

# Illinois Trust Code VS Missouri Uniform Trust Code

BAMSL Trust & Estate Planning Institute  
*September 10, 2020*

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125 YEARS

# Trust Code Background

- Uniform Trust Code (UTC)
  - Established – 2000
  - Amended – 2001, 2003, 2004, 2005, 2010
  - 35 states have adopted some version of the UTC
- Missouri Uniform Trust Code (MUTC)
  - Effective Date – January 1, 2005
  - RSMo Sections 456.1-101 – 456.11-1106
- Illinois Trust Code (ITC)
  - Effective Date – January 1, 2020
  - 760 ILCS 3/101-1506

# Illinois Trust Code

- Modeled after UTC
- Retains most of preexisting law on trusts; codifies certain case law
- Consolidates other Illinois statutes dealing with trusts
- Fills in gaps of previous nonexistent trust law
- Adopts uniform set of definitions
- Updates/remedies certain problems in previous trust laws

# Illinois Trust Code

- Code applies to:
  - All **trusts** created before, on, or after Effective Date
  - All **judicial proceedings** concerning trusts commenced on or after Effective Date
  - All **judicial proceedings** concerning trusts commenced before Effective Date, unless court finds application of Code provision would substantially interfere with effective conduct of judicial proceedings or prejudice the parties (old trust law would apply instead)
  - All **nonjudicial matters** concerning trusts commenced before, on, or after Effective Date
  - **Any rule of construction or presumption** provided in the Code applies to trust instruments executed before Effective Date, unless there is clear indication of contrary intent in trust instrument
  - Any **act** done before Effective Date is NOT affected by the Code

# Missouri Uniform Trust Code

- Modeled after UTC
- Chapter 456 of the Revised Statutes of Missouri
  - Statutory numbering corresponds to UTC (456.\_\_ - \_\_\_\_)
  - Numeral following the period and preceding the dash refers to the UTC **Article**
  - Numeral following the dash refers to the corresponding UTC **Section**
- Codifies Missouri common law but includes several innovative provisions
  - Mandatory Rules, Representation, Revocable Trust Rules

# Missouri Uniform Trust Code

- **Except as otherwise provided**, the MUTC applies to:
  - All **trusts** created before, on, or after January 1, 2005
  - All **judicial proceedings** concerning trusts commenced on or after January 1, 2005
  - All **judicial proceedings** concerning trusts commenced before January 1, 2005, unless court finds application of the MUTC provision would substantially interfere with effective conduct of judicial proceedings or prejudice the parties (old trust law would apply instead)
  - **Any rule of construction or presumption** provided in the MUTC apply to trust instruments executed before January 1, 2005, unless there is clear indication of contrary intent in trust instrument
  - Any **act** done before January 1, 2005 is NOT affected by the MUTC

# Overview

## ITC

- ARTICLE 1** – General Provisions and Definitions
- ARTICLE 2** – Judicial Proceedings
- ARTICLE 3** - Representation
- ARTICLE 4** – Creation, Validity, Modification, and Termination of Trust
- ARTICLE 5** – Creditor’s Claims; Spendthrift and Discretionary Trusts
- ARTICLE 6** – Revocable Trusts
- ARTICLE 7** – Office of Trustee
- ARTICLE 8** – Duties and Powers of Trustee
- ARTICLE 9** – Illinois Prudent Investor Law; Life Insurance; Affiliated Investments
- ARTICLE 10** – Liability of Trustees and Rights of Persons Dealing with Trustee
- ARTICLE 11 – Total Return Trusts**
- ARTICLE 12** – Trust Decanting
- ARTICLE 13 – Uniform Powers of Appointment Law**
- ARTICLE 14 – Perpetuities**
- ARTICLE 15** – Miscellaneous Provisions

## MUTC

- ARTICLE 1** – General Provisions and Definitions
- ARTICLE 2** – Judicial Proceedings
- ARTICLE 3** - Representation
- ARTICLE 4** – Creation, Validity, Modification, and Termination of Trust
- ARTICLE 5** – Creditor’s Claims; Spendthrift and Discretionary Trusts
- ARTICLE 6** – Revocable Trusts
- ARTICLE 7** – Office of Trustee
- ARTICLE 8** – Duties and Powers of Trustee
- ARTICLE 9** – [unused]
- ARTICLE 10** – Liability of Trustees and Rights of Persons Dealing with Trustee
- ARTICLE 11** – Miscellaneous Provisions

