

**THURSDAY, SEPTEMBER 29, 2016**

**GENERAL SESSION**

**CURRENT CALIFORNIA DEVELOPMENTS IN ESTATE PLANNING  
AND ADMINISTRATION**

Robert E. Temmerman, Jr., Esq. | *Temmerman, Cilley & Kohlmann, LLP*

Robert E. Temmerman, Jr. will discuss new developments in California case law and legislation that impact your estate planning and administration practice. Case law developments include attorney liability, emergency powers of trustees and trust funding anomalies; legislative developments include trustee powers, modification of trusts and changes in conservatorship rules.

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Session A1:

**FUNDAMENTALS TRACK: ESSENTIAL ESTATE PLANNING CONCEPTS: A PRIMER**

Charles H. Packer, Esq. | *Hopkins & Carley, A Law Corporation*

Lynn C. Stutz, Esq. | *Stutz Law*

This fundamentals program is meant for attorneys with minimal estate planning experience, and for non-attorney professionals. The speakers, both experienced estate planning attorneys, will discuss Court-supervised probate as well as non-probate transfer procedures, wills and probate avoidance trusts, trust funding and administration, powers of attorney for property management, and powers of attorney for medical decisions / advance health care directives. They will present a basic overview of tax issues, including the federal transfer taxes (estate and gift taxes), capital gains and the step up in basis, and Proposition 13 rules.

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Session A2:

**LIFE INSURANCE FOR MODERN ESTATE PLANNING: A REVIEW OF CURRENT  
PRACTICES, BEST PRACTICES, AND WHY THERE IS A DIFFERENCE**

Thomas Kanaley, J.D., DBA | *The Nautilus Group*

Jeffrey M. Ostrum, CFP | *Financial Architects Partners*

Thomas J. Pauloski, Esq. | *AB Bernstein Private Wealth Management*

This session will focus on the practical uses of life insurance as a wealth leveraging tool – providing maximum tax efficiency, liquidity, and performance – for estate planning practitioners. Through case studies, the panelists, all experienced life insurance professionals, will look at the difference between life insurance planning as sometimes commonly done versus how it should be done. They will review the most recent legislative, judicial, and administrative rulings on life insurance planning.

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Session A3:

**PROPER BENEFICIARY DESIGNATIONS AND FIXING IMPROPER ONES**

Michael J. Jones, CPA | *Thompson Jones LLP*

Retirement benefits beneficiary forms are the unruly child of estate planning. They can upset even well-drafted trusts and wills, and naming a trust as beneficiary creates its own challenges. This session will explore those challenges and how to master them.

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Session A4:

**CARING FOR YOUR SPECIAL NEEDS CHILD FOR YOUR LIFETIME AND BEYOND**

Jennifer M. Cunneen, Esq. | *Cunneen Law*

Bradford L. Elman, CLU | *Northwestern Mutual*

Greg Finn | *Fremont Bank*

Karen M. Park | *AB Bernstein Private Wealth Management*

For parents of special needs children, nothing is more important than making sure that those children are properly cared for throughout their lifetime. Planning professionals are in a unique position to help solve these parents' greatest concern by designing an optimal strategy to ensure this care. This is a complex area of planning given the breadth of issues involved, which include navigating government benefits, establishing limited conservatorships, drafting of a special needs trust, financial planning, identification of appropriate trustees and the need for asset protection. In this presentation, the panelists (an estate planning attorney, financial advisor, trust officer, and insurance specialist, who have decades of experience in special needs planning, will explore the various planning tools available to those with special needs, as well as how these tools work in practice for families with varying degrees of wealth and for children with varying degrees of needs. Three of these panelists are special needs parents themselves.

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Session A5:

**THE POST-NUCLEAR FAMILY: DEFINING SPOUSES AND DESCENDANTS IN THE 21<sup>st</sup> CENTURY**

Patricia A. Cain, Professor of Law | *Santa Clara Law*

Nicole M. Pearl, Esq. | *McDermott Will & Emery LLP*

As social norms continue to evolve and reproductive technology continues to advance, our clients' definitions of "family" continue to expand. To avoid accidentally disinherit children or spouses, the definitions that we use in estate planning documents must keep up with this expansion. In this brave new world, attorneys must not only draft for the family relationships of today, but also for future generations of a client's family. Formulating definitions that encompass all of the permutations of family can be a challenge. This session will help drafters adapt their definitions for terms such as "child" or "spouse" beyond the traditional notions of a family.

**FRIDAY, SEPTEMBER 30, 2016**

**FIRST GENERAL SESSION**

**FEDERAL TAX UPDATE (AND MORE)**

Samuel A. Donaldson, Professor of Law | *Georgia State University*

Stay up to date with this informative and entertaining recap of the big cases, rulings, regulations, and legislation from the past 12 months in the federal income, estate, and gift tax arenas.

