

# What's New in Estate Planning 2025

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# Your Speakers: Roberta J. Robinson

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- Founder: Robinson & Wilson, A Law Corp.
- 47+ years attorney experience
- Office in Rancho Bernardo, San Diego, CA.
- Certified Specialist in Estate Planning Trust & Probate Law
- Proud mother of partner Attorney Daniel Joseph Wilson
- Grandmother of 5 wonderful grandchildren



# Your Speakers: Daniel J. Wilson

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- Partner: Robinson & Wilson, A Law Corp.
- 12+ years attorney experience
- Office in Rancho Bernardo, San Diego, CA.
- Certified Specialist in Estate Planning Trust & Probate Law
- Master of Laws in Taxation
- Rancho Bernardo Community Foundation, Past-President



# Agenda

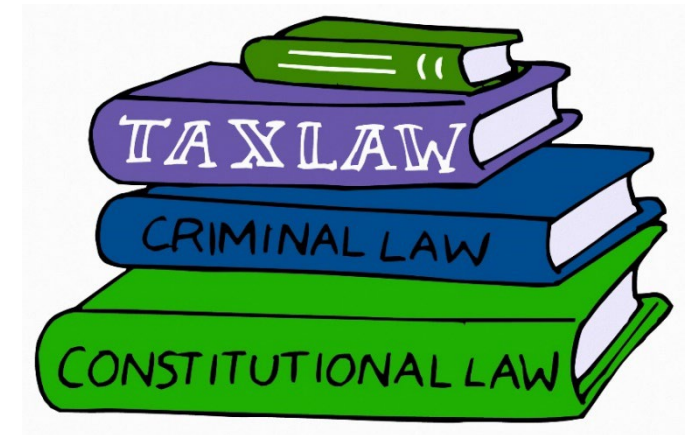
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- Tax Law: Recent Developments

- Federal \$13,990,000 transfer exemption! For how long?
- Transfers without Probate
- Secure Act 2.0 and RMD's
- Basis Step-Up Planning
- California Property Tax (Prop 19)

- Case Law: Recent Developments

- Wills, Trusts, and Administration



# 2025: Federal Estate Tax Exemption

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- 2025: \$13,990,000 tax free - 40% on excess
- **2026**: Approx. **\$7** Million tax free - 40% on excess
- Example:
  - \$13.99M death in 2025 = \$ 0 Federal Estate Tax
  - \$13.99M death in 2026 = \$2.76M Federal Estate Tax



# Sunset: 2017 Tax Cuts & Jobs Act (TCJA)

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- 2017: 10-year tax bill ending 12/31/25
- What could happen to the exemption?
  - Nothing: \$ 7M in 2026
  - Extension: \$13.99M+ in 2026
  - New Law: ?
- Example:
  - \$13.99M death in 2025 = \$ 0 Federal Estate Tax
  - \$13.99M death in 2026 = \$2.76M Federal Estate Tax





# Portability to Spouse

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- 2025: Married couple has 2 x \$13.99M
  - TOTAL: \$27.98M estate tax free
- **2026**: Married couple has 2 x \$7 M
  - TOTAL: **\$14 M** estate tax free

