THOMPSON COBURN LLP

# Heckerling 2017 - Report No. 11 (Thursday 1/12/17)

This report features more on asset protection, fiduciary income taxation, leveraged transfers, and private foundations.

The summary of "Protecting the Estate from In-Laws and Other Predators" is a quick read reminding one of the basics. Here's an alternative clause I use for QTIP trusts when the client has asset protection concerns: "The trustee shall distribute all of the income of the Marital Trust from and after my death **to or for the benefit of** my spouse, not less frequently than annually, for and during the remainder of my spouse's life." That allows the trustee to apply the income for the surviving spouse's benefit, rather than pay the cash to the spouse. Reg. § 20.2056(b)-7(d)(2) says that QTIP trusts' income provisions are governed by those in the general power of appointment marital trust under Reg. § 20.2056(b)-5(f), and Reg. § 20.2056(b)-5(f)(4) includes, "Among the powers which if subject to reasonable limitations will not disqualify the interest passing in trust are the power to determine the allocation or apportionment of receipts and disbursements between income and corpus, **the power to apply the income** or corpus **for the benefit of the spouse**, and the power to retain the assets passing to the trust." Rev. Rul. 85-35 supports this and seems to allow even more creativity for those who want more elaborate provisions.

The report on fiduciary income taxes is a good list of some basic issues. Anyone receiving this email may attend or encourage your colleagues to attend my free webinar February 7, Fiduciary Income Tax Refresher and Update . As to the Code § 643(g) election: When the first spouse dies, I tend to deduct for income tax purposes, because we don't know whether the surviving spouse's estate will be subjected to estate tax. Also, I don't make the election until an estate tax or income tax audit is resolved. One may make the election after being examined, and there is no reason to make an irrevocable election before then.

"An Examination of Critical Pressure Points Associated with Sophisticated Estate Plans and How to Deal with Them" was presented by one of the top estate tax litigators in the country and one of the most creative lawyers-turned-financial engineer in the country. Comments on some of their ideas:

- Adding leverage to a GRAT meant selling assets to one's own LLC for a promissory note (with 10% equity) and then transferring that LLC by GRAT. I am not a big fan of it, because I am concerned that the IRS will try to step together the note payment stream with the GRAT payment stream.

- Beneficiary grantor trusts tend to be oversold by a particular promoter but can work if done correctly. Getting the statute of limitations to run is a little tricky. See part III.B.2.i.xiii. Adequate Disclosure on Gift Tax Returns of my business structuring materials (if you don't have them, email me or have your secretary complete this form to get 1,200 pages of materials and a free quarterly newsletter with the most recent version: http://www.thompsoncoburn.com/forms/gorin-newsletter).

- intergenerational split-dollar is where the senior generation loans money to fund life insurance on a junior generation.  I always had viewed discounted intergenerational split-dollar as an aggressive technique, but the Tax Court's decision in Morrissette has made me view them in a better light (although the case did not resolve all issues).  See part II.Q.4.e.iii. Estate Tax Consequences of Split-Dollar Agreements of my materials.  The least risky approach is a split-dollar loan.  I know an appraiser who will often determine an 85% discount.  I am a big believer of life insurance on one's children; and, if one has excess liquid assets, a taxable estate, and children, etc. whose lives are not fully insured, then this is worth considering.  (It might be worth considering in other cases, too.)

- I recently helped with a SCIN in a very large transaction.  A concern was that we would lose Code § 6166 deferral (a 14-year installment plan for paying estate tax generated by inclusion of a business interest) through a regular sale for a note, and the client did not want to take the mortality risk of a GRAT.  We took extra precautions to show that mortality assumptions were accurate.

The report on "Private Foundation Governance and Grantmaking: Practical Solutions to Everyday Dilemmas" certainly lived up to the program's promise.  It's a "must read" if you advise private foundations.

