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New York Law Journal

Trusts&Estates

Top 10 Developments, Lessons, and Reminders of 2025

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January 20, 2026

10. And Baby Makes…Four?

With advances in medical technology, genetic material can be used in myriad ways.

In ***Matter of Baby D.K.N.,*** 2025, N.Y. Slip Op 25202 (Sup Ct. Kings Co.) Sept 3, 2025, appears to be the first case in the country that recognizes three individuals with genetic or gestational ties to a child as legal parents of the child. The child was conceived through assisted reproductive technology (ART). E.D. was the egg donor, R.N. was the sperm provider, and E.K. gestated the child. The three planned to conceive through ART and raise the child together in their shared home.

The court granted the petition under New York Family Court Act Article 5-C, the purpose of which is to legally establish a child's relationship to their parents when the child is conceived through ART or gestational surrogacy. Notably, the Article does not call for a best interest analysis, as is required by other statutes when adjudicating custodial or visitation rights. The Article does not specify the maximum number of

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intended parents. In relevant part, §581-102(k) broadly defines an intended parent as "an individual who manifests the intent to be legally bound as the parent…"

The court found that all three petitioners were deemed "intended parents" and "participants" under the statute, and all three parents were named on the child's birth certificate. Although E.D. was married to M.R., who was presumed a parent under the marital presumption statute and supported E.D.'s decision, M.R. expressly declined parentage, and was given permission not to be a party. Had M.R. been joined in the proceeding, the court could potentially have determined the child had four parents.

The implications of this case are potentially far-reaching in demonstrating a path to multi-parent recognition, with possible attendant support rights and inheritance rights from multiple parents, elevating the importance of intentional definitions in estate planning documents.

9. Service of Process Methods for Surrogate's Court Proceedings Significantly Expanded

New York has modernized service of process requirements for Surrogate's Court proceedings by amending Surrogate's Court Procedure Act (SCPA) §§307, 308, and 309. Previously, service of process on New York domiciliaries without court order was strictly limited to personal delivery, whereas nondomiciliaries could be served by mail. Under the new law (A.8408/S.8175), enacted on Nov. 21, 2025, and effective immediately, service of process can be made by registered or certified mail upon New York residents, as well as those outside the state, without court order. Where service by mail within or without the

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state cannot be completed after diligent efforts, the amendments also allow for service by e-mail with court order.

The amendments update the time within which process must be served, allowing for 10 days when service is made by personal delivery, 20 days when service is made by means other than personal delivery within the U.S, and 30 days in all other cases and where the attorney general is a party.

8. Post-Mortem Right of Publicity Laws Expanded

The right of publicity (ROP), which is governed by state law, 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 post-mortem ROP extends the ROP beyond an individual's lifetime, allowing an executor or heir to enforce the protections provided by law. Since 2021, New York (N.Y. Civ. Rights Law §50-f) has recognized post-mortem publicity rights for 40 years after death for individuals who die domiciled in New York whose name, voice, signature, photograph, or likeness has commercial value at the time of or because of their death.

Given the proliferation of artificial intelligence (AI) and the unparalleled dangers presented by ubiquitous cloning, New York strengthened its post-mortem ROP laws to provide estates with the legal infrastructure to better police (and potentially license) the identity of deceased personalities. A bill (S.8391/A.8882) enacted Dec. 11, 2025, and effective immediately, specifically requires prior consent from a deceased individual's heirs or executors for the commercial use of the individual's name, voice, image, or likeness. Previously, instead of consent, a disclaimer could be sufficient, provided the depiction was not likely to deceive the public into thinking it was authorized.

A related bill, signed into law the same day and billed by Gov. Kathy Hochul as the first in the nation (S.8420-A/A.8887-B), requires advertisers to disclose if an advertisement includes AI generated synthetic performers, which are digitally created assets designed to give the impression that a human is performing.

Given the exploding technology and the value it may create for name, image and likeness, practitioners should be mindful that New York's statute explicitly provides that post-mortem publicity rights are property rights, freely descendible and transferable, including by contract, gift, trust, or any other testamentary instrument. In the absence of an express testamentary transfer, these rights will pass under a residuary disposition. Since the post-mortem ROP is a property right that will likely be included in the gross estate for estate tax purposes, it will be prudent for practitioners to consider planning techniques to enhance its value to heirs while minimizing transfer tax costs.

7. Governor Reaches Agreement to Pass Medical Aid in Dying Act

A proposed Medical Aid in Dying Act (MAID) (A.136/S.138) passed both houses in 2025. The Act allows a mentally competent, terminally ill patient with no more than six months to live to request medication to be self-administered to hasten death. The proposal also provides detailed procedures and protections for patients against abuse and immunities to health care providers, including a physician who prescribes the medication. The cause of death would be listed as the underlying terminal illness, not suicide, so insurance benefits cannot be denied for actions taken in accordance with the Act.

