CALIFORNIA PRACTICE GUIDE
PROBATE
2026 UPDATE

This 2026 softbound Update completely replaces the 2025 Update.

These Highlights summarize the most significant developments over the past year. The paragraph numbers are keyed to the 2026 edition of the Practice Guide where the topics are discussed in greater detail.

Check for Case/Statutory/Rules Developments: Our cut-off date for this Update was May 25, 2026. Some of the new cases may not have been final at that time and may be affected by later developments. In addition, unless specifically noted, this Update does not include case, legislative or rules developments taking effect after our press date. Counsel should check subsequent case histories and independently verify the current state of the law, including any developments that may affect the analysis in this Practice Guide.

Thank You! As always, we appreciate your comments and suggestions regarding this Practice Guide. *Please keep them coming!*

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2026 UPDATE HIGHLIGHTS

CHAPTER 1

PRELIMINARY CONSIDERATIONS

Conservatorships

[1:112] **LPS conservatorships for "gravely disabled":** A conservatorship may be established under the Lanterman-Petris-Short Act for the "gravely disabled." These LPS proceedings govern the involuntary commitment of the gravely disabled to appropriate institutions for treatment and are therefore subject to strict statutory standards. [See generally, Welf. & Inst.C. §5350 et seq.]

(For a comprehensive discussion of the procedural and substantive protections afforded "gravely disabled" proposed conservatees in LPS proceedings, see *Conservatorship of A.J.* (2025) 109 CA5th 728, 732, 330 CR3d 691, 695.)

[1:112.1f] **Proposed LPS conservatee's right to refuse to give testimony:** LPS conservatees are similarly situated with individuals subject to involuntary civil commitments under criminal statutes (such as persons found not guilty by reason of insanity) which permit a person subject to involuntary commitment to refuse to testify in commitment proceedings, and, as such, equal protection principles require the government to justify its disparate treatment of proposed conservatees. [Compare *Esparza v. Sup.Ct.* (2026) 118 CA5th 426, 434, 341 CR3d 509, 514 (criminal case)—incompetence of victim to testify in a kidnapping case could *not* be presumed from a prior grave disability finding in LPS conservatorship]

[1:112.1i] **LPS conservatee's records confidential:** All information and records obtained in the course of providing services under the LPS Act are confidential and protected from public disclosure. [Welf. & Inst.C. §5328; see *Doe v. County of Orange* (2025) 113 CA5th 1276, 1281, 336 CR3d 605, 609]

[1:112.2] **"Gravely disabled" prerequisite:** The proposed conservatee must be "gravely disabled" (Welf. & Inst.C. §5008(h)). Adjudication of "gravely disabled" status must be based on factual findings proved beyond a reasonable doubt:

- That the proposed conservatee is unable to provide for their basic personal needs for food, clothing, shelter, personal safety, or necessary medical care as a result of a mental disorder, a severe substance use disorder, or a co-occurring mental health disorder and a severe substance use disorder; and
- There is no willing and responsible family member, friend or other third party available to assist in furnishing the conservatee with these necessities. [See *Conservatorship of A.B.* (2025) 118 CA5th 362, 380-381, 341 CR3d 604, 619—substantial evidence supported finding of grave disability where proposed conservatee was unable to secure housing without medication due to mental illness and lacked the insight into his illness to consistently take medication without a court order]

[1:112.2k] **Time limitations governing trial:** The Welfare & Institutions Code requires that a demand for trial on the issue of grave disability must be made within five days following the hearing on the conservatorship petition and trial must commence within 10 days of the date of demand, subject to the court's ability to continue the trial date for a period not to exceed 15 days upon the request of counsel for the proposed conservatee. Failure to commence the trial within that period of time is grounds for dismissal of the conservatorship proceedings. [Welf. & Inst.C. §§5350(d), 5361]

These limitations are not mandatory but directory, and may be waived. [*Conservatorship of A.H.* (2025) 114 CA5th 227, 267-268, 336 CR3d 844, 874—court's noncompliance with limitations on continuances did not require dismissal but failure to render finding of grave disability for over ten months deprived proposed conservatee of due process]

[1:112.3] **Conservatee's placement determined by court:** When an LPS conservatorship is established, it is the *court's* obligation (not the conservator's) to determine and designate the *least restrictive appropriate placement* for the conservatee. [Welf. & Inst.C. §5358(a)(1)(A), (c)(1); *Conservatorship of A.J.* (2025) 109 CA5th 728, 733-734, 330 CR3d 691, 696—court may not delegate duty to designate "least restrictive alternative placement" to public guardian]

CHAPTER 2

ALTERNATIVES TO PROBATE

Inter Vivos Trusts

[2:116.5] **Exclusive jurisdiction over trust's "internal affairs":** Except as provided in Prob.C. §15800 (governing revocable trusts and trusts requiring joint action of the settlor and all beneficiaries), the trustee or *any* trust beneficiary may petition the probate court regarding a variety of matters affecting the trust's "internal affairs." As to these proceedings, the probate court's jurisdiction is *exclusive* (i.e., not concurrent with the court's civil side). [Compare *Powers v. McDonough* (9th Cir. 2025) 163 F4th 1162, 1189-1190 (applying California law)—class of unhoused veterans with severe disabilities had standing to pursue claim against Dept. of Veterans Affairs for breach of fiduciary duties allegedly created under charitable trust for management of VA campus grounds since veterans had sufficient "special interest" to enforce alleged trust and California Attorney General had not ensured alleged trust was properly managed]

