State of the States

2025 Year-End Estate Planning Advisory

November 19, 2025

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This section surveys notable 2025 developments in trusts and estates across key jurisdictions, highlighting enacted legislation, pending proposals and consequential court decisions with practical planning implications. From Connecticut's decanting statute and digital asset forfeiture rules to New York's movement on electronic wills and service reforms, Illinois's modernization measures and case law, Florida's adoption of FUFIPA and expanded decanting, and significant changes in Texas, California, and North Carolina, the landscape continues to evolve in ways that affect fiduciary administration, tax exposure and beneficiary rights.

Connecticut

The following bills became effective or passed in Connecticut in 2025:

- *Connecticut Uniform Trust Decanting Act*, CT Gen Stat section 45a-545a, which permits Connecticut irrevocable trusts to be decanted (effective as of January 1, 2024).
- *H.B. No. 6990*, which specifies that the term "property," as used in various Connecticut statutes concerning the seizure and forfeiture of property, includes digital wallets and virtual currency (signed into law on June 23, 2025).
- *H.B. No. 6918*, which prohibits marriage between first cousins (signed into law on June 23, 2025).

The following bills were proposed in Connecticut in 2025 and are pending:

- *H.B. No. 5333*, which would adopt the Uniform Real Property Transfer on Death Act in Connecticut.

- *H.B. No. 5152*, which would reduce the estate tax exemption threshold from the current $13.99 million to $3.6 million, eliminate the caps on estate and gift taxes (currently $15 million for combined estate and gift tax) and deposit the revenue from such taxes in the Early Childhood Education Fund.
- *H.B. No. 7177*, which would extend the filing deadline for estate tax returns from six months to nine months.

As a reminder, Connecticut has a separate state gift tax. Connecticut residents are subject to state gift tax on all federally taxable gifts, while nonresidents are subject to state gift tax only on federally taxable gifts of real estate or tangible personal property located in Connecticut. Connecticut taxable gifts must be reported on a Connecticut gift tax return, regardless of whether any tax is due. Connecticut gift tax and estate tax are unified, meaning that Connecticut taxable gifts reduce the amount of Connecticut estate tax exemption available at death ($13.99 million, for decedents dying in 2025).

New Jersey

New Jersey had very few developments in trusts and estates law in 2025.

- *Senate Bill S421*, a bill to authorize electronic wills introduced in 2024, remains under consideration.
- *Archit & Monal Amin v. Director, Division of Taxation*, Docket No. 007430-2022 (Tax Court of New Jersey, December 31, 2024).
  - On New Year's Eve of 2024, the Tax Court of New Jersey granted summary judgment to New Jersey resident taxpayers contesting an assessment of New Jersey income tax on undistributed earnings from certain controlled foreign corporations (CFC), as defined in Section 957 of the Internal Revenue Code.
  - The taxpayers were direct shareholders in four CFCs and indirect shareholders in two other CFCs. Under the Tax Cuts and Jobs Act (TCJA), for federal income tax purposes, US shareholders in CFCs are taxed on their share of the CFC's post-1986 accumulated earnings and profits, as a deemed repatriation dividend, regardless of whether those earnings and profits are actually distributed. The TCJA imposes a one-time tax on such dividends. For tax year 2017, the taxpayers included their share of the CFCs' post-1986 accumulated earnings and profits which had not been distributed to them on their federal income tax return but not their state income tax return. On audit, the New Jersey Division of Taxation assessed a $2.1 million state income tax deficiency.

- In finding for the taxpayers, the Tax Court held that the New Jersey Gross Income Tax Act, NJSA 54A:5-1(f), expressly requires dividends to be actually distributed in order to be income taxable.

As a reminder, New Jersey has a state inheritance tax, which is imposed on the beneficiary, rather than a state estate tax imposed on the decedent's estate. New Jersey state inheritance tax applies to New Jersey resident decedents and non-resident decedents who own real estate or tangible personal property in New Jersey. The amount of the tax depends on whether the decedent was a New Jersey resident, the beneficiary's relationship to the decedent, the value of the decedent's estate and the type of property received by the beneficiary.

