New Drafting Issues for Revocable Trusts, Journal of the Missouri Bar
The Missouri General Assembly has recently enacted comprehensive trust legislation. This article addresses how revocable trusts should be changed in light of these new laws.

I. Introduction

In 2004, the Missouri General Assembly enacted, for the first time, comprehensive trust legislation - the Missouri Uniform Trust Code. At the same time, the legislature amended the Revised Missouri Principal and Income Act (2001). Together, these statutes address most aspects of the law of trusts. Consequently, they raise numerous new opportunities and challenges for estate planners. This article addresses changes estate planners should consider for basic (i.e., non-estate tax) revocable trusts based on this legislation.

II. Revocation and Amendment of a Joint Trust

The most significant drafting issues raised by the Missouri Uniform Trust Code (MUTC), §§ 456.1-101 to 456.11-1106, RSMo, relate to the essence of revocable trusts - the ability to amend and revoke. The MUTC sensibly reverses the common law rule that trusts are presumed irrevocable.2 While the power of one settlor to revoke his or her trust is clarified, the MUTC provides less definitive guidance for settlors of joint trusts. For joint trusts (in non-community property states such as Missouri), the MUTC states that "each settlor may revoke or amend [a joint trust] with regard to the portion of the trust property attributable to that settlor's contribution."3 Despite the apparently clear language of this section, the MUTC does not go on to say how this provision is to be applied to tenancy by the entirety property contributed to a joint trust. In fact, the comments to the Uniform Trust Code acknowledge that the effect of this provision is uncertain when the trust contains entireties property.4 If entireties property is to be transferred to the trust, one must consider how the MUTC revocation rules apply to it.5

An argument can be made that because the MUTC allows one spouse to "revoke or amend the trust with [respect] to the portion of the trust property attributable to that settlor's contribution," then each spouse should be able to revoke or amend the trust with respect to half of the entireties property (or possibly some other percentage established by proof of contribution).6 The statutory language, however, falls far short of mandating such a significant departure from Missouri law. Missouri courts have held that one spouse can revoke a joint trust after the death of the other spouse because the survivor has acceded to sole ownership of all the property;7 however, the courts have never ruled that one spouse has the unilateral right to revoke a trust as to any entireties property while the other spouse is still living.

The defining attributes of entireties property suggest that such a power of unilateral revocation would not exist at common law. One of the unique attributes of entireties property is that each spouse is considered to have an indivisible interest in all of the property.8 Each spouse's indivisible interest is, of course, the reason that a creditor of just one spouse cannot attach entireties property.

9.In addition, Missouri law has always held that the only way to sever a tenancy by the entirety is by mutual act or agreement of both spouses.10 Neither spouse has the right to sever entireties property unilaterally.11 Therefore, in applying the MUTC, courts could easily find that no portion of entireties property transferred to a joint trust is "attributable to [just one spouse's] contribution," and, consequently, that neither spouse has the unilateral right of revocation under § 456.6-602(2) as to such assets. Such an interpretation would be consistent with the intent of most settlers, which is that entireties property would retain its characteristics even when held by spouses in a joint trust.

If § 456.6-602(2) is interpreted so that neither spouse can unilaterally revoke or amend the trust with respect to entireties property while both are living, then drafters should consider the consequences when one of the spouses becomes incapacitated. In many, if not most, situations in non-taxable estates, clients want one spouse to have broad authority over the trust if the other spouse does lose the capacity to act.

If there is no unilateral power of revocation, however, the competent spouse not only will lack the power to revoke or amend the entire trust, but he or she will also lack the power to do so with respect to any portion of the entireties property (which may be the majority of the assets in the trust). The trust could, in essence, become irrevocable. If the competent spouse cannot amend or revoke the trust, this problem cannot be remedied by relying on that spouse's power to withdraw from the trust because the authority to withdraw is concomitant with the authority to revoke.12 A spouse could establish a conservatorship and seek court approval for such a change,13 but this is not a convenient option.

