

Hosted by Lathrop GPM and Horizons Foundation Professional Advisors Circle

Trusts & Estates Report-Back from 2025 Lavender Law Conference

**Presented by Alma Soongi Beck, Esq.
and Gabrielle Intagliata, Esq.**

**Special Guests Joseph D. Growney, Andrew R. Biddison, and
Alison Zinn (October 22 webinar only)**

October 15, 2025 (Redwood Shores) and October 22, 2025 (Online Webinar)

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Better as One with Hopkins Carley

Alma Soongi Beck

J.D., LL.M. Taxation

Lathrop GPM LLP

Private Client Services (Planning & Administration)

Redwood City, California

alma.beck@lathropgpm.com



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Better as One with Hopkins Carley

Gabriella (Gabby) Intagliata

J.D.

Lathrop GPM LLP
Private Client Services (Litigation)
St. Louis, Missouri

gabrielle.intagliata@lathropgpm.com



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Special Guests on October 22 Webinar Only



Alison Zinn



Joseph D. Growney



Andrew R. Biddison

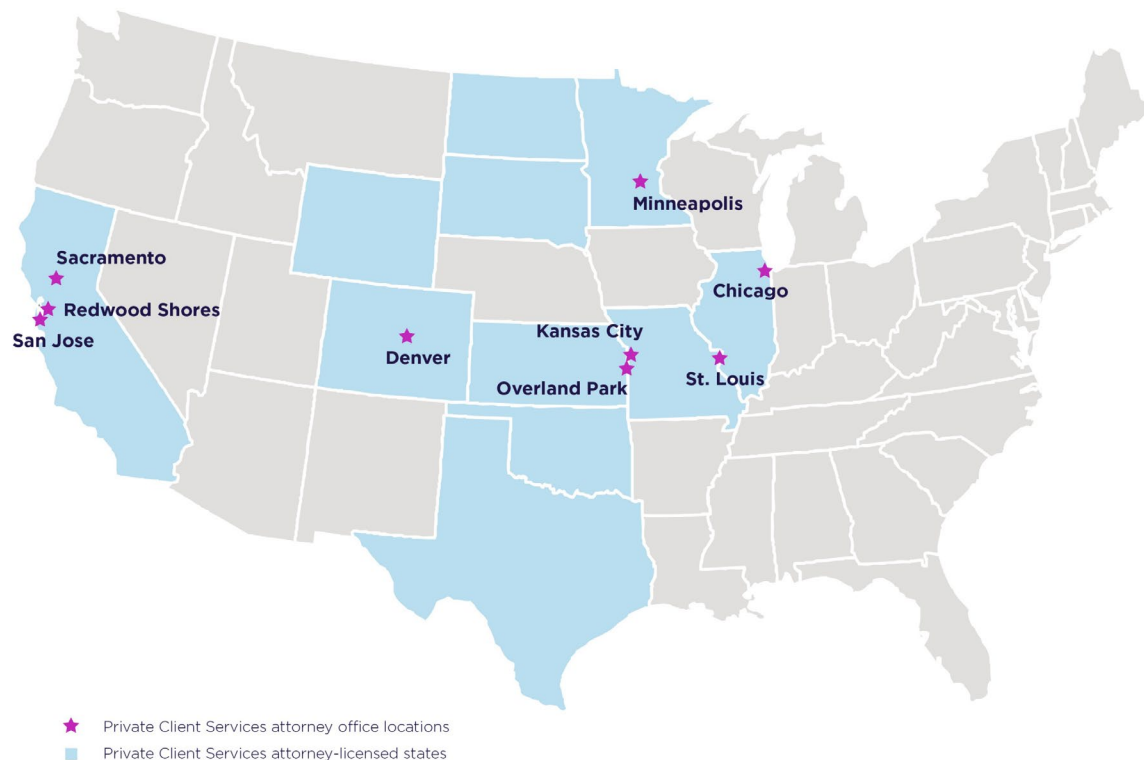
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Lathrop GPM's Private Client Services Team



