

May 2025

## Upcoming CLE Programs

Join us on May 7, June 5 and 6, 2025

See pages 10, 12, 14



THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

# COMMUNIQUE

## The Estate Planning Issue

*Whitney Short  
& Amanda Stevens on*

## **Alternative Estate Planning Techniques**

*See page 24*

*Also inside*  
**Amending or  
Decanting an  
Irrevocable Trust**

**In Rem Jurisdiction  
Rights of Surviving  
Spouses**

**Federal Estate and  
Gift Tax Exclusion**

**Planning Ahead**

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*Volunteers needed*  
**Health Care Power of  
Attorney-a-Thon**  
**June 17, 2025**

*See page 16*

*Looking for office space?*  
**View the listings inside**  
*See pages 13 and 30*



# COMMUNIQUE

THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

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# COMMUNIQUÉ


THE OFFICIAL PUBLICATION OF THE CLARK COUNTY BAR ASSOCIATION

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For more information about our publication's editorial calendar, deadlines, editorial policy, author guidelines, ad rates, ad specifications, and deadlines, contact the publisher at Clark County Bar Association, 717 S. 8th Street, Las Vegas, Nevada 89101-7006. Phone: (702) 387-6011. Email: [editor@clarkcountybar.org](mailto:editor@clarkcountybar.org). 

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### Communiqué Editorial Calendar

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| December 2024  | Pro Bono                  | 11/1/2024    |
| January 2025   | Five Things               | 12/1/2024    |
| February 2025  | ADR                       | 1/2/2025     |
| March 2025     | Family Law                | 2/1/2025     |
| April 2025     | Civil Procedure           | 3/1/2025     |
| May 2025       | Estate Planning & Probate | 4/1/2025     |
| June/July 2025 | Membership Matters        | 5/1/2025     |
| August 2025    | First Amendment           | 7/1/2025     |
| September 2025 | Legislative Wrap-Up       | 8/1/2025     |
| October 2025   | Pro Bono                  | 9/2/2025     |
| November 2025  | Mental Health             | 10/1/2025    |
| December 2025  | Science & Technology      | 11/1/2025    |

\*The combined June/July issue will be released in June. The editorial calendars, schedules, editorial policies, and writer's guidelines for the *Communiqué* are subject to change without notice.



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- Announcements
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- Discounts
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**Contact:** StephanieAbbott@clarkcountybar.org, 702-387-6011

**Bar Activities****Event Calendar**

Please join us for these upcoming CCBA activities:

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- May 1 CCBA Group Night at Aviators Game - Page 6
- May 2 Community Service Committee Meeting - Page 6
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Learn more / RSVP: <https://clarkcountybar.org/events/>, 702-387-6011

**Bar Services****Contact the CCBA**

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# Law Day Activity at Creech Air Force Base

May 1, 2025

The CCBA's Community Service Committee helped to arrange for Nevada lawyers to volunteer for the Law Day activity at Creech Air Force Base on Thursday, May 1, 2025.

Interested bar members were required to sign up by April 4, 2025, to have time for the USAF security forces to perform a security clearance.

For more information and to learn about upcoming community outreach events, contact Stephanie at StephanieAbbott@clarkcountybar.org or (702) 387-6011.

## Bar Activity

### Bar Committee Meetings

May 2025

12-1pm

Via Zoom

**May 2:** Community Service

**May 9:** Publications

**May 14:** CLE

**May 15:** New Lawyers

In person at CCBA  
office with Zoom  
option

**May 16:** DICE

**Learn more:** (702) 387-6011, StephanieAbbott@clarkcountybar.org.

## Special Offers

### CCBA Baseball Tickets Offer

#### *Member benefit offer\**

The CCBA holds a limited number of tickets to select home games for the 2025 Las Vegas Aviators season schedule. CCBA is pleased to offer\* use of our available tickets to current and paid CCBA members on a first come, first served basis.

To request use of the CCBA tickets, CCBA members need to send an email request to CCBA's staff at donnaw@clarkcountybar.org with the following information:

1. CCBA member name
2. Email address (associated with the Las Vegas Ballpark app)
3. 1st, 2nd, and 3rd choices of home game day—  
Select from list of available game days from the list at clarkcountybar.org

Note: The list of available game day tickets is subject to change without notice.



### CCBA Group Night at Aviators Game

#### *Discounted group ticket offer\* for game on May 1, 2025*

CCBA members, family, and friends are invited to come out to the ball game on Thursday, May 1st for an action-packed evening as the Aviators take on the Tacoma Rainiers. Come early for pregame festivities and drink specials in the Plaza starting at 5 p.m.. Whether you're a die-hard baseball fan or just looking for a fun night out, this event is a home run!

**When:** Thursday, May 1, 2025, 6:35 p.m.

**Game:** Tacoma vs. Las Vegas Aviators

**Location:** BERM

**Price of ticket:** \$12

**Order tickets:** <https://fevo-enterprise.com/event/CCBANight2025>

**Deadline to order:** 8:35 p.m. (two hours after first pitch)



\*Restrictions apply to both of the special, limited-time offers listed on this page. For more information, Donna at donnaw@clarkcountybar.org or (702) 387-6011.

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## Bar Services

### Sponsorship Opportunities

Opportunities are available to select businesses to sponsor bar activities, including:

- CCBA's Anniversary Party
- 40 Year Club Luncheon
- Bar Luncheons
- CLE Programming
- Meet Your Judges Mixer
- New Admittees Reception

For more information, contact: Donna at the Clark County Bar Association, (702) 387-6011, [donnaw@clarkcountybar.org](mailto:donnaw@clarkcountybar.org).

## Bar Activity

### Monthly Mixer

May 22, 2025

CCBA members are invited to attend our monthly mixer on their own dime and time.

**When:** Thursday, May 22, 2025, 7:00 p.m. to 8:30 p.m.

**Where:** Davy's, 1221 S. Main St., Las Vegas, NV 89104

**Note:** Dates and locations of monthly mixers are subject to change.

Learn more: (702) 387-6011, [donnaw@clarkcountybar.org](mailto:donnaw@clarkcountybar.org).



## Bar Activity

### Professional Portrait Session

May 28, 2025

#### Special offers:

20% off purchases of professional portraits for CCBA members!

No sitting fees (\$49 value) for this and graduation/family portrait session

All members of the Nevada bar and bench, law students, and supporting legal staff are invited to sit for a professional portraits at the Clark County Bar Association office during a sitting sponsored by Portraits to You.

Drop-ins are welcome; appointments are preferred.

