



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2013 Wisconsin Act 92
[2013 Senate Bill 384]

**Laws of Trusts, Uniform Trust
Code, and Changes to Estate
Recovery and Divestment
Provisions**

2013 Wisconsin Act 92 revises and expands the Wisconsin Statutes relating to trust law through the adoption of the Uniform Trust Code (UTC), as recommended by the National Conference of Commissioners on Uniform State Laws (NCCUSL). The Act also incorporates provisions outside the scope of the UTC, including three trust law concepts not currently reflected in the Wisconsin Statutes (“directing parties,” “trust protectors,” and “decanting”) and addresses certain issues relating to estate recovery and divestment provisions of the state’s Medical Assistance (MA) program, as described below.

WISCONSIN UNIFORM TRUST CODE

The Act reorganizes ch. 701, Stats., by repealing certain provisions of the chapter and by adopting the UTC, with some modifications, as new subchapters of ch. 701, Stats., as described below:

- Subchapter I - defines terms used throughout the Wisconsin UTC and also includes several general provisions governing trusts.
- Subchapter II - provides procedures regarding the role of a court in administering a trust.
- Subchapter III - addresses issues of representation relating to trusts.
- Subchapter IV - describes requirements for the creation, modification, and termination of trusts.
- Subchapter V - addresses issues regarding creditor’s claims, spendthrift provisions, and discretionary trusts.
- Subchapter VI - creates provisions applicable to revocable trusts.
- Subchapter VII - provides procedures regarding designation and removal of a trustee.
- Subchapter VIII - defines powers and duties of a trustee.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature’s Web site at: <http://www.legis.wisconsin.gov>.

- Subchapter IX - governs duties owed by fiduciaries in relation to the trust.
- Subchapter X - describes the liabilities of trustees and other individuals in relation to a trust.
- Subchapter XI - incorporates the Uniform Principal and Income Act, presently codified in s. 701.20, Stats., into the framework of the Wisconsin UTC.
- Subchapter XII - describes the applicability of the Wisconsin UTC to pre-existing trusts, and contains additional general provisions governing trusts.

NON-UTC TRUST LAW CONCEPTS

In addition to creating a new statutory framework based on the UTC, as described above, Act 92 incorporates certain provisions into Wisconsin trust law that are outside the scope of the UTC. The provisions describe powers and duties of parties acting in a fiduciary or fiduciary-like capacity with respect to the trust, which include directing parties and trust protectors. The Act also provides a decanting procedure that is outside the scope of the UTC, allowing transfers of assets from one trust to a second trust under certain circumstances.

ESTATE RECOVERY AND DIVESTMENT

Finally, Act 92 contains changes to the estate recovery and divestment provisions of the state's Medicaid program. The changes concern estate recovery and divestment as it relates to the inclusion of certain assets for divestment purposes; treatment of certain promissory note transactions; voiding certain transfers of real property; property transfer reporting requirements; and requirements applicable to special needs, pooled, and living trusts.

In addition, Act 92 modifies the scope of assets subject to estate recovery by the Department of Health Services. First, the Act specifically includes "revocable trusts" as being subject to recovery, and excludes "irrevocable trusts" from recovery. Second, in addition to other changes, it repeals a statutory provision added in the 2013-15 biennial budget act that had allowed recovery of any property that was marital property at any point during a timeframe of over five years leading up to and including application and eligibility for MA, if the nonrecipient surviving spouse had an ownership interest in the property at the time of the recipient spouse's death.

Effective date: The provisions of 2013 Wisconsin Act 92 related to estate recovery and divestment took effect on December 15, 2013, and the remaining provisions of the Act will take effect on July 1, 2014. The estate recovery provisions first applied to the recovery of public assistance provided to individuals who died on October 1, 2013. The divestment provisions first applied to determinations of initial eligibility for MA for individuals who applied on July 2, 2013.

Prepared by: Brian Larson, Staff Attorney

January 21, 2014

BL:jb;ksm