Proskauer

Wealth Management Update

March 2026

March 2026 AFRs and 7520 Rate

The March 2026 Section 7520 rate for use with estate planning techniques such as CRTs, CLTs, QPRTs and GRATs is 4.80%, which is 0.20% higher than the February 2026 rate. The March applicable federal rate ("AFR") for use with a sale to a defective grantor trust or intra-family loan with a note having a duration of:

- 3 years or less (the short-term rate, compounded annually) is 3.59%, up from 3.56% in February;
- 3 to 9 years (the mid-term rate, compounded annually) is 3.93%, up from 3.86% in February; and
- 9 years or more (the long-term rate, compounded annually) is 4.72%, up from 4.70% in February.

New York Medical Aid in Dying Act

Statutory Framework and Purpose

The New York Medical Aid in Dying Act amends the New York Public Health Law to permit medically assisted dying for certain terminally ill adults. Signed into law by Governor Kathy Hochul on February 6, 2026, the Act authorizes physicians to prescribe life-ending medication that an eligible patient may self-administer. The law will take effect on August 5, 2026.

Eligibility Criteria

To qualify under the Act, an individual must:

- Be 18 years of age or older and a resident of New York State.
- Have a terminal illness with a prognosis of six months or less to live.
- Possess decisional capacity to make an informed healthcare decision at the time of the request.
- Be capable of self-administering the prescribed medication.

The statute emphasizes that a request must be voluntary and that the patient retains the right to withdraw or rescind the request at any point.

Request and Review Process

The Act prescribes a structured process for requesting and approving medical aid in dying:

- A patient must make an oral request for the medication, which must be documented by the patient's attending physician.
- The patient must also submit a written request in a form compliant with the statutory form requirements.
- The attending physician must determine that the patient meets the statutory criteria, including diagnosis, prognosis, capacity, and voluntariness.
- A consulting physician must independently confirm these determinations.
- If there is any question about the patient's mental capacity, the patient must be evaluated by a qualified mental health professional.

Safeguards and Participation Protections That Limit the Scope of the Act

The statute includes multiple safeguards to protect vulnerable individuals and clarify professional obligations, including:

- A mandatory waiting period of 5 days between when a prescription is written and filled.
- An oral request by the patient for medical aid in dying must be recorded by video or audio.
- A mandatory mental health evaluation of the patient seeking medical aid in dying by a psychologist or psychiatrist.
- A prohibition against anyone who may benefit financially from the death of a patient from being eligible to serve as a witness to the oral request or an interpreter for the patient.
- Limiting the availability of medical aid in dying to New York residents.
- Requiring that the initial evaluation of a patient by a physician be in person.
- Allowing religiously-oriented home hospice providers to opt out of offering medical aid in dying.

- Ensuring that a violation of the law is defined as professional misconduct under the Education Law.
- Extending the effective date of the bill to six months after signing to allow the Department of Health to put into place regulations required to implement the law while also ensuring that healthcare facilities can properly prepare and train staff for compliance.

Insurance and Legal Effects

The Act clarifies that participation in medical aid in dying does not affect a patient's health insurance benefits. Additionally, life insurance policies may not be denied solely because a policyholder used medical aid in dying. Providers who comply with all statutory requirements are protected by civil and criminal immunity for actions taken under the Act.

New California Probate Code §15804: Revised Virtual Representation in California

On January 1, 2026, California Probate Code § 15804 was amended. Such amendment modernizes § 15804 by formally adopting *virtual representation* in trust and estate proceedings in California. Previously, if a beneficiary could not represent themselves because they were a minor, incapacitated, unborn, unknown, or unlocatable, a guardian ad litem had to be appointed.

The amendment identifies specific categories of persons who *can receive notice and bind* others:

- Parents representing minor children (including later-born children).
- Conservators/guardians of the estate representing their conservatees/wards.
- Guardians ad litem (where already appointed).
- Agents with authority to act for principals.
- Trustees representing trust beneficiaries.
- Personal representatives representing interested persons in estates.

