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TRUSTS & ESTATES

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The State of the States: 2024

An update on key planning developments

State legislatures have been very busy on several trust and estate-related fronts. Here's an update on some key planning developments across the country through Dec. 6, 2024.

State-Level Corporate Transparency

The Corporate Transparency Act (CTA), which went into effect Jan. 1, 2024, mandates that most U.S. business entities disclose beneficial ownership information (BOI) to the Financial Crimes Enforcement Network (FinCEN). However, on Dec. 3, 2024, the US District Court for the Eastern District of Texas issued a nationwide preliminary injunction barring the enforcement of the CTA.[1] The government has appealed. How this plays out is yet to be seen. While the litigation is ongoing, FinCEN issued guidance that reporting companies aren't required to file BOI. Whatever the outcome at the federal level, however, state level reporting regulation is unlikely to be affected if the basis on which the CTA is held unconstitutional is that it usurps states' powers to regulate corporate entities. Accordingly, the fate of the federal act will not likely impact state filing obligations.

In the meantime, here are the latest development at the state level:

California. This state's senate passed the Beneficial Owners ACT[2] in May 2024, but it failed to pass the Assembly before the end of the 2023-24 legislative session. The law would have mandated disclosure in a publicly available database beginning on Jan. 1, 2026 of BOI for corporations and limited liability companies (LLCs) formed or doing business in California.

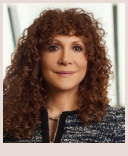
District of Columbia (D.C.). D.C. amended its laws in 2020 to require that all entities formed or registered to do business in D.C. file the name, residence and business address of each person whose total share of direct or indirect, legal or beneficial ownership of the entity is greater than 10%, or if the person controls financial or operational decisions or can direct day-to-day operations of the entity.[3] The definition of a "beneficial owner" casts a wider net than the federal CTA, which uses a 25% ownership threshold.

New York. Modeled on the federal CTA, the New York LLC Transparency Act (NYLTA), originally enacted on Dec. 22, 2023, was amended and signed by Gov. Kathy Hochul on March 1, 2024.[4] The new law's requirements take effect on Jan. 1, 2026.

Both the CTA and NYLTA require BOI reporting about certain entities, but while the CTA applies to several different entities, currently, the NYLTA applies only to LLCs formed or authorized to do business in New York.

Under NYLTA, which incorporates many provisions of the CTA, LLCs must provide information about each beneficial owner, defined as an individual who, directly or indirectly, exercises substantial control over the entity or owns or controls at least 25% of the entity's ownership interests. The information required includes full legal name, date of birth, current address and unique identification number from an acceptable identification document, such as a passport.

A copy of the report entities file under the CTA with FinCEN can be filed with the New York Department of State to satisfy New York's filing requirements. Whereas the information collected under the CTA will typically be confidential, the

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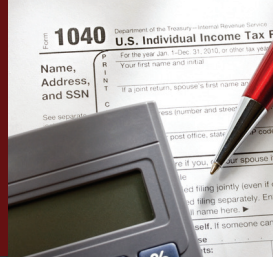


original NYLTA contained a provision that would have created a public database of beneficial owners. However, pursuant to a last-minute compromise, under NYLTA, like the CTA, only government agencies and law enforcement will have access to that information. The Attorney General can investigate any LLC that fails to file its beneficial disclosure and seek fines of up to $500 for each day late. LLCs formed or qualified to do business in New York on or after Jan. 1, 2026 must provide the informational filing within 30 days. Entities organized or qualified prior to Jan. 1, 2026 must file an initial report by Jan. 1, 2027. Unlike the CTA, which requires an updated report within 30 days of a change, NYLTA requires all reporting companies to file an annual statement confirming or updating their information.

Maryland. In 2024, Maryland introduced legislation requiring certain business entities to file BOI with the State Department of Assessments and Taxation.[5] The bill died.

Massachusetts. Massachusetts introduced a bill in 2023 to require disclosure of BOI of LLCs formed or conducting business in the state in a publicly available database.[6] The bill was referred for study to the state's joint committee on economic development and emerging technologies but hasn't further progressed.[7]

While trusts and estates aren't themselves specifically reporting entities under the CTA or state versions of the act, trustees, trust protectors, settlors and trust beneficiaries may all be considered beneficial owners if a trust is a member of an LLC and meets the statutory thresholds. It will be incumbent on practitioners to familiarize themselves with the new laws to properly advise clients of reporting obligations and to monitor closely the on-going litigation in the federal district court and any related guidance issued.

Post-Mortem Right of Publicity

The right of publicity (ROP) is an individual's right to control and profit from the commercial use of their name, image or likeness and to prevent others from exploiting their persona for commercial gain. The ROP is governed by state law through statute or common law. The post-mortem ROP extends the ROP beyond an individual's lifetime, typically prohibiting the unauthorized use of an individual's likeness for commercial purposes for some period after death and allowing an executor or heir to enforce the protections provided by law.

