# Committee Newsletter | Fall 2017

## TABLE OF CONTENTS

### Articles

1. Bitcoin & Beyond  
   Author: Amanda Leigh Brown
2. Pay Attention to Expanding Fiduciary Requirements  
   Author: Jamie P. Hopkins
3. Recent Developments in Gift and Estate Tax Law  
   Author: Rob Maloney

### News and Announcements

1. Call for Article Submissions
2. Teleconferences and Webinars
3. Upcoming Events
By now, you’ve probably heard of the cryptocurrency Bitcoin. While the future of cryptocurrencies as a fully and widely accepted form of currency is still unclear, one thing is for sure: the underlying technology—blockchain—is here to stay.

So, what in the world is blockchain? Without getting too technical, blockchain technology allows for an immutable and verifiable decentralized ledger system. Essentially, a transaction or some information is placed onto a “block.” Transactions are broadcast to each computer that has volunteered to act as a full “node” on that blockchain, and uninterested parties across the network (called “miners” in Bitcoin) can verify that the transferor has ownership of what he is trying to transfer. If a consensus is reached amongst the uninterested parties and the transaction is accepted, it’s recorded and linked to prior blocks of information (hence “blockchain”).

Thanks to a lot of complicated mathematics and cryptography, the blockchain is—practically speaking—unalterable. A recorded block cannot be changed without changing the block’s cryptographic “signature,” which would then affect all subsequent blocks. This will send red flags to those uninterested parties working to verify blocks as they’re added to the blockchain, and the transaction will be rejected.

Around the globe, blockchain in the real estate and property space is starting to take off.

One of the biggest implications for blockchain in real estate is the potential to transform the public records system. The conveyance records today are inefficient and difficult to navigate. Before a sale can go through, an attorney has to trace title and verify that the seller actually has the ownership he claims to have. With digitally recorded transfers on a public blockchain, however, the time spent tracing title is drastically reduced. This is because prior transfers of that property have already been verified by the outsiders and distributed to all nodes in the blockchain. It is then only necessary to compare the new transfer against the most recent historical transfer. Moreover, any attempts to defraud a purchaser will quickly be rejected, as there would be a missing link between the true owner and the would-be defrauder.

Taking it a step further, the real-estate sale itself could benefit from blockchain technology and what are often called “smart contracts.” Currently, if A wants to buy a piece of property from B, A needs to trust that when he transfers the money to B, B is going to deliver on his promise. If B chooses not to deliver, A has to then hire an attorney and get the court system involved. However, on the blockchain, you can code an automatic transfer upon the delivery of payment. In that case, as soon as A pays the price to B (via cryptocurrency or other electronic transfer), the contract has been publicly and verifiably executed and recorded, and the title vests in A.

Blockchain technology has significant potential to shake up the way real estate transactions are currently being done. It is moving beyond a niche cryptocurrency market and into the real world. Governments and the private sector alike are taking notice—you should too.
Pay Attention to Expanding Fiduciary Requirements

By Jamie P. Hopkins

Attorneys have long been held to a fiduciary standard of care. A fiduciary standard of care means attorneys are required to act with prudence and loyalty in the best interest of a client. However, the world is changing quickly and broader fiduciary requirements are starting to develop. In April 2016, the Department of Labor expanded the ERISA investment advice fiduciary rule to include some of the advice traditionally covered by estate-planning attorneys. Furthermore, some states like Nevada, California, and New York are considering adding broader fiduciary rules designed for financial advisors that might impact attorneys. Within the next year or two, the SEC is expected to release a proposed rule covering investments, which might also impact attorneys.

Expanding fiduciary rules matter for attorneys because liability might increase, documentation requirements might change, and existing malpractice insurance might need modifications. While attorneys should already be documenting their process and recommendations, it could become even more important in the future. There could be increased liability for attorneys, as the Department of Labor's new fiduciary rule brings with it co-fiduciary liability concerns that otherwise might not have existed. Lastly, advice or actions covered under these varying fiduciary standards might not be covered under your current liability insurance. Many carriers specifically exclude ERISA fiduciary advice or investment advice, which means you might need to update your insurance coverage. Keep an eye out for future changes in fiduciary standards, even if the changes are not directed to attorneys. Your practice might still be impacted.

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Recent Developments in Gift and Estate Tax Law

By Rob Maloney

Gift Taxes

The current gift tax exclusion amount per year per donee is $14,000. In 2018, however, that number will increase to $15,000. This is the first time the gift tax exclusion amount has increased since 2013. This means that, beginning in 2018, you can gift up to $15,000 per year per donee without paying any gift tax. If you are married, your spouse can also gift up to $15,000 per year per donee, which means that the total gift-tax-free amount could equal up to $30,000.

As an aside, if you choose to file a gift tax return, the IRS generally has three years after the date of filing the return to challenge you on any additional gifts you may have made that year. On the other hand, if a gift tax return is not filed in a given year, the statute of limitations does not begin to run, and gift taxes could be assessed at any time by the IRS.

Estate Taxes

For those estate tax filers who were not necessarily required to file an estate tax return because the estate was not large enough but who failed to file the estate tax return in a timely manner in order to elect portability, the IRS is providing some relief. Those estate tax filers may still elect portability (even if they missed the initial deadline) if they file the Form 706 by the later of (1) January 2, 2018 or (2) the second anniversary of death. If filers are planning to seek this relief, they must include the following statement at the top of Form 706: “Filed Pursuant to Rev. Proc. 2017-34 to Elect Portability Under Section 2010(c)(5)(A).”

Author Biography: Rob Maloney, Esq. practices in the Estate & Trust Department at Boulay, assisting clients with estate and tax planning matters. Rob prioritizes learning about client stories and believes building lasting client relationships based on trust are at the center of successful estate planning.

NEWS AND ANNOUNCEMENTS >>

Call for Article Submissions

We Need Authors! The YLD RPTE Committee’s quarterly newsletter and 101/201 articles provide young lawyers a unique opportunity to have articles published and distributed to thousands of other young lawyers across the country. If you are interested in submitting an article for publication for 101/201 articles and the upcoming Winter 2017–18 newsletter, please submit a brief description of your proposed article topic by December 22, 2017, to Content Editors Andy Peluso (andy.peluso@hwhlaw.com), Daphna Davidovits (ddavidovits@ecjlaw.com), and Jeffrey Guevin (jpg@vermontcounsel.com). For article topics that are approved, authors must submit draft articles by January 10, 2018. Articles for the newsletter should discuss recent legal developments and be 200 to 600 words in length.
Teleconferences and Webinars

The YLD RPTE Committee will be hosting teleconferences and webinars in the near future. Be on the lookout!

Upcoming Events

February 1–3, 2018       ABA Midyear Meeting; Vancouver

May 9–12, 2018            30th Annual RPTE Spring Symposia & Leadership Meeting; Orlando

May 10–12, 2018            Spring YLD Conference; Louisville

August 2–7, 2018        ABA Annual Meeting; Chicago