Steve

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**From: Joseph G. Hodges Jr.**
**Sent: Sunday, January 15, 2017 6:09 PM**
**Subject: Heckerling 2017 - Report No. 11 (Thursday 1/12/17)**

As we have done in January for the last twenty years, and again with the permission of the University of Miami School of Law Center for Continuing Legal Education, we will be posting daily Reports to this list containing highlights of the proceedings of the 51st Annual Philip E. Heckerling Institute on Estate Planning that is being held on January 9-13, 2017 at the Orlando World Center Marriott Resort and Convention Center in Florida. A complete listing of the proceedings and the Institute's 2017 brochure are available at www.law.miami.edu/heckerling and the listing of the proceedings was also published as part of **Introduction Part 2** that was distributed on 1/4/17.

We also will be posting the full text of each of these Reports on the ABA RPTE Section's Heckerling Reports Website, as we have since the 2000 Institute. Those Reports from 2000 to

2016 can now be found at URL http://www.americanbar.org/groups/real_property_trust_estate/events_cle/heckerling_reports.html . In addition, each Report from 2006 to date can also be accessed at any time from the ABA-PTL Discussion List's Web-based Archive that now only goes as far back as January of 2006 and is located at URL http://mail.americanbar.org/archives/aba-ptl.html .

**Editor's Comments** : This Report #11 begins our coverage of the 3rd series of the Special Sessions that were held on Thursday afternoon.  included in this Report are SS 3-A Protecting the Estate the Estate from the In-Laws, SS 3-B Subchapter J governing Fiduciary Income Taxes, SS 3-C Sophisticated Estate Planning Pressure Points, and SS 3-D Private Foundation Governance and Grantmaking.

The next Report #11 will finish the coverage of the 3rd series of Special Sessions and, space permitting, will begin the coverage of the 4th and final series of Thursday afternoon Special Sessions.

**Now for the news of the day**: The Colorado Lawyer, a monthly magazine that is published by the Colorado Bar Association, in its January 2017 issue (Vol. 46, No. 1) republished a 2015 article in its Technology in the Law Practice column by Sharon Nelson and John Simek of Sensel Enterprises, Inc., a digital forensics, information security and information technology firm based in Fairfax, Virginia,  entitled "*How Lawyers Can Manage Their Technology Well*" that is well worth the read, especially with the increasing emphasis of the ethics rules on technology use and competency.

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**Thursday, January 12th, SPECIAL SESSIONS III - 2:00 to 3:30 pm**
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**Special Session 3-A**
**Protecting the Estate from In-Laws and Other Predators [FS]**
**Presenters: Gideon Rothschild, Scott L. Rubin and Bruce M. Stone**
**Reporter: Craig Dreyer**

The panelists explored the use of lifetime QTIPs, discretionary trusts and other strategies to provide greater divorce/creditor protection. Recent case developments and drafting suggestions were also included. Here is our report on some of the more significant highlights from this session.

The panel consisted of two well-known estate planning lawyers, Mr. Rothschild from New York and Mr. Stone from Florida, and Mr. Rubin, who is a well-known family law attorney in Florida.  The materials for session included a hypothetical fact pattern for discussion purposes, sample trust provisions for use to protect assets in the divorce context, and some case law from around the country showing the dangers to trust planning in the family law context.

The panel began by noting there is no one size fits all strategy with asset protection planning in the family law context.  When dealing with family law judges, we need to take off our estate planning hats as record title is much less important.  In addition, in many states the spouse also has super creditor or an exception creditor status.  Essentially, this means the spouse can get to assets that other creditors may not be able to reach.   When you combine the public policy goals and the family law equitable distribution principles, it often creates results that seem incorrect in the estate planning context. There is also a general presumption in the family law context that assets are jointly owned unless proven otherwise.

The panel then discussed a myriad of interesting family law cases. These cases show that trusts are not always effective in the context of divorce. The panel noted that estate planners should focus on third party trusts and matrimonial agreements for the best asset protection in the family law context.

