

State of the States

2026 Year-End Estate Planning Advisory

November 19, 2026

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This section surveys notable 2026 developments in trusts and estates across key jurisdictions, highlighting enacted legislation, pending proposals and consequential court decisions with practical planning implications.

Connecticut

Connecticut did not enact any new trusts and estates legislation in 2026. The following bills were proposed in 2026 but none were enacted:

- H.B. No. 5266, which would adopt the Uniform Real Property Transfer on Death Act in Connecticut.
- H.B. No. 5152, which would require the collection of identifying information from nonresident owners of residential property.
- S.B. No. 261, which would facilitate the transfer of a motor vehicle registration to a named beneficiary upon the death of the owner of the vehicle.

As a reminder, Connecticut has a separate state gift tax. Connecticut residents are subject to state gift tax on all federally taxable gifts, while nonresidents are subject to state gift tax only on federally taxable gifts of real estate or tangible personal property located in Connecticut. Connecticut taxable gifts must be reported on a Connecticut gift tax return, regardless of whether any tax is due. Connecticut gift tax and estate tax are unified, meaning that Connecticut taxable gifts reduce the amount of Connecticut estate tax exemption available at death ($15 million, for decedents dying in 2026).

New Jersey

At the end of 2025, New Jersey readopted and amended its inheritance tax regulations. Notable changes include the following:

- The regulations expanded the definition of Class A beneficiaries to include nonbiological children conceived through any means of assisted reproduction.
- The regulations clarify that the Division of Taxation requires an Inheritance Tax Waiver for transfers to beneficiaries from all financial institutions, rather than only those that qualify as banking institutions, trust companies and deposit companies.
- The regulations further clarify that the law allows no inheritance tax deduction for executor commissions related to the transfer of real estate that was specifically devised to a beneficiary.

The following bills were proposed in New Jersey in 2026 and are pending:

- Several bills that would narrow the transfer inheritance tax, including S985 (exempting transfers of residential real property between family members), S2427 (exempting all transfers to lineal relatives), S1867/A1523 (eliminating the tax on a decedent's brothers and sisters) and *A316/S3858* (eliminating the tax on step-grandchildren).
- A3545, which would realign the transfer inheritance tax payment due date to coincide with the due date of the federal estate tax payment.
- A1819, which would establish the Uniform Real Property Transfer on Death Act in New Jersey.
- A4736, which would authorize a trustee, in certain circumstances, to terminate service without filing a formal accounting with the court or obtaining release agreements from beneficiaries.

As a reminder, New Jersey has a state inheritance tax, which is imposed on the beneficiary, rather than a state estate tax imposed on the decedent's estate. New Jersey inheritance tax applies to New Jersey resident decedents and nonresident decedents who own real estate or tangible personal property in New Jersey. The amount of the tax depends on whether the decedent was a New Jersey resident, the beneficiary's relationship to the decedent, the value of the decedent's estate and the type of property received by the beneficiary.

New York

The most notable 2026 development in New York is the enactment of the New York City non-primary residence property surcharge. The surcharge, more commonly known as the “pied-à-terre tax,” was enacted as part of the state budget and became effective July 1, 2026, applying retroactively to obligations arising from the start of the year. The new tax applies to family homes (Class 1 properties) with a market value of at least $5 million and condos or co-ops (Class 2 properties) with a market

value of at least $1 million. Properties used as a primary residence are exempt from the tax; however, the property owner is responsible for filing an exemption request demonstrating that the property qualifies.
On September 29, 2026, a state court ruled that the rollout of the pied-à-terre tax was unlawful because it improperly shifted the burden of proof onto homeowners. The ruling did not invalidate the tax itself, only the City's implementation of it. The City immediately appealed, and the rollout has continued in the meantime. Several other legal challenges to the tax remain pending. The deadline for requesting an exemption from the tax was October 13, 2026. Absent extension, the tax is set to sunset on June 30, 2031.

Other New York legislation enacted or taking effect in 2026 includes the following:

