

**48th Annual Philip E. Heckerling
Institute on Estate Planning
January 13-17, 2014
*Introduction Part 2***

Heckerling 2014

University of Miami School of Law Center for Continuing Legal Education
Orlando World Center Marriott Resort and Convention Center
Orlando, Florida
<http://www.law.miami.edu/heckerling>

GENERAL INFORMATION ABOUT INSTITUTE:

Inquiries/Registration:

Philip E. Heckerling Institute on Estate Planning University of Miami
School of Law Center for Continuing Legal Education P.O. Box 248087
Coral Gables, FL 33124-8087

Telephone: 305-284-4762 / FAX: 305-284-6752

Web site: www.law.miami.edu/heckerling E-mail: heckerling@law.miami.edu

Headquarters Hotel - Orlando World Center Marriott
8701 World Center Drive
Orlando, FL 32821
Telephone (407) 239-4200, FAX (407) 238-8777

NOTICE: Although audio tapes of all of the substantive session at the Miami Institute currently are only made available to Institute registrants for purchase, the entire proceeding of the Institute other than the afternoon special sessions are published annually by Lexis/Nexis. For further information, go to their Web site at <http://www.lexisnexis.com/productsandservices>. The text of these proceedings is also available on CD ROM from Authority On-Demand by LexisNexis Matthew Bender. For further information, contact your sales representative, or call (800) 833-9844, or fax (518) 487-3584, or go to <http://www.bender.com>, or write to Matthew Bender & Co., Inc., Attn: Order Fulfillment Dept., 1275 Broadway, Albany, NY 12204.

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Heckerling 2014 - Introduction Part 2

As we have done in January for the last seventeen 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 48th Annual Philip E. Heckerling Institute on Estate Planning that is being held on January 13-17, 2014 at the Orlando World Center Marriott Resort and Convention Center in Florida. A complete listing of the proceedings is available at www.law.miami.edu/heckerling and is published as part of this Introduction Part 2.

We also will be posting the full text of each of these Reports on the ABA RPTE Section's Web site, as we have since the 2000 Institute. Those Reports can now be found at URL http://www.americanbar.org/groups/real_property_trust_estate/events_cle/heckerling_reports.html. In addition, each Report can also be accessed at any time from the ABA-PTL Discussion List's Web-based Archive that is now at URL <http://mail.americanbar.org/archives/aba-ptl.html> by registered subscribers to that List or by anyone at the List's public archive at <http://home.ease.lsoft.com/scripts/wa.exe?A0=ABA-PTL-PUB>.

Our on-site local reporters who will be present in Orlando in 2014 are Joanne Hindel Esq., a Vice President with Fifth Third Bank in Cleveland, Ohio; Kimon Karas Esq., an attorney with McCarthy, Lebit, Crystal and Liffman Co. LPA in Cleveland, Ohio; Craig Dreyer Esq., an attorney with Clark Skatoff, PA in Palm Beach Gardens, Florida; Herb Braverman Esq., an attorney with Braverman & Associates in Orange Village, Ohio; Kristin Dittus, a solo attorney in Boulder, Colorado, Michael Sneeringer Esq., an attorney with Nelson & Nelson, PA in North Miami Beach, Florida, Michelle R. Mieras, a Senior Trust Officer with Bank of the West in Denver, Colorado, Theodore C. Preston Esq., an attorney with the Preston Law Office, PC in Elizabeth, Colorado, and Elizabeth Lindsay-Ochoa, a VP and Sr. Trust Counsel with Tompkins Financial Advisors in Ithica, New York.

The editor again in 2014 will be Joseph G. Hodges Jr. Esq., a solo practitioner in Denver, Colorado. He is also the Chief Moderator of the ABA-PTL discussion list.

2014 Institute Program Schedule

48th Annual Heckerling Institute on Estate Planning January 13 - 17, 2014

Monday, January 13

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7:00 a.m. - Institute Registration Opens Palms Ballroom

9:00 a.m. – 12:15 p.m.

Fundamentals Program:

Back to School: A (Re)Introduction to the Law of Trusts

Robert H. Sitkoff

Contemporary estate planning has pushed the boundaries of traditional trust law, leading to profound change, if not a quiet doctrinal revolution. This session will take us back to school, as it were, for a primer on the law of trusts and a look at how the innovations of late fit-or don't fit-into traditional doctrine.

