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ESTATE PLANNING ALERT: CONNECTICUT LEGISLATURE PASSES OVERHAUL OF CONNECTICUT TRUST LAW

Effective January 1, 2020, there will be significant changes to Connecticut law concerning the formation, administration and termination of trusts. The recently adopted Connecticut Uniform Trust Code modernizes current law and establishes standards for individuals serving as trustees or in other fiduciary capacities. The new law makes our state an appealing venue for trusts by including an extended rule against perpetuities period and guidance on the formation of self-settled trusts. Although a complete summary of the new law is beyond the scope of this alert, some key highlights include the following:

■ **Dynasty Trust Planning.** A trust that continues for multiple generations is sometimes called a "Dynasty Trust." In previous years, Connecticut law provided that non-charitable trusts could not exist in perpetuity and had to terminate within approximately 90 years of creation. The possibility of a Dynasty Trust that extended beyond the lives of the grantor's grandchildren was unachievable. Connecticut's limited trust term often resulted in a grantor's inability to plan for future generations without having to hire an out-of-state

trustee. States with more developed trust laws, like Florida or Delaware, became increasingly attractive because they authorized trust terms that could last significantly longer (360 years in Florida, in perpetuity in Delaware). The new law makes it possible to create a trust in Connecticut that can last up to 800 years, thus providing an opportunity for creating Dynasty Trusts. As a result, Connecticut residents no longer have to turn to other jurisdictions to create and administer Dynasty Trusts.

■ **Directed Trusts.** Prior to this legislation, trustees retained full responsibility over how trust assets were managed, invested and distributed. The new legislation allows a trustee's duties to be allocated between the trustee and other individuals who may be better able to carry out certain trust objectives. By establishing a Directed Trust, a grantor can now appoint a trust director, that is, a non-trustee individual with authority to manage a specific part of the trust administration. For example, a grantor can appoint a trusted family member as trustee to oversee

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distributions, and appoint a different individual or a trust company as the trust director to handle investments. A trust director is subject to the same rules and has the same fiduciary duty and exposure to liability as a similarly situated trustee. The new law facilitates the use of trust directors in Directed Trusts by authorizing a division of responsibilities between the trust director and trustees.

- **Asset Protection Trusts.** The new law enables the creation of “Self-Settled Asset Protection Trusts.” A Self-Settled Asset Protection Trust is a trust created by an individual for the benefit of himself or herself, which can shield assets from the claims of creditors. While the Self-Settled Asset Protection Trust is appealing to individuals looking to insulate themselves from potential unknown liabilities, the new law makes it clear that stringent requirements must be met when creating an asset protection trust for the benefit of the grantor so as not to run afoul of fraudulent transfer laws. Among the prerequisites, the trust must:
 - 1) be governed under Connecticut law; 2) be irrevocable; 3) include a spendthrift clause (i.e., a provision that prevents the beneficiary from assigning his or her interest in the trust); and 4) appoint an independent trustee to make distributions to the individual creating the trust. Use of a Self-Settled Asset Protection Trust is a

strategy that advisors may recommend to better protect their client’s assets from future creditors.

- **Income Tax Reimbursement.** Currently, if a trust permits the reimbursement of income taxes to the grantor of the trust, the principal of the trust can be subject to creditor claims. The new law makes it explicitly clear that such reimbursement authority does not subject the trust assets to claims of creditors as long as the trust agreement expressly provides the trustee with the requisite discretion to reimburse the grantor. Accordingly, an irrevocable trust can permit reimbursement of income taxes to the grantor without jeopardizing trust assets or putting them within reach of uninvited creditors.

Highlighted below are various rules from the new law that will impact the future of trust management and administration here in Connecticut:

- **Non-Judicial Settlement Agreements.** As enacted, the law allows interested parties to enter into a binding, non-judicial settlement agreement in matters relating to a trust, such as interpretation of the trust agreement, trustee resignation and appointment, trust accountings, and trustee compensation. The law prohibits interested parties from modifying or terminating a trust by way of a non-judicial settlement agreement.

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This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.

- **Notice to Beneficiaries.** The law imposes new reporting requirements on the trustee to keep each qualified beneficiary (or the beneficiary's designated representative who is qualified to receive notice on behalf of the beneficiary) reasonably informed about the trust's administration, and to provide an annual report about the trust property upon request.
- **Trust Combination and Division.** After providing proper notice, a trustee of an *inter vivos* trust is permitted to combine the trust with other trusts or to divide the trust as needed. For testamentary trusts, the trustee must seek court approval.
- **Modification of Irrevocable Trusts.** Certain irrevocable trusts may be modified or terminated if the court finds that the grantor, trustees and beneficiaries all consent. In some circumstances, trust beneficiaries may modify a trust without the consent of the grantor if the court concludes that modification is consistent with the purpose of the trust.
- **Transferring Trusts Out of State.** The legislation also prescribes the requisite process for transferring a

Connecticut trust to another jurisdiction. For certain *inter vivos* trusts, the trustees must provide notice to beneficiaries in advance of a transfer and transfers regarding testamentary trusts will require probate court approval. Charitable trusts are prohibited from transferring to another jurisdiction outside of the United States.

A note about effective dates: In general, the new Connecticut Uniform Trust Code applies to all Connecticut trusts. However, there are specific exceptions to this rule. For example, the provisions relating to enhanced notice and disclosure to trust beneficiaries apply only to irrevocable trusts created on or after January 1, 2020, and to revocable trusts that become irrevocable on or after January 1, 2020.

While this alert provides a summary of the key changes under the new legislation, we encourage you to contact a Wiggin and Dana attorney if you have any questions about how the new law will impact current and future estate plans. As with any new legislation, we will continue to develop strategies that accommodate client needs and maximize planning opportunities under the new law.