**When:** Wednesday, May 28, 2025, 9:30 a.m. to 2 p.m. only

**When:** Clark County Bar Association, 717 S. 8th St., Las Vegas

**RSVP to CCBA:** [clarkcountybar.org](http://clarkcountybar.org) or (702) 387-6011



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# Clark County Bar Luncheon

*Las Vegas Country Club  
May 8, 2025*



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*Special guest speaker*  
**Las Vegas  
Mayor  
Shelley  
Berkley**

*RSVP to CCBA*  
**702-387-6011**  
**clarkcountybar.org**



## Bar Activity



# 34th Annual MEET YOUR JUDGES MIXER

**Thursday, September 4, 2025**

5:30 p.m. to 9:00 p.m. • Worldview atop the World Market Center

**Refreshments • Appetizers • Silent auction**

*Special thanks to event sponsors*



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**RSVP to the CCBA required by August 20, 2025**

*Sponsorship opportunities available*  
**<https://clarkcountybar.org> • (702) 387-6011**



**RSVP Now**

## Bar Activity

### Pet Supply Drive to Benefit Street Dogz

Now through  
May 31, 2025



Bar members are invited to donate pet food and supplies to benefit Street Dogz—a local non-profit organization helping homeless pets and their humans with pet food and supplies, spaying and neutering, medical treatment, emergency boarding/housing, etc.

**When:** Through May 2025

**Where:** Drop-off locations:

**CCBA** - 717 S. 8th St., Las Vegas, NV 89101

**Legal Aid Center of Southern Nevada** - 725 E. Charleston Blvd., Las Vegas, NV 89104

**Naylor & Braster** – 10100 W. Charleston Blvd., Suite 120, Las Vegas, NV 89135

**Suggested items for dogs and cats:** Dry food, wet food with flip top, dog sweaters and coats (all sizes, especially XXL), dog beds, pillows, blankets, harnesses (XL), collars, leashes, treats, bones, toys for all sizes, wagons, strollers, gallon-size baggies, dog shoes, umbrellas, spray bottles, cooling scarves, kiddie pools, litter boxes, and litter. For a full list of items, see [clarkcountybar.org](http://clarkcountybar.org) or call Stephanie at the CCBA office at (702) 387-6011.

# Traffic Ticket CLE Program Free for CCBA Members May 7, 2025


On May 7, 2025, civil and criminal litigator Joseph R. Maridon, Jr., Esq. will make a special presentation for the continuing legal education of Nevada lawyers in a program produced by the Clark County Bar Association and sponsored by Bank of Nevada and Las Vegas Legal Video.

Joseph R. Maridon, Jr., is a seasoned Nevada attorney with a deep commitment to navigating the complexities of traffic law. A 2003 graduate of UNLV's Boyd School of Law, he has resolved over 25,000 traffic citation cases across southern Nevada, earning a reputation as a steadfast advocate for his clients. In the past two years, he has represented over 100 defendants in contested civil infraction hearings, with at least a dozen cases appealed to the district court, showcasing his skill in both trial and appellate settings.



Joseph will present "Time Twist: Navigating Nevada's New Civil Infractions – A Case Study," a CLE program for Nevada lawyers. His presentation will explore Nevada's shift to civil traffic infractions under AB 116 (effective January 1, 2023) and analyze a hypothetical case to demonstrate defense strategies and procedural pitfalls.

Attendance at this live webcast is free and only for current CCBA members on Wednesday, May 7, 2025. This lunchtime learning program will be held via Zoom from 12:00 to 1:15 p.m. and offers 1.0 general CLE credit for Nevada lawyers. RSVP to the CCBA is required by May 7, 2025.

Pricing of the live webcast event is included with the 2025 CCBA membership. CCBA membership will be verified upon RSVP. During the event, attendance will be taken, and only those Nevada lawyers in attendance will have their attendance reported to Nevada Board of Continuing Legal Education. The event will be recorded for use in the CCBA's audio/visual library. The recorded versions of the program will be offered for rental use at a small fee (to cover administrative costs). For more information, visit [clarkcountybar.org](http://clarkcountybar.org) or call the CCBA office at (702) 387-6011. 

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702-384-1616

### RENO, NV

5375 Kietzke Lane  
Reno, NV 89511  
775-553-0000





## Lunchtime Learning CLE

### Defending a State Bar Grievance

June 5, 2025

#### Speakers:

- Rob Bare
- Glenn Machado
- Michelle Alarie

#### Topics:

- Grievance sources
- Procedural possibilities early on
- The formal complaint
- Unique legal standards
- How to achieve the best result

**Offers:** 2.0 Ethics CLE credit for Nevada lawyers

**When:** Thursday, June 5, 2025, from 11 a.m. to 1:15 p.m.

**Where:** Legal Aid Center of Southern Nevada

**Live presentation (in-person only):** FREE for CCBA members only. Non-members may attend complimentary if they accept a pro bono case from the Legal Aid Center of Southern Nevada. See available cases listed at <https://www.lacsnprobono.org/volunteer-attorneys/available-cases>.

**Recorded materials rental:** \$50/CCBA Member or \$100/non-member.

**RSVP Now:**  
[clarkcountybar.org](http://clarkcountybar.org)  
(702) 387-6011



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# Ethics CLE Program Free for CCBA Members June 5, 2025

On June 5, 2025, respected professional responsibility attorneys Rob Bare, Glenn Machado, and Michelle Alarie will make a special presentation for the continuing legal education of Nevada lawyers in a program produced by Stephen Smith of the Clark County Bar Association's CLE Committee and sponsored by Bank of Nevada, Las Vegas Legal Video, and Legal Aid Center of Southern Nevada. This in-person event will include a pizza lunch while supplies last. Space will be limited. RSVP to the CCBA is required by June 3, 2025.

#### About the speakers

**Rob Bare** has been practicing law for over 30 years. He is the owner and sole manager of Law Office of Rob Bare, PLLC. He is a graduate of Pennsylvania State University (highest distinction) and University of Pittsburgh School of Law. Prior to private practice, Rob served as judge in the Eighth Judicial District Court (January 2011 – January 2021) and as bar counsel for the State Bar of Nevada (August 1993 – December 2010). Also, he served as judge in department 6 of the Las Vegas Municipal Court (January 2007 – June 2007). Prior to his move to Nevada, Rob served as senior defense trial lawyer (Captain), U.S. Army Judge Advocate General's Corps, Trial Defense Service, Fort Irwin, California (May 1991 – August 1993). He served as Trial Defense Lawyer, U.S. Army Judge Advocate General's Corps, Trial Defense Service, Fort Ord, California (October 1989 – May 1991).