- Governor Hochul signed the Medical Aid in Dying Act (A136/S138) on February 6, 2026, and it became effective August 6, 2026. The act allows a terminally ill, mentally capable adult with a prognosis of six months or less to live to request, obtain and decide whether to ingest medication to end his or her life peacefully. Additional safeguards include a five-day waiting period between the writing and filling of the prescription, an audio/video recording of the patient's oral request (which may not be witnessed by anyone who could benefit financially from the patient's death), a mental health evaluation and an initial in-person examination by a physician.
- The New York LLC Transparency Act (NY LLCTA) became effective January 1, 2026. As discussed under “Select updates impacting family business owners,” LLCs formed outside the United States and authorized to do business in New York must report certain beneficial ownership information to the New York Department of State. For such LLCs authorized to do business in New York on or after January 1, 2026, the filing deadline is 30 days after filing the application for a Certificate of Authority. For such LLCs authorized to do business in New York prior to January 1, 2026, the filing deadline is December 31, 2026.
- S8373, which became effective January 20, 2026, reduces and standardizes commissions for trustees of charitable trusts. The annual commissions for a trustee of a charitable trust are now 80% of the rates applicable to a non-charitable trust up to the principal value of $20 million and are further reduced to 50% for any portion of a charitable trust exceeding $20 million in principal value. Such commissions are payable one-third from income and two-thirds from the principal of the trust, unless the trust instrument explicitly states otherwise. Trustees of trusts in existence before the effective date may continue using the prior method of computing commissions through December 31, 2026.

Planning note: New York has a state estate tax that applies to New York resident decedents and nonresident decedents who own real or tangible personal property located in the state of New York. In 2026, New York's estate tax exemption amount is $7,350,000, with this amount set to be adjusted

for inflation in 2027. Additionally, unlike with the federal estate tax exemption, a New York decedent will completely lose the benefit of the exemption amount if the decedent's gross estate exceeds 105% of the exemption amount. While New York does not have a state gift tax, taxable gifts made within three years of death are brought back into a New York decedent's estate for the purpose of calculating the decedent's gross estate. The three-year gift addback rule was set to expire on January 1, 2026, but was extended until 2032 as part of the passage of the 2025–2026 state fiscal plan.

Illinois

In 2026, Illinois continued its incremental approach to probate, trust and fiduciary reform. The spring session produced legislation, effective January 1, 2027, that limits the grounds on which third parties may refuse to accept a power of attorney, establishes procedures for charitable beneficiaries to collect nonprobate assets and strengthens supported decision-making as an alternative to guardianship. Illinois also decoupled from the federal qualified small business stock (QSBS) gain exclusion. Efforts to raise the Illinois estate tax exclusion amount stalled yet again, and the appellate courts issued several decisions with practical implications for will execution, spousal rights, intestate succession and estate litigation.

Legislative Updates

- **Third-Party Acceptance of Powers of Attorney for Property (effective January 1, 2027).** Public Act 104-0609 (HB 4462) amends Section 2-8 of the Illinois Power of Attorney Act (755 ILCS 45/2-8) to remove two grounds that were previously considered “reasonable cause” for a third party to refuse to honor a power of attorney for property: (i) the agent's refusal to provide a copy of the original power of attorney, certified by an attorney, a court, or a governmental entity as valid; and (ii) the refusal of the principal's attorney to certify that the power of attorney is valid. However, a third party may still require that an agent provide an affidavit or an Agent's Certification and Acceptance of Authority, and all other current statutory grounds for refusal (including suspected financial exploitation) remain unchanged. In practice, institutions will no longer be able to condition acceptance on attorney validity certificates, potentially reducing delays for agents managing accounts on behalf of incapacitated clients. Agents should nonetheless be prepared to deliver a properly executed Agent's Certification and Acceptance of Authority on request.
- **Charitable Organization Beneficiary Act (effective January 1, 2027).** Public Act 104-0481 (HB 4206) creates the Charitable Organization Beneficiary Act, which establishes a process meant to ensure that charitable organizations actually receive assets that are left to them through nonprobate beneficiary designations (such as payable-on-death accounts and retirement plans). Holders of such property must notify the charitable organization within 45 business days

after verifying the owner's death. They must also provide key details, including the exact beneficiary designation language, the name of the owner of the property and a description of the property. For bad-faith noncompliance, courts may impose up to a $10,000 penalty, while holders acting in good faith receive liability protection. Charitably inclined clients who rely on beneficiary designations should confirm that their designation language precisely identifies the intended organization and intended gift; upon the client's death, holders will be required to share the exact designation language with the charity.

