

Preliminary Report

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

Again this year a complete listing of the proceedings and speakers is available on the Institute's Web site. The URL for that site is

<http://www.law.miami.edu/heckerling>. For those of you without access to the Web, here are the core parts of the schedule:

Scope of the Institute:

The Heckerling Institute on Estate Planning is the nation's leading conference for estate planners. It is designed for experienced attorneys, trust officers, accountants, insurance advisors, and wealth management professionals who are familiar with the principles of estate planning. As the largest such gathering of estate planning professionals in the country, the Institute has some of the better characteristics of a national convention, offering a unique 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. With the addition of this year's new series on financial assets, 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.
- Our general session lectures, which begin on Tuesday morning and continue throughout the week, provide in-depth analysis of topics of timely interest to experienced estate planners.
- Wednesday and Thursday afternoons offer a wide variety of workshops, panel discussions, and case studies that will examine and provide practical guidance on sophisticated estate planning techniques.
- New this year is a series of afternoon programs focusing on financial assets in estate planning. This series will provide a review of modern portfolio and financial theory, explore how tax considerations can be integrated with those principles, and examine some of the latest wealth management strategies.
- Finally, this year's Institute once again includes our popular Fundamentals Program, designed to be of interest to not only entry-level practitioners, but also to more experienced planners who would benefit from a thorough review of these three important topics. The programs will review the various types of charitable entities, explore planning and drafting for the marital deduction, and examine the preparation and filing of the Form 706

THE INSTITUTE 2004 FACULTY:

Steve R. Akers
Bessemer Trust
Dallas, Texas

Louis J. Chiavacci

Merrill Lynch
Coral Gables, Florida

Ronald D. Aucutt
McGuireWoods LLP
McLean, Virginia

Dennis I. Belcher
McGuireWoods LLP
Richmond, Virginia

Scot W. Boulton
U.S. Bank Private Client Group
St. Louis, Missouri

Michael V. Bourland
Bourland, Wall & Wenzel, P.C.
Fort Worth, Texas

Jeffrey L. Burr
Jeffrey L. Burr & Associates
Las Vegas, Nevada

Jeffrey Callender
Deloitte & Touche
New York, New York

Thomas Christensen, Jr.
Blackburn & Stoll, LC
Salt Lake City, Utah

Virginia F. Coleman
Ropes & Gray LLP
Boston, Massachusetts

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

Nicholas J. DeNovio
Senior Counsel to the Chief Counsel
Department of the Treasury
Internal Revenue Service
Washington, D.C.

S. Stacy Eastland
Goldman, Sachs & Co.
Houston, Texas

David M. English
University of Missouri School of Law
Columbia, Missouri

Mary Louise Fellows
University of Minnesota School of Law
Minneapolis, Minnesota

Charles D. Fox, IV
Schiff Hardin & Waite
Chicago, Illinois

Lawrence A. Frolik
University of Pittsburgh School of Law
Pittsburgh, Pennsylvania

T. Randall Grove
Landerholm, Memovich, Lansverk & Whitesides
Vancouver, Washington

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

Ellen K. Harrison
Shaw Pittman LLP
McLean, Virginia

Dan T. Hastings
Skadden, Arps, Slate, Meagher & Flom LLP
New York, New York

Jerome M. Hesch
Greenberg Traurig
Miami, Florida

Marcia Chadwick Holt
Davis, Graham & Stubbs LLP
Denver, Colorado

Donald O. Jansen
Fulbright & Jaworski L.L.P.
Houston, Texas

Marcus P. Johnson
Bourland, Wall & Wenzel
Fort Worth, Texas

Mary Louise Kennedy

Edwards & Angell, LLP
Providence, Rhode Island

Robert C. Lawrence, III
Cadwalader, Wickersham & Taft
New York, New York

Jonathan R. Macey
Cornell Law School
Ithaca, New York

Jerry J. McCoy
Law Office of Jerry J. McCoy
Washington, D.C. Howard M. McCue

Mayer, Brown, Rowe & Maw
Chicago, Illinois
Judith W. McCue

McDermott, Will & Emery
Chicago, Illinois
Kathryn W. Miree

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

Donald J. Mulvihill
Goldman Sachs
Chicago, Illinois

Richard W. Nenno
Wilmington Trust Company
Wilmington, Delaware

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

Lloyd Leva Plaine
Sutherland, Asbill & Brennan LLP
Washington, D.C.

