

**HECKERLING INSTITUTE 2001
REPORT #6**

As we did in January of the last four years, and again with the permission of the University of Miami School of Law Center for Continuing Legal Education, we will be posting to this list throughout the coming weeks highlights of the proceedings of the 35th Annual Philip E. Heckerling Institute on Estate Planning that is being held January 8-12, 2001 at the Fontainebleau Hilton Resort and Towers in Miami Beach, Florida.

Our on-site local reporters there in Miami this year will include:

Steve Leimberg Esq. of Bryn Mawr, PA - leimberg@home.com
Bruce Stone Esq. of Miami, FL - Brucestone@aol.com
Eugene Zuspann Esq. of Denver, CO - ezuspann@zuspann.com
Julia Fisher Esq. of Philadelphia, PA - JuliaFisher@ewgf.com
Alan Rothschild Jr. Esq. of Columbus, GA - ar@hatcherstubbs.com
Joe Hodges Esq. of Denver, CO - jghodges@jghlaw.com

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Again this year a complete listing of the proceedings and speakers is available on the Institute's Web site. The new URL for that site is <http://www.law.miami.edu/heckerling>
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REPORT NO. 6 - Friday, January 12, 2001

First, Reporter Alan Rothschild reports the following on Gideon Rothschild's (no relation) Friday morning presentation entitled "Protecting the Estate from In-laws and Other Predators."

Throughout the week of the Heckerling Institute, the speakers highlighted components of the estate planning process which would survive possible repeal of the estate tax. Creditor protection is one of the most significant and Gideon Rothschild presented a through discussion of this topic on Friday morning.

The central theme of his program was that modern society requires every estate planner to consider the possibility that creditors' claims may arise which could negate the benefit of an intended gift or bequest to a beneficiary. Therefore, creditor protection should be a third focus for estate planners, along with tax planning and the planning for the orderly distribution of property to the intended beneficiaries.

Gideon pointed out that many trusts used in estate planning do not adequately consider creditor protection. For example, an UGMA/UTMA account must be paid outright to the beneficiary when they reach a certain age. A minor's trust with more discretion in the trustee and/or a spendthrift provision could protect against claims that existed at the time an outright distribution would otherwise be required. (As an aside, Rothschild suggested that some creditor protection for an existing UGMA/UTMA account might be obtained through the formation of a family limited partnership to which the account's assets are contributed in exchange for limited partnership interests.)

While spendthrift trusts are nearly universally accepted in the United States, it was not until the United States Supreme Court's Nichols decision in 1875, that English common law was reversed. Even today, spendthrift provisions are not recognized in the UK. Some states place limitations on the effectiveness of spendthrift provisions. These include monetary caps and ineffectiveness against certain types of claims, such as those for support and tort claims. In addition, many states do not recognize spendthrift provisions where the grantor retains a beneficial interest (self-settled trusts). Generally, state and federal tax claims also trump spendthrift provisions.

Gideon had a number of suggestions to maximize the creditor protection aspects of trusts:

-include an express spendthrift provision - give the trustee the power to sprinkle trust property to more than one beneficiary - have at least one independent trustee whose consent is required for the distribution of trust property-if a trust protector is used (the person or persons with special powers, such as trustee removal), make them independent from the grantor and beneficiary - make distribution standards purely discretionary, not tied to an ascertainable standard -keep property in trust for the maximum allowable time (or, in the alternative, give the trustee a hold back power)

Rothschild also talked briefly about the creditor protection aspects of FLP's and LLC's. First, creditors of a limited partner will not be able to satisfy their claims out of the FLP itself, since it is a separate legal entity -- so long as the partners have operated the FLP properly. Second, a creditor will generally be subject to a "charging order" remedy only. However, Gideon did point out that a charging order may not be the exclusive remedy, depending on state law and the language of the partnership agreement. If not, garnishment or levy and sale may be options available to a creditor against a debtor's partnership interest.

Finally, Rothschild discussed the effectiveness of disclaimers against creditor claims. Since a disclaimer relates back before a transfer, it may be effective. However, some states statutorily provide that a disclaimer is ineffective (for example, Fla., Mass., Minn., N.J. and Wash). On the other hand, some states specifically provide that creditors of a disclaimer have no interest in the disclaimed property. These include Md., Mo. and Texas. However, disclaimed property can be reached to pay off Fed. tax liens.

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Next, we are still awaiting a report on Roy Adams' Friday morning session entitled "Ethics at the Edge: Sophisticated Estate Planning and Professional Responsibility" and some of the highlights from the Tuesday morning and Friday morning Q&A sessions.

In the meantime, special mention was made during the Friday morning Q&A session of the following recent development in the split dollar arena, with this brief report coming to us courtesy of a prior post by JJ MacNab on the ABA-PTL List:

Date: Tue, 9 Jan 2001 17:34:05 -0500
From: "deathandtaxes.com" <jj@DEATHANDTAXES.COM>
Subject: [ABA-PTL] Equity Split Dollar - IRS Notice 2001-10
X-To: Estate Planning <ep@lists.financialpro.org>,
Non-Profit Gift Planners <GIFT-PL@LISTSERV.IUPUI.EDU>,
Dirt Death and Taxes Deals <3DT@MAIL.ABANET.ORG>,
Tax law discussion <ABA-TAX@ABANET.ORG>
To: ABA-PTL@MAIL.ABANET.ORG

The IRS has just released Notice 2001-10 which contains very important guidance regarding interpretation and changes in split dollar life insurance arrangements.