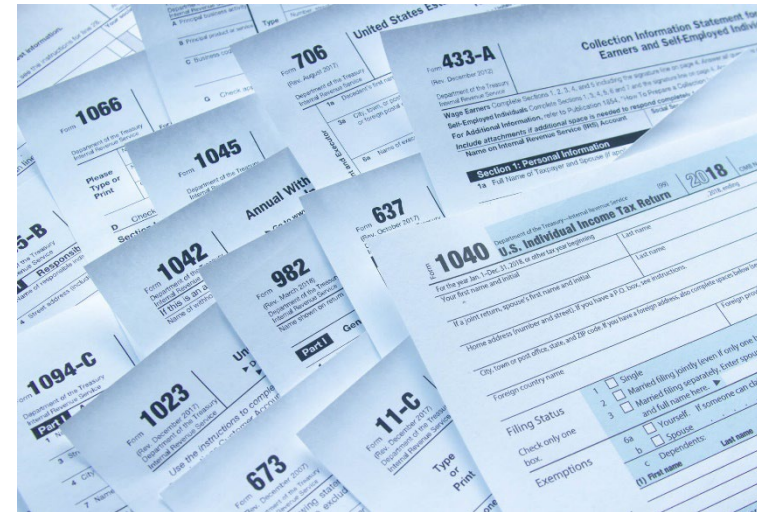




# Federal Estate Tax Return – Form 706: Portability Election

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- Elect “portability” of the “DSUE”
  - D: Deceased
  - S: Spouse’s
  - U: Unused
  - E: Exemption (\$13.99M in 2025)



# Extension of Time to Elect Portability

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- Federal Estate Tax Return – Form 706
- Due **9-months** after death
- Request “extension of time” to file if:
  - Estate was less than the exemption
  - Death after 12/31/2010
  - **New: 5 years** or less since death!



# How to Use the Disappearing \$7M Exemption

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- Gifts
- No claw back
- Must spend exemption from bottom up
- Is it worth it?
- No new income tax basis at death.



# 2025 Gift Taxes

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- \$13,990,000 gift tax exemption
- No clawback
- \$19,000 annual gift tax exclusion
- Unlimited medical and educational expenses
- Carry-over income tax basis



# 2025 Generation-Skipping Transfer Tax (GST)

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- Direct vs. Indirect GST Transfers
- \$13,990,000 GST tax exemption,  
not portable to spouse!
- Extension of Time to Allocate
- No clawback
- \$19,000 annual GST exclusion



# Income Taxes: Basis Step-Up Planning

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- Lifetime: Cost Basis (Purchase Price)
  - Sales Price – Cost Basis = Capital Gain
  - Appreciation taxable!
- Death: New Income Tax Basis at Death
  - Basis “step-up” to “fair market value” date of death
  - Home/Stock Sale
    - Lifetime: \$1M sale - \$400k cost basis = \$600k gain
    - Death: \$1M sale - \$1M new basis = \$ 0 gain
- Exceptions to New Basis
  - Retirement plans and annuities

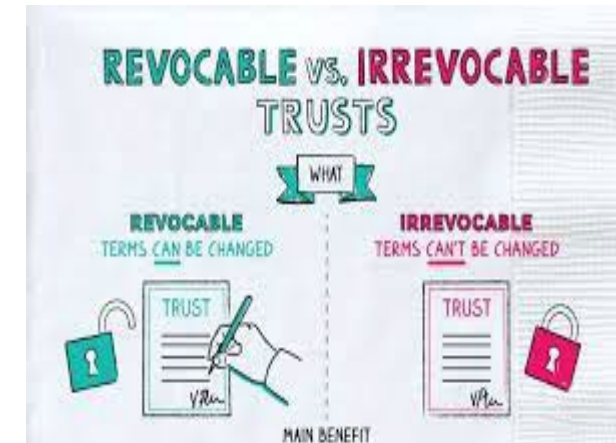




# Income Taxes: Basis Step-Up Planning

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- Irrevocable Trusts: No New Basis at Death
- Types of Irrevocable Trusts
  - A-B Trust: Trust B (decedent) for benefit of spouse
  - Generation-Skipping Trust: for benefit child/grandchild
- Reason: Assets not Includable in Estate





# Income Taxes: Basis Step-Up Planning

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- Modification of A-B Trust
  - Problem: Trust B Substantial Gain
  - Solution: Cause “Inclusion” in Survivor’s Estate
  - How: Add “General Power of Appointment”
- Petition Court
  - Consent of Beneficiaries
  - Reason: Intent was to Minimize Taxes
  - Hearing & Court Order



# Income Tax: Irrevocable Trusts & Estates

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- Federal Income Tax
  - Top Rate: 37%
  - Trust Taxable Income: \$15,650+
- California Income Tax
  - Top Rate: 14.4%
  - Taxable Income: \$1M+
- Who is Taxed?
  - Trust: Accumulated Income
  - Beneficiary: Distributed Income



