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Silent Trusts Are Trending: Will They Hold Trustees to Account?

*Kent D. Schenkel**

I. INTRODUCTION

A common intuition, perhaps amply supported by anecdotal evidence, is that easy money creates a disincentive to efforts for personal success. Many trust settlors seem to embrace this view but still wish to provide generously for their families. Enter the so-called “silent trust,” which seeks to moderate the disincentive effect by way of trust provisions that limit or waive notice and disclosure requirements to beneficiaries.¹

But a fundamental tension plagues these trusts. Beneficiaries need basic information about a trust in order to hold trustees to account. Consequently, traditional trust law provides limits on the degree to which trustees can be silent as respects a beneficiary’s right to know.² The Uniform Trust Code (“UTC”) broadly adopts the traditional view, while (perhaps grudgingly) conceding adopting states’ preferences for allowing trust settlors to opt out of certain information and accounting provisions.³ So the outer boundaries of silent trusts remain unsettled, even across those jurisdictions that have adopted the UTC.

This short article first summarizes the status of the mandatory information and reporting rules under the UTC, and then takes a peek at the legal principles on which cases interpreting silent trust provisions stand. In so doing, it situates the silent trust in the context of the larger academic debate about mandatory versus default provisions in trust law. It finds that mandatory UTC provisions requiring a trustee to act in good faith and giving courts the power to act in the interest of justice can serve as sufficient safeguards to beneficiaries of silent trusts. None-

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¹ See, e.g., Jay A. Soled et al., *Quiet Trusts: When Mum’s the Word to Trust Beneficiaries*, EST. PLAN., July 2013, at 13, 13-14; David A. Diamond et al., *The Silent Trust: Using State Statutes to Delay Notification of a Trust*, TSWBO3 A.L.I. 1 (2014) [hereinafter Diamond et al., *The Silent Trust*]; William R. Burford, *What the Kids Don’t Know – Deconstructing the ‘Silent’ Trust*, SV024 A.L.I.-A.B.A 1, 4 (2014) [hereinafter Burford, *What the Kids Don’t Know*].

² ALAN NEWMAN ET AL., *BOGERT’S THE LAW OF TRUSTS AND TRUSTEES* § 965 (2021) [hereinafter *BOGERT’S THE LAW OF TRUSTS AND TRUSTEES*].

³ See *infra* Part II.

theless, courts must interpret these provisions to permit beneficiaries, upon request, to obtain from the trustee any information reasonably required to determine whether trustee wrongdoing has occurred.

II. INFORMATION AND REPORTING UNDER THE UTC

According to one of the leading treatises on trust law, “[a]ccountability of the trustee to the beneficiary” is “at the heart of their fiduciary relationship.”⁴ It follows that, without accountability, no trust relationship is formed. For this reason, it would seem that a trust settlor would be unable to completely eliminate a trustee’s obligation to keep the trust beneficiary reasonably informed. To do so would in effect strike a blow against trustee accountability and risk removing the trust relationship from the purview of a court.⁵ But this does not mean that a settlor cannot modify the extent to which a trustee must adhere to default rules mandating the provision of information to the beneficiaries. If legislative moves by UTC adopting jurisdictions are any indication, the settlor’s ability to modify or waive information and reporting requirements is generally increasing.⁶

The UTC’s provisions requiring trustees to inform and report to beneficiaries appear in section 813.⁷ Not all of the trustee’s duties here are affirmative; some can depend on whether a beneficiary has requested information concerning the trust.⁸ The duties can also vary depending upon whether the beneficiary in question enjoys the status of a “qualified beneficiary,” as defined by the code.⁹ While the UTC’s rules are comprehensive, they do not uniformly settle the question across en-

⁴ BOGERT’S THE LAW OF TRUSTS AND TRUSTEES, *supra* note 2, § 965.

