Winter 2019/2020

Estate Planning Update Winter 2019/2020 - Connecticut Modernizes Its Trust Laws, Offering New Planning Opportunities

Connecticut recently adopted new trust laws that go into effect on January 1, 2020. The Uniform Trust Code (which was promulgated in 2000, and has been adopted in some form in more than 30 other states, including Florida, Massachusetts and New Jersey) modernizes Connecticut's trust law and provides a framework for establishing directed trusts and asset protection trusts. Day Pitney has been at the forefront of analyzing the new trust laws and educating attorneys and fiduciaries about their potential benefits as well as possible changes to trustees' responsibilities.

Our clients, whether they are considering making gifts to trusts, are donors or beneficiaries of existing trusts, or serve as trustees, may be interested in the possibilities offered by the new trust laws. Highlights of the Connecticut Uniform Trust Code are summarized below.

Directed Trusts

A directed trust facilitates planning for special beneficiary circumstances or special assets, such as a closely held business, by allowing different fiduciaries to be in charge of different aspects of trust administration. Historically, the trustee of a trust governed by Connecticut law was solely responsible for the trust's administration, including the investment, management and distribution of assets. Now, under the Connecticut Uniform Directed Trust Act, the responsibilities of a trustee may be divided among two (or more) fiduciaries, with the fiduciaries other than the trustee known as "trust directors." The fiduciaries may manage different aspects of the trust administration. For example, a trusted family member or friend may be responsible for distributions to beneficiaries as the "distribution director," while an individual, bank or trust company may be responsible for the investment of trust assets as the "investment director." Trust directors have the same fiduciary duties as trustees.

Asset Protection Trusts

An asset protection trust is a vehicle for potentially protecting one's own assets from creditors while retaining the possibility of accessing those assets in the future. Under the new Connecticut Qualified Dispositions in Trust Act, an individual may establish a self-settled asset protection trust (also called an APT) with his or her own assets and remain a permissible beneficiary of the trust. Assets held in a properly structured APT generally are not reachable by creditors. The new law sets forth a number of stringent requirements that must be followed for a trust to qualify as an APT and not run afoul of laws against placing assets out of the reach of creditors.

Dynasty Trusts

One of the benefits of trusts, demonstrated over more than a century, is the ability to make property available for multiple generations of beneficiaries with protection from creditors and from constantly changing tax laws. For these "dynasty" trusts, it is often the case that the longer the trust can last, the better. Connecticut trusts that become irrevocable on or after January 1, 2020, will be able to last as long as 800 years. In the past, Connecticut irrevocable trusts had to terminate approximately 90 years after they were created.

Notices to Beneficiaries

Trustees should be aware of changes to notice requirements. The new law requires the trustee to keep certain trust beneficiaries (or individuals appointed to receive notice on behalf of beneficiaries) reasonably informed about the trust, to give notices when the trust becomes irrevocable or the trustee changes, and in some circumstances to provide annual reports about the trust to the beneficiaries.

Trust Modification and Termination

The new trust laws offer additional flexibility for the modification or termination of irrevocable trusts. A court may modify or terminate an irrevocable trust where the grantor, trustees and beneficiaries all consent. In certain circumstances, beneficiaries may seek to modify erroneous or outdated terms of a trust without consent of the grantor if the court concludes the modification would be in line with the purposes of the trust.

If you would like to discuss Connecticut's Uniform Trust Code and the estate planning opportunities it provides, please contact your Day Pitney estate planning attorney.