- **Supported Decision-Making Revisions (effective January 1, 2027).** Public Act 104-0663 (HB 5365) amends the Supported Decision-Making Act (755 ILCS 9/), which permits adults with disabilities to retain decision-making authority with the assistance of chosen supporters rather than through the appointment of a guardian. The amendments provide that the execution of such a supported decision-making agreement may not be used as evidence of capacity or incapacity in any civil or criminal proceeding (even though the existence of an agreement may still be entered into evidence), and that supporters must complete training developed by the Guardianship and Advocacy Commission within 45 days of signing the consent to act. Families planning for a beneficiary with disabilities should consider whether a supported decision-making agreement, coordinated with powers of attorney and a supplemental needs trust, would be a better alternative to a guardianship proceeding.
- **Small Estate Affidavit – Excluded Motor Vehicles Revisions (effective January 1, 2027).** Public Act 104-0624 (SB 2704) amends the Small Estates Article of the Probate Act of 1975 (755 ILCS 5/25-1) to clarify that certain vehicles (including motor homes and other vehicles used as living quarters, non-self-propelled vehicles, commercial vehicles, implements of husbandry and buses) are not considered “excluded motor vehicles” and therefore will count toward an individual's $150,000 small estate threshold (which took effect January 1, 2026). The practical effect of this clarification is that, for decedents dying on or after January 1, 2027, the value of these vehicles must be included in the gross value of the personal estate reported on the small estate affidavit, rather than being disregarded and transferred separately. Practitioners should confirm that the valuation on any affidavit includes any such vehicles, because their inclusion could push an estate above the $150,000 threshold and require formal probate administration. For clients who own recreational vehicles, commercial vehicles or farm equipment in their individual names, this change is yet another reason to consider titling such assets in a revocable trust or, where available, using transfer-on-death vehicle titles.
- **Decoupling From Federal QSBS Exclusion (taxable years ending on or after December 31, 2026).** Public Act 104-0468 (SB 3019), signed June 16, 2026, requires individuals, trusts, estates and partnerships to add back to Illinois base income any gain excluded from federal gross income under section 1202 of the Internal Revenue Code. The addback applies to taxable years

ending on or after December 31, 2026, and therefore applies to the full 2026 taxable year for calendar-year taxpayers. Founders and investors anticipating a QSBS sale should model the Illinois tax cost. Families using non-grantor trusts to multiply the federal exclusion should evaluate whether Illinois can tax the gain recognized by each trust.

- **Illinois Estate Tax Reform Stalls Again (introduced, not enacted).** Several bills introduced in the 104th General Assembly would have raised the Illinois estate tax exclusion amount, which remains $4 million per decedent without portability. SB 3847 would have increased the exclusion amount to $8 million for persons dying on or after January 1, 2027, indexed for inflation beginning in 2028, and would have permitted use of a deceased spouse's unused exclusion amount. SB 3787 would have tied the Illinois exclusion amount to the federal applicable exclusion amount under section 2010 for persons dying on or after January 1, 2027, and HB 2601 also would have increased the exclusion amount to $8 million for persons dying on or after January 1, 2026. However, none of these bills advanced beyond committee, and SB 3847 and SB 3787 remained in the Senate Assignments Committee when the spring session adjourned. Because the federal exemption is $15 million per individual for 2026 and will be indexed for inflation beginning in 2027, the gap between federal and Illinois exposure continues to widen, and Illinois residents (as well as nonresidents owning Illinois-situs property) should continue to plan their estates around this $4 million threshold.

Key Appellate Decisions

- **Remote witnessing and substantial compliance:** *In re Estate of Felner*, 2026 IL App (1st) 251143. An Illinois Appellate Court affirmed the admission to probate of a will witnessed remotely by audio-video communication during the COVID-19 emergency declaration. The petitioners argued that the will was not executed in substantial compliance with the Electronic Wills, Electronic Estate Planning Documents, and Remote Witnesses Act (755 ILCS 6/1-1 et seq.). Applying a substantial-compliance framework, however, the court held that the essential purposes of the Act were achieved where the remote execution was sufficiently documented and observed to provide a reliable basis for determining proper execution, and there was no evidence of a deviation that compromised the identity of the participants, the authenticity of the execution or the integrity of the instrument. This decision provides comfort for wills remotely witnessed during the pandemic, but practitioners should continue to document remote executions carefully, as the court's analysis turned on the quality of that documentation.
- **Renunciation and out-of-state real property**: *In re Estate of Kohnen*, 2026 IL App (2nd) 250453. A surviving spouse who renounced her late husband's will claimed a one-third share of his estate under Section 2-8(a) of the Probate Act (755 ILCS 5/2-8(a)). The trial court ruled that her spousal share included real property located in Arizona. On appeal, the decedent's children argued, relying on *In re Estate of Pericles*, that out-of-state real property is not part of the “entire

estate” used to compute a renouncing spouse's share, and the Appellate Court reversed and remanded, holding that out-of-state real property is excluded from the renouncing spouse's share. For clients with real property in multiple states, the decision is a reminder that the situs of real estate can materially affect a surviving spouse's statutory rights, and that ancillary probate and elective share regimes in other jurisdictions must be considered in coordinating the overall plan.

