HECKERLING INSTITUTE 2001
OPENING REMARKS

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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OPENING REMARKS - - JANUARY, 2001

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SCOPE:

The "Miami Institute" is widely recognized as the premier estate planning program in the country. It is designed for sophisticated attorneys, trust officers, accountants, insurance and financial planners who, through years of experience and practice, are familiar with the principles of estate planning. The Institute offers something of interest to every member of the estate planning team.

A recent developments panel on Monday afternoon, featuring three of the nation's foremost estate planning experts, will guide you through the year's developments on the tax front. The same distinguished panel will be joined the next morning by a speaker from the Internal Revenue Service for the first of two question and answer sessions.

Tuesday's program features the beginning of our general session lectures. The lectures provide in-depth analysis of topics of timely interest to experienced estate planners, and are presented by some of the nation's leading authorities.

On Wednesday and Thursday afternoons, the Institute offers a wide variety of workshops and panel discussions, including case studies that will illustrate and provide practical guidance on how to implement sophisticated estate planning techniques. In addition, there will be a repeat Special Session entitled "2001: A Tech Odyssey" covering all aspects of conducting an automated trusts and estates law practice in the 21st Century. All Institute registrants are invited to complete the Survey that has been posted on the Web for this Session before arriving in Miami. The URL is http://members.iex.net/~jghodges/miami2001.html.

Finally, this year's Institute once again includes our popular Fundamentals Program. The first two fundamentals sessions will provide a thorough review of two topics central to the estate planning process: planning for qualified retirement plan benefits and IRAs, and the use of GRATs, GRUTs and QPRTs. The final session differs from our traditional offerings by examining the income tax principles applicable to family limited partnerships - a topic of increasing importance to estate planners.

Because of the scope and quality of its educational programming, the Institute has grown to be the largest meeting of estate planning professionals in the country, with a record number of over 2,500 individuals from around the nation in attendance last year. As our regular attendees know, this concentration of talent has led the Institute to have some of the better characteristics of a national convention of estate planners. The weeklong program provides the opportunity to exchange ideas, to network, and to review the latest in technology, products, and services displayed by over 100 vendors in an exhibit hall dedicated entirely to the estate planning industry. We invite those of you who have never attended our program, or who have been absent in recent years, to join us in Miami Beach January 8 - 12, 2001, to take advantage of this unique event.

THE INSTITUTE FACULTY:

Brenda M. Abrams, Esq.
Abrams, Etter & Marks, P.A.
Miami, Florida

Roy M. Adams, Esq.
Kirkland & Ellis
New York, New York

Ronald D. Aucutt, Esq.
McGuire Woods LLP
McLean, Virginia

John Becker, Ph.D.
Los Gatos, California

Dennis I. Belcher, Esq.
McGuire Woods LLP
Richmond, Virginia

D. Keith Bilter, Esq.
Friedman, Olive, McCubbin, Spalding, Bilter, Roosevelt & Montgomery, P.C.
San Francisco, California

Jonathan G. Blattmachr, Esq.
Milbank, Tweed, Hadley & McCloy LLP
New York, New York

Alan D. Bonapart, Esq.
Bancroft & McAlister LLP
Greenbrae, California

Lawrence Brody, Esq.
Bryan Cave LLP
St. Louis, Missouri

Beverly R. Budin, Esq.
Ballard Spahr Andrews & Ingersoll, LLP
Philadelphia, Pennsylvania

J. Donald Cairns, Esq.
Spieth, Bell, McCurdy & Newell, L.P.A.
Cleveland, Ohio

Dominic J. Campisi, Esq.
Evans, Latham, Harris and Campisi
San Francisco, California

Natalie B. Choate, Esq.
Bingham Dana LLP
Boston, Massachusetts

Richard B. Covey, Esq.
Carter, Ledyard & Milburn
New York, New York

Mark B. Edwards, Esq.
Poyner & Spruill L.L.P.
Charlotte, North Carolina

Julia B. Fisher, Esq.
Erskine, Wolfson, Gibbon & Fisher, P.C.
Philadelphia, Pennsylvania

Leslie C. Giordani, Esq.
Giordani, Schurig, Beckett & Tackett, LLP
Austin, Texas

Joseph G. Gorman, Jr., Esq.
Sheppard, Mullin, Richter & Hampton LLP
Los Angeles, California

James L. Gulley, Esq.
Internal Revenue Service
Houston, Texas

Carol A. Harrington, Esq.
McDermott, Will & Emery
Chicago, Illinois

Milford B. Hatcher, Jr., Esq.
Jones, Day, Reavis & Pogue
Atlanta, Georgia

Joseph G. Hodges, Jr., Esq.
Attorney at Law
Denver, Colorado

Susan T. House, Esq.
Hahn & Hahn
Pasadena, California

Robert F. Hudson, Jr., Esq.
Baker & McKenzie
Miami, Florida

Frederick R. Keydel, Esq.
Joslyn Keydel & Wallace, LLP
Detroit, Michigan

Charles R. Levun, JD, CPA
Levun, Goodman & Cohen
Northbrook, Illinois

Stephen E. Martin, Esq.
Stephen E. Martin, P.L.L.C.
Idaho Falls, Idaho

Carlyn S. McCaffrey, Esq.
Weil, Gotshal & Manges LLP
New York, New York

Jerry J. McCoy, Esq.
Law Office of Jerry J. McCoy
Washington, D.C.

Judith W. McCue, Esq.
McDermott, Will & Emery
Chicago, Illinois

Kathryn W. Miree, Esq.
Kathryn W. Miree & Associates, Inc.
Birmingham, Alabama

Professor Jeffrey N. Pennell
Emory University School of Law
Atlanta, Georgia

John W. Porter, Esq.
Baker & Botts, L.L.P.
Houston, Texas

Susan Porter, Esq.
United States Trust Company of New York
New York, New York

John R. Price, Esq.
Perkins Coie LLP
Seattle, Washington

James V. Quillinan, Esq.
California Trust & Estate Counselors, LLP
Mountain View, California

Charles L. Ratner, JD, CLU, ChFC
Ernst & Young LLP
Cleveland, Ohio

Gideon Rothschild, Esq.
Moses & Singer, LLP
New York, New York

Jeff J. Saccacio, CPA, PFS, ChFC, myCFO
Irvine, California

Frances Schafer, Esq.
Internal Revenue Service
Washington, D.C.

Edward S. Schlesinger, Esq.
Law Offices of Edward S. Schlesinger, P.C.
New York, New York

Pam H. Schneider, Esq.
Drinker, Biddle & Reath LLP
Philadelphia, Pennsylvania

Bruce Stone, Esq.
Holland & Knight
Miami, Florida

John A. Wallace, Esq.
King & Spalding
Atlanta, Georgia

Howard M. Zaritsky, Esq.
Rapidan, Virginia

THE PROGRAM SCHEDULE:

Sunday, January 7

12:00 6:00 p.m.

Registration

Monday, January 8

8:00 a.m. 2:00 p.m.

Registration

8:00 9:00 a.m.

Complimentary Continental Breakfast

9:00 10:30 a.m. /

10:45 a.m. 12:15 p.m.

OPTIONAL PRE-CONFERENCE FUNDAMENTALS PROGRAM
The Fundamentals of Estate Planning for Qualified Retirement Plan Benefits and IRAs: What to Do in Real Life.

Natalie B. Choate

10:30 10:45 a.m.

Break

2:00 2:10 p.m.

Introductory Remarks

Tina Hestrom Portuondo,

Institute Director

2:10 3:30 p.m.

Recent Developments in Estate, Gift and Income Taxation 2000 - Part One.

Jonathan G. Blattmachr

Carlyn S. McCaffrey

Pam H. Schneider

Materials by Richard B. Covey

3:30 3:45 p.m.

Break

3:45 5:15 p.m

Recent Developments in Estate, Gift and Income Taxation 2000 - Part Two.

6:00 7:00 p.m.

Complimentary Reception for Registrants

Tuesday, January 9

8:00 9:00 a.m.

Complimentary Continental Breakfast

9:00 10:30 a.m.

Question & Answer

Jonathan G. Blattmachr

Carlyn S. McCaffrey

Frances Schafer

Pam H. Schneider

10:30 10:45 a.m.

Break

10:45 11:30 a.m.

Now That You Have Me Here, What Are We Going to Do? Meritorious and Occasionally Meretricious Planning for an Existing FLP.

Milford B. Hatcher

11:30 a.m. 12:15 p.m.

How to Tie a Tight Knot with Marital Agreements.

Dennis I. Belcher

12:15 2:00 p.m.

Lunch Break

2:00 2:45 p.m.

The Pre-Owned IRA: Its Service Record, the Limited Warranty, and Your Possibilities for Resale.

Mark B. Edwards

2:45 3:30 p.m.

Client Capacity, Estate Planning and Malpractice Traps (Representing the Mentally Impaired Client).

James V. Quillinan

John Becker

3:30 3:45 p.m.

Break

3:45 4:30 p.m.

Planning Issues and Opportunities Impacting Entrepreneurs.

Jeff J. Saccacio

4:30 5:15 p.m.

College Funding: New Kid on the Block (Qualified State Tuition Plan) Challenges Traditional Techniques (Crummey Trusts and Minor Trusts). And the Winner is…Beverly R. Budin

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Wednesday, January 10

8:00 9:00 a.m.

Complimentary Continental Breakfast

9:00 9:45 a.m.

Flexibility or Contortion—Telling the Difference and Using One to Avoid the Other.

Ronald D. Aucutt

9:45 10:30 a.m.

Old but Not Cold: Changing Grandfathered Generation-Skipping Trusts.

Carol A. Harrington

10:30 10:45 a.m.

Break

10:45 11:30 a.m.

How to Greet New Uniform Trust and Estate Acts?: With Rational Exuberance.

Judith W. McCue

11:30 a.m. 12:15 p.m.

Perils of Prosperity: What Goes Up Will Likely Result in Surcharge.

Dominic J. Campisi

12:15 2:00 p.m.

Lunch Break

2:00 3:30 p.m. /

3:45 5:15 p.m.

FUNDAMENTALS PROGRAM
GRATs, GRUTs and QPRTs (and Competing Techniques for Large Intrafamily Transfers).

(Runs concurrently with the Special Sessions.)

Howard M. Zaritsky

2:00 3:30 p.m.

Special Sessions I

I-A CASE STUDY The Conduct of Gift and Estate Tax Audits Involving Family Limited Partnerships.

John W. Porter

John A. Wallace

James L. Gulley

I-B Drafting to Avoid the Shoals and Survive the Storms on the Long Cruise of a Twenty-First Century Estate Plan.

Ronald D. Aucutt

Frederick R. Keydel

Bruce Stone

I-C Representing the Mentally Impaired Client.

James V. Quillinan

John Becker

I-D Fiduciary Investment Liability.

Dominic Campisi

I-E Saving for College.

Beverly R. Budin

3:30 3:45 p.m.

Break

3:45 5:15 p.m.

Special Sessions II

II-A CASE STUDY Planning Issues and Opportunities Impacting Entrepreneurs.

Jeff J. Saccacio

II-B 2001: A Tech Odyssey.

Joseph G. Hodges, Jr.

Julia B. Fisher

You are invited to complete the Odyssey Survey that is located at

http://members.iex.net/~jghodges/miami2001.html before 1/1/00.

II-C Practical Ethics: Real Time

Solutions to Real Problems

John R. Price

J. Donald Cairns

Joseph G. Gorman, Jr.

II-D Planning for Existing FLPs

Milford B. Hatcher, Jr.

II-E Grandfathered

Generation-Skipping Trusts

Carol A. Harrington

Thursday, January 11

8:00 9:00 a.m.

Complimentary Continental Breakfast

9:00 9:45 a.m.

Marital Deduction and

Generation-Skipping Formula Clauses:

How to Get More Bang for Your Buck.

D. Keith Bilter

9:45 10:30 a.m.

That Which You Did Not Wish to Learn - Practical Aspects of QFOBIs.

Stephen E. Martin

10:30 10:45 a.m.

Break

10:45 11:30 a.m.

Funding Marital Deduction (and other) Bequests: Only the Questions Are Still the Same.

Jeffrey N. Pennell

11:30 a.m. 12:15 p.m.

The Family Foundation: An Owner's Manual.

Kathryn W. Miree

12:15 p.m. 2:00 p.m.

Lunch Break

2:00 3:30 p.m.

3:45 5:15 p.m.

FUNDAMENTALS PROGRAM
Income Tax Principles Applicable to the Formation, Operation and Termination of Family Limited Partnerships.

(Runs concurrently with the Special Sessions.)

Charles R. Levun

2:00 3:30 p.m.

Special Sessions III

III-A CASE STUDY Now That I Have Built It, How Do I Get Rid of It: Estate Planning for the Owners of the Closely Held Business.

Mark B. Edwards

III-B What’s New in Life Insurance?

Offshore and Domestic Private

Placement; Creative Split Dollar Funding.

Leslie C. Giordani

Lawrence Brody

Charles L. Ratner

III-C After the Ink Dries: Guiding Your Clients through Family Foundation Management.

Kathryn W. Miree

Jerry J. McCoy

III-D Planning and Drafting Enforceable

Marital Agreements.

Brenda M. Abrams

Dennis I. Belcher

Howard M. Zaritsky

III-E Formula Clauses

D. Keith Bilter

3:30 3:45 p.m.

Break

3:45 5:15 p.m.

Special Sessions IV

IV-A CASE STUDY Inbound U.S. Tax Planning: Choosing the Best Investment Structures.

Robert F. Hudson, Jr.

IV-B 2001: A Tech Odyssey (Repeat of Session II-B).

Joseph G. Hodges, Jr.

Julia B. Fisher

IV-C The Parable of the Conflicted Clients: A Morality Play in Five Acts.

Susan T. House

Bruce Stone

Cast Members: Stephen A. Lynch III,

Alfred J. Olsen, Hanson S. Reynolds,

Barbara A. Sloan, Susan K. Smith, Diana

S. C. Zeydel

IV-D Funding

Jeffrey N. Pennell

IV-E QFOBIs

Stephen E. Martin

Friday, January 12

8:00 9:00 a.m.

Complimentary Continental Breakfast

9:00 9:45 a.m.

Protecting the Estate from In-laws and Other Predators.

Gideon Rothschild

9:45 10:30 a.m.

Ethics at the Edge: Sophisticated Estate Planning and Professional Responsibility.

Roy M. Adams

10:30 10:45 a.m.

Break

10:45 a.m. 12:15 p.m.

Question & Answer II.

