

BOLHOUSE, BAAR & LEFERE, P.C.
ATTORNEYS AT LAW

Michigan Trust Code

Thomas R. Vander Hulst

April 2010

You probably haven't read about it in the newspaper, but a new law governing trusts went into effect April 1, 2010 which affects every trust that exists in the State of Michigan. It is called the *Michigan Trust Code* and has been in the making for the past six years. The Michigan Trust Code is Michigan's first comprehensive statute governing the creation, administration, termination and modification of trusts.

A trust is an agreement whereby one individual, the "Settlor," entrusts property to another individual, the "Trustee," who agrees to manage and distribute the property for the benefit of one or more beneficiaries, as provided in the agreement. A single person can establish a trust as the settlor. A husband and wife, or two or more unrelated people, could set up a trust in which case all would be settlors. The new law clarifies under what circumstances a person is considered capable of creating a trust, the responsibilities of the trustee and the rights of the beneficiaries.

The most common type of trust is a revocable trust, which means the settlor can change or revoke the trust at any time. Often the same person is the settlor, the trustee, and the beneficiary of the trust. In these instances the settlor usually can do anything he or she desires with the trust property. When the settlor dies or becomes incapacitated, the successor trustee must give certain notices and accounting to certain people. Some of these requirements can be limited in the trust; for example the trust could limit who receives an accounting from the trustee under certain circumstance.

Trusts have several advantages over Wills including:

- Avoiding the probate process, especially advantageous for those who own real property in more than one state;
- Maintaining privacy regarding assets;
- Delaying distribution of estate for a period of time after death;
- Providing for minor or disabled children or grandchildren;
- Providing management of assets if the settlor becomes incapacitated; and
- Minimizing estate taxes

Trusts are the most flexible tool used in estate planning. However, they are more complex to draft and operate and, consequently, more expensive than Wills. The complexity of a Trust and the number of trusts necessary to achieve one's estate planning goals will depend on specific individual circumstances.

If you have any questions about trusts or would like your trust reviewed in light of the new law, please contact us for an appointment.