

# TENNESSEE LEGISLATURE CONTINUES TO SUPPORT AND IMPROVE TRUST LAWS

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Once again, the Tennessee legislature passed into law several updates to the Tennessee Trust Code, which were recommended and drafted by the Trust Committee of the Tennessee Bankers Association (“TBA”). The legislation, encompassed in Public Chapter No. 166, was signed into law by Tennessee Governor Bill Lee and took effect on April 17, 2023. The TBA’s legislation continues the state’s efforts to remain a top tier trust jurisdiction attracting interest from wealth planners across the nation.

The new legislation makes several changes affecting both trust and estate administration in Tennessee. In keeping with Tennessee’s trend toward modern and flexible administration, the legislation expands the trust virtual representation statute, found at Tenn. Code Ann. § 35-15-303. It now allows trustees of beneficiary trusts to bind and represent the qualified beneficiaries of their trusts, and for parents to bind and represent their incapacitated adult child in cases where no conservator or guardian has been appointed. In addition, the updated statute provides a process by which disagreeing parents may resolve their disagreement and for one of them to bind and represent a minor child in a trust matter.

For estates, the new legislation now provides for non-judicial settlement agreements for estate administration. As with trusts, the fiduciary of an estate, along with those persons whose consent would be required to reach a settlement with the court, may now resolve certain matters using a written settlement agreement without the involvement of the court. In certain cases, this should help expedite the estate administration process.

Sections 5 – 7 of the legislation have further enhanced Tennessee directed trust laws, providing certain trust clients and corporate trustees with more flexibility in adopting the directed trust structure. In a directed trust, the trustee’s traditional responsibilities may be bifurcated between different parties – often, a corporate trustee is assigned the administrative responsibilities of the trust and the responsibility for distributions, and a third party is assigned investment responsibility. This third party may be called a Trust Advisor or an Investment Trustee, or even consist of a committee. Thanks to the legislative updates, primarily found at Tenn. Code Ann. § 35-15-716, a person with the power to appoint additional or successor trustees now has the power to appoint multiple trustees, to allocate fiduciary responsibilities, and to effectively create a directed trust.

Other notable changes made by the Committee’s trust legislation include (1) codifying the settlor’s power to remove and appoint the trustee of their revocable trust, (2) further streamlining the process at Tenn. Code Ann. § 35-15-817 for terminating a trust and discharging the fiduciary’s liability, and (3) moving the trustee’s power to decant a trust to its own statute, now at Tenn. Code Ann. § 35-15-818.

As with the TBA’s previous trust legislation, these changes reflect Tennessee’s recognition of the importance of modernized trust laws and continue to emphasize statutory flexibility for trust administration. We welcome the opportunity to help you implement your estate planning goals.



**About the author:**

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