This newsletter is third in a series on the modernization of Connecticut's trust laws by Public Act 19-137, effective January 1, 2020.

Asset Protection Trusts: Directed Trusts: Greater Flexibility for Connecticut Trusts

By Alfred R. Casella | September 18, 2019

At the tail end of the legislative session, the Connecticut General Assembly enacted historic and sweeping trust legislation including the Uniform Trust Code and Directed Trust Act, and extended the rule against perpetuities to allow 800-year dynasty trusts. Public Act 19-137, "An Act Concerning the Uniform Trust Code" was signed by Governor Lamont on July 12, 2019, and goes into effect on January 1, 2020.

Traditionally, Trustees were responsible for every aspect of a trust's administration, including selecting and managing investments and making distribution decisions. Today, clients often want a trusted individual other than the Trustee to continue to manage their investments, run their businesses or manage unique assets such as real estate (especially commercial real estate), collectibles (such as antiques and artwork), or large concentrations of a single type of asset (such as a particular stock). Or, a client may want to designate the persons who will control trust distributions in a manner that recognizes their values and family dynamics.

Such clients will have a flexible new option next year. The Connecticut Uniform Directed Trust Act,[1] effective on January 1, 2020 (the "Act") enables Grantors of trusts whose principal place of administration is in Connecticut to designate one or more "Trust Directors." A Trust Director may be authorized to direct or consent to the trustee taking a certain action or non-action, and a Trustee who follows the direction of the Trust Director (a "Directed Trustee") generally will be protected from liability. This allows the Trust Director to tell the Trustee to take actions that the Trustee would not otherwise take. For example, Trust Directors may approve the retention of concentrated stock positions, favor one group of beneficiaries over another when making distributions, or invest in assets that require the Trust Director's unique expertise.

The Trust Director may be either an individual or an institution with the appropriate expertise or experience to manage the non-traditional assets. As such, a trust can have one or more Trustees, as well as one or more Trust Directors. Like the Trustee, the Grantor may remove the Trust Director. Also like the Trustee, the Trust Director is entitled to reasonable compensation.

The Act protects beneficiaries, because the Directed Trustee is liable for complying with the Trust Director's directions when such compliance otherwise would amount to the Trustee's "willful misconduct." When does that occur? For example, if the Trust Director tells the Trustee to break the law, the Trustee's compliance would, because of its illegality, amount to willful misconduct. Or, if the Trust Director tells the Trustee to make a distribution to someone who is not a trust beneficiary, that distribution would amount to willful misconduct. Or, if the Trust Director tells the Trustee to purchase an asset owned by the Trust

[1] Connecticut Public Act 19-137, Sections 81-98.

Director (or a relative of the Trust Director) at a seemingly inflated price, the Trustee's automatic compliance could be willful misconduct. Beyond such circumstances, it is difficult to imagine when a Trustee would be obligated to disregard a Trust Director's direction. Nevertheless, a Trustee with reasonable doubt about whether or not to comply with a direction may petition the court with appropriate jurisdiction for instructions. In most cases, the Trustee who follows a direction is not liable for its consequences—that liability rests with the Trust Director. In this manner, the fiduciary duties are bifurcated, while leaving the beneficiaries with the same recourse they would have against the Trustee of a more traditionally structured trust.

As the tenth state to enact the Uniform Directed Trust Act, Connecticut joins a growing list of enlightened states authorizing the use of Trust Directors.[2]

If you would like more information about this exciting new planning opportunity, please contact one of our attorneys in the Trusts and Estates Department.

---

[2] The other nine states are: Arkansas, Colorado, Georgia, Indiana, Maine, Michigan, Nebraska, New Mexico and Utah. Rhode Island has introduced Directed Trust legislation.

Richard A. Marone, Chair
860.240.6026
rmarone@murthalaw.com

Marcel J. Bernier
860.240.6087
mbernier@murthalaw.com

Alfred R. Casella
860.240.6048
acasella@murthalaw.com

Patrick D. Coughlin
203.653.5409
pcoughlin@murthalaw.com

George A. Dagon, Jr.
860.240.6039
gdagon@murthalaw.com

Christopher S. Fox
617.457.4082
cfox@murthalaw.com

Shera G. Golder
860.240.6188
sgolder@murthalaw.com

Robert A. Heinimann, Jr.
203.772.7781
rheinimann@murthalaw.com

Natale A. Messina
860.240.6027
nmessina@murthalaw.com

Lisa Newfield
203.772.7768
lnewfield@murthalaw.com

Lisa P. Staron
860.240.6175
lstaron@murthalaw.com

Suzanne Brown Walsh
860.240.6041
swalsh@murthalaw.com

Donna M. White
617.457.4133
dwhite@murthalaw.com