- **Equitable adoption claims narrowly applied**: *In re Estate of Hegner*, 2026 IL App (1st) 240738. A claimant who had been raised by the decedent sought a share of the decedent's intestate estate under the doctrine of equitable adoption. An Illinois Appellate Court affirmed judgment for the decedent's heirs, holding that equitable adoption is an equitable remedy carrying no right to a jury trial, that the Dead-Man's Act properly barred the claimant's testimony regarding his conversations with the decedent, and that a successful claimant does not become an heir but may only receive a share of the estate as an equitable remedy. The decision underscores that informal family relationships, however close, are no substitute for a will, a trust or a completed adoption, and that successful equitable adoption claims remain rare in Illinois.
- **Testamentary capacity and undue influence:** *In re Estate of Ticknor*, 2026 IL App (5th) 250501. The Appellate Court affirmed a bench-trial judgment rejecting a will contest brought by the decedent's only child, whom the will expressly disinherited in favor of the executrix and her daughter. The court held that the son failed to overcome the presumption of testamentary capacity: the decedent's “bizarre” accusations against his son did not amount to an insane delusion, given that the decedent was independently running his business and managing his finances when he executed the will. The court also held that the son failed to prove undue influence because the decedent was not dependent on the executrix, notwithstanding her status as a fiduciary under the powers of attorney. The case illustrates the value of an express disinheritance clause and of evidence that the testator was managing his own affairs at execution where a client departs from a natural-objects-of-bounty plan.
- **Attorney-client privilege in trust construction actions:** *Dakota R. Mills Longenecker v. Deborah K. Perlita Denker, et al.*, 2026 IL App (4th) 250820-U. An Illinois Appellate Court held that the testamentary exception to the attorney-client privilege, which permits disclosure of a decedent's communications with counsel in actions contesting the validity of a will or trust, does not extend to disputes over the construction or interpretation of wills or trusts. As a result, the drafting attorney's estate planning notes were not discoverable in an action seeking to construe the decedent's trust. Although issued as a nonprecedential Rule 23 order, the decision reinforces the importance of clear drafting, as extrinsic evidence of intent from the planning file may be unavailable in a construction proceeding.

Planning note: Illinois imposes an estate tax on estates exceeding the $4 million exclusion amount, without portability, on residents and on nonresidents owning real or tangible personal property located in Illinois. Illinois does not impose a gift tax. With 2026 reform efforts having stalled, married couples with combined estates above $4 million should confirm that their plans preserve the first spouse's Illinois exclusion, and clients should review powers of attorney, beneficiary designations and planning for family members with disabilities in light of the legislation taking effect January 1, 2027.

Florida

Over the past year, several developments have affected the private wealth and fiduciary landscape in Florida. A summary of key updates follows.

Amendment 3: homestead exemption increase and year-end deadline for new residents.

On November 3, 2026, Florida voters adopted Amendment 3 to the Florida Constitution, which materially changes how property taxes are imposed. The non-school homestead exemption will increase from $50,000 to $150,000 in 2027 and to $250,000 in 2028, with annual inflation adjustments beginning in 2029. The existing $25,000 exemption for school-district taxes remains unchanged, and counties and municipalities may offer even larger exemptions, potentially eliminating their local property tax on qualifying homesteads. The increased exemption is immediately available only to homeowners (or future homeowners) who establish Florida permanent residency by December 31, 2026. A person who becomes a Florida resident on or after January 1, 2027, will receive only the existing $50,000 non-school exemption for the first four years of residency and will qualify for the larger exemption in the fifth year. Owning a Florida home before year-end is not the determining factor: a client who owns a Florida vacation home but remains domiciled elsewhere until after January 1, 2027, will be subject to the waiting period, while a client who becomes a Florida resident before December 31, 2026, should qualify for the increased exemption on a homestead acquired later. Amendment 3 also reduces the cap on annual assessment increases for non-homestead residential property, such as vacation homes and rental properties, from 10% to 5% per year.

Planning note: Clients who have been considering a change of domicile to Florida should evaluate accelerating the move into 2026. The taxpayer bears the burden of proving that domicile changed before the deadline, and it is not yet known how strictly property appraisers will enforce it. At a minimum, clients should obtain a Florida driver's license, register to vote and record a Declaration of Domicile before December 31, 2026, and should take broader steps to evidence the move, recognizing that a change of domicile for property tax purposes may also be scrutinized by the client's former state for income and estate tax purposes.