Alan D. Bonapart

Judith W. McCue

Susan Porter

Edward S. Schlesinger

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MIAMI INSTITUTE GENERAL INFORMATION:

Inquiries/Registration:
Philip E. Heckerling Institute on Estate Planning
University of Miami School of Law
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P.O. Box 248087
Coral Gables, FL 33124-0201
Telephone: 305-284-4762 / FAX: 305-284-6752
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Telephone (305) 538-2000, FAX (305) 674-4607
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HECKERLING INSTITUTE 2001
TECHNOLOGY SURVEY

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TECHNOLOGY SURVEY -- DECEMBER, 2000

One of the afternoon Special Sessions at the Miami Institute this year is entitled: 2001: A Tech Odyssey

It will be presented by attorneys Joseph G. Hodges, Jr. and Julia B. Fisher on Wednesday and Thursday afternoons (same session - repeated on two separate days).

As part of this presentation Joe and Julia have put together a 20-question on-line Survey about the sorts of technology all of us are using today in our professional practices and what we would like to know more about. The results of this Survey will be made available free of charge to all those who attend one of these two Special Sessions in Miami and eventually as part of these Reports.

The purpose of this message is to invite all practicing attorneys, CPAs and other allied professionals who may be receiving this message but who are not going to be able to attend the Miami Institute this coming year to feel free to take this Survey too. It only takes about 5 minutes on average to complete, so it is not time consuming or difficult to respond to. The more people who take the Survey, the more representative the results of the Survey will be, so don't miss your big chance to tell us all what software and technology products you like the best and to find out which ones are currently the most popular and why.

Due to time limitations and so the results of this Survey can be properly compiled and published during the Institute, the presenters ask that everyone respond to this Survey by no later than midnight on December 31, 2000 (that's New Years Eve for us young folks).

An easy link to follow to access this Survey is:
http://members.iex.net/~jghodges/miami2001.html

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HECKERLING INSTITUTE 2001
REPORT #1

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REPORT NO. 1 - Monday, January 8, 2001

First, our super-sluth when it comes to the vendors and things technical, Reporter Gene Zuspann, has filed the following Report on his Monday visits to the Exhibit Hall:

As the size of the institute grows, so do the number of vendors. 99 vendors are now listed in the Registration list. There are multiple vendors in almost all categories.

The categories that are apparent are:

Administration support services such as deed preparation
Appraisal and valuation companies
Auction houses
Book and reference material sales
Missing person locators
Software sales - these include software for planning and administration.
Trust departments/companies and other companies managing assets

And now for some highlights:

ProDoc is one of the popular document preparation system. The do forms for several practice areas in Texas and Florida and the Probate Court forms in Colorado. ProDoc uses a proprietary engine and most programming in the past has been by ProDoc. They are currently working on an update for all of Colorado's pending new Guardianship and Conservatorship forms now that the new Uniform Act became law there effective 1/1/01, and they just recently shipped their most recent update of all of the Colorado Probate Court forms for the new required caption format as of 1/1/01.

ProBATE Software, from Greeley Colorado has a fully integrated estate and trust administration package. The package includes programs for estate planning calculations and presentations, Forms 706, 709 and 1041, and trust accounting, plus a new NAPTA Web link. This suite of programs is a competetor to Zane & Associates, Lackner 6-in-1, TeDec and West Group. Lee Zane, Vince Lackner and West Group are also exhibiting, although Tedar Brooks is just finishing his windows product and it is only available thru their TeDec web site. Faster Systems is also here exhibiting its Faster fiduciary accounting package this year.

Most of the regulars are also here, including:

Nicole Splitter, with U.S. Trust, with their new EPLAN Software. This was reviewed in the October, 2000 issue of Estate Planning Magazine.

EVP valuation systems, which has just released the CapWatch product. This can downloaded from their Web site and is included in the current version of the EVP product. We'll report on some of the other valuation companies later.

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Next, and as an add on to the above re LawOnTheWeb, Reporter Gene Zuspann also reports the following about Natalie Choate's Monday morning three-hour "Fundamentals" program:

I attended the Monday morning presentation by Natalie Choate on "The fundamental of Estate Planning for Qualified Retirement Plan Benefits and IRAs: What to do in real life."

As normal, the materials are quite extensive - 93 pages of materials with another 27 pages of appendices. Two sections of the materials - Understanding the Minimum Distribution Rules and Case studies are from her book "Life and Death Planning for Retirement Benefits." The other two sections were written just for this institute. There were a large number of attendees at this presentation, even though it is supposedly a fundamentals program, so the interest in the program was quite high.

Her first topic was "Ten Things that make Planning for Retirement Benefits Different from Estate Planning for Other Assets." This one of the new topics not in her book. She said that this follows the "Dummies" how to books, however, it actually consisted of 16 so she stuck 6 topics in other #10 - Special Planning Opportunities. She started the presentation with a caveat: Never be in business with your spouse.

In the first part of the session - from 9:00 to 10:30 - she covered the differences in Section I of her outline and the general rules. She
extensively discussed the Minimum Distribution Rules for the various possible scenarios, i.e. participant alone, participant and spouse, participant and non-spouse individual, etc. She also covered the Required beginning Date rules.

One recommedation: where the younger generation beneficiaries are already wealthy, and do not need the money, and the client is not using the money in the IRA, leave it to a foundation and avoid both the death taxes and the income taxes.

After the break, she covered several of her 26 case studies. She finished with the results of a survey of the methods used by a number of the experts in the area in planning for distributions from large plans. These include:

-Use fixed term for both the spouse and the participant. This method ensures certainty regardless of the timing and order of death between the spouse. However, this feels this may be a disservice to the client, especially if the actual life expectancy of the client and spouse are considered. Taking into account the family history of the client, and the fact that non-smoking, well educated persons in good health will often outlive the tables, there may be better methods. Several alternatives are:

-Use recalculation of lives on the spouses and a charitable remainder trust as a contingent beneficiary.

-Use the split method - a fixed term on the participant and recalculate the spouse.

-Hedge your bets under Notice 88-38. Split the money into 3 IRAs and use a different option on each of the IRAs. When the client is ready to take money out each year, evaluate which IRA would be best to deplete. This gives the client the flexibility to choose the best alternative taking into account the facts and circumstances at the time of the withdrawal during each year in the future.

All in all, a very good presentation. As always, her presentation included some good humor and kept the audience interested.

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Third, Reporter Steve Leimberg has filed the following Report regarding Jonathan Blattmachr's portion of the Monday afternoon "Recent Developments" presentation.

Here's to the Lossers! That's a line from an "Old Blue Eyes" tune. Jonathan Blattmachr and Professor Mitchell Gans put a new twist on it - just when it appeared everything that could be said about the subject already had. I'm referring of course to the subject of Wealth Transfer Tax Repeal. Jonathan and Mitchell's perspective, presented as part of the Recent Developments opening segment at the 35th Annual Heckerling Institute makes the following interesting points that perhaps many folks missed in the crunch of the sound bites on both sides of this important issue:

The proposal to repeal the estate tax can't be justified on the basis of a slowing economy (even assuming fiscal stimulus is both a necessary and effective tool to warm up a cooling economy) since it would do nothing to produce an immediate tax savings for taxpayers with a propensity to consume most, if not all, of their tax savings.

Repeal goes beyond merely the estate tax. Its triple whammy would include the gift and GST as well. And coupled with a proposed significant reduction in income tax rates, the result is likely to produce four major losers: (1) the life insurance community, (2) charities, (3) spouses, and (4) states.Life insurance companies would be hurt because of what is called "adverse selection". In other words those who perceived they no longer needed insurance because of a repeal - but who were healthy - would drop their coverage - while those who were sick would retain the coverage - thus taking away from the insurers the (already counted upon) advantage of a pool of healthy insureds who continue to pay premiums. (On the other hand, Jonathan mentioned that, the enhanced relative advantage of the tax-free build up inside the policy would encourage high-net worth high income individuals to retain or purchase cash value life insurance and to some degree, counterbalance the policies lapsed because of repeal).

Charities would be hurt - badly - because both estate tax and income tax incentives would be removed. With a reduced income tax furthering the loss of incentive to make charitable gifts, direct bequests at death as well as lifetime giving will likely diminish. Worse yet, according to Jonathan, charities would have to depend on the federal and state governments to make up some of the difference. He fears this would result not only in shortfalls in operating revenues but more importantly in an expanded role of the government(s) in "picking winners". In other words he worries that philanthropy may become controlled by governments to the point of being "rampantly politicized". And of course, with respect to religious charities, direct governmental financial assistance is probably unconstitutional.

Spouses will lose because the state legislated protection for surviving spouses which provides a minimum share of a deceased spouse's estate (e.g. right of election) serves as a protection only to the extent there's something to share (typically 1/3) IN THE ESTATE. Without a gift tax, it will be easy (and less expensive) for a moneyed spouse to give away assets and thwart the intention of protective state laws.

Of the three major loses, states would suffer most. As a recent Tax Analysts article suggests, states stand to lose a lot of money - year after year. Jonathan estimated over $100 billion over the next 10 years would be lost. He noted that it may be politically impossible for the states to adopt independent estate tax systems to make up the loss and few would have easy mechanisms to replace the revenue lost if the states could no longer impose a death tax equal to the state death tax credit (which EVERY state currently does).

Perhaps the most interesting part of the Blattmachr/Gans commentary, the impact of the repeal of the gift tax, has been the least commented on by other authorities - and may prove to be the most important issue of all - because of its implications on both federal and state income taxes - and because of the significant increase in the real cost of repeal. Think about the following:

First, it would be easy - without a gift tax - for a taxpayer in one state to shift income to a trusted relative in another state, one with no or a lower state (and/or local) income tax - and at some "old and cold" date - that trusted relative gives the income producing property back. Likewise, a gift tax free gift of appreciated property to a lower bracket relative - say a daughter - or retired parent - who sells the property and pays a much lower tax than the donor would have paid - followed by a conservative period of time - followed by a gift back to the donor of the net proceeds.

Second, trusts - deliberately created in states which do not impose a state income tax on trust income(such as Alaska, Delaware, Florida, Nevada, South Dakota, Texas, Wyoming, or Washington) could be "packed" with income producing assets to eliminate state income taxes.

As Jonathan put it, "Little tricks" will be developed to minimize income tax on the return of that money to the grantor. So just as taxpayers will try to avoid federal income tax once the barrier of gift tax is removed, so will they try to reduce their state income tax
through various income shifting methods. Jonathan pointed out that this potential to "GAME THE SYSTEM" will be difficult to police or to create laws that would prevent or minimize the loss of either state death or income tax revenue.

The conclusion of the Blattmachr/Gans Heckerling Current Events commentary is that the loopholes and deficiencies inherent in current law can - and should - be fixed. But they feel "repeal would be the wrong remedy." They suggest instead a substantial upward revision in the size of the exemption or exemption equivalent available to all taxpayers and a significant increase in the size of the GST exemption.

That is it for Report No. 1. 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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HECKERLING INSTITUTE 2001
REPORT #2

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. 2 - Tuesday, January 9, 2001

First, some quick additional news from the Exhibition Hall:

A. Lawgic has just made three significant announcements [www.lawgic.com]:

(1) The upcoming release of the Advanced Package for its Florida Wills & Trusts estate planning software package is expected to be available in February of 2001. The initial release of this Package will include Qualified Personal Residence Trusts (QPRTs), Grantor Retained Annuity Trusts (GRATs) and Intentionally Defective Grantor Trusts (IDITs). Charitable Trusts and Joint Trusts will be made available later in 2001. In addition the GRAT form currently is being modified to take into account the recent Tax Court Walton case.

(2) Later this year they will be releasing a new package called New York Wills & Trusts. This product will be authored by none other than Carlyn S. McGaffrey, a partner in the New York City law firm of Weil, Gotshal & Manges LLP, in conjunction with the authors of the Florida Wills & Trusts system, who are John Arthur Jones,, Edward F. Koren, Richard L. Stockton and Bruce Stone, all of whom are partners of Holland & Knight LLP. This product will include a fully searchable library, including selected Internal Revenue Code sections and cases.

(3) Versions of the Florida Wills & Trusts system modified for additional east coast state are planned for release later on. Those states include Virginia, Maryland, Georgia and the District of Columbia in late 2001 and Massachusetts in early 2002.

B. Power Presentations LLC (tm) of Mesa, Arizona is exhibiting ten separate estate planning PowerPoint Presentations that will retail for $399 each, or you can buy five of them for $1,749 or all ten of them for $2,499. Further information can be obtained from their Web site at www.power-presentations.net.

C. zCalc is exhibiting its popular zCalc Excel spreadsheet program which comes with the zCalc Tool Box that allows you to analyze various estate planning strategies and the zCalc Function Library that allows you to install over 100 custom functions into your Excel spreadsheets. You can download the program from their Web site at www.zcalc.com for $99.

D. WealthTec is exhibiting its WealthMaster (tm) financial and estate planning software, which combines enhanced versions of its two leading-edge products, AdvancePro Series (tm) and ProPrimerPro Series (tm). Your can download it for $1,095 or obtain it by mail on a CD for $1,195. Current modules include estate planning, qualified plans and IRAs, charitable planning and tax and financial planning. Further information can be obtained from their Web site at www.wealthtec.com.

E. ProDoc is now marketing Lipman's Wills and Trusts, which includes a wide spectrum of estate planning documents from the simple to the complex, including FLPs and dynasty ILITs and has been written to conform to state laws. For $95 per month, Florida residents can purchase their Plan D Estate Planning package, which includes the ProDoc document assembly engine, Lipman's Wills and Trusts, FLSSI Probate, FLISSI Guardianship and Small Estate Wills. Further information is available on their Web site at www.prodoc.com.

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Next, Reporter Gene Zuspann reports the following about Tuesday morning's Question & Answer Session One staring Jonathan G. Blattmachr, Carlyn S. McCaffrey, Frances Schafer and Pam H. Schneider:

Francis Schafer - Discussed the reorganization in the service effecting Estate and gift tax work.

Pam Schneider - She started by relaying that the Mellon Case discussed on Monday has been appealed. She then took up marital deduction questions. She addressed language that the trustee would distribute additional funds for the purpose of making "equal" gifts. Pam has language that the trustee has no right to verify use of the funds, and that the spouse can use the money for anything he or she wants to avoid the negative inference under 2056 that anyone other than the SS has a right to distributions. Planning for a QDOT can be done by the surviving spouse, post-mortem.

Carlyn McGaffrey discussed the new definition of a grantor in the 678 regs.

Jonathan Blattmachr responded to a number of questions came as a result of Natalie's presentation. Jonathan answered these with the caveat that any controversy should be referred to Natalie.

Q - is there a 691 problem with using a CRT as a remainder beneficiary. A problem exists if there are also human beneficiaries. The 5 year rule must be used if there any non-human beneficiaries. Fran said that one inquiry the service gets is that people want to pass thru the 691 deduction to the beneficiaries. Carlyn and Jonathan agreed that the use of a CRT is only used if you have no better alternative.

