2025 Update and View of 2026:

Among the Backdrop of a Big, Beautiful Bill and a Government Shutdown

STANISLAUS ESTATE PLANNING COUNCIL

Presented By:

Erin A. Norcia – Danville, CA

Steven P. Braccini, Esq. – Menlo Park, CA & San Francisco, CA

John W. Prokey, Esq. – San Jose, CA & Modesto, CA

February 12, 2026

11:45 p.m. – 1:15 p.m.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

SUMMARIES

Estate Administration Summary [EAN]:

Packard v. Packard provides a path to modification of unambiguous trust distribution provisions, if the proponent is able to prove the terms do not express the settlor's intent. Expect to see more of these petitions. 2025 included substantive legislation affecting trust and estate lawyers, such as revisions to RUFADAA, changes to virtual representation, expanded notice in conservatorships, and an exception to full probate where the sole asset is the decedent's former home. Finally, we have several cautionary warnings, ranging from settlors doing their own drafting to attorneys properly evaluating conflicts checks.

Estate Litigation Summary [SPB]:

A blockbuster opinion found that a practitioner engaged in financial elder abuse instead of zealous representation. Indeed, claims of elder abuse continue to permeate proceedings, potentially resulting in an award of attorney's fees.

Law and motion opinions abound. The venerable anti-SLAPP motion continues to find its place in probate proceedings, though one opinion underscores the risk of attorney's fees where such a motion is frivolous and not based on petitioning activity. A *lis pendens* may be proper in the context of a trustee removal action. Terminating sanctions are, indeed, appropriate for a pattern of discovery abuse and failing to follow discovery orders.

Estate Planning Summary [JWP]:

After roaring into consciousness and demanding countless hours to understand its provisions, and in some cases to comply, the Corporate Transparency Act left with a whimper for U.S. entities. The One Big Beautiful Bill Act makes the transfer tax exemptions "permanent" and offers some other beneficial planning opportunities. The venerable issue of loan versus gift gets some face time, and cases show the struggles for DSUE and the estate tax marital deduction for surviving spouses. Tax cases also provide guidance in the context of SEC rules and GRATs and in the context of grantor trusts. Also, the Tax Court allows tax affecting for only the third time, but this time with a new methodology and salacious facts. Finally, a PLR provides guidance on 1031 exchanges and trust distributions.

A. Revenue Procedure 2025-32 – 2026 Inflation Adjustments [JWP]

i. Applicable Exclusion Amount: $15,000,000 (+$1,010,000), $30,000,000 (+$2,020,000) for a married couple. This is technically

not an inflation adjustment, the Big Beautiful Bill sets the amount at $15 million with inflation adjustments beginning in 2027.

ii. Annual Exclusion Amount: $19,000

iii. Gifts to Non-US Citizen Spouse: $194,000 (+$4,000)

iv. Section 2032A Special Use: $1,460,000 (+$40,000)

v. Section 6166 2-Percent Portion: $1,940,000 (+$40,000)

vi. Section 6039F (Form 3520) Gifts from Foreign Persons Exceed: $20,573 (+$457)

vii. Trusts and Estates Highest Income Tax Bracket: $16,000 (+$350)

B. RECENT CALIFORNIA CASE LAW DEVELOPMENTS (PLANNING, ADMINISTRATION, PROPERTY TAX, AND CONSERVATORSHIPS), LEGISLATION, & "TAX" AUTHORITIES

Selected authorities and cases of interest to trust and estate attorneys published between November 12, 2024 and November 3, 2025.

1. *Estate Of Duke* Applies To Trusts, And Does Not Trigger No-Contest Clause, Even If Reformation Petition Is Meritless. [EAN]

PACKARD V. PACKARD (2025) 108 Cal.App.5th 1284 [February 24, 2025]

Summary: The settlor's trust, as amended, devised his residence to son Greg, a sum equal to the value of the residence as determined by appraisal to son Scott, and the remaining property equally between Greg and Scott.

The settlor thereafter handwrote the word "one-half" into the amendment near the provision devising the equal value by appraisal to Scott, and initialed and dated the interlineation.

Upon the settlor's death, Greg became successor trustee, and both Greg and Scott agreed to a reappraised value of the property. Scott sent a letter to Greg's counsel proposing distribution of one-half of the reappraised value to Greg via cash.

However, after reconsidering the situation, but after 120 days from the date the notification by the trustee had been served per Probate Code section 16061.7, Scott filed a petition asking the probate court to construe and reform the amendment so that it accurately reflected what he alleged to be the settlor's

intent, specifically that the "one-half" interlineation was to reflect equal distributions between the settlor's sons, and that the Probate Code permits the consideration of extrinsic evidence to demonstrate the true intent of the settlor.

Greg filed a motion for judgment on the pleadings, contending that although Scott's petition was styled as one for construction or reformation, Scott was in reality contesting the trust because he sought to invalidate the handwritten change. Greg argued that Scott's petition was time-barred because he failed to file it within the 120-day limitations period for trust contests set forth in Probate Code section 16061.8.

Scott opposed the motion, arguing that his petition for reformation and construction did not constitute a trust contest under Probate Code section 16061.8 and was therefore not subject to its statute of limitations. Scott asserted his petition for reformation and construction did not concern the validity of the interlineation, but rather the settlor's true intent in executing the interlineation. He argued that extrinsic evidence can be admitted to reform a trust, even if seemingly unambiguous, where clear and convincing evidence establishes an error in the expression of the testator's intent at the time the document was drafted and also establishes the testator's actual specific intent at the time the document was executed.

The probate court granted Greg's motion, concluding that the request for construction and reformation was a contest to the trust and barred by the statute of limitations in section 16061.8.

The Court of Appeal reversed the order and remanded the case. Even though "one-half" is not susceptible to more than one interpretation, and does not create an ambiguity, the court looked to *Estate of Duke* (2015) 61 Cal.4th 871, where the court reconsidered and abandoned the historical rule that extrinsic evidence is inadmissible to reform an unambiguous will. Although *Estate of Duke* involved a will, the court found its logic applies equally to the reformation of a trust. A beneficiary should not be punished for bringing an action to ensure the proper interpretation, reformation, or administration of an estate plan. Such actions serve the public policy of facilitating the fair and efficient administration of estates and help to effectuate the settlor's intentions, which might otherwise be undone by mistake, ambiguity, or changed circumstances. If the basis is interpretation, even a meritless reformation petition is still a reformation petition. It cannot be the case that the answer to whether a petition is deemed a contest to the trust or a request to reform the trust depends on how persuasive the extrinsic evidence is of the settlor's intent—that goes to the merits of the petition.

The court concluded that Scott did not seek to nullify the trust. Rather, he argued the settlor always intended his assets to be divided equally between his two children, and a handwritten "one-half" interlineation in the trust amendment reflected the trustor's mistaken belief that he was accomplishing that goal. Accordingly, Scott's petition was not subject to Probate Code section 16061.8's

120-day limitations period, and the probate court erred in granting defendant's motion for judgment on the pleadings.

Comment: Trusts do not share the same statutory authority as wills for use of extrinsic evidence. See California Probate Code section 6111.5. Most California courts, however, have ignored this distinction, and this ruling confirms that courts will apply *Estate of Duke* to interpret settlor intent, even when the trust is clear.

Key to a petition being alleged as one for "reformation" and not as a "contest" may be the premise of a drafting error resulting in the document terms not being reflective of the testator's, or settlor's, intent.

Second, the rule is that a no-contest clause must be strictly construed, and may not extend beyond what plainly was the settlor's intent. So, can drafters construct a no-contest clause which will apply to the beneficiary who brings a meritless action as a reformation petition? Perhaps not, in view of the court's language that even a meritless reformation petition is still a reformation petition.

Finally, where does this leave us from an administration standpoint? A claim for reformation of a trust has a three-year statute of limitations. Should counsel for the trustee, upon learning that a beneficiary is alleging the trust terms are not reflective of settlor intent, recommend that the trustee file a petition for instructions to construe the trust terms and ascertain the beneficiaries before making distributions, based on the three-year statute of limitations irrespective of a 16061.7 notice?

2. Zealous Representation Or Financial Elder Abuse? [SPB]

HERREN V. GEORGE (2025) 109 Cal.App.5th 410 [March 3, 2025]

Summary: Susannah S. is the daughter, trustee, and attorney-in-fact of plaintiff George S., an octogenarian whose doctors determined in 2023 that he lacked the capacity to make financial and medical decisions. Pursuant to the Elder Abuse and Dependent Adult Civil Protection Act (Welf. & Inst. Code, § 15600 et seq.2) (Elder Abuse Act), Susannah filed a petition on behalf of George for a protective order against defendant Jaime B. Herren, a lawyer who had met with George alone in 2024 and secured his agreement to pay a $100,000 retainer. (§ 15657.03.) After a contested hearing, the Marin County Superior Court issued a restraining order prohibiting Herren from abusing and contacting George.

In the published portion of this opinion, the First District Court of Appeal rejected Herren's contentions that a restraining order could not be sought or issued under the Elder Abuse Act without the trial court first adjudicating George's competence. The Court also concluded that substantial evidence supported the finding that Herren committed financial abuse of an elder. (See §§ 15610.07, 15610.30, subd. (a)(3), 15610.70, subd. (a).) In the unpublished

portion of the opinion, the Court rejected Herren's other challenges to the elder abuse restraining order.

3. Is it a Gift or a Loan? IRC § 7872 Applies Because IRS Only Argued Part-Gift. [JWP]

ESTATE OF BARBARA GALLI V. COMMISSIONER [2025] T.C. No. 7003-20 and 7005-20 [May 5, 2025]

Summary: In this gift and estate tax case, the issue before the court was whether a $2.3 million transfer from mother to son was a gift or partial gift. Mother and son both signed a "simple note" calling it a loan. The loan terms provided for a term not to exceed 9 years with interest at the mid-term AFR as of the loan date (1.01% - February 2013). Mother and son treated this transaction as a loan and mother did not file a gift tax return.

Following mother's subsequent death, IRS asserted the transfer was an unreported partial gift of $869,000 looking to the fact that the note was unsecured, it lacked provisions for legal enforceability comparable to commercial loans, and that son's intent or ability to repay was not sufficiently demonstrated. IRS asserted in the alternative that the valuation of the note in the estate resulted in an undervaluation of $544,000. IRS issued notices of deficiency for both unpaid gift tax and underpaid estate tax.

Son, as Executor, on a motion for summary judgment argued that the Commissioner did not try to recharacterize the entire transfer as a gift. Rather, the Commissioner only recharacterized a portion of the transfer as a gift. As a result, the transaction was a pure loan governed by IRC § 7872. Because the loan charged interest at the AFR, the loan was not a "below market loan" to which the gift tax rules apply.

The Tax Court looked closely at the notices of deficiency, the pleadings, and opposition to Petitioner's motion for summary judgment. That review lead the court to conclude that the Commissioner failed to set forth specific facts showing there was a genuine dispute for trial and failed to make recharacterization of the entire transfer as a gift an issue in the case. The Commissioner did not assert the entire transfer was a gift. Therefore, the issue was merely whether the transfer was entirely a loan, or partly a gift and a loan. As such, the court shifted its focus to IRC § 7872 and *Frazee v. Commissioner,* 98 T.C. 554 (1992).

IRC § 7872 provides comprehensive treatment for below market loans, displacing the traditional fair market methodology for valuation by substituting a methodology using the AFR. Since the loan satisfied the minimum interest rate required by IRC § 7872, the Tax Court determined the transfer was entirely a loan and no portion of the loan was a gift.

4. AB 565 (Dixon) Representation of trust beneficiaries. [EAN]

Status: 07/14/25 Chaptered – Secretary of State – Chapter 39 Statutes of 2025

Per Legislative Counsel's Digest:

Existing law establishes procedures for the creation, modification, and termination of a trust, and regulates the administration of trusts by trustees on behalf of beneficiaries. Existing law requires a trust beneficiary to be provided notice of specified actions regarding the trust. Existing law sets forth requirements under which notice given to a specified person or class of persons is sufficient to comply with a requirement that notice be given to a trust beneficiary or a person interested in the trust.

