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Estate Planning Update July 2016 - New Jersey Enacts the Trust Uniform Code

The Uniform Trust Code (UTC) becomes effective in New Jersey on July 17. The UTC will apply to existing trusts as well as to new trusts. The UTC offers flexibility, efficiency in administration and estate planning opportunities not found under prior law. Clients may want to revisit existing trusts, both revocable and irrevocable, to determine whether to take advantage of new estate planning opportunities under the UTC. Attorneys and other advisers should be aware that they may want to override the default provisions of the UTC in certain cases. **Some highlights of the UTC include:**

- *The UTC allows for the modification of an irrevocable trust without a court proceeding.* Among other requirements, the trust must not have charitable beneficiaries and the modification must not be inconsistent with a material purpose of the trust. A modification could be used to adapt an irrevocable trust to changing circumstances of the beneficiaries or to changes in tax laws.
- *The UTC authorizes the use of directed trusts and trust protectors.* A directed trust allows someone other than the trustee to make decisions relating to the trust. The trust could allow a financial adviser to manage trust investments, while a corporate trustee would be responsible for distribution decisions and administration. This provision also can be helpful where the trust holds illiquid assets or concentrated positions, such as family business interests, residences or large blocks of publicly traded equities. Also, a trust can now authorize a person other than the trustee to direct modification or termination of the trust.
- *The UTC introduces "secret" or "quiet" trusts.* A trust may now provide that even some adult beneficiaries are not entitled to information about the trust for a significant period of time. The UTC does require that if a beneficiary who is age 35 or older becomes aware of the trust, the trustee must provide the beneficiary with the trust instrument and information regarding the investment and management of the trust property upon request.
- *Other provisions.* The UTC affirms the use of special needs trusts for individuals with disabilities and strengthens the creditor protection of special needs trusts. The UTC enables the nonjudicial settlement of trust accounts and other matters related to trust administration. The UTC also protects trustees by providing a six-month limitations period for challenges to trustee actions as long as certain requirements are met.

Laws similar to the New Jersey UTC have been enacted in many other states, including our footprint states of Massachusetts and Florida. This firmwide experience will be useful to our New Jersey colleagues and their clients.