On Dec. 17, 2025, Hochul announced an agreement with the legislature to sign the bill, with additional guardrails, designed to ensure the integrity of the patient's decision and the preparedness of the medical institutions, as follows:

· Mandatory five day waiting period between when prescription is written and filled;

· Oral request for medical aid in dying must be recorded by video or audio;

· Mandatory mental health evaluation by psychologist or psychiatrist;

· Anyone who may benefit financially from patient's death prohibited from serving as witness or interpreter;

· Medical aid in dying available only to New York residents;

· In-person initial evaluation of patient by physician required;

· Religiously-oriented home hospice providers can opt out of offering medical aid in dying;

· Violation of law defined as professional misconduct; and

· Effective date delayed six months after signing to allow Department of Health to implement regulations.

A number of jurisdictions, including California, Colorado, District of Columbia, New Jersey, Oregon, Vermont, and Washington have some form of this legislation and several more states have introduced similar legislation, with more likely to follow.

6. Commission Structure for Individual Trustees of Charitable Trusts Modernized

Individual trustees of wholly charitable trusts and trustees of non-charitable trusts were compensated differently in New York. On Nov. 21, 2025, Hochul enacted a law (A.8300/S.8373) that eliminates the discrepancy, after many years of failed attempts to revise the compensation structure.

Previously, under SCPA §§2308(5) and 2309(5), a trustee of a wholly charitable trust was entitled to only 6% of annual income collected, regardless of the trust's principal value. By contrast, a trustee of a non-charitable trust is compensated based on the value of the trust principal, receiving statutory annual commissions calculated on a sliding scale. The charitable trustee compensation structure was criticized because the duties of charitable and non-charitable trustees are comparable and because the limitation to income commissions created a potential conflict of interest, since trustees were incentivized to maximize income instead of investing for total return.

The new law, which takes effect on Jan. 20, 2026, provides commissions to individual trustees of wholly charitable trusts at the same rates as individual trustees of non-charitable trusts, with a reduced amount of 80% of the rates for a non-charitable trust with a principal value of up to $20 million, and a reduced amount of 50% on the principal value in excess of $20 million. Corporate trustees will still be entitled to reasonable compensation at published rates. As with non-charitable trusts, the charitable trust commissions would be payable one-third from income and two-thirds from principal. There are no commissions for paying out principal of a wholly charitable trust.

5. Three-Year Gift Add-Back Extended but Recharacterized as Debt to Facilitate Federal Deduction

New York Tax Law §954(a) (3) includes a three-year gift add-back provision, which requires gifts made within three years of death to be included in the New York gross estate for estate tax purposes, even though those gifts are not included in the federal gross estate. Originally set to expire on Dec. 31, 2025, this add-back rule was extended through the end of 2031 in the 2025-2026 Executive Budget, enacted May 9, 2025.

The provision is problematic because the New York estate tax attributable to assets added back is not deductible for federal estate tax purposes since only state death taxes paid on assets "includible in the federal gross estate" qualify for the deduction (Internal Revenue Code (IRC) §2058). These gifts, artificially added back for New York estate tax computation purposes, are not includable in the federal gross estate.

Ironically, this left the estates of individuals who died within three years of gifting in a worse position than if they had done no planning: they were potentially subject to top 16% New York estate taxes, yet if they died owning the assets, they would be entitled to a federal deduction for state death taxes, which could effectively reduce the top rate to 9.6% (16% New York tax deductible against a top 40% federal estate tax rate = 9.6%).

To address this problem, the final budget classifies the New York estate tax attributable to the add-back as debt of the decedent under IRC §2053(a)(3), with the intent of making it a deductible debt from the federal gross estate. Whether the IRS accepts New York's recharacterization remains to be seen.

4. Proposal to Broaden Scope of New York LLC Transparency Act Vetoed by Governor

Modeled on the federal Corporate Transparency Act (CTA), the New York LLC Transparency Act (NYLTA)(A.8544/S.8059) took effect on Jan. 1, 2026.

Originally under NYLTA, which cross-references many provisions of the CTA, LLCs formed or authorized to do business in New York were required to provide information about each beneficial owner. However, on March 26, 2025, the Treasury Department removed the requirement for U.S. companies and U.S. persons to report beneficial ownership information to the Financial Crimes Enforcement Network under the CTA, thereby narrowing the scope of the rule to foreign reporting companies. Because many key terms

in NYLTA cross-reference the CTA, without statutory amendment it appeared that NYLTA would only apply to foreign LLCs authorized to do business in New York.

