

# Legislative Update – Policy too

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# 2018 Florida Legislature



3,250 BILLS/PCBS FILED  
2,721 AMENDMENTS FILED  
527 COMMITTEE MEETINGS  
2,853 BILLS SEEN IN COMMITTEE  
40 FLOOR SESSIONS  
200 BILLS PASSED BOTH CHAMBERS

Next Session March 2019





# 2018 Florida Legislature

## What **didn't** passed

- Involuntary Examinations under Baker Act
- Adding a new Dev. Disability – Duchenne MD
- POLST
- Protection for Vulnerable Investors
- E Notaries – with E Wills inserted last minute



# 2018 Florida Legislature

## What passed

- HB 57 - Attorneys for Dependent Children with Special Needs
- HB 413 – Trusts
- HB 421 – Homestead Waivers
- HB 1059 – Elder Abuse / Exploitation





# 2018 Florida Legislature

## What passed

- HB 413 – Trusts
  - Settlor's intent vs. for the benefit of a beneficiary
  - Notice options – same as before but now posted to an account or website with private access
  - Clarification of limitations periods for suing a trustee who failed to account
  - New Decanting provisions
    - For tax purposes
    - For SNT purposes

# 2018 Florida Legislature

## What passed

- HB 421 – Homestead Waivers – new 732.7025
  - "By executing or joining this deed, I intend to waive homestead rights that would otherwise prevent my spouse from devising the homestead property described in this deed to someone other than me."
  - (2) The waiver language in subsection (1) may not be considered a waiver of the protection against the owner's creditor claims during the owner's lifetime and after death. Such language may not be considered a waiver of the restrictions against alienation by mortgage, sale, gift, or deed without the joinder of the owner's spouse.
  - Takes effect July 1, 2018





# 2018 Florida Legislature

## What passed

- HB 1059 – Elder Abuse / Exploitation
  - creates a cause of action for a temporary (15 day) injunction for protection against the exploitation of a vulnerable adult
  - Who can file
  - What can be granted



# 2019 Florida Legislature

## What to look forward to

- March 2019
- Electronic Notarization
- Electronic Wills



# Federal Changes



- Tax Changes in December, 2017
- ABLE POMS update March 2018
- Special Needs Trust POMS Update March 2018

# Federal Changes



- Sweeping Federal Taxation changes signed December 22, 2017
- Changed Income tax brackets
- Standard deductions - \$6500/13k, 13k/24k
- Estate and gift tax changes
- Deductions for state taxes paid - \$10k limit
- Alimony – Not Deductible by payor, not reportable
- Sports Tickets (golf, social clubs) – not deductible anymore as entertainment



# Federal Changes



- Sweeping Federal Taxation changes signed December 22, 2017
- Changes to ABLE law
  - Increased annual contribution to \$15,000
  - Allows for additional earned income to go in too
  - Allows transfer in from a 529 plan

# Federal Clarifications



- New POM for ABLE adopted by SSA April 2, 2018
- CMS Memo to all State Medicaid directors dated September 7, 2017
- New SNT POMS adopted by SSA April 30, 2018



# Federal Clarifications



- New POM for ABLE adopted by SSA April 2, 2018
  - Clarified ABLE account is beneficiary's account
  - Can't be used like a QIT for income
  - Clarified deposits from all types of SNT's not income
  - Specifically discusses excluding debit cards tied to ABLE accounts

# Federal Clarifications

- CMS Memo to all State Medicaid directors dated September 7, 2017
  - Presumes that ABLÉ programs established by a state is a "qualified ABLÉ program"
  - Clarified that contributions to and earnings in an ABLÉ account do not count as MAGI for those Medicaid programs that consider MAGI
  - Clarified contributions from a SNT is not income
  - Discussed the tax treatment of using funds for disallowed expenditures ("de minimus")
  - Defers to states for "recovery" pursuant to Medicaid payback



# Federal Clarifications

- New SNT POMS adopted by SSA April 30, 2018
  - Anticipated re-write of all relevant SNT POMS sections -
    - SI 01120.200, 201, 202 and 203
  - Several compared versions are found at links provide in the materials
  - Stated as “not changes, but rather clarifications of long existing policy.”
  - In general the changes will make Trust Administrator’s (Trustee’s) lives much easier

# Federal Clarifications



- New SNT POMS, 2018 – Highlights
  - Updated a lot of definitions
  - Added in a 90 day grace period to fix just about any problem provided the Trust had been previously submitted
  - Stated that Social Security is not responsible for reporting misuse of SNT Funds



# Federal Clarifications

- New SNT POMS, 2018 – Highlights
  - Added VA Survivor's Benefits Plans to income streams that can be legally assignable to a D4A or D4C in addition to alimony and child support.
    - Clarified that SSA will consider any income stream assigned by court order to be irrevocable
  - Specifically states that if a d4A or d4C buys a home or vehicle it must be in the beneficiary's name, unless state law prohibits such – a vehicle may need to be in the driver's name but a lien on the vehicle would be preferred
    - Clearly stated that others may benefit from the home or car without contributing **BECAUSE...**

# Federal Clarifications

- New SNT POMS, 2018 – Highlights
  - Adjusted language for d4A and d4C from sole-benefit to “**primary benefit**” for distribution standard under “Explanation of the sole benefit rule for third party payments” (but still uses “sole benefit” describing d4A and d4C).



# Federal Clarifications

- New SNT POMS, 2018 – Highlights
  - ...when the trust makes a payment to a third party for goods or services, the goods or services must be for the **primary benefit** of the trust beneficiary. You should not read this so strictly as to prevent any collateral benefit to anyone else. For example, if the trust buys a house for the beneficiary to live in, that does not mean that no one else can live there, or if the trust purchases a television, that no one else can watch it. On the other hand, it would violate the sole benefit rule if the trust purchased a car for the beneficiary's grandson to take her to her doctor's appointments twice a month, but he was also driving it to work every day.

# Federal Clarifications



- New SNT POMS, 2018 – Highlights
- Specifically contemplates paying family caregivers and specifically says they don't need any medical training or certifications.
- Third party travel to accompany a beneficiary is elaborated on and includes transportation, food and lodging. Use a "reasonableness" test to determine how many can be paid. Also specifically mentions paying for admissions to a museum.
- Visitation is still limited to see beneficiaries in a facility.



# Federal Clarifications



- New SNT POMS, 2018 – Highlights
  - Specifically states you can fund ABLE accounts from SNT for the beneficiary.
  - Funding a prepaid debit card managed by the beneficiary is income. If the card is managed by an Administrator (trustee) then ok.
  - Much more detail about court “created” vs. “approved”.



# Thank You

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