Mr. Rubin noted that the rules regarding prenuptial agreements and trusts are incredibly blurry. Family court judges do not follow the same policy as probate judges. Many family law treatises explain that record title is meaningless in family law. Mr. Rubin noted, the more strings or control being used in the trust, prenuptial, or FLP, the more likely the family court will use equity principles to get to the property. He provided that in short marriages courts tend to uphold prenuptial agreements, but in longer marriages the trend among all the states is to find a way to fairly split the assets in half. Also, if some assets are moved offshore, the Judge can simply award assets in the jurisdiction to one spouse and the offshore assets to the other spouse. Mr. Rubin noted that family law courts often have a way of creating new property rights that are foreign to estate planners such as a quasi-beneficial interests, nominal interests, or expectancy interests.

The panel then discussed disclosure relating to marital agreements. They also noted, it is always better to overvalue items than undervalue them. Mr. Rothschild also noted that a potential inheritance disclosure may be required in a prenuptial agreement. Mr. Rubin said this is the more cautious approach to take. While an inheritance is not subject to consideration in Florida, there are some courts that may consider an expectancy as a potential source of future income. Therefore, it is best practice to disclose potential inheritances.
In addition to prenuptial agreements, Mr. Stone noted that early in his career it was common to make trust distributions outright at ages 25, 30, and 35. Later the standard was to leave the assets in trust and let the client withdrawal them. Today, Mr. Stone merely suggests a trustee make distributions at certain ages in an effort to prevent attachment by creditors. The panel noted that trusts don't always work in worst situations, but the less strings a beneficiary has the better off the trust will protect the client. The panel recommends a belt and suspender approach using premarital agreements and trusts. Also, merely requiring a prenuptial agreement in a trust is not enough, as many prenuptial agreements favor the spouse more than a court would. You must specify the terms of the prenuptial agreement in the trust.

Mr. Stone indicated that another option to use to protect assets is to condition a child's beneficial interest in the trust on their spouse singing a waiver to the trustee of the trust. Here separate representation and disclosure is required, but the spouse can give a knowing and meaningful waiver. The spouse will usually sign the waiver, since the money will flow freely once it is signed. The panel also noted that you want to be careful in being too creative with asset protection. In the Schwartz v. Bloch, an attorney advised a client to give his businesses to his father for asset protection purposes. His father then fired him from the business and a malpractice claim soon followed.

The panel also discussed the recent case of Nelson v. Nelson, Lexis 2016 Fla. App. 18470, where a husband had transferred the family home to trust for the benefit of his wife in an intervivos QTIP. During the divorce proceeding the husband claimed the home should be marital asset. The trial court judge who was presiding over the divorce case found the home was a marital asset, but the appellate court overturned the ruling. This is an example of how family law judges often look to equity rather than title. In the family law context, a gift from one spouse to another is generally a marital asset, so the trial court judge had a legal basis for his ruling.

The panel went on to discuss how in some states an expected inheritance can be considered as possible future income. One example is Massachusetts. The panel also warned that a divorce in Massachusetts may allow discovery of a Florida estate plan. They moved on to discuss the Bacardi and Berlinger cases where garnishment of spendthrift trusts were allowed due to the exception creditor status of the creditor.

The panel also discussed a lengthy hypothetical to assist with planning that pointed out numerous issues that a family law lawyer would be trained to look at. In addition, Mr. Rubin noted that courses are being advertised to family law lawyers on how to invalidate trusts that estate planners are using to protect their clients' assets. Good family law attorneys pride themselves on creativity. With that in mind, we should be sure to disclose to our clients that the best planning may not always protect assets.

In conclusion, Mr. Stone left us with a good way to convince our clients to enter prenuptial agreements. He said everyone has a marital agreement, some couples negotiate it between themselves, while others have it modified from time to time depending on the whims of the legislature.

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**Special Session 3-B**
**Distilling the Essence of Subchapter J: Fiduciary Income Tax Essentials for Estate Planners**
**Presenters: Melissa J. Willms, George L. Cushing and John Goldsbury**
**Reporter: Michelle Mieras**

Income taxes continue to drive how estate planners advise clients to structure their plans. Income taxes that arise during estate or trust administration are just as important. This panel discussed the critical aspects of Subchapter J, including what is income, DNI, IRD, and the grantor trust rules.This presentation built on Willms' Wednesday morning Main Session on Income and Transfer Tax Issues for Fiduciaries (see Report #9).

