PA UNIFORM TRUST ACT: NEW DUTIES AND OPPORTUNITIES FOR TRUSTEES

After five years of drafting, the new **Pennsylvania Uniform Trust Act** became effective on November 6, 2006. Trustees of Pennsylvania Trusts now are required to inform trust beneficiaries, upon the occurrence of certain "triggering events", about the existence of a trust and the beneficiaries' rights to receive certain information regarding the trust. While the new law imposes new duties on Trustees, it actually would protect a Trustee who complies with the law from liability in connection with his or her administration of the trust, to the extent of the financial information actually disclosed to the beneficiaries.

The Trustee must provide "**Notice**" to the "**current beneficiaries**" of the trust. Current beneficiaries include (1) any beneficiary who is eighteen years of age or older to or for whom income or principal of the trust is currently required to be distributed; (2) any beneficiary twenty-five years or older to whom income or principal of the trust may, in the Trustee's discretion, currently be distributed; (3) any beneficiary who has sent the Trustee a written request for notice; and (4) a charitable beneficiary or a person appointed to enforce a trust created for an animal.

The "**Notice**" must inform each beneficiary (i) that the trust exists; (ii) the name of the Grantor or Settlor who created the trust; (iii) the Trustee's name, address and telephone number; and (iv) that the beneficiary has the right to request and receive, at least annually, a copy of the trust and a yearly financial report ("annual report"). The annual report must contain certain financial information concerning the trust, including the trust's assets with market values if feasible, and the trust's liabilities, receipts and disbursements since the date of the last report.

Triggering Events. The Notice described above may be given to any beneficiary at any time but must be given within 30 days after the occurrence of any of the following "triggering events":

(1) The trustee learns that the creator of a trust dies;
(2) The trustee learns that the creator of a trust is adjudicated incapacitated;
(3) There is a change in the Trustees of the trust; or
(4) The person who had not previously received notice becomes a beneficiary of the trust (for example, a current income beneficiary attains age eighteen or a discretionary beneficiary attains the age of 25 years).

Benefit to all Trustees. Under prior law, until a Trustee obtained a written release from all trust beneficiaries, or filed an accounting with the appropriate Court, the Trustee remained liable for his or her administration of the trust for the period from the last accounting filed (if any), or for the period of the Trustee's entire administration of the trust. In many cases, a Trustee was potentially liable for substantial trust assets and activity over a significant period of time. Under the UTA, a Trustee who sends annual reports to the beneficiaries will not be liable after 5 consecutive years with respect to any transaction disclosed in the annual report in each of those 5 years. Under the new law, a beneficiary may not challenge a transaction of the trust, or assert a claim against a Trustee with regard to a transaction, if: (i) the beneficiary received an annual report for the year in which the transaction took place and annually for 4 years thereafter; (ii) the transaction was disclosed in each of the annual reports; (iii) the beneficiary did not object in writing within 6 months after receiving the fifth annual report; (iv) each annual report had a conspicuous written statement describing the effect of the beneficiary's failure to object to the report. Of course, if the Trustee does not send the required Notice, he or she would remain liable in the same manner as under prior law.

The Uniform Trust Act does not provide any particular format for an annual report. However, it is clear that a Trustee would benefit from being as clear, complete and detailed as possible. A Trustee will not be relieved from liability with respect to any information not disclosed in the annual report.

The Uniform Trust Act has the effect of shifting from the Courts to trust beneficiaries the responsibility for monitoring Trustees' actions. The 5 year reporting period provides the beneficiary with ample notice to discover and object to any of the Trustee's actions, and to insure that the beneficiaries are provided with the information necessary to ascertain whether the Trustee has performed its duties properly.

Under the Act, the creator of the trust may appoint a person to receive notices on behalf of specific trust beneficiaries, and a beneficiary may waive in writing the right to receive notices pursuant to the Act.

The bottom line. It would behoove anyone serving as a Trustee to become familiar with the Uniform Trust Act, and to consider voluntarily complying with the Notice provisions of the Act.

We have extensive experience with trusts and trust administration and compliance issues, as well as other estate planning issues. We look forward to assisting you.

Peter L. Reiss

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