Uniform Disclaimer of Property Interests

By William P. LaPiana

The National Conference of Commissioners on Uniform State Laws (NCCUSL) approved the Uniform Disclaimer of Property Interests Act (UDPIA) on July 29, 1999. The new disclaimer act replaces three uniform acts promulgated in 1978 (the Uniform Disclaimer of Property Interests Act, the Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act and the Uniform Disclaimer of Transfers under Nontestamentary Instruments Act) and will be incorporated into the Uniform Probate Code (UPC) to replace current UPC § 2-801. UDPIA is the most comprehensive disclaimer statute ever written and is designed to allow every sort of disclaimer that is useful for tax planning purposes.

Nine Month Time Limit

UDPIA does not include a specific time limit for making any disclaimer and makes no reference to the nine month limit of Code § 2518. At the beginning of the drafting process, the NCCUSL drafting committee decided that the new act would reflect the basic concept underlying all disclaimers: no one can be forced to accept a gift. The only bar to a disclaimer, therefore, should be acceptance of the offer. This decision recognizes that, in almost all jurisdictions, disclaimers can be used for more than tax planning. A proper disclaimer will often keep the disclaimed property from the disclaimant's creditors. In short, the new act is a type of enabling act that prescribes all of the rules for refusing a proffered interest in or power over property and the effect of that refusal on the power or interest. UDPIA leaves the tax consequences of the refusal to tax law.

The drafting committee also believed that the decision not to include a specific time limit—to "decouple" the disclaimer statute from the time requirement for a "qualified disclaimer" under Code § 2518—would reduce confusion. The older uniform acts and almost all the current state statutes (many of which are based on those acts) were drafted in the wake of the passage of Code § 2518 in 1976. That gift tax provision replaced the "reasonable time" requirement of prior law with a requirement that a disclaimer must be made within nine months of the creation of the interest disclaimed, if the disclaimer is to be a "qualified disclaimer"—one that is not regarded as a transfer by the disclaimant.

The statutes that were written in response to Code § 2518 reflected the nine month time limit that Code section established. Under most of these statutes (including the 1978 uniform acts and UPC § 2-801), a disclaimer must be made within nine months of the creation of a present interest. For example, a disclaimer of an outright gift under a will must be made within nine months of the decedent's death, corresponding to the requirement of Code § 2518. A future interest, however, may be disclaimed within nine months of the time that the interest vests in possession or enjoyment. For example, a remainder contingent on surviving the holder of the life income interest must be disclaimed within nine months of the death of the life income beneficiary. The time limit for disclaimers of future interests does not correspond to Code § 2518, which generally requires that a qualified disclaimer of a future interest be made within nine months of the interest's creation, no matter how contingent it may be.

The nine month time limit of the existing statutes really is a trap. Although it superficially conforms to Code § 2518, its application to the disclaimer of future interests does not. The UDPIA drafting committee hoped that, by removing all mention of time limits, the statute itself would signal that different law sets the requirements for a tax qualified disclaimer.

Relates Back

UDPIA reads differently from current disclaimer statutes because it abandons the term "relates back." Courts have interpreted that term to mean that the disclaimer takes effect as a refusal at that time, thus preventing the disclaimant from transferring the interest. UDPIA adopts this interpretation. Rather than using the term "relates back," however, UDPIA makes disclaimers effective at the time when the offer of the gift is irrevocable. For example, a disclaimer of a gift under a will is "effective" when the will becomes irrevocable at the death of the testator. In addition,

§ 4(f) states that a disclaimer "is not a transfer, assignment, or release." Taken together, the time of effectiveness provisions and § 4(f) clearly state the meaning of a disclaimer as a refusal.

Disclaimer of Trustee Powers

UDPIA creates rules not only for the disclaimer of interests in property, but also for the disclaimer of powers over property. The act includes sections devoted to the disclaimer of powers not held in a fiduciary capacity (powers of appointment) (§ 9) and of powers held in a fiduciary capacity (§ 11). Trustees may have tax motives for surrendering powers. For example, a trust for the primary benefit of a surviving spouse will not qualify for the marital deduction if the trustee has the power to invade principal for others. If the trustee effectively disclaims the power, the trust might then qualify for the marital deduction under Code § 2056. Trustees have, in general, had difficulty disclaiming powers. The courts usually decide that the trustee must accept the trust as created or decline to be trustee. In contrast, UDPIA gives trustees the ability to make such disclaimers. Any disclaimer by a trustee must, of course, comport with the trustee's fiduciary duty.