**Glenn M. Machado** has been practicing law in Nevada since 2001 and currently concentrates his practice in the areas of professional responsibility and legal ethics, primarily working with Rob Bare, in defending State Bar of Nevada disciplinary proceedings, as well as providing consulting and expert witness services. From 2004 to 2015, Glenn served as an assistant bar counsel for the State Bar of Nevada, where he handled all aspects of the attorney-discipline process including intake, investigation, prosecution, and appeal. As Assistant Bar Counsel, Glenn presented numerous continuing legal education courses regarding professional responsibility and ethics throughout Nevada and contributed over two dozen articles to the State Bar of Nevada's *Nevada Lawyer* magazine concerning issues relating to the Rules of Professional Conduct. Mr. Machado



also practiced commercial litigation for over ten years and served as an interim deputy district attorney for White Pine County, Nevada.

**Michelle Alarie** is the founder and managing attorney of Alarie Law, a law firm providing counsel to individuals and small businesses in the areas of employment & labor law, insurance coverage, professional responsibility, and general business litigation. Michelle's practice encompasses legal ethics and professional responsibility, including attorney disciplinary defense and assisting attorneys, law firms, and other professionals to understand and adhere to ethical standards and best practices in their legal practice. Michelle graduated from the UNLV William S. Boyd School of Law. After graduation, Michelle completed a judicial clerkship for Judge Rob Bare of the Eighth Judicial District Court and was a litigation partner at an AmLaw 200 firm. Michelle left big law after more than a decade, opening Alarie Law to collaborate one-on-one with her clients.



#### **About the CLE program**

Rob, Glenn, and Michelle will present "Defending a State Bar Grievance," a CLE program on Thursday, June 5, 2025. The CLE program offers 2.0 ethics CLE credits for Nevada lawyers. The program will be held live, in-person, at Legal Aid Center for Southern Nevada, from 11 a.m. to 1:15 p.m. Pizza lunch will be available while supplies last. Space will be limited. RSVP to the CCBA is required by June 3, 2025.

Attendance at this in-person event is free for current CCBA members. Non-members may attend complimentary if they accept a pro bono case from the Legal Aid Center of Southern Nevada. See available cases listed at <https://www.lacsnprobono.org/volunteer-attorneys/available-cases>.

During the event, attendance will be taken, and only those Nevada lawyers in attendance will have their attendance reported to Nevada Board of Continuing Legal Education. The event will be recorded for use in the CCBA's audio/visual library. The recorded versions of the program will be offered for rental use at a small fee (to cover administrative costs). For more information, visit [clarkcountybar.org](http://clarkcountybar.org) or call (702) 387-6011. **C**

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# AI Made Easy: Transforming Your Practice with Simple, Affordable Tools CLE on June 6, 2025

Join Jeff Bolender for this engaging presentation live from the prestigious UNLV William S. Boyd School of Law. This CLE session (2.0 hours) demonstrates how large language models are reshaping the legal profession, offering attorneys actionable insights into leveraging AI tools to elevate their practices with simplicity and affordability. Explore the practical and innovative applications of AI tools (please bring your laptop/tablet/notebook for a hands-on learning experience):



- **Prompts:** Learn to craft precise, effective prompts to turn ChatGPT into a reliable legal assistant. This segment will also introduce meta-prompts—powerful techniques for generating dynamic and refined outputs—alongside reusable personas for tasks like proofreading briefs, organizing evidence, and creating timelines.
- **Google Notebooks:** Discover how to use Google Notebooks for case analysis and creating interactive CLE courses. This segment will demonstrate how to master complex legal concepts and build dynamic, participatory learning environments tailored to legal education.
- **Projects:** Explore the breadth of ChatGPT Projects to streamline workflows across multiple areas. From automating client intake and preparing deposition outlines to organizing case files, drafting motions, and more, this segment highlights the expansive possibilities for integrating AI into your practice.
- This course blends practical demonstrations with actionable strategies, showing how AI can enhance legal expertise, streamline tasks, and expand your professional reach—all with tools that are easy to learn and implement.
- **Speaker:** Jeff Bolender of Bolender Law Firm, PC
- **When:** Friday, June 6, 2025, 2:00 p.m. to 4:15 p.m.
- **Where:** UNLV Boyd School of Law, 4505 S. Maryland Pkwy. Complimentary parking at the Cottage Grove garage: <https://www.unlv.edu/maps/pkg-1>
- **Offers:** 2.0 general CLE credits for Nevada lawyers. Attendance will be taken and reported to the NV CLE Board for only those members in attendance who registered with the CCBA in advance of the event.
- **Fee:** \$25/CCBA member
- **RSVP to the CCBA:** [clarkcountybar.org](http://clarkcountybar.org), (702) 387-6011 

## Lunchtime Learning CLE

### AI Made Easy: Transforming Your Practice with Simple, Affordable Tools

June 6, 2025

**Course description:** Join Jeff Bolender for this engaging presentation live from the prestigious Boyd Law School. This CLE session (2.0 hours) demonstrates how large language models are reshaping the legal profession, offering attorneys actionable insights into leveraging AI tools to elevate their practices with simplicity and affordability. Explore the practical and innovative applications of AI tools. Please bring your laptop/tablet/notebook for a hands-on learning experience.

**Offers:** 2.0 general CLE credit for Nevada lawyers

**When:** Friday, June 6, 2025, 2:00 p.m. to 4:15 p.m.

**Where:** UNLV Boyd School of Law, 4505 S. Maryland Pkwy., Complimentary parking at the Cottage Grove garage

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CCBA members are needed to volunteer for the community outreach activity Health Care Power of Attorney-a-Thon:

- **When:** Tuesday, June 17, 2025, 9 a.m. to noon
- **Where:** MLK Senior Center, 2420 N. Martin Luther King Jr. Blvd., Building B, North Las Vegas.
- **About:** The Health Care Power of Attorney-a-Thon involves guiding a senior through the process of executing a health care power of attorney. The clients will be preregistered and scheduled for one-hour appointments with the volunteer attorneys.
- **Offers:** 1 hour CLE credit for 3 hours of pro bono service
- **CLE training before event:** A one-hour pre-recorded CLE video and PowerPoint presentation called "Health Care Power of Attorney" are available on demand for non-estate planning attorneys. An optional Zoom meeting to cover logistics and answer any questions for the volunteer attorneys will be held on June 16, 2025, at noon.
- **Registration:** Contact Cesar Hernandez, pro bono coordinator, at [chernandez@snslp.org](mailto:chernandez@snslp.org) by June 6, 2025. 



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# Key Rules for the One Judge/One Defendant Process

By Chief Judge Melisa De La Garza and Charles A. Mapp, Sr.

