

NY's Latest Legislative Session: What Passed, What Didn't, What's Next

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The second year of the 2023-2024 legislative session began on Jan. 3, 2024, and ended on June 6, 2024. Here are some of the most significant developments of the 2023-2024 session.

What Passed

May New York's Infamous Moiety Rule RIP With Creation of Multiple Person Accounts (Passed Both Houses; Awaiting Delivery to Governor)

New York Banking Law (NYBL) Section 675 creates two potentially troublesome presumptions when a deposit is made into a joint bank account in the name of the depositor and another person. First, each account holder has the immediate ability to withdraw one-half of the deposited funds, which creates an irrevocable gift of one-half of the account to the other account holder, regardless of whether any funds are actually withdrawn (New York's infamous "Moiety Rule"). Second, on the death of one account holder, the balance automatically vests in the survivor. Since many individuals open these types of accounts for convenience purposes only (for example an elderly person wishing to allow a child to write checks on their account), the statute can often thwart the intent of the depositor. The presumption of an immediate gift

also translates to immediate gift tax consequences if the gift exceeds the current annual exclusion amount and is not covered by the marital deduction.

In recognition of the fact that many depositors do not intend to make an irrevocable one-half gift to the other account holder or to leave the account to the survivor if the depositor dies first, NYBL §678 was enacted to establish "convenience accounts." These accounts allow the depositor and another account holder to withdraw funds for the depositor's benefit, while ownership of the funds remains in the depositor and, on the depositor's death, the funds pass to the depositor's estate. However, convenience accounts have not been widely adopted. Under proposed law (A.9230-B/S.9383A), NYBL §675 would apply only to accounts created before the July 1, 2025, effective date unless modified after that date with a signature card. NYBL §678 would be repealed and replaced with a new §678 that establishes multiple-person account rules for accounts created after the effective date.



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Credit: Sean Pavone/Adobe Stock

New York City, NY.

The Moiety Rule is revoked under the proposed law. Account funds belong to account owners during their lifetimes according to each owner's contribution, creating a tenancy in common during lifetime. No intention to make a gift is imputed from opening an account in multiple names or from making an additional deposit to an account. In multiple-owner accounts, ownership is proportional to each owner's net contribution, unless otherwise specified. In the absence of evidence, contributions are presumed to be equal.

An account signature card establishes the account type and the terms of the account determine rights at death. If account owners have not chosen survivorship or there is clear and convincing evidence that survivorship was not intended, account funds will be disposed of as part of the deceased owner's estate. Survivorship may not be altered by will.

Banks are required to notify owners of existing multiple-person accounts about the new signature card requirement within six months of the Act's effective date. Existing accounts without a new signature card will continue to be governed by NYBL §675 until a new card is received. The Act would take effect on July 1, 2025.

New York's Corporate Transparency Act Amended and Enacted Without Public Database

Modeled on the federal Corporate Transparency Act (CTA), the New York LLC Transparency

Act (NYLTA), which was originally enacted on Dec. 22, 2023, was amended and signed by Gov. Kathy Hochul on March 1, 2024, (A.8544/S.8059). The requirements of the new law take effect on Jan. 1, 2026.

Both the CTA and NYLTA require beneficial ownership reporting information about certain entities, but while the CTA extends to a number of different entities, currently NYLTA applies only to LLCs formed or authorized to do business in New York.

Under NYLTA, which incorporates many provisions of the CTA, LLCs must provide information about each beneficial owner, which is defined as an individual who, directly or indirectly, exercises substantial control over the entity or owns or controls at least 25% of the ownership interests of the entity. This could include trust beneficiaries, trustees and settlors if the trust is a member of an LLC and meets those thresholds. The following information must be provided about each beneficial owner:

- Full legal name
- Date of birth
- Current address
- Unique identification number from an acceptable identification document, such as a passport

A copy of the report entities file under the CTA with the Department of Treasury's Financial Crimes Enforcement Network can be filed with the New York Department of State to satisfy New York's filing requirements. Whereas the information collected under the CTA will typically be confidential, the original NYLTA contained a provision that would have created a public database of beneficial owners. However, pursuant to a last-minute compromise, under NYLTA, like the CTA, only government agencies and law enforcement will have access to that information. The Attorney General can investigate any LLC that fails to file its beneficial disclosure and seek fines of up to \$500 for each day late. LLCs formed or qualified to do business

in New York on or after Jan. 1, 2026, must provide the informational filing within 30 days. Entities organized or qualified prior to Jan. 1, 2026, must file an initial report by Jan. 1, 2027. Unlike the CTA, which requires an updated report within 30 days of a change, NYLTA requires all reporting companies to file an annual statement confirming or updating their information.

Certain exempt companies, such as large operating companies, banks, credit unions, insurance companies, investment companies registered under the Investment Company Act of 1940 and accounting firms will be exempt from the NYLTA filing requirements but will need to file an attestation of exemption.

