

Wisconsin's New Trust Code—What Does It Mean for Your Trust?

On December 13, 2013, Governor Scott Walker signed the new Wisconsin Trust Code (the WTC) into law. With an effective date of July 1, 2014, the WTC fundamentally changes the law that governs trusts created after and, in many respects, before July 1, 2014. This article summarizes some of the most significant changes in the WTC.

With its adoption of the WTC, Wisconsin became the 27th state to enact the Uniform Trust Code—a model law designed to modernize the law governing trusts. This new, robust law makes Wisconsin a much more desirable place to administer trusts and provides fantastic planning opportunities for Wisconsin residents.

The WTC is a default statute, which means that (in most cases) if you do not like what the WTC provides, you can override the WTC in your trust. If you do not override the WTC in your trust, the WTC's default rules will apply.

Trustees, Trust Protectors and Directing Parties

Traditionally, the Trustee named in your trust was responsible for all decisions relating to the trust. In some cases, you may have named a Trust Protector for your trust and given that person limited responsibilities; but even in those cases, for the most part, the Trustee controlled the trust. As of July 1, 2014, Wisconsin will have statutes that more clearly articulate the roles of Trustees and Trust Protectors.

A Trust Protector can serve any number of important roles. For example, a Trust Protector can be given the power to remove and replace the Trustee or Directing Party (see below), to modify the trust, to modify the trust beneficiaries or to terminate the trust. If you have concerns about your trust beneficiaries knowing about the existence of the trust or its assets, you can create a "Silent Trust" by giving the Trust Protector powers to enforce rights otherwise held by the beneficiaries.

In addition to Trustees and Trust Protectors, as of July 1, 2014, Wisconsin residents will be able to name Directing Parties for trusts. A Directing Party is a person who has the power to direct the Trustee's investment and/or distribution

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decisions. The power to direct investment decisions may be particularly useful in cases where the trust owns a special asset, such as stock in a closely-held business or real estate. In those cases, you can name a Directing Party who is intimately familiar with the special asset to be responsible for all decisions relating to the trust's investment in that asset.

Disclosure of Trust Information

The WTC includes expansive provisions for the disclosure of trust information to the beneficiaries. The existence of the trust and annual reports of the trust's financial information have to be provided not only to the current beneficiary but also to future beneficiaries. In some cases, this may be more disclosure than you want. For example, if a trust is being administered for the surviving spouse's benefit, you may not want your children or grandchildren receiving information about the trust during the surviving spouse's lifetime. If you want to limit the trust disclosures, you will need to include a special provision in your trust. Because the disclosure of information provides benefits to the Trustee, you will want to carefully weigh your desire to limit trust information against those benefits.

Nonjudicial Settlement Agreements

Under Wisconsin's current trust law, if you create an irrevocable trust and later decide that a change needs to be made, you are (with very limited exceptions) required to go to court to request the change. Under the WTC, parties will be able to enter into a binding, nonjudicial settlement agreement to modify a trust. Nonjudicial settlement agreements can also address trust interpretation, approval of Trustee reports, investment decisions and any other matter involving a trust. There are, however, restrictions on the ability to use a nonjudicial settlement agreement that may limit its usefulness.

Decanting

The WTC also permits a Trustee, Trust Protector or Directing Party to "decant" a trust (subject to certain limitations). Decanting is the process of transferring assets from an existing irrevocable trust to a new irrevocable trust. The new trust can include terms that are significantly different from the existing trust. For example, decanting can be used to change the beneficiaries of the trust, to change the timing of distributions to the beneficiaries, to extend the duration of the trust, to remove a spendthrift provision from a trust, or to appoint a Trust



Protector or a Directing Party. If you do not want the trust you created to be decanted, you can include a decanting prohibition in your trust.

Life Insurance Trusts

Under current law, the Trustee of an irrevocable life insurance trust (a trust designed for the principal purpose of owning life insurance policies) is required to take steps to determine the viability of the life insurance policies owned by the trust and, to the extent possible, prevent the lapse of the insurance. The WTC completely negates this responsibility. Trustees will no longer have a duty to monitor what is often a very significant asset of the trust. This new rule will apply to life insurance policies acquired by the trust on or after July 1, 2014, and to trusts created before that date if the Trustee provides notice to the beneficiaries. If you want your Trustee to be responsible for ensuring the viability of this significant asset for your beneficiaries, you will need to include a special provision in your trust.

Save the Date!

Want to learn more about the WTC's impact on your trust? Members of Reinhart's Trusts and Estates team will be hosting a series of seminars that will explain the WTC in greater detail and highlight planning opportunities you may want to consider. Be sure to attend one of the following seminars for more information:

October 1, 2014 - Madison
October 9, 2014 - Waukesha
October 14, 2014 - Milwaukee

Each of these seminars will start at approximately 5:00 p.m.

If you have any questions, please contact your Reinhart attorney or any member of the Reinhart Trusts and Estates Practice Group.

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