

Introduction, Pt. II

A complete listing of the proceedings and speakers is available on [the Institute's Web site](#)

As we have done in January for the last ten years, and again with the permission of the University of Miami School of Law Center for Continuing Legal Education, we will be posting daily Reports to this list containing highlights of the proceedings of the 41th Annual Philip E. Heckerling Institute on Estate Planning that is being held January 8-12, 2007 at the Orlando World Center Marriott Resort and Convention Center in Orlando, Florida, a new venue for the Institute this year. A complete listing of the proceedings and speakers will be published here later and is also available on the Institute's Web site at <http://www.law.miami.edu/heckerling>.

Our on-site local reporters who are present in Orlando this year are Gene Zuspann Esq. of Zuspann & Zuspann in Denver, Colorado, Herb Braverman Esq. of Walter & Haverfield, LLP in Cleveland, Ohio, Merry Balson Esq. of Wade, Ash, Woods, Hill & Farley in Denver, Colorado, Paul Hood Esq. of L. Paul Hood Jr. (APLC) in Mandeville, Louisiana, Joanne Hindel Esq. of Fifth Third Bank in Cleveland, Ohio. Jason Havens Esq. of Havens & Miller PLLC in Destin, Florida. Alan Rothschild Esq. of Hatcher, Stubbs, Land, Hollis and Rothschild, LLP in Columbus, Georgia, and Kimon Karas Esq. of McCarthy, Lebit, Crystal and Liffman Co., LPA in Cleveland, Ohio. The editor again this year will be Joseph G. Hodges Jr. Esq, a solo practitioner in Denver, Colorado, who also is the Chief Moderator of the ABA-PTL List.

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In Introduction Part I we summarized the Scope of the Institute, introduced the Faculty for 2007, and listed the Institute's Director and the members of the Advisory Committee.

In this Introduction Part II we are listing the Substantive Program Schedule and Highlights so everyone will know what sessions will be presented next week and when and approximately when the various Reports on the same can be expected to appear on the ABA-PTL discussion list.

2007 HECKERLING SUBSTANTIVE PROGRAM SCHEDULE AND HIGHLIGHTS:

Monday, January 8

7:00 a.m.

Registration

9:00 a.m. – 12:15 p.m.

OPTIONAL PRE-CONFERENCE FUNDAMENTALS PROGRAM

Wealth Transfer Tax: Selected Issues, Surprising Results

Jeffrey N. Pennell

Beneath their superficial simplicity, many wealth transfer tax provisions present quirky refinements that challenge our understanding of the actual operation of these complex and poorly-integrated rules. This session explores the obvious and less-than-obvious fundamentals that must be mastered to become a veteran estate planner.

2:00 – 2:10 p.m.

Introductory Remarks

Tina Portuondo, Institute Director

2:10 – 5:15 p.m.

Recent Developments – 2006

Steve R. Akers Carlyn S. McCaffrey and Louis A. Mezzullo

Materials by Richard B. Covey and Dan T. Hastings

6:00 – 7:00 p.m.

Complimentary Reception for Registrants

Tuesday, January 9

9:00 – 9:50 a.m.

GRATs vs. Installment Sales to IDGTs: Which is the Panacea or are They Both Pandemics?

Jonathan G. Blattmachr

How do GRATs stand up against installment sales to grantor trusts? Although GRATs are touted as a “heads I win, tails, I can't lose” strategy, incorrect resolution of unanswered questions about GRATs could be devastating. Understanding the economics is also critical to success. Learn which assets, which structure and why.

9:50 – 10:40 a.m.

Financial Engineering Meets Estate Planning

S. Stacy Eastland

This session will explore the ins and outs of modern financial engineering, including the use of derivatives in hedging and modernization of a client's highly appreciated, marketable assets. The use of derivatives during estate administration and the use of interfamily derivatives to shift wealth from one generation to the next will also be covered.

10:50 – 11:40 a.m.

“Free” Life Insurance: Really a Free Lunch or a Prelude to Acid Indigestion?

Stephan R. Leimberg

An exploration of the convergence of ethics, law, and life insurance, what “works” and what's “right”, and an examination of how the more we forget (or never learn) the lessons of the past, the more often they will be revisited upon us – and our clients.