Real Property Can be Transferred on Death by Deed

New York joins at least 20 other states in enacting a Transfer-on-Death (TOD) Deed Law. The new law allows a real property owner to designate a beneficiary who will automatically inherit the property on their death, similar to a TOD bank account. The owner, who must have testamentary capacity, is required to sign the TOD deed before two witnesses and a notary and the deed must be recorded during the owner's lifetime in the county in which the property is located, making it a public document.

The key features of the new law include:

- Avoids probate;
- No gift tax implications because the deed does not confer a present interest;
- Owner's cost basis is unaffected;
- Owner retains full ownership and control of property during lifetime; and
- TOD deed is fully revocable.

While the new law may be useful in facilitating property transfer in the right circumstances, it will be prudent to exercise caution to avoid unintended circumstances. Since the property will pass outside the will, it may derail an estate plan

if that property was needed to fund trusts or other estate planning strategies; or if the deed does not dovetail with the broader estate plan, particularly if family or financial circumstances change, including due to divorce or death of a beneficiary; or if other estate planning documents are updated but the TOD Deed is inadvertently omitted; or if estate tax apportionment is not specifically considered. A revocable trust structure may be a more appropriate and sophisticated solution for larger or more complicated estates.

The new law, which was enacted as part of the 2024-2025 Executive Budget, took effect on July 19, 2024, and is codified as §424 of the New York Real Property Law.

Recordkeeping Duties of Traditional Public Notaries Reduced (Passed Both Houses; Awaiting Delivery to Governor)

Legislation allowing Electronic Notarization (N.Y. Exec. Law §135-c), became effective Jan. 31, 2023. The law establishes requirements and procedures for electronic notarization yet extends the requirement to keep a detailed log of all notarial acts performed for 10 years to all notaries, including electronic notaries and notaries who only provide traditional in-person services.

Objections were raised that this recordkeeping was excessively time-consuming and onerous. For attorney-notaries, the detailed logs also raised concerns about attorney-client privilege and confidentiality. The bill (A.7241/S.8663) proposes to limit the recordkeeping and reporting duties of public notaries specifically to electronic notarization acts, exempting traditional non-electronic notarial acts from these new record-keeping requirements.

Health Care Proxies Can be Witnessed Remotely

NY Public Health Law §29812-a. now provides a procedure for witnessing a health care proxy using audio-video technology, provided:

- The principal, if not personally known to a remote witness, displays valid photo ID;

- The audio-video conference allows for direct interaction between the principal and any remote witness;
- Any remote witness receives a legible copy of the health care proxy, transmitted via facsimile or electronic means, within 24 hours; and
- The remote witness signs the transmitted copy and returns it to the principal.

Notarized Affidavits No Longer Required in Civil Cases

As of Jan. 1, 2024, an affirmation by any person, wherever made, subscribed and affirmed by that person to be true under penalties of perjury, can be used in a civil action in New York in lieu of and with the same force and effect as an affidavit (A.5572/S.5162). Previously, only two groups were exempt from the requirement to submit affidavits (1) attorneys, physicians, osteopaths, and dentists and (2) individuals physically located outside the United States. The new law amends Civil Practice Law and Rules §2106 to expand the ability to submit an affidavit to any person. The new law will significantly facilitate the ability to file papers quickly in time sensitive court proceedings, including matrimonial actions.

What's Next?

New York has two-year legislative sessions. Since this is the second year of New York's 2023-2024 legislative session, even though the proposals below may have had some traction, any proposals that did not pass in the current legislative session have technically died and would need to be reintroduced as new bills in the upcoming 2025-2026 legislative session.

Proposal to Fully Decouple from Federal Opportunity Zone Tax (Passed Senate and Delivered to Assembly)

Federal law grants investors in Qualified Opportunity Zones (QOZ) three benefits: 1. defer capital gains until sale or Dec. 31, 2026, 2. increase basis (reduce gain) by 10% if QOZ investment is

held for five years/15% if held for seven years before Dec. 31, 2026, and 3. completely exclude gain for QOZ investments held at least 10 years. New York's 2021-2022 Executive Budget eliminated the first two benefits. This proposal (A.2170/S.0543) would eliminate the third.

Proposal to Disqualify Surviving Spouse if Marriage Annulled or Voided After Death (Died in Committee)

Under New York law, a marriage can be annulled post death. However, to determine elective share rights (the right of a surviving spouse to take a share of a decedent's estate, in New York typically one-third), the marital status of the parties at the time of death controls. Under Estates, Powers, and Trusts Law (EPTL) §5-1.2, the right of election exists unless: (1) the marriage was annulled or divorce occurred prior to death, or (2) the marriage is considered void due to bigamy or incest. Accordingly, if annulment occurs after death, the statute technically allows a right of election to proceed if the parties were married on the decedent's date of death. Cases have highlighted a specific type of elder abuse, in which an individual, commonly a caretaker, nefariously marries an individual who is incapable of validly entering into a marriage. For example, in *Campbell v. Thomas*, 73 A.D.3d 103, 897 N.Y.S.2d 460 (2010), Howard Thomas was diagnosed with terminal cancer and severe dementia. After Howard's daughter, his primary caregiver, took a one-week vacation, leaving him in the hands of a caregiver, Nidia Thomas, she returned to find that Nidia had married Howard. Despite the fact that the children successfully had the marriage annulled after Howard's death, Nidia asserted a right of election. Although Nidia would be considered a surviving spouse under the plain meaning of the statute, the court determined that equitable principles required the departure from the statute's plain meaning because it would defy equitable

principles to allow Nidia to profit from her own wrongdoing. Although it was able to use its equitable powers, the court did call upon the legislature to examine revisions to the law that would prevent unscrupulous individuals from exploiting the elderly.