More in a bit.

JJ MacNab
jj@deathandtaxes.com

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Lastly, on the technical side of things, and apropos of Special Sessions II-B and IV-B entitled "2001: A Tech Odyssey" that were presented by Joseph G. Hodges, Jr. of Denver, Colorado and Julia B. Fisher of Philadelphia, Pennsylvania, in Wednesday and Thursday afternoons, which presentations involved in large part an overview of the results of their special Heckerling Survey that was done in an attempt to find out what sort of software and other computer technology all of us are currently using and like, the following is being provided courtesy of the ABA Law-Tech List and Ross Kodner of Microlaw:

Date: Fri, 12 Jan 2001 11:01:57 -0600
From: "Ross L. Kodner" <rkodner@IX.NETCOM.COM>
Subject: [ABA-LAWTECH] What's new on MicroLaw.com? Latest Update Info
Comments: To: solosez@abanet.org, lawtech@abanet.org,
listserver@technolawyer.com, network2d@abanet.org,
NET-LAWYERS@PEACH.EASE.LSOFT.COM, lawpractice@lists.wisbar.org
To: LAWTECH@MAIL.ABANET.ORG

Lots of new stuff at MicroLaw.com:

1) Tons of new free techno.CLE materials are now online on our "Legal Tech CLE page (<http://www.microlaw.com/cle.html>) as follows:

- * Atlanta LegalTech 2000 - 60 Hot Legal PC Tips and Netsites in 60 Minutes
- * Toronto LegalTech 2000 - The Paper LESS Office(tm) - Taming the Paper Monster
- * Toronto LegalTech 2000 - ASPs in the Law Firm - Just Hold on a Minute!
- * Toronto LegalTech 2000 - Linux in the Law Firm - Pipe Dream or Reality?
- * Chicago LegalTech 2000 - It's Time to Become Word Processing Ambidextrous: Down with the WP Wars! Up with Format-Compatibility!
- * Chicago Legal Tech - 60 Hot Legal PC Tips and Netsites in 60 Minutes
- * Chicago LegalTech - 7+ Habits of Highly Organized Lawyers
- * Minnesota CLE - How to Commit Ethical Violations and Malpractice with Your Computer!
- * Minnesota CLE - 18th Annual Real Estate Institute: Technology for the Real Estate Lawyer
- * Minnesota CLE - 18th Annual Real Estate Institute: 30 Hot Legal PC Tips and Netsites in 60 Minutes
- * Chicago LegalTech - The Mobile Lawyer: Practice Any Time, Any Place

- * Atlanta LegalTech 2000 - It's Time to Become Word Processing Ambidextrous
- * Atlanta LegalTech 2000 - Things That Go Bump in the Night: Protecting Your System from Techno.Gremlins (Data Backup and Electrical Protection)
- * Oklahoma Bar Association - Technology Survival Guide 2001
- * Oklahoma Bar Association - It's About Time! Technology that Pays
- * Oklahoma Bar Association - Technology for Estate Planning Lawyers

1) Don't forget our Legal Articles page - tons of techno.article links there
<http://www.microlaw.com/cle/articles/index.htm>

2) Coming Soon! MicroLaw Techno.Store where you'll be able to get great prices on a carefully selected and MicroLaw-recommended range of legal technology products. Also, even more new articles and a compendium of my popular "CLE Travelogue" posts (thanks to those who suggested this idea)! New CLE materials from the Singapore Legal Sys-Tech Conference are coming! A compendium of the classic "Circuit Court" columns from the annals of Law Office Computing . . . and MicroLaw's Legal Macro Libraries for Word and WordPerfect--now available in a "public" version!

Upcoming events and programs include:

January 29-31 - New York LegalTech 2001 at the Hilton Hotel & Towers in Manhattan - info at <http://www.legaltechshow.com/> - "ASPs: Ready for Small Firm Prime Time or Will the ASP Byte?" with Loren Jones from Westworks, Dan O'Day from Elite.com and John Treddenick from Caseshare.com; "The 7+ Habits of Highly Organized Lawyers" with Sheryn Bruehl, Rick Georges and Michele Kargol; "Things That Go Bump in the Night: Protecting Your Systems from Techno.Disaster!" with Tom Rowe and Michele Kargol; and "Buying Law Office Technology 101: Upgrading, Cost Justification and the Lease v. Buy Question" with Steve Gallagher, Natalie Thornwell and Tom Rowe.

Other events on the horizon are ABA TECHSHOW 2001 <http://www.techshow.com> (March 15-17 in Chicago), Oregon Bar and OLMA's Legal Technology 2001 (April 6 in Portland), the Nebraska Bar's Technology Program (April 20-21 in Omaha).

Hold the dates! ABA TECHSHOW 2001 - March 15-17, 2001!

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That is it for Report No. 6. The full text of all the Reports will be posted on the ABA RPPT Web site at http://www.americanbar.org/groups/real_property_trust_estate.html beginning early next week.

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