



UPDATE TO NEW HAMPSHIRE'S NEW UNIFORM TRUST CODE

NCCUSL Clarifies that Mandatory Notice Requirements Do Not Apply to Pre-Existing Irrevocable Trusts

***McDonald & Kanyuk, PLLC
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In our July 2004 newsletter, we discussed the new trustee notification and disclosure rules contained in New Hampshire's Uniform Trust Code ("UTC"), codified as Chapter 564-B of the Revised Statutes Annotated¹. New Hampshire's UTC is a slightly modified version of the UTC developed by the National Conference of Commissioners on Uniform State Laws ("NCCUSL").

The legislative history to New Hampshire's UTC indicates that the legislature intended to follow NCCUSL's version except where the legislature made specific changes. The effective date provisions of the NCCUSL version upon which New Hampshire based its statute did not exempt pre-existing irrevocable trusts from the UTC's mandatory beneficiary notification requirements. Our July newsletter therefore advised Trustees of such trusts that the notices must be given by December 2, 2004. The burdensome requirement was not well received by the professional trustee commentators in those states which have adopted the UTC.

Responding to this criticism, in August 2004 NCCUSL amended its UTC to clarify that the beneficiary notice requirements apply to post-effective date irrevocable trusts, trustees who accept new trusteeship after the effective date of the UTC, and revocable trusts that become irrevocable or where the settlor becomes incapacitated.

NCCUSL has indicated that this amendment is intended to clarify, but not change, the UTC effective date provisions. Given the legislature's intent to follow NCCUSL's lead, we are advising our Trustee clients that the notice requirements do not apply to pre-existing irrevocable trusts. There is talk of introducing legislation to affirm this and we will keep you posted.

¹ If you did not receive our July newsletter or need another copy, please let us know.

Our July newsletter also mentioned that many jurisdictions that adopted the UTC changed the trustee notification requirements from mandatory to non-mandatory (“default”) rules. The mandatory disclosure rules have been largely criticized on the basis that they frustrate settlors’ intentions and contravene the general rule giving benefactors free reign in defining the scope of their largess -- a time-honored principle in New Hampshire trust law. NCCUSL’s responded in its August, 2004 amendments by providing alternate mandatory and default rule regimes, and allowing enacting jurisdictions to choose between them. New Hampshire’s UTC drafting committee is currently looking at this and may submit for the upcoming legislative session amendments choosing the default rule option. We will continue to monitor this issue and keep you posted.

If you have any questions about your trustee notification and disclosure obligations, please contact us at McDonald & Kanyuk, PLLC, at 603-228-9900 and ask to speak with Joseph F. McDonald, III, Amy K. Kanyuk or Joy V. Riddell.