The new proposal (A10019/S3260) would amend the EPTL by disqualifying as surviving spouse an individual whose marriage was annulled before or after the death of the decedent.

Proposal to enact Medical Aid in Dying Act for Terminally Ill Patients (Died in Committee)

The proposed Medical Aid in Dying Act (A00995C/S02445-C) would allow a mentally competent, terminally ill patient with no more than six months to live to request medication to be self-administered to hasten death. The law would provide detailed procedures and protections for patients against abuse and immunities to health care providers, including a physician who prescribes the medication. While an emotionally charged topic, a number of jurisdictions, including California, Colorado, District of Columbia, New Jersey, Oregon, Vermont, and Washington have some form of this legislation and several more states have introduced it. The cause of death under the new law would be listed as the underlying terminal illness. Insurance benefits cannot be denied for actions taken in accordance with the Act.

Proposal to Repeal Requirement for Nonresident Attorneys to Maintain Physical New York Office (Passed Senate and Delivered to Assembly)

To practice in New York, Judiciary Law §470 requires nonresident attorneys admitted to practice in New York to maintain a physical office in the state. A bill (A.8879/ S.9281) was introduced to repeal this requirement. When the law was originally enacted in 1909, a central concern reportedly was serving attorneys located outside New York and communicating across state lines. According to advocates of the bill, modern transportation

and communication technologies have rendered the law outmoded. With modern-day mechanisms for serving attorneys outside the state and New York law providing a jurisdictional basis for out-of-state service, supporters maintain there is no reason to require a brick-and-mortar office. Prior attempts to repeal the law have been made, as recently as 2023, when a bill passed both houses, but was vetoed by Gov. Hochul in Dec. 2023 on the basis that the state has a responsibility to ensure adequate oversight and regulation of all attorneys practicing in the state.

What Didn't Pass

Personal Income Tax Rate Increases

Like last year, both Senate and Assembly Budget proposals called for an increase in personal income tax rates, but no new changes were enacted in the final 2024-2025 Executive Budget. Both houses proposed increasing the top income tax rate from 10.3% to 10.8% for those with taxable income between \$5 million and \$25 million. For income levels over \$25 million, the proposals called for a rate increase from 10.9% to 11.4%. The final 2023-2024 Executive Budget extended the temporary 7.25% business income tax rate that was set to expire through 2026 for taxpayers with a business income base over \$5 million. This year, both chambers also proposed raising the corporate tax rate from 7.25% to 9% through 2026, but that did not appear in the final Budget either.

The following bills never made it out of Committee and died this legislative session.

Proposal to Reform New York Estate Tax; Establish Gift and Inheritance Tax

This proposal (A.3193/S.2782) would lower New York's estate tax exemption to \$750,000 and apply progressive marginal tax rates ranging from 5% to 50%. The bill would introduce a gift tax and an inheritance tax system, subject to certain exceptions and credits. The exemptions from the proposed gift and inheritance taxes are modest

at \$50,000 and \$250,000, respectively, while the tax rates applicable to both would range from 5% to 50%.

Proposal to Increase Income Taxes on High Earners

This bill (A.3115/S.2059) would institute a progressive personal income tax. New rates would be added for single taxpayers earning more than \$450,000 per year, and married taxpayers earning more than \$500,000. Additional brackets are added in roughly \$100,000 increments, with 0.5% tax increases per bracket, increasing the tax rate to 11% for an individual making \$1 million per year, 12% for a married couple making \$2 million per year, and reaching 24% for an individual or married couple making \$20 million per year.

Proposal to Apply 1% New York City Income Tax on Earnings of Non-New York City Residents

This proposal (A.6238), named the Infrastructure Jobs Act, would impose a 1% tax on the earnings in New York City of non-New York City residents. Residents of New York who live outside of NYC would receive a dollar-for-dollar tax credit to offset real property taxes attributable to the taxpayer's primary residence.

Proposal to Impose Additional Capital Gains Tax

This proposal (A.2576/S.2162) would amend current law by introducing additional tax on capital gains. Currently, the highest federal tax rate on ordinary income is 37%, while the highest federal tax rate on long-term capital gains is 23.8%. Since New York applies a flat tax rate to all income, regardless of its character, the amended law would apply an additional New York tax of 13.2% to a taxpayer's long-term capital gains to bring the combined state and federal tax rate up to 37%, so the total tax does

not differ between ordinary income and long-term capital gains.

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