⁵ In cases where no allegations of wrongdoing have been made and the settlor has chosen to waive the duty to account, some courts have declined to impose such a duty on the trustee. *See id.* California has a statute that permits courts to enforce accountings where settlors have waived them where there is “a showing that it is reasonably likely that a material breach of the trust has occurred . . .” CAL. PROB. CODE § 16064(a) (West 2021).

⁶ For current treatment of information and reporting requirements in UTC jurisdictions, see *infra* Appendix.

⁷ *See* UNIF. TR. CODE § 813(a) (UNIF. L. COMM’N amended 2010).

⁸ *Id.* § 813(c).

⁹ *See id.* § 813(a)-(c). *See also* UNIF. TR. CODE § 103(3) (defining “beneficiary”). A “qualified beneficiary” is defined as a beneficiary who, on the date at issue:

(A) is a distributee or permissible distributee of trust income or principal; (B) would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in subparagraph (A) terminated on that date without causing the trust to terminate; or (C) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

Id. § 103(13).

acting jurisdictions as to a trustee's information reporting requirements. This is because jurisdictions have not enacted section 105, relating to mandatory and default rules, in the form presented by the UTC's Drafting Committee.¹⁰

Given the fundamental nature of the trustee's accountability to the beneficiary, one might surmise that trust law provisions requiring trustees to account and report to beneficiaries cannot be completely waived by the settlor. But the UTC gives the settlor substantial control over the scope of these obligations, and, depending upon whether or in what modified form certain "bracketed" provisions of section 105 were adopted by the state in question, a settlor may be at least theoretically able to waive all information and reporting requirements.¹¹ These provisions regarding a trustee's information and reporting requirements are referenced in sections 105(b)(8) and (9).¹² Essentially, they provide that a settlor cannot waive two types of duties contained in section 813. First is the duty "to notify qualified beneficiaries of an irrevocable trust who have attained 25 years of age of the existence of the trust, of the identity of the trustee, and of their right to request trustee's reports."¹³ Second is the duty "to respond to the request of a [qualified] beneficiary of an irrevocable trust for trustee's reports and other information reasonably related to the administration of a trust."¹⁴

According to the comments, these provisions, which were placed in brackets in 2004,¹⁵ "have generated more discussion in jurisdictions considering enactment of the UTC than have any other provisions of the Code."¹⁶ Despite that the UTC's Drafting Committee takes the position that the provisions should be enacted as presented, most enacting jurisdictions have modified or deleted them.¹⁷ Thus, even a general sense of state law, which varies widely, cannot be discerned solely by reference to the UTC.

Why have adopting states either deleted or modified the provisions making certain information and disclosure requirements mandatory? It would seem that trust settlors wish to retain the option to keep their beneficiaries—perhaps fully but maybe only partially—in the dark. Many settlors are doubtless concerned about the incentive-dampening

¹⁰ See *infra* Appendix.

¹¹ See UNIF. TR. CODE § 105(b)(8)-(9) (placed in brackets to indicate their optional status).

¹² *Id.*

¹³ *Id.* § 105(b)(8).

¹⁴ *Id.* § 105(b)(9). The provision places the term "qualified" in brackets.

¹⁵ See *id.* § 105 cmt.

¹⁶ *Id.*

¹⁷ See *infra* Appendix; see also BOGERT'S THE LAW OF TRUSTS AND TRUSTEES, *supra* note 2, § 965.

effects of gifts in trust. Other concerns might be keeping information about the trust from the beneficiaries' parents or relatives, and perhaps that third parties who gain knowledge of the trust will impose on the trust beneficiaries.¹⁸ A couple of comprehensive outlines prepared for continuing legal education courses indicate that the call for these trusts is strong, and that practitioners and trust departments are clearly responding.¹⁹