Robert C. Pomeroy
Goodwin Proctor LLP
Boston, Massachusetts

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

A. Christopher Sega
Venable, Baetjer, Howard & Civiletti
Washington, D.C.

David G. Shaftel
Law Offices of David G. Shaftel, PC
Anchorage, Alaska

Barbara A. Sloan
McLaughlin & Stern, LLP
New York, New York

Conrad Teitell
Cummings & Lockwood LLC
Stamford, Connecticut

William J. Tyne
Bessemer Trust
London, England

Andrew H. Weinstein
Holland & Knight, LLC
Miami, Florida

Glen A. Yale
Oppenheimer, Blend, Harrison & Tate, Inc.
San Antonio, Texas

THE PROGRAM SCHEDULE:

Sunday, January 4
12:00 - 6:00 p.m.
Registration -
Fontainebleau Hilton Resort & Towers or Wyndham Miami Beach Resort

Monday, January 5
8:00 a.m.
Registration - Fontainebleau Hilton Resort & Towers or Wyndham Miami Beach Resort

8:00 - 9:00 a.m.
Complimentary Continental Breakfast

9:00 - 10:30 a.m.
OPTIONAL PRE-CONFERENCE FUNDAMENTALS PROGRAM -
Publicly Supported Charities, Private Foundations and Everything in Between: Talking - and
Understanding- the Talk

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

Conrad Teitell

The structural, practical and tax aspects of publicly supported charities, community foundations, donor-advised funds (maintained by both charitable and "commercial" entities), supporting organizations (three types) and private foundations (non-operating, operating, pass-through, and corporate). Choosing wisely among the donee-charities; plus the plethora of tax rules for outright and split-interest contributions to those entities.

10:30 - 10:45 a.m.

Break

2:00 - 2:10 p.m.

Introductory Remarks

Tina Portuondo, Institute Director

2:10 - 3:30 p.m.

Recent Developments in Estate, Gift and Income Taxation - 2003 Part One

Dennis I. Belcher

Carol A. Harrington

Jeffrey N. Pennell

Materials by Richard B. Covey and Dan T. Hastings

3:30 - 3:45 p.m.

Break

3:45 - 5:15 p.m.

Recent Developments in Estate, Gift and Income Taxation - 2003 Part Two

6:00 - 7:00 p.m.

Complimentary Reception for Registrants

Fontainebleau Hilton Resort & Towers

Tuesday, January 6

8:00 - 9:00 a.m.

Complimentary Continental Breakfast

9:00 - 9:45 a.m.

The Domestic Asset Protection Trust Comes of Age

Richard W. Nenno

This presentation will summarize the domestic asset protection trust laws, discuss their federal income and transfer tax implications, assess their asset protection effectiveness, describe possible uses of these trusts, and compare the domestic trust laws to one another and domestic trusts to offshore trusts.

9:45 - 10:30 a.m.

But I Just Wanted a Few Strings Over the Trust Assets for Me and My Family

Steve R. Akers

A discussion of the controls over distributions and administrative powers that may be retained by a donor or trust beneficiary without causing problems. Non-tax (including creditor effects) and tax factors are explored, including the gift, estate and income tax effects of various powers. The program

addresses the effects of various strategies that a donor may suggest to keep controls over trust assets, including removal and appointment powers.

10:30 - 10:45 a.m.

Break

10:45 - 11:30 a.m.

Cottage Savings is a Loss to Trust Beneficiaries

Lloyd Leva Plaine

This program will address how Internal Revenue Code Section 1001 gain realization and recognition rules and the Cottage Savings holding are applied to beneficiaries of trusts in the case of trust distributions, divisions, modifications, settlements and interpretations. This is especially relevant for trusts that are grandfathered from the GST tax and non-grandfathered trusts with a zero inclusion ratio.

11:30 - 12:15 p.m.

Old But Not Cold - Restructuring, Refocusing, and Retiring Irrevocable Trusts

Ronald D. Aucutt

Many old trusts are unwieldy, unproductive, or otherwise outdated. Distribution standards, fiduciary powers, and trustee succession plans all need to be rethought. Even termination is not always as simple as it sounds. This presentation will address these issues in light of both emerging law and practical constraints.

12:15 - 2:00 p.m.

Lunch Break

2:00 - 2:45 p.m.

Bulletproofing the Family Limited Partnership - Current Issues

John W. Porter

A discussion of current issues involving family limited partnerships and LLCs, including recent case law and IRS pronouncements. The discussion will also focus on the audit and litigation positions taken by the IRS, defenses to those positions, privilege issues, and practice tips to avoid or minimize the risk of dispute with the IRS regarding FLPs or LLCs.