Ms. Willms began with a review of the current tax environment. She reminded the audience of the 39.5% highest income tax rate, the 20% highest capital gains rate, the 3.8% tax on net investment income, and that trusts get to the highest income tax rate at a lowly $12,500 of income.
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Mr. Cushing discussed the decedent's income taxes. The executor needs to investigate to determine what has been or needs to be filed. Obtain a transcript from the IRS using Form 4506-T, and copies of returns and underlying documents with Form 4506. Be aware that in some cases where an executor has not been appointed because there are no probate assets, the IRS may insist on a court appointment in light of expanding privacy issues. If the decedent is survived by a spouse, a joint income tax return may be filed with the spouse, but consider the resulting implications of joint liability. If the spouse is receiving all of the assets, the concern may not be as great as if the decedent's children are receiving the assets. Be sure to use the decedent's expiring carryforwards or losses.

Turning to basis (prompting Ms. Willms to note that "it's all about that basis" a la Meghan Trainor), Mr. Goldsbury stated the general rule of a step-up to fair market value at death. He pleaded with the audience to instead say there is an adjustment to basis at death, since there is also potential for a step-down in basis. How do you know if a basis adjustment has occurred? Mr. Goldsbury recommends doing it the old-fashioned way: open the statute, look at the identified ways basis adjustment occurs, and see if one fits.
He pointed out that one must be attentive of the exceptions to basis adjustment, and reminded us that using the alternate valuation date or special valuation reductions affects the basis as well. Look at both sides of the equation and consider the future income tax consequences. Ms. Willms described two general exceptions to basis adjustment: IRD and property re-inherited within one year of gift.

Mr. Goldsbury discussed basis issues in the context of lifetime gifts. He noted the difference between a bequest of depreciated property and a gift of depreciated property, the latter of which has potential beneficial effects when sold at the right value. He suggested the possibility of giving some capital losses to your spouse for Valentine's Day.

Mr. Cushing reviewed the estate's income tax circumstances when the decedent is no longer circling the drain, but in it. He noted the basics of obtaining an EIN and notifying the IRS of the fiduciary relationship. Estates are not obligated to pay estimated income taxes for two years. A revocable trust which is the residuary beneficiary can take advantage of the same rule, even without a Sec. 645 election. Mr. Cushing noted the differences in income tax opportunities and obligations for trusts and estates, such as the tax year. The magic of the 645 election is it works to reduce these differences, and allows the trust and estate to file one return. The trustee must consent on a Form 8855 to the return filed by the executor, or the trustee must file a separate return. The trust will need an EIN for purposes of the 645 election, and, once funded, will need to then obtain a new EIN.

The session then focused on the different meaning of income in the tax world (i.e., subject to income tax) and the fiduciary world (i.e., income vs. principal), and the importance of knowing which world is being referenced at different times. They reviewed a simple fact pattern involving a trust as the beneficiary of an IRA, and explained how the different income meanings applied. Ms. Willms reminded the audience to check the document for definitions, and reviewed the power to adjust and equitable adjustment.

The remainder of the session was spent delving into the presenters' top ten things to know about Subchapter J:

**1) Simple vs. Complex Trusts**

**2) Distributable Net Income - consequence and exceptions**

Ms. Willms admired the wonderful gift of the 65-day rule, noting that without it we would be hard-pressed to make appropriate adjustments, since all income and distributions for the year are treated as being made on the last day of the year.

Mr. Goldsbury reminded us that distributions of specific bequests of an asset or cash do not carry out DNI, including the typical tangible personal property disposition clause.

Mr. Cushing described the operation of the separate share rule.

**3) Charitable Deductions**

The set aside rule only applies to estates and pre-1969 trusts.

**4) Deductibility of Interest**

**5) Net Losses and Excess Deductions**

Use ‘em or lose ‘em, other than in the year of termination.

