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Updates from the Hill: Changes in Tennessee Estate Law

July 2011

The Tennessee General Assembly recently adjourned its 2011 session. Though tort reform captured the headlines, the Legislature also passed several measures that could impact Tennessee residents in the planning and administration of their estates. This edition of GSRM's newsletter summarizes these changes, most of which took effect on July 1, 2011. More information on individual bills may be found at the Tennessee General Assembly website (www.legislature.state.tn.us).

2011 BILLS ADOPTED

Public Chapter No. 417; T.C.A. § 30-2-324
Estate Administration
A court may enter an order dismissing without prejudice a probate case if (i) no order of final disposition has been entered; (ii) the estate has been open for a period not less than 18 months and disposition could have occurred; and (iii) the estate administration remains incomplete. This new law stresses the importance of efficiently and promptly administering estates. Moreover, this law may expose financial and legal professionals to potential liability if they transact business for estates in which the personal representative's authority to act on behalf of the estate has been terminated pursuant to this law and the financial and/or legal professional had actual knowledge or should have reasonably known the personal representatives authority was terminated.

Public Chapter No. 417; T.C.A. § 31-1-103(b)
Estates: Disclaimers for 2010 Estates
For estates of decedents dying in 2010 this law extends the time period for which a valid disclaimer may be made to the latter of (i) September 17, 2011 or (ii) 9 months after the decedent's date of death. This new state law provides consistency with the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (the "Tax Act") which, for Federal purposes, similarly extends the disclaimer period for 2010 estates. Because the Tax Act was not signed into law until December of last year, these laws extend the disclaimer time period and allow 2010 estates additional time to evaluate the tax benefits and tax detriments of making qualified disclaimers.

Public Chapter No. 477; T.C.A. § 31-1-203, 31-2-205
Estates: Bond Requirements
This new law requires that the bond of a personal representative of an estate include an obligation of the personal representative to pay all court costs, attorney's fees and other expenses reasonably incurred because of the failure of the representative to properly account for and utilize all funds coming into the estate. Prior to this new law, the language of the bond was discretionary and this requirement did not apply.

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Public Chapter No. 26: T.C.A. § 45-2-2001(b)(1)

Private Trust Companies

This act adds "lineal descendants of the original owners of a private trust company" to the definition of "family member" for purposes of identifying those persons with whom a trust company may do business while maintaining an exemption from the Banking Act. From a succession planning perspective, this law may benefit and provide significant relief to certain closely-held private trust companies.

Public Chapter No. 95: T.C.A. § 56-52-104

Charitable Organizations: Charitable Gift Annuities

This law modifies the minimum balance requirements charitable organizations are mandated to keep in separate accounts for their charitable gift annuities and provides that any portion of the charitable gift annuity risk that is insured or reinsured by a charitable organization with an authorized insurer or reinsurer shall be exempt from meeting certain minimum balance requirements.

Public Chapter No. 366: T.C.A. §§ 20-5-106, 20-5-107, 20-5-110

Estates: Damages for Personal Injuries Resulting in Death

Under this new law effective May 30, 2011, a surviving spouse who has abandoned the deceased spouse waives the right to bring a wrongful death action on behalf of the deceased spouse and also to collect any wrongful death proceeds. To invoke the waiver, the children or next of kin of the decedent must establish the statutory grounds for abandonment under the divorce statute or that the surviving spouse willfully withdrew from the deceased spouse for two years.

Public Chapter No. 336: T.C.A. § 8-36-120(a)

Estates: State of Tennessee Retirement Benefits

This act provides that lump sum retirement benefits from the State of Tennessee payable to an estate may be paid to a surviving spouse in the absence of actual knowledge of a purported will if the amount payable does not exceed $50,000. Under current law, if there is no surviving spouse and the amount does not exceed $10,000, payment can be made to the next-of-kin.

If you have general questions or need additional information regarding the contents of GSRM's Estate Planning & Probate from the Hill, please contact a member of the firm's Estate Planning & Probate Section at 615.244.4994.

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