How Senate Bill 50 Will Impact Day-To-Day Practice

Probate Petition

1. **Named Executor owes money to the decedent's estate**

   KRS 395.015 amendment

   - Before SB 50:
     i. Applicants for appointment as executor were not expressly required to disclose personal indebtedness to the decedent. The court might not discover a conflict.
   - After SB 50:
     i. Applicants must affirmatively state any indebtedness they owe to the decedent as part of their sworn application.
   - Practical Impact:
     i. Estate attorneys must update forms. Will new AOC forms be coming?

2. **The Unprepared Personal Representative Petitioner**

   KRS 395.015 amendment

   - Before SB 50:
     i. An applicant for appointment as executor was not required to file a sworn financial disclosure statement. No mechanism existed to place estate asset information under seal.
   - After SB 50:
     i. Every applicant must now file a mandatory sworn financial disclosure statement before appointment. The court places this statement under seal. A copy is automatically transmitted to the Department of Revenue, creating a direct link between the probate filing and the state tax record.
   - Practical Impact:
     i. Tax attorneys and CPAs must ensure that asset values listed in the sealed disclosure are consistent with subsequent state and federal tax filings. Creditors holding verified claims may petition to unseal the records by demonstrating good cause, but media access is not permitted solely on the

basis of a decedent's public status. Privacy intestates is not something that has been litigated heavily in KY.

3. **The Vintage Car**

   NEW KRS 186A

   - Before SB 50:
     i. Motor vehicles could not be transferred at death by a beneficiary designation filed with the county clerk. Transfer required probate or joint titling, and the transaction was subject to Kentucky motor vehicle usage tax.
   - After SB 50:
     i. Effective January 1, 2028, an owner may designate a beneficiary for a motor vehicle at the county clerk's office. Title vests automatically in the named beneficiary at the owner's death, bypassing probate entirely. The transfer is expressly exempt from the Kentucky motor vehicle usage tax.
   - Practical Impact:
     i. Executors will no longer need to probate vehicles with a properly filed beneficiary designation. Tax attorneys and CPAs can structure vehicle transfers outside the taxable transfer system. Creditor attorneys representing auto lenders should note that the beneficiary takes subject to any pre-existing security interests or liens on the vehicle.

Trust Administration

4. **Settlor nominates a trust protector in a new instrument with authority to remove and replace trustees, executing the nomination electronically**

   NEW Uniform Directed Trust Act

   NEW Electronic Estate Planning Documents Act

   - Before SB 50:
     i. A trust protector's power to remove and replace a trustee was a common planning technique but had uncertain treatment in Kentucky under prior law. The power to direct, if held by someone other than the trustee, raised questions about whether the holder was an

ii.

informal co-trustee subject to full fiduciary liability. Electronic execution of a trust protector appointment was also legally uncertain

- After SB 50:
    i. Under the Directed Trust Act, a trust protector holding a power to remove and replace a trustee is a "trust director" - a statutory fiduciary for the specific power of direction. The trustee is subject to that power and must comply. The director's liability is limited to the directed function. The nomination of the director, and any subsequent modification or exercise of the director's powers requiring a signed record, may be executed electronically under the EEEPDA.
- Practical Impact:
    i. Trust protector and/or trust directors or other appointed fiduciaries in trust provisions now operate within a clear statutory framework. Attorneys should revisit all existing trust instruments that include trust protector provisions and analyze whether the new directed trust rules change the protector's liability exposure or the trustee's duty of compliance. New trusts should draft the protector's powers with the directed trust framework explicitly in mind.
    ii. Real property documents cannot be executed electronically.

5. **Decades-old irrevocable trust has outdated administrative provisions**

   NEW Uniform Trust Decanting Act

- Before SB 50:
    i. Modifying an irrevocable trust in Kentucky often required either unanimous beneficiary consent of notice (including unborn and minor beneficiaries) or a court petition.
- After SB 50:

i. An authorized fiduciary may decant into a second trust with updated administrative terms (modern investment standards, electronic notice, expanded trustee powers, changed situs) without court approval. 60-day beneficiary notice still applies. Existing tax benefits, charitable interests, and the original trust's liability must be preserved.

- Practical Impact:
    i. The breadth of changes that can be made has increased, but with cumbersome beneficiary notice requirements, state trusts may stay state.

6. **Trustee wants to restructure trust as a special-needs trust after beneficiary's disability**

   NEW Uniform Trust Decanting Act

   - Before SB 50:
       i. Kentucky had no statutory decanting authority. A trustee seeking to restructure an irrevocable trust to add special-needs protections had to petition a court or obtain beneficiary consent.
   - After SB 50:
       i. Under the Uniform Trust Decanting Act, an authorized fiduciary may distribute all or part of the first trust's assets into a new special-needs trust without court approval, so long as beneficiaries receive 60 days' notice and no prohibited self-dealing occurs. The new trust carries over the liabilities of the first.
   - Practical Impact:
       i. Families and professional trustees gain a powerful, low-cost tool to adapt outdated irrevocable trusts to a beneficiary's changing circumstances. The 60-day notice window gives beneficiaries meaningful opportunity to object.

7. **Business owner transfers LLC membership interests to a Kentucky DAPT as part of a succession and protection plan**

   NEW Kentucky Qualified Dispositions in Trust Act

   - Before SB 50:

   i. A Kentucky business owner wanting to protect LLC interests from personal liability claims (arising from other business ventures or professional exposure) had to either move the LLC membership to a state with DAPT statutes, rely on charging orders or make an outright gift to children or a non-self-settled trust (loss of control and economic benefit).