New York

The following bills were proposed in New York in 2025 and are currently pending:

- *A7856A*, which would allow for the electronic execution of wills, has passed the Senate and the Assembly and is currently awaiting delivery to Governor Hochul.
- *S8175*, which would amend New York's Surrogate's Court Procedure Act (SCPA) to enhance service of process procedures is also awaiting delivery to the Governor. The proposed revisions would:
  - Permit service by certified mail without return receipt;
  - Include service by electronic methods as a means of alternative service, when needed;
  - Amend the rules on service periods within and without the State; and
  - Deem service by electronic means to be complete upon transmission of the process to the recipient.

Planning Note: New York has a state estate tax that applies to New York resident decedents and non-resident decedents who own real or tangible personal property located in the state of New York. In 2025, New York's estate tax exemption amount is $7,160,000. This amount is set to be adjusted for inflation in 2026 and is projected to be approximately $7,300,000. Additionally, unlike with the Federal estate tax exemption, a New York decedent will completely lose the benefit of the exemption amount if their gross estate exceeds 105% of the exemption amount. New York does not have a state gift tax, however, taxable gifts made within three years of death are deemed brought back into a New York decedent's estate for the purpose of calculating their gross estate. The 3-year gift addback rule was set to expire on January 1, 2026, but was extended until 2032 as part of the passage of the 2025-2026 state fiscal plan.

Illinois

Illinois continued its steady modernization of probate, trust and fiduciary law in 2025, with the legislature enacting several significant statutory changes and appellate courts issuing decisions with practical implications for estate planning, trust administration and fiduciary risk management.

Legislative Updates

- **Small Estate Affidavit Threshold Increased (effective January 1, 2026).** Illinois expanded the situations where a decedent's estate can be settled without opening a full probate. The threshold for using a Small Estate Affidavit increased from $100,000 to $150,000, and, importantly, motor vehicles do not count toward that $150,000 cap because they can be transferred under separate vehicle-title rules. In practice, this means modest estates can be settled faster and at lower cost when the decedent primarily held bank or brokerage accounts, and will help families avoid the need for probate proceedings.
- **Expanded Recordkeeping and Compliance Duties for Trustees (effective January 1, 2026).** The Illinois Trust Code now requires trustees to retain a copy of the governing trust instrument for seven years following trust termination. The same legislation also aligns trustees' duties with Illinois's Revised Uniform Unclaimed Property Act, mandating that trustees "conduct a reasonable search" for assets which have been presumptively abandoned or have been reported and remitted to a state unclaimed property administrator before final distribution. Trustees and family offices should ensure document-retention and compliance policies are updated to meet these new standards.
- **Health Care Decision-Making Revisions (effective January 1, 2026).** Illinois updated the Living Will Act and the Health Care Surrogate Act to clarify the interaction between living wills, powers of attorney for health care and Physician Orders for Life-Sustaining Treatment (POLST). The amendments confirm that a valid health care power of attorney controls whenever the named agent is available (and thus the agent's decisions supersede a Living Will), and providers should follow the agent's decisions within the scope of the document. The amendments also clarify that a POLST form is not a prerequisite to honoring a patient's declaration if the patient has been determined to be a qualified patient (defined under the Act as a terminally ill patient with capacity to make such decision).
- **Financial Institution Reliance on Probate Court Documents (effective January 1, 2026).** Financial institutions now have statutory protection and are released from liability when relying in good faith on court-issued Letters of Office or similar authority of an executor or administrator. If multiple fiduciaries are named and there is confusion or conflict regarding who can act, financial

institutions may refuse to act until receiving direction from a court. This change is intended to provide greater certainty and reduce delays stemming from institutional liability concerns.

- **Pending Illinois Estate-Tax Reform (introduced, not yet enacted).** Several bipartisan bills introduced in 2025 would raise the Illinois estate tax exemption (currently $4 million per individual). Several of these bills propose increasing the exemption to $6 million per individual, tying it to the federal exemption with portability, or creating a higher exemption for qualifying farm property. If enacted, these changes could materially reduce Illinois estate tax exposure for many families. Individuals who are Illinois residents or who have property located in Illinois should monitor developments in 2026. Until then, the baseline remains: Illinois imposes estate tax above $4 million per decedent (without portability), which often requires coordinated planning for married couples and Illinois-situs assets.