# ITC 102

APPLIES TO

- Express trusts
- Trusts created pursuant to statute, judgment, or decree that requires trust administered in manner of an express trust
- Land trust
- Liquidation trust
- Security instrument
- Instruments under which nominee, custodian for property, or paying/receiving agent is appointed
- Trusts created by deposit arrangement in banking/savings institution
- Grain Indemnity Trust Accounts or any other trust created under Grain Code
- Voting trust
- Escrow

DOES NOT APPLY TO



# ITC 103



## Notable Beneficiary Definitions:

- Beneficiary
- Current Beneficiary
- Presumptive Remainder Beneficiary
- Qualified Beneficiary

# MUTC 103



Expands UTC definitions to include:

- Permissible Distributee
- Principal Place of Administration

# ITC 105

## Default rules to consider:

- Trust provisions control, except as provided in this section.
- Mandatory provisions to note:
  - Requirements to create trust
  - Duty of trustee to act in good faith
  - Powers of court to modify a trust
  - Effect of spendthrift provision and creditor rights
  - Certain duties of trustee to provide accountings to certain beneficiaries



*Mandatory provisions (remaining slides)*

# MUTC 105

- Trust provisions control, except as provided in the section.
- Mandatory provisions to note:
  - Notice to Permissible Distributees 21+ of existence of trust and of rights to reports/information\*
  - Duty to respond to request of Qualified Beneficiary for reports/information
  - Periods of limitation for commencing judicial proceeding
  - Venue for a judicial proceeding

*\*Settlor may designate a Permissible Distributee to receive notice in lieu of providing to other Permissible Distributees who are ancestors or lineal descendants of the designated Permissible Distributee*

# ITC 111

## Nonjudicial Settlement Agreements

- Interested Persons can enter into a NJSA for any of the matters specifically identified in the section.
- Interested Persons
  - Trustee
  - All beneficiaries (or representatives) whose consent required if settlement approved
- If any Qualified Beneficiary is a charity, then Illinois Attorney General must receive notice of proposed agreement at least 60 days before agreement's effective date.

### Includes the following:

- Validity, interpretation, and construction of trust terms
- Approval of trustee's report or accounting
- Exercise or non-exercise of any trustee power
- Removal/appointment of trustee, trust protector, trust advisors
- Trustee compensation
- Trustee liability/indemnification for trust actions
- Modification of trust administrative terms
- Termination of trust

# MUTC 111

## Nonjudicial Settlement Agreements

- Interested Persons
  - Those whose consent would be required to achieve a binding settlement before a court
- Interested persons may enter into a binding NJSA with respect to any matter involving a trust
- NJSA valid only if it does not violate a material purpose of the trust and includes terms and conditions that could be properly approved by the court under the MUTC or other applicable law
- NJSA may not be used to terminate/modify trust for reasons that a court could terminate/modify trust as set forth in subsection 1 of RSMo 456.4B-411

### Includes the following:

- Interpretation and construction of trust terms
- Approval of Trustee's report or accounting
- Direction to Trustee to refrain from act or grant to Trustee of necessary or desirable power
- Resignation or appointment of Trustee or determination of Trustee compensation
- Transfer of trust's principal place of administration
- Trustee liability for actions relating to trust

# Representation – In General

- Representation of beneficiaries
  - Objective is to deal with the rights of beneficiaries who are not *sui juris* or who are not otherwise parties
    - nonjudicial settlement agreement
    - court proceeding
  - Satisfy notice requirements of due process
  - Protect the interests of such beneficiaries
  - Bind such beneficiaries to the action taken (judicially or nonjudicially)

# ITC 307

- Designated Representative
  - Can represent and bind any individual who is a Qualified Beneficiary
  - Treated as a fiduciary
- Trust can:
  - Appoint any person(s) as a *Designated Representative*
  - Authorize any person(s), other than trustee, to appoint a DR



# ITC 307 (continued)

- Exceptions:

- Cannot represent Current Beneficiary who is  $\geq 30$  years old and not incapacitated
- Cannot represent Qualified Beneficiary while also serving as Trustee
- If DR is also a Qualified Beneficiary, then cannot represent other Qualified Beneficiaries, unless:
  - Trust instrument specifically nominates DR, or
  - DR is relative of Qualified Beneficiary