The solution to this problem is to employ a properly drafted power of attorney. If a settlor is incapacitated, then another party can exercise the settlor's rights to revoke or amend the trust (without judicial intervention) only "under a power of attorney [and] only to the extent expressly authorized by the terms of the trust or the power."14 One should note that the MUTC authorizes an amendment or revocation of a trust to the extent such power is included in a power of attorney or a trust.15 The Durable Power of Attorney Law of Missouri, however, prohibits an amendment or revocation of a trust unless the authority to take such action is expressly included in the power of attorney itself.16 Therefore, in all cases involving joint trusts with no estate tax liability, and especially if the power of revocation is limited as suggested above, estate planners should consider authorizing at least a spousal power of amendment in both the trust and the power of attorney. This will allow amendment of a joint trust even during periods of incapacity, as both spouses (one through an agent) would be acting together to change the trust.

If, on the other hand, the MUTC is interpreted to allow unilateral revocation or amendment of a trust with respect to a portion of the entireties property, then other problems arise. First, clients obviously should be informed of the change in their respective rights to entireties property upon contributing the same to a joint trust. More importantly, this power of revocation could have significant adverse effects on a couple's protection from creditors. As noted above, one of the reasons entireties property is exempt from the creditor of one spouse is that there is no way to separate that spouse's interest from the interest of the other. If that interest can be unilaterally severed once placed into a joint trust, there is a persuasive argument that such property is no longer exempt from creditors' claims.17 This potential liability cannot be cured by use of a spendthrift clause because such clauses are ineffective to the extent a debtor has the power of revocation.18 Thus, while there is no guarantee that entireties property transferred to a trust, no matter how drafted, will remain exempt from the creditors of just one spouse, allowing a unilateral power of revocation or amendment as to a portion of such property while in the trust will all but guarantee that this protection is lost. Thus, the unilateral power of revocation or amendment as to entireties property may well be one power clients would rather not have.

In sum, due to the uncertainty and potentially adverse consequences of the revocation rules, no matter how interpreted, one should address specifically the authority of the parties to revoke or amend a joint trust. If entireties property is transferred to the trust, attorneys should consider stating expressly that property held by tenants by the entirety conveyed to the trust remains entireties property19 and that the trust cannot be amended or revoked as to such property by only one spouse (unless authorized to act for the other pursuant to a power of attorney, which should be drafted accordingly) until one spouse dies. This would afford flexibility in case of incapacity or death, and it would offer the best creditor protection for assets transferred into the joint trust during the life of both settlors. Most importantly, such provisions would afford a

measure of certainty arguably lacking under the MUTC at this time.20

III. Manner Of Revocation Or Amendment

If a power to revoke exists, the next issue is how that power can be exercised. The MUTC contains significant provisions concerning the method for amendments or revocations. Interestingly, the Uniform Trust Code (prior to the amendments made in Missouri) provided that a trust could be revoked by substantially complying with any methods provided in the trust or, unless those methods are expressly made exclusive, by any other method manifesting clear and convincing evidence of the settlor's intent to revoke. This provision was changed by the legislature to be consistent with Missouri law.21 Under the Missouri version of the Uniform Trust Code, if there is a method for revocation in the trust, then the settlor must substantially comply with that method.22 In other words, any method provided for revocation or amendment is conclusively deemed to be the exclusive means for doing so. Therefore, one should discuss with clients the extent to which the manner of revocation or amendment should be circumscribed. The trust could simply omit prescribing any method of revocation or amendment (thus making any act evidencing intent sufficient), or it could include a method but expressly state that any other methods clearly evidencing intent to amend or revoke are sufficient (thus overriding the statute). The best approach, however, may be to prescribe several acceptable methods of revocation or amendment (e.g., a notarized writing delivered to and accepted by the trustee or any notarized or witnessed document). What is imperative is that the settlor realize what the rules are and that they must be followed.

