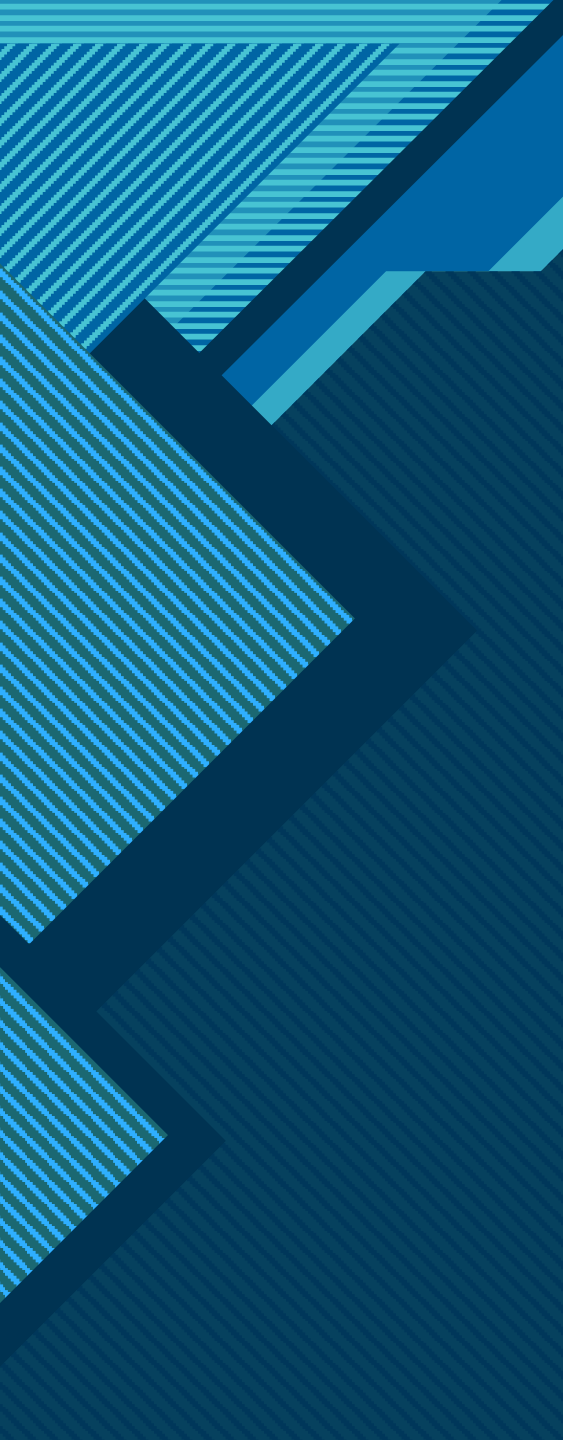




Missouri Probate and Trust Law Updates (2023)

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Agenda

- Basic estate/gift tax review
- Important Statutory Changes from 2022
- Remote Public Access/Redaction Rules
- Corporate Transparency Act
- SECURE Act 2.0 Updates
- 2023 Legislative Update/Recap

Tax Updates

- Trusts/Estates hit top tax rate of 37% at \$14,450 of income
 - Distribute net income out to beneficiaries as much as possible (where possible)
- Annual gift tax exclusion
 - 2001-→\$10,000
 - 2002- 2005→\$11,000
 - 2006 –2008→\$12,000
 - 2009 –2012→\$13,000
 - 2013 –2017-→\$14,000
 - 2018 –2021→\$15,000
 - 2022→\$16,000
 - **2023→\$17,000**
 - 2024? Likely \$18,000

Tax Updates

- 2023 lifetime exclusion amount: \$12.92 mm (\$25.84 mm w/ portability)
 - Set to revert to ½ in 2026 → use it or lose it
- Rev. Proc. 2022-32: An estate seeking to file a *portability only* estate tax return has an automatic extension of time until the fifth anniversary of the deceased spouse's death.
 - Increased from prior two-year filing requirement
 - Must print "FILED PURSUANT TO REV. PROC. 2022-32 TO ELECT PORTABILITY UNDER §2010(c)(5)(A)" at the top of the Form 706.
 - Note: Full 706 still due 9 months after death (with one 6-month extension)