Horizons Foundation Professional Advisors Circle



H O R I Z O N S
our LGBTQ foundation

San Francisco Foundation Professional Advisors Council



**San Francisco
Foundation**

Agenda

1. Gender & Gender Identity in Estate Planning, Administration, and Litigation
2. Marriage, domestic partnership, and property ownership
3. Parentage and the Impact of “More Than 2 Parent” Laws

Agenda

4. Guardianship & Conservatorship Orders
5. Clients Leaving the State and/or the U.S.
6. The Rise of “Living Probate”

Q&A

1. Gender and Gender Identity in Estate Planning, Administration, and Litigation

The Evolution of Gender Identities

Not just our clients, but also...

Even cisgender, heteronormative parents may have LGBTQ+ children or relatives, including trans and non-binary children and grandchildren

The Evolution of Gender Identities

Is “legal” gender important in the estate plan?

- No longer relevant for marriage
 - Since 2013 in some states, and since 2015 for the rest of the U.S.
- No longer relevant for California state domestic partner registration or recognition
 - Since 2020

The Evolution of Gender Identities

So where could “legal” gender be an issue in the estate plan?

Names and pronouns of clients.

Names and pronouns of clients’ beneficiaries.

Names and Pronouns of Clients

- What names and pronouns are **our clients** using?
 - What's on the license or passport, for purpose of the notary?
 - What about for documents that do not require notarization?

Names and Pronouns of Clients

- What about “Dead names”?
 - *Is it really “dead” for purpose of estate planning documents?*
- When should we list “also known as” or “formerly known as” names
- ASK: Is there any place where the former names appear where it could be relevant?

Names and Pronouns of Beneficiaries

What names and pronouns are the **beneficiaries** using?

- What about when the beneficiary's name or pronouns change after the trust becomes irrevocable?
- e.g. Irrevocable trusts for “nieces” “nephews” “daughters” “sons”

Names and Pronouns of Beneficiaries

Is there a gendered language savings clause?

References. As used in this instrument, the masculine, feminine, or neuter gender, if used, and the singular or plural number, shall each include the others whenever the context so indicates....

Will this be sufficient?

Does the Trust allow amending names and/or gendered references (e.g. “niece”), such as by a Trust Protector without requiring court approval?

Practice Pointers

Other drafting options to consider:

The [Settlor/Plaintiff/Member/ Shareholder] uses they/them pronouns and is sometimes referred to in this document as “they” or “them.”

Do we update all our pronoun references to “he/she/they”?

Practice Pointers

- How we're taught to use pronouns (in English).
 - Don't ask and assume, and don't get it wrong.
 - Notice, ask, offer your own, apologize, try again.
- Adding your own to....
 - Email signature lines
 - Zoom names
- Asking
 - In Person
 - On Intake Forms

2. Marriage, Domestic Partnership, and Property Ownership

Marriage, Domestic Partnership, and Property Ownership

QUESTION: Now that we have federal marriage equality, aren't the issues the same for same sex couples as for heteronormative married couples?

ANSWER: Sometimes.... When the facts are the same.....

Marriage, Domestic Partnership, and Property Ownership

- Tenancy by the entirety
 - A special form of joint tenancy for married persons which allows creditor protection for the surviving spouse. Creditors of the deceased spouse alone cannot claim the property. The spouses cannot deal with the property separately.
- Joint tenancy
 - Joint tenancy gives each owner an undivided interest in the whole asset shared jointly and the asset automatically passes to the surviving owner upon death of the other owner. Lacks the creditor protections available under tenancy by the entirety.
 - Example: Mo. Rev. Stat. § 461.300

Marriage, Domestic Partnership, and Property Ownership

Jurisdictions with Tenancy by the Entirety

** Conflicting statutes on the books—check into this if applicable to your practice*

- Land:
 - AK, AR, MS
- Need to explicitly title as such:
 - DC, FL, HI, MD, MA, MI, MS, OR
- Ownership Presumption / Default:
 - IN, MO, NY, NC
- Other:
 - DE, IL, NJ, OK, PA, RI, RN, VT (also for people in civil unions), VA, WY