Fran commented that the IRS is trying to get a number of reg projects out in a hurry before the change in the administration so that someone familiar with the project can review it. Apparently, when the Clinton administration came in, some regs were pulled that had already gone to the Federal Register to be published and were again reviewed. Some projects are 643 Regs and 645 Regs. She also announced that Treasury has requested suggestions for any new projects that need to be done. The due date for submitting these is January 16.

Pam discussed charitable issues. She clarified the Atkinson trust from yesterday. The trust was properly drafted but improperly administered. She also discussed the regs in 4940 and 4942 and the Ann Jackson case on 4942 (that a PF distribute 5% of its net assets each year).

Carlyn then discussed some GRAT questions: Now that example 5 has been declared invalid (if not appealed and reversed), zero-ed out GRATs should become much more popular. If clients have open years, they should file an amended gift tax return. (Fran said this seems appropriate because the Adequate Disclosure Rev Proc refers to an amended return). Carlyn and Jonathan suggested filing an amended return even though the statute of limitations has run to recapture the unified credit reported on the oldreturns. Pam believed that this could be avoided and corrected on a schedule explaining the change attached to the 706.

Jonathan then discussed Strangi, Knight and Shepherd. He does not believe that story is all in on gifts on formation. See the comments in the Monday proceedings. Pam and Carlyn are not sure there is that much of a problem but agree that since it is easily solved, why take the risk. Pam questioned what waiting period should be used. Jonathan said his clients like 10-15 minutes, he likes one year. Shepherd case - additions by moneyed partner - to avoid the problem, Jonathan creates a new partnership. Does a 5x5 power in itself, without being tied to the donation, entitle the donor to an annual exclusion? Carlyn said that the panel had debated this issue. They agreed that this should not be relied on to get the exclusion.

Pam discussed a CLT where children have a vested interested and they assign that interest to their children (the grantor's grandchildren). Fran said that timing of gift would be an issue. If done shortly after creation, the value of the gift by the children would be the value of the remainder at that time. Pam respectfully disagreed with this position. Carlyn hedges the bet by making a transfer by the children to a new trust that includes the grandchildren and the child's spouse (a non-skip person). There will still be GST if distributed later to the GC. However, this will avoid an acceleration of the GST tax.

Fran discussed ESBTs and the problems with distributions and from which portion of the trust the distribution would be treated - S-corp or non-S-corp portion. Looking for comments on proposed regs. Also, If an S-corp makes a charitable donation, the service will deem that the governing instrument (the trust) allows such deductions for the S-corp contributions and allow the fiduciary to deduct its share of the contribution on its return.

General Discussion - Client transfers an income or annuity interest to the spouse. Simultaneously, client sells remainder to her children. What are the tax consequences? Client gets a marital deduction. 2702 does not apply because T had to have retained an interest - this was simultaneous. Allows you to create an old style GRIT. The transaction must be simultaneous to avoid 2702. Fran thinks the service will try to figure out some way to keep this from working. Carlyn suggested that this is for the aggressive client, but the panel believes it works.

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Next, Reporter Gene Zuspann reports the following on Milford B. Hatcher's Tuesday morning session entitled "Planning for an Existing FLP":

Milford started with a show of hands to see how many people think that the death tax laws will be repealed. Most people do not think they will be repealed.

The first part of the presentation dealt with operational issues.

Clients must recognize the entity as separate and distinct from its partners. If clients run afoul of this rule, they are putting a bullseye on their chests. Examples

- pay personal expenses from the partnership

- put personal use property in the partnership and use it rent free

- deposit partnership income in the personal account of the general partner.

Milford set forth 3 morals:

-Practitioners must carefully explain to clients that there will be material operational differences.

-Transfers of personal use assets should, at a minimum, be accompanied by a lease and FMV rental payments, and if possible, be avoided altogether.

-a transfer of almost all of an individuals assets to an FLP may invite closer scrutiny by the IRS

Strangi and Knight courts were impressed that you "dot your i's and cross your t's."

Timing of the gifts are relevant. There should be a waiting period between formation and gift to avoid the Shepherd case. He uses one month, but there is nothing supporting this in the law.

Strangi and Knight are considered as taxpayer victories, however, the discounts allowed were lower than those previously allowed. This may be a case of bad facts make bad law. Milford believes that the battle is going to be in valuation.

There is no one method that is always right. He discussed (very broadly) the following:

Installment sales to grantor trusts:

- Advantages are low interest rates, use of a grantor trust - grantor pays tax but this is not a gift, and GST planning.

- Disadvantages are required "seed" gifts or guarantees, possible adverse income tax consequences at grantor's death, and higher valuation risks.

The Walton case has made him reconsider GRATs, especially where there are volatile assets.

He did not get to preferred partnerships other than that Milford regards this to be the best vehicle where the grantor has and wants a compulsion to control.

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Next, Reporter Gene Zuspann reports the following on Dennis I. Belcher's Tuesday morning session entitled "How to Tie a Tight Knot with Marital Agreements":

Dennis questioned why anyone prepares these documents. It is a lose-break even situation. The best scenario is that you never hear about the agreement after it is completed. If the matter goes to litigation, the attorney preparing the document will be a witness, and maybe, a defendant.

He first reviewed the issues. The first issue is what law will be applied to the agreement. It is best to be in a state that has adopted the Uniform Premarital Agreement Act. Agreements in these states are more likely to be enforceable. He then discussed the provisions of the Act.

The presentation and materials also addressed the requirements under ERISA.. The benefits may be waived by the spouse if all requirements are met, however the regs take the view that this can not be done in a premarital agreement because at that time, the person is not a spouse.

Dennis discussed a number of cases and the procedures that should be taken or followed in view of the same.

Next he covered planning for divorce and then planning for death. Some agreements do not provide for divorce, but almost every agreement covers death.

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Next, Reporter Gene Zuspann reports the following on Beverly R. Budin's Tuesday afternoon session entitled "College Funding: New Kid on the Block":

Beverly first set out the general history of QSTPs. Each state develops their own plan. For this reason, no 2 plans are alike. There are two kinds of plans - Prepaid Educational Assistance (where the donor purchases tuition credits) and Educational Savings accounts, where the money is typically invested in mutual funds.

The two parties to the plan are the person contributing the funds - the account owner - and the beneficiary of the plan - the designated beneficiary (DB). The account owner retains full control, including the right the terminate the plan and withdraw the funds. The DB has not control at all (and may have negative tax effects that he also cannot control).

There are several rules set out in IRC 529:

1. The contribution by the account owner must be in cash.

2. There will be a penalty (with few exceptions) if the distributions are not used for education expenses

3. The account owner may not direct investments (other than the initial investment in some states).

4. There can be no excess contributions.

5. The interest in the QSTP may not be pledged.

Since plans vary from state to state, a donor needs to investigate different plans to determine what is best for the donor's facts andcircumstances. Many states do not require the donor to be a resident, so this gives a lot of flexibility in selecting a plan. Beverly then summarized the various distribution alternatives and taxeffects of each. The discussion included various income and estate tax results for both the account owner and the designated beneficiary and the gift tax consequences for the donor.

Finally she concluded with some case studies to determine what clients are best suited to this strategy. The optimum client is one that is moderately wealthy, not making annual exclusion gifts already, wants to provide education funding for another, yet either needs or feels the need to have the right to reclaim the funds.

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That is it for Report No. 2. The full text of all the Reportswill 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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HECKERLING INSTITUTE 2001
REPORT #3

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
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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. 3 - Tuesday, January 9, 2001 and Wednesday, January 10, 2001

First, some quick additional news from the Exhibition Hall:

A. The Lackner Group's 6-in-1 Estates and Trusts Administration software. In late 2000 The Lackner Group demonstrated the new features of its 6-in-1 for Windows program throughout Pennsylvania. First, you are now allowed to work with the product as a basic, intermediate or advanced level, and move freely between these three levels. Second, their transaction classification or coding system has been greatly simplified by the use of filters keyed to the user level you choose. Third, they have installed a new search engine for easily finding their forms and documents and the coding system. Fourth, they have improved the way you enter sale transactions when there are multiple lots of a particular asset acquired on different dates and different prices, such as mutual funds with dividend reinvestment plans, including the ability to choose among various methods of identifying which shares you are selling.

For more information, go to www.lacknergroup.com.

B. Brentmark Software is exhibiting a whole host of software products this year, including Estate Planning Tools [$395], IRS Factors Calculator [$149], Charitable Financial Planner [$349], Estate Planning Quick View [$249], Wallace Securities Pricing CD-ROM [$99 for one year], PFP Notebook [$695], their new Savings Bond Toolkit program [$249 - it is being previewed as part of the Tech Odyssey 2001 Special Session presentation on Wednesday and Thursday], Pension and Roth IRA Analyzer [$449], Investment Scenario Generator [$299], Roth IRA Conversion Analyzer [$249], Goldberg Reports (on-line) [$199 per year], Pension Distribution Calculator [$149], Roth IRA Conversion Calculator [$49], and Minimum Distribution Calculator [$79].

For more information, go to www.brentmark.com or www.leimberg.com.

C. Crescendo Interactive is also exhibiting a whole host of software and related products, including crescendo Lite [$150] and Pro [$995], Crescendo Plus for PowerPoint [$495], GiftLegacy.com Web site [$5,000 per ear], GiftLaw.com [FREE], Crescendo Presents [$150], Crescendo Estate [$300], and a series of planned giving and conference Videos [$59 each]. Of particular note is the PowerPoint client side show and program HELP screens that come with their own built-in audio explanations that are times to match the pace of the slide scripts. We suspect that soon everyone who is now offering PowerPoint or Presentation slide shows for sale will be adding automatic or user-defined audio features to their slide shows.

For more information, go to www.crescendosoft.com.

D. Cowles Legal Systems, Inc. has announced the availability of revocable trust, irrevocable trust, will and trust termination checklists free of charge to current Cowles software and system users via www.cowleslegal.com. Cowles Checklists are designed for use during the initial appointment, when information may be gathered, phrase selections made, and supporting documents and funding documents and correspondence selected, all while the client is available to provide detailed information. Using the checklist to draft during the initial appointment allows for specific fee quotes to be given at the end of the initial appointment and eliminates follow-up calls. At the end of the initial appointment, the checklist may be routed to an assistant for data entry and completion of the estate plan, so the drafter has the completed plan for review shortly after the initial appointment. The drafter may complete data entry, but with use of the checklist, data entry by the drafter is optional. A checklist approach to drafting protects the attorneys' time to allow more initial appointments to take place. Unlike other methods the checklist allows the drafter to make substantive drafting decisions while with the client, significantly enhancing the ability to make decisions based on perceptions of the client's needs and goals, which are most apparent during the appointment. The attorney can complete a thorough, personal and comprehensive initial appointment, allowing the client to see their expertise in the estate planning area, and allowing the attorney to truly listen to the client rather than focusing on what questions need to be asked. The checklist also serves as a receptacle for all pertinent information, and minimizes liability by insuring that all pertinent questions are asked and documented.

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Next, Reporter Julia Fisher reports the following about Dennis Belcher's presentation Tuesday morning entitled "How to Tie a Tight Knot with Marital Agreements and Mark Edwards' Tuesday afternoon presentation entitled "The Pre-Owned IRA":

Dennis Belcher based his talk and his materials on some recent experiences he has had both defending and attacking premarital agreements. Dennis made these points among many others:

1. Remember that a premarital agreement is a litigating document.

2. Remember that in the litigation of a premarital agreement it is the boilerplate that will make the difference.

3. Remember to a avoid a jury because juries don't like rich people.

4. Consider including provisions pertaining to divorce in the agreement; of the parties are young, consider a sunset provision if the marriage last for a number of years. Be familiar with the relevant divorce laws, or seek the input of someone who is familiar with those rules.

5. Retirement benefits provide a challenge, in that a waiver before the marriage is not effective for ERISA purposes. Consider attaching a signed consent to the agreement and appointing the other spouse as attorney in fact to sign the power.

6. While no state requires separate counsel for each party, it is advisable.

7. Be aware of the difference in the consideration rules under the Uniform Pre-Marital Act for pre and post marital agreements.

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Mark Edwards in his presentation entitled Pre-Owned IRAs covered the significance of satisfying the designated beneficiary rules when the spouse is not the primary beneficiary of the IRA to maximize the stretch-out over the life expectancies of the IRA beneficiaries. He also advised that the attorney should ensure that the client documents the method by which the required minimum distributions are calculated, as the custodian may or may not retain any paperwork evidencing the election. A customized beneficiary designation should be prepared and sent to the custodian, and the client should check regularly with the custodian (especially in this age of mergers of banks, etc.) that the current designation is on file.

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Next, Reporter Steve Leimberg, reports the following about the Tuesday morning session entitled "Client Capacity, Estate Planning and Malpractice Traps" that was presented by James V. Quillinan and John Becker.

James V. Quillinan, an estate planning attorney with California Trust & Estate Counselors, LLP, in Mountain View, California and John Becker, Ph.D., a neuropsychologist in Los Gatos, California, explored some of the ethical and practical issues pertaining to the representation of clients with marginal mental capacity. Here are some of their key points:

Capacity is a factual determination. --Focus on capacity - since if there is not sufficient capacity

- the documents are worthless.

--Most attorneys have little or no training in this area.

--When examining memory impairment, look at two elements: First, look at the person's ability to absorb and process "new" information. Second, look at his/her ability to recall and process previously learned information.

Can he/she go through a logical process of weighing options?

--A family doctor may consider a person "sharp as a tack" but that person may not have the ability to process new information.

Two hints: First, ask the person to remember 3 things in the room. For instance, a chair, a glass, a pen. Second, ask the person to draw a clock - and set the hands for "10 after 11". This is a test of two quadrant thinking and ability to abstract. As we age, our competence diminishes. If capacity is or may be an issue, it is very important for a qualified medical professional to see this person on MORE than one occasion. Be sure relatives are interviewed. Get information on how they function day to day. Be particularly concerned when a person can't meet the demands of work/life. Be sensitive to the fact that some people "sound" great - until you ask them to DO things.

Indicia of unsound mind or incapacity includes (a) inability to stay alert or maintain attention, (b) information processing problems, (c) faulty thought process, and (d) mood control. Here are some thoughts with regard to these: Alertness/attention: Look for diminished level of consciousness, disorientation with respect to time, places, persons, or situations, or a loss in ability to focus and concentrate.

Information processing: Look for inability to understand or communicate with others, inability to plan or organize "projects" in one's self interest, do abstractions, recognize familiar objects and persons.

Thought Processing: These are more extreme and obvious and include delusions, hallucinations, repetitive thoughts. Inability to Modulate Mood: Look for pervasive and persistent anger, fear, panic, depression, apathy, or euphoria.

The central question is: Does the deficit significantly impair the person's ability to understand and appreciate the consequences of his/her actions? And how often and how severe and for how long does the deficit in mental function occur?

It is important to remember that the mere diagnosis of disorder does not equate to unsound mind or incapacity to perform a given act.

