THE UNIFORM TRUST CODE REVIVES THE HISTORICAL PURPOSES OF TRUSTS AND REITERATES THE IMPORTANCE OF THE SETTLOR'S INTENT

I. INTRODUCTION

An accepted principle of trust law is that a trust exists for the benefit of its beneficiaries and the trustee has a duty to manage the assets of the trust for the benefit of those beneficiaries. Tradition-ally, the trustee had a duty to carry out the settlor's intent regarding the terms of the trust and the settlor was permitted to set forth the duties of the trustee in the trust instrument. The Uniform Trust Code (“UTC”), adopted by twenty-one jurisdictions, codifies the common-law principle that a settlor's intent controls the provisions of the trust, while also setting forth a standard that creates both uniformity and predictability. Courts in jurisdictions not adopting the UTC lack both a standard and guidance when determining issues of trust law.

This Article will first demonstrate that the historical purposes of living trusts were to benefit the beneficiary and that the settlor's intent was a controlling factor in enforcing and interpreting trust agreements. This Article will then examine the UTC's attempt to codify a uniform approach to balance the beneficiary's interests and the settlor's intent. This Article will then discuss critic's opposition pertaining to the need to follow the settlor's intent as well as the "benefit-the-beneficiary" rule provided for in the UTC. Next, this Article will evaluate cases from jurisdictions that have adopted the UTC. In re Trust Created By Isvik and In re Biggs Charitable Remainder Trust, the Supreme Court of Nebraska and Supreme Court of Kansas, respectively, relied on the UTC to determine the rights among the beneficiaries.

2. See infra notes 26-37 and accompanying text.
4. See infra notes 120-40 and accompanying text.
5. UNIF. TRUST CODE § 801.
6. See infra notes 185-254 and accompanying text.
7. See infra notes 26-37 and accompanying text.
8. See infra notes 56-103 and accompanying text.
9. See infra notes 104-18 and accompanying text.
10. See infra notes 143-84 and accompanying text.
11. 741 N.W.2d 638 (Neb. 2007).
parties based on the settlors' intents. The results of those cases are in line with the historical purposes of trusts. Finally, this Article will examine the results of recent decisions from courts in jurisdictions that have not adopted the UTC. In *J.P. Morgan Chase Bank, N.A. v. Longmeyer*, the Supreme Court of Kentucky considered the duties of a former trustee following the revocation of a trust and, without reference to the settlor's intent, determined that the trustee had a duty to inform former beneficiaries of their lost interest. In *Johnson v. Johnson*, the Maryland Court of Special Appeals considered whether a settlor could, through terms of the trust, release the trustee of the duty to report to beneficiaries, and determined, again without reference to the settlor's intent, that a settlor cannot release a trustee of all accountability. In both *Longmeyer* and *Johnson*, the jurisdictions' failure to adopt the UTC led to a pattern of reasoning that does not align with the historical purposes of trust law.

This Article will establish that the UTC has successfully codified a standard, which successfully accounts for the historical purposes of trusts. This Article will establish that settlor's intent is the overriding principle found within the provisions of the UTC. Furthermore, this Article will show that courts in jurisdictions adopting the UTC have honored the settlor's intent by ascertaining that intent and making decisions that comply with and promote it. Additionally, jurisdictions adopting the UTC have reached more predictable and uniform decisions that are more consistent with the historic purposes of trusts than courts from jurisdictions that have not adopted the UTC. This predictability and uniformity result from the UTC's unified approach.
in determining the rights of beneficiaries while accounting for the settlor's intent, rather than relying on outdated statutes and case law.\textsuperscript{25}

II. BACKGROUND

A. HISTORICAL PURPOSES OF TRUSTS

As early as the thirteenth century, landowners arranged what they called "uses," which are similar to modern day trust mechanisms.\textsuperscript{26} Under these uncomplicated arrangements, landowners would transfer the title to property to feoffees on the agreement that the feoffee would later transfer that same property to a beneficiary named by the owner.\textsuperscript{27} These types of transfers required the landowner trust that the feoffee would remain loyal and not later lay claim to the property.\textsuperscript{28} As "uses" were not enforceable at law, the landowner and the future beneficiary could not look to the courts if the feoffee proved unreliable.\textsuperscript{29}

As uses grew more popular, beneficiaries who had expected to receive property from landowners became disgruntled when feoffees refused to transfer title to the land.\textsuperscript{30} As a result, many beneficiaries attempted to turn to the common-law courts for relief.\textsuperscript{31} However, due to rigid pleading requirements, beneficiaries had little success in common-law courts.\textsuperscript{32}

Starting in the late fourteenth century and continuing into the early fifteenth century, beneficiaries stopped seeking relief in the common-law courts and instead appealed to the equity courts for justice.\textsuperscript{33} The Chancellors of the equity courts felt it was their duty to rule on cases in accordance with their conscience rather than by the rigid pleading system and rules of precedence used in the common-law courts.\textsuperscript{34} The equity courts ruled and granted relief by theorizing they were simply requiring trustees to act upon the dictates of their own conscience.\textsuperscript{35} The equity courts believed their role was simply to en-

\begin{itemize}
\item \textsuperscript{25} See infra notes 350-95 and accompanying text.
\item \textsuperscript{26} Melanie B. Leslie, Trusting Trustees: Fiduciary Duties and the Limits of Default Rules, 94 GEO. L.J. 67, 73 (2005).
\item \textsuperscript{27} Id.
\item \textsuperscript{28} Id.
\item \textsuperscript{29} Id.
\item \textsuperscript{30} Id. (stating that the effectiveness of uses was entirely dependent upon the trustee's behaving in a trustworthy manner and beneficiaries became disgruntled when trustees proved untrustworthy).
\item \textsuperscript{31} Id.
\item \textsuperscript{32} Id.
\item \textsuperscript{33} Id.
\item \textsuperscript{34} Id. (stating the common law courts required rigid pleading requirements that effectively barred beneficiaries claims).
\item \textsuperscript{35} Id.
\end{itemize}
force the trustee’s pre-existing moral obligation. By the middle of the fifteenth century, the equity courts routinely enforced beneficiaries’ rights in uses.

The equitable doctrine to enforce pre-existing moral norms helped to establish the duty of loyalty. As law relaxed the tight restrictions on the transfer of property, the duty of loyalty has become increasingly more complicated. Trusts have evolved from a simple mechanism used to hold real property to ones utilized primarily for asset management. The modern trust has evolved along with society’s definition of wealth. As compared to previous centuries, when society calculated wealth by the amount of land owned, modern wealth now consists of complex financial assets such as bonds, stocks, pension plans, annuity and insurance contracts, and bank deposits. These complex financial assets make up modern trusts and as a consequence, trusts require highly specialized and active management.

The evolution of the trustee’s role has accompanied the evolution of the trust from realty to complex financial assets. Yet, even with this evolution, the principles behind the trust have remained the same. These principles include a trustee managing the trust as directed by the settlor, for the benefit of a beneficiary. Trustees in the early years of trust creation were unpaid laypersons who simply acted as a middleman in the conveyance of land. In contrast, the modern-day trustee is often a paid professional dedicated to the management of trust assets. These modern-day trustees rely on their experience and expertise in taxation, investment management, trust accounting, fiduciary administration, and regulation to effectively manage trust assets.

In the United States, these trustees are often large profit-
These corporate fiduciaries offer a host of benefits such as financial backing and longevity. These benefits give confidence to the trust's creator if a situation arises where the trustee erroneously manages the trust, and also prevent the need for a settlor to designate within the trust for a successor to take the place of a previous trustee.

Along with the specialized and active management necessary to manage a trust, fiduciary duties have also become more detailed and complex. The relationship between the settlor, trustee, and beneficiary initiated at the creation of a trust necessarily puts the beneficiaries at the risk of the trustees' mismanagement of the trust assets. The fundamental concern in modern-day trust law has been to protect against these risks.

B. HISTORICAL PURPOSE AND THE UNIFORM TRUST CODE

The Uniform Trust Code ("UTC") establishes a definitive standard to govern the powers and duties of a trustee, the relations among trustees, and the interest and rights of a beneficiary. While establishing a uniform and definitive standard, the UTC also allows flexibility to individual states to change and modify certain provisions in accordance with the needs of a particular jurisdiction. In accord with the historical purposes of trusts, the UTC has codified the rule that a living trust exists to benefit the beneficiaries. Furthermore, the UTC establishes this rule as mandatory and one that a settlor can-
not waive. Historically, trustees and courts regarded the settlor's intent as the guide to trust administration. Thus, the general rule was that the settlor alone determined the terms of the trust that would best serve that settlor's beneficiaries. The Restatement Third of Trusts and various courts in multiple jurisdictions have reaffirmed this rule.

C. The Settlor's Intent under the Uniform Trust Code

One of the main objectives of the Uniform Trust Code ("UTC") was to codify the common law principles of trusts. Among these common law principles was the notion that the trustee had a duty to act in accordance with the settlor's intent. The various sections that make up the UTC indicate that the purpose of the UTC is to provide for the historic principle that the settlor's intent is paramount. The UTC establishes this objective by stating that the trustee has a duty to act in accordance with the purposes and terms of the trust. Additionally, the UTC's notion that the settlor's intent controls permeates throughout the various sections of the UTC.

For example, Article One of the UTC ("Article One") defines "terms of the trust" as the settlor's intent concerning the provisions of the trust as expressed in the trust itself or established by other evi-
Article One also allows the settlor, through the terms of the trust, to supersede the majority of the default provisions of the UTC. Included among the default provisions a settlor is unable to supersede are the requirements for the formation of a trust, the trustee’s duty to act in good faith in harmony with the settlor’s intent, the requirement that the terms of the trust be for the benefit of a beneficiary, and a court’s ability to modify a trust in accordance with the settlor’s intent. These mandatory requirements, particularly the benefit for the beneficiary rule, aim at defeating abuse by the trustee rather than defeating the settlor’s intent.

Article Four of the UTC ("Article Four"), which establishes the requirements for creating, modifying, and terminating trusts, advances the notion that the court is under a duty to ascertain the intent of the settlor and then make only those modifications that are in line with that intent. As a result of the increased use of long-term trusts in recent years, there has been a need for greater flexibility in the modification and termination of trusts. Article Four allows for this greater flexibility by allowing for the modification or termination of an irrevocable trust when the settlor and beneficiaries agree unanimously. Additionally, Article Four allows for modification of trust provisions because of unanticipated circumstances not foreseen by the settlor or to achieve the settlor’s tax objectives. Although Article Four seems to liberalize the ability of the settlor, beneficiary, and trustee to modify the terms of the trust, the UTC clearly indicates that courts are to ascertain the settlor’s intent and make only those modifications that are in line with that intent. Upon termination of a trust, Article Four sets forth that the trustee is to distribute the trust

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71. Id. § 103 ("Terms of a trust’ means the manifestation of the settlor’s intent regarding a trust’s provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding").

72. See id. § 105. ("Except as otherwise provided in the terms of the trust, this [Code] governs the duties and powers of a trustee, relations among trustees, and the rights and interest of a beneficiary.")

73. UNIF. TRUST CODE § 105 (b).

74. John H. Langbein, Mandatory Rules in the Law of Trusts, 98 Nw. L. Rev. 1105, 1126-27 (2004) (trust terms that remove a trustee’s fiduciary obligation or excuse bad faith on the part of the trustee would essentially make the trustee’s duty illusory and provide opportunity for the trustee to act in a self-serving manner).

