. Ann. tit. 14A § 108	Vt. Stat. Ann. tit. 14A § 111	Vt. Stat. Ann. tit. 14A § 107

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<u>State</u>	<u>Transfer of Principal Place of Administration</u>	<u>Nonjudicial Settlement Agreement</u>	<u>Governing Law</u>
22. Virginia	Va. Code Ann. § 55-541.08	Va. Code Ann. § 55-541.11	Va. Code Ann. § 55-541.07
23. West Virginia	W. Va. Code Ann. § 44D-1-108	W. Va. Code Ann. § 44D-1-111	W. Va. Code Ann. § 44D-1-107
24. Wyoming	Wyo. Stat. Ann. § 4-10-108	Wyo. Stat. Ann. § 4-10-111	Wyo. Stat. Ann. § 4-10-107 In determining most significant relationship, principal place of administration is given most weight, and location of trust property is the second most significant. The least significant factors are domiciles of beneficiaries and of settlor.

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NON-UTC STATES THAT PROVIDE FOR THE NONJUDICIAL TRANSFER OF SITUS OF A TRUST

The following States have not adopted the UTC but do provide, to varying degrees, for the nonjudicial transfer of the principal place of administration or situs of the trust. The titles of the code sections of the various statutes, if any, are set forth in parentheses after the citations.

<u>State</u>	<u>Statutory Authority</u>
1. California	Cal. Prob. Code § 15404. Settlor and all beneficiaries of a trust may consent to the modification or termination of the trust.
2. Illinois	760 Ill. Comp. Stat. 5/16.1(d). (Virtual representation) Provides for nonjudicial settlement agreements and states that the Trustee and all other persons and parties in interest whose consent or joinder would be required in order to achieve a binding settlement approved by the court may enter into a binding nonjudicial settlement agreement with respect to any matter involving a trust, including the transfer of a trust's principal place of administration.
3. Indiana	Ind. Code Ann. § 30-4-6-3. (Venue; transfer of trust's principal place of administration; notice; objection to transfer) The pertinent provisions of this section track UTC § 108.

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- | <u>State</u> | <u>Statutory Authority</u> |
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| 4. Iowa | Iowa Code § 633A.2202. (Modification or termination by settlor and all beneficiaries) An irrevocable trust may be modified or terminated upon the consent of the settlor and all of the beneficiaries.
Iowa Code § 633A.1108. (Governing law) In general, the law of the jurisdiction designated in the terms of the trust shall govern the trust, on the condition that at the time the trust was created the designated jurisdiction had a substantial relationship to the trust. In the absence of a controlling designation in the terms of the trust, the law of the jurisdiction that has the most significant relationship to the matter at issue. A jurisdiction has a substantial relationship to the trust if it is the residence or domicile of the settlor or of any qualified beneficiary, the location of a substantial portion of the assets of the trust, or a place where the trustee was domiciled or had a place of business. |
| 5. Louisiana | La. Rev. Stat. Ann. §2021. (General rule; modification) The settlor may modify the terms of the trust after its creation only to the extent he or she expressly reserves the right to do so.
La. Rev. Stat. Ann. §2031. (Delegation of right to amend) A trust instrument may authorize a person other than the settlor to modify the provisions of the trust instrument in order to add or remove beneficiaries, or modify their rights, if all of the affected beneficiaries are descendants of the person given the power to modify. |
| 6. Minnesota | M.S.A. § 501B.154. (Nonjudicial settlement agreements) The trustee and all beneficiaries of a trust not under court supervision may enter into a binding nonjudicial settlement agreement with respect to the transfer of the trust's situs. |
| 7. Montana | Mont. Rev. Code Ann. § 72-33-407. (Modification or termination by trustor and all beneficiaries) If the trustor and all beneficiaries of a trust consent, they may compel the modification or termination of the trust. |

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<u>State</u>	<u>Statutory Authority</u>
8. Nevada	Nev. Rev. Stat. Ann. § 163.5553. (Powers of trust protector) A trust protector may exercise the powers provided to the trust protector in the instrument in the best interests of the trust. Such powers may include the power to change the location or governing law of the trust.
9. South Dakota	<p>S.D. Codified Laws § 55-1A-38. (Trustee may perform necessary and appropriate acts) A trustee may perform such acts, which, in the judgment of the trustee, may be necessary or appropriate for the proper management, investment, and distribution of the trust estate.</p> <p>S.D. Codified Laws § 55-3-39. (When state law or jurisdiction provision valid, effective, and conclusive) Except as expressly provided by the terms of a governing instrument or by a court order, a general law or a state jurisdiction provision stating that the laws of this state govern is valid, effective, and conclusive for the trust if all of the following are true: (i) some or all of the trust assets are deposited in South Dakota or physical evidence of such assets is held in this state and the trust is being administered by a qualified person; (ii) a trustee is a qualified person who is designated as a trustee under the governing instrument, a successor trusteeship, or designated by a court having jurisdiction over the trust; and (iii) the administration occurs wholly or partly in this state.</p>
10. Washington	Wash. Rev. Code § 11.98.045. (Criteria for transfer of trust assets or administration) A trustee may transfer trust assets to a trustee in another jurisdiction or may transfer the place of administration of a trust to another jurisdiction if the trust instrument so provides or by giving written notice to all persons interested in the trust not less than 60 days before initiating the transfer, provided no beneficiary objects to the proposed transfer.

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<u>State</u>	<u>Statutory Authority</u>
11. Wisconsin	Wis. Stat. Ann. § 701.12. (Revocation, modification and termination of trusts with consent of settlor) Settlor and all beneficiaries of a trust or any part thereof may revoke, modify or terminate the trust or part thereof, as applicable, by written consent.

