

The Cannon Estate Planning Teleconference Series

January 19, 2021: The Impact of 2020 on Estate Planning

The year 2020 has been like no other in the memory of most of us. We have all been impacted in a significant way by the onslaught of COVID-19, the economic dislocation that followed, social unrest unmatched since the 1960s and a polarizing national election. Estate planning professionals have been striving to adjust to what some have referred to as "the new normal." In this teleconference, we will consider several aspects of how estate planning has evolved – in some ways, perhaps, permanently – including:

- Enhanced Interest in Large Lifetime Taxable Gifts and Long-Term Trusts
- Increased Use of Certain Leveraging Strategies
- Renewed Emphasis on Planning for Eventual Incapacity
- Practical Limitations on Client Counseling and Document Signing

February 23, 2021: Recent Developments in Valuation and Inclusion in the Gross Estate

Unrelated to the 2020 turmoil, the IRS and the judiciary have been exceptionally busy evaluating and ruling on matters of interest to estate planners and professionals who administer trusts and estates. Particularly active areas of developing law have been the valuation of property potentially subject to gift or estate tax and determining what assets are properly includable in a decedent's gross estate. This teleconference will explore a number of recent cases and rulings addressing the following:

- Continuing Expanded Reach of IRC Section 2036(a)
- "Tax-Affecting" in Valuation of Pass-Through Entity Equity
- The Specter of "Double Inclusion" in the Gross Estate
- Misapplication of Willing Buyer-Willing Seller Test and Lack of Marketability Discount

March 23, 2021: The Uniform Trust Code Revisited

As of August 2020, in the 18 years since Kansas became the first state to enact the Uniform Trust Code, 33 more states, plus the District of Columbia, have enacted it. Additionally, several states that have not enacted the UTC have adopted portions of it or have modeled some of their trust laws on it. Thus, it can fairly be said that the UTC has become highly influential in the development of trust law nationally. A statutory compilation of such stature deserves a thorough review. We will examine some of the most important aspects of the UTC, including:

- Default and Mandatory Rules
- Virtual Representation
- Trust Modification
- Notice Requirements
- Duties Trustees Owe to Beneficiaries

April 27, 2021: Administration of Non-Standard Trust Investments

The bane of many a Trustee's existence is the responsibility and potential liability associated with holding, and perhaps having to dispose of, trust property that does not readily lend itself to routine trust administration. Such types of trust property include various types of tangible personal property, various categories of real estate, closely-held business equity, mineral interests, intellectual property, digital assets and even concentrations of traditional trust assets. In addition to the practical administrative challenges the Trustee faces in handling unusual trust investments, the Trustee may also be confronted with conflicting demands from beneficiaries regarding those investments. In this teleconference, we will introduce and evaluate the following topics:

- The Uniform Prudent Investor Act and a Trustee's Duty of Diversification
- Unique Challenges Arising from Holding a Closely-Held Business Interest
- Trust Assets Not in Trustee's Physical Possession or Direct Control
- Steps to Mitigate Risk

May 25, 2021: Trust Situs and Governing Law Considerations

There is a wide variety of trust laws among the states and the District of Columbia with their respective good and bad aspects – depending on one's point of view. Estate planning professionals need to be cognizant of the fact that a trust's situs and governing law, whether as originally established or later validly changed, will often have significant impact on how certain language in the trust instrument is interpreted, how the trust is administered and the extent to which the trust's objectives are able to be achieved. This teleconference will highlight:

- The Meaning of "Situs" and "Principal Place of Administration"
- Specific Results That May Flow from a Trust's Situs and Its Governing Law
- Selecting or Determining a Trust's Governing Law and Situs
- Establishing a Trust in a Target Jurisdiction or Moving it to a Target Jurisdiction

June 22, 2021: No Good Deed Goes Unpunished (Ethics)

Estate planning professionals, in an honest and zealous attempt to give their clients the best possible service, sometimes get tripped up by ethics rules. A service provider who has a solid understanding of the applicable rules and engages in more than momentary reflection on the situation at hand before acting can avoid ethics rules violations, and possible civil liability, without diminishing client service. The subjects to be discussed in this teleconference will include:

- Concurrent Representation of Spouses and Other Family Members
- Planning for a Client's Possible Eventual Incapacity
- Safekeeping of a Client's Original Estate Planning Documents
- Disclosure of a Disabled Client's Confidential Information

