

JULY 2020 NEWSLETTER

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HOW THE TERMS OF AN IRREVOCABLE TRUST CAN BE MODIFIED

FIRM ANNOUNCEMENTS

1. AWARDS:

Pozzuolo Rodden, P.C. is pleased to announce that Martindale-Hubbell, the information service company to the legal profession since 1868, announced that Joseph R. Pozzuolo's 2020 Peer Review Rating for ethical standards and professional ability is excellent.

Pozzuolo Rodden, P.C. is pleased to announce that Martindale-Hubbell congratulated Joseph R. Pozzuolo, Esquire on his 45th Bar Anniversary showcasing his years of hard work and proven experience.

2. UPCOMING SEMINARS:

Joseph R. Pozzuolo, Esquire will be presenting the following continuing legal and accounting education (CLE/CPE) webinar seminars for Clear Law Institute on Wednesday, July 15th @ 1pm:

How Middle Income Families Should Prepare For Retirement, Including Ethics

Please contact Christine Wainwright at Chrissy@Pozzuolo.com or Clear Law Institute at gqueen@clearlawinstitute.com if you would like the online details to attend this upcoming or any other past online CLE/CPE seminars.

3. BLOGS:

1. The following are a few of the business, tax, employment, estate planning and business litigation blogs posted on our main website www.pozzuolo.com during the past month:

- a. How To Uncouple Insurance Policies In Divorce;
- b. No Contest Clause- Why Have One? and,
- c. If I Die, I Do Not Want My Spouse To Remarry Until Our Children Are Grown. Is There Anything I Can Do?

Please visit our website www.pozzuolo.com for more information on these and other relevant business, tax, estate, business litigation and employment topics.

2. The following are a few of the family law blogs posted on our family law website www.pozzuolofamilylaw.com during the past month:

- a. Benefits Of Divorce Mediation;
- b. Divorce Decree Forbidding Overnight Guest; and,
- c. Top 10 Things Not To Do When You Divorce.

Please visit our website www.pozzuolofamilylaw.com for more information on these and other relevant family law topics.

HOW THE TERMS OF AN IRREVOCABLE TRUST CAN BE MODIFIED

The Uniform Trust Code (“UTC”) was enacted in 2000 in order to provide states with a model guidance on trust law. Pennsylvania adopted a customized version of the UTC and enacted the Uniform Trust Act (“UTA”) in 2006. Contained within the UTA are many factors to consider in determining if you can modify or terminate an irrevocable trust with or without court approval.

Some of the most common and routine reasons for trust modifications are: correct errors or resolve ambiguities, repair defective provisions, divide or combine trust, early termination of trusts, address changes in the laws, and/or broaden or delete investment powers. Some of the more challenging reasons include add or remove beneficiaries, add, change or remove trustees, and broaden or narrow distribution provisions such as preserving a beneficiary’s right to receive dependent public benefits. Whatever the reason for the trust modification or termination it is important to consult an experienced trust attorney.

A. Noncharitable Trusts Without Court Approval

- I. Pennsylvania permits the modification or termination of a noncharitable irrevocable trust without court approval provided that the settlor/creator/grantor of the trust and all trust beneficiaries agree. A beneficiary is an individual or entity that has a present or future beneficial interest in a trust or an individual, in a capacity other than that of trustee or trust protector or holds a power of appointment over trust property. Only the trust creator and beneficiaries have a role in such a modification or termination even if the modification or termination would be inconsistent with a material purpose of the trust. The trustee has no role. However, such modification powers of the trust creator and beneficiaries do not extend to modifications to add a portability clause permitting beneficiaries the authority to remove and replace a trustee at his/her/their discretion.
- II. The trust modification or termination also can be accomplished by a binding nonjudicial settlement agreement (“NJSA”) without the settlor’s consent. To modify the trust by NJSA all beneficiaries and all trustees of the trust must enter into the agreement for the modification to be effective. The UTA expressly provides a nonexclusive list of 13 items that may be resolved by use of a NJSA, including, but not limited to, (i) the interpretation or construction of a trust’s provisions, (ii) transfer of a trust’s situs, (iii) granting to a trustee of any necessary or desirable power, and, (iv) exercising or not exercising of any power held by a trustee. If however, the modification will be inconsistent with a material purpose of the trust, it may not be modified by NJSA and requires court approval. Notwithstanding, if the settlor/creator is alive and will consent to the modification, the trust may still be materially modified without court approval.
- III. The UTA also expressly provides that trust can also be terminated for economic reasons with or without court approval. Pennsylvania does not set a threshold amount. The UTA provides that the trustee (i) by unilateral action, must simply determine that the value of the trust property is insufficient to justify the cost of administration, (ii) notify the qualified beneficiaries at least sixty days in advance of the proposed termination, and, (iii) that there be no objection from a qualified beneficiary before the date specified in the notice.