2:00 – 2:10 p.m.

Introductory Remarks

Tina Portuondo, Institute Director

Patricia D. White, Dean, University of Miami School of Law

2:10 – 5:15 p.m.

Recent Developments 2013

Dennis I. Belcher, Carol A. Harrington, Jeffrey N. Pennell

6:00 – 7:00 p.m. - Institute Opening Reception

Tuesday, January 14

9:00 – 9:50 a.m.

Portability: Now Available in Generic Form (Focus Series) Thomas W. Abendroth

Congress has made portability of the applicable exclusion amount a permanent part of the Code. It is now an integral part of the planning advice we prescribe to our clients. But in many respects, we still are experimenting with how best to use it. This session will review the current state of portability and its uses, both routine and experimental.

9:50 – 10:40 a.m.

Venn Diagrams: Meet Me at the Intersection of Estate and Income Tax (Focus Series)
(Financial Assets Series) Paul S. Lee

Post-ATRA planning for larger estates will increasingly focus on income tax planning, the management of tax basis, and maximizing the “step-up” in basis at death. This presentation will discuss: measuring the transfer tax costs (including state estate and inheritance taxes) against the income tax savings from the “step-up” on different types of assets; recapturing assets that have already been transferred; multiplying the applicable

exclusion amount; using trust and partnership elections, distributions, and reorganizations to maximize the “step-up” and “split” income across taxpayers.

10:55 – 11:45 a.m.

There’s No Place Like Home, But Where’s Home? The Role of “Residence” and “Domicile” in State Income and Transfer Tax Planning - Foreign Service Officers, Corporate Executives, NBA Referees, and More Richard W. Nenno

Most states assess an income tax and/or one or more transfer taxes and base taxability on whether an individual is a “resident” or is “domiciled” there. States such as Florida, which don’t have an income or transfer tax, nevertheless offer rules to establish residence or domicile for individuals wishing to escape taxation elsewhere. This session will survey how key states define “resident” and “domicile”, give planning pointers, and consider specific fact patterns.

11:45 a.m. – 12:35 p.m.

Health Care Surtax: Individuals -- Dancing Under a 3.8% Limbo Pole (Focus Series)
Christopher R. Hoyt

The 3.8% health care surtax is triggered once a person's modified adjusted gross income (MAGI) exceeds \$200,000 (\$250,000 on a joint return). But several income sources are exempt from the surtax, including IRA distributions and certain profits from an S corporation. Techniques that can help an individual reduce MAGI may become increasingly popular, including installment sales, charitable remainder trusts and charitable lead trusts.

2:00 – 2:50 p.m.

When Business Life Insurance Results in Income or Compensation - Depends on Who Owns the Policy Donald O. Jansen

A must for closely-held business planners! Business life insurance has income/compensation results based on the owner: employee (executive bonus plans); employer and employee jointly (split-dollar); employer (key person, deferred compensation, self-insured medical). This presentation will review the strategies for all three to avoid or minimize the impact of ERISA, Section 409A and EOLI.

2:50 – 3:40 p.m.

When You Must Adjust - How, When, Why and What Do the Professionals Do? (Financial Assets Series)
Gail E. Cohen

More than 15 years have passed since the Uniform Law Commissioners promulgated the first Uniform Principal and Income Act in 1997. Through the years, professional fiduciaries have developed techniques and guidelines to assist in determining the appropriate manner to exercise discretion under the various state versions of the Act. This

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session will review the state laws, examine the cases that have arisen interpreting the laws, and discuss how professional fiduciaries across the country have applied the law.

3:55 – 4:45 p.m.

Funding Unfunded Testamentary Trusts

Mickey R. Davis

You're helping the children administer their father's sizable estate.

You've reviewed the will of the predeceased mother, and ask about her bypass trust. The children were told, that Mom's will left everything to Dad. Is there any way to salvage the benefits that were supposed to have arisen from the bypass trust? Explore the fiduciary and tax issues that arise when a testamentary trust has gone unfunded.

4:45 – 5:35 p.m.

Representing Clients with Diminishing Capacity: What to Know and How to Bridge the Gap

Robert B. Fleming

With the aging of our client base comes increased frailty, more frequent disability and greater susceptibility to exploitation and undue influence.

Do you know how to best deal with clients as they become more vulnerable and dependent? How to recognize diminishing capacity, and what a lawyer can do about it? Who to call when you need assistance?

