

NC Statutory Update

- I. T&E:
 - a. E Wills - Update, hurdles, concerns, possible solutions.
 - b. Notary Laws. Specifically Remote Notary. This is relevant to lots of practice areas, but the way it interacts with E-Wills is part of the nitty gritty we're working through.
 - i. A notary can receive a commission as an electronic notary - it is different and in addition to being a regular notary.
 - ii. An electronic notary can perform acknowledgments, jurats, verifications or proofs and oaths or affirmations. But the person has to be in the presence of the e notary at the time of notarization.
 - iii. You can use communication technology to establish presence.
 - 1. Have to have sufficient video quality to allow a clear and unobstructed visual observation of the face of each participant and the document presented by the remotely located principal during credential analysis, so that the e notary can verify the principal's identity.
 - 2. The remote notary has to be physically located in NC
 - iv. E notary must make a judgment that the principal does not appear to be incompetent, lacking in the understanding of the nature and consequences of the transaction, or acting involuntarily, under duress, or undue influence.
 - v. The e notary has to act the principal if the principal would like an attorney to participate the notarization.
 - vi. NC Secretary of state licenses e notary platforms.
 - vii. An electronic notary expressly cannot notarize an electronic will, a revocable or irrevocable trust, a codicil, any document related to the relinquishment of parental right, or mail in absentee ballots.
 - c. Spousal Entitlements
 - i. In NC, a surviving spouse can claim the first \$60,000 of a decedent's personal property. NCGS 30-15 (SL 2023-120).
 - 1. Must be claimed during ss's lifetime. Can be claimed by SS, SS's agent under DPOA, or guardian.
 - 2. If an estate has been opened, the spousal allowance has to be made w/in 6 months of issuance of letters.
 - 3. If no estate opened, there's no deadline.
 - 4. This was formerly known as a spousal year's allowance and had to be claimed within 1 year of the decedent's death.

5. Spousal allowance is exempt from creditor claims and takes priority over a child's allowance.
- ii. A child can claim \$10,000.
 1. Claimed by (in this order of priority) general guardian of child
 2. Surviving parent
 3. Person with whom the child resides.
- iii. There is a procedure for an additional allowance, but it requires a hearing. It is an allowance of up to one-half of the decedent's annual after-tax income, averaged over the three prior calendar years.
- d. Clarification that in a will AND in a revocable trust, a divorced spouse is deemed to have predeceased the Testator/Settlor spouse.
 - i. UNLESS the will or trust provides otherwise
 - ii. OR it is a will or trust executed after the divorce
 - iii. OR they remarry and don't redi-vorce prior to death
- e. Changes to Guardianship Statutes SL 2023-124
 - i. Focus on alternatives that are less restrictive than guardianship.
 - ii. For example, guardianship petition has to include a statement identifying what less restrictive alternatives have been considered and why they are insufficient to meet the needs of the respondent
 - iii. A new notice to be given to a respondent, notifying of their rights.
 1. Right to Notice
 2. Right to an Attorney
 3. Right to Gather Evidence
 4. Right to a Hearing
 5. Right to a Jury
 6. Right to a Closed Hearing
 7. Right to Present Evidence and Testimony
 8. Right to Call Witnesses and Question Witnesses
 9. Right to Express Your Wishes Regarding your Rights
 10. Right to Express Wishes as to Who is the Guardian
 11. Right to Appeal
 - iv. Also rights post adjudication
 1. Right to a Qualified, Responsible Guardian
 2. Right to Request a Transfer to Another County
 3. Right to Request Restoration of Competency
 4. Right to Request Review or Modification of Guardianship
 5. Right to Vote
 6. Right to Request a Hearing in a Petition to Permit Sterilization

7. Ability to Drive

- f. Unclaimed Property – Escheated Property
 - i. Now in NC, if the unclaimed property is worth \$5,000 or less, the fee for a small estate affidavit is waived.
 - ii. This was at the urging of the NC Treasurer, presumably to make it easier to clear out these funds. NCBS 7A-301(b). SL 2023-88
 - g. Move to E filing. It’s been a bumpy road.
 - i. Example: NCGS 132-1.10. No agency of the state shall require that a social security number be transmitted over the Internet, unless the connection is secured or the information is encrypted. But that does not apply to any official records of the courts.
 - ii. So, when we provide death certificate, which has SSN, we have to redact it. Adds burden
 - iii. Fees have to be paid by credit card
 - iv. On the other hand, now judgments can be paid by credit card. SL 2023-103
- II. Legal Procedure
- a. Amendment to Rule 4 to allow an AOC form for acceptance of service. G.S. 1A-1, Rule 4(j5) SL 2023-97.
 - i. An aside: in that same session law was a correction to a definition that a bar is an establishment primarily engaged in the business of selling alcoholic beverages for consumption on the premises. And deleting that a bar shall include a brewery, winery, or distillery. NCBS 18B-1000(1) – Chapter on regulation of alcoholic beverages.
 - b. Rule 5 service can be performed electronically on an attorney through the court’s case management system. Service must be sent by 5:00 pm on a regular business day. If it’s after 5, it’s deemed to be on the next business day. NCGS 1A-1, Rule 5. SL 2023-103.
 - c.
- III. Tax
- a. PTE Election allowed as a work around for the SALT cap. NCGS 105-153.1 et seq. Session law 2023-12, passed April 3, 2023. Effective upon becoming law.
 - b. An act to allow sports wagering. SL 2023-42. NCGS 18C-901. It’s now legal in NC, and the amount you hear about it is just astonishing.
 - i. Became effective January 2024
 - ii. You cannot wager on the occurrence of injuries, the occurrence of penalties, the outcome of disciplinary proceedings, or the outcome of replay reviews
 - iii. You cannot wager on youth sports

- iv. You cannot place a pari-mutuel wager – which is a form of wagering on horse races where wagers are made on one or more horses and all wagers are pooled and held by the host of the race for distribution.
- v. Lots of licensing rules
- vi. There is an 18% tax on interactive sports wagering operators. Applied to gross wagering revenue.
- vii. The tax goes:
 1. \$500,000 to reimburse the department of revenue and lottery commission for expenses.
 2. Next \$2,000,000 to DHHS for gambling addiction education and treatment programs.
 3. Next \$1 million to North Carolina Amateur sports.
 4. \$300,000 to each of certain public NC universities.
 - a. App State, ECU, Elizabeth City State, Fayetteville State, NC A&T, NC Central, UNC Asheville, UNC Charlotte, UNC Greensboro, UNC Pembroke, UNC Wilmington, WCU, WSSU.
 5. \$1,000,000 to NC Outdoor Heritage Advisory Counsel to give grants to sporting teams to travel to in-state or out of state sporting events and grants to attract sporting events
 6. Of the remainder, 20% to the listed institutions, 30% to the North Carolina Major Events Games and Attractions Fund, and 50% to the general fund.

IV. Grab Bag

- a. Prohibition of Unfair Real Estate Service Agreements.
 - i. This was in response to a specific scam. A company out of Florida would get people to pay for services related to selling the property at some day in the future. There would be something recorded to make sure that the company would get a commission on the sale. When the time to sell came, the owner could not find the company to provide the services.
 - ii. A contract between a service provider and an owner to provide services, current or future, in connection with the maintenance, purchase, or sale of residential real estate. And does any of the following
 1. Runs with the land or binds future owners
 2. Allows for assignment of the service obligations without consent of owner or buyer
 3. Creates a lien, encumbrance or other real property security interest.
 - iii. Recording one of these is prohibited and is deemed to be an unfair and deceptive trade practice, which goes along with

treble damages, and recoveries are not offset by consideration paid by the service provider to the owner.

- b. Stepparent adoption changes to make it easier for adult adoptees to be adopted by former stepparents.
- c. A person who is over age 16 but under 18 can get a drivers license after having a learner's permit for 9 months. Used to be 12 months. Effective My 6, 2023, SL 2023-13. NCGS 20-11.
- d. Parents' Bill of Rights, and Right to be notified of certain things, withhold consent for certain instruction, receive notices about student physical and mental health. The law also prohibits instruction on gender identity, sexual activity or sexuality in grades kindergarten through fourth grade. SL 2023-106. NCGS Chapter 114A.
- e. Related: Requirement that sports participants participate with biological sex., determined at birth. NCGS 115C-12(23), SL 2023-109.
- f. Related: Act to prohibit gender transition procedures for minors. NCGS 90-21.150, SL 2023-222.