IV. Incapacity

As under common law, the settlor can revoke or amend a trust only so long as the settlor has capacity to do so. Section 456.6-603 creates a presumption of capacity and then defines when that presumption is rebutted (either by an adjudication of total incapacity or disability or by a trustee receiving a "affidavit of incapacity"). The "affidavit of incapacity" is defined as "a written certificate furnished by at least one licensed medical doctor that states that the settlor lacks capacity to revoke the trust."23
This issue of incapacity deserves further attention. First, many settlors prefer to have any determination of incapacity confirmed by a second opinion, so one should consider defining an affidavit as one executed by two doctors. Second, many medical professionals have experience with forming opinions about a person's ability to manage his or her financial affairs, but the standard of lacking "capacity to revoke the trust" may not be something about which doctors are as comfortable rendering an opinion; consequently, a more common definition of incapacity could be employed.

24 Third, doctors may have some concern with their authority to disclose such information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the privacy regulations promulgated under its authority. As has been well publicized, HIPAA and the regulations thereunder generally prohibit health care providers from disclosing protected health information of a patient without his or her consent, which could make obtaining the information necessary to determine incapacity difficult in the absence of a court proceeding.25 While it may be unnecessary for settlors to include provisions within the trust that would meet the exacting requirements for an authorization to release records as defined by 45 C.F.R. § 164.508, there are other options. HIPAA privacy regulations authorize health care providers to disclose protected health information to an individual or their "personal representative." For an adult patient, a "personal representative" is defined as a person with "authority to act on behalf of an individual . . . in making decisions related to health care."

26 Consequently, a trust could include language designating any trustee as a personal

representative authorized to receive health care information - at least as necessary to determine incapacity. The following language should allow health care providers to release such information to trustees:
The trustee is authorized to make any inquiry as the trustee believes, in good faith, is necessary to determine the settlor's capacity or incapacity. Any trustee is hereby authorized to receive individually identifiable health information related to the settlor's capacity because of the trustee's authority to make decisions related to the settlor's health care and, therefore, is a "personal representative"of the settlor as defined by 45 C.F.R. § 164.502(g)(2).

Of course, if the settlor whose capacity is at issue is still serving as trustee (and will continue to do so until determined incapacitated), further authority to release health care information will be needed. 45 C.F.R. § 164.510(b) authorizes health care providers, who follow certain procedural requirements before disclosure, to "disclose to a family member, other relative, or a close personal friend of the individual, or any other person identified by the individual, the protected health information directly relevant to such person's involvement with the individual's care or payment related to the individual's health care."

A trust, therefore, could also include language designating any person nominated as a successor trustee as such "other individual" identified as a permissible recipient of health care information and could define what information is "directly relevant" to that person's involvement with the settlor's care or payment for care, as follows:

Any covered entity is authorized, pursuant to 45 C.F.R. § 164.510(b), to release individually identifiable health care information of the settlor to all persons or entities designated in this trust as a trustee or a successor trustee, whether serving at the time of disclosure or not, to the extent such information relates to the capacity or incapacity of the settlor and, specifically, to execute or decline to execute an affidavit of incapacity and to provide any protected health information relevant to said affidavit. Such information is directly relevant to the recipient's involvement in the settlor's care or payment for care. The settlor further declares that this provision constitutes an agreement to disclose such information pursuant to 45 C.F.R. § 164.510(b)(i) and that the release of such information is in the settlor's best interests.

Finally, the provisions of § 456.6-603 regarding incapacity have another important effect. This section states that while the "trust is revocable and the settlor has capacity to revoke the trust," the rights of all beneficiaries are within the settlor's control and the trustee owes duties only to the settlor. This exclusive duty to the settlor is what most clients expect for their revocable trusts. One point to consider is that the settlor's status as the only party with such rights is, under the MUTC, effective only so long as the trust is revocable and the settlor has capacity to revoke. Many settlors would want to retain such unique standing for their own trust even if incapacitated; therefore, drafters should consider overriding this provision by stating that the settlor retains such exclusive rights so long as the settlor is living.27 In a joint trust, the document should also state that, upon the death of one settlor, the surviving spouse shall be considered the settlor as to the entire trust.