Marriage, Domestic Partnership, and Property Ownership

Common Law Marriage

- Common law spouses typically have the same probate rights as legal spouses.
- AL (if entered into prior to 2017), CO, DC, GA (if entered into prior to 1/1/1997), ID (if entered into prior to 1/1/1996), IA, KS, MT, NH (inheritance only), OH (if entered into prior to 10/10/1991), OK, PA (if entered into prior to 1/1/2005), RI, SC, TX, UT

Marriage, Domestic Partnership, and Property Ownership

State-level marriage equivalents

California Recognized Domestic Partnership

Vermont Civil Union

Local and County Domestic Partnership

Employer Level Domestic Partnership for health benefits

Practical Tips for Estate Planning (CA, VT)

Your clients might not be sure where and when they registered (or might remember it wrong)!

- *PRACTICAL TIP: Make sure to ask! Then do your research as needed.*

Practice Pointers

If they're married or registered in a state-level domestic partnership or civil union:

- *Should their property be titled in Tenancy in the Entirety or Community Property?*
- *What types of Trusts do they need, e.g. joint / separate trusts?*

Practice Pointers

If they're not married or registered in a state-level domestic partnership or civil union:

- *Should they consider either or both?*
- *Will it improve their federal or state income taxes?*
- *Do they need the federal unlimited marital deduction for gift and estate tax purposes?*
- *Will it improve their state level tax issues, such as state income tax or state property taxes?*

What about Domestic Partnership? (CA)

California “Recognition” of Other State Marriage-Equivalents
Family Code §299.2

A legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership as defined in this part, shall be recognized as a valid domestic partnership in this state regardless of whether it bears the name domestic partnership.

Who Else Is Recognized as CA State DPs?

Looking for Co-Counsel in Another State?

- * National LGBTQ+ Bar Association, [LGBTQBar.org](https://www.lgbtqbar.org)
- * State and Local LGBTQ Bar Associations

Kansas

- Kansas is a separate property state.
- Prior to *Obergefell*, Kansas passed a constitutional ban on same sex marriage (2005).
- Kansas does not recognize tenancy by the entirety; only tenancy in common and joint tenancy.
- Kansas recognizes common law marriage. Requirements:
 - (1) Both parties have legal capacity to marry;
 - (2) The parties have a present agreement to be married; and
 - (3) The parties hold each other out to the public as a married couple.
- Kansas Senate Bill 63 (2025) – ban on gender affirming care for minors. Governor Kelly vetoed the bill; overridden by Kansas legislature.

Minnesota

- Separate property state. Legalized same sex marriage via legislative act (not Constitutional amendment).
- Does not recognize tenancy in the entirety; only tenancy in common and joint tenancy. Under MN joint tenancy, each joint tenant owns an identical undivided interest in the property. Essentially, it as is if the property is held by a single person. Decree of dissolution of marriage severs all joint tenancy interests in real estate between the married persons, except to the extent the decree holds otherwise. Minn. Stat. § 500.19(5).
- KFF Policy Tracker: no laws/policies limiting gender affirming care.

Colorado

Colorado is a separate property state.

Prior to *Obergefell*, Kansas passed a constitutional ban on same sex marriage (2006). Despite *Obergefell*, it was repealed by voters in November 2024.

Colorado does not recognize tenancy by the entirety; only tenancy in common and joint tenancy.

Colorado recognizes common law marriage. Generally, the requirements include:

- (1) the mutual consent or agreement of the couple to enter the legal and social institution of marriage; and
- (2) conduct manifesting that mutual agreement.

Colorado

Hogsett v. Neale, 478 P.3d 713 (Colo. 2021). The Court in *Hogsett* instructs courts analyzing the issue to “give weight to evidence reflecting a couple’s express agreement to marry [and] in the absence of such evidence, the parties’ agreement to enter a marital relationship may be inferred from their conduct.”