# MUTC

- Nothing comparable

# ITC 411

## Noncharitable Irrevocable Trusts

- **Termination**

- If all beneficiaries consent and court determines continuance not necessary to achieve any material trust purpose
- Trust property distributed as beneficiaries agree

- **Modification**

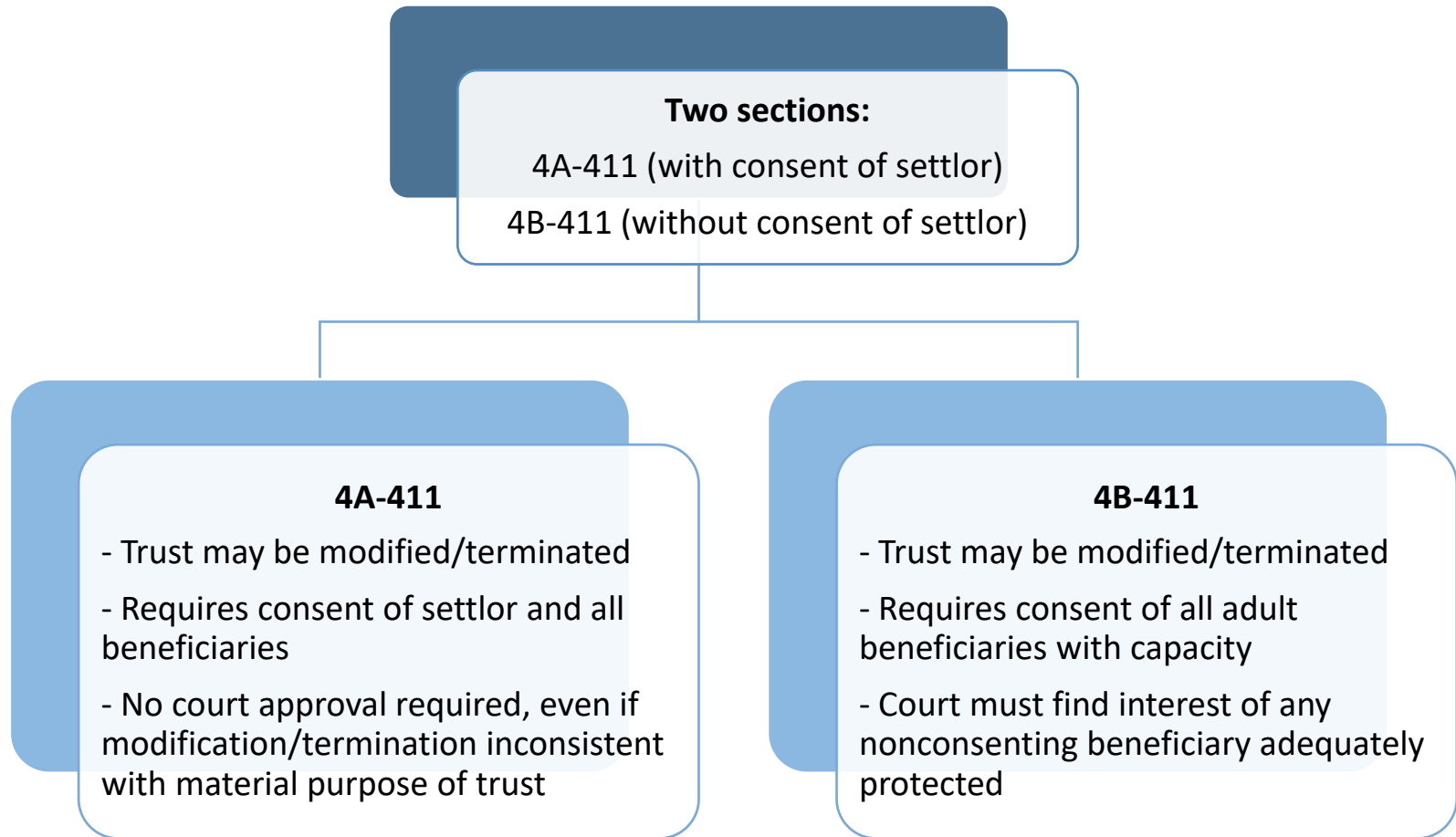
- If all beneficiaries consent and court determines modification not inconsistent with any material trust purpose