Nonjudicial settlement and discharge of a trustee

- The Florida Trust Code was amended to authorize a qualifying trustee to settle the trustee's accounts and be discharged without judicial intervention. A trustee who is in substantial compliance with the duty to inform and account under the Florida Trust Code may seek nonjudicial discharge when the trust terminates or when the trustee resigns or is removed.
- Specifically, a qualifying trustee seeking nonjudicial discharge must send a trust disclosure document to the qualified beneficiaries of the trust and to the co-trustees of the trust. The trust disclosure document must contain the following information:
  - The name, mailing address, telephone number and email address of the trustee seeking discharge;
  - A plan of distribution that includes:
    - A schedule of the assets reasonably anticipated to be distributed by the trustee;
    - The amount of any debts, expenses and taxes to be paid; and
    - Any reasonable reserve to be held by the trustee;
  - If the trustee's duty to account has not been waived, a trust accounting in the form provided for by the Florida Trust Code;
  - A statement that the trust has terminated or that the trustee has resigned or has been removed; and
  - Statutory language regarding the qualified beneficiary's right to object to the requested relief and to consult with an attorney.
- Each recipient of the trust disclosure document has 60 days to object to the relief being sought. If no written objection is received within 60 days after receipt of the trust disclosure document, the trustee is discharged from all liability and claims arising out of any matter disclosed in the trust disclosure document.

Planning note: This procedure provides trustees with an alternative to a judicial accounting when a trust is terminating or a trustee is ceasing to serve.

Fee-shifting mechanism for personal representatives in enforcement proceedings

- Effective July 1, 2026, a new section of the Florida Probate Code creates a fee-shifting mechanism in proceedings brought to enforce a personal representative's authority.

- Previously, when a personal representative encountered banks, entities or beneficiaries who refused to recognize the personal representative's authority, obtaining compliance could require court intervention, with its attendant costs.
- Under the new provision, when a personal representative prevails in such an enforcement proceeding, the court must award taxable costs and attorney's fees to the personal representative. The court may direct payment of the fees and costs from:
  - Any person whose action or inaction necessitated the enforcement proceeding;
  - Any person having an interest in the estate; and
  - Property outside of the estate through the entry of an enforceable judgment.

Homestead protection for property held in revocable trust

- *In Schiro v. Elliott*, 435 So. 3d 1156 (Fla. 2d DCA 2026), a case from Florida's Second District Court of Appeal, the personal representative of her mother's estate petitioned the court to determine that her mother's residence was protected homestead property that would be exempt from creditors' claims.
- Notably, title to the residence was held by the decedent's revocable trust, and the decedent was survived by her three adult children.
- The court addressed two issues:
  - Whether a residence titled in a revocable trust can be constitutional homestead; and
  - Whether the protection from creditors can pass to a decedent's adult children or is limited to a surviving spouse and minor children, as argued by the creditors.
- On the first issue, the court held that property held by a revocable trust is considered to be owned by a “natural person” for homestead purposes because the settlor retains the right to revoke the trust during the settlor's lifetime.
- As to whether the decedent's adult children could benefit from the homestead protection, the court noted that Article X, section 4(b) of the Florida Constitution provides that homestead protections “inure to the surviving spouse or heirs of the owner.” Under prior Florida case law, “heirs” includes a decedent's descendants, including beneficiaries who would have qualified for homestead protection if title to the property had passed to them directly. Thus, the court held that the decedent's adult children, as heirs, were entitled to the homestead protection from creditors.

Planning note: Clients who title a residence in a revocable trust will not forfeit the creditor protection provided for under Florida's homestead laws if the residence otherwise qualifies. To ensure that such property is protected, clients should consider expressly excluding the homestead property from debt-payment and tax-apportionment clauses so that the terms of the trust agreement do not counteract

the otherwise available creditor protection. A general direction to pay debts from the trust could be read as making otherwise exempt property available to creditors.

Texas

Our 2025 Year-End Estate Planning Advisory discussed four proposed constitutional amendments that were on the ballot in the November 2025 general election:

- Senate Joint Resolution 18, which prohibits the imposition state taxes on realized or unrealized capital gains of an individual, family, estate or trust.
- House Joint Resolution 2, which prohibits the future imposition of state estate, gift or generation-skipping transfer taxes.
- Senate Bill 4, which, in relevant part, increases the homestead exemption from property taxes to $140,000 for all Texans.
- Senate Bill 23, which, in relevant part, increases the homestead exemption to $200,000 for Texans aged 65 or older or disabled.

Texas voters approved each of these measures.