- After SB 50:
   i. An owner can transfer interests to a Kentucky Qualified Trust, remain a discretionary beneficiary, retain certain rights, and still receive discretionary distributions. The qualified affidavit must confirm the transfer does not render the owner insolvent. Child support, spousal maintenance, and pre-existing secured debt obligations are carved out of the QDTA.
- Practical Impact:
   i. Business succession planning must now be integrated with DAPT analysis. For business owners who want both asset protection and retained economic benefit, KY DAPT's are a powerful new tool. The qualified affidavit process, timing constraints, and carve-out analysis require careful coordination between the estate planning attorney, corporate counsel, and the client's accountant.

8. **Settlor designs a new trust that separates investment authority from administrative trustee authority**

   NEW Uniform Directed Trust Act

- Before SB 50:
   i. A settlor wanting a trusted family investment advisor to control the trust portfolio while a corporate trustee handled administration had to either name the advisor as a co-trustee (giving them full fiduciary liability for all trust functions) or draft complex delegation provisions (which reduced but did not eliminate the trustee's liability). Neither cleanly separated the roles or the liability.
- After SB 50:

i. Under the Uniform Directed Trust Act, the trust instrument can now expressly appoint the investment advisor as a "trust director" with a "power of direction" over investments. The corporate trustee must follow the director's investment instructions unless compliance would constitute willful misconduct. The director is a fiduciary for investment decisions; the trustee is a fiduciary for administration and distributions. Each bears liability only for their own domain.

- Practical Impact:
    i. Family offices, wealth managers, and investment advisors can now be cleanly integrated into trust structures as statutory directors without the exposure of full trusteeship. Trust documents must precisely define the scope of each directed power, what information must be shared between director and trustee, and what standard governs the trustee's duty to object.

9. **The Closely Held Family Business**

NEW Uniform Directed Trust Act

- Before SB 50:
    i. A business founder who wanted to place company stock in trust while retaining operational control had to accept either full co-trustee status for their advisor (with attendant fiduciary liability for all trust functions) or complex delegation arrangements that did not cleanly separate liability between the parties.
- After SB 50:
    i. Under the Uniform Directed Trust Act, the trust instrument may designate the founder as a trust director with the exclusive power to direct business decisions, including voting shares and managing operations. A corporate trustee serves as the directed trustee for administrative and tax functions and is shielded from liability for the director's business decisions unless the trustee's compliance constitutes willful misconduct
- Practical Impact:

i. Corporate attorneys structuring business succession plans can now use the directed trust framework to bifurcate control and liability cleanly. Litigators can no longer automatically pursue the corporate bank for poor business outcomes. Claims must be directed at the trust director for breach of the director's own fiduciary duty, and the willful misconduct standard is the threshold for trustee liability.

10. **The Accidental Tax Burden**

NEW Uniform Trust Decanting Act

- Before SB 50:
  i. A settlor of an irrevocable grantor trust who wished to shift income tax liability away from themselves had no mechanism to modify the administrative powers triggering grantor trust status without unanimous beneficiary consent or a court order, neither of which was practically available in most cases.
- After SB 50:
  i. The decanting statute expressly permits an authorized fiduciary to pour trust assets into a second trust whose terms eliminate the administrative powers that caused grantor trust status, effectively converting the trust from a grantor trust to a non-grantor trust and shifting the income tax burden to the trust entity.
- Practical Impact:
  i. Tax attorneys and CPAs can use decanting as a remedial income tax planning tool when a grantor trust's tax burden becomes unmanageable. IRS challenges to these modifications are possible, and tax litigators will defend them by pointing to the state statute's explicit authorization as a safe harbor against federal audit exposure.

Estate Administration

11. **Sheriff's involvement in Estate Administration**

KRS 395.380; 395.400 Amendments

- Before SB 50:
    i. After 60 days with no personal representative, the District Court would order the county sheriff to administer the estate. The sheriff's powers expired when their term of office ended.
- After SB 50:
    i. The court must now order the public administrator and guardian (a designated, bonded fiduciary) to administer the estate. If no such person has been appointed for the county, the court may appoint any suitable person at its discretion. The sheriff is entirely removed from estate administration.
- Practical Impact:
    i. Estate administration is no longer tied to the electoral cycle of the sheriff's office.

12. **Business owner transfers LLC membership interests to a Kentucky APT as part of a succession and protection plan**

    NEW Kentucky Qualified Dispositions in Trust Act

- Before SB 50:
    i. A Kentucky business owner wanting to protect LLC interests from personal liability claims (arising from other business ventures or professional exposure) had to either move the LLC membership to a Delaware or Nevada APT (uncertain Kentucky enforcement), rely on charging order protections alone (limited), or make an outright gift to children or a non-self-settled trust (loss of control and economic benefit).
- After SB 50:
    i. The QDTA expressly covers qualified dispositions made through a trustee acting in that capacity, including transfers of LLC membership interests. An owner can transfer interests to a Kentucky Qualified Trust, remain a discretionary beneficiary, retain certain rights (e.g., veto over trustee selection, ability to serve as investment advisor under Section 66 of the Act), and still receive discretionary distributions. The

qualified affidavit must confirm the transfer does not render the owner insolvent. Note that the QDTA explicitly carves out child support, spousal maintenance, and pre-existing secured debt obligations.

- Practical Impact:
    i. Business succession planning must now be integrated with APT analysis. For business owners who want both asset protection and retained economic benefit, the QDTA is a powerful new tool, but the qualified affidavit process, timing constraints, and carve-out analysis require careful coordination between the estate planning attorney, corporate counsel, and the client's accountant.