75. UNIF. TRUST CODE art. 4.

76. Id. art. 4, general cmt.


78. UNIF. TRUST CODE § 411.

79. Id. §§ 412, 416.

80. Id. § 412(a).

The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent
assets in accordance with the settlor's terms and purposes of the trust.\textsuperscript{81} Similar to Article Four, Article Two of the UTC\textsuperscript{82} ("Article Two") allows parties to seek instruction from courts on a variety of issues.\textsuperscript{83} Article Two allows parties to a trust to institute an action on any matter regarding the trust's administration or to determine the rights among the parties.\textsuperscript{84}

Article Six of the UTC\textsuperscript{85} ("Article Six") governs the provisions of revocable trusts and acknowledges that the common law principles of equity are to supplement the UTC.\textsuperscript{86} The revocable trust is largely used today as a will substitute.\textsuperscript{87} As such, Article Six reflects this practice by treating revocable trusts as the useful equivalent of a will.\textsuperscript{88} Under the UTC, a settlor may revoke the trust by any method set forth in the terms of the trust or by any other manner that manifests clear and convincing evidence of the settlor's intent.\textsuperscript{89} Article Six also provides that a settlor may revoke the trust while the settlor has capacity to do so and establishes that the beneficiary's rights are subject to the control of the settlor.\textsuperscript{90} Article Six establishes that a settlor has control over the trust and its terms, and retains the right to enforce those terms.\textsuperscript{91} Furthermore, Article Six establishes that during the period of time that the trust is revocable, the trustee owes all duties exclusively to the settlor of the trust.\textsuperscript{92}

\textsuperscript{81} Id. § 411.
\textsuperscript{82} Id. art. 2.
\textsuperscript{83} Id. § 201(c), cmt.

[D]etermining questions of construction; determining the existence or non-existence of any immunity, power, privilege, duty, or right; determining the validity of a trust provision; ascertaining beneficiaries and determining to whom property will pass upon final or partial termination of the trust; settling accounts and passing upon the acts of a trustee, including the exercise of discretionary powers; instructing the trustee; compelling the trustee to report information about the trust or account to the beneficiary; granting powers to the trustee; fixing or allowing payment of the trustee's compensation or reviewing the reasonableness of the compensation; appointing or removing a trustee; accepting the resignation of a trustee; compelling redress of a breach of trust by any available remedy; approving or directing the modification or termination of a trust; approving or directing the combination or division of trusts; and authorizing or directing transfer of a trust or trust property to or from another jurisdiction.

\textsuperscript{84} Id.
\textsuperscript{85} Id. art. 6.
\textsuperscript{86} Id. art. 6 general cmt.
\textsuperscript{87} English, supra note 77, at 336.
\textsuperscript{88} UNIF. TRUST CODE art. 6. general cmt.
\textsuperscript{89} Id. § 602.
\textsuperscript{90} Id. § 603.
\textsuperscript{91} Id. § 603. cmt.
\textsuperscript{92} Id. § 603.
Further, Article Seven of the UTC\textsuperscript{93} ("Article Seven"), which contains the provisions regarding a change in trusteeship, still allows the court discretion to consider the settlor's intent in such a change.\textsuperscript{94} Under Article Seven, a court may remove a trustee if the trustee has committed an untoward act or breach of trust.\textsuperscript{95} As a settlor's trust typically places confidence in the trustee's discretion and judgment, the selection of the trustee becomes an important term of the trust and therefore beneficiaries should not easily be able to modify this term.\textsuperscript{96} Therefore, even under the standard set forth in Article Seven, a court gives a significant amount of weight to the settlor's selection of the trustee.\textsuperscript{97}

Finally, Article Eight of the UTC\textsuperscript{98} ("Article Eight"), which governs the powers and duties of the trustee, supports the idea that the settlor's intent is paramount in trust law.\textsuperscript{99} Under Article Eight, a trustee has a good faith duty to administer the trust in accordance with the purposes and terms of the trust, as set forth by the settlor, for the interest of the beneficiary.\textsuperscript{100} Article Eight requires the trustee place the interest of the beneficiaries above those interests of the trustee.\textsuperscript{101} Additionally under Article Eight, a trustee is under a duty to keep the beneficiaries informed of the trust administration.\textsuperscript{102} However, generally this duty to the beneficiaries is not applicable to revocable trusts since the settlor exclusively controls the rights of the beneficiary, including the beneficiary's rights to information about the trust assets and trust administration.\textsuperscript{103}

D. CRITICS OF THE "SETTLOR'S INTENT" APPROACH AND THE UNIFORM TRUST CODE

The various provisions of the Uniform Trust Code\textsuperscript{104} ("UTC") establish that the settlor's intent is to be the controlling factor in trust law.\textsuperscript{105} However, critics have opposed the UTC's approach regarding the settlor's intent on two contrary grounds.\textsuperscript{106} First, some critics ar-
gue that the settlor's intent should not carry much weight. These critics argue that, with regards to the settlor's power to determine investing strategies, the sound policy of investment practices should restrain the power of the settlor to direct investments that are contrary to the interest of the trust beneficiaries. Furthermore, these critics are against allowing "dead hand" control and argue that settlor cannot plan for and address changing circumstances.

Contrary to those critics who argue that the settlor's intent should not control, other critics argue that the provisions of the UTC do not provide enough for the intent of the settlor. As such, these critics argue that the UTC has departed from the historical purposes of trusts. These critics argue that the UTC has shifted the focus from the intent of the settlor to the trustee’s duty to benefit the beneficiary. These critics point out that historically, trust law afforded the settlor of a trust wide latitude in determining the terms of the trust and the benefits that each beneficiary was to be entitled. However, the critics go on to argue that the UTC provisions deny the settlor this power. Specifically, the critics point to the mandatory provisions contained within the UTC that the settlor is not free to waive. The critics argue that these mandatory provisions restrain the settlor’s historical freedom to direct the assets of the trust. Critics argue that the UTC’s alleged shift from honoring the intent of the settlor to the emerging “benefit of the beneficiary” rule has undesirable consequences. The critics argue the undesirable consequences include the undermining of an established statutory scheme and legal regime, a change in the fundamental way a trustee would deal with administrative matters, and an increase in the litigation of trust issues.

108. Id.
110. See Cooper, supra note 1, at 1182-83 (arguing that “the Uniform Trust Code required the trustee to ignore the “deal” he entered into whenever doing so would serve the objective needs of the trustee beneficiaries.”).
111. See id. at 1182-85 (arguing that the Uniform Trust Code shifts the focus from the intent of the settlor to the benefit of the beneficiary).
112. Id. at 1166.
113. Id. at 1168.
114. Id.
115. Id. at 1172-73.
116. Id. at 1173-74.
117. Id. at 1177-78.
118. Id. at 1178-79 (arguing that the historical purposes of the trust, allowing for the settlor to establish the terms of the trust, are frustrated with the emergence of the benefit for the beneficiary rule and that this new rule revolutionizes established trust
E. DECISIONS UNDER THE UNIFORM TRUST CODE

The Uniform Trust Code\textsuperscript{119} ("UTC") has been adopted by twenty-one jurisdictions including: Alabama,\textsuperscript{120} Arizona,\textsuperscript{121} Arkansas,\textsuperscript{122} Florida,\textsuperscript{123} Kansas,\textsuperscript{124} Maine,\textsuperscript{125} Missouri,\textsuperscript{126} Nebraska,\textsuperscript{127} New Hampshire,\textsuperscript{128} New Mexico,\textsuperscript{129} North Carolina,\textsuperscript{130} North Dakota,\textsuperscript{131} Ohio,\textsuperscript{132} Oregon,\textsuperscript{133} Pennsylvania,\textsuperscript{134} South Carolina,\textsuperscript{135} Tennessee,\textsuperscript{136} Utah,\textsuperscript{137} Virginia,\textsuperscript{138} Wyoming,\textsuperscript{139} and the District of Columbia.\textsuperscript{140} These adopting jurisdictions use the UTC to provide a framework for determining the rights of settlors, beneficiaries, and trustees.\textsuperscript{141} In contrast, those jurisdictions that have not adopted the UTC lack a framework by which to analyze trust issues.\textsuperscript{142}

\textsuperscript{119. Unif. Trust Code §§ 101-1106 (2000).}
\textsuperscript{120. Ala. Code 1975 § 19-3B-101 (2007).}
\textsuperscript{123. Fla. Stat. § 736.0101 (2007).}
\textsuperscript{129. N.M. Stat § 46A-1-101 (2007).}
\textsuperscript{130. N.C. Gen. Stat. § 36C-1-101 (2006).}
\textsuperscript{131. N.D. Cent. Code § 59-09-01 (2007).}
\textsuperscript{132. Ohio Rev. Code Ann § 5801.01 (West 2008).}
\textsuperscript{133. Or. Rev. Stat. § 130.001 (2009).}
\textsuperscript{134. 20 Pa. Cons. Stat. § 7701 (2006).}
\textsuperscript{137. Utah Code Ann. § 75-7-101 (2004).}
\textsuperscript{138. Va. Code Ann. § 55-541.01 (2006).}
\textsuperscript{140. D.C. Code § 19-1301.01 (2004).}
\textsuperscript{141. See In re Trust Created by Isvik, 741 N.W.2d 638 (2009) (discussing the applicable section of the NUTC and the guidance the NUTC gave in resolving the issues being decided); In re Biggs Charitable Remainder Trust, 109 P.3d 1253, 2005 WL 992007 (Kan. 2005) (discussing the applicable sections of the KUTC and the guidance the KUTC gave in resolving the issues being litigated).}
\textsuperscript{142. See J.P. Morgan Chase Bank, N.A. v. Longmeyer, 275 S.W.3d 697, 701-02 (Ky. 2009) (noting that the Kentucky statutes may not be consistent with modern trends and the laws in other jurisdictions); Johnson v. Johnson, 967 A.2d 274, 281-82 (Md. Ct. Spec. App. 2009) (noting that no Maryland case law provided the definition for settlor's intent).}
1. Decisions in Jurisdictions Adopting the Uniform Trust Code

a. In re Trust Created by Isvik

In In re Trust Created By Isvik, In re Trust Created By Isvik, 143 the Supreme Court of Nebraska used the Uniform Trust Code ("UTC") to determine whether a settlor intended to revoke the trust or only discharge the trustee.144 The trust's terms stated that Lavohn Isvik ("Isvik") was the sole trustee and that her two daughters were future beneficiaries.145 In the terms of the trust, Isvik reserved the right to revoke or amend the trust by filing a written instrument with the trustee.146 In 2004, Isvik named Security National Bank ("SNB") as trustee.147 In 2005, however, Isvik became dissatisfied with SNB's performance and revoked the trust, both verbally and in writing, and requested that SNB return all the assets to her immediately.148

Subsequently, a representative from SNB spoke with Isvik, and following the conversation determined she did not intend to revoke the trust but she wanted to act as her own trustee.149 Thereafter SNB proceeded as though the trust remained in effect.150 Isvik and SNB were scheduled to meet and sign a new trust document, however, Isvik died prior to the meeting.151 Following Isvik's death, SNB filed a petition in an attempt to determine whether Isvik revoked the trust or whether the trust should be reformed to effectuate only a change in the trustee.152 The County Court for Douglas County concluded Isvik only intended to change trustees and not to revoke the trust altogether.153 The trust beneficiaries appealed the county court's decision.154

On appeal, the Supreme Court of Nebraska considered the applicability of the Nebraska Uniform Trust Code ("NUTC").155 The court noted that Nebraska adopted the UTC in 2003 and it became effective in 2005.156 As a result of the UTC's recent adoption in Nebraska, there has been little Nebraska case law discussing the UTC's