Disclaimer of Property Added to Trust

Disclaimers of additions of property to a trust are also the subject of innovative provisions. UDPIA § 5 allows trustees to disclaim property that would otherwise be added to a trust. Such disclaimers have been hampered by the same reasoning that has held back potentially useful disclaimers of fiduciary powers. For example, a trustee might wish to disclaim an addition to a trust that would otherwise lead to the imposition of the generation-skipping transfer tax. Again, any disclaimer of a property interest by a trustee must comport with the trustee's fiduciary duty.

Disclaimer of Interest in Jointly Held Property

The most important new provision dealing with the disclaimer of interests in property is § 7, "Disclaimer of Interest in Jointly Held Property." Although existing statutes usually mention the possibility of disclaiming jointly held property, they do not provide details. Any disclaimer of joint tenancy or tenancy by the entirety property is an anomalous concept in property law terms. At the death of one joint holder, nothing really "passes" to the survivor. The traditional common law view is that the survivor has been "freed of the participation" of the other joint tenant. Nevertheless, courts have interpreted the existing disclaimer statutes as contemplating the disclaimer of at least the "accretive portion" of the joint tenancy—that part of the property that the decedent would have received had the tenancy been severed unilaterally. See *Dancy v. Comm'r*, 872 F.2d 84 (4th Cir. 1989); *McDonald v. Comm'r*, 853 F.2d 1494 (8th Cir. 1988); *Kennedy v. Comm'r*, 804 F.2d 1332 (7th Cir. 1986); *In re Estate of Lamoureux*, 412 N.W.2d 628 (Iowa 1987). Holdings such as these, of course, give little help to tenants by the entirety who cannot make a unilateral severance. IRS rulings have generally, albeit reluctantly, followed these cases, allowing the disclaimer of the severable portion. A surviving tenant by the entirety, of course, could not make a qualified disclaimer under these rulings.

The IRS ended the controversy in late 1997 when it promulgated new final regulations under Code § 2518. Treas. Reg. § 25.2518-2(c)(4)(i) allows a surviving joint tenant or tenant by the entirety to disclaim that portion of the tenancy to which he or she succeeds on the death of the first joint tenant (when there are two joint tenants), whether or not the tenancy could have been unilaterally severed under local law and regardless of the proportion of consideration that the disclaimant furnished. The regulations also create a special rule for joint tenancies between spouses created after July 14, 1988, when the spouse of the donor is not a U.S. citizen. In that case, the donee spouse may disclaim any portion of the joint tenancy includable in the donor spouse's gross estate under Code § 2040, which creates a contribution rule. Thus, the surviving non-citizen spouse may disclaim all of the joint tenancy property if the deceased spouse provided all of the consideration for the tenancy's creation.

Treas. Reg. § 25.2518-2(c)(4)(iii) also recognizes the unique features of joint bank accounts. The regulations permit the disclaimer by a survivor of that part of the account that the decedent contributed, so long as the decedent could have regained that portion during life by unilateral action. The regulations bar the disclaimer of that part of the account attributable to the survivor's contribution and explicitly extend the rule governing joint bank accounts to brokerage and other investment accounts, such as mutual fund accounts, held in joint name.

Section 7 was drafted to allow every sort of qualified disclaimer of jointly held property possible under the Treasury Regulations. Section 2(5) defines jointly held property to include joint tenancies and tenancies by the entirety as well as all other sorts of joint arrangements by stating: " 'Jointly held property' means property held in the name of two or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property." A surviving holder of joint property may disclaim the greater of a fractional portion of the property, determined by dividing the number one by the number of joint holders immediately before the death of the holder giving rise to the opportunity to disclaim, and that portion of the jointly held property not attributable to the contribution of the disclaimant. A surviving spouse who

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contributed all the consideration for the purchase of the family home held in joint tenancy could disclaim one-half of the property. Had the surviving spouse contributed nothing, he or she could disclaim as much as all of the property, although a qualified disclaimer would be limited to one-half.

The surviving holder of a joint account who contributed nothing to the account could disclaim the entire account. The disclaimer would be a qualified disclaimer under the regulations so long as the other requirements of Code § 2518 are met. The disclaimant is deemed to have predeceased the last of the other joint holders to die. In the case of spousal joint tenants, the decedent then would be the deemed survivor. The disclaimed portion would pass through his or her estate and could help the estate take advantage of the unified credit.