In the high profile 2021 case of *Estate of Michael J. Jackson,*[8] the Tax Court directly addressed the taxability of image and likeness. The estate originally valued Jackson's image and likeness at $2,105 on his estate tax return; the IRS' initial valuation on audit was about $434 million. In a stunning victory for the estate, the court determined the value was around $4 million. This case, which involved California's post-mortem ROP statute,[9] put squarely in the spotlight the big dollars potentially at issue in valuing these intangible rights for estate tax purposes. Indeed, many state statutes specifically define the post-mortem ROP as a property right that's freely descendible and transferable by will, trust or other testamentary instrument, meaning it will likely be included in the gross estate, making it prudent for practitioners to consider the post-mortem ROP in planning.

About half the states have some form of post-mortem ROP.

About half the states have some form of post-mortem ROP.[10] States vary in terms of what triggers the post-mortem ROP. For example, Ohio,[11] Oklahoma[12] and Utah[13] require individuals to have exploited their publicity rights during their lifetime. Alabama,[14] Arizona,[15] Arkansas,[16] Florida,[17] Georgia,[18] Hawaii,[19] Illinois,[20] Indiana,[21] Louisiana,[22] Nevada,[23] Tennessee[24] and Washington[25] don't require commercial exploitation during lifetime. California,[26] Kentucky,[27] New York,[28] Ohio,[29] Oklahoma,[30] Pennsylvania,[31] South Dakota[32] and Texas[33] require that the name, image or likeness have commercial value either during lifetime or at death.

The number of years the post-mortem ROP protects an individual's persona after death varies widely among the states, from 10 years in Tennessee

and Washington,[34] to 20 years in Virginia,[35] to 30 years in Pennsylvania,[36] to 40 years in Florida and New York,[37] to 50 years in Arkansas, Illinois, Kentucky, Louisiana, Maryland, Nevada and Texas,[38] to 60 years in Ohio,[39] to 70 years in California, Hawaii and South Dakota[40] to 100 years in Indiana and Oklahoma,[41] with some states having protection for an uncertain duration.[42]

The nexus for using a state statute is typically that a decedent was domiciled or resident in that state at the time of death. However, Hawaii,[43] Indiana,[44] Nevada[45] and Washington[46] have broad statutes that provide protection as long as the exploitation occurs within the state, regardless of whether the individual was domiciled or a resident of the state.

The recent proliferation of artificial intelligence (AI) has intensified the danger that the rapidly evolving technology will be exploited to create unauthorized AI-generated renditions of an individual's voice and likeness that may violate their publicity rights. While most reported AI disputes involve living celebrities, the widely reported 2024 California case involving the estate of comedian George Carlin involved post-mortem publicity rights. The estate of Carlin, who died in 2008, filed suit against a podcaster who used AI to create a podcast titled "George Carlin: I'm Glad I'm Dead," using a replica of Carlin's voice.[47] The lawsuit alleged the Dudesy Podcasters used Carlin's name, image and likeness without consent for advertising, selling and soliciting traffic to their podcast, website, YouTube channel and social media accounts, thereby misappropriating Carlin's publicity rights and infringing copyright.[48] The parties settled the case in April 2024, including Dudesy reportedly agreeing to take down the podcast permanently and refrain from using Carlin's image, voice or likeness in the future without the express written approval of the estate.

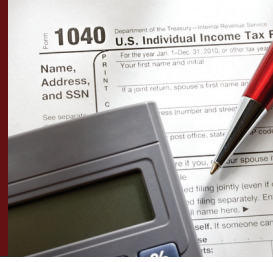
Here are some important state statutory developments:

California. This state enacted two pieces of legislation in September 2024 to protect an individual's likeness and help ensure the responsible use of AI. The first new law[49] requires that contracts specify when AI-generated versions of a performer's likeness or voice will be used. Entertainers, who must be represented by counsel during the contract negotiations, must agree to these provisions. The second new law,[50] coming on the heels of the high profile George Carlin estate case, bans the commercial usage of deceased performers' digital replicas if their estates haven't consented.

Louisiana. In 2022, this state passed the Allen Toussaint Legacy Act, named after the famous New Orleans musician, which provides individuals with "a property right in connection with the use of that individual's identity for commercial purposes."[51] The law, which became effective on Aug. 1, 2022, applies whether an individual died before or after that date. Previously, only deceased soldiers had post-mortem ROPs. This right to identity protection is limited to commercial purposes and applies only to individuals domiciled in or who died domiciled in Louisiana. The law creates post-mortem ROPs for 50 years after an individual's death. However, the ROP will terminate if the decedent's identity isn't used commercially for three consecutive years after death.