**6) In-Kind Distributions, and the recognition of gain/loss**

A distribution of an asset will trigger recognition when distributed to satisfy a debt or pecuniary bequest.

Note that the executor could also elect to trigger gain using Section 643(e).

**7) Beneficiaries’ Recognition of Gain**

Watch out for the exceptions to the general rule that there is no gain or loss recognized by a beneficiary as a result of a distribution. Ms. Willms stated that another word for disappointed beneficiary is plaintiff.

**8) Income in Respect of Decedent (and deductions in respect of decedent)**

**9) Section 643(g) Expense Election**

Mr. Cushing reminded us to do the math to determine whether a deduction is more valuable on the estate tax return or the income tax return where a choice may be made.

**10) Grantor Trust Rules**

The session concluded with a recommendation to look online for Mr. Goldsbury’s article on “21 Ways and Counting to Have a Trust’s Capital Gain Taxed to the Beneficiary” and a reminder to also consider the state fiduciary income tax considerations.

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**Special Session 3-C**
**Beware of What’s Hiding in the Attic — An Examination of Critical Pressure Points Associated with Sophisticated Estate Plans and How to Deal with Them [LIT]**
**Presenters: John W. Porter and S. Stacy Eastland**
**Reporter: Bruce Tannahill**

This presentation focused on issues that can make or break an estate plan that utilizes certain sophisticated estate planning techniques, including sales to intentionally defective grantor trusts, self-cancelling installment notes/private annuities, formula clauses, the beneficiary defective inheritor's trusts, and split-dollar life insurance transactions. It also discussed potential donee liability for gift tax and interest in connection with these transactions.

In this special session, John Porter, probably one of the country's pre-eminent estate and gift tax litigators, and Stacy Eastland, the attorney who help popularize the sophisticated use of family limited partnerships in estate planning, discussed issues that are crucial to the success of sophisticated estate planning strategies. They noted that all strategies have considerations (a/k/a disadvantages) and advantages. This session focused on the considerations and how to minimize them.

**Gift tax matters**

If gift tax is incurred, the plan needs to identify who will pay it, especially if the plan didn't expect a gift tax would be imposed. Over the last 4 years or so, gift tax return audit rate has been approximately 1%.

Mr. Porter noted that the donee is secondarily liable for donor's gift tax. The statute of limitations for donees doesn't expire until one year after the statute for the donor statute runs. The donee's liability is capped at the amount of the gift but there is a split in circuits on whether the cap includes unlimited liability for interest. The 11th circuit is the only circuit that says the liability for interest is unlimited. Planners and donees should be aware that the IRS has discretion to decide which donee to pursue for the unpaid gift tax liability.

**Sales to Intentionally Defective Grantor Trusts**

Mr. Porter believes it's one of the best techniques out there. It can shift a lot of wealth regardless of whether you're using discounted assets or not. The IRS has gone after it and it's still on the IRS radar.

Observations and comments:

It should not make a difference if you use the same asset as a seed gift that is sold to the IDGT. You want time between seed gift and sale and the longer the time, the better. Mr. Porter believes in at least a 30-day minimum.

If you get back a note, what is value of note? Practitioners generally believe that under section 7872, you have a safe harbor and note value should believe its face. Some at IRS say section 7872 is only an interest rate safe harbor and doesn't address other features of the note. The ultimate question is whether it is a retained interest.

Mr. Porter hasn't seen IRS challenge a 10:1 debt to equity ratio.

If a beneficiary guarantees the debt, the question is whether they are good for it. If not, it's illusory. It also has real world implications – the beneficiary may have to make payments under the guaranty. A guaranty fee should be paid to beneficiary.

There is a section 2036 issue if a limited partnership interest is sold to a trust and payments from the limited partnership interests are used to satisfy debt, The IRS has argued a section 2036 interest retained in property because partnership income is used to satisfy debt. The question is was there a bona fide sale for full and adequate consideration. Mr. Porter recommended using a formula clause based on value as finally determined. If distributions will be used to pay the note, partnership distributions should be made in amounts and times that differ from payments on the note to avoid the circular payment argument.

