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CAN SELECTION OF A TRUSTEE BE A MATERIAL PURPOSE UNDER F.S. §736.0706(2)(D)?

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Establishing a paradigm in which the settlor's intent may be respected is an important aspect of a well-drafted estate plan. An often critical aspect of that intent involves the settlor's choice as to who is in charge, that is, who is the trustee. Understanding the interplay between the Florida Statutes and the relevant caselaw regarding the rights of the beneficiaries to remove a chosen trustee can prove critical in having the estate plan play out as intended.

F.S. §736.0706 governs removal of a trustee in Florida. The fourth and final method of removal in that statute is sometimes referred to as "no-fault removal." F.S. §736.0706(2)(d) includes four requirements. The court may remove a trustee if 1) there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries; 2) removal of the trustee best serves the interests of all the beneficiaries; 3) removal is not inconsistent with a material purpose of the trust; and 4) a suitable co-trustee or successor trustee is available.

This article begins by describing recent statutory amendments to the Florida Trust Code in connection with a trust's purpose and trust interpretation. Next, it summarizes current

caselaw, none of which is Florida jurisprudence, that addresses whether the selection of a particular trustee can serve as a material purpose of a trust in determining whether removal of a trustee is appropriate pursuant to F.S. §736.0706(2)(d). In addressing current decisions from other states, particular attention is given to *In re Trust Created by Fenske*, 930 N.W.2d 43 (Neb. 2019).

Recent Amendments to the Florida Trust Code

The polestar of trust interpretation is the settlor's intent.[1] The Florida Legislature recently amended F.S. §§736.01013(11), 736.0105(2)(c), and 736.0404 to remove language that obfuscated the primacy of the settlor's intent. The eradicated language placed the focus of the administration of a trust on the benefit of the beneficiaries, arguably to the exclusion of a contrary settlor's intent. In particular, the definition of "interests of the beneficiaries" under §736.0103(11) was amended to mean the beneficial interests *intended by the settlor* as provided under the terms of the trust. Specifically, the Florida Trust Code was amended as follows:

i. The definition of "interests of the beneficiaries" under F.S. §736.0103(11) was amended to mean the beneficial interests intended by the settlor as provided under the terms of the trust;

ii. The exception to the general rule that the terms of the trust prevail over provisions of the Code contained in F.S. §736.0105(2)(c) was amended to remove the mandatory requirement that the terms of the trust be for the benefit of the beneficiaries; and

iii. F.S. §736.0404 was likewise amended to remove the requirement that the trust and its terms be for the benefit of the beneficiaries. As amended, a trust's purpose only needs to be lawful, not contrary to public policy, and possible to achieve.[2]

Accordingly, the amendments to the Florida Trust Code clarify that the "best interests of the beneficiaries" does not supplant the "intent of the settlor." Rather, the courts are bound by the settlor's intent and may not ignore that intent simply by accepting an argument that the consequence of following the settlor's intent is not in the perceived best interests of the beneficiaries. The long-standing rule of law that the settlor's intent controls remains.

Law, Prior to *Fenske*

The bulk of caselaw across the country, and in Florida, provides great deference to a settlor's trustee selection and disfavors the removal of such a trustee.[3] Since the adoption of the Florida Trust Code, which incorporated many provisions from the Uniform Trust Code, including F.S. §736.0706, no Florida cases have addressed removal pursuant to §736.0706(2)(d). Other jurisdictions, however, that have also adopted the provision from the Uniform Trust Code upon which §736.0706(2)(d) is modeled have addressed the selection of a trustee as being a material purpose of a trust.

In *In re McKinney,* 67 A.3d 824 (Pa. 2013), the beneficiary of two separate trusts sought the removal of the trustee, PNC Bank, National Association (PNC), based on the family's geographic movement over time coupled with the fact that PNC had gone through approximately six different corporate mergers leading to different bank officers involved in administering the trusts.[4] Removal was sought pursuant to 20 Pa. C.S.A. §7766(b)(4), which provides for removal of a trustee if removal of the trustee best serves the interests of the beneficiaries of the trust, is not inconsistent with a material purpose of the trust, a suitable co-trustee or successor trustee is available, and if there has been a substantial change of circumstances.[5] The beneficiary's primary argument for removal was that she and her children had moved from Pennsylvania to Virginia, thus, leading to a change in her financial planning needs, and that the trustee had undergone several mergers, which undermined stability in the trust administration.[6] The court began its analysis by noting that this was the first instance in which it had been asked to interpret and apply §7766(b)(4).[7] It then explained that, prior to the legislature's adoption of Ch. 77 of Pennsylvania's Probate, Estates, and Fiduciaries Code, a person seeking removal was required to show fault or negligence by the trustee.[8] The court began its analysis of whether removal of PNC was inconsistent with a material purpose of the trust by quoting the following commentary to §706 of the Uniform Trust Code:

It has traditionally been more difficult to remove a trustee named by the settlor than a trustee named by the court, particularly if the settlor at the time of the appointment was

aware of the trustee's failings. Because of the discretion normally granted to a trustee, the settlor's confidence in the judgment of the particular person whom the settlor selected to act as trustee is entitled to considerable weight. This deference to the settlor's choice can weaken or dissolve if a substantial change in the trustee's circumstances occurs.[9]

The court then emphasized that, if a settlor chooses an individual to act as trustee, the selection "represents an expression of trust and confidence, and removal of a personally chosen individual is thus considered to be a drastic remedy."[10] In analyzing this issue, the court looked to the fact that the trusts did not explicitly provide that the trusts be administered by Pennsylvania banks.[11] The court also highlighted the fact that for a period of time when the settlor was living, one of the trusts was being managed by an Ohio bank.[12] Thus, the court concluded that, because there was no evidence before the trial court that the settlors ever even contemplated PNC serving as trustee, removal of PNC as trustee was not inconsistent with a material purpose of the trusts.[13] The court then held that the trial court erred in finding that removal of PNC was inconsistent with a material purpose of the trusts.[14]

Importantly, in footnote 3, the court provides an insightful analysis as to the potential differences in the analysis regarding whether removal of a trustee is inconsistent with a material purpose of the trust when the trustee is an individual versus an institution. Footnote 3 of the opinion provides, in pertinent part:

"Because of the discretion normally granted to a trustee, the settlor's confidence in the judgment of the particular person whom the settlor selected to act as trustee is entitled to considerable weight." This basis for prohibiting beneficiaries from removing the trustee, except for cause, has been the subject of considerable criticism when the trustee is a professional, corporate trustee. Because today's banking environment is characterized by increasingly large banks, mergers and other consolidations, and transfers of trust business, critics of the common-law rules assert that "it is not material to the purpose of the trust for a particular corporate trustee to serve as trustee when another corporate trustee could perform the same function." The traditional, restrictive common law rules on trustee removal have also been under attack by beneficiary

organizations whose overriding principle is that trusts are for the benefit of their beneficiaries.

Perhaps in response to such factors, the UTC's default rules have significantly expanded the grounds for changing trustees. First and most important, if the qualified beneficiaries unanimously request that the trustee be removed, section 706(b)(4) authorizes the court to do so if it "finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available." When the settlor selects an individual trustee, presumably the choice of trustee usually will be material to the settlor's purposes for the trust. When a corporate trustee is serving, however, beneficiaries presumably will more often be able to show that removal of the corporate trustee would not be inconsistent with a material purpose of the trust, particularly if it is the successor through court appointment, merger or other consolidation of another corporate trustee designated by the settlor.[15]

In *Davis v. U.S. Bank National Association*, 243 S.W.3d 425 (Mo. Ct. App. 2007), a beneficiary commenced an action for removal of a corporate trustee. The removal action was brought pursuant to §§456.7-706.2(4) and 456.7-704 of the Revised Statutes of Missouri.[16] The petition asserted that it was filed on behalf of all qualified beneficiaries of the trust, that removal of the corporate trustee best served the interests of all the beneficiaries of the trust, that removal was not inconsistent with a material purpose of the trust, and that a suitable successor trustee was available and willing to serve.[17] The trial court granted summary judgment in favor of the beneficiary and ordered the removal of the corporate trustee.[18] The court began its analysis by quoting §456.7-706.2(4) of the Revised Missouri Statutes and noting that the statute provided for removal of a trustee without any showing of wrongdoing by the trustee.[19] In analyzing the specific issue of whether removal of the corporate trustee was inconsistent with a material purpose of the trust, the court rejected the corporate trustee's argument that the trust did not contemplate a change of trustee, while the trust did contemplate keeping the same trustee in the same state.[20] The court rejected this argument outright based on the reasoning that the argument speculated what the trust contemplated, without any evidentiary support, and further characterized the argument as "irrelevant," because the statutory scheme provided for the change of trustee as long

as the terms of the trust did not prohibit it, and the terms of the trust did not prohibit such a change in trustee.[21] The court further noted that the corporate trustee had failed to present evidentiary support that its removal was inconsistent with a material purpose of the trust.[22] Thus, the court affirmed the trial court's entry of summary judgment and associated removal of the corporate trustee.[23]