13. **Settlor drafts a new irrevocable trust with express, broad decanting authority as a planning safety valve**

    NEW Uniform Trust Decanting Act

- Before SB 50:
    i. When creating an irrevocable trust, a settlor had no way to build in statutory flexibility to modify administrative terms in the future. Modification required either beneficiary consent (including unborn beneficiaries) or a court petition. Attorneys used nonjudicial settlement agreements as a workaround, but those required all beneficiary consent and had limited scope.
- After SB 50:
    i. A settlor can now draft a new irrevocable trust that expressly grants the trustee broad decanting authority consistent with the Uniform Trust Decanting Act. The instrument can specify: which modifications are permitted; whether beneficiary consent is required or waived; what notice period applies; and how tax-sensitive provisions (GST status, charitable interests) must be preserved. This builds forward flexibility into the instrument at no additional cost.
- Practical Impact:

i. Every new irrevocable trust drafted under SB 50 should include a deliberate decanting clause; either expressly authorizing specific modifications or expressly restricting the default statutory authority. Omitting the clause means the statutory default applies, which may or may not align with the settlor's intent.

14. **Parent of minor children nominates a guardian electronically as a standalone document**

NEW Electronic Estate Planning Documents Act

- Before SB 50:
  i. A guardian nomination for minor children required paper execution and was typically included within a will, meaning it could not be updated independently without re-executing the entire testamentary instrument. Parents who had executed a will years earlier could not easily make a standalone electronic update to their guardian nomination.
- After SB 50:
  i. A nomination of a guardian for a minor child (or a disabled adult child) is now an enumerated non-testamentary estate planning document under the EEEPDA and may be executed as a standalone electronic record. Parents can update guardian preferences without re-executing a full will, using a secure e-signature platform, and store the nomination digitally.
- Practical Impact:
  i. This enables parents, particularly young parents who may resist full estate planning, to execute at minimum a guardian nomination quickly and electronically, creating a critical protection even before they complete a full plan. Attorneys should still recommend a complete plan, but the electronic standalone option removes a key barrier.

15. **The Procrastinating Executor**

KRS 395.015 amendment

- Before SB 50:

    i. Kentucky did not impose a strict statutory deadline for filing an estate inventory, and failure to file did not trigger automatic court sanctions. Enforcement depended on beneficiary complaints or judicial discretion.

- After SB 50:
    i. Executors must now file the estate inventory within 90 days of appointment. Failure to meet this deadline triggers an automatic show-cause hearing. Consequences include removal from the fiduciary role, denial of compensation, and a civil fine of $100 per day, enforceable through contempt of court.
- Practical Impact:
    i. Litigators have a statutory contempt mechanism to use against dilatory fiduciaries, and removal actions will become more straightforward to prosecute. Inventories will likely need to be filed with unknown values. Will inventory amendments once asset values are known become more common?

16. **The Bankrupt Fiduciary**

    KRS 395.010 amendment

- Before SB 50:
    i. A fiduciary's personal bankruptcy did not automatically disqualify them from continuing to serve. Removal required a separate court petition and a finding of cause, which could be contested and time-consuming.
- After SB 50:
    i. A fiduciary who files for personal bankruptcy or becomes insolvent during administration is now subject to mandatory statutory removal. The District Court is required to discharge the fiduciary from their role to protect the estate.
- Practical Impact:
    i. Corporate counsel for family entities must have succession protocols in place, particularly where the fiduciary also serves as a voting member of a

family LLC or holds other governance roles. Bankruptcy attorneys representing debtor-fiduciaries must account for simultaneous state-court removal proceedings as a near-certain consequence of a bankruptcy filing.

17. **The Deathbed Transfer**

    KRS 392 Amendment

    - Before SB 50:
        i. A transferor could convey real or personal property to a third party or entity during life, and the surviving spouse's remedies were limited to dower and curtesy rights in property passing through the estate. Transfers made outside of probate were generally beyond the surviving spouse's reach.
    - After SB 50:
        i. Any transfer of property made within two years before death is classified as "surplus property." The surviving spouse may bypass the probate inventory and file a direct statutory action to claw back 50% of the value of such property from the transferee, including from a trust or LLC that received the asset.
    - Practical Impact;
        i. Title and real estate attorneys can no longer treat a recorded deed as conveying clean title if the grantor dies within 24 months of execution. All such transfers should be accompanied by a notarized spousal joinder or waiver. Family law litigators gain a direct statutory cause of action against third-party transferees, with significant implications for quiet title and partition proceedings.

18. **The Pre-Death Business Restructuring**

    KRS 392 amendment

    - Before SB 50:
        i. A client in a second marriage could transfer appreciated assets into an LLC or holding company for the benefit of children from a prior relationship without the current spouse's consent, provided the transfer occurred during

life and outside of probate. The surviving spouse's remedies were largely limited to elective share rights in the probate estate.

- After SB 50:
    i. Any transfer of property to an LLC or other entity within two years before the transferor's death is subject to the surviving spouse's statutory clawback right. The spouse may pierce the entity and recover 50% of the transferred property's value as surplus property, regardless of the LLC's otherwise applicable liability shield.
- Practical Impact:
    i. Business lawyers funding LLCs or family limited partnerships with appreciated assets must obtain a written and notarized spousal waiver at the time of transfer if the client's death within 24 months is a realistic possibility. Without that waiver, the entity's ownership structure is vulnerable to a direct statutory attack. Family law litigators will use the two-year rule to force the liquidation or partition of entity assets to satisfy spousal claims.

19. **The Executor Appointed Without Bond**

KRS 395.130 Amendment

- Before SB 50:
    i. The standard practice in most Kentucky estates was that a personal representative gave a bond, but it was almost always unsecured, meaning no corporate surety backed it. The bond was largely a formality with limited practical value to beneficiaries if an executor misbehaved.
- After SB 50:
    i. Under new KRS 395.130(1), no bond is required at all unless the court exercises its discretion to order one, or the appointment involves a public administrator or curator. When the court does order a bond under subsection (2)(b), it must be a true surety bond backed by a licensed incorporated surety company. The old middle ground, an unsecured promise dressed up as a bond, is eliminated. In its place, the expanded oath under KRS 395.120

carries the accountability load. The personal representative swears or declares, under penalty of perjury, to keep estate funds in separate accounts, maintain cancelled checks, invest lawfully, file all required documents and tax returns on time, insure estate property, and obey court orders.

