



Section News

Student Writing Contest Winners Announced



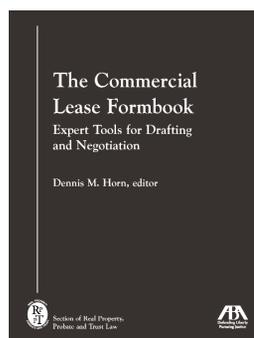
First Place Winner Craig S. Kaufman of Temple University and Section Chair Kevin L. Shepherd.

The 2005 first place winner of the Jacques T. Schlenger Student Writing Contest is **Craig S. Kaufman, Temple University**, for his submission, "Sympathy for the Devil's Advocate: Assisting the Attorney General When Charitable Matters Reach the Courtroom." Second place winner is **Adrienne Iwamoto Suarez, University of Hawaii**, for her essay, "Covenants, Conditions and Restrictions on Free Speech?" In third place is **Jennifer Felten, Southwestern University**, for her essay, "Brownfield Redevelopment 1995-2005: An Environmental Justice Success Story?"

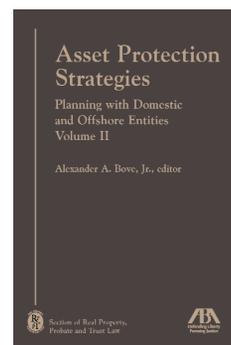
The competition was named in memory of Jacques T. Schlenger, a nationally renowned estate planning lawyer, founder of the Venable Foundation, and a member of the Section for 45 years. The award was co-sponsored by the Venable Foundation, which was established in 1981. The foundation promotes the health and well-being of the communities where Venable clients and lawyers work and live and supports a wide range of civic, cultural, and charitable endeavors as well as public interest law and legal education.

The award was designed to foster interest, encourage legal scholarship, and reward law student writing on real property, probate, and trust law subjects of general and current national interest. The competition was open to all full-time law students in ABA-approved law schools in the United States and its possessions. ■

Check Out New Books from RPPT



**The Commercial Lease Formbook:
Expert Tools for Drafting and
Negotiation**
By Jeffrey N. Pennell and
Alan Newman



**Asset Protection Strategies,
Volume II**
By Alexander A. Bove Jr.

Please go to www.ababooks.org to find these and all other RPPT titles, which may be ordered on-line. ■

Wills vs. Revocable Living Trusts

Endlessly debated in estate planning circles is which is the better primary estate planning document, a will or revocable living trust. As usual, it depends. Knowing the relative merits of the documents is critical to serve your clients effectively. Here are several things to consider when you are choosing whether to recommend a will or revocable living trust.

Wills

- Wills offer a measure of simplicity. A will is one document, as opposed to a trust, which also requires a “pour-over” will—“pouring over” any assets not transferred into the trust during the grantor’s life.
- Clients are usually more comfortable with a will, because clients often lack familiarity with trusts. (The corollary is the client who insists on a trust because of what he or she heard on a financial program on television.)
- Wills are typically less expensive in the planning stage because there are no costs associated with funding a will, unlike a trust.
- Wills require only a low level of testator capacity for execution.
- Wills can provide for guardians of minor children, unlike trusts.

Ask the Mentor

Query: How do I get involved in a CLE program or write something for a RPPT publication?

Most CLE programs are generated by RPPT’s substantive committees. A substantive committee is concerned with concrete legal practice areas, and lists of the RPPT Section’s substantive committees can be found at: Real Property, www.abanet.org/rppt/cmtes/rp, and Probate & Trust, www.abanet.org/rppt/cmtes/pt. The best way to get involved in CLE programming is to join a substantive committee and express your interest to the group chair or committee chair, whose roles include providing opportunities to Section members.

The RPPT Section publishes two periodicals (*Probate & Property* magazine and the *Real Property, Probate and Trust Journal*) and three electronic newsletters (*E-Dirt*, *E-STATE*, and the *RPPT Bulletin*). Through its Books and Media Committee, the Section also provides a long and continually growing list of monographs. Contact information for the editors and the editorial criteria for each publication can be found on the web. Visit the PUBLICATIONS link (www.abanet.org/rppt/publications) on the RPPT home page.

- Wills are effective only on probate, which usually can occur only after death.
- The probate of a will is a judicial proceeding that requires notices and service of process, as well as potentially opening the details of the estate to public scrutiny. But if your state’s probate code allows for some type of informal or independent administration, then the details of the estate do not necessarily become a matter of public record.
- Wills do not assist in disability planning. Separate instruments are required to plan for the disability of the testator, such as a power of attorney to manage property and a health care proxy to allow an agent to attend to the testator’s personal needs.
- Wills operate only on “probate” assets or “testamentary” assets (assets either in the client’s name alone or when the beneficiary predeceases the client).

Revocable Living Trusts

- A trust is usually effective immediately, although funding of the trust may occur at a later time.
- A trust operates to avoid probate, but only for the assets in the trust at the time of the grantor’s death. For a trust to be effective, the trust needs to be funded during the grantor’s life and a “pour-over” will is used to transfer any remaining assets at death.
- A trust provides for the disability of the grantor by allowing a successor trustee to continue to manage trust assets regardless of the grantor’s condition; however, a health care proxy also should be considered to attend to the grantor’s personal needs. The trust is considered more effective in dealing with disability, as opposed to a power of attorney for property, which is often met with resistance by banks, brokerage companies, and others. But a power of attorney for property, including the power to transfer assets into the trust, can be critical to fully funding the trust if the grantor becomes incapacitated.
- Trusts offer a measure of privacy for the deceased grantor. If any disputes arise between the successor trustee and beneficiaries, however, it is likely that the trust terms will become a matter of court record despite the grantor’s wishes.
- Because the trust is an agreement between the grantor and trustee, the grantor must have sufficient capacity to enter into a contract, which is typically a higher standard than that to execute a will.
- Trusts are generally more expensive in the planning stage because of the costs associated with funding the trust. Ensuring full funding of the trust may require hours of work and dozens of forms, deeds, and assignments. Arguably, the costs are offset, however, when considering the probate expenses avoided if the trust is completely funded. ■

Letter to the Editor

I want to thank you for your article in the July/August 2005 issue of *Probate & Property* questioning the constitutionality of state estate taxes imposed by decoupled states on real and tangible personal property sited in other states that impose no estate taxes (or estate taxes that are less than the pre-EGTRRA state credit). The state of Maine estate tax for residents has been calculated by allowing the deduction from the pre-EGTRRA state credit of the "lesser" of (1) the taxes imposed by other states on real and tangible personal property in those states and (2) a proportional amount of the state credit based on the ratio of non-Maine real and tangible personal property to the federal gross estate. In my situation, the client personal representative and his deceased spouse had each owned a tenancy-in-common interest in a Florida condominium at the time of her death. Because Florida's estate tax is now unenforceable, the result was the imposition of Maine estate tax on the Florida real property. Citing the *Treichler* and *Frick* U.S. Supreme Court cases, we requested a refund of the additional tax that resulted. Today, we received a decision from the director of the Appellate Division of Maine Revenue Services. That decision concluded that the calculation of the Maine estate tax in that manner "likely violates" the Due Process Clause of the U.S. Constitution. Accordingly, a refund check will be forthcoming sometime in the next few weeks.

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