The 35th Annual Probate & Trust Law Section Conference

More Great Sessions Than Ever! 40 + sessions including:

- Competency and Communication
- FLPs
- Basics sessions
- Ethics and Elimination of Bias
- Trust Protectors
- Life Insurance
- Wisconsin Laws
- And much, much more!

Featuring

Dr. Sung Won Sohn
How to Manage Through Turbulent Economic Times

Ronald D. Aucutt
Changes to Federal Estate & Gift Tax

Stuart E. Schmitz & Dr. Stanley L. Smith
Competency and Communication/Medical Issues and Alzheimer’s

Susan Porter
Discretionary Distributions

Economy-Related Issues

- Managing Assets, Trusts and Estates
- Planning in a Down Economy
- Handling Diminished Assets
- Duties of a Trustee in a Falling Economy
- Handling Shrinking Endowments
- Taking Advantage of Depressed Values and Rates
- What Happens Once G-ship/ C-ship Assets are Depleted?
- Asset Protection Planning

All New Law

Monday, June 8, 2009

REGISTRATION & CONTINENTAL BREAKFAST
Sponsored by U.S. Trust, Bank of America Wealth Management
8:25 – 8:30 a.m.
WELCOME & INTRODUCTION
- Dale J. Schoonover, Section Chair
8:30 – 9:00 a.m.
2009 Legislation
New legislation impacting probate and trust attorneys; prospective legislation that is being drafted; overview of the drafting process, and Uniform Acts being studied – including the Uniform Disclaimer of Property Interests Act and the Collection of Personal Property By Affidavit.
- Mavis J. Van Sanbeek & Scott M. Nelson
9:00 – 10:00 a.m.
Discretionary Distributions from the Perspective of the Professional Trustee
- Susan Porter
10:00 – 10:25 a.m. BREAK
10:25 – 11:25 a.m.
Competency and Communication
How to recognize and evaluate cognitive function; why the idea of capacity to consent is a spectrum or continuum and not a black and white issue and how it is dependent on the cognitive function of the individual and the gravity of the situation for which a decision needs to be made. A virtual “primer” on how to communicate for elderly clients and their families with the medical profession about medical understanding causes of dementing illnesses; functional staging of dementia (this has direct implications with regard to capacity to consent); and further discussion of surrogate decision making.
- Stuart E. Schmitz & Stanley L. Smith, M.D., MS
11:25 – 12:25 p.m.
Federal Estate Tax Legislation: Progress and Prospects – Looking at Congress’s Chance of a Decade to Tell Us Where the Legislative Changes Begun in 2001 Will End Up
An up-to-the-minute look at the federal estate tax legislative climate; the significance of Democratic control, the economic crisis and need for revenue; review and evaluation of the prospects for “portability” of the unified credit; the odd post-2001 estate tax math and surprising “middle class” rationalizations for estate tax reform; and the effects our clients and practices.
- Ronald D. Aucutt
12:25 – 1:25 p.m.
INSTITUTE LUNCHEON
Sponsored by the Masonic Cancer Center, University of Minnesota
1:25 – 2:25 p.m.
BREAKOUT SESSION A
Making sense of the astonishingly haphazard case law; figuring out what FLP planning is really all about: tracking the glacial progress of legislative initiatives and the promised 2004(p4) regulations; and sorting out the estate planner’s obligations to the client, to the client’s family, to business associates, and to the tax system.
- Ronald D. Aucutt
2. The Professional Trustee and Discretionary Trusts: Case Studies
- Susan Porter
3. Competency and Communication
Assessment of cognitive function; understanding causes of dementing illnesses; functional staging of dementia (this has direct implications with regard to capacity to consent); and further discussion of surrogate decision making.
- Stuart E. Schmitz & Stanley L. Smith, M.D., MS
4. Valuation of Agricultural Assets
Learn about IRC 2032A issues, including minority and lack of marketability discounts. Valuation approaches to farm assets for gift tax and estate tax purposes, including valuation of growing crops and other hard to value agricultural assets. Discounts for cost to partition land for gifts of fractional interests under the annual exclusion.
- Patrick K. Costello
5. Post-Mortem Estate and Tax Planning in a Turbulent Economy – Or, What to Do When the Estate’s Assets Tank, or Worse Yet, Simply Disappear!
