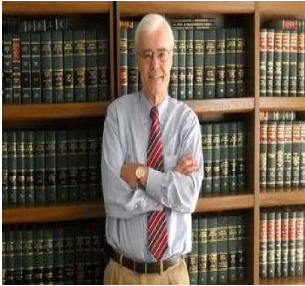


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**September 2013**

### **2013 Changes to our Probate and Trust Code**

Significant changes were made to the South Carolina Probate Code, which includes our Trust Code. Although many new provisions concern postmortem procedures, a number of changes may be of interest to our clients for planning purposes.

For one, there is a new procedure for filing disclaimers with the Probate Court when someone dies. In addition, the South Carolina rules now vary from the federal estate and gift tax rules on what constitutes a disclaimer.

Disclaimers in South Carolina will no longer have to be qualified disclaimers for federal estate and gift tax purposes. Assuming a married individual does not have a taxable estate and wants to use disclaimer planning, the individual can now provide more flexibility for their surviving spouse as far as leaving assets to children and others when both spouses have died.

For instance, if a disclaimer is exercised such that the assets go into a Trust B, sometimes called a Credit Shelter Trust, then with a qualified disclaimer, the surviving spouse loses the right to change the distribution to children when he or she dies. With proper planning under the new rules, the surviving spouse can change the amount going to children, and in some cases, whether the gift goes in trust or outright to children.

There are possible estate tax consequences to granting these powers, but in the proper circumstance where there are not likely to be any estate taxes, the disclaimer can be used to protect the assets from third parties, such as creditors. It may also be possible to structure the trust so that certain powers can be turned on or off, depending upon whether or not estate taxes are an issue.

Since many of our trusts drafted since 2001 involve disclaimer planning, we want our clients to be aware of the new options. Although the changes become effective on January 1, 2014, any necessary planning should be in place prior to that date.

Another helpful feature has to do with the value of assets that you can have outside of your trust and still use a somewhat inexpensive summary proceeding rather than an expensive probate proceeding. This may prove to be beneficial for many of our clients who fund their trusts, but forget some assets that have nominal values.

With some adjustments, the old rule was not more than \$10,000 in probate assets other than real estate; now it is \$25,000. This is better, but still a relatively small amount when compared to states like Florida, which allow \$75,000. Therefore, our clients still need to take care to properly and fully fund their trusts prior to their deaths or permanent disability.

*Disclaimer*

*This newsletter is intended for the exclusive use of our clients who live in South Carolina. You have received this newsletter because, according to our file, we did estate planning work for you in the past and your primary residence is in South Carolina. If this is not correct, or we have mailed this newsletter to the wrong person, or if you have hired another attorney to take care of your estate planning work, or if you have moved out of state, or if you would otherwise like to be removed from our client mailing list, please let us know so that we can take you off of our client mailing list and/or move you to the proper list.*

Another important change has to do with the manner in which the spouse's elective share is calculated. The elective share is the right that a spouse has to take against their deceased spouse's Will or a Trust.

Still another important change is that the statute expressly provides for Trust Protectors in South Carolina. A Trust Protector is a third party, not a trustee, who can direct certain actions or manage certain types of assets.

In some cases, a Trust Protector is granted powers to amend or revoke a trust, often to compensate for changed circumstances or to save taxes. In many instances, there are duties that cannot be given to the grantor of the trust, or a beneficiary, and in some cases, not even the trustee, because they can have adverse tax or other consequences. In some cases, Trust Protectors are granted certain veto powers over decisions by trustees.

South Carolina also specifically recognizes "Decanting" which is a process that can be used to pour ("decant") the assets of one trust into another trust. As per the reporter's comment to the new act:

Providing decanting authority to a trustee, authority to appoint the property of an original trust to a second trust, provides a nonjudicial method for modifying an irrevocable trust when doing so would be in the best interests of the beneficiaries or in furtherance of the purposes of the trust. Some examples of how decanting authority might be used by a trustee include: modifying the administrative or substantive provisions of a trust to account for a change in law, combining trusts to reduce administrative costs, limiting

the authority of interested trustees, correcting scrivener's errors, and conforming the distribution provisions of a trust to the requirements of a special needs trust.

