

Important Legislative Changes Relevant to Georgia Clients

Summer 2018

The 2017–18 Georgia legislative session brought numerous changes, including several significant amendments to the Georgia Trust Code and other trust laws. These new changes take effect on July 1, 2018. Below are some of the provisions that are relevant to our Georgia clients.

Rule Against Perpetuities Extended to 360 Years

The Rule Against Perpetuities limits how long assets can remain in trust before trust assets must be distributed out to beneficiaries. The new laws extend the permissible trust duration to 360 years, up from 90 years in many circumstances. This longer time period allows families to extend the benefits of holding assets in trust, such as wealth transfer tax minimization and increased protection from creditor claims.

Virtual Representation

There are many instances in which, due to age or incapacity, it may be impossible or impractical for individuals to receive notice or consent to certain actions with respect to the trust. The new laws clarify who can receive notice and give consent on behalf of others, such as minor children, unborn descendants, and incapacitated persons.

Trust Modification and “Decanting”

The new laws also expand the ability to modify or terminate an irrevocable trust by permitting trusts to be modified in three ways.

First, certain interested persons can petition a court to modify or terminate a trust. Although the ability to modify a trust through a court process existed previously, the new laws expand the scope of judicial modification. The new laws also add that under certain circumstances, the court may be required to approve a petition to modify or terminate a trust.

Second, the new laws permit nonjudicial settlement of trust matters. The parties who could consent to a judicial settlement agreement regarding a trust can generally also agree to settle certain trust issues without the need for a court process.

Third, under certain circumstances, Georgia now expressly permits trust “decanting,” or transferring assets from one trust to another trust that is similar, though not necessarily identical, to the first trust. This process provides a means for the trustee to indirectly make limited modifications to the trust.

Directed Trusts

The new laws also create the concept of a “trust director,” which is a person with specified limited responsibilities with regard to a trust. This addition allows a grantor to divide the responsibilities of trust administration among different persons. For example, a trust director could be responsible for managing and investing assets, while a trustee would remain responsible for determining when and in what amounts distributions are made.

Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA)

This new law clarifies when executors, trustees, and agents under powers of attorney can gain access to digital assets such as email and social media accounts. Previously, fiduciaries encountered difficulties in accessing digital assets. Under RUFADAA, an individual may also choose to permit a fiduciary to have broad access or may limit the access.

Impact on Planning

The new laws expand your planning possibilities, including the types of terms that can be included in new trusts and wills, or the ability to modify existing trusts based on new circumstances. Please contact a member of the Private Wealth Group to discuss the effect of the new laws on your planning.

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