Key Appellate Decisions

- **Trustee Duty Enforce Loans – *In re Estate of Sippel, 2025 IL App (3d) 230227***. An Illinois Appellate Court confirmed that trustees must actively pursue repayment of loans and notes owed to a trust. In Sippel, a corporate trustee was found to have breached its fiduciary duty by failing to collect shareholder loans owed to the trust, and the trustee was surcharged for the resulting losses. This case reinforces that Illinois trustees have an affirmative duty to pursue and document collection of debts owed to a trust, and trustees should inventory all receivables, follow up at reasonable intervals and document collection efforts.
- **Divorce and Retirement-Account Beneficiaries – *Mowen v. Kelly, 2025 IL App (4th) 240906***. An Illinois Appellate Court held that a former spouse remained the valid beneficiary of retirement accounts because the decedent did not change the beneficiary following the divorce and the divorce decree did not expressly revoke the designation. The decedent had named the former spouse as the primary beneficiary of the retirement accounts and had not updated the accounts after the divorce. The Appellate Court held that absent express language in a divorce decree or the applicability of a state statute, beneficiary designations survive divorce. Clients should be aware that divorce does not automatically alter retirement or life insurance beneficiary designations. Clients should verify and update beneficiary designations, especially after significant life events (including changes in marital status).
- **Scrivener Exception for Estate Documents Prepared with Non-Lawyer Assistance – *Roszkowiak v. Roszkowiak, 2024 IL App (2d) 230265***. An Illinois Appellate Court held that a trust amendment typed by the settlor's daughter was valid, finding that the daughter acted merely as a scrivener and not as an unauthorized drafter. A trust settlor may amend his or her own trust without the assistance of an attorney, but non-lawyers are ordinarily prohibited from preparing estate planning documents under the Illinois Consumer Fraud and Deceptive Business Practices

Act. This decision confirms that it is permissible for a non-lawyer to provide ministerial assistance to an individual – here, typing the trust amendment at the direction of the trust settlor – when the non-lawyer is acting at the settlor's direction and is not providing legal advice. That said, to avoid ambiguities and/or disputes, clients should involve counsel to ensure the document is legally valid, properly executed, and consistent with related beneficiary designations and tax objectives.

- **Standing to Sue Agents under Power of Attorney – *In re Estate of Piton, 2024 IL App (3d) 240051***. An Illinois Appellate Court narrowed standing – a legal concept permitting one to pursue a lawsuit because there is a sufficient connection to the legal claim and the court has the ability to remedy the legal injury – to challenge an agent's conduct under the Illinois Power of Attorney Act. Only principals or true successors in interest (i.e., someone who actually inherits the affected property) may sue an agent for fiduciary breach under the Illinois Power of Attorney Act. Individuals with mere expectancy interests (in Piton, the principal's nieces and nephews) lack standing. This case limits exposure to peripheral challenges from individuals serving as agents under a power of attorney.
- **Disclosure Obligations of Trustees – *Lindblad v. Blair, 2025 IL App (1st) 241753-U***. A trustee satisfies disclosure duties under the Illinois Trust Code by providing a beneficiary with the most recent restatement of the trust agreement. An Illinois Appellate Court held that beneficiaries are not entitled to prior drafts or non-operative amendments unless there is a specific challenge to validity of the current operative trust instrument. This case clarifies the scope of a trustee's duty to provide information to trust beneficiaries and limits beneficiaries' rights to access non-operative trust instruments absent a specific need for validity challenges.

Florida

Over the past year, several legislative developments have impacted the private wealth and fiduciary landscape in Florida. A summary of key updates follows.

