



# HENSON EFRON

## Key changes in Minnesota trust law

**By Christopher Burns & Lloyd D. Stern**

For those of you who help clients plan their estates, we thought it might be helpful to develop a list of changes to Minnesota trust law that are generally effective as of January 1, 2016.



Christopher J. Burns

In a comprehensive update of the law, the Legislature codified caselaw, adopted many provisions of the Uniform Trust Code and added a provision for decanting trusts.

The concept of decanting, or moving assets from one trust to another, as set forth in Minn. Stat. § 502.851, is too complex to cover in this brief synopsis. While new to Minnesota, decanting is familiar to a number of other states including New York, which was used as a template by our local drafters. Decanting will be covered in a subsequent publication. For now, here are the top nine changes to Minnesota trust law (in our opinion).

### **1) Court jurisdiction**

One unique aspect of Minnesota's trust law has long been its basis of in rem jurisdiction. Most other states use in personam jurisdiction. Under the Minnesota Uniform Trust Code (MNUTC), petitioners may now elect in their initial petition either jurisdictional basis. Minn. Stat. § 501C.0201 to 501C.0202. In the absence of a designation by a petitioner, the presumption is that a petitioner invokes the court's in rem jurisdiction.

### **2) Directed trusts**

The MNUTC includes a section on directed trusts, an addition to Minnesota law. A directed trust allows the settlor to separate some of the different components of being a fiduciary so that different individuals and/or trust companies may be retained to perform different functions.

Minnesota joins an increasing number of states that have adopted similar statutes. Among them are Alaska, Delaware, Illinois, Nevada and our close neighbors in South Dakota.

This new law has the benefit of bringing us in line with other competitive jurisdictions.

The statute introduces new concepts, terms, and new trustee roles that lawyers in Minnesota need to become familiar with. These new roles set out in Minn. Stat. § 501C.0808 under the title of "Directed Trusts", include "investment trust advisors," "distribution trust advisors" and "trust protectors."

The new statute at § 501C.0808 subd. 4 contains a long list of powers that could be included in the governing instrument.

A directed trust will have an administrative trustee (either an individual or a firm) who is directed to act in accordance with the exercise of specific powers by the directing party or parties. Other powers are held by and the responsibility of another party.

Unless limited by the terms of the governing trust, the investment trust advisor(s) may direct the administrative trustee with respect to: retention of assets, management, control and voting of shares, compensation of advisors and other investment type matters.

A directed trust may provide for a distribution trust advisor who has authority to direct the administrative

trustee with respect to “all decisions relating directly or indirectly to discretionary distributions to one or more beneficiaries.” For example, a trusted family member could serve as an advisor on distributions related to the health, support and education of a beneficiary and a more knowledgeable party, such as a CPA or a tax attorney might be named to provide advice on tax sensitive distributions.

A trust protector may be named in order to permit the modification of the trust at a later date.

### **3) Trust modification**

In some areas, practitioners had long relied on various cases to interpret statutes. The MNUTC committee worked to have more items spelled out in statutes than to continue the past practice of relying on cases. While this is present throughout the MNUTC, it is particularly evident in the sections related to trust modification. These sections do not, however, simply restate the cases but expand upon them. For example, § 501C.0411 provides that a non-charitable irrevocable trust may now be modified or revoked with the consent of the settlor and all of the beneficiaries of the trust “even if the modification or termination is inconsistent with a material purpose of the trust.”

Statutes now also allow for modifications of non-charitable trusts without the consent of the settlor due to (i) unanticipated circumstances (§ 501C.0412), (ii) uneconomic trusts (§ 501C.0414), (iii) to correct mistakes (§ 501C.0415), and (iv) to achieve the settlor’s tax objectives (§ 501C.0416).