In February, the Justice Court, Las Vegas Township, implemented a new “One Judge/One Defendant” criminal case assignment process. The system aims to streamline case management and improve judicial efficiency.

The new process employs a computer program designed to determine whether a defendant has a prior connection to an existing criminal case. If a prior connection is established, the new case will be assigned to the same judge overseeing the existing case. This approach ensures continuity and consistency in the handling of criminal cases involving the same defendant.

## Key Rules for the One Judge/One Defendant process:

- 1. Determination of prior connection:** The computer program assesses whether the defendant has a prior connection to an existing criminal case in the justice court. A prior connection is established when:
  - An active, lower-numbered criminal case, including cases where a criminal complaint has not been filed, is pending against the defendant or co-defendant.
  - The defendant has not satisfied all conditions of a sentence, and the case has ongoing post-adjudication status checks or an active warrant.
  - The defendant is charged, and the charge arises from the same criminal transaction that is the basis of a citation/criminal complaint previously filed against the defendant or co-defendant.
- 2. Case assignment:** If a prior connection exists, the new case is assigned to the court with the prior connection. If multiple prior connections exist, the new case is assigned to the court with the lowest case number.
- 3. Superseding cases:** Domestic violence and/or DUI case assignments supersede prior connections.
- 4. Exclusion of traffic cases:** Traffic case types are excluded from this process and are randomly assigned, regardless of prior connections.

## Court News

### Civil Bench-Bar Meeting

- **Host:** Eighth Judicial District Court
- **When:** Tuesday, May 13, 2025, 12-1:00 p.m.
- **Where:** Regional Justice Center, Courtroom 10D and Zoom
- **Update:** Meetings go dark June, July, and August, resuming September 9, October 14, and December 9
- **Contact:** EJDCBenchBar@gmail.com



5. **Administrative reassignment:** If a case is assigned to a department in error, it is administratively reassigned to the appropriate department, in accordance with established administrative orders and/or these rules.

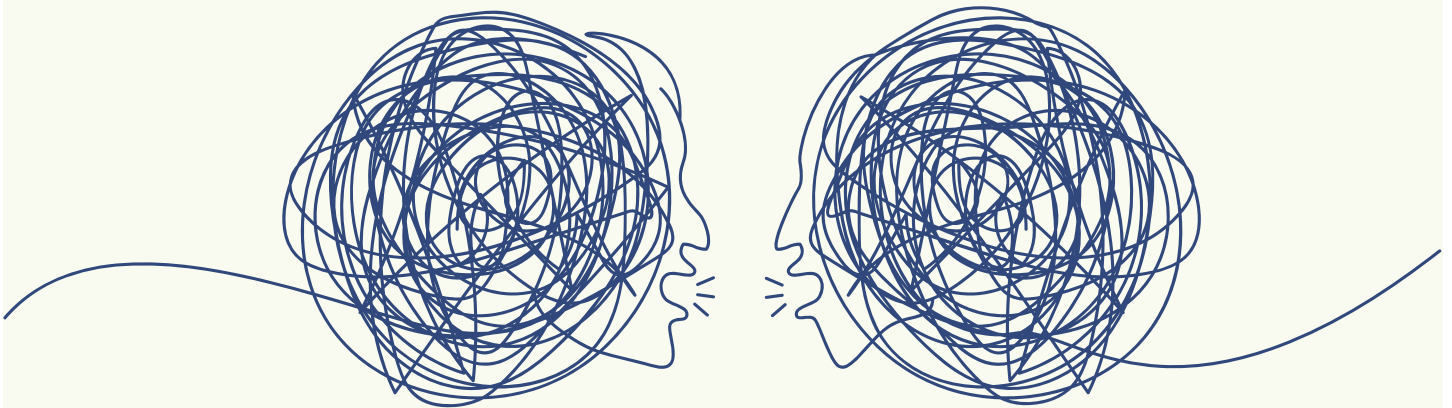
Although it has only been a couple of months, the court is starting to see definite improvement in efficiency for all parties. A defense attorney handles all of their client's cases, giving the attorney a better overall picture of their client's situation. A prosecutor is able to evaluate the defendant's overall impact on the community. Even the Clark County Detention Center receives the benefit of transporting fewer inmates between courtrooms each morning. More importantly, the decision-maker, the judge, has the "whole" defendant before him/her in that the judge is presiding over all of the defendant's open cases in the justice court.

The initiative underscores the justice court's commitment to enhancing the judicial process and ensuring that justice is administered timely, efficiently, and fairly. **G**

**Judge Melisa De La Garza** is honored to become the Chief Judge of the busiest court in Clark County. Las Vegas Justice Court had over 45,000 criminal case filings, and nearly 100,000 civil case filings, for fiscal year 2023. In addition, the court handled an additional 126,000 traffic matters. The court has nine specialty courts, including drug court, mental health court, veterans' court, and DUI court. Judge De La Garza shares a bench with 15 other justices of the peace, three hearing masters, and over 300 staff. She will continue to preside over the community court specialty court as she oversees her duties as the chief judge. **Charles A. Mapp, Sr.**, is currently serving as the interim court administrator for the justice court.



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# Pour with Caution: Decanting, Amending, and the Fiduciary Tightrope

By Alexander LeVeque

**A**s a trust and estate litigator in Nevada, I routinely see the complexities surrounding irrevocable trusts. While these instruments are designed to provide certainty, tax efficiency, and asset protection, they're not always as "irrevocable" as the name suggests. Life changes, tax laws evolve, and family dynamics shift—often requiring trustees and beneficiaries to consider amending or decanting the trust. But just because they *can* doesn't always mean they *should*.

This article offers a practical roadmap for navigating these decisions, with a particular focus on balancing legal options with fiduciary responsibilities.

## Why amend or decant?

There are many legitimate reasons for amending or decanting an irrevocable trust. Some of the most common include:

- **Fixing drafting errors**, such as misidentifying beneficiaries or property.
- **Eliminating outdated provisions**, like references to the Rule Against Perpetuities in dynasty-trust-friendly jurisdictions.
- **Adapting to tax law changes**, including restructuring formulas tied to outdated exemption amounts.
- **Changing trust situs** for more favorable jurisdictional treatment.
- **Providing for special needs beneficiaries** or enhancing asset protection by shifting to a fully discretionary standard.

Decanting is especially powerful—it allows a trustee to transfer trust assets into a new trust with more favorable terms, much like pouring wine to separate out the

sediment. However, both amending and decanting actions must align with applicable state law and, crucially, fiduciary duties.

