

## Winter 2020 Newsletter | Happy New Year!



### IN THE LAW

Tennessee recently updated the laws around the open carrying of firearms. Scroll to the bottom of this newsletter to see the breakdown of the new law's requirements.

### IN THE SPOTLIGHT

The SECURE Act is here. Read below for some highlights of the important information you're going to need to know.

### IN THE LAW

There have been monumental cases in Estate Planning Law. We have the pertinent facts.

### IN THE COMMUNITY

We kicked off our seventh year of the Christenberry Kids program in September, and cannot wait for the third book distribution of the school year next month.

Our first distribution celebrated the start of the school year with a fun cowboy theme, while the holidays were actively celebrated during the December event.

Seeing the joy of reading being embraced by these kids is a highlight of our efforts. If you would like to donate books to the program, please contact Garrett Lemons at [glemons@kmfpc.com](mailto:glemons@kmfpc.com)



## SECURE Act: A (Very) Brief Introduction

On December 20, 2019, President Trump signed the Setting Every Community Up for

## Retirement Enhancement ("SECURE") Act into law.

The following is a brief overview of some of the key changes as they relate to retirement plan administration:



### Ashley N. Trotto, Esq.

From our last issue:

#### The IRS Updated 401(k) Hardship Regulations: Here's What You Need To Know

---

- **Safe Harbor 401(k) Notices:** The safe harbor notice requirement for nonelective contributions is eliminated. Employees must still be allowed to make or change elections at least once per year.
  - Effective for plan years beginning after Dec. 31, 2019.
- **Repeal of maximum age for traditional IRA contributions:** Individuals over age 70 ½ may continue to make contributions to traditional IRAs.
  - Effective for contributions and distributions made for tax years after Dec. 31, 2019.
- **401(k) Plans must allow long-term, part-time employees to participate:** 401(k) plans must have a dual eligibility requirement under which an employee is eligible if he or she:
  - (1) works at least 1,000 hours in one year (the current rule); or
  - (2) works 500 hours in three consecutive years.
  - Effective for plan years beginning after Dec. 31, 2020.
- **Penalty-free withdrawals in case of birth or adoption:** Permits a plan to make in-service distributions up to \$5,000 for expenses related to the birth or adoption of a child and excepts any such distribution from the 10% early withdrawal penalty for participants under age 59 ½.
  - Effective for distributions made after Dec. 31, 2019
- **Increase in age for required minimum distributions:** Increases the required minimum distribution age from 70 ½ to 72.
  - Effective for distributions made after Dec. 31, 2019 for individuals who attain age 70 ½ after such date.
- **Modification of required distribution rules for designated beneficiaries** Distributions to individuals other than the surviving spouse of the employee, disabled or chronically ill individuals, individuals who are not more than 10 years younger than the employee, or child of the employee who has not reached the age of majority are generally required to be distributed by the end of the 10<sup>th</sup> calendar year following the year of the employee's death.
  - Effective for distributions with respect to employees who die after Dec. 31, 2019
  - For government plans, the effective date is Dec. 31, 2021

Plan sponsors generally have until the last day of the first plan year beginning on or after Jan. 1, 2022 to amend their plans to comply with SECURE Act provisions. Governmental plan sponsors have until the last day of the first plan year beginning on or after Jan. 1, 2024.

**NOTE:** Although employers can delay amendment of their plans, some provisions of the Act are already in effect and changes to plan administration or employee communications may be required immediately or in the near future.

Over the next few months, we will be diving further into the SECURE Act and its effect on our clients. We are already planning our **spring seminar** on this topic, so keep an eye out in your email for an invitation. We'd love to see you there! Also, be on the lookout for additional information on the SECURE Act as it relates to estate planning.

As always, for any of your Employee Benefits needs, please contact us at (865) 546-7311.

---

# An Update to the Fair Labor Standards Act (FLSA)

The updated Fair Labor Standards Act's long-awaited final overtime rule went into effect on January 1, 2020. Please keep the following important provisions in mind when assessing your current payroll practices and procedures:

1. The salary threshold for exempt employees has increased to \$684 per week (\$35,568 annually);
2. The exemption threshold for highly compensated employees has increased to \$107,432; and
3. Employers may use non-discretionary bonuses and incentives, including commissions, paid at least annually to satisfy up to 10% of the salary threshold.

Please direct questions about the final rule or its application to your specific workforce to Ashley N. Trotto, Esq. at (865) 546-7311.

---

## Reminders that Planning Requires Attention to Detail



**Marshall H. Peterson, Esq.**

**Two recent cases in probate law highlight the importance of thorough estate planning.**

**Clients of Kennerly, Montgomery & Finley benefited from both cases and current and future clients should note the lessons to be learned.**

### **First, An Exception to the Real Estate Vesting Rule**

In *In Re Estate of Nichols*, 2018 WL 1443017 (Tenn. Ct. App. Mar. 22, 2018), two daughters were provided bequests under their father's will. The balance of the estate—the residuary—was directed to another beneficiary.

