

TAX AND TRUSTS & ESTATES UPDATE

May 2016

[No More Secret Trusts? New Jersey's Uniform Trust Code Mandates Disclosure to Beneficiaries...With Exceptions](#)

New Jersey's recently enacted Uniform Trust Code (the "UTC") contains many provisions that will streamline the administration of trusts under New Jersey law, but it also imposes some controversial new obligations on trustees to make certain disclosures to trust beneficiaries. Under the UTC, trustees will be required to keep certain trust beneficiaries "reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests." Many individuals who have created trusts may find these new requirements onerous, as they may prefer that their beneficiaries not know about the existence of trusts for their benefit for a variety of reasons, or until a later time.

There is some good news, however. The law provides that the terms of a trust may override the duty to make disclosures to trust beneficiaries, with certain limits. If the trust terms so provide, the trustee does not have to make affirmative disclosures regarding the existence of the trust or its administration. However, notwithstanding any provision in the trust to the contrary, the trustee must respond to a request made by a "qualified" beneficiary (essentially, a current beneficiary or the person(s) next in line to benefit from the trust after the current beneficiaries) of the trust who is at least 35 years old for a copy of the trust instrument or other information reasonably related to the administration of the trust. The duty to respond to a beneficiary's request for information regarding a trust's administration does little to change the obligations of trustees under current law, because beneficiaries are already entitled to demand that a trustee account for his or her acts and proceedings as trustee.

The UTC takes effect July 17 but applies to all New Jersey trusts, including those created prior to the law's enactment. Because any trust created prior to the enactment of the UTC obviously would not contain language overriding the disclosure requirements of the UTC, clients with existing trusts who do not want the disclosure requirements to apply to those trusts will need to take action in order to opt out of the requirements, if possible. Depending on a particular trust's terms, it may be possible to transfer property from the trust into a newly created trust containing provisions overriding the disclosure rules. Such transfers would need to be completed before July 17 to avoid being subject to these disclosure rules.

If you have one or more existing trusts and would like to discuss how the new disclosure requirements will affect you or your options for potentially avoiding them, please contact your attorney as soon as possible.

We will provide a complete summary of the UTC changes in a future alert before the effective date.

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This is the second in a series of articles on nonprofit organizations and issues that we feature in our regular Updates. We have found this area to be one of ever-increasing interest to our clients and colleagues, and we hope you will find these articles helpful and insightful.

Every nonprofit organization should, on a regular basis, run through a simple checklist to confirm that the organization is attending to some of the basic aspects of its operation and governance. At its simplest level, that checklist would include:

- Checking your certificate of incorporation and bylaws to confirm that you have the proper number of trustees/directors, that you have elected all of the officers mandated in those documents, and that all elections have been for the terms specified in those documents
- Checking that your organization had an annual meeting or annual resolutions adopted by unanimous consent, in the past year
- Confirming with your state of incorporation and with any state that you are authorized to do business in that the organization is in good standing and current on all of its state filings and fees
- Checking your activities and their geographical reach to determine if your organization needs to be authorized to do business and/or registered to solicit donations in additional jurisdictions
- Checking your organization's information that is posted at guidestar.com, and confirming that it is current and accurate
- Carefully reviewing your IRS Form 990 or 990-PF prepared by your tax preparer, and confirming that all organization activities (in particular, new activities) are disclosed and consistent with your organization's stated purposes in your certificate of incorporation and bylaws
- Confirming that you have made the IRS aware of any change in your principal business address
- Confirming that you have adopted and are complying with the organization's conflict of interest policy
- Reviewing employee compensation to determine and substantiate that it is reasonable
- Reviewing policy for reimbursement of trustee expenses to confirm legal compliance

These are just some of the most fundamental, but important, things that every nonprofit organization should "check off" on a regular basis. Missteps and errors with respect to any of the foregoing can have very embarrassing, and potentially costly, ramifications. And if you see that you do have compliance issues as you work through this list, you should contact your attorneys or other advisors without delay.

Sherman Wells Named One of the Best Places to Work in New Jersey

Sherman Wells Sylvester & Stamelman LLP is honored to be named by NJBIZ as one of the Best Places to Work in New Jersey for 2016. Of the 100 companies recognized, Sherman Wells was ranked #25 overall and distinguished as the top ranked law firm within the small/medium company category. We are particularly proud to be one of the youngest companies recognized. Going forward, we will continue to strive to make Sherman Wells a forward-thinking firm dedicated to the professional growth and quality of life of our people.

As Sherman Wells continues to expand, we would like to warmly welcome our newest member to the Tax and Trust & Estates Group:

Beth Corroon, Paralegal

Beth has more than 15 years of experience in estate planning and administration. On the estate planning side, Beth supports the attorneys in our group in drafting wills, trust agreements, powers of attorney, and living wills & health care proxies. On the estate administration side, she provides support with the estate administration process from start to finish, including the probate process, gathering and valuing assets, preparing federal and state estate tax returns and accountings, assisting with federal and state estate tax audits, and closing estates. Prior to joining Sherman Wells, Beth was a paralegal in the Trusts & Estates Practice Group of Fox Rothschild LLP. Previously, she worked at Lowenstein Sandler LLP. She started her paralegal career at Norris McLaughlin & Marcus, P.A. Beth received her undergraduate degree from Rutgers University and her Certificate in Paralegal Studies from Fairleigh Dickinson University.

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