Ansell & Anderson P.A.
TRUST AND ESTATE LAW

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We are pleased to send you this annual summary of the most significant changes to the federal and New Hampshire laws which affect estate planning and estate and trust administration. We hope that you find this information helpful.

On December 22, 2017, President Trump signed the Tax Cuts and Jobs Act, implementing the most dramatic changes to the tax code in many years. The exemption from gift, estate and generation skipping transfer tax was doubled from $5,000,000 to $10,000,000. The tax law changed the method for calculating inflation adjustments. The 2018 inflation adjusted amount has not yet been released; however, we anticipate that it will be approximately $11,200,000 per person and $22,400,000 for a married couple. Like many other provisions of the new law, the gift, estate and generation skipping transfer tax exemption is scheduled to return to the 2013 amount of $5,000,000, as adjusted for inflation, in 2026. Portability provisions, made permanent in 2013, are unchanged and allow spouses to share their gift and estate tax exemptions. The 2018 annual gift tax exclusion increased to $15,000 and the amount that can be transferred to a non-U.S. citizen spouse increased to $152,000.

This is welcome news as many of our clients will no longer need to be concerned about the wealth transfer taxes reducing their loved ones' inheritances. Against the backdrop of the dramatic change in wealth transfer taxes, we encourage you to review your estate plan to determine if this change in the law will cause unintended consequence to your plan. For example, if your trust provides that the estate tax exempt amount is to be held in trust for the benefit of children (from a previous marriage), with the balance passing to a current spouse, then, in this example, depending on the total value of your taxable estate, it is possible that a trust with these provisions would pass entirely to your children, leaving nothing to pass to your spouse. Many clients updated their estate plans as a result of the increased estate tax exemption in 2013. If you have not reviewed your estate plan in a few years or if you have questions about how the new tax law will affect your estate plan, please contact the office to schedule an appointment with one of us to discuss the application of the new law to your estate plan.

On the state level, beginning in June 2017, all probate filings for new estates are to be filed on-line. All routine probate filings are now processed through a centralized filing center in Concord, rather than at the county Circuit Courts. Heirs and beneficiaries have the option to sign up on-line to receive all probate filings via email directly from the Court. The transition to e-filing was initially a bit rocky, with some Petitions for Estate Administration taking six to eight weeks to be processed and others being processed within two or three weeks. We anticipate that

going forward the e-filing system will be a positive change, making the probate process more efficient.

Effective January 1, 2018, New Hampshire adopted its own version of the Uniform Power of Attorney Act. Under the new law, third parties, such as banks and financial institutions, are prevented from arbitrarily refusing to accept powers of attorney. If a third party refuses to accept a notarized power of attorney, there is a process for the agent to obtain a court order mandating the acceptance with the third party paying the attorneys' fees associated with obtaining the court order. We anticipate that these provisions in the law will be a deterrent to third parties refusing to accept notarized powers of attorney. While there is a statutory form for a power of attorney, we have opted to continue to use our forms, with appropriate modifications and references to the new statute. Powers of attorney signed under the previous law are still effective and do not need to be updated to comply with the new law. The provisions of the new law apply to powers of attorney signed before, on or after January 1, 2018.

Since 2009, New Hampshire has authorized self-settled asset protection trusts. Originally, this was authorized under the Qualified Dispositions in Trusts Act, which allowed an individual to transfer property to an irrevocable trust that provides asset protection but still allowed the individual to benefit from the property transferred to the trust. In 2017, the Qualified Dispositions in Trusts Act was repealed, although existing trusts created under the Act were grandfathered. In place of the Qualified Dispositions in Trusts Act several statutory provisions were added that together provide similar protection for irrevocable self-settled asset protection trusts. Under the new provisions, a trust offers asset protection for a grantor who is a beneficiary of the trust, provided that the trust includes a spendthrift clause, and a condition that the grantor cannot make distribution to himself or herself. A spendthrift clause indicates that the trust assets are not subject to anticipation, assignment, pledge, sale or transfer by the beneficiary.

New Hampshire is the first state in the U.S. to authorize civil law foundations. Civil law foundations are trust-like vehicles used primarily in continental Europe. The new law takes elements from the New Hampshire Trust Code, and its corporate and limited liability law. Presently, the law is unsettled with respect to whether civil law foundations will be taxed as trusts. Until their tax treatment is resolved, they are unlikely to be widely used.