The Court of Appeals of Kansas addressed whether the appointment of an independent, third-party trustee was a material purpose of a trust in *Matter of Trust of Hildebrandt*, 388 P.3d 918 (Kan. Ct. App. 2017). In that case, the settlor executed a trust in which he and his brother were appointed trustees.[24] The trust appointed the settlor's attorney as successor trustee, and if he were unable to serve, two senior members of the attorney's law firm or its successor firm who were actively engaged in the practice of law to serve as trustees.[25] The trust was created to provide for the continuation of the joint farming operation created by the brothers and provided for specific distributions for each beneficiary.[26] The settlor added a "no-contest" provision to the trust in 2003, and passed away in 2004.[27] After the settlor's death, the settlor's brother filed a petition to appoint his niece as successor trustee because the settlor's attorney was deceased.[28] The settlor's attorney's law firm responded, asserting that there was already a successor trustee appointed in the trust.[29] The district magistrate judge appointed the niece as successor trustee, the district court affirmed, and the law firm appealed.[30]

In analyzing whether the law firm's appointment as successor trustee was a material purpose of the trust, the court first noted that the term "material purpose" is not defined in the Kansas Uniform Trust Act.[31] The court then quoted the *Restatement (Third) of Trusts* as follows:

[A] proposed modification might change the trustee or create a simple, inexpensive procedure for appointing successor trustees, or it might create or change procedures for removing and replacing trustees. Modifications of these types may well improve the administration of a trust and be more efficient and more satisfactory to the beneficiaries without interfering with a material purpose of the trust. On the other hand, repeated

modifications to change trustees or even a particular change of trustee, or an amendment of provisions relating to the trusteeship, might have the effect of materially undermining the contemplated qualities or independence of trustees. A given change might even have the effect of shifting effective control of the trust in such a way as to be inconsistent with a protective management purpose or other material purpose of the trust. Thus, changes of trustees or in trustee provisions are to be particularly but sympathetically scrutinized for possible conflict with a material trust purpose.[32]

The court explained that it could not find any Kansas caselaw that addressed whether a change in who the successor trustee would be could constitute a material purpose of a trust.[33] The court then looked to the Kansas Supreme Court's analysis of whether a petition to modify a trust in connection with payment of a beneficiary's expenses was inconsistent with a material purpose of the trust.[34] The court, searching for direction on the definition of "material purpose," quoted again from the *Restatement (Third) of Trusts* as follows:

"Material purposes are not readily to be inferred. A finding of such a purpose generally requires some showing of a particular concern or objective on the part of the settlor, such as concern with regard to a beneficiary's management skills, judgment, or level of maturity. Thus, a court may look for some circumstantial or other evidence indicating that the trust arrangement represented to the settlor more than a method of allocating the benefits of property among multiple intended beneficiaries, or a means of offering to the beneficiaries (but not imposing on them) a particular advantage."[35]

With that framework in mind, the court analyzed the law firm's argument that the "detailed provisions in the original instrument," and the no-contest provision made it clear that all provisions of the trust were material, and that the trust expressly included interference with the trust administration as an action punishable by exclusion from benefit under the trust.[36] The court rejected this argument finding that nothing in the paragraph appointing the law firm as successor trustee expressly indicated why the settlor chose the attorney or the law firm to serve as successor trustee.[37] Importantly, the court stated: "[N]othing in the paragraph reflects [the settlor] required the successor trustee to be an independent third-party trustee."[38] The court then declared that the circumstantial evidence suggested an independent, third-party successor trustee was

the attorney's idea, and not a material purpose of the trust at the time it was drafted.[39] Finally, the court rejected the argument that the no-contest provision operated to make every provision of the trust, including the successor trustee provision, a material purpose.[40] The court was not persuaded by this argument, reasoning that no-contest provisions are to be strictly construed and that the subject no-contest provision did not specifically prohibit the trustee and the beneficiaries from asking the district court to change the successor trustee.[41] Put simply, the court declared: "[T]he no-contest provision to the trust provides no clear indication [the settlor] intended a change in the successor trustee to be a violation of a material purpose of the trust."[42] Thus, the court held the district court did not err when it approved a modification of the trust resulting in the replacement of the law firm with the niece as successor trustee.[43]