Practical Office Procedures: Develop a form to send to a psychologist. Model the form after your state's definitions of unsound mind and incapacity to make a decision and definition of dementia.

RED ALERT: Some of the conditions that should trigger further investigation are problems we all have (well, at least I have) and that should trigger sensitivity on the professional team's part include:

--Forgetting names

--Misplacing keys or glasses

--Not recognizing someone in an unfamiliar setting

>>>>(Starting to worry? Don't panic - unless you also have problems...)<<<<

--Getting lost while driving a familiar route

--Confusion over what time it is or where you are

--Experiencing a gradual or sudden change in personality

--Experiencing a loss of memory that is disabling to the point that work is impossible or it upsets your ability to conduct normal daily activities.

Quillinan and Becker emphasized that "Once the subject of capacity enters the lawyer's mind, it must be resolved" and "It is essential to take steps to preserve evidence regarding the client's testamentary capacity".

They also noted that as soon as the issue of lack of capacity arises, undue influence must be considered - and to the extent possible - nullified. They suggested careful documentation of:Who brought the client to your office?

Was the client alone with you?

If the estate plan exhibits extreme favoritism, ask why.

A psychologist or psychiatrist rather than the attorney should obtain and study medical records. The family physician may be the worst person to do an analysis. Meticulously record and save and date changes you make to the client's documents.

--Consider sending drafts with obvious mistakes hoping the client picks it up.

--Consider having a psychologist at the execution of key documents.

--Be wary of video and audio taping because it becomes a two-edged sword. It's evidence and the "chain" must be carefully maintained.

--File a post-execution memo for your file.

--When using medical professionals, it is essential to use an engagement letter to outline exactly what you need. Create that letter as a checklist so that there will be "no holes" in the process.

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Next, Reporter Gene Zuspann reports the following on Wednesday morning's leadoff presentation entitled "Flexibility or Contortion" by Ronald D. Aucutt

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Next, Reporter Alan Rothschild reports the following on Dennis I. Belcher's Tuesday morning session entitled "How to Tie a Tight Knot with Marital Agreements":

Ron Aucutt's Weds. morning program introduced issues and challenges in drafting long term irrevocable trusts. Through three fact patterns, Ron illustrated the tax, fiduciary and beneficiary issues that arise in administering long term trusts. Some of the issues include inadequate fiduciary investment powers; lack of flexibility to alter beneficial interests in future generations to address individual needs and circumstances; failure to provide for replacement or succession of trustees; and lack of clarity in the document as to identification of future beneficiaries.

On this last point, Ron said that the class of beneficiaries in a long term trust, particularly in jurisdictions with no perpetuities law, could easily equal the size of a public corporation's shareholders. In multigeneration trusts, it is also important to describe the beneficiaries with great clarity -- this includes at what generation "per stirpes" applies and how the takers in default are defined if a family line runs out generations in the future.

Ron also discussed the Delaware Tax Trap and the uncertainty of its application in jurisdiction's without perpetuities laws. Finally, he discussed the obvious need to draft in light of the uncertain future of the federal transfer tax laws. Although Ron does not presently think the estate tax will be repealed by Congress in 2001, even if it is, we must continue to draft for any pre-repeal period (and post-repeal reinstatement?) as well.

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Next, Reporter Gene Zuspann reports the following on Judy McCue's presentation entitled "How to Greet New Uniform Trust and Estate Acts?: with Rational Exuberance":

The presentation deals with two new acts approved by NCCUSL: The Uniform Disclaimer of Property Interests Act and the Uniform Trust Code.

She started with a discussion of the progress of the adoption of the Uniform Principal and Income Act. Section 104 - the power to adjust has become a "flash point" among the different states considering the act. The result is that some states have refused to adopt the act at all, and some states have adopted the act without section 104. As a result, NCCUSL has adopted a new section - 105 - to keep a court from reviewing the discretion of the trustee, except in cases of abuse. Section 105 also sets forth remedies in case the trustee does abuse discretion, and lastly, the gives trustee the ability to go to court and get approval of the exercise or non-exercise of the power to adjust.

In addition, at least 4 states have either adopted the act, or are looking at adopting the act, with an ability of the trustee to convert the trust to a unitrust. These are Delaware, New York, Pennsylvania and Missouri. Judy believes that this movement will expand "to a legislature near you."

She next addressed the Disclaimer Act. She said that what must be realized is that the Disclaimer Act does not tie disclaimers to IRC 2518. A disclaimer can be made at any time. As such, a disclaimer under the Disclaimer Act would be valid that is not valid for tax planning under section 2518 and would be a taxable gift.

The Disclaimer Act also will be subject to other laws of the state. For instance, each state has to determine the effect of this act on creditors and whether the act should be subject to fraudulent transfer laws. The last 25 minutes of the presentation were on the Uniform Trust Code. The final version is available on the web at:

She believes that this law, because of its breadth and innovation, will generate the greatest amount of controversy. Some of the provisions she discussed were virtual representation, charitable trusts - cy pres will be the default rule, pet trusts, the time to challenge an action of the trustee for breach of trust - 1 year if notice; 5 years if no notice.

Although, generally, the trust instrument controls, Section 105 of the code provides parts of the law that may not be overridden by the trust. Judy believes that the inability to override the effect of a spendthrift provisions in the Code will be controversial. See Article 5 as to creditors claims, spendthrift and discretionary trusts.

Another controversial provision is the obligation to furnish the whole trust to all beneficiaries, and not just those portions pertaining to that beneficiary. This cannot be overridden by the trust instrument. Also, section 706 provides procedures for removal of a trustee at the request of beneficiaries.

Her final comment was that she expects states to select provisions that they do not approve and modify the act to comply with that state's desires.

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That is it for Report No. 3. 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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HECKERLING INSTITUTE 2001
REPORT #4

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
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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. 4 - Wednesday, January 10, 2001 and Thursday, January 11, 2001

First, somehow Gene Zuspann's report on Dennis I. Belcher's Tuesday morning session entitled "How to Tie a Tight Knot with Marital Agreements" was accidentally cut from Report No. 3 before it went out (sorry Dennis and Gene), so here it is:

Dennis questioned why anyone prepares these documents. It is a lose-break even situation. The best scenario is that you never hear about the agreement after it is completed. If the matter goes to litigation, the attorney preparing the document will be a witness, and maybe, a defendant. He first reviewed the issues. The first issue is what law will be applied to the agreement. It is best to be in a state that has adopted the Uniform Premarital Agreement Act. Agreements in these states are more likely to be enforceable. He then discussed the provisions of the Act.

The presentation and materials also addressed the requirements under ERISA.. The benefits may be waived by the spouse if all requirements are met, however the regs take the view that this can not be done in a premarital agreement because at that time, the person is not a spouse. Dennis discussed a number of cases and the procedures that should be taken. Next he covered planning for divorce and then planning for death. Some agreements do not provide for divorce, but almost every agreement covers death.

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Second, here is yet more news from the Exhibition Hall, this time courtesy of Reporter Gene Zuspann:

I have been after some kind of a breakdown of vendors, especially in software. Some or all of these have been mentioned in earlier Reports. I believe that this is all the Estate Planning Software vendors who are attending:

BNA - Estate Tax Spreadsheet

Brentmark - Estate Planning Tools

CCH - Viewplan's Vista, Factuary, Benequick, Beneview and Progeny

Crescendo - the programs are primarily for charitable planning

ProBATE - from Greeley Colorado, one of the integrated programs for administration, but includes estate planning as well

Pen 'd Calc - a customizable program (by the vendor) that allows the user to have the screens changed.

U.S. Trust - EPLAN

West - Intuitive Estate Planner, FATE, FET, FIT and FGT

zCalc - good, inexpensive software ($99 here) for illustration of a large number of plans

Power Presentation is also attending (written up by Joe yesterday) but I understand that this is not a full calculation program.

Drafting programs - those that generate estate planning documents:

Cowles Legal Systems

Lawgic Publishing Company

ProDoc

The Technology Group - Wealth Transfer Planning by Jonathan Blattmachr (the only one currently on the web)

West - Bob Wilkins' Drafting Wills and Trusts on Caps

Lexis also has a product that has clauses for estate planning. At the moment, this is not a generation system. They are working on that now that they have acquired HotDocs, but their representatives have no idea of the status of estate planning forms other than the state already out - California.

Another web based planning vendor for the sharing of the information among the various parties to the estate plan is Connect2A.com, located at www.connect2a.com on the web. The significant difference for this product is that everyone enters information into an on-line database (is this a real ethical problem) and the information is downloaded in a format that various programs can import to use in the planning and generation of the documents. This would save the attorney a lot time in recreating the data.

I question whether the attorney should not have the data loaded to the firm's web site and sent to the attorney via e-mail or downloaded from the web site database. Although there would be time to enter the data into the various programs, the data would not be out of the attorney's hands. Also, encryption of this data would be available depending upon the request of the client.

Finally, a new company is at the institute - U.S. Deeds. They will have a state specific deed prepared and recorded for any state. The cost is $150 + recording costs. Ted Atlass queried whether you would get any advice. The danger would be that they would prepare an adequate deed, but, especially where the laws of the state are not understood by the attorney, i.e. a deed for California property needed by an attorney unfamiliar with community property, no suggestion that there are other issues that need considered.

In that case, whose O&E policy will take the hit?

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Next, Reporter Julia Fisher reports the following about Carol Harrington's presentation Wednesday morning entitled "Grandfathered Generation-Skipping Trusts":

On Wednesday, Carol Harrington covered the final regulations regarding effective date grandfathered GST trusts. The regs, which were issued December 20, 2000, address two issues: the two recent case holdings on the effect of a general power of appointment, and the rules regarding additions to grandfathered trusts.

The two cases (Peterson v. Comm'r, 1996 and Simpson v. US, 1999) reached different results when a surviving spouse held a general power of appointment over a pre-1986 marital trust. In the Peterson case the court sided with the IRS and held that the lapse of a general power in favor of grandchildren resulted in a taxable direct skip. The court in Simpson found for the taxpayer where the surviving spouse exercised the general power in favor of grandchildren. The regulations resolve the issue by providing that any property remaining in trust after the release, exercise or lapse of a taxable power is treated as a constructive addition to the trust.

The second issue that the final regs address is the case of additions to the corpus of effective date grandfathered trusts. The transition rule provides that GST does not apply to an effective date grandfathered trust except to the extent of post effective date additions to the trust, but a definition of addition is not found in the effective date provisions, the legislative history or existing regulations. Numerous private letter rulings have been sought, and many have been issued, seeking clarification of the addition rule when changes are made to a grandfathered trust.

The final regs provide four safe harbors regarding changes to exempt trusts, generally approving changes that arise from:

1. Certain powers held by the trustee;

2. Court approved settlements;

3. Judicial constructions; and

4. Modifications that do not shift beneficial interests in the trust to a lower generation or extend the time for vesting beyond the period provided in the original trust.

Carol pointed out that the regulations do not make clear the actual effect of the loss of exempt status if a change to the trust is treated as an addition.

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Next, Reporter Gene Zuspann reports the following on Thursday morning's leadoff presentation entitled "Funding Marital Deduction (and other) Bequests: Only the Questions are the Same" by Prof. Jeff Pennell:

Some of Jeff's material comes from several of his publications - BNA Tax Management Portfolio, 843 Estate Tax Marital Deduction, and Casner and Pennell, Estate Planning, Chapter 13. Also, the footnotes indicate that many of the provisions in the material are adapted for forms originally copyrighted The Northern Trust Company, printed with permission.

Jeff started with a chart on the different alternatives to funding the marital trust. He pointed out that the planner needs to keep in mind the possibility that the estate tax is repealed and carryover basis comes back. In this scenario, pecuniary funding could case significant taxable gains on funding - much larger than now. Also, he indicated that each of the alternatives have a hickey. The object in funding is to avoid the hickey.

Jeff has 8 alternatives. His most important criteria is the flexibility of the alternative chosen.

He next discussed PLR 9143008. An attorney in California has allegedly been told that the Service will issue a Revenue Ruling on the facts of this case. The PLR used cascading funding, which Jeff feels is very useful.

The method of funding can be chosen at the time of funding, rather than when the instrument is drafted.

Jeff then discussed the Chenowith case. The planning technique is to fund the marital share with 51% of an entity, getting the control premium in the funding, and then using intervivos gifts to reduce the share to less than 50% by the date of death. Note that you "can screw this up," citing TAM 9403005.

The problems with the large amount of IRD in many estates often needs to be taken into account. Sometimes these should be allocated away from the Marital bequest. This can also be trust when funding with 2057 assets. This topic will be addressed by Steve Martin in a presentation on 2057 later today.

Funding with split interests was discussed using cash to fund, then buy a life estate in an asset with the remainder purchased by the nonmarital share. He cites Treas. Reg. 25-2702-2(d)(1) Ex. 3 has authority that this is allowable.

In some regions, the Service is waiting for the surviving spouse to die, to determine if there was adequate funding at the date of the funding of the marital share. If a funding problem exists, there are sometimes massive gift tax, along with interest and penalties that have run for a number of years. One alternative, at the end of funding, have the surviving spouse give the fiduciary a release (normally the gift starts at the time that the spouse cannot make a claim against the fiduciary), and then file a gift tax return. This can get the statute running.

With the separate share rule, pecuniary maritals have become as difficult as fractional share maritals. "Caution also is in order if state law provides that the recipient of a true worth pecuniary bequest is entitled to statutory interest in lieu of income." The regs provide that the interest distribution does not carry DNI and is not entitled to a deduction - the result is double taxation. The moral - emphasized several times in the presentation - is that each choice does have a hickey.

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Next, Reporter Julia Fisher reports the following about Keith Bilter's presentation Thursday morning entitled "Marital Deduction Formula Clauses":

On Thursday, following Professor Pennell's discussion of marital deduction funding formulas, D. Keith Bilter of San Francisco analyzed his approach to this question. His analysis is founded on the objective that the marital deduction not be overfunded. This goal can best be met in most circumstances he posited by the use of three shares, all funded at date of distribution values: a pecuniary marital formula, a pecuniary credit shelter amount equal to the balance of the assets of the estate at date of death fair market value and a residuary equal to any balance of the estate.

Keith's conclusion is that this method will freeze the value of the marital, and that all appreciation will be allocated to the third residuary share. If the assets depreciate prior to funding, the plan provides that the marital and credit shelter shares abate proportionately.

This approach mandates careful attention to the GST funding rules that apply to pecuniary bequests. His conclusion is that a true worth marital funded at date of distribution values, using assets fairly representative of appreciation and depreciation during the period of administration and bearing appropriate interest will satisfy the GST requirements.

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Next, Reporter Gene Zuspann reports the following on Steve Martin's Thursday morning presentation entitled "Practical Aspects for Qualified Family Owned Business Interests [QFOBIs]"

Both Berle Abbin, who introduced Steve, and a number of Steve's colleagues said they have no intention of reading or using 2057, or for that matter, 2032A.

