
**The
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AC
TEC
STUDIES

The summary of each state's laws reflected in this study has been based on an opinion received from a reporter for that state. With rare exceptions, reporters are Fellows of the College from that state. Following the reporter's name is the date as of which that state's material was most recently reviewed. Neither the College nor the individual reporters and editors (who have volunteered their time and experience in the preparation of the studies) assume any responsibility for the accuracy of the information contained in any study.

Study 2:

**Validity of
Testamentary Pourovers**

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VALIDITY OF TESTAMENTARY POUROVERS

I. GENERAL.

In every jurisdiction, a testamentary bequest or devise to a trustee of an amendable inter vivos trust (which must be funded at least with the right to receive life insurance proceeds and/or other assets of nominal value), in existence at or prior to the date of the will, is valid even if the trust was amended after the date of the decedent's last will but prior to his death, and property so bequeathed or devised shall be treated as an addition to the trust and governed by the terms of the trust as amended. A revocation of the trust before the death of the testator will cause the disposition to fail unless the testator has made an alternative disposition.

The statutes of some states may be broader and, among other things, permit pourovers (1) to trusts established or amended after the date of the will and, if so authorized by the will, after the death of the grantor; and (2) to trusts, regardless of the existence, size, or character of the corpus of the trust.

II. GRANTOR AS SOLE TRUSTEE AND SOLE INCOME BENEFICIARY.

Even where there is an absence of applicable statutory authority or case law, most reporters believe that the validity of the pourover would not be affected if the recipient trust were one in which, during the testator's lifetime, he or she was the sole trustee and also the sole income beneficiary. This assumes that a new trustee is named or appointed and there are additional beneficiaries eligible for income and principal following the testator's death.

However, in two states (Connecticut and West Virginia) the reporters believe that testamentary pourovers under these circumstances may be invalid.

Reporters in four states (Alabama, Maryland, Mississippi and South Carolina) were unable to provide an opinion.

III. INELIGIBLE TRUSTEE.

The following table shows whether the validity of the pourover is affected if the pourover trustee is not eligible to act as a testamentary trustee under the laws of the decedent's domicile.

ALABAMA	F	KENTUCKY	A	NORTH DAKOTA	A
ALASKA	A	LOUISIANA	B	OHIO	A
ARIZONA	A	MAINE	A	OKLAHOMA	A
ARKANSAS	A	MARYLAND	A	OREGON	A
CALIFORNIA	A	MASSACHUSETTS	A	PENNSYLVANIA	A
COLORADO	A	MICHIGAN	A	RHODE ISLAND	A
CONNECTICUT	A	MINNESOTA	A	SOUTH CAROLINA	A
DELAWARE	B	MISSISSIPPI	B	SOUTH DAKOTA	A
DISTRICT OF COLUMBIA	A	MISSOURI	B	TENNESSEE	A
FLORIDA	C	MONTANA	C	TEXAS	B
GEORGIA	A	NEBRASKA	A	UTAH	A
HAWAII	A	NEVADA	A	VERMONT	A
IDAHO	A	NEW HAMPSHIRE	A	VIRGINIA	E
ILLINOIS	A	NEW JERSEY	A	WASHINGTON	A
INDIANA	A	NEW MEXICO	A	WEST VIRGINIA	A

ARIZONA ARS Sec. 14-2511.
Gordon G. Waterfall
Tucson, Arizona
November 27, 1995

ARKANSAS Act 751 of the 1995 Arkansas General Assembly
William D. Haught (Uniform Testamentary Additions to Trusts Act of 1995).
Little Rock, Arkansas
June 2, 1997

CALIFORNIA California Probate Code Sec. 6300.
Edward V. Brennan
San Diego, California
December 4, 1995

COLORADO Secs. 15-11-511 and 15-16-105, C.R.S.
William C. McGehee
Denver, Colorado
June 2, 1997

CONNECTICUT Conn. Gen. Stats. § 45a-260 (1995).
Martin Wolman
Hartford, Connecticut
January 22, 1996

DELAWARE 12 Del. C. § 211 and 8 Del. C. § 380.
Richard G. Bacon
Wilmington, Delaware
February 2, 1996

DISTRICT OF COLUMBIA D.C. Code Sec. 18-306, 1981 edition.
Malvern J. Sheffield, Jr.
Washington, D.C.
April 24, 1996

FLORIDA Florida Statutes 732.513, 733.808, 737.404.
Rohan Kelley
Ft. Lauderdale, Florida
February 6, 1996

GEORGIA O.C.G.A. §§ 53-12-70 through 53-12-74.
William Linkous, Jr.
Atlanta, Georgia

June 2, 1997

HAWAII Hawaii R.S. Sec. 560:2-511.

Arthur B. Reinwald

Honolulu, Hawaii

June 10, 1997

IDAHO Secs. 15-2-511 and 15-7-105 Idaho Code.

Loren C. Ipsen

Boise, Idaho

June 3, 1997

ILLINOIS 755 ILCS 5/4-4.

Carter Howard

Chicago, Illinois

February 20, 1996

INDIANA IC 29-1-6-1 (j), IC 30-4-2-1 (c),
IC 30-4-2-5 and IC 30-4-2-8(6).

John W. Houghton

Indianapolis, Indiana

June 6, 1997

IOWA Sec. 633. 275 I.C.A.

Robert A. VanOrsdel

Des Moines, Iowa

June 4, 1997

KANSAS K.S.A. 59-3101 and 59-1701.

Willard B. Thompson

Wichita, Kansas

March 5, 1996

KENTUCKY KRS 394.075.