The provisions of UDPIA dealing with the disclaimer of interests in property, other than disclaimers by trustees, also differ from previous statutes. Section 6 governs all such disclaimers, whether the disclaimed interest was created by will, under intestacy law or by a nontestamentary instrument. The old uniform acts, UPC § 2-801, and almost all state statutes deal separately with disclaimers of testamentary and nontestamentary interests. The separation reflects the need to select a time at which the disclaimant is deemed to have died to determine how the disclaimed interest passes, absent a direction in the instrument. For testamentary interests, the time has always been the death of the decedent. For other interests, the time is usually when the instrument creating the interest becomes irrevocable.

Effective Time of Disclaimer

Under UDPIA, unless the instrument provides for the disposition of the disclaimed interest should it be disclaimed or for the disposition of disclaimed interests in general (§ 6(b)(2)), the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution of the interest under § 6(b)(3)(A). Section 6(a)(1) defines time of distribution as "the time when a disclaimed interest would have taken effect in possession or enjoyment." "Possession" and "enjoyment" are, of course, terms of art from the law of future interests and describe the time at which it is certain to whom property belongs. The terms do not mean that the person actually has the property in hand. For example, the time of distribution of present interests created by will and of all interests arising under the law of intestate succession is the date of the decedent's death. At that moment, the heir or devisee is entitled to his or her devise or share. It is irrelevant that time will pass before the will is admitted to probate and that actual receipt of the gift may not occur until the administration of the estate is complete. The time of distribution of present interests created by nontestamentary instruments generally depends on when the instrument becomes irrevocable. Because the recipient of a present interest is entitled to the property as soon as the gift is made, the time of distribution occurs when the creator of the interest can no longer take it back.

The time of distribution of a future interest is the time when it comes into possession. Previous uniform acts and UPC § 2-801 provided that a disclaimant would be treated as predeceasing the creation of the future interest (for example, the death of the decedent if the interest was in a testamentary trust). That approach leads to an ambiguity. Assume that T's will creates a testamentary trust for A, who is to receive all of the income for life. At A's death, the trust is to be distributed to T's descendants by representation. A is survived by T's son S and daughter D. S has two living children and D has one child. S decides that he would prefer his share of the trust to pass to his children and disclaims. The disclaimer must be made within nine months of T's death if it is to be a qualified disclaimer for tax purposes. Under prior acts and UPC § 2-801, the interest passes as if S had predeceased T.

A problem can arise if S is survived by children born after T's death. It is possible to argue that, had S predeceased T, the afterborn child would not exist and that D and S's two children living at the time of T's death are entitled to all of the trust property. Under § 6(b)(3)(A), however, S is deemed to have died immediately before A's death, even though under § 6(b)(1) the disclaimer is effective as of T's death. There is no doubt, therefore, that S's children living at the time of distribution, whenever born, are entitled to the share of the trust property he would have received.

In the above example, it is clear that S's children should receive exactly what S would have received had he not disclaimed. Section 6(b)(3)(A) ensures that result by requiring that the disclaimed interest pass as if the disclaimant had died. This provision in turn ensures that a disclaimer cannot alter the representational scheme of a multigenerational gift or the intestacy statute. The classic example is the disclaimer by an older generation representative whose children outnumber those of her deceased

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sibling. For example, X dies intestate, survived by daughter D, her three children and the only child of predeceased son S. D disclaims. Were D deemed simply to have predeceased X, her children could argue that they were entitled to three-fourths of the estate because all the heirs are now in the same generation. Courts have rejected this interpretation of deemed death, taking the position that the disclaimer should only allow the passing of what the disclaimant would otherwise have taken. See, e.g., *Welder v. Hitchcock*, 617 S.W.2d 294 (Tex. Civ. App. 1981); *Estate of Fienga*, 347 N.Y.S.2d 150 (Surr. Ct. 1973). UDPIA agrees with that position.

Preventing the use of a disclaimer to alter the shares of an intestate estate or of a multigenerational gift by limiting the effect of the disclaimer to the disclaimed interest solves one problem but creates another. In the example in the previous paragraph, if the disclaimed interest passes as if D predeceased X, S's child could claim one-fourth of the interest because, once again, all of the heirs would be in the same generation. UDPIA prevents that result by adapting language from UPC § 2-801, providing that if the disclaimant's descendants would have shared in the disclaimed interest had the disclaimant predeceased (in this example with their cousin, S's child), then the interest passes only to the disclaimant's descendants.