The executor claimed that there were not sufficient liquid assets to satisfy the bequests, and that the real estate—the great majority of the residuary estate value—was untouchable as a source of funding.

The general rule is that real estate vests in the beneficiary upon the testator's death and therefore is not part of the probate estate. The Court of Appeals in this case established an exception to the real estate vesting rule. The result is that the daughters received their bequests, and now, the rule for all estate administrations is that the bequests are funded before the residuary—even if that residuary is real estate.

### **Second, The Importance of Proper Will Execution**

A will is not effective until the testator dies and the probate court admits it to probate. A will must be properly executed for the probate court to validate it as a will. The standard for execution of a will is subject to long-standing safeguards. Among those safeguards is the requirement that at least two witnesses be present when the testator executes the document and that the witnesses and the testator are in the sight and presence of each other. The witnesses are not only affirming that the testator signed the will, but also that the testator appeared to know it was intended as a will, that no one was coercing the signing, and that the testator appeared to have the requisite capacity.

To expedite estate administration, a lawyer-drafted will often involves an affidavit—a sworn statement—affirming the witnesses were present and the circumstances appeared appropriate for a will signing. The affidavit is not part of the will but is prepared as an additional document to be submitted to the court with the will. The affidavit is presented in lieu of the witnesses appearing to testify as to the proper execution of the purported will.

In *In Re Estate of Morris*, 2015 WL 557970 (Tenn. Ct. App. Feb. 9, 2015), beneficiaries who were left out of the purported will contended that the document was invalid as a will because the document was not

witnessed. The Court of Appeals agreed. The decedent Morris signed a document that looked like a will, and the document was supported by an affidavit, but no witnesses signed the will. The consequence of the Morris will being invalidated is that Mr. Morris died intestate, meaning he had no will, and the estate's assets passed equally to the decedent's heirs in accordance with state law on intestacy. Those intestate takers included the omitted beneficiaries.

### Lessons to be Learned

Estate planning requires thinking through the most effective ways to accomplish objectives, followed by careful implementation. Seek professional help. Your estate reflects your legacy. A lifetime of accumulation given in dedication to loved ones and favored causes warrants taking time to get proper advice and follow-through. Without appropriate planning, you run the risk of your intentions falling by the wayside.

At Kennerly, Montgomery & Finley, we have expertise and experience in [trusts and estates](#), [charitable giving](#), [employee benefits](#), [business succession planning](#), [real estate](#), [intellectual property](#), [debtor/creditor](#), [family law](#), [business structures](#), and [asset protecting](#), among others. We can handle all these issues in litigation, but we prefer to help clients plan and follow-through to avoid litigation and have assurance that their plans and dreams will be implemented.

### Other Developments in Trusts and Estates

#### Tennessee's Marital Asset Protection ("MAP") Trust

#### Recent Changes to Trust and Estate Laws in Tennessee

by  
[Michael R. Crowder, Esq.](#)

### Legal Tip: 2020 Dates

One small way to protect yourself and your business this year is by writing "2020" when dating all checks, contracts, and other official documents instead of the common shorthand method of "20."

**Do: 1/1/2020**

**Don't: 1/1/20**



## 501(c)(3) Tax-Exempt Organizations and Lobbying Revisited Grassroots Lobbying

In [my last article regarding lobbying and 501\(c\)\(3\) tax-exempt organizations](#), I discussed the extent to which these organizations may take part in Direct Lobbying activities.

Direct Lobbying refers to communications with legislators or legislative staff members that specifies and expresses a view on a particular piece of legislation.

Another type of lobbying, Grassroots Lobbying, is also governed by general rules under Internal Revenue Code § 4911.



**Zack R. Gardner, Esq.**

From our last issue:

### Clarifying the Tennessee Public Records Act

In the context of [501\(c\)\(3\) tax-exempt entities](#), Grassroots Lobbying refers to attempts to influence legislation by trying to affect the general public's opinion with respect to—and encourage action on—a particular piece of legislation. Much like Direct Lobbying, the different types of communications with the

public refer to and reflect on a particular view of said legislation.