143. 741 N.W.3d 638 (Neb. 2007).
145. In re Trust Created By Isvik, 741 N.W.2d 638, 641 (Neb. 2007).
146. In re Isvik, 741 N.W.2d at 641.
147. Id.
148. Id. at 641.
149. Id.
150. Id. at 642.
151. Id.
152. Id.
153. Id.
154. Id. at 641.
155. Id.
156. NEB. REV. STAT. § 30-3801 (2005).
157. In re Isvik, 741 N.W.2d at 644.
158. Id.
application, however, the UTC provides relevant information for courts to consider in deciding issues of trust law. The court determined that the NUTC was applicable and then focused upon the specific language of the NUTC regarding the court’s ability to reform the terms of a trust and whether the letter was a “term of the trust.” The NUTC defines “terms of a trust” as an expression of a settlor’s intent regarding the trust provisions as articulated in the trust instrument. The current trust instrument reserved for the settlor the right to revoke or amend the agreement by filing a written instrument with the trustee. The court concluded that the letter by which the settlor purported to revoke the trust was a term of the trust within the meaning of the NUTC. The court next looked to the NUTC to determine whether extrinsic evidence should be allowed, if necessary, to conform the letter to the settlor’s intent. The court concluded that extrinsic evidence was properly considered to determine the settlor’s intent, but ultimately opined the there was not clear and convincing evidence that the settlor’s declaration of her intent was a mistake. The court determined that because Isvik revoked the trust prior to her death, the trust ceased to exist. Therefore, the Supreme Court of Nebraska reversed the county court’s decision.

b. In re Biggs Charitable Remainder Trust

In In re Biggs Charitable Remainder Trust, the Supreme Court of Kansas used the provisions of the Uniform Trust Code (“UTC”) to determine whether modification of the trust was necessary to comply

159. See In re Charles C. Wells Revocable Trust, 734 N.W.2d 323 (Neb.App. 2007) (referring to the UTC, the court states the following: “Given its recent adoption, there is not a great deal of case law discussing the application of § 706. However, the comments to § 706 provide some relevant information for our consideration of the trial court’s decision in the present case.”); see also English, supra note 57 at 2 (Winter 2004) (stating prior to the enactment of the UTC, New Mexico had relatively few trust statutes and little reported case law on trust matters and that following adoption of the UTC New Mexico’s trust law is more complete, more accessible, and, as additional states enact the UTC, more uniform with the trust law of other states).

160. In re Isvik, 741 N.W.2d at 644-45 (stating that in order to resolve the issues presented, the court must initially decide whether the letter was subject to reformation).

161. Id. at 645 (citing NEB. REV. STAT. § 30-3841).

162. Id.

163. Id.

164. See id. at 645-47 (stating that in equitable actions to reform written instruments extrinsic evidence is admissible to prove mistake and actual intent).

165. In re Isvik, 741 N.W.2d at 648-49.

166. Id.

167. Id.


with the settlor's tax objectives.\textsuperscript{170} Virginia Biggs ("Biggs"), settlor of
the charitable trust, died on January 26, 2002.\textsuperscript{171} Upon her death, in
accordance with the terms of her revocable trust, the residue of the
trust was to fund a charitable remainder trust to pay Biggs's daughter
or nephew income for their lifetimes.\textsuperscript{172} Following Biggs's death, the
trustee filed a tax return claiming a $328,316.00 charitable deduction,
covering the value of the interest that was to pass to the charitable
trust.\textsuperscript{173} The Internal Revenue Service ("IRS"), after examination of
the tax return, proposed adjustments that would deny the charitable
deduction for estate tax purposes.\textsuperscript{174}

The trustee of the charitable trust filed suit in the District Court
of Lyon County, contending that Biggs intended to obtain the tax de-
ductions for the amount transferred into the charitable trust.\textsuperscript{175} The
trustee argued that Biggs made her intent clear in the terms of the
trust by reference to the Internal Revenue Code, which specified benefi-
ciaries who were eligible for charitable deduction for gift and estate
tax purposes.\textsuperscript{176} Therefore, the trustee opined that the district court
should modify the terms of the trust to comply with the Biggs's tax
objections.\textsuperscript{177}

The district court approved the trust modifications and the trus-
tee appealed to the Supreme Court of Kansas in order to bind the
IRS.\textsuperscript{178} On appeal, the Kansas Supreme Court discussed the relevant
provisions of the Kansas Uniform Trust Code\textsuperscript{179} ("KUTC").\textsuperscript{180} The
court stated that provisions of the KUTC allowed for modification of
the trust where, because of unanticipated circumstances unforeseen
by the settlor, the modifications to the terms of the trust would further
the settlor's intent regarding the purposes of the trust.\textsuperscript{181} Additionally, the court noted that modifications to the terms of the trust are
acceptable if the modifications serve to achieve the settlor's likely in-
tent.\textsuperscript{182} The court concluded that Bigg's intent, as shown by the terms
of the trust, was to obtain the tax deductions for the amount trans-

\begin{itemize}
\item \textsuperscript{170} \textit{In re Biggs Charitable Remainder Trust}, 109 P.3d 1253, *5 (Kan. 2005).
\item \textsuperscript{171} \textit{In re Biggs}, 109 P.3d at *1.
\item \textsuperscript{172} Id.
\item \textsuperscript{173} Id.
\item \textsuperscript{174} Id. (Denial of the charitable deduction would have resulted in the estate owing
a substantial amount of estate tax).
\item \textsuperscript{175} Id. at *2.
\item \textsuperscript{176} Id.
\item \textsuperscript{177} Id.
\item \textsuperscript{178} Id. at **1.5.
\item \textsuperscript{179} KAN. STAT. ANN. § 58a-101 (2003).
\item \textsuperscript{180} \textit{In re Biggs}, 109 P.3d 1253, *5.
\item \textsuperscript{181} Id.
\item \textsuperscript{182} Id.
\end{itemize}
ferred into the charitable trust. Therefore, the Supreme Court of Kansas affirmed the district court's decisions.

2. Recent Decisions in Non-Adopting Uniform Trust Code Jurisdictions

Though history indicates that a trustee's first duty is to manage the trust on the settlor's behalf and in a manner appropriate to effectuate the intent of the settlor, there are recent decisions focusing on the duty to the beneficiaries, rather than a duty to the settlor and the settlor's intent. In *J.P. Morgan Chase Bank, N.A. v. Longmeyer*, the Kentucky Supreme Court considered whether a former trustee had a fiduciary duty to provide former beneficiaries with notice that a settlor had removed them as beneficiaries under a new estate plan. The Kentucky Supreme Court concluded that the former trustee had a duty to inform the former beneficiaries of the changes in the new trust instrument. In *Johnson v. Johnson*, the Maryland Court of Special Appeals considered whether a beneficiary who had a future interest in the trust assets was entitled to an accounting from the trustee. The Maryland court explained that a settlor cannot, in the terms of the trust, circumscribe the trustee's responsibility to account to the trust beneficiaries. As the trustee's duty to account cannot be waived, the Maryland court concluded that the future beneficiary was entitled to an accounting from the trustee.

a. *J.P. Morgan Chase Bank, N.A. v. Longmeyer*

In *J.P. Morgan Chase Bank, N.A. v. Longmeyer*, John Longmeyer ("Longmeyer"), as executor of Ollie Skonberg's ("Skonberg") estate, brought an action against a former trustee of Skonberg's trust, alleging that the former trustee breached a fiduciary duty by notifying former trust beneficiaries of a change to the trust. Skonberg, a wealthy widow consulted an attorney, James L. Coorssen

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183. Id.
184. Id.
186. 275 S.W.3d 697 (Ky. 2009).
188. *Longmeyer*, 275 S.W.3d at 703.
190. *Id.*
191. *Id.*
192. *Id.*
193. 275 S.W.3d 697 (Ky. 2009).
("Coorssen"), and hired him to prepare an estate plan for her that would include a revocable living trust.\textsuperscript{195} The trust named Skonberg as income beneficiary during her life and named beneficiaries who would receive assets from her estate following her death.\textsuperscript{196} In 1987, Skonberg again employed Coorssen to make modifications to her original estate plan.\textsuperscript{197} The changes included the addition of several charities to which a sizeable portion of the estate was to go and designated JP Morgan Chase Bank ("the Bank") as trustee.\textsuperscript{198}

In 1997, Skonberg, then ninety-three years old and suffering from failing health, hired attorney Longmeyer to make changes to her 1987 estate plan.\textsuperscript{199} Longmeyer made the requested changes and on August 27, 1997, Skonberg revoked her 1987 trust and executed the new trust instrument, which named Longmeyer as the sole trustee.\textsuperscript{200} Skonberg died just six weeks after the creation of the new inter-vivos trust.\textsuperscript{201}

Prior to drafting Skonberg's new estate plan, Longmeyer met with both Skonberg and Vicki Smothers ("Smothers").\textsuperscript{202} At the meeting, Smothers gave Longmeyer a handwritten outline of the desired changes to the estate plan, which removed the charities named in the 1987 revision, removed the Bank as trustee, and named Longmeyer as sole trustee.\textsuperscript{203}

On October 2, 1997, the Bank, following notification of the changes made to the trust and prior to Skonberg's death, entered into an "investment agency agreement" with the new trustee, Longmeyer.\textsuperscript{204} Under the agreement, the Bank agreed to manage the trust funds.\textsuperscript{205} Following Skonberg's death, Longmeyer was named the trustee and executor of her estate, and the Bank continued to

\textsuperscript{195} Longmeyer, 275 S.W.3d at 699.
\textsuperscript{196} Id.
\textsuperscript{197} Id.
\textsuperscript{198} Id. The author inserted JP Morgan Chase Bank in as beneficiary throughout so as to keep the facts of the case succinct and eliminate confusion. Originally the trust called for Liberty National Bank to act as trustee. Id. at 699. Liberty National Bank was eventually taken over by Bank One and Bank One was eventually taken over by JP Morgan Chase Bank. Id. at 698-99. JP Morgan Chase Bank was the named party in the final action in the Supreme Court of Kentucky. See generally id. at 697.
\textsuperscript{199} Id. At this time Skonberg's health was such that Skonberg was nearly bedridden.
\textsuperscript{200} Id. The witnesses to Skonberg's signing the revised estate plan consisted on Longmeyer, his wife, and his secretary.
\textsuperscript{201} Id.
\textsuperscript{202} Id. Vicki Smother's handled the majority of Skonberg's affairs including finances and was the party who recommend that Skonberg contact Longmeyer to revise her estate plan.
\textsuperscript{203} Id.
\textsuperscript{205} Longmeyer, 275 S.W.3d at 700.
manage Skonberg’s trust funds in accordance with the previous agreement.\textsuperscript{206} However, on November 17, 1997, about a month after Skonberg’s death, Longmeyer terminated the agreement with the Bank.\textsuperscript{207}

Nearly six months after the termination of the agreement between Longmeyer and the Bank, the Bank sent letters to each of the charities Skonberg removed as beneficiaries under the 1997 plan.\textsuperscript{208} The letters notified the charities of their removal as beneficiaries and suggested that others may have unduly influenced Skonberg during the 1997 revision to the estate plan’s drafting.\textsuperscript{209} Subsequently, the charities filed an action against Skonberg’s estate, claiming that others had influenced Skonberg in the creation of the 1997 estate plan.\textsuperscript{210} Eventually, Longmeyer, as executor of Skonberg’s estate, settled with the former beneficiaries for $1.875 million.\textsuperscript{211}