In addition, the statute allows others with *substantially identical interests* to represent and bind such individuals who are unable to bind themselves when they have aligned interests and *no conflict of interest*.

Notice provided to a designated representative is now treated as notice to the person represented.

Virtual representation cannot be used if there is a conflict between the representor and the person being represented regarding the specific matter in dispute.

Fiduciaries who rely in good faith on virtual representation and give notice accordingly are not liable for resulting losses, *unless* they commit breach of trust by intentional misconduct, gross negligence, bad faith, or reckless indifference.

Consent given via virtual representation is not automatic, a person who provides consent for another person pursuant to § 15804 must do so in writing.

FINCEN - Residential Real Estate Rule

The Financial Crimes Enforcement Network (FinCEN) recently issued a new federal reporting requirement affecting certain residential real estate transactions. Effective March 1, 2026, this reporting obligation is designed to combat money laundering by increasing transparency in non-financed residential real estate transfers involving legal entities and trusts.

Because the rule imposes significant civil and criminal penalties for noncompliance, we encourage anyone participating in residential real estate transactions to be aware of the rule's provisions and requirements.

The FinCEN Residential Real Estate Rule requires certain professionals involved in real estate closings and settlements to file a "Real Estate Report" with FinCEN on any "reportable transfer," which is defined as a "*non-financed transfer to a transferee entity or transferee trust of an ownership interest in residential real property*."

- A transfer is considered "non-financed" if it does not involve an extension of credit to all transferees that is (1) secured by the transferred residential real property and (2) extended by a financial institution with both an anti-money laundering (AML) program obligation and a Suspicious Activity Report (SAR) filing requirement.
- Transfers financed only by private lenders or seller-financing (such as installment contracts) are treated as "non-financed" and may require reporting.
- Importantly, even a $0 transfer, such as a quitclaim deed conveying property to an entity or trust for no consideration may trigger a reporting obligation.

What constitutes “residential real property”?

For purposes of the rule, “residential real property” includes:

- Real property containing a structure designed principally for occupancy by one to four families.
- Land on which the transferee intends to build a structure designed principally for occupancy by one to four families.
- A unit designed principally for occupancy by one to four families within a larger structure.
- Shares in a cooperative housing corporation.
- Properties located outside the United States are excluded; the rule applies only to U.S. residential real property.

This definition may include land with agricultural uses if it contains a residential home, as well as mixed-use properties with a residential component.

What is a “transferee entity” and a “transferee trust”?

- A ***transferee entity***includes corporations, partnerships, limited liability companies, estates, associations, and other similar entities, both domestic and foreign. Some highly regulated entities (such as banks, credit unions, public utilities, insurance companies, and securities reporting issuers) are exempt from the definition of transferee entity.
- A ***transferee trust***is any legal arrangement created when a grantor or settlor places assets under the control of a trustee for the benefit of one or more beneficiaries or for a specified purpose. Certain types of trusts are exempt from the rule, including statutory trusts and trusts where the trustee is a securities reporting issuer. Transfers to an individual’s personal trust may require reporting, unless an exemption applies (such as the exemption for transfers for no consideration from an individual or spouse to a trust where one or both are the grantor/settlor).

Fractional and Minority Interests

Even fractional or minority interests trigger reporting. If an entity holds ***any*** ownership interest in the residential real property being transferred, the transaction may be reportable. If a transfer involves multiple transferees and at least one is a transferee entity or transferee trust, the transfer may be reportable.