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July 27, 2021: Estate Planning for the Disabled and Aging Population

Amazing advances in medical science have given people the prospect of ever-increasing longevity. The accompanying difficulty, however, is that folks living to an advanced age face a greater possibility of becoming disabled before death. Estate planners must contend with a unique, additional layer of complexity in representing clients who are getting older and whose acuity may be waning or who have an intended beneficiary who is disabled. We will review the following issues and challenges that are of particular interest and relevance in this context:

- Financial Elder Abuse
- Testamentary Capacity and Undue Influence
- Design and Efficacy of Revocable Trusts, Durable Powers of Attorney and Advance Directives
- Designing and Administering Special Needs Trusts

August 24, 2021: Balancing Income Tax Planning and Estate Tax Planning

Income tax rates and estate tax exemptions and rates will inevitably rise and fall depending in substantial part on changes in our country's political and economic climate. Far more often than not, when an estate planner designs a plan, the planner doesn't know what the tax laws will look like when the plan is implemented. In addition, in some cases, the composition and aggregate value of a client's estate changes materially between the time when estate planning documents were signed and the client's death. Thus, building flexibility into estate plans so that post-death decisions can be made to minimize estate tax, or income tax, as appropriate, is paramount. In this teleconference, we will focus on:

- Portability and Clayton QTIP Trusts
- Using General Powers of Appointment and Other Strategies to Achieve Basis Step-Up
- Design and Uses of Long-Term Multigenerational Trusts
- Minimizing Trust-Level Income Taxes

September 21, 2021: Directed Trusts: Risks and Liabilities

Directed trusts, largely unknown in the United States just a few decades ago, are becoming increasingly common. Many states have adopted statutes to establish a framework for the operation of directed trusts, and courts are sometimes called upon to resolve messy disputes among trust protectors, Trustees and beneficiaries. We will discuss the unique drafting challenges, liability risks and other issues that arise in connection with directed trusts, including:

- State Laws and Desirable Governing Instrument Provisions Regarding Directed Trusts
- Ways to Divide Duties and Responsibilities of Trust Administration Between Trustee and Trust Protector
- Nature of a Trust Protector and Whether a Trust Protector is or Should Be a Fiduciary
- Potential Liability of Directed Trustees and Trust Protectors

October 26, 2021: Avoiding the Future Disruption of an Estate Plan

A provision in a trust instrument saying the trust is irrevocable, or the irrevocable nature of a trust because of the death of the settlor, may, in 2021, be a mere minor impediment to making changes to the trust. Furthermore, a surviving spouse or beneficiaries who are unhappy with the terms of a decedent's estate plan may launch a frontal assault on the plan. There are steps that can be taken to prevent or dissuade frivolous or vengeful actions by disgruntled parties and to help ensure a client's carefully constructed estate plan is preserved intact. This teleconference will highlight the following strategies:

- Trust Instrument Provisions Designed Specifically to Limit Decanting and Changes Under the Uniform Trust Code and Similar Laws
- Marital and Cohabitation Agreements
- Drafting and Enforcing No Contest Clauses
- Mediation and Arbitration Provisions

November 16, 2021: Dealing With a "Bad" Trustee

Unfortunately, some trusts, even where the administrative and dispositive provisions are well-designed, fail to operate as intended because the Trustee lacks the ability to be an effective fiduciary. The Trustee's shortcomings may result from his or her having insufficient trust administration expertise and/or a confrontational attitude towards one or more of the beneficiaries. Depending on the nature and extent of the Trustee's deficiencies, resolving the situation may prove difficult. Considerations to be discussed in this teleconference include:

- Determining Whether One or More Breaches of Fiduciary Duty Have Been Committed
- How to Proceed if No Actionable Breach of Duty Has Occurred
- Possible Options for Improving Quality of Administration or Relationship With Beneficiaries
- Removal and Replacement of Trustee

December 14, 2021: Ethics Issues for Estate Planners Before the Engagement Begins

Estate planners must have a working knowledge of and adhere to applicable rules of ethics even before rendering any services. Failure to do so could result in an engagement that is rife with multiple problems giving rise to severe problems for the client(s) and the planner. Among the pre-engagement issues that will receive our focused attention in this teleconference are the following:

- Screening Clients to Avoid Problems Before They Develop
- Honestly Discerning Whether You Have the Requisite Competence to Render Needed Services
- Ascertaining Who You May Properly and Effectively Represent
- Designing Engagement Letters