Following this settlement, Longmeyer filed suit against the Bank to recover the $1.875 million.\textsuperscript{212} Longmeyer claimed the Bank had breached its fiduciary duty when it disclosed what Longmeyer believed was confidential information to the charities of the 1987 estate plan.\textsuperscript{213} The Jefferson Circuit Court ruled in favor of the Bank, granting it summary judgment.\textsuperscript{214} The circuit court stated that the Bank had a fiduciary duty to inform those beneficiaries who were adversely affected in the 1997 estate plan revisions.\textsuperscript{215} On appeal, the Court of Appeals of Kentucky reversed the circuit court ruling and remanded the case to determine the breach of confidentiality.\textsuperscript{216} The appellate

\textsuperscript{206} Id.
\textsuperscript{207} Id., Bank One, 2005 WL 678617 at *1.
\textsuperscript{208} Longmeyer, 275 S.W.3d at 700. In December of 2007 JP Morgan Chase Bank originally contacted Robert L. Hallenberg, a trust and estates attorney, regarding Skonberg’s estate and the new estate plan. Id. Hallenberg responded in an opinion letter in May of 2008 in which he advised JP Morgan Chase Bank that it had an obligation to notify the former trust beneficiaries of the nature of the revisions and the circumstances involved. Id.
\textsuperscript{209} Id.
\textsuperscript{210} Id. Unknown to JP Morgan Chase Bank at the time they sent out the letters informing the former beneficiaries of their removal from the estate plan, at least one charity had already begun an investigation of its own into the circumstances surrounding the 1997 estate plan. Id.
\textsuperscript{211} Id.
\textsuperscript{212} Id.
\textsuperscript{213} Id. Longmeyer contended that if JP Morgan Chase Bank had remained quiet about the 1997 revisions, the former beneficiaries would have been unaware that they had been ousted as Skonberg’s beneficiaries and would not have brought the suit that resulted in the $1.875 million settlement. Id.
\textsuperscript{214} Id.
\textsuperscript{215} Id. The trial court reasoned that regardless of the motives behind the notification to former beneficiaries that JP Morgan Chase Bank had a duty to inform those beneficiaries. Id.
\textsuperscript{216} Bank One, 2005 WL 678617 at *4 (Ky.App. 2005).
court reasoned that the Bank first had a duty to deal with the trust in accordance with the intent of the settlor. The appellate court further stated that the duty of the trustee upon a valid revocation of a trust is to wind up the trust and return the assets of the trust to the settlor. Additionally, if the trustee had reasonable grounds to believe there was undue influence regarding the revocation of the trust, then the trustee had a duty and right to defend the trust in its own name. The Kentucky Supreme Court granted certiorari to address the issue of what duties a former trustee owes to various parties.

The Kentucky Supreme Court began its analysis by stating that a trustee had a duty to administer the trust for the benefit of the named beneficiaries. The court also held that a trustee had an inherent duty to provide information about the trust to the beneficiaries. In contrast to the appellate court decision, the Kentucky Supreme Court discussed Kentucky Statute section 386.715 and determined that the statute imposed a duty on a trustee to keep the beneficiaries reasonably informed. The court recognized that Kentucky’s laws regarding a trustee’s duty to a beneficiary might be inconsistent with other jurisdiction and modern trends. However, the court stated that until the legislature took action to amend the current statute, it could not rewrite the law.

In Longmeyer, the Kentucky Supreme Court interpreted the Kentucky statute governing the duties of a trustee to a beneficiary as not only applicable to a current trustee, but also to former trustees. Furthermore, the court reasoned that the plain language of the statute imposed a duty on the trustee to communicate information of material fact to the beneficiaries. The court further noted that the

217. Id. at *3.
218. Id.
219. Id.
220. Id.
221. Longmeyer, 275 S.W.3d at 700.
222. Id. at 700-01.
223. KY. REV. STAT. ANN. § 386.715 (West 1976).
224. Longmeyer, 275 S.W.3d at 701-02. The court generally focused its interpretation of trust law on KRS § 386.715 which provides that “the trustee shall keep the beneficiaries of the trust reasonably informed of the trust and its administration.” Id.
225. Id.; Kevin D. Millard, See The Trustee’s Duty to Inform and Report Under the Uniform Trust Code, 40 REAL PROP., PROB. & TR. J. 373, 377 (Summer 2005) (explaining how the Uniform Trust Code, enacted in some jurisdictions, provides that the trustee of a revocable trust only owes duties to the settlor during the time the trust remains revocable and the settlor has capacity to revoke; thus the trustee’s duty to inform and report applies only to the settlor of a revocable trust).
226. Longmeyer, 275 S.W.3d at 702.
227. Id.
228. Id.
establishment of the new trust arrangement dramatically affected the interests of the charities.229

Justice Schroder, writing for the dissent in Longmeyer, stated the court should have remanded the case for trial to determine what, if any, the trustee's obligations and duties were to the settlor of the trust after the revocation of the 1987 trust.230 The dissent reasoned that because Skonberg retained the power to revoke the trust, the trustee's duty upon revocation was to wind up the trust and return the trust property to the settlor.231 The Bank did just that and failed at the time of revocation to file suit concerning any undue influence that the Bank may or may not have suspected and defend the trust in its own name.232 The dissent also focused on the timing of the notification and agreed with the appellate court that it was a factor, considering the trustee had already abided by the revocation.233 Thus, the dissent would have remanded the case for trial to discuss these questions and to determine both questions of law and fact.234

b. Johnson v. Johnson

In another case, Johnson v. Johnson,235 the Maryland Court of Special Appeals considered whether a trustee was required to give an accounting of the trust to a future beneficiary.236 In 2004, Catherine Johnson ("Catherine") and Edward Johnson ("Edward"), as husband and wife, created an inter vivos trust, naming themselves as trustees.237 In 2006, Edward's son, James Johnson ("James"), requested that Catherine provide him with an accounting of the trust but she failed to answer this request.238 Subsequently, James filed a petition requesting the Calvert County Circuit Court to order Catherine to file an accounting of the trust.239 Following a hearing, the circuit court ordered Catherine to provide an accounting.240
On Catherine’s appeal, the Maryland Court of Special Appeals first noted that the settlor was free to choose beneficiaries and establish the beneficiaries’ respective interest in the trust assets.241 The court also noted that the interest created in the beneficiary could be either a present or future interest.242 The court determined that Catherine held the only present interest in the trust, while James held a future interest.243 While recognizing that uncertainty existed as to whether James would actually benefit from the interest, the court held that he was entitled to an accounting.244 Next, the court noted that other jurisdictions required that a trustee provide an accounting to a beneficiary upon a showing of mismanagement, waste, or dissipation of assets.245 However, the court opined that Maryland case law did not require the beneficiary to show such a burden in order to obtain an accounting from the trustee.246

In regards to the limitations of a trust, Catherine argued that Maryland case law and the terms of the trust provided that the settlor’s intent should control.247 Further, Catherine pointed to three specific provisions in the trust to show the intent that a beneficiary was not to receive an accounting.248 However, the court stated that Maryland law recognized that it was against sound policy to allow a settlor to relieve a trustee from all accountability.249 Additionally, the court noted that broadly defining those entitled to an accounting helped to maintain the integrity of the trust.250 The court reasoned that settlors who attempt to create a trust where the trustee has no accountability are essentially contradicting themselves.251 The court noted that a trust grants rights to beneficiaries enforceable in equity.252 Thus, the court reasoned that if a beneficiary cannot call on a trustee for an accounting, the beneficiary is essentially left without a remedy because the beneficiary would be unable to require a trustee to abide

241. Id. at 277.
242. Id.
243. Id.
244. Id. at 280.
245. Id.
246. Id. at 280-81.
247. Id. at 281.
248. Id. ("The TRUSTEE shall not be required at any time to file any account in any court, nor shall the TRUSTEE be required to have any account judicially settled. . . . TRUSTORS direct that only the information concerning the benefits held for or distributable to any particular beneficiary be revealed to such beneficiary and that no person shall be entitled to information concerning benefits held for or distributable to any other person.").
249. Id. at 282.
250. Id. at 283.
251. Id. at 282.
252. Id.
by certain conduct regarding the management of trust assets.\textsuperscript{253} Thus, the court concluded that even though the language of the trust eliminated the duty of the trustee to account to the beneficiaries, James was entitled to an accounting and Catherine was required to provide it.\textsuperscript{254}

III. ARGUMENT

Though trust law clearly holds that a trustee owes a fiduciary duty to the settlor and beneficiaries, many states have not defined a standard for determining the extent of the trustee's duties, beyond the basic duty to act solely for the settlors and beneficiaries' benefit.\textsuperscript{255} The failure of these states to define such a standard or to ascertain the settlor's intent when resolving issues of trust law has led to undesirable consequences, including the failure to adhere to the historical purposes of trusts, as some courts have completely disregarded the settlor's intent as set forth in the terms of the trust.\textsuperscript{256} Additionally, the failure of some states to provide a standard for determining the extent of a trustee's fiduciary duties has led to non-uniformity of laws between states, with courts unpredictably interpreting the extent of those duties.\textsuperscript{257} Courts in Kentucky and Maryland recently dealt with the issue of defining the extent of a trustee's fiduciary duties.\textsuperscript{258} In both instances, the court's reasoning conflicted with the historical purposes of trusts, specifically the duty of the trustee to carry forth the intent of the settlor and the ability of the settlor to set forth the terms of the trust.\textsuperscript{259}

In \textit{JP Morgan Chase Bank, N.A. v. Longmeyer},\textsuperscript{260} the Supreme Court of Kentucky emphasized the trustee's duty to administer the trust solely for the benefit of the beneficiaries and the trustee's duty to keep the beneficiaries of the trust reasonably informed of the trust

\begin{itemize}
  \item 253. \textit{Id.}
  \item 254. \textit{Id.} at 283.
  \item 255. \textit{See infra} notes 396-422 and accompanying text.
  \item 256. \textit{See infra} notes 399-411 and accompanying text.
  \item 257. \textit{See infra} notes 419-22 and accompanying text.
  \item 259. \textit{Compare} \textsc{Unif. Trust Code} § 106 (stating that the common-law of trusts and principles of equity supplement the UTC) \textit{and} \textsc{Unif. Trust Code} § 603 \textsc{Unif. Trust Code} (stating that the rights of the beneficiaries are subject to the control of the trustee and the duty of the trustee is owed exclusively to the settlor) \textit{with} \textit{JP Morgan Chase Bank, N.A. v. Longmeyer}, 275 S.W.3d 697 (Ky. 2009) (noting the trustee's duty to keep the beneficiary informed without referencing the intent of the settlor) \textit{and} \textit{Johnson v. Johnson} 967 A.2d 274 (Md. Ct. Spec. App. 2009) (stating that a settlor cannot, in the terms of the trust, relieve a trustee of all accountability).
  \item 260. 275 S.W.3d 697 (Ky. 2009).\
\end{itemize}
and its administration. The court applied these duties to a former trustee. In Johnson v. Johnson, a Maryland Court of Special Appeals rejected a trustee's contention that provisions of a trust superseded the trustee's duty to provide an accounting of the trust. The court referenced the Restatement Third of Trusts as authority for the proposal that a trust settlor cannot restrict the duty of the trustee to account to trust beneficiaries.