The basic thrust, if you qualify, is to get an additional deduction of $675,000. However, this is deceiving. The actual benefit is the difference between the current applicable exclusion amount and $1,300,000. This is the maximum that can be used after the interaction of the applicable exclusion amount and 2057. There is great complexity. However, Steve pointed out that he comes from a small community and his clients are usually smaller. They care about the savings gained using 2057. Further, pairing 2032A and 2057 in an estate of a married couple, can shelter $4.2 million from tax.

Steve believes that 2057 may be expanded. This comes from his conversations with people in Treasury. The reason is that they are looking for targeted tax relief - relief that benefits taxpayers that engage in certain activities.

Steve discussed the eligibility requirements of 2057. He pointed out that some of the terms in the statute are not defined or clarified, and that some, such as present interest, have a different meaning than their definition in other sections (2503 in the instance of the term present interest). He also discussed events and repercussions of recapture caused by an early disposition of a QFOBI - a qualified family owned business interest. One scary thought is that, if a recapture tax is owed, the tax and interest could exceed the value of the interest.

[Author's note: Several years ago, Don Kelley, in his presentation on a related topic, said that he "papers the file" with instruction letters, warning letters, and other CYA letters to the parties signing the election - a VERY GOOD IDEA!]

Initially, Steve pointed out that 2057 is highly dependent upon 2032A, having 16 cross-references to that section. However, there are many differences, so the planner must be cognizant of these. Steve has found that there is no clear answer to which election is best. He talks with the family about the differences and the probable actions of the family in the recapture period. Also, there is no authority for a protective election under 2057 (there is under 2032A).

Another area where there is no authority is for a partial election. Steve has filed returns with partial elections, which have been audited and closed without problem.

Originally, when this section was passed as 2033A, there was concern about the type of martial formula. A pecuniary marital formula is best for using 2032A. Now, Steve believes that any marital formula works with 2057. He pointed out the Jeff Pennell's material indicates that a formula marital may not work.

Steve drafts with all of his QFOBI provisions in one place. This includes subtrusts and those provisions to help avoid triggering the recapture tax. Also, he sometimes includes provisions creating positions to assist with material participation by a qualified heir (a requirement to avoid recapture), such as appointing a qualified heir as a special trustee, or to hire a qualified heir as a manager. To avoid problems with persons not signing the election and recapture agreement, he sometimes modifies his tax clause to provide that if a beneficiary does not sign the agreement, that beneficiary's share will be burdened with the extra tax caused by the inability to elect 2057. This is often a problem where one heir is managing the business, and the other heir(s) are not around and not involved - those not involved are not willing to take the risk of a large recapture tax if something goes wrong.

Finally, he discussed the problems with buy-sell agreements and premarital agreements where QFOBI's are involved.

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That is it for Report No. 4. 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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HECKERLING INSTITUTE 2001
REPORT #5

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REPORT NO. 5 - Thursday, January 11, 2001

First, Reporter Steve Leimberg reports the following on Kathryn Miree's Thursday afternoon presentation entitled "he Family Foundation: An Owner's Manual":

Kathryn Miree, of Kathryn Miree & Associates in Birmingham, Alabama, co-author with Jerry McCoy of THE FAMILY FOUNDATION HANDBOOK delivered a very practical and fast paced commentary on what advisors need to know - say - and do - with respect to family foundations. Here are some of her thoughts:

Family foundations comprise about 40% of all foundations - but are rapidly becoming a larger percentage. It's estimated that there are over 18,000 Family Foundations - and this number is growing rapidly. These range from small (too small?) ($20,000- $30,000) to the Bill Gates size approaching $22,000,000.

The planner has four main roles: First, consider and fully explore the alternatives. Second, if a foundation IS appropriate, select the proper form. Third, instruct, warn, and help keep the parties within state and federal guidelines and laws. Fourth, help the parties structure and monitor the operation of the foundation including governance, structure, and grant-making.

Kathryn noted three reasons to be ultra careful about the set-up and structure of the Family Foundation: (1) The foundation is a public entity in the sense that the public will have knowledge of its deeds/misdeeds and to a great extent the public will see and think of the family as it is reflected in the foundation's actions, (2) The foundation's board has accepted significant and continuous long-term fiduciary responsibility (spelled L I A B I L I T Y), (3) the penalties for failure to meet federal and state laws in this area are severe.

It is very important that the professional impress upon family members that their responsibility encompasses much, much more than merely writing checks. (And also that the foundation - even though it is preceded by the word, "family" is not equivalent to a discretionary family checking account. So advisors must caution family members that foundation money must not be used to pay a family member's charitable pledges or other personal expenses).Planners must also focus - and have family members focus - on what the goal(s) of the foundation are - and how important each goal is. For example, "Are we here merely to encourage philanthropy?" " Is the major objective to bring the family together?" "Do we want (need) the foundation to support our children financially?"

The importance of concentrating on goals makes the creation of a mission statement critical and requires that the board of directors be very involved in the creation of that statement. So advisors should construct and give involved family members questions to answer. Those questions, regarding the mission of the foundation, should be used by all parties to move the parties to - and keep the parties in - consensus. Kathryn continually warned about the fact that different family members will have different agendas and goals and that a key role of the professional was to take the time to help the family work through the issues. Her outline reminds her readers that a family foundation can be a catalyst for family discord rather than the unifier many donors hope it will be if the planners and creators ignore generational differences, don't take time to recognize individual strengths and weaknesses, and don't select and train the board properly.

Kathryn stressed that the rules and tax laws in the foundation area are not intuitive and that it was easy for family members to "stray from the path". She discussed the Federal Volunteer Protection Act of 1997 which was enacted to provide a measure of liability protection for true volunteers (uncompensated directors, officers, trustees, or other volunteers) when acting within the scope of their duties and when the act or omission was not willful, criminal, gross negligence, reckless misconduct, or flagrant indifference) but cautioned that this protection has its limits.

It is essential, she continually reminded the audience, to develop and maintain policies and procedures, checklists and forms - particularly in the areas of (1) gift acceptance (be particularly sensitive about real estate and closely-held businesses), (2) grant making policies, (3) board training, and (4) investment policies.

The key function of a family foundation is, of course, grant making - and Kathryn pointed out that this is also the area where the board is most likely to get into trouble. Her three guidelines here to professionals were: (1) continually remind the board that its distributions must be for CHARITABLE purposes, (2) it must strike a balance between the minimum distributions required by law (to discourage accumulations of funds) and exhausting the funds of the foundation, and (3) since the IRS will not take your word forwhat you - or the recipient of the grant has done with the foundation's money, the board must keep meticulous records and provide timely tax information to both the federal and state government.

Professionals should help keep clients out of trouble by giving them examples of "safe" and "risky" distributions. In other words provide each board member with a list of "on road" and off-road examples so they know when red flags should be raised and bells should ring -BEFORE they make a distribution.

Setting realistic objectives and getting the board to agree to rules at the outset will avoid divisiveness and makes problems easier to solve at the outset.

One of the policies that should be decided upon early on in the foundation's life is the grant-awarding process and the procedure for handling - or denying - unsolicited grant applications. Kathryn recommended the creation of a checklist to help board members know what to look for - and a format for politely saying, "NO."

She discussed the prohibited transaction (essentially "anti-self interest" "anti-abuse") rules and the potential for violation of these strict prohibitions. The many traps of self-dealing (transactions between the foundation and a "disqualified person" (such as certain substantial contributors, foundation manager, certain family members, or certain others with power or control over the foundation) include the payment of salaries for family members. The compensation problem can arise with staff, trustees, or board members paid for professional services. The key to safety seems to be the reasonableness of the payment (consider complexity, time, training) with respect to the work done, the skill required, and the need of the foundation for the specific services rendered. .

Kathryn discussed the general prohibitions against real estate sales or leases between the foundation and "disqualified persons" and the exception that allows a disqualified person to lease real estate to the foundation at no cost. She also alerted the audience to the problems where the foundation owned a business - and that foundations should generally not be overly involved in the ownership of businesses.

Kathryn concluded her comprehensive and informative discussion by stating that the attorney's central role is to assure that the private foundation vehicle is "right" for the client and the client's family, that a proper structure is in place to facilitate the creation of a mission statement and the accomplishment of that mission, create forms and checklists to make life easier and safer for board members, and help avoid crisis management.

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Next, Reporter Steve Leimberg reports the following on Thursday afternoon's Special Session III-B entitled "What's New in Life Insurance?" and staring three well known presenters, Leslie C. Giordani, Lawrence Brody and Charles L. Ratner.

First, Leslie Giordani's presentation:

Leslie Giordani, a partner in Giordani, Schurig, Beckett and Tackett, LLP in Austin, Texas discussed offshore and domestic private placement life insurance. These are concepts that are new to many - although as she explained - the key benefits of such techniques (incredible flexibility, highly efficient cost structure, and very favorable tax results) have been available for many years and there has been a recent surge in the number of products available to facilitate this planning for the ultra wealthy (best used with clients who have a $20 million plus net worth). The facilitating vehicle is U.S. tax compliant VUL (Variable Universal Life Insurance) issued by an insurer situated outside the U.S. (For example in Bermuda or the Cayman Islands).

Her talk was divided into three segments: (1) advantages, (2) tax rules, and (3) implementation. Advantages include: TAX (earnings grow tax deferred within the "shell" of the policy, the cash values can be accessed tax free if the policy is not a MEC (Modified Endowment Contract, no U.S. state premium or federal DAC tax is imposed), and the death benefit is tax free), FLEXIBILITY (The client can select - and retain the ability to replace - one or more investment managers and thus has considerable (albeit indirect) influence over the assets which will be purchased with the money the client puts into the contract. There are no SEC or state insurance or "Blue Sky or other securities laws" to contend with. So a broad range of investment products and designs is possible. In some situations it may even be possible to pay premiums "in kind" rather than in cash), FEE STRUCTURE (The fees and annual charges are exceptionally low relative to typical domestic based products), and ASSET PROTECTION (There is typically higher protection against creditors than is afforded to most U.S. based products).

DESIGN: Leslie pointed out that these VUL products are almost always an investment rather than tax-driven tool so, in design, considering that mortality charges are a drag on investment, these policies usually are arranged with minimum death benefit relative to cash values. Usually, the attempt is to save income rather than estate tax with these contracts and so the normal estate planning tactic of placing the policy into an irrevocable trust is not used. (Such use would also have the double disadvantage of high gift tax cost and block access to policy cash values). Quite often, the overall plan encompasses the use of cash already given away. So clients who have already established and funded dynasty trusts would be good candidates.

DOWNSIDE: All the normal consumer protection expected by purchasers of domestic U.S. life insurance does not exist - since the offshore policy lives in an essentially unregulated environment. (But of course, because of their size, the insureds are usually sophisticated investors and should have sophisticated counsel capable of the proper due diligence).

NEEDLES TO THREAD: Leslie pointed out that the following Code Sections must be carefully studied and complied with: 7702, 7702A, 817(h), 4371, and 953(d). Leslie stressed that it is exceptionally important that the insurance carrier selected have the software and systems to assure the client of continued compliance with these code sections. Although this is typically not a problem for the offshore subsidiaries of U.S. insurers or large offshore carriers, it may be a problem for smaller offshore companies.

OFFSHORE IMPLEMENTATION: Doing this right requires that almost all the steps be accomplished outside the U.S. So, once the client has a general idea of the benefits, costs, tax, and other legal issues and has reviewed sample policy illustrations, the following must be completed by the insured offshore: Discussion of specific transaction details with broker, review of specific illustrations and comparison of specific carriers, specific discussion of carrier to use, the policy application, medical and financial underwriting, ownership (trustee of a foreign trust or foreign company must own the policy), premium payment (the foreign owner must make payments directly to the offshore insurer.)

Once these things are accomplished - all offshore - the carrier will typically place all or essentially all of the risk with reinsurers. At that time, the trust will be finalized and the trustee of the trust will sign the application. Upon receipt of a final offer from the carrier, the premium will be placed into the policy's segregated account.

Leslie concluded her exceptionally well constructed and lively talk by emphasizing the importance of carefully selecting an insurance broker. Among the duties of a broker are to obtain the best possible medical and underwriting outcome, assist in policy design, assure and constantly monitor due diligence, tax compliance, advocate with reinsurers, negotiate fees, monitor jurisdictional issues, and provide follow through service.

Second, Larry Brody's presentation:

Lawrence Brody is a partner in the St. Louis based international law firm of Bryan Cave, LLP. Larry had the unenviable and Herculean task of explaining the unexplainable, the just released IRS notice 2001-10 on split dollar. As expected, he performed a masterful job.

Here are snippets of his major comments: (Because of the importance of this topic, I'm going to go beyond a quick review and cover as much of Larry's enlightened thinking as possible - as accurately as possible - without interjecting any of my own opinions).

(1) The notice was not totally unexpected. The IRS, when it stopped issuing rulings on split dollar in mid-1999, signaled warning that the taxation was "under study". The IRS, since the 1996 TAM, has been silent on the income taxation of equity split dollar.

(2) The IRS has been "concerned" about the use of "alternative" (substitute) term rates for quite some time.

(3) This Notice is an attempt by several departments of the IRS to put their best thinking on both these issues.

(4) The Notice covers alternative term rates, P.S. 58, and the current IRS thinking on equity split dollar.

(5) The "transfer" of policy values under Section 83 discussed in the â€˜96 TAM was difficult to see since the TAM really didn't explain its rationale. This Notice attempts to make that explanation and follows the TAM.

(6) This Notice asks for comments on the issues it raises and suggests that they will impact on the outcome.

(7) The Notice has many, many segments that are difficult to understand. It starts by stating that the IRS is reviewing the federal income tax of split dollar and providing "interim guidance pending publication of further guidance." Larry asks, not so tongue in cheek, "Is this guidance - or are we waiting for guidance? (It's not really clear WHAT this Notice attempts - or does - accomplish). How reliable is it - and when does it become effective?

(8) Although it primarily addresses split dollar between employers and employees, the Notice goes on to state that it also applies to other situations - including "arrangements including gifts." Larry assumes that means private (personal) family split dollar involving gift tax implications (there are no compensation issues here but the gift and GST implications may be significant). The full implication of this statement is (like much of the Notice) "not totally clear".

(9) The Notice makes an excellent summary of the current state of the law on split dollar based on the published rulings. It does NOT mention the TAM!

(10) The third section (III) begins by stating that none of the published rulings has directly addressed equity split dollar. It then states that equity - if it involves a transfer of property - is taxable under Section 83.

(11) The Notice makes the comment that, if the insured is the beneficial owner of the policy from inception, there is no transfer of property. (Which is exactly the argument foes of the TAM have been making - that without a transfer - without anything "moving" - how can Section 83 apply?) It looks much more like an interest free loan under Code Section 7872, either a demand or term loan. (Larry points out that the temporary regs under 7872 state, if "new things are added" those provisions would be applied prospectively only).

