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The New New Jersey Uniform Trust Code: Creating Uniformity for Beneficiaries, Trustees and the Professionals that Advise Them

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As an estate planning attorney, it is hard to contain my excitement that a version of the Uniform Trust Code ("NJUTC") was enacted in New Jersey on January 19, 2016 with an effective date of July 17, 2016. With its passage, New Jersey joins at least 28 other states (including our neighbor, Pennsylvania) that have enacted legislation based on the model legislation originally prepared in 2000 by the Uniform Law Commission.

Why the giddiness? In our transient world in which family members and advisors are scattered across the nation (and globe), the NJUTC allows for a level of confidence that the administration of a trust may be handled similarly in multiple states. The objective of the NJUTC is to provide consistency and fairness for those who create trusts (known as settlors or testators), beneficiaries (individuals who receive the economic benefit of a trust) and trustees (individuals and institutions that administer a trust). This feature allows estate planning attorneys, and other advisors, to better serve their clients and provides more certainty for those serving as trustees.

Before delving into more detail about of the benefits of the NJUTC, let's answer a fundamental question, what is a trust? A trust is traditionally established through a legal document (inter vivos or living trusts created during lifetime and testamentary trusts created under a Will) that empowers a trustee to manage and oversee assets for the benefit of an individual or charity. For example, one may create a trust during his/her lifetime that gives legal ownership of one's house or another asset (e.g. brokerage account) to a trustee. The trustee has the legal responsibility to manage and oversee the trust asset for the benefit of his or her children, as the trust's beneficiaries. Of course, a charitable organization may be a beneficiary too. For example, a settlor could be the beneficiary for a term of years (e.g. 10 years) and then a charity would receive the remaining assets (this is known as a Charitable Remainder Trust). The terms of the trust establish how and when the trustee may grant the economic interest of the trust assets (e.g. use of the house or access to the income earned on the investments) to the trust beneficiaries.

Now that we have covered the basics of how a trust operates and the players involved, let's focus on a few highlights of what the NJUTC actually does:

- Establishes that upon reaching the age of 35, if a beneficiary becomes aware of the trust, the trustee must provide the beneficiary both the trust instrument and information regarding the investment and management of the trust if requested by the beneficiary.
- Clarifies and affirms the ability to establish Special Needs Trusts for individuals with disabilities and strengthens the protection against creditors' attempts to reach the assets held in a Special Needs Trust.
- Establishes a means of determining which jurisdiction's law governs a trust and location of a trust's principal place of administration.
- Enables the non-judicial settlement of trust accounts and other matters related to trust

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administration; provided, such action is not contrary to a material purpose of the trust or public policy. This eliminates the need to go through the cost and delay of seeking court approval for action such as (a) interpreting the terms of a trust; (b) approving a trustee's accounting; (c) approving or restraining an action of a trustee; (d) approving the resignation or appointment of a trustee and determining a trustee's compensation; (e) transferring the principal place of administration of a trust; and (f) establishing trustee liability for an action related to a trust.

- Defines who may represent and legally bind another individual in matters related to the administration of a trust (e.g. a cousin may be able to virtually represent (speak for and legally bind) another cousin under a non-judicial agreement or a parent as to his or her minor or unborn child).
- Establishes the method for creating, modifying or terminating a trust, including, but not limited to allowing for the modification or termination of a trust even if the trust has a spend thrift clause (limiting creditor access to trust assets) and allowing for the modification or termination of a trust if the trustee and beneficiaries agree (the settlor does not have to agree).
- Establishes the duties of a trustee and how a trustee is appointed, declines appointment or is removed. For the most part, the NJUTC restates current law. However, it does make a few changes. For example, it clarifies the relationship between a trustee and investment advisor and the responsibilities of each to direct and manage the trust assets.

Unlike most statutes, that only apply prospectively, the NJUTC applies retroactively, with some limited exceptions, to trusts created before, on or after the effective date – in sum, potentially to all trusts that exist or will be created. Nonetheless, the enactment of the NJUTC does not necessarily mean you must revise your estate plan or seek modification of an existing trust. Obermayer, and other firms that follow best practices, likely have already addressed many of the benefits provided by the NJUTC. The enactment of this legislation, however, should motivate many to double check that their estate plan is up-to-date. Regardless of the passage of new state laws, it is always wise to review an estate plan whenever you are contemplating changing the beneficiaries, trustees, executors or agents of your estate, whenever a life altering event occurs (e.g. marriage, divorce, new job or retirement), or due to the passage of time. One rule of thumb is to review your plan every five years to affirm everything is in order.

To learn more about the New Jersey Uniform Trust Code and estate planning in general, please contact an attorney in our Trust & Estates Practice Group:

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