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Session B1:

**FUNDAMENTALS TRACK: DRAFTING ADMINISTRATIVE TRUST PROVISIONS FOR THE 21<sup>ST</sup> CENTURY**

Liza Hanks, Esq. | *Finch Montgomery Wright LLP*

Denise M. Riley, Esq. | *Northern Trust*

This fundamentals program focuses on administrative provisions that are seldom reviewed by clients and are often single-spaced, overlooked, and relegated to the back of the trust. Such provisions however are overlooked at the drafters' peril, especially in today's fluid and fast-changing environment. Panelists Denise Riley, Senior Vice President and Senior Fiduciary Officer at Northern Trust, and Liza Hanks, partner at Finch Montgomery Wright LLP, will discuss key administrative issues that estate and trust attorneys should be aware of while drafting. With a focus on drafting to avoid administrative difficulties, the panelists will discuss issues such as dealing with unconventional assets, allocation of income and expenses, trustee succession, investment restrictions, conflict of interest, accounting requirements, trustee compensation, and change of situs. Using illustrations from real-life, they will discuss common mistakes that drafters make and suggest language that will avoid such pitfalls.

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Session B2:

**RUNNING THE BASIS (CATCHING MAXIMUM TAX SAVINGS)**

Paul S. Lee, Esq. | *Northern Trust*

The income tax savings from the “step-up” in basis is now critical to estate planning. This presentation will discuss simple and complex tax basis management techniques that maximize the basis adjustment at death for all different types of assets. The presentation will discuss: (i) using leverage to multiply the amount of “step-up” but minimize estate tax inclusion; (ii) using multiple applicable exclusion amounts; (iii) creative uses of entities taxed as partnerships (including LLCs that are temporarily disregarded entities) that “strip and shift” the basis from one asset to another, maximize the “step-up,” and also transfer wealth; (iv) techniques to deal with those pesky installment notes currently in the grantor’s estate (but still get a “step-up”); and (v) how to partner with charity in this new estate planning paradigm where it’s all about the basis.

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Session B3:

**THE DONOR, THE ADVISOR, THE CHARITY, AND THE GIFT  
COMPLEX ESTATE GIFT STRATEGIES – A CASE STUDY OF THE “MY OWN BUSINESS INSTITUTE”**

S. Andrew Starbird, Ph.D, Professor, Moderator | *Santa Clara University*

Lawrence Donatoni | *Santa Clara University*

David Wheeler Newman, Esq. | *Mitchell Silberberg & Knupp LLP*

This session will use a case study and deconstruct the elements and roles of the donors, the advisor, and the charity that produced a transformational gift to Santa Clara University. Each step in the process will be reviewed from conception, building coalition in the University, working out the terms of the gift, timing, how important each individual’s role was in making this happen, what were some of the complexities and obstacles with the asset and how they were resolved. Areas covered will focus on honoring donor intent throughout the negotiation process, engaging professional advisors, challenges when merging not-for-profit organizations, developing programs using gifts with specific contractual obligations, creating an income stream from the donors CRUT and the value of ongoing donor stewardship. Mr. Newman will present the technical process behind this gift, asset by asset since each asset was different and with its own technicalities; if alternative options to approach each step were considered; and the logic behind the decisions made with the perspectives of the charitable gift and the tax implications for the donors.

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Session B4:

**REJUVENATING STALE IRREVOCABLE TRUSTS: IF IT IS BROKEN, THEN DO FIX IT  
– PART I**

Nancy G. Henderson, Esq. | *Henderson, Caverly, Plum & Charney LLP*

The terms of an existing inter-vivos or testamentary irrevocable trust may no longer serve a client's wealth transfer objectives. This program briefly touch on the most commonly used direct strategies to fix "broken" trusts, including judicial modification and reformation actions, mergers and consolidations, divisions, non-judicial settlement agreements, and decantings. Because such direct strategies are often unavailable or are inadequate solutions, this program will also examine strategies to use the resources otherwise locked in a "broken" trust to help achieve the client's objectives in setting up new trust, such as distributions and re-contributions, inter-trust loans, guarantees, sales and exchanges, and joint investments (including the use of preferred partnerships structures).

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Session B5:

**EXPERT WITNESSES: OPINING FROM EITHER SIDE OF THE AISLE**

John A. Hartog, Esq. | *Hartog | Baer | Hand*

Robert E. Temmerman, Jr., Esq. | *Temmerman, Cilley & Kohlmann, LLP*

Robert E. Temmerman, Jr., and John A. Hartog frequently serve as opposing expert witnesses in major California trust and estate cases. They will present an in-depth analysis on the kinds of expert witness testimony that trust and estate attorneys frequently require in contested matters. Beginning with an overview of California case law and statutes that govern expert witness testimony, the speakers will discuss how these rules relate to expert witness testimony in connection with applicable standards of care for both trustee breach of fiduciary duty and professional negligence cases for trust and estate lawyers. The speakers will also draw on their own extensive experience (often on opposing sides) to discuss the techniques and strategies of utilizing an effective expert witness in a contested trust and estate matter.