## Applicable laws: What does the trust say?

The first step is always to read the trust document itself. Does it contain express language allowing or prohibiting amendment or decanting? What is the trustee's distribution standard? Does the trust confer limited or expansive discretion?

State law governs the amendment or decanting of trusts, and rules vary widely. Nevada, for example, permits broad decanting powers under NRS 163.556. The Uniform Trust Code (UTC) and Uniform Trust Decanting Act (UTDA) provide more narrow model frameworks, adopted in varying forms across states.

## Can ≠ should: fiduciary duties still apply

Even when authorized, the trustee must tread carefully. Nevada law, which generally tracks the Restatement (Third) of Trusts, outlines four critical fiduciary duties:

- **Duty of Loyalty:** Act solely in the interest of the beneficiaries.
- **Duty of Impartiality:** Consider the diverse interests of all beneficiaries, whether vested or contingent.
- **Duty of Prudence:** Exercise skill, care, and caution appropriate to the role.
- **Duty of Good Faith:** Act in line with the trust's purpose and applicable law.



## Non-judicial options

When court involvement isn't preferred, trustees have non-judicial tools:

- **Non-Judicial Settlement Agreements (NJSAs)** allow beneficiaries and trustees to agree on changes, provided they don't violate the trust's material purpose. While private and cost-effective, NJSAs are not binding on non-parties and may carry tax or enforceability risks.
- **Notices of Proposed Action (NOPAs)** provide transparency and offer beneficiaries a chance to object before a trustee takes a proposed action. In jurisdictions like Nevada, proper notice can cut off future liability—but may also provoke litigation if objections arise.

## Judicial pathways

Sometimes, court intervention is the wisest route:

- **Petitions for instructions** let trustees seek guidance before acting, creating a “safe harbor” from liability. Courts in Nevada have broad powers to approve actions and bind all interested parties.
- **Petitions for ratification** ask courts to validate actions already taken. While not ideal, this approach can still shield trustees if the court approves the conduct retroactively.
- **Combination approaches**—like pairing a NJSa with a petition—offer both flexibility and legal certainty. This “belt and suspenders” method can be the best practice in complex or high-risk scenarios.

## Lessons from case law

Recent cases underscore the stakes. In *Hodges v. Johnson*, 177 A.3d (N.H. 2017), trustees decanted two trusts to eliminate certain beneficiaries. The court voided the decantings and removed the trustees for breaching the duty of impartiality, affirming that even contingent beneficiaries deserve

consideration. Similarly, In Re: *Matter of Niki and Darren Irrevocable Trust*, 2024 WL 3515556 (Del. Ch. 2024), Delaware's Chancery Court invalidated a decanting where the trustee lacked power to invade the principal.

These cases reinforce a simple truth: trustees must understand their powers and duties before acting—or risk costly consequences.

## Final thoughts

Amending or decanting an irrevocable trust can be a powerful tool to achieve better outcomes for all involved. But like any powerful tool, it must be used with care. Trustees must not only follow the letter of the law, but also the spirit of their fiduciary obligations. When in doubt, it's always wise to seek judicial guidance or pair non-judicial actions with court approval. **C**

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**Alex LeVeque** is the Managing Partner of Solomon Dwiggs Freer & Steadman, Ltd., where his practice is devoted to private wealth law, with an emphasis on fiduciary and trust litigation. He represents clients across Nevada, throughout the United States, and internationally in complex trust and estate disputes.



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# Forum Fortified: The Power and Procedure of *In Rem* Jurisdiction in Nevada Trust Law

By Alan Freer and Jeffrey Luszeck

**C**onflicts of laws in trust proceedings have become increasingly prevalent. Due to portability of trusts and favorable jurisdictions such as Nevada, it is no longer uncommon for an out-of-state resident to have a Nevada trust. One strategic tool to resolve conflicts of laws in trust proceedings in Nevada is *in rem* jurisdiction—a mechanism that provides Nevada courts legal control over trust property and binds all parties with an interest in a trust. Knowing when, why, and how to secure *in rem* jurisdiction in Nevada can make trust administration more efficient and secure.

## What is *in rem* jurisdiction?

Like most states, Nevada distinguishes between *in personam* (personal) and *in rem* (property-based) jurisdiction. In trust cases, *in rem* jurisdiction allows the court to make binding decisions concerning a trust, including trust property, administration, and interested parties.

## How to secure *in rem* jurisdiction

In Nevada, upon petition of a trustee, settlor, or beneficiary of a trust, a Nevada district court shall assume jurisdiction of a trust as a proceeding *in rem* unless: (1) another court has already properly assumed continuing jurisdiction *in rem* in accordance with the laws of that jurisdiction; and (2) the Nevada district court determines that it is not appropriate for the district court to assume jurisdiction under the circumstances. *See* NRS 164.010(1).

A petition under NRS § 164.010 must provide notice to all interested parties as defined in NRS 132.185. *See*

NRS § 155.010, NRS § 164.037. Because a trust proceeding under NRS § 164.010 is considered an *in rem* proceeding, once the court assumes jurisdiction of a trust, its orders are binding on all interested parties, which can include beneficiaries, creditors, trustees, and other parties whose interests relate to the trust assets, even if they are not physically present or individually served—so long as proper notice is given. *See* NRS § 164.030(4).

## When to seek *in rem* jurisdiction

*In rem* jurisdiction should be sought early in trust administration, particularly when an interested person wishes to have Nevada as the controlling jurisdiction over any administrative matters, anticipates litigation or disputes, or the trustee needs court guidance before taking certain actions.

Proactively assuming *in rem* jurisdiction before any controversy arises gives the Nevada court exclusive authority over the trust “as of the date of the filing of the petition” to assume jurisdiction. *See* NRS § 164.010(5) (a). This prevents other state or federal courts from intervening under the prior-exclusive-jurisdiction doctrine, which holds that only the first court to assert control over the trust’s res (*i.e.*, property) retains jurisdiction.

## Why *in rem* jurisdiction matters

There are multiple benefits to securing *in rem* jurisdiction, which include:

1. **Legal finality:** Court orders are binding on all interested persons, including future claimants, reducing the risk of later challenges.

2. **Jurisdictional shield:** Other courts cannot interfere once Nevada has jurisdiction over the trust assets. This protects the trust from parallel or conflicting rulings in different jurisdictions.
3. **Trustee protection:** Trustees can petition for instructions or declaratory relief under NRS 153.031 or NRS 30.040, minimizing liability and uncertainty.
4. **Continuing oversight:** Once jurisdiction is granted, the court retains authority until released by petition. This allows jurisdiction to be maintained in Nevada and future matters to be resolved efficiently.
5. **Creditor resolution:** Creditors seeking to enforce judgments against the trust must do so in the Nevada court, streamlining proceedings.