[2:116.24b] **Virtual representation:** Effective January 1, 2026, the Legislature has repealed former Prob.C. §15804 and replaced the section with a new identically entitled §15804 codifying in great detail the rules governing so-called "indirect" or "virtual" representation. [New Prob.C. §15804]

[2:116.24c] **Effect of notice:** Notice to a person who may represent and bind another person is sufficient to comply with any requirement that notice be given to the represented person and has the same effect as if notice were given directly to the represented person. [New Prob.C. §15804(a)]

[2:116.24d] **Persons qualified to serve as representatives:** A person may serve as a representative and bind another person except (i) the representative and represented person must not have a conflict of interest during the representation with respect to the particular subject matter of the representation and (ii) a settlor shall not represent and bind a beneficiary with regard to the termination or modification of an irrevocable trust. [New Prob.C. §15804(b)]

[2:116.24e] **Requirements for consent to representation; effect thereof:** A person providing consent for another person must do so in writing; such consent is binding on the represented person unless they object to the representation before the consent would become effective; and a fiduciary acting in reliance upon a properly made representation 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. [New Prob.C. §15804(c)]

[2:116.24f] **Actions taken by court conclusive:** An action taken by the court under this procedure is conclusive and binding upon a person properly represented. [New Prob.C. §15804(d)]

[2:116.24g] **Representations permitted:** The following representations are permissible:

— A parent may represent and bind their minor children and children subsequently born if a guardian or guardian ad litem has not been appointed for the children;
— A conservator of the estate may represent and bind the conservatee;
— A guardian of the estate may represent and bind the minor ward;
— A guardian ad litem with authority to act with respect to the matter may represent and bind a minor ward;
— An agent with authority to act with respect to the matter may represent and bind the principal;
— A trustee may represent and bind the beneficiaries of the trust;
— A personal representative may represent and bind persons interested in the estate. [New Prob.C. §15804(e)(1)-(7)]

[2:116.24h] **Representation of "substantially identical interests":** 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 and bound by another person having a "substantially identical" interest with respect to the "particular question or dispute." [New Prob.C. §15804(f)]

[2:116.24i] **Representative of successive ("future") interests:** The statute provides the following rules for the representation of successive or so-called "future" interests:

— 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;

— 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 persons and classes of persons who might take on the happening of all future events;

— 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. [New Prob.C. §15804(g)(1)-(3)]

[2:116.24j] **Representation by holder of power of appointment:** 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. [New Prob.C. §15804(h)]

[2:116.24k] **Other rights and procedures not affected:** Prob.C. §15804 does not affect any of the following

— Requirements for notice in a court proceeding to (i) a person who has requested special notice, (ii) a person who has filed notice of appearance, or (iii) a particular person or entity required by statute to be given notice (e.g., the Attorney General);

— Availability of a guardian ad litem pursuant to Prob.C. §1003;

— A representative's previously existing duties. [New Prob.C. §15804(i)(1)-(3)]

[2:116.24*l*] **"Notice" broadly construed:** For purpose of Prob.C. §15804, "notice" includes "other papers." [New Prob.C. §15804(j)]

CHAPTER 3

COMMENCING PROBATE PROCEEDINGS

Probate Jurisdiction and Venue

[3:34] **Jurisdiction:** There is no separate "probate court" in California. Rather, probate jurisdiction is vested in the superior court. [Cal. Const. Art. VI, §§10-11; Prob.C. §7050]

Many (but not all) superior courts have separate "probate departments." However, the "probate department" simply is the superior court "sitting in probate." [See Prob.C. §7050; *Bunker v. Buccinio* (CD CA 2025) 2025 WL 3002615, *2]

[3:39.1] **"Property" broadly defined:** "Property" is "anything that may be the subject of ownership and includes both real and personal property and any interest therein." [Prob.C. §62; see, e.g., *Pham v. Sup.Ct. (Kon)* (2025) 117 CA5th 115, 124-125, 340 CR3d 204, 212—terms of IVF agreement control disposition of frozen embryo on divorce or legal separation]

[3:52] **Probate court as court of "general jurisdiction":** When supervising any proceedings governed by the Probate Code, probate courts are courts of "general jurisdiction." This principle means that, for purposes of deciding matters affecting estate administration, probate courts have "the same power and authority . . . as otherwise provided by law for a superior court . . . including, but not limited to, the matters authorized by Section 128 of the Code of Civil Procedure [granting courts power to operate, including the contempt power]." [Prob.C. §800; see *Bunker v. Buccinio* (CD CA 2025) 2025 WL 3002615, *2]

Setting and Notice of Initial Hearing

[3:216] **Reasonable efforts required to effect personal or mail service:** Notice must be reasonably calculated to give *actual notice* to *all persons interested in the estate* (whether as heirs, testate beneficiaries, *creditors*, or otherwise). Mailed notice must itself be "reasonably calculated" to *reach* the proper persons. For due process purposes, therefore, petitioner may be required to make "*reasonably diligent efforts*" to *locate* the interested persons. [See *Copeland v. Pham* (CD CA 2025) 2025 WL 3158121, *3-4—where no information is provided as to how an address was identified as being related to defendant or whether there were subsequent attempts to find alternate addresses, plaintiff did not provide sufficient evidence of a "thorough, systemic investigation and inquiry" to authorize service by publication or alternative means]