This Argument will show that the lack of uniformity among states in defining a trustee's fiduciary duties has led to an uncertain standard in the enforcement of those fiduciary duties and negatively impacts the benefits of a revocable trust. This Argument will establish that the Uniform Trust Code ("UTC") codified a standard that successfully accounts for the historical purposes of trusts while also giving latitude to adopting jurisdictions to modify trusts in accordance with their needs. Furthermore, this Argument will show that courts in jurisdictions that have adopted the UTC have reached decisions that are more consistent with the historical purposes of trusts, as those courts formulated their decisions based on the settlor's intent and terms of the trust. In addition, courts in jurisdictions that have adopted the UTC have reached more predictable and uniform decisions than courts from jurisdictions that have not adopted the UTC. This uniformity and predictability results because the UTC provides a unified approach to determine the rights of beneficiaries and accounts for the settlor's intent, instead of the relying on outdated statutes and case law that are not reflective of the historical purposes of trusts or modern trends.

A. THE UNIFORM TRUST CODE HAS SUCCESSFULLY CODIFIED A STANDARD THAT ACCOUNTS FOR THE HISTORICAL PURPOSES OF THE TRUST

Historically, individuals used trusts to transfer property from one to another. Settlers accomplished the transfer using a third party,
whom the settlor entrusted to carry forth the settlor's intent.\textsuperscript{273} When a third party failed to transfer the property as requested by the settlor, equity courts routinely required the third party to honor the settlor's intent.\textsuperscript{274} Overtime, as trust assets have evolved from being land based to more complex financial resources, trusts have become more complicated.\textsuperscript{275} However, the UTC has codified the essential principles of historic trust law, including the common-law rule that the trustee is to carry forth the settlor's intent for the benefit of the beneficiary.\textsuperscript{276}

1. Historical Purposes of a Trust

Historically, the trust was a mechanism used to transfer property using a third person, the trustee, who agreed to carry forth the intent of the settlor of the trust by conferring the land, and thus a benefit, on the beneficiary.\textsuperscript{277} However, issues arose if the trustee later refused to honor the settlor's intent and instead kept the property.\textsuperscript{278} As a result of these issues, beneficiaries began appealing to the equity courts to force the trustee to honor the settlor's intent.\textsuperscript{279} The Chancellors of the equity courts felt they had a duty to uphold the moral obligation the trustee made to the settlor by enforcing the terms of the trust.\textsuperscript{280} The Chancellor, using common-law principles of equity, enforced the terms of the trust by looking at the settlor's intent and then requiring the trustee to honor that intent.\textsuperscript{281}

As laws relaxed the tight restrictions on the transfer of property, the utilization of trusts expanded to other purposes, mainly asset management.\textsuperscript{282} However, even though trusts were used for more complex purposes, the principles behind the trust remained the same.\textsuperscript{283} Those principles include a trustee managing the settlor of the trust's property as directed by the settlor, for the benefit of a bene-

\begin{itemize}
\item \textsuperscript{273} Id.
\item \textsuperscript{274} See id. (discussing the Chancellors duty to enforce prior ethical obligations).
\item \textsuperscript{275} Langbein, supra note 40, at 637-38 (stating that the feudal restrictions on the transfer of real property disappeared from the late seventeenth to the early twentieth centuries).
\item \textsuperscript{276} Id.; UNIF. TRUST CODE §§ 102, 603 (2000).
\item \textsuperscript{277} Leslie, supra note 26, at 73.
\item \textsuperscript{278} Id.
\item \textsuperscript{279} Id.
\item \textsuperscript{280} Id.
\item \textsuperscript{281} Id. (stating it was the Chancellors duty to uphold the moral obligation of the trustee).
\item \textsuperscript{282} Langbein, supra note 40, at 637. (stating that the feudal restrictions on the transfer of real property disappeared from the late seventeenth to the early twentieth centuries).
\item \textsuperscript{283} Id. at 638-41.
\end{itemize}
As trusts evolved into increasingly complex instruments, the Uniform Trust Code\textsuperscript{285} ("UTC") has attempted to incorporate the common-law principles of honoring the intent of the settlor for the benefit of the beneficiary into modern-day trust law.\textsuperscript{286}

2. The Uniform Trust Code Accomplished the Historical Purposes of Trusts

The Uniform Trust Code\textsuperscript{287} ("UTC") acknowledges that the common-law principles of equity are to supplement the UTC.\textsuperscript{288} The principle that a trustee should carry forth the intent of the settlor is found in Article Six of the UTC\textsuperscript{289} ("Article Six"), which notes that a settlor has the capacity to control the rights of a beneficiary, and that the trustee owes a duty exclusively to the settlor to carry forth the settlor's intent.\textsuperscript{290} Therefore, this section establishes that a settlor has control over the trust and its terms and retains the right to enforce those terms.\textsuperscript{291} Thus, Article Six codifies the common-law principle that the settlor has the capacity to set forth the terms of the trust and retains control over whom the trust benefits.\textsuperscript{292}

Similarly, Article Eight of the UTC\textsuperscript{293} ("Article Eight"), though seemingly providing the principle that a trustee should manage the trust for the benefit of the beneficiary and not in accordance with the settlor's intent, in fact reinforces the notion that the settlor controls.\textsuperscript{294} The comments to section 802 state that a trustee has a duty of loyalty to place the interests of the beneficiaries above the trustee's own interests.\textsuperscript{295} While a trustee is to administer the trust for the benefit of the beneficiaries, Article Eight provides how a trustee is to fulfill this duty.\textsuperscript{296} Article Eight establishes that once a trustee has accepted trusteeship, the trustee is to administer the trust in accordance with the purposes and "terms of the trust," as well as for the

\textsuperscript{284} Leslie, supra note 26, at 73-74.
\textsuperscript{285} UNIF. TRUST CODE §§ 101-1106 (2000).
\textsuperscript{286} See id. (discussing the role of the settlor's intent in resolving issues of trust law).
\textsuperscript{287} UNIF. TRUST CODE §§ 101-1106 (2000).
\textsuperscript{288} Id. § 106.
\textsuperscript{289} Id.art. 6.
\textsuperscript{290} Id. § 603.
\textsuperscript{291} Id. § 603 cmt.
\textsuperscript{292} See id. (stating the duty of the trustee is owed to the settlor of the trust).
\textsuperscript{293} UNIF. TRUST CODE art. 8.
\textsuperscript{294} Id. § 802.
\textsuperscript{295} Id. § 802, cmt.
\textsuperscript{296} See Unif. Trust Code § 801 (discussing the duty of the trustee upon acceptance of a trusteeship is to administer the trust in good faith and in accordance with the trust terms).
beneficiaries’ interests. Article One of the UTC ("Article One") defines "terms of the trust" as the settlor’s manifestation of intent regarding the provisions found within the trust. Thus, Article Eight indicates that the trustee’s primary duty is to abide by the terms of the trust, or in other words, to abide by the settlor’s intent. Therefore, this duty is similar to the duty equity courts historically enforced, specifically requiring a trustee to place the beneficiary’s interest above the trustee’s interests by administering the trust in accordance with the settlor’s terms.

3. The Uniform Trust Code Honors the Settlor’s Intent

The provisions of the Uniform Trust Code ("UTC") codify the historical purposes of trust by establishing that the settlor’s intent controls. These provisions include the settlor’s ability to set forth the majority of the terms of the trust instrument, the trustee’s duty to administer the trust in accordance with the settlor’s intent, and the court’s duty to enforce the intent of the settlor. The settlor’s intent has historically been the controlling factor in trust law. Consistent with common-law purposes, the provisions of the UTC continue to honor the settlor’s intent by allowing the settlor to, in the terms of the trust, restrict the beneficiary’s interests.

Some critics argue that the settlor’s intent should not be a controlling factor with regards to the investing practices of the fiduciary. These critics argue that the settlor should not be able to set forth an investment strategy that creates risks contrary to the beneficiary’s interest. However, Article Four of the UTC ("Article Four") accounts for potential unforeseen circumstances and permits a court to modify the terms of the trust accordingly. Although Article Four

298. Id. art. 1.
299. Id. § 103(18).
300. See Unif. Trust Code § 801 cmt. (stating primary duty of the trustee is to follow terms of the trusts which means the settlor’s intent).
301. See Leslie, supra note 26, at 73 (noting that the Chancellor routinely required the trustee to honor the terms of the trusts by enforcing the trustee’s moral obligation); Unif. Trust Code §§ 103 (18), 603 (a), 801 (noting the trustee’s duty to act in accordance with the terms of the trust).
303. Id. §§ 103, 105, 411, 412, 201, 602, 603, 706, 801, 802, 813.
304. Id. §§ 105, 603, 412(a).
305. Leslie, supra note 26, at 73-74.
308. Id.
309. Unif. Trust Code art. 4.
310. Id. § 411.
allows for modification of the terms of the trust, it requires courts to do so in accordance with the settlor's intent.\textsuperscript{311} Under Article Four, courts are under a duty to determine the settlor's intent and to only make modifications that are in line with the settlor's intent.\textsuperscript{312} Although situations will arise that may place the beneficiaries' interest in jeopardy, the need to abandon the settlor's intent is not necessary.\textsuperscript{313} To disregard the settlor's intent would be to disregard the historical purposes of trusts.\textsuperscript{314} The UTC has effectively balanced the need to deal with unforeseen or changing circumstances, while taking into account the importance of recognizing and honoring the settlor's intent.\textsuperscript{315}

Contrary to those critics who argue that the settlor's intent should not control, other critics argue that the provisions of the UTC do not provide for the settlor's intent.\textsuperscript{316} These critics argue that the mandatory provisions of the UTC diminish or destroy the historical aspect of the settlor's intent.\textsuperscript{317} However, it is clear that the mandatory rules contained within the UTC provisions have an intent-serving purpose.\textsuperscript{318} Specifically, the critics' argument that the UTC revolutionizes trust law is without merit.\textsuperscript{319} The provisions of the UTC are almost entirely default rules.\textsuperscript{320} The few mandatory rules do not significantly intrude on the settlor's ability to set the terms and purposes of the trust.\textsuperscript{321} Although the critics argue that the mandatory rules conflict with the settlor's ability to control future investments, the mandatory rules of the UTC only allow courts to modify trusts when change in circumstances, unforeseen to the settlor at the time of the trusts creation, are necessary to honor the purposes of the trust.\textsuperscript{322} Additionally, the UTC clearly indicates that when unforeseen circumstances arise, courts are to ascertain the settlor's intent and make modifications that are in line with the settlor's

\begin{footnotes}
\item[311] Id.
\item[312] Id.
\item[313] Id.
\item[314] See Leslie, supra note 26, at 73-74 (discussing the equity court's enforcement of the terms of the trust as set forth by the settlor).
\item[315] \textsc{Unif. Trust Code} § 411.
\item[316] See infra notes 317-41 and accompanying text.
\item[317] Cooper, supra note 1, at 1182-85 (arguing that the Uniform Trust Code shifts the focus from the intent of the settlor to the benefit of the beneficiary).
\item[318] Langbein, supra note 74, at 1126-27.
\item[319] See infra notes 320-24 and accompanying text.
\item[320] \textsc{Unif. Trust Code} art.1 general cmt.
\item[321] See infra notes 322-23 and accompanying text.
\item[322] \textsc{Unif. Trust Code} § 412(a); Langbein, supra note 74, at 1126-27.
\end{footnotes}
intent. Thus, the mandatory rules facilitate the settlor's intent rather than prohibit that intent.