New Hampshire trust law is cutting-edge. The New Hampshire Supreme Court recently decided a high-profile case with potentially far-reaching implications: *David Hodges, Jr. et al v. Alan Johnson et al* 2016-0130. In the *Hodges* case, the trustees decanted assets from certain irrevocable trusts into new irrevocable trusts and in the process eliminated certain discretionary beneficiaries of the first trust. The decantings were authorized under the terms of the trust and under the New Hampshire decanting statute in effect at the time of the decantings. The trustees argued that the decantings were necessary to preserve the business

purpose of the original trust, which held interests in the closely-held business of the grantor. The probate court judge held, and the Supreme Court affirmed, that the decantings were void because they were "accomplished without consideration for the interests of the [removed] beneficiaries." The Court stated that the authority to decant "does not abrogate the trustee's duty under [the statute] to administer, invest and manage the trust and distribute the trust property in good faith, in accordance with its terms and purposes and the interests of the beneficiaries, and in accordance with this chapter." There is a pending appeal of the Supreme Court decision. We will continue to watch how it unfolds in the courts and keep you informed.

There were two major cases decided in Massachusetts involving long-term care planning techniques: *Heyn v. Director of the Office of Medicaid*, 89 Mass. App. Ct. 312 (2016) and *Daley v. Executive Office of Health and Human Services & Nadeau v. Director of the Office of Medicaid* (combined cases), 477 Mass. 188 (2017). Although these cases are not the law in New Hampshire, they provide insight into the direction in which the law may be moving. MassHealth has historically attacked transfers of homes to irrevocable trusts; however, the Supreme Judicial Court (SJC) in Massachusetts recently rejected MassHealth's arguments. MassHealth had argued that the assets of an irrevocable trust were countable for purposes of MassHealth eligibility when the grantor retained the right to live in a home that had been transferred to an irrevocable trust. In one of the *Daley* cases, the grantors transferred their home to an irrevocable trust, reserving in the trust the right to live in the home. In the other, the grantors reserved for themselves a life estate in the deed and transferred the remainder interest to an irrevocable trust. The SJC indicated that in both cases, the home was not to be considered a countable asset for purposes of determining eligibility for benefits. In the *Heyn* case, the SJC rejected MassHealth's arguments about why certain provisions in an irrevocable trust caused the trust assets to be accessible to the grantor, despite the trust clearly stating the opposite. We will stay tuned to see how the law in New Hampshire evolves in response to these decisions.

New Hampshire is working with the State of Ohio to offer ABLE accounts to New Hampshire residents under a new program called STABLE NH. The STABLE NH accounts are offered through a partnership with Ohio's STABLE program. The Achieving a Better Life Experience (ABLE) Act was passed in December of 2014, allowing tax-favored savings accounts for individuals who are blind or disabled. Assets in an ABLE account will not disqualify the beneficiary from eligibility for government benefits, provided that certain requirements are met. In 2016, the New Hampshire legislature enacted the New Hampshire ABLE savings account program. Additionally, the 2017 Tax Cuts and Jobs Act authorized rollovers from a beneficiary's 529 education savings account to an ABLE account for the same individual. The rollovers are subject to the annual contribution limit, currently $15,000. (This amount is tied to the annual gift tax exclusion amount.)

Another change as a result of the Tax Cuts and Jobs Act relates to 529 education savings accounts. Beginning in 2018, up to $10,000 each year can be withdrawn tax-free from a 529 account for primary and secondary school expenses (public, private, or religious). Previously, tax-free withdrawals were only available from a 529 account for qualified college expenses.

As always, it is important that your estate pass to your intended beneficiaries, whether by will, trust, beneficiary designation or joint tenancy. We encourage each of you to review your estate plan every year. This should include a review of your current documents, ownership of assets and accounts, and confirmation of beneficiary designations. You should consider whether any changes are needed at this time.

Many of you will recall that Alyssa joined Ansell & Anderson as an associate attorney in January of 2012. She has been an invaluable asset to the practice, particularly following Ruth's unexpected illness and death. Many of you have had the pleasure of working with Alyssa. We are delighted to share the news that Alyssa has become a shareholder in the firm as of January 2018.

Our staff works diligently to provide our clients with excellent service. We continue to be blessed with Jennifer Pierce and Robin Davison, our estate planning paralegals, Melissa Myrdek, our probate paralegal, Ellen Boudreau, our bookkeeper and probate paralegal, and Elizabeth Gyure, our receptionist and legal assistant. We could not serve our clients without their efforts, which we greatly appreciate.

Christine was again honored to be counted among the best trust and estate attorneys in New Hampshire and New England. Christine is thankful for all of our clients and peers who have helped her to achieve these distinctions.

We appreciate your loyalty and referrals of other family members and friends for our services. Best wishes for a healthy and prosperous 2018.