Ansell & Anderson P.A.
TRUST AND ESTATE LAW

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We are pleased to send you this annual summary of the most significant changes to federal and New Hampshire laws that affect estate planning and estate and trust administration. We hope that you find this information helpful.

On July 4, 2025, the One Big Beautiful Bill Act (OBBBA) was signed into law. It is an extensive piece of tax and spending legislation with hundreds of provisions. In this letter, we highlight a few of the changes related to estate planning. First, there is good news regarding the estate tax exemption. If you recall from our prior letter, the estate and gift tax exemption was increased under the Tax Cuts and Jobs Act in 2017; however, that increase was temporary and was set to return to $5,000,000 in 2026, as were many of the other individual tax changes that were enacted as a part of the Tax Cuts and Jobs Act. Under the OBBBA, the increased federal estate and gift tax exemption became permanent as did many of the other individual tax provisions. We should note that these are as permanent as any tax law and could still be changed in the future by Congress.

In 2026, the estate, gift and generation skipping transfer tax exemption is $15,000,000 per person, and it will be indexed for inflation for years after 2026. The bill also preserves portability for the estate tax exemption, which allows spouses to share their exemption amounts, resulting in a married couple being able to transfer up to $30,000,000 tax-free during their lifetimes or at death. However, portability still does not apply to the generation skipping transfer tax.

The annual gift tax exclusion remains $19,000, unchanged from 2025. This gift tax exclusion allows a person to give up to $19,000 per year to as many individuals as the person wishes without reducing their gift and estate tax exemption or requiring the filing of a gift tax return. A married couple can give $38,000 together.

The OBBBA also contained some revisions to 529 plans, tax-advantaged investment vehicles for saving for education. Historically, they were only for post-secondary education; however, they can now be used for K-12 education as well. Under the OBBBA, the definition of "qualified education expense" has been expanded to allow for more types of educational expenses to be eligible for tax-free withdrawals. Prior to the OBBBA, only tuition was eligible for tax-free withdrawals from 529s for K-12 education. Under the new law, tuition and other related expenses, like books, fees for standardized testing, and tutoring or other educational classes outside of school, are all eligible for tax-free withdrawals for K-12 education, up to $20,000 per year.

Further, the OBBBA now allows for tax-free withdrawals for a wider range of educational paths after high school. These include programs that prepare students for industry-specific licensing exams and continuing education that may be required for professional credentials. 529 account funds may now be withdrawn tax-free to pay for tuition, books, materials, and exam fees for these programs.

Finally, the OBBBA implemented a new type of educational savings account for minors called the Money Accounts for Growth and Advancement program. Contributions up to $5,000 can be made to these accounts every year by parents, other relatives, or even by a parent's employer. Contributions may only be made prior to the account beneficiary's 18th birthday and the money in the account grows tax-deferred while the beneficiary is a minor. Further, children born between January 1, 2025 and December 31, 2028 will be eligible to receive a $1,000 contribution into one of these accounts from the federal government. Distributions from these accounts are not allowed before the beneficiary is 18, but once they reach age 18, funds turn over to the beneficiary and may be withdrawn for educational expenses, first-time home purchases (up to $10,000) and the costs of starting a small business. Non-qualifying withdrawals are subject to a 10% penalty if the account beneficiary is under 59 ½ years old. With the novelty of these accounts, we are awaiting more guidance from the IRS.

The United States Tax Court case, Estate of Rowland v. Commissioner, serves as an important reminder related to requirements to elect portability after a spouse passes away. Portability allows spouses to share their federal estate tax exemptions. However, sharing your exemption with your spouse is not automatic. An estate tax return for the deceased spouse must be filed to transfer the deceased spouse's unused exemption to the surviving spouse. When filing for portability, some of the requirements of a traditional estate tax return are relaxed and you have five years to file the Return following death. In Estate of Rowland v. Commissioner, the surviving spouse filed an estate tax return within the required time but failed to properly value the assets in the estate, particularly those that did not pass to the surviving spouse. Assets that do not pass to the surviving spouse are required to be reported using actual date of death values. The Tax Court held that due to the improper valuations, the surviving spouse was not able to transfer the deceased spouse's unused estate tax exemption. This case serves as a reminder that if you wish to take advantage of portability, a proper and timely estate tax return needs to be completed.

