

Pennsylvania Legal Update on Estate & Trust Law

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Today's Topics

- Federal Transfer Tax Update: New 2025 Numbers
 - Utilizing “Bonus” Exemption
 - Trump Tax Changes
- Pennsylvania Legislative Update
 - PA Enacts Uniform Directed Trust Act & Simplified Trust Termination
 - PA Finally Adopts Federal Grantor Trust Rules
- Federal Regulatory Guidance
 - Cryptocurrency Deregulation
 - Final Treasury RMD Regulations
 - Corporate Transparency Act
- Estate, Trust & Fiduciary Case Law Update

PA Legislative Update

- PA FINALLY Adopts
 - Grantor Trust Rules (effective Tax Years 2025 Forward)
 - Directed Trust Act (effective October 13, 2024)

- PA adopt new Nonjudicial Method to Settle Trusts in PA
 - Section 7785.1 (effective October 13, 2024)

Simplified Method to Terminate Trusts

- The amendment to the UTA providing for nonjudicial account settlement becomes effective on October 13, 2024.
- Amends UTA 20 Pa.C. Section 7785.1

What does Section 7785.1 allow:

Under Section 7785.1, a Trustee may obtain a nonjudicial settlement of its account when:

- 1) the trust terminates in whole or in part;
- 2) the trustee ceases or intends to cease to serve for any reason; or
- 3) the trustee seeks discharge for an interim accounting period when the trust is continuing.”

In order to settle their account in this manner, trustees must give notice to:

- 1) all qualified beneficiaries,
- 2) other beneficiaries who have requested notice regarding the trust account,
- 3) others with notification rights of beneficiaries, co-trustees, successor trustees, trust directors and
- 4) other fiduciaries.

Process Under Section 7785.1

- The contents of the notice are set forth in § 7785.1 (e)
- Require 30 months of trust account statements to be included
- Written objections to proceeding with the nonjudicial settlement of an account must be sent to the trustee within 60 days after the notice was sent. 20 Pa.C.S.A. § 7785.1 (g).
- The trustee and objector may then proceed either by starting a court proceeding to resolve the objection or by entering into a nonjudicial settlement agreement under 20 Pa.C.S.A. § 7710.1.

PA Adopts Federal Grantor Trust Rules

- Dec 14 2023 Governor Josh Shapiro signed SB 815 to add Section 302(c) to Tax Code to incorporate Federal Grantor Trust rules into PA's income tax law.
- Income rec'd by resident trust or non-resident trust from PA source now taxable to grantor or other person to the extent the grantor or other person is treated as owner under IRC 671-679.
- Any person treated as an owner of an irrevocable grantor-type trust to pay state PA personal income tax on the trust's income regardless of their receipt of such income.

Why PA Grantor Trust Tax Rules Relevant?

- ❑ Individual treated as the owner of a trust under IRC 671 to 679 to report all classes of income on their PA personal income tax return even if they do not receive an income distribution from the trust.
- ❑ Dramatic shift in PA income tax reporting requirements of irrevocable grantor trusts in Pennsylvania in that the income will no longer be taxed to the trust nor its beneficiaries.
- ❑ New Grantor Trust reporting and filing requirements effective tax years beginning in 2025 for grantors or other individuals treated as the owner of an irrevocable grantor-type trust in PA.

IRC 671-679

- 673: Reversionary Interest in Income or Principal in excess of 5% of inception value of trust.
- 674: Power to Change Beneficial Enjoyment
- 675: Admin Powers:
 - Power to deal less fair consideration and borrow without adequate interest or security and substitute property
- 676: Power to Revoke
- 677: Income may be used for benefit of grantor, grantor's spouse or to pay life insurance premiums
- 678: Other persons treated as grantor
- 679: Foreign Trusts

Simple v. Complex Grantor Trusts

- **Simple Grantor Trust:** Trust where all of the income is distributed annually so that there is no additional income within the trust beyond what has been distributed.
- **Complex Grantor Trust:** Trust where not all of the income is not required to be distributed each year. As a result, certain income may gain or lose its status depending on what year it was distributed and whether it is the current year or prior year's income that is being distributed out of the trust – which has tax implications associated with it.