**GRATs**

The speakers said they have been involved in a number of GRAT audits over the years. The IRS looks for compliance with all of the GRAT requirements and with the terms of the GRAT agreement.

Observations and comments:

If the section 2702 regulations require a specific provision, include it. Don't depend on state law.

Have the terms of the GRAT agreement been complied with? One risk is that GRAT fails so badly, it is valued at $0, resulting in the asset's full value being included in estate or subject to gift tax. '

Clients need to understand that terms need to be complied with.

You always get valuation questions in GRAT audits. Initial valuation is not much of a concern due to the adjustment provision in the regulations. It can be a problem if there is a swap or asset used to pay annuity. One strategy is to consider a Wandry clause.

Adding leverage can make a GRAT work better and avoids need to use cascading GRATs. The speakers recommended reviewing Carlyn McCaffrey's "Getting Gratifying GRAT Results" presentation from Tuesday. (see Report #3)

**Beneficiary Defective Irrevocable Trusts (BDITs)**

This is the strategy that gives Mr. Porter the most heartburn.

Usually no seed gift for the sale but there is a guaranty from third party.

Observations and comments:

The gift tax risk is fairly low.

The estate tax risk arises under both sections 2036(a)(1) and 2036(a)(2).

The analysis is similar to an FLP analysis and the roadmap for it is FLP cases.

The IRS and courts may require a legitimate non-tax reason for the transfers.

Given the structure and the potential use of the bona fide sale for full and adequate consideration exception, it has a lot of risk.

If you are going to defend this, you may have to put settlor on the witness stand.

The question becomes whose trust is it?

Alternatives include preferred partnerships that do not comply with section 2701 and sales to reciprocal non-reciprocal trusts.

**Intergenerational split-dollar**

The speakers believe that if it works, it's great.

Observations and comments:

One risk is that it could be recharacterized as loan regime split-dollar, which has different rules.

Section 2703 could apply.

The IRS could assert step-transaction/sham argument (uphill argument). To avoid it, you should have non-tax reasons, such as buy-sell or estate liquidity.

Rights being transferred by senior generation are property rights.

An alternative is to buy insurance inside an LLC. You may be able to argue for a discount on a long-term note, which doesn't have to be for someone's life.

Contribute the note into GRAT.

**Private annuity/SCIN**

Observations and comments:

A private annuity could ensure the grantor's consumption needs always met. The risk from an estate tax perspective is that if grantor outlives the IRS life expectancy table, you've added assets to the estate. One option is for payments to terminate at end of life or a term (that is longer than life expectancy).

If using them with someone in poor health, you want a doctor's opinion that the client has more than 50% likelihood of living for at least 12 months. Medical testimony is crucial.

Private annuity and SCINs don't work well unless you have a grantor trust because you can't deduct income portion of private annuity.

Can you use mortality tables and 7520 rate in valuing private annuities and SCINs?

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**Special Session 3-D**
**Private Foundation Governance and Grantmaking: Practical Solutions to Everyday Dilemmas [CHR][INT]**
**Presenters: Alan F. Rothschild, Jr., Victoria B. Bjorklund and Carolyn O."Morey" Ward**
**Reporter: Beth Anderson**

This session explored common private foundation issues through a series of hypotheticals including avoidance of excise taxes on foundation activities, governance, foreign grantmaking, and the interplay of foundations and donor-advised funds. This presentation keyed off of Mr. Rothschild's Thursday Morning Main Session presentation about The Nuts and Bolts of Private Foundations (see Report #9). Here are some of the highlights from this Special Session.

After a brief introduction, the presenters jumped into hypotheticals to aid in their discussion of common private foundation issues and how to resolve them. The issues included whether a foundation could sponsor a table at a charitable event and if so could directors and their spouses attend the event. Yes to the purchase, assuming foundation doesn't have restrictions, and assuming charity is a public charity, and yes to attendance by a trustee or director if the purpose is to "monitor and observe" the grant of the foundation.