These critics also argue that the UTC creates a fundamental change in the way trustees must now deal with administrative matters. The critics argue that under the UTC the trustee's duty shifts from protecting the interests of the settlor to providing for the beneficiary. However, Article Eight of the UTC ("Article Eight") sets forth the rule that the trustee has a good faith duty to administer the trust in accordance with the purposes and terms of the trust as established by the settlor. Article One of the UTC ("Article One") defines "terms of the trust" as the settlor's intent concerning the provisions of the trust as expressed in the trust itself or established by other evidence. Furthermore, the UTC's benefit for the beneficiary rule aims to defeat abuse by the trustee rather than to defeat the settlor's intent. Trust terms that remove a trustee's fiduciary obligation or excuse bad faith on the part of the trustee would essentially make the trustee's duty illusory and provide opportunity for the trustee to act in a self-serving manner.

Thus, as was the case historically between the landowners and feoffs, the UTC requires the trustee to administer the trust in accordance with its terms by carrying out the settlor's intent. Therefore, the UTC's requirement that the trust benefit the beneficiary does not take away from the settlor's ability to establish the terms of the trust or the trustee's duty to administer the trust in accordance with the settlor's terms, rather it requires that the trustee honor the settlor's intent.

323. **Unif. Trust Code** § 412(a).

The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.

**Id.**

324. See supra notes 316-23 and accompanying text.


326. **Id.**

327. **Unif. Trust Code** art. 8.

328. **Id.** § 801.

329. **Id.** art. 1.

330. **Id.** § 103. ("Terms of a trust" means the manifestation of the settlor's intent regarding a trust's provisions as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.").


332. **Id.**

333. Compare Leslie, *supra* note 26, at 73-74 (discussing the historical purposes of trusts and the relationship between landowners and feoffs, and the early enforcement of uses.) with **Unif. Trust Code** § 801 (stating that the trustee has a good faith duty to administer the trust in accordance with the purposes and terms of the trust for the benefit of the beneficiary).

334. See supra notes 325-34 and accompanying text.
Finally, these critics argue that the provisions of the UTC could lead to increased litigation. The critics argue that the UTC's "benefit-the-beneficiary" rule provides beneficiaries with another avenue to extort settlements from trustees who are unwilling to commit to long-term litigation. However, the critic's argument fails in at least one aspect. Under the UTC, when a dispute arises, the court is required to ascertain the intent of the settlor and interpret the terms of the trust according to the settlor's intent. Additionally, Article Two of the UTC ("Article Two"), which sets forth the role of the court in resolving issues of trust law, states that a judicial proceeding may involve a request to determine rights or a request for instructions. Thus, if a beneficiary challenges a term of the trust, the UTC proposes that a trustee can institute an action to determine the rights of the parties without becoming involved in prolonged litigation.

The settlor's intent is the controlling influence behind the provisions of the UTC. The UTC's language clearly indicates that the mandatory provision establishing that the trustee is under a duty to carry forth the settlor's intent for the benefit of the beneficiary is in line with the historical purposes of trust law. Additionally, the UTC's requirement that the trustee act in accordance with the terms of the trust is also in line with the historical purposes of trust law.

335. Cooper, supra note 1, at 1184-85.
336. Id. at 1185.
337. See infra notes 338-41 and accompanying text.
338. UNIF. TRUST CODE § 412(a).
339. Id. art. 2.
340. Id. § 201(c).
341. Id. “Subsection (c) makes clear that the court’s jurisdiction may be invoked even absent an actual dispute.” Id. Among the questions that can be posed to the court include:

[D]etermining questions of construction; determining the existence or non-existence of any immunity, power, privilege, duty, or right; determining the validity of a trust provision; ascertaining beneficiaries and determining to whom property will pass upon final or partial termination of the trust; settling accounts and passing upon the acts of a trustee, including the exercise of discretionary powers; instructing the trustee; compelling the trustee to report information about the trust or account to the beneficiary; granting powers to the trustee; fixing or allowing payment of the trustee's compensation or reviewing the reasonableness of the compensation; appointing or removing a trustee; accepting the resignation of a trustee; compelling redress of a breach of trust by any available remedy; approving or directing the modification or termination of a trust; approving or directing the combination or division of trusts; and authorizing or directing transfer of a trust or trust property to or from another jurisdiction.

342. Id. §§ 103, 105, 412(a), 601, 801.
343. Compare UNIF. TRUST CODE §§ 103, 105, 412(a), 601, 801 (explaining that the intent of the settlor is paramount) with Leslie, supra note 26, at 73-74 (discussing the equity courts enforcement of trustee's fiduciary duty to the settlor).
which required the trustee to honor the settlor’s intent. These UTC provisions provide for and ensure the settlor’s ability to control its trust assets into the future.

B. STATES THAT HAVE ADOPTED THE UNIFORM TRUST CODE HAVE REACHED DECISIONS THAT BETTER CONFORM WITH THE HISTORICAL PURPOSES OF TRUSTS THAN COURTS IN STATES THAT HAVE NOT ADOPTED THE UNIFORM TRUST CODE

Jurisdictions that have adopted the Uniform Trust Code ("UTC") have utilized the UTC as a framework in resolving issues of trust law and as a result have reached outcomes that are more predictable and conform to the settlor’s intent. Additionally, UTC adopting jurisdictions have achieved more uniform decisions that correlate with the historical purposes of trusts. Jurisdictions that have not adopted the UTC are left to rely on outdated statutes and case law that do not reflect the common-law purposes of trusts. Furthermore, these non-adopting jurisdictions do not provide the necessary framework to allow predictability, which thereby has the potential of creating needless litigation.

1. Courts in States that Have Adopted the Uniform Trust Code Reach Predictable and Uniform Decisions that Conform with the Purposes of the Uniform Trust Code

In some jurisdictions, case law on trusts is sparse; in fact, some of the original push for the Uniform Trust Code ("UTC") came from states with a lack of trust law that wanted the UTC to fill gaps in the states’ common law. The UTC provides a foundational standard to

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344. Compare Leslie, supra note 26, at 73-74 (discussing the equity courts early enforcement of uses.) with Unif. Trust Code §§ 103, 105, 411, 412, 601, 801 (discussing the duty of a trustee and acknowledging that the settlor’s intent is the controlling factor in trust law).

345. Compare Leslie, supra note 26, at 73-74 (discussing the historical purposes of trusts and the relationship between landowners and feoffs, and the early enforcement of uses.) with Unif. Trust Code §§ 103, 105, 411, 412, 601, 801 (discussing the duty of a trustee and acknowledging that the settlor’s intent is paramount in trust law).


347. See infra notes 351-95 and accompanying text.

348. See infra notes 351-95 and accompanying text.

349. See infra notes 396-422 and accompanying text.

350. See infra notes 396-422 and accompanying text.


352. See In re Charles C. Wells Revocable Trust, 734 N.W.2d 323 (Neb.App. 2007) (referring to the UTC, “Given its recent adoption, there is not a great deal of case law discussing the application of § 706. However, the comments to § 706 provide some relevant information for our consideration of the trial court’s decision in the present case.”); See also English, supra note 57, at 2 (stating prior to the enactment of the UTC, New Mexico had relatively few trust statutes and little reported case law on trust matters
rly on when resolving litigation issues. Nebraska adopted the UTC in 2003 and it became effective in 2005. Nebraska case law since 2005 shows that reliance on the UTC, and specifically as adopted the Nebraska Uniform Trust Code ("NUTC"), has given courts a definitive standard by which to rule. Even with the lack of case law since adopting the UTC, courts have a standard to reference when making decisions.

a. *In re Trust Created By Isvik*

In *In re Trust Created By Isvik*, an alleged trustee, Security National Bank ("SNB"), filed an action seeking a declaration on whether Lavohn Isvik ("Isvik"), the settlor, revoked her trust two weeks prior to her death by signing a letter or merely changed the trustee. Isvik's letter indicated to SNB that she wanted to revoke the trust and wanted all the trust assets returned to her. SNB, upon receiving the letter, spoke with Isvik and determined from the conversation that Isvik did not want to revoke the trust but rather only change trustees. The County Court for Douglas County ruled that the letter intended to change trustees and that Isvik did not intend to revoke the trust all together. On appeal, the Supreme Court of Nebraska first considered the applicability of the Nebraska Uniform Trust Code ("NUTC"). Upon concluding that the NUTC was applicable to the facts of the case, the court turned to the specific language of the NUTC regarding the court's ability to reform the

and that following adoption of the UTC New Mexico's trust law is more complete, more accessible, and, as additional states enact the UTC, more uniform with the trust law of other states).

353. See infra notes 389-95 and accompanying text.


356. See infra notes 358-95 and accompanying text.

357. See *In re Charles C. Wells Revocable Trust*, 734 N.W.2d 323 (Neb.App. 2007) (referring to the UTC, the court stated the following: "Given its recent adoption, there is not a great deal of case law discussing the application of § 706. However, the comments to § 706 provide some relevant information for our consideration of the trial court's decision in the present case."); see also English, * supra* note 57, at 2 (Winter 2004) (stating prior to the enactment of the UTC, New Mexico had relatively few trust statutes and little reported case law on trust matters and that following adoption of the UTC New Mexico's trust law is more complete, more accessible, and, as additional states enact the UTC, more uniform with the trust law of other states).

358. 741 N.W.3d 638 (Neb. 2007).

359. *In re Trust Created By Isvik*, 741 N.W.3d 638, 641 (Neb. 2007).

360. *In re Isvik*, 741 NW.2d at 641.

361. Id. at 642.

362. Id. at 641.


364. *In re Isvik*, 741 N.W.2d at 644.
terms of a trust and considered whether the letter was a "term of the trust." The NUTC defines "terms of a trust" as a manifestation of a settlor's intent with regards to the trust provisions as articulated in the trust instrument. The current trust instrument reserved for the settlor the right to revoke or amend the agreement by filing a written instrument with the trustee. Thus, the court concluded that the letter by which Isvik purported to revoke the trust was a "term of the trust" within the meaning of the NUTC.

Next, the court considered the NUTC to determine whether extrinsic evidence should be allowed to conform the letter to the settlor's intent. Specifically, the court noted that extrinsic evidence would be admissible to show the settlor's intent or to show mistake. The court then applied the NUTC to the current set of facts and concluded that the allowance of extrinsic evidence was essential to determine Isvik's intent. The court determined that Isvik's notice to the trustee, regarding her intent to revoke the trust, was unambiguous. The court then looked to the letter written by Isvik and determined that there was not clear and convincing evidence showing that Isvik's intent was a product of mistake.

b. In re Biggs Charitable Remainder Trust

In In re Biggs Charitable Remainder Trust, the trustee filed an action requesting the court to modify the terms of the trust so that the terms complied with Virginia Biggs's ("Biggs"), the settlor, intent. Biggs's intent, as expressed in the terms of the trust, indicated that she intended to receive a charitable deduction for the sums of money transferred to the charitable remainder trust. Following Biggs's death, the trustee filed a tax return claiming these tax deductions. However, upon receiving the tax return, the Internal Revenue Service ("IRS") proposed adjustments that effectively disallowed the charita-
ble deductions for estate tax purposes. The District Court of Lyon Court, after discussing the terms of the trust, approved the trust modifications. The trustee appealed to the Supreme Court of Kansas in an attempt to bind the IRS to the lower court's decision.

On appeal, the court reviewed the terms of the trust as well as the trustee's proposed modifications to the trust terms. The court then discussed the relevant sections of the Uniform Trust Code (“UTC”), specifically as adopted the Kansas Uniform Trust Code (“KUTC”), regarding the court’s authorization to modify the terms of a trust. Specifically, the court noted that under the KUTC modifications to the terms of a trust are allowable when circumstances not foreseen by the settlor arise. The Supreme Court of Kansas also noted that with regard to modifications, that courts must ascertain the probable intent of the settlor and then make modification in accordance with that intent. Applying these sections of the KUTC, the court concluded that the settlor's intent was to obtain the charitable tax deductions for the sums of money transferred to the charitable trust. Therefore, the court concluded that modifying the terms of the trust was in line with the probable intent of the settlor.