New Grantor Trust Considerations?

□ **Individuals treated as grantors:**

- should consider additional income from the trust that could impact their quarterly estimated tax payments for PA state income tax purposes.
- will need to confirm whether such income needs to be reported to their local municipality if they are residents of municipalities that tax unearned income.

□ **Trustees:**

- Change in reporting and filing requirements.
- For a grantor-type trust, the trustees will no longer need to make state quarterly estimated tax payments on behalf of the trust, pay tax on the income received by the trust, or issue tax letters to the beneficiaries.

□ **Pre-2025 Beneficiaries:**

- should consider changes to their tax filing requirements when they were previously taxed on income distributed pre-grantor trust rules.

PA Adopts Directed Trust Act

- Generally follows the Uniform Directed Trust Act published by the Uniform Law Commission in 2017.
- Joint effort by both the Pennsylvania Joint State Government Commission's Advisory Committee on Decedents' Estates Laws and the Pennsylvania Bankers Association.
- In July 2024, Pennsylvania Governor Josh Shapiro signed the Pennsylvania Directed Trust Act, **Senate Bill 1231** (now part of **Act No. 64 of 2024**, sponsored by Senator Lisa Baker), into law, making Pennsylvania the 20th state to adopt a directed trust act following.
- Adds new Subchapter H.1 to Chapter 77 known as the Directed Trust Act.

What does Directed Act Allow:

- Directed trusts allow the powers traditionally held by a trustee to be bifurcated and shared with another person or entity known as a “trust director” who directs the “directed trustee” on certain administrative matters.
- Pennsylvania’s adoption of its Directed Trust Act expressly allows a trustee’s powers to be bifurcated or shared, thereby statutorily condoning directed trusts and providing a framework for their interpretation and judicial enforcement. The Act clarifies the directed trustee and trust director relationships by defining their responsibilities and liability and confirming that fiduciary duty follows the bifurcated task absent “willful misconduct,” which is “intentional conduct that is malicious, designed to defraud, or unconscionable,” and excludes “mere negligence, gross negligence, or recklessness.”

Bifurcation of Traditional Trustee Rule Allows:

- a trusted third party to oversee closely held business or other unique trust assets a traditional trustee may not be equipped or efficiently able to handle;
- an investment advisor to continue to manage the trust assets while a trusted friend or family member, for instance, oversees trust distributions;
- an independent third party better equipped in certain administrative nuances (such as taxation, business interests, special needs, public benefits, or other matters) to lessen the burden on the directed trustee for cost or other administrative efficiencies.

Weren't Directed Trusts Already Allowed?

- ❑ Many Pennsylvania practitioners have been drafting what are essentially directed trusteeship provisions into trusts for years without any clear statutory law allowing such directed trusteeships or clarifying the parties' roles and responsibilities in court adjudications.
- ❑ The Directed Trust Act is a default Rule.
- ❑ The Directed Trust Act applies to trusts whenever created but does not affect decisions or actions that occurred before the effective date of the Act.

What does the Directed Trust Act do?

- ❑ The Act requires a directed trustee to comply with a powerholder's exercise, or nonexercise, of a power of direction, and the directed trustee is not liable for doing so.
- ❑ The Act references the current "trust instrument" in Chapter 77 of Title 20 as "terms of a trust."
- ❑ Section 7703 defines "terms of a trust" as either of the following:
 - ❑ 1) The manifestation of the settlor's intent expressed in the trust instrument; or 2) The terms provided for in the trust document, as established by a trustee or other person, by a court order, by a nonjudicial settlement agreement or rules of construction.

The Directed Trust Act Does Not Apply to:

- 1) A power of appointment;
- 2) A power held by the settlor or a beneficiary to appoint or remove a trustee unless the terms of the trust provide that the power is exercisable;
- 3) A settlor's power to revoke a trust;
- 4) A power of a beneficiary that benefits the beneficiary or a person represented by the beneficiary; or
- 5) A power over a trust that must be held in a nonfiduciary capacity to achieve the settlor's tax objectives.