### **4) Default rules**

The new MNUTC contains default rules that apply only if the provisions of the trust agreement fail to address, or only partially address, a particular matter. Specifically, § 501C.0105(b)

provides that the terms of a trust prevail over any provision of the Code except for twelve (12) elements that cannot be overridden by the trusts terms. They include, among others:

- The requirements for creating a trust.
- The duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust and the interest of the beneficiaries.
- The power of the court to modify or terminate a trust under § 501C.0410 to 501C.0416, dealing with the creation, modification, and termination of a trust.
- The effect of a spendthrift provision and rights of certain creditors to reach trust assets under § 501C.0501 to 501C.0507.
- Duties with respect to “qualified beneficiaries” as defined in § 501C.0103.

### **5) Majority action**

Previously, Minnesota followed the Restatement (Second) of Trusts view that trustees need to act unanimously unless provided for otherwise in the trust instrument. The MNUTC changes this and instead provides that “[c]otrustees who are unable to reach a unanimous decision may act by majority decision.” § 501C.0703.

### **6) Trustee removal**

The provisions governing trustee removal under Minn. Stat. § 501C.0706 essentially mirror the provisions contained in repealed § 501B.16 (9). The new language now omits any reference to removing a trustee “for cause” which, for many years in the past was generally a requisite factor for removal.

Similarly to the repealed statute, a court may remove a trustee for a serious breach of trust; lack of cooperation among the trustees; unfitness, unwillingness, persistent failure to administer the trust

effectively, or a substantial change in circumstances. One change of special mention is that only all “qualified beneficiaries” (not all beneficiaries) may now request and obtain trustee removal. A “qualified beneficiary” is defined in § 501C.0103(m) as a beneficiary who is determined to be an actual distributee of trust income or principal on the determination date.

### **7) Duty to inform beneficiaries**

It is generally recognized that a trustee has a duty to keep beneficiaries informed about material facts relating to trust administration and facts necessary to protect their respective interests. That basic duty is set out under Minn. Stat. § 501C.0813(a).

There may be circumstances however, when for any number of reasons, the creator of the trust may not want one or more particular beneficiaries to have information on financial or other sensitive aspects of the trust.

The new statute at § 501C.0813(b) permits a settlor to override the general rule previously mentioned, by inserting an express provision in the trust limiting its application and thus preventing the sharing of information. If this is done, the trustee will be also required to keep either the settlor or another person reasonably informed about the administration of the trust and of the material facts necessary to protect the beneficiaries’ interests. Under such circumstances, the person receiving the information is not considered a fiduciary and has no obligation to inform the beneficiaries about the information received.

### **8) Statute of limitations**

In Minnesota, the six-year statute of limitations, formerly strictly enforced, may now be shortened to three (3) years to bar actions against the trustee.

Under Minn. Stat. § 501C.1005(a), if a trustee provides the beneficiary or a representative of the beneficiary, with a report that adequately discloses the existence of a potential claim then, the disclosed claim is subject to the shorter statute of limitations.

Another important new provision contained in Minn. Stat. § 501C.0605 provides that a judicial proceeding to contest the validity of a trust that was revocable immediately prior to the grantor's death, may be commenced on the earlier of three (3) years after

such death, or 120 days after the trustee has "provided the person" with a copy of the trust instrument together with a notice informing the person of the shortened time period for commencing an action.

#### **9) Nonjudicial settlement agreements**

Interested persons, a defined term under the MNUTC, may now enter into Nonjudicial Settlement Agreements under § 501C.0111 "with respect to any matter involving a trust... to the extent it does not violate a material purpose of the trust

and includes terms and conditions that could be properly approved by the court."

---

**Christopher J. Burns** is a shareholder at Henson & Efron, P.A., where he chairs the Estate Planning, Trust and Probate Practice Group. He can be reached at [cburns@hensonefron.com](mailto:cburns@hensonefron.com).

**Lloyd Stern** served over 18 years with U.S. Bank as manager of the bank's Twin Cities Estate Services Group. Prior to joining the bank, Lloyd engaged in the private practice of law.