III. ARE SILENT TRUSTS FUNDAMENTALLY INCOMPATIBLE WITH THE LAW OF TRUSTS?

Considerations of public policy have always been a hard brake on trusts' terms. Cases implicating public policy might involve trust provisions creating restraints on marriage or investment decisions.²⁰ But silent trusts also raise fundamental issues. In the context of silent trusts, the question is whether a settlor's seemingly paradoxical attempts to benefit the beneficiary by restricting access to information is fundamentally incompatible with the very nature of the trust relationship. The UTC has attempted to walk the fine line between yielding to the freedom of disposition of settlors and ensuring that beneficiaries have sufficient information to enforce the trustee's obligation. On the one hand is the UTC's official view that section 105 should be enacted as presented, which has been soundly rejected by enacting states.²¹ On the other hand, placing sections 105(8) and (9) in brackets is essentially a concession that at least some silent trust provisions are compatible with the UTC's overall scheme.²²

But must the specific duties of a trustee under sections 813(a), (b)(2) and (3) be deemed mandatory in order to maintain the integrity

¹⁸ See Robert M. Brucken, *Can Trusts Really be Secret?*, PROB. L.J. OHIO, Sept./Oct. 2015, at 22, 22.

¹⁹ See, e.g., Burford, *What the Kids Don't Know*, *supra* note 1, at 4; Diamond et al., *The Silent Trust*, *supra* note 1, at 1; Nicole K. Mann & Jane Zhao, *Silent Trusts: "Three Can Keep a Secret, if Two of Them are Dead"*, 1065 A.L.I. 1, 31 (2018) (stating that many states have adopted statutes permitting silent trusts).

²⁰ See John H. Langbein, *Mandatory Rules in the Law of Trusts*, 98 NW. U.L. REV. 1105, 1109 (2004).

²¹ See *infra* Appendix.

²² The comments to the 2004 amendments make clear that "[t]he placing of these provisions in brackets does not mean that the Drafting Committee recommends that an enacting jurisdiction delete" the sections. To the contrary, the Drafting Committee "continues to believe that" enacting the sections "as is, represent[s] the best balance of competing policy considerations. Rather, the provisions were placed in brackets out of a recognition that there is a lack of consensus on the extent to which a settlor ought to be able to waive reporting to beneficiaries, and that there is little chance that the states will enact sections 105(b)(8) and (b)(9) with any uniformity." UNIF. TR. CODE § 105 cmt. (UNIF. L. COMM'N 2010).

of trusts? The answer seems to be no. After all, a trust created under the UTC, even where those provisions have been made default, still maintains the accountability of the trustee to the beneficiary—the true heart of the trust relationship. The mandatory rules of section 105 still include “the duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries,”²³ and “the power of a court to take such action and exercise such jurisdiction as may be necessary in the interests of justice.”²⁴ Further, courts have been issuing rulings consistent with these principles for many years,²⁵ and have stepped in to limit the extent to which settlors can restrict the rights of beneficiaries to access information about trusts.²⁶ There seems to be general recognition among courts that if the withholding of information from the beneficiary creates an unacceptably high risk of a breakdown in the enforcement of the trustee’s fiduciary obligations, then it threatens the efficacy of the trust.²⁷

A potential problem, however (and this was presumably a concern of the UTC’s Drafting Committee), is that courts in many of these cases require evidence or some showing of fraud or other wrongdoing on the part of the trustee in order for the beneficiaries to be entitled to the very information that evidences that malfeasance.²⁸ One of the older cases on this rule is *Keller’s Estate*,²⁹ decided in 1909 by the Supreme Court of Pennsylvania. Here, no trust was involved, but the decedent in his will left his estate for life to his wife, with remainder to his son, and named both beneficiaries executors. Some years later, the surviving widow died, followed several days later by the son. The widow’s executors filed suit against the son’s estate, maintaining that the son had “converted all the assets of [his father’s] estate”³⁰ and demanded an accounting. But the father’s will had provided that “no inventory nor appraisal nor account” was to be filed by the executors.³¹

Despite that the plaintiffs alleged wrongdoing, the court upheld the waiver of accounting in the father’s will. It held that where “fraud” is

²³ *Id.* § 105(b)(2).

²⁴ *Id.* § 105(b)(13).