A Trust Director for Investments:

Unless the terms of a trust provide otherwise, a trust director for investments has the following powers:

- 1) To direct the trustee, or veto the trustee's recommendations, as to the investment of the trust's assets and the voting of
- 2) To select, change and determine reasonable compensation of one or more investment advisors or managers and to authorize or engage them to perform any of the investment duties of a trustee or trust director;
- 3) To determine the frequency and methodology for valuing trust assets;
- 4) To exercise or veto the trustee's exercise of any other investment power the trustee has or might have; and
- 5) To perform other acts relating to the investment of the trust's assets as the terms of the trust specify. The terms of a trust may expressly grant to a trust director powers, alone or together with powers to direct a trustee's action, to modify their terms of a trust. In that event, the trust director is a trust protector.

Limitations on Powers, Duties & Liability of Trust Directors/Directed Trustees

Unless the terms of a trust direct otherwise, a directed trustee does not have a duty to:

- monitor a trust director or
- inform or advise a settlor, beneficiary, co-trustee or another trust director concerning an instance in which the trustee might have acted differently than a trust director.

To the extent, however, a trustee does take any such action, the trustee assumes no liability by doing so. A directed trustee that has reasonable doubt about its duty may petition the court for a declaratory judgment.

Directed Trust Act is Default Rule

- The terms of a trust may assign different duties and standards of care to different trustees and, in doing so, may relieve a trustee from liability with respect to a duty assigned to another trustee to the same extent that, in a directed trust, a directed trustee is relieved from duty and liability with respect to a trust director's power of direction.
- The Directed Trust Act applies to trusts whenever created but does not affect decisions or actions that occurred before the effective date of the Act.

Federal Transfer Tax Exemptions

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- 2025 Increases
 - Portable Estate/Gift Tax Individual Exclusion
 - Increased from \$13.61m to \$13.99m per person
 - Appx. \$28m b/w married couple
 - Non-Portable GST Individual Exclusion \$13.99m
 - Annual Gift Exclusion increase from \$18k to \$19k
- Recall 2026 Sunset under 2017 TCJA
 - 2026 will sunset back to \$5m as adjusted for inflation—Est. \$7.5m
 - How likely is sunset to occur?
 - Repeat of 2010?

Possible Changes Under Trump Admin

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- House Ways and Means Committee Working Paper Legislative Proposals
- Extension of 2017 TCJA?
- Increased SALT Deductions?
- Trump's Cryptocurrency Executive Order

Cryptocurrency Executive Order

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- ❑ Launch of Trump Meme Coins
 - ❑ Not an investment opportunity but “digital collectibles”
- ❑ 1/23/2025 Executive Order re: regulatory clarity & encouraging growth of US Digital Asset Industry
 - ❑ Crypto hedge fund manager Scott Bisset selected to lead Treasury Dept.
 - ❑ Crypto supporter Paul Atkins selected to chair SEC
 - ❑ Atkins known for advocating market-friendly policies and opposing regulation, contracts to predecessor Gary Gensler
 - ❑ SEC announced “Crypto Task Force”
 - ❑ Deregulation on the horizon?
- ❑ Concern of regulators and lawmakers re: speculative nature of meme coins and potential market impact

Will TCJA Sunset Actually Occur?

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- ❑ Heckerling panelists disagreed on future transfer tax legislation and likelihood that TCJA will sunset at the beginning of 2026 as currently scheduled.
- ❑ May not know until the end of 2025.
 - ❑ In 2017, the Republican president and the controlled House and Senate didn't pass legislation until the beginning of 2018.
 - ❑ The Senate wants separate immigration and tax bills, with immigration to be addressed first.
 - ❑ Tax legislation may be deferred until after the August recess, meaning Congress would not begin to address tax legislation until September 2025.
- ❑ Consensus that sunset will not occur given history of tax cuts under Republicans.
- ❑ Trump administration priorities may increase the already high deficit level, making tax reduction more difficult to pass.