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Session C1:

**FUNDAMENTALS TRACK: DRAFTING QTIP TRUSTS IN THE NEW ERA OF  
PORTABILITY**

Darin Donovan, Esq. | *Hopkins & Carley, A Law Corporation*

Francis B. Doyle, Esq. | *WealthPLAN*

Brian L. Shetler, Esq. | *Berliner Cohen*

This fundamentals program will focus on the planning and drafting of Qualified Terminable Interest Trusts for modest-sized estates. The presentation will include a discussion of the legal development of the QTIP trusts, as well as when QTIP trusts should be utilized. The panel will discuss using QTIP trusts to facilitate a "step-up" in basis for assets in taxable and non-taxable estates.

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Session C2:

**TRUST AND ESTATE SETTLEMENTS: AVOIDING A TAX HEADACHE**

Laurelle M. Gutierrez, Esq. | *McDermott Will & Emery LLP*

Robin L. Klomparens, Esq. | *Wagner Kirkman Blaine Klomparens & Youmans LLP*

Trust and estate litigation is often complicated, contentious and emotionally charged. Parties negotiating the resolution of their disputes regarding interests in trusts or estates are often not focused on, and may not be aware of, the income and/or transfer tax consequences that may impact the economic results of the settlement. A settlement that does not take into account the

tax consequences of agreements reached in the settlement may significantly shift or reduce the parties' actual beneficial interests in the estate or trust. In addition, the settlement provisions themselves can have a substantial impact on the tax consequences of the settlement. A properly structured settlement agreement can be designed to address the allocation of tax risks among the parties and provide greater (although not perfect) certainty of the tax consequences of the settlement. This program will provide an overview of the income, gift, estate and generation-skipping transfer tax issues to consider in trust and estate litigation.

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Session C3:

**CHARITABLE GIFTS OF INTELLECTUAL PROPERTY**

David Wheeler Newman, Esq. | *Mitchell Silberberg & Knupp LLP*

The democratization of technology means that more people are able to create and transfer intellectual property, including patents, trademarks, and copyrights, while increased demand for these assets has increased their value dramatically. Charitable contributions of these intangible assets are subject to a surprisingly complex matrix of tax rules governing the tax benefits arising from those contributions. The speaker will cover the rules that must be considered with contributions of intellectual property and the planning dynamics for navigating these rules to plan gifts that will take full advantage of available tax benefits.

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Session C4:

**REJUVENATING STALE IRREVOCABLE TRUSTS: IF IT IS BROKEN, THEN DO FIX IT – PART II**

Nancy G. Henderson, Esq. | *Henderson, Caverly, Plum & Charney LLP*

*Continued...*

The terms of an existing inter-vivos or testamentary irrevocable trust may no longer serve a client's wealth transfer objectives. This program briefly touch on the most commonly used direct strategies to fix "broken" trusts, including judicial modification and reformation actions, mergers and consolidations, divisions, non-judicial settlement agreements, and decantings. Because such direct strategies are often unavailable or are inadequate solutions, this program will also examine strategies to use the resources otherwise locked in a "broken" trust to help achieve the client's objectives in setting up new trust, such as distributions and re-contributions, inter-trust loans, guarantees, sales and exchanges, and joint investments (including the use of preferred partnerships structures).

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Session C5:

**PROPOSED REVISION TO ACTEC COMMENTARIES ON ETHICS**

Patricia A. Cain, Professor of Law, Moderator | *Santa Clara Law*

Karen Boxx, Professor of Law | *University of Washington*

Bryan D. Kirk, Esq. | *Fiduciary Trust International*

Neither the Model Rules of Professional Conduct (MRPC) nor the Comments to them provide sufficiently explicit guidance regarding the professional responsibilities of lawyers engaged in a trusts and estates practice. Recognizing the need to fill this gap, The American College of Trust and Estate Counsel (ACTEC) has developed a set of Commentaries on selected rules to provide some particularized guidance to ACTEC Fellows and others regarding their professional responsibilities. First published in 1993, the Commentaries continue to assist courts, ethics committees and others concerned with issues regarding the professional responsibility of trusts and estates lawyers. The Commentaries are now in 5<sup>th</sup> edition (2016).

**SECOND GENERAL SESSION**

**PLANNING OPPORTUNITIES (AND TRAPS) WITH BUSINESS ENTITIES, EMPHASIS ON INCOME TAXATION**

Samuel A. Donaldson, Professor of Law | *Georgia State University*

This session will focus on the federal income tax planning opportunities and traps inherent in each of the three major forms of business entities: the C corporation, the S corporation, and the partnership. Special emphasis on how estate planning strategies can trigger income tax traps.