Florida Uniform Fiduciary Income and Principal Act (FUFIPA)

- Effective January 1, 2025, the FUFIPA replaces the prior Florida Uniform Principal and Income Act. FUFIPA governs the default allocation of receipts and disbursements between income and principal for trusts and estates with a Florida principal place of administration.
- FUFIPA modernizes Florida's fiduciary accounting rules by encouraging the use of modern portfolio theory, emphasizing total return across both income and principal appreciation. Fiduciaries are now expressly authorized to make adjustments between income and principal under certain circumstances, providing greater flexibility to administer long-term trusts for both current and remainder beneficiaries. This modernization aligns with Florida's 2022 extension of the rule against perpetuities to 1,000 years.

- If a court determines that a fiduciary has abused its discretion under FUFIPA, affected beneficiaries are entitled to be restored to the position they would have occupied but for the abuse.

Expanded Decanting Flexibility under Florida Law

- Trust decanting allows a trustee to transfer assets from an existing trust into a new trust with modified terms – essentially "pouring" the old trust into a new one – to better reflect the settlor's intent or respond to changing family, tax or administrative circumstances. Recent amendments to Florida Statute section 736.04117 expand trustee flexibility and clarify beneficiary protections.
- "Authorized trustees" (as defined in section 736.04117(1)(b)) now have greater latitude when establishing a new trust to receive property through decanting:
  - Trustees with *absolute discretion* to invade principal may extend the trust's duration, modify dispositive provisions and alter beneficial interests. Subject to statutory limits, this includes the ability to decant into a supplemental needs trust, even if the original trust was not one.
  - Trustees with *limited discretion* to invade principal (e.g., limited to distributions for health, education, maintenance and support) may also decant, provided the beneficiaries' interests in the new trust remain substantially similar to those in the original trust.
- Under Florida law, beneficiaries who receive a limitation notice – a written statement that an action for breach of trust may be barred if not brought within six months of adequate disclosure – must typically act within that 6-month window. The new legislation clarifies, however, that a trustee's notice of intent to decant does not constitute a disclosure sufficient to trigger this limitations period. Accordingly, the 6-month period begins only after the trustee has exercised the decanting power and provided formal disclosure of the completed decanting to the beneficiaries.

Planning Note: These changes afford trustees additional flexibility to adapt trusts to evolving family or tax circumstances while reinforcing the importance of clear documentation and disclosure once a decanting is executed. Counsel should be consulted well in advance to ensure compliance with the statute and proper timing of all beneficiary notices.

Effect of Lifetime Gifting on Trust Distributions

- New Florida legislation clarifies that lifetime gifts by a settlor to a beneficiary may be applied to satisfy, in whole or in part, future trust distributions if:
  - The trust instrument expressly so provides;
  - The settlor or trustee makes a contemporaneous written declaration at the time of the gift; or

- The beneficiary provides a written acknowledgment that the gift is to be treated as a partial or full satisfaction of a trust distribution.

- This clarification is intended to prevent beneficiaries from receiving a "double benefit" when a settlor makes significant lifetime transfers intended to accelerate or substitute for future trust distributions.

Texas

While state governments rarely make headlines, this year all eyes have been on Austin – or rather, away from Austin. The Texas Legislature convenes every other year – in 2025, lawmakers have been at work passing a wide variety of laws, ranging from state and local taxation to education.

Income and Transfer Tax Updates

- **Capital Gains**: Senate Joint Resolution 18 proposes a constitutional amendment that would prohibit the imposition of capital gains tax upon a decedent's death. This will be voted on in a general election this November.
- **Estate, Gift, and GST Taxes**: House Joint Resolution (HJR) 2 proposes a constitutional amendment prohibiting the imposition of state-level estate, gift or generation-skipping transfer (GST) taxes. Although none currently exist in Texas (with one exception, discussed below), this amendment would prohibit any from occurring in the future, notwithstanding any future amendments. HJR 2 will also be on the ballot this November.
- **Vehicle Gift Tax**: Texas does impose a flat $10 gift tax on the recipient of a motor vehicle from certain family members, trusts and a decedent's estate. SB2064 eliminated the gift tax on transfers of vehicles from a decedent's estate. SB2064 was signed into law on June 20, 2025 and became effective September 1, 2025.