2025 Use of “Bonus” \$7m Exemption

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- Still Important for High-Net-Worth Clients
- Possible Planning Techniques:
 - Split Gifting
 - Gifting/Dynasty Trust Funding
 - Gifting from funded QTIP Trusts
 - SLATs
 - Sales to Grantor Trusts
 - QPRTs
 - GRATs/GRITs
 - Basis Planning
- Valuation Issues: Smalidino Case

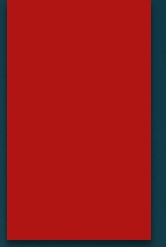
Final Treasury Regs on Trust RMDs

- ❑ Finalized by Treasury July 2024
- ❑ See-Through Trusts
- ❑ “Countable beneficiaries” determine payout when Trust named as bene
- ❑ Determination of “countable beneficiaries” made as of participant’s DOD unless modified by three post-death events if completed by 9/30 of year after death:
 - ❑ Distribution of entire interest of the beneficiary
 - ❑ Beneficiary disclaimer
 - ❑ Trust grants POA exercisable at death to “countable beneficiary” who restricts appointees

The Corporate Transparency Act

- Appellate Saga of CTA Challenges: What's the latest as of today?

Recent Trust Case Law



IRS Chief Counsel Advice 2023-52018

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- ❑ Issued Nov. 28, 2023, Released Dec. 29, 2023
- ❑ IRS finds trust beneficiaries to have made a taxable gift by consenting to addition of trust provision authorizing the trustee to reimburse grantor for income tax paid on the grantor trust's income
- ❑ IRS held result would be the same even if simply failed to object
- ❑ Distinguishes prior guidance in Rev. Ruling 2004-64 and changes IRS position from PLR 2016-47001
- ❑ Ominous valuation threat under Reg. 25.2511(c)

Estate of Bolles v. Commissioner:

Treatment of Advances as Loans v. Gifts

- Mary Bolles transferred money to each of her children from the Trust, keeping a record of her advances and repayments from children, treating the advances as loans forgiving up to the annual gift tax exclusion.
- Mary made numerous advances amounting to \$1.06 million to her son Peter, an architect, between 1985 and 2007 while he was an architect and able to repay the loan.
- Peter's architecture career faltered, and by 1989 it was clear Peter could not repay the advancements.
- Mary kept advancing funds to Peter despite Peter's financial troubles but kept track of interests. Mary created a revocable trust in 1989 excluding Peter from any distribution of her estate upon her death, she later amended the trust, including a formula to account for the loans made to him rather than excluding him. Peter signed an acknowledgment in 1995 that he was unable to repay any of the amounts Mary had previously loaned to him. He further agreed that the loans and the interest thereon would be taken into account when distributions were made from the trust.
- Upon Mary's death in 2010, the IRS assessed the estate with a deficiency of \$1.15 million on the basis that Mary's advances to Peter were gifts. Mary's estate asserted that the advances were loans. Both parties relied upon *Miller v. Commissioner*, T.C. Memo.

When Advances to be Considered a Loan

- The case of *Miller v. Commissioner* to establish that an advance is a loan, the court should consider whether:
 - (1) there was a promissory note or other evidence of indebtedness,
 - (2) interest was charged,
 - (3) there was security or collateral,
 - (4) there was a fixed maturity date,
 - (5) a demand for repayment was made,
 - (6) actual repayment was made,
 - (7) the transferee had the ability to repay,
 - (8) records maintained by the transferor and/or the transferee reflect the transaction as a loan, and
 - (9) the manner in which the transaction was reported for Federal tax purposes is consistent with a loan.

- In the *Estate of Bolles* case, the tax court recognized that where a family loan is involved, an actual expectation of repayment and an intent to enforce the debt are crucial for a transaction to be considered a loan.

