



New Jersey adopts the **Uniform Trust Code: Why it matters.**

The genius of the American federal legal system is that the states may act as independent laboratories for law, working to develop what is best for each state rather than starting with a “one size fits all” top-down solution.

Having said that, the states do tend to converge toward uniformity, a kind of “best practices” for legal development. The mechanism for that convergence is the Uniform Law Commission, which proposes model uniform laws for the states to adopt or modify as appropriate.

In 2000 the Commission proposed a **Uniform Trust Code (UTC)**. Initially aimed at jurisdictions that, unlike New Jersey, had a relatively undeveloped law of trusts, the UTC has been adopted by more and more states over time. On January 19, 2016, New Jersey joined 28 other states in enacting a modified version of the Uniform Trust Code. It becomes effective on July 17, 2016, but once in effect the UTC generally also will apply to trusts created before that date.

In our mobile society, having uniformity and consistency in the law is a good thing.

That is the biggest benefit of the adoption of the Uniform Trust Code, meeting the expectations of beneficiaries and grantors now and in the future. Another advantage is that some trust administration will be possible without going to court for supervision and approval. These activities include, for example, moving a trust from one jurisdiction to another, accepting a trustee’s resignation, reforming mistakes, approving trust accounting, and terminating a trust in some circumstances.

Every family that has incorporated trusts into their wealth management or estate planning should plan for an early consultation with their legal advisors on the applicability of the Uniform Trust Code to their situation. You may also bring your questions to us at **Garden State Trust**, although the implementation of changes to your plans must be supervised by your attorney.

Other substantive changes include:

- **Replacement of a trustee will be allowed upon agreement of the beneficiaries.** This will make it easier for Garden State Trust to take over as successor trustee.
- **Wholly secret trusts will no longer be allowed.** In some cases families have asked Garden State Trust to keep the terms of a trust secret from younger beneficiaries, so as not to blunt their ambitions. As trustee, we always follow the instructions included in the trust instrument in this regard. However, under the Uniform Trust Code secrecy will be somewhat limited. Upon reaching age 35, beneficiaries may ask for a copy of the trust instrument, as well as information regarding the investment and management of the trust’s assets. The new rule applies to current and future beneficiaries of the trust, whether the interest is vested or contingent.
- **Strengthens the creditor protections afforded to Special Needs Trusts.** Garden State Trust is pleased to act as trustee for Special Needs Trusts for disabled persons. Such trusts may provide for an improved quality of life without impairing access to government benefits, but they must be administered according to strict legal standards.
- **Establishes the duties of the trustee.** The UTC clarifies the relationship between the trustee and any investment advisor to the trust, as well as the responsibilities of each in trust management. When a professional, corporate trustee such as Garden State Trust is employed as the trustee, we typically act as investment advisor as well. However, the new law paves the way for Garden State to serve only as an Administrative Trustee in situations where the person creating a trust already has a financial advisor monitoring the portfolio to be placed in the trust.
- **Mergers and divisions of trusts.** The Uniform Trust Code expands flexibility in trust management. Two or more trusts may be merged into a single trust so long as the purposes of the trusts will not be impaired. This is so even if the trusts had different creators and different trustees. On the flip side, a single trust may be divided into two or more trusts. Consent of the beneficiaries to a trust merger or division may be sought, but it is not required.