To broaden the scope of NYLTA back to domestic LLCs, both houses passed a bill (A.8662/S.8432) that would have introduced state-specific definitions, decoupling from federal law to maintain disclosure requirements for domestic LLCs. Hochul vetoed the bill on Dec. 20, 2025, explaining that NYLTA was intended to ensure the state receive similar reporting to that required under the CTA, not to place additional burdens on LLCs. Accordingly, NYLTA currently applies only to foreign LLCs authorized to do business in New York.

3. Electronic Wills Are Allowed in New York

The New York Electronic Wills Act (A.7856A/S.7416A) was signed into law on Dec. 12, 2025, authorizing the electronic signature, attestation and notarization of wills. An "electronic will" means a will executed electronically in compliance with the statute and subsequently filed with the court.

The will must be signed by the testator or by another individual in the testator's physical presence and directed by the testator. At least two witnesses must sign in the physical or remote presence of the testator and within 30 days after witnessing. Electronic wills must include a self-proving affidavit and a mandatory cautionary disclosure statement in at least 12-point font, boldfaced and double-spaced type. The will must be electronically filed with the New York State Unified Court System within 30 days of execution.

The testator may revoke an electronic will at any time by executing a subsequent will or a separate writing executed with the formalities of a will indicating intent to revoke, or by removing the electronic will from the court system. Removal from the system (except by court order during the life of the testator) constitutes revocation. The Act is to take effect 545 days after becoming law.

The proposal had initially been opposed, including by the New York City Bar, over critical concerns, like inadequate legal safeguards and exposing testators, beneficiaries, and the courts to significant legal ambiguity and uncertainty. Since that time, the governor reached an agreement with the legislature to address those concerns, including failing to sufficiently detail fraud protections, in the upcoming legislative session. As indicated in her approval memorandum, (No. 24 Chapter 637), she signed the bill into law on the basis of that agreement.

2. Resident or Not… New York State is Gonna Getcha, Getcha, Getcha

A. New York Flies After Snowbirds

Did a couple change their domicile from New York to Florida? That was the issue in ***Matter of John J. Hoff & Kathleen Ocorr-Hoff,*** DTA No. 850209 (N.Y. Tax Appeals Trib. Oct. 9, 2025).

The couple had lived in upstate New York for many years. In 2014 they bought a condominium in Naples to establish a second home in a warm climate. They began spending more time in Naples, ultimately deciding to transition there as part of husband's retirement plan to exit from his New York business, claiming they changed domicile in 2018. While not disputing that the taxpayers intended to change their domicile at some point, the Tribunal concluded that they failed to accomplish that change for the years at issue.

In coming to its decision, the Tribunal noted that a party claiming a domicile change has the burden of proof by clear and convincing evidence. The standard of review necessitates an examination of objective factors to determine a taxpayer's subjective intent, using the following categories:

i. Home: Taxpayers continued to maintain both homes as permanent, full-time residences.

ii. Time: Taxpayers spent time in both residences and, significantly, spent more time in New York than in Florida. The tally of daily locations was based on the Tax Division's analysis of the taxpayers' Verizon statements.

iii. Business Ties: Although husband did ultimately sell his New York business after the audit period, in 2018 and 2019 he was president and sole shareholder and continued to collect a significant salary. Wife also continued her business in New York for the years at issue.

iv. Social Ties: While taxpayers joined a country club in Florida in 2018, they also continued full membership "in not one, but two" country clubs in New York.

v. Family Ties: Three of the five taxpayers' children and wife's parents lived in New York, they had no family in Florida, and they spent three of four significant holidays in their New York home in 2018 and 2019.

vi. Other Evidence: Although in 2018 taxpayers registered to vote

in Florida, obtained Florida driver licenses and filed a Florida Declaration of Domicile, according to the Tribunal "so-called formal declarations of domicile, such as voter registration or motor vehicle registration, have lost their importance in recent years as courts have recognized their self-serving nature…" Moreover, creation of Florida revocable trusts and wills governed by Florida law did not occur until 2019; few personal effects were moved from New York to Florida; only one of their four cars was registered in Florida during the audit period; and taxpayers used a NY accountant.

The ***Hoff*** case underscores the fact that New York remains vigilant and aggressive in residency audits. Taxpayers should anticipate review of cell records to determine day counts and note that taking "formal steps" such as updating voting and vehicle registrations will not be dispositive without facts and circumstances that clearly support a change of domicile.

B. Convenience of the Employer Rule is Very Convenient…for New York

Remote work has become commonplace since the pandemic. If someone works in New York and lives in another state, what are the personal income tax implications of telecommuting?

Generally, an employee pays taxes in the jurisdiction in which the employee physically performs services. Even prior to the pandemic, however, New York imposed a so-called "convenience of employer rule." Pursuant to this rule (20 NYCRR 132.18(a)), if employees work from home through the employer's necessity, the employee will be taxed in the employee's telecommuting location.

