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## What's trending on NP Trusts & Estates

**Inheritances and the engaged and separated**, maintaining your estate plan to ensure success, an eco-friendly burial, alternatives to estate litigation and more. Here's what's trending in estate planning and wealth management.

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### Estate Planning

#### *Inheritances and the engaged and separated*

Marriage and divorce trigger automatic protections in the event that one's estate plan does not reflect his or her marital status at the time of death. However, individuals who are engaged to be married or separated (but not divorced) from their spouses do not enjoy the benefits of these protections. Inheritance laws determine who is entitled to receive what from the estate of a decedent. They were developed to reflect the impact of marriage and divorce on relationships.

#### **The married versus the engaged**

In every state except Georgia, a surviving spouse is entitled to a share of the decedent spouse's estate even if the decedent did not leave a will indicating his or her desire to include the surviving spouse. Similarly, in a majority of jurisdictions, "rules of pretermission" grant a surviving spouse an intestate share of their decedent spouse's estate if his or her will was executed prior to marriage and failed to provide for his or her spouse. The theory behind these rules is that because marriage is a lifetime commitment to care for one another, failure to revoke a premarital will or execute a will upon marriage is unlikely to reflect a testator's intent. Therefore, the law views the provision of an intestate share to a surviving spouse as the extension of an existing obligation of support, whereas the provision of an intestate share to a surviving fiancé(e) would create a new obligation triggered at death that is not present during one's lifetime.

In stark contrast to the laws that make provisions for inheritance by a surviving spouse, a surviving fiancé(e) has no statutory rights with respect to the estate of his or her decedent

fiancé(e). A pre-engagement will remains effective despite the change in circumstances that an engagement represents. Likewise, a surviving fiancé(e) whose decedent fiancé(e) did not execute a will with provisions for him or her does not have a right to an intestate share of the decedent fiancé(e)'s estate.

### **The divorced versus the separated**

In every state except Mississippi, a bequest to a former spouse made in a will executed prior to divorce is revoked by implication upon divorce. However, mere separation does not revoke a bequest to a spouse made in a will prior to divorce. Furthermore, if an individual dies while a divorce is pending but not yet final, courts have considerable discretion in determining whether a decedent leaves a surviving spouse, entitled to the previously mentioned benefits, or a divorcé(e), entitled to none.

Although inheritance laws can provide helpful recourse where an estate plan, or the lack thereof, fails, they provide such recourse only minimally and should not be relied upon, especially by those who are not quite married or divorced. An estate plan that accurately reflects marital status and donative intent is essential.

— *Sarah Roscioli*

### ***Maintaining your estate plan to ensure success***

Most individuals believe that once they have executed and signed their estate plan documents, which might include a revocable trust, will, power of attorney, health care proxy or other more complex planning instruments, their job is done and their estate plan is finished. But signing the documents and getting an estate plan in place is only the first step.

Equally, if not more, important than creating your estate plan, is making sure you review it periodically in order to maintain it. The older your documents are when they need to be implemented, the greater the risk your documents are no longer compliant with applicable laws and procedures and your estate plan no longer functions as you originally intended.

Even if your estate plan was crafted by a skilled and experienced estate planning attorney, the following are a few common life changes that may prompt the need to review and update your estate plan:

- Named fiduciary/beneficiary is now deceased
- Birth/adoption of children
- Marriage or divorce
- New employment/retirement
- Move to a new state
- Changes in citizenship

- New gift, estate or inheritance tax laws
- Inheritance
- Substantial increase/decrease in value of assets
- Changes in health/injury

In addition to the foregoing events, over time your goals and intentions naturally change, so it may be the case that you simply change your mind about something and want to revise various aspects of your estate plan, such as beneficiaries, division of assets or whom you want to name as a fiduciary. The key to keep in mind is that your estate plan should reflect your current intentions, and not the goals you had ten years ago.

Having an estate plan in place does not mean that your job of protecting your family's future ends. The next step is to periodically review your estate plan, ideally every 2–5 years, in light of the various personal and financial changes in your life, and to make changes as may be necessary.

