2026 Probate and Trust Updates

Andy Peebles
Carnahan Evans PC
Springfield, Missouri

Agenda

- Federal Tax Updates (OBBB)
- State Law Updates
- Electronic Estate Planning

Federal Tax Updates

- Trusts/Estates now hit top tax rate of 37% at over $16,000 of income
  - Distribute net income out to beneficiaries as much as possible
- Annual gift tax exclusion (per donor, per recipient)
  - 2018 –2021→$15,000
  - 2022→$16,000
  - 2023→$17,000
  - 2024→$18,000
  - **<u>2025/2026→$19,000 ($38,000 for married couples)</u>**

One Big Beautiful Bill Act (OBBB)

- Signed by President Trump on July 4, 2025
- Made permanent many of the provisions of the Tax Cuts and Jobs Act (TCJA) of 2017
- Estate/Gift/GST Exemption
  - 2026 lifetime exclusion amount for estate/gift tax: $15 mm ($30 mm w/ portability); up from 13.99 mm last year
  - Avoided the sunset of the increased exemption under the TCJA

Trump Accounts

- Effective July 4, 2026
- Parents/guardians/others can establish for any U.S. child under age 18 with a valid SS number
- Accounts automatically created for U.S. citizens born between 2025-2028 with a one-time $1,000 contribution per child
    - Any child not born within this time frame can still have an account, but will not receive the seed money
- Authorized contributions allowed up to $5,000 per year
- Funds must be invested in certain mutual funds that track a U.S. stock index (e.g. S&P 500)
- Money cannot be withdrawn before the year the child turns 18
- After 18, the account is treated like a traditional IRA with similar tax rules

Charitable Giving Updates

- Standard deduction raised again (adjusted for inflation):
  - $31,500 for joint filers,
  - $23,625 for head of household, and
  - $15,750 for all other filers
- Taxpayers who claim the standard deduction will also be able to claim a Charitable Deduction for cash contributions ($1,000 for single, $2,000 for married).
  - Does not apply to property contributions made to a charity
- For 2026 and subsequent years, taxpayers who itemize must first calculate 0.5% of their income and then exclude that amount from charitable contributions when determining their itemized deduction
- Makes itemizing charitable deductions less appealing and may therefore limit charitable giving

529 Account Expansion

- More options for what qualifies as an eligible expense:
  - Up to $20,000 to pay for K-12 expenses (up from the previous $10,000)
  - Additional non-tuition qualified expenses for K-12 costs (e.g. books, online learning materials, and tutoring fees)
  - Additional post-secondary educational costs, such as tuition, fees, books, supplies, and equipment for credentialed programs (e.g., testing fees in pursuit of a post-secondary credential or fees for continuing education requirements)

Missouri Law Updates

- 2025-2026 Missouri legislative session resulted in 100 bills passed (up from 67 last year and 46 the year before—progress!)
- None of those bills impacted estate and trust law
- Primary recent update involves a bill passed in last year's session that became effective this year: Missouri Electronic Estate Planning Act

Rise of Digital Estate Planning

- Requirements that wills be in a physical writing and witnesses sign in the physical presence of testator have been consistent over thousands of years
  - Protection against undue influence, fraud, incapacity, etc.
- 1955: Missouri enacted the Probate Code to codify requirements
- 2001: Nevada becomes 1st State to enact electronic will legislation
- Uniform Law Commission introduced Uniform Electronic Wills Act in 2019
  - Utah was the first state to enact in 2020
- 2020: First exception to physical presence rule for witnesses during COVID-19 emergency
  - Written requirement still enforced

Missouri Joins the Electronic Trend

- Sections 474.540 to 474.564, RSMo
- Embraces the national trend to recognize electronic estate planning documents
  - In today's digital society, most documents are signed and stored electronically
  - Estate planning documents are nearly the only documents which still require paper signatures
- Missouri becomes the 15th state to enact electronic will legislation and only the 5th state to enact complete digital estate planning legislation
- Builds upon existing Missouri statutes that already support the digital estate planning trend
  - Section 472.280 allows Missouri probate courts to maintain records "by means other than bound volumes of paper pages, including…electronic data processing, machine-readable media, graphic or video display." (1983)
  - Missouri Fiduciary Access to Digital Assets Act (Sections 472.400 to 472.490) (2018)