Wednesday, January 15

9:00 – 9:50 a.m.

Wrapping Up Your Gift Tax Return with a Tidy Bow: Reporting Gifts with an Eye Toward Audit (Litigation Series)

Stephanie Loomis-Price, David Pratt

Did you file a record number of gift tax returns on behalf of your clients in recent years? Do you use formula clauses for gifts and sales? How do you report them? This dynamic duo will discuss audit-proofing (to the extent possible), including the reporting of formula transfers that may be highly scrutinized.

9:50 – 10:40 a.m.

Because it Wasn't Complicated Enough – Estate Planning Issues for Same-Sex Couples in the Wake of the Supreme Court's Recent Decisions

Lee-ford Tritt

In the wake of the recent Supreme Court decisions in Windsor and Hollingsworth, the already complicated world of estate planning for same-sex couples has gotten even more complicated. The decisions went further than the federal government ever has in extending equal rights to same-sex couples, but left untouched the thicket of conflicting state laws that offer varying degrees of legal recognition of same-sex unions. This ever evolving legal landscape coupled with large numbers of migrating same-sex couples means that estate planning for same-sex couples will remain challenging. This session

will discuss the recent Supreme Court decisions and the new issues that they raise for estate planners, including an overview of the minefield of choice-of-law issues that advisors must safely navigate.

10:55 a.m. – 12:35 p.m. Question and Answer Panel Dennis I. Belcher, Carol A. Harrington, Jeffrey N. Pennell

(Questions for this panel may be submitted ahead of time via email to Heckerling@law.miami.edu)

2:00 – 5:20 p.m.

FUNDAMENTALS PROGRAM

(Runs concurrently with Special Sessions I and II) Estate Planning Through an Asset Protection Lens Gideon Rothschild, Daniel S. Rubin

With "permanent" portability and a \$5,000,000 exemption, clients have begun to question the necessity of "estate planning". Fortunately, all signs indicate that the litigation explosion continues unabated, and that clients are demanding "asset protection planning" solutions from their estate planning advisors. This program will discuss ways in which an advisor can help clients integrate their estate and asset protection planning.

2:00 – 3:30 p.m. - Special Sessions I

Session I-A

Planning for Estates Under \$10 Million: A Rubik's Cube of Simplicity (Focus Series)
Martin M. Shenkman, Steve R. Akers, Christopher R. Hoyt

Estate planning for clients who may not be subject to the federal estate tax might, on first blush, appear seemingly simple; yet, the permutations of planning options are as legion. And like the Rubik's cube, a turn to align one issue, shifts another out of alignment. Planners will have to balance the often competing client objectives of: maximizing income tax basis on death, minimizing state estate tax in a decoupled state, asset protection goals, and simplicity and cost consciousness if there is no federal estate tax, and more. Default reliance on bypass/QTIP planning will no longer suffice. Existing planning will also have to be re-evaluated, often resulting in an Alice in Wonderland like planning where taxpayers will affirmatively assert positions the IRS had historically used to challenge planning options. Welcome to the rabbit hole of FLPs with intentional 2036 strings, ILITs without typical Crummey powers, and more.

Session I-B

GRATs - Current Issues Regarding Creation, Maintenance, and Operation John W. Porter, Carlyn S. McCaffrey

GRATs are an incredibly effective tool for shifting future appreciation to next-generation family members. Because of this, GRATs have long been on the Treasury Department's radar screen and are now seeing increased transfer tax audit scrutiny from the IRS. This

presentation will address current issues involving the creation, maintenance, and operation of GRATs from the estate planning and audit perspective.

Session I-C

Living and Working with the Uniform Principal and Income Act (Financial Assets Series) Gail E. Cohen, George D. Karibjanian, R. Hugh Magill

This panel will examine the data collected from professional fiduciaries throughout the United States on the methodology used to implement the Act across various states. Learn the highly effective habits of corporate trustees and participate in a discussion of the relative merits of these different methodologies.

Session I-D

(Same) Sex Ed: Practical Tips and Tricks When Planning for Same-Sex Couples Lee-ford Tritt, Wendy S. Goffe, Nicole M. Pearl, Lauren J. Wolven

Same-sex couples (married, in civil unions or domestic partnerships, or in no legally recognized relationship) face unique challenges in the estate planning context. This session will provide some practical guidance on key components of an effective estate plan for same-sex couples, including dispositive instruments, marital agreements, medical directives, beneficiary designations, arranging for the disposition of remains, adoption implications and other important considerations.