The presentation will focus on post-death estate planning options available to the practitioner in a turbulent economy. Specifically, what actions can or should the practitioner take to address a significant decline in the value of the estate’s assets from date of death? It will discuss alternate valuation and the new anti-Kohler proposed regulations under Proposed Regulations section 20.2002-1 dated April 24, 2008, and the comments submitted by ACTEC, the ABA and the AICPA. It will discuss the Roski case, IRS Notice 2007-90 and security under Internal Revenue Code Section 6166 relating to the payment of estate taxes in installments. It will discuss the estate and income tax treatment by individuals, estates, trusts and charitable organizations relating to losses incurred in the Madoff scandal. Finally, it will address fiduciary responsibility and liability relating to valuation and market decline. What actions can a personal representative or trustee take in anticipation of a market decline? What should the personal representative or trustee do or not do after a significant decline in asset values has already occurred?
- William S. Forsberg & Terry L. Sye
6. Transfer on Death Deeds
The new legislation to authorize Transfer on Death Deeds became effective August 1, 2008. This session will review the new statute and offer practice tips to take advantage of the new statute and avoid traps for the unwary.
- Elizabeth A. Garvey & Julian J. Zweber
7. The Business Case for Diversity
(2-hour session)
(2.0 elimination of bias credits applied for)
Diversity in the legal profession is not only the right thing to do, it is good for business. This program explains the financial and practical benefits of diversity. You will learn that: diverse firms attract and retain talented attorneys, reduce turnover, create a productive work environment, and enhance business development efforts. More corporate clients are demanding that women and minority attorneys be assigned to their work. Women and minority attorneys are becoming successful rainmakers.
- Roy S. Ginsburg
Topics will include focus on four categories of assets that are underused in charitable planning. IRAs and qualified plan accounts: drafting of beneficiary designations and the use of these accounts to fund testamentary charitable remainder trusts; Funding with farm commodities, e.g. grain or animals; step-by-step implementation and the enhanced tax leverage. Transferring a rare musical instrument or art object to a CRUT. How closely-held business interests afford a number of ways to combine philanthropic and business succession goals; how to use these assets to fund charitable gifts yet avoid “prearranged sales,” self-dealing, and UBIT.
- Robert E. Harding
9. Duties of a Trustee in a Falling Economy
- Ann Hart Wernz
2:25 – 2:40 p.m. BREAK
2:40 – 3:40 p.m.
BREAKOUT SESSION B
#7 continued … Business Case for Diversity
10. Who Gets Grandma’s Yellow Pie Plate “Revisited”? – Managing the Emotional Minefield of Tangible Personal Property Distribution
Practical methods of encouraging clients to be proactive in planning ahead; pitfalls to avoid in estate administration; and simple guidelines for the personal representative or successor trustee.
- Rosalind K. Keppler
11. Donors and Endowment Funds – What Happens When the Value of the Endowment is Less than the Contributed Amount?
An analysis of the new Uniform Prudent Management of Institutional Funds Act (UPMIFA), including the standards for investment, expenditure, and modification of endowment funds.
- Gregory A. Kwan
12. Coordinating Beneficiary Designations with the Client’s Estate Plan – “How can I fit all this stuff on one short line?”
The importance of coordinating retirement plan and insurance beneficiary designations with the estate plan; how to work with on line beneficiary designation systems; and how to make life easier for you and your client using the beneficiary designation trust.
- Thomas E. Lund
13. Asset Protection Planning – Is That a Light at the End of the Tunnel or an Oncoming Train?
This session reveals the principles of wealth protection implemented by affluent families and applies it to the average estate planning client. This is a must attend session for any financial and estate planning professional with clients who earn over $150,000 per year or whose families own assets valued at over $2,000,000. Unconventional definitions of risk, wealth and financial independence, the most effective way to achieve affluence, a variety of practical strategies for protecting assets, investing wisely, maximizing family wealth, reducing unnecessary income and transfer taxes, essential lessons to building a successful business, professional practice or investment portfolio, protecting assets, pitfalls and myths and misconceptions clogging the information highway, strategies and techniques to overcome the internal and external threats to accumulating and preserving wealth over multiple generations.
– John R. Bedosky