Notable Texas cases from late 2025 and 2026 include the following:

- In *Zeller v. Allen*, No. 13-24-00200-CV (Tex. App.—Corpus Christi–Edinburg Nov. 20, 2025), a trust was created in 1966 for the benefit of the settlors' son and his “children and lineal descendants.” The son had four sons, one of whom had a nonmarital daughter, who claimed an interest in the trust assets. The Court of Appeals held that the settlors did not intend to include the daughter in the beneficial class of “children and lineal descendants” because the trust instrument did not define the term and, under the law in effect at the time the trust became effective, the term “children” did not include an unrecognized, illegitimate child of the father.
- In *In re Estate of Wynn*, No. 10-23-00187-CV (Tex. App.—Waco Dec. 18, 2025), the decedent's will left his estate to his spouse, subject to two cash legacies to his children from a prior marriage. The will also included a no-contest provision. The children contested the will, alleging, among other things, that the page of the will providing for the disposition of the estate was a forgery. The trial court found that the children's claim triggered the no-contest provision, but the Court of Appeals reversed. Under Texas law, a no-contest provision is unenforceable if the contestant establishes, by a preponderance of the evidence, that there was just cause for bringing the action and that the action was brought and maintained in good faith. For an action to be brought with just cause, factual grounds applicable to the legal basis of the action must exist. Because a genuine issue of material fact existed as to whether the will was forged, a genuine

issue of material fact also existed as to whether the children had just cause for bringing the action.

- In *In re Estate of Ledbetter*, No. 02-25-00326-CV (Tex. App.—Fort Worth Feb. 5, 2026), the decedent, a wealthy widower who had created trusts to benefit his children upon his death, met his second spouse when he was 81 years old. During their marriage, which lasted only 16 months before his death, the decedent gave control of his finances to his spouse (who invoked the Fifth Amendment when asked about her true identity), gave her millions of dollars in cash and real property interests, made uncharacteristic business decisions and extravagant purchases such as a jet and a yacht, grew estranged from his children and executed a new estate plan that disinherited his children and named the spouse as a trustee. The record indicated that the spouse had a pattern of deception and fraud. The Court of Appeals affirmed the trial court's appointment, on its own motion and under its equitable powers, of a receiver to manage the trust assets. The court found that the spouse, as a fiduciary, posed a threat of irreparable dissipation of assets, that the court could not micromanage the complex assets of the estate and that, given her pattern of dishonesty and evasion, the spouse was unlikely to comply with such orders in any event.
- In *In re Est. of McCulloch*, No. 02-25-00036-CV, 2026 Tex. App. LEXIS 2094 (Tex. App.—Fort Worth Mar. 5, 2026, no pet.) (mem. op.), the decedent was survived by a spouse, two sons from their relationship and a third son from a different relationship. The decedent left all of his property to a trust that he and his spouse had settled. After the decedent died, his spouse, as co-grantor and co-trustee and as authorized by the trust's terms, amended the trust to revoke distributions to a separate trust for the benefit of her stepson. The decedent's will named the spouse as executor, and the stepson opposed her appointment. The Court of Appeals held that the stepson lacked standing to oppose the appointment because he was neither an “heir” of the decedent nor did he have a pecuniary interest in the decedent's estate. The stepson was not an heir because the statutory definition of “heir” requires a decedent to have died intestate to have heirs. The stepson did not have a pecuniary interest in the decedent's estate because his interest had been revoked by the stepmother, and the validity of that revocation had not been challenged and was not before the court.

Finally, the Texas Business Court continues to gain traction, in part through an expansion of its jurisdiction. Effective September 1, 2025, the value threshold for a “qualified transaction” was reduced from $10 million to $5 million, and the Business Court was given concurrent jurisdiction over certain intellectual property disputes. The Business Court held its first bench trial in November 2025 and its first jury trial, and issued its first directed verdict, in 2026. Its expanding caseload should allow the court to develop a body of precedent. In July 2026, Governor Greg Abbott reappointed all 10 judges of the Business Court to new two-year terms beginning September 1, 2026.

California

2026 Billionaire Tax Act (Proposition 40)

California voters rejected Proposition 40, the 2026 Billionaire Tax Act, on November 3, 2026. We describe the measure here because the policy debate it reflects is unlikely to end with this election. Similar wealth tax proposals have been introduced in California and other states, and a future measure could borrow heavily from Proposition 40's design.