Notwithstanding the foregoing, potential downsides to securing *in rem* jurisdiction in Nevada include:

1. **Personal jurisdiction over trustees:** Confirmed trustees are subject to Nevada's personal jurisdiction, which may be undesirable in certain cases.
2. **Public docket:** While trust documents and sensitive information can be filed under seal, redacted, or lodged *in camera* pursuant to NRS 164.041 and 699A.256, this can be filed as a "Doe" proceeding. However, under NRS 164.041, the me-

dia or others can move to unseal for cause shown. Should confidential information be required to be disclosed, public access is limited—information is not indexed by search engines and must be searched directly on the court's website.

3. **Creditor forum:** Creditors can pursue claims within the trust proceeding itself—typically a benefit to trustees and beneficiaries, but a consideration for risk-averse trustees.

## Conclusion

Proactive use of *in rem* jurisdiction in Nevada provides trustees and beneficiaries with powerful tools for legal clarity, efficiency, and control. For general practitioners advising clients on trust matters, securing *in rem* jurisdiction early is often the best strategy to ensure smooth administration and prevent jurisdictional conflicts, which can be leveraged to their clients' advantage.

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**Alan D. Freer and Jeffrey P. Luszeck** are members of Solomon, Dwiggins, Freer & Steadman, Ltd., where they focus their practice primarily on trust and estate litigation. Mr. Luszeck serves as co-chair of the legislative committee for the probate and trust section of the State Bar of Nevada.

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# Alternative Estate Planning Techniques: Navigating the Road Beyond Revocable Living Trusts

By Amanda Stevens and Whitney Short

**M**any estate plans traditionally involve revocable living trusts (“RLT”), which facilitate the seamless transfer of assets and help to avoid probate. However, not all individuals wish to employ this method; alternatives to an RLT may be more fitting for some unique situations. This article explores three such alternatives: using beneficiary designations, holding property as joint tenants, and not owning any assets. Each approach offers distinct advantages and disadvantages, which must be carefully weighed depending on the client’s specific needs and goals.

## 1. Payable on death (“POD”) and transfer on death (“TOD”) designations

POD and TOD designations allow individuals to name beneficiaries who will receive assets upon their death, bypassing probate. *See* NRS § 111.761.

### Pros:

- **Simplicity and affordability:** POD and TOD designations are simple and affordable, as they typically require only the completion of a beneficiary designation form with the relevant entity.
- **Avoiding probate:** Assets with POD or TOD designations pass directly to the named beneficiary without going through the probate process in most cases.

### Cons:

- **Limited availability:** Not all assets can be titled with POD or TOD designations. Business interests in Nevada, for example, cannot have POD or TOD designations.

- **Real property:** For real property, a transfer on death deed is possible in Nevada. *See* NRS § 111.671. However, certain requirements must be met to sell the property after it is inherited. *See* NRS 111.689.
- **Lack of distribution specifics:** Unlike an RLT, POD and TOD designations provide little in the way of specific instructions for how assets should be distributed.

## 2. Joint tenancy: shared ownership for simplicity and probate avoidance

Taking title to property as joint tenants with rights of survivorship is another popular alternative to an RLT. *See* NRS § 111.065, NRS § 111.365. Under this structure, two or more individuals jointly own property, and upon the death of one joint tenant, the surviving tenant(s) inherit(s) the decedent’s share of the property.

### Pros:

- **Simplicity and affordability:** Joint tenancy is simple and inexpensive to establish. The title to property is simply transferred into joint ownership.
- **Avoiding probate:** When one joint tenant passes away, the surviving joint tenant(s) take(s) full ownership.

### Cons:

- **Loss of control:** All joint tenants must agree to any decisions regarding the property, which can become problematic if disagreements arise among multiple owners.

- **Tax concerns:** The creation of joint tenancy can trigger gift tax consequences, especially if the transfer is made without compensation. Moreover, the surviving joint tenant may be responsible for paying capital gains taxes when the property is sold.
- **Liability concerns:** If one joint tenant faces financial distress, creditors may be able to seize the jointly owned property. Similarly, Medicaid could potentially claim part of the property if the individual qualifies for benefits and the property is included in the estate.

### 3. Owning nothing: A radical yet potentially effective strategy

One alternative involves not having any assets. This strategy entails transferring ownership of assets to various entities or individuals, such as family members or irrevocable trusts.


#### Pros:

- **Avoiding probate:** The most significant benefit of owning nothing is that assets held by others are not subject to the decedent's probate.
- **Reducing estate taxes:** By transferring assets out of an individual's name during their lifetime, it may be possible to reduce the taxable estate, thus minimizing estate taxes. For wealthy individuals, this can result in substantial tax savings at death.

#### Cons:

- **Loss of control:** Once transferred, the individual relinquishes ownership, which can be unsettling for those who wish to maintain control over their property during their lifetime.
- **Fraud concerns and creditors:** Transferring assets can raise red flags, particularly if done in a manner that appears to be aimed at avoiding creditors or Medicaid's lookback period. *See* Division of Welfare and Supportive Services Medical Assistance Manual Section F-410.1. If the transfers are deemed fraudulent, creditors or Medicaid may still be able to access the assets, and there may be other legal ramifications. *See* NRS § 112.180.
- **Gift tax implications:** The act of gifting property can trigger federal gift tax consequences, especially if the transfers exceed the annual exclusion limit or lifetime exemption. *See* IRS Form 709.

## Conclusion

While an RLT remains a common estate planning tool, the alternatives outlined here provide distinct options for avoiding probate and managing estate tax liabilities. The client's goals, the complexity of their estate, and their tolerance for risk are what determine the correct strategy to use. It is crucial to work with experienced legal, financial, and tax professionals to create an estate plan that is both effective and aligned with the client's desires. 

*Amanda L. Stevens and Whitney E. Short of Short & Stevens Law, LLC. Amanda and Whitney both went to Boyd School of Law and have been active members of the CCBA since graduating in 2015.*



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# Protecting & Maximizing the Rights of Surviving Spouses in Nevada Estate Administration

By Thomas R. Grover

**N**evada probate law includes several tools attorneys can use to protect surviving spouses. The loss of a spouse is a devastating event. Practitioners who fully utilize the various tools which protect surviving spouses can make a difficult chapter of life more bearable.

Throughout this article, I use the term “surviving spouse” to describe a widow or widower. For purposes of this article, the term not only refers to married people, but also partners in a formal, registered domestic partnership. “Domestic partners have the same rights, protections and benefits, and are subject to the same responsibilities, obligations and duties under law, . . . as are granted to and imposed upon spouses.” NRS § 122A.200(1)(a).

