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THE CONNECTICUT UNIFORM TRUST DECANTING ACT: WHAT YOU NEED TO KNOW

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In a [previous Wiggin and Dana advisory](#), we highlighted a new “decanting” statute in Connecticut. As described in that advisory, effective January 1, 2025, Connecticut will specifically authorize “decanting” the assets of an otherwise irrevocable trust into a new trust with improved terms. The statute outlines precisely what kinds of trusts can and cannot be decanted, and the mechanics of getting a decanting done.

We now dive deeper into the statute, outlining the limitations, the types of trusts that can be decanted, administrative requirements, and any liability and limitations of decanting under the new statute. But first, we answer the question *why decant?*

WHY DECANT?

Many of our clients wish to plan their estates to save taxes, protect assets from the claims of creditors or divorcing spouse and/or establish a multi-generational legacy. Achieving these goals almost always entails the use of a trust, and in most circumstances, to achieve the desired goal, the trust must be irrevocable. While we work with our clients to ensure that the trust is designed to stand the test of time, the sad fact is that no one can foresee every possible change in circumstances that might make a family wish that the terms of the trust could be modified to address the changed circumstances. With the advent of the decanting statute, in many cases, that wish can be granted.

Examples of situations in which decanting has been useful to our clients include:

- To remove provisions of an old trust that could subject the assets of the trust to the claims of a beneficiary’s creditors or a beneficiary’s divorcing spouse
- To narrow the class of beneficiaries of the trust
- To qualify the trust for various tax benefits
- To modify the trust to better carry out the grantor’s intent
- To fix an error in the trust.

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WHAT ARE THE LIMITS?

The theory underpinning decanting is that if a trustee has broad discretion to make a distribution to a set of beneficiaries, that discretion should also authorize the lesser-included power to make a distribution in further trust for that set of beneficiaries. Important limits flow from this principle, including the following:

1. Decanting generally may not be used to add beneficiaries to the new trust who were not also beneficiaries of the old trust.
2. A decanting generally may be used to narrow the class of beneficiaries to a smaller group, or to place limits on how and when a beneficiary may receive distributions from the trust.

TRUSTS COVERED UNDER THE NEW LAW

The Connecticut Uniform Trust Decanting Act (the "Act") will allow decanting of irrevocable trusts, whether testamentary or *inter vivos*, or under limited circumstances, revocable trusts, established before, on or after January 1, 2025, that have a principal place of administration in Connecticut or are governed solely or substantially under Connecticut law. However, such a trust may only avail itself of the decanting statute if it grants a trustee thereof either "expanded distributive discretion" or "limited distributive discretion" over the trust principal.

A trustee has expanded distributive discretion if he, she or it has unlimited discretion to distribute trust principal to one or more beneficiaries of the trust. A trustee has limited distributive discretion if he, she or it has discretion to distribute trust principal, but such discretion is limited by either an ascertainable standard or a reasonably definite standard. The type of discretion a trustee has matters as the Act permits a trustee with unlimited discretion to make certain changes that a trustee with limited discretion cannot make.

Regardless of the distribution standards, the Act does not allow the decanting of (a) statutory trusts established under the Connecticut Statutory Trust Act and (b) wholly charitable trusts, though it does set rules for the decanting of trusts that contain charitable interests and permits the decanting of animal trusts. The Act also establishes specific standards for decanting involving special needs trusts for beneficiaries with a disability.

DECANTING UNDER THE NEW LAW

Under the new law, a trustee (other than a trustee who is the grantor or beneficiary) may exercise the decanting power without the consent of any person and without court approval. However, for trusts created under a will, an exercise of the decanting power must be approved by the probate court. An exercise of the decanting power must be in a record signed by the trustee. Such record must identify the trust being decanted (which the statute calls the "first trust"), the new trust (which the statute calls the "second trust") and state the property of the first trust being distributed to the new trust and the property, if any, that remains in the first trust.

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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.

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The trustee must give sixty (60) days advance notice of the intended exercise of the decanting power to the beneficiaries and certain others. Such notice must specify the manner in which the trustee intends to exercise the decanting power, the proposed effective date for exercise of the power, and must include a copy of the first trust and the second trust. The failure to give required notice generally does not invalidate the decanting if the trustee complied with certain notice provisions under the Connecticut Uniform Trust Code. The decanting power may be exercised before the expiration of the 60-day notice period if all persons entitled to receive notice waive the period in a signed record.

LIABILITY AND LIMITATIONS UNDER THE NEW LAW

While the Act makes decanting more accessible, it sets in place protections, limitations and guardrails for fiduciaries and all persons using decanting as a planning tool. Note the Act does not create or imply a duty to decant. The Act sets limits on decanting power to avoid unintended tax consequences and includes a saving provision to address a decanting that does not comply with all of its requirements. Moreover, trustees cannot exploit decanting to reduce their liability as the Act generally prohibits a second trust from protecting a fiduciary from liability for breach of trust to a greater extent than the first trust. However, a second trust may provide for indemnification of the first trust's trustee for any liability or claim that would have been payable from the first trust if the decanting had not occurred. The Act bars trustees from exercising the decanting power to the extent the first trust expressly prohibits decanting or prohibits a trustee from using authority under state law to modify the trust or distribute any part of its principal to another trust. Trustees and other persons who reasonably rely on the validity of a prior decanting performed under the Act, another state law, or the law of another jurisdiction are not liable for any action or failure to act as a result of the reliance.

SUMMARY

The passage of the new law is indeed welcome news. It will create many planning opportunities for trustees who want to modify outdated or undesirable trust terms, and eliminate, in most, if not in all instances, the burden of changing the situs of Connecticut trusts to another state with a decanting statutory scheme to modify the trusts' terms or distribute first trust property to a second trust. Consider discussing decanting and other planning strategies with your Wiggin and Dana attorney.