

WILLMS, S.C.

LAW FIRM

TO: Clients and Friends of Willms, S.C.

FROM: Andrew J. Willms

DATE: November 27, 2013

RE: Wisconsin's Laws Governing Trusts to Undergo Major Revision

For the first time since 1972, the rules governing trusts in the state of Wisconsin are on the verge of a major overhaul. The Wisconsin State Senate and State Assembly have both voted in favor of the new Wisconsin Uniform Trust Code, and Governor Walker has indicated that he plans to sign the legislation. If signed by the Governor, this law would then go into effect at some point in the summer of next year.

The new law is intended to modernize Wisconsin's Trust Code by updating the definitions of what a trust is, the roles of the trustees, the roles of the beneficiaries, and the rules governing how Wisconsin trusts are administered and distributed. It is based in large part on the national Uniform Trust Code, which was drafted by the National Conference of Commissioners on Uniform State Laws, and which has already been adopted in part or in whole by 27 states, including Florida.

If it becomes law, Wisconsin's new Uniform Trust Code will make several important changes to the laws governing the use, administration, and distribution of both revocable and irrevocable trusts in Wisconsin. Some of these changes are as follows.

1. The new Trust Code will allow the provisions governing the administration of an irrevocable trust to be changed by creating a new trust agreement and transferring the assets of the old trust into the new one, provided specified preconditions are satisfied.
2. The new Trust Code will allow people to create a trust to pay for expenses associated with the care of their pets after they die.
3. The new Trust Code will allow a trust agreement to divide responsibility for (i) administration of the Trust; (ii) investment of Trust assets, and (iii) decisions pertaining to trust distributions, between distinct trustees at the same time. Currently, trustees are responsible for all three areas at the same time.

4. The new Trust Code will provide that a testamentary trust is not subject to continuing judicial supervision unless so ordered by the court. Under current law, a trust established by a deceased person's Will (called a "testamentary trust") is subject to continuing court supervision.
5. The new Trust Code allows a trust agreement to grant a "Trust Protector" (who may or may not also be a Trustee) the authority to undertake a variety of acts, such as:
 - a. Amending the terms of an otherwise irrevocable trust agreement;
 - b. Approving distributions to trust beneficiaries before they are made;
 - c. Eliminating or modifying the interests of a beneficiary, and adding new beneficiaries;
 - d. Removing, replacing, or appointing a trustee or successor trustee; and
 - e. Terminating the trust.

In sum, Wisconsin's new Trust Code significantly enhances the benefits associated with the establishment and funding of a trust for Wisconsinites. It also creates new opportunities to modify existing trusts that are otherwise irrevocable. If you would like to learn how you could take advantage of this important new law through either modifying your existing trust or creating a new trust, please call our office to schedule an appointment.

END OF MEMO