2022 Statutory Changes

- (Effective since August 28, 2022)
- Revised Trust Decanting Statute
- Updates to familial relationship presumptions
- Creditor claim revisions

Revised Trust Decanting (456.4-419)

- Section 1 (amended)
 - Cannot decant if the Settlor is also the Trustee (new)
 - Trustee must have discretion to distribute income or principal to beneficiaries (not mandatory or completely prohibited) (same as previous)
 - Does not have to be limited by an ascertainable standard
 - May create new trusts or modify existing trust via decanting (new, but confirms what already believed)

Revised Trust Decanting (456.4-419)

- Section 2 (new)
 - At least one permissible distributee (PD) of 1st trust must be PD of 2nd (i.e. can remove PDs, but not all of them, in new trust)
 - If settlor is living and first trust is not a grantor trust, cannot add new PDs to 2nd trust
 - If settlor is deceased or first trust is grantor trust, contingent bene may be promoted to PD in 2nd trust
 - Under no circumstances can Trustee add completely new beneficiaries to 2nd trust
 - All benes must have been PDs or contingent benes in 1st trust
 - Exception: Section 3 regarding creation of SNT pooled trust
 - 2nd trust may retain, modify, eliminate, or add a power of appointment
 - New POA may be general or limited and permissible appointees need not be limited to the beneficiaries of the 1st trust

Revised Trust Decanting (456.4-419)

- Section 3 (new)
 - Applies to trusts containing a disabled beneficiary (e.g. SNTs)
 - Must retain SNT status in 2nd trust and must further purposes of the 1st trust
 - 2nd trust may create Medicaid pooled trust or contain payback provisions

Revised Trust Decanting (456.4-419)

- Section 4 (amended)
 - New--If trustee limited by ascertainable standard in 1st trust and trustee is a PD:
 - 2nd trust must contain the same or a more restrictive standard as the 1st
 - 2nd trust may not modify or grant a new POA provided to such trustee
 - New--Cannot amend 1st trust to reduce or prevent application of marital deduction, charitable deduction, gift tax exclusion, S Corp status, or GST exemption
 - Decanting power does not apply to trust property subject to a presently exercisable power of withdrawal held by a beneficiary (same as previous)
 - Spendthrift clause or provision prohibiting amendment/revocation shall not preclude use of decanting power (same as previous)

Revised Trust Decanting (456.4-419)

- Section 5 (amended)
 - At least 60 days prior to decanting, trustee of 1st trust must notify PDs of both the 1st and 2nd trusts of the planned decanting
 - Big change—used to be only PDs of 2nd trust
- Section 8 (new)
 - 2nd trust may have a duration that is different than 1st trust (e.g. shorter or longer)
- Section 9 (new)—Savings Clause
 - In the event the 2nd trust doesn't comply 100% with decanting statute, statute applies automatic elimination of any offending provisions and automatic addition of required provisions

Familial Relationship Presumptions in Trusts

- 456.1-114 (new statute)--Familial relationships in trust situations
- Child conceived or born during a marriage is presumed to be the child of the persons married unless a judicial proceeding commenced before the death of the subject parent states otherwise
- Child born outside of wedlock is presumed not to be child of the person who did not give birth unless:
 - A judicial proceeding commenced before the death of the person states otherwise or
 - The person openly recognized the child as their own and has not refused to support the child
 - Trustee given broad discretion to determine sufficiency of “recognition” or “support”

Familial Relationship Presumptions in Trusts

- Child adopted prior to 18 is presumed to be the child of the adopting parent and not of natural parents
- Parental rights apply from the time the relationship is established (not retroactive)
- Terms of a Trust prevail over this section

Creditor Claim Updates

- 456.5-504 (revised)—Creditor Claims against Discretionary Trusts
 - Added subsection 5
 - Whether or not a spendthrift clause is included, no creditor of a beneficiary (whether current or contingent) is entitled to any information regarding trust assets or records if distributions are solely within the Trustee's discretion

