

# Just Because It's Irrevocable Doesn't Mean It's Irrevocable!

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# Introduction

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- (1) Amending *Revocable* Trusts
- (2) Uniform Trust Code (“UTC”)
- (3) Nonjudicial Modifications of *Irrevocable* Trusts
- (4) Judicial Modifications of *Irrevocable* Trusts
- (5) Decanting

# Common Features of Revocable Trusts

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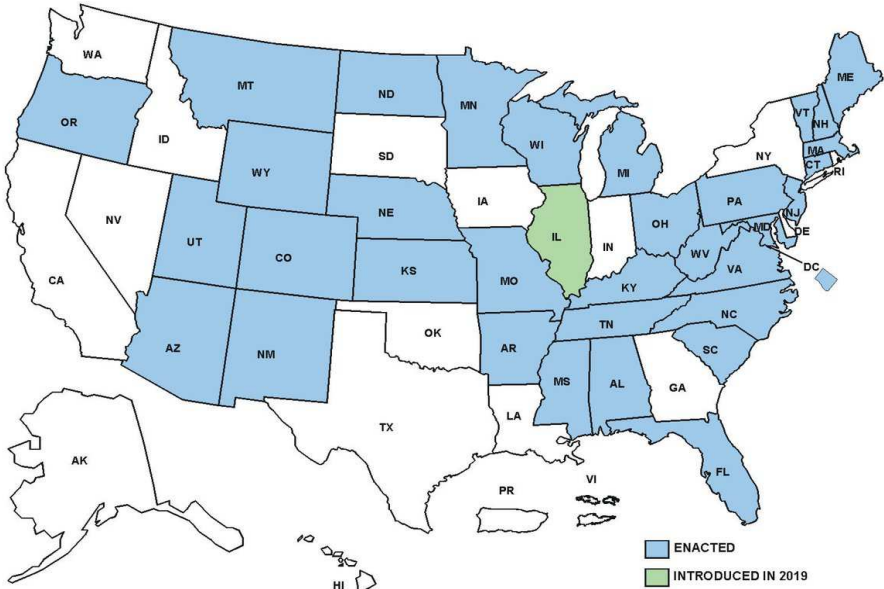
- (1) Often changeable by Grantor (a/k/a Settlor)
- (2) Often Grantor = Trustee (or Grantor is *a* Trustee)
- (3) Often “Grantor Trust” for income tax purposes
- (4) Often minimal asset protection for Grantor

# Amending Revocable Trusts

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- (1) Who has power to amend?
- (2) What action is required to amend the trust pursuant to the trust agreement?

# Uniform Trust Code



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*“ To provide States with precise, comprehensive, and easily accessible guidance on trust law questions.”*



# Non-Judicial Modifications

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- (1) 456.4-411A – Consent of Settlor and Beneficiaries
- (2) 465.1-111 – Nonjudicial Settlement Agreements



# RSMo. 456.4-411A (Consent)

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## Requirements:

1. Noncharitable Irrevocable Trust
2. Settlor consents
3. All beneficiaries consent



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# RSMo. 456.4-411A (Consent)

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Example: Grandpa Gene  
Trust FBO Gillian



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# RSMo. 456.1-111 (Settlement Agreement)

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## Requirements:

1. “Interested Parties” consent
2. Modification does not violate “material purpose” of trust

\*Note: some states have “closed-end” statutes that allow only the types of modifications expressly enumerated in the statute

# RSMo. 456.1-111 (Settlement Agreement)



Matters that may be resolved by a nonjudicial settlement agreement include:

- (1) the interpretation or construction of the terms of the trust;
- (2) the approval of a trustee's report or accounting;
- (3) direction to a trustee to refrain from performing a particular act;
- (4) the resignation or appointment of a trustee and the determination of a trustee's compensation;
- (5) transfer of a trust's principal place of administration; and
- (6) liability of a trustee for an action relating to the trust

\*Note: some states have “closed-end” statutes that allow only the types of modifications expressly enumerated in the statute



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# RSMo. 456.1-111 (Settlement Agreement )



Example: Grandpa Gene  
Trust FBO Gillian

# Judicial Modifications

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- (1) 456.4-411B – Consent of Adult Beneficiaries
- (2) 465.4-412 – Unanticipated Circumstances
- (3) 456.4-413 – Charitable Trusts



# RSMo. 456.4-411B (Consent)



## Requirements:

1. Noncharitable Irrevocable Trust
2. Adult Beneficiaries Consent

OR

## Requirements:

1. Noncharitable Irrevocable Trust
2. Court determines non-consenting beneficiaries are protected
3. Benefits living Settlor who is beneficiary
4. Does not violate material purpose

# RSMo. 456.4-412 (Unanticipated Circumstances)

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## Requirements:

1. Circumstances not anticipated by Settlor
2. Modification will further purposes of trust

OR

1. Provision is administrative
2. Modification will further purposes of trust



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## RSMo. 456.4-413 (Charitable Trusts)



If a particular charitable purpose becomes unlawful, impracticable, impossible to achieve or wasteful. . . a court may apply **Cy Pres** to modify or terminate a trust in a manner consistent with the settlor's charitable purposes . . .

Cy Pres =  
“As Near  
as Possible”



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# RSMo. 456.4-414 (Uneconomic Trust)

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Requirements:



1. Notice to Qualified Beneficiaries
2. Trust < 250k (MO)

OR



1. Court determines value of trust property does not justify cost of administration

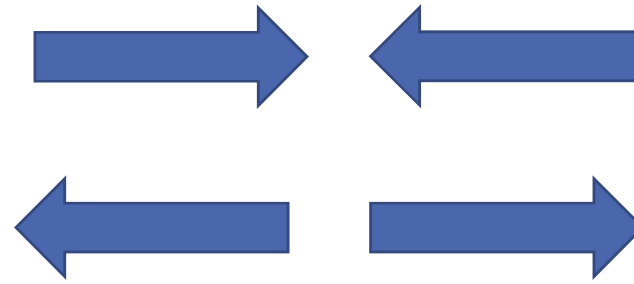


# RSMo. 456.4-417 (Combination/Division of Trusts)



## Requirements:

1. Notice to Qualified Beneficiaries
2. Does not impair rights of beneficiaries



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# RSMo. 456.4-416 (Achieve Tax Objectives)

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## Requirements:

1. Achieves Settlor's tax objectives
2. not contrary to the Settlor's probable intention.



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# Virtual Representation

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- (1) 456.3-302 – Holder of general testamentary power of appointment may bind appointees
- (2) 456.3-303 – Parents may bind minor children; fiduciaries may represent represented parties
- (3) 456.3-304 – Person with substantially identical interest may bind those similarly situated

# Decanting 456.4-419

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A trustee who has the discretionary power to distribute income or principal “to or for the benefit of” one or more beneficiaries of a trust (the “first trust”) may instead exercise this discretionary power by appointing all or part of the income or principal subject to the discretionary power to the trustee of a second trust (the “second trust”).



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