Tennessee. This state enacted the Ensuring Likeness, Voice, and Image Security (ELVIS) Act of 2024,[52] effective July 1, 2024, named after Elvis Presley. Notably, this legislation extended the ROP to include an individual's voice. Previously, Tennessee's ROP statute didn't extend to voice and only protected "name, photograph, or likeness." The new law also creates liability for knowing unauthorized uses of an individual's voice or likeness and will provide stronger protection against AI-generated performances.[53]

Federal fix? The Nurture Originals, Foster Art and Keep Entertainment Safe Act (NO FAKES Act) was introduced in the U.S. Senate by a bipartisan group of senators on July 31, 2024.[54] The bill, which targets unauthorized digital replicas given rapidly advancing AI technology, would protect the voice and visual likeness of all individuals from unauthorized computer-generated recreations from generative AI and other technologies. It would generally prohibit digital replicas of an individual created without consent in all U.S. jurisdictions unless used for news, sports broadcast, public affairs, documentary or biographical purposes. The protection would be in place during the individual's lifetime and extend up to 70 years after death. If passed at the federal level, this law would provide some uniformity compared to the patchwork of state laws currently governing these issues.



Transfer-on-Death Deeds

A transfer-on-death deed (TODD) is a legal mechanism that allows property owners to name a beneficiary to inherit real estate directly on the owner's death, bypassing the probate process. TODDs are popular for their efficiency, enabling straightforward transfers of property at death while allowing the owner to retain full control of the property during their lifetime, with the flexibility to sell, mortgage or modify the beneficiary designation as they see fit. Typically, no gift tax consequences are associated with a TODD because the deed doesn't transfer a present possessory interest.

As of 2024, at least 20 jurisdictions have adopted the Uniform Real Property Transfer on Death Act (URPTDA), which standardizes transfer-on-death procedures across jurisdictions: Alaska,[55] D.C.,[56] Hawaii,[57] Illinois,[58] Maine,[59] Mississippi,[60] Montana,[61] Nebraska,[62] Nevada,[63] New Hampshire,[64] New Mexico,[65] New York,[66] North Dakota,[67] Oregon,[68] South Dakota,[69] Texas,[70] Utah,[71] Virginia,[72] Washington[73] and West Virginia.[74] The uniform law mandates the same standard of capacity as that required to make a will, the same formalities as any other recorded deed and the filing of the TODD with the county office where the property is located during the transferor's lifetime. Other states that haven't adopted URPTDA but allow for TODDs through their legislation include: Arizona,[75] Arkansas,[76] California,[77] Colorado,[78] Indiana,[79] Kansas,[80] Minnesota,[81] Missouri,[82] Ohio,[83] Oklahoma,[84] Wisconsin[85] and Wyoming.[86] Accordingly, at least 32 jurisdictions have adopted some form of laws allowing for TODDs.

Here are the latest state developments:

Delaware. In April 2024, Delaware introduced legislation to adopt URPTDA.[87]

New York. New York became the most recent state to adopt a version of the URPTDA,[88] effective July 2024. On the owner's death, ownership of the property will pass directly to a named beneficiary. To execute a TODD in New York, the owner must sign the deed in the presence of two witnesses and a notary.

New Hampshire. In 2024, New Hampshire enacted its version of URPTDA effective July 2024.[89] The deed must: be titled "Transfer on Death Deed;" state that the transfer will take place on the owner's death; be recorded with the county register of deeds before the owner's death or within 60 days after it's executed; and be signed and notarized.

New Jersey. In June 2024, New Jersey introduced legislation to create its state's version of URPTDA.[90]

North Carolina. North Carolina introduced legislation in 2023 to adopt URPTDA. However, the bill[91] hasn't seen any movement and has been referred to the state's Judiciary committee.

Minnesota. In April 2024, Minnesota enacted legislation that substantially updated its TODD laws.[92] The amended law took effect in August 2024. The changes clarify that the execution of a TODD doesn't affect the property's title, but an insurable interest exists for the beneficiary for purposes of insuring the property against loss or damage that occurs on or after the deed becomes effective. The law also expands the validity of TODDs to situations in which the deed was recorded incorrectly or incompletely. Descendants of TODD beneficiaries will now receive the property if no successor beneficiary is listed in the deed.

It's important to note that while TODDs may benefit property owners looking to streamline estate planning and avoid probate, they should be used with caution to avoid unintended complications with an estate plan.

Rhode Island. Rhode Island introduced its version of URPTDA in April 2024,[93] with the stated goal of helping residents pass on their homes without probate.

As more states adopt TODD legislation, it's important to note that while TODDs may benefit property owners looking to streamline estate

planning and avoid probate, they should be used with caution to avoid unintended complications with an estate plan. Because property transferred via TODD passes outside of a will, it could interfere with other estate-planning strategies, particularly if the property was intended to fund trusts or other estate-planning vehicles. Changes in family or financial circumstances—such as divorce, death of a beneficiary or updates to estate-planning documents—may create inconsistencies if the TODD isn't kept current. Further, TODDs often overlook estate tax apportionment issues. In many cases, a revocable trust may be a more comprehensive and sophisticated option.

Electronic Execution

In today's technologically driven society, courts have increasingly been called on to adjudicate the validity of electronic writings purporting to be wills.[94] While a controversial topic, even before the pandemic, jurisdictions had begun to advance their laws to permit electronic wills as our technological capabilities continue to expand.