(12) P.S. 58 rates or - if lower - one year term rates: The Notice points out the rates are very out of date (1946). So it doesn't make sense to continue using the rates. IRS is worried about "reverse split dollar" where the employer pays the higher of P.S. 58 or one year term - and states, there is no published guidance that authorizes the use of the P.S. 58 rates. Larry agrees - but points out there is no published authority that prevents the use of the P.S. 58 rates for this purpose. Larry thinks the Service is saying, you can't "do" reverse split dollar - but notes that they don't actually say that. They just say there's no authority. So the effect of this commentary in the Notice is uncertain.

(13) The next few paragraphs relate to term rates. The IRS wants one standard set of rates.

(14) The Notice importantly states, Pending consideration of public comments and pending publication of further guidance, the taxation of split dollar will be determined ... (Larry questions whether this Notice is guidance or a prelude to guidance). But states, "Here's where they are going - IF they are not there yet: You can characterize split dollar arrangement any way you chose - as long as three requirements are met: (1) Your characterization is not inconsistent with the substance of the transaction, (2) the characterization has been consistently followed, and (3) YOU ACCOUNT FOR ALL ECONOMIC BENEFITS PROVIDED TO THE EMPLOYEE!

This means you can treat split dollar as a loan (Section 7872 governs). So ONLY 7872 applies. You must therefore account for the interest. (You do not have to add to that any life insurance protection or anything else! There is no equity issue).

If the employer doesn't get repaid, the advances (premiums) are income (e.g. The Young Case).

Alternatively (to interest free loan treatment), if you don't treat the transaction as a loan, it's a "non-loan" (which means Code Section 83 applies). This is accomplished through a fiction under which the employer (and not the employee) acquires the policy and through one or more deemed transfers shifts the policy cash values to the employee. (Even though in actuality, the employee owned the policy from inception.) In this event, the insured is taxed on the economic benefits under Code Section 83, AND the net amount at risk under Code Section 61 AND on any other benefits under Code Section 61. The Section 83 equity is taxable - presumably - as it accrues (i.e. currently) IF THE EMPLOYEE IS "SUBSTANTIALLY VESTED". Section 4 of the Notice MAY provide grandfathering - or it may NOT. It's meaning and import are uncertain.

Item 6: Where the employer doesn't get repaid: Appears to be a bonus arrangement. Similar to the Young case. Not real clear.

Item B: Grandfathers P.S. 58 rates. Confusing because - if this Notice isn't in effect yet - why is grandfathering necessary? New Table: 2001. Says nothing about survivorship. No comment on U.S. 38.

Larry's bottom line: The Notice raises as many questions as there are answers!

And third, Charles Ratner's presentations:

Charles Ratner, National Director of Personal Insurance Counseling and Managing Director of The Ernst and Young Center for Family Wealth Planning discussed the "the Good, the Bad, and the Ugly, opportunities and risks associated with replacing life insurance, both internally within the same insurer and outside with a different insurer.

Charlie began with a strong caveat that THE PRESUMPTION IS THAT AN EXISTING POLICY SHOULD BE PRESERVED. He emphasized that the burden of proof of appropriateness of replacement is on the party who claims such an action is in the client's best interest and will meet the client's needs, objectives, and circumstance more effectively than the existing contract. He also made it clear in his materials that A POLICY TO BE REPLACED SHOULD NEVER BE CANCELLED UNTIL IT IS CONFIRMED THAT THE REPLACEMENT IS IN FORCE!

The first line of inquiry should always be: "Does the present carrier allow an internal exchange?" (Often, an internal exchange, one through the insurer that issued the existing contract, can be made on a very cost effective basis, often without evidence of insurability, with a waiver of any or most surrender charges, an absence of premium tax, and without payment of an agent's commission on the new policy).

Charlie stated that - although there is no such thing as "the right" or "the best" policy - he emphasized that usually - one type of policy is more appropriate than another in a given situation for a given client at a given time with given objectives - and that policy design - i.e., differences in the allocation of mortality, interest, and "loading" (expense) charges and the increased ability to "dial in" and custom design a desired ratio of death benefit to cash values may be meaningful in accomplishing the client's intended objectives at that time. Often (although not always) a newer product may be "better" than an existing contract because of changes in design features, pricing, or other benefits unavailable through the presently existing contract.

On the subject of appropriateness, Charlie explained that advisors must re-examine their definition of "risk". He stated that what was once considered the least risk, whole life, is now considered by some, because of its relative lack of premium payment flexibility and specified endowment date (and consequent tax consequences), much more risky.

Conversely, he noted, what was considered the highest risk, a policy (e.g. Variable or Variable Universal Life) in which the values were dependent on the success of the specific contract's underlying assets, is considered by some to be a lower risk because of its highly flexible payment (premium) structure and potential for internal growth beyond what is possible in a whole life contract.

He also pointed out that currently, the purchase of ultra large policies is essentially "a buyer's market", i.e., that it is often possible to negotiate both the offer from the insurer and the fee payable to the agent to write and service the case.

Charlie emphasized the care and deliberation which should be taken by all parties before a policy was replaced and concluded with a quip that "Replacement was not a task that should be attempted at home."

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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 "Live Summary Report" was received by them late Thursday evening re the 2001 Technolawyer @Awards:

1) Favorite Accounting Software goes to: Quickbooks

2) Favorite Case Management software goes to TimeMatters!

3) Favorite Document Assembly/Automation Solution goes to -- HOTDOCS/HOTDOCS PRO

4) Favorite Document Management Solution goes to -- WORLDOX

5) Favorite Handheld Computer goes to -- PALM SERIES

6) Favorite Handheld Application goes to -- AVANTGO

7) Favorite Knowledge Management Solution goes to -- CASEMAP/TIMEMAP

8) Favorite Legal Research Tool goes to -- WESTLAW

9) Favorite Legal Web Site goes to -- FINDLAW

10) Favorite New Legal Software Product for 2000 goes to -- TIMEMAP

11) Favorite Online CLE Provider goes to -- LAW.COM

12) Favorite Print Legal Technology Publication goes to -- LAW OFFICE COMPUTING

13) Favorite Time-Billing Software goes to TIMESLIPS!

14) Favorite Word Processing Software goes to - MICROSOFT WORD [that's a first]

15) Favorite TechnoReleases goes to -- CASESOFT

16) Favorite TechnoLawyer Contributor goes to -- ROSS KODNER

17a) MasterPost of the Year Part 1 goes to -- MARK FELLMAN -- for the MasterPost entitled "ASPs Deserve Better than FUD"!

17b) MasterPost of the Year Part 2 goes to -- JEFF BEARD -- for the MasterPost entitled "Palm or Visor?"!

18) Syndicated Contributor of the Year goes to -- DENNIS KENNEDY

19) Techno-Firm of the Year goes to -- KIRKPATRICK & LOCKHART LLP -- whose main office is in Pittsburgh

20) Legal Technology Consultant of the Year goes to -- THOMAS ROWE

21) TechnoLawyer of the Year goes to -- DENNIS KENNEDY

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That is it for Report No. 5. 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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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 recognized 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 to 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 discliamer relates back before a transfer, it may be effect. 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 entitle "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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HECKERLING INSTITUTE 2001
REPORT #7

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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. 7 - Friday, January 12, 2001

First, Reporter Alan Rothschild reports the following on Roy Adams' Friday morning presentation entitled "Ethics at the Edge: Sophisticated Estate Planning and Professional Responsibility."

In the final lecture of the 2001 Heckerling Institute, Roy Adams discussed the practical and ethical components of three cutting edge planning techniques -- the Remainder Purchase Marital Trust ("RPM Trust"), the Guaranteed GRAT and the Restricted Management Account ("RMA").

RPM TRUST --- The RPM Trust is a simultaneous transfer of a life interest in trust to a spouse coupled with a sale of the remainder interest to their children. The transfer to the spouse is designed in a way which purports to qualify for the gift tax marital deduction, but which is not subject to estate tax on the spouse's death. If successful, the entire property interest, less the interest actually paid to the spouse from the trust, passes to the children gift and estate tax free.

In the RPM Trust, the spouse will not have a GPA and a QTIP election will not be made. As such, the property should not be included in the spouse's estate at their death. However, the interest transferred to the spouse should qualify for the gift tax marital deduction because the children pay the parent/grantor adequate and full consideration for their interest, thus, Section 2523(b) does not apply.

In order to reduce valuation issues, Adams recommends that the spouse receive either an income only interest in the trust or an annuity. This will make valuation one of a simple annuity or life estate. On the other hand, if an ascertainable or discretionary standard is used, then correct valuation is difficult to achieve.

In an all income RPM Trust which pays income to the spouse for the shorter of a specific term or the spouse's life, and if the trust invests for growth, then all of the appreciation on the trust property should be transferred to the children free of transfer taxes. This result is clearly better than a GRAT and sale to an IDGT where only the growth in excess of the IRS rates is passed on to the children.

In an annuity RPM Trust, the trust could pay the spouse an annuity for a fixed no. of years. Adams noted that the annuity could be structured in such a way that the purchase price paid by the children was significantly lowered. An annuity RPM Trust has significant advantages on a GRAT also -- there is no mortality risk -- if the spouse dies during the term, only the present value of the remaining annuity payments are included.

Adams' outline goes into significant detail about the issues governing the taxation of these types of interests. He emphasizes that it is critical to the economic viability of the RPM Trust that adequate and full consideration for the remainder interest be equal to the actuarial value of such interest under Section 7520.

Two ways trouble could arise are under Gradow and Chap. 14. Under Chap. 14, the transferor does not retain any interest in trust, rather, he or she simultaneously transfers a life estate to his or her spouse and sells the balance. Some courts, like Gradow, have held that for estate tax purposes, in determining whether a transferor has received full and adequate consideration for their remainder interest sale, the measure is not the actuarial value of the remainder, but the full value of the property. If this rule were applicable to RPM Trusts, they would not work. However, Adams urged that the decisions should have not an impact on these rusts since the grantor does not retain an interest in the trust (the entire interest is transferred at once), and these decisions do not apply to gift tax inclusion in any event.

GUARANTEED GRAT --- In a traditional GRAT, if the grantor dies during the GRAT term, all of the GRAT property is included in the grantor's gross estate under Sections 2036 & 2039. Adams suggested eliminating this "mortality risk" through the establishment of a Guaranteed GRAT. This type of GRAT is structured as follows: Parent creates traditional GRAT for the shorter of a period of years or their death. Parent also retains a contingent reversion so that the remaining GRAT property will be paid to their estate if they do not survive the GRAT term. Their children are the remaindermen and receive any excess GRAT property at the end of the term.

Shortly after establishing the GRAT, parent/grantor and children/remaindermen enter into a purchase agreement for the children to purchase the equivalent of the parent's contingent reversion at FMV. If parent dies during the GRAT term, the GRAT will terminate and distribute the remaining property to parent's estate. The estate will be obligated to pay the children an amount equal to the value of the amount it receives from the GRAT on account of the parent's contingent reversion, and the children pay the estate an amount equal to the current actuarial value of the contingent reversion. The estate will then be entitled to an estate tax deduction for the amount it pays to the children. Therefore, Adams suggested, even though the GRAT property is included in the parent's estate, it receives an offsetting deduction.

Adams' outline cited a 1999 Trusts & Estates article by David Handler and Deborah Dunn entitled "Guaranteed GRATs: GRATs without Mortality Risk" for more information.

RMA --- To establish a Restricted Management Account, an investor establishes an investment management account, funds it with cash or securities and enters into a management agreement with an investment manager. Under the terms of the agreement, the investment manager has the exclusive right to manage the investments and the investor may not terminate the agreement for a fixed period of time. Adams noted that the SEC prohibits registered investment advisors from entering into these types of agreements. However, non-registered advisors, banks and trust companies may be able to since they are not subject to this SEC prohibition. One bank is already test-marketing this product in the Pittsburg and West Palm Beach markets.

Because of the restrictions on access to the account, Adams suggested that RMA accounts should be subject to at least as favorable valuation discounts as Rule 144 stock. Such stock has been valued in ranges from 20-60%, with a recent study showing 21% as the average.

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Next, along with the recent development in the split dollar arena that we reported on briefly in Report No. 6, there was another newsworthy development that occurred in the MRD arena that first came to light only after Natalie Choate had finished her Fundamentals presentation on Monday morning entitled "The Fundamental of Estate Planning for Qualified Retirement Plan Benefits and IRAs: What to do in real life." Here are some recent discussion list postings of interest on this subject:

Date: Fri, 12 Jan 2001 08:57:42 -0600
From: "Hoyt, Christopher" <HoytC@UMKC.EDU>
Subject: [GIFT-PL] Treasury Overhauls IRA Distribution Regulations !!
To: GIFT-PL@LISTSERV.IUPUI.EDU

Dear Colleagues:

A remarkable development!! The Department of Treasury has issued a substantial revision to the proposed regulations that govern the required minimum distributions from IRAs and qualified retirement plans both after age 70 1/2 and after death. It substantially overhauls the proposed regulations that have been in place since 1987!

The rules are considerably simplified. There is no need to elect to recalculate or not recalculate one's life expectancy. A beneficiary can be determined as late as the end of the year following the year of the employee's death.

Amazing!!

What is the impact on charities? Give me some time to read it please. You can look at it yourself, if you like. An excerpt from the preamble to the revised regulations is attached, including the popular situation of naming a trust as a beneficiary of an IRA. If you would like to see the full text, the tax gurus at Tax Analysts published the full text in its Friday edition of its Tax Notes Today library available on LEXIS. The headline reads:

2001 TNT 9-7 PROPOSED REGS SUBSTANTIALLY SIMPLIFY MINIMUM REQUIRED DISTRIBUTIONS. (Doc 2001-1313 (108 original pages))

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REQUIRED DISTRIBUTIONS FROM RETIREMENT PLANS
[4830-01-u]

DEPARTMENT OF TREASURY
Internal Revenue Service (IRS)
26 CFR Parts 1 and 54
[REG-130477-00; REG-130481-00]
RIN 1545-AY69, 1545-AY70
JANUARY 11, 2001

EXCERPT FROM THE PREAMBLE THAT EXPLAINS THE CHANGES:

As discussed below, in response to extensive comments, the rules for calculating required minimum distributions from individual accounts under the 1987 proposed regulations have been substantially simplified. Certain other 1987 rules have also been simplified and modified, although many of the 1987 rules remain unchanged. In particular, due to the relatively small number of comments on practices with respect to annuity contracts, and the effect of the 1987 proposed regulations on these practices, the basic structure of the 1987 proposed regulation provisions with respect to annuity payments is retained in these proposed regulations. The IRS and Treasury are continuing to study these rules and specifically request updated comments on current practices and issues relating to required minimum distributions from annuity contracts.