Proposition 40 would have imposed a one-time 5% excise tax on the worldwide net worth of California-resident billionaires and on certain trusts they have funded. Much of the measure was ambiguous and untested, and many technical questions would have been left to Franchise Tax Board guidance. Key features included the following:

- **Who is taxed and when.** The tax would apply to California residents on January 1, 2026, with a net worth of $1 billion or more measured on December 31, 2026. Spouses' net worth is combined. The full 5% rate applies at $1.1 billion, with a phase-in for net worth between $1 billion and $1.1 billion. Trusts pay a flat 5%.
- **What is counted.** Worldwide assets are included at fair market value, excluding directly held real property, certain property kept outside California, retirement accounts and $5 million of other assets. Related-party and below-market debts are not deductible, and gifts over $1 million made after October 15, 2025, are added back in computing the donor's net worth.
- **Trusts.** Grantor trust assets count toward the grantor's net worth. Non-grantor trusts funded by a billionaire are taxed separately unless the transferor elects otherwise, and beneficiaries may be taxed on “distributable” trust assets.
- **Apportionment.** Net worth is apportioned 100% to California, reducible to no less than 25% only on clear and convincing proof.
- **Valuation.** Private businesses are presumed to be worth book value plus 7.5 times average book profits, a presumption that can be rebutted with certified appraisals.
- **Filing and payment.** The tax may be paid in five annual installments, subject to a 7.5% deferral charge, and an automatic six-month extension is available for 2026.
- **Enforcement.** Understatement penalties of 20% or 40% apply, subject to disclosure defenses, and a broad anti-avoidance rule may reach changes of residence.

Planning note: Although Proposition 40 failed, its provisions offer a useful framework for evaluating future wealth tax proposals. Clients who may be affected by similar proposals should contact their Katten attorney.

New virtual representation statute

When the California Probate Code requires notice to, or the consent of, "all beneficiaries," beneficiaries who are minors, incapacitated, unborn or unknown (MIUUs) present a challenge because they cannot act for themselves. Virtual representation addresses this problem by allowing another person to receive notice, give consent and bind MIUUs, so that they cannot later challenge actions such as a trust modification or termination.

Until recently, California was one of only three states without a virtual representation statute. Former Probate Code section 15804 was widely regarded as confusing, and trustees often had to petition the court for a guardian ad litem in routine matters, adding delay and expense. AB 565, effective January 1, 2026, rewrote section 15804, bringing California in line with the Uniform Trust Code and 47 other states. Key features of the new statute include the following:

- **Fiduciaries.** Parents may represent minor and later-born children (if a guardian ad litem has not been appointed), and conservators, guardians, agents under a power of attorney, trustees and personal representatives may represent those they serve, subject to their fiduciary duties.
- **Powers of appointment**. A power holder may represent all potential appointees, so a single notice to the holder can replace notice to each appointee.
- **Substantially identical interests.** An MIUU who is not otherwise represented may be represented by someone with a substantially identical interest, such as a competent sibling with an equal share. Current interest holders may also consent on behalf of successor interest holders.
- **Prohibitions.** Representation is not permitted where a conflict of interest exists on the matter, and a settlor may not represent others in modifying or terminating an irrevocable trust.
- **Written consent and fiduciary protection.** Consents must be in writing and bind the represented person unless he or she objects before they take effect. Fiduciaries relying on the representation are protected absent intentional breach, gross negligence, bad faith or reckless indifference.
- **Other notice rules.** Existing requirements continue to apply, including section 16061.7 notices, notices of proposed action, special notice requests and the court's power to appoint a guardian ad litem.

Planning note: Virtual representation can make accountings, modifications, trustee changes and terminations faster and less costly, particularly for multigenerational trusts. Because a hidden conflict could later undo the result, it is best used for routine actions where interests clearly align; for potentially divisive actions, such as changing distribution shares, full notice or the appointment of a

guardian ad litem remains the safer course. Because the statute is new and courts have not yet interpreted it, trustees should identify any MIUU beneficiaries, document their conflict analysis and obtain written consents before relying on it.

Adjustments to the California homestead exemption

Assembly Bill 2782, signed into law in September 2026, is an omnibus measure amending California's Civil, Family, Labor and Probate Codes. Of most interest to homeowners, it sets the 2026 homestead exemption, which protects equity in a primary residence from creditors' claims, at a minimum of $373,175 and a maximum of $746,350. Beginning January 1, 2027, these amounts will be adjusted annually for inflation. Homeowners with significant equity in a California residence should consider how the updated exemption fits within their broader asset protection and estate plans.

Revised statutory power of attorney form

Assembly Bill 2199, signed into law in June 2026, repeals and replaces Probate Code section 4401 and adds section 4466, modernizing California's statutory power of attorney form effective January 1, 2027. The revised form allows the principal to (i) appoint one or more successor agents, (ii) nominate the agent or co-agents as conservator or co-conservators of the principal's estate and (iii) grant optional authority over digital assets, consistent with the Revised Uniform Fiduciary Access to Digital Assets Act. Under the digital assets provisions, the principal may authorize the agent to access a catalog of the principal's electronic communications (for example, whom the principal emailed and when), the content of those communications or both. The general signing, witnessing and acknowledgment requirements are unchanged, and the bill does not amend existing powers of attorney; documents properly signed on the current form before 2027 remain valid.

