Ansell & Anderson P.A.
TRUST AND ESTATE LAW

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The biggest changes in the law in 2014 occurred at the state level. Effective July 1, 2014, Senate Bill 289 was an enormous piece of legislation with many components all of which were intended to make New Hampshire one of the best legal environments for trusts in the country. You can now go to court and prove your will or trust while you are alive, if you have concerns about the beneficiaries of your estate challenging your estate plan after your death. New Hampshire law provides a process for an individual to file a petition with the court, notify all interested parties and introduce evidence to prove that his or her will or trust is valid. It is now possible to refute any claim of undue influence or incapacity and have your will or trust conclusively proved valid during your lifetime.

A novel concept that was introduced as part of this legislation allows a trustee to unilaterally modify an irrevocable trust. At first blush, this seems to give a trustee an inappropriate amount of power. There are protections for grantors (trust creators) and beneficiaries detailed in the statute which require that any modification must further the grantor's intent or a material purpose of the trust, preserve favorable tax treatment, enhance efficient administration or minimize the cost of administration. For more details, go to the articles and blog section of our website where you will find a three part series about modifications to irrevocable trusts.

New Hampshire also established surrogates for health care decision making, effective January 1, 2015. In the event an incapacitated individual does not have advance directives for health care or a legal guardian, a physician or advance practice registered nurse may designate a surrogate to make health care decisions for that individual. There is an order of priority for who would become the health care surrogate (spouse first, adult children second, parents third, siblings fourth etc.) While nearly all of our clients have advance directives for health care, many clients have had experiences with a loved one who is incapacitated and who does not have advance directives. Although it is clearly preferable to sign an advance directive for health care while healthy, it is encouraging that there is now a procedure for designating a decision maker in a less cumbersome process than a court appointed legal guardian.

For the second year in a row, there were no major changes to the federal gift, estate and generation skipping transfer tax laws. The 2015 gift and estate tax exemption inflation adjusted amount is $5,430,000 ($10,860,000 for a married couple). Portability provisions, made permanent in 2013, are unchanged and allow spouses to share their gift and estate tax exemptions. The 2015 annual gift tax exclusion remains $14,000 and the amount that can be transferred to a non-U.S. citizen spouse increased to $147,000 for 2015.

On December 19, 2014, the President signed the Tax Increase Prevention Act of 2014 that extends many tax incentives but only through 2014. The Act included extending the tax-free direct distributions of up to $100,000 from an IRA to qualified charitable organizations for individuals over age 70 ½. Unfortunately, none of the tax incentives included in this legislation were extended beyond 2014 and so we must wait for certainty with respect to the fate of these provisions for 2015.

President Obama also signed the Achieving a Better Life Experience (ABLE) Act into law on December 19, 2014. The ABLE Act provides for tax advantaged savings accounts for qualified individuals with disabilities to save for certain expenses, such as education and transportation. These accounts are similar to 529 savings accounts set up for education expenses, except that ABLE accounts will allow individuals and families to save for disability-related expenses to supplement, but not replace, benefits provided through Medicaid, Supplemental Security Income, the beneficiary's employment, and other sources.

The U.S. Supreme Court issued a decision holding that assets held in an inherited IRA are not afforded the same special protection as a traditional or Roth IRA under the bankruptcy code. *Clark, et ux v. Rameker*, 134 S.Ct. 2242 (2014). In reaching its decision, the Court distinguished traditional and Roth IRAs as worthy of protection from creditors because those accounts are intended to allow debtors to meet their basic needs during their retirement. Funds in inherited IRAs, conversely, must begin to be withdrawn by the beneficiary in the year after the death of the decedent no matter how far from retirement the beneficiary is and the beneficiary may withdraw the entire balance without a penalty.

We encourage each of you to review your estate plan every year and to consider whether changes are needed. This process should include a review of your current documents, ownership of assets and accounts, and confirmation of beneficiary designations.

Christine was honored to be counted among the best trust and estate attorneys in New Hampshire and New England again this year. This year, Christine received the special designation of "Lawyer of the Year" in the Trusts and Estates category. Christine is thankful for all of our clients and peers who have helped her to achieve this distinction.

We are honored by the loyalty and warmth which so many of you have extended to us throughout this challenging year and strive to repay your loyalty with superior service and work product. Many have asked about whether the firm name will change now that Ruth is no longer with us. This firm was founded by Ruth in 1994. We still run this firm based on standards that Ruth set for excellent service and high quality legal work at a reasonable price. At this time, it makes sense to keep the name Ansell & Anderson, Professional Association.

We appreciate your referrals of other family members and friends for our services. Best wishes for a healthy and prosperous 2015.