- Whether advances made to a son with no loan agreements, security, or attempts to force repayment were legitimate loans or were gifts.

- Transfer tax related contexts in which the loan vs. equity transfer issue may be important.
- IRS published position that an upfront gift arises when a loan is made if the lender intends later to forgive the loan (though the IRS did not make that allegation in this case).

McDougall v. Commissioner: Consent to Spouse's Receipt of QTIP Assets a Gift

- Decedent died in 2011 leaving residuary to a marital trust granting husband an income interest naming their two children as remainder beneficiaries. A QTIP election was made for marital trust.
- In 2016, spouse and children agreed to commute marital trust to spouse, who sold certain of the marital trust assets to other trusts established for the children in exchange for promissory notes.
- The spouse and each child separately filed gift tax returns for 2016 and reported that those transactions resulted in offsetting reciprocal gifts and no gift tax.
- The IRS issued a notice of deficiency to spouse and each child determining that (1) commutation of the marital trust was gift from the spouse to the children under section 2519 and (2) the agreement was gift from the children to the spouse of the remainder interests in the marital trust under section 2511.
- The U.S. Tax Court held (following its prior decision in *Estate of Anenberg v. Commissioner*, 162 T.C. No. 9 (May 20, 2024)) that commutation of a QTIP marital trust, in which the surviving spouse had an income interest and two children had remainder interests, to other trusts for the benefit of the children in exchange for promissory notes payable to the surviving spouse, did not result in a gift by the surviving spouse to the children under section 2501, but did result in gifts from the children to the surviving spouse of the remainder interests in the marital trust under section 2511.

Schlapfer v. Comm'n.: Adequate Disclosure in Gift Tax Returns

- ❑ Tax Memo 2023-65.
- ❑ Gifts must be “adequately disclosed” in 709 to begin the time period for the IRS to challenge a valuation.
- ❑ First case in two decades detailing “adequate disclosure” requirements.
- ❑ Applies more lenient “substantial compliance”.

U.S. v. Paulson (9th Cir.): Successor Trustee Liability for Unpaid Estate Taxes

- ❑ Decedent Allen Paulson died in 2000 with most of assets in Rev Trust.
- ❑ Estate filed 706 and paid some tax, deferring rest under Section 6166.
- ❑ In 2005 Estate and IRS compromised on increased estate tax owed, which was again deferred under Section 6166.
- ❑ Rev Trust assets distributed between 2003-2006 but Estate Tax never paid.
- ❑ Successor Trustees appointed between 2009-2011.
- ❑ In 2015 IRS action against Estate and Rev Trust for \$10m in unpaid Federal Estate Tax and sought personal liability under 6324(a)(2) against beneficiaries and Successor Trustees.
- ❑ District Court held Successor Trustees not liable because they were never in possession of property at time of Decedent's death.
- ❑ Ninth Circuit Reversed, US Supreme Court denied Cert.

IRC Section 6166 Deferral

- **(a) 5-YEAR DEFERRAL; 10-YEAR INSTALLMENT PAYMENT (1) IN GENERAL** If the value of an interest in a closely held business which is included in determining the gross estate of a decedent who was (at the date of his death) a citizen or resident of the United States exceeds 35 percent of the adjusted gross estate, the executor may elect to pay part or all of the tax imposed by section 2001 in 2 or more (but not exceeding 10) equal installments.
- **(3) DATE FOR PAYMENT OF INSTALLMENTS** If an election is made under paragraph (1), the first installment shall be paid on or before the date selected by the executor which is not more than 5 years after the date prescribed by section 6151 (a) for payment of the tax, and each succeeding installment shall be paid on or before the date which is 1 year after the date prescribed by this paragraph for payment of the preceding installment.
- **(b) DEFINITIONS AND SPECIAL RULES (1) INTEREST IN CLOSELY HELD BUSINESS** For purposes of this section, the term “interest in a closely held business” means—**(A)** an interest as a proprietor in a trade or business carried on as a proprietorship;
- **(B)** an interest as a partner in a partnership carrying on a trade or business, if—**(i)** 20 percent or more of the total capital interest in such partnership is included in determining the gross estate of the decedent, or
- **(ii)** such partnership had 45 or fewer partners; or
- **(C)** stock in a corporation carrying on a trade or business if—**(i)** 20 percent or more in value of the voting stock of such corporation is included in determining the gross estate of the decedent, or
- **(ii)** such corporation had 45 or fewer shareholders.
- **(2) RULES FOR APPLYING PARAGRAPH (1)** For purposes of paragraph (1)—**(A) Time for testing** Determinations shall be made as of the time immediately before the decedent’s death.
- **(C) Indirect ownership** Property owned, directly or indirectly, by or for a corporation, partnership, estate, or trust shall be considered as being owned proportionately by or for its shareholders, partners, or beneficiaries. For purposes of the preceding sentence, a person shall be treated as a beneficiary of any trust only if such person has a present interest in the trust.