Both the In re Trust Created by Isvik and In re Biggs decisions demonstrate that the UTC successfully codified the historical purpose of trusts—that maintaining the settlor's intent is paramount. In Isvik and Biggs, the courts examined the applicability of the Nebraska Uniform Trust Code (“NUTC”) and KUTC respectively, and determined that application of the NUTC and KUTC gave specific guidance on resolving the issues. Despite the lack of case law applying the

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378. Id. at *1.
379. Id.
380. Id.
381. Id. at *5.
384. In re Biggs, 109 P.3d at *5. The provisions of the KUTC relied on by the court were K.S.A. 2004 Supp. 58a-412(a) and 58a-416. Id.
385. Id.
386. Id.
387. Id.
388. 741 N.W.2d 638 (Neb. 2007).
389. See In re Isvik, 741 N.W.2d 638, 640-41 (Neb. 2007) (discussing whether the modification to the trust would be consistent with the settlor's intent); In re Biggs 109 P.3d at *5 (discussing whether the modification to the terms of the trust would be consistent with the settlor's intent).
391. See In re Isvik, 741 N.W.2d at 645-47 (discussing the applicable section of the NUTC and the guidance the NUTC gave in resolving the issues being decided); In re Biggs 109 P.3d at *5 (discussing the applicable sections of the KUTC and the guidance the KUTC gave in resolving the issues being litigated).
particular section of the UTC, the courts in both cases were able to reference either the UTC itself or their jurisdiction’s adopted version of the UTC and adequately resolve the issues while at the same time laying a definitive foundation for future cases. These cases illustrate that the UTC successfully accounts for the settlor’s intent. Furthermore, these cases illustrate that the courts primary concern when making decisions that affect the terms of the trust is ascertaining the settlor’s intent.

2. Courts in States That Have Not Adopted the Uniform Trust Code Have Reached Inconsistent Decisions that Provide No Predictability and Are Not Consistent with the Historical Purposes of the Uniform Trust Code

In contrast to jurisdictions adopting the Uniform Trust Code (“UTC”), those that have not adopted the UTC do not have a satisfactory framework on which to rely when considering issues of trust law. Furthermore, decisions by jurisdictions that have not adopted the UTC show inconsistencies with the historical purposes of trusts.

a. JP Morgan Chase Bank, N.A. v. Longmeyer

In JP Morgan Chase Bank, N.A. v. Longmeyer, Ollie Skonberg’s (“Skonberg”) trust listed her as the sole beneficiary to all trust assets while she was living and named JP Morgan Chase Bank (the “Bank”) as trustee. Thus, the Bank was under a fiduciary obligation to manage the trust for Skonberg’s benefit. Additionally, as

393. See In re Isvik, 741 N.W.2d at 646 (mentioning the lack of case law since adopting of the UTC and discussing the relevant comments to the UTC that were applicable to the issue being litigated); In re Biggs, 109 P.3d at *5 (discussing the applicable sections of the KUTC and the guidance the KUTC gave in resolving the issues being litigated).

394. See In re Isvik, 741 N.W.2d at 646 (discussing the applicable sections of the UTC and the requirement of determining the settlor’s intent in resolving the issue); In re Biggs 109 P.3d at *5 (stating that the KUTC required that modification be made in “accordance with the settlor’s probable intention.”).

395. See In re Isvik, 741 N.W.2d at 640-41 (discussing whether the modification to the trust would be consistent with the settlor’s intent); In re Biggs 109 P.3d at *5 (discussing whether the modification to the terms of the trust would be consistent with the settlor’s intent).


397. See infra notes 399-422 and accompanying text.

398. See infra notes 399-422 and accompanying text.

399. 275 S.W.3d 697 (Ky. 2009).


401. Compare UNIF. TRUST CODE § 603 (2000) (stating that the rights of the beneficiaries are subject to the control of the settlor of the trust and the duties of the trustee are owed exclusively to the settlor) with Longmeyer, 275 S.W.3d at 699 (noting that Skonberg was the sole beneficiary during her natural life as well as settlor of the trust
Skonberg was the settlor of the trust, the Bank was under a fiduciary duty to manage the trust in accordance with Skonberg's direction.\textsuperscript{402} Thus, when Skonberg revoked the 1987 trust in favor of the 1997 estate plan, the Bank was under a duty to act in accordance with Skonberg's wishes.\textsuperscript{403}

One area of particular concern created by the Kentucky Supreme Court in \textit{Longmeyer} was in regards to the settlor's intent.\textsuperscript{404} Historically, it was the settlor's intent, as set forth in the terms of the trust, which courts referenced when deciding issues.\textsuperscript{405} However, in \textit{Longmeyer}, the court failed to even consider Skonberg's intent despite the fact that she was alive at the time of the revocation.\textsuperscript{406} Instead the court noted that no Kentucky case law recognized the existence of a trustee's duty to a settlor.\textsuperscript{407} Under the historical purposes of a trust, not only was the Bank under a duty to comply with Skonberg's direction regarding the trust, but it also had a duty to Skonberg to administer the trust solely on her behalf.\textsuperscript{408} In contrast to the analysis provided by the Uniform Trust Code\textsuperscript{409} ("UTC"), the court in \textit{Longmeyer} determined the trustee's duties without regard to Skonberg's actual intent.\textsuperscript{410} Consequently, the court's decision in \textit{Longmeyer} provides greater uncertainty for future trustees regarding the extent of their duty of loyalty to the settlor versus beneficiaries.\textsuperscript{411}

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\textsuperscript{402} \textit{Compare Unif. Trust Code § 817} (2000) (stating that upon termination of the trust, the trustee is under a duty to proceed expeditiously in distributing the trust property to the persons entitled to the trust assets) \textit{with Longmeyer}, 275 S.W.3d at 702 (discussing Skonberg's revocation and the duty of the trustee, without noting that the trustee had no duty beyond that of returning the trust assets to Skonberg upon termination of the trust).

\textsuperscript{403} \textit{See Longmeyer}, 275 S.W.3d at 699-700 (discussing the trustee's duties upon revocation of the trust).

\textsuperscript{404} \textit{See infra} notes 405-11 and accompanying text.

\textsuperscript{405} \textit{Leslie, supra} note 26, at 73.

\textsuperscript{406} \textit{See Longmeyer}, 275 S.W.3d at 704 (discussing to whom the trustee owed a duty without discussing the settlor's intent).

\textsuperscript{407} \textit{Longmeyer}, 275 S.W.3d at 703-04, n.12.

\textsuperscript{408} \textit{Compare Leslie, supra} note 26, at 73-74 (noting that the trustee had a moral obligation to honor the intent of the settlor) \textit{with Longmeyer}, 275 S.W.3d at 701 (noting the duty of the trustee to manage the trust for the benefit of the beneficiaries but failing to discuss Skonberg's intent).


\textsuperscript{410} \textit{Compare Longmeyer}, 275 S.W.3d at 704, n 12 (stating that no Kentucky case law recognized the existence of a trustee's duty to a settlor), \textit{with In re Trust Created by Isvik}, 741 N.W.2d 638, 654 (2007) (noting the intent of the settlor in the trust agreement), and \textit{In re Biggs Charitable Remainder Trust}, 109 P.3d 1253, 2005 WL 992007, *2-5 (Kan. 2005) (discussing the intent and objectives of the settlor as set forth in the terms of the trust).

\textsuperscript{411} \textit{See Turney P. Berry et al., Longmeyer Exposes (or Creates) Uncertainty About the Duty to Inform Remainder Beneficiaries of a Revocable Trust, 35 ACRES J. 125} (2009) (discussing the uncertainties created by the courts decision in \textit{Longmeyer}).
In *Johnson v. Johnson*, the Maryland Court of Special Appeals stated that the settlors, Catherine Johnson ("Catherine") and Edward Johnson ("Edward"), could not, through specific provisions in the trust instrument, override a trustee's duty to provide an accounting to James Johnson ("James"), a beneficiary. The court relied on the reasoning of the Restatement Third of Trusts, which takes the position that it is against public policy to allow a settlor to relieve the trustee of all accountability. In contrast to the analysis provided by the Uniform Trust Code ("UTC") and applied in other jurisdictions, the court in *Johnson* emphasized the duty the trustee has to the beneficiary without determining or discussing the settlor's intent, which the trustee is under a duty to carry out.

The court's failure to look at Catherine and Edward's intent was not in line with the common-law purposes of trusts. The court in *Johnson* should have first considered Catherine and Edward's intent regarding the beneficiaries and then determined whether the trustee carried forth their intentions.

The *JP Morgan Chase Bank, N.A. v. Longmeyer* and *Johnson* decisions demonstrate the problems associated with jurisdictions that do not have a definitive standard regarding the extent of the trustee's fiduciary duties on which they can rely. Courts, instead of having a

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416. *Compare* UNIF. TRUST CODE § 801 (2000) (stating that a trustee shall administer the trust in accordance with its terms and its purposes) *with Johnson*, 967 A.2d at 279-82 (noting that permitting a settlor to eliminate the duty to account to beneficiaries would be contrary to previous decisions regarding who is entitled to an accounting).
417. *Compare Johnson*, 967 A.2d at 282 (stating that Catherine and Edward's was contrary to public policy), *with Leslie, supra* note 26, at 73-74 (discussing the equity courts enforcement of the settlor's intent).
418. *Compare Johnson*, 967 A.2d at 282 (stating that it is contrary to public policy to allow a settlor to relieve a trustee of all accountability), *with UNIF. TRUST CODE § 603* (stating that the rights of beneficiaries are subject to the control of the settlor and the duties of the trustee are owed to the settlor), and *UNIF. TRUST CODE art. 1, general cmt.* (stating that the UTC is "primarily a default statute. Most of the Code's provisions can be overridden by the terms of the trust.").
419. 275 S.W.3d 697 (Ky. 2009).
420. *See JP Morgan Chase Bank, N.A., v. Longmeyer*, 275 S.W.3d 697, 701-02 (Ky. 2009) (discussing previous case law and persuasive authority in resolving the issue and noting that their current law may be out of date with modern trends and other jurisdictions), *and Johnson*, 967 A.2d at 281-82 (relying on persuasive authority in discussing the duties of a trustee, while noting that they were presented with no Maryland case law regarding the duty to enforce the settlor's intent).
foundation upon which they can build, simply rely on interpretation of previous case law and statutes that are out of date with modern trends.\textsuperscript{421} Authoritative guidance is necessary to give the judicial systems in these jurisdictions stability and more importantly, to provide a framework on which settlors, beneficiaries, and trustees can rely.\textsuperscript{422}

3. **All States Should Incorporate the Uniform Trust Code To Act in Accordance with the Historical Purposes of Trusts and To Provide More Predictability in Litigation and More Uniformity between Jurisdictions**

The Uniform Trust Code\textsuperscript{423} ("UTC") successfully codifies the common-law principle that the settlor's control is paramount in determining the rights among parties to a trust.\textsuperscript{424} The UTC also provides more uniformity among jurisdictions that have adopted the UTC and provides more predictability in litigation as compared to those jurisdictions that have not adopted the UTC.\textsuperscript{425} Therefore, jurisdictions that have not adopted the UTC would benefit from the UTC's structure and would provide greater clarity for settlors, beneficiaries, and trustees.\textsuperscript{426}

Jurisdictions that have adopted the UTC have provided

\textsuperscript{421} See Longmeyer, 275 S.W.3d at 701-02 (noting that current Kentucky case law may be out of date with modern trends and other jurisdictions), and Johnson, 967 A.2d at 281-82 (noting that they were aware of no Maryland case law requiring the beneficiary to show mismanagement, waste, or dissipation of assets to receive at accounting and relying on persuasive authority in discussing the duties of a trustee).\textsuperscript{422}

\textsuperscript{422} Compare In re Trust Created by Isvik, 741 N.W.2d 638, 644-45 (Neb. 2009) (noting the applicability of the NUTC in resolving the issues), and In re Biggs Charitable Remainder Trust, 109 P.3d 1253, 2005 WL 992007, *5 (Kan. 2005) (stating that the KUTC was applicable to the resolving the issue before the court), with Longmeyer 275 S.W.3d at 701-02 (discussing previous cases and persuasive authority in resolving the issue and noting that their current law may be out of date with modern trends and other jurisdictions), and Johnson, 967 A.2d at 281-82 (relying on persuasive authority in discussing the duties of a trustee).\textsuperscript{423}

\textsuperscript{423} UNIF. TRUST CODE §§ 101-1106 (2000).