If, however, the employee telecommutes for their own convenience, the employee's wages for those workdays will be classified as if the employee was working from the employer's physical office. During the pandemic, the Department of Taxation and Finance took the position that if a nonresident's primary office was in New York, even if she was telecommuting from outside the state due to the pandemic, her days telecommuting were considered days worked in New York, unless her employer established a bona fide employer office at her telecommuting location.

In ***Matter of Edward A. and Doris Zelinsky*** (2025 WL 1508341 (N.Y. Tax App. Trib.) May 15, 2025), a Connecticut resident and professor at Cardozo Law School maintained that income earned while working in Connecticut should not be treated as New York source income, including during the pandemic from March through December 2020, when in-person classes were suspended in accordance with executive order and he never set foot in New York.

The Tribunal rejected the taxpayer's claim, even though Cardozo was closed during the pandemic and the taxpayer was prohibited from teaching there. The Tribunal found that Cardozo's allowing its employees to work from home, wherever that may have been, "did not constitute its own necessity to have those job functions performed in those places" as opposed to anywhere else. Taxpayer also challenged the Division's position on constitutional grounds as violations of the Due Process and Commerce clauses, which the Tribunal rejected.

With millions continuing to telecommute in the post-pandemic world, New York's convenience rule can tax employees as if physically working in their employer's office in New York, despite never setting foot in that location…even when remote work is mandated by executive order. There may also be a risk of double taxation if the employee's home state taxes the income and does not provide a credit.

In order to avoid the convenience rule, it will be necessary to show work outside the state due to the employer's necessity for business reasons or work from a bona fide employer office outside the state (TSB-M06(5)I), meaning that the office must either contain or be near specialized facilities, or satisfy a number of secondary and other factors (which can include the home office being a requirement of employment, the employee performing some core duties at the home office, meeting with clients on a regular and continuous basis at the office and using a specific area of the home exclusively to conduct the business of the employer that is separate from the living area).

1. Are Irrevocable Trust Assets Reachable in Divorce?

In ***C.S. v R.H.,*** 2025 N.Y. Slip Op. 51426(U), 87 Misc.3d 1201(A), the question presented was whether a court can consider the value of marital assets placed into trusts for equitable distribution purposes, without distributing the assets or dissolving the trusts. The Supreme Court determined to include the value of assets transferred by spouses 15 years before divorce into irrevocable trusts for benefit of their descendants.

The couple acquired great wealth when Goldman Sachs purchased the business in which husband was a partner, and they enjoyed an opulent lifestyle post buy-out. The parties placed much of their wealth into irrevocable trusts for benefit of their daughters. Neither spouse was a beneficiary of the trusts, although the court found that trust assets funded their lifestyle. The trusts were grantor trusts; husband was grantor, investment advisor to LLCs held in the trusts, and had the power to remove and replace trustees.

After wife filed for divorce in 2018, husband took unilateral actions to systematically cut her out of any involvement in the trusts, unilaterally removing her from LLC roles, executing mid-trial decantings that expanded his investment-advisor powers, and evicting her from trust-owned homes while securing favorable leases for himself. The court found these actions evidenced ongoing control and egregious economic fault.

The court determined husband was arrogant, acted in bad faith, and lacked credibility, often a key factor in family law cases. Although the trust powers held by husband are common powers that are routinely included in trust instruments, where a party has acted egregiously, family law courts have seized upon the control inherent in these powers as evidence that the trusts are the alter-ego of the powerholder. The court found that wife was sincere, intelligent, warm and testified credibly that she did not understand the planning, that husband assured her the trusts were just tax shelters, and she did not have separate counsel.

Despite the court's finding that the trusts were valid with legitimate estate planning purposes that should not be disturbed, the court included the full value of the trusts ($110+ million) in the total marital estate of $180+ million. Wife was awarded 50% of the marital estate, or $90 million, including all of the non-trust marital assets, essentially leaving husband with nothing because wife was awarded all of the non-trust assets and neither spouse was a beneficiary of the trusts. Additionally, husband was also ordered to pay wife an additional $35 million over ten years, although he apparently had no assets with which to satisfy that obligation.

Clearly in this case the de facto control husband exercised over the trusts, his perceived egregious conduct and his arrogant and evasive testimony weighed heavily on the court. While many have expressed concern that the decision is problematic for planning by essentially disregarding the legal framework of a trust, legitimate estate planning with the informed consent of both spouses, independent trustees, and impartial administration should go a long way to shoring up the protection of irrevocable trust assets in the event of divorce. In the meantime, the case is being appealed.

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This article includes developments through Jan. 9, 2026.

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She wishes to thank her colleague Senior Client Advisor **Noelle Zola** *for her assistance.*

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