Proving the Will

[3:231.2] **Impact of "litigation privilege":** The Civ.C. §47(b) "litigation privilege" for "publications" made in a judicial proceeding is *no defense* to a malicious prosecution cause of action. But the privilege *may* bar other tort causes of action based on forgery of a will. [Civ.C. §47(b); see *Kim v. New Life Oasis Church* (2025) 115 CA5th 659, 668, 338 CR3d 473, 480—litigation privilege protects recording of lis pendens provided it (i) identifies an action filed in court of competent jurisdiction and (ii) action affects title or right to possession of real property; see also *In re People Who Care Youth Ctr., Inc.* (BC CD CA 2025) 2025 WL 2939348, *30 (applying California law)—litigation privilege protects recording of mechanics lien in slander of title action; *Smith v. Counts* (ED CA 2025) 2025 WL 2644223, *8—litigation privilege immunizes defendants from liability for abuse of process based on allegedly false statements made in relation to judicial proceeding; but see *Michael K. v. Cho* (2025) 113 CA5th 1, 13, 335 CR3d 102, 112—privilege is broad enough to include publication to nonparties with some interest in the proceeding]

[3:247.5] **Absent or defective attestation not necessarily fatal:** A will not executed in compliance with the Prob.C. §6110(c)(1) attestation formalities may nonetheless be upheld as a valid formal will (i.e., it shall be treated as if executed in compliance with

§6110(c)(1)) if the will's proponent establishes by *clear and convincing evidence* that, at the time the testator signed the document, the testator intended it to constitute the testator's will. [Prob.C. §6110(c)(2); *Estate of Boyajian* (2025) 112 CA5th 843, 852, 334 CR3d 640, 646—witness formalities still required to turn a stand-alone revocation into a will]

Procedural Considerations in Probate Generally

[3:449.3] **More than published notice required where interested persons' whereabouts reasonably ascertainable:** Constitutional due process does not require the "best" form of service (i.e., personal delivery) in every case. But it is clear that—again, notwithstanding what state statutes may say—published and/or posted notice is *not* enough as to interested persons (heirs, beneficiaries and potential claimants against the estate) whose identities and whereabouts are *known or reasonably ascertainable*. [See *Pro-Toll v. Cronk* (ND CA 2026) 2026 WL 479972, *4—lack of evidence of steps taken to identify alternative addresses or of alternative methods of service is not reasonable diligence]

[3:456] **"Substantive" pleading or contest:** A general appearance is made by any pleading filed or contest made on substantive, as opposed to jurisdictional, grounds. By filing the pleading or contest, the person waives notice defects in regard to that proceeding. [See *Paradise v. State of California* (CD CA 2025) 2025 WL 2092821, fn. 1 (applying California law)—where a person voluntarily appears in a case generally they will be held to have waived notice]

CHAPTER 8

CREDITORS' CLAIMS

Notice to Decedent's Creditors and the "Nonclaim Statute"

[8:29.2] **Public entity claims governed by special statutes:** Public entity claims based on *tax* and certain other specified liabilities of the decedent are *not* barred by the normal claim-filing deadlines. Instead the representative must first make a *written request* to the applicable agency to file its claim, and the claim-filing period is governed by the particular law on which the claim is based. [Prob.C. §9201]

Likewise, the time for claim-filing by the Director of the state Department of Health Care Services for Medi-Cal benefits that decedent received, by the Director of the California Victim Compensation Board to collect (from decedent's estate) unpaid restitution owed by an incarcerated heir or beneficiary, and by the Director of the California Department of Child Support Services or a local child support agency providing services pursuant to Division 7 of the Family Code for court-ordered child support obligations runs only after notice is given to the applicable Director to file a claim. [Amended Prob.C. §§9202(a), (b) & (e)]

Creditor's Action on Rejected Claims

[8:99.2] **Limited to actions on "liability of the person":** The

CCP §366.2 limitations period applies only to actions on the "liability of the person" that survive decedent's death—i.e., liabilities for which decedent is *personally accountable* and for which the claimant may seek satisfaction out of decedent's personal assets. The §366.2 bar applies to all claims that arise from the conduct of a decedent regardless of against whom the claims are brought. [See *Landt v. M&E Brothers, LLC* (SD CA 2026) 2026 WL 381638, *5]

Claims by Public Entities

Medi-Cal claims by Department of Health Care Services

- [8:144.2] **Method of giving notice:** The notice, along with a copy of decedent's death certificate, must be given as provided in Prob.C. §1215 or submitted electronically through the department's website using the online notice of death form. [Amended Prob.C. §§9202(a)]

[8:140.3] **Court-ordered child support claims; notice required:** The Probate Code requires the general personal representative or estate attorney to give notice of the decedent's death within 90 days after the date general letters are first issued to the Director of the California Department of Child Support Services if the representative or estate attorney knows or has reason to believe that decedent had a court-ordered child support obligation. The Code allows the Director or a local child support agency providing services under Fam.C. §17000 et. seq. four months after the notice is received to file a claim. [New Prob.C. §9202(e)]