Nevada was the first state to enact legislation allowing electronic wills in 2001, which was amended in 2017.[95] Indiana passed legislation permitting electronic wills in 2018.[96] Arizona enacted electronic will legislation in 2019.[97] Florida enacted an Electronic Documents Act in June 2019, which took effect Jan. 1, 2020 and includes electronic wills.[98] Illinois enacted the Electronic Wills and Remote Witnesses Act, effective July 26, 2021.[99] In 2022, Maryland amended its law regarding the requirements to execute a valid will to include electronic wills and remote witnessing of wills.[100]

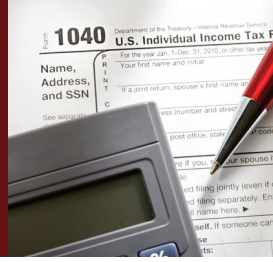
In July 2019, the Uniform Law Commission (ULC) promulgated the Uniform Electronic Wills Act (UEWA), which gives a testator the ability to electronically execute a will provided the will must exist in the electronic equivalent of text (no audio or video wills); the requisite number of witnesses must be physically present or, in states that will allow it, virtually present for the signing of the electronic will; and electronic wills can be revoked the same way as traditional ones, including by a subsequent will or codicil or a revocatory act. Additionally, UEWA requires that the self-proving affidavit be executed at the same time as an electronic will so the affidavit is part of the electronic will. An electronic will should be recognized as valid if it's valid under the law of the jurisdiction where the testator was physically located at the time of signing. UEWA doesn't include requirements regarding the storage of electronic wills, although individual states can add requirements in their statutes.

Because UEWA only addresses electronic will executions, the electronic execution of other estate-planning documents fell into an ambiguous area of the law that lacked formal guidance.

Utah was the first state to enact UEWA in August 2020.[101] Colorado,[102] North Dakota[103] and Washington[104] enacted UEWA in 2021.[105] D.C.,[106] Idaho[107] and Minnesota[108] enacted UEWA in 2023. Georgia,[109] Michigan,[110] Missouri,[111] New Jersey,[112] New York,[113] North Carolina[114] and Virginia[115] introduced UEWA legislation in 2024.

Because UEWA only addresses electronic will executions, the electronic execution of other estate-planning documents, such as trusts and powers of attorney, fell into an ambiguous area of the law that lacked formal guidance. In 2021, Delaware was the first state to pass legislation that recognized the electronic execution of various trust-related instruments, including governing instruments (other than wills and codicils), non-judicial settlement agreements, modifications and documents related to the appointment or removal of trustees, advisors or protectors.[116]

In 2022, the ULC promulgated the Uniform Electronic Estate Planning Documents Act (UEEPDA). UEEPDA applies only to non-testamentary documents. As described by the ULC, UEEPDA was drafted to complement UEWA, which



can be inserted as an Article of UEEPDA to provide states with a comprehensive set of rules for both testamentary and non-testamentary electronic estate-planning documents. Oklahoma became the first state to adopt UEEPDA and the complementary UEWA simultaneously, allowing residents to complete their entire estate plan digitally.

Here are the most recent developments in electronic estate planning:

Colorado. Colorado, which had enacted UEWA in 2021,[117] also enacted UEEPDA in 2024,[118] effective Jan. 1, 2025, and will accordingly recognize the validity of a full range of electronic estate-planning documents.

D.C. In 2023, D.C. adopted UEWA and now allows individuals to execute, witness and attest wills in electronic format.[119] D.C. also recognizes wills that were validly executed electronically in other jurisdictions but may not comply with its own requirements.[120]

Idaho. This state enacted UEWA in 2023, with retroactive effect to Jan. 1, 2020, allowing individuals to execute, witness and attest wills in electronic format.[121] Idaho will also recognize wills that were validly executed electronically in other jurisdictions that may not comply with its own requirements.[122]

Illinois. Illinois enacted UEEPDA in 2023, amending and adding to its Electronic Wills and Remote Witnesses Act to create the Electronic Wills, Electronic Estate Planning Documents and Remote Witnesses Act, effective Jan. 1, 2024.[123]

Minnesota. While Minnesota didn't directly adopt UEWA, it relied on the uniform provisions to amend its probate laws to allow for electronic execution, witnessing, attesting and notarizing of wills.[124] Minnesota also amended its probate laws to recognize electronic wills validly executed in other jurisdictions.[125] These new laws apply to wills executed on or after Aug. 1, 2023.[126]

Missouri. Missouri introduced legislation in 2024 that would allow for the electronic execution of a full range of estate-planning documents in the state.[127]

Oklahoma. Effective Nov. 1, 2024, Oklahoma[128] enacted a comprehensive version of UEEPDA, which includes UEWA and enables individuals to execute, witness and attest wills and other estate-planning documents in electronic format.

Virginia. Virginia introduced a bill to implement UEEPDA,[129] which would allow for the electronic execution of non-testamentary estate-planning documents.

Washington. Having enacted UEWA[130] in 2021 to permit the electronic execution of wills, this state enacted UEEPDA in 2024, effective June 6, 2024,[131] to complement UEWA and extend permissible electronic execution to non-testamentary estate planning documents.

What happens if a spouse dies during the divorce process?