EXPLANATION OF PROVISIONS

Overview

Many of the comments on the 1987 proposed regulations addressed the rules for required minimum distributions during an employee's life, including calculation of life expectancy and determination of designated beneficiary. In particular, comments raised concerns about the default provisions, election requirements, and plan language requirements. In general, the need to make decisions at age 70 1/2, which under the 1987 proposed regulations would bind the employee in future years during which financial circumstances could change significantly, was perceived as unreasonably restrictive. In addition, the determination of life expectancy and designated beneficiary and the resulting required minimum distribution calculation for individual accounts were viewed as too complex.

To respond to these concerns, these proposed regulations would make it much easier for individuals -- both plan participants and IRA owners -- and plan administrators to understand and apply the minimum distribution rules. The new proposed regulations would make major simplifications to the rules, including the calculation of the required minimum distribution during the individual's lifetime and the determination of a designated beneficiary for distributions after death. The new proposed regulations simplify the rules by

* Providing a simple, uniform table that all employees can use to determine the minimum distribution required during their lifetime. This makes it far easier to calculate the required minimum distribution because employees would

* no longer need to determine their beneficiary by their required beginning date,

* no longer need to decide whether or not to recalculate their life expectancy each year in determining required minimum distributions, and

* no longer need to satisfy a separate incidental death benefit rule.

* Permitting the required minimum distribution during the employee's lifetime to be calculated without regard to the beneficiary's age (except when required distributions can be reduced by taking into account the age of a beneficiary who is a spouse more than 10 years younger than the employee).

* Permitting the beneficiary to be determined as late as the end of the year following the year of the employee's death.

This allows

* the employee to change designated beneficiaries after the required beginning date without increasing the required minimum distribution and

* the beneficiary to be changed after the employee's death, such as by one or more beneficiaries disclaiming or being cashed out.

* Permitting the calculation of post-death minimum distributions to take into account an employee's remaining life expectancy at the time of death, thus allowing distributions in all cases to be spread over a number of years after death.

These simplifications would also have the effect of reducing the required minimum distributions for the vast majority of employees.

THE UNIFORM DISTRIBUTION PERIOD

Under these proposed regulations and the 1987 proposed regulations, for distributions from an individual account, the required minimum distribution is determined by dividing the account balance by the distribution period. For lifetime required minimum distributions, these proposed regulations provide a uniform distribution period for all employees of the same age. The uniform distribution period table is the required minimum distribution incidental benefit (MDIB) divisor table originally prescribed in section 1.401(a)(9)-2 of the 1987 proposed regulations and now included in A-4 of section 1.401(a)-5 of the new proposed regulations. An exception applies if the employee's sole beneficiary is the employee's spouse and the spouse is more than 10 years younger than the employee. In that case, the employee is permitted to use the longer distribution period measured by the joint life and last survivor life expectancy of the employee and spouse.

These changes provide a simple administrable rule for plans and individuals. Using the MDIB table, most employees will be able to determine their required minimum distribution for each year based on nothing more than their current age and their account balance as of the end of the prior year (which IRA trustees report annually to IRA owners). Under the 1987 proposed regulations, some employees already use the MDIB table to determine required minimum distributions. Under the new proposed regulations, they would continue to do so. For the majority of other employees, required minimum distributions would be reduced as a result of the changes.

For years after the year of the employee's death, the distribution period is generally the remaining life expectancy of the designated beneficiary. The beneficiary's remaining life expectancy is calculated using the age of the beneficiary in the year following the year of the employee's death, reduced by one for each subsequent year. If the employee's spouse is the employee's sole beneficiary at the end of the year following the year of death, the distribution period during the spouse's life is the spouse's single life expectancy. For years after the year of the spouse's death, the distribution period is the spouse's life expectancy calculated in the year of death, reduced by one for each subsequent year. If there is no designated beneficiary as of the end of the year after the employee's death, the distribution period is the employee's life expectancy calculated in the year of death, reduced by one for each subsequent year.

The MDIB table is based on the joint life expectancies of an individual and a survivor 10 years younger at each age beginning at age 70. Allowing the use of this table reflects the fact that an employee's beneficiary is subject to change until the death of the employee and ultimately may be a beneficiary more than 10 years younger than the employee. The proposed regulations would allow lifetime distributions at a rate consistent with this possibility. Consistent with the requirements of section 401(a)(9)(A)(ii), the distribution period after death is measured by the life expectancy of the employee's designated beneficiary in the year following death, or the employee's remaining life expectancy if there is no designated beneficiary. This ensures that the employee's entire benefit is distributed over a period described in section 401(a)(9)(A)(ii), i.e., the life expectancy of the employee or the joint life expectancy of the employee and a designated beneficiary.

The approach in these proposed regulations allowing the use of a uniform lifetime distribution period addresses concerns raised in comments on the 1987 proposed regulations that the rules are too complex. It eliminates the use of two tables and the interaction of the multiple beneficiary and change in beneficiary rules. Finally, it generally eliminates the need to fix the amount of the distribution during the employee's lifetime based on the beneficiary designated on the required beginning date and eliminates the need to elect recalculation or no recalculation of life expectancies at the required beginning date. * * *

DETERMINATION OF THE DESIGNATED BENEFICIARY

These proposed regulations provide that, generally, the designated beneficiary is determined as of the end of the year following the year of the employee's death rather than as of the employee's required beginning date or date of death, as under the 1987 proposed regulations. Thus, any beneficiary eliminated by distribution of the benefit or through disclaimer (or otherwise) during the period between the employee's death and the end of the year following the year of death is disregarded in determining the employee's designated beneficiary for purposes of calculating required minimum distributions. If, as of the end of the year following the year of the employee's death, the employee has more than one designated beneficiary and the account or benefit has not been divided into separate accounts or shares for each beneficiary, the eneficiary with the shortest life expectancy is the designated beneficiary, consistent with the approach in the 1987 proposed regulations.

This approach for determining the designated beneficiary following the death of an employee after the employee's required beginning date is simpler in several respects than the approach in the 1987 proposed regulations and responds to concerns raised with respect to the effects of beneficiary designation at the required beginning date. Under this approach, the determination of the designated beneficiary and the calculation of the beneficiary's life expectancy generally are contemporaneous with commencement of required distributions to the beneficiary. Any prior beneficiary designation is irrelevant for distributions from individual accounts, unless the employee takes advantage of a lifetime distribution period measured by the joint life expectancy of the employee and a spouse more than 10 years younger than the employee. Further, for an employee with a designated beneficiary, this approach provides the same rules for distributions after the employee's death, regardless of whether death occurs before or after an employee's required beginning date. Finally, in the case of an employee who elects or defaults into recalculation of life expectancy and who dies without a designated beneficiary, the requirement that the employee's entire remaining account balance be distributed in the year after an employee's death has been eliminated and replaced with a distribution period equal to the employee's remaining life expectancy recalculated immediately before death.

DEFAULT RULE FOR POST-DEATH DISTRIBUTIONS

As requested by some commentators, these proposed regulations would change the default rule in the case of death before the employee's required beginning date for a nonspouse designated beneficiary from the 5-year rule in section 401(a)(9)(B)(ii) to the life expectancy rule in section 401(a)(9)(B)(iii).

Thus,

absent a plan provision or election of the 5-year rule, the life expectancy rule would apply in all cases in which the employee has a designated beneficiary. As in the case of death on or after the employee's required beginning date, the designated beneficiary whose life expectancy is used to determine the distribution period would be determined as of the end of the year following the year of the employee's death, rather than as of the employee's date of death (as would have been required under the 1987 proposed regulations). The 5-year rule would apply automatically only if the employee did not have a designated beneficiary as of the end of the year following the year of the employee's death. Finally, in the case of death before the employee's required beginning date, these proposed regulations allow a waiver, unless the Commissioner determines otherwise, of any excise tax resulting from the life expectancy rule during the first five years after the year of the employee's death if the employee's entire benefit is distributed by the end of the fifth year following the year of the employee's death. * * *.

Trust as beneficiary

These proposed regulations retain the provision in the proposed regulations, as amended in 1997, allowing an underlying beneficiary of a trust to be an employee's designated beneficiary for purposes of determining required minimum distributions when the trust is named as the beneficiary of a retirement plan or IRA, provided that certain requirements are met. One of these requirements is that documentation of the underlying beneficiaries of the trust be provided timely to the plan administrator. In the case of individual accounts, unless the lifetime distribution period for an employee is measured by the joint life expectancy of the employee and the employee's spouse, the deadline under these proposed regulations for providing the beneficiary documentation would be the end of the year following year of the employee's death. This is consistent with the deadline for determining the employee's designated beneficiary. Because the designated beneficiary during an employee's lifetime is not relevant for determining lifetime required minimum istributions in most cases under these proposed regulations, the burden of lifetime documentation requirements contained in the previous proposed regulations is significantly reduced.

A significant number of commentators on the 1997 amendment to the proposed regulations requested clarification that a testamentary trust named as an employee's beneficiary is a trust that qualifies for the look-through rule to the underlying beneficiaries, as permitted in the 1997 proposed regulations. These proposed regulations provide examples in which a testamentary trust is named as an employee's beneficiary and the look-through trust rules apply. As previously illustrated in the facts of Rev. Rul. 2000-2, 2000-3 I.R.B. 305, the examples also clarify that remaindermen of a "QTIP" trust must be taken into account as beneficiaries in determining the distribution period for required minimum distributions if amounts are accumulated for their benefit during the life of the income beneficiary under the trust.

Date: Wed, 17 Jan 2001 15:53:48 -0500
From: Tim Barkley <farmertim@FARMLAW.COM>
Subject: [ABA-PTL] IRA/QP regs
To: ABA-PTL@MAIL.ABANET.ORG

Folks,

Forgive if this has already hit the list, but the new MRD rules can be found at http://www.access.gpo.gov/su_docs/fedreg/a010117c.html if anybody wants it from the mouth of the hoss - if your browser will let you, you can skip the Fed Reg lookup step and go directly to

>> http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2001_register&docid=01-304-filed.pdf

>> for the file in .pdf format

--tim

barkley@barkleylaw.com
barkley@birchgroup.com
301-829-3778

Date: Wed, 17 Jan 2001 15:26:29 -0600
From: "Hoyt, Christopher" <HoytC@UMKC.EDU>
Subject: [ABA-PTL] How To Explain The New IRA Distribution Rules To The Numerically Challenged
To: ABA-PTL@MAIL.ABANET.ORG

Dear Colleagues:

Some of you may be looking for a simple way to explain the new IRA distribution regulations to clients, donors and friends. Attached is a short summary that does it, and it includes the tables and exact percentages that they will need to comply with the new laws.

I'm confident that everything is accurate, but if you see a mistake please let me know and I will publicize your correction and my error to the world. I inserted citations to the applicable regulations for you to verify the statements.

The new rules are absolutely wonderful compared to the old rules. For example, it is very easy to name a charity as a beneficiary of part or all of a person's retirement account without accelerating distributions over the person's lifetime or after death.

Over the account owner's lifetime the minimum distributions are the same whether a charity is named as a beneficiary or not. After the account owner's death, however, the administrator will usually want to "cash out" the charity's share of the account before the end of the year that follows the year that the account owner died. That will leave only non-charitable beneficiaries at the end of that year and will give those beneficiaries greater flexibility than if the charity is still a beneficiary. Overall, this cash-out strategy permits a charity to be a beneficiary of part or all of any IRA or retirement plan account without causing any problems to the other beneficiaries, such as children.

CHRIS HOYT
Christopher R. Hoyt
Professor of Law

= =

REQUIRED DISTRIBUTIONS OVER YOUR LIFETIME AFTER AGE 70 ½

GENERAL RULES

Unless you are married to someone who is more than ten years younger than you, there is one -- and only one -- table of numbers that tells you the portion of your IRA, 403(b) plan or qualified retirement plan that must be distributed to you each year after you attain the age of 70 ½.

The only exception to this table is if (1) you are married to a person who is more than ten years younger than you and (2) she or he is the only beneficiary on the account. In that case the required amounts are even less than the amounts shown in the table. To be exact, the required amounts are based on the actual joint life expectancy of you and your younger spouse.

TWO SIMPLE STEPS

Step 1: Find out the value of your investments in your retirement plan account on the last day of the preceding year. For example, on New Years Day you can look at the closing stock prices for December 31.

Step 2: Multiply the value of your investments by the percentage in the table that is next to the age that you will be at the end of this year. This is the minimum amount that you must receive this year to avoid a 50% penalty.

Example: Ann T. Emm had $100,000 in her only IRA at the beginning of the year. She will be age 82 at the end of this year. She must receive at least $6,250 during the year to avoid a 50% penalty (6.25% times $100,000).

THE TABLE: (Law: Prop. Reg. Sec. 1.401(a)(9)-5 Q&A 4(a)(2) (2001)) 70 3.8168%   [[....snip.... but see further below re]]

Unlike the old law, there is no longer any different payout based on who you name to be the beneficiary of your account after your death. The minimum lifetime distributions over the rest of your life will be the same whether you name a charity, your father, your mother, your sister, your brother, your child, your grandchild, your dog or your cat. However, distributions after your death can vary depending on who the beneficiary is.

= =

REQUIRED DISTRIBUTIONS AFTER DEATH FOR PEOPLE WHO DIE AFTER "THE REQUIRED BEGINNING DATE" (after April 1 of the year that follows the year that the person attained age 70 ½).

RULES IF SPOUSE IS NOT A DESIGNATED BENEFICIARY (Spouses generally qualify for the most favorable treatment, such as rollovers)

GENERAL RULE

The general rule is that distributions can be made from the decedent's account over the life expectancy of a person who is the same age that the decedent would have been on the last day of the year in which she or he died. Prop. Reg. Sec. 1.401(a)(9)-5, Q&A 5(a)(2) and 5(c)(3)

EXAMPLE: Sam died at the age of 79. His IRA must be emptied over the next 10 years, since a 79 year old person has a life expectancy of 10 years. The minimum required distribution for each year is 1/10th of the account balance in the first year, 1/9th the second year, 1/8th the third year, and so on.

EXCEPTION IF THERE IS A YOUNGER DESIGNATED BENEFICIARY

Instead of distributing the amounts over the life expectancy of someone who is the decedent's age, amounts can be distributed over the longer life expectancy of the designated beneficiary. The life expectancy of the designated beneficiary is determined by using the beneficiary's age as of the beneficiary's birthday in the calendar year immediately following the calendar year of the employee's death. Prop. Reg. Sec. 1.401(a)(9)-5, Q&A 5(c)(1).

EXAMPLE: When Sam died at the age of 79 he had named his 22 year old granddaughter as the sole beneficiary of the IRA. Next year his granddaughter was age 23. According to the table, a 23 year old has a life expectancy of 59 years. Thus, instead of distributing the amounts over 10 years the amounts can be distributed over 59 years. The first required distribution is 1/59th, next year it is 1/58th, etc. etc.