Overview of Missouri Electronic Wills and Estate Planning Documents Act (the "Act")

- Effective Date: provisions of the Act apply to the will of a decedent who dies on or after August 28, 2025 and to any other estate planning document signed or remotely witnessed on or after August 28, 2025. (Section 474.564)

- Baseline Rule: An electronic will shall be a will for all purposes of the laws of [Missouri]. The provisions of law applicable to wills and principles of equity shall apply to an electronic will, except as modified [herein]. (Section 474.544)
  - Chapters 472, 473, and 474 in particular
  - All laws involving validity of a will, who can execute a will, taking against a will, probate administration, duties of personal representative, etc. apply equally to electronic wills

Electronic Will Requirements (Section 474.548)

- A record that is readable as text at the time of signing
  - E.g. no audio recording; no discussion of terms over video conference
- Remains accessible as text for later reference
- Signed by the testator <u>or</u> another individual in the testator's name, physical presence, and direction
  - Mirrors Section 474.320
- Signed in the physical <u>or</u> electronic presence of the testator by at least two individuals after witnessing:
  - The signing of the will <u>or</u>
  - Testator's acknowledgement of the signing of the will

Important Definitions (474.542)

- “Electronic presence”
  - Two or more individuals in different locations
  - in real time
  - using technology enabling live, interactive audio-visual communication that allows for
    - observation,
    - direct interaction, and
    - communication between the individuals
- “Record”
  - Information inscribed on a tangible medium or
  - Information that is stored in an electronic or other medium and is retrievable in perceivable form
- “Sign”
  - With present intent to authenticate or adopt a record, to:
    - Execute or adopt a tangible symbol or
    - Affix or logically associate with the record an electronic symbol or process

Requirements of Witnesses to Electronic Will (Section 474.548.3)

- A witness to a will must be:
  - a resident of the U.S., District of Columbia, Puerto Rico, U.S. Virgin Islands, federally recognized Indian tribe, or any territory subject to U.S. jurisdiction and
  - physically located in one of the locations above at the time of signing

- Exception to Physical Location Rule: if a self-proving affidavit was signed contemporaneously with the electronic will, witness does not have to be physically located in a U.S. state or territory at the time of signing.
  - E.g. could witness the signing of the will via video conference while on vacation in a foreign country
  - Self-proving affidavit does not negate residency requirement of the witness, however

Self-Proved Electronic Will (Section 474.550)

- <u>Background</u>: Self-proved wills are easier to admit in probate and less likely to be challenged
  - E.g. witnesses do not have to appear in court to testify, and the court can accept the will as valid evidence of the testator's sound mind and intent
- Contemporaneously with the signing of an electronic will <u>or</u> at any subsequent date, an electronic will may be made self-proved:
  - In the same manner as specified in Section 474.337; <u>or</u>
  - If fewer than two witnesses are physically present in the same location as testator, before a remote online notary authorized to perform online notarization in any U.S. state.
  - Note: if affidavit signed subsequent to the signing of the will, physical presence requirement applies to witnesses
- Form and content of the affidavit must be substantially the same as outlined in Section 474.550
  - Refers to appearance of witnesses before the notary “by remote online means”

Electronic Revocation of Previous Will (Section 474.552)

- An electronic will may revoke all or part of a previous will.
- All or part of an electronic will shall be revoked by:
  - A subsequent will that revokes it expressly or by inconsistency,
  - A written instrument signed by the testator declaring the revocation, or
  - A physical act with the intent to revoke
    - Must be performed by testator <u>or</u> by another who was directed by the testator and who performed the act in testator's physical presence
    - Preponderance of the evidence applies (low standard; more likely than not; over 50%)
- Presumed that testator revoked an electronic will if evidence exists that testator signed the e-will but neither the e-will nor a certified paper copy of the e-will can be located after testator's death.
  - Vital to maintain records

Exceptions to Missouri Requirements (Section 474.546)

- What if the electronic will at hand does not comply with Section 474.548 requirements?