- If all beneficiaries do not consent, then court can still terminate/modify trust, if:

- Trust could have been terminated/modified had all beneficiaries consented, AND
- Any beneficiary who did not consent is treated equitably and consistent with trust purposes

- Trustee consent not required

# MUTC 411 ✕



# ITC / MUTC 412-416 ✕

Court  
can  
terminate or  
modify  
trust:

- Unanticipated circumstances or inability to administer trust effectively
- Charitable purpose no longer being fulfilled
- Uneconomic trust (e.g. assets < \$100,000)
  - *MUTC limit is < \$250,000*
- Conform to settlor's intent
- Achieve settlor's tax objectives

# ITC 505

- After settlor’s death:
  - Revocable trust property is subject to settlor’s creditors and debts to extent probate estate is inadequate to satisfy
  - Any claims otherwise barred against settlor’s probate estate will also be barred against settlor’s revocable trust
  - Orders of classification in Sections 18-10 and 18-13 of Illinois Probate Act also apply to claims against revocable trust property
  - **Trustee of revocable trust released from liability, if:**
    - Distributions made after 6 months of settlor’s death, AND
    - Personal representative of probate estate did not give trustee notice that probate estate is insufficient to pay all debts/expenses

# MUTC 505

- Any Trustee with duty or power to pay debts of deceased settlor may publish notice to creditors
  - Once per week for four consecutive weeks
  - County of settlor’s domicile at death
- Establishes 6-month deadline from the date of first publication for claims to be presented to the Trustee or be forever barred against the Trustee and trust property
- Trustee shall not be liable to account to the deceased settlor’s personal representative under RSMo 461.300 by reason of any debt barred under this section

# ITC / MUTC 602

- Revocability / Amending
  - ITC – trust cannot be revoked or amended unless trust instrument expressly says so
  - MUTC – trust can be revoked or amended unless instrument says otherwise
- For any joint revocable trust, either settlor can revoke or amend with respect to trust property contributed by such settlor
  - ITC and MUTC are basically the same
  - But under ITC, other settlor must be notified in event of revocation/amendment

# ITC 604

- Validity of revocable trust can be contested by person within earlier of:
  - 2 years after settlor's death, OR
  - Either
    - time permitted to contest settlor's will under Illinois Probate Act (for trust that receives a legacy from a will admitted to probate; e.g., pour-over will), OR
    - 6 months after trustee sent notice with certain trust information to person (for any other trust)
- Trustee can distribute revocable trust property, and be released from liability, 9 months after settlor's death, unless:
  - Trustee knows of a pending judicial proceeding to contest trust validity, OR
  - Potential contestant has notified trustee of possible judicial proceeding to contest trust and proceeding commences within 60 days after trustee receives such notice



# MUTC 604

- Validity of a revocable trust may be contested within the earlier of:
  - 2 years from Settlor's death, OR
  - 6 months after Trustee sent copy of trust and notice informing person of trust's existence, Trustee's name/address, and time allowed to commence a proceeding, OR
  - In the case of pour-over Will, on the date any contest of that Will is barred under RSMo §473.083, provided that a copy of the trust was filed with the probate division within 90 days of the first publication of notice of granting of letters on the estate of the decedent under RSMo §473.033.

# Duty to Inform and Account

## ITC 813.2

- Only applies to:
  - Irrevocable Trusts – became irrevocable **before January 1, 2020**
  - Revocable trusts – trustee accepts trusteeship **before January 1, 2020**
- Annual ***current account*** required:
  - Beneficiaries entitled to receive income
  - **Current Account** – shows receipts, disbursements, and asset inventory
- ***Final account*** on termination of trust:
  - Beneficiaries entitled to distribution of trust estate
  - Covers period from last current account to distribution date
  - Shows inventory of trust estate, receipts, disbursements, and distributions


# ITC 813.1

- Only applies to:
  - Irrevocable Trusts – became irrevocable on or after January 1, 2020
  - Revocable trusts – trustee accepts trusteeship on or after January 1, 2020
- **Trust Accounting**
  - New definition in ITC 103(38)
  - *One or more written communications from the trustee with respect to the accounting year that describe: (A) the trust property, liabilities, receipts, and disbursements, including the amount of the trustee’s compensation; (B) the value of the trust assets on hand at the close of the accounting period, to the extent feasible; and (C) all other material facts related to the trustee’s administration of the trust.*

