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ESTATE PLANNING AND ADMINISTRATION

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The NextGen Bar Exam and the Future of Trusts & Estates Practice: A Critical Juncture*

BY MIKYLA ABDUL-AZIM

The legal profession stands at a pivotal moment as the National Conference of Bar Examiners (NCBE) prepares to roll out the NextGen Bar Exam beginning July 2026. For those engaged in trusts and estates, the ramifications of this shift extend well beyond the confines of legal education—they touch the very pipeline of practitioners and, ultimately, the public's access to competent counsel in this vital area.

The Changing Landscape of Bar Examination

Historically, the Uniform Bar Examination (UBE) has required substantive knowledge of trusts and estates, tested primarily through the Multistate Essay Examination (MEE). This structure incentivized law students to pursue coursework in the field, ensuring a baseline of competency among new attorneys. The NextGen Bar Exam, however, will reduce both the duration of testing and breadth of topics covered. Trusts and estates will be relegated to the performance tasks or integrated question sets sections, which assess research and writing skills rather than substantive legal knowledge, and for which examinees are provided with all of the substantive information necessary to answer the question. Trusts and estates will not be among the foundational concepts and principles of the NextGen Bar Exam, soon to be rolled out in at least 45 jurisdictions.

Implications for Legal Education and Practice

The exclusion of trusts and estates as a core subject has immediate and long-term consequences. Law students, often guided by bar exam content, may opt out of elective courses in trusts and estates, leading to diminished enrollment. Declining course enrollment may lead law schools to devote fewer resources to these offerings or to eliminate the courses entirely. Over time, this will result in a shrinking pool of attorneys with any formal training in the field.

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*A version of this article appeared in the Summer 2025 Newsletter of the Estate and Trust Law Section of the Maryland State Bar Association.

When the Digital You Lives On: AI, Legacy, and Grief

Fiction universally cautions us against pulling the dead back into the living realm. Variations abound on this theme from *Orpheus and Eurydice* to *Frankenstein* to *Truly, Madly, Deeply* and *Ghost*. We read, or binge watch, or tell around the campfire, countless tales of zombies, vampires, and other hauntings, from terrifying to bittersweet to zany, all with more or less the same message passed down over millennia: grieve and let them go; this is the natural order of things.

Now, as artificial intelligence evolves, we must contend with the uncanny valley of the digital afterlife. Recent articles from *Ars Technica*, *The New York Times*, and NPR explore how AI is being used to recreate the personas of the departed (the *Times* calls it “Grief Tech”). AI-generated avatars can mimic voices, mannerisms, and even conversational patterns, raising not only new questions about identity, consent, and legacy, but ancient ones repeated in myriad stories down through the ages, about grief and letting go. NPR’s article chillingly calls these AI avatars of the deceased “deadbots” and goes on at length about their monetization possibilities (for targeted marketing, of course).

The phenomenon is no longer science fiction. Companies like StoryFile are developing tools that allow loved ones to interact with deadbots, trained on personal data such as emails, texts, and social media posts. While some find comfort in these digital echoes, others worry about the ethical and emotional consequences of blurring the line between memory and simulation.

HERE ARE A FEW KEY IMPLICATIONS FOR ESTATE PLANNING:

1. Explicit Directive: To prohibit creation of an AI likeness, consider a clear written directive to that effect, either in a will or as a stand-alone document. Without clear instruction from you, your family may face confusion—or conflict. But lower your expectations as to how well a directive will work: it may help ensure that a judge shuts it down after the fact if the issue reaches a court, but an online vendor is not likely to review your legal documents first, to confirm that you didn’t disapprove, before helping a determined loved one create your post-mortem AI persona. (On the flip side, someone keen to live on as an avatar may proactively participate by sitting for a filmed interview during life to facilitate the capture of added data—though this doesn’t guarantee that friends and family will ever choose to interact with it.)

2. Data Ownership: Who owns the data that fuels these AI personas? Is it the individual, the heirs, or the platform that hosts the data? Estate plans may address the transfer and control of digital content, including social media accounts, cloud storage, and biometric data.

3. Legal Precedents: The law is still catching up. State laws vary regarding the use of a person’s image and likeness, and few jurisdictions have statutes that directly address AI-generated likenesses of the deceased. Until clearer legal frameworks emerge, proactive planning is the best (albeit imperfect) defense against unintended consequences.

What impact these deadbots may have on the grieving process we have yet to see. But don’t say Mary Shelley didn’t warn you. ■

How the OBBBA Might Affect Estate Planning

BY MIKYLA ABDUL-AZIM

The President signed the One Big Beautiful Bill Act (the “OBBBA”) into law on July 4, 2025. The OBBBA extends certain tax provisions implemented by the Tax Cuts and Jobs Act of 2017 (the “TCJA”) and amends others. Various provisions of the OBBBA add certainty to existing estate planning methods and create new opportunities.

