



CONNECTICUT PASSES DECANTING STATUTE TO PROVIDE GREATER FLEXIBILITY TO MODIFY OLD TRUSTS

June 10, 2024

On June 5, 2024, Connecticut followed a number of other states by passing a “decanting” statute which specifically authorizes decanting of irrevocable trusts in Connecticut. Decanting is the act of a Trustee distributing the assets from a trust (“Old Trust”) into a new trust (“New Trust”) which has different terms that are more suited to the current circumstances. While practitioners in Connecticut have been able to decant some trusts in Connecticut before now, this statute, which specifically authorizes Trustees to take this action, will allow Trustees to act with clarity and certainty as well as permit decanting under a broader range of circumstances.

The statute will go into effect on January 1, 2025, and applies to all irrevocable trusts, whenever created, in which Connecticut is designated as the choice of law or which are administered in Connecticut. The distribution standards present in the Old Trust determine the scope in which the Trustees are free to decant to the New Trust.

The more discretion the Trustee has in the Old Trust, the more the New Trust can have terms which are substantively different. In all events, the vested interests of beneficiaries of the Old Trust cannot be reduced or eliminated via the decanting.

While the statute authorizes a Trustee of an irrevocable trust to act without the consent of any person or court (except for testamentary trusts which do require court approval), the statute requires notice to (1) the Settlor of the Old Trust, (2) the beneficiaries of the Old Trust and/or any designated representatives, (3) any person having the right to remove or replace the Trustee that has the power to distribute assets of the Old Trust, (4) the Trustees of the Old Trust and the New Trust, (5) any person holding a power of appointment over the Old Trust. If the trust has a charitable interest or is a special needs trust, then there are additional notice provisions. The Trustees must give 60 days’ notice prior to the decanting, but that period can be waived by the notice recipients to allow for an earlier decanting.

The statute includes restrictions on decanting when charitable interests are involved and also includes provisions authorizing interested parties to petition the Probate Court to rule on various decanting actions.

If you have any questions about the new statute or potentially decanting an existing trust, contact your Cummings & Lockwood LLC attorney.