Estate planning is not a static process. It requires your attention and periodic maintenance as your life continues to change over time.

— *Kaitlyn B. Barnett*

### ***An eco-friendly burial***

The options for eco-friendly burial and cremation alternatives continue to grow. The idea is being driven not only by the desire to use fewer and less toxic resources, but also the feeling of it being more natural to return to the earth rather than be entombed and separated from it.

#### **What does an eco-friendly burial entail?**

1) No embalming, which uses toxic chemicals that can be harmful to workers and end up in the water supply. Alternatives include the use of dry ice, refrigeration, essential oils or a topical non-toxic embalming agent.

2) No concrete vaults, which not only are energy-intensive to produce but also prevent natural decomposition. Alternatives include the use of a shroud or burlap sack.

3) Use of caskets made from sustainably harvested wood or organic materials or use of a shroud instead of a casket.

4) Protection of the natural habitat by choosing a natural burial or a conservation burial. With a conservation burial part of the fees are used for land protection and restoration and the burial area is protected with a conservation easement.

5) Offsetting the environmental downsides of cremation, which uses fossil fuels and releases pollutants from the burning of medical implants and cavity fillings. If cremation is the most viable option, there are still ways to incorporate an eco-friendly component. “Let Your Love Grow” is a product that turns ash into plant food and “Bios Urn” lets you grow a tree using cremated remains.

### **What are some additional eco-friendly options that are being developed?**

The number of eco-friendly burial options is continuing to grow. However, not all options are available across the country. Here are a few in the works:

- A mushroom suit that aids in the decomposition of your body after you die.
- Alkaline hydrolysis, which only is legal in a handful of states, uses pressure and a water and potassium hydroxide based solution to dissolve remains. After, bone fragments are reduced to ash.
- Eternal reefs, which involves mixing cremated remains into an environmentally safe concrete mixture, are dropped into the ocean in designated areas to create new habitat for marine life. Loved ones can personalize the top of the reef and ride on a separate boat to the reef site where the dedication and placement of the reef take place.
- Recompose, a public benefit corporation, is developing a process that will convert human remains into soil. More information can be found by searching for the “Urban Death Project,” which contemplates repurposing urban structures to provide a green burial for people living in cities.

### **Want to find out more about eco-friendly options?**

If you’re interested in an eco-friendly burial, the [Green Burial Council](#)’s website has resources that can provide some guidance.

### **Convey your burial wishes to your loved ones**

Whether you are interested in an eco-friendly burial or not, it is a good idea to discuss your burial plans with your loved ones.

— *Sally A. Dabrowski*

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## **Estate Administration**

### ***What happens to your cryptocurrency when you die?***

With the introduction of blockchain technology and the surge in cryptocurrency offerings, peer-to-peer transactions are streamlining the pathways of commerce. Cutting out the middleman (such as a bank or investment firm) by using this new platform might just leave a hole in the ability to identify your ownership of crypto assets at your death.

**Without a middleman to help identify your holdings, cryptocurrency owners must take measures during their lifetime so the account's existence is known.**

*Scenario:* An investment in a cryptocurrency is made but not discussed with any family members and the nominated executor. Unlike traditional assets, no account statements are issued for cryptocurrency accounts making it unlikely that the account will be discovered.

*Safeguarding measures:* During life, owners of crypto assets should prepare, and maintain, an inventory of crypto-asset accounts and the exchanges used, including account login, password and private key information, which is kept in a secure location.

**A cryptocurrency wallet is a method of storing private and public keys and interacts with various blockchain networks to enable users to send and receive digital currency and monitor their balance. Diversified holdings often require that you use multiple wallets.**

*Scenario:* The existence of a crypto asset is known but the executor does not have the cryptocurrency wallet information.

*Safeguarding measures:* Wallets may be online, mobile, desktop, hardware, paper or a combination of these types. Each wallet has a unique protocol used to gain access to its contents. Executors not only need information on the existence of your crypto assets, but also how to access your cryptocurrency wallet(s) as well.