This bill would delete that indirect notice provision and would instead provide that notice given to a person authorized to represent and bind another person is sufficient to comply with notice requirements for actions regarding a trust. If a person consents for a person to represent and bind them, the bill would require that consent to be in writing and would make consent binding on the represented person unless they object to the representation before consent would have become effective. The bill would prohibit certain persons from representing and binding another person for these purposes, and would authorize specified representative relationships and representation of successive interests.

Comment: Prior Probate Code section 15804, the "virtual representation statute", was a challenging read.

This bill recasts the statute, and:

1) Provides that notice to a person who may represent and bind another person pursuant to this section is sufficient to comply with certain requirements of the Probate Code that notice be given to the represented person, and has the same effect as if notice were given directly to that represented person.

2) Authorizes a person to serve as a representative as provided under these provisions and bind another person except as follows:

a) The representative and the represented person cannot have a conflict of interest during the representation with respect to the particular matter that is the subject of the representation; and

b) A settlor cannot represent and bind a beneficiary regarding the termination or modification of an irrevocable trust.

3) Requires a person who provides consent for another person under these provisions to do so in writing.

4) Provides that the consent of a person who may represent and bind another person pursuant to these provisions is binding on the represented

person unless the represented person objects to the representation before the consent would have become effective.

5) Provides that a fiduciary who acts in reliance upon a representation made pursuant to these provisions is not to be liable for any resulting loss, unless the fiduciary committed a breach of trust intentionally, with gross negligence, in bad faith, or with reckless indifference to the interests of a beneficiary.

6) Provides that an action taken by the court under a specified division of the Probate Code is conclusive and binding upon a person represented pursuant to this section.

7) Provides that the following representation is permissible:

a) **A parent may represent and bind the parent's minor children and children subsequently born** if a guardian or guardian ad litem for the child or children has not been appointed;

b) A conservator of the estate may represent and bind the conservatee;

c) A guardian of the estate may represent and bind the minor ward;

d) A guardian ad litem with authority to act with respect to the matter may represent and bind the ward;

e) An agent with authority to act with respect to the matter may represent and bind the principal;

f) **A trustee may represent and bind the beneficiaries of the trust**; and

g) A personal representative may represent and bind persons interested in the estate.

8) Specifies that, unless otherwise represented, **a minor, an incapacitated person, a person subsequently born, or a person whose identity or location is unknown and not reasonably ascertainable may be represented by and bound by another person having a substantially identical interest with respect to the particular question or dispute**.

9) Provides that the following representation of successive interests is permissible:

a) If an interest has been given to persons who comprise a certain class upon the happening of a future event, the living persons who would constitute the class as of the date the representation is to be determined may represent and bind all other members of the class as of that date;

b) If an interest has been given to a living person or to a class of persons, and a substantially identical interest is to pass to another person or class of persons, or both, upon the happening of a future event, the living person or the living members of the class of persons who hold the interest may represent and bind all of the persons and classes of persons who might take on the happening of all future events; and

c) If an interest will be given to a living person or to a class of persons upon the happening of a future event and a substantially identical interest would pass to another person or class of persons, or both, upon the happening of one or more future events, the living person or the living members of the class of persons who will hold the interest on the happening of an earlier event may represent and bind all of the persons and classes of persons who might take on the happening of all future events.

10) Authorizes the holder of a lifetime or testamentary power of appointment to represent and bind persons who are permissible appointees or takers in default of that exercise.

11) Specifies that these provisions do not affect any of the following:

a) Requirements for notice in a court proceeding to any of the following: a person who has requested special notice; a person who has filed notice of appearance; and a particular person or entity required by statute to be given notice.

b) Availability of a guardian ad litem pursuant to Section 1003.

c) A representative's previously existing duties.

A key requirement is **that consent be in writing** for a person providing consent as a virtual representative for others, and this consent is binding unless the represented person objects before it takes effect. A representative can only bind others if there is no conflict of interest between the representative and the person being represented.

Virtual representation allows a competent adult, as per the statute, to represent and bind other individuals, such as those who are minors, incapacitated, or whose location is unknown, in matters concerning a trust.

Notice given to a person who is authorized to represent another has the same legal effect as if it were given directly to the represented person.

This bill aligns California with 47 other states who have already codified some form of virtual representation. The framework of the bill is somewhat similar to language found in the Uniform Trust Code adopted by the Uniform Law Commission regarding virtual representation.

Probate Code section 15804 is amended as follows:

~~15804.~~

~~(a) Subject to subdivisions (b) and (c), it is sufficient compliance with a requirement in this division that notice be given to a beneficiary, or to a person interested in the trust, if notice is given as follows:~~
~~(1) Where an interest has been limited on any future contingency to persons who will compose a certain class upon the happening of a certain event without further limitation, notice shall be given to the persons in being who would constitute the class if the event had happened immediately before the commencement of the proceeding or if there is no proceeding, if the event had happened immediately before notice is given.~~
~~(2) Where an interest has been limited to a living person and the same interest, or a share therein, has been further limited upon the happening of a future event to the surviving spouse or to persons who are or may be the distributees, heirs, issue, or other kindred of the living person, notice shall be given to the living person.~~
~~(3) Where an interest has been limited upon the happening of any future event to a person, or a class of persons, or both, and the interest, or a share of the interest, has been further limited upon the happening of an additional future event to another person, or a class of persons, or both, notice shall be given to the person or persons in being who would take the interest upon the happening of the first of these events.~~
~~(b) If a conflict of interest involving the subject matter of the trust proceeding exists between a person to whom notice is required to be given and a person to whom notice is not otherwise required to be given under subdivision (a), notice shall also be given to persons not otherwise entitled to notice under subdivision (a) with respect to whom the conflict of interest exists.~~
~~(c) Nothing in this section affects any of the following:~~
~~(1) Requirements for notice to a person who has requested special notice, a person who has filed notice of appearance, or a particular person or entity required by statute to be given notice.~~
~~(2) Availability of a guardian ad litem pursuant to Section 1003.~~
~~(d) As used in this section, "notice" includes other papers.~~

SEC. 2.

Section 15804 is added to the Probate Code, to read:

15804.

(a) Notice to a person who may represent and bind another person pursuant to this section is sufficient to comply with a requirement in this division that notice be given to the represented person, and has the same effect as if notice were given directly to that represented person.
(b) A person may serve as a representative as provided in this section and bind another person, except as follows:

(1) The representative and the represented person shall not have a conflict of interest during the representation with respect to the particular matter that is the subject of the representation.
(2) A settlor shall not represent and bind a beneficiary regarding the termination or modification of an irrevocable trust.
(c) (1) A person who provides consent for another person pursuant to this section shall do so in writing.
(2) The consent of a person who may represent and bind another person pursuant to this section is binding on the represented person unless the represented person objects to the representation before the consent would have become effective.
(3) A fiduciary who acts in reliance upon a representation made pursuant to this section shall not be liable for any resulting loss, unless the fiduciary committed a breach of trust intentionally, with gross negligence, in bad faith, or with reckless indifference to the interests of a beneficiary.
(d) An action taken by the court under this division is conclusive and binding upon a person represented pursuant to this section.
(e) The following representation is permissible:
(1) A parent may represent and bind the parent's minor children and children subsequently born if a guardian or guardian ad litem for the child or children has not been appointed.
(2) A conservator of the estate may represent and bind the conservatee.
(3) A guardian of the estate may represent and bind the minor ward.
(4) A guardian ad litem with authority to act with respect to the matter may represent and bind the ward.
(5) An agent with authority to act with respect to the matter may represent and bind the principal.
(6) A trustee may represent and bind the beneficiaries of the trust.
(7) A personal representative may represent and bind persons interested in the estate.
(f) Unless otherwise represented, a minor, an incapacitated person, a person subsequently born, or a person whose identity or location is unknown and not reasonably ascertainable may be represented by and bound by another person having a substantially identical interest with respect to the particular question or dispute.
(g) The following representation of successive interests is permissible:
(1) If an interest has been given to persons who comprise a certain class upon the happening of a future event, the living persons who would constitute the class as of the date the representation is to be determined may represent and bind all other members of the class as of that date.
(2) If an interest has been given to a living person or to a class of persons, and a substantially identical interest is to pass to another person or class of persons, or both, upon the happening of a future event, the living person or the living members of the class of persons who hold the interest may represent and bind all of the persons and classes of persons who might take on the happening of all future events.

(3) If an interest will be given to a living person or to a class of persons upon the happening of a future event and a substantially identical interest would pass to another person or class of persons, or both, upon the happening of one or more future events, the living person or the living members of the class of persons who will hold the interest on the happening of an earlier event may represent and bind all of the persons and classes of persons who might take on the happening of all future events.
(h) The holder of a lifetime or testamentary power of appointment may represent and bind persons who are permissible appointees or takers in default of that exercise.
(i) This section does not affect any of the following:
(1) Requirements for notice in a court proceeding to any of the following:
(A) A person who has requested special notice.
(B) A person who has filed notice of appearance.
(C) A particular person or entity required by statute to be given notice.
(2) Availability of a guardian ad litem pursuant to Section 1003.
(3) A representative's previously existing duties.
(j) For purposes of this section, "notice" includes other papers.

5. An Action For Removal Of A Trustee Is One Involving A Dispute Over Title, Justifying a *Lis Pendens*. [SPB]

NEWELL V. SUPERIOR COURT (2024) 107 Cal.App.5th 728 [December 20, 2024]

Summary: Lucy Mancini Newell was supposed to be the trustee and sole beneficiary of her parents' trust. But after her father, Arthur Mancini, died in his early 90's, Newell learned he had amended the trust to name his 56-year-old caregiver, Neneth Rollins, as trustee of the trust and sole beneficiary. Newell filed a petition challenging the validity of the trust amendments that changed the trustee and beneficiary of the trust from Newell to Rollins. When Newell discovered Rollins used trust assets to purchase real property, Newell recorded a *lis pendens* against the property and amended her petition to include, among other things, a request to impose a constructive trust on the property. Rollins moved to expunge the *lis pendens* under Code of Civil Procedure section 405.31, which provides, in part: "In proceedings under this chapter, the court shall order the notice expunged if the court finds that the pleading on which the notice is based does not contain a real property claim." The probate court, in Los Angeles Superior, granted the motion, ruling Newell's petition did not contain a "real property claim," within the meaning of related Code of Civil Procedure section 405.4.

Newell filed a petition for writ of mandate, and the Second District Court of Appeal granted the petition reasoning that the claim did involve one concerning real property. The Court of Appeal reasoned that the trustee of a trust holds title to real property, but unlike a corporation, a trust is not a legal entity. Rather, a trust is a fiduciary relationship with respect to property. If Newell succeeded on her claims, the probate court would have to appoint a new trustee of the trust,

who would then be entitled to hold title to the property in his or her name as successor trustee of the trust. In that event, Newell's petition would change the name of the titleholder. True, as the probate court stated, title would still be in the name of the trustee, but the trustee would be a different person, and the name of the title owner on the deed would be different.

[Note: Code of Civil Procedure section 405.4 provides: " 'Real property claim' means the cause or causes of action in a pleading which would, if meritorious, affect (a) title to, or the right to possession of, specific real property or (b) the use of an easement identified in the pleading, other than an easement obtained pursuant to statute by any regulated public utility."]

6. Failed DSUE Reporting Highlights Technical Requirements of Filing Portability Only Estate Tax Returns. [JWP]

ESTATE OF BILLY S. ROWLAND V. COMMISSIONER [2025] T.C. Memo. 2025-76 [July 15, 2025]

Summary: In *Rowland*, an estate tax return (Form 706) was filed for the estate of first spouse to die (deceased's estate). No Form 706 was due other than to claim DSUE for the survivor. The deceased's estate timely filed an extension of time to file the Form 706, yet filed it about 6 months past the extended due date claiming DSUE of $3,712,562. "Filed Pursuant to Rev Proc 2017-34" was written across the top. While the Form 706 listed assets the deceased owned, it did not include any information as to the fair market value of those assets – the Form 706 merely estimated the gross value of the estate. Bequests made by the deceased included specific pecuniary bequests to individuals and a charity, a portion to her surviving spouse, 20% of the trust estate to a charitable family foundation, and the residue to trusts for her grandchildren.

After the survivor's death, the survivor's estate filed its own estate tax return claiming DSUE from the deceased's estate. The survivor's estate reported estate tax of over $4m, and thus needed the DSUE to reduce the estate tax due (the DSUE would have been worth $1,485,027. IRS selected the estate tax return for the survivor's estate for examination and found his estate was ineligible to claim the DSUE.