The concept of the disclaimer as a deemed death follows the approach that existing statutes take. Just as under those statutes, the result of a disclaimer of an interest created under a will is seldom in doubt under § 6. Even if the will does not provide for the death of the disclaimant before the testator, the doctrine of lapse and antilapse statutes will give a clear answer. The law of lapse as it applies to nontestamentary instruments and the interests they create is far less certain. In the absence of comprehensive lapse provisions like UPC §§ 2-603, 2-706 and 2-707, general principles may dictate the exact result of the disclaimer of an interest created in an instrument other than a will. Unfortunately, the exact application of those general principles to any particular situation may not be obvious.

Disclaimers by Corporations and Partnerships

Section 6(b)(3)(B) provides a rule for the passing of property interests disclaimed by persons other than individuals. Because § 8 applies to disclaimers by trustees of property that would otherwise pass to the trust, this paragraph principally applies to disclaimers by corporations, partnerships and the other entities listed in the definition of "person" in § 2(b). A charity, for example, might wish to disclaim property if acceptance of the property would be incompatible with its purposes.

Acceleration of Future Interests

Section 6(b)(4) continues the approach taken in prior uniform acts and UPC § 2-801 that provides for the acceleration of future interests on the making of a disclaimer. For example, Father's will creates a testamentary trust to pay income to his son S for his life, and on his death to pay the remainder to S's descendants then living, by representation. If S disclaims his life income interest in the trust, the remainder will immediately become possessory in S's descendants determined as of Father's death, just as if S really had not survived. It is immaterial that the actual situation at S's death might be different, with different descendants entitled to the remainder.

Disclaimers of Powers of Appointments

Section 9 deals with disclaimers by holders of powers of appointment and § 10 with disclaimers by appointees, permissible appointees and takers in default. A properly disclaimed power ceases to exist as of the time the disclaimer becomes effective, which in turn depends on what sort of power is involved and whether or not it has been exercised. If a holder disclaims a power before exercising it, the disclaimer takes effect at the time that the instrument creating the power became irrevocable and the disclaimer destroys the power. If the holder has exercised the power, the disclaimer takes effect immediately after the last exercise of the power. The power ceases to exist from that time forward, unless the power is a presently exercisable general power of appointment. Once exercised, such a power cannot be disclaimed. This is the only provision in UDPIA that makes a specific act sufficient to bar a subsequent disclaimer.

Section 10 makes a disclaimer by an appointee take effect as of the time that the instrument by which the holder exercises the power becomes irrevocable. Disclaimers by objects and takers in default take effect as of the time the instrument creating the power becomes irrevocable. The effect of the disclaimer is the same as that of any disclaimer of an interest of property under § 6. The disclaimed interest will pass according to the explicit provisions of the instrument exercising or creating the power or under the default rule of

§ 6(b)(3)(A), which deems the disclaimant to have predeceased the time of distribution.

Delivery

The delivery provisions of § 12 are designed to ensure that the disclaimer reaches the person or entity having the responsibility to distribute the disclaimed interest. UDPIA does not require filing the disclaimer with a court unless there is no person or entity to whom delivery can be made. For example, a disclaimer of an interest in a decedent's estate must be filed with the court having the authority to appoint the personal representative only if no personal representative is serving at the time.

Bars to Disclaimers

Section 13 of UDPIA is captioned "When Disclaimer Barred or Limited." Like existing statutes, this section recognizes that a waiver of the right to disclaim, as well as an assignment, conveyance, encumbrance, pledge, transfer or judicial sale of the interest sought to be disclaimed, will bar a disclaimer. In addition, the past exercise of a general power of appointment bars a disclaimer of the power. The section also includes three novel provisions. First, subsection (e) states that other law can bar or limit a disclaimer. This provision recognizes situations such as the cases holding that disclaimers are transfers in the context of Medicaid qualification or issues in dealing with federal tax liens. (The Supreme Court has granted certiorari in *Drye v. U.S.*, 119 S. Ct. 1453 (1999), to resolve the tax lien question.) Second, subsection (f) provides that a disclaimer barred by § 13 takes effect as a transfer of the interest disclaimed to those who would have taken the interest had the disclaimer not been barred. This provision eliminates the ambiguity that would otherwise be caused by an ineffective refusal to accept property. Third, subsection (g) provides that any disclaimer that meets the requirements for a qualified disclaimer under Code § 2518 is a valid disclaimer under UDPIA.

