

Update from the Legislative Committee

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The 2011 session of the General Assembly was a long session, in which new legislation was introduced (as opposed to a short session, in which the legislature only considers technical corrections to bills and bills which passed either house or senate during the long session). The legislative committee of our section was very busy during the 2011 session and brought several bills before the legislature.

One of the most significant new laws affecting our practice area is S.L. 2011-344, which includes substantial revisions to Chapters 28A, 29, 30, and 31 of the General Statutes. A separate article by Jim Hickmon in this edition covers the changes to Chapter 28A effective Jan. 1, 2011. This article discusses statutory changes that become effective Jan. 1, 2011. An article in the December edition will cover additional legislative changes effective Jan. 1, 2011 that are covered in this edition of the newsletter.

Payable on Death Accounts. S.L. 2011-235. This legislation clarifies that a person may name a "non-natural person" as a beneficiary of a payable on death account established with a bank, savings and loan institution, savings and credit union. The legislation expressly allows a person to name a trust or other entity as the beneficiary on a payable on death account. If a non-natural person is named as a beneficiary, however, only one beneficiary may be named (you can't name more than one beneficiary where you name a non-natural person as beneficiary). In addition, the new statutes require that the person designating the account to be paid on death to sign a statement that they understand that the property will not pass under the terms of their will or be inherited by heirs.

Devise/Devisee/Statutory Construction. S.L. 2011-284. This legislation came from the General Statutes Committee and clarifies and makes consistent the use of the words devise and devisee throughout estate-related sections of the General Statutes. The legislation clarifies that the term "devise" applies to both a gift of real property as well as personal property, and removes the terms "legatee" and "bequest" from the General Statutes.

Trusts and Estate Planning Changes. S.L. 2011-339. This legislation amends several different statutes as follows:

1. Clarifies N.C.G.S. § 32-55 to provide that the notice to be given if a trustee seeks compensation in excess of 1% must contain a statement that the qualified beneficiaries or their representatives have twenty days from the date of the notice to file a proceeding to protest the reasonableness of the compensation.

2. Adds a new provision to N.C.G.S. § 36C-5-505 to provide that the property in certain trusts will be deemed to have been contributed by the settlor's spouse. The property will be included in the spouse's estate for estate tax purposes if the settlor is considered a beneficiary. The trusts to which this rule applies are: (i) a marital general power trust; (ii) an appointment trust under IRC §2523(e); (iii) an inter-vivos QTIP trust; (iii) an irrevocable inter-vivos trust of which the settlor's spouse is the sole beneficiary during the spouse's lifetime but which does not qualify for the federal gift tax marital deduction; and (iv) a subtrust or other trust attributable to the previous 3 trusts.

3. Adds to N.C.G.S. § 36C-7-704(f) a provision that a successor trustee is vested with the title to property held by the former trustee.

4. Clarifies N.C.G.S. § 36C-8-816 to provide that a trustee's powers, including investment powers and powers over trust assets, continue after termination of the trust to allow for wind-up of the trust administration.

5. Provides that a personal representative that is a licensed trust institution does not have to be bonded. N.C.G.S. § 28A-8-1(b).

6. Adds several amendments to update references to banking statutes to clarify what institutions may serve as trust institutions and to remove outdated language. Clarifies that all trust institutions must be licensed by the Commissioner of Banks, and the fee for the license is \$500. Also allows the Commissioner to investigate, at a trust institution's expense, whether the trust institution is in a "hazardous condition." The "hazardous condition" language replaces the previous "insolvency" standard for trust institutions. If the Commissioner revokes a trust institution's license because it is in a "hazardous condition," notice of the revocation is to be sent to the clerk of court in each county.

7. Modifies provisions with regard to the boards of directors of private trust companies, to allow equity owners of a private trust company to delegate functions to advisory groups or sub-groups of the board of directors. Notice of

delegation must be given to the Commissioner within 48 hours of the change to the power of the board of direct

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