

February 2025

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.

The 2024 election results quelled the panic felt by many regarding the sunset of the 2017 law that doubled the gift and estate tax exemption. Under the current law, each person has an exemption from federal gift and estate taxes, which allows you to transfer property to your family tax-free. In 2025, each person's lifetime exemption is \$13,990,000, with portability of the unused exemption by a surviving spouse. In 2026, the exemption will return to \$5,000,000 per person as adjusted for inflation for years after 2011, unless Congress passes further legislation.

With a Republican controlled Congress and a Republican President, many experts predict that the \$13,990,000 exemption will be extended and will not sunset at the end of this year. Our general advice has been, and continues to be, that clients should be making large taxable gifts only if they would be happy that they had done so regardless of the estate tax law changes. If you would like to meet to discuss making gifts to take advantage of the current gift and estate tax exemption, Christine or Alyssa would be happy to meet with you. We may not know whether the exemption will be extended until late this year. If you are considering making a large gift this year and would like our assistance with an Irrevocable Trust, we ask that you let us know by June 30, 2025, in order to provide all our clients with the best possible service and work product.

The annual gift tax exclusion increased to \$19,000 this year from \$18,000 last year. The 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.

In July, the IRS published their final regulations for the SECURE Act inherited IRA provisions. The final regulations generally reflect the same rules as the proposed regulations that were released in 2022. It is now clear that for most beneficiaries, an inherited IRA must be fully distributed to the beneficiary at the end of the 10th year following the decedent's death. Further, if the decedent had begun taking Required Minimum Distributions ("RMDs"), then the beneficiary of that inherited IRA must continue to take the RMDs. The exceptions to this rule remain eligible designated beneficiaries: a surviving spouse, minor children, disabled or chronically ill individuals, or any other individual who is not more than 10 years

younger than the IRA owner. If an IRA owner died after their required beginning date but prior to satisfying their RMD for the year of their death, and there are multiple designated beneficiaries, the multiple beneficiaries do not have to prorate their distribution to satisfy the RMD. One of the beneficiaries can take the whole RMD.

The New Hampshire Interest and Dividends Tax has been repealed. Individuals and estates may still have a final return needed for those individual and estates subject to the tax in 2024, but beginning after December 31, 2024, that tax will no longer apply. Trusts, which are separate taxpayers, have not been subject to the Interest and Dividends Tax since 2013.

New Hampshire became the 20th state to adopt a modified version of the Uniform Real Property Transfer on Death Act. The law authorizes the use of Transfer on Death Deeds (“TOD Deeds”) to transfer real property as a will substitute to beneficiaries upon a decedent’s death without probate. The requirements for a valid TOD Deed are: (1) the transferor must have capacity to execute the Deed, subject to the same standard for executing a will; (2) it must meet the same execution formalities as any other deed; (3) it must bear the title “Transfer on Death Deed”; (4) it must state that the transfer to the designated beneficiary is to occur upon the death of the transferor; and (5) it must be recorded prior to the transferor’s death, within 60 days of the execution of the Deed and in the registry of deeds for the county or counties in which the real estate is located.

TOD Deeds are fully revocable during the transferor’s lifetime, even after they are recorded. It is not possible to have an irrevocable TOD Deed. The new statute authorizes revocation of an entire TOD Deed or part of the Deed, either expressly or by inconsistency. During the transferor’s life, the recorded TOD Deed does not change any party’s rights or interests in the property. The transferor’s rights and interest in the property, including the right to sell and encumber the property are not affected. Similarly, any of the transferor’s creditor’s rights remain unaffected by the existence of the TOD Deed. It is possible therefore to have a TOD Deed on a mortgaged property. It also does not create a present legal interest in the transferee, which is different from, for example, a deed that contains a life estate. Accordingly, being designated as a beneficiary does not give any creditor of the transferee an interest in the property nor does it affect the transferee’s eligibility for public assistance. Upon the death of the transferor, the property is transferred to the transferee in accordance with the deed and outside of the probate process, however, it is subject to the transferor’s creditors. This is not a Medicaid planning tool. Further, as it is a new law there is some uncertainty about the ability of the transferee to sell the property immediately following the death of the transferor due to the property being subject to the debts of the transferor’s estate.

In a statutory development affecting compensation owed to a deceased employee, a modification to the law changes the amount of money an employer may distribute to a deceased employee's heirs, without being required to open probate. The prior version of the law only allowed payment of up to \$300 of wages earned by the deceased employee before needing probate proceedings. The amendment increases this amount to \$3,000.

In the case of *Tremblay v. Bald*, 2024 N.H. 6 (January 30, 2024), the New Hampshire Supreme Court was asked to consider whether continued cohabitation is valid consideration for a promise to leave certain property to another upon death. A written agreement was made between an unmarried couple. They became engaged in 2009 but never married. On January 1, 2012, the couple executed a notarized agreement that stated in the event of the decedent's death, if the couple was living together at the time of his death, his partner had her choice of one of the two pieces of real estate and her choice of one of two vehicles, then owned by the decedent. The couple then executed two more agreements by which the decedent promised to leave his partner another car and another property, provided they were living together as an engaged couple at the time of the decedent's death. The decedent later died without a will while the couple was still engaged and living together.

The decedent's partner brought the case against the decedent's estate seeking to enforce the agreements claiming the agreements were valid contracts. The trial court ruled that the agreements were not enforceable contracts because they lacked adequate consideration. On appeal, the decedent's partner argued that the trial court erred in the finding that the contracts were unenforceable because her continued cohabitation with the decedent prior to his death was the consideration for the contracts. The administrator for the decedent's estate argued that the agreements were not supported by consideration because (1) the couple was already living together at the time of the agreements, (2) either party could have ended the relationship at any time, and (3) the agreements failed to expressly recite consideration. The Supreme Court agreed with the decedent's partner that the agreements were validly supported by consideration and therefore, are enforceable. This case serves as a reminder that creating and updating your estate plan to incorporate your intent, particularly when there are agreements in place, is very important. If the decedent had died with a will or trust stating his intent, this would not have been an issue.

As we begin a 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 for the assistance of our dedicated, hardworking staff, including paralegals, Jennifer Pierce, Robin Davison and Victoria Farren. Jennifer and Robin support us with drafting estate planning documents. Victoria and Robin help with probate and trust administration. Nicole Masson, our amazing receptionist, answers the phone, greets you when you come in and gets you onto the calendar. We could not run the office without these professionals who work behind the scenes to help us to take care of our clients.

Shannon Nicholson, who joined us as an associate attorney in August of 2023, has started the Master's in Taxation program at Boston University. Alyssa and Christine have their LLM in Taxation, as did Ruth. We are excited Shannon will have the expertise in estate and gift taxation that will enable her to better serve our clients.

Alyssa was invited to join the American College of Trust and Estate Counsel (ACTEC), an invitation-only national professional organization of colleagues who practice in trust and estate law. Christine is also an ACTEC fellow. Ruth was a member of ACTEC as well.

Ansell & Anderson was recognized for excellence in trust and estates in the 2025 edition of Best Law Firms. We are thankful for our peers who nominated our firm to receive this honor.

We appreciate your loyalty and referrals of other family members and friends for our services. We strive to take good care of clients who are referred to our firm.

Best wishes for a healthy and joyful 2025.

A handwritten signature in cursive script that reads "Alyssa".A handwritten signature in cursive script that reads "Christine".