
PERSPECTIVES

RECENT DEVELOPMENTS IN TRUST LAW

Implications for Trustees

Across the U.S. and here in Maine, the laws relating to the design, administration and taxation of trusts have changed quite dramatically over the last ten years. The duties and obligations of trustees have increased in scope and complexity, creating new administrative challenges. As we look ahead, we believe the role of the professional fiduciary will become increasingly important, and we have responded with significant enhancements to our administration and planning capabilities.

The State of Maine has been on the cutting edge of new laws affecting trusts and the role of trustees in administering trusts. In 1996, the Maine Legislature enacted the Uniform Prudent Investor Act, which recognized the role of modern portfolio theory in the investment of trust assets. This act made clear that the prudence of an investment approach for a trust should be based on the portfolio as a whole, not the individual securities held in the account. It is now established law that the principles and concepts of modern portfolio theory apply to the management of trusts in this State.

In 2000, the Maine Legislature changed an old common law rule, known as the Rule Against Perpetuities. Historically, this rule mandated that trusts could be set up to last only for a limited number of years, generally the lifetime of

the beneficiaries living at the time the trust was created, plus an additional 21 years. With the change in 2000, trusts in Maine now can be set up to last in perpetuity. This change allows the creation of trusts commonly known as Dynasty Trusts, which are often designed to be exempt from estate and gift taxes and the generation skipping transfer tax. These trusts typically benefit children, grandchildren, great-grandchildren and beyond, with the assets in the trust sheltered from the federal and state estate tax system.

Effective in 2003, the Maine Legislature enacted a new version of the Uniform Principal and Income Act (NUIA), which generally provides guidance to trustees in allocating the receipts and disbursements of a trust between the trust's principal and income. This Act helped clarify the obligation of trustees to both the current income beneficiaries and remainder beneficiaries of a trust. It also gave trustees a powerful new tool to make adjustments between income and principal so that a trust could be invested for the best total return, with that return fairly allocated between the current and remainder beneficiaries. In the past, during periods when the financial markets were strong, like the late 1990's, current beneficiaries were often disappointed that trust portfolios were showing dramatic growth in market value, but income distributions remained modest. Conversely, remainder beneficiaries were

often disappointed that trust portfolios had significant investments in bonds and other fixed income instruments, which generated more income for the current beneficiary, but had little or no growth potential. NUPIA allows a trustee to adopt an investment approach which is not constrained by the actual income generated by the trust, but designed to generate the best total return, taking into consideration the time horizon and risk tolerance of all of the beneficiaries. The trustee can then allocate a fair part of the total return to the current beneficiary as income.

The powers given to trustees under NUPIA have significant implications for individuals, often family members, who find themselves in the role of trustee. With the broad new powers to make adjustments between income and principal, an individual who may not have much experience with trusts must first interpret the complex terms of the trust document, and then determine what constitutes “fair and reasonable” treatment of all beneficiaries before making any adjustments. Although a trustee can seek assistance from a third-party investment advisor in devising a total return investment strategy, allocating that return among current and remainder beneficiaries can often involve sensitive family issues. A disinterested professional trustee can often provide expertise in both investments and trust administration, with a separation from the inherent tension of family relationships.

The good work of our Legislature continued in 2005 when the Uniform Trust Code was enacted in Maine. Maine was one of the first states in the nation to adopt this comprehensive new law, which codifies and clarifies many of the rules governing the obligations of trustees in the administration of trusts and the rights of beneficiaries for whose benefit the trusts are being administered. Among the many provisions of the Maine Uniform Trust Code in Maine are new

requirements for trustees to notify certain beneficiaries about the existence of trusts set up for their benefit and to keep these beneficiaries reasonably informed about the administration of the trust. The Uniform Trust Code imposes yet another layer of administrative responsibilities on trustees, again making the assistance of a skilled professional something to be seriously considered.

All in all, the many legislative developments governing the administration of trusts have increased the importance of having a professional trustee. The pace of change has been pronounced, and the importance of thoughtful planning and careful administration has never been greater. At H.M. Payson & Co., our fiduciary services professionals work closely with portfolio managers and clients in identifying potential issues for review. At the same time, we have devoted significant resources to our trust administration capabilities. Our experienced team of trust officers plays an increasingly important role in coordinating the administrative and portfolio management activities among clients, their attorneys, and our investment professionals. In this manner, we are positioned to deliver the highest quality trust management and administration services available.

We welcome the chance to work with our clients and their estate planning attorneys in the design and creation of trusts to comply with and take advantage of the opportunities created by the new laws. We also look forward to working with the families of our clients in the administration of the trusts they create. We are committed to remaining a local, hands-on trust company, dedicated to providing the highest quality service in a close working relationship with the families we serve.

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