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Is Your Bank Ready for Trust Protectors?

On December 13, 2013, Governor Scott Walker signed the Wisconsin Trust Code into law. The provisions of the Wisconsin Trust Code will take effect on July 1, 2014 and will be contained in Chapter 701 of the Wisconsin Statutes.

One of the new concepts addressed in the Wisconsin Trust Code is that of a “Trust Protector.” A Trust Protector is generally a person appointed to direct certain limited actions with respect to a trust. A Trust Protector is not a Trustee. However, if appointed, a Trust Protector is authorized to watch over the trustee and perform specific duties or actions on behalf of the trust.

A Trust Protector may be appointed in one of the following ways: “[i] by the settlor in a trust instrument; [ii] by a court in a court order, or [iii] by the interested parties in a nonjudicial settlement agreement.” If appointed, the Trust Protector is only authorized to perform those actions that are specifically stated in the trust instrument, court order or nonjudicial settlement agreement (the “governing instrument”). Among other things, the governing instrument may give a Trust Protector the authority to change the trustees of a trust, amend the trust, or change the beneficiaries of the trust.

The nature and scope of the powers granted to a Trust Protector under a governing instrument will vary greatly. Therefore, any request of a financial institution made by a purported Trust Protector must be reviewed on an individual, case-by-case basis. Generally, a financial institution or its counsel should review copies of the documents relating to the appointment of the Trust Protector, as well as the scope of authority granted to the Trust Protector under the governing instrument. The financial institution may also want to consider obtaining a certification from the Trust Protector under which the Trust Protector attests to his or her authority to perform the actions requested and exempts the financial institution from liability associated with acting on the Trust Protector’s direction.

Please contact one of the attorneys listed if you would like to discuss recommended updates to financial institution policies and procedures to comply with the provisions of the Wisconsin Trust Code and to specifically address issues that may arise due to the increased use of Trust Protectors.

The information contained herein is based on a summary of legal principles. It is not to be construed as legal advice. Individuals should consult with legal counsel before taking any action based on these principles to ensure their applicability in a given situation.