Ansell & Anderson P.A.
TRUST AND ESTATE LAW

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Welcome to 2020! For over two decades Ansell & Anderson has endeavored to provide our clients with excellent service. Christine, Alyssa and our staff look forward to the new decade and ways in which we can continue to improve our practice.

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.

The President signed the Setting Every Community Up for Retirement Enhancement (SECURE) Act at the close of last year. The Act contains substantial changes in the law concerning retirement accounts. An exhaustive discussion of the provisions in the Act is beyond the scope of this letter. Instead, we have chosen to highlight some of the changes that are most likely to impact our clients.

Perhaps the most frequently discussed change in the SECURE Act as it relates to estate planning is the elimination of the so-called "stretch provisions" for inherited IRAs. Previously, a beneficiary of an inherited IRA was allowed to stretch the distributions of an inherited IRA over his or her life expectancy, continuing the income tax deferral on the amounts not withdrawn and potentially reducing the income tax on amounts withdrawn each year. Now, with few exceptions, non-spouse beneficiaries will have to withdraw 100% of the funds in an inherited IRA within 10 years of the account owner's death. This shortens the period over which an inherited IRA must be withdrawn, eliminating years of tax deferred growth and, in many cases, increasing the amount of income tax a beneficiary will pay on withdrawals by pushing them into a higher marginal income tax bracket. The IRA stretch rules remain the same for surviving spouses and beneficiaries who are disabled, chronically ill, and those who are 10 or fewer years younger than the IRA owner. For minor children inheriting an IRA from their parent, the 10-year period will not start until they reach age 18.

The news is abuzz with talk of how these changes will affect existing estate plans of those with large retirement accounts. Most of the discussion centers on the interaction between "conduit" trust provisions and the elimination of the stretch provisions. Conduit provisions are used in trusts that are designated as beneficiaries of IRAs. These provisions typically direct the trustee to withdraw from the IRA and distribute only the Required Minimum Distribution ("RMD") from the inherited IRA each year. Under the SECURE Act, the RMD requirements have been removed for most inherited IRAs. As a result, many professionals fear that the only "required distribution" is the entire account balance in the 10th year after a beneficiary inherits an IRA. This would restrict a beneficiary's access to funds in years 1-9 and likely result in a large income tax bill in year 10. For example, consider a $1,000,000 IRA that pre-SECURE Act would have been distributed over 20 years now all coming out of the Trust in one year. We are happy to report that our standard conduit trust

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language avoids this pitfall by providing trustees with discretion to make payments in excess of the RMD. Therefore, they can decide how much or how little they would like to withdraw in years 1-9. The majority of our clients with trusts designed to be designated as the beneficiary of retirement accounts have our standard conduit language in their trusts, and therefore do not need to rush in and have the documents updated. However, some of our clients with particularly large retirement accounts payable to their trusts may want to consider having us review their plans, particularly if their goal is to avoid large sums being distributed to their beneficiaries in a given year. As always, if you are concerned about your particular situation, we are happy to discuss it with you. For a more detailed analysis of the SECURE Act, view our latest blog article at www.ansellpa.com.

The SECURE Act contains some additional provisions of note. The age an account holder must begin taking RMDs has now been pushed back from 70½ to 72. The law also removes the restriction on contributions to traditional IRAs for individuals over age 70½. The SECURE Act also made a slight adjustment to the rules regarding 529 college savings plans which may now be used to pay off up to $10,000 of student debt of a beneficiary. Finally, the "Kiddie Tax" rules have reverted to their pre-Tax Cuts and Jobs Act of 2017 status. Unearned income of a minor child is once again taxed as if the child was in his or her parents' marginal tax bracket.

This year, New Hampshire followed the national trend and enacted the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA). RUFADAA attempts to modernize the law by anticipating and addressing common issues with the administration of digital assets. "Digital assets" is a term used to define a broad category of intangible property that is increasingly becoming a significant part of modern life. Common examples of digital assets include email accounts, social media accounts and online picture albums. The Act creates more flexibility for those who want to control proliferation or nonproliferation of their digital assets upon their death. RUFADAA also seeks to create a unified system for custodians of digital assets to look to when determining how to proceed with regard to a deceased individual's digital assets. We have updated our documents to address the disposition of digital assets in conjunction with this statute. However, clients with older documents should not feel obligated to update their documents solely on account of these changes.

The New Hampshire legislature also passed a law building on previous legislation that works to prevent the financial exploitation of elderly and vulnerable adults. The law targets the use of powers of attorney to exploit anyone over the age of 65 and other "vulnerable" adults (as defined by New Hampshire law). The law creates an affirmative duty on investment advisors, broker-dealers and other related professionals to report suspected abuse to the New Hampshire Secretary of State and allows them to freeze action on accounts where abuse is suspected. The statute insulates those acting under it from liability, as long as such action was made with reasonable care and in good faith. Financial abuse of elders is a concern for many.

This statute is a welcome addition to the developing safety net that seeks to prevent such abuse.

On the federal level, the U.S. Supreme Court published an opinion relevant to a state's ability to tax an out-of-state trust. In *North Carolina D.O.R. v. Kaestner*, North Carolina sought to tax the income of a New York trust on the sole basis that one of the Trust's beneficiaries was a resident of North Carolina. A New York resident created a trust for the benefit of his three children, one of whom later moved to North Carolina. Under North Carolina law, any trust income "for the benefit of" a North Carolina resident was deemed taxable. During the period in question, the beneficiary received no distributions and had no right to receive distributions, however North Carolina still assessed a tax on the Trust's income. The Court held that given the facts, imposition of such a tax violated the Constitution. The decision centered on the beneficiary not receiving, nor having the right to receive, trust distributions during the period the tax was assessed. This case, read in conjunction with the exemption that trusts receive from the 5% tax on interest and dividends levied by the state of New Hampshire, adds support to the legal framework that makes New Hampshire such an attractive location for establishing trusts.

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.

We are delighted that Jaran R. Blessing joined our firm in August. In 2019, Jaran graduated from Emory University School of Law with honors. Jaran received the Wolters Kluwer Publishing Award for Excellence in Taxation. Jaran and his wife, Jacqueline, make Concord their home. We know that you will enjoy working with Jaran when the opportunity arises.

Alyssa and Jaran both welcomed new additions to their families in 2019. Alyssa and her husband, John, welcomed their son, Graham, in April. Jaran and Jacqueline welcomed their son, James, in October. Both are enjoying the joys of new parenthood.

Our staff works diligently to provide our clients with superior service. We are thankful for the assistance of our paralegals, Jennifer Pierce, Robin Davison and Victoria Farren and for our receptionist, Michele Folsom. 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 happy and healthy 2020.