Session I-E

Public Benefits 101

Robert B. Fleming, Rebecca C. Morgan

Will or trust? Powers of attorney? Modern estate planning goes beyond those simple questions, even in an environment not dominated by estate taxes. Costs of long-term care and availability of public benefits loom large in planning considerations. Learn more about Medicare, Medicaid, Social Security and other government benefit programs, and how they affect your clients' plans.

Session I-F

Much Ado About Something: Clash of the Agent, Attorney, and Appraiser in Gift Tax Audits (in 4 Scenes) (Litigation Series) Stephanie Loomis-Price, David Pratt, Scott A. Bowman, Timothy K. Bronza

Far from Shakespearean comedy (and more like Odysseus's struggles), gift tax audits present clashes among appraisers whose valuations support gift tax returns, attorneys who are defending the returns, and IRS agents, who challenge the returns and underlying valuations. This saga will demonstrate the importance of presentation of the gift tax return, the appraisal, and materials provided in audit.

3:50 – 5:20 p.m. - Special Sessions II

Session II-A

Venn Diagrams II: Tax Basis and Income Tax Planning for Larger Estates (Focus Series)
(Financial Assets Series) Paul S. Lee, Cassady V. Brewer, Ellen K. Harrison

This presentation will focus on the more complex planning techniques that create, sustain and maintain tax basis and maximize income tax savings. The panel will focus on: the use of partnerships to "shift" basis, income, and assets and to maximize the "step-up" in basis with the Section 754 election and partnership debt; creating estate tax inclusion and basis through elections, powers, and appointments in trust; preferred partnerships; planning with depreciable and depletable assets; and the use of trusts to defer or avoid state income taxes.

Session II-B

Clinical Trials with Portability
(Focus Series)

Thomas W. Abendroth, Richard S. Franklin, Lester B. Law

The panel will discuss the use of portability in various common planning scenarios, including couples below and above the applicable exclusion amount, second marriages and blended families, clients with closely-held assets, and clients in states with state death taxes. They will focus in part on the situations in which portability may replace traditional credit shelter planning.

Session II-C

Recent Developments for Fiduciaries 2014 Turney P. Berry, Dana G. Fitzsimons, Jr.

With a focus on how fiduciaries and their advisors may best understand and manage fiduciary risk and related ethical challenges in an increasingly litigious and confrontational environment, the panel will review recent cases and statutory enactments from across the country and discuss trends and developments in several areas including: investments, concentrations, and special assets; surcharge exposure; disclosure to beneficiaries and evidentiary and ethical privileges; the fiduciary as client and conflicts of interest; modification of trusts; settlement, defenses, and limitations on actions against fiduciaries; jurisdiction; trust advisors; incapacity; and third party liability.

Session II-D

How to Practice Law, Abide by the Rules of Professional Conduct, and Have a Life that Rules Nancy C. Hughes, Louis S. Harrison

Want a life outside the practice that rules? Save 4 weeks of time annually by implementing techniques designed to manage your practice efficiently and competently, while complying with the Rules of Professional Conduct.

Session II-E

What's Hot in Life Insurance

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(Financial Assets Series)

Donald O. Jansen, Mary Ann Mancini

This panel will discuss recent developments and current issues involving life insurance such as policy valuation; Crummey powers (when there is an arbitration clause, whether notice is necessary, etc.); substitution power in a trust holding a policy; policy sales; and charitable gifts of policies (CRTs, shark fin CLATs, etc.).

Session II-F

Unfunded Testamentary Trusts-Fiduciary Liability Issues (Litigation Series) Mickey R. Davis, Mary B. Hickok, David Pratt

Your client's father just died with a sizable estate, all of which passes to his new wife. You've reviewed the will of the client's mother who died ten years ago, and ask about her bypass trust. The client tells you that his Dad always said that Mom's will left everything to Dad. Is there any way to recover assets that should have gone to your client? Explore the surprising fiduciary issues that may save the day when a testamentary trust has gone unfunded.

Thursday, January 16

9:00 – 9:50 a.m.

Must We Trust a Trust That's Just a Crust That Wast a Trust?

