

**Preface (Provisional) to the 2008 Edition of *Loring A Trustee's Handbook* (Forthcoming February 2008)**  
*(109 Years Serving the Trust Community)*

Producing Loring 2008 turned out to be a monumental effort. There are over 150 pages of new text in the body of the work, and 1372 new footnotes below. 572 old footnotes have been re-worked. There are citations to 84 new cases. Seven of those cases were decided in 2007. There are citations to 33 law reviews and three treatises that were not in Loring before.

Prof. Mark L. Ascher's revision of the 4th edition of Scott on Trusts continues. Volumes 3 & 4 of the 5th Edition (Scott & Ascher) cover the nature and extent of a beneficial interest; the transfer of a beneficial interest; restrictions on the transfer of a beneficial interest; trust administration: general principles; the trustee's duties; the trustee's powers; the investment of trust funds; principal and income; the trustee's compensation; the trustee's right to indemnity; the trustee's liabilities to the beneficiaries and to the trust; the beneficiaries' liabilities to the trustee, the trust, and each other; the rights of third parties against the trustee or the trust property; and the rights of third parties against the beneficiaries. We have combed Volumes 3 & 4 looking for material that we felt the readers of Loring would find useful. What we found, and we found a lot, has been woven into the fabric of Loring 2008. Not only has the Handbook been enhanced by the process, it has also been refreshed by it.

Sections 227 through 229 of the Restatement (Third) of Trusts: Prudent Investor Rule (1992) are now Sections 90 through 92 respectively of the new Restatement (Third) of Trusts. In Loring 2008, the numerous citations to these three sections have been updated to reflect this conversion. The "1992" section numbers, however, have not been deleted. They remain, but are now between brackets.

After only 35 years, the Uniform Management of Institutional Funds Act (UMIFA) has been superseded by the Uniform Prudent Management of Institutional Funds Act (UPMIFA), which covers charitable corporations as well as charitable trusts. The process of revising Loring to reflect this development has reminded us once again of how difficult it must be for the busy trust practitioner to keep up with all this trust-related codification, some of which is conflicting, some of which is intersecting, some of which is fleeting, and all of which is ultra-nuanced and ultra-technical.

In researching and writing the recently-published law review article *Publicly-Traded Open End Mutual Funds in Common Law and Civil Law Jurisdictions: A Comparison of Legal Structures* (New York University Journal of Law and Business)<sup>1</sup>, we had occasion, in collaboration with Andreas Dehio from the University of Heidelberg, to examine in some depth how the common law of trusts has influenced the structuring and administration of mutual funds on both sides of the Atlantic. Some of the spin-off from this research has been incorporated where appropriate into Loring 2008. Loring is no longer just for estate planners and family trustees.

Apart from keeping up with Prof. Ascher's work-in-progress, introducing our readers to UPMIFA, and adding material on how trust law informs mutual fund structuring and administration both here and abroad, we have brought 14 additional sections into the Handbook. The new sections are listed below:

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<sup>1</sup> Charles E. Rounds, Jr. & Andreas Dehio, *Publicly-Traded Open End Mutual Funds in Common Law and Civil Law Jurisdictions: A Comparison of Legal Structures*, 3 N.Y.U. J.L. & Bus. 473 (2007).

- §8.15.62 Equitable Apportionment Doctrine
- §8.15.63 Bona Fide Purpose Doctrine
- §8.15.64 The Special Occupant (Equitable Estate *pur Autre Vie*)
- §8.15.65 Destructibility of Contingent Remainders Rule (the Trust Exemption)
- §8.15.67 Implied Warranty of Authority (the Trust Application)
- §8.43 Who Is the Settlor of the Trust?
- §8.44 Mediation Has Its Limitations When It Comes to Trust Disputes
- §9.6 The Incorporated Mutual Fund (U.S. and U.K.)
- §9.7.5.1 The Trusteed Mutual Fund (U.S. and U.K.)
- §9.7.5.2 The Incorporated U.S. or U.K. Mutual Fund Is Trusteed
- §9.7.5.3 Civil Law Trust Analogs in the Mutual Fund Context
- §9.7.5.4 Substantive Differences Between the Common Law and Civil Law Mutual Fund Structural Models
- §9.9.12 U.K.-REITS and G-REITS are Not Trusts
- §9.9.13 A Bailment is Not a Trust

There is even more cross-referencing in Loring 2008 than there was in Loring 2007. With the introduction of fourteen new sections, we continue the process of filling in gaps in our presentation of the substantive material. And we continue to cull the text and footnotes for errors. Finally, the Handbook's index continues to be refined and expanded.

Our readers should understand, however, that in spite of all this new material, Loring continues to be lean and mean. We continue to stay away from frivolous footnoting and the mindless stringing of citations. Each footnote is either itself a wealth of useful information or the gateway to it.

Finally, Charles E. Rounds, Jr. welcomes his son, Charles E. Rounds, III, to the title page of Loring. Now a practicing trusts and estates lawyer in Colorado, he was in high school when his father took over the Loring Project.

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