Turning now to New Hampshire law updates. The New Hampshire legislature has updated the rules related to the New Hampshire homestead exemption. The homestead exemption is now $400,000 for a single person and $550,000 for a married couple, up from $120,000 and $240,000 respectively. To qualify for the exemption, the home must have been continuously occupied as a primary residence for the preceding 12 months. This means that for a married couple, they may claim up to $550,000 as

exempt from creditors' claims. The law also provides that if the creditors claim concerns an unpaid medical bill, or other debt relating to a terminal or catastrophic illness or injury, then the full market value of the home may be claimed as exempt.

As many of you know, New Hampshire now recognizes Transfer on Death Deeds, which allow an individual to transfer real estate to an intended beneficiary without requiring probate. We discussed the full details of these deeds last year in our annual letter. A new provision has been added to the law, which requires the beneficiary of real estate via a Transfer on Death Deed to file a "Notice of Death Affidavit" with the registry of deeds in the county where the real estate is located. The affidavit must contain the beneficiary's name and address, the name of the now deceased grantor and their date of death, the address of the property being transferred, and the date the transfer on death deed was executed, and finally, where to send all future property tax bills. The affidavit must be filed within 60 days of the grantor's death, but it is not a requirement to taking title. The intention behind this provision is to help create clear chain of title when the beneficiary inherits the property, not to create another requirement to transfer ownership.

A new law went into effect as of January 1, 2026, which provides that an individual who intentionally and feloniously kills another person forfeits all benefits with respect to the decedent's estate. Specifically, the law immediately revokes any interest the individual would have had in the decedent's estate had they not killed the decedent, whether by Will, Trust, or joint ownership. This type of law is often called a slayer statute. In New Hampshire, prior to enacting this law, estates could turn to common law to prevent a person from benefiting from the estate of someone they killed; this is the first time it has been codified.

The New Hampshire Supreme Court ruled, in, *In re Estate of Thurrell*, 2024 N.H. 66, on the application of New Hampshire's anti-lapse statute found in RSA 551:12. The anti-lapse statute says, absent evidence in the Will, if a beneficiary of a bequest in a Will dies before the person executing the Will, then the beneficiary's heirs take the beneficiary's bequest, as if the beneficiary had survived. In, *In re Estate of Thurrell*, 2024 N.H. 66, the decedent left a Will in which all of his property was to go to his father, if his father survived him, and if his father did not survive him, then to his uncle. His Will did not specify whether his uncle had to survive him. Neither the decedent's father nor uncle survived him. The decedent's father had one living child (the decedent's sister). The decedent's uncle had two living children (the decedent's cousins). The trial court determined, and the Supreme Court agreed, that the decedent's cousins were entitled to all of the assets under the Will because the language of the Will required the decedent's father to survive him, but it did not include the same condition for the decedent's uncle. This case highlights the importance of always including survivorship language and being clear about what your intent is should a person not survive you.

In our 2023 annual letter, we highlighted a case called *In re Omega Trust* that asked the question of whether email communication between a client and his attorney that outlined the particular terms of a proposed trust amendment was effective to amend the trust. The client engaged in a back and forth with his attorney regarding the contents of a trust amendment but died prior to executing that amendment. The New Hampshire Supreme Court indicated that such communication could in theory constitute a trust amendment, but it was remanded to the trial court to determine if the communication in this particular case constitutes a trust amendment. The trial court found that the email messages in this case were not a valid trust amendment because there was clear evidence that the client understood that his email exchange with his lawyer would not be a trust amendment on its own and further action by him was required to implement his intent, and until such time as it was more formally executed, the client could still make further changes.

As we begin the new year, it is always a good idea to review your estate plan. It is important that your estate pass to your intended beneficiaries, whether by will, trust, beneficiary designation or joint tenancy. This should include a review of your current documents, ownership of assets and accounts, and confirmation of beneficiary designations. You should consider whether any changes are needed at this time.

We are thankful to enter 2026 with all of our amazing support staff whose hard work is crucial to our ability to serve our clients. We are fortunate to have our support staff who have stayed with the firm over the years. Our paralegal, Jennifer Pierce, celebrates 20 years with the firm in 2026 and our paralegal, Robin Davison, celebrated 10 years in 2025. We continue to be grateful for their assistance, as well as the hard work of our wonderful paralegal and bookkeeper, Victoria Farren, and our receptionist, Nicole Masson. We could not do what we do without them.

Our associate attorney, Shannon Nicholson, anticipates completing the Masters in Taxation (LLM) program at Boston University in May of 2026. Christine and Alyssa both have their LLMs in Taxation from Boston University, as did Ruth. We congratulate Shannon for obtaining this additional training in our field, and on her recent engagement. She and her partner will be celebrating their marriage in October.

We appreciate your continued loyalty and referrals of family members and friends for our services.

Best wishes for a healthy and happy 2026.