V. Modification Or Termination Of Trust

The MUTC departs from Missouri law by expanding the power of the court to modify or terminate trusts. Helpful authority is provided to the court to modify trusts based on mistakes in drafting,28 unsatisfied tax objectives,29 or "unanticipated circumstances."30 The MUTC goes further, however, in granting the court broad authority to modify or terminate even where no such problems or changes have occurred. For example, § 456.4B-411(1) allows a court to modify or terminate a trust, even without the consent of the settlor, so long as all the adult beneficiaries consent and the court finds that "any nonconsenting beneficiary will be adequately protected."

Such flexibility for beneficiaries and the courts may significantly undermine the estate planning goals of clients who desire to control the management of trust assets after their death and protect the interest of beneficiaries from potential creditors.

Settlors, however, have only a limited ability to limit the court's authority to modify or terminate trusts. If a trust prohibits modification or termination under § 456.4B-411(1), the court still can "modify or terminate [the] trust under" § 456.4B-411(3), but, in this instance, the court has to make additional findings to justify such an action. In addition to determining that the interest of any non-consenting beneficiary will be protected and that any living settlor will be benefitted, the court must also find that the termination or "modification is not inconsistent with a material purpose of the trust."31 If settlors strongly desire to limit the court's power to modify or terminate their trusts, then the trust should expressly prohibit modification or termination based solely on the consent of beneficiaries under § 456.4B-411(1) and should state that a material purpose of the settlor is to keep the property in trust so as to allow management by the trustee and to protect the interest of the beneficiaries through a spendthrift clause.32 While such statements cannot absolutely prohibit a future modification or termination, they should at least make such changes more difficult.

The MUTC also includes a default "small" or "uneconomic" trust clause similar to that found in many trust documents. Section 456.4-414 authorizes the trustee, without the necessity of court approval, to terminate a trust having a total value of less than $100,000 "if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration." Settlors should be informed of this rule and that the trust can prohibit its application if desired.33 One should also note, however, that this same section authorizes the court to modify or terminate an uneconomic trust, and this power cannot be prohibited by the trust document.34

VI. Removal Of The Trustee

As one might imagine, the MUTC contains numerous provisions related to the powers and duties of trustees. With respect to what is often one of the most contentious issues involving trustees - the power of beneficiaries to remove them - the MUTC takes a middle-of-the-road approach. Beneficiaries have no absolute right to remove the trustee, but the court, upon a qualified beneficiary's request or its own motion, may remove a trustee for "a serious breach of trust," material "lack of cooperation among cotrustees," failure "to administer the trust effectively," certain reductions in the trustee's services, or the unanimous request for removal by all beneficiaries.35 While these are sensible default rules, many settlors will want their beneficiaries to have more control over the trustee by, for example, having the unconditional ability to have the trustee removed and replaced by a successor, independent trustee without court approval. If this is desired, the trust needs to provide it expressly.36 On the other hand, the identity of the trustee is occasionally of great importance to the settlor. If this is the case, the trust can state that the identity of the trustee is a material purpose of the trust, which should prohibit removal based solely on a reduction in trust services or unanimous request by qualified beneficiaries.37 Furthermore, the trust can actually eliminate the court's power of removal under § 456.7-706 entirely.38 If the trust states that this section is inapplicable, then the court would still retain some authority to remove the trustee (under its power to remedy trustee malfeasance, to act in the interest of justice, or, in some circumstances, even to modify the trust itself),39 but removal would be much less likely than under the MUTC's default rules.

