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## Now Trending: Directed Trusts

A directed trust is one in which the grantor appoints both a trustee and another person (sometimes called a "trust protector") to perform one or more duties traditionally belonging to the trustee. While the concept is not new, it is being used much more frequently than in the past.

States have begun passing legislation to clarify the roles than the trust protector may play. Missouri is no exception. In section 456.8-808 RSMo, the trust protector may be granted the following powers:

- to remove and appoint a trustee or successor trustee
- to modify or amend the trust to save taxes
- to change the trust terms to reflect legal changes

- to correct errors, resolve ambiguities that might otherwise require court construction
- to change beneficiaries' interests
- to terminate a trust or change the law governing it to another state

A trust protector may not, however, exercise a power for his own benefit.

The trustee must follow the written instructions of the trust protector so long as the directions are within the scope of the powers granted to the trust protector.

Missouri's statute is very favorable for both the trust protector and the trustee, imposing liability upon them only for acting in bad faith or with reckless indifference.



*The new trend in estate planning is to set up a "Directed Trust."*

Some trust companies will only accept trusts governed by Delaware law, since there is a body of case law establishing legal precedents that provide clarity.

Before finalizing a directed trust, you should definitely meet with the corporate trustee to be sure that they will accept the terms set forth in your instrument.

### Republican Tax Plan Highlights



#### Business Tax Changes:

20% corporate tax rate. Current tax rate of 35% is the highest in developed world.

25% rate for pass-through businesses.

10% one time repatriation rate for bringing back corporate profits.

#### Personal Tax Changes:

12%, 25%, 33% three individual tax rates. (subject to revision)

Doubling of standard deduction to \$12,000 for individuals, \$24,000 for couples.

Eliminate the estate & alternative minimum tax.

# Determination of Competency

It is sometimes necessary in litigation to determine if a person was competent to perform an action, such as signing a contract or appointing another to act on his behalf.

In State v. Tobben, a recent Missouri Appellate Court case, a corporation tried invalidate a shareholder proxy by claiming he was either not competent at the time he granted the proxy to vote his shares, or was suffering under the undue influence of his daughter.

The plaintiffs filed a motion for appointment of a guardian ad litem for

the shareholder. The shareholder's attorney argued that the Circuit Court had no jurisdiction to determine competency and filed a motion to dismiss.

The trial court scheduled a medical exam of the shareholder to determine his competency. The Court of Appeals held that the lower court lacked authority to determine competency and held that the motion for appointment of a guardian was invalid.

The Appellate Court vacated the Order to appoint a guardian, stating that only the Probate Court has jurisdiction to determine a person's competency.



*The Probate Court has exclusive jurisdiction to determine competency.*

# When are Tenants' Assets Abandoned?

Tenants sometimes leave personal belongings when they vacate rental property. The question then arises as to when a landlord is permitted to remove or dispose of it. Done improperly, a landlord may be liable for damages to the tenant.

Section 441.065 RSMo states that the premises shall be deemed abandoned if:

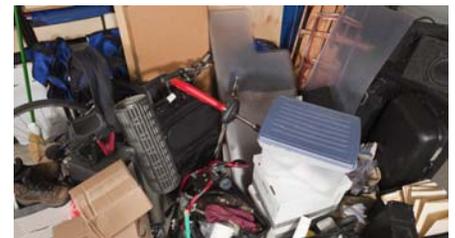
- the landlord has a reasonable belief the tenant has vacated and does not intend to return; and
- Rent is due and has been unpaid for thirty (30) days; and

- The landlord posts written notice on the premises and mails by both regular and certified mail, a notice of the landlord's belief that the tenant has abandoned.

The statute describes what must be contained in the written notice to the tenant.

The tenant has ten (10) days to either pay rent or respond in writing that the tenant has not abandoned the premises.

If the tenant fails to pay the rent or inform the landlord within ten days that the tenant has not vacated, the landlord may freely remove or dispose of the property.



*Landlords must observe statutes in removing Tenants' personal property.*

# What is "Undue Influence"?

In Nestal v. Rohach, the three siblings that received a small inheritance under their mother's will sued the fourth sibling who inherited most of the assets. The siblings claimed that Melissa had exerted undue influence on their mother.

There was a four day jury trial in which the jury found no undue influence on four accounts but did find undue influence on three others. On

appeal, it was shown by the mother's diary entries that Melissa had long been her favorite. The mother had turbulent relationships with the other children.

There was insufficient evidence that Melissa had overcome the will of the mother, substituting her own will. Therefore, the trial court's finding was reversed.



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