- Practical Impact:
  i. In the typical estate with a trusted family member as executor, no bond will be required and no surety company will be involved. But the executor is not operating without accountability. The sworn obligations are specific and enforceable, and failure to perform them is grounds for removal, plus exposure to civil and criminal penalties for conversion. For drafting attorneys, waiver of bond language in a will still carries weight since the court may consider the testator's intent, but the court is not bound by it.

20. **The Surviving Spouse Who Gets Half Instead of Everything**

KRS 391.010 Amendment

- Before SB 50:
  i. Under prior Kentucky intestacy law, the surviving spouse did not inherit first. The decedent's children took the real estate outright under KRS 391.010(1), and the surviving spouse's protection came primarily through dower, which gave her a one-half fee simple interest in surplus real estate and surplus personalty. The result was that in a blended family, the surviving spouse and the stepchildren often ended up as involuntary co-owners, but the framework for how that happened was indirect and not well understood by most clients.
- After SB 50:
  i. After SB 50: The new KRS 391.010(1)(a) restructures intestate succession by putting the surviving spouse first. But where the decedent is survived by descendants who are not lineal descendants of the surviving spouse, or where the surviving spouse has her own descendants who are not descendants of the decedent, the spouse's share is capped at one-half.
- Practical Impact:

i. The most important client conversation this provision generates is not about the 50/50 split itself. It is about the client who assumes his or her spouse will take everything and has never thought about what intestacy actually produces. A husband in a second marriage who owns a brokerage account in his name alone may assume it passes entirely to his wife if he dies without a will. Under SB 50, if she has children from her first marriage, half of that account passes to her surviving spouse and the other to her heirs at law if he does not have children. She does not inherit the whole of it simply because they are married. The attorney's role is to make that outcome concrete before any documents are signed, then offer the planning tools to change it.

21. **The Jointly Held Home and Separately Titled Investment Property**

KRS 391.010; 392.020 Amendments

- Before SB 50:
  i. Many blended family couples held the marital residence jointly with right of survivorship while the decedent separately owned investment or rental property acquired before the marriage or titled in his name alone.
- After SB 50:
  i. Joint tenancy property still passes by survivorship outside the estate and outside the intestacy calculation. Separately titled real property, however, is fully subject to the new KRS 391.010 descent rules. If the decedent has children from a prior relationship, the surviving spouse takes one-half of that property and the children split the other half. Simultaneously, new KRS 392.020 restructures dower by eliminating the surviving spouse's fee simple interest in surplus real estate at death and replacing it with a life estate in one-third of real property transferred during the marriage but not owned at death. The two changes together mean that titling decisions made years before death now carry far more consequence than most clients appreciate.
- Practical Impact:

i. A title review should be a standard part of every blended family planning engagement. Attorneys should map each significant asset against the new rules before recommending any testamentary structure.

22. **The Stepchild Who Inherits from a Stepparent Who Had No Children**

KRS 391.010(5)(c) Amendment

- Before SB 50:
    i. Under prior KRS 391.010, once the estate exhausted all lineal ancestors and their descendants, the property passed to the nearest collateral relatives and ultimately, if no kindred survived, to the husband or wife of the intestate. Stepchildren had no statutory inheritance right at all. A stepparent who died without a will and without blood relatives left property to a spouse or to the state, not to stepchildren.
- After SB 50:
    i. The new KRS 391.010(5)(c) adds stepchildren to the intestate succession ladder for the first time, placing them at the end of the line after aunts, uncles, and their descendants but before escheat to the state. The statute does not limit this to stepchildren of the most recent marriage. It appears to encompass stepchildren from any former spouse of the decedent. If no stepchildren survive either, the estate escheats under KRS 393.020.
- Practical Impact:
    i. This provision matters most for elderly clients with no surviving blood relatives who have never considered that a stepchild, possibly from a decades-old dissolved marriage, now has a statutory claim to their estate if they die without a will. It also creates a planning opportunity for clients who want to benefit stepchildren intentionally. A simple will or revocable trust resolves the ambiguity entirely and allows the client to direct assets where they actually intend. Attorneys handling estates of intestate decedents with no obvious heirs should now ask specifically about former marriages and whether stepchildren are living before concluding that escheat is the correct

outcome. It is worth noting that the statute does not clarify how former stepchildren will be treated and if they are also included.

23. **The Ward in a Second Marriage with Children from a Prior Relationship**

    KRS 391.010(1)(a)(3); 392.020 Amendments

    - Before SB 50:
        i. A ward with children from a first marriage who died intestate survived by a current spouse saw the spouse take one-half under dower and the children take the remaining half. The mechanism was the dower statute, and whether certain non-probate assets counted toward the spouse's share was governed by uncertain fraud-on-dower caselaw.
    - After SB 50:
        i. The surviving spouse still takes one-half under new KRS 391.010(1)(a)(3) when survived by descendants who are not lineal descendants of the spouse. However, the mechanism has changed. The spouse now takes by descent rather than through dower, and new KRS 392.020 expressly defines surplus personalty to include accounts passing by beneficiary designation, TOD designations, and assets held in a revocable trust over which the decedent held a power of revocation at death.
    - Practical Impact:
        i. A conservator who managed the ward's beneficiary designations or revocable trust during incapacity should understand that those assets will now factor into the surviving spouse's credit calculation in a defined and codified way. Attorneys advising conservators in blended-family situations should audit non-probate assets and model the new surplus personalty rules to understand how the estate will actually be divided at death.

