New Wisconsin Trust Code – A Year in Review

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The new Wisconsin Trust Code (the "WTC") went into effect July 1, 2014, fundamentally changing the law in Wisconsin governing trusts. With more than a year and a half of experience under the new WTC, Reinhart attorneys have had ample time to explore the new opportunities afforded by the WTC. The following are just a few examples of these opportunities:

Irrevocable Trust Modifications

Prior to the enactment of the WTC, irrevocable trusts (with limited exceptions) could only be modified with court approval, meaning that even a slight modification to an irrevocable trust amounted to a costly court proceeding. With the new WTC, however, most trust modifications can be accomplished without court approval, provided that all of the beneficiaries of the trust agree. This means that trusts that were once rigid and inflexible can now be updated to comport with the client's current estate planning wishes. Reinhart attorneys recently drafted a modification agreement whereby an irrevocable life insurance trust was modified to allow an individual (rather than a bank) to act as trustee, to allow a grandchild's share to be held in trust (rather than being distributed outright to the grandchild), and to allow a beneficiary's adult parent to receive information about the insurance trust on behalf of his or her minor child. Modification agreements can also be used to alter the tax attributes and other administrative provisions of a trust.

Irrevocable Trust Terminations

The WTC also allows for the early termination of an irrevocable trust. As with trust modifications, an irrevocable trust may be terminated early if all of the trust's beneficiaries consent to the termination and it does not frustrate a fundamental purpose of the trust. Reinhart attorneys have drafted a number of termination agreements for irrevocable trusts that were created upon the death of the first spouse. These "credit shelter" or "bypass" trusts are often no longer necessary because the estate tax exemptions have dramatically increased in recent years ($5.45 million in 2016) and because the surviving spouse can now use his or her deceased spouse's unused estate tax exemption (this is referred to as portability of the estate tax exemption). Upon termination of these credit shelter trusts, the assets are included in the surviving spouse's taxable estate, meaning that the assets will receive a step-up in basis for income tax purposes when the surviving spouse dies. For highly appreciating assets, this income tax planning opportunity can save significant amounts of capital gains tax upon the subsequent sale of those assets.

Trust Protectors and Directing Parties

Under prior law, the trustee of a trust was responsible for all decisions relating to the trust. With the WTC, however, clients now have the option of appointing a trust protector and directing party, in addition to naming a trustee. A trust protector can serve any number of important roles. For example, a trust protector can be given the power to oversee the trustee, remove and replace the trustee or directing party, to modify the trust, to modify the trust beneficiaries or to terminate the trust. A directing party is a person who has the power to direct the trustee's investment and/or distribution decisions. This can be particularly useful in the context of a family business or other unique assets. For instance, Reinhart attorneys have drafted a number of trusts naming a bank as trustee, but naming a child involved in the family business as the directing party. While the bank is responsible for the day to day administration of the trust, the child maintains control of the investment of the family business stock, creating a complete bifurcation of duties.

Please contact your Reinhart attorney or any Reinhart Trusts and Estates attorney to discuss any of the topics covered in this newsletter.