11:40 a.m. – 12:30 p.m.

What Have They Done to Our Benefits? An Update on Recent (and Prospective) Developments in Estate and Distribution Planning for Retirement Benefits

Natalie B. Choate

What Congress, the courts, and the IRS have done to (or for) our clients' retirement benefits recently, including: which trusts must be amended due to Rev. Rul. 2006-26; 2006 PLRs; which clients

should adopt the new Roth 401(k) plans; how increasing Roth plan availability affects estate planning; and what's next (charitable IRA rollovers anyone?).

2:00 – 2:50 p.m.

Yesterday's FLP: Fabulous Locked-In Profits or Finally Losing Pizazz?

Ronald D. Aucutt

Has case law reassured us that we have been “doing family limited partnerships right,” so that only sloppy FLPs should expect any problems? Or has the IRS finally found the Achilles' heel of a technique it equates with bogus discounts? This presentation will boldly ponder those questions and their implications.

2:50 – 3:40 p.m.

Succession Planning – The Need For Both A Belt and Suspenders – Coordinating the Estate Plan with the Corporate Documents

Jonathan C. Lurie

The succession plan involves a combination of estate planning and corporate documents that need to be coordinated. This session will explore how to best coordinate the estate planning documents, which may include an irrevocable trust, with the business documents necessary to implement the plan.

3:50 – 4:40 p.m.

Avoiding Malpractice Claims Against Estate Planning Counsel: How Your Actions Can Exacerbate, Mitigate, or Eliminate Your Exposure

Kevin S. Rosen

Estate planning lawyers face the greatest exposure to malpractice claims. These claims do not arise solely from substantive errors. Rather, the overall relationship with the client poses a veritable malpractice minefield. Learn how to identify and mitigate these risks and otherwise put yourself in the best position to defend against the increasingly inevitable lawsuit.

4:40 – 5:30 p.m.

Charting a Course for Convenience or Incapacity –New Aids to Navigation in the Uniform Power of

Attorney Act

Linda S. Whitton

This session will highlight the innovations and default rules of the new Uniform Power of Attorney Act, and analyze their implications for principals, agents, and the persons who deal with agents.

Wednesday, January 10

9:00 – 9:50 a.m.

Navigating the Landmines in Charitable Gift Planning: Legislation, Lawsuits, and Personal Liability

Kathryn W. Miree

The charitable landscape has never been more tumultuous. This session focuses on how to plan charitable gifts with recent and proposed legislative changes, how to ensure gift intentions withstand institutional and programmatic changes, and how to avoid the increasing potential for personal liability in post-gift management.

9:50 – 10:40 a.m.

Estate Planning and Compliance after the Final (or re-proposed) GSTT Qualified Severance Regs (if they are issued) OR Generation-Skipping for the Charitably Inclined Grandparent

Pam H. Schneider

If the Service has issued final (or re-proposed) GSTT Qualified Severance Regulations, this session will discuss how these regulations will change the way we plan and the forms we file with the IRS. If this life changing event has not happened, this session will instead discuss the intersection between popular planned giving techniques and the generation-skipping transfer tax as well as the synergies available to a client with both generation-skipping and charitable goals.

10:50 a.m. – 12:30 p.m.

Question & Answer Session

Steve R. Akers Carlyn S. McCaffrey and Louis A. Mezzullo

2:00 – 5:15 p.m.

FUNDAMENTALS PROGRAM – (Runs concurrently with the Special Sessions) The Blount Truth about the Family Business: Tax and Non-Tax Considerations in Drafting Buy-Sell Agreements

Howard M. Zaritsky and Farhad Aghdami

The favorable income tax rates for both dividends and capital gains have temporarily simplified some aspects of planning for business buy-outs, but questions remain. This program examines the key issues in planning a buy-sell agreement, including: Where and how should one document the restrictions? What types of transfers should be restricted? How can one best assure favorable income tax treatment and full recovery of basis? How best to fund the buy-out? What are the estate, gift, and GST tax ramifications? How should the agreement restrict competition by former owners? How should it change control from a strict one-share, one-vote regimen? All this, and forms too.