Enter *Fenske*

In *Fenske*, the beneficiaries filed a petition to remove the bank as trustee and to appoint the husband of one of the beneficiaries as the successor trustee.[44] The county court denied the petition, and the beneficiaries appealed.[45] The last will and testament of Jack Fenske, the settlor, devised most of his property to Elkhorn Valley Bank & Trust (bank), as trustee, for the benefit of Mr. Fenske's great-nieces, Jennifer and Laura.[46] In 2016, Laura's husband and the nominated successor trustee, David P. Wilson, relayed a request that the bank voluntarily resign as trustee, citing concerns about trust income and an intent to initiate termination of the trust.[47] The bank refused to resign, arguing that the bank's removal would not be consistent with the material terms of the trust and further asserting that a member of the bank's trust committee knew Mr. Fenske personally and had insight as to why he had nominated the bank as trustee.[48] Jennifer and Laura then filed their petition to modify the trust to remove the bank as trustee and approve David P. Wilson as successor trustee.[49] The petition to modify was brought pursuant to §30-3862(b)(4), Nebraska Statutes,[50] which is identical to §706 of the Uniform Trust Code and F.S. §736.0706(2)(d).
Determining whether removal of the bank was inconsistent with a material purpose of the trust was a matter of first impression for the court.[51] The court began its analysis by noting that Nebraska's Uniform Trust Code does not define "material purpose."[52] The court then stated that the "most guidance" regarding the meaning of

"material purpose" can be found in the comments to §411 of the Uniform Trust Code, which states:

In order to be material, the purpose…must be of some significance: "Material purposes are not readily to be inferred. A finding of such a purpose generally requires some showing of a particular concern or objective on the part of the settlor, such as concern with regard to a beneficiary's management skills, judgment, or level of maturity."[53]

The court then went on to quote from the *Restatement* commentary quoted in the comment on the Uniform Trust Code, which provides as follows:

Thus, a court may look for some circumstantial or other evidence indicating that the trust arrangement represented to the settlor more than a method of allocating the benefits of property among multiple intended beneficiaries, or a means of offering to the beneficiaries (but not imposing on them) a particular advantage. Sometimes, of course, the very nature or design of a trust suggests its protective nature or some other material purpose.[54]

[A] particular change of trustee…might have the effect of materially undermining the contemplated qualities or independence of trustees. A given change might even have the effect of shifting effective control of the trust in such a way as to be inconsistent with a protective management purpose or other material purpose of the trust. Thus, changes of trustees…are to be particularly but sympathetically scrutinized for possible conflict with a material trust purpose.[55]

The court then quoted the accompanying comment in the Uniform Trust Code, which states as follows:

Because of the discretion normally granted to a trustee, the settlor's confidence in the judgment of the particular person whom the settlor selected to act as trustee is entitled to considerable weight. This deference to the settlor's choice can weaken or dissolve if a substantial change in the trustee's circumstances occurs.[56]

Against the backdrop of those legal authorities, the court declared that it understood the above-cited commentary to indicate that whether the proposed replacement of a trustee is inconsistent with a material purpose of the trust depends on the significance to the settlor of the initial choice of the trustee.[57] The court went on to emphasize:

For example, there may be cases in which there is no indication that the particular trustee or the qualities that trustee brought to the assignment were an important consideration for the settlor. In those types of cases — where the current trustee is merely an incidental means to accomplish ends — removal would not be inconsistent with a material purpose.

* * *

On the other hand, however, are cases in which it is important to the settlor that a particular person or entity or a person or entity with particular qualities serve as trustee. The Uniform Trust Code and the Restatement commentary quoted above indicate that in those circumstances, replacement of the selected trustee with another person or entity or a person or entity that lacked the desired qualities would be inconsistent with a material purpose.[58]

In finding that removal of the bank would be inconsistent with a material purpose of the trust, the court looked to the testimony of the drafting attorney, Richard Stafford.[59] Stafford testified that Fenske's objective was to keep the trust assets together as long as they could be kept together, that Fenske had a history with the bank and a relationship with its president (who was still serving as president at the time of trial), and that Fenske wanted a trustee that was independent.[60] Importantly, Stafford further testified that "the one thing that I think [Fenske] was really trying to get away from was to have any of his relatives being in charge of his assets."[61] The court went on to conclude:

In the end, we need not resolve whether and to what extent Laura's admission that this motion is part of an attempt to terminate the trust ought to affect the material purpose analysis, because even if it is set to the side, we would find that removal is inconsistent with a material purpose of the trust for another reason. Stafford testified that the Bank was selected because Fenske wanted a trustee that was "independent" and that he did not want a trustee that was a part of his family. This testimony suggests that the selection of the Bank as trustee was more than an incidental means to an end, but that independence from his family was, for Fenske, an important quality in a trustee. The Restatement comments we quoted above recognize that a proposed trustee removal

and replacement "might have the effect of materially undermining the contemplated qualities or independence of trustees."[62]

In finding that the removal of the bank as trustee would be inconsistent with a material purpose of the trust, the court affirmed the order of the county court denying the beneficiaries' request to remove the bank as trustee.[63]

Conclusion

When looking for a material purpose of the trust, any special attributes of the trustee must be taken into account. A material purpose may exist if the settlor's selection is a relative or friend who the settlor believes will best know the settlor's intent and who is expected to use that unique knowledge when exercising the discretion granted under the trust instrument. A material purpose is less expected (but not impossible) if the settlor appointed a large financial institution, without any special relationship to the settlor or the beneficiaries.

Under current Florida law, the fault of an existing trustee is no longer required for removal from office if all of the requirements of F.S. §736.0706(2)(d) are met. However, characterizing removal under this provision as "no fault," while arguably accurate, is, at best, incomplete, and potentially misleading. The development of law regarding removal under that provision recognizes removal is not automatic and is not to be decided solely by reference to the best interests of the beneficiaries. The intent of the settlor remains relevant. Even when there has been a substantial change of circumstances or a request by all of the qualified beneficiaries, removal may only occur if the removal would be not inconsistent with a material purpose of the trust.

[1] *See L'Argent v. Barnett Bank, N.A.*, 730 So. 2d 395, 397 (Fla. 2d DCA 1999); *see also Minassian v. Rachins*, 152 So. 3d 719, 725 (Fla. 4th DCA 2014) (citing *Bryan v. Dethlefs*, 959 So. 2d 314, 317 (Fla. 3d DCA 2007), *quoting Sorrels v. McNally*, 105 So. 106, 109 (Fla. 1925)) ("Generally, '[t]he polestar of trust or will interpretation is the settlor's intent,' which should be 'ascertained from the four corners of the document through consideration of 'all the provisions of the will [or trust] taken together….'").

[2] Laws of Fla. Ch. 2018-35 §§2, 5 (2018).

[3] *See, e.g., Lustre v. Lustre*, No. F062884, 2012 Cal. App. LEXIS 9083, at *23 (Dec. 13, 2012) ("[C]ourts are reluctant to remove a trustee originally appointed by the settlor, since the settlor has placed confidence in that person to serve in that role in the circumstances involved."); *Lovett v. Peavy*, 316 S.E.2d 754, 757 (Ga. 1984); *Jennings v. Murdock*, 553 P.2d 846, 870 (Kan. 1976) ("[T]he removal of a trustee is a drastic action which should only be taken when the estate is actually endangered and intervention is necessary to save trust property. Further, this is especially true where the trustee is named by the settlor.") (internal quotes removed); *In re Estate of Rosenbrook*, No. A12-1715, 2013 Minn. App. LEXIS 461, *7, 2013 WL 2301954 (May 28, 2013) (holding that hostility that does not interfere with the administration of the estate by the trustee toward beneficiaries does not require said trustee's removal, and the courts should be even more reluctant to do so when such trustee was named by the settlor); *In re Will of Gershcow*, 261 N.W.2d 335, 338 (Minn. 1977), *quoting* Bogert, Trusts and Trustees 348 (2d ed.) ("[C]ourts are more reluctant to remove a trustee who has been chosen by the settlor than one who is court-appointed."); *In re Matthew W.T. Goodness Trust*, No. PM/08-7349, 2009 R.I. Super. LEXIS 54 (May 14, 2009); *Ingalls v. Ingalls*, 59 So. 2d 898, 903 (Ala. 1952) ("It has been said that a court should be more reluctant to remove a trustee appointed by the settlor than one selected by itself. The removal of a trustee is a drastic action which should only be taken when the estate is actually endangered and intervention is necessary to save trust property.") (internal citations removed); *Forbes v. Forbes*, 341 P.3d 1041, 1052 (Wyo. 2016) (emphasizing that significantly greater deference and credibility is granted to a trustee selected by the settlor as compared to a trustee appointed by a court).