Reporting Exemptions

The following types of transfers are generally exempt from the reporting requirement:

- Grants, transfers, or revocations of easements.
- *Transfers resulting from the death of an individual (whether by will, trust, operation of law, or contractual provision).*
- Transfers incident to divorce or dissolution of a marriage or civil union.
- Transfers to a bankruptcy estate.
- Transfers supervised by a court in the United States.
- *Transfers for no consideration made by an individual, either alone or with their spouse, to a trust of which that individual, that individual's spouse, or both are the grantor(s) or settlor(s).*
- Transfers to a qualified intermediary for purposes of a 1031 exchange.
- Transfers for which there is no reporting person involved.

Filing and Reporting Cascade

The rule establishes a seven-tier "cascade" of potential reporting persons based on their role in the transaction, starting with the closing or settlement agent and extending to those who prepare deeds, disburse funds, or provide title services. Filing responsibility falls to the first person involved in the transfer. If you perform any function in a residential real estate transaction, you may be considered a reporting person if no one higher in the cascade is involved. Parties may also enter into a designation agreement to assign reporting responsibility.

Information Required to Be Reported

For each reportable transfer, the reporting person must file a Real Estate Report containing information sufficient to identify the transaction, the property, the parties, and the individuals who ultimately own or control the transferee entity or trust. Required information includes identifying details for the reporting person; the residential real property (address, property type, and ownership interest transferred); the date and nature of the transfer; any consideration paid (including transfers for nominal or no consideration); and identifying information for each transferor and transferee, including legal name, address, jurisdiction of formation or creation, and taxpayer identification number, as applicable.

Critically, the report must disclose beneficial ownership and control information for transferee entities and trusts. For entities, this includes individuals who directly or indirectly own 25% or more of the entity and individuals exercising substantial control. For trusts, reportable individuals generally include the trustee, grantor or settlor, and any person with authority to dispose of trust assets or direct the trustee. For each such individual, the report must include the person's full legal name, date of birth, address, taxpayer identification number, and citizenship.

Filing Deadline and Recordkeeping

A Real Estate Report must be filed on FinCEN's online portal by the later of (1) the final day of the month following the month when the closing occurred, or (2) 30 calendar days after the date of closing. Reporting persons must retain supporting documentation for five years, including designation agreements and certifications obtained to complete the report. The filed report itself does not need to be retained .

Penalties for Noncompliance

Noncompliance carries significant consequences, including civil penalties for negligent violations and for willful violations, potential imprisonment of up to five years, and substantial criminal and civil fines of up to $250,000 and a civil penalty of up to $279,937.

Update on New York Legislation Allowing Electronic Wills

On December 12, 2025, Governor Hochul signed into law the New York Electronic Wills Act, which authorizes the execution of electronic wills in New York. The EWA will take effect on June 10, 2027 (545 days after enactment) and will be codified as EPTL § 3-6.1 et seq.

Pursuant to the bill, the requirements for an electronic Will would be as follows:

1. **Execution:** The Will must (a) be a record that is readable as text at the time of signing, (b) be signed by the testator (or by someone in the physical presence of the testator at his or her direction) and (c) be signed in the physical or electronic presence of the testator by two witnesses who are domiciled in New York within thirty days after witnessing the testator's execution of the Will or witnessing the testator's acknowledgment of the signing of the Will. Note that the definition of

"sign" includes affixing an electronic symbol or process. The Will must contain "audit trail data," defined as data relating to the creation and execution of the electronic Will.

2. **Filing with the Court:** Within thirty days of its execution, the Will must be electronically filed with the New York State unified court system either by the testator or another person authorized by the testator. The failure to timely file an electronic Will with the court will result in the electronic Will being deemed invalid.
3. **Required Disclosure:** The Will must contain a disclosure language substantially similar to the statutory form disclosure.

Notably, an electronic Will may revoke a prior Will, whether electronic or otherwise. Also, as discussed in December, commentators have noted several ambiguous aspects to the bill, including that it is unclear when the 30-day time period to file the Will with the court system begins and how the 30-day period for witnessing the Will interacts with the 30-day filing requirement. None of those ambiguities were clarified between the bill passing and being signed into law.

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