In 2023, Colorado passed a law protecting access to gender-affirming care for minors. In May 2025, the Kelly Loving Act was passed for further protections but in late summer 2025, various health providers hit the “pause” button on providing gender-affirming care to new patients in light of the Supreme Court ruling.

3. Parentage – The Impact of the “More Than 2 Parent” Laws

The Evolution of Parentage

How many parents can you have in California?

The Evolution of Parentage

More than 2 (SB274, 2013)

The Evolution of Parentage

Where else can you have more than 2 parents?

The Evolution of Parentage

Where else can you have more than 2 parents?

Delaware, Florida, Louisiana, Maine

New Jersey, New York, North Dakota

Oregon, Pennsylvania, Washington

Maybe D.C.

Who does this affect?

12% of the U.S. population lives in California

- Clients who move to CA would hopefully have their documents reviewed.
- But also....
 - What about your clients' children, grandchildren, other relatives, and other beneficiaries who might live or move to California?

When does it arise?

- Trust Administration and Probate
 - *Who inherits by intestate succession?*
 - ***Who gets notice?***
- Incapacity
 - *Who can file for conservatorship? (“parent” “adult child”)*
 - *Who can challenge a Power of Attorney or Advance Health Care Directive?*

The Evolution of Parentage

Who is legally a parent in California?

- “Natural parents” and
- Adoptive parents

Notably, other states use “biology” in the definition of parentage.

- Consult local family law counsel.

The Evolution of Parentage

AWKWARD QUESTIONS to AVOID with LGBTQ+ PARENTS:

“Who’s the father?”

She doesn’t have a father. She has a donor.

“Who’s the mother?”

He doesn’t have a mother. He has a surrogate.

Be cautious of defaulting to “biological parent” which is only part of the definition even in the states that include “biology” in the definition.

The Evolution of Parentage

What's a “natural” parent?

Family Code §7601

“Natural parent” as used in this code means a nonadoptive parent established under this part, ***whether biologically related to the child or not.***

Probate Code §6453

Someone determined under Uniform Parentage Act (Family Code §7600 et seq.) where presumption is not rebutted.

The Evolution of Parentage

CAUTION:

- In California, “natural child” is not defined as “biological child”.... It’s defined as “non-adoptive child.”
- Be wary of reference to “biological” in your documents. It’s not consistent with California law defining parentage, and it can create confusion and inconsistency in your documents.

The Evolution of Parentage

Who are “natural” parents under the Uniform Parentage Act?

- a. Spouses, CA SRDPs when child is born during the marriage or domestic partnership
- b. **“The presumed parent receives the child into his or her (their) home and openly holds out the child as his or her (their) natural child.” Family Code §7611(d)**
- c. Determination of paternity under Family Code §7630(c)
- d. Conceived after death under Probate Code §249.5

Family Code 7611(d) – Estate of Martino

Estate of Martino, D080846, Oct. 18, 2023, 4th District, Div. One

Under CA Family Code 7611 (d), a stepchild may establish a right to intestate succession where the decedent receives the child into their home and openly holds out the stepchild as their natural child.

This case also has a great summary of the other related cases and the evolving law.

Family Code 7611(d) – Estate of Martino

Estate of Martino, D080846, Oct. 18, 2023, 4th District, Div. One

Petitioner Zambito was the Decedent's step-child. Zambito maintained very little contact with his own biological father, and was raised by the Decedent for 6 years as a young child. They maintained a close relationship even after his mother divorced the Decedent, and he considered the Decedent to be his true father.

Family Code 7611(d) – Estate of Martino

Estate of Martino, D080846, Oct. 18, 2023, 4th District, Div. One

After becoming an adult, Zambito served in the army for 20 years and kept in touch with the Decedent. After retiring from the military, Zambito visited the Decedent regularly, including after his health began to fail in 2018, when Zambito increased his efforts to visit, spoke with the Decedent often, and accompanied the Decedent to medical appointments.

Family Code 7611(d) – Estate of Martino

Estate of Martino, D080846, Oct. 18, 2023, 4th District, Div. One

Many of Decedent's close personal friends said that in their frequent contacts with Decedent, he always referred to Zambito as his son. The friends did as well, and in the Decedent's final years, Decedent maintained a close relationship with Zambito.