**Anyone with knowledge of your crypto-account access information is free to access and transfer the assets.**

*Scenario:* Cryptocurrency wallet, account and private key information is left in an easily accessible location.

*Safeguarding measures:* If your crypto-asset account information is easily accessible by other persons, they may be able gain access to and withdraw funds from your cryptocurrency account without proper authorization. Accordingly, your account information and private keys should be stored in a location, or separate locations for account login codes and passwords or private keys, which are accessible only to entrusted individuals.

**What else should be done to protect crypto assets.**

Let your estate planning attorney know that you own crypto assets as this ownership may affect your estate plan.

Engage a third-party company that provides services to help consumers manage their crypto assets. As the use of blockchain technology expands to more industries, these companies may become the middleman that currently does not exist.

— *Mary Ford*

### ***Family settlement agreements: an alternative to trust litigation.***

Given our current litigious society, it is important for high-net worth families to consider family settlement agreements (also known as non-judicial settlement agreements) as an alternative to litigation when faced with contentious trust and estate disputes.

#### **What is a family settlement agreement?**

Common in certain states, including Illinois, the family settlement agreement is an increasingly popular vehicle for families to resolve discord in matters involving trusts and estates. Essentially, a family settlement agreement is an agreement that is typically entered into by beneficiaries that resolves a bona fide dispute involving a trust and/or an estate.

#### **What are the benefits of a family settlement agreement?**

The benefits of a family settlement agreement are numerous: not only is a settlement agreement far more cost-effective than lengthy litigation, but also it allows families to move on from conflict and repair relationships without public scrutiny. One of the biggest detractors of litigation between heirs is that family issues play out in the court's public forum. For high-profile, high-net worth families and family business owners, these types of suits can lead to unwanted press and media intrusion into personal family affairs.

#### **How does the family settlement process work in Illinois?**

In general, Illinois courts permit family settlement agreements where there is a reasonable or substantial basis for the belief that prolonged and expensive litigation will result, that the estate will be materially depleted and that family relationships will be "torn asunder." *Wolf v. Uhlemann*, 325 Ill. 165, 183 (1927).

Under the Illinois virtual representation statute, family settlement agreements (also referred to as non-judicial settlement agreements) are specifically authorized to resolve disputed trust matters, including: (i) resolution of bona fide disputes related to administration, investment, distribution or other matters; (ii) modification of terms of the trust pertaining to administration of the trust; and (iii) validity, interpretation or construction of the terms of the trust, among other matters. 760 ILCS 5/16.1(d).

## **Are their tax implications to family settlement agreements?**

Before embarking on a family settlement agreement, it is important that family members have all tax issues analyzed. In certain circumstances where asset transfers are involved, it may be possible to structure it in such a way that there will be minimal tax repercussions.

— *Maureen Mullen*

## ***Guidelines for administering an estate***

Many of the steps that an executor must take in settling a decedent's estate depend on the provisions of the decedent's will and the composition of the assets owned by the decedent. The following is a general list of the items an executor should address during the administration of a decedent's estate.

### **Date of death to one month after death**

The executor should locate the decedent's will, confer with the attorney who will represent the estate, consider custody of any minor children and begin gathering statements and bills issued to the decedent.

[Where should I keep my executed will?](#)

[Duties of an Executor from Date of Death through Probate](#)

[Tips for working with a legal team on estate settlement](#)

[Can I get paid for serving as an executor?](#)

### **Two-to-three months after death**

The executor should determine the heirs-at-law of the decedent, initiate probate with the Court in the decedent's state of residence (and ancillary probate in any other states in which the decedent owned real estate) and begin to prepare a preliminary list of assets and debts for the decedent.

[Estate planning and the family tree](#)

[What is a probate petition?](#)

[Administration options for small estates](#)

[What is the difference between probate and non-probate assets?](#)

[Will your family be able to find all of your assets after you die?](#)

### **Three-to-eight months after death**

Once appointed, the executor can officially act on behalf of the decedent. The executor should begin collecting the decedent's assets, paying the decedent's debts, sending notifications of the decedent's death, filing the decedent's outstanding personal income tax

returns and the like.