(Focus Series)

Ronald D. Aucutt

This presentation will examine what some view as "un-trust-like" notions - protectors, selectors, advisors, appointers, special trustees, directed trusts, secret trusts, virtual representation, in terrorem forfeitures, self-settled trusts, perpetual trusts, decanting, and the like - and ask if what we call trusts are really worthy of the treatment accorded that venerable institution.

9:50 – 10:40 a.m.

Ay ay ay - NII! The 3.8% Tax on Trusts and Estates - Planning and Administration

(Focus Series) John Goldsbury

The 3.8% health care surtax on "net investment income" (NII) is finally here for 2013. Proposed regulations are out; final regulations are scheduled for 2013. The tax applies to individuals and trust/estates, but there are several quirks applicable only to trust/estates. This session will focus on the latter, both on the planning side and the administrative side.

10:55 – 11:45 a.m.

Help Me Fix My Trust!

Amy E. Heller

Mistakes happen. Laws change. Circumstances change. Any of these situations can cause a trust to no longer accomplish its intended purpose. This session will explore different methods available for fixing irrevocable estate planning documents and the tax and state law considerations in using the available approaches.

11:45 a.m. – 12:35 p.m.

Charitable Giving in the New Estate Planning Environment (Focus Series) Turney P. Berry

This presentation will examine: planning for and creating charitable interests in trusts that are primarily non-charitable; using deferred gift annuities and charitable remainder trusts as long-term care and retirement planning devices and for other uses as tax rates rise; preserving ancestral homes and family farms through charitable transfers; and the use of charity when transferring business interests and investment portfolios. It will also consider selecting the best charitable device and recipient to meet the client's objectives and the effect of interest rate changes on charitable planning.

2:00 – 5:20 p.m.

Fundamentals Program

(Runs concurrently with Special Sessions III and IV) Income Tax Planning for Estate Planners: A Three Hour Tour Samuel A. Donaldson

Just sit right back and you'll hear some tales ... of fateful estate plans that failed to spot and deal with applicable federal income tax issues.

Indeed, the weather starts getting rough for estate planners who forget about the income tax implications of the strategies they recommend to clients. This session will address several of the federal income tax issues estate planners regularly encounter, with an emphasis on recent changes and developments. Specific topics to be covered include basis in gifted property, the preferential tax rates for net capital gains, the exclusion for gain on the sale of a principal residence, the "Kiddie Tax," installment sales, like-kind exchanges, marital property transfers, the taxation of life insurance, and the income tax deduction for charitable contributions. And it's taught by a professor (not Mary Ann).

2:00 – 3:30 p.m. - Special Sessions III

Session III-A

Trusts We Trust

(Focus Series)

Ronald D. Aucutt, Bruce M. Stone

This session will sift through the pieces of trust law left after the morning's session, seeking balance between aggressiveness and timidity in achieving clients' goals.

Session III-B

Current Transfer Tax Audit/Appeals Issues: What's Hot?

(Litigation Series)

John W. Porter

This presentation will address current estate and gift tax audit and appeals issues, including family limited partnerships and LLCs, recent case law, and tips for handling a transfer tax dispute before the IRS at the audit and appeals levels. Alternative dispute resolution mechanisms with the IRS, including Fast Track Settlement and Post Appeals Mediation, will also be discussed.

Session III-C

Practical Issues in Planning for the 3.8% Tax on Trusts/Estates (Focus Series) John Goldsbury, Robert S. Keebler

This session will go over several examples (some from the regulations; some from the panelists) illustrating the 3.8% health care surtax as it applies to trusts/estates.

Session III-D

The Alphabet Soup of International Planning Gideon Rothschild, Scott A. Bowman, Ellen K. Harrison

This workshop will explore recent developments impacting foreign trusts including FATCA, OVDI and FATF, as well as planning with QDOTs, planning to avoid or minimize penalties attributable to UNI, and the final regulations concerning gifts from covered expatriates.