24. **The Ward Whose Revocable Trust Assets Are Now Expressly Subject to the Surviving Spouse's Dower Claim**

    KRS 392.020(5) Amendment

    - Before SB 50:

i. Whether assets held in a revocable trust were subject to a surviving spouse's dower claim was litigated under the fraud-on-dower doctrine. A conservator who established or funded a revocable trust for the ward had no clear statutory rule to apply in assessing the spouse's potential claim.

- After SB 50:
  i. New KRS 392.020(5) expressly includes in surplus real estate and surplus personalty all property held in a trust over which the decedent held a power of revocation at death. The surviving spouse's dower credit will be calculated against these assets.
- Practical Impact:
  i. A conservator who established a revocable trust as part of managing the ward's estate, or who funded an existing revocable trust during the guardianship, should understand that those trust assets will be counted when calculating the surviving spouse's share. Attorneys advising conservators in active guardianship matters should model the new rules against the ward's full asset picture, including trust assets, to advise accurately on what the surviving spouse will receive and to identify whether any conflict of interest exists between the spouse and other potential beneficiaries in the conservatorship proceeding.

25. **The Adult Adoptee Who Inherits by Intestate Succession After the Adoption Age Rule Change**

KRS 199.520(2)(b) Amendment

- Before SB 50:
  i. Under prior KRS 199.520, upon adoption a child was deemed the natural child of the adoptive parents for all purposes, including inheritance, without regard to the age at which the adoption occurred. An adult adoptee was treated as a natural child for intestate succession purposes.
- After SB 50:
  i. The amended KRS 199.520(2)(b) limits inheritance and succession rights to adoptees who were adopted and resided in the household of the adoptive

parents prior to age 18. An adult adoptee who never resided in the household as a minor no longer qualifies as an heir for intestate succession purposes.

- Practical Impact:
    i. Some families have used adult adoption to create inheritance rights in a caregiver or other individual. Under the new rule, if the adoptee did not reside in the adoptive household before age 18, that individual is no longer an intestate heir. Attorneys should audit any existing adult adoption arrangements and counsel clients about will planning to protect intended beneficiaries.

26. **The Medicaid Recipient Whose Surviving Spouse Receives Beneficiary-Designated Assets That Now Count Toward the Dower Share**

    KRS 392.020(2) Amendment

- Before SB 50:
    i. Under prior Kentucky case law, a surviving spouse could retain nonprobate assets passing by beneficiary designation while also claiming one-half of the probate estate. Assets passing outside the estate did not reduce the surviving spouse's dower share. The recovery claim attached only to the probate estate, so nonprobate assets were not subject to direct recovery.
- After SB 50:
    i. New KRS 392.020(2) includes beneficiary designation accounts, transfer-on-death designations, and payable-on-death accounts as "surplus personalty" against which the surviving spouse's share is credited. Life insurance proceeds payable to the spouse are also credited against the share. The result is that the spouse's net inheritance from the probate estate may be significantly reduced when the spouse already received substantial nonprobate assets.
- Practical Impact:
    i. From a Medicaid planning perspective, this matters in estates where the decedent recipient had both a probate estate and significant nonprobate assets. Recovery targets the probate estate, but under prior law the surviving

spouse's full dower claim competed with the state's recovery out of probate assets. Now that nonprobate assets received by the spouse offset the dower claim, the probate estate available for recovery may be larger. In other words, the state may now recover more from the probate estate than it could before, because the surviving spouse's competing claim is reduced by what the spouse received outside of probate. Attorneys administering these estates should carefully calculate the credited amounts before conceding the extent of any recovery offset.

27. **The Medicaid Recipient in a Revocable Trust Whose Surviving Spouse Now Has a Claim Against Trust Assets**

KRS 392.020(5) Amendment

- Before SB 50:
  i. Whether a revocable trust was subject to the surviving spouse's dower claim was a contested and uncertain question in Kentucky. The practical answer depended largely on whether the trust was funded and whether the transfer was viewed as a fraud on dower.
- After SB 50:
  i. New KRS 392.020(5) explicitly includes in "surplus personalty" and surplus real estate" all property held in a trust over which the decedent held a power of revocation at death or a general power of appointment. The surviving spouse now has a clearly stated statutory claim against trust assets in this category.
- Practical Impact:
  i. Medicaid planning frequently involves revocable trusts, and recovery in Kentucky reaches the probate estate. However, assets in a revocable trust at death are now expressly counted as surplus personalty or surplus real estate, which affects the calculation of the surviving spouse's share and, potentially, the assets available for recovery. Additionally, where the decedent retained a power of revocation, the trust assets are arguably part of the estate for recovery purposes under the expanded "estate" definitions used in some

states' recovery programs. Attorneys should review whether the Cabinet for Health and Family Services' current recovery policy reaches revocable trust assets in light of this statutory change and counsel clients accordingly. This area warrants close attention as policies are updated.

28. **The Executor Who Has Been Sitting on an Estate and Now Faces Real Consequences for Missing Settlement Deadlines**