- [8:144.42] **Court-ordered child support obligation:** Under Prob.C. §9202(e), a local child support agency may assert a claim against a decedent's estate to collect outstanding court-ordered child support. [New Prob.C. §9202(e)(2)]

- [8:144.43] **Representative's/attorney's duty to give written notice:** If the general personal representative or estate attorney knows or has reason to believe that the decedent had a court-ordered child support obligation, *the representative or attorney* must give notice of decedent's death to the Director of the California Department of Child Support Services *no later than 90 days after the date letters are first issued to the general personal representative.* [New Prob.C §9202(e)(1)]

    A local child support agency then has four months after receipt of the notice to file a claim. [New Prob.C. §9202(e)(2)]

- [8:144.44] **Method of giving notice:** The notice must be given as provided in Prob.C. §1215 or submitted electronically through the department's official website in a manner determined by the department. [Prob.C. §9202(e)(1)]

        Mailed notice should be addressed to:
        Department of Child Support Services
        P.O. Box 419064
        Rancho Cordova, CA 95741-9064

- [8:144.45] **Applicability:** Prob.C. §9202(e) applies only to estate for which letters were first issued on or after January 1, 2026. [New Prob.C. §9202(e)(3)]

[8:164] **Litigation where no claim required—insured claims:** An action on a claim for which decedent was covered by liability insurance may be *commenced* or *continued* against decedent's estate, and a judgment may be enforced against the insured, to the *extent of the insurance coverage without first filing a creditor's claim*. This rule applies regardless of whether the action was *pending* at decedent's death or *commenced thereafter*. [See Prob.C. §§550-555, 9390; *SBD Real Estate Four, LLC v. Nomura Dry Cleaners, Inc.* (CD CA 2025) 2025 WL 3633034, *5 (allowing substitution of estate under Prob.C. §550 in case filed after decedent died)]

- [8:170] **Parties to action—representative need not be joined:** A Prob.C. §550 suit may be commenced or continued *without formally joining* the insured decedent's estate representative or other successor in interest (e.g., under Prob.C. §13100 summary distribution). [Prob.C. §550(a)]

  Rather, the complaint must name "Estate of (*decedent's name*), Deceased" as defendant. The proceedings continue in the name of the estate, but are conducted in the same manner as if the action were against the personal representative. [Prob.C. §552(a); see *SBD Real Estate Four, LLC v. Nomura Dry Cleaners, Inc.* (CD CA 2025) 2025 WL 3633034]

- [8:172] **Service of summons:** Summons on a Prob.C. §550 complaint must be served on the person designated in writing by the insurer or, if none, on the insurer. [Prob.C. §552(a); see *SBD Real Estate Four, LLC v. Nomura Dry Cleaners, Inc.* (CD CA 2025) 2025 WL 3633034; *Michelle K. v. County of Sonoma* (ND CA 2025) 2025 WL 808080, *2—service on decedent's "successor in interest" insufficient under CCP §§337.40-337.42 and Prob.C. §550]

CHAPTER 10

FEDERAL ESTATE TAX

[10:1] **Historical Overview:** Since 2001, the federal estate, gift and generation-skipping transfer tax system has had a long and checkered legislative history, culminating in July 2025 with the enactment of a comprehensive statute titled, no doubt with unintentional irony, the One Big Beautiful Bill Act (PL 119-21, OBBBA).

The Current Estate Tax and Gift Tax Regime: Under OBBBA, instead of sunsetting to roughly $7 million per person, OBBBA permanently extends and increases the federal gift and estate tax exemption to $15 million per individual ($30 million for couples) in 2026, with this amount to be indexed annually for inflation. The 2025 legislation also permanently extends the generation-skipping transfer (GST) tax exemption and increases the gift tax annual exclusion as of January 1, 2026 to $19,000 per recipient ($38,000 for married couples who split gifts), subject to annual increases for inflation. For gifts made in 2026, the gift tax exclusion remains at $19,000. [Rev.Proc. 2025-32]

(**Caveat:** This Chapter does not purport to be an advanced level treatment of federal estate tax law. Practitioners working in this field and reviewing the many IRS Regulations and Revenue Rulings in this area will want to consider the impact of the U.S. Supreme Court's decision in *Loper Bright Enterprises v. Raimondo* (2024) 603 US 369, 144 S.Ct. 2244, fundamentally altering the landscape for reviewing Federal government and IRS regulatory actions as the Court in *Loper Bright* overruled the "Chevron Doctrine" (*Chevron U.S.A. Inc. v. Natural Resources Defense Council* (1984) 467 US 837, 104 S.Ct. 2778) and held that courts in exercise of their independent judgment no longer need to defer to "permissible" agency interpretations when deciding whether an agency (such as the IRS) has correctly interpreted the law simply because the statute is ambiguous.)