VII. Trustee's Duty To Inform And Report

One of the trustee's duties that is regulated with the most detail under the MUTC is the duty to keep beneficiaries informed. Section 456.8-813 requires trustees of a trust that has become irrevocable to notify qualified beneficiaries of the existence of the trust, the identity of the settlor,

the trustee's contact information, and the right to other information specified in the MUTC. This section also requires trustees to respond to certain requests for additional information and, regardless of a request, to send to permissible distributees (anyone currently eligible to receive trust principal or income)40 a report of the trust property, liabilities, receipts, disbursements, and trustee's compensation at least annually. Obviously, the duty to report is inapplicable when the settlor of a revocable trust is serving as trustee.41 Further, as stated above, if the trust is properly worded, then the settlor can also retain exclusive rights to such information, even when not serving as trustee, during his or her lifetime so that the trust remains confidential until the settlor's death.

While the settlor is unlikely to want to limit his or her own rights to information from a trustee, he or she may want to alleviate such comprehensive reporting requirements after the settlor's death. The MUTC allows the trust to waive all the trustee's reporting requirements except the duty to notify "permissible distributees of an irrevocable trust who have attained twenty-one years of age of the existence of the trust and their rights to request trustee's reports and other information reasonably related to the" trust administration.42 In addition, although the trust can waive the duty to give any notice at all to qualified beneficiaries who are not permissible distributees (that is, individuals who are not currently eligible to receive property, but would be if a permissible distributee died or the trust terminated),43 the MUTC does still require trustees to respond to their request for trustee reports or other information reasonably related to the trust administration.

44 Due to the settlor's ability to override so many of the reporting requirements, the settlor should be able to eliminate any duty to provide reports unless requested or to limit the content of annual disclosures unless more information is requested. If, however, a settlor wants to keep the existence of a trust confidential (at least with respect to beneficiaries over 21 years of age), the settlor's options are more limited. The easiest, though not necessarily the best, approach would be simply to prohibit any distributions to individuals until they attain an age at which the settlor would be willing that they be informed of the trust; in this situation, such persons would not constitute permissible distributees to whom the duty to notify is owed because they would not be currently eligible to receive distributions. The detriment to this approach, obviously, is that the trust would afford no protection for those beneficiaries' needs. Another potential option would be for the trust to allow distributions to beneficiaries under a certain age only after, for example, the trustee (or some other third party) makes a written determination that a beneficiary is in need and 10 days has passed without such need being alleviated. In this situation, the trust could be available to assist young beneficiaries if necessary, but the trustee could argue that, until a determination of need has been made and such time has passed, no such person is currently eligible to receive distributions and, therefore, is not a permissible distributee who is entitled to any notice. In any event, if such a person does find out about the trust, the trustee would have to respond to requests for information.45 Thus, the MUTC allows broad latitude in eliminating annual, automatic reporting requirements, but it makes it quite difficult to keep the existence of a trust secret.

VIII. Trustee's Power To Alter Income Interest

One of the most significant changes in the law related to the dispositive provisions of a trust comes from the Revised Principal and Income Act (2001), §§ 469.401-469.467, RSMo. This act, as originally drafted, allowed settlors to grant beneficiaries the right to receive a percent of the entire trust (a "unitrust" interest) rather than just income.46 Now, with the most recent amendment to § 469.411, trustees are also authorized to change the interest of a beneficiary in a trust already in existence from an income interest to a unitrust interest (between 3% and 5%).47 Thus, this section now not only allows settlors to draft unitrusts, it also allows trustees to elect unitrust treatment even when the settlor has not provided for this. If the settlor wants to limit

distributions only to income, then the trust must specifically prohibit the trustee's authority to elect unitrust treatment under § 469.411(5)(2).

IX. Spendthrift Protection

In addition to addressing the rights of settlors, beneficiaries, and trustees, the MUTC also specifically addresses the rights of creditors to trust assets. In fact, the Uniform Trust Code, especially as modified in Missouri, provides significant help to estate planners in protecting the interests of trust beneficiaries from actions by creditors. Section 456.5-502 provides that the interest of a beneficiary in a trust is protected from creditors by use of a spendthrift clause, which is deemed included simply by use of the term "spendthrift trust" or words of similar import. Simplifying the means of creating spendthrift protection should avoid unnecessary disputes regarding the exposure of trust assets.