²⁵ See *infra* text accompanying notes 28-35.

²⁶ See *infra* Part IV.

²⁷ The Restatement (Third) of Trusts (comments on Clause (c) of § 29) gets at this point when it praises the “flexibility” of the trust in permitting settlors to create interests “individually tailored as the particular property owner deems best,” but points out that these “advantages” need to be “balanced against . . . the burdens a former owner’s unrestrained dispositions might place on courts to interpret and enforce individualized interests and conditions.” RESTATEMENT (THIRD) OF TRUSTS § 29(c) cmt. (AM. L. INST. 2003).

²⁸ See BOGERT’S THE LAW OF TRUSTS AND TRUSTEES, *supra* note 2, § 965.

²⁹ 73 A. 926, 926 (Pa. 1909).

³⁰ *Id.*

³¹ *Id.* at 926-27.

complained of, the court will order an accounting even where the will waives it, “if ground be shown.”³² Here, the court said there was “not a suggestion of fraud” even though the plaintiffs had alleged conversion.³³ The court seemed to think that to hold otherwise would have defeated the intent of the testator to shield the estate from accountability to persons who weren’t beneficiaries of the estate.

Another influential older case is *Wood v. Honeyman*,³⁴ an Oregon decision involving a number of trusts, extensive facts, and a settlor’s misplaced faith in his son-in-law, who served as successor trustee of the two trusts at issue. The trust beneficiaries were able to amass considerable evidence of malfeasance by the trustee and filed suit to remove him from office and for an accounting, among other relief. In the trustee’s appeal of the trial court’s judgment against him a major issue was whether he should be required to account, despite that in at least one of the trusts at issue, the settlor had waived that obligation in the trust instrument. The Oregon Supreme court held that a settlor can relieve a trustee of providing “formal accounts” to the beneficiary, but, when called upon, must “show that he faithfully performed his duty” and account to “a court of equity.”³⁵

IV. CAN THE LAW OF TRUSTS PREVENT A BENEFICIARY FROM OBTAINING EVIDENCE OF A TRUSTEE’S WRONGDOING?

How does a trust beneficiary who is concerned about possible wrongdoing on the part of the trustee obtain evidence of same when the trust provisions shield the trustee from providing trust accountings or other information? The most interesting and compelling contemporary case on this issue, and one that arose in the context of the UTC, is the North Carolina decision of *Wilson v. Wilson*.³⁶ North Carolina had adopted the UTC in 2006 but was one of the jurisdictions that completely left out sections 105(b)(8) and (9), making the accounting and reporting requirements of section 813 default-only.³⁷ In this case, the settlor created trusts for his two children in 1992 containing language relieving the trustee of any obligation “to prepare or file for approval any inventory, appraisal or regular or periodic accounts or reports with

³² *Id.* at 927.

³³ *Id.*

³⁴ 169 P.2d 131 (Or. 1946).

³⁵ *Id.* at 166.

³⁶ 690 S.E.2d 710 (N.C. Ct. App. 2010).

³⁷ N.C. GEN. STAT. § 36C-1-105 (2021).

any beneficiary . . .”³⁸ The beneficiaries filed suit against the trustee for breach of fiduciary duty in 2007.³⁹

The beneficiaries made a couple of fairly specific allegations. First they alleged that the trustee had permitted the settlor to “take control” of trust assets and invest those assets in “highly speculative” business ventures resulting in their “substantial depreciation.”⁴⁰ Second, they maintained that the trustee “breached his statutory duty by failing to distribute income to Plaintiffs as required by the terms of the Trust Instruments.”⁴¹ The trustees refused to respond to discovery requests, citing the silent trust provisions referred to above, and went so far as to file a motion for a protective order, stating that “by reason of the provisions of the Trust Instrument, the discovery sought herein may not be had.”⁴² The trial court granted the motion and also entered a partial declaratory judgment, citing legislative commentary with respect to North Carolina’s version of UTC section 813, and stating that a trustee “may override, or negate the requirement of disclosure” to beneficiaries by a provision in the trust instrument.⁴³ The beneficiaries appealed both issues.⁴⁴