B. Noncharitable Trusts With Court Approval

- I. If all the beneficiaries wish to modify or terminate a noncharitable trust, but the settlor has died (or does not consent), then a court can terminate the trust if it concludes that continuance of the trust is not necessary to achieve any material purpose of the trust.

The court can modify the trust if it concludes that modification is not inconsistent with a material purpose of the trust. What constitutes a material purpose is decided on a case-by-case basis as there is very little judicial guidance.

A court can modify or terminate the trust without consent of the settlor and without the consent of “all” of the beneficiaries, if the trust could have been modified had all beneficiaries consented and the interests of a beneficiary who does not consent will be

adequately protected.

C. Charitable Trust

The laws of trust modification and termination for a charitable trust are very different than a noncharitable trust. If a particular charitable purpose becomes unlawful, impracticable or wasteful, the court shall apply “cy pres” (i.e. as near as possible”) to fulfill, as nearly as possible, the settlor’s charitable intention, provided that the trust does not fail in whole or in part and the trust property does not revert to the settlor or the settlor’s successors in interest. If, in a charitable trust, there is an express provision that results in the distribution of property to a noncharitable beneficiary, it will prevail over the power of the court to apply cy pres.

Pennsylvania law allows a court to modify an administrative provision of a charitable trust to the extent necessary to preserve the trust. This includes modification of trustee succession.

The trustee can, without court approval, terminate a charitable trust holding an amount less than \$100,000, with the consent of the Attorney General and all charitable organizations. The trustee can also terminate, with notice to the Attorney General, if the administrative expenses or other burdens are unreasonably out of proportion to the charitable benefits

In order to determine if you can modify or terminate an irrevocable trust the main things you need to know is: what kind of trust it is, what the settlor’s intent is and do all parties consent. If you want to modify or terminate an irrevocable trust the trust and estate attorneys in our office would be happy to assist you.

PUBLICATIONS

All of the following professional publications and past newsletters written by attorneys of this office are available by clicking here: http://pozzuolo.com/Pubs_Articles.shtml

Corporate/Tax Articles

Bankruptcy - How To Prevent It And How To Cope With It Should It Happen To Your Business

Deferred Compensation Rewards And Retains Key Employees

Design Buy-Sell Agreements For Maximum Utility

How An S Corporation Avoids The Double Taxation Incurred When Excessive Compensation Is Treated As A Dividend

How Mortgage Lenders Should Draft Broker Agreements To Avoid RESPA Violations

How To Look, Act And Sound Like A Professional Corporation

How to Structure a Suitable Buy-Sell Agreement

How To Use Non-Qualified Deferred Compensation Arrangements As A Business, Retirement And Tax Planning Tool

Money Purchase Pension Plan Falls Out Of Favor

Protecting A Client's Business From Unfair Competition Using Restrictive Covenants

Structuring Loans From Qualified Plans - How To Handle The Strict Tax Rules

What Type of Qualified Corporate Retirement Plan Best Serves Your Business, Tax And Retirement Needs

Why An Employment Contract Is Mandatory

Estate Planning Articles

Adapt Estate Planning Strategies to Fit the Needs of Same-Sex Couples

College Funding Tool Offers Estate Planning Advantage

Diversify Strategies For An Effective Estate Plan

Divorce and Estate Planning

Divorce Raises The Need For Performing An Estate Planning Review

Drafting The Durable Power Of Attorney For Wealth Protection Purposes

Estate Planning For Pet Owners

Remarriage Situations Can Raise Special Estate Planning Considerations

Six Proven Estate Planning Techniques

Special Needs Trust - An Estate Planning Tool For The Disabled

The Limited Liability Company -A Sophisticated Tool For Estate Planning

Using Trusts To Maximize Family Protection And Minimize Estate Tax

Why Living Wills- Advance Directives Are An Essential Part Of Estate Planning

This newsletter is courtesy of Pozzuolo Rodden, P.C.

To subscribe, unsubscribe, or for any questions, please contact us at INFO@POZZUOLO.COM.