2:00 – 3:30 p.m. Special Sessions I

I-A – Current Issues Involving Family Limited Partnerships and LLCs

John W. Porter

A discussion of the federal estate and gift tax issues involving family limited partnerships and limited liability companies. The discussion will include IRS and taxpayer positions regarding these entities, recent valuation and Section 2036 case law, and tips for dealing with disputes regarding these entities.

I-B – What the Heck-erling is Happening with Life Insurance?

Stephan R. Leimberg, Lawrence Brody and Charles L. Ratner

The panelists will further discuss stranger owned (a.k.a investorinitiated) life insurance and 2006 life insurance cases, rulings, and legislation including Dow Chemical (insurable interest), Chawala (insurable interest), Grassley/Baucus Excise Tax (CHOLI), Blount (impact of corporate owned life insurance on valuation), PLR 200606027 (transfer for value), PLR 200603002 (transfer tax implications of intent vs. policy facts), DOL Advisory Opinion 2006-03A and more.

I-C – Navigation without a Compass – Charitable Planning in 2007

Kathryn W. Miree and Jerry J. McCoy

Donors and donees today must react to a changing landscape. Actual and proposed legislation would

provide new incentives but impose added burdens. Conventional planning approaches must be reconsidered and some adjustments will be necessary. These concerns, and appropriate reactions, will be discussed in this interactive session.

I-D – One Size Fits All – Tailoring a Form Power of Attorney to Meet Individual Client Needs

Linda S. Whitton and William LaPiana

Using the new Uniform Power of Attorney Act statutory form as a model, this session will offer drafting strategies for customizing a form power of attorney.

I-E – When Trusts Are Not Enough – Strategic Family Plans Also Require a Strategic Structure: The Private Trust Company

John P.C. Duncan, Michael R. Conway, Bryan R. Dunn and Sara S. Hamilton

The panel will share their experiences with families using private trust companies (“PTCs”) to place and keep the family at the helm to guide the family’s strategic plan across generations. The PTC’s role in tax risks and benefits management, and the best chartering states will also be explored.

3:45 – 5:15 p.m. Special Sessions II

II-A – Defense Strategies, Risk Management, and Evolving Theories and Trends in Malpractice Claims Against Estate Planning Counsel

Kevin S. Rosen, Pamela A. Bresnahan and Mary Beth S. Robinson

Where are the malpractice risks when performing estate planning work? How are they changing? The answers are far broader than knowing the substantive law. Client identification, unrecognized conflicts, and evidentiary disputes are a few examples of the other factors that create risks for estate planning lawyers. Learn how best to position yourself to avoid these risks and how your actions will be portrayed in malpractice litigation from experienced trial counsel who defend these claims and malpractice insurance claims counsel who manage them.

II-B – What Yesterday’s FLP Calls For: Rejoicing or Repairing?

Ronald D. Aucutt and Daniel H. Markstein, III

This session will examine family limited partnerships at the crossroads and explore how to

distinguish the success stories from the disasters waiting to strike. The panel will offer suggestions on how to secure the successes and repair the wrecks, with an eye particularly on practical dilemmas and tax traps.

II-C – Emerging Issues Under the Twin UPIAs

Susan Porter and Alan S. Acker

This workshop will address the interplay between the Uniform Prudent Investor Act and the Uniform Principal and Income Act. The session will explore common issues which arise concerning investments and allocations of receipts and disbursements, including practical considerations regarding the power to adjust and the unitrust regime. There will be an emphasis on drafting recommendations which can achieve greater flexibility and overcome some of the drawbacks under the model statutes.

II-D – More on the Generation-Skipping Transfer Tax

Pam H. Schneider and Carol A. Harrington

This session will further explore issues concerning planning with the generation-skipping transfer tax.

II-E – GRATs vs. Installment Sales to Grantor Trusts vs. Direct Gifts: What Do the Numbers and Theory Say?

Jonathan G. Blattmachr, Robert A. Weiss and Diana S.C. Zeydel

This session will discuss “intimate” details of selected sophisticated estate and gift tax planning arrangements including GRATs, installment sales to grantor trusts and gifts. It will discuss theory, the legal risks (and how to minimize those risks) and will present a “Monte Carlo” analysis projecting the after-tax benefits. The session will consider the wealth retained by the senior generation, management of wealth for successor generations, and the impact of generation-skipping transfer and income taxes.