Death During Divorce Proceeding

If an individual has been divorced and dies having failed to update their estate-planning documents to reflect the divorce, about half the U.S. states revoke bequests to former spouses in wills or other estate-planning documents. The other half doesn't. Even if a so-called revocation-on-divorce statute applies, those laws will be inapplicable during the pendency of the divorce, up until the final divorce decree is entered, which leads to the question: What happens if a spouse dies during the divorce process?

When one spouse dies after divorce proceedings have been initiated but haven't been finalized, the majority view across the United States, including Florida,[132] New York[133] and California,[134] appears to be that the marriage dissolution action generally is dismissed, known as "abatement by death." The couple is typically considered legally married, with the probate court having jurisdiction. If the decedent spouse didn't have a will, the estate generally will pass pursuant to that state's intestacy laws. If there's a will or trust, asset distribution will typically proceed in accordance with its terms, subject to a spouse's right of election. Accordingly, it's prudent both for divorced spouses and spouses in the process of getting a divorce to give immediate attention to their planning documents to ensure they reflect their intent (subject to elective share statutes and other legal restrictions).

However, in certain circumstances, a settlement agreement can be enforced even if one spouse dies before entry of final judgment. In New York, for example, while it's well-settled that a divorce action is abated in the event of death, an exception to this rule exists when the court has made a final adjudication of divorce but hasn't performed the mere ministerial act of entering the final judgment.[135] Moreover, even if the divorce action abated due to the decedent's death and that exception isn't applicable, a settlement agreement is still binding if the parties intended it to be an enforceable contract on its execution.[136]

Pennsylvania law differs from the majority view of abatement by death. It has a statute providing that, if one spouse dies while divorce is pending and grounds for the divorce have already been established, the divorce court can proceed with the case.[137]

Similarly, in New Mexico, if a party to the dissolution action dies during the divorce proceeding but prior to the entry of a divorce decree, the proceedings for the determination, division and distribution of marital property rights don't abate. Instead, the court will conclude the proceedings as if both parties had survived.[138]

Recent developments. Until recently, New Jersey was plagued by a so-called "black hole:" The divorce action abated if one party died during the divorce proceeding, yet if the parties were no longer cohabitating, the surviving spouse was precluded from exercising elective share rights, leaving the surviving spouse entitled to neither equitable distribution in the divorce nor an elective share of the deceased spouse's estate. In the 1990 New Jersey Supreme Court case of *Carr v. Carr,*[139] the husband died during divorce proceedings, leaving all his assets to children from his prior marriage. The surviving spouse was unable to claim a statutory elective share, and her claim for equitable distribution was terminated along with the divorce action. Lacking clear guidance, the court imposed the equitable remedy of a constructive trust on the assets of the husband's estate to prevent unjust enrichment.[140]

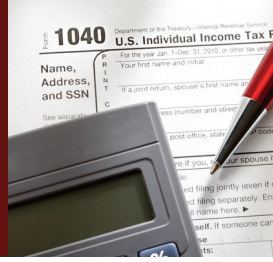
The black hole received renewed attention after the perception of an inequitable result in the 2018 New Jersey Court of Appeals case of *Acosta-Santana v. Santana*,[141] in which the husband died amidst divorce proceedings. A draft settlement agreement had been circulated in which the spouses agreed to split assets 50-50. The husband executed a will, leaving most of his estate to his children and naming his brother as executor. The husband died unexpectedly prior to the execution of the settlement agreement. As a result, the divorce court lost jurisdiction of the case, and it moved to probate court. The wife, as surviving spouse, ended up receiving approximately $600,000 more in assets than she would have had the settlement agreement been finalized.

In 2024, New Jersey amended its laws[142] to provide that a court's authority to effectuate an equitable distribution of property won't abate if either party dies prior to final judgment. The surviving spouse wouldn't have a right to an intestate share or an elective share of the decedent's estate. The amended New Jersey statute[143] applies retroactively.[144]

There's a growing trend of states implementing and updating MAID laws.

Medical Aid in Dying

Medical Aid in Dying (MAID) refers to the practice of a terminally ill, mentally sound adult requesting and receiving prescribed medication from a physician or, in some states, an advanced practice registered nurse (APRN) or nurse practitioner (NP) to voluntarily end their life. In states that have enacted MAID legislation, there are typically strict eligibility requirements, including that a patient must be an adult, have six months or less to live, be able to make informed health care decisions and be able to self-administer medication. This topic has also been front and center internationally, with British lawmakers voting to legalize assisted dying in a landmark decision at the end of November 2024, with even stricter requirements, including that two doctors and a judge would have to give their approval to a terminally ill adult with no more than six months to live. Parliamentary approval is required before that bill becomes law.



Opponents of MAID have raised concerns including religious and ethical issues, potential conflicts with the Hippocratic Oath in the medical field and fear of external pressures influencing a patient's decision. Proponents believe this option allows individuals facing unbearable suffering to have more control over their final days and offers a compassionate choice for those seeking relief from terminal illness.