Property Tax Updates

- Texas does not have a state income tax, so most of the state's revenue is sourced from property taxes. The lack of other sources of revenue, coupled with rising property values, has resulted in very high property taxes throughout the state – in fact, Texas property taxes are, on average, among the highest in the nation.
- In an effort to provide some relief to homeowners, the homestead exemption aims to effectively reduce the value of one's home.
- In 2025, the available homestead exemption is $100,000. Therefore, if you apply and qualify for the Texas homestead exemption, your property tax liability will be calculated as though your home is worth $100,000 less than its appraised value.

- To qualify, the home must qualify as a residence homestead and be owned by an individual (or a property structured trust) as his or her primary residence (i.e., not a vacation home).
- Texas Governor Greg Abbott signed SB4 into law, which could result in an important change to Texas's property code and benefit homeowners residing within the state. This bill would increase the homestead exemption to $140,000 for all Texans, thereby reducing Texans' property tax liability up to an estimated $900.
- Governor Abbott also signed SB23, which would increase the homestead exemption to $200,000 for Texans who are 65 or older or disabled (i.e., eligible for disability insurance benefits under Federal Old-Age, Survivors, and Disability Insurance).
- Because SB4 and SB23 seek to amend the Texas Constitution, they both will subject a state constitutional vote in November 2025.

Business Courts

For the past several years, we have been tracking the creation and implementation of Texas Business Courts. These special courts, intended to oversee complex business cases, have jurisdiction over the following:

- Disputes over $5 million that involve various corporate affairs, such as derivative actions, actions by a business or its owner against another officer or owner, and actions to hold owners or executives responsible for breaches of duty;
- Cases involving publicly traded companies, regardless of the amount in question; and
- Cases in excess of $10 million that involve contracts or commercial transactions and where the parties consent to the business courts' jurisdiction.

As of September 23, 2025 – just over one year since the Business Courts began hearing cases – 45 opinions have been issued on matters ranging from energy and natural gas disputes, to jurisdictional conflicts, to limited liability company agreement interpretation. Given how new the Business Courts are, it is hard to ascertain trends or opine on the anticipated success or failure of any specific causes of action. However, having courts dedicated to complex commercial litigation, coupled with Texas's business-friendly economic and tax environment, may be appealing to business owners looking to relocate from less appealing jurisdictions.

California

The following highlights summarize key updates, including new legislation and important appellate decisions that are particularly relevant for those with California ties.

Legislative Updates

- **Private Retirement Plans and Trusts**. California Assembly Bill (AB) 2837, effective January 1, 2025, made significant amendments to the California Enforcement of Judgments Law (EJL). The legislation revises procedures for serving notices of judgment, expands certain exemptions from collection and updates rules on wage garnishment. Most notably for private wealth clients, AB 2837 modifies creditor protections for distributions from retirement assets, potentially impacting planning involving Private Retirement Plans (PRPs) and Private Retirement Trusts (PRTs).
- **Private Retirement Plans (PRPs)**. California Code of Civil Procedure (CCP) section 704.115 governs exemptions for assets held in PRPs. While the statute provides limited guidance – famously defining a "private retirement plan" as a "private retirement plan" – California courts have interpreted this to mean a plan "designed and used for retirement purposes."
  - Courts apply a totality-of-the-circumstances test to determine whether a plan meets this standard, considering:
    - The debtor's subjective intent;
    - The timing of the plan's creation;
    - The debtor's control over contributions;
    - Compliance with the plan's formal rules; and
    - Whether withdrawals were actually used for retirement purposes.
- **Private Retirement Trusts (PRTs)**. A PRT is an employer-sponsored, irrevocable grantor trust designed to hold and protect PRP assets from creditors and bankruptcy claims. California courts have identified several factors relevant to determining whether a PRP held in trust qualifies as a valid PRT:
  - The sponsoring employer may be wholly owned by the plan participant.
  - The plan must be structured for bona fide retirement purposes, supported by financial forecasting or appraisal.
  - The trust should be administered by an independent trustee or custodian.
  - The plan should be maintained and reviewed annually.
  - The plan should include a clear formula for contributions and distributions, including timing and eligibility criteria.
- **Creditor Protection Framework Before and After AB 2837**. Prior to AB 2837, qualified plan balances enjoyed protection under federal ERISA rules, while distributions from those plans were protected under CCP section 704.115, subject to exceptions such as child and spousal support obligations.

