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NONJUDICIAL SETTLEMENT AGREEMENTS IN CONNECTICUT

Sometimes, a Trustee of an irrevocable trust needs guidance on properly administering a trust or seeking formal approval for their actions. Historically, in Connecticut, the Probate Courts have served that function. Probate Courts provide a forum for a Trustee to raise questions or to seek formal approval of the Trustee's actions. That could include seeking clarification on the terms of the trust, appointing a successor Trustee, or presenting a formal accounting.

Under Connecticut's Trust Code, which became effective January 1, 2020, some matters can now be handled outside of court through "nonjudicial settlement agreements," which are "binding" on all "interested persons."

Under **Connecticut General Statutes § 45a-499k**, interested persons may sign a nonjudicial settlement agreement with respect to any matter involving an *inter vivos* trust. "Interested persons" are all parties whose consent would be required had the agreement been presented to a judge. They include the Trustee, the current beneficiaries of the trust, and the contingent beneficiaries (all of whom, except for the Trustee, may be represented by an adult guardian or conservator, if the beneficiary is a minor or disabled).

Although Section 45a-499k is broadly worded to allow "any matter involving an *inter vivos* trust," so long as it does not "violate a material purpose" of the trust, the statute provides a list of specific types of matters that a nonjudicial settlement agreement may resolve. Although the list is not intended to be exhaustive, Trustees and their counsel will be most comfortable relying on Section 45a-499k for those matters specifically identified in the statute.

The following are a few examples from the list of matters under Section 45a-499k.

EXAMPLES

Ambiguous Terms: While reviewing the trust agreement, a Trustee realizes there are ambiguous or conflicting distribution standards and needs direction. Instead of relying on her interpretation, the Trustee may prefer that everyone agree as to the exact meaning of the terms. A nonjudicial settlement agreement can resolve the ambiguity moving forward.

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NONJUDICIAL SETTLEMENT AGREEMENTS IN CONNECTICUT

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Accounting Approval: A Trustee seeks to provide the beneficiaries an accounting for his actions over the past several years to cut off any liability for those actions. He can provide the accounting to the beneficiaries, ask them to approve it, and obtain a binding approval without involving the court. Similarly, the parties may agree to release or indemnify the Trustee for those actions he may have taken during his tenure.

Trustee Action: A beneficiary requests that the Trustee make changes to the trust's portfolio, refrain from selling certain assets, or assume additional powers to invest in alternative assets. A nonjudicial settlement agreement can either direct or restrict the Trustee from taking such action and may grant the Trustee such requested powers.

Trustee Succession: The relationship among the Trustee and the beneficiaries is strained, the beneficiaries would like a new Trustee to serve, and the current Trustee is willing to resign. Alternatively, the trust fails to name a successor Trustee, or all named successors are unable to serve, and the parties seek to clarify successorship. In either of these scenarios, the parties may agree to appoint a successor not named in the document or agree to the resignation and replacement of the current Trustee.

Change of Situs: The Trustee and beneficiaries would like to move the trust from Connecticut to another jurisdiction that may provide a benefit to all parties. The parties may agree to move the principal place of administration to another state by nonjudicial settlement agreement.

Additional Notes. Nonjudicial settlement agreements are intended for matters related to the administration of the trust. They may not "modify" or "terminate" a trust. That distinction can be a bit gray in practice; however, "modification" and "termination" of trusts are addressed in other statutory sections. Any interested party may submit a nonjudicial settlement agreement to the relevant Probate Court to determine whether the agreement was proper. The statute does not state expressly whether a Probate Court review must occur before the agreement is signed, or whether a Court can review an agreement after the agreement has been signed.

Nonjudicial settlement agreements are intended for matters related to the administration of a trust and can provide Trustees and beneficiaries with flexibility for certain types of matters without the added expense of obtaining court approval. To learn more, you are encouraged to reach out to your Wiggin and Dana attorney with any questions.

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.