Preliminary Considerations

[10:5.1] **"Applicable exclusion amount":** For purposes of calculating the unified credit against estate tax, the basic exclusion amount for estates of decedents dying and gifts made in 2026 is $15,000,000 (indexed for inflation), plus any unused exclusion amount of a predeceased spouse (who died after 12/31/10) if the personal representative of the predeceased spouse has so elected; this is the concept generally known as "portability." [See IRC §2010(c); Rev.Proc. 2025-32]

[10:5.2] **Portability and the "deceased spousal unused exclusion amount" (DSUEA):** Assuming the representative of the surviving spouse's estate has elected to claim the spousal unused exclusion amount of a predeceased spouse, the DSUEA is the *lesser of*:

— the basic exclusion amount of the deceased spouse whose DSUEA is being calculated (for deaths and gifts made in 2025, $13,990,000), *or*

— the basic exclusion amount of the last deceased spouse of the surviving spouse, over the combined amount of the deceased spouse's taxable estate plus adjusted taxable gifts. [IRC §2010(c)(4)]

[10:5.3a] **Portability election requires proper and timely filing:** In a recent case a late-filed election by the previously deceased spouse's representative was denied because the estate tax return of the spouse, in addition to being filed six months late, was not complete since the return failed to adequately distinguish between property qualifying for the marital and charitable deductions and other non-qualifying estate property. The rules governing portability impose a special rule where the predeceased spouse's estate does not have sufficient assets to otherwise require a return. In these cases, the estate does not need to report the value of each item or property but "only the description, ownership, and/or beneficiaries of such property, along with all other information necessary to establish the right of the estate to the deduction." However, where the value of the marital or charitable disposition is needed to determine the property passing to someone other than a surviving spouse or a charity, this exception to the general rule does not apply and the fair market value of the assets must be stated on the return. Although the return was filed within the time period of then applicable Rev.Proc. 2017-34 permitting late filing, the estate could not rely on the Revenue Procedure because the "complete and properly prepared" return requirement was not met. The court further rejected the taxpayer's "substantial compliance" argument. [*Estate of Rowland v. Commr.,* TC Memo 2025-76]

Federal Estate Tax: Statutory Framework

[10:155a] **Qualified terminal interest trust (QTIP):** QTIP treatment of an otherwise qualifying marital bequest will be denied absent the executor's election to take the marital deduction for the QTIP interest. [*Estate of Griffin v. Commr.,* TC Memo 2025-47]

Credits against tax

[10:167] **Former credit for state death tax repealed; impact—effective exemption from tax:** Recall that the effect of the applicable exclusion amount for decedents dying in 2026 is to exempt from tax all taxable estates of $15,000,000 or less. [Rev.Proc. 2025-32]

Valuation

[10:219.5] **Interests in closely held businesses—built-in capital gains tax liability:** The proper amount of such a valuation offset for unrecognized capital gain in a closely held investment company is a dollar for dollar reduction of the company's entire built-in capital gain tax liability, under the assumption that the company was liquidated, and all assets sold, on the date of death. [See *Pierce v. Commr.,* TC Memo 2025-29 (gift tax case)—allowed "tax-affecting" of entity-level taxes when valuing pass-through entities and also approved high marketability discount]

[10:224] **Special use valuation (IRC §2032A):** One of the longest sections in the Estate and Gift Tax Law (and perhaps the most complex), IRC §2032A permits an executor to elect to reduce the value for estate tax purposes of a farm or other real property used in a closely held business, provided numerous stringent qualifications are met. Qualifying real property may then be valued at its "current use" (as opposed to its highest and best use). However, the election may not reduce the gross estate by more than $1,460,000 for decedents dying in 2026. [IRC §2032A]

The initial $750,000 reduction permitted in 1997 has been and continues to be adjusted for inflation by an annual cost-of-living adjustment (see IRC §1(f)(3)). The adjustment amount is $750,000 multiplied by the cost-of-living adjustment for inflation occurring after 1997. If the amount of the limit, as adjusted, is not a multiple of $10,000, the amount will be rounded to the next lowest multiple of $10,000. [IRC §2032A(a)(3); see Rev.Proc. 2025-32]

Generation-Skipping Tax

[10:261] **GST exemption:** Every individual is allowed a GST exemption equal to the estate tax exemption ($15,000,000 for 2026). [Rev.Proc. 2025-32]

Payment of Estate Tax

[10:376.2] **Adjustment for estates of decedents dying after**

1998: In the case of estates of decedents dying after 1998, the $1 million amount referred to in the definition of "2% portion" is increased by an amount equal to $1 million multiplied by a cost-of-living adjustment (see IRC §1(f)(3)). If the amount, as adjusted, is not a multiple of $10,000, the amount will be rounded to the next lowest multiple of $10,000. [IRC §6601(j)(3)]

For the year 2026, the adjusted amount is $1,940,000. [Rev.Proc. 2025-32]

[10:379.1g] **Contesting notice of tax deficiency before the Tax Court:** The taxpayer may choose to litigate any dispute over taxes owing *before and without paying* the disputed tax amount (together with penalties and interest assessed, if applicable) by challenging the deficiency before the US Tax Court whose primary jurisdiction includes redetermining income, gift and estate tax deficiencies. (The Tax Court will also review IRS collection actions to seize property or file liens for due process concerns.) The court's jurisdiction is limited to resolving disputes involving *unpaid taxes*. [*Commissioner v. Zuch* (2025) 605 US 422, 430-432, 145 S.Ct. 1707, 1713-1714—Tax Court lacks jurisdiction to resolve dispute between taxpayer and IRS when IRS no longer pursuing levy because the subject tax liability has been satisfied]