2:45 - 3:30 p.m.

Taming the Tiger: Designing, Implementing and Operating the FLP to Avoid a Successful Section 2036 Attack

T. Randall Grove

Recent cases show that the IRS is having success in attacking family entities through the use of Internal Revenue Code Section 2036. Understanding client objectives and providing guidance before and after the establishment of the entity is very important in avoiding this hazard.

3:30 - 3:45 p.m.

Break

3:45 - 4:30 p.m.

Defined Value Clauses: How Much Do I Love Thee? This Much - No More, No Less A. Christopher Sega

A review of the issues involved in the transfer of "difficult to value" assets. This presentation will

compare so-called "defined value" and "price adjustment" clauses, review the Proctor case and the related public policy concerns, and address the government's attack on formula clauses.

4:30 - 5:15 p.m.

Funding Formulas Fail on Flexibility: Variations on Traditional Marital/Credit Shelter Funding Techniques
Barbara A. Sloan

This session will explore how to create the flexibility so desirable in post-EGTRRA credit shelter/marital deduction planning and how to address control issues and combine techniques to provide maximum flexibility.

Wednesday, January 7

8:00 - 9:00 a.m.

Complimentary Continental Breakfast

9:00 - 9:45 a.m.

Charitable Trust Litigation: Enforcing Donor Intent When the Ties That Bind Become Frayed
Howard M. McCue

What happens when the donor's family becomes disenchanted with the charity that father selected? Who speaks for the charity? This program will examine some recent cases to seek guidance for planners and fiduciary litigators alike.

9:45 - 10:30 a.m.

The Rules of Engagement: Managing Liability for Nonprofit Boards
Kathryn W. Miree

How well do you advise your clients on the risk of assuming a board position at a public or private charity? In this era of accountability, this "how to" manual guides professionals through the process of advising clients on their roles and responsibilities as nonprofit board members, focusing on key areas of risk and best practices for liability management.

10:30 - 10:45 a.m.

Break

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

Question & Answer Session

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

12:15 - 2:00 p.m.

Lunch Break

2:00 - 3:30 p.m. / 3:45 - 5:15 p.m.

FUNDAMENTALS PROGRAM - Basic Estate Planning for Spouses: Drafting for the Marital Deduction Isn't Rocket Science - It Isn't That Precise (Runs concurrently with the Special Sessions)
Jeffrey N. Pennell

The marital deduction: a staple of virtually every estate planning practice. Its basic qualification rules also inform, and sometimes even transcend, other wealth transfer tax issues (e.g., reaching carryover basis, if that becomes a reality). This session will expand your knowledge of the essentials of this bedrock of everyday practice.

2:00 - 3:30 p.m.
Special Sessions I

I-A - CASE STUDY - But I Just Wanted a Few Strings Over the Trust Assets for Me and My Family
Steve R. Akers

This session will address the effects of the various strategies that a donor may suggest to keep controls over trust assets, including removal and appointment powers for the donor or for beneficiaries, and creditor effects of retained powers by donors or beneficiaries.

I-B - Bulletproofing the FLP - Current Issues

John W. Porter
T. Randall Grove

A discussion of current issues involving family limited partnerships and LLCs, including recent case law and IRS pronouncements, audit and litigation positions taken by the IRS, defenses to those positions, and practice tips to avoid or minimize the risk of dispute with the IRS regarding FLPs or LLCs.

I-C - Everything You Always Wanted To Know About Domestic Asset Protection Trusts, But Could Never Find Out

- Richard W. Nenno
- Mary Louise Kennedy
- Jeffrey L. Burr
- David G. Shaftel
- Thomas Christensen, Jr.

Will I be sued if my clients use domestic APTs? Will I be sued if my clients don't use domestic APTs? Is the full faith and credit clause really fatal to domestic APTs? Representatives of five domestic APT states tackle these and other hard questions about this recent technique.

I-D - Charitable Trust Administration: Enforcing Donor Intent When the Ties That Bind Become Frayed

Howard M. McCue

This session will examine some recent cases to seek guidance for planners and fiduciary litigators alike.

I-E - Satisfying Solutions and Practical Planning For S Corporations

Charles D. Fox, IV

This session will examine many of the recent developments with respect to S Corporations, including the new regulations on electing small business trusts and tax affecting valuation strategies, and will examine the important planning issues that arise when advising clients who have or who are considering S Corporations.