Koski v. Campbell (Ca.): Trustee Cannot Remain Neutral & Obligated to Defend Trust

- ❑ Kiomars Fiazi created a Rev Trust, which by Second Amendment omitted his nephew, Schuyler Campbell, and added friend Dinora Figueroa.
- ❑ Second Amendment also “directed” trustee “to defend, at the expense of the trust estate, any contest or other attack of any nature on this trust or any of its provisions.”
- ❑ Campbell challenged Second Amendment.
- ❑ Settlor’s Sister and Trustee, Manijeh Koski, filed Petition in Probate Court to “remain neutral” and “file no responsive pleading”.
- ❑ Figueroa objected to Trustee remaining neutral based on terms of the Trust.
- ❑ Held that trust terms directing the trustee to defend against will contests prohibit trustee from remaining neutral.
- ❑ Trustee’s obligation to comply with an express directive takes precedent over trustee’s general duties to beneficiaries.

In Trusts under the Will of Kline (Mass.): **Proper Exercise of Power to Adjust**

- Helen Kline died testate with separate trusts fbo daughters with mandatory income and discretionary principal “for any emergency...only under most extraordinary circumstances” without anticipating principal would be required.
- Helen’s daughter Denise’s son objected to distributions to his mother in excess of Trust’s net income.
- Trustee noted that principal had experienced significant growth while income had “not kept pace”.
 - In 2021 income was approximately 2% of Trust’s principal value.
 - Trustee argued shifting investments for higher income yield would have lower long term principal results and would trigger capital gains detrimental to remainder beneficiary grandsons.
 - Trustee instead transferred principal to income considering daughter’s other sources of income, to result in 3.1% income over three-year average.
 - Son argued that mother had other assets of \$1m and lived in 5 bedroom 3,800 SF apartment for \$6,000/mo.
- Inquiry: Did P&I Act allow Trustee with income and remainder bene to adjust b/w prin and income for total return when disproportionally increased principal relative to income.
- Court found MPIA solved “vexing problem” of balancing trust interests impartially under PIA’s investing for “total return” which improperly favored remainder beneficiaries by granting the “power to adjust” to recharacterize prin and income for “total return” while maintaining “equitable treatment among beneficiaries while at the same time pursuing a prudent investment strategy”.
- Held that when Trust instrument does not clearly evidence settlor’s intent to deny power to adjust, MPIA allows adjustment if “fair and reasonable” to beneficiaries