STATES WHICH HAVE NO STATUTE PROVIDING FOR THE NONJUDICIAL TRANSFER OF THE PRINCIPAL PLACE OF ADMINISTRATION OR THE SITUS OF A TRUST

The following States' statutes either (i) provide for transfer of the situs or principal place of administration of a trust by petition to the court and are silent with respect to nonjudicial transfers or (ii) are silent with respect to the transfer of the situs or principal place of administration of a trust.

<u>State</u>	<u>Statutory Authority, if any</u>
1. Alaska	Alaska Stat. §13.36.090 (Trustee's Duties; Appropriate Place of Administration; Deviation.) A trustee is under a continuing duty to administer the trust at a place appropriate to the purposes of the trust and to its sound, efficient management. If the principal place of administration becomes inappropriate for any reason, the court may enter any order furthering efficient administration and the interests of beneficiaries, including, if appropriate, release of registration, removal of the trustee and appointment of a trustee in another state. Trust provisions relating to the place of administration and to changes in the place of administration or of trustee control unless compliance would be contrary to efficient administration or the purposes of the trust. Views of adult beneficiaries are given weight in determining the suitability of the trustee and the place of administration.
2. Connecticut	Silent

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- | <u>State</u> | <u>Statutory Authority, if any</u> |
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| 3. Colorado | Colo. Rev. Stat. Ann. § 15-16-305. (Trustee's duties - appropriate place of administration - deviation) Court may enter any order furthering the administration of the trust. Trust provisions relating to the place of administration and to changes in the place of administration or of trustee shall control, unless compliance would be contrary to efficient administration or the purposes of the trust.
Colo. Rev. Stat. Ann. § 15-16-703. (Choice of law as to meaning and effect of governing instrument) Meaning and legal effect of a governing instrument is determined by the local law of the State selected by the transferor in the governing instrument. |
| 4. Delaware | Silent with respect to the transfer of the situs or principal place of administration of a trust. However, 12 Del. C. § 3332(b) provides that upon the transfer of a trust to Delaware, “[e]xcept as otherwise expressly provided by the terms of a governing instrument or by court order, the laws of [Delaware] shall govern the administration of a trust while the trust is administered in [Delaware].” |
| 5. Georgia | Ga. Code Ann. § 53-12-32. (Power to direct modification) A trust instrument may confer upon a Trustee or other person the power to modify the trust.
Ga. Code Ann. § 53-12-32. (Modification of trust by court)
Ga. Code Ann. § 53-12-4 (Law governing the validity of the trust) and Ga. Code Ann. § 53-12-5. (Law governing the meaning and effect of trust provisions) both provide that law of the jurisdiction designated in the trust instrument shall control unless the effect of the designation is contrary to the public policy of the jurisdiction having the most significant relationship to the matter at issue, and, in the absence of an effective designation in the trust instrument, the law of the jurisdiction having the most significant relationship to the matter at issue shall control. |

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<u>State</u>	<u>Statutory Authority, if any</u>
6. Hawaii	Haw. Rev. Stat. §560:7-305. (Trustee's duties; appropriate place of administration; deviation) If the principal place of administration becomes inappropriate, the court may for good cause enter any order furthering efficient administration and the interests of beneficiaries, including designation of administration in another state.
7. Idaho	Idaho Code § 15-7-305. (Trustee's duties -- Appropriate place of administration -- Deviation) Court may enter any order furthering the administration of the trust. Trust provisions relating to the place of administration and to changes in the place of administration or of trustee shall control, unless compliance would be contrary to efficient administration or the purposes of the trust.
8. Kentucky	Ky. Rev. Stat. Ann. § 386.725. (Appropriate place of administration – Deviation) Court may enter any order furthering the administration of the trust. Trust provisions relating to the place of administration and to changes in the place of administration or of trustee shall control, unless compliance would be contrary to efficient administration or the purposes of the trust.
9. Maryland	Silent

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<u>State</u>	<u>Statutory Authority, if any</u>
10. Massachusetts	<p>Massachusetts statutory law is silent with respect to the transfer of the situs or principal place of administration of a Massachusetts trust.</p> <p>Informally: Massachusetts counsel has advised that, unless an intervivos trust has become subject to the jurisdiction of a Massachusetts court to which the Trustee of the trust is thereafter accountable, a judicial application to a Massachusetts court seeking permission to transfer the situs of the trust assets or the place of the trust's administration is not necessary. Additionally, Massachusetts counsel has advised that Massachusetts case law suggests, when a Grantor of a Massachusetts trust is deceased, the issue of whether the trust situs can be transferred without judicial action is dependent on the Grantor's intent determined by reviewing the trust language relating to the situs of the trust and, in particular, whether there is any restriction on who may serve as trustee or where such trustee may be located.</p>
11. Mississippi	Silent
12. New Jersey	Silent

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13. New York	<p>New York statutory law is silent with respect to the transfer of the situs or principal place of administration of a New York trust.</p> <p>Informally: With regard to inter vivos trusts created in New York, New York counsel has advised that unless the trust instrument evidences the Grantor’s intent that the situs of the trust <u>not</u> be transferred (which can be at least partially determined by whether there is a restriction on where a successor Trustee may be located), a judicial action is not necessary in New York court in order to transfer the situs or place of administration of the trust.</p>
14. Oklahoma	Silent
15. Rhode Island	Silent
16. Texas	<p>Tex. Pr. Code Ann. § Sec. 112.054. (Judicial Modification or Termination of Trusts) On petition of a trustee or beneficiary, court may modify the terms of a trust.</p> <p>Informally: Texas counsel has confirmed that unless an intervivos trust has (i) previously become subject to the jurisdiction of a Texas court, or (ii) the trust language prohibits the transfer of the situs of the trust, a judicial action in Texas court is not necessary in order to transfer the situs or place of administration of the trust.</p>

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