\textsuperscript{424} Id. §§ 103, 105, 411, 412, 201, 602, 603, 706, 801, 902, 813.

\textsuperscript{425} Compare In re Trust Created by Isvik, 741 N.W.2d 638, 644-45 (Ne. 2009) (discussing the applicability of the UTC to the issues being litigated and deciding the issues within the framework provided by the UTC), and In re Biggs Charitable Remainder Trust, 109 P.3d 1253, 2005 WL 992007, *5 (Kan. 2005) (stating that the KUTC was applicable to the resolving the issue before the court), with JP Morgan Chase Bank, N.A. v. Longmeyer, 275 S.W.3d 697, 701-02 (Ky. 2009) (discussing previous cases and persuasive authority in resolving the issue and noting that their current law may be out of date with modern trends and other jurisdictions), and Johnson v. Johnson, 967 A.2d 274, 281-82 (Md. Ct. Spec. App. 2009) (noting that there was no Maryland case law giving definition to settlor's intent).\textsuperscript{426}

\textsuperscript{426} Compare In re Isvik, 741 N.W.2d at 644-45 (discussing the applicable sections of the UTC and referencing the UTC for guidance in deciding the issue before the court), and In re Biggs, 109 P.3d at *5 (discussing the relevant sections of the KUTC in deciding the issue), with Longmeyer, 275 S.W.3d at 701-02 (discussing previous case law and other authorities in resolving the issues while noting that current Kentucky laws may be out of date with modern trends and other jurisdictions), and Johnson, 967 A.2d at
settlers, beneficiaries, and trustees the necessary framework for resolving issues of trust law. Furthermore, the UTC provides more predictability in litigation because reference to the UTC or a particular jurisdiction’s adoption of the UTC, gives courts the necessary guidance in resolving particular questions of trust law. Even jurisdictions that have little case law on a particular subject are able to reference the UTC for explanation and direction on a particular topic. Finally, and most importantly, the UTC drives forward the principle that the settlor's intent is the controlling factor in trust law. Decisions made by courts in jurisdictions that have adopted the UTC indicate the importance of looking to and determining the settlor's intent; doing so has led to decisions that are in line with the historical purposes of trust law.

Jurisdictions that have not adopted the UTC, however, do not routinely rely on the settlor's intent in deciding issues of trust law and consequently, they provide little predictability in litigation and even less uniformity. These courts are left to rely on statutes and case law to determine the settlor's intent in trust matters.

281-82 (noting that there was no Maryland case law giving discussing a trustee’s obligation to abide by the settlor’s intent).

427. Compare In re Isvik, 741 N.W.2d at 644-45 (noting the applicability of the NUTC in resolving the issues), and In re Biggs, 109 P.3d at *5 (stating that the KUTC was applicable to the arguments), with Longmeyer, 275 S.W.3d at 701-02 (noting that the Kentucky statutes may not be consistent with modern trends and the laws in other jurisdictions), and Johnson, 967 A.2d at 281-82 (noting that no prior Maryland case law “addressed the extent to which a decedent or testator [could] limit the common law duty of a trustee to account in a court of equity” and that Kentucky had no statutes addressing the issue.).

428. Compare In re Isvik, 741 N.W.2d at 644-46 (discussing the applicable section of the NUTC and the guidance the NUTC gave in resolving the issues being decided), and In re Biggs, 109 P.3d at *5 (discussing the applicable sections of the KUTC and the guidance the KUTC gave in resolving the issues being litigated), with Longmeyer, 275 S.W.3d at 701-02 (discussing previous case law and statutes), and Johnson, 967 A.2d at 281-82 (noting existing case law was inapplicable because current case was factually dissimilar).

429. See In re Charles C. Wells Revocable Trust, 734 N.W.2d 323 (Neb.App. 2007) (referring to the UTC, “Given its recent adoption, there is not a great deal of case law discussing the application of § 706. However, the comments to § 706 provide some relevant information for our consideration of the trial court's decision in the present case.”); see also David M. English, The New Mexico Unif. Trust Code, 34 N.M.L. REV. 1, 2 (Winter 2004) (stating prior to the enactment of the UTC, New Mexico had relatively few trust statutes and little reported case law on trust matters and that following adoption of the UTC New Mexico's trust law is more complete, more accessible, and, as additional states enact the UTC, more uniform with the trust law of other states).


431. Compare Longmeyer, 275 S.W.3d at 704, n. 12 (stating that no Kentucky case law recognized the existence of a trustee's duty to a settlor), with In re Isvik, 274 Neb. at 533 (noting the intent of the settlor in the trust agreement), and In re Biggs 109 P.3d at *2-5 (discussing the intent and objectives of the settlor).

432. Compare Longmeyer, 275 S.W.3d at 704, n. 12 (stating that no Kentucky case law recognized the existence of a trustee’s duty to a settlor), and Johnson, 967 A.2d at 281-82 (stating that the intent of the settlor was not controlling), with In re Isvik, 741
law which are not in line with modern trends and do not reflect the historical purposes of trusts.\textsuperscript{433} These jurisdictions create little, if any, guidance on issues that could be resolved by simple reference to the UTC.\textsuperscript{434}

Jurisdictions that have not yet adopted the UTC should incorporate the UTC.\textsuperscript{435} Doing so will enforce the historical purposes of trust law by requiring courts to determine the settlor's intent and then to make decisions that are in accordance with that intent.\textsuperscript{436} Additionally, adopting the UTC will provide settlors, beneficiaries, and trustees more predictability in litigation and more uniformity between jurisdictions.\textsuperscript{437} Finally, because the UTC has attempted to incorporate the historical purposes of trusts into the language of the UTC, adopting jurisdictions will realign themselves more closely with the historical purposes of trust law.\textsuperscript{438}

IV. CONCLUSION

Historically, the trust was a mechanism to allow a settlor to accomplish something through a third party that the settlor could not accomplish alone. The settlor, intending to transfer property to a beneficiary, created a trust and enlisted a trustee to protect and honor the settlor's intention and ultimately to benefit the beneficiary. Equity courts enforced these trust arrangements by requiring a trustee to honor the settlor's intent by managing the trust assets for the benefit of the beneficiaries. The modern day trust, while much more complex, essentially has the same purpose as historical trusts. Specifically,

\textsuperscript{433} See In re Isvik, 741 N.W.2d at 644-47 (discussing the applicability of the UTC and applying the UTC framework to the issues to reach a conclusion); In re Biggs, 109 P.3d at *5 (discussing the applicability of the KUTC and applying the provisions of the KUTC in resolving the trust issue before the court).

\textsuperscript{434} Compare In re Isvik, 741 N.W.2d at 644-47 (discussing the applicable section of the NUTC and the guidance the NUTC gave in resolving the issues being decided), and In re Biggs, 109 P.3d at *5 (discussing the applicable sections of the KUTC and the guidance the KUTC gave in resolving the issues being litigated), with Longmeyer, 275 S.W.3d at 701-02 (discussing previous case law and statutes), and Johnson, 967 A.2d at 281-82 (noting existing case law was inapplicable because current case was factually dissimilar).

\textsuperscript{435} See infra notes 436-38 and accompanying text.

\textsuperscript{436} UNIF. TRUST CODE art. 4.

\textsuperscript{437} See David M. English, The New Mexico UNIF. TRUST CODE, 34 N.M.L. REV. 1, 2 (Winter 2004) (stating prior to the enactment of the UTC, New Mexico had relatively few trust statutes and little reported case law on trust matters and that following adoption of the UTC New Mexico's trust law is more complete, more accessible, and, as additional states enact the UTC, more uniform with the trust law of other states).

\textsuperscript{438} UNIF. TRUST CODE §§ 103, 105, 411, 412, 201, 602, 603, 706, 801, 802, 813 (2000); Leslie, supra note 26, at 73.
that purpose is to ensure that the trustee dutifully follows the settlor's intent as set forth in the terms of the trust and carries out the settlor's intent for the benefit of the beneficiary.

The various provisions of the Uniform Trust Code439 ("UTC") codify the historical purpose of trusts. The UTC allows the settlor to set forth the terms of the trust and then requires the trustee to honor that intent for the benefit of a beneficiary. Additionally, the UTC requires courts deciding trust issues to ascertain the settlor's intent and make decision in accordance with the settlor's intent. Jurisdiction that have adopted the UTC have a framework to rely on in analyzing issues and consequently have reached conclusions that are in line with the historical purposes of trusts and more uniform with other UTC adopting jurisdictions. Additionally, adoption of the UTC will likely reduce litigation involving trusts, particularly involving routine matters that can be resolved with reference to the UTC.

Comparatively, jurisdictions that have not adopted the UTC reach conclusions that are not in line with the historical purposes of trusts. In *J.P. Morgan Chase Bank, N.A. v. Longmeyer*,440 the Supreme Court of Kentucky failed to even consider the settlor's intent.441 Instead, the court relied on outdated statutes, while admitting that Kentucky laws were not in line with modern trends.442 However, the Supreme Court of Kentucky's reasoning was backward. It is not that the Kentucky laws were out of date with modern trends; rather, it was that Kentucky case law was not in line with the historical purposes of trusts. The court's failure to discuss and enforce the settlor's intent leaves settlors, beneficiaries, and trustees with no choice but to litigate future issues.

Similarly, the Maryland Court of Special Appeals in *Johnson v. Johnson*,443 failed to uphold the intent of the settlor.444 The court repeatedly stated that a settlor could not relieve a trustee of all accountability. Because the court failed to uphold the intent of the settlor, the court essentially puts the beneficiary in a better position than the settlor and encourages beneficiaries to initiate litigation in order to "get what they want." The court's reasoning was also not in line with the historical purpose of trusts. The court should have examined the trust instrument to ascertain the settlor's intent.

440. 275 S.W.3d 697 (Ky. 2009).
442. *See supra* notes 398-410 and accompanying text.
All jurisdictions should adopt the UTC. The provisions of the UTC clearly establish the need to look to the settlor’s intent when making important issues regarding the terms of the trust. Adopting the UTC will also assist jurisdictions in reaching decisions that honor the historical purposes of trusts, namely that a trustee has a duty to act in accordance with the settlor’s intent and courts should make the settlor’s intent paramount in deciding difficult issues in trust law.

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