

NONJUDICIAL SETTLEMENT AGREEMENTS (NJSAs) UNDER THE WISCONSIN TRUST CODE

November 17, 2015

Caitlyn B. Sikorski
414-298-8201
csikorski@reinhartlaw.com

Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 1700, Milwaukee, WI 53202
www.reinhartlaw.com

Webinar Housekeeping

Viewing the Slides

Today's slide presentation will advance automatically in synch with the live presentation.

Handouts

If you would like a hard copy of the slide presentation, a printable version was e-mailed to you yesterday.

Adjusting Your Volume

Volume can be adjusted using the volume control on your computer or phone.

Asking Questions

Throughout the webinar, type your questions using the "QUESTIONS" section in the webinar panel. We will answer as many questions as possible during our Q & A session at the end of the presentation.

Information

This webinar provides general information about legal issues. It should not be construed as legal advice or a legal opinion. Attendees should seek legal counsel concerning specific factual situations confronting them.

Overview of Nonjudicial Settlement Agreements

- Jurisdictional issues
- When appropriate
- Necessary parties
- Representation
- Effect of invalidity
- Trustee liability

3

©2015 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Reinhart
Boerner Van Deuren s.c. Attorneys at Law

Jurisdictional Issues

- Governing law and principal place of administration—determines which laws apply
- Governing law—determines meaning and effect of the terms of a trust, including:
 - Identity of beneficiaries
 - Extent of beneficiaries' interests
 - Allocation of income and principal
 - Creditor access

4

©2015 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Reinhart
Boerner Van Deuren s.c. Attorneys at Law

Jurisdictional Issues (cont.)

- Principal place of administration—governs administrative matters, including:
 - State tax reporting obligations (sometimes)
 - State court jurisdiction
 - State law governing administration of trust

5

©2015 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Reinhart
Boerner Van Deuren s.c. Attorneys at Law

Jurisdictional Issues (cont.)

- When governing instrument is silent
 - Governing law is the law of the jurisdiction having the most significant relationship to the matter at issue
 - Principal place of administration is the Trustee's usual place of business

6

©2015 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Reinhart
Boerner Van Deuren s.c. Attorneys at Law

Nonjudicial Settlement Agreements—When Appropriate?

- Requirements:
 - Interested persons may enter into a binding NJSA with respect to any matter involving a trust
 - NJSA is valid only to the extent it includes terms and conditions that could be properly approved by a court
- Court approval
 - Any interested person may request court approval of NJSA

7

©2015 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Reinhart
Boerner Van Deuren s.c. Attorneys at Law

Nonjudicial Settlement Agreements— When Appropriate? (cont.)

- Permissible subject matter
 - Interpretation or construction of trust terms
 - Approval of a trustee's accounting
 - Direction to a trustee
 - Resignation or appointment of a trustee
 - Trustee's compensation
 - Transfer of a trust's principal place of administration

8

©2015 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Reinhart
Boerner Van Deuren s.c. Attorneys at Law

Nonjudicial Settlement Agreements— When Appropriate? (cont.)

- Liability of a trustee
- Criteria for distribution to a beneficiary where the trust has discretion
- Resolution of administration or distribution disputes
- Investment actions
- Appointment of, and powers granted to, a directing party or a trust protector
- Direction to a directing party or trust protector
- Other

9

©2015 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Reinhart
Boerner Van Deuren s.c. Attorneys at Law

Nonjudicial Settlement Agreements—Necessary Parties

- "Beneficiary"
- "Qualified Beneficiary"
- "Directing Party"
- "Directed Trust Property"
- "Settlor"
- "Trust Protector"

10

©2015 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Reinhart
Boerner Van Deuren s.c. Attorneys at Law

Nonjudicial Settlement Agreements—Representation

- Representation of necessary parties—an interested person may be represented in a NJSA
 - Binding on represented party
 - Trustee is not liable for giving notice, information or an accounting to a represented party

11

©2015 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Reinhart
Boerner Van Deuren s.c. Attorneys at Law

Nonjudicial Settlement Agreements—Representation (cont.)

- Representation may be by:
 - Holder of general power of appointment
 - Fiduciaries/agents/guardians
 - Parents
 - Person appointed by Trustee
 - Person with substantially identical interest
 - Person appointed by court
- No conflicts of interest

12

©2015 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Reinhart
Boerner Van Deuren s.c. Attorneys at Law

Nonjudicial Settlement Agreements—Effect of Invalidity

- NJSA is invalid in any of the following situations:
 - Impermissible subject matter
 - Missing necessary parties
 - Inadequate representation

13

©2015 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Reinhart
Boerner Van Deuren s.c. Attorneys at Law

Nonjudicial Settlement Agreements—Effect of Invalidity (cont.)

- NJSA w/impermissible subject matter:
 - Unenforceable
- NJSA with missing/inadequately represented parties:
 - Unenforceable against missing/inadequately represented parties
 - May or may not be enforceable against parties who signed

14

©2015 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Reinhart
Boerner Van Deuren s.c. Attorneys at Law

Nonjudicial Settlement Agreements—Trustee Liability

- Statute of limitations
 - One year
 - Beneficiary is barred one year from the date the beneficiary or representative was sent a report that adequately discloses the existence of a potential breach of trust
 - Adequate disclosure—provides sufficient information so that the beneficiary or representative knows of the potential claim or should have inquired into its existence

15

©2015 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Reinhart
Boerner Van Deuren s.c. Attorneys at Law

Nonjudicial Settlement Agreements—Trustee Liability (cont.)

- Five years
 - If one-year limit does not apply, a claim for breach of trust must be commenced within five years after the first to occur of:
 - Removal, resignation, death of trustee
 - Termination of beneficiary's interest
 - Termination of the trust

16

©2015 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Reinhart
Boerner Van Deuren s.c. Attorneys at Law

Nonjudicial Settlement Agreements—Trustee Liability (cont.)

- Beneficiary's consent, release or ratification
 - If beneficiary consents to conduct constituting a breach of trust, trustee is not liable to a beneficiary unless:
 - Induced by improper conduct of trustee
 - Beneficiary lacked knowledge of beneficiary's rights or material facts relating to the breach

17

©2015 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Reinhart
Boerner Van Deuren s.c. Attorneys at Law

Nonjudicial Settlement Agreements—Trustee Liability (cont.)

- Reliance on trust instrument
 - Trustee who acts in reasonable reliance on the terms of the trust is not liable for a breach of trust to the extent the breach resulted from the reliance. Reliance may not be justified when:
 - Trustee is aware that the terms of the trust have been clarified or changed by court decree or nonjudicial settlement
 - Trust is ambiguous and Trustee relies on one of several meanings

18

33009615 ©2015 All Rights Reserved
Reinhart Boerner Van Deuren s.c.

Reinhart
Boerner Van Deuren s.c. Attorneys at Law

Questions?

THANK YOU!