There's a growing trend of states implementing and updating MAID laws. Oregon[145] was the first state to adopt legislation allowing MAID in 1997, and since then, California,[146] Colorado,[147] Hawaii,[148] Maine,[149] New Jersey,[150] New Mexico,[151] Vermont,[152] Washington[153] and D.C.[154] have enacted laws allowing for medical aid in dying.

For terminally ill residents of states that don't allow MAID, one option is to travel to a jurisdiction where such treatment is legal. To accommodate this, some states, like Vermont and Oregon, which had previously passed laws allowing MAID with residency requirements, recently passed laws removing the residency requirement.

There can be distinctions between capacity needed to make health care decisions and testamentary capacity.

Some states, including California, Colorado and Oregon are also amending their laws to expedite access to treatment for terminally ill patients by reducing the waiting period from when a patient is first evaluated to when they may begin receiving treatment. Some states, including California, Colorado and Vermont, which previously only allowed physicians to prescribe and treat patients with MAID, are now allowing APRNs and NPs to evaluate and prescribe MAID to qualifying patients.

There can also be distinctions between capacity needed to make health care decisions and testamentary capacity. In Oregon, for example, the standard for health care decisions is the ability to understand the general medical information necessary to give informed consent to treatment and to comprehend the nature and ramifications of receiving MAID.[155] The Oregon standard for testamentary capacity is that the individual must: be aware they're executing a will and understand its contents; comprehend the nature and extent of their property; and know which family members stand to inherit their assets without being reminded.[156] Of course, it will be prudent for a terminally ill individual to update and finalize their estate plan well in advance of getting MAID.

Here's the latest round-up of state legislative activity:

California. In 2022, this state's End of Life laws were amended[157] to reduce the waiting period from 15 days to 48 hours, to eliminate the requirement of a final attestation form and to require health care providers to post their policy about MAID on their website.

Colorado. In June 2024, this state passed an amendment to its End of Life Options Act that reduces the waiting period from 15 to seven days, adds advanced practice NPs as prescribers of MAID and allows for providers to waive the waiting period in circumstances when the patient is unlikely to survive more than 48 hours and otherwise qualifies for MAID.[158]

Delaware. In 2024, the Delaware Death with Dignity Act (the DDDA) passed both houses, but Gov. John Carney vetoed the legislation.[159] The DDDA provided that terminally ill adults may receive medicine to end their lives humanely and with dignity if either their physician or an APRN and a consulting physician or an APRN agree on the diagnosis and prognosis. They also had to determine that the patient had decision-making capacity, was making an informed decision and was acting voluntarily.

Hawaii. In June 2023, this state passed legislation reducing the waiting period from 20 days to five days. The amendment[160] also allows for APRNs to treat and prescribe MAID to patients. Physicians in Hawaii will also be able to waive the waiting period in certain circumstances, such as when death is likely prior to the end of the waiting period.

Michigan. This state introduced legislation in 2024 to allow MAID to qualifying terminally ill patients. The bill, in its current form, includes a 15-day waiting period and limits prescribers to licensed physicians.[161]

New Jersey. The New Jersey Medical Aid in Dying for the Terminally Ill Act went into effect in 2019[162] but has been met with some opposition. A bill was introduced in 2024 that would repeal the MAID law.[163] Another bill was also introduced in January 2024 that would amend the state's MAID law to waive the 15-day waiting period in certain circumstances.[164]

A MAID Act has failed to advance in New York in every 2-year legislative session since 2015.

New York. In 2024, the New York Medical Aid in Dying Act was introduced and failed to advance through the legislature.[165] A MAID Act has failed to advance in New York in every 2-year legislative session since 2015.

North Carolina. In 2023, North Carolina introduced legislation designed to study the effects of allowing MAID in the state.[166] If passed, this bill would fund and direct research on the topic at the North Carolina Institute of Medicine.

Oregon. In 2023, Oregon amended its Death with Dignity Act to remove the residency requirement for MAID.[167] This follows a 2019 amendment to the law that gives physicians discretion to waive the 15-day waiting period in cases in which the patient's death is imminent.[168]

Pennsylvania. The state introduced legislation[169] allowing qualifying terminally ill patients to receive MAID, with a residency requirement and a 15-day waiting period.

Vermont. In 2023, Vermont enacted legislation that removed the residency requirement from its Patient Choice and Control at End of Life Act,[170] allowing qualifying non-residents to receive MAID. In 2022, Vermont enacted an amendment removing the requirement that examinations be done in person, reducing requirements regarding the physician waiting period and offering immunity to anyone acting in good faith and complying with the state's MAID law.[171]

Washington. In 2023, this state enacted an amendment to its Death with Dignity Act, reducing the waiting period from 15 to seven days and allowing NPs and physician's assistants to prescribe MAID.[172]

West Virginia. In November 2024, West Virginia put the issue of MAID on the ballot.[173] Residents in the state voted to amend the state's constitution to prohibit people from partaking in "the practice of medically assisted suicide, euthanasia, or mercy killing of a person."