Conclusion

UDPIA recognizes that disclaimers have a wide variety of uses. The act provides rules for all of those potential uses, while leaving policy questions on the effect of a proper refusal of property or rejection of a power to other law.

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Keeping Current
PROBATE

Keeping Current—Probate offers a look at selected recent cases, rulings and regulations, literature and legislation. The editors of *Probate & Property* welcome suggestions and contributions from readers.

CASES

• TAX APPORTIONMENT: **Will provision prevails over statutory apportionment.** The decedent's will directed that all death taxes be paid from the residue and defined death taxes to include all estate, inheritance and succession taxes "which are assessed by reason of my death." In *Peterson v. Mayse*, 993 S.W.2d 217 (Tex. Ct. App. 1999), the court held that the apportionment clause overrode the statutory apportionment rule.

• EQUITABLE ADOPTION: **Proof must be by clear and convincing evidence.** In *Williams v. Estate of Pender*, 738 So. 2d 453 (Fla. Dist. Ct. App. 1999), the court required clear and convincing evidence of each of the five elements of equitable adoption: 1) agreement to adopt, 2) performance by the natural parents by surrender of custody, 3) performance by child by living in the home of the foster parents, 4) partial performance by the foster parents by taking the child into their home and treating the child as their own and 5) intestacy of the foster parents. For a similar holding, see *Welch v. Wilson*, 516 S.E.2d 35 (W. Va. 1999).

• REPUBLICATION BY CODICIL: **Post-marriage codicil republishes premarital will.** A testator executed his will and married his wife later that day. He subsequently adopted his wife's child. After the adoption the testator executed two codicils. His wife alleged that the will was revoked by a state statute providing that a subsequent marriage and birth or adoption of a child revokes a premarital will. The court in *In re Estate of Wells*, 983 P.2d 279 (Kan. Ct. App. 1999), held the will effective because it was republished by codicil after the marriage and adoption.

• ATTORNEY'S FEES: **Executor's undue influence precludes payment from estate.** A will was denied probate because the executor exercised undue influence over the decedent. That executor moved for payment of his lawyer's fees from the estate, but the court denied the fee application. *In re Estate of Herbert*, 979 P.2d 1133 (Haw. 1999).

• DOMICILE: **Decedent's intent outweighs physical location of property.** The decedent's estate was administered in Massachusetts. An after-death survey of the decedent's property revealed that 11% of the property, including his house, was actually located in Connecticut. The court in *Bernier v. DuPont*, 715 N.E.2d 442 (Mass. App. Ct. 1999), held that the decedent intended to reside in Massachusetts and Massachusetts courts had jurisdiction based on the decedent's domicile.

• PRETERMITTED CHILD: **Nonmarital child entitled to forced share.** A decedent's will was executed before the birth of his child. Although the child's mother was married to someone else at the time of the child's birth, the court held that the child qualified as a pretermitted child because there was clear and convincing evidence of paternity overcoming the presumption that the mother's husband was the child's father *In re Matter of Wilkins*, 691 N.Y.S.2d 878 (N.Y. Surr. Ct. 1999).

RULINGS AND REGULATIONS

• GST TAX: **Failure to allocate exemption on Schedule R excused under substantial compliance doctrine.** PLR 199937026.

• INCOME TAX BASIS: **Beneficiary not estopped from claiming a stepped up basis greater than the fair market value of the asset shown on the estate tax return.** TAM 199933001.

• MARITAL DEDUCTION: **Savings clause in deceased spouse's will sufficient to support interpretation limiting distribution to surviving spouse consistent with marital deduction rules.** TAM 199932001.

• POWER OF APPOINTMENT: **Trustee's power to amend a trust determined not to be a general power because the trustee had no beneficial interest in the trust and the grantor's intent was to benefit the trustee's children.** FSA 199830026.

• VALUATION: **Special valuation rules of Code § 2701 may apply to formation of a partnership.** TAM 199933002.

