

WISCONSIN TRUST CODE IN ACTION – KEY ISSUES AFFECTING TRUSTEES

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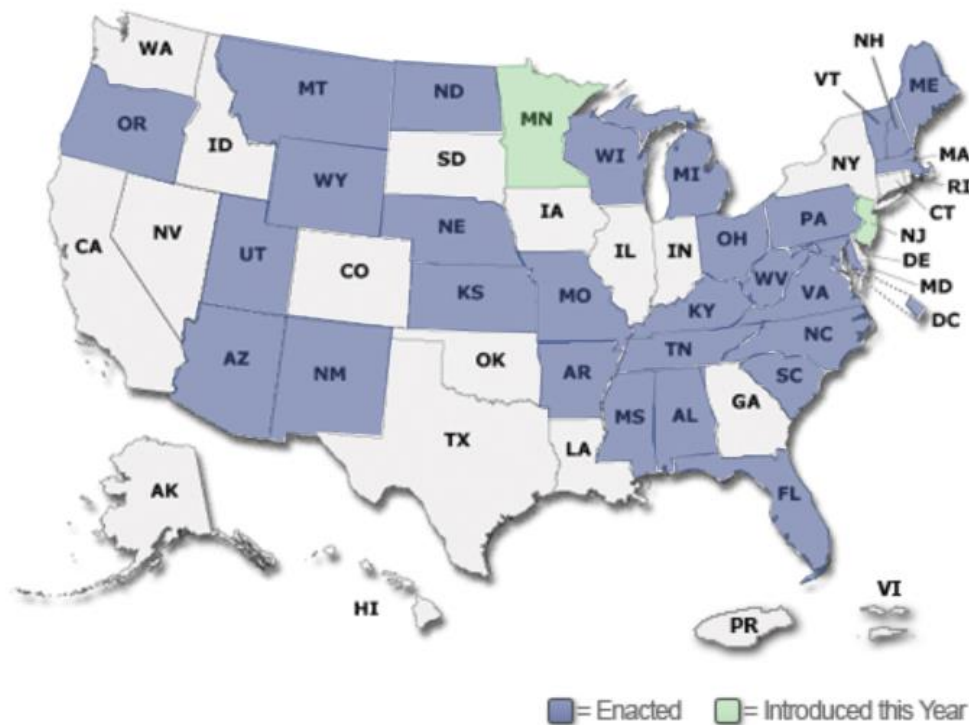
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Agenda

- What Happened on July 1, 2014?
- Significant Issues Implementing the Wisconsin Trust Code (WTC)
 - Qualified Beneficiaries
 - Modifying and Terminating Trusts
 - Nonjudicial Settlement Agreements
 - Credit Shelter Trusts
 - Directed Trusts
 - Duty to Inform and Report
 - ILITs
- What's next?

UTC Status

- WTC is based on UTC
- 31 jurisdictions have now adopted the UTC
- Minnesota just passed its version of the UTC effective 1/1/2016



What Happened

- 2013 Wisconsin Act 92 ("WTC") signed December 13, 2013; effective July 1, 2014
- Complete restatement of Wisconsin Statute Chapter 701
- Applies to existing and newly created trusts; a court may apply the new law to proceedings commenced before July 1, 2014
- Primarily a default statute; mandatory provisions in §701.0105

WTC Impact on Trust Administration

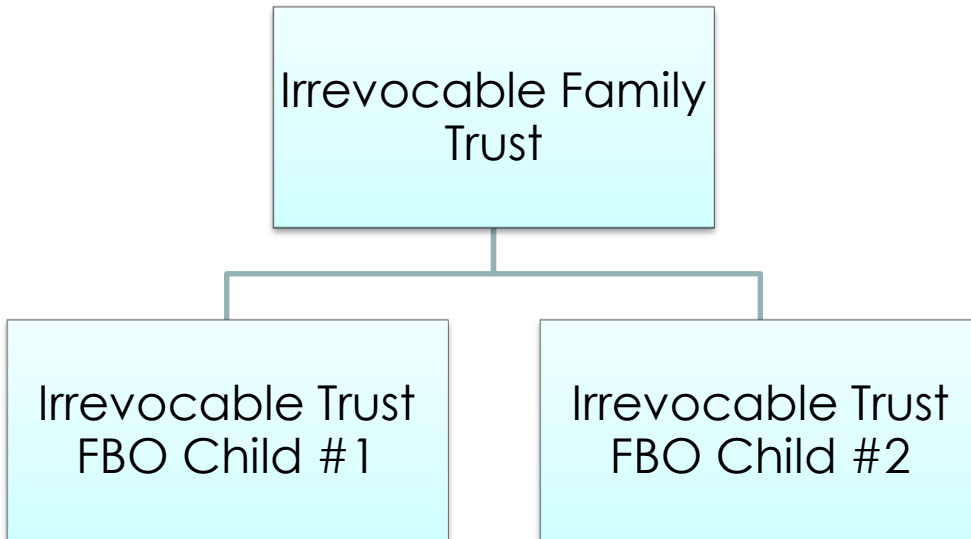
1. Identify Key Parties
2. Identify Applicable Law
3. Duty to Inform and Report
4. New Administration Issues
5. Specialty Trusts
6. Directed Trusts