Practice Pointers

- Don't let your clients pass away intestate.
- Clearly define “children” of your clients in the document.
- Watch out for language that implies biology determines legal parentage!

Practice Pointers

Questions for the Estate Plan Questionnaire:

1. Did you raise anyone else other than the people you list as “children” whom you held out as your own natural child?
2. Did you parents raise anyone else who...
3. Did anyone else raise you who...

Practice Pointers

- Including or excluding in definition of “parent” or “child

“[PERSON] shall be considered a legal child [or parent] of mine for purposes of this document, regardless of [PERSON]’s actual legal relationship to me.”

Practice Pointers

- Including or excluding in definition of “parent” or “child

“I [We] have [are aware of] no other siblings or half-siblings, living or deceased, no one else who would be considered a legal parent [or child] and anyone claiming such relationship or their issue is intentionally omitted as a potential beneficiary.”

Practice Pointers

Consider exclusions for donor clients, e.g.

- *“I have no children, living or deceased, whether adopted or ‘natural’ as defined in Family Code §7601 and Probate Code §6453, regardless of any possible genetic connection to me arising from artificial reproduction technology, and anyone claiming any such parent-child relationship may exist is intentionally omitted as potential beneficiaries.”*

4. Guardianship & Conservatorship Orders – Protections for LGBTQ+ People Facing Incapacity

Guardianship & Conservatorship

- Who will be appointed guardian/conservator?
 - Who is your client's legal family?
 - What is their current relationship with their legal family?
 - In many jurisdictions, the default is to appoint a family member. Consider whether this is the best outcome for your client.

Guardianship & Conservatorship

- What powers is the court likely to grant the guardian/conservator?
 - Some courts will grant general powers even if the protected person still has capacity.
 - Argue for a specific set of powers and limit as much as possible.

Guardianship & Conservatorship

- Are there specific cultural needs of your client?
 - Aging in place
 - Religious observances/practices
 - Culinary needs
 - Access to the client's community
 - s

5. Leaving the State and/or the U.S. – Cross-border Inheritance, Trust, & Tax Issues

Moving to Another State

- Hostile home state laws: healthcare, housing, employment, public accommodations
- More protective state laws in destination state
- Changing anti-LGBTQ+ public opinion:
 - KFF Policy Tracker
 - Transgender Law Center
- *Special thanks to Brian Balduzzi, Attorney at Faegre, Drinker, Biddle & Reath, Philadelphia, Pennsylvania*

Domestic Relocation assistance and support

- Everywhere is Queer and inReach
- Trans Resistance Network (helping access affirming care)
- Access to funding (see Resources)
- Support networks (advisors, real estate agents, physicians, schools, employment)
- *Special thanks to Brian Balduzzi, Attorney at Faegre, Drinker, Biddle & Reath, Philadelphia, Pennsylvania*

Advising Client Moving to Other States

- * Review and Update documents with an attorney licensed in the new state.
- * Possible co-counsel with the current state counsel.

Moving from the U.S. to another country

Not necessarily tax motivated

Not wanting to give up U.S. citizenship

Seeing the move as a trial period

Professionals that will be needed

U.S. tax lawyers & accountants to assist with:

- FBAR, Foreign Bank Account Reporting
- FACTA, Foreign Account Tax Compliance Act
- PFIC, Passive Foreign Investment Company reporting
- Foreign tax credits.
- U.S. and foreign country tax treaties.
- U.S. and foreign country totalization agreements.
- Tax consequences of specific visas.

Professionals that will be needed

Other advisors:

- Relocation services.
- Visa counsel.
- Foreign accountant.

Cross-Border Estate Planning Issues

Before establishing residency

- Consult with inheritance / estate planning counsel in the country of residency, and if needed, update of U.S. Estate Planning docs (i.e. revocation of Living Trusts)
- Getting married abroad -> forced heirship rules
- What you've inherited from family in other countries.