# Electronic Signatures: **Not** Ca. Wills/Trusts

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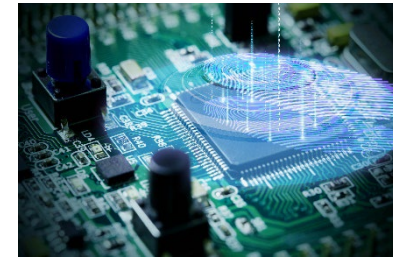
- What is an Electronic Signature?
  - E-sign app online: Docusign, Adobe Acrobat
  - No physical signature on paper
  - Will the e-signature count in Court?
- Which States Allow Electronic Wills?
  - Uniform Electronic Wills Act (UEWA) – Adopted in:
    - Colorado, Utah, North Dakota, Oregon and Washington
  - **Not** California.
    - A valid Will must be in writing and physically signed.
    - Probate Code Section 6110



# Electronic Signatures: Recording Documents Signed and Notarized Online

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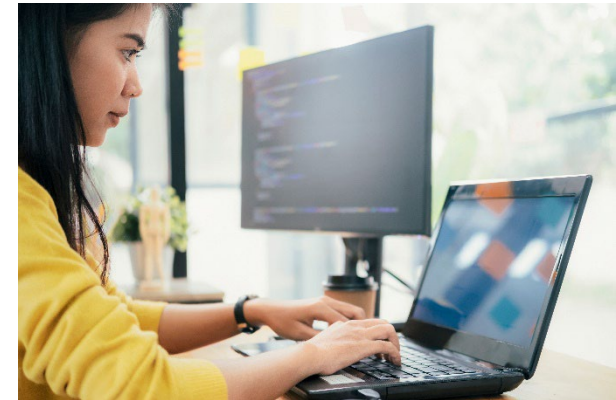
- Electronic Recording of Original Document with Wet Signatures since 2004
- Physical Recording of Copy of Original Document with E-Signature/E-Notary – **New**
  - Disinterested Custodian- Person who is not a grantee, beneficiary, or person who benefits from the document.
  - Prints a tangible copy of the original e-document.
  - Wet Signatures
    - Disinterested Custodian signs Certification stating the copy is an accurate reproduction of an electronic record.
    - Notary signs a Jurat
  - Physically record a copy of the original e-document with wet signatures.



# Electronic Assets & Communications: Fiduciary Access

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- Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) –
  - Who can access digital assets during incapacity or after death?
  - Digital Assets: Emails, texts, messages, social media accounts, photos, online bank accounts, cryptocurrency, and online-stored intellectual property.
- Fiduciary
  - Lifetime Fiduciary: Conservator, Agent under Durable Power of Attorney
  - Fiduciary Action After Death: Executor, Trustee
- Three-Tier System to Determine User’s Intent
  - First: User’s designation through online tool
  - Second: Estate planning document, e.g., Power of Attorney, Will, Trust
  - Third: Provider’s terms of service





