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ARTICLE: “Non-Charitable Purpose Trusts: Past, Present, and Future,” 51 *Real Prop. & Est. L.J.* 321 (2016)

This interesting article is a good read for all trusts and estates would-be scholars, from law students to practicing attorneys, as it hits the heart of what’s a valid purpose trust. It also delves into the history and differences among private trusts, charitable trusts and non-charitable purpose trusts, including the adoption of non-charitable purpose trust provisions in the Uniform Trust Code (UTC) and various *Restatements*. Finally the article provides helpful advice for drafting these trusts and suggestions for further reforms to the law.

We’re all familiar with trusts that mandate or allow the trustee to distribute specified assets to named beneficiaries, but likely not as familiar with trusts that carry out special missions, better known as “purpose trusts.” These come in two main varieties: charitable and non-charitable. The charitable purpose trust is very common and has been widely used and accepted for hundreds of years. However, the non-charitable purpose trust first appeared in offshore jurisdictions, and only in recent years has it found increasing acceptance under the laws of the United States.¹

Examples of non-charitable purpose trusts include trusts for the: maintenance of tombs, monuments and grave sites; performance of religious services; care of animals; and achievement of financing and other business purposes. In the past, courts had disallowed these trusts due to the lack of human beneficiaries to enforce the terms and because many of these trusts are perpetual in nature and violate the rule against perpetuities (RAP).² The UTC, as well as the courts, have only more recently found ways to get around these obstacles and, therefore, the author advocates that practitioners should better understand and use these trusts.

Charitable purpose trusts have been used and enforced as early as the 15th century in England.³ Additionally, they weren’t subject to the RAP in rec-

ognition of the benefits conferred on the public. If the purpose of the charitable trust became obsolete, the courts could simply modify or invalidate impossible or impractical restrictions under the cy pres doctrine.⁴

The RAP and the lack of a particular beneficiary have caused the courts to invalidate non-charitable purpose trusts in the past. The article goes through the history and cites many cases when this occurred. A trust for the care of animals was the one non-charitable purpose trust that was at times respected in the past (which today is common and widely accepted), though it still was usually disallowed.⁵

In addition to various *Restatements*, the Uniform Probate Code was amended in 1990 to provide for greater use and flexibility of non-charitable purpose trusts, and courts in many states began to more readily accept them.⁶ That being said, even today, the rules aren’t crystal clear regarding what type of purpose trusts work and what the terms should be, and that’s the reason the author provides guidance and pointers to the drafters of these trusts. Additionally, the suggestions for further reform at the end of the article provide the readers with greater understanding of potential clarifications and improvements to non-charitable purpose trusts.

Endnotes

1. See Uniform Trust Code Sections 408, 409 (amended 2010), 7C U.L.A. 490-95 (2000).
2. See *Tilden v. Green*, 28 N.E. 880, 882 (N.Y. App. Div. 1891); *Morice v. Bishop of Durham* (1804) 32 Eng. Rep. 656, 658 (Eng.).
3. See Gareth Jones, *History of the Law of Charity, 1552-1827* (1969); Mary K. Lundwall, “Inconsistency and Uncertainty in the Charitable Purpose Doctrine,” 41 *Wayne L. Rev.* 1341, 1345-46 (1994).
4. See Alex M. Johnson Jr., “Limiting Dead Hand Control of Charitable Trusts: Expanding the Use of the Cy Pres Doctrine,” 21 *U. Haw. L. Rev.* 353, 369-72 (1999).
5. See, e.g., *In re Dean*, 41 Ch D 552 (1889) and *In re Estate of Kelly* (1932) 1 IR (H.Ct.).
6. Uniform Probate Code Section 2-907(A) (amended 1993), 8 pt. 1 U.L.A. 355 (2013).