- Under AB 2837, courts now apply a "means test" when a creditor challenges a claim of exemption. The court determines how much of the PRP's balance or distributions is necessary for the debtor's retirement and exempts only that portion.
- Importantly, assets held in a properly structured PRT are not subject to the means test and remain fully exempt from creditor claims, regardless of the debtor's financial need. If a court finds that a PRT was properly established and administered, both the trust corpus and distributions may be shielded from judgment creditors.

Planning Note: When properly implemented, PRTs can serve as a powerful tool for creditor protection of retirement assets in California. However, the post–AB 2837 landscape remains untested.

***Estate of Tarlow*, 109 Cal. App. 5th 124 (2025)**

The California Court of Appeal held that a trustee of a testamentary trust has standing to petition in an estate proceeding because the trustee is a person entitled to distribution of a share of the estate.

- **Facts**: The decedent's will created a testamentary trust for his sister, naming his friend as trustee. Following the decedent's death, the beneficiaries sought final distribution of the estate and argued that their mutual disclaimers and assignments eliminated the need to fund the testamentary trust. The trustee disagreed and petitioned the court for distribution of the sister's share to him as trustee. The trial court dismissed the petition, finding that the trustee lacked standing.
- **Holding**: The appellate court reversed, holding that when a will creates a testamentary trust, the named trustee is a devisee under the will whose interests vest at the decedent's death. Accordingly, under California Probate Code section 11700, the trustee qualifies as a person entitled to distribution and has standing to petition for distribution from the estate.

***Packard v. Packard*, 108 Cal. App. 5th 1284, 330 Cal. Rptr. 3d 203 (2025)**

The court held that a petition seeking construction or reformation of a trust amendment – intended to implement the trustor's intent rather than challenge the trust's validity – is not a "trust contest" subject to the 120-day statute of limitations for contests.

- **Facts**: The trustor's amendment allocated specific assets between his two sons and later included a handwritten change that altered the distribution formula. After the trustor's death, one son petitioned to reform the trust to reflect equal division, arguing a drafting mistake. The probate court deemed the petition a time-barred "contest."

- **Holding**: The appellate court reversed, finding that the petition was not a contest because it sought to reform the trust to reflect the settlor's true intent, not to invalidate the instrument. The court confirmed that reformation is permissible even where the language appears unambiguous, so long as clear and convincing evidence demonstrates a mistake in expressing intent.

Statutory Updates

- **Adjustment of Intergenerational Transfer Exclusion under Proposition 19**.
  - **Background**: Proposition 19 (2020) amended the California Constitution to modify property tax rules governing intergenerational transfers and base value transfers.
  - **2025 Adjustment**: For transfers or changes in ownership occurring February 16, 2025 through February 15, 2027, the intergenerational transfer exclusion amount increases to $1,044,586. The exclusion is adjusted biennially based on changes in California's housing price index, as published by the Federal Housing Finance Agency.
- **Update to Small Estate Petitions (AB 2016)**.
  - **Background**: California's "summary succession" procedures allow successors to transfer certain property without formal probate when the decedent's gross estate falls below a statutory limit, adjusted every three years.
  - **2025 Update**: For decedents dying on or after April 1, 2025, the gross estate limit increases to $750,000 (up from $184,500 for decedents dying between April 1, 2022 and March 31, 2025). Assembly Bill 2016 also limits this simplified process to a decedent's primary residence in California and codifies the $750,000 threshold under the Probate Code.

North Carolina

Electronic Storage of Attested Written Wills by an Attorney

- This new law, enacted as part of Session Law 2025-33 (enacted June 30, 2025), allows attorneys to electronically store original wills and subsequently offer a certified paper copy of the electronic record for probate.
  - This law, codified under Chapter 31 of the North Carolina General Statutes, addresses the problem of probating a photocopy of a will that cannot be located after the testator's death (a lost will), which can be a cumbersome process. Under this new law, at a testator's direction, a North Carolina licensed attorney may create an electronic record of an original will and sign an affidavit certifying that the paper copy is a complete, true and accurate copy of that electronic record.