# Transfers without Probate

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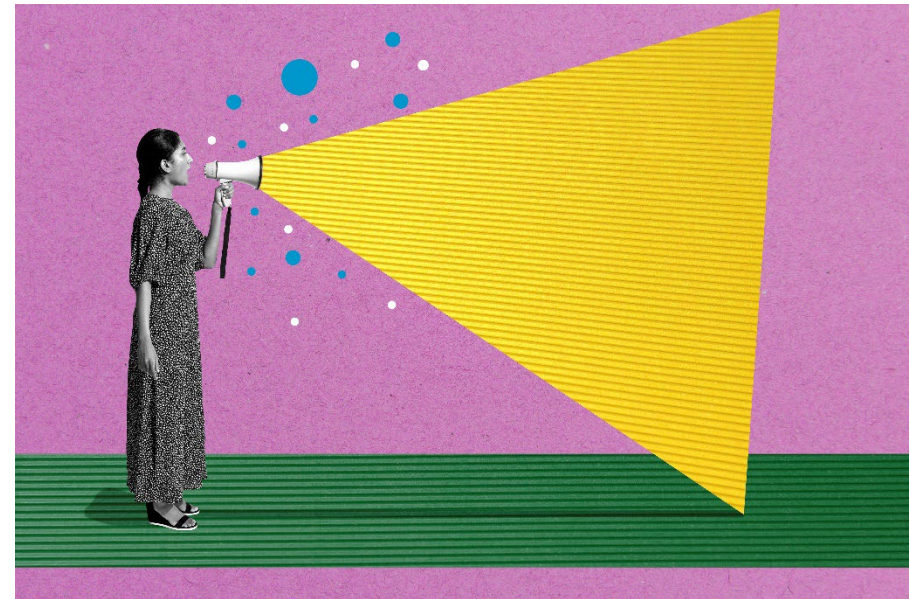
- Transfer of Personal Property – Affidavit Small Estate
  - Value does not exceed \$184,500
  - Excluding primary residence not more than \$750k beginning 4/1/25
- Transfer of Primary Residence – Petition Succession
  - Value does not exceed \$750,000
  - Beginning 4/1/25
  - What is a “primary residence”?
- Transfer of Real Property – Affidavit Small Value
  - Value does not exceed \$61,500
  - Excluding primary residence not more than \$750k beginning 4/1/25



# Trust Notice & Accounting: Incompetency of Trustor

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- Has the Trustor Become Incompetent?
  - Doctors' letters
  - Court determination
  - Not voluntary resignation of Trustor
- Successor Trustee: Duty to Give Notice
  - Written notice to all remainder beneficiaries who would inherit
  - Signed copy of trust and all amendment
  - Within 60 days
- Successor Trustee: Duty to Account
  - Provide written account annually to all remainder beneficiaries





# Property Taxes: CA Prop.19 – Parent-Child Exclusion

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- California Real Property Owners
- Affects Property Taxes
- Historic Change to California Constitution



# Property Taxes: Transfers after February 16, 2021: “Residence Exclusion”

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- Parent can transfer their primary residence to children, if child maintains the property as their own primary residence
- No reassessment of property tax
- Limited exclusion:
  - Market value >\$1M over assessed value is reassessed



# Property Taxes: CA Prop.19 – Parent-Child Exclusion

- Homeowner's Exemption: Child
  - Child must **file within 1 year!**
- Homeowner's Exemption: Parent
  - Homeowner in Hospital or Health Care Facility
  - Otherwise would occupy home and intends to return
  - Dwelling can be rented only to a related person

A screenshot of a California property tax exemption form, likely a Proposition 19 exemption form. The form is titled "STATE OF CALIFORNIA DEPARTMENT OF REVENUE" and "Office of Tax & Fee Administration". It includes a barcode at the top right. The form contains several sections with text and input fields, including a section for "PROPERTY INFORMATION" and a section for "EXEMPTION INFORMATION". The form is partially filled out with blue text and has a "FILE" button at the bottom right.

# Property Taxes: Transfers after February 16, 2021 “\$1M Other Property Exclusion” or Rental Property

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- Parent transfer “other property” to children is 100% reassessed.
- No \$1M Other Property Exclusion
- Rental property cash flow will decrease



# Proposition 19 Planning

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First Question to ask: Do the kids want to keep the property?



OR



# Proposition 19 Planning: Methods to Qualify for Parent-Child Exclusion

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- RESIDENCE:
  - Give child Right of First Refusal/ Option to Purchase
  - Non-Pro Rata Distribution
  - Parent-Child Equalization Loan



# Proposition 19 Planning: Other Property Tax Strategies

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- Rental/Commercial Property
  - Recalculate cash flow after increased property taxes.
  - Sell? (Remember: New income tax basis)
- Creation of LLC/Partnership
  - “Entity Rules” vs. Parent/Child Exclusion
- Original Transferor Rule
  - Co-owners purchase/inherit property and transfer to joint tenancy





# Income Taxes: SECURE 2019 & SECURE 2.0 Changes to Retirement Plan Distribution Rules

- Distributions from retirement plans are “ordinary income”
  - Except Roth IRA
  - Strategy: Defer withdrawal
- Distributions Required During Lifetime:

SECURE Act 2.0: New Required Minimum Distribution Ages Effective 2023	
<u>Birth Year</u>	<u>RMD Age</u>
Before 1951	No Change
1951-1959	RMD starts at Age 73
1960 & Later	RMD starts at Age 75



# Income Taxes: SECURE 2019 & SECURE 2.0 Changes to Retirement Plan Distribution Rules

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- Distributions from retirement plans are “ordinary income”
  - Except Roth IRA and Distribution to Charity
  - Strategy: Defer withdrawal
- Distributions Required After Death:
  - Life Expectancy: Spouse, Minor Child, Disabled/chronically ill person, Beneficiary less than 10 years younger than IRA owner
  - 5 years: Estate, No Beneficiary, Deceased Beneficiary, Trust other than “see through trust”
  - 10 Years: Everyone else. Must take RMD’S.





# Cases: What must the Omitted Child Prove? (Estate of Williams)

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- Decedent had 7 children but only knew of 6
- Trust named 2 children born during marriage as beneficiaries
- After death, the other child, Carla, found the family
  - DNA match
- Carla sued for an equal share of the estate
- Court: Carla failed to prove “sole reason” she was omitted was because Decedent was unaware of her. 4 other children were also omitted.



# Cases: Was the Estate Planning Attorney Liable? (Grossman v. Wakeman)

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- Richard told his lawyer to leave 100% to his wife
- Richard told his son and grandchildren all to them
- Did lawyer negligently leave out the son and grandchildren?
- Court: No. Lawyer not liable to son and grandchildren, since they are not the clients.



# Cases: Did the Sisters have Standing to Sue? (Hamlin v. Jendavi)

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- Dr. Head was very ill.
- After left hospital, she went to live with former student.
- Dr. Head signed a trust naming the student as trustee and sole beneficiary.
- Two weeks later, she died.
- Dr. Head's sisters sued to invalidate the trust. The former student said the sisters had no standing.
- Court: Sisters have standing as intestate heirs.





## Cases: Presumption of Fraud and Undue Influence (Robinson v. Gutierrez)

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- Decedent gave caregiver free room and board in exchange for care services.
- Decedent signed an estate plan making the caregiver the trustee and sole beneficiary.
- 10 days later, decedent died.
- Suit to invalidate the distribution – presumption of undue influence of “care custodian”. The caregiving said there was no “payment”.
- Court: Room and board was remuneration. Presumption of fraud applies.





## Cases: Unreasonable Restraint on Alienation (Godoy v. Linzner)

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- Mother named 3 children as trust beneficiaries
- Handwritten amendment: Child can only sell their share of the family home to another child a below fair market value
- Suit to invalidate the amendment
- Court: The amendment was void as an unreasonable restraint on alienation
- A Better Plan: Option to buy for fair market value



## Cases: Trustee Breach of Fiduciary Duty – Double Damages (Asara v. Maniscalco)

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- Trustee, also a beneficiary, committed financial elder abuse against the Decedent
- Petitioner, also a beneficiary, sued Trustee for payback plus double damages as a penalty
- Trustee claimed payback/penalties should go to the trust, which included Trustee as a beneficiary
- Court: Payback and penalty are owed to the Petitioner only.





## 2025 Take Aways:

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- **Estate Tax:** 2026 return of the @\$7M exemption. Spouse elect portability – 5 years!
- **Income Tax:** Modification of irrevocable trust is possible to get new income tax basis.
- **Electronic Signatures:** California Will/Trust must have “wet signature”.
- **Transfers without Probate:** Possible to avoid probate on \$750k residence.
- **Successor Trustee:** Has the Trustor become incompetent?
- **Real Property:** Plan for increase in property taxes after death under Prop 19.
- **Retirement Plans:** Review beneficiary designations and their withdrawal period.
- **Cases:** Leave a clear record of distribution intent. Stay in touch with your family to prevent undue influence. Plan realistically for the family home.
- **Trustee Duties:** Upcoming presentation in 2025.

# QUESTIONS?

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