On the Commissioner's motion for summary judgment, the Tax Court agreed with IRS that the survivor was ineligible to claim the DSUE. First, the Form 706 for deceased's estate was not timely filed. IRC § 2010(c)(5)(A) explicitly prohibits a portability election if the Form 706 is filed after its statutory deadline, including any granted extensions. However, IRS granted a safe harbor for "Portability Only Returns" at that time via Rev. Proc. 2017-34 (allowing a Portability Only Return to be filed on later of January 2, 2018 or the second anniversary of the decedent's date of death – note Rev. Proc. 2022-32 extended to the fifth anniversary of the decedent's date of death).

While Rev. Proc. 2017-34 provides a safe harbor for late-filed Portability Only Returns, there are specific requirements that must be met. Among those requirements is that the return must be completely and properly prepared (meaning, it must follow the instructions and specified regulations). Those instructions include directions on how to value assets. There is also a special "relaxed" approach to valuation. However, that approach may not be used if the "value of such property relates to, affects, or is needed to determine, the value passing from the decedent to a recipient other than the recipient of the marital or charitable deduction property that may be used."

Here, the Form 706 for the deceased's estate did not provide valuation information. Further, the Form 706 made no effort to identify and distinguish marital and charitable deduction property (and applied the relaxed valuation approach to all property). Ultimately, property was to pass to the surviving spouse and the charitable family foundation. Thus, the assets reported on the Form 706 for the deceased's estate related to, affected, or were needed to determine, the value passing from the deceased to the trusts for her grandchildren. As such, relaxed valuation reporting does not apply.

7. SB 1458 (Allen) The Revised Uniform Fiduciary Access to Digital Assets Act. [EAN]

Status: 09/27/24 Chaptered – Secretary of State – Chapter 799 Statutes of 2024

Per Legislative Counsel's Digest:

Existing law, the Revised Uniform Fiduciary Access to Digital Assets Act, generally authorizes a decedent's fiduciary to access and manage digital assets and electronic communications, as specified. The act authorizes a user, defined to mean a person who has an account with a custodian, to use an online tool to direct the custodian to disclose or not disclose the user's digital assets to a designated recipient, which is defined to mean a person chosen by a user using an online tool to administer digital assets of the user. The act specifies that, if a user has not used an online tool to give that direction, the user may give direction regarding the disclosure of digital assets in a will, trust, power of attorney, or other record to a fiduciary. The act defines "fiduciary" for purposes of the act to mean an original, additional, or successor personal representative or trustee. Under existing law, the act applies in certain situations, including when a fiduciary is acting under a will.

This bill would add conservator and agent to the definition of "fiduciary" for purposes of these provisions. The bill would also define "agent," "conservator," "conservatee," and "principal" for purposes of the act. This bill would also make the act applicable if a fiduciary is acting under a power of attorney or to a conservator, as specified.

The bill would require a custodian to disclose to an agent the content of electronic communications or the catalogue of electronic communications sent or received

by a principal and digital assets, other than the content of electronic communications, as specified. The bill would require a custodian to disclose to a conservator the catalogue of electronic communications sent or received by a conservatee and digital assets, other than the content of electronic communications, as specified.

Existing law imposes the legal duties of care, loyalty, and confidentiality on a fiduciary charged with digital assets. Existing law gives a fiduciary specific authorities when acting within the scope of their duties, including making the fiduciary an authorized user of the property of the decedent or settlor, as specified. Existing law authorizes a fiduciary to request that a custodian terminate a user's account and requires that request to include specific information, including a certified copy of the letter of appointment of the representative, a small-estate affidavit, a court order, a certified copy of the trust instrument, or the certification of the trust, as specified.

This bill would extend that authority to a fiduciary with respect to the property of a conservatee or principal. The bill would also authorize a fiduciary, or an affiant acting with respect to a deceased user, as specified, to submit a request for termination with a power of attorney.

Existing law requires a custodian to comply with a request from a fiduciary or designated recipient to disclose digital assets or terminate an account within 60 days after the receipt of information, as specified. Existing law specifies that it does not limit a custodian's ability to obtain, or require a fiduciary or designated recipient to obtain, a court order that makes specific findings, including that the account belongs to the decedent, principal, or trustee and that there is sufficient consent from the decedent, principal, or settlor to support the disclosure.

This bill would also authorize a custodian to, or require a fiduciary or designated recipient to, obtain a court order that finds that the account belongs to, and that there is sufficient consent from, the conservatee. The bill would also make technical and conforming changes.

Comment: The bill was sponsored by the California Lawyers Association, Trusts and Estates Section Executive Committee (TEXCOM). The Committee received no timely support or opposition. Its purpose is to allow "lifetime fiduciaries" access to digital assets.

The Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) established procedures for a *decedent's* personal representative or trustee to obtain digital assets and electronic information from the custodian of those assets for the purpose of administering the estate or trust. This bill expands RUFADAA to additionally apply to a fiduciary acting as a conservator of the estate of a living individual or an agent acting as an attorney-in-fact who is granted authority under a durable or nondurable power of attorney.

What are digital assets? Digital assets are broadly defined as electronic records in which an individual has a right or interest. This includes a wide range of intangible assets that exist online or in electronic form. Digital assets include things such as emails, texts, messages, social media accounts, photos, online bank accounts, cryptocurrency, and online-stored intellectual property.

To make a request, the fiduciary must provide specified forms of documentation, including for example: (a) a written request for disclosure in physical or electronic form; and (b) a certified copy of the user's will, trust, power of attorney or other record evidencing the user's consent to disclosure, unless the user provided direction using an online tool.

Drafters: either update your powers of attorney to include authority to obtain digital assets, or, if appropriate, expressly do not grant this authority as to all or specific digital assets. Or, grant authority, but allow the user to provide directions to the fiduciary on how to exercise that authority similar to the form below.

Under RUFADAA, a user may prohibit disclosure of digital assets. Clients who value their privacy may not want to allow unlimited access to their email, social media accounts, and/or texts in the event of their incapacity or death.

Also, consider that in the context of post-mortem trust administration, digital assets are part of the trust estate. Beneficiaries are entitled to inspect trust property without the need to engage in formal discovery. *Strauss v. Superior Court of Los Angeles County* (1950) 36 Cal.2d 396. Further to the above privacy concerns, clients may be even more troubled over their discreteness if they know beneficiaries may ask to inspect digital assets marshalled by their successor trustee.

DIGITAL ASSETS INVENTORY AND DIRECTIVE

We hereby declare that we are holding all of the digital assets described herein in trust under the terms of the [TRUSTNAME] LIVING TRUST dated [EDATE]. It is our request, intent, and directive that the trustee follow the directions hereinbelow, and that the custodian of each digital asset provide the disclosure as indicated, per the trustee's Digital Asset powers in Section 7.8 of the trust.

- *"Full access" is intended to provide the trustee with complete control over the asset, including the ability to manage, modify, and delete the digital assets.*

- *"Partial access" is intended to provide the trustee limited entry to a digital account, providing only enough information to complete specific acts of administration, per the trustee's discretion, subject to any restrictions, if any, as explained below.*

- *"Copy-only"*

- **E-mail Account (e.g., Yahoo!, Gmail, AOL, Outlook, Hotmail, Juno, employer's E-mail account)**

Name of E-mail Service Provider and Web Address	**Username/E-mail Address**	**Access and Directions**
1.		Full ☐ Partial (explain below) ☐ Copy-only Access ☐ No Access ☐ Directions (e.g. delete, archive, distribute to _____, etc.) _____ _____

Continued….

8. An Order Suspending The Powers Of A Trustee Is Confirmed As Non-Appealable. [SPB]

YOUNG V. HARTFORD (2024) 106 Cal.App.5th 730 (November 12, 2024)

Summary: Defendant Stanley Hartford is the trust protector and defendant Debbie Fleshman is the trustee of the Carolyn Patricia Young Family Trust. Plaintiff Christa Ann Young is a current beneficiary of the trust. Plaintiff alleges defendants are conspiring to improperly withhold trust funds from plaintiff and from certain charities that the trust instrument dictates should receive a portion of the net income of the trust annually. The alleged purpose of the conspiracy is to preserve assets for the benefit of defendant Debbie Fleshman, who (in addition to being trustee) is a residuary beneficiary of the Trust, and will inherit half of its residue upon plaintiff's death. Plaintiff filed an *ex parte* application seeking the suspension of defendants' powers arising from their respective roles as trust protector and trustee of the trust and appointment of a private professional fiduciary as "interim" trustee. The Orange County Superior Court granted the ex parte application and issued a minute order suspending the powers of the defendants. Both defendants (i.e., the trust protector and trustee) appealed.

Plaintiff filed a motion to dismiss the appeal before completion of the record. The Fourth District Court of Appeal granted the motion, confirming that the order appealed from was non-appealable. The Court of Appeal reasoned that nothing in Probate Code section 1300 or 1304, the relevant statutes, rendered the order appealable.

Note: The Court of Appeal analyzed Probate Code section 15642, which only deals with trustees. It, therefore, seems the California courts continue to treat trust protectors as fiduciaries and apply law applicable to trustees.

9. Marital Deduction Planning Proves to be Temperamental. [JWP]

ESTATE OF MARTIN W. GRIFFIN ET AL. V. COMMISSIONER [2025] T.C. Memo. 2025-47 [May 20, 2025]

Summary: The Tax Court addressed whether two bequests from the deceased husband in trust for his surviving wife qualified for the estate tax marital deduction. The deceased husband had two trusts: (i) his revocable trust (the "RLT"); and (ii) the MCC Trust (a trust that, by its terms, benefited his wife and would qualify as a QTIP Trust). The RLT directed that at his death: (a) $2 million was to pass to the MCC Trust; and (b) $300,000 was to pass to the trustee of the MCC Trust as "living expense reserve" for the deceased husband's surviving wife.

The parties agreed that the $2 million bequest to the MCC Trust was a terminable interest. Thus, the bequest would not qualify for the estate tax marital deduction unless a QTIP election is made. The estate tax return for deceased husband's estate failed to make a valid QTIP election for the $2 million bequest to the MCC Trust (it was not reported on Schedule M, Part A and nothing else in the return indicated an intent to make a QTIP election). As a result, deceased husband's estate did not qualify for the estate tax marital deduction on the $2 million bequest.

The Commissioner asserted that the $300,000 bequest also did not qualify for the estate tax marital deduction. The argument was that the $300,000 also passed to the MCC Trust and no QTIP election was made. The Tax Court found, however, that under Kentucky law the $300,000 bequest was to a separate trust (albeit with the same trustee as the MCC Trust). In addition, the remainder of the trust passed to surviving wife's estate. Thus, it was not a terminable interest and no QTIP election was required to qualify the bequest for the estate tax marital deduction. The $300,000 qualified for the estate tax marital deduction.

10. A Court's Duty Is To Ascertain And, If Possible, Give Effect To Settlor Intent...Except Where Prohibited By Law Or Opposed To Public Policy. [EAN]

GODOY V. LINZNER (2024) 106 Cal.App.5th 765 [November 11, 2024]

Summary: Silvia's trust devised the trust property, including her home, which is the subject of this case, in equal shares among her three children at the time of her death. A final trust amendment, of course drafted by Silvia, herself, stated:

"would like to add the following" language to "will/living trust":

"With the intention of leaving my house to my kids (Sonia, Arturo, and Leticia) which I worked all my life for, my legacy [and] my wish, is to keep the house as a place for all three of my children to enjoy, live and prosper and not to be sold or given outside of a [sic] family."

Below that line, she included four clauses that read in full as follows:

"(A) Should any one of my children [Sonia, Arturo, or Leticia] upon my death or in the future wish to sell their portion they must to [sic] offer it for 100,000 (one hundred thousand doll.) to each other.

(B) They must be flexible in received [sic] the purchase if it takes one to ten years (1–10 years).

(C) If the sibling chooses to split the payments of the property 50% and 50% it is equal shares, it is my wish to do so.

(D) My wish is for this home to be in the family, no outsiders. No dispute or adversary behavior among my children take place. Therefore, no contesting of my will/trust and this document. It is a gift."