Uniform Fiduciary Income & Principal Act: Power to Adjust

- The Uniform Law Commission approved UFIPA in July of 2018
- UFIPA expanded power to adjust under Section 203. In 1994, the Uniform Law Commission approved the Uniform Prudent Investor Act, which was revised in 1997 to note that under the Uniform Prudent Investor Act, fiduciaries are encouraged to *prudent investing* or total return investing, and that created some dilemmas for some trustees.
- Under Section 104 of the 1997 Act, the trustee was given the authority to adjust from income to principal or from principal income if three conditions were met.
 - 1) the trustee invests and manages trust assets as a prudent investor, recalling of course the Prudent Investor Act.
 - 2) the terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income.
 - 3) the trustee determines that the trustee is unable to comply with the requirement of the Act that a trustee administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries. This inability to comply with that requirement goes to the fundamental dilemma created by total return investing.
- UFIPA abandoned these three conditions to only require that the fiduciary determine the exercise of the power to adjust will assist it administering the trust or estate "impartially". Not make it possible when it had been impossible, but just assist.
- UFIPA added a power to convert to a unitrust based on 2003 IRS regulations, which included an example stating that "a state statute providing that income is a unitrust amount of no less than 3 percent and no more than 5 percent of the fair market value of the trust assets, whether determined annually or averaged on a multiple-year basis, is a reasonable apportionment of the total return of the trust."

In re Katherine Reece Trust (Co.): **Accustomed Standard of Living**

- ❑ Katherine Reece was beneficiary of t/u/w of late spouse, Oliver Frasca, which allowed her to live in home without any obligation to contribute as long as funds remain in trust and allowed discretionary HEMS distributions for Katherine and Oliver's children from another marriage giving primary consideration to Katherine under standard enjoyed by her during their marriage with duty to consider other resources.
- ❑ Katherine and Oliver separated after Will executed prior to his death, with marital separation agreement.
- ❑ Children declined trusteeship and appointed BOFK, NA, which sought court guidance on "standard of living" Katherine enjoyed during marriage and whether other resources must be considered.
- ❑ First inquiry was impact of separation agreement on right to inherit—held not waived and right to benefits under testamentary trust.
- ❑ Second inquiry was standard of living at the time of death and immediately before during legal separation.
- ❑ Court looked to Section 50 Restatement (Third) of Trusts, Comment d(2) providing the standard of support and maintenance "is ordinarily that enjoyed by the beneficiary at the time of the settlor's death or at the time an irrevocable trust is created."
- ❑ Court looked to period of separation immediately before death and not "during marriage" pre-separation.

Restatement (Third) of Trusts: Discretionary Distribution Standard

- Section 50(2) addresses whether the trustee may, or must, take other resources available to the trust beneficiary into account when making a discretionary distribution from the trust.
- Comment (e) creates a presumption, subject to a couple of qualifications, that the trustee *should* take these 'other resources' into account to determine whether, and in what amounts, a distribution is to be made to the beneficiary.
 - Comment(e) also notes that this presumption should *not* apply when the settlor expresses a contrary intent, or where applying such a presumption would be contrary to the trust's material purposes or the express terms of the trust instrument.
- Section 50(2) comments provide that no matter how broad the trustee's discretionary standard is- even if *happiness* is included- the trustee's consideration of other resources is still a factor in the determination of whether the trustee's exercise of discretion was reasonable. Equally important, the Reporter's Note to Section 50(2) acknowledges that this presumption is a departure from the prior two **Restatements of Trusts**.

Restatement (Third) §50 Qualifications

The qualifications described in Section 50 are whether:

- (i) if there are other resources that the trustee readily knows about, such as a mandatory distribution of income from the same trust, or payment from another trust that is part of a coordinated estate plan, such resources should be taken into consideration in making a discretionary distribution;
- (ii) the settlor or decedent identified a period of time during which the beneficiary was not expected to be self-supporting, then the inference is that the trustee should not deny discretionary distributions;
- (iii) the trustee's consideration of other resources may have a bearing on the overall reasonableness of the trustee's exercise of discretion, even when there are nonobjective distribution standards such as 'benefit' and 'happiness;' and
- (iv) the grant of extended discretion to the trustee, as indicated by the use of words like 'sole' and/or 'absolute discretion' does not necessarily imply one way or the other, but may suggest that the trustee has greater latitude in the exercise of its discretion.