There were a number of other major changes. A complete summary of the changes published by the South Carolina Legislature can be found on the home page of our website at: [www.HiltonHeadEstatePlanning.com](http://www.HiltonHeadEstatePlanning.com).

### **Is Your Estate Planning Up To Date?**

It is highly recommended that you have your documents and planning reviewed no less than every 2-3 years.

It is important not to go beyond 3-5 years for a review or update of your estate planning documents or your estate plan. If you go beyond 5-7 years, then you are running a significant risk that your planning is out of date and will not accomplish your objectives. The longer you wait, the more likely it is that your documents and planning will be out of date at the time they are needed the most.

If you would like to review and possibly update your estate plan and would like our assistance, please go to the home page of our website at [www.HiltonHeadEstatePlanning.com](http://www.HiltonHeadEstatePlanning.com) and look for the tab titled "Returning Clients." It is one of the tabs on the right hand side of each page. There will also be a list of items that we need to have back. Much of the information is for you and does not need to be returned to us. If you prefer, we can email or mail you an estate planning package. Once you have filled out the information, please call to set up a mutually convenient time to meet.

During the estate planning conference, we will review your current documents, your assets, and

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other relevant information, to determine if any changes are needed. We will also answer any questions that you may have concerning your documents and your planning. We can also discuss any other changes that you want concerning your estate planning.

### **Is Your Trust Fully Funded?**

For clients who have Revocable Trusts, we also offer a trust funding review service. As part of this service, we review your titles, deeds, bank statements, brokerage account statements, and other evidence of ownership with you to determine if your trust is fully funded. If you do not already have one, we also show you how to put together a binder to keep the information up to date. This will make it easier for you and your family to find relevant information in the event of an emergency.

This part of the meeting usually takes about an hour or two, unless a follow up meeting is needed. This work is also at our normal hourly rates.

If you want to include this service, which we highly recommend, please let us know when you call for the appointment. You need to provide copies of your most recent brokerage and bank account statements, copies of deeds to real estate, life insurance, IRA, pension and annuity beneficiary designations, automobile and boat titles, at least 48 hours prior to our meeting. If you have individual stocks, bonds or other securities, you should only bring photocopies. If you already have one of our binders, you also need to drop this off at least 48 hours prior to our meeting.

Please keep in mind that if you have a trust, and it is not fully funded at your date of death or your disability, your assets and your loved ones can be subject to unnecessary probate procedures and

the resulting costs, increased time and delays that are involved.

In some extreme cases, there can also be needless estate taxation, and in other cases, there may be overly restrictive trusts that are no longer needed for your loved ones. With proper planning, these issues can be avoided and the job can be made much easier for your loved ones.

Again, it is highly recommended that you have your documents and planning reviewed. If you do not wish to meet, no response is necessary. We are here to be of service if and when you need us. We will simply note our records to let us know that we followed up with you.

### **For Those Who Read This Information**

We are often concerned that clients do not read the information that we send to them. For this reason, we often include a bonus or discount for those who do.

For those clients who have read this far and who want to meet to review *both* their planning and trust funding and are also willing to download the information referenced above from our website at [www.HiltonHeadEstatePlanning.com](http://www.HiltonHeadEstatePlanning.com), we will credit you with one hour of our time at our highest billing rate toward your bill for the services. You must also refer to this offer when you call in to set up an appointment, and the appointment has to be scheduled prior to September 30, 2013.

Also please keep in mind that we need the relevant information at least 48 hours prior to the office conference. You can email the information or drop it off. If you drop it off, please let us know what day and time you will be coming by. Please do not leave any original documents, such as wills, trusts, deeds, etc. Our staff is not allowed to accept them.

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