Session III-E

UPIA and TOLI

(Financial Assets Series)

Lawrence Brody, Gary L. Flotron, Richard A. Schwartz, Richard M. Weber, E. Randolph Whitelaw

The Uniform Prudent Investor Act (UPIA) requires all trustees to manage, monitor and evaluate trust assets and investments for the benefit of the beneficiaries of the trust; however despite numerous professional articles pointing out the applicability of UPIA to trust-owned life insurance (TOLI), the vast majority of trustees of irrevocable life insurance trusts (ILITs) either are unaware of or continue to ignore this duty with respect to TOLI. This multi-discipline presentation will examine the application of the provisions of the UPIA to TOLI; methods and systems to evaluate and manage the risk inherent in permanent life insurance; and which methods and systems will comply with UPIA and are "dispute defensible" for the trustee of an ILIT.

Session III-F

Ethics in Charitable Gift Planning for All the Players Conrad Teitell, Heather J. Rhoades

Many disciplines are involved. Professionals should know the ethics rules of their own professions and those of the others. Through 15 hypotheticals in this audience-participation session, you'll learn how to spot the issues and comply with the rules. In the process, you'll also learn important substantive rules. Not knowing your stuff is also unethical - not to mention malpractice.

3:50 – 5:20 p.m. - Special Sessions IV

Session IV-A

Charitable Planning Today

(Focus Series)

Turney P. Berry, Stephanie Casteel, Martin Hall

This panel presentation will consider in-depth the charitable giving strategies available to today's estate planners, including practical tips on designing the most effective strategies to meet your client's objectives.

Session IV-B

How to Fix a Broken Trust

Amy E. Heller, Michael M. Gordon, Jonathan C. Lurie

This panel will use case studies to explore various methods to modify an irrevocable trust. Among other techniques, the panel will explore the use of decanting and trust amendment powers to effect modifications including extending the termination date of a trust, changing a trust's grantor trust status, bifurcating trustee responsibilities through the appointment of trust advisors and implementing quiet trust provisions.

Session IV-C

“Residence” and “Domicile” for State Income and Transfer Tax Purposes:

A Closer Look

Richard W. Nenno, Christine L. Albright, Laurelle M. Gutierrez, Sharon L. Klein, Laura H. Peebles, David J. Slenn

This session will explore the meaning of “residence” and “domicile” for state income and transfer tax systems, focusing on the rules for establishing and escaping tax in California, Delaware, Florida, Illinois, New York, Pennsylvania, and other key states with sample calculations.

Session IV-D

GST Tax: Post-ATRA Planning and Practical Pointers Julie M. Kwon, Pam H. Schneider

This workshop will review factual scenarios to provide practical solutions to recurring GST tax problems in drafting, post-death administration and allocations, and examine options to mitigate adverse consequences of errors or take advantage of planning opportunities.

Session IV-E

Ethics in Estate and Trust Disputes (a/k/a Tales from the Crypt) (Litigation Series)

Steven K. Mignogna, Charles D. "Skip" Fox, IV, Jessica A. Uzcategui

Ethical duties often collide in estate and trust disputes. This program will target the most crucial ethics issues and national trends including: conflicts of interest; confidentiality and privilege; duties in the drafting process; counsel fees; liability in court-appointed positions; and unauthorized practice of law. The session will benefit those professionals who create estate plans, those who deal with disputes and litigation about those plans - and those who don't want to be the target of litigation.

Friday, January 17

9:00 – 9:50 a.m.

IRAs and Charitable Giving: Everybody Wins But the IRS Natalie B. Choate

This presentation will explore how lifetime and at-death charitable giving with retirement benefits can solve estate planning problems and help charity while benefitting your low-, middle-, and high-income clients.

Including: How to draft and administer trusts so retirement benefits don't get blown up in the fiduciary charitable deduction minefield.

9:50 – 10:40 a.m.

Asset Protection Planning - Ethical? Legal? Obligatory?

Daniel S. Rubin

Professional ethical obligations, as well as the potential for civil and criminal liability, will give thoughtful counsel pause. The ethical advisor will always act to further his or her client's asset protection plan with appropriate due diligence and within permissible bounds as set forth under the governing rules of ethics - the parameters of which will be discussed in this program.

10:50 a.m. – 12:00 p.m.

Estate Planning: The New Frontier

(Focus Series)

Martin M. Shenkman

ATRA, the final frontier. Thriving in the brave new world of permanent high exemptions and portability, applying new planning approaches and perspectives. Highlights of Heckerling. Capitalizing on changing demographics and client desires, harnessing technological efficiencies and more, to thrive in the post-ATRA environment. The reduced importance of the federal estate tax doesn't lessen the need for planning, it only changes the estate planning conversation for many clients.