

The Long-Awaited Passage of the Wisconsin Trust Code Trailer Bill and Its Impact on Trust Administration

On March 20, 2024, Gov. Tony Evers signed Senate Bill 759, also known as the Wisconsin Trust Code Trailer Bill or the "Trailer Bill." The new bill clarifies various issues that have arisen since the Trust Code's adoption and goes into effect Saturday, March 23, 2024. The following are key updates from the Trailer Bill:

Non-Judicial Settlement Agreements

Non-judicial settlement agreements (NJSAs) have become an important tool since the adoption of the Trust Code. NJSAs are used to discharge trustees, modify beneficial trust provisions, and resolve disputes, among other things.

The Trailer Bill clarifies that NJSAs may also be used to modify or terminate trusts and to remove and replace trustees. The Trailer Bill requires that advance notice be given to the settlor (if living), the trustee and each trust protector and directing party of the trust—at least 30 days before an NJSA becomes effective.

Representation

Prior to the adoption of the Trailer Bill, there were limited instances in which a person could represent and bind the interests of a beneficiary. These instances include where the beneficiary was a minor, lacked capacity or could not be located or if another beneficiary had a substantially identical interest.

The Trailer Bill expands the scenarios in which representation is permitted. For example, persons with powers of appointment over the trust estate can now represent permissible appointees, and a parent can represent the interests of both a minor child and the unborn issue of that minor child. Further, a settlor may designate a representative for a beneficiary who may be authorized to represent their interests.

Procedures for Filing Claims and Debts of a Deceased Settlor

The Trust Code lacked a specific procedure for making and responding to creditor claims. The Trailer Bill adds a set of rules that apply to claims against a revocable trust following the death of a settlor. The procedures are similar to those

POSTED:

Mar 21, 2024

RELATED PRACTICES:

[Trusts and Estates](#)

<https://www.reinhartlaw.com/practices/trusts-and-estates>

RELATED SERVICES:

[Trust and Estate Administration](#)

<https://www.reinhartlaw.com/services/trust-estate-administration>

[Trust Services](#)

<https://www.reinhartlaw.com/services/trust-services>

RELATED PEOPLE:

[Shannon M. Toole](#)

<https://www.reinhartlaw.com/people/shannon-toole>

[Josh R. LeNoble](#)

<https://www.reinhartlaw.com/people/josh-lenoble>



pertaining to claims against an estate, as outlined in Chapter 859 of the Wisconsin Probate Code. The Trailer Bill also updates deadlines for creditors' claims and how these deadlines may be adjusted by trustee action.

Trustee's Duty to Inform and Report

The Trailer Bill modifies the Trust Code so that the trustee has the discretion to inform the settlor of the trust about trust administration. Previously, a settlor only had a right to information if the settlor was a beneficiary of the trust. Further, if a beneficiary is only entitled to a specific dollar amount or specific property under the trust, that beneficiary is no longer entitled to a full accounting. Rather, that beneficiary is only entitled to receive information about the specific amount to which they are entitled. Additionally, the Trailer Bill permits a settlor to determine a beneficiary's right to information about the trust. The new provisions even permit a settlor to create a "silent trust," which is a trust where the trustee is not required to inform the beneficiaries about the trust assets until certain conditions are met or may instead provide trust information to a representative designated by the settlor.

Adoption of the Uniform Trust Decanting Act into the Wisconsin Trust Code

The Trailer Bill adopts the Uniform Trust Decanting Act (UTDA). "Decanting" is a process by which a trustee can distribute assets from one trust to another trust, so long as certain conditions are met and the beneficiaries' interests are respected. This power previously existed in the Trust Code, but integrating the UTDA into the Trust Code clarifies certain aspects of decanting and aligns the Trust Code with other states that have adopted the UTDA.

If you have questions about how the changes to the Wisconsin Trust Code may impact your trust(s), please contact Shannon Toole, Josh LeNoble or a member of Reinhart's Trusts and Estates Practice.

These materials provide general information which does not constitute legal or tax advice and should not be relied upon as such. Particular facts or future developments in the law may affect the topic(s) addressed within these materials. Always consult with a lawyer about your particular circumstances before acting on any information presented in these materials because it may not be applicable to you or your situation. Providing these materials to you does not create an attorney/client relationship. You should not provide confidential information to us until Reinhart agrees to represent you.