Steps to protect a decedent's identity

Notifying the credit bureaus of a family member's death

Contacting Social Security when a family member dies

Digital footprint dilemma: handling digital assets after death

Attend to social media accounts like Facebook

Debts of an estate—What should be paid first?

Sale of a decedent's residence in an estate

What to do with unwanted household items?

How does a decedent's income get reported in the year of death?

### **Nine months after death**

The executor is responsible for filing and paying federal and state estate tax or inheritance tax due on the decedent's assets. Federal estate tax returns are due nine months after death. State estate and inheritance tax returns are typically, but not always, due nine months after death as well. The executor should check with the attorney and accountant for the estate to determine the estate tax and inheritance tax deadlines for the decedent.

What is included in the decedent's gross estate?

The 2018 federal Estate, Gift and GST tax lifetime exclusion is \$11,180,000 per taxpayer

Federal estate and gift tax changes under the Tax Cuts and Jobs Act

Portability: What's in it for you?

What is a "step-to" in basis at death?

How is estate tax allocated among beneficiaries?

### **10 months after death to the end of administration**

The executor should not make final distribution of the decedent's assets until after the creditor claim period has expired, the federal and state estate tax or inheritance tax closing letters are issued, beneficiaries have been notified of the basis in the distributed assets, fiduciary income tax returns have been filed, all debts and expenses have been paid and required filings have been made with the Court.

The issuance of federal estate tax closing letters is no longer automatic

Executors, let them know their basis

The foregoing is not intended to be exhaustive, technical or cover the administration process in depth but a general guideline of the administration process.

— Kerri Painting, Mary-Benham B. Nygren, Sarah M. Richards, Stephanie A. Bruno, Sarah Roscioli, Jo-Ann Silva Martin, Nicole A. Place, Sarah T. Connolly, Deborah J. Wilcox Mabry

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## **Wealth Management**

### ***What is an apostille?***

“Apostille” is a French term that means “to add marginal notes.” Apostille is also used to refer to the legalization of a document for international use under the terms of the 1961 “Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents.”

### **What is an apostille?**

An apostille is a certificate that verifies the authenticity of the seals and signatures of officials on public documents where documents from one country must be presented in another country as part of a legal process.

An apostille, however, may not be required in all country-to-country transactions. It is required only if the law of the country where the public document is to be used requires an apostille certification.

### **What is the procedure for obtaining an apostille?**

To be eligible for an apostille, a document must first be certified (with respect to the authenticity of the capacity and signature of the person signing the document) by an officer recognized by the authority that will issue the apostille. These certifications typically include documents signed by a notary public, county clerk or state registrar.

Once a document has been certified for authenticity, an apostille can be issued by a designated authority in a country where the Apostille Convention is in force. In the United States, apostilles are signed by competent authorities, which include the secretary of state or equivalent in U.S. states and the District of Columbia, the clerks and deputy clerks of U.S. federal courts and the U.S. Department of State Office of Authentications.

### **What documents are eligible for an apostille?**

Some of the most common documents requiring legalization with an apostille certificate are powers of attorney, passports, diplomas and birth, marriage and death certificates. In addition, an apostille certificate can authenticate public documents, including:

- Court documents
- Administrative documents
- Notarial acts
- Official certificates that are placed on documents signed by persons in their private capacity

## What does an apostille certification contain?

In the United States, apostille certifications may differ from one state authority to another. However, there are similar attributes shared by all:

- Information regarding the public document to which the apostille is to be affixed
- Country in which the apostille is produced
- Capacity of the public official
- The seal or stamp appearing on the public document
- Place where the apostille was issued
- Date of issuance
- The person who issued the apostille
- Certificate number assigned to the apostille
- Seal or stamp of competent authority and signature of the competent authority

If you have an upcoming country-to-country transaction, you should contact the office of the secretary of state where your transaction will be occurring to determine the exact procedure for your state as well as the timeframe for obtaining an apostille.

— *Kim Sturgeon*

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Achieving success in estate planning, wealth management and tax minimization.