



# Five Key Trust Administration Updates to the Long-Awaited Passage of the Wisconsin Trust Code Trailer Bill

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**THE WISCONSIN TRUST CODE TRAILER BILL**, which became effective at the end of March, clarifies various issues that have arisen since the Wisconsin Trust Code's adoption in 2014.

## THE FOLLOWING ARE FIVE KEY UPDATES TO THE TRUST CODE:

### 1. Non-Judicial Settlement Agreements

Since the Trust Code's adoption, non-judicial settlement agreements (NJSAs) have become an important tool. NJSAs provide great flexibility in administering irrevocable trusts by allowing interested parties to remove trustees, modify beneficial trust provisions, and resolve disputes, to name a few.

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 named in the trust instrument—at least 30 days before an NJSA can become effective.

### 2. 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, the trust's settlor may designate a representative to represent a beneficiary's interests.

### 3. 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 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.

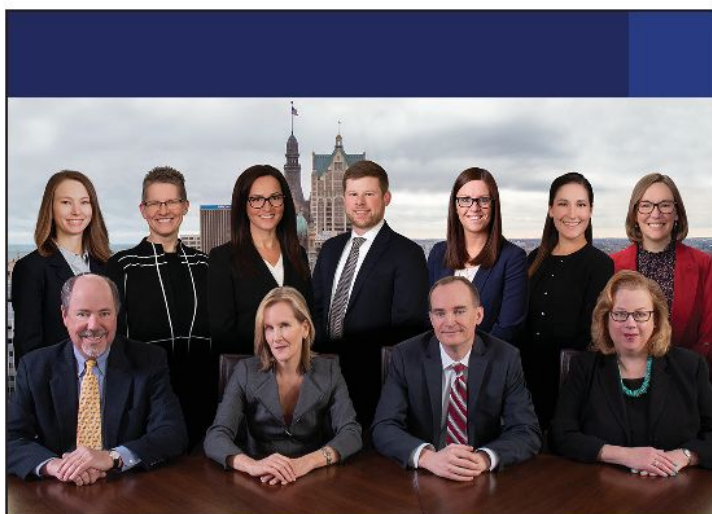
### 4. Trustee's Duty to Inform and Report

The Trailer Bill modifies the Trust Code so that the trustee has 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 his or her interest. 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.

### 5. 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 the Wisconsin Trust Code Trailer Bill or other estate planning matters, please contact attorneys Shannon Toole, Josh LeNoble or another member of Reinhart's Trusts and Estates Team.



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