After Silvia's death, two of the children filed a petition for instructions to determine whether Silvia's "wishes" in the amendment were precatory or mandatory. If the wishes were mandatory, those children asked the probate court to modify the trust instrument by striking the amendment because its language imposed an unreasonable restraint on alienation under Civil Code section 711. They also sought an order compelling their other sibling, as trustee, to sell the home on the open market and equally distribute the proceeds, as well as an order instructing her to not use trust assets to purchase their interests.

The trustee objected to each of these requests, asserting that section 711 did not apply to testamentary gifts of real property, and that in any event the amendment did not impose an unreasonable restraint on alienation under section 711.

The probate court determined Silvia's wishes in the amendment were mandatory, not precatory, but agreed that section 711's prohibition of unreasonable restraints on alienation applied, and the amendment unreasonably restrained alienation by precluding an open market sale at fair market value. The trustee appealed, and the appellate court affirmed.

The appellate court concluded that a testator has the right to distribute his or her property upon such terms and conditions as seem just and proper to him or her; and the recipient of the testator's bounty is required to partake thereof under the terms provided in the testamentary document, so long as such terms and conditions are not prohibited by some law or opposed to public policy. Subjecting a fee simple interest to an unreasonable restraint on alienation is both prohibited by law and contrary to public policy.

Section 711 applies to testamentary instruments. When a restraint on alienation encumbers a fee simple interest, the restraint is typically unreasonable because it tends "to defeat the very purpose of the interest created. Such is the case here. The trust instrument conveyed the property in fee simple, which vested the siblings with the right to freely alienate their respective interests. But that right is sabotaged by the language in the amendment restricting any sale of the interests to $100,000 and only amongst the siblings.

Comment: Silvia could have created a trust to hold her home after her death, but did not. The gift was outright. Although her trust could validly impose terms and conditions on the devise, those conditions may not fall under the prohibitions under 711.

If Silvia had gone to an attorney, perhaps years of litigation and attorney fees would have been avoided.

Second, if Silvia had seen an attorney, what terms could she have included in an ongoing trust? Or stated otherwise, when do the terms of a trust violate public policy, as per Probate Code section 15203? Under California law, trust terms that violate public policy include, for example, provisions that incentivize harmful actions, waive trustee accountability, shield trust assets from child support claims, restrict successor trustee access to information, or completely insulate trustees from oversight.

11. Attorney's Fees Awardable For A Frivolous Anti-SLAPP Motion. [SPB]

Littlefield v. Littlefield (2024) 106 Cal.App.5th 815 [December 4, 2024]

Summary: The parties to this dispute are co-trustees of The Pony Tracks Ranch Trust (the Trust) and its three sub-trusts. David and Scott are Allison's brothers, and Denise Sobel is Allison's aunt. Allison filed a verified petition alleging "request[s] for relief" for: (1) removal of the co-trustees under Probate Code section 15642; (2) breach of fiduciary duty; and (3) breach of the Trust. The petition also included a "cause of action" for declaratory and injunctive relief. [Note: The petition alleged that Jacques Littlefield, the father of Allison, David, and Scott, created the Trust "to acquire and retain for the collective benefit of [his] descendants" the real property known as Pony Tracks Ranch (the Ranch).] The co-trustees filed a special motion to strike the petition under Code of Civil Procedure section 425.16 (the anti-SLAPP motion). Their notice of motion stated that they sought to strike the petition "in its entirety, or in the alternative, to strike" all causes of action and the prayer for relief. The co-trustees alleged the petition implicated free speech because Allison sought to enjoin them from harassing, disparaging or defaming [her], or from permitting any employees or other agents of the LLC owning the Ranch from doing so. The co-trustees argued that the anti-SLAPP statute applied because "the speech that [Allison] asks to be restricted—the [appellants'] deliberation in response to an employee['s] concerns of guns in the workplace—involves an issue of public interest." Allison opposed

the motion, arguing that the action was about the misconduct of trustees managing private property. With respect to the first step of the anti-SLAPP analysis, Allison argued that the co-trustees failed to satisfy their burden of identifying acts that were protected or causes of action arising from protected activity under section 425.16. Allison sought attorney's fees on the ground that the motion was frivolous. The trial court (San Mateo Superior Court) denied the anti-SLAPP motion, reasoning that the co-trustees did not meet their burden under "Prong I." The trial court also reasoned that the co-trustees failed to show the petition arose from protected activity under the category of public interest under section 425.16(e)(4) because the allegations concern the speaker and a small, specific audience, it did not involve a public figure, and it was not covered by the news. The trial court, however, found that the anti-SLAPP motion was not frivolous and denied Allison's request for attorney's fees.

The First District Court of Appeal affirmed the trial court's denial of the anti-SLAPP motion, but it reversed on the issue of attorney's fees, finding that the motion was frivolous. The Court of Appeal agreed with Allison that "[n]o straight-faced argument can be made" for striking the entire petition or even any entire cause of action, each of which included claims for relief based on clearly unprotected activity such as restricting Allison's use of the Ranch. Further, the Court of Appeal reasoned that the co-trustees' own acknowledgement that "not everything in the Petition involves protected activity" should have alerted them to the fact that, at a minimum, they were vastly overreaching.

12. Is it One, Beautiful or Big? Key Provisions of The One Big Beautiful Bill Act (OBBBA). [JWP]

H.R.1 ONE BIG BEAUTIFUL BILL ACT [July 4, 2025]

QSBS PROVISIONS [2025] I.R.C. § 1202

Summary: The OBBBA enhances the benefits of IRC §1202 Qualified Small Business Stock (QSBS).

The OBBBA increases the two main financial thresholds for QSBS: the per-issuer cumulative exclusion limit rises from $10 million to $15 million, and the maximum company size ("aggregate gross asset" limit) for qualification increases from $50 million to $75 million. Both new limits are adjusted for inflation. Furthermore, the QSBS gain exclusion is now tiered by holding period: 50% for three years, 75% for four years, and 100% for five years or more.

INCOME TAX CHARITABLE DEDUCTIONS AND ITEMIZED DEDUCTIONS

Summary: The OBBBA introduces significant and permanent changes to charitable contribution deductions, taking effect in tax year 2026.

For taxpayers who take the standard deduction, a new benefit is created: a permanent, above-the-line deduction of up to $1,000 per filer for charitable donations.

For taxpayers who itemize, the OBBBA introduces or makes important changes.

First, the law permanently establishes a new floor on the deduction for charitable contributions. Starting in 2026, donations will only be deductible to the extent they exceed 0.5% of the taxpayer's Adjusted Gross Income (AGI). For example, a taxpayer with $200,000 in AGI would not be able to deduct the first $1,000 of their charitable giving, but anything over that threshold would remain deductible.

Second, the OBBBA permanently increases the AGI limit for cash contributions to public charities to 60% of AGI.

Third, a new limitation takes effect in 2026 for taxpayers in the highest tax bracket. This rule limits the tax benefit of all itemized deductions to 35%, instead of the 37% top bracket. Mathematically, taxpayers add itemized deductions to AGI. They then reduce their itemized deductions by taking 2/37 of the lesser of either: (i) their itemized deductions; or (ii) their income that exceeds the 37 percent tax bracket. Example for married filing jointly: AGI of $900,000 and $100,000 of itemized deductions. The taxpayer would reduce itemized deductions by 2/37ths of the lesser of: (i) $100,000; or (ii) $487,550 ($900,000, plus $100,000, minus cut off for 35% bracket $512,450). So in this example, a reduction of $5,405.

Charitable deduction carryforwards from 2025 and prior charitable gifts are not subject to the new 0.5 percent of AGI floor because the original contribution occurred before the rule's effective date. However, they are subject to the 35% maximum benefit limit on itemized deductions in 2026 and future years.

Fourth, the OBBBA temporarily (tax years 2025 through 2029) increases SALT deduction cap to $40,000. However, the $40,000 cap is reduced (but not beyond $10,000) for taxpayers with income between $500,000 and $600,000 (for single filers and married filing jointly). The cap increases and threshold amounts each increase by 1% per year thought 2029. Note that PTET planning remains effective (note CA extended PTET through December 31, 2030).

TRUMP SAVINGS ACCOUNTS [2025] I.R.C. §§ 530A, 128

Summary: OBBBA now allows for "Trump Savings Accounts." These are separate accounts for children under the age of 18. Funding of these accounts is scheduled to begin in July 2026. Here are some basic limits and requirements: (i) the child is the owner of the account; (ii) total aggregate contributions from individuals and employers are capped at $5,000 annually per child; (iii) contributions by individuals are made with after-tax dollars; (iv) up to $2,500 may be contributed by an employer and is excluded from the employee's gross

income (employer contribution may be made to the employee's account or the account of the employee's dependent child); (v) a one-time $1,000 contribution from the United States Government is provided for children born between 2025 and 2028 and does not count against the annual $5,000 limit; (vi) contributions from qualified charities and government programs do not count against the annual $5,000 limit; (vii) investment earnings within the account accrue tax-deferred; (viii) funds must invested in mutual funds or exchange-traded funds that track a qualified index and account fees are limited to 0.1% of the account balance; (ix) the child cannot access the funds in his or her account until reaching age 18 (but can roll to an ABLE account at age 17); (x) upon reaching age 18, the child's Trump Savings Account automatically converts to a Traditional IRA subject to the IRA rules (distributions 10% penalty if taken before age 59½ and penalty exceptions exist for qualified expenses such as higher education and first-time home purchases); and (xi) taxation of distributions: contributions from individuals not taxable, employer contributions and earnings are taxable.

13. SB 1106 (Rubio) The Kasem-Nichols-Rooney Law. [EAN]

Status: 09/22/24 Chaptered – Secretary of State – Chapter 455 Statutes of 2024

Per Legislative Counsel's Digest:

The Guardianship-Conservatorship Law generally establishes the powers and duties of a guardian or conservator of a person, an estate, or both. Existing law authorizes a conservator to establish the residence of a conservatee within and outside of California, as prescribed, and requires the conservator to select the least restrictive appropriate residence that is available, which existing law presumes to be the personal residence of the conservatee. Existing law requires the conservator to file a notice of change of residence with the court within 30 days of the date of the change, and requires the conservator to deliver a copy of the notice to the spouse or registered domestic partner of the conservatee, if any, and to the relatives named in the petition for appointment of the conservator, as specified, and to file proof of delivery of that notice with the court. If the conservator proposes to remove the conservatee from their personal residence, existing law requires the conservator to provide notice to those persons at least 15 days before the proposed removal of the conservatee, except as specified. Existing law, at any time after issuance of letters of guardianship or conservatorship, authorizes specified individuals, including an interested person, to file with the court clerk a written request for special notice.

This bill, the Kasem-Nichols-Rooney Law, would additionally require the conservator to provide notice if the conservator proposes to remove the conservatee from their current residence. The bill also would require the conservator to provide notice under the above circumstances to a person who has requested special notice of the matter, and would define "interested person" for these purposes. When the conservator is removing the conservatee from their current residence or personal residence, the bill would require the conservator

to provide notice to the designated persons at least 20 days before the proposed removal of the conservatee, except as specified.

Existing law requires a conservator to provide notice of a conservatee's death by delivering a copy of the notice to specified persons and by filing a proof of delivery with the court, unless otherwise ordered by the court.

This bill additionally would require the conservator to provide notice to the above-specified persons of the date, time, and location of any funeral, burial, or memorial arrangements for the conservatee, if the conservator makes those arrangements. The bill would require that notice to be delivered electronically whenever possible.
This bill would define "interested person" for these purposes.

Comment: There is a rebuttable presumption that the conservatee's personal residence at the time of the commencement of the conservatorship is the least restrictive appropriate residence; the presumption may be overcome by clear and convincing evidence. (Prob. Code section 2352.5).

A conservator may establish the residence of the conservatee at any place within California without the permission of the court, which is the least restrictive appropriate residence that is available and necessary to meet the needs of the conservatee and that is in the best interests of the conservatee, absent a court order reserving this right to the conservatee. (Prob. Code, section 2352(b)). If a conservator intends to change the conservatee's residence, the conservator shall file a notice of change of residence with the court within 30 days of the change. The notice must include a declaration stating that the conservatee's change of residence is the least restrictive appropriate residence.

If, however, the conservator proposes to remove the conservatee from their personal residence, the conservator must provide a notice of intention at least 15 days before the proposed removal, absent emergency circumstances. The notice must be delivered to the conservatee's spouse or domestic partner, if any, and heirs entitled to notice, unless the court waives the notice requirement for good cause.