In its review, the appeals court emphasized up front that non-waivable provisions of the UTC require a trustee to act in good faith and in the interests of the beneficiaries and recognize the court’s power to take action in the interest of justice.⁴⁵ This despite that the North Carolina statute “omitted those portions of the Uniform Trust Code that would require the trustee to keep qualified beneficiaries reasonably informed about the trust administration.”⁴⁶ The case turned on the court’s view that the mandatory good faith requirement, coupled with the court’s power to act in the interest of justice, means that beneficiaries are always entitled to information “reasonably necessary to enforce their rights under the trust,” and that such information “could not be legally withheld, notwithstanding the terms of the trust instrument.”⁴⁷

The decision in *Wilson* seems right, even though it dilutes the settlor’s right to limit information shared with the beneficiaries. Any alternative would seem to prevent beneficiaries from holding the trustee accountable in any case except that in which sufficient evidence of mal-

³⁸ *Wilson*, 690 S.E.2d at 711.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.* at 712.

⁴³ *Id.*

⁴⁴ *See id.*

⁴⁵ *See id.* at 714.

⁴⁶ *Id.*

⁴⁷ *Id.* at 716.

feasance could be gathered without a trustee accounting. And to so hold would be to ignore the principles of good faith and trustee accountability to the courts—principles necessarily baked into the law of trusts.⁴⁸ But the dissent in *Wilson*, written by Judge Elmore, seemed unconcerned about this dilemma.⁴⁹ It noted that the beneficiaries could not prove their case without information the settlor legally chose to withhold from them and that therefore summary judgment in favor of the trustees should be granted.⁵⁰

Quite a number of jurisdictions seem to have case law that, at least pre-UTC, is in accord with the decision in *Wilson*, at least where fraud or wrongdoing is evident.⁵¹ But a potential problem remains where evidence of any alleged wrongdoing cannot be obtained because silent trust provisions prevent the beneficiaries from gathering basic information about the trust. For example, a relatively recent Mississippi case interprets the effect of a direction in a trust document to waive an accounting where the jurisdiction's version of the UTC permits waiver.⁵² Mississippi adopted the UTC in 2014.⁵³ The jurisdiction retained sections 105(b)(8) and (9),⁵⁴ but added a provision that gives the settlor a great deal of flexibility in, for example, specifying a different age for mandatory notification of a beneficiary under section 813(b) or designating a surrogate to receive notice to the beneficiary.⁵⁵ In the case of *Estate of Fuller v. Kelly*, a trust instrument provided that the trustee was not "required to account to any court."⁵⁶ Citing Mississippi's version of UTC section 105(a), the court held that the provision waiving accounting was "enforceable under Mississippi law" absent "some evidence of mismanagement or fraud."⁵⁷ In so ruling, the court followed the Mississippi Supreme Court case of *In re Estate of Baumgardner*,⁵⁸ a case decided in 2012 (before the state's adoption of the UTC), indicating that the Mississippi UTC's provisions did not really change the law in the state as to whether a waiver of accounting was effective.⁵⁹ It is,

⁴⁸ See BOGERT'S THE LAW OF TRUSTS AND TRUSTEES, *supra* note 2, § 965.

⁴⁹ See *Wilson v. Wilson*, 690 S.E.2d 710, 716 (N.C. Ct. App. 2010) (Elmore, J., dissenting).

⁵⁰ *Id.* at 719 (Elmore, J., dissenting).

⁵¹ See, e.g., *Briggs v. Crowley*, 224 N.E.2d 417, 421 (Mass. 1967); *In re Childress Trust*, 486 N.W.2d 141, 146 (Mich. Ct. App. 1992); *Killeen v. Chico*, 328 S.E.2d 184, 186 (W. Va. 1985).

⁵² *Estate of Fuller v. Kelly*, 203 So. 3d 1147, 1149 (Miss. Ct. App. 2016).