FIN

Thursday, January 11

9:00 – 9:50 a.m.

Not My Fault - The Devil Made Me Do It!

Responsibilities and Liabilities of a Directed Trustee

Dennis I. Belcher

Grantors frequently divide a trustee's duties, particularly where the investments are concentrated. One trustee has custody of the assets and another (often an investment committee or a trust advisor) has the authority to direct investments. This presentation will cover the allocation of trustee responsibilities, the duties and potential liability of directed trustees, the steps to minimize directed trustee liability, and the effect of exculpation provisions.

9:50 – 10:40 a.m.

Waste Not, Want Not – Creative Use of General Powers of Appointment to Fund Tax-Advantaged Trusts

John F. Bergner

This presentation will analyze several recent Internal Revenue Service letter rulings endorsing the use of general powers of appointment to fund tax-advantaged trusts. The program will discuss planning techniques that can be built upon these rulings, review the tax and non-tax risks, and provide sample forms designed to accomplish the planning goals while minimizing risks.

10:50 – 11:40 a.m.

The Perfect Storm: How the Confluence of Tax Planning and the Ethics Rules Can Sink the Estate Planner, the Fiduciary and the Estate Plan

Mary Ann Mancini

This program will examine the state and federal ethical rules an estate planner or fiduciary must address when engaged in tax planning, including the preparation of tax returns for a trust or estate. Although no definitive answers will be provided (because there aren't any), means of protecting the estate planner and the fiduciary from the anger of beneficiaries, a state ethics committee and/or the Office of Professional Responsibility will be discussed.

11:40 a.m. – 12:30 p.m.

Simplified Trial Resolution: High Quality Justice in a Kinder, Faster Environment

Robert W. Goldman

This program will provide an overview of a new trial resolution process developed by the American College of Trust & Estate Counsel (“ACTEC”). After reviewing and discounting traditional forms of arbitration, ACTEC has developed a new way to resolve disputes that cannot be successfully mediated. Litigation is inevitable, but slogging through the overworked, time consuming judicial process is no longer required.

12:45 – 1:45 p.m.

Florida Insurance: Issues Relating to Unauthorized Entities

Attendance at this session is required for all insurance professionals seeking continuing education credit in Florida.)

2:00 – 5:15 p.m.

FUNDAMENTALS PROGRAM – Making "Friends" with Subchapter K (Runs concurrently with the Special Sessions)

Richard B. Robinson

The estate planner's encounters with Subchapter K are not limited to FLPs. Questions regarding the formation, operation and liquidation of partnerships and limited liability companies are everyday occurrences when doing estate planning for a family business. This program will give you the basic tools to spot the issues and provide answers.

2:00 – 3:30 p.m. Special Sessions III

III-A – Simplified Trial Resolution from an Estate Planner’s Point of View

Robert W. Goldman, Bridget A. Logstrom, John T. Rogers, Jr. and Bruce M. Stone

Strategies for protecting your client’s estate for the intended beneficiaries with the new simplified trial resolution process developed by ACTEC.

III-B – It All Starts When the Participant Dies: The Executor's Guide to Post-Mortem Compliance and Planning for Retirement Benefits

Natalie B. Choate

Everything you need to know to advise executors and beneficiaries regarding inherited retirement benefits: post-mortem rollovers, Roth conversions; estate taxes: how to pay; valuation discounts; AVD issues; the IRD deduction; disclaimers; plan-to-plan transfers; surviving spouse under age 59½; cleanup strategies if decedent named no beneficiary; six differences between an inherited and a regular IRA; and problems with the plan administrator.

III-C – Directed Trustees, Co-Trustees, and Successor Trustees – Fiduciary and Regulatory Issues

Dennis I. Belcher, David H. Pankey and Ann Hart Wernz

Corporate trustees are increasingly using third party investment managers to manage funds either as a directing trustee or a co-trustee, and trustees are changing more frequently. The panel will discuss regulatory and fiduciary risks in using third party investment managers, practical problems with multiple trustees, and liability issues for successor trustees.

III-D – Coordinating Business and Succession Plans

Jonathan C. Lurie

This session will explore how to coordinate the business and estate planning documents to effectuate the succession plan.

