

CONNECTICUT ENACTS HISTORIC AND SWEEPING TRUST LEGISLATION

June 4, 2019

The Connecticut legislature, on June 5, 2019, enacted HB 7104, an Act Concerning the Connecticut Uniform Trust Code. This massive bill, over 90 pages in length, adopts four major categories of revisions to trust law: Dynasty Trusts, Domestic Asset Protection Trusts, Directed Trusts and Statutory Trust Rules. Kelley Galica Peck, a partner in Cummings & Lockwood's Private Clients Group who is based in the Firm's West Hartford office, was instrumental in the drafting and proofing of The Act.

According to Laura Beck, Chair of Cummings & Lockwood's Private Clients Group, "the recently enacted trust legislation by the Connecticut legislature is historic and sweeping in nature and will greatly enhance the administration of trusts, as well as create significant estate planning opportunities for our clients in Connecticut."

"Connecticut residents will benefit from this legislation in a variety of ways:

- First, the bill permits the creation of longer term trusts in Connecticut, which will allow families to protect their assets in trust through multiple generations.
- Second, the bill enables the use of asset protection trusts in Connecticut, as in 19 other states, which will allow residents to protect their assets from unknown future liabilities.
- Third, the bill adopts comprehensive provisions to enable the use of trust directors in Connecticut who can make investment decisions, enhancing the flexibility of trusts to hold unique assets, such as real estate and family businesses.
- Fourth, the bill adopts 80 new statutes providing trustees and beneficiaries greater guidance in the management of trusts."

Beck further cautioned that while "the new law provides many new opportunities for planning, it also contains some traps for the unwary and the potential for an unexpected impact on existing estate plans. Once the law goes into effect, clients should be consulting with their legal advisors to determine how this new law may impact their current plan and whether it creates new planning opportunities."

The bill is expected to become law when the Governor signs it or, absent action from the Governor, fifteen days after it is presented to him for signature. It is not expected that the Governor would veto the bill. The bill, assuming it becomes law, will be effective as of January 1, 2020.

Below is an analysis of the four major categories of revisions to Connecticut trust law under the from this important legislation.

Dynasty Trusts

The bill permits the creation of Dynasty Trusts in Connecticut, which will allow trusts to continue through multiple generations. Prior to enactment, the usual duration of a trust was limited to about 110 years. It is now increased to 800 years. This new opportunity for multi-generational wealth planning in Connecticut is a significant benefit.

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Most Dynasty Trusts can be funded with assets that will remain exempt from estate and generation-skipping transfer taxes so that wealth can pass to the benefit of each generation without the erosion of transfer taxes. Approximately 20 other states permit Dynasty Trusts, and in the past Connecticut residents who wanted to avail themselves of this opportunity in most cases had to hire corporate trust companies in other states to act as trustee. Now residents can retain the assets with an individual or professional trustee right here in Connecticut. This should appreciably diminish the on-going cost of creating and maintaining Dynasty trusts.

Domestic Asset Protection Trusts

People often consider the opportunity to protect their assets in complex, off-shore trust arrangements. The expense of such planning tends to be prohibitive for most people. Approximately 21 states have similar legislation that allows an individual to establish a trust within the state and be a beneficiary of that trust while having the trust property protected from creditors. To take advantage of these opportunities, residents had to hire professional trustees in other states and had to be concerned that Connecticut would not respect the law of the other states. The bill now enables the use of this type of asset protection trust in Connecticut. The bill does not allow a person to protect all assets or to protect against existing creditors, but allows for future protection against unknown liabilities. There are a number of steps that must be met in order to qualify for these trusts, but when done properly they will enable individuals to protect their own assets in a fashion similar to the way limited liability companies are used to protect business assets.

Directed Trusts

The bill also adopts comprehensive provisions to enable the use of trust directors in Connecticut. A trust director can be given special and limited responsibilities that traditionally were held by the trustee. Most common responsibilities relate to investment activity. This will allow for the appointment of a trustee to make distribution decisions, but allow for a specialized professional to make investment decisions. This also will open a broad range of opportunities for those who wish to place a closely-held business interest in a trust, but need a fiduciary with special skills to manage the business. It also will enable the retention of concentrated positions, whether investments or a business or real property, that a trustee otherwise might be unwilling to hold.

Statutory Trust Rules

The bill also adopts 80 new statutes providing trustees and beneficiaries greater guidance in the management of trusts. It imposes greater notice requirement to beneficiaries. At the same time, however, it permits the appointment of an individual to receive notice on behalf of the beneficiary if the beneficiary is not suited to receive and deal with the management of the trust (such as for a young or disabled beneficiary). It also permits trustees and beneficiaries to obtain court approval to modify or terminate trusts when the provisions are either erroneous or no longer make sense based on changing circumstances. The bill also provides greater access to the probate courts for trust matters, including the opportunity to obtain pre-approval of a court for actions by the trustee and the use of non-judicial settlement to resolve trust matters. These rules do impose some greater responsibilities on trustees and greater opportunities for beneficiaries, but most of all clarifies some of the very murky questions that have been unresolved in Connecticut law related to trusts.