Relocation Options

Digital nomad visas

[Beyond the H-1B Cap: Global Alternatives for U.S. Employers and Foreign National Workers - Spotlight on Digital Nomad Visa Options - McCown & Evans LLP](#)

- Where?
 - Barbados, Brazil, Canada, Colombia, Costa Rica, Croatia, Cyprus, Dubai/UAE, Estonia, Hungary, Iceland, Italy, Greece, Japan, Malaysia, Montserrat, Mexico, Portugal, South Korea, Spain
- Why?
 - Social security taxes & other relief

Relocation Options

Digital nomad visas

- How?
 - Businesses don't want to be considered business abroad
 - Will likely pay more in tax.
- Other Consideration:
 - Spain, Uruguay -> can be helpful for Spanish speakers
 - Income tax wouldn't be the issue, but more social security (65%) -> unless company gives letter saying they're sending employee to that country

Relocation Options

Residency by investment

[Residence by Investment Programs | Henley & Partners](#)

- Where?
 - Australia, Austria, Canada, Costa Rica, Cyprus, Greece, Hong Kong, Hungary, Italy, Jersey, Latvia, Luxembourg, Malaysia, Malta, Mauritius, Monaco, Montenegro, Namibia, New Zealand, Panama, Portugal, Singapore, Switzerland, Thailand, UAE, UK, Uruguay

Challenges for people with children.

6. The Rise of “Living Probate” – Is It Coming to a State Near You?

What States Offer “Living Probate”?

Alaska	<u>Alaska Stat. § 13.12.530</u> (2024)
Arkansas	<u>Ark. Code § 28-40-202</u> (2024)
Delaware	<u>Del. Code tit. 12, § 1311</u> (2024)
Nevada	<u>Nev. Rev. Stat. §§ 30.040, 137.007</u> (2024)
New Hampshire	<u>N.H. Rev. Stat. § 552:18</u> (2024)
North Carolina	<u>N.C. Gen. Stat. § 28A-2B-1</u> (2024)
North Dakota	<u>N.D. Cent. Code § 30.1-08.1-01</u> (2024)
Ohio	<u>Ohio Rev. Code § 5817.02</u> (2024)
South Dakota	<u>S.D. Codified Laws § 21-24-3</u> (2024)

Source: [Living Probate: Validating Your Will While You’re Still Alive](#)

What is “Living Probate”?

A court proceeding where you can provide your will's validity while you're still alive. Also called “ante-mortem” (before death) probate

Typically requires evidence of:

- Proper execution
- Sound mind / mental state
- Lack of undue influence

If found to be valid, the will stays on file with the probate court.

North Dakota and South Dakota: “Living Probate”

- Ante-Mortem Probate: N.D. Cent Code. §§ 30.1-08.1-01 – 30.1-08.1-04.
 - Reflective of the “contest model” of living probate as opposed to the “conservatorship model.” Rarely used in practice.
 - Testator may enter a proceeding declaring the validity of the will regarding: (1) signature on the will; (2) witnessing; (3) capacity; and (4) lack of undue influence.
 - Parties to the proceeding: (1) beneficiaries named in the will and (2) all present intestate successors.
 - Will becomes binding in North Dakota until testator executes a new will and institutes a new proceeding.

North Dakota and South Dakota: “Living Probate” (con’t)

- Declaratory Judgment Proceedings: S.D. Codified Laws § 21-24-3.
 - South Dakota has no statutory scheme specific to ante-mortem probate. Its declaratory judgment framework, however, permits an ante-mortem will contest to occur.

7. Final Words About Other Jurisdictions – California, Illinois, Missouri, Kansas, Minnesota, North Dakota, South Dakota, Colorado

Thank You for Attending!

Alma Soongi Beck

alma.beck@lathropgpm.com

Gabrielle (Gabby) Intagliata

gabrielle.intagliata@lathropgpm.com

Lathrop GPM LLP

Private Client Services

Estate and Trust Planning, Administration, and Litigation

California, Minnesota, Missouri, Kansas, Colorado, Wyoming, Illinois, North
Dakota, South Dakota

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