How to best title and transfer assets without gift tax; how to create QDOTs in the estate planning process and by the surviving spouse, and the differences between the two QDOT types; how to select assets to fund a QDOT; how to best administer QDOTs, file tax returns, etc.; turning the tables – how to advise a nonresident alien with a U.S. citizen spouse.
– Julia L. Rau

15. Trust Protectors: What Are They Protecting and How Are They Doing It?
What is a trust protector? How they add flexibility in drafting client documents and administering trusts. When should they be used? Potential dangers in using a trust protector. Does MN law allow their use? Will Minnesota Courts uphold actions by a trust protector? What is the experience with trust protectors in other states, like South Dakota, that have statutory authority for trust protectors? Who serves as a trust protector and is one compensated? Is a trust protector considered a fiduciary and required as such to meet certain minimum fiduciary standards?
– P Daniel Donohue & James W. Rockwell

16. Planning and Post-death Administration for Estates Between $1.0 and $3.5 Million – When the IRS Doesn’t Care
Planning for Minnesota estate tax: using gifts effectively; and using disclaimers for flexibility.
– Randall W. Sayers & Trisha A. Vicario

17. Estate Planning Opportunities Using Sophisticated Tools – How Best to Take Advantage of Depressed Values and Low Interest Rates to Shift Wealth
The effect of varying interest rates and market forces on gifts, sales to family members, private annuities, self-canceling installment notes, grantor retained annuity trusts, sales to grantor trusts, and charitable lead trusts. What techniques are available, when they are appropriate and how they work. How low interest rates adversely affect some techniques, such as QPRTs and CRTs.
– John L. Nelson, Dana M. Neu & Cameron R. Seybolt
3:40 – 3:55 p.m. BREAK

18. IRS: Estate and Gift Tax Examinations – Inside the Audit Process
In this session we will: Identify structure of IRS Estate and Gift Tax Program; detail process of classifying and auditing estate and gift tax returns; address audit span; introduce Fast Track Appeals program; and discuss §6166 Lien Procedures.
– Elizabeth R. Miller

19. Minnesota Income Tax Residency of Individuals and Trusts – What Estate Planners Ought to Know
Minnesota residency rules for individuals and trusts; steps to effectively change an individual’s residence – physical presence and intent; lessons from recent MN Department of Revenue audits; basic income taxation of trusts; and impact of a trust’s situs on income and transfer tax planning.
– Peter S. Hatimen & Masha M. Yevzelman

20. Medical Assistance Update 2009
The 2009 budget crisis threatened many cuts in medical assistance and other health care programs. This session will discuss the latest developments in the medical assistance program, including changes in eligibility criteria, if any, calculation and reduction of asset transfer penalties, and recovery of medical assistance claims from probate and non-probate assets of the medical assistance recipient and spouse.
– Julian J. Zweber

21. Life Insurance and Teeth... Ignore Them and They’ll Go Away
An understanding of how the current economical environment may compromise your clients’ life insurance policy; how to minimize/eliminate the advisor’s exposure/risk level; how to identify, evaluate and remedy failing policies; the two questions to determine if your clients’ policy will meet their planning objectives; life settlements – how they work, who is a candidate and when to introduce, including the new UPJA standards.
– Robert Cohen

22. Fixing Problems with Sophisticated Irrevocable Planning Instruments Once They’re Signed
The presentation will focus on ways to “fix” sophisticated irrevocable inter vivos estate planning instruments after they are executed. Specifically, it will address planning options available to the practitioner with inter vivos irrevocable trusts when there is a significant and dramatic decline in the value of trust assets – such as we have seen recently. It will discuss “underwater” grantor retained annuity trusts (GRATs) and “underwater” highly leveraged irrevocable grantor trusts (IGT). What do you advise the trustee of an IGT when the value of trust assets drops below the face amount of the IGT promissory note? What are the estate, gift and income tax implications? What do you advise the grantor of the IGT when his or her security interest in IGT assets is in jeopardy? Should the grantor foreclose? The presentation will discuss the following sophisticated estate planning concepts: 1) installment sale of “old” GRAT assets; 2) “re-GRATING”; 3) the “GAP GRAT”; 4) IGT premisory note renegotiation options – note interest rate reductions, note principal reductions and debt forgiveness; 5) “secondary IGTs”, and 6) “rolling IGTs”. Finally, we will discuss planning options for trustees of irrevocable trusts, including charitable trusts and private foundations, when trust or foundation assets simply disappear, such as happened in the Madoff scandal.
– William S. Forsberg & E. Burke Hinds; Materials by Milford Hatcher

23. ABCs of Private Trust Companies – Do They Really Work? The Devil is in the Details!
PTC Analysis, Situs, Formation Requirements, Operational Issues, and an analysis of situs including state laws, taxation and Court supervision.
– P Daniel Donohue

24. Guardianship/Conservatorship – What Happens Once the Assets are Depleted?
A review of the process to address a soon-to-be insolvent or depleted conservatorship and an explanation of the process and options available to the Ward after the assets are gone.
– Rick Davies & Robert A. McLeod

25. Income Taxation of Trusts and Estates
The complex rules governing the income taxation of trusts and estates require resolution to four questions: (1) What items should be taxed? (2) Who should be taxed? (3) When should these items be taxed? and (4) How should these items be taxed? This presentation is intended to provide a framework to enable you to resolve these questions and to provide you with some helpful planning ideas and tips.
– Kelli A. Enders

4:55 – 6:15 p.m. RECEPTION Sponsored by Lowry Hill

Tuesday, June 9, 2009
8:00 – 8:30 a.m. CONTINENTAL BREAKFAST
Sponsored by The Northern Trust Company

8:30 – 9:15 a.m. Non-Tax Case Law Update
– Melinda K. Greer & Sonny F. Miller
9:15 – 10:15 a.m. How to Manage Through Turbulent Economic Times
– Dr. Sung Won Sohn
10:15 – 10:30 a.m.  BREAK

10:30 – 11:30 a.m.  BREAKOUT SESSION D

26. How to Respond to Fiduciary Theft
   This session will review the responses to fiduciary theft including surcharges and other causes of action in supervised cases; and ways to prevent theft and to identify theft after it has occurred.
   – Robert A. McLeod

27. Marital Property Laws of Wisconsin – What an Estate Planner Needs to Know – Opportunities Galore or Pitfalls into Horror; Say Cheeeze!
   Opportunities – Tax advantages of Wisconsin marital property laws and estate and income tax laws; when Wisconsin marital property laws apply; preserving WI marital property tax attributes when a client moves from WI to MN; pitfalls – potential marital property related pitfalls awaiting a client who moves from MN to WI
   – Roy A. Sjoberg

28. Changes to the Kiddie Tax and Other Income Tax Planning Considerations
   – Barry J. Newman

29. Trust Litigation – Effective Practices for Representing Parties – Trustees, Beneficiaries and Interested Persons
   Trust proceedings have become an increasingly employed mechanism for presenting and pursuing a wide range of issues and disputes involving trustees, beneficiaries and other interested parties. This session will address the broad jurisdictional reach and prerogatives available in trust proceedings and will focus on effective and pragmatic practices.
   – Michael R. Cunningham

30. Probate Law – Didn’t They Teach You That in Law School?
   This panel of experienced probate practitioners will discuss basic questions that many attorneys and paralegal have about probate proceedings, and thought that they should have learned in law school, but did not. If you have questions that you would like the panel to address/discuss, please email them to vogien@minnpro.org.
   – Andrea S. Breckner, Cynthia R. Costello, Kathi A. Kodadet, Matthew J. Shea, Mary E. Shearen, Peggy Zdon & Susan J. Link, moderator

31. Transitioning Your Business in the Real World – Observe as a “Real” Family and Their Advisor Work Through a Succession Plan for the Family Business
   Observe how one “family” and their advisor work through emotional aspects of transitioning a family business; identify technical aspects of transitioning the business including various wealth transfer strategies, liquidity and control and equalization problems; acquire a better understanding of the complexities of family dynamics in the family business context – along with some practical tools that can be used with clients.
   – David B. Gollin, Mark W. Greiner, Kathleen L. Kuehl & Kristine J. Merta

32. Now What? The Large Estates Panel Tackles the Tough Questions
   (2-hour session)
   Your panel will offer practical/impractical suggestions – and an occasional answer – concerning perplexing planning, administration and practice management conundrums. Panelists will frequently disagree with each other, and questions posed will result in more questions. The panel firmly believes that as our circle of knowledge increases, so does our circumference of ignorance. You may pose questions in advance to Alan Yanowitz at alan@mnestateplanning.com.
   – John R. Bedosky, Bronwen L. Cound, Mark W. Greiner, E. Burke Hinds, Charles (Chip) T. Parks, Jr. & Alan J. Yanowitz

33. Trust Terms with the 1041 in Mind
   The advantages and disadvantages of various options for trust terms looking specifically at the tax consequences when completing the fiduciary income tax return – Form 1041.
   – Bryan Jamison

34. Ethical Potpourri – Assorted Ethical Issues Commonly Faced by Estate Planners
   (1.0 ethics credit applied for)
   Topics include: representing married couples, defining who your client is in estate administrations, drafting estate planning documents for unmarried couples, determining client competence and capacity, representing multiple generations within a family, asset protection planning, estate planning for clients with assets in multiple jurisdictions, and duties to beneficiaries of estate plans. The presentation will focus on practical solutions using the Minnesota Rules of Professional Conduct as a guide.
   – Matthew J. Shea & Marlo W. Turcotte

35. Powers of Attorney and Incapacity Planning
   An overview of the statutory short form and common law Powers Attorney for control over the estate and Advance Directives for the control over the person. What information do you need to know to answer your client’s initial questions and how do you help them find the answers they will need to make them feel more secure about their estate plan?
   – John E. Olmon

   When to use disclaimer planning; overview of administration with disclaimers; potential traps and opportunities; solidify your confidence with disclaimers and recognize additional ramifications that you may not already know.
   – Mary P. Robben

   Status of Barg in the court system; impact of the MN Supreme Court decision on elder law practice; practice tips; and update on other MN judicial proceedings re: recovery and possible legislative efforts of DHS to counter Barg.
   – Thomas J. Meinz

38. ABCs of Charitable Planning: A Primer on Planned Giving Techniques
   Rules for charitable deductions for income, estate and gift taxes; available strategies and vehicles for charitable giving; and tips and traps in charitable giving.
   – Sheryl G. Morrison

39. The Latest on New Trust/Banking Rules, Procedures and Laws
   – William C. Kuhlmann & Lloyd S. Stern

40. Medicare Set Aside Trusts and Government Programs
   The purpose of the Medicare Secondary Payer Act is to ensure that Medicare is reimbursed for any payments made on behalf of an injured person when a primary payer exists. It now appears that CMS will begin enforcing the MSP on claims other than worker’s compensation claims. This session will explore Medicare Set Aside trusts as a means to protect payments for future medical expenses which will not be covered by Medicare and the impact of MSA’s on other government benefits such as Medical Assistance and Supplemental Security Income.
   – Laurie Hanson & Cathryn D. Reher

41. Non-Tax Case Law Update: Highlighting Recent Trust and Estate Litigation Cases
   This presentation will further the non-tax case law update with a focus on litigation. Discussion will include current trends in estate and trust litigation and tips on avoidance.
   – Bridget A. Logstrom Koci, Christopher T. Shaheen & Gregory M. Weyandt
REGISTRATION / ORDER FORM

The 35th Annual
Probate & Trust Law Section Conference

June 8 & 9, 2009
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