[10:379.2] **Estate tax refund actions; jurisdiction:** In lieu of challenging a Notice of Deficiency in the Tax Court, the taxpayer may choose to pay the disputed tax and file a claim for refund. The district courts and the Court of Federal Claims generally have jurisdiction over such suits, provided full payment of any assessed tax liability has been made and a timely claim for refund filed. [*Commissioner v. Zuch* (2025) 605 US 422, 431, 145 S.Ct. 1707, 1713—Tax Court does not have jurisdiction to resolve questions about disputed tax liability once the tax liability has been served out] Timely filing is a jurisdictional prerequisite to filing suit. [See IRC §7422(a)]

CHAPTER 12

DEATHBED AND POSTMORTEM PLANNING AND FIDUCIARY INCOME TAX CONSIDERATIONS

Deathbed Planning

[12:6.1] **CAVEAT—The One Big Beautiful Bill Act:** No gift planning should be undertaken without discussing with clients the implications of the One Big Beautiful Bill Act. The gift tax now contains a $15,000,000 lifetime exemption, indexed for inflation.

[12:24] **Gift and estate tax considerations:** A completed gift made just before death will ordinarily remove the gifted property from the donor's gross estate (and probate estate as well). But gifts of more than the annual per donee exclusion ($19,000 in 2026) must be reported annually and are subject to federal gift tax (IRC §2503(b)) once the applicable amount is exceeded . . . with the exception of charitable and spousal gifts, which are exempt (IRC §§2522(a), 2523). [See Rev.Proc. 2025-32]

[12:26] **Unified credit:** A gift of more than the per donee annual exclusion amount ($19,000 for 2026) to a particular donee in a given year, or a gift of any future interest, whatever its value, will be taxable and will require the filing of a gift tax return. However, the applicable credit amount (sometimes also referred to as the unified credit amount) will be available so that no tax need actually be paid for taxable lifetime gifts of up to $15,000,000 in 2026 (plus, if applicable, the unused lifetime exemption amount of a predeceased spouse who died after 2010). [See IRC §2505; Rev.Proc. 2025-32]

Disclaiming Interests in Estate Property

[12:110] **Disclaimers valid under federal law are valid under California law:** Prob.C. §295 provides that if a disclaimer is effective under the IRC, it is effective under the Probate Code as well. [But see *Estate of Tarlow* (2025) 109 CA5th 124, 131, 330 CR3d 178, 184—presumption that disclaimer is valid is not conclusive; trustee had standing to challenge validity of beneficiary's disclaimer]

The Estate's Income Tax Returns

[12:236.1] **New cap on "miscellaneous itemized deductions" for any taxable year beginning after December 31, 2017:** The OBBBA enacted July 4, 2025 replaced the Pease limitation on itemized deductions (suspended for tax years 2018 through 2025 by the TCJA) with a new cap. [Amended IRC §§67, 68]

Newly enacted IRC §67(h) states that "[n]otwithstanding subsection (a), no miscellaneous itemized deduction shall be allowed for any taxable year beginning after December 31, 2017." Previously, IRC §67(a) allowed miscellaneous itemized deductions for an individual but only to the extent that the deductions exceed 2% of adjusted gross income. IRC §68 reduces the amount of the itemized deductions otherwise allowable for an individual for the taxable year (determined without regard to §68) by 2/37 of the lesser of:

— the amount of itemized deductions, *or*

— so much of the taxable income of the taxpayer for the taxable year (determined without regard to §68 and increased by the amount of itemized deductions) as exceeds the dollar amount at which the 37 percent rate bracket under §1 begins with respect to the taxpayer.

Unlike the Pease limitation, new IRC §68 does not exclude trusts and estates from the new cap. It is not clear whether §68 applies to deductions that are available exclusively to trusts and estates.

The IRC specifically defines "itemized deductions" to exclude deductions allowable in arriving at adjusted gross income ("above-the-line deductions"). [IRC §63(d)]

"Miscellaneous itemized deductions" are all itemized deductions other than any deduction specifically listed in IRC §67(b). Executor fees, trustee fees, and other administration expenses are not listed. Nor are other fiduciary specific deductions (IRC §§642(b), 642(c), 651 and 661) listed. However, IRC §67(e) provides that the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that costs paid or incurred with respect to estate/trust administration that would not otherwise have been incurred by the estate/trust but for the existence of the estate/trust, and the deductions allowable under IRC §642(b) (the personal exemption deduction), IRC §§651 and 661 (the beneficiary distribution deductions) are "treated as allowable in arriving at adjusted gross income." It is not clear whether §68 might nevertheless apply to those deductions.

It is not clear whether the final Regulations issued by the IRS in 2020 regarding (former) IRC §67(e) ("2020 Regulations") are applicable only for purposes of IRC §67, but not for purposes of §68. [85 Fed.Reg. 66219-01] The 2020 Regulations clarified that executor and trustee fees and other miscellaneous estate trust expenses are not "miscellaneous itemized deductions" and so remain deductible. The 2020 Regulations also addressed the interplay of IRC §67(g) with IRC §642(h)(2), which allows the beneficiary of an estate or trust to deduct the net amount of all costs incurred by the estate or trust in excess of its gross income during its last tax year.

Specifically, the 2020 Regulations clarify the following deductions are allowable in figuring adjusted gross income and are not "miscellaneous itemized deductions":

— Costs paid or incurred in connection with the administration of the estate or trust which would not have been incurred if the property were not held in the estate or non-grantor trust.
— Deductions concerning the personal exemption of an estate or non-grantor trust.
— Deductions for trusts distributing current income.
— Deductions for trusts accumulating income.