⁵³ S.B. 2727, 2014 Leg., Reg. Sess. (Miss. 2014).

⁵⁴ MISS. CODE ANN. § 91-8-105(b)(8)-(9) (2021.).

⁵⁵ *Id.* § 91-8-105(d)(2)-(3).

⁵⁶ *Estate of Fuller*, 203 So. 3d at 1148.

⁵⁷ *Id.* at 1149.

⁵⁸ 82 So. 3d 592 (Miss. 2012).

⁵⁹ See *id.* at 604-05.

and the court will enforce it, except that “evidence of mismanagement or fraud in the record could warrant an accounting even in the presence of an explicit waiver.”⁶⁰ But as stated above, acquiring such evidence can be a problem where silent trust provisions restrict access to it. So it remains to be seen whether other courts will pick up on the sound reasoning of North Carolina’s *Wilson* case—the UPC’s mandatory good faith requirement, coupled with the court’s power to act in the interest of justice, means that beneficiaries are always entitled to information “reasonably necessary to enforce their rights under the trust.”⁶¹

V. THE MANDATORY VERSUS DEFAULT DEBATE

Restrictions in the UTC on the withholding of information from trust beneficiaries are not anti-dead hand rules in that they do not attempt to defeat a settlor’s intent.⁶² Instead, they have as their purpose the preservation of the very vehicle by which the settlor has chosen to make the gift in question. This is not a paternalistic or condescending move—these rules are not protecting the settlor from an inability to “understand” the consequences of the actions taken.⁶³ In any given instance it may well be more likely that the settlor, rather than any legislature or court, is in the best position to assess the potential benefit or detriment to the beneficiary of withholding information. Further, only the settlor can determine his own individual tolerance level for the risk that a more lightly-monitored trustee will fall short of its obligations. But, in order for the trust relationship to reliably function, there must be an unimpeachable protection mechanism, and the core ingredient in that relationship—the “without which not”—is the accountability of the trustee to the trust beneficiary. Eliminating the beneficiary’s access to information puts this essential element of a trust at risk, and the courts must determine trust law’s tolerance for the appropriate level of that risk. The consequence to the donor is that a failure to follow trust law rules means that trust law protections will not follow.

⁶⁰ *Id.* at 605 (quoting *In re Stubbs-Kelley Trust*, 573 So. 2d 734, 736 (Miss. 1990)).

⁶¹ *Wilson v. Wilson*, 690 S.E.2d 710, 716 (N.C. Ct. App. 2010).

⁶² See Langbein, *supra* note 20, at 1119-20.

⁶³ The situation may be different in the event a settlor attempts to eliminate all fiduciary duties. Langbein puts it thus:

The concern is I may not understand that, by eliminating all fiduciary duties, I am effectively making *T*, rather than *B*, the donee. By forbidding me from eliminating all fiduciary duties, the rule protects me and my intended beneficiary (whether *T* or *B*) by requiring me to make my transfer in a forthright manner.

Id. at 1123.

VI. CONCLUSION

Donors do not gift property in trust to enrich trustees, or to limit the consequences to the trustee of either the mismanagement of trust property or the failure to respond to the legitimate needs of trust beneficiaries. Even where silent trust provisions are used, settlors gift property in trust to maximize the benefit to the beneficiaries of those gifts. Restrictions settlors may place on the use of trust property (limiting access until certain ages, inserting spendthrift provisions, conditioning distributions on educational incentives, and reducing trustee information and reporting requirements) are almost always meant, in the eye of the settlor, to increase the property's benefit to the beneficiaries. The genius of a trust lies in the settlor's almost unlimited freedom to craft the beneficial interest in ways the settlor deems will achieve this goal. And American trust law gives extraordinarily wide latitude in the calibration of this interest.

