



MAJOR CHANGES IN CT TRUST LAW OFFER EXPANDED PROTECTIONS, POSSIBLE WINDFALL FOR STATE

July 5, 2019

Author: Keith Zimmerman

Fairfield County Business Journal - Daily Voice Plus Section

Kelley Galica Peck, a Partner in Cummings & Lockwood's Private Clients Group and based in the West Hartford office, was interviewed by Kevin Zimmerman for the Daily Voice Plus Section of the Fairfield County Business Journal regarding the Connecticut Legislature passing HB 7104, an Act Concerning the Connecticut Uniform Trust Code, which is expected to be signed into law by Gov. Ned Lamont.

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Major Changes in CT Trust Law Offer Expanded Protections, Possible Windfall for State

Sweeping changes to Connecticut's trust laws – some of which dated back a couple of hundred years – are set to take effect on Jan. 1, bringing the state into alignment with several others and potentially creating a windfall of millions of dollars for Connecticut's coffers.

The Connecticut Legislature passed HB 7104, an Act Concerning the Connecticut Uniform Trust Code, on June 5, which is expected to be signed into law by Gov. Ned Lamont.

Kelley Galica Peck, a partner in Stamford-based Cummings & Lockwood's Private Clients Group, served as vice chair, Estates and Probate Section, of the Connecticut Bar Association and was instrumental in the drafting and proofing of the act.

"Trust law has historically been very fractured and divergent in the country for a long time," Peck said. "And in Connecticut that was especially true. It was very scattershot, and contained some confusing and conflicting opinions."

So much so that many individuals and corporations based in Connecticut were taking their assets out of the state for the more modernized states of Alaska and Nevada. "Connecticut was losing a lot of business," Peck said. "One of our motivations was to keep those trusts here."

Connecticut residents will benefit from this legislation in a variety of ways, she said. One such impact will come from the creation of dynasty trusts, which will allow trusts to continue through multiple generations. Prior to enactment, the usual duration of a trust was limited to about 110 years, or roughly three generations. That will be increased to 800 years.

"It's a pretty big number," Peck said with a laugh. "Who knows what will be happening in 800 years? But we felt that was a good number," as it allows for such trusts to be funded with assets that will remain exempt from estate and generation-skipping transfer taxes so that wealth can pass to the benefit of each generation without the erosion of transfer taxes.

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“It allows each generation some control over those assets,” Peck said. “And it’s essentially perpetual. Before, residents would hire corporate trust companies in other states to act as trustee. Now they can retain the assets with an individual or professional trustee in state.” About 25 states allow dynasty trusts, she added.

The law also seeks to discourage people from trying to protect their assets in complex, off-shore trust arrangements such as those popularized in the Cayman Islands. Nineteen states have similar legislation providing for Domestic Asset Protection Trusts which allow an individual to establish a trust within the state and be a beneficiary of that trust while having the trust property protected from creditors.

When properly established, such trusts enable individuals to protect their own assets in a fashion similar to the way limited liability companies are used to protect business assets.

Peck noted that the bill does not allow a person to protect all assets or to protect against existing creditors. Instead, it allows for future protection against unknown liabilities. “If I commit malpractice today, I can’t put all my assets into a trust tomorrow,” she explained. “Creditors can still get at those assets.”

The bill also adopts comprehensive provisions to enable the use of trust directors, someone who can be given special and limited responsibilities that traditionally were held by the trustee. This will allow for the appointment of a trustee to make distribution decisions, but allow for a specialized professional to make investment decisions, she said, while also establishing a range of opportunities for those who wish to place a closely held business interest in a trust, but need a fiduciary with special skills to manage that business. It also enables the retention of concentrated positions, whether investments or a business or real property, that a trustee otherwise might be unwilling to hold.

HB 7104 also adopts 80 new statutes providing trustees and beneficiaries greater guidance in the management of trusts — something Peck called “the big one” as far as changes. It imposes a greater notice requirement to beneficiaries; permits the appointment of an individual to receive notice on behalf of the beneficiary if the beneficiary is not suited to receive and deal with the management of the trust (such as for a young or disabled beneficiary); and allows trustees and beneficiaries to obtain court approval to modify or terminate trusts when the provisions are either erroneous or no longer make sense based on changing circumstances.

The bill also provides greater access to the probate courts for trust matters, including the opportunity to obtain pre-approval of a court for actions by the trustee and the use of nonjudicial settlements to resolve trust matters.

While the new rules impose some greater responsibilities on trustees and greater opportunities for beneficiaries, “it provides greater flexibility and clarity where there wasn’t before,” Peck said.

Peck believes such changes will benefit Connecticut’s bottom line as residents in states whose trust laws are still antiquated continue to seek refuge elsewhere.

How much could be at stake? Noting that New Hampshire “is commonly regarded as one of the top five states for this kind of legislation,” Peck said that a trust transferred to that state had about \$90 million in assets under management before such legislation was adopted, and had quadrupled in the past decade since the legislation had passed.

“Connecticut could be a mecca as well,” she said, “as long as we continue to improve our statutes to keep pace with those jurisdictions and our marketing in this area. Places like New Hampshire and South Dakota have done a lot of marketing. We need to do the same.”