## Petition to set aside: protecting surviving spouses & minor children

A petition to set aside estate without administration is one of the most powerful tools to protect a Nevada surviving spouse. Normally, full probate administration begins with a petition to appoint a personal representative, followed by filings like an inventory, accounting, and other actions, depending on the size and nature of the estate. The full process can last at least several months.

In contrast, a petition to set aside can distribute an estate to a surviving spouse and/or minor children with a single petition, bypassing the ordinary and often cumbersome estate administration process. Thus, the process is called a petition to set aside *without administration*.

Where an estate is worth less than \$100,000.00, “the court *must* set aside the estate for the benefit of the surviving spouse or . . . or minor children . . .” NRS §

146.070(3) (emphasis added). This is mandatory, not discretionary, language.

Creditors are not paid when a surviving spouse petitions for a “set aside” unless “manifest injustice” would result. NRS § 146.070(4). As a practical matter, courts almost universally side with a surviving spouse when a set aside petition is challenged by a creditor.

The calculation of the \$100,000.00 threshold is not as simple as it may seem. The petitioning surviving spouse must disclose nonprobate transfers to the court, which are counted against the \$100,000 threshold. NRS § 146.070(9). A nonprobate transfer is “a transfer of any property or interest in property from a decedent to one or more other persons by operation of law or by contract that is effective upon the death of the decedent...” NRS § 132.237, NRS § 111.721(1). A bank account with a “payable-on-death” designation is an example of a nonprobate transfer.

By way of example, if an estate only had \$50,000.00 in assets, but there was a \$200,000.00 payable-on-death account in favor of the surviving spouse, that estate would not qualify for a set aside under NRS § 146.070 because the combined value of the estate and nonprobate transfer exceeds the \$100,000.00 threshold.

The \$100,000.00 threshold is determined as of the date of death. If estate assets have appreciated since the date of death, that appreciation is not counted against the \$100,000.00 threshold. Practitioners should check for differences between date of death and current values, especially where considerable time has passed.

## Probate homestead

A surviving spouse may also be entitled to a probate homestead, which allows them to stay in the marital residence even though the residence would otherwise be dis-



posed of to satisfy other heirs or creditors.

NRS § 146.050(2) provides that “a homestead *may* be set apart by the court to the surviving spouse, [...] for a limited period if deemed advisable *considering the needs and resources* of the family and the nature, character and obligations of the estate” (emphases added).

Unlike a set aside, a probate homestead is discretionary. The purpose of a probate homestead is to protect the surviving spouse from destitution or impoverishment. The court will examine the resources available to the surviving spouse and their needs in exercising its discretion. A surviving spouse with ample resources available to them is unlikely to obtain a homestead, especially where it would impede the rights of others.

## Surviving spouses & community property

Nevada’s community property laws provide another useful tool to protect the interests of surviving spouses. Pursuant to NRS § 123.220, all property acquired during marriage, with very limited exceptions, is community property.

When one spouse dies, “[a]n undivided one-half interest in the community property is the property of the surviving spouse and his or her sole separate property.” NRS § 123.250(1)(a). That one-half, separate property interest is not subject to estate administration. NRS § 123.250(1)(a). The other one-half, which is attributed to the decedent, is subject to estate administration. NRS § 123.250(1)(b)(2). The one-half interest subject to estate administration goes entirely to the surviving spouse, unless a valid will directs otherwise. NRS § 123.250(1)(b)(1).

Recognizing the separate property interests following the death of a spouse is critical to protecting the rights of a surviving spouse.

First, because half of the estate passes outside of estate administration, the estate may fall under the \$100,000.00 set aside threshold, where it would not otherwise. So, for example, if there are \$190,000.00 in community assets, all titled in the Decedent’s name, half (\$95,000.00) passes to the surviving spouse outside of probate pursuant to NRS § 123.250(1)(b)(1). The remaining half (\$95,000.00) falls below the set aside threshold and can be distributed to the surviving spouse with a single petition.

Second, splitting community property at death can protect the surviving spouse from the reach of creditor claims. If a given debt is individual, and the creditor files

a claim that renders the estate insolvent, that creditor cannot reach the one-half of the community that passed to the surviving spouse outside of estate administration at death. Combined with a set aside, it may be possible to completely defeat an otherwise valid creditor claim.

It is a best practice to seek declaratory relief in the initial probate petition, or set aside petition, that one half of the community has already passed outside of estate administration.

## Conclusion

Nevada law provides several important tools to protect the interests of surviving spouses. These tools can assist practitioners to maximize the interests and security of a surviving spouse. **G**

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**Thomas R. Grover** is a partner with Blackrock Legal. His practice focuses on estate and trust litigation matters, including resolution of the rights of surviving spouses.



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# The Federal Estate and Gift Tax Exclusion and Potential Changes on the Horizon

By Katie Daff

**T**he estate tax is a tax on assets an individual owns or controls at his or her death. The federal estate tax exclusion—the amount of an individual's estate that is exempt from taxation—is currently at an all-time high of \$13,990,000 per person or \$27,980,000 for married couples, adjusted for inflation. Because the estate tax exclusion is so high, only a small percentage of estates are currently subject to federal estate tax, which has a maximum rate of 40 percent. There is no state level estate tax in Nevada.

The \$13,990,000 lifetime exclusion per individual applies to gift and estate taxes combined. The IRS refers to this as a unified credit because it unifies both the gift tax and estate tax exclusions. Therefore, individuals can gift amounts up to the annual exclusion limit, currently \$19,000 for 2025, to as many individuals as they wish without it affecting their lifetime gift and estate tax exclusion. However, any gift to an individual which exceeds \$19,000 per year reduces the donor's lifetime exclusion. Married couples can gift \$38,000 to a recipient annually without reducing their lifetime exclusions. The gift tax exclusion amount for gifts to a non-citizen spouse is \$190,000 annually. Generally, there is no tax on assets passing between U.S. citizen spouses.

The current estate tax exclusion amount, which was increased by President Trump's 2017 Tax Cuts and Jobs Act, is set to sunset on December 31, 2025. Therefore, unless Congress acts before then, on January 1, 2026, the federal estate tax exclusion is expected to decrease to

\$5,490,000 per person, which is predicted to be around \$7,000,000 when adjusted for inflation. This decrease in the federal estate tax exclusion would lead to a larger number of estates being subject to the federal estate tax.