At any time after the establishment of a conservatorship, the spouse or domestic partner of the conservatee, any relative or creditor of the conservatee, or any other interested person may file for special notice. There are restrictions on who qualifies as an interested person; the statute specifically lists the conservatee's spouse or domestic partner, relatives, and creditors, but also extends the right to request special notice to "any other interested person." The request for special notice may request notice on specific topics—such as petitions filed or inventories and appraisals of the estate's property—or all matters for which notice can be provided.

This bill clarifies who may receive special notice when a conservator is moving the conservatee's place of residence, and extends the timeframe for when a

conservator must provide a notice of intent to move the conservatee from their personal residence, from 15 days to 20 days.

Specifically, this bill clarifies that a conservator's family and friends may request special notice of a conservatee's change of residence, and adds provisions requiring notice of any funeral or burial arrangements to be provided to family members and interested persons, as specified.

SB 1106 is intended to strengthen protections for conserved individuals by requiring conservators to notify loved ones of important developments, such as when they are moved from their residence, when they pass away, and details of the conservatee's funeral/memorial/burial services if the conservator arranges them.

14. Even Though A Prevailing Defendant In A Financial Elder Abuse Case Cannot Recover Attorney's Fees Under The Elder Abuse Statutes, Nothing Prohibits A Prevailing Defendant From Recovering Attorney's Fees For "Cost of Proof" Under Code Of Civil Procedure Section 2033.420. [SPB]

GAMO V. MERRELL (2025) 113 Cal.App.5th 656 [August 14, 2025]

Summary: Plaintiff Tirso Gamo purchased a car from defendants J Star Auto Group, Inc. (J Star) and Jared Merrell (collectively, the sellers). He later sued them for financial elder abuse (Welf. & Inst. Code, § 15610.30), violation of the Consumers Legal Remedies Act (CLRA; Civ. Code, § 1750 et seq.), and other related claims. The sellers prevailed on all claims at trial, and then they filed a motion for attorney fees under Code of Civil Procedure section 2033.420 (cost-of-proof fees) and Civil Code section 1780, subdivision (e) (CLRA fees). Generally, the former allows a party to request fees where it serves requests for admission and the responding party unreasonably fails to admit a request that the serving party later proves true. As to CLRA fees, they can be sought by a prevailing defendant when a plaintiff prosecutes a CLRA claim in bad faith.

The trial court (Orange County Superior) held the sellers' fee request was barred as a matter of law by section 15657.5, subdivision (a), which awards fees to prevailing plaintiffs on financial elder abuse claims but not to prevailing defendants. The trial court found this unilateral fee provision prohibited the sellers from obtaining fees for prevailing on the financial elder abuse claim and the other intertwined claims.

The Fourth District Court of Appeal affirmed, in part, and reversed, in part (affirming as to CLRA fees, but reversing as to cost-of-proof fees). The Court of Appeal reasoned that the trial court correctly observed that section 15657.5, subdivision (a) contains a unilateral fee provision. This provision bars defendants from obtaining attorney fees for prevailing on financial elder abuse claims and all intertwined claims. Awarding a defendant fees for prevailing on

such claims would contravene this unilateral fee provision. Here, however, the sellers did not seek fees for prevailing on the claims against them. Rather, they sought cost-of-proof fees, which arise from Gamo's alleged failure to admit certain requests for admission in discovery without good reason. This caused the sellers to incur fees to prove the truth of these requests. Cost-of-proof fees can be awarded without interfering with the public policy behind the unilateral fee provision in section 15657.5, subdivision (a). As these statutes can be harmonized, the Court of Appeal concluded that the trial court erred by finding cost-of-proof fees were barred as a matter of law. As to CLRA fees, the Court of Appeal concluded that sellers have not met their burden of showing error.

15. Of Trusts and 1031 Exchanges – Holding for Investment. [JWP]

PLR 202450005 [2024] [December 17, 2024]

Summary: This PLR deals with whether distribution of real estate subject to a binding contract for sale from a trust will preclude the real estate from being held for investment or for the productive use in a trade or business within the meaning of IRC § 1031. A testamentary trust was created under father's Will for the benefit of his daughters and their descendants. The trust provides that it is to terminate upon the death of the last surviving grandchild who was living at father's death (Terminating Event).

The Trust owned undeveloped land, referred to as the "Property," which the trust held for investment purposes throughout its existence. The Trustees desired to sell the Property and acquire replacement property pursuant to IRC § 1031. To that end, the Trustees entered into a sales contract with a buyer. While in contract, the Terminating Event occurred. The Trustees determined that it no longer made sense for the trust to complete the IRC § 1031 exchange. However, the Trustees believed it was in the best interests of the trust beneficiaries to allow each trust beneficiary to complete his or her own IRC § 1031 exchange.

The Trustees submitted a termination plan to state probate court. The Termination Plan included completing sale of the Property and the Trustees agreeing to accommodate beneficiaries interested in completing their own IRC § 1031 exchange (an "Exchange Beneficiary"). The plan was to form a wholly owned tax disregarded LLC for each Exchange Beneficiary owned by the Exchange Beneficiary. The Trustees would then distribute an undivided tenancy-in-common (TIC) interest in the Property, subject to the sales contract, to each Exchange Beneficiary's LLC. Thereafter, the Trustees will cause the Property to be sold. Each Exchange Beneficiary's LLC could then engage in a separate IRC § 1031 exchange.

IRS ruled that distribution of a TIC interest subject to the sales contract to Exchange Beneficiary's LLC as result of the trust's involuntary termination will not preclude the TIC Interest from being held for investment or for the productive use in a trade or business within the meaning of IRC § 1031. IRS reasoned that,

"[b]ecause Taxpayer's exchange is independent of the involuntary termination of the Trust, the transfer of an interest in the Property to Taxpayer subject to a contract for its disposition will not violate the holding requirement of Section 1031(a) with respect to the subject exchange."

16. Are You My Friend? [EAN]

CONSERVATORSHIP OF ANNE S. (2025) 112 Cal.App.5th 1021 [July 10, 2025]

Summary: Attorneys Sobel and Hankin ("petitioners'") filed a joint petition to appoint Sobel as the conservator of the person and estate of Anne. Sobel stated he was a confidant and adviser to Anne, and knew her now-deceased husband since 1990. Hankin, on the other hand, stated a much more nominal relationship, limited to encountering and befriending Anne on one occasion while walking in their same neighborhood.

Although the petition was initially supported by Anne's health care agent, medical professionals, and other individuals, Anne objected, and her stepson filed a competing petition. Sobel ultimately dismissed his portion of the petition, but a determined Hankin maintained it in his own right.

Anne, through counsel, moved for judgment on the pleadings and sought sanctions against Hankin, arguing that the petition was legally frivolous as Hankin lacked standing. The trial court granted the motion, and the appellate court affirmed.

Despite Hankin's argument that he was an "interested person" and "friend", the court looked to Probate Code section 48, finding an interested person is: (1) an heir, devisee, child, spouse, creditor, beneficiary, and other person having who could be financially affected by the preceding, (2) any person having priority for appointment as personal representative, or (3) a fiduciary representing an interested person. Hankin was unable to explain how he qualified under those definitions.

Hankin also argued he was a friend of Anne. The court looked to common meanings attached to and defining the term friend, for example, a person with one with whom one has developed a close and informal relationship of mutual trust and intimacy. Anne did state on the court record at a hearing that she did not know Mr. Hankin and that he was a complete stranger. That, along with his single fleeting neighborhood interaction, supported the court's conclusion that he was not her friend.

Comment. Compare this case with SB 1106. Although SB 1106 specifically includes "friends" as notice recipients in certain situations, and discussed the right to request special notice of an "interested person", "friend" status per this case requires a close relationship, and "any other person", per Probate Code section 48, is an other person who has a property right in or a claim against the trust or estate which may be affected by the proceeding.

Probate Code section 48 does say the meaning of "interested person" as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, any proceeding. Although the meaning of "interested person" may vary, Hankin couldn't show enough connection to Anne to justify granting him standing.

17. The "Harmless Error" Doctrine Does Not Apply To Revocation Of Wills In California. [SPB]

ESTATE OF BOYAJIAN (2025) 112 Cal.App.5th 843 [July 3, 2025]

Summary: In this will contest, siblings Anush Boyajian and Robert Boyajian were proponents of competing documents regarding their deceased mother's (Layla Boyajian) testamentary intent—respectively, a will signed in 2006 and a document signed in 2018 purporting to revoke the will. The trial court (Orange County Superior) ruled for Robert, concluding the 2018 document "canceled" the will, thus revoking it. (Prob. Code, § 6120(b).) The trial court also found Layla specifically intended the document to revoke the will.

Anush contended the trial court erred because revocation by cancellation must occur by physical alteration of the will—not by a separate, stand-alone document. Robert disagreed, but he also asserted the revocation was valid pursuant to section 6120(a), because the 2018 document qualified as a "subsequent will."

The Fourt District Court of Appeal reversed, reasoning that revocation may well have been Layla's intention, but Probate Code section 6120 requires more to effect a revocation by cancellation. Specifically, the Court of Appeal reasoned that cancellation under section 6120 requires a physical act akin to burning, tearing, obliterating, or destroying. The Court of Appeal commented that requiring a physical alteration to the will to find a revocation is an ancient concept, perhaps in need of revisiting. But Robert presented no recent California authority expanding the concept of cancellation beyond its historically narrow sense of a "lattice work" or " 'criss-cross' " drawn over text. Accordingly, the Court of Appeal concluded that as a stand-alone document, the 2018 document (a purported revocation) could not and did not cancel the 2006 will. The Court of Appeal also rejected Robert's argument that the 2018 document was somehow a subsequent will under the "harmless error" doctrine even though it was not witnessed. The Court of Appeal reasoned that California has not fully adopted the uniform Probate Code's "harmless error" doctrine in full.

18. Annuity Payments from GRATs Found to NOT Be Purchases under Section 16(b) of the Securities and Exchange Act of 1934. [JWP]

NOSIRRAH MANAGEMENT, LLC V. AUTOZONE [2025] WL 1104984 (W.D. Tenn. [April 14, 2025]

Summary: Here a shareholder, Nosirrah Management, LLC (Plaintiff), sued on behalf of Nominal Defendant AutoZone, Inc. to recover alleged short-swing profits from an insider. Suit was brought Section 16(b) of the Securities Exchange Act of 1934 (Section 16(b)). Under Section 16(b), officers, directors, and holders of more than 10% of the listed stock of any company shall be liable to the company for any profits realized from any purchase and sale or sale and purchase of such stock occurring within a period of six months.

Here, Rhodes was an officer or director, he sold AutoZone stock, and he sold that stock within 6 months of receiving it from GRATs.

Rhodes created the two GRATs in early 2020 and contributed 5,000 shares of AutoZone stock to each GRAT. Rhodes was the sole grantor, trustee, and annuitant of each GRAT, and the GRAT remainders would pass to his children. In March and April 2022, Rhodes received annuity payments of AutoZone stock from the GRATs. In July 2022 (i.e., within six months), Rhodes sold 2,310 shares of AutoZone he received from the GRATs on the open market and made a profit. Plaintiff argued that the receipt of the annuity payments constituted a "purchase" and the subsequent sale was a sale, triggering Section 16(b) liability.

The Court ultimately found that Rhodes was not liable under Section 16(b) due to the Rule 16a-13 Exemption. That exemption provides as follows: "[a] transaction...that effects only a change in the form of beneficial ownership without changing a person's pecuniary interest in the subject equity securities shall be exempt from [Section 16(b)]."

The rules under Section 16b provide the following definitions: (i) a "pecuniary interest" is "the opportunity, directly or indirectly, to profit or share in any profit derived from a transaction in the subject securities"; and (ii) an "indirect pecuniary interest" in a class of securities includes "[a] person's interest in securities held by a trust). Furthermore, Rhodes children did not have beneficial ownership over the AutoZone stock because they only had remainder interests without power to exercise or share investment control over the GRATs.

The Court found that when the GRATs paid the AutoZone stock as annuities to Rhodes, his interest went from an indirect pecuniary interest in those shares to a direct pecuniary interest in those shares. As such, Rhodes had a pecuniary interest in the share before and after the annuity payments. Furthermore, his *beneficial ownership* changed in form from indirect to direct. Since payment of the annuity with shares in AutoZone resulted in only a change in the form of beneficial ownership without changing Rhode's pecuniary interest, payment of the annuities was exempt from Section 16(b).