- The printed electronic copy of the will and the affidavit may be filed after the testator's death, and the electronic copy may then be probated in the same manner as an attested written will. This law is effective on January 1, 2026, will apply to attested written wills stored as electronic records on or after the date (even if the will was executed before the effective date).

- There are two important points to note about this new law.
  - First, only an attorney licensed to practice in North Carolina may create the electronic record of the paper will and a certified paper copy of the electronic record that may later be offered for probate.
  - Second, creating an electronic record of the will means the testator may not subsequently revoke this will by physical act (destroying or tearing up the will). The will, however, can still be revoked by a later will or codicil.

Elective Share Updates

- S.L. 2025-33 addressed the requirements a trust must satisfy for a trust created for a surviving spouse to be valued as 100% countable toward the surviving spouse's elective share under G.S. 30-3.3A(e)(1) (i.e., the full value of the trust would be treated as having passed to the surviving spouse for elective share purposes).
- Pursuant to G.S. 30-3.3A(e)(1), a trust must satisfy the following requirements in order for a trust to qualify as a 100% spousal trust under G.S. 30-3.3A(e)(1):
  - The trust must be controlled by a non-adverse trustee during the surviving spouse's lifetime;
  - The trustee shall distribute to or for the benefit of the surviving spouse either:
    - (a) the entire net income of the trust at least annually, or
    - (b) the income of the trust in such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance, and support of the surviving spouse; and
  - The trustee shall distribute to or for the benefit of the surviving spouse out of the principal of the trust such amounts and at such times as the trustee, in its discretion, determines necessary for the health, maintenance and support of the surviving spouse.
- This law amends G.S. 30-3.3A(e)(1) to clarify the following:
  - A non-adverse trustee must be in place for the entire duration of the trust (i.e., all successor trustees must be non-adverse trustees);
  - The non-adverse trustee requirement will be met if the surviving spouse serves as his or her own trustee;

- A trust will not meet the income or principal distribution requirements above unless the trust provides that the trustee shall distribute the income and principal as provided in those sub-subdivisions by specifically using the terms "shall," "is required to," or other equivalent term or terms; and
- The trustee's ability to exercise discretion regarding the timing and amount of distributions necessary for health, maintenance, and support of the surviving spouse is not determinative.

Uniform Community Property Disposition at Death Act

- The Uniform Community Property Disposition at Death Act (S.L. 2025-25, signed into law on June 26, 2025) repeals existing Chapter 31C of the General Statutes, which already recognized community property rights at death for couples who had moved to North Carolina from a community property state, and enacts a new Article 5 of Chapter 30, which creates a new framework for how community property is handled at the death of a spouse in North Carolina.
- This new law clarifies how community property is handled in a separate property state like North Carolina.
- The new law creates a presumption that one-half of community property belongs to the surviving spouse and cannot be disposed of by the deceased spouse's will; the other one-half can be disposed of by the deceased spouse's estate plan (or if none, by intestate succession). The deceased spouse's one-half of the community property is not subject to a claim for an elective share by the surviving spouse.
- The act also provides procedures outlining how a surviving spouse (or heirs) can make claims for community property and provides time limits for filing such claims (generally one year from the date of death). In addition, the new law protects third parties who transact in good faith with community-property spouses.
- The act will become effective on January 1, 2026, and will apply to judicial proceedings commenced on or after that date.

Paternity Updates

- Under North Carolina law, a child born to unmarried parents is presumed to be the child of the mother for inheritance purposes. Under current law, even if a father consents to having his name on the child's birth certificate, this alone does not create a parent-child relationship sufficient to allow the child to inherit from the father. In order for the child to inherit from the father, the father must also file an affidavit acknowledging paternity during his lifetime and the child's lifetime with the Clerk of Superior Court of the county where either the father or the child resides.

- A new law eliminates the requirement of filing the acknowledgement of paternity with the Clerk of Superior Court. This change, made by modification of G.S. 29-19(b)(2), was signed into law on July 9, 2025 in S.L. 2025-75. The new law will be effective December 1, 2025 and applies to the estates of decedents dying on or after that date.

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