# ITC 813.1 (continued)

- **Annual** trust accounting required:
  - All Current Beneficiaries ✕
  - All Presumptive Remainder Beneficiaries
- **Final** trust accounting on termination of trust:
  - All beneficiaries entitled to a distribution from trust residue ✕

# ITC 813.1 (continued)

- Specific notice requirements to all Qualified Beneficiaries 
  - MANDATORY Notice (within 90 days)
    - Trust's existence
    - Beneficiary's right to request complete copy of trust instrument
    - Whether beneficiary has right to receive or request trust accountings
  - Other Notices
    - Acceptance of trusteeship & trustee's contact information
    - Any changes in trustee's compensation
    - Trustee resignation or changes
- Trustee has discretion to provide copy of trust instrument and trust accounting to beneficiaries other than QBs
- Qualified Beneficiary can reasonably request copy of trust instrument

# Duty to Inform and Account

## MUTC 813 ✕

- Trustee shall
  - Keep Qualified Beneficiaries reasonably informed
  - Promptly respond to requests for information
  - Promptly furnish copy of trust upon request
- Notice within 120 days of acceptance of trusteeship or when trust becomes irrevocable:
  - Trustee's contact information
  - Rights to copy of trust and trustee report
- Trustee report to Permissible Distributees and others who request it annually and at termination
- Does not apply to trusts that became irrevocable before January 1, 2005

# ITC 817

- Codifies Trustee's right to get approval of trust accounting before making distributions
- Also allows Trustee to request refunding agreement from beneficiary for any trust liabilities (pro rata share)

# MUTC 817

- 30-day objection period for any proposed distribution
- Reasonable reserve for payment of debts, expenses, and taxes
- Any release by beneficiary of a Trustee from liability for breach of trust is invalid to the extent:
  - it was induced by improper conduct of the trustee; or
  - the beneficiary, at the time of the release, did not know of the beneficiary's rights or of the material facts relating to the breach.



# ITC 902

- Mostly follows prior rules for Illinois Prudent Investor Law
- Adds some new criteria Trustee **may** consider in making investment decisions
  - Effects of inflation and deflation
  - **Environmental and social conditions**
  - Asset's special relationship/value to purpose of trust or to beneficiaries
- **Missouri Prudent Investor Act**
  - Chapter 469 (moved from 456 to RSMo 469.900 to 469.913)
    - Disclaimers of Property
    - Principal & Income Act
    - Uniform Fiduciaries Law
    - Missouri Prudent Investor Act

# ITC 1005

- Beneficiary actions against Trustee for breach of trust
  - Matters disclosed in trust accounting
    - 2 years – trusts that became irrevocable after January 1, 2020 and trustees who accept appointment after January 1, 2020
    - 3 years – all other trusts/trustees (previous IL law)
  - All other matters
    - 5 years – of first to occur of:
      - i. trustee’s removal/resignation/death,
      - ii. termination of beneficiary’s interest in trust, or
      - iii. trust termination

# MUTC 1005

- Beneficiary actions against Trustee for breach of trust
  - 1 year from the last to occur of the date beneficiary was sent report that adequately disclosed the existence of a potential claim for breach of trust and the date the Trustee informed the beneficiary of the time allowed for commencing a proceeding with respect to any potential claim adequately disclosed in the report.
  - A report adequately discloses the existence of a potential claim if it provides sufficient information so that the beneficiary knows of the potential claim or should have inquired into its existence.
  - If no report sent, a judicial proceeding must be commenced within 5 years after the first to occur of:
    - Removal, resignation, or death of the Trustee;
    - Termination of the beneficiary's interest in the trust; or
    - Termination of the trust.