[4] *In re McKinney*, 67 A.3d 824, 826 (Pa. Super. Ct. 2013).

[5] 20 Pa. C.S.A. §7766(b)(4).

[6] *McKinney*, 67 A.2d at 828-29.

[7] *Id.* at 830.

[8] *Id.* (citing 20 Pa. C.S.A. §7121 (repealed 2006)).

[9] *McKinney*, 67 A.2d at 835.

[10] *Id.* (quoting *In re Estate of Mumma*, 41 A.3d 41, 49-50 (Pa. Super. Ct. 2012)).

[11] *Id.* at 835-36.

[12] *Id.* at 836.

[13] *Id.*

[14] *Id.*

[15] *Id.* at 827 (citing Alan Newman, *The Intention of the Settlor Under the Uniform Trust Code: Whose Property Is It, Anyway?,* 38 Akron L. Rev. 649, 695-97 (2005) (footnotes omitted)); *see also In re Vincent J. Fumo Irrevocable Children's Trust ex rel. Fumo*, 104 A.3d 535, 550 (Pa. Super. Ct. 2014) (applying reasoning expressed in *McKinney* in finding that removal of settlor's (father) close, longtime friend and physician as successor trustee was consistent with a material purpose of a trust set up for the benefit of a daughter, as settlor had apparently engineered successor trustee's appointment to serve settlor's ends over daughter's interests); *Lund v. Lund*, 924 N.W.2d 274, 284-85 (Minn. Ct. App. 2019) (finding that trial court did not abuse its discretion by removing named trustee where trustee's removal was not inconsistent with the material purpose of the trusts, which was to provide lifetime benefits to the beneficiary without exposing assets to taxes after his death); *Fleet Bank v. Foote*, No. CV 020087512S, 2003 WL 22962488, at *4 (Conn. Sup. Ct. Dec. 2, 2003) (finding that removal of corporate trustee based on two of corporate trustee's officers leaving employment at corporate trustee not to be inconsistent with a material purpose of the governing instrument).

[16] *Davis v. U.S. Bank Nat. Ass'n,* 243 S.W.3d 425, 426 (Mo. Ct. App. 2008).

[17] *Id.*

[18] *Id.* at 427.

[19] *Id.* at 428-29.

[20] *Id.* at 431.

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Matter of Trust of Hildebrandt*, 388 P.3d 918, 919 (Kan. Ct., App. 2017).

[25] *Id.*

[26] *Id.*

[27] *Id.* at 920.

[28] *Id.*

[29] *Id.*

[30] *Id.*

31 *Id.* at 921.

[32] *Id.* (quoting Restatement (Third) of Trusts §65 cmt. f (Am. L. Inst. 2003)).

[33] *Id.*

[34] *Id.* (citing *In re Trust D of Darby*, 234 P.3d 793 (Kan. 2010)).

[35] *Id.* (quoting *Darby*, 234 P.3d at 793 (quoting Restatement (Third) of Trusts §65 cmt. d (Am. L. Inst. 2001))).

[36] *Id.* at 922.

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *Id.* at 922-23.

[44] *In re Trust Created by Fenske*, 930 N.W.2d 43, 45 (Neb. 2019).

[45] *Id.* at 44.

[46] *Id.*

[47] *Id.* at 45.

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.* at 48.

[52] *Id.*

[53] *Id.* (quoting **Unif. Trust Code §411** (Unif. L. Comm'n 2018), *quoting* **Restatement (Third) of Trusts §65** cmt. d (2003)).

[54] *Id.* at 48-49 (quoting Restatement (Third) of Trusts **§65** cmt. d (2003)).

[55] *Id.* at 49 (quoting Restatement (Third) of Trusts **§65** cmt. f (2003)).

[56] *Id.* (quoting Unif. Trust Code **§706** (Unif. L. Comm'n 2018)).

[57] *Id.*

[58] *Id.*

[59] *Id.* at 50.

[60] *Id.*

[61] *Id.*

[62] *Id.* (quoting **Restatement (Third) of Trusts §65** cmt. f (2003)).

[63] *Id.*

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