



Uniform Law Commission
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

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WHY YOUR STATE SHOULD ADOPT THE UNIFORM TRUST DECANTING ACT

“Decanting” is when a trustee distributes assets from one trust to a second trust, like pouring wine from the bottle to another vessel. Its use has been growing in recent years as trustees search for ways to modify the terms of an otherwise irrevocable trust due to changed circumstances that the settlor did not anticipate. The Uniform Trust Decanting Act (UTDA) provides a set of decanting rules that are designed to further the settlor’s intent, protect the beneficiaries’ interests, and prevent abuses by the decanting trustee. It should be enacted in every state because:

- ***UTDA provides certainty of law.*** Trusts are already being decanted in every state, sometimes under questionable authority based on obscure common-law decisions. The UTDA provides clear statutory rules.
- ***UTDA provides appropriate limits on a trustee’s ability to decant.*** The UTDA contains different decanting rules that ensure the settlor’s intent will not be defeated. One stricter set of rules applies to trustees with limited discretion, and one more lenient set of rules applies to trustees with expanded discretion. All trustees are subject to fiduciary duties and required to act in accordance with the purposes of the first trust.
- ***UTDA protects beneficiaries.*** Under the UTDA, all qualified beneficiaries must receive notice 60 days before a proposed decanting. Anyone who objects to the decanting may ask a court to intervene. Vested interests may not be reduced or eliminated.
- ***UTDA protects charitable interests.*** Under the UTDA, a trust held solely for charitable purposes may not be decanted. If the trust contains any determinable charitable interest, that interest may not be reduced or eliminated by a decanting. The Attorney General must be notified of any proposed decanting and may object on behalf of the charity or charities that stand to benefit.
- ***UTDA protects trustees from liability for a previous trustee’s decanting.*** The UTDA allows a trustee that assumes management of a previously decanted trust to rely on the validity of the previous decanting without risk of incurring liability for the previous trustee’s actions.
- ***UTDA makes decanting easier and safer.*** Under the UTDA, a trustee may “decant” by restating the existing trust document, avoiding the need to draft an entirely new trust when only a small administrative change is intended. The UTDA also contains an innovative savings provision that gives effect to valid provisions of a decanting despite any technical violations that are later deemed invalid.

For further information about the Uniform Trust Decanting Act, please contact ULC Legislative Counsel Benjamin Orzeske at 312-450-6621 or borzeske@uniformlaws.org.

The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.

SENATE BILL 16-085
COLORADO UNIFORM TRUST DECANTING ACT
House Judiciary Committee
April 7, 2016

A. What is trust decanting?

Decanting is a term used to describe a distribution of trust assets into a second trust with different terms.

Decanting is a useful technique for modifying outdated terms of an irrevocable trust.

B. Decanting is permitted by:

- The terms of the trust instrument
- The common law of some states
- Decanting statutes of some states

C. Background.

The Uniform Trust Decanting Act was promulgated in a rising tide of state decanting of statutes.

States are recognizing the need to provide for flexibility in the administration of irrevocable trusts.

There are some 23 diverse decanting statutes to date.

This flexibility is desired particularly in the case of older trusts that no longer adequately give effect to the settlor's purposes because of:

- Changes in beneficiary circumstances
- Changes in law

Yet, decanting can be abused just as trustee discretion can be abused.

The Uniform Law Commission set out to draft a Uniform Decanting Statute that imposes limits on the power to decant to:

- Protect beneficiaries
- Protect settlor intent
- Protect against inadvertent tax consequences
- Protect charitable interests

D. Support.

- American Bar Association
- Colorado Bar Association
- National Association of State Charity Officials (State Attorneys General)

E. Colorado already authorizes modification of irrevocable trusts by:

- Court action
- Beneficiary agreement for testamentary trusts
- Again, decanting is yet another way to modify an irrevocable trust through:
 - * Exercise of trustee discretion
 - * Must be in accordance with fiduciary duty
 - * Must be in accordance with the purposes of the trust
 - * No need to obtain a court order