# Trust Decanting

- Known as *Illinois Trust Decanting Law*
- Allows decanting by a trust restatement; don't necessarily need "second" trust
- Trust instrument can restrict or prohibit decanting [ITC 1203, 1215]
- Includes a more rigid list of some definitions [ITC 1202]
  - *Expanded Distributive Discretion*
    - replaces "absolute discretion"
    - includes any distribution standard that is not limited to ascertainable standard or reasonably definite standard

# Trust Decanting

- Following trusts can be decanted [ITC 1203]:
  - Express irrevocable trust (trust with express terms; not constructive trust)
  - Trust revocable by settlor – only with consent of trustee or person with adverse interest
- Trust held solely for charitable purposes cannot be decanted [ITC 1203]
- Applies fiduciary duty to trustee in *exercising* decanting powers [ITC 1204]
  - Duty includes acting in accordance with purposes of the FIRST trust
  - But trustee has no duty to exercise decanting powers

# Trust Decanting

- **Objection by a beneficiary does not necessarily prevent decanting** [ITC 1207]
- People entitled to notice, includes [ITC 1207]:
  - Settlor
  - Persons with powers to change trustees
  - Fiduciaries of FIRST and SECOND trusts
- Expands some court powers in approving or directing a decanting [ITC 1209]
  - Includes ability to appoint *special fiduciary* to handle decanting
- **Decanting instrument** [ITC 1210]
  - Must identify FIRST and SECOND trusts
  - Must identify property transferred from FIRST to SECOND trust
  - Must identify property kept in FIRST trust

# ITC 1211

## **EXPANDED** Distributive Discretion *rules to note:*

- Cannot add a new current beneficiary to SECOND trust
- Any presumptive remainder beneficiary or *successor beneficiary* of SECOND trust must be current beneficiary, presumptive remainder beneficiary, or *successor beneficiary* of FIRST trust
- Can't reduce or eliminate a *vested interest*
- Different options available for existing powers of appointment
- SECOND trust can be administered under law of any jurisdiction

## **LIMITED** Distributive Discretion *rules to note:*

- Each beneficiary of FIRST trust must have substantially similar beneficial interests in SECOND trust
- SECOND trust can be administered under law of any jurisdiction

# Trust Decanting

- **Applicable perpetuities period [ITC 1220]**
  - SECOND trust can have a different duration than FIRST trust
  - But any property in SECOND trust that came from FIRST trust is subject to same rules applicable to FIRST trust
- **Savings Clause [ITC 1222]**
  - Any impermissible provisions included in SECOND trust will be automatically removed
  - Any required provisions missing in SECOND trust will be automatically included
- **Fiduciary who discovers any such error in decanting is required to take corrective action [ITC 1222]**



# MUTC Decanting Statute – RSMo 456.4-419

- Based on South Dakota’s decanting statute and reflects Missouri common law
- Designed to give flexibility to Trustees of discretionary trusts to appoint assets of the first trust into a second trust – an amendment or creation of new trust without court involvement
- Trustee remains subject to all fiduciary duties
- Several prohibitions or restrictions designed to help attorneys not make tax law errors
- 60-day notice requirement by Trustee of first trust to the Permissible Distributees (or if none, Qualified Beneficiaries) of second trust prior to making discretionary distribution
- Does not impose duty on Trustee to exercise or consider exercising decanting power

# MUTC Differences to Note

- **GST Grandfather Exemption** - Article 4 - RSMo 456.4-418
  - Narrow provision added in 2009 to allow distributions from certain trusts without causing loss of GST grandfather exemption
- **Decanting** - Article 4 - RSMo 456.4-419
- **No-Contest “Safe Harbor”** - Article 4 - RSMo 456.4-420
  - Provides procedure for interlocutory determination whether a particular motion, petition, or other claim for any relief would trigger application of the no-contest clause
  - Provides the court may award costs, expenses, and attorneys’ fees to any party as provided in RSMo 456.10-1004
- **Missouri Uniform Powers of Appointment Act**
  - RSMo 456.970 to 456.1135 adopted in 2016

# Resources

**Illinois Trust Code Outline:** Illinois Trust Code Provisions, Comparison to Prior Illinois Law, Comparisons to Uniform Trust Code Provisions, and Practice Pointers

- Authored by Susan Bart, Adam Damerow, Jane Ditelberg, Benetta Jenson, Stuart Kohn, Tye Klooster, Lauren MacDonald, Suzanne Shier, Rebecca Wallenfelsz, and Ryan Walsh

**Missouri Practice Series, Probate and Surrogate Laws Manual, 4A MOPRAC CH 456 (2d ed.)**

- Authored by the late Judge John A. Borron, Jr.; 2020 Supplement prepared by David M. English

**Missouri Practice Series, Trust Code and Law Manual, 4C MOPRAC § 456.000 (2019 ed.)**

- Authored by Francis M. Hanna

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