Estate and Gift Tax

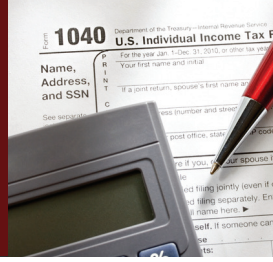
There are 13 jurisdictions (Connecticut,[174] D.C.,[175] Hawaii,[176] Illinois,[177] Maine,[178] Maryland,[179] Massachusetts,[180] Minnesota,[181] New York,[182] Oregon,[183] Rhode Island,[184] Vermont[185] and Washington[186]) that impose a state-level estate tax, and six (Iowa,[187] Kentucky,[188] Maryland,[189] Nebraska,[190] New Jersey[191] and Pennsylvania[192]) that have an inheritance tax, including one state (Maryland) that imposes both sets of taxes.

Here's an overview of the latest jurisdiction-level taxes:

Connecticut. Connecticut's estate and gift tax exemption is equal to the federal exemption amount for individuals dying after Jan. 1, 2024.[193] The state imposes an estate tax of 12% on the excess above the federal amount.[194] There's a $15 million cap on an individual's estate and gift tax liability.

Connecticut remains the only jurisdiction in the country with a true gift tax. Importantly for planning purposes, Connecticut doesn't impose a tax on gifts of tangible or real property located outside the state, so it's possible to make gifts with that type of out-of-state property without triggering a Connecticut gift tax.[195]

For individuals dying on or after Jan. 1, 2021, the estate tax may be reduced by up to half of the amount a decedent invested in certain private funds or funds through Connecticut Innovations for 10 years or more. This reduction can't exceed $5 million.[196]



D.C. The Estate Tax Adjustment Amendment Act of 2020[197] reduced D.C.'s estate tax exemption to $4 million for individuals dying on or after Jan. 1, 2021.[198] Beginning Jan. 1, 2022, that exemption amount increases annually by cost-of-living adjustments. The 2024 exemption amount was $4,715,600.

Kentucky. Kentucky imposes an inheritance tax with a top rate of 16%. Beneficiaries are grouped into classes based on their relation to the decedent, with more distant relatives paying higher rates on inherited assets.[199]

Hawaii. In 2018, Hawaii enacted laws reducing the Hawaiian estate tax exemption amount to $5 million indexed for inflation, $5.49 million in 2024.[200] In 2022, the state increased its estate tax rate on estates exceeding $10 million to 20%.[201] Hawaii's estate tax exemption is portable between spouses.

In Massachusetts, now only the value of the estate above the exemption amount is taxable.

Illinois. The state increased its exemption amount to $4 million in 2013. It remained $4 million in 2024.[202]

Iowa. In 2021, Iowa enacted legislation[203] to repeal its inheritance tax, which ranges from 0% to 15% depending on the relationship of the decedent to a beneficiary. The tax will be reduced by 20% a year beginning with individuals dying in 2021 and culminating in full repeal for individuals dying on or after Jan. 1, 2025.

New Jersey. New Jersey imposes an inheritance tax at a top rate of 16%. Rates are determined with reference to how closely related the beneficiary is to the decedent.[204]

Maine. Maine's estate tax exemption for individuals dying after Jan. 1, 2018 is $5.6 million, indexed for inflation.[205] The exemption was $6.8 million in 2024.

Maryland. In 2019, the state enacted a law providing that in 2019 and subsequent years, the Maryland estate tax amount will be capped at $5 million and won't be adjusted for inflation.[206] Maryland's estate tax exemption is portable between spouses.

Massachusetts. In 2023, this state doubled the estate tax exemption from $1 million to $2 million for individuals dying on or after Jan. 1, 2023[207] and ended the "cliff" approach of taxing in full those estates that exceeded the exemption. Now only the value of the estate above the exemption amount is taxable.

Minnesota. In 2017, Minnesota enacted legislation increasing the estate tax exemption amount incrementally, reaching a maximum amount of $3 million for 2020 and thereafter.[208]

Nebraska. In 2022, this state enacted legislation[209] to reduce the inheritance tax for individuals dying on or after Jan. 1, 2023.

New York. Effective for those dying on or after Jan. 1, 2019, New York's exemption amount is linked to the 2010 federal exemption amount of $5 million, indexed for inflation.[210] In 2024, New York's exemption amount was $6.94 million, rising to $7.078 million in 2025. However, the New York estate tax regime maintains its built-in "cliff."[211] Only estates that are less than or equal to the exemption amount on the date of death will pay no tax; for those estates that are between 100% and 105% of the exemption amount, there's a rapid phase-out of the exemption; and those estates that exceed 105% of the exemption amount will lose the benefit of the exemption amount entirely and be subject to tax from dollar one. While New York doesn't impose a current gift tax, the New York gross estate of a deceased resident is increased by the amount of any taxable gift made within three years of death, if the decedent was a New York resident at the time the gift was made and at the time of death.

Out-of-state real and tangible property won't trigger a New York estate tax for New York residents. Nonresidents who own real or tangible property located in New York won't owe any New York estate tax if the value of their New York situs property is below the New York exemption amount at the date of death.