III-E – The Ethical Rules of Circular 230 and the Estate Planner and Fiduciary

Mary Ann Mancini and Cono R. Namorato

The panelists will discuss how the ethical rules of Circular 230 impact the manner in which an estate planner and/or a fiduciary addresses tax issues when advising an estate planning client or administering a trust or estate.

III-F– Planning with Derivatives and Structured Products

S. Stacy Eastland and George F. Albright, Jr.

The session will examine case studies in which financial engineering turbo-charges estate planning.

3:45 – 5:15 p.m. Special Sessions IV

IV-A – Simplified Trial Resolution from a Litigator’s Point of View

Robert W. Goldman, Bridget A. Logstrom, John T. Rogers, Jr. and Bruce M. Stone

Strategies for implementing a simplified trial resolution clause in a will or a trust and for working with estate planners to protect the intent of the testator/settlor.

IV-B – The Ethics of Asset Protection Planning – An Oxymoron?

Alexander A. Bove, Jr., Matthew P. Matiasovich, Jay D. Adkisson and Gideon Rothschild

A panel presentation/debate examining the sometimes conflicting ethical and practice issues faced in asset protection planning when representing clients with situations ranging from no foreseeable problems to existing claims and investigations against them. Do the attorney's responsibilities and exposure to professional, civil, or even criminal liability change as the client's situation becomes more egregious? The panelists will review and comment on the challenging practical, ethical, and philosophical issues surrounding this troublesome area of the law.

IV-C – It Is Better to Give and Then Receive – Is the IRS’ Favorable Analysis Correct?

John F. Bergner and Mitchell M. Gans

This panel will provide a more detailed analysis of the potential benefits and risks of using general powers of appointment to fund tax-advantaged trusts. The presentation will review several planning situations in which the IRS letter rulings may be helpful; analyze the tax, legal and practical issues and the IRS reporting requirements; and review sample forms that may be used to implement this planning.

IV-D –Death, Dirt & Duties: Estate Planning for Real Estate Transfers

Wendy S. Goffe and Scott B. Osborne

This panel will deal with selected issues that arise in the context of estate planning with real property, including the personal residence gain exclusion, title insurance, like kind exchanges, planning for gifts to individuals as well as charities, and conservation easements.

IV-E– A Holistic Approach to Analysis of Private Annuity Trusts to Defer Capital Gains, Including Exit Strategies

Jerome M. Hesch and Kevin McGrath

Sellers may rejoice at the deferral of capital gains afforded by the sale of appreciated property to a non-grantor, private annuity trust, but there is no joy in the income tax treatment to the purchaser. This session will address the negative income tax aspects and other tax issues that must be considered in evaluating a proposed private annuity transaction. What if the private annuity sale is a done deal? Exit strategies to minimize the negative income tax consequences to the purchaser will be evaluated.

Friday, January 12 9:00 – 9:50 a.m.

The Inheritance Threat That Dares Not Speak Its Name: Financing the Cost of Long-Term Care

Richard L. Kaplan

This session explores the financing of long-term care in the context of preserving assets for surviving heirs. Subjects include the limited coverage provided by Medicare and “medigap” policies, but the principal focus will be the cataclysmic changes to Medicaid enacted in February 2006 and their implications for long-term care insurance.

9:50 – 10:40 a.m. From NASCAR Condominiums to Private Mausoleums: Keeping the Vacation Home in the Family

Wendy S. Goffe

As the proportion of wealth invested in family recreational property increases, issues relating to keeping the property in the family take on a new significance. Deep feelings arise when family members are forced to deal with questions about how to share responsibilities and benefits of ownership. This presentation examines why the family cabin (of any value) is so important in our society, the types of conflicts that arise when families try to hold onto property, methods for transferring ownership to charity and the next generation, and methods of management and organization to maintain harmony once the property has been passed down.

10:50 a.m. – 12:00 noon

There’s Got to be a Morning After: What We Have Learned and What to Do with It

Mark B. Edwards

After five days of study, you might feel that you suffer from information overload. To help you, we will wrap up the week’s presentations, put what we have learned in the context of our day-to-day practice using a hypothetical fact situation, and focus on practical issues.

The End

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