DEFINITION OF QUALIFIED BENEFICIARY (QB)

A QB is:

1. Current Beneficiary (CB)
2. Ignore powers of appointment
3. Persons who will become a current beneficiary if the interests of the CB terminate without causing the trust to terminate
4. The current beneficiaries if the trust terminates

Definition of QB



- Mandatory income S/S
- Discretionary principal to S/S and issue
- S/S has limited POA

- Discretionary income and principal to child and child's issue
- Limited POA
- Outright to grandchildren (@ 30) when child dies

Default beneficiaries: 50% to H's heirs at law; 50% to W's heirs at law

Modification /Termination of Trust

1. 701.0411 – Modify / Termination by Consent
2. 701.0412 – Unanticipated Circumstances
3. 701.0413 – *Cy près*
4. 701.0414 – Uneconomic Trust
5. 701.0415 – Correct Mistakes
6. 701.0416 – Achieve Settlor's Tax Objective
7. 701.0417 – Combine or Divide Trusts
8. 701.0418 - Decanting

Nonjudicial Settlement Agreements (NJSA)

1. NJSA = binding agreement w/r/t any matter involving a trust; must include terms that could be approved by a court
2. Interested persons
3. Matters that can be addressed
4. Can you modify or terminate a trust using a NJSA?

Credit Shelter Trust

Year	Federal Estate & Gift Tax Exemption Equivalent	Wisconsin Death Tax & Wis. Gift Tax Exemption	Max. Fed. Estate / Gift Tax Rates
1985	\$400,000	Inheritance tax and gift tax; tax rate, exemption based on relationship of recipient to transferor	55%
1986	\$500,000	Same	55%
1987 – 1997	\$600,000	Inheritance tax phased out over 5 years beginning in 1987; beginning in 1992 not gift tax and Wis. estate tax is a “pick-up” tax based on federal credit for state death taxes	55%
1998	\$625,000	“Pick-up” estate tax based on federal credit	55%
1999	\$650,000	Same	55%
2000 – 2001	\$675,000	Same	55%
2002 - 2003	\$1,000,000	Decoupled estate tax; \$675,000 Wis. exemption	50% - 49%
2004 – 2005	\$1,500,000	Same	48% - 47%
2006 – 2007	\$2,000,000	Same	46% - 45%
2008	\$2,000,000	Wisconsin estate tax sunsets and is eliminated	45%
2009	\$3,500,000	n/a	45%
2010	\$5,000,000 or \$0	n/a	35% or 0%
2011	\$5,000,000	n/a	35%
2012	\$5,120,000	n/a	35%
2013	\$5,250,000	n/a	40%
2014	\$5,340,000	n/a	40%
2015	\$5,430,000	n/a	40%
2016 and beyond	Future exemption subject to inflation adjustment	Anticipate no change	40%

Credit Shelter Trust

- Credit Shelter Trust Problem
- Possible Solutions:
 1. Discretionary Distribution
 2. Disclaimer
 3. NJSA
 4. Court Modification / Termination

Directed Trusts

- Revocable trusts may be directed by the settlor
- Irrevocable trusts may split investment or distribution decisions between a Trustee and a Directing Party (DP). A DP is a fiduciary.
- Why consider a directed trust?
 - Special assets
 - Outside investment advisor
 - Distribution decisions

Directed Trusts (cont.)

- Directed trust property ("DTP")
 - DP shall manage DTP and income earned by DTP
 - DP shall control, manage and vote the DTP
 - DP may delegate to outside investment advisers
 - DP shall value the DTP
 - Trustee has no duty to review IPS
 - Trustee has no duty to perform investment suitability reviews on DTP
 - Trustee has no duty to verify values of DTP
 - Trustee has no duty to monitor investment performance of DTP

Directed Trusts (cont.)

- Directed trust is different than delegated trust
 - Delegated trust allowed per Statutes § 881.01(10)
 - Trustee duties
 - Reasonable care to select agent
 - Establish scope and terms of delegation
 - Monitor performance
 - Investment agent must use reasonable care
 - Lower Trustee fees in directed trust

Duty to Inform and Report (§701.0813)

1. New Notice Provisions

- Notice of Trustee Acceptance – to QB
- Notice of Irrevocable Trust – to QB
- Change in Trustee Compensation – to CB
- Notice of Trust Protector/Directing Party – to Petitioner
- Annual Accounting – to CB
 - Assets, Liabilities, Receipts, Disbursements, Trustee Compensation, Market Value of Assets (if feasible)

Duty to Inform and Report (cont.)

2. Duty to Keep Reasonably Informed

- UTC comments suggest annual accounting
- Restatement (second) §179 – says no affirmative duty absent a request
- Best practice is to provide accounting to all CB

3. Options to Avoid Accounting

- Seek beneficiary waiver
- Limited power of attorney
- Opinion letter that beneficiaries are reasonably informed
- Create a silent trust

What's Next?

1. Current Legislative Environment

2. WTC Trailer Bill Study Group

- Nonjudicial settlement agreements
- Representation
- Decanting
- Subchapter V – creditor rights
- Self-settled trusts
- Duty to inform and report
- Principal and Income Act changes
- Prudent Investor Act
- Atty fees – review standard
- Probate code changes

DONE!

Thank you!