Remote Public Access/Redaction Rules

- Since the 1990s, Casenet has allowed the public to access information about public cases, such as party and lawyer information, docket entries, scheduled hearings and trials, and judgments
 - The public was required to use designated computer terminals in local courthouses
- Beginning July 1, the public will have remote access to most case documents and filings
- Redaction of confidential information is not new, but increased public access underscores the need for diligence in complying
- Beginning July 1, 2023, for every document filed, must certify compliance with redaction obligations as to that document

Remote Public Access/Redaction Rules

- Must redact confidential info from every filing, including, but not limited to:
 - Social Security numbers
 - Driver's license numbers
 - Taxpayer ID numbers (EIN)
 - Financial account numbers
 - Dates of birth
 - Names of minors
- Contemporaneously file an unredacted version or sheet explaining the information redacted
- Judiciary working on mechanism to allow filers to correct mistakes (e.g. failing to redact information or redacting too much information), but not yet available

Remote Public Access/Redaction Rules

- Not all documents will be available remotely to the public on July 1:
 - July 1→Supreme Court of Missouri and Missouri Court of Appeals
 - On or after July 16→Circuits 1-11
 - On or after Aug. 20→Circuits 12-21
 - On or after Sept. 17→Circuits 22-29
 - **On or after Oct. 22→Circuits 30-46**
- Note: Once remote access is granted, that court's public case documents will be available retroactively to July 1, 2023.
- Public still required to use computer terminals in courthouses to see public case documents filed before July 1

Corporate Transparency Act

- Enacted January 2021
- Purpose is to prevent money laundering and other illicit activities
- Requires entities created or registered in the US to file a beneficial ownership information report with The Financial Crimes Enforcement Network (“FinCEN”)
- Est 32 million entities to be affected

Corporate Transparency Act

- Which companies will have to file a beneficial ownership information report?
 - *A domestic reporting company* (e.g. entity created by filing with the Secretary of State)
 - *A foreign reporting company* (e.g. entity created in a foreign country but registered to do business in the United States)
- Are there any exemptions to filing?
 - Among the 23 exemptions are companies that are already regulated (e.g. publicly traded companies), insurance companies, and broker-dealers.
 - There is also a 'large operating company' exemption which applies to entities that (1) have 20+ full time employees in the U.S., and (2) filed an income tax return in the previous year with at least \$5 million in gross receipts or sales, and (3) have an operating presence or physical office within the U.S.

Corporate Transparency Act

- When do companies have to file?
 - Any company created *before* January 1, 2024 must file a report no later than January 1, 2025
 - Any company created *on or after* January 1, 2024, must file a report within 30 calendar days of receiving notice of their registration or creation
- What information needs to be provided?
 - *Reporting Company:*
 - (1) full legal name,
 - (2) any trade or “doing business as” names,
 - (3) a complete current PHYSICAL address
 - (4) the state or foreign jurisdiction of formation,
 - (5) for a foreign reporting company, the state or jurisdiction where the company first registers, and
 - (6) the IRS Taxpayer Identification Number (TIN)

Corporate Transparency Act

- *Beneficial Owner*
 - Defined as anyone who directly or indirectly exercises substantial control over the entity or owns or controls a 25%+ interest:
 - (1) full legal name
 - (2) date of birth
 - (3) current residential or business street address (physical)
 - (4) unique identifying number from an acceptable identification document (e.g. non-expired U.S. passport, non-expired driver's license, etc.)
 - (5) Image of document the unique identifying number came from.
- Exceptions to “beneficial owner” include the minor children of a beneficial owner or a person that is solely an employee of the reporting company

Corporate Transparency Act

- *Company Applicant*
 - Individual who directly files the document that creates the entity or registers the entity to do business in the United States (e.g. secretary/paralegal) AND
 - Individual who is primarily responsible for directing or controlling the filing of the relevant document by another (e.g. supervising attorney)
 - Same information as Beneficial Owner
 - Only required for entities created on or after 1/1/2024