Robert L. Hallenberg

Louisville, Kentucky

January 12, 1996

LOUISIANA La. R.S 9:1931-1936, 23 *La. Law Review*
621 at 632.

David F. Edwards

New Orleans, Louisiana

June 11, 1997

MAINE M.R.S.A. Title 18A, Sec. 2-511.

Philip C. Hunt
Portland, Maine
November 21, 1995

MARYLAND Anno. Code of Md. Estates and Trusts
George E. Thomsen Sec. 4-411.
Baltimore, Maryland
December 18, 1995

MASSACHUSETTS G.L. c203, Sec. 3B.
Preston H. Saunders
Boston, Massachusetts
January 22, 1996

MICHIGAN Mich. Stat. Anno. Sec. 26.78(1)-(4);
Kenneth E. Konop Mich. Comp. Laws Sec. 555.461-555.464.
Ann Arbor, Michigan
February 12, 1996

MINNESOTA Minn. Stat. 524.2-511.
John A. Burton, Jr.
Minneapolis, Minnesota
January 11, 1996

MISSISSIPPI § 91-5-11, Miss. Code Anno. (1972).
Joshua Green
Jackson, Mississippi
December 29, 1995

MISSOURI Mo. Rev. Stat. Secs. 362.600 and 456.232.
Edward A. Setzler
Kansas City, Missouri
December 13, 1995

MONTANA Secs. 72-2-531; 72-34-307; 72-33-622;
Keith P. Johnson 72-33-108(7); 72-33-612; and 72-33-621, M.C.A.
Butte, Montana
June 7, 1997

NEBRASKA R.R.S (1995), Secs. 30-2335, 2336, 2337.
Thomas M. Davies (Uniform Probate Code Secs. 2-510, 511, 512).
Lincoln, Nebraska
June 1, 1997

NEVADA N.R.S. 163.220 to .250.

George K. Folsom
Reno, Nevada
January 12, 1996

NEW HAMPSHIRE R.S.A. 563-A, *Rogers v. Whitney*, 193 A2d 10

Arthur H. Nighswander 105 N H 95.
Laconia, New Hampshire
November 21, 1995

NEW JERSEY N.J.S.A. 3B:4-1 to 3B:4-6.

Richard Kahn
Morristown, New Jersey
December 8, 1995

NEW MEXICO N.M.S.A. 1978, Secs. 45-2-511 and 45-7-105

John S. Catron (1995 Repl. Pamp.).
Santa Fe, New Mexico
December 15, 1995

NEW YORK EPTL 3-3.7 and see Bennett Commission

Jon L. Schumacher Report 6.1B, 1963.
Rochester, New York
January 12, 1996

NORTH CAROLINA GS 31-47.

Brian F. D. Lavelle
Asheville, North Carolina
December 12, 1995

NORTH DAKOTA Chap. 30.1-08-11, N.D. Century Code.

Robert E. Rosenvold
West Fargo, North Dakota
June 3, 1997

OHIO R.C. 1335.01 and 2107 63, *Smyth v. Cleveland Trust Co.*,

Wiley Dinsmore 172 O.S 489, 179 N.E.(2d) 60 (1961).
Cincinnati, Ohio
November 21, 1995

OKLAHOMA Title 84, Okla. St. Ann., Sec 301-308.

Cynda C. Ottaway
Oklahoma City, Oklahoma

June 11, 1997

OREGON ORS 112.265.

Campbell Richardson
Portland, Oregon
June 2, 1997

PENNSYLVANIA Sec. 2515 Probate, Estates and Fiduciaries

Stephen E. Nash
Pittsburgh, Pennsylvania
November 29, 1995

Code, 20 Pa. C.S.A. § 2515. Clarifying amendment effective
December 16, 1992.

RHODE ISLAND GL 1956 Sec. 33-6-33.

Alan L. Swartz
Providence, Rhode Island
December 19, 1995

SOUTH CAROLINA Sec. 62-2-510 Code of Laws, S.C., 1976.

Charles M. Stuart, Jr.
Greenville, South Carolina
February 1, 1996

SOUTH DAKOTA S.D.C.L. 29-2-18 through 29-2-23. May be

Raymond M. Schutz
Aberdeen, South Dakota
December 14, 1995

cited as "Uniform Testamentary Additions to
Trust Act " and/or S.D.C.L. 29A-2-511.

TENNESSEE T.C.A. 32-3-106 and 35-50-107.

Joe M. Duncan
Memphis, Tennessee
June 2, 1997

TEXAS Sec. 58a Probate Code.

John L. Hopwood
Houston, Texas
December 20, 1995

UTAH Secs. 75-2-511 and 75-7-101 U. Code Anno.

Charles M. Bennett
Salt Lake City, Utah
February 12, 1996

1953, as amended.

VERMONT 14 VSA 2329.

Eugene V. Clark
Bennington, Vermont
June 2, 1997

VIRGINIA Code § 64.1-73.
Michael Armstrong
Richmond, Virginia
March 10, 1996

WASHINGTON Chapter 23, Section 2, Laws of 1985 (RCW
Watson B. Blair 11.12.250).
Seattle, Washington
November 20, 1996

WEST VIRGINIA Code Chap. 41, Art. 3, Secs. 8-11.
Noel P. Copen
Huntington, West Virginia
December 28, 1995

WISCONSIN Wis. Stats., 701.08.
David W. Reinecke
Madison, Wisconsin
June 10, 1997

WYOMING W.S. § 2-6-103.
Thomas N. Long
Cheyenne, Wyoming
March 14, 1996