The 2020 Regulations distinguish as "not a Section 67(e) deduction and thus . . . subject to both the 2-percent floor in section 67(a) and 67(g)" costs incurred by an estate or non-grantor trust that would commonly or customarily be incurred by an individual. [Treas.Reg. §1.67-4(a); see Treas.Reg. §1.67-4(b)]

The 2020 Regulations require that "bundled fees" be allocated between fees eligible for the full deduction and those subject to the 2% floor using "any reasonable method." [Treas.Reg. §1.67-4(b)(3)] The 2020 Regulations exclude from the application of the 2-percent floor costs relating to estate and generation-skipping transfer tax returns, fiduciary income tax returns, and the decedent's final individual income tax returns, appraisal fees incurred to determine the fair market value of assets as of date of death, for purposes of making distributions, or preparing the estate's or trust's tax returns or a generation skipping transfer tax return. [Treas.Reg.§1.67-4(b)(3) and §1.67-4(b)(5)]

However, as stated above, the 2020 Regulation by its terms applies to §67 and the 2-percent floor and absent further guidance from the IRS, may not protect these deductions from the §68 limitation. The 2020 regulations further clarify that upon the termination of an estate or trust, each deduction characterized as an excess deduction under IRC §642(h)(2) will have the same character in the hands of the beneficiary succeeding to the property of an estate or trust as it had while in the estate or trust. [Treas.Reg. §1.642(h)-2(a)(2)]

The character of excess deductions of a trust or an estate is determined by a three-step process: 1) direct expenses are allocated first (i.e., real estate taxes offset real estate rental income); 2) remaining deductions are allocated in the discretion of the trustee (i.e., trustee may allocate deductions not available or limited for individuals against trust/estate income); 3) any deductions remaining after all of the trust/estate income has been offset constitute excess deductions that are allocated to the beneficiaries when the trust/estate is terminated in accordance with Treas.Reg. §1.642(h)-4. [Treas.Reg. §1.652(b)-3]

However, these items of deductions remain subject to any additional applicable limitation under the Code. The 2020 regulations do not provide any guidance on whether such deductions are deductible for purposes of determining alternative minimum tax. They do require the fiduciary to separately identify on the Form K-1 these three components if a limitation may apply, as provided in the Instructions to Form 1041, and the Schedule K-1. [Treas.Reg. §1.642(h)-2(b)(1); 85 Fed.Reg. 66219-01]

The 2020 Regulations apply to taxable years beginning October 19, 2020; however, estates, non-grantor trusts, and their beneficiaries may apply the rules in the proposed regulations issued in May 2020 for taxable years beginning on or after Dec. 31, 2017 through the effective date of the final regulations. [See 85 Fed.Reg. 27693-01]

CHAPTER 14

SPECIAL PROBLEMS IN PROBATE ADMINISTRATION

Federal Estate and Income Tax Issues

[14:351] **Estate tax:** If the decedent was a U.S. citizen and the decedent's gross estate is large enough ($15,000,000 or more for decedents dying in 2026), a federal estate tax return must be filed no matter where decedent was domiciled at death and no matter where their property is located. [Rev.Proc. 2025-32]

CHAPTER 15

LITIGATION

Will Contests

[15:85.52] **Anti-SLAPP law applies:** In any action or petition brought to enforce a no-contest clause, the provisions of CCP §425.16 et seq. (California's anti-SLAPP, or Strategic Lawsuit Against Public Participation, law) apply, and the beneficiary's action is subject to an anti-SLAPP motion to strike. [See *Clapkin v. Levin* (2026) 119 CA5th 222, 233, 342 CR3d 482, 490—anti-SLAPP motion denied where causes of action arose from underlying corporate disputes and not protected litigation activity]

Revocation as ground for will contest

- [15:169] **Subsequent testamentary instrument**: A *subsequent will* which revokes the earlier will in whole or in part *expressly* or by *inconsistency*. [Prob.C. §6120(a); *Estate of Boyajian* (2025) 112 CA5th 843, 851-852, 334 CR3d 640, 646—stand-alone document that does not name a beneficiary or make donative transfer of property and is not signed by two witnesses is not a testamentary instrument effective to revoke prior will]
- [15:174] **Cancellation, mutilation or other act of destruction:** A will may be revoked by being "burned, torn, canceled, obliterated, or destroyed" with the *intent* and *for the purpose* of revoking it. [Prob.C. §6120(b); but see *Estate of Boyajian* (2025) 112 CA5th 843, 850-851, 334 CR3d 640, 644-645—stand-alone revocation document not effective to cancel will because cancellation requires physical alteration to the will]

[15:242] **Timely request for statement of decision required:** There is no absolute right to a statement of decision. It is required only if *timely requested* as prescribed by CCP §632. Through December 31, 2026, the request must be made within 10 days after the court announces or serves its tentative decision, except that if trial is concluded within *one calendar day or in less than eight hours over more than one day*, the request must be made *prior to submission* of the matter for decision. [See Amended CCP §632(a), (c)]

Effective January 1, 2027, the request for a statement of decision must be made *prior to submission* of the matter for decision. [Amended CCP §632(a)]