It is noted the Plaintiff also tried to argue that Rhodes had a "qualified interest," not a "pecuniary interest," in the annuity payments from the GRATs. If the interest was not a pecuniary interest, then the Rule 16a-13 Exemption would not apply. For procedural reasons, the Court considered the argument waived by Petitioner and did not consider the argument. On the issue of this argument,

the Court stated in part, "Whether Rhodes had a pecuniary interest in the AutoZone stock is a question of law, has a clear resolution given the SEC Rules, and a failure to consider Plaintiff's argument would not result in a 'miscarriage of justice.'"

19. AB 2016 (Maienschein) Decedents' estates. [EAN]

Status: 09/21/24 Chaptered – Secretary of State – Chapter 331 Statutes of 2024

Per Legislative Counsel's Digest:

Existing law establishes procedures through which a successor of the decedent may, without procuring letters of administration or awaiting probate of the will, dispose of a decedent's real and personal property by utilizing an affidavit or declaration under penalty of perjury if the gross value of the decedent's estate does not exceed $166,250. Existing law also establishes procedures through which a successor of the decedent may, without procuring letters of administration or awaiting probate of the will, dispose of a decedent's real property by filing a petition in the superior court if the gross value of the decedent's real property does not exceed $166,250. Existing law excludes certain property from the determination of the value of the estate, including property held in joint tenancy. Existing law requires the Judicial Council to adjust the dollar amounts under these provisions, as specified, every 3 years.

This bill would exclude real property that was included in a petition to the superior court from the affidavit procedures. The bill would change the petition procedures to apply only to real property that was the decedent's primary residence in this state and has a gross value that does not exceed $750,000 or the amount specified by Judicial Counsel after review. The bill would require a successor who files a petition to deliver notice of the petition to each heir and devisee named in the petition. The bill would specify that, for these purposes, "primary residence" is not limited to the decedent's residence at the time of their death.

Comment: The "small estate" exception to probate allows a decedent's successor in interest to use a simplified affidavit procedure to collect the decedent's real or personal property outside of formal probate. Under current law, the threshold amount is $166,250 for deaths prior to April 1, 2022, $184,500 for deaths between April 1, 2022 and March 31, 2025, and now $208,850 for deaths on or after April 1, 2025. The threshold amount is determined by combining all probate assets in the aggregate; it does not include any non-probate assets, such as assets subject to the right of survivorship, insurance policies, IRAs, 401Ks, or assets held in a living trust.

The Probate Code also allows for a decedent's successor to a real property interest to use a simplified petition to obtain a court order determining that the party has succeeded to that real property, if the gross value of decedent's real and personal property's value does not exceed the applicable threshold amount.

This bill revised the provision related to transferring real property via petition to allow the "personal" (not "primary") residence of a decedent to be transferred via petition if that real property does not exceed $750,000, as indexed under Probate Code section 890. This change conforms the value limit to be more in line with median home prices in California, which are far in excess of the applicable prior threshold amount.

The bill specifies that the residence is not limited to the decedent's residence at the time of their death, but rather to a residence that was the decedent's primary residence. This is to ensure that if someone dies while living in a nursing home or with a family member due to having to seek assistance or care, that residence would not be considered their primary residence for purposes of the small estate petition process authorized by the bill.

The California Probate Referees Association opposed the bill, arguing that the bill will have serious unintended consequences. Referees throughout the state reviewed their workload over the last 12 months preceding their opposition and estimated 60 percent of residences in California are valued at under $750,000, and contended the result will be a reduction in the number of cases going through probate by more than 50%. Anecdotally, the argument of more litigation was raised, despite the requirement that notice be provided to the heirs and devisees. The Probate Referees allege the bill will undermine California's "highly praised" probate system.

In my opinion a more legitimate concern is whether title companies will be concerned about title and may be unwilling to issue a title policy without a full probate proceeding, as sometimes companies will not issue a title insurance policy where the transfer was by "set aside" and will insist on an order from the probate court approving the transfer. Title insurance is an essential part of every real estate transaction in California. This is the same concern practitioners have worried about with transfer on death deeds.

20. A Trustee Of A Testamentary Trustee Has Standing To Petition To Compel Distribution Of An Estate. [SPB]

ESTATE OF TARLOW (2025) 109 Cal.App.5th 124 [February 20, 2025]

Summary: If a will creates a trust and names a trustee, does that trustee have standing to seek a court order determining their right to take charge of the trust assets? The Second District Court of Appeal held that they do. Probate Code section 11700 provides that "any person claiming to be a beneficiary or otherwise entitled to distribution of a share of the estate, may file a petition for a court determination of the persons entitled to distribution of the decedent's estate." When a will creates a trust, the named trustee is the person entitled to receive the assets intended to fund the trust, and is therefore a "person claiming to be ... entitled to distribution of a share of the estate." Thus, the trustee "may file a petition" and the court must then determine the validity of the trustee's claim.

Barry Tarlow died on April 30, 2021. His will nominated David Henry Simon as executor, but Simon declined that role at the request of the Decedent's sister and brother, Barbara and Gerald. This allowed Barbara and Gerald to become the executors themselves, while Simon retained his more limited role as trustee of the Trust. The will was admitted to probate in July 2021. Barbara's share of the residual interest in the Estate, the portion intended to fund the Trust, was valued at more than $20 million. Barbara and Gerald filed a petition for distribution of the Estate, and Simon objected. Simon filed his own petition under section 11700, asking the court to distribute Barbara's interest to him as trustee of the Trust. Barbara and Gerald demurred to Simon's petition on the grounds that Simon lacked standing. The trial court (Los Angeles Superior) sustained the demurrer, with leave to amend. Simon filed an amended petition, and Barbara and Gerald demurred again. The trial court sustained the demurrer, without leave to amend, finding that Simon had not changed his petition except to add further legal argument which it found unpersuasive.

The Second District Court of Appeal reversed, finding that Simon did have standing. The Court of Appeal reasoned that because Simon is the named trustee of the Trust, he is a devisee under the will, entitled to receive and administer the trust property from the Estate, and therefore is a "person claiming to be … entitled to distribution of a share of the estate" under section 11700. Thus, the Court of Appeal further reasoned Simon is one of those persons who "may file a petition," under the statute and has standing to proceed under section 11700.

21. Whose Income Is It Anyway? To Answer that Question, Court Holds that Trust it a Grantor Trust with Respect to Husband. [JWP]

SCENIC TRUST V. COMMISSIONER [2024] T.C. Memo. 2024-85 [September 5, 2024]

Summary: In 2006, Mr. Simpson created the irrevocable Scenic Trust, naming "my heirs at law" as beneficiaries, Mr. Hoyal, Mr. Simpson's business partner was named trustee. At formation, Simpson was unmarried with no children. That same year Simpson transferred his 100% interest in Kats, LLC (disregarded for tax purposes) to the trust through a Private Annuity Agreement and Unit Purchase Agreement. In 2008, Simpson got married. At issue were Mr. Simpson's and Scenic Trust's 2012 and 2013 income tax returns. At its core, this case is about the whether income derived from a direct-mail subscription business was taxable to Mr. Simpson or Scenic Trust? On audit, IRS concluded the 2012 and 2013 income was all taxable to Mr. Simpson. After the Commissioner losing statute of limitations arguments, only Mr. Simpson's 2013 income tax return remained at issue.

The Court found that the income really belonged to Mr. Simpson on two bases: (i) anticipatory assignment of income; and (ii) Scenic Trust was a grantor trust.

The Court first found that the income of Kats, LLC was taxable to Mr. Simpson under the anticipatory assignment of income doctrine. Why? Mr. Simpson: (i) consistently held himself out as its owner; (ii) had total control over every financial decision and transaction that occurred within the entity; (iii) Mr. Simpson's activity was linked to the activity of Reality Kats; and (iv) even though being characterized as merely the settlor of Scenic Trust, Mr. Simpson really had full control of Scenic Trust.

On the grantor trust issue, IRC § 677 provides that "the grantor shall be treated as the owner of any portion of a trust, whether or not he is treated as such owner under section 674, whose income without the approval or consent of any adverse party is, or, in the discretion of the grantor or a nonadverse party, or both, may be [...]held or accumulated for future distribution to the grantor or the grantor's spouse." The Tax Court focused on two points to determine whether Scenic Trust was a grantor trust under IRC § 677(a): (1) whether Mrs. Simpson's was a spouse under IRC § 672(e); and (2) whether the trustee was a "adverse party" under IRC § 672(b).

When Mr. Simpson married in 2008, his wife became an "heir at law" and a beneficiary of Scenic Trust under state intestacy law. Mr. Simpson claimed he and his wife were legally separated in 2013 and claimed there was a marital separation agreement. However, he failed to provide sufficient evidence that he and his wife were legally separated within the meaning of IRC § 672(e). Thus, the Court found that his wife was a beneficiary of Scenic Trust in 2013.

The Tax Court also found that Mr. Hoyal was a non-adverse party. Mr. Hoyal had no beneficial interest in Scenic Trust, he had no power of appointment and no right to share in the income or principal of Scenic Trust. Further, he consistently acted in line with Mr. Simpson's wishes. The bottom line is that Mr. Hoyal had sole discretion to distribute or not distribute income or principal of Scenic Trust to any beneficiary, including income to Mr. Simpson's spouse. Therefore, since Mr. Hoyal was not an adverse party, Scenic Trust was a grantor trust with respect to Mr. Simpson pursuant to IRC § 677(a) and all income of Scenic Trust was taxable to Simpson in 2013 (regardless of whether income was actually distributed).

22. SB 1127 (Niello) Trust termination. [EAN]

Status: 7/02/24 Chaptered – Secretary of State – Chapter 76 Statutes of 2024

Per Legislative Counsel's Digest:

Existing law establishes procedures for the creation, modification, and termination of a trust, and regulates the administration of trusts by trustees on behalf of beneficiaries. Existing law authorizes a trustee to terminate a trust if the principal of a trust does not exceed $50,000 in value.

This bill would instead grant a trustee the power to terminate a trust if the fair market value of its principal does not exceed $100,000 in value.

Comment: At some point, the costs of administering a trust exceed its benefits and ultimately disadvantage the beneficiaries. In this case, it is in the beneficiaries' interest to terminate the trust and distribute the assets.

Generally, in order to terminate a trust, a trustee or beneficiary must petition the court, and, if the court finds that the fair market value of the principal of the trust has become so low in relation to the cost of administration that continuation of the trust under its existing terms will defeat or substantially impair the accomplishments of its purposes, the court may order the termination, as long as it does so in a manner that conforms as nearly as possible to the intention of the settlor (Probate Code section 15408(a)). However, if the trust principal does not exceed $50,000 in value the trustee has the power to terminate the trust without petitioning the court (Probate Code section 15408(b)).

If a trust is terminated by the trustee pursuant to Probate Code section 15408(b), the trustee may distribute the trust property in a manner that conforms as closely as possible to the settlor's expressed intentions in the trust instrument or as directed by the court. (Probate Code sections 15410(d)-(e)). If the trust instrument does not specify a distribution method at termination and the settlor's intent is unclear, the trustee may distribute the assets to the living beneficiaries on an actuarial basis. (Probate Code section 15410(e)). All beneficiaries and relevant parties must be notified in writing about the dissolution date, and the trustee must collect written acknowledgments of distribution receipts from them.

Section 15408 was added to the Probate Code in 1986, authorizing trustees to terminate trusts valued at $20,000 or less without court approval. Legislation in 2010 raised the amount to $40,000, and to $50,000 in 2018. This bill increases the threshold to $100,000, to be periodically adjusted based on CPI. Increasing the amount to $100,000 places California more in line with other states.

This is the default rule that applies in the absence of a specific provision in the trust instrument establishing a different cap or a different procedure for termination without a court order. This author drafts trusts to allow a trustee the discretion to terminate trusts valued at $200,000 or less, as even $100,000 is relatively modest, and the threshold amount itself is discretionary, not mandatory.

