

# CONTINUATION FOR TENNESSEE TO MAINTAIN STATUS AS A TOP JURISDICTION FOR CREATING AND ADMINISTERING TRUSTS



**Tennessee Senate Bill No. 534/House Bill No. 817, once signed into law, will become effective on July 1, 2025. This law represents a continuation of efforts by the Tennessee Bankers Association (“TBA”) Trust Committee to maintain Tennessee’s status as a top jurisdiction for creating and administering trusts. Such legislative updates help attract interest in Tennessee from wealth planners across the nation.**

The new legislation makes several updates to the Tennessee Trust Code. These include a new statute that provides for tax reimbursement to grantor trusts, enlarging a court’s power to appoint a public trustee, and clarifying a beneficiary’s status as a non-fiduciary.

## **Tax Reimbursement for a Grantor Trust**

The legislation enacts a new statute which makes tax reimbursement for a grantor trust a statutory default rule. Why? Because of recent IRS guidance regarding the tax consequences of modifying a trust to allow for tax reimbursement, as well as uncertainty about the ability to do so through decanting.

Specifically, this statute provides that unless the terms of a trust instrument indicate that a settlor is not to be reimbursed for the settlor's personal income tax liability, a disinterested trustee (in its sole discretion, or under direction of a trust protector or trust advisor) may reimburse the settlor for any amount of the settlor's income tax liability that is attributable to the trust's income, capital gains, deductions and credits in the calculation of the settlor's taxable income. A trustee may pay such amount to the settlor directly or directly to the appropriate taxing authority. The addition of this statute enhances Tennessee's status as a top-trust state in the nation.

### Updating Laws Concerning when a Public Trustee Can be Appointed

Prior to this legislative update, TCA § 30-1-404 allowed a court to appoint a public trustee in certain situations where the trust estate does not exceed \$100,000, including (1) when a currently serving trustee dies or resigns, if no substitute trustee is designated in the trust; (2) the trust does not provide for the appointment of successor and no beneficiary petitions for the appointment of successor within three months after vacancy; or (3) a court determines that a small trust should not be terminated but a successor should be appointed.

The statute has been updated to eliminate the \$100,000 cap on the market value of the trust estate and to allow for appointment of the public trustee in situations where a provision for appointment of a successor trustee is unable to be implemented (in addition to scenarios where the instrument does not provide for a successor trustee and where a beneficiary has not petitioned the court to appoint a successor within three (3) months).

### Clarification of a Beneficiary's Non-Fiduciary Role

When TCA § 35-15-1202 was initially enacted, it served to distinguish the fiduciary roles of trust protectors and trust advisors (and allowed beneficiaries to serve in a non-fiduciary capacity). The statute complements Tennessee's other directed trust statutes by separating the liability of each fiduciary serving on a trust from the other(s). It also requires a trust protector or advisor to act in good faith.

This year's update to the statute clarifies that any person can serve as a trust advisor or trust protector in a non-fiduciary role if specifically appointed in such capacity, and in such case would only have a duty to act without bad faith or reckless indifference — all while maintaining excluded fiduciary treatment.

As with prior TBA trust legislation, these changes reflect Tennessee's recognition of the importance of modernized trust laws, including statutory flexibility in trust administration. Pendleton Square Trust Company, Inc. welcomes the opportunity to work with families and their trusted advisors in navigating Tennessee's updated trust laws.



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Brendan serves as Fiduciary Counsel with Pendleton Square in its Nashville Office. Nothing in this article should be construed as providing legal or tax advice regarding your specific situation.