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Big Changes Are Likely Coming to The GA Trust Code in July 2017

By Richard M. Morgan

Many state legislatures over the last decade or so have been on a mission to become more friendly as to estate and trust laws. These changes have included, among others, the extension of the rule against perpetuities safe harbor from 90 years to either 360 years or longer, or a total termination of the rule (which effectively extends the number of years a trust may continue to exist), the ability to effectively utilize self-settled trusts, and the ability to more easily modify otherwise irrevocable trusts.

Now a special Trust Code Revision Committee of the Fiduciary Law Section of the Georgia Bar Association (Committee) has proposed its first set of changes to the Georgia Trust Code since the last major revision in 2010. The Committee's first set of changes went before the Georgia legislature in January 2017, and they have been progressing as expected through the legislative process. Assuming that the proposed legislation is eventually enacted during this 2017 legislative session, the proposed legislation will most likely become the new law as of July 1, 2017.

The Committee is made up of ten members. I am proud to be a member and assist in this important project for both the Bar Association and the residents of Georgia. While all of the Committee members have been doing an exceptional and selfless job, special kudos go out to our Committee Chair, Nick Djuric, who has been doing an incredible job on both the Committee's work and in helping usher our proposed legislation through the Georgia legislative process.

This first set of legislative proposals before the GA Legislature includes the extension of the safe harbor rule against perpetuities from 90 years to 360 years (HR122, which can be found at: <http://www.legis.ga.gov/legislation/en-US/Display/20172018/HB/122>) and the ability to more easily change otherwise irrevocable trusts (HR121, which can be found at: <http://www.legis.ga.gov/legislation/en-US/Display/20172018/HB/121>).

The expanded ways to modify an otherwise irrevocable trust include (a) court-approved modification during the settlor's (trust creator's) life with the consent of the settlor and all beneficiaries; (b) court-approved modification after death of settlor with the consent of all beneficiaries, provided the modification is not inconsistent with any material purpose of the trust; (c) court-approved modification of a trust in its discretion to facilitate efficient administration of the trust; (d) decanting, i.e., trustee may distribute trust property to new or amended trust(s); and (e) non-judicial (private) settlements permitted with the consent of all parties that would otherwise be required to participate in a court-approved modification. In addition, a mechanism is provided to ensure unborn and unascertained beneficiaries are represented in the trust modification process by providing for one party to receive notice and give consent on behalf of another party. Further, the maximum size at



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which a trust may be terminated based on being insufficient to justify the cost of administration is to be increased from \$50,000 to \$100,000.

The cumulative effect of these proposed changes to Georgia Trust Law is to enhance the ability to modify otherwise irrevocable trusts, to have the option to do so in a private, rather than court based, process, and to enable much longer term, Dynasty trusts under GA Law. The reason Dynasty trusts are important is that they can greatly extend the period over which the tax and non-tax (asset protection and control) benefits of trusts can be achieved.

While not put forth by the Committee or any other Section of the Georgia Bar Association, new legislation was also proposed to enable the use of self-settled asset protection trusts in Georgia (HB197, which can be found at:

<http://www.legis.ga.gov/legislation/en-US/Display/20172018/HB/197>). While this proposed legislation could have a profound effect on Georgia Trust law, it is not as likely, although not out of the question, to be enacted in this 2017 legislative session. If this proposed legislation continues to move toward being enacted, we will inform our readers of both the legislation and its potentially significant new types of trust benefits could be achieved under Georgia Law.