23. Terminating Sanctions Are Appropriate Following A Pattern Of No Less Than Eight Discovery Motions. [SPB]

ATLAS V. DAVIDYAN (2025) 113 Cal.App.5th 1086 [August 29, 2025]

Summary: Appellant Mike Davidyan was the defendant in a civil action in which plaintiff and respondent Joyce Atlas won a default judgment of over $1,100,000 in the Los Angeles County Superior Court. The default judgment was entered as a termination sanction based on the defendant's noncompliance with his obligations under the discovery statutes.

The plaintiff and defendant presented sharply different characterizations of the facts of the underlying case. Plaintiff states that defendant was a "fraudster" who preyed on cash-strapped homeowners by deceiving them into signing over their property under the guise of providing a loan. Defendant claims that plaintiff was a drug user and seller who lived rent-free in his property for several years.

Defendant represented himself in the trial court, and, as his appellate counsel admitted, "[d]uring discovery this often meant he was his own worst enemy." Plaintiff filed a total of nine motions to compel discovery responses and for discovery sanctions. The trial court, in a series of orders issued between October 28, 2021, and July 10, 2023, initially declined to impose sanctions and gave defendant multiple extensions of time to respond; then issued several orders imposing monetary sanctions and setting compliance deadlines; then, finding that defendant's continued noncompliance was willful, imposed issue sanctions, and finally terminating sanctions. Defendant appealed.

The Second District Court of Appeal affirmed, reasoning that the trial court imposed terminating sanctions only after hearing eight previous motions for discovery non-compliance, and only after taking a patient and cautious approach to the discovery dispute. After plaintiff's first motion to compel, the trial court gave defendant more time to respond. When defendant still did not provide complete or adequate written discovery responses, the trial court imposed moderate monetary sanctions and set new response deadlines in four more discovery hearings between December 2021 and January 2023. When these orders to compel and monetary sanctions proved insufficient to induce compliance, the trial court imposed issue sanctions. When even this severe penalty did not result in discovery compliance, the trial court imposed terminating sanctions. The trial court took exactly the incremental and non-punitive approach contemplated by the discovery statutes.

24. Tax Court allows Tax Affecting for Only the Third Time and Applies the Delaware Chancery Method in a Salacious Case. [JWP]

PIERCE V. COMMISSIONER [2025] T.C. Memo. 2025-29 [April 8, 2025]

Summary: Mr. and Mrs. Pierce ran a maternity products business. In 2014, they transferred interests in their business, Mothers Lounge, LLC, to trusts for their children by gift and sale. Mothers Lounge was taxed as an S Corporation. At issue was the value of those gifted and sold interests in Mothers Lounge. Mrs.

Pierce settled with IRS, and thus, the case addressees the fair market value of the minority, non-marketable business interests transferred by Mr. Pierce.

Mothers Lounge primarily used a "free, just pay shipping" business model to sell maternity products. In 2014, the business faced significant threats including the encroachment of major online retailers like Amazon and a lawsuit over illegal marketing practices. What's more, Mr. Pierce was having an affair, and someone in the know attempted to blackmail him to keep quiet. It is in this backdrop that the Tax Court had to determine the fair market value of the interests Mr. Pierce transferred.

The Tax Court applied a discounted cashflow (DCF) method. The court adopted Petitioner's expert's cash flow projections, which anticipated a decline in future growth and profit margins based on the known business challenges. Perhaps most importantly for our practice area, for only the third time, the Tax Court applied tax-affecting (applying a fictitious entity-level tax of 26.2%) to the earnings of Mothers Lounge. In the prior two instances, the Tax Court applied the SEAM model. In this case, the court adopted the Delaware Chancery Method. Of course, both valuation experts agreed that tax-affecting should apply and both agreed that the proper method is the Delaware Chancery Method (although they did disagree on the proper rate).

As an aside, the Tax Court determined a 5% discount for lack of control and a 25% discount for lack of marketability were applicable to the transferred interests.

25. Conflict Checks: Be Careful With Prospective Clients. [EAN]

WINTER V. MENLO (2025) 110 Cal.App.5th 299 [April 2, 2025; rehearing denied April 23, 2025, review denied June 25, 2025]

Summary: Sam and Vera Menlo created several trusts, two of which appointed Jeffrey Winter, Frank Menlo, and Rafael Deutsch as successor co-trustees.

In March 2021, Jeffrey sought legal counsel from Attorney Adam Streisand at Sheppard Mullin to represent him in potential litigation against Frank related to the trusts. Jeffrey first inquired whether there was a conflict in Attorney Streisand representing Jeffrey in litigation involving Frank. Attorney Streisand assured Jeffrey there was no conflict but did not know that Jeffrey intended to sue Frank. During discussions with Attorney Streisand, Jeffrey shared his belief that Frank exercised undue influence and documents supporting that belief. Attorney Streisand then ran an additional conflicts check and discovered that he previously represented Frank. Streisand informed Jeffrey that because Frank was a former client, he could not sue Frank.

In December 2022, Jeffrey filed a petition seeking Frank's suspension and removal as co-trustee, an accounting, and an order revoking a power of

appointment executed by Vera for lack of capacity. Jeffrey also alleged financial elder abuse, breach of fiduciary duty, breach of trust, and wrongful taking of property.

Frank retained Attorney Streisand and Sheppard Mullin and filed his own petition seeking declaratory relief regarding the power of appointment.

In response, Jeffrey filed a motion to disqualify Attorney Streisand and Sheppard Mullin under California Rules of Professional Conduct, Rule 1.18 on the grounds that Jeffrey was a prospective client who shared confidential and material information with Streisand in March 2021. The probate court granted the motion, reasoning that Jeffrey communicated information to Streisand that could have formed the basis for Jeffrey's litigation strategy against Frank.

The Court of Appeal upheld the probate court's ruling. Applying a de novo review, the court evaluated whether the information Streisand gained from his discussions with Jeffrey was "material" within the meaning of Rule 1.18. The court clarified that information is "material" if the information is potentially harmful to the prospective client at the time of the attorney's representation of the second client. The court found that the information Jeffrey disclosed to Attorney Streisand was material even though some of the information appeared in the petition because the disclosure went beyond the preliminary information about the issues in the case. The information consisted of Jeffrey's mental impressions of the case and the documents supporting the allegations in the petition, including information not specifically referenced in the petition.

Comment: Conflicts checks are inherently imperfect for many reasons, including for example catching name changes through marriage or divorce, or giving adequate consideration to both the nature and degree of discussions with prospective clients.

A prospective client who consults a lawyer about possibly retaining that lawyer for legal services taints the lawyer's ability to represent a different, adverse party if the lawyer received material information from the prospective client "in the same or a substantially related matter." The only exception is if both the other client and the prospective client give informed written consent to the representation.

Make sure your conflicts checks include actual and prospective clients (and for the latter, what was discussed).

26. Enough To State A Claim For Dependent Adult Abuse Under The Elder Abuse Act. [SPB]

DOE V. KACHRU (2025) 115 Cal.App.5th 175 [October 13, 2025]

Summary: Appellants Jane and John Doe allege they selected the medical facility where their child was born based on publications and marketing

materials that led them to expect "privacy," "round-the-clock midwifery support," and delivery care consistent with "evidence-based, low-intervention care." However, when it came time for Jane to give birth, the Does allege none of the labor and delivery staff provided care consistent with these assurances. They claim to have suffered, and continue to suffer, traumatizing injuries from the difficult labor and birth. The Does sued the hospital and most of the medical personnel involved in the birth, including respondent Dr. Amita Kachru. Kachru attended to Jane at the very end of her prolonged labor, after concerns about Jane's and the baby's condition arose, at which point Kachru allegedly told Jane she had two options, a cesarean section (C-section) or a vacuum-assisted vaginal delivery. Jane alleged she objected to both procedures and told Kachru she wanted to continue laboring. Kachru did not perform a C-section, but she did perform a vacuum-assisted delivery.

In their operative complaint, the Does alleged nine causes of action against Dr. Kachru, including for medical battery, gender violence, and abuse of a dependent adult. They did not allege Kachru was negligent or violated applicable medical standards of care. After the trial court (San Francisco Superior) sustained Kachru's demurrer to all claims against her except one, which the Does then asked be dismissed, the trial court entered a judgment of dismissal from which the Does now appeal.

Except as to Jane's medical battery claim, the First District Court of Appeal affirmed. As for the elder abuse claim, or more accurately the claim for dependent adult abuse, the Court of Appeal found that the Does maintained Jane was a "dependent" adult while she was at the hospital and therefor also pleaded a claim under the Elder Abuse Act (Welf. & Inst. Code, § 15610 et seq.) Although Jane sufficiently alleged a medical battery claim based on Dr. Kachru's performance of the vacuum-assisted delivery, she did not allege Kachru acted with "recklessness, oppression, fraud, or malice" (id., § 15657) required to state a claim under the Elder Abuse Act. The Act permits the recovery of damages (and attorney fees) by a plaintiff who can prove "by clear and convincing evidence that a defendant is liable for physical abuse ..., neglect ..., or abandonment ..., and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse." (Id., § 15657.) The Court of Appeal concluded that Jane's allegations that she objected to a vacuum-assisted delivery, but Dr. Kachru nevertheless performed one, may be sufficient to plead an arguably unauthorized touching and, thus, a medical battery, but they are insufficient to meet the significantly heightened degree of culpability required by the Elder Abuse Act.

27. Reasonable Cause Saves Charitable Deductions, But Gross Valuation Misstatement Bites. [JWP]

WT ART PARTNERSHIP LP V. COMMISSIONER [2025] T.C. Memo. 2025-30 [April 10, 2025]

Summary: The Tax Court addressed charitable contribution deductions claimed by WT Art (a tax partnership) for five (5) ancient Chinese paintings donated to the New York Met in 2010, 2011 and 2012, totaling over $73 million. The parties stipulated to the values of the paintings donated in 2011 and 2012 ($47.92 million reported, versus 41.5 million stipulated). Thus, the remaining issues for discussion herein were: (i) whether WT Art submitted "qualified appraisals" for 2010, 2011 and 2012; (ii) whether "reasonable cause" exists for the failure to submit qualified appraisals; (iii) the fair market value of "Palace Banquet"; and (iv) whether a 40% penalty applies for a gross valuation misstatement.

The Tax Court found that the appraisals submitted by WT Art were not "qualified appraisals." The preparer, an auction house known as China Guardian Auction Co. Ltd. (the Auction House), was an entity and not an individual as required by law for a "qualified appraiser." Ms. Wang,

as president of the Auction House, signed the appraisals. However, she supervised 3 or 4 employees who were involved in actual preparation of the appraisals. Ms. Wang did not testify at trial and there was no evidence she possessed "education and experience" in valuing ancient Chinese art. One of the employees, a junior member of the team, testified at trial. She suggested that a senior member of the team may have had "education and experience" in valuing ancient Chinese art, but that person did not testify at trial. Thus, no one who worked on the appraisals could be found to be a "qualified appraiser."

The Tax Court did find that the failure to submit qualified appraisals was due to "reasonable cause" and thus allowed the charitable income tax deductions. There was a good-faith belief that the Auction House was a reputable firm whose appraisals were acceptable to IRS. In 2005, WT Art donated four paintings to the Met and secured an appraisal from London Gallery to support the values claimed. IRS selected this return for examination and disputed the valuations placed on the four paintings. Additional appraisals were obtained from the Auction House to support the value conclusions of London Gallery. Significantly, the IRS exam team did not challenge London Gallery's or the Auction House's status as a "qualified appraiser." Further, WT Art made donations in 2006, 2007 and 2008 and supported income tax deductions with appraisals from London Gallery and the Auction House. IRS did not initiate an examination of those income tax returns. Thus, the Tax Court held that, "WT Art had 'reasonable cause' to believe that appraisals prepared by [the Auction House] would comply with all applicable reporting and substantiation requirements.

On the valuation of Palace Banquet, the Court found the correct fair market value to be $12 million, far below the claimed $26 million. In determining this value, the Tax Court considered whether there should be a discount for lack marketability due to a "deaccession" restriction (a restriction that prohibits the recipient from selling, trading, or permanently removing the artwork from its collection, permanently or for a specified period of time). The Commissioner asserted there should be such a discount; however, there was no legally binding

deaccession restriction, and even if there were, the Commissioner's expert failed to supply a plausible methodology for calculating the discount.

Finally, because the claimed value of Palace Banquet was 217% of the correct value, there was a gross valuation misstatement. The Court upheld the 40% gross valuation misstatement penalty for 2010 finding there is no reasonable cause defense for a gross valuation misstatement. No valuation based penalties were upheld for 2011 or 2012.