Alternatives to Will Contests

[15:114.3] **Specific performance action; no jury trial right:** An action to specifically enforce an oral agreement to make a will is *not* triable by jury. Reason: Historically, specific performance actions were tried in equity, *not* at law. [But see *Halperin v. Halperin* (2026) 118 CA5th 193, 202, 341 CR3d 230, 236—beneficiary of trust established by father could not assert IIEI claim in civil court against brothers for allegedly interfering with father's efforts to amend trust as complaining beneficiary had adequate remedy in probate]

[15:115.9] **Intentional interference with expectation of inheritance—not available where probate remedy available:** Testator's daughter could not state a claim for intentional interference of expected inheritance against brothers who allegedly interfered with Testator's effort to amend his trust to equalize distribution among children. Daughter had standing in probate to seek relief as evidenced by her earlier probate petition based on same factual allegations. [*Halperin v. Halperin* (2026) 118 CA5th 193, 202, 341 CR3d 230, 236 & fn. 8]

Elder and Dependent Adult Abuse Claims (Welf. & Inst.C. §15600 et seq.)

[15:553] **Standards of proof:** The standard of proof applicable to elder or dependent adult abuse actions depends upon the nature of the abuse:

— Physical abuse, neglect or abandonment under the Act must be proved by clear and convincing evidence, or, in certain specified cases by a preponderance of the evidence pursuant to New Welf. & Inst.C. §15657.02 (Amended Welf. & Inst.C. §15657).

— Financial abuse under the Act must be proved by a preponderance of the evidence (Welf. & Inst.C. §15657.5).

[15:553.1] **Special standard of proof exception:** The 2025 Legislature added Welf. & Inst.C. §15657.02 to provide a special, lowered standard of proof (preponderance of the evidence) in any case where either the plaintiff has prevailed on a discovery motion due to spoliation of evidence by the defendant or a judge or arbitrator determines at any point during litigation or arbitration that spoliation of evidence has been committed by the defendant. [New Welf. & Inst.C. §15657.02(a)]

Spoliation of evidence means the "intentional improper alteration of evidence or the intentional concealment or destruction of records, documents or other evidence that is done by a party, with the intent of preventing the evidence from being produced, and that has materially prejudiced the other party." [New Welf. & Inst.C. §15657.02(c)]

Note, however, that this provision applies only to actions against residential care facilities, adult community care facilities, and skilled nursing facilities. And the scope of the provision is further limited by the exemption of general acute care hospitals, acute psychiatric hospitals and certain other facilities from its application. [New Welf. & Inst.C. §15657.02(b)] Refer to the statute for further details.

Adjudicating Adverse Claims to Property (Prob.C. §850)

[15:590] **Double damages recovery; attorney fees and costs:** Damages equal to twice the value of the property recovered for the estate in a Prob.C. §850 proceeding, as well as reasonable attorney fees and costs, are recoverable upon a finding that defendant (a) *in bad faith* wrongfully took, concealed or disposed of the property, or (b) took, concealed or disposed of the property "by the use of undue influence in bad faith *or* through the commission of elder or dependent adult financial abuse" (as defined in Welf. & Inst.C. §15610.30). [Prob.C. §859; see *Moramarco v. Nowakoski* (2026) 119 CA5th 739, 746, 343 CR3d 51, 57—court does not have discretion to weigh mitigating factors, including ability to pay, when imposing Prob.C. §859 double damages]

Proceedings to Determine Distribution Rights (Prob.C. §11700)

[15:730] ***CAVEAT—Time limitations:*** Be mindful of the CCP §632 time limitations: Through December 31, 2026, any party desiring a statement of decision runs the risk of waiving it unless the request is made within 10 days after the court announces its tentative decision or, if trial concluded within *one calendar day or in less than eight hours over more than one day*, *prior to submission of the matter for decision*. [See Amended CCP §632(a), (c) (1/1/27 "sunset" date)]

Effective January 1, 2027, any party risks waiving their right to a statement of decision unless the request is made *prior to submission of the matter for decision.* [Amended CCP §632(a)]

CHAPTER 16

ACCOUNTINGS, DISTRIBUTIONS, COMPENSATION AND DISCHARGE

Preliminary Distributions

[16:54] **Notice given to Director of Health Care Services, Director of California Victim Compensation Board, Franchise Tax Board and Director of California Department of Child Support Services**: Most courts will withhold approval of distributions absent either a showing that notice of death was given to the Director of Health Care Services pursuant to Prob.C. §§9202(a) and 215 or proof that this notice is not required because (a) neither decedent nor decedent's predeceased spouse received Medi-Cal, *or* (b) no claim can be made by the Department of Health Care Services because decedent was under age 65, decedent was survived by a spouse or a minor or disabled child, or decedent's predeceased spouse died before June 30, 1993. [See L.A. Sup.Ct. Rules 4.63(b), 4.66; S.D. Sup.Ct. Rule 4.5.8]

Courts are likely to take a similar approach with regard to other Prob.C. §9202 notice requirements:

— Where decedent had or was reasonably believed to have had a court-ordered child support obligation, approval of distributions may be conditioned upon showing that notice of decedent's death has been given to the Director of the California Department of Child Support Services pursuant to Prob.C. §9202(e). [New Prob.C. §9202(e) (applicable to estates for which letters first issued on or after 1/1/26)]