T/U/A Richard H. Wells

Pa. Super. 2022

- ❑ Bank president created perpetual charitable trust for VMI with his bank as Trustee.
- ❑ VMI sought to terminate the trust and add to its endowment.
- ❑ Court rejected VMI's attempt to break trust because the settlor had clearly wanted a perpetual trust and no evidence of excessive fees or other trust inefficiencies that would merit terminating the trust.
- ❑ Note: Fees were consistent with market rates.
- ❑ Takeaway: Charities shouldn't be greedy, and the court will follow the Settlor's intent and respect the Trust as long as fees are efficient and reasonable.

PA Supreme Court Affirms Wells

- Affirmed March 21, 2024.
- PA Supreme Court held that the Foundation failed to satisfy the statutory standard under Section 7740.3 (e) of the Uniform Trust Act, which requires a showing that the administrative expenses or other burdens of the trust are unreasonably out of proportion to the charitable benefits.

UTC 706: Removal of trustee

The settlor, a cotrustee or a beneficiary may request the court to remove a trustee or a trustee may be removed by the court on its own initiative.

The court may remove a trustee if it finds that removal of the trustee best serves the interests of the beneficiaries of the trust and is not inconsistent with a material purpose of the trust, a suitable cotrustee or successor trustee is available and:

- (1) the trustee has committed a serious breach of trust;
- (2) lack of cooperation among cotrustees substantially impairs the administration of the trust;
- (3) the trustee has not effectively administered the trust because of the trustee's unfitness, unwillingness or persistent failures; or
- (4) there has been a substantial change of circumstances. A corporate reorganization of an institutional trustee, including a plan of merger or consolidation, is not itself a substantial change of circumstances.

Trust under Will of Wen (N.J.): Accustomed Standard of Living Beyond Bare Essentials

- ❑ Wu Wen died testate creating a family TUV for wife Ping naming their sons Peter and Andrew and daughter Catherine as remainder beneficiaries
- ❑ Net income to Ping with discretionary principal “even to the point of exhaustion” for her HMS in “accustomed manner of living”.
- ❑ Independent Trustee appointed who filed accounting to which Peter objected based on Catherine’s alleged manipulation of their mother Ping.
- ❑ Catherine as Agent fbo Ping and charged Ping rent for living in a residence owned by Catherine, which was from Trust.
- ❑ Held that distributions from trust to pay Ping’s rent to daughter did not violate trust’s distribution standard.
- ❑ Distributions based on beneficiary’s accustomed standard of living cannot be measured as merely covering the bare essentials.

Uniform Trust Code Section 813 Duty to Inform & Report

- UTC 813(b)(1) provides that a trustee must promptly furnish a copy of the trust instrument to any beneficiary who requests a copy.
 - Note that this duty is not limited to qualified beneficiaries.
- UTC 813(b)(2)-(3) provides that within sixty days:
 - after accepting a trusteeship, the trustee must notify the qualified beneficiaries of the acceptance and of the trustee's name, address, and telephone number.
 - after the date the trustee acquires knowledge of the creation of an irrevocable trust, or that a formerly revocable trust has become irrevocable, the trustee must notify the qualified beneficiaries of the trust's existence, of the identity of the settlor or settlors, of the right to request a copy of the trust instrument, and of the right to a trustee's report.

Uniform Trust Code Section 706 Trustee Removal

- UTC 706:
 - (a) The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on its own initiative.
 - (b) The court may remove a trustee if:
 - (1) the trustee has committed a serious breach of trust;
 - (2) lack of cooperation among cotrustees substantially impairs the administration of the trust;
 - (3) because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or
 - (4) there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available

UTC 805: Costs of administration

- In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust and the skills of the trustee.

Uniform Trust Code Section 805 Costs

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- UTC 805: In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust and the skills of the trustee.
- Factors Which Might Be Considered:
 - Amount of work performed
 - Character of services rendered
 - Difficulty of the problems involved
 - Importance of the litigation
 - The amount or value of the property in question
 - The Degree of responsibility incurred
 - Whether fund involved was "created" by the attorney
 - Professional skills and standing of the attorney in his profession
 - The results the attorney obtained
 - The ability of the client to pay an equivalent fee
 - The amount of money or value of the property in question