Corporate Transparency Act

- Updating Information
 - If information about the reporting company or its beneficial owners changes (NOT the applicant's info), the reporting company must submit updated info within 30 days
 - If the report was filed with inaccurate information, the reporting company has 30 days from which they became aware of the inaccuracy to file an updated report
- Penalties for Failure to File
 - \$500 per day civil penalty
 - \$10,000 fine or 2 years imprisonment
 - 90-day Safe Harbor

SECURE Act 2.0 Updates

- Inherited IRA Recap:
 - *Eligible Designated Beneficiary (lifetime stretch)*
 - Spouse
 - Minor child (under 21)
 - Disabled/chronically ill
 - Not more than 10 years young (e.g. sibling)
 - See-through trusts (e.g. conduit/accumulation trusts)
 - *Designated Beneficiary (10 year payout)*
 - Non-spouses (e.g. adult children)
 - *Non-Designated Beneficiary (5 year payout)*
 - Charities
 - Estate

SECURE Act 2.0 Updates

- Clarifies that a special needs trust that designates a charity as the remainder beneficiary will not disqualify the individual primary beneficiary from being treated as an eligible designated beneficiary
- Adds a one-time tax-free charitable distribution from an IRA of up to \$50,000 to a CRAT, CRUT, or charitable gift annuity
 - In addition to the preexisting annual \$100,000 qualified charitable distribution
 - Both \$50K and \$100K limits are now indexed for inflation for tax years beginning after 2023

2023 Legislative Summary

- Nothing of note passed!
- Out of the 2,111 bills introduced, less than 3% were sent to the governor for consideration
- SB103 has some very minor changes to the guardianship code, specifically 475.040 and 475.275
 - Mostly clarifies the public administrator requirement to undergo an annual audit (now called “examination”) for pooled conservatorship accounts
 - The governor has until July 14 to act on this bill
- All other trust/estate bills will be reintroduced next session

Trust/Estate Legislation to Look Forward to in 2024

- Uniform Electronic Wills Act

- Provides for the recognition of wills signed electronically
- Defined as “a record that is readable, and remains accessible, as text at the time of signing by the testator or by another individual in the testator's name, in the testator's physical presence, and by the testator's direction”
- Two witness requirement still applies, but may witness in the physical or electronic presence of the testator within a reasonable time after witnessing the signing
- Electronic will valid if compliant with Missouri law or the law of the jurisdiction where testator is physically located, domiciled, or resides when the will signed

Trust/Estate Legislation to Look Forward to in 2024

- Estate Planning During COVID-19

- Ratifies all documents signed during the COVID-19 state of emergency, even if physical presence requirement not met, if certain requirements met:
 - (1) The signor represented their physical presence in this state;
 - (2) The notary was physically located in this state and stated the county in which they were physically located;
 - (3) The notary identified the signors to their satisfaction;
 - (4) Any persons whose signature was required appeared using video conference software where live, interactive audio-visual communication between the principal, notary, and any other necessary person allowed for observation, direct interaction, and communication at the time of signing; and
 - (5) The notary recorded in their journal the exact time and means used to perform the act.
- Deemed satisfied if a licensed Missouri attorney present at the remote execution signs a written acknowledgment verifying these facts

Trust/Estate Legislation to Look Forward to in 2024

- Principal Place of Administration

- Notice of proposed transfer of a trust's principal place of administration shall include a notice stating that a change in the place of administration may result in a change of the trust's governing law, which may affect the rights of any beneficiaries

- Changes to guardianship code

- E.g. Modifies language relating to exemptions for individuals seeking appointment from a background check and home assessment (e.g. adds grandparents to the exempt list unless requested by a party or required by the court)

Helpful Links

- Missouri Legislation (Enacted and Proposed):
 - <https://mobar.org/site/content/About/Government-Relations/legislative-engagement-center.aspx>
- Remote Public Access/Redaction Resources:
 - <https://www.courts.mo.gov/page.jsp?id=195713>
 - <https://news.mobar.org/what-you-need-to-know-about-e-filing-following-expanded-remote-public-access/>
 - <https://www.springfieldbar.com/events/EventDetails.aspx?id=1640845&group=>
 - SMBA Monthly Luncheon (6/21@12-1) w/ Judge Jeffrey Bates

Thank you!

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