Silent trusts offer one of the latest challenges in holding together the fundamentals of the trust relationship while ensuring that the device can change in response to demands of trust settlors and their advisors. There is an ongoing academic debate about mandatory versus default provisions in trust law.⁶⁴ While most arguments in favor of mandatory rules focus on the property rights of trust beneficiaries, default-only rules generally favor rights of settlors. Silent trusts sit squarely in the center of this debate, and their trajectory provides insight into the direction trust law is taking. Settlors are increasing their control over trusts, and yet the UPC and many courts have thus far maintained certain important checks on that control. Trustees are obligated to act in good faith in the interests of trust beneficiaries and courts have the power to act in the interest of justice.⁶⁵ An essential open question in many jurisdictions is whether courts will enforce silent trust provisions in cases where they threaten to prevent beneficiaries from obtaining evidence of fraud or other wrongdoing on the part of trustees.

⁶⁴ Compare Langbein, *supra* note 20, at 1105 (stating that mandatory trust rules include some "intent-defeating rules" that "serve an anti-dead-hand policy" and are necessary to ensure that trusts "benefit the beneficiaries"), with Jeffrey A. Cooper, *Shades of Gray: Applying the Benefit-the-Beneficiaries Rule to Trust Investment Directives*, 90 B.U. L. REV. 2383, 2384 (2010) (disagreeing with Professor Langbein's view on the "benefit-the-beneficiaries" rule).

⁶⁵ UNIF. TR. CODE § 105(b)(2) (UNIF. L. COMM'N amended 2010).

APPENDIX

Jurisdiction	Citation	Notes
1. Alabama	ALA. CODE § 19-3B-105(b)(8) (2021)	In Alabama only “the duty . . . to respond to the request of a qualified beneficiary of an irrevocable trust for trustee’s reports and other information reasonably related to the administration of a trust” is mandatory.
2. Arizona	ARIZ. REV. STAT. ANN. § 14-10105(B)(8) (2021)	In Arizona only “[t]he duty to respond to the request of a qualified beneficiary of an irrevocable trust for trustee’s reports and other information reasonably related to the administration of a trust” is mandatory.
3. Arkansas	ARK. CODE ANN. § 28-73-105 (2021)	In Arkansas both provisions were omitted.
4. Colorado	COLO. REV. STAT. § 15-5-105(2)(h)-(i) (2021)	Colorado mandates the duty “to provide notice of the existence of an irrevocable trust, of the identity of the trustee, and of the right to request trustee’s reports to current distributees or permissible distributees of such trust at any age, or to other qualified beneficiaries of such trust who have attained twenty-five years of age,” and the duty “to respond to the request of a qualified beneficiary of an irrevocable trust for trustee’s reports and other information reasonably related to the administration of a trust.”
5. Connecticut	CONN. GEN. STAT. § 45a-499e(b)(7) (2021)	Connecticut’s statute permits notification to a “designated representative of [a] qualified beneficiary” in lieu of notice to the qualified beneficiary.

Jurisdiction	Citation	Notes
6. The District of Columbia	D.C. CODE § 19-1301.05(c)(1) (2021)	The District of Columbia has added provisions to the statute that give the settlor the power to “waive or modify” notice, information and reporting requirements under certain circumstances.
7. Florida	FLA. STAT. § 736.0105(r)-(t) (2021)	Florida has modified the UTC provisions but generally mandates comprehensive duties of notice and reports to qualified beneficiaries.
8. Hawaii	S.B. 385, 31st Leg. (Haw. 2021), HAW. REV. STAT. § -105 (effective Jan. 1, 2022)	Hawaii largely retains the mandatory UTC language but does not restrict notification to qualified beneficiaries over age 25.
9. Illinois	760 ILL. COMP. STAT. 3/105 (2021)	Illinois modifies the mandatory provisions and makes them prospective only.
10. Kansas	KAN. STAT. ANN. § 58a-105 (2021)	Kansas omits both subsections.
11. Kentucky	KY. REV. STAT. ANN. § 386B.1-030(j) (West 2021)	Kentucky permits the designation of a surrogate to receive reports.
12. Maine	ME. STAT. tit. 18, § 105(3)(B) (2021)	Maine permits the designation of surrogates to receive information and reports.
13. Maryland	MD. CODE ANN., EST. & TRUSTS § 14.5-105 (West 2021)	Maryland largely retains the UPC language.
14. Massachusetts	MASS. GEN. LAWS ch. 203E, § 105 (2021)	Massachusetts omits the provisions.