Estate planners should note, however, that the simple reference to a spendthrift trust "restrain[s] both [the] voluntary and involuntary transfer[s] of a beneficiary's interest."48 In most cases in which settlors have elected to keep a beneficiary's interest in trust, they want to protect these assets both from the beneficiary's creditors and from any ill-advised decisions by the beneficiary; therefore, the prohibition on involuntary and voluntary transfers is advisable. Section 456.5-502, as revised and enacted in Missouri, however, does allow spendthrift protection from creditors even if the beneficiary is allowed to assign or alienate his or her interest in the trust voluntarily. This flexibility could be important in appropriate cases. If such flexibility is desired, the trust must specifically prohibit involuntary transfers, and it should also state that the trust contains spendthrift protection from creditors, but does not prohibit voluntary transfers by the beneficiary.

49 Creditors are not, however, completely left in the cold by the MUTC. Section 456.5-506 allows a creditor or assignee of a beneficiary to reach any mandatory distributions of income or principal, including those upon termination of a trust, if the trustee has withheld the same for more than a reasonable time. Thus, the trustee cannot protect a beneficiary from creditors simply by withholding required distributions even if the beneficiary does not object.

Such a provision is one reason to consider discretionary, rather than mandatory, powers to distribute income or principal. The more difficult issue arises if addressing distributions when a beneficiary attains a certain age or upon termination of a trust; these distributions normally are drafted in mandatory language (e.g., "The trustee shall distribute one-half of the trust estate upon the beneficiary attaining the age of 30 and the remainder upon the beneficiary attaining the age of 35."). Such a provision would allow a creditor to attach that distribution if withheld for an unreasonable time.50 In appropriate cases, settlors should consider including a provision that would expressly authorize the delay of a distribution or the extension of the trust term under certain circumstances (if, for example, the trustee were to determine that any payment to a beneficiary would be taken by a creditor and would not serve the beneficiary's best interest). Presumably, this power to withhold funds or extend the trust would mean the scheduled distribution could no longer be characterized as a mandatory distribution. If the funds were retained, the spendthrift provision would continue to apply and the trustee could assist the beneficiary by making certain discretionary payments for his or her benefit until the condition authorizing the delay in distribution (or extension of the trust) was alleviated. While such authority in the trustee could result in the trust continuing longer than the settlor would desire, and there is no guarantee the court would construe the withheld distribution as suggested, such a provision is another example of new drafting opportunities and challenges under the MUTC.

X. Conclusion

The legislation passed in 2004 contains some of the most important developments in Missouri

trust law in decades. The MUTC clarifies dozens of previously unresolved, and hence problematic, issues and in other areas enacts sensible rules that will greatly aid drafters and their clients. Yet, as with any comprehensive legislation, one size does not fit all. Consequently, it is essential to review the changes to trust law created by these statutes to determine where such provisions require new changes in trust documents.