    KRS 395.255; 395.990 Amendment

    - Before SB 50:
        i. Under prior law, a fiduciary who failed to file an inventory or settlement on time was subject to a fine of $10 per day, a penalty so nominal that it had little practical deterrent effect. The delinquency reporting mechanism existed but lacked meaningful enforcement teeth. Extensions were routinely granted and rarely contested
    - After SB 50:
        i. Amended KRS 395.255 substantially strengthens the enforcement mechanism. The clerk must report delinquent fiduciaries to the District Judge monthly. The judge mails a notice and warning and sets an extended deadline. If that extended deadline is also missed, the court issues a show cause order that may result in a finding of breach of fiduciary duty, removal as fiduciary, contempt, a fine of $100 per day after the extended deadline, denial of fiduciary compensation, or any other penalty authorized for breach of fiduciary duty. A fiduciary who fails to appear at the show cause hearing is automatically removed. Extensions beyond 30 days are limited to situations involving a pending adversary proceeding in Circuit Court or good cause shown, and the 30-day cap is an intentional signal that timely filing should be the norm. The daily fine under KRS 395.990 increased from $10 to $100.
    - Practical Impact:
        i. This is the most significant change to estate administration discipline since the current penalties were set in 1942. Fiduciaries and their attorneys must

treat settlement deadlines with the same seriousness as court-ordered filing deadlines. The 10-fold increase in the daily fine, combined with the automatic removal provision and the denial-of-compensation remedy, creates real financial exposure for a delinquent executor. Attorneys with clients serving as personal representatives should calendar all settlement due dates at the time of appointment and communicate clearly that extensions are no longer routine. For clients inheriting from estates being administered by others, these tools give beneficiaries stronger leverage to compel timely closure. This change also puts pressure on the District Courts to actively monitor their dockets, which may reduce the number of effectively abandoned estates that have previously gone unaddressed for years.

Estate Administration Close

29. **The Medicaid Recipient Whose Estate Is Administered Without Full Probate Under the Simplified Dispensation Procedures**

KRS 395.455 Amendment

- Before SB 50:
  i. Under prior KRS 395.455, the court could dispense with administration of a small estate where the surviving spouse's exemption plus preferred claims consumed the entire probate estate. This allowed assets to transfer to the surviving spouse or children without a full administration. However, the practical interplay with recovery was uncertain because the state's claim as a creditor was not always addressed in these streamlined proceedings.
- After SB 50:
  i. The amended KRS 395.455 clarifies the dispensation procedure, explicitly covering both testate and intestate estates and allowing transfer to persons designated by the surviving spouse. The surviving spouse's $30,000 exemption under KRS 391.030 remains in place.
- Practical Impact:

   i. Kentucky Medicaid recovery operates as a creditor claim against the probate estate. If a small estate is dispensed with under KRS 395.455 without formally addressing the claim, the state's recovery right could be inadvertently bypassed. Practitioners should ensure that any simplified administration that involves a Medicaid recipient's estate includes notification to the Cabinet and confirmation of whether a claim exists before any distribution is authorized by the court. The expanded use of these simplified procedures under SB 50 increases the risk that claims are overlooked in routine, low-asset estate matters.

30. **The Executor Who Can Now Close a Simple Estate Through Informal Final Settlement Without a Notary or Hearing**

    KRS 395.605 Amendment

    - Before SB 50:
        i. Under prior Kentucky practice, closing an estate through an informal final settlement required the fiduciary to sign a notarized document. Even in straightforward estates where all beneficiaries agreed and there were no disputes, the notarization requirement added a procedural step that slowed the process and occasionally created obstacles for executors handling matters without counsel. There was no provision allowing a beneficiary under a legal disability to be included in an informal settlement.
    - After SB 50:
        i. The fiduciary may now sign the informal settlement under penalty of perjury rather than before a notary, modeled on the approach used for tax returns. No notice or hearing is required before the court approves and confirms the settlement. Once confirmed, the court may enter an order discharging the fiduciary and the surety. A non-residuary legatee who has been paid in full need only be evidenced by a cancelled check or signed receipt rather than a verified waiver. For a residuary beneficiary, the verified waiver is still required. Notably, if a beneficiary is under a legal disability, the court retains discretion to allow informal settlement if it finds that the

beneficiary's best interests would be served. Only final settlements can be informal; all periodic settlements remain formal

- Practical Impact:
    i. For practitioners handling routine estates where the family is cooperative and all beneficiaries are competent adults, the informal final settlement process is now genuinely streamlined. The elimination of the notary requirement removes a logistical friction point that disproportionately affected pro se fiduciaries and rural clients. The court still confirms the settlement and may discharge the fiduciary by order, which provides a clean record of closure. Attorneys should update their estate closing checklists to reflect that AOC Form 850 will need revision to remove the notarial acknowledgment and that nonresiduary legatees no longer require verified waivers when payment is documented. The new perjury-based acknowledgment should be treated with the same seriousness as a notarized document when advising clients.

31. **The Executor Who Wants to Use the Proposed Settlement Procedure to Get Court Pre-Approval Before Making Distributions**

    KRS 395.617 Amendment

- Before SB 50:
    i. Prior Kentucky law did not include a formal mechanism for a fiduciary to seek pre-approval of a proposed plan of distribution before carrying it out. A fiduciary who was uncertain about the proper treatment of a particular asset or creditor claim had to either proceed and risk surcharge, or seek a declaratory judgment in Circuit Court, which was expensive and time-consuming. Periodic and final settlements were filed after the fact, meaning the court reviewed what had already occurred rather than what was proposed.
- After SB 50:
    i. Amended KRS 395.617 creates a formal proposed settlement procedure. A fiduciary may file a proposed settlement on the same timeline required for

a periodic or final settlement. The proposed settlement must include all the information required for a regular settlement except the supporting documentation. It may include proposed payments and proposed distributions. The fiduciary must give at least 20 days' notice to interested parties before a hearing. Interested parties may file exceptions. The court may approve, modify, or reject the proposal. If the court approves, the fiduciary carries out the plan and then files the actual settlement with supporting evidence showing that the approved steps were taken. Under amended KRS 395.620, if the subsequent filing confirms the settlement followed the approved plan, the court will confirm it without requiring a further hearing.