28. SB 1002 (Blakespear) Firearms: prohibited persons. [EAN]

Status: 09/24/24 Chaptered – Secretary of State – Chapter 526 Statutes of 2024

Per Legislative Counsel's Digest:

Existing law prohibits a person who has been taken into custody, assessed, and admitted to a designated facility, or who has been certified for intensive treatment after having been admitted to a designated facility, because the person is a danger to themselves or others as a result of a mental health disorder, from owning a firearm, as specified. Existing law also prohibits a person who has been adjudicated to be a danger to others as a result of a mental disorder or mental illness, or who has been adjudicated to be a mentally disordered sex offender, a person who has been found not guilty by reason of insanity of committing specified crimes, a person found by a court to be mentally incompetent to stand trial, or a person who has been placed under conservatorship by a court because the person is gravely disabled as a result of a mental disorder or impairment by chronic alcoholism from purchasing or receiving, or attempting to purchase or receive, or having possession, custody, or control of a firearm or any other deadly weapon. A violation of these prohibitions is a crime.

This bill would, among other things, expand those prohibitions to also prohibit the ownership, possession, custody, or control of ammunition.

The bill would require a person subject to the prohibition because they are a danger to themselves or others as a result of a mental health disorder to relinquish a firearm, other deadly weapon, or ammunition they own, possess, or control within 72 hours of discharge from a facility, as specified, and would require a person subject to the prohibition because they are a person who has been adjudicated to be a danger to others as a result of a mental disorder or mental illness, or who has been adjudicated to be a mentally disordered sex offender, or a person who has been found not guilty by reason of insanity of committing specified crimes, to relinquish to law enforcement a firearm, other deadly weapon, or ammunition in their custody or control within 14 days of the court order finding the person to be a person as described. By expanding the application of an existing crime, this bill would impose a state-mandated local program.

Existing law allows a search warrant to be issued upon probable cause, supported by affidavit, naming or describing the person to be searched or searched for, and particularly describing the property, thing, or things and the place to be searched. Existing law also specifies the grounds upon which a search warrant may be issued, including, among other grounds, when the property or things to be seized include a firearm or other deadly weapon that is owned by, in the possession of, or in the custody or control of specified individuals.

This bill would additionally authorize a search warrant to be issued on the grounds that the property to be seized includes ammunition and is owned by, in the possession of, or in the custody or control of specified individuals.

This bill would incorporate additional changes to section 1524 of the Penal Code proposed by SB 899 to be operative only if this bill and SB 899 are enacted and this bill is enacted last. The bill would incorporate additional changes to section 8103 of the Welfare and Institutions Code proposed by AB 2629 and SB 1025 to be operative only if this bill and one or both of those bills are enacted and this bill is enacted last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Comment: If you represent a fiduciary who is marshaling control of a firearm and/or planning a distribution of a firearm, my recommendation is to refer them to a licensed Federal Firearm Licensee (FFL), ***always*** (unless you have a unique expertise in this evolving and complex area of the law). An FFL will provide the fiduciary with the appropriate confirmation of identification and background checks to ensure that either an individual the fiduciary is charged with the oversight of, or whom is the devisee of a pending distribution, is not a prohibited person and for transfers, that all necessary steps are completed.

29. In A "LPS" Conservatorship, The Court Has The Initial Duty To Set Placement. [SPB]

CONSERVATORSHIP OF A.J. (2025) 109 Cal. App. 5th 728 [March 13, 2025]

Summary: A.J. appeals from an order appointing the San Francisco Department of Disability and Aging Services Office of the Public Conservator (Public Guardian) as his conservator under the Lanterman-Petris-Short Act (LPS Act). (Welf. & Inst. Code, § 5000 *et seq.*) He contends the Public Guardian improperly argued in its closing that he was unable to provide for his basic need for shelter because of his history of being involuntarily detained. He further argues the trial

court (San Francisco Superior) improperly delegated to the Public Guardian the duty to designate the least restrictive alternative placement.

The First District Court of Appeal reversed and remanded for the trial court to designate the least restrictive placement, but it otherwise affirmed. The Court of Appeal reasoned that the trial court expressly delegated the duty to designate the least restrictive placement. Specifically, the form order appointing the Public Guardian as A.J.'s conservator stated, "The Conservator shall have the power to place the person, for psychiatric treatment, in a state-licensed facility or hospital, a county hospital, a hospital operated by the Regents of the University of California or the United States Government, [or] a facility or agency approved or accredited by the State Department of Health Care Services." Nothing in the order designates the level of placement. That a conservator has the discretion to transfer a conservatee to a less restrictive alternative placement without further hearing and court approval, and the fact that the Public Guardian intended to place A.J. in the least restrictive setting, an unlocked residential treatment facility with outpatient wraparound services, "does not eliminate the duty of the court to set the initial level of placement." Thus, the trial court failed to "determine the least restrictive and most appropriate alternative placement for" A.J. The Court of Appeal concluded reversal is required for the limited purpose of the trial court to fulfill this duty.

30. Of Payments at Death, Marital Agreements, and the Estate Tax Deduction for Claims Against the Estate. [JWP]

ESTATE OF RICHARD D. SPIZZIRRI V. COMMISSIONER [11th Cir. 2025, Affirmed in part] T.C. Memo. 2023-25 [May 19, 2025]

Summary: Husband's estate appealed one of the Tax Court's findings to the Court of Appeals for the Eleventh Circuit. The appealed issue was the denial of an IRC § 2053 deduction for $1 million payments made at husband's death to wife's three children under a marital agreement.

The Appeals Court affirmed the Tax Court, ruling that the payments did not qualify as claims against the estate under IRC § 2053(a)(3). The Commissioner argued that the payments were neither "contracted bona fide" nor "for an adequate and full consideration. The court noted that "bona fide" requirement bars a deduction for a claim "to the extent it is founded on a transfer that is essentially donative in character." It is to look through "a mere cloak for a gift or bequest." Further, transfers between family members (and this includes descendants of a spouse) are subject to "particular scrutiny." The court looked to the five factors in Treas. Reg. § 20.2053-1(b)(2)(ii): (i) the transaction underlying the claim…occurs in the ordinary course of business, is negotiated at arm's length, and is free from donative intent; (ii) the claim is not related to an expectation or claim of inheritance; (iii) the claim originates pursuant to an agreement between the decedent and the family member; (iv) performance by the claimant stems from an agreement between the decedent and the family member; (v) all amounts paid in satisfaction or settlement of a claim or expense are

reported by each party for Federal income and employment tax purposes…in a manner that is consistent with the reported nature of the claim or expense.

The Appeals Court found that each factor weighed against the taxpayer. Notably, the provision in the marital agreement to make the payments was not in the ordinary course of business or negotiated at arm's length free from donative intent. Rather, testimony indicated the payments were included in the marital agreement "to keep his wife happy" and show "largesse to her children," because he "wanted to keep his fourth marriage [a]s his last" and avoid "the expense…of divorce." What's more, the payments to wife's children were found to be contracted "in lieu" of wife's rights as a surviving spouse. Thus, the claims of wife's children were "related to" their mom's "expectation or claim of inheritance." Finally, the marital agreement was not between decedent and wife's children.

Since the Appeals Court found that the payments to wife's children were not contracted for bona fide, the court affirmed the Tax Court's ruling that husband's estate was not entitled to an IRC § 2053 deduction for the three $1 million payments to wife's children made a husband's death.

31. AB 2505 (Gabriel) Attorneys: pro bono legal services. [EAN]

Status: 09/27/24 Chaptered – Secretary of State – Chapter 719 Statutes of 2024

Per Legislative Counsel's Digest:

Existing law, the State Bar Act, provides for the licensure and regulation of attorneys by the State Bar of California (State Bar), a public corporation governed by a board of trustees. The act provides that it has been the tradition of those learned in the law and licensed to practice law in this state to provide voluntary pro bono legal services to those who cannot afford the help of a lawyer and further provides that every lawyer authorized and privileged to practice law in California is expected to make a contribution, whether by directly providing pro bono legal services or, if that is not feasible, by providing financial support to organizations providing free legal services to persons of limited means, as specified.

This bill would provide that every lawyer should aspire to fulfill their individual commitment to provide pro bono legal services each year and contribute financially to California legal aid organizations. The bill, except as specified, would require an active licensee to report annually whether they have provided pro bono legal services and certain other information through the licensee's My State Bar online profile on the State Bar's internet website, as prescribed. The bill would require the State Bar to retain and maintain the reported information for purposes of historical record for at least 5 years. The bill would make the reported information confidential and exempt from disclosure as a public record, but would authorize the State Bar to publish aggregated and anonymized reports based on that information. Under the bill, the failure of a licensee of the State Bar to comply with its provisions would not be grounds for disciplinary or

administrative recourse. The bill would prohibit the State Bar from using specified moneys for any costs associated with these provisions. The bill would define terms for its purposes.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Comment: We should have all noted this compliance requirement and reported pro bono legal services, if any (or that no such pro bono services were provided) through our State Bar online profile on the State Bar's internet website. If you did not, failure to comply is not grounds for disciplinary or administrative recourse.

32. Ten Month Delay In LPS Conservatorship Matter Can Constitute Denial Of Due Process. [SPB]

CONSERVATORSHIP OF A.H. (2025) 114 Cal.App.5th 227 [September 8, 2025]

Summary: Plaintiff and respondent Public Guardian of Contra Costa County (Public Guardian) filed a petition to conserve defendant and appellant A.H. under the Lanterman-Petris-Short (LPS) Act (Welf. & Inst. Code, § 5350 et seq.) in February 2023. The trial court (Contra Costa Superior) imposed a temporary conservatorship pursuant to section 5352.1. A.H. demanded a trial, and his temporary conservatorship was extended up to September 25, 2023. A.H.'s trial was to begin by May 20, 2023, pursuant to section 5350, subdivision (d)(2), but it was set for July 17 and did not begin until July 26—one day after A.H.'s counsel objected to further continuances. The trial court thereafter granted several more continuances, to which A.H.'s counsel objected, that prolonged the trial. While the trial on this first LPS petition was pending and as the initial temporary conservatorship was expiring, the Public Guardian filed a second petition to conserve A.H. and obtained a new temporary conservatorship that extended A.H.'s involuntary confinement. Trial on the new petition was to begin in October 2023. A.H. opposed further continuances and requested dismissal of both petitions, to no avail. The trial court eventually dismissed the first petition at the Public Guardian's request, and trial on the second petition began on January 2, 2024, approximately ten weeks after the statutory deadline. On January 5, 2024—over 10 months after the filing of the dismissed petition that started A.H.'s confinement—the trial court found that A.H. was gravely disabled due to a mental disorder, ordered a one-year LPS conservatorship, and imposed various restrictions. Upon the expiration of that conservatorship, the Public Guardian did not seek to extend it.

Appealing from the conservatorship order, A.H. contends: (1) the trial court erred by not dismissing both petitions because a recent amendment to section 5350,

subdivision (d)(2) requires dismissal if the matter is not timely brought to trial; (2) the court abused its discretion in repeatedly continuing the trial, resulting in prejudice; and (3) the delay in adjudicating the conservatorship petitions violated A.H.'s due process rights.

The First District Court of Appeal reversed. It reasoned that A.H.'s first two arguments were unavailing. Section 5350, subdivision (d)(2) empowers the trial court—but does not require that court—to dismiss a conservatorship petition when the trial has not started by the statutory deadline. Further, even if the trial court abused its discretion in repeatedly continuing the trial and denying A.H.'s requests to dismiss the petitions, the error was harmless because it did not affect the conservatorship order from which A.H. appeals.

The Court of Appeal, however, reasoned that A.H.'s third argument turned not on statutory procedures but on the overall delay between the filing of the first LPS conservatorship petition (coinciding with the start of his involuntary confinement pursuant to temporary conservatorships) and the conclusion of his trial. Rather than starting within 10 days after his request as required by statute and then concluding apace to a grave disability finding, A.H.'s trial took 10 months to reach a grave disability finding—a delay the Court of Appeal found appears endemic to LPS cases in Contra Costa County. Under the circumstances of this case—including that A.H. had never before been found gravely disabled and that none of the delay was attributable to him—the Court of Appeal concluded that A.H. was deprived of due process and reversed the order of conservatorship.