Footnotes

1 Thomas K. Riley received his law degree from Washington and Lee University, magna cum laude, and is a principal in the firm of Riley & Dunlap, P.C., in Fulton.
2 Section 456.6-602(1), RSMo Supp. 2005.
3 Section 456.6-602(2), RSMo Supp. 2005.
4 Section 456.6-602, RSMo Supp. 2004, Uniform Trust Code Comment (stating "[m]ost difficult may be determining a contribution rule for entireties property.").
5 Because this article addresses issues only if raised by the new statutes, a long-standing concern about entireties property transferred to a trust will be noted only in passing. Tenancy by the entireties property is exempt from the creditors of just one spouse (see note 9). Unfortunately, it is not clear that entireties property will retain this characterization, and, hence, protection from creditors, once it is transferred to a trust (because it is then held by the trustees, not by the spouses in their individual capacities). Consequently, planners should consider retaining entireties property outside the trust and using a non-probate transfer to the trust upon the death of one or both spouses. Regardless, if a trust is funded with entireties property, as is often the case, then the issues of revocation and amendment discussed herein must be considered.
6 See Section 456.6-602(2), RSMo Supp. 2005. Bass v. Rounds, 811 S.W.2d 775, 780 (Mo. App. E.D. 1991).
7 Holdener v. Fieser, 971 S.W.2d 946, 951 (Mo. App. E.D. 1998).
8 Stafford v. McCarthy, 825 S.W.2d 650, 656 (Mo. App. S.D. 1992).
9 Wehrheim v. Brent, 894 S.W.2d 227, 229 (Mo. App. E.D. 1995).
10 Ronollo v. Jacobs, 775 S.W.2d 121, 123 (Mo. banc 1989).
11 Merrill Lynch, Pierce v. Shackelford, 591 S.W.2d 210, 214 (Mo. App. W.D. 1979).
12 See § 456.6-603, RSMo Supp. 2005.
13 Section 456.6-602(6), RSMo Supp. 2005.
14 Section 456.6-602(5), RSMo Supp. 2005.
15 Id.
16 Section 404.710(6), RSMo Supp. 2005.
17 Green Hills Production Credit Ass'n v. Blessing, 844 S.W.2d 5, 6 (Mo. App. W.D. 1992).
18 Section 456.5-505(1), RSMo Supp. 2005.
19 While there is no guarantee courts will recognize entireties property if it is held in the trust, expressing such an intent and maintaining the attributes of entireties property is the best approach short of holding such property outside the trust.
20 The provisions of § 456.6-602 not only can be clarified by the trust, but can be overridden by the trust terms. Section 456.1-105 RSMo Supp. 2005. In any instance in which the drafter intends the trust to override the statutory provisions, one should consider not only drafting provisions in the trust different from the statutory default sections, but also expressly stating that the particular section or sub-section does not apply.
21 See e.g., Salem United Methodist Church v. Bottorff, 138 S.W.3d 788, 794-95 (Mo. App. S.D. 2004).
22 Section 456.6-602(3), RSMo Supp. 2005.
23 Section 456.6-603, RSMo Supp. 2005.
24 Id.
25 Health Insurance Portability and Accountability Act of 1996 (HIPAA), 45 C.F.R. § 164.502(a) (1996).

26 45 C.F.R. § 164.502(g)(2).
27 Section 456.6-603 can be overridden by the trust terms. Section 456.1-105, RSMo Supp. 2005.
28 Section 456.4-415, RSMo Supp. 2005.
29 Section 456.4-416, RSMo Supp. 2005.
30 Section 456.4-412, RSMo Supp. 2005.
31 Section 456.4-411B(3), RSMo Supp. 2005.
32 Section 456.4B-411(3) and Missouri Comment. (The UTC had a presumption that a spendthrift clause was not a material purpose, but this has been removed in the MUTC. Id.).
33 Section 456.1-105, RSMo Supp. 2005.
34 Sections 456.4-414 and 456.1-105, RSMo Supp. 2005.
35 Section 456.7-706, RSMo Supp. 2005.
36 The provisions of § 456.7-706 may be overridden by the trust. Section 456.1-105, RSMo Supp. 2005.
37 Section 456.7.706(2), RSMo Supp. 2005.
38 Section 456.1-105, RSMo Supp. 2005.
39 Section 456.1.105, RSMo Supp. 2005.
40 Section 456.1.103(14), RSMo Supp. 2005.
41 Section 456.6-603(1), RSMo Supp. 2005.
42 Section 456.1-105 (8), RSMo Supp. 2005.
43 Section 456.1-103(19), RSMo Supp. 2005.
44 Section 456.1-105(9), RSMo Supp. 2005.
45 Id.
46 Section 469.411, RSMo Supp. 2005.
47 Id.
48 Section 456.5-502, RSMo Supp. 2005.
49 Id.
50 Section 456.5-506, RSMo Supp. 2005.

, 388 (Mo. App. W.D. 2004).