The presenters discussed PLR 2016-30009 and the personal services exception to compensation. The best practice is to have a detailed employment agreement listing the provided services. A private foundation cannot have "no show" jobs where people are getting paid for nothing.

The presenters discussed best practices for use of common office space and employees. General rule is that reimbursement arrangements don't work. It's self-dealing for family office to reimburse the foundation for use of space and vice versa. Separate leases with a non-disqualified person landlord with any common areas allocated to the family office. If the space cannot be divided into separate leases, then have the family office sign the lease and provide office space rent free to the foundation. Shared equipment, supplies and technology should be paid by the family office with an agreement that the foundation uses it for free. Same is true for shared employees unless the personal services exception is met, then the foundation can reimburse for use of a shared employee.

Another topic discussed is what to do if the board discovers that one of its directors has been committing acts of self-dealing. First, marshal the evidence. Hire counsel and forensic accountant. Search for other related expenses. Look at the company credit card and reimbursement requests from the bad director. Self-dealing is measured by acts and each act is a new event that is triggering a penalty (and interest). Review the directors and officers insurance to determine whether it covers excise tax and self-dealing; look for reimbursements for legal and accounting expenses. Not generally possible to pay self-dealing tax through insurance because that's also an act of self-dealing. The bad director would need independent legal counsel and should recuse himself or herself from the meeting in which the board discusses the issues and outcomes. The Board needs to determine which federal and state laws were violated. May be potential conflict of interests if all of the board is family, and may need to appoint independent interim board members.

The presenters then discussed how a founder of a private foundation may protect the foundation's purpose from future changes. Solutions included narrowly defining the purpose; requiring independent directors be filled by people who work within that defined purpose as a means to educate and balance the family directors; creating the foundation under a trust instead of a corporation; requiring amendments to the purpose section of the bylaws by a supermajority vote; and making restricted gifts to the private foundation.

The presenters briefly discussed co-investment arrangements and whether a private foundation could join into an investment opportunity (for instance to meet hedge fund minimums) with a disqualified person. As a general matter most PLRs are blessing these arrangements, but the private foundation community is still wary of potential self-dealing. IRS has listed this issue on the priority guidance plan.

The presenters reserved the last ten minutes of their time for an audience Q/A session which included a discussion on best practices for foundation credit card use, and a reminder that any misuse, even if inadvertent, of the foundation's credit card is an act of self-dealing. Best practices is to have a written credit card policy where very few people have a foundation card and only for the purpose of foundation business, and all other people working with the foundation should seek reimbursement for expenses incurred on behalf of the foundation. Family members should be in the reimbursement bucket.

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**The Reporters**

Our on-site local reporters who will be present in Orlando in 2017 are **Joanne Hindel Esq** ., a Vice President with Fifth Third Bank in Cleveland, Ohio; **Kimon Karas Esq** ., an attorney with McCarthy, Lebit,  Crystal and Liffman Co. LPA in Cleveland, Ohio; **Craig Dreyer Esq** ., an attorney with Clark Skatoff, PA in Palm Beach Gardens, Florida; **Herb Braverman Esq** ., an attorney with Braverman & Associates in Orange Village, Ohio; **Kristin Dittus Esq** .  a solo attorney in Denver, Colorado, **Michael Sneeringer Esq** ., an attorney with Akermn, LLP in Naples, Florida, **Michelle R. Mieras** , a Fiduciary Risk Manager with  Bank of the West in Denver, Colorado, **Beth Anderson Esq** , an attorney with Wyatt, Trrant & Combs, LLP in Louisville, Kentucky, **Bruce A. Tannahill Esq** , a Director of Estate and Business Planning in the Mass Mutual Financial Group in Phoenix, Arizona, and **Patrick J, Duffey Esq** , an attorney with Holland & Knight in Tampa, Florida.

The **Report Editor** again in 2017 will be **Joseph G. Hodges Jr. Esq** ., a solo practitioner in Denver, Colorado.  He is also the Chief Moderator of the ABA-PTL discussion list.

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