I-F - Financial Assets Series (See insert at bottom for program description)

3:30 - 3:45 p.m.

Break

3:45 - 5:15 p.m.

Special Sessions II

II-A - CASESTUDY- The Rules of Engagement for Nonprofit Boards: Case Studies and Cautionary

Tales Kathryn W. Miree Jerry J. McCoy

This session will take an in-depth look at several recent cases involving liability for nonprofit boards, and examine ways to protect nonprofit board members (and the charities they represent).

II-B - Bulletproofing the FLP- Current Issues (Repeat of Session I-B)

John W. Porter T. Randall Grove

II-C - The Future of the Transfer Tax System: Reform or Repeal?

- Dennis I. Belcher
- Lloyd Leva Plaine
- Mary Louise Fellows

The American Bar Association's Sections on Real Property, Probate and Trust Law and on Taxation, the American Bankers Association, the American College of Tax Counsel, the American College of Trust and Estate Counsel, and the American Institute of Certified Public Accountants formed a Task Force on Transfer Tax Reform to prepare a non-partisan, non-political report analyzing the administrability of the gift, estate, and GST tax law as changed by the 2001 Act and alternatives to the 2001 Act. The panel will discuss the Report, which focuses on the transitional period, the carry-over basis rules, the continuation of the gift tax notwithstanding repeal of the estate and GST taxes, proposed modifications to existing law, and alternative tax systems.

II-D - An Update on Retirement Benefit Planning Issues: Recent Developments and Practical Advice

Marcia Chadwick Holt

Virginia F. Coleman

The panelists will focus on the issues of creating separate accounts and naming trusts as beneficiaries. They will also offer some practical advice on resolving retirement issues.

II-E - Restructuring, Refocusing and Retiring Old Trusts

Ronald D. Aucutt

This interactive session, using examples drawn from actual cases, will examine ways to retool old irrevocable trusts or to soften the landing for terminating trusts.

II-F - Financial Assets Series (See insert for program description)

Thursday, January 8

8:00 - 9:00 a.m.

Complimentary Continental Breakfast

9:00 - 9:45 a.m.

Split Dollar Has Split - So How Do We Finance Premiums Now?

Donald O. Jansen

Despite the title, reports of the demise of split dollar have been exaggerated. However, after the final regulations, it is more expensive. The pros and cons of post-regulation split dollar and other premium funding techniques (such as third party financing, sales to defective trusts, GRATs and FLPs) will be reviewed.

9:45 - 10:30 a.m. When the Kids Won't Play Well Together: Tax-Free Corporate Divisions in Family Business Succession Planning

Michael V. Bourland

Effective planning of an estate with a significant family business component is difficult in a

dysfunctional second generation environment. This presentation will examine the necessary steps in a tax-free division and transfer of a family business in corporate form and other estate assets among members of the dysfunctional second generation.

10:30 - 10:45 a.m. Break 10:45 - 11:30 a.m.

Trust Classification Times Four

Robert C. Lawrence, III

This session will discuss the criteria used to classify a foreign (non-U.S.) entity for U.S. federal tax purposes as a trust, association taxable as a corporation, partnership, or disregarded entity. If the entity is a trust, then it is necessary to determine whether the trust is a non-U.S. or U.S. trust, grantor or non-grantor trust, or a complex or simple trust and the U.S. federal tax consequences thereof. The analysis will conclude with a comparison of foreign (non-U.S.) trusts to alternative vehicles used commonly in civil law jurisdictions.

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

Tax Shelters - The Ethical Dilemma

Andrew H. Weinstein

What is a tax shelter; will you know it when you see it; dead or alive; what to do with it when you identify it; navigating the new rules; compliance; confidentiality agreements; professional risks, rewards, responsibilities and penalties. This session will address ethical obligations involving tax shelters and will review targeted issues affecting private client service.

12:15 - 2:00 p.m.

Lunch Break

2:00 - 3:30 p.m. / 3:45 - 5:15 p.m.