Oregon. Since 2011, Oregon has an exemption amount of $1 million.[212]

Pennsylvania. Pennsylvania imposes an

inheritance tax at a top rate of 15%. Rates are determined with reference to the relation of the beneficiary to the decedent. The state allows a 5% discount if the inheritance tax is paid within three months of the decedent's death.[213]

Rhode Island. Pursuant to a law signed in June 2014, this state increased its estate tax exemption amount to $1.5 million in 2015, indexed for inflation.[214] For 2024, the estate tax exemption amount increased to $1,774,583.

Vermont. The state enacted a law in 2019 which increased the state exemption amount to $5 million in 2021 and thereafter.[215]

Washington. The exemption amount is $2 million, indexed for inflation, which was $2.193 million in 2024.[216]

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Endnotes

1. *Texas Top Cop Shop, Inc. v. Garland* (Docket No. 4:24-CV-478).
2. CA. S.B. 1201 (2024).
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4. N.Y. A.8544/S.8059.
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6. MA H. 3566 (2023).
7. MA Order H.4593.
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9. Cal. Civ. Code Section 3344.1.
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11. Ohio Rev. Code Ann. Section 2741.01.
12. Okla. Stat. tit. 12, Section 1448.
13. *Nature's Way Prod., Inc. v. Nature-Pharma, Inc.*, 736 F. Supp. 245 (D. Utah 1990).
14. Ala. Code Section 6-5-771.
15. *In re Estate of Reynolds*, 235 Ariz. 80 (Ct. App. 2014).
16. Ark. Code Ann. Section 4-75-1103.
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20. 765 Ill. Comp. Stat. 1075/5.
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22. L.A. Rev. Statute Section 51:470.1.
23. Nev. Rev. Stat. Section 597.790.
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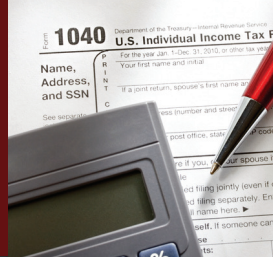
25. Wash. Rev. Code Section 63.60.020.
26. Cal. Civ. Code Section 3344.1.
27. Ky. Rev. Stat. Ann. Section 391.170.
28. N.Y. Civ. Rights Law Section 50-f.
29. Ohio Rev. Code Ann. Section 2741.01.
30. Okla. Stat. tit. 12, Section 1448.
31. 42 Pa. C.S.A. Section 8316.
32. S.D. Codified Laws Section 21-64-1.
33. Tex. Prop. Code Ann. Section 26.003.
34. Tenn. Code Ann. Section 47-25-1104 and Wash. Rev. Code Section 63.60.040.
35. Va. Code Ann. Section 8.01-40.
36. 42 Pa. C.S.A. Section 8316.
37. Fla. Stat. Ann. Section 540.08 and N.Y. Civ. Rights Law Section 50-f(8).
38. Ark. Code Ann. Section 4-75-1107, 765 Ill. Comp. Stat. 1075/30, Ky. Rev. Stat. Ann. Section 391.170, Md. Code Ann., Bus. Reg. Section 19-503, Nev. Rev. Stat. Section 597.790 and Tex. Prop. Code Ann. Section 26.012.



39. Ohio Rev. Code Ann. Section 2741.02.
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41. Ind. Code Section 32-36-1-8 and Okla. Stat. tit. 12, Section 1448(G).
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63. 63. NRS 111.655 to 111.699.
64. N.H. Rev. Stat. Section 563-D:5.
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67. N.D.C.C. Section 30.1-32.1-02.
68. ORS Section 93.969.
69. 69. SD CL Section 29A-6-408.
70. TX Estates Code 2C-114.051.
71. Utah Code Section 75-6-405.
72. Virginia Code Section 64.2-624.
73. RCW Section 64.80.
74. West Virginia Code Sections 36-12-1.
75. A.R.S. Section 33-405.
76. Ark. Code Ann. Section 18-12-608.
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79. IN Code Section 32-17-14-11.
80. K.S.A. Sections 59-3501 to 59-3507.
81. Minn. Statutes Section 507.071.
82. RS Mo Section 461.025.
83. OH RC Section 5302.23.
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85. Wisconsin Statutes Section 705.15.
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89. NH RSA Section 563-D:19, 563-D:20.
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94. *See In re Estate of Javier Castro*, No. 2013ES00140 (Ct. Common Pleas, Lorain County, Prob. Div., Ohio, June 19, 2013) (will written with two witnesses on Samsung Galaxy Tablet) and *In re Estate of Horton*, 925 N.W.2d 207 (Mich. Ct. App. 2018) (typed electronic note on decedent's phone recognized as valid will).
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137. 23 Pa.C.S. Section 3323.
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147. Colorado End-of-life Options Act, C.R.S. Article 48 of Title 25.
148. H.I. HB650 (2018).
149. Patient-directed care at the end of life, MS Section 2140.
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153. R.C.W. Section 70.425.
154. D.C. Code Section 7-661.01 et seq.
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