***The current estate tax exclusion amount, which was increased by President Trump's 2017 Tax Cuts and Jobs Act, is set to sunset on December 31, 2025.***

However, there is a possibility that the estate tax exclusion could be abolished entirely. Republicans are pushing for the passage of the Death Tax Repeal Act ("Act"), which aims to eliminate the federal estate tax. The Act arrives as Republicans work to extend the 2017 Tax Cut and Jobs Act before it expires at the end of this year. The Act, if passed, would permanently eliminate the federal

estate tax, thereby allowing individuals to pass an unlimited amount of assets free of tax after their death. The gift tax would remain in place to prevent high net worth individuals from transferring assets to family members tax-free during their lifetimes, although the gift tax exclusion amount could change from its current annual value of \$19,000. Different versions of the Act attempting to repeal the estate tax have been presented since 2015 but have failed to become law.

Whether the current estate tax exclusion is extended, reduced, increased, or abolished remains to be seen. Given the uncertainty around tax laws, it is beneficial to review your estate plan periodically to mitigate potential estate tax liability. **G**

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**Katie Daff** is co-founder of Estate Law, Inc., where she focuses her practice on estate planning, probate, and trust administration.



## Plan Ahead

By Brian P. Nestor

**W**hen a loved one dies, the last thing the family wants is to end up in court. Unfortunately, too many families end up in court because their loved one did not have a proper estate plan. People often fail to have a proper estate plan due to the misconception that estate planning is only for the wealthy. Quite the opposite is true: estate planning is for everyone.

For example, if a decedent's estate holds Nevada real property, Nevada law requires the property to pass through probate. Generally, probate is the process where a court administers a deceased person's assets after death. The court relies on NRS 133 (Wills) and 134 (Succession), not the family, to determine who receives the assets and how much each person receives, after the payment of administrative fees and costs and to valid creditors. Moreover, probate involves tasks such as attending hearings, notifying creditors, and inventorying assets, which require significant expense. Probate is a public process as well. Thus, probate should be avoided whenever possible.

The good news is that probate may be avoided with proper estate planning. Continuing with the example above, if a person owns Nevada real property and places the property into a trust, when the person dies, the property remains in trust and is administered as instructed

under the trust, without probate. Trust administration without court involvement is a private process and can result in significant savings to the decedent's trust estate. A trust also allows a person to determine the trust beneficiaries, such as a relative, friend, charity, or even a pro bono service provider. Furthermore, a cleverly drafted trust may control what assets (or amounts) beneficiaries receive, the age when they receive them, and how they may use them. Thus, a trust offers a way to avoid probate as well as determine how trust assets will be administered.

In sum, with proper estate planning, planning ahead can assist in avoiding probate all together. If you are an estate planning attorney interested in ensuring families have the proper estate plan, there are several pro bono opportunities from ask-a-lawyer sessions to assisting with will and deed preparation. Furthermore, Goldsmith & Guymon, P.C. accepts pro bono estate planning cases as no estate is too small to assist in avoiding probate. **C**

**Brian P. Nestor** is an associate attorney at Goldsmith & Guymon, P.C. He is a proud graduate of Pepperdine School of Law, the Straus Institute for Dispute Resolution, UNLV Honors College, and Faith Lutheran.



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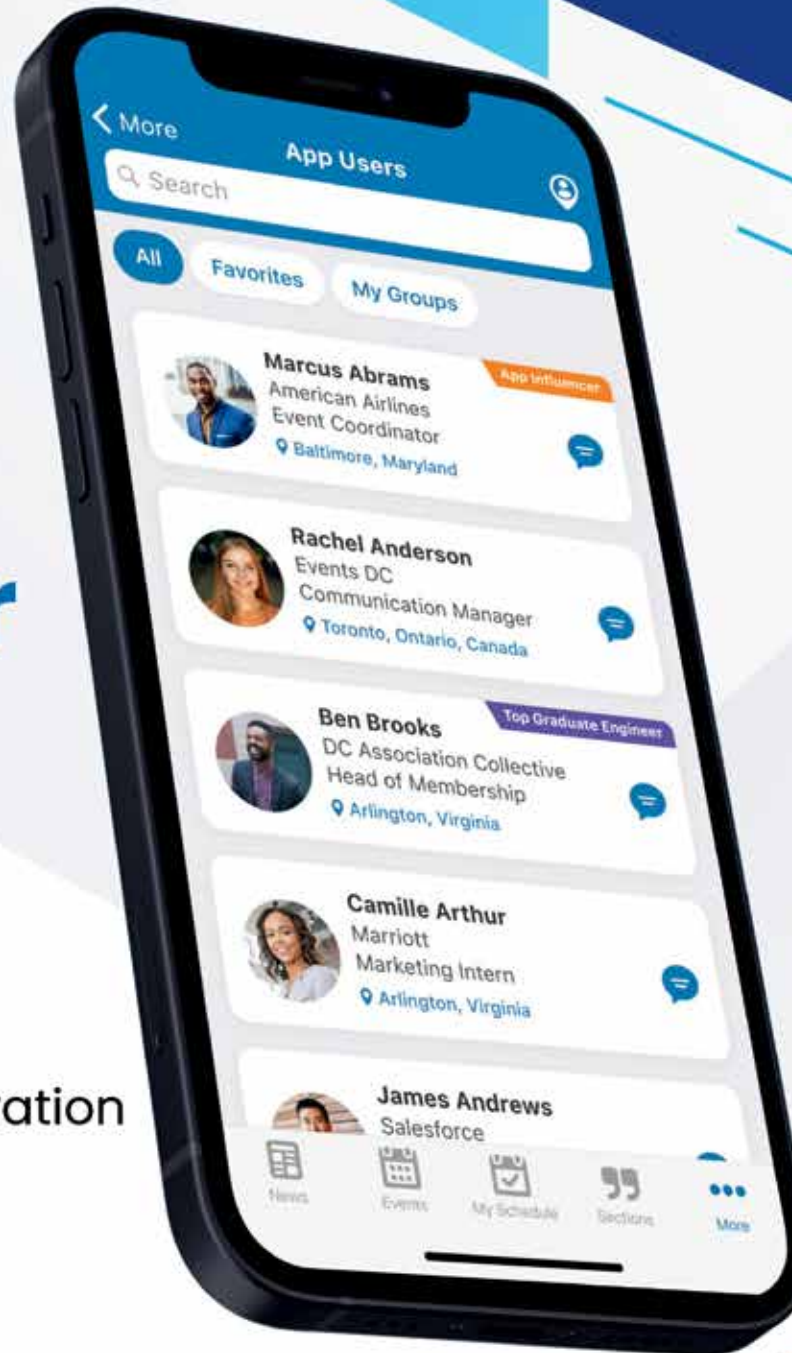


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