Many practitioners have spent the past few years planning with uncertainty because several provisions of the TCJA were scheduled to sunset on December 31, 2025. The OBBBA provides a greater degree of certainty, which will impact tax and estate planning. Additionally, new provisions have been introduced that may provide planning opportunities. Below are brief explanations of some of the provisions of the OBBBA that will affect how estate planners advise clients moving forward.

A. Estate, gift, and generation skipping transfer tax exemption

The TCJA increased the estate, gift, and generation skipping transfer tax exemptions to \$10 million for the 2017 tax year, indexed for inflation thereafter. For 2025, the federal estate and gift tax exemption was \$13.99 million for each individual and \$27.98 million for married couples. This increase was scheduled to sunset on January 1, 2026.

Starting on January 1, 2026, the OBBBA increases the federal estate, gift, and generation skipping transfer tax exemption to \$15 million for each individual (\$30 million for married couples). Thereafter, the estate, gift, and generation skipping transfer tax exemptions will continue to be indexed for inflation. This provision of the OBBBA is **not** scheduled to sunset.

Although Congress can alter the exemption at any time that it has the votes to do so, these changes remove some uncertainty for the foreseeable future and may simplify planning for some individuals and couples.

B. Qualified Small Business Stock Election

By 2010, the gain that could be excluded from recognition under Section 1202 of the Internal Revenue Code (“IRC”) for qualified small business stock had increased from its original 50% (where it started in 1993) to 100% on the first \$10 million of gain. To qualify for exclusion as small business stock, stock was required to be held for a minimum of 5 years and the asset limitation of the business when stock was issued was limited to \$50 million.

The OBBBA changes the requirements to qualify as a small business, and as stock subject to excludible gain, for purposes of Section 1202 of the IRC. Some of these changes for qualified small business stock issued on or after July 5, 2025 include the following: the gross asset limit to be categorized as a qualified small business increases from \$50 million to \$75 million; the cumulative per-taxpayer exclusion is calculated based on the first \$15 million in gains, instead of the first \$10 million; the percentage of gain excluded on the first \$15 million of gains will increase gradually depending on how long the stock has been held by the taxpayer (50% if held for 3 years; 75% if held for 4 years; and 100% if held for 5 years or more). Both the \$15 million per-taxpayer exclusion and the corporate asset threshold of \$75 million will increase for inflation beginning in 2027.

C. Income Tax Rates and Brackets

The TCJA established new tax rates and brackets related to the federal income tax for individuals. The maximum income for which an individual would need to pay each marginal tax rate was increased, allowing individuals with higher income to be subject to lower marginal tax rates. In conjunction with the broadening of tax brackets, the marginal tax rate of many tax brackets was

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2025 Estate and Trust Law Updates for Maryland, DC, and Virginia

BY OREN GOLDBERG

Lawmakers in Maryland, DC, and Virginia enacted several changes to estate, trust, and probate laws, aiming to improve efficiency and clarify fiduciary duties. These updates affect estate tax exemptions, trustee powers, allowances, and procedures for handling small estates and trusts.

MARYLAND

Estate Tax. No changes: estate tax exemption remains at \$5 million, with no inflation adjustments, and is portable between spouses. Governor Moore's proposal to reduce the exemption to \$2 million did not pass.

Trustee Resignation. Trustees may now resign with 30 days' notice, without court approval. Notice must be given to the settlor (if living), all qualified beneficiaries, and any other serving trustee.

Trustee Compensation. Unless the trust provides otherwise, non-professional trustee compensation was previously limited to a statutory cap, but the statute now permits reasonable compensation.

Decanting. Trustees intending to decant (move assets to a new trust) must provide 60 days' notice to qualified beneficiaries. The law aligns notice requirements with other provisions in the Maryland Trust Act, but trusts can be drafted to bypass statutory notice.

Claims for Unpaid Child Support. Unpaid child support takes a higher priority over unpaid tax obligations and expenses of the final illness in insolvent estates.

Domestic Partnerships and Marriage. Maryland continues to recognize registered domestic partnerships. New requirements include providing full legal names, dates of birth, and Social Security Numbers (if available) when registering a partnership or obtaining a marriage license.

Abandoned Property and Digital Currencies. The Maryland Uniform Disposition of Abandoned Property Act now covers virtual currencies and clarifies procedures for identifying owners of abandoned property.

DISTRICT OF COLUMBIA

The "Strengthening Probate Administration Amendment Act of 2024" and the "Uniform Trust Decanting Act of 2024" introduced several changes:

Allowances. Homestead allowance increased to \$30,000; exempt property allowance to \$20,000; family allowance to \$30,000. Exempt property allowance for disinherited adult children was eliminated.

Small Estates. The threshold for simplified small estate administration is now \$80,000.

Formal Probate. "Standard probate" is now termed "formal probate" to distinguish it from abbreviated proceedings.

Hybrid Letters of Administration. Courts may issue letters of administration informally while retaining supervisory authority.

Notice of Probate. The publication requirement has been shortened from three weeks to two.

Transfers by Affidavit. Small assets can be transferred by affidavit after 60 days, provided funeral expenses are paid and all successors agree.

Funeral Expenses. Personal representatives may pay funeral expenses at their discretion if the estate is solvent and the will authorizes it.

Personal Representative Appointment. Courts may appoint a personal representative without a hearing if all heirs or beneficiaries agree.

Waiver of Notice and Consent. Interested persons may waive notice or consent to estate matters, with procedures for revocation.

Decanting. Trustees may decant assets to a new trust, subject to notice requirements unless the governing instrument specifies otherwise.

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This trend is particularly concerning given the persistent prevalence of malpractice claims in trusts and estates—insurers have identified it as one of the top three practice areas for such claims. In legal deserts, where general practitioners serve as the primary resource for estate planning, the lack of foundational knowledge can have outsized negative effects on individuals and families.

Trusts and Estates: Ubiquity and Urgency

Trusts and estates law is not a niche specialty; it is universally relevant. It affects anyone who owns or inherits property, plans for incapacity, serves as a fiduciary, owns a small business, or simply contemplates mortality. The “Great Wealth Transfer”—an estimated \$84.4 trillion expected to pass between generations by 2045—underscores the societal importance of competent estate planning. The efficient transfer of wealth, as well as the succession of small businesses, depends on practitioners who understand the intricacies of trusts and estates. At a minimum, it necessitates a broad swath of attorneys with sufficient exposure to the subject area to spot issues and recognize when to do further training or call in co-counsel with subject matter expertise.

Moreover, estate planning intersects with issues of disability, aging, and advances in reproductive technology. The latter, in particular, presents new legal challenges for families formed through assisted reproductive methods, with legislative responses lagging behind technological realities. Estate planning documents remain essential tools for protecting vulnerable populations and ensuring continuity in the face of evolving family structures.

Advocacy and the Path Forward

Recognizing the risks posed by the NextGen Bar Exam, professional organizations have mobilized. The National College of Probate Judges and the American College of Trust and Estate Counsel (ACTEC) have called for the reinstatement of trusts and estates as a foundational subject. The Maryland State Bar Association (MSBA), in collaboration with the Real Property, Trust and Estate Law Section of the American Bar Association (ABA) is preparing a resolution for consideration by the ABA House of Delegates. If the NCBE remains unmoved, state bar administrators may need to ensure that trusts and estates will be included in state-specific examinations, as Maryland has already committed to doing.

Conclusion

The decision to exclude trusts and estates from the NextGen Bar Exam’s core subjects is more than a curricular adjustment—it is a policy choice with far-reaching consequences for legal education, professional competency, and public welfare. As the legal community navigates this transition, continued advocacy and strategic adaptation will be essential to safeguard the future of trusts and estates practice. ■

For further information and ongoing developments, resources are available at <https://www.actec.org/nextgenbarexam/>

How the OBBBA Might Affect Estate Planning

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reduced. For example, the TCJA reduced the highest marginal income tax rate for individuals from 39.6% to 37%. Additionally, whereas prior to the TCJA individuals making over \$426,700 would be subject to the highest marginal tax rate, after the TCJA this rate is not applicable until an individual's taxable income is equal to or in excess of \$500,000. This portion of the TCJA was meant to expire at the end of 2025.

The OBBBA locks in these broadened tax brackets and lower tax rates with no sunset provision.

D. State and Local Tax Deduction

The OBBBA increases the personal state and local taxes that individuals can deduct as it relates to personal income taxes. The cap on deduction of personal state and local taxes increased from \$10,000 to \$40,000 per household, and the \$40,000 is anticipated to increase by 1% annually. The new \$40,000 deduction cap begins to phase out for households with a \$500,000 adjusted gross income and completely phases out for households with an adjusted gross income of \$600,000.

This newly introduced provision will remain in effect through 2029, with the limit reverting to \$10,000 in 2030 unless Congress takes further action to extend it.

E. Qualified Business Income Deduction

The TCJA introduced the qualified business income deduction for noncorporate taxpayers. Owners of pass-through entities including S corporations, sole proprietorships, and some trusts, can deduct up to 20% of their qualified business income. Limits on deductions applied

if the taxpayer's taxable income exceeded the threshold amount (\$157,500, adjusted for inflation) by \$50,000, or \$100,000 if filing jointly.

The OBBBA locks in 20% as the value of the deduction. Additionally, limits on a taxpayer's ability to take the deduction are not phased-in until the taxpayer's taxable income exceeds the threshold amount (still \$157,500, adjusted for inflation) by \$75,000, or \$150,000 if filing jointly. This increase will allow more taxpayers with higher taxable incomes to utilize the qualified business income deduction.

F. Trump Accounts

The OBBBA creates a new type of IRA account that can be created for individuals under age 18. This new type of IRA, called a Trump Account, may be created for any individual under 18 and the account will have the same benefits as other IRA plans. The Trump accounts have a \$5,000 annual maximum contribution limit, which will increase annually with inflation.

While an account may be created for any individual under 18, for children born during the years 2025 through 2028, the accounts will be eligible to receive a \$1,000 contribution from the federal government or charities.

Whether the account is funded only by the federal government contribution, or parents, family, and employers contribute as well, the funds cannot be distributed to the beneficiary until age 18. Individuals interested in beginning a savings account for minors should carefully consider the benefits and restrictions compared to that of a 529 Plan or other savings account and their overall intent in creating the account. ■

P&F NEWS

Partners **Anne Coventry** and **Stephanie Perry** were named by *Washingtonian* as Top Financial Advisors.

Best Lawyers, a peer-reviewed publication, and U.S. News have named several Pasternak & Fidis attorneys as the “best” in Bethesda, Maryland for 2026. Partner **Vicki Viramontes-LaFree** was recognized in the fields of Family Law and Family Law Mediation. Partners **Anne Coventry**, **Stephanie Perry**, and **Micah Snitzer** were all recognized in the field of Trusts & Estates.

Micah Snitzer became the head of the Estate Administration practice.

Anne Coventry was listed in the Maryland Daily Record as one of Maryland’s “Power Players” on the publication’s 2025 Estate and Trust Law Power List.

Anne Coventry spoke at the Mid-Atlantic Fellows Institute of the American College of Trust and Estate Counsel (ACTEC) on “Drafting and Negotiating Premarital Agreements from an Estate Planning Perspective.”

Bethesda Magazine named **Stephanie Perry**, **Anne Coventry**, and **Micah Snitzer** Top Attorneys in the field of Trusts and Estates, and **Vicki Viramontes-LaFree** was named a Top Attorney in the field of Divorce/Family Law.

2025 Estate and Trust Law Updates for Maryland, DC, and Virginia

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VIRGINIA

Allowances. Homestead and exempt property allowances increased to \$25,000; family allowance to \$30,000.

Attorney’s Duties. Attorneys owe duties only to their clients unless a written agreement specifies otherwise.

Priority of Debts and Expenses. Funeral expenses have priority over other debts, with caps increased to \$5,000 for funeral expenses and \$4,000 for medical expenses per institution.

Transfers by Affidavit. The value of assets transferable by affidavit increased to \$75,000; assets valued at \$35,000 or less may be transferred without affidavit after 60 days.

Waiver of Inventory. Estates not exceeding \$35,000 may be settled without filing an inventory.

Transfer on Death Deeds. Revocable transfer on death deeds no longer require express revocation to convey property during life. Agents need express authority to modify such deeds.

Termination of Uneconomic Trusts. Trustees may terminate trusts valued under \$250,000 after notifying beneficiaries.

Expanding Trustee Powers. Trustees’ powers to manage assets, make distributions, and form business entities have been clarified and expanded.

Transfers for Minors. Fiduciaries may transfer assets for minors, with court approval required for amounts over \$35,000.

Charitable Funds. Institutions may modify restrictions on charitable funds under \$375,000 with donor consent or, for smaller funds, after notification to the Attorney General.

What This Means to You

These legislative changes are designed to streamline estate and trust administration, clarify fiduciary responsibilities, and provide greater flexibility for estate planning. Individuals should review their estate plans to ensure compliance and optimal efficiency under the new laws. ■

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WELCOME, MIKYLA ABDUL-AZIM

Welcome to our newest attorney, Mikyla Abdul-Azim! Originally hailing from New York, Mikyla is graduate of the LMU Loyola Law School and has a Bachelor of Arts in Strategic Communications from Temple University. Mikyla is already contributing to our Estate Planning and Probate practice with her sharp drafting skills and keen sense of observation. In her free time, Mikyla likes to bake, craft, read, and go dog-watching in her neighborhood.