- Practical Impact:
    i. This is particularly valuable in estates involving competing creditor claims, disputed distributee shares, or questions about the proper treatment of Medicaid recovery claims. A personal representative who suspects a recovery claim is coming but is uncertain of the amount or validity can now file a proposed settlement, give the Cabinet proper notice, and obtain court guidance before distributing to beneficiaries. Similarly, in blended-family estates where the new SB 50 spousal inheritance rules create uncertainty about shares, the proposed settlement allows the executor to get a judicial determination of the distribution plan before writing checks. The two-step process, proposal followed by confirmation of execution, provides both procedural protection for the fiduciary and a clear record for all interested parties.

32. **The Estate with No Distributable Assets Where the Court Can Now Order No Letters Be Issued and Simply Probate the Will**

    KRS 395.455(2) Amendment

    - Before SB 50:
        i. Prior Kentucky practice did not have a clearly codified mechanism allowing a court to simply probate a will and decline to issue letters of administration

where there were genuinely no probate assets. Families in this situation often faced the choice of either opening a full estate to formally close it or leaving the will unprobated, neither of which was ideal. The lack of a clear path sometimes resulted in unnecessary administrative proceedings for estates consisting entirely of nonprobate assets, or in wills sitting unprobated with no clean record of closure.

- After SB 50:
    i. Amended KRS 395.455(2) expressly authorizes the District Court, where it is satisfied that no distributable estate will pass through the hands of a personal representative, to order that no letters of administration be issued and, in the case of a testate estate, to order that the will be probated only. This creates a clean, codified mechanism for recording the will in the county clerk's office and establishing the decedent's testamentary intent without opening a full administration.
- Practical Impact:
    i. This is a practical tool for the increasingly common estate where the decedent held all assets in revocable trusts, with beneficiary designations, or jointly with right of survivorship, and the probate estate is empty. It is also relevant for estates where the will contains a pour-over provision and all assets have already passed to the trust. Under the new provision, the attorney can appear before the District Court, present the will for probate, and obtain an order confirming that no letters are required. The result is a clean public record without the burden and expense of appointing a personal representative, posting bond, filing an inventory, and completing a settlement. Attorneys with clients in this situation should consider whether the new KRS 392.020 surplus personalty rules have inadvertently pulled any nonprobate assets back into the surviving spouse's dower calculation, which could create distributable assets that require a different approach, before concluding that a letters-free probate is appropriate.

Estate Planning

33. **Physician proactively funds a Kentucky DAPT before any malpractice claim arises and may remain a trust beneficiary**

NEW Kentucky Qualified Dispositions in Trust Act

- Before SB 50:
  i. A Kentucky physician wanting to protect personal assets from future malpractice claims had to either move assets or rely on married-couple joint tenancy, retirement accounts, and homestead exemptions or a non-self-settled trust.
- After SB 50:
  i. The physician may now create a Kentucky Qualified Disposition Trust, fund with liquid assets, investment accounts, or business interests, execute a qualified affidavit confirming solvency and good faith, and appoint a Kentucky-resident as co-trustee. After the 2-year statute of limitations runs, claims by future judgment creditors are extinguished by statute. The physician may remain a discretionary beneficiary. The trust's spendthrift provision is enforceable in Kentucky courts without choice-of-law risk.
- Practical Impact:
  i. The importance of planning early in these professions is even more important now. High-risk professionals (physicians, attorneys, architects, financial advisors) now have a compelling in-state vehicle. Planners must time the funding carefully, pre-claim, solvent, with no threatened litigation, and document the qualified affidavit thoroughly to defeat any actual-fraud challenge.

34. **Homebound elder executes a complete estate plan via video and e-signature platform**

NEW Electronic Wills Act

NEW Electronic Estate Planning Documents Act

- Before SB 50:

    i. A client who was physically unable to visit an attorney's office due to mobility limitations could not validly execute a will, trust, durable POA, or healthcare directive without someone physically present. Home visits were the only option, which were costly, logistically difficult, and dependent on finding available witnesses.

- After SB 50:
    i. The client may now execute a full estate plan, will, revocable trust, durable POA, advance directive, body disposition directive, and guardian nomination, entirely over a HIPAA-compliant video platform. The attorney supervises electronically, two Kentucky-resident witnesses appear via electronic presence, and a remote online notary certifies the will. All documents are stored as authenticated electronic records.
- Practical Impact:
    i. Estate planning attorneys may be able to serve rural, elderly, homebound, and hospitalized clients without a physical visit, but these types of documents are currently not “tested” in the courts. Firms need electronic execution workflows, remote notarization partnerships, and updated engagement letters covering digital file storage and retrieval. Provisions that require presence in KY, but not for the testator, could result in probate litigation over the presence of witnesses. This is a deviation from the Uniform Electronic Will Act which does not require presence in state of the witness for the will to be valid.
    ii. Estate planning attorneys who serve terminally ill and elderly clients must have an emergency electronic execution protocol ready: pre-drafted template documents, a vetted remote notarization service, a capacity assessment workflow, and a clear client intake process for urgent cases. The ability to deploy this protocol within hours of a call could be the difference between a valid plan and intestacy.

35. **Client signs revocable trust, durable POA, and healthcare directive electronically at a virtual planning meeting**

NEW Electronic Estate Planning Documents Act

- Before SB 50:
    iii. Kentucky had no framework for electronic execution of non-testamentary planning documents. Although some documents (like POAs) may have had informal electronic options, there was no statutory certainty that electronic signatures met execution requirements.
- After SB 50:
    i. provided statutory execution requirements are met electronically, the Uniform Electronic Estate Planning Documents Act gives electronic records and signatures the same legal force as paper equivalents for trust instruments, powers of attorney, healthcare directives, beneficiary designations, and powers of appointment.
- Practical Impact:
    i. Remote estate planning becomes fully viable. Clients who are homebound, traveling, or in rural areas can execute a complete plan without in-person visits. Financial institutions and healthcare providers will need updated intake procedures to accept and authenticate electronic originals. Similar to example 5, witness provisions deviate from the Uniform Law Commission.

