

STRAUSS & MALK LLP Newsletter



This Strauss & Malk LLP newsletter is issued periodically informing you of various matters we believe to be of interest. We want to provide our clients and friends with up-to-date information regarding important topics. We are available to assist you with legal needs in any way possible.

ABOUT THE FIRM

- [Areas of Practice](#)
- [Attorney Bios](#)
- [Internal Revenue Service](#)
- [Previous Newsletters](#)

Illinois Expands Statute to Amend Trusts

More power than ever is in the hands of trust beneficiaries. Irrevocable trusts can now be modified by the beneficiaries, thanks to a new Illinois law regarding virtual representation. In August 2009, Illinois approved SB188 (effective January 1, 2010), which significantly expands the scope of the virtual representation law. The new law will allow a greater number of trusts to use private agreements to settle disputes amongst beneficiaries. Such agreements would bind the trustee, as well as all current and future beneficiaries.

Which Trusts Qualify?

Under Illinois' previous virtual representation statute, all beneficiaries of a trust were required to be competent adults in order to permit amendments. That is no longer the case. The new law allows a trust beneficiary who is a minor, disabled, an unborn person, or a person whose identity or location is unknown to be represented by a competent adult beneficiary who has a "substantially identical interest" regarding the issue. Thus, under the new law, all beneficiaries who are competent adults and the representatives of those who are minors, disabled, unborn persons, or persons whose identity or location is unknown may enter into an agreement to settle disputed or ambiguous terms of a trust and bind all current and future beneficiaries. This modification significantly expands the number of trusts which will now be eligible to settle trust administration issues by entering into private agreements rather than resorting to litigation.

Which Provisions Can Be Modified?

Previously, the Illinois law permitted the beneficiaries to enter into an agreement with the trustee to settle certain issues, such as the construction or ambiguity of a particular provision or the duties and/or powers of the trustee. The new law allows those types of changes and more. It provides broad examples of the matters that may be resolved by the use of a nonjudicial settlement agreement, including, but not limited to (1) the terms of the trust, (2) the powers of the trustee, (3) the administration of the trust and (4) the termination of the trust. It appears that very few aspects of a trust remain outside the scope of virtual representation under the new law. But certain actions, such as changing beneficiaries, changing bequest amounts or terminating the trust early, remain beyond the reach of the virtual representation law. Additionally, the new law (1) allows for conversion to a total return trust (one that pays a fixed percentage of the trust to the beneficiary annually) by agreement, (2) allows a charitable beneficiary to be represented by the Illinois Attorney General in a dispute or nonjudicial settlement agreement and (3) clarifies that a nonjudicial settlement agreement is only valid if its terms could be approved by a court under applicable law. Also, a trustee is authorized to obtain and rely upon the opinion of legal counsel on any relevant matter, such as whether interests are substantially identical or whether an agreement could be approved by a court under applicable law.

"A single conversation across the table with a wise man is better than ten years mere study of books."

Henry Wadsworth Longfellow



Strauss & Malk LLP
ATTORNEYS AT LAW

135 Revere Drive
Northbrook, IL 60062
(847) 562-1400
Fax (847) 562-1422

If you would like to be removed from this list please follow the link below and type REMOVE in the subject line or if you would like to add somebody to the list, follow the link below, type ADD, then add insert contact information.

This communication is advertising material. This is not intended to be, and cannot be, used as legal advice.