Jurisdiction	Citation	Notes
15. Michigan	MICH. COMP. LAWS ANN. § 700.7105(2)(i) (West 2021)	Michigan reduces the mandatory requirements to a duty “to provide beneficiaries with the terms of the trust and information about the trust’s property, and to notify qualified trust beneficiaries of an irrevocable trust of the existence of the trust and the identity of the trustee.”
16. Minnesota	MINN. STAT. § 501C.0105 (2021)	Minnesota omits the provisions.
17. Mississippi	MISS. CODE ANN. § 91-8-105(d)(2)-(3) (2021)	Mississippi modifies the provisions by permitting a different age to be designated and permitting surrogates to receive information and reports.
18. Missouri	MO. REV. STAT. § 456.1-105(3) (2021)	Missouri permits a settlor to limit information and reporting requirements to certain “permissible distributees.”
19. Montana	MONT. CODE ANN. § 72-38-105 (2021)	Montana omits the provisions.
20. Nebraska	NEB. REV. STAT. § 30-3805(b)(8) (2021)	Nebraska mandates a requirement “to keep the qualified beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests, and to respond to the request of a qualified beneficiary of an irrevocable trust for trustee’s reports and other information reasonably related to the administration of a trust.”
21. New Hampshire	N.H. REV. STAT. ANN. § 564-B:1-105 (2021)	New Hampshire omits the provisions.
22. New Jersey	N.J. STAT. ANN. § 3B:31-5(b)(7) (2021)	New Jersey only provides mandatory rights to qualified beneficiaries 35 years of age or older.

Jurisdiction	Citation	Notes
23. New Mexico	N.M. STAT. ANN. § 46A-1-105 (2021)	New Mexico mandates the UTC provisions except with respect to a trustee that is a “regulated financial service institution” and also mandates that the settlor “[be] informed of the risks and consequences of the waiver.” N.M. STAT. ANN. § 46A-8-813(F).
24. North Carolina	N.C. GEN. STAT. § 36C-1-105 (2021)	North Carolina omits the provisions.
25. North Dakota	N.D. CENT. CODE § 59-09-05 (2021)	North Dakota omits the provisions.
26. Ohio	OHIO REV. CODE ANN. § 5801.04 (B)(14)(C) (West 2021)	Ohio permits surrogates to receive “notices, information, or reports otherwise required” under the UTC’s provisions.
27. Oregon	OR. REV. STAT. § 130.020(4)(b) (2021)	Oregon permits surrogates to receive “notice, information or reports” to qualified beneficiaries.
28. Pennsylvania	20 PA. CONS. STAT. § 7705 (2021)	Pennsylvania currently omits UTC § 105(b)(9).
29. South Carolina	S.C. CODE ANN. § 62-7-105 (2021)	South Carolina omits the provisions.
30. Tennessee	TENN. CODE ANN. § 35-15-105 (2021)	Tennessee omits the provisions.
31. Utah	UTAH CODE ANN. § 75-7-105 (West 2021)	Utah omits the provisions.
32. Vermont	VT. STAT. ANN. tit. 14A, § 105 (2021)	Vermont omits the provisions.
33. Virginia	VA. CODE ANN. § 64.2-703 (2021)	Virginia omits the provisions.
34. West Virginia	W. VA. CODE § 44D-1-105 (2021)	West Virginia omits the provisions.
35. Wisconsin	WIS. STAT. § 701.0105 (2021)	Wisconsin omits the provisions.
36. Wyoming	WYO. STAT. ANN. § 4-10-105 (2021)	Wyoming omits the provisions.