36. **The Botched Digital Document**

NEW Electronic Wills Act

- Before SB 50;
    i. An electronic will that failed to meet all execution requirements, such as having only one witness instead of two, was simply invalid. No saving doctrine applied to cure defective execution of an electronic will in Kentucky
- After SB 50:

i. A defectively executed electronic will may still be admitted to probate under a harmless error doctrine if the proponent proves by clear and convincing evidence, using metadata, communications, or other electronic records, that the decedent intended the specific digital file to constitute their will.

- Practical Impact:
  i. Technology vendors offering remote online notarization platforms must ensure their systems produce reliable metadata and maintain comprehensive audit trails. Litigators will use e-discovery tools, including server logs, IP address records, and text messages, to contest or support admission of defective electronic wills. Digital forensics will become a standard feature of contested probate proceedings.

37. **The Closely Held Family Business**

NEW Uniform Directed Trust Act

- Before SB 50:
  i. A business founder who wanted to place company stock in trust while retaining operational control had to accept either full co-trustee status for their advisor (with attendant fiduciary liability for all trust functions) or complex delegation arrangements that did not cleanly separate liability between the parties.
- After SB 50:
  i. Under the Uniform Directed Trust Act, the trust instrument may designate the founder as a trust director with the exclusive power to direct business decisions, including voting shares and managing operations. A corporate trustee serves as the directed trustee for administrative and tax functions and is shielded from liability for the director's business decisions unless the trustee's compliance constitutes willful misconduct
- Practical Impact:
  i. Corporate attorneys structuring business succession plans can now use the directed trust framework to bifurcate control and liability cleanly. Litigators can no longer automatically pursue the corporate bank for poor business

outcomes. Claims must be directed at the trust director for breach of the director's own fiduciary duty, and the willful misconduct standard is the threshold for trustee liability.

38. **Statutory Animal Trusts**

    KRS 386.175 Amendment

    - Before SB 50:
        i. A trust for the care of an animal was treated as an honorary trust in Kentucky, meaning it was not legally enforceable because animals cannot be trust beneficiaries. A caretaker who failed to use trust funds for the animals' benefit faced no statutory accountability
    - After SB 50:
        i. Kentucky now recognizes binding, enforceable animal trusts. The planner may appoint a trust protector, such as a veterinarian or caretaker, with statutory standing to enforce the trust if the trustee fails to provide for the animals. The trust terminates when no living animal covered by its terms remains.
    - Practical Impact:
        i. Equine and agricultural attorneys can now draft fully funded, legally binding trusts for the care of horses and livestock, specifying caretakers, funding mechanisms, and oversight roles. The trust protector's statutory enforcement standing creates a new basis for fiduciary duty litigation if trust funds are mismanaged or animals are neglected.

39. **The Surviving Spouse of a Medicaid Recipient Who Inherits the Entirety Intestate and Then Applies for Medicaid Herself**

    KRS 391.010(1)(a)1-2 Amendment

    - Before SB 50:
        i. Under prior law, where the decedent had children, the surviving spouse took only dower/curtesy, not the full estate. The children received direct shares. The surviving spouse's receipt was therefore limited in size, which in some cases allowed her to apply for Medicaid herself without the full inherited

estate creating a resource disqualification or requiring extended spend-down.

- After SB 50:
    i. Where all children are also descendants of the surviving spouse, she now inherits the entirety of the intestate estate. The surviving spouse may find herself holding substantially more assets than under prior law, all of which count as countable resources if she herself later needs Medicaid long-term care benefits.
- Practical Impact:
    i. A surviving spouse who inherits the full estate under the new SB 50 rules and who subsequently needs nursing home placement will have a larger resource base to spend down before qualifying for Medicaid. The additional assets she inherited, which previously would have passed to children directly, now must be exhausted before eligibility is established. This does not change the five-year look-back or caregiver-child exemption analysis, but it does mean that assets formerly outside the surviving spouse's estate for Medicaid purposes are now included. For clients where the decedent lacked a will and the surviving spouse is herself in declining health, this expanded inheritance may delay Medicaid eligibility for the second spouse by months or years.

40. **The Surviving Spouse Who Can Now Dispense with Administration of a Testate Estate Without Renouncing the Will**

    KRS 395.455 Amendment

    - Before SB 50:
        i. Under prior KRS 395.455, the court could dispense with administration where the surviving spouse's exemption plus preferred claims consumed the entire distributable estate. However, the prior statute required the renunciation of any will and the giving of bond before the court could enter such an order. This created a practical trap for surviving spouses in testate estates: to access the streamlined dispensation, the spouse had to formally

renounce the will, a step that could have unintended consequences for the estate plan, tax treatment, or other estate documents.

- After SB 50:
    i. The amended KRS 395.455 expressly removes both of those requirements. The court may now order that administration be dispensed within both testate and intestate estates without requiring the renunciation of a will and without requiring the giving of bond. The surviving spouse, or a person designated by the surviving spouse, may receive the transferred assets directly. The section also clarifies that where no distributable estate will pass through a personal representative's hands at all, the court may simply order that no letters be issued and, in a testate estate, that the will be probated only.
- Practical Impact:
    i. This change meaningfully simplifies estate settlement for surviving spouses in smaller estates where the exemption and preferred claims exhaust the assets. Prior practice required attorneys to navigate the tension between accessing the dispensation route and preserving the will's effect, which sometimes led families to proceed with full administration unnecessarily. Now, a surviving spouse with a modest estate can avoid full administration without forfeiting the will. Attorneys handling these matters should also note the continued importance of the KRS 391.030 exemption calculation, and should confirm that recovery claims, if any, are properly addressed as preferred claims before the dispensation order is entered, since a Medicaid debt is a preferred claim that must be satisfied before assets transfer.