



A Simplified Procedure for Termination and Distribution of Inter Vivos Trusts

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Did you know that on April 3, 2023, R.C. § 5801.22 became effective, giving trustees an option for a simplified, out-of-court procedure for the termination and distribution of inter vivos trusts? This procedure may be particularly attractive to your practice as it provides trust information to the beneficiaries and provides the beneficiaries' full release to the exiting trustee without the delay or expense of a judicial accounting. Should a trustee elect to use this procedure, the trustee must serve on the necessary parties: (1) a written notice that complies with the requirements set forth within R.C. § 5801.22 (B) (1); and (2) one or more trustee's reports covering the applicable reporting period. The trustee may also serve these documents upon other persons who the trustee reasonably believes may have an interest in the trust.

The required written notice must contain information such as: (1) the date of the notice; (2) a description of the authority for the proposed distributions; and (3) a description of the proposed distributions, including the names of the proposed distributees with a description of the assets proposed for distribution to each. The notice must also inform the recipient of the 45-day objection period, during which a recipient may object to the matters disclosed within the notice or to any other matter pertaining to the trustee's administration of the trust, along with a description of the procedures that the trustee will follow if the trustee does, or does not, receive such an objection.

Additionally, the notice must inform its recipients of the bar of claims that will result from the failure to deliver a timely objection, and that, conversely, the trustee may rely upon written consents and waivers from the recipients to complete the distributions prior to the expiration of the objections period, if all recipients deliver a written consent and irrevocable waiver of claims to the trustee.

Finally, the notice must contain an estimate of any income or expenses that the trustee reasonably expects to be received or disbursed before the completion of the trust-terminating distributions. An exhibit showing the trust assets on hand must also be attached to the notice.

If, at expiration of the objection period, the trustee does not receive a written objection, the trustee shall distribute the assets as provided within the notice and any person who was served the notice shall be barred from challenging the validity of the trust or otherwise bringing a claim against the trustee as to matters disclosed within the notice. Similarly, if the trustee receives a written consent and waiver of claims from each recipient of the notice, the trustee may distribute the assets prior to the expiration of the objection period.

If the trustee receives a timely written objection, the trustee may: (1) submit the written objection to the court for resolution; or (2) resolve the objection by accepting a withdrawal of the objection, or by written instrument or written agreement. Such an agreement may contain a release and trustee-indemnification clause. Within a reasonable time following resolution of all timely objections, the trustee shall distribute the trust assets as provided within the notice, subject to any modifications contained within the resolving document.

Should an issue or dispute arise while a trustee elects to utilize this procedure to terminate a trust, sophisticated and experienced trust, estate, and probate litigation counsel should be consulted to help effectuate a successful resolution.

This article provides an overview and summary of the matters described therein. It is not intended to be and should not be construed as legal advice on the particular subject.