WHAT IF THERE ARE TWO OR MORE BENEFICIARIES?

Generally the distributions are measured by the beneficiary with the shortest life expectancy. Prop. Reg. Sec. 1.401(a)(9)-5, Q&A 7(a)(1). However, separate distribution computations may be possible with separate accounts. Prop. Reg. Sec. 1.401(a)(9)-8, Q&A 2 and 3.

EXAMPLE: Sam named both his 58 year old nephew and his 22 year granddaughter as equal co-beneficiaries. Distributions to both beneficiaries are based on the older nephew's life expectancy. However, separate distribution computations may be possible with separate accounts for each beneficiary.

WHAT IF ONE BENEFICIARY IS A CHARITY?

GENERAL RULE: The minimum distributions revert to the decedent's remaining life expectancy. The other beneficiaries (e.g., children and grandchildren) cannot use their longer life expectancies. The logic is that a charity does not have a life expectancy. Prop. Reg. Sec. 1.401(a)(9)-5, Q&A 7(a)(1)(last sentence).

SOLUTIONS WHEN A CHARITY IS A BENEFICIARY:

#1: A SEPARATE ACCOUNT FOR THE CHARITY: Prop. Reg. Sec. 1.401(a)(9)-8, Q&A 2 and 3. In that case, the distributions to the other beneficiaries are computed without regard to the account for the charity.

#2: CASH OUT THE CHARITY's INTEREST BEFORE THE END OF THE NEXT YEAR: If the charity's entire share is distributed before the end of the calendar year that follows the year of death, then the charity is no longer a beneficiary and will not affect the distribution period. This is because the point in time when the final beneficiaries are determined is the last day of the calendar year following the calendar year of the account owner's death. Prop. Reg. Sec. 1.401(a)(9)-4, Q&A 4(a).

HERE IS THE TABLE FOR MEASURING THE REMAINING YEARS OF REQUIRED DISTRIBUTION USING EITHER (1) THE REMAINING LIFE EXPECTANCY OF THE ACCOUNT OWNER OR (2) THE LIFE EXPECTANCY OF THE DESIGNATED BENEFICIARY, WHICHEVER IS APPROPRIATE. Table V of Reg. 1.72-9, as required by Prop. Reg. Sec. 1.401(a)(9)-5, Q&A 6. [[....snip.... but see further below re]]

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Date: Thu, 18 Jan 2001 00:23:24 EST
From: VWHenry@AOL.COM
Subject: [ABA-PTL] new IRA regulations ala Prof. Hoyt
To: ABA-PTL@MAIL.ABANET.ORG

With Professor Hoyt's permission, I have reformatted his email on the new IRA regulations for the mathematically challenged and posted it to the following URL. The effect of these changes on charities is still undetermined, but it certainly gives advisors a reason to visit with donors and clients about their estate planning needs.

http://gift-estate.com/RMD-2001.html

Vaughn W. Henry
Springfield, IL

http://gift-estate.com

Date: Wed, 17 Jan 2001 14:40:13 -0600
From: "John L. Olsen" <jolsen02@EARTHLINK.NET>
Subject: [ABA-PTL] New MRD calculator available now!!
To: ABA-PTL@MAIL.ABANET.ORG

Jeff Pickard, the guru of ZCalc, has an online MRD calculator, WITH THE NEW RULES INCORPORATED, available on his website: www.zcalc.com. It's FREE!

He's also got the new rules incorporated in his UTTERLY MARVELLOUS "ZCalc Toolbox". In that one, you'll get every MRD report you could want - including a comparison of the new rules with the old ones, COMPLETE WITH GRAPHS!

The thing does SCINS, CRATS, CRUTS, CLUTS, CLATS, QPRTS, GRATS, and a new ESTATE PLANNING SCENARIO, which graphically illustrates a number of typical EP distribution patterns, in as clear a presentation as I've ever seen. He's selling it for $99 for now, and, in my opinion, it's WELL worth the money!

No, I don't get commissions from Jeff. But he's nice enough to give me the software for free because I'm a loudmouth!

John Olsen

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That is it for Report No. 7 - Stand By for Final Report No. 8

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Headquarters Hotel - Fontainebleau Hilton, Miami Beach, FL
Telephone (305) 538-2000, FAX (305) 674-4607

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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 are published annually by Lexis/Nexis. For further information, go to their Web site at <http://www.lexis.com/>.

The text of these proceedings is also available on CD ROM from Authority by Matthew Bender. For further information, contact your Matthew Bender sales representative, or call (800) 533-1637, or fax (800) 828-8341, or go to URL <http://www.bender.com/>, or write to Matthew Bender & Co., Inc., Attn: Fulfillment Dept., 1275 Broadway, Albany, NY 12204.

Joseph G. Hodges Jr. Esq. , Denver, CO - ABA-PTL List Co-Moderator

jghodges@jghlaw.com
<http://members.iex.net/~jghodges>

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HECKERLING INSTITUTE 2001
REPORT #7a

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. 7a - January 23, 2001

In Report No. 7 we reported the following:

[....snip....]

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Next, along with the recent development in the split dollar arena that we reported on briefly in Report No. 6, there was another newsworthy development that occurred in the MRD arena that first came to light only after Natalie Choate had finished her Fundamentals presentation on Monday morning entitled "The Fundamental of Estate Planning for Qualified Retirement Plan Benefits and IRAs: What to do in real life." Here are some recent discussion list postings of interest on this subject:

[....snip....]

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Natalie Choate has now posted some very helpful information about these new Minimum Distribution Rules and the Amendments to the Proposed Regulations on her Web site at http://www.ataxplan.com, as follows:

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First, she has posted an "Urgent Notice" about this new development at http://www.ataxplan.com/articles_fr/notice_fm.htm that reads as follows:

URGENT NOTICE!

The IRS has just issued new proposed regulations that make major changes to the minimum distribution rules.

These changes permit REDUCED required distributions for (almost):

Everyone who is already past his or her required beginning date; Everyone whose required beginning date is April 1, 2001;

and MAY permit some favorable change in the required distributions for:

Anyone who has inherited a retirement plan from a person who died after 1999; and even, in some cases, any person who inherited a retirement plan from a person who died earlier than the year 2000.

Click here to read Natalie Choate's 26-page outline summarizing The New Minimum Distribution Rules [SEE FURTHER BELOW]

Where can you find these extremely important new proposed regulations on the web?

www.leimbergservices.com

At Steve Leimberg's always up-to-the-minute website, you can log in using the free trial. Once you have logged in, click on the blue newsletter tab, "EMPLOYEE BENEFIT AND RETIREMENT PLANNING" to find the new proposed regulations. It is newsletter #30.

Brentmark Software at www.brentmark.com/newrmd.htm.

Here is the schedule of updates for this website to reflect the new proposed regulations:

1.A memo describing all the changes in detail will be posted to this website no later than January 19, 2001.

2.The "Trust Review Questionnaire" has been withdrawn from the website; a revised version reflecting the changes will be posted no later than January 26, 2001.

3.Work has begun on a new edition of Life and Death Planning for Retirement Benefits with publication probably in the summer of 2001. As soon as I figure it out, the deal for recent buyers of the 1999 edition will be posted here. In the meantime, for all of you who own the 1999 edition:

4.A completely revised version of Chapter 1 of the book Life and Death Planning for Retirement Benefits (the chapter primarily affected by the changes) will be posted to this website by January 31, 2001.

5.Summary updates to the other chapters will be posted in February 2001 as they are finished.

6.The rest of the information on this website will be updated for the new rules after the above items are finished.

7.All seminars from now on will include the new rules.

As I work to accomplish these items, please bear in mind that:

All information on this website may be out of date until it is updated for the new rules.

Contact all clients who will have reached age 70½ in 2001 (or who reached 70½ in an earlier year) and suggest that they not take their 2001 minimum distribution yet until their situation is reviewed under the new rules.

Contact all clients who are holding inherited IRAs and other inherited retirement plans and suggest that they not take their 2001 minimum distribution yet until their situation is reviewed under the new rules.

---Natalie B. Choate

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Second, on the following Web page she has posted the entire text of her 26-page analysis of the Amendments, with the Table of Contents being as follows:

http://www.ataxplan.com/articles_fr/notice_fm.htm

Understanding the NEW Minimum Distribution Rules

January 2001

Amendments to the Proposed Regulations

by Natalie B. Choate, Esq.
Bingham Dana LLP/Boston MA
www.ataxplan.com

You can either view and print the new rules below OR download the pdf file. You will need Acrobat Reader to open and save the pdf file. (You can download

Reader for free at Adobe's website.)

NOTE: This is article is 26 pages long.

TABLE OF CONTENTS

- Where to find the law; effective dates
- Terminology used in this outline
- The New Way to Determine Lifetime Distributions
- New method of determining required distributions after RBD
- Contrast with old rules; good news for charities and old spouses
- Lifetime distributions if DB is much younger spouse
- Recalculation election ceases to exist
- Planning implications of the new method
- The New Way to Determine Post-Death Distributions
- Designated beneficiary is determined at death, not at RBD
- Final determination is made at end of the year after the date of death
- How to compute distributions: death before the RBD
- How to compute distributions: death on or after the RBD
- Increased significance of post-mortem planning
- Estate or non-qualifying trust as beneficiary
- Who should take action immediately: heirs of deceased participants
- Other Changes and Clarifications Made By New Proposed Regs
- Annuity payouts
- Beneficiary’s beneficiary
- Default rules
- Enforcement and reporting
- IRA inherited by surviving spouse
- Model amendment

- Multiple plans or IRAs, distributions from

- Permitted delays in making MRDs

- QDROs

- Spouse, special rules for

- Trust rules

- When is a trust for the spouse the same as a spouse?

- What Has Not Changed

- Minimum distribution rules not changed by the new proposed regs

- Planning problems not affected by the new proposed regs

- New planning problems created by the new proposed regs

- Comments By Type Of Plan

- Qualified retirement plans

- Roth IRAs

- Traditional IRAs

- 403(b) plans

- 457 plans

- The “Uniform Table”

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The Reporters hope you find this Supplemental information useful.

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That is it for this Supplemental Report No. 7A

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Headquarters Hotel - Fontainebleau Hilton, Miami Beach, FL
Telephone (305) 538-2000, FAX (305) 674-4607
===

HECKERLING INSTITUTE 2001
REPORT #8

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. 8 - Recent Developments and Final Wrap Up

First, on Monday afternoon, 1/8/01, Jonathan G. Blattmachr, Carlyn S. McCaffrey and Pam H. Schneider presented "Recent Developments in Estate, Gift and Income Taxation2000." We reported on Jonathan's portion of this in Report No. 1. Many of the other matters that were discussed will be reported on in an upcoming issue of Richard B. Covey's Practical Drafting (US Trust Co.). Here from the Index of the Covey materials that were handed out and discussed in Miami are the key topics that were covered:

IRC Sec. 67(e) - 2% floor Misc. Itemized Deductions

IRC Secs. 83 and 7872 - Split-Dollar Life Ins.

IRC Secs. 170, 664, 2055 and 2523 - Charitable Deduction - CLTs and CRTs

IRC Sec. 401(a)(9) - Qualified Plan Benefits - payments to POA trust and LE payment method

IRC Sec. 469(g) - Allowance of Suspended Passive Losses

IRC Sec, 529 - Gifts to Qualified State Tuition Programs

IRC Secs. 642(f) and 643(h) - Def. of Trust Grantor - Final Regs.

IRC Sec. 643(a)(7) - CRTs - Proposed Regs.

IRC Sec. 645 - Election Treat RLT as Part of Estate for Income Tax

IRC Sec. 663(c) - Separate Share Regs.

IRC Sec. 678 - Power of Withdrawal

IRC Secs. 679 and 684 - Foreign Trusts - Proposed Regs.

IRC Sec. 1041 - Nonrecognition for Transfers Between Spouses

IRC Sec. 1361 - ESBT Election and Grantor Trusts

IRC Sec. 2013 - Simultaneous Death and Credit for Income Interest

IRC Secs. 2031 and 2512 - Valuations, including the Simplot, Shephard, Knight and Strangi cases

IRC Sec. 2032 - AVD and Late Returns

IRC Secs. 2035-2039 - Lifetime Transfers

IRC Sec. 2041 - GPOAs

IRC Sec. 2042 - Life Ins. and Grantor Power Change Trustees

IRC Sec. 2053 - Claims and Administration Expenses

IRC Secs. 2056, 2519, 2523 and 2207A - Hubert Reg.s and MD

IRC Secs 2501 and 2511 - Gifts and POAs

IRC Sec. 2503(c) - Gift Tax Annual Exclusion

IRC Secs. 2601-2654 GST - Dynasty Trusts & Choices

IRC Sec. 2702 - GRITs, GRATs and GRUTs

IRC Sec. 2703 - Price Fixed in Agreement

IRC Sec. 2704(b) - Applicable Restrictions

IRC Sec. 4942 - Private Foundation Rules

IRC Sec. 6081 - Automatic Extension File Form 706 - Proposed Regs.

IRC Sec. 6166 - Election Defer Payment of Tax

IRC Sec. 6321 - Lien on Trust Property

IRC Sec. 6501(c)(9) - Gift Tax Adequate Disclosure - Final Regs.

Revocable Trusts - Misc. Matters

Changes in Florida Intangible Tax and Estate Tax Interest Rates Connecticut Payment of Death Taxes

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Next, Steve Williams of U.S. Deeds has sent along the following clarification about his new service offering:

Just wanted to make a clarification regarding your comments about the deed preparation company I also own, U.S. Deeds. Your recital of the deed preparation cost for each attorney-prepared deed ($150 + recording) is accurate for most states but some states are higher.

Regarding your question about the advice provided, the attorneys we engage for the preparation in a given state routinely raise issues (such as transfer tax imposition where it may not be anticipated) and recommend alternative forms of conveyance when it appears appropriate. That being said, our purpose is very narrow. It is to properly convey the property to the person or entity requested. We do not provide services in the nature of a co-counsel relationship on the estate planning being conducted.

On your final question, U.S. Deeds' O&E policy covers any legal advice we provide regarding transfers in the State of Florida (where we are located) and any errors or omissions that we may make in transmitting to you the legal advice rendered by the attorney we engage in the state where the property is located. The preparing attorney also carries his or her own E&O coverage. Though I'm not a litigator, I have to naively assume the policy "taking the hit" will be the one covering the party at fault.

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Finally, Cowles Legal Systems, Inc. reports the following re their Cowles Estate Planning Software Demo

Cowles Legal Systems, Inc is committed to your estate planning success! Schedule a live, one-on-one Software Demo and see Cowles Trust Plus Drafting software in action from your PC via the Internet!

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That is it for Report No. 8, our FINAL one.

Thanks for listening, and thanks to all the hard working reporters who gave of their time and talent to make this year's Reports possible.

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 sometime later today 1/18/00

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