FUNDAMENTALS PROGRAM - Preparing and Filing the Form / 706: Who, What, How, When, and Where (Runs concurrently with the Special Sessions)

Glen A. Yale

For practitioners who have prepared no or few returns - the basics and not so basics of preparing the Form 706, including what needs to be reported and what does not, how various assets can be reported, making elections, what deductions are proper and which ones are not, engagement letters for preparing the return and retaining the appraiser, return attachments, assembling the return, and disclosures to the client and to the IRS (they are not the same!). Sample asset and deduction schedules will be critiqued. 2:00 - 3:30 p.m. Special Sessions III

III-A -CASE STUDY - Tax-Free Corporate Divisions in Family Business Succession Planning

Michael W. Bourland

Marcus P. Johnson

This session will present case study examples illustrating the role of family corporate business tax-free divisions in the estate planning process.

III-B - Planning and Drafting for Maximum Flexibility in Credit Shelter/Marital Deduction Planning

Barbara A. Sloan

A review of the many straightforward techniques (ceilings, floors, disclaimers, partial QTIPs, and Clayton trusts) and a discussion of some of the thorny issues that arise when meeting with the client and drafting for these alternatives.

III-C - Tax Shelters - The Ethical Dilemma

Andrew H. Weinstein

Nicholas J. DeNovio

A panel discussion on real life (and death) fact patterns involving the tax shelter dilemma and opportunities for ethical solutions thereto.

III-D - The Uniform Trust Code: Your State Might Be Next

· David M. English

· Judith W. McCue

· Scot W. Boulton

Completed in 2000, the Uniform Trust Code has been enacted in five states and is being considered in over 30 others. This program will review the Code, focusing on the most discussed provisions, including the sections dealing with notice, nonjudicial settlements, trust modification and termination, revocable trusts, and trustee removal. The panel consists of the Code's Reporter and other participants in the drafting and enactment process.

III-E - Premium Financing Techniques

Donald O. Jansen

This session will focus on income, gift and estate tax concerns with various examples of premium funding techniques such as split dollar, GRATs, FLPs, third party financing, and sales to defective trusts.

III-F - Financial Assets Series (See insert for program description)

3:30 - 3:45 p.m.

Break

3:45 - 5:15 p.m.

Special Sessions IV

IV-A - CASE STUDY- Planning for the Very Old Client: The Complex and Confused World of Anna G.

Lawrence A. Frolik

This session will confront the problem of estate and end of life planning for Anna G., an 85 year old widow, who may suffer from modest dementia, was married three times and has step-children, children, and grandchildren, and who lived for years in California, a community property state, but who now resides in a common law property state... and she wants to write a new will.

IV-B - Formulas, Fractions and Ratios - Oh My!

S. Stacy Eastland

A. Christopher Sega

An examination of the defined value and price adjustment clauses being used to limit transfer tax risk, with illustrations of the types of clauses that are sanctioned in the case of disclaimers, GRATs, CRUTs, and marital and charitable bequests, and why the government dislikes these clauses.

IV-C-Tax Shelters-The Ethical Dilemma (Repeat of Session III-C)

Andrew H. Weinstein

Nicholas J. DeNovio

IV-D - Foreign Trusts

Robert C. Lawrence, III

This session will examine the use of foreign (non-U.S.) trusts and alternative vehicles in tax planning.

IV-E- Financial Assets Series (See insert for program description)

Friday, January 9

8:00 - 9:00 a.m.

Complimentary Continental Breakfast

9:00 - 9:45 a.m.

State Death Tax Credit: Planning and Drafting in Light of Phase Out

Robert C. Pomeroy

EGTRRA's phase out of the state death tax credit has resulted in many states imposing an estate tax based on the pre-EGTRRA state death tax credit tables. This program will focus on the deathtime and lifetime planning issues that arise as a result thereof.

9:45 - 10:30 a.m.

Old Age With Fears and Ills: Planning for the Very Old Client

Lawrence A. Frolik

The very old client represents special planning challenges. With death a near reality, the next estate plan is likely the last. Planning is often complicated by client deficits in mental capacity and physical stamina, long-term care costs that threaten to erode the estate, and complex family relations that make it difficult for the client to decide how to distribute the estate. This program will address these and other problems raised by the very old client and will suggest appropriate and effective responses.

10:30 - 10:45 a.m.

Break

10:45 a.m. - 12:00 p.m.

CASE STUDY - Grand Finale - Implementing Bright Ideas

- Ellen K. Harrison
- Jerome M. Hesch
- S. Stacy Eastland

Each panelist will provide separate planning recommendations for different client hypotheticals.

Financial projections, using a range of investment assumptions, will illustrate each panelist's recommendation. The objective is to illustrate the substantive and empirical analysis needed in order to choose the most appropriate technique for a client from the available alternatives.

GENERAL INFORMATION:

Inquiries/Registration:

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