- Still valid as an electronic will under the laws of Missouri if executed in compliance with the law of the jurisdiction where the testator is:
  - Physically located when the will is signed or
  - Domiciled/resides when the will is signed or when the testator dies.

Electronic Estate Planning Documents (474.560)

- Confirms that <u>all</u> other estate planning documents may also be executed electronically and that witnesses may do so in the electronic presence of the principal.
  - Includes trusts, powers of attorney, health care directives, beneficiary deeds, nonprobate transfers, amendments, etc.
- Allows documents to be signed in one or more counterparts, whether electronic or paper.
- May create a certified paper copy of any electronic estate planning document if a provision of law requires presentation of the original document.
  - Must affirm under penalty of perjury that a paper copy is a complete, true, and accurate copy of the electronic document.
  - No requirement that certified paper copy be signed contemporaneously

Additional Provisions

- 474.554
  - Allows for a court order to be obtained to require a records custodian under a terms of service agreement to disclose digital assets for purposes of obtaining an electronic will.
- 474.556
  - Allows for a certified paper copy of an electronic will to be prepared to satisfy statutory requirements that the original will be admitted to probate.
  - Testator must affirm under penalty of perjury that the paper copy is a complete, true, and accurate copy.
  - If the electronic will was self-proving, the certified paper copy must also include a self-proving affidavit.
  - No requirement that certified paper copy be signed contemporaneously
- 474.562
  - The Act supersedes the majority of the federal Electronic Signatures in Global and National Commerce Act.
  - Signed into law on June 30, 2000, and provides a general rule of validity for electronic records and signatures for transactions in or affecting interstate or foreign commerce.

Estate Planning During Emergency (Section 474.600)

- Ratifies all EP documents signed during the COVID-19 state of emergency (defined as 4/6/2020 to 12/31/2021), even if physical presence requirement not met, if certain requirements met:
  - (1) The signor represented their physical presence in Missouri;
  - (2) The notary was physically located in Missouri and stated the county in which they were physically located;
  - (3) The notary identified the signors to the notary's 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 existed at time of signing.

Practical Effects on Practitioners

- Greater accessibility to create estate plans
  - Individuals with mobility issues can complete estate planning from home
  - Residents of rural areas no longer need to travel long distances to attorney
  - Emergency estate planning situations (e.g. death bed, inability to travel quickly to attorney’s office)
  - Busy professionals can schedule signings outside traditional business hours
- Reduction of estate administration expenses/timelines?
  - Clearer documentation reduces disputes and litigation
  - Video recordings provide evidence of testator capacity
  - Digital audit trails prevent forgery claims
  - Faster document retrieval speeds up probate administration

Practical Effects on Practitioners

- Potential challenges may include:
  - Technology failures
  - Cybersecurity (encryption and secure storage are crucial)
  - Authentication challenges (Courts may need to develop new verification procedures)
  - Undue influence concerns (who is behind the camera?)
- Law firms and estate planning attorneys must begin to adapt their practices
  - Allow for fully remote consultation and document preparation
  - Virtual signing ceremonies with all parties
  - Invest in secure digital document management systems
  - Online notarization platforms

Practical Effects on Practitioners

- Immediate impact still to be seen
- Likely a slow adaptation of electronic signing in most law firms
    - Anticipate most will continue to sign in person, where available
- Adapt with new technology/laws or get left behind
- Immediate need to research electronic signing/video conferencing software, obtain electronic notary licenses, establish new signing procedures, etc.
- Market new electronic signing option to potential clients

Thank you!

Andy Peebles

Carnahan Evans PC

apeebles@carnahanevans.com

417-447-4400