North Carolina

Updates to the North Carolina Nonprofit Corporation Act

Session Law 2026-52, signed into law on July 7, 2026, and effective October 1, 2026, made several changes to the North Carolina Nonprofit Corporation Act (Chapter 55A of the North Carolina General Statutes).

- **New annual reporting requirement.** For the first time, every domestic nonprofit corporation, and every foreign nonprofit corporation authorized to conduct affairs in North Carolina, must file an annual report. New G.S. 55A-16-22.1 requires a paper or electronic report by November 15 of each year disclosing the corporation's registered office and agent, principal office, principal

officers, a brief description of its activities and a contact authorized to speak for the entity. The filing fee is $18 for an electronic report and $25 for a paper report. A report not filed within 60 days after the due date is delinquent, and delinquency is a new ground for administrative dissolution, as is the failure to designate a principal office. The annual reporting requirement takes effect January 1, 2027.

- **Mergers and domestication.** Charitable and religious corporations may now merge, without court approval or notice to the Attorney General, with a single-member LLC whose sole member is a section 501(c)(3) organization (and that would itself qualify for exemption). The act also expands the types of business entities that may merge with a North Carolina nonprofit corporation. In addition, new Article 11B of Chapter 55A permits a nonprofit corporation to domesticate into or out of North Carolina without dissolving and re-forming.
- **Minimum board size.** The default minimum size of a nonprofit board increases from one director to three directors for nonprofit corporations organized on or after October 1, 2026. The change does not apply to private foundations, which may continue to have a board of one or more directors.

Planning note: Families with North Carolina private foundations or other charitable entities should calendar the new November 15 annual report deadline to avoid delinquency and the risk of administrative dissolution, and should consider whether the new domestication and merger provisions offer useful restructuring options.

Fiduciary income tax updates

Section 1.3 of S.L. 2026-31 rewrites G.S. 105-160.2, the statute that imposes North Carolina income tax on estates and trusts.

Under prior law, North Carolina imposed fiduciary income tax on the taxable income of an estate or trust that was for the benefit of a North Carolina resident, or for the benefit of a nonresident to the extent the income was derived from North Carolina sources. As a result, the undistributed income of a trust could be taxed solely because a beneficiary resided in North Carolina, regardless of whether the beneficiary received, or had any right to receive, a distribution. In *North Carolina Department of Revenue v. Kimberley Rice Kaestner 1992 Family Trust*, 588 U.S. 262 (2019), the US Supreme Court held that the Due Process Clause of the Fourteenth Amendment prohibited North Carolina from taxing the undistributed income of a trust based solely on the in-state residence of its beneficiaries, where the beneficiaries had no right to demand distributions, did not receive distributions during the years at issue and the trust otherwise had no connection to the state.

In response to Kaestner and the resulting uncertainty in applying the prior statute, G.S. 105-160.2(b) now imposes the tax only on the taxable income of an estate or trust that (i) is derived from North Carolina sources and is attributable to the ownership of an interest in real or tangible personal property in North Carolina or (ii) is derived from a business, trade, profession or occupation carried on in North Carolina. A beneficiary's North Carolina residence will no longer, standing alone, subject a trust's undistributed income to North Carolina fiduciary income tax. The change is effective for taxable years beginning on or after January 1, 2026.

Planning note: Trustees of trusts with North Carolina beneficiaries should revisit their North Carolina filing positions for 2026, and families considering a non-grantor trust for a North Carolina resident may find North Carolina a more favorable environment than under prior law.

Extension of emergency video notarization and witnessing

North Carolina's emergency video notarization and witnessing provisions have again been extended for an additional year. The provisions expired by their terms on July 1, 2026, before a permanent remote notarization framework became operational and before the extension was enacted. Part VII-A of S.L. 2026-52 (House Bill 517) restored the provisions by moving the sunset date in both operative expiration statutes from July 1, 2026, to July 1, 2027. The provisions will sunset earlier if the Secretary of State issues the first remote electronic notary license under G.S. 10B-134.19 before July 1, 2027.

Planning note: Until the extension is confirmed to cover the gap period, consider re-executing any documents that were notarized or witnessed by video between July 1, 2026, and the date the extension was enacted.

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To download a PDF of the entire advisory, click here.

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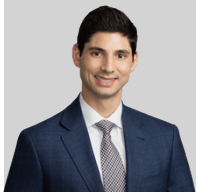
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