LITERATURE

• **Asset protection trusts.** Recent articles discussing asset protection trusts include David Aronofsky, *Montana's Foreign Capital Depository Act: A Financial Pie in the Rocky Mountain Sky or a Sensible New Assets Attraction Approach?*, 32 Vand. J. Transnat'l L. 711 (1999); Eric Henzy, *Offshore and "Other" Shore Asset Protection Trusts*, 32 Vand. J. Transnat'l L. 739 (1999); Gideon Rothschild et al., *Self-Settled Spendthrift Trusts: Should a Few Bad Apples Spoil the Bunch?*, 32 Vand. J. Transnat'l L. 763 (1999); Amy Lynn Wagenfeld, *Law for Sale: Alaska and Delaware Compete for the Asset Protection Trust Market and the Wealth that Follows*, 32 Vand. J. Transnat'l L. 831 (1999).

• **Attorney-client privilege.** For a discussion of the posthumous application of the privilege, see Forrest Shea Browning, Swidler & Berlin v. United States: *A Grave Decision—When Does Attorney-Client Privilege Have a Life of its Own?*, 22 Am. J. Trial Advoc. 671 (1999).

• **Body disposition.** Jennifer E. Horan recommends a functional approach to family status for same-sex couples when disposing of remains in *"When Sleep at Last Has Come": Controlling the Disposition of Dead Bodies for Same-Sex Couples*, 2 J. Race, Gender & Just. 423 (1999).

• **Charitable trusts.** Recent articles include: Jonathan Gopman and Daniel Mielnicki, *New Perspectives in Planning with Testamentary Charitable Lead Annuity Trusts*, Tr. & Est. 46 (June 1999); Paula Kilcoyne, *Charitable Trusts - Donor Standing Under the Uniform Management of Institutional Funds Act in Light of* Carl J. Herzog Foundation, Inc. v. University of Bridgeport, 21 W. New Eng. L. Rev. 131 (1999); Conrad Teitell, *Charitable Remainder Trusts—Final Regulations*, Tr. & Est. 36 (Aug. 1999).

• **Conservation easements.** For a review of conservation easements benefits, see Brenda J. Brown's *Land Preservation Provides Estate Tax Benefits: Section 2031(c)*, 17 UCLA J. Envtl. L. & Pol'y 117 (1998).

• **Contracts to make a will.** Jason Thomas King recommends a constructive trust remedy rather than enforcing a promise to make a will in *Lifetime Remedies for Breach of a Contract to Make a Will*, 50 S.C. L. Rev. 965 (1999).

• **Defamation after death.** Raymond Iryami discusses the history and recent developments related to the departed's reputation rights in *Give the Dead Their Day in Court: Implying a Private Cause of Action for Defamation of the Dead from Criminal Libel Statutes*, 9 Fordham Intell Prop. Media & Ent. L.J. 1083 (1999).

• **Family-owned businesses.** Recent articles focusing on family-owned businesses include: Shannon E. O'Brien, *Estate Tax Treatment of Family-Owned Businesses: The Evolution of Internal Revenue Code Section 2057*, 67 UMKC L. Rev. 495 (1999); Sebastian V. Grassi Jr., *Drafting for the Family-Owned Business Deduction*, 90 J. Tax'n 358 (1999); and Neil E. Harl, *The Family-Owned Business Deduction: Still in Need of Repairs*, Drake J. Agric. L. 59 (Spring 1999).

• **Foreign trust taxation.** Donald D. Kozusko and Stephen K. Vetter question *Respect for "Form" as "Substance" in U.S. Taxation of International Trusts*, 32 Vand. J. Transnat'l L. 675 (1999). Carlyn S. McCaffrey & Elyse G. Kirschner discuss foreign trusts and the requirements they impose in *Learning to Live with the New Foreign Nongrantor Trust Rules*, 32 Vand. J. Transnat'l L. 555 (1999).

• **Limited liability companies.** For a review of limited liability companies, see Thomas W. Jacobs and Thomas J. Callahan, *What Tax Lawyers Need to Know About Single Member Limited Liability Companies*, Prac. Tax Law. 7 (Summer 1999).

• **Long-term care insurance.** Robert D. Hayes, Nancy G. Boyd and Kenneth W. Hollman stress the importance of advising elderly clients to purchase insurance packages in *What Attorneys Should Know About Long-Term Care Insurance*, 7 Elder L.J. 1 (1999).

• **Medicaid.** Omar N. Ahmad provides an overview of the Medicaid program and discusses the "income-first" rule in *Medicaid Eligibility Rules for the Elderly Long-Term Care Applicant, History and Developments, 1965-1998*, 20 J. Legal Med. 251 (1999).

• **Negligent trust situs.** A possible new tort