Grassroots Lobbying has two tests that limit the amount of time or money that can be spent on such activities. The first test, the “Substantial Part Test,” described in my previous article, applies much the same to Grassroots Lobbying as it does to Direct Lobbying. The Expenditure Test for Grassroots Lobbying is based on the lobbying nontaxable amount for Direct Lobbying as set forth in Internal Revenue Code § 4911(c)(2). See the table below for the applicable amounts:

If the exempt purpose expenditures are:	The Direct Lobbying nontaxable amount is no more than:	The Grassroots Lobbying nontaxable amount is no more than:
<ul style="list-style-type: none"><li>• Not over \$500,000</li></ul>	<ul style="list-style-type: none"><li>• 20% of the exempt purpose expenditures</li></ul>	<ul style="list-style-type: none"><li>• 5% of the exempt purpose expenditures</li></ul>
<ul style="list-style-type: none"><li>• Over \$500,000, but not over \$1,000,000</li></ul>	<ul style="list-style-type: none"><li>• \$100,000 plus 15% of the excess of the amount over \$500,000</li></ul>	<ul style="list-style-type: none"><li>• \$25,000 plus 3.75% of the excess of the amount over \$500,000</li></ul>
<ul style="list-style-type: none"><li>• Over \$1,000,000, but not over \$1,500,000</li></ul>	<ul style="list-style-type: none"><li>• \$175,000 plus 10% of the excess of the amount over \$1,000,000</li></ul>	<ul style="list-style-type: none"><li>• \$43,750 plus 2.5% of the excess of the amount over \$500,000</li></ul>
<ul style="list-style-type: none"><li>• Over \$1,500,000</li></ul>	<ul style="list-style-type: none"><li>• \$225,000 plus 5% of the excess of the amount over \$1,500,000</li></ul>	<ul style="list-style-type: none"><li>• \$56,250 plus 1.25% of the excess of the amount over \$1,500,000</li></ul>

The Grassroots Lobbying nontaxable amount for a tax-exempt organization is equal to 25% of the applicable Direct Lobbying nontaxable amount expended by the tax-exempt organization during a taxable year. For example, if a 501(3)(c) tax-exempt organization has exempt purpose expenditures of less than \$500,000, then their Grassroots Lobbying nontaxable amount would be equal to no more than 5% of the entity's total exempt purpose expenditures.

Ultimately, the rules surrounding Grassroots Lobbying are in place to limit the amount of expenditures tax-exempt organizations are spending in attempts to influence legislation. The rules expressly do not, among other things, limit tax-exempt organizations from:

1. Making available the results of nonpartisan analysis, study, or research;
2. Providing technical advice or assistance to a governmental body, committee, or other subdivision thereof in response to a written request where such advice would otherwise constitute the influencing of legislation; or
3. Appearances before, or communications to, any legislative body with respect to a possible decision of such body which might affect the existence of the organization, its powers and duties, tax-exempt status, or the deduction of contributions to the organization.

As with Direct Lobbying, a tax-exempt organization wishing to use the Expenditures Test must elect to do so by filing a Form 5768 with the IRS, and the election stays in place until a revocation is filed. If your tax-exempt organization needs any assistance with this or any other legal need, please reach out to us at (865) 546-7311.

## New Concealed Carry Law Eases Access to Handguns

As of January 1, 2020, Tennessee citizens will find it easier to obtain a concealed carry permit for a handgun. The new law, Tenn. Code Ann. § 39-17-1366, provides for a simpler training process for those who wish to obtain a handgun permit. This law differentiates between the current, older permit law, now known as the “enhanced handgun carry permit,” and the new, more limited permit, referred to as a “concealed



handgun carry permit.” An enhanced handgun carry permit is required for those who wish to openly carry their handguns; whereas a concealed handgun carry permit will suffice for anyone who only wishes to carry a concealed weapon.

## Elijah C. Lovingfoss, Esq.

From our last issue:

### The Complexities of the Statute of Repose in Construction and Related Litigation

---

An applicant for a concealed handgun carry permit must meet many of the same requirements for the enhanced handgun carry permit with respect to their criminal, mental health, and substance abuse history. The biggest difference in the permit requirements is the amount of training required. In order to obtain an enhanced handgun carry permit, an applicant, with a few exceptions related to law enforcement and current or former military personnel, must show that they have completed a firearms safety course that includes time spent actually using the weapon on a firing range.

An applicant for the more limited concealed carry handgun permit is not required to show proof of hours spent on the firing range. Instead, a class satisfactory to meet the handgun training requirements is required to include information on “the basic knowledge and skills necessary for safe handling and storage of firearms and ammunition and includes firearm safety rules, handgun uses, features, basic skills and techniques, safe cleaning, transportation, and storage method.” Tenn. Code Ann. § 39-17-1366(l)(1). The class must also be at least 90 minutes long, provides the current law related to carrying handguns, and include a test or quiz that demonstrates competence with the information in the course. The lack of a firing range component means this requirement may be completed through an online class.

Gun owners should be aware of this change in the law. Depending on how a gun owner wishes to carry, they may be able to avoid the cost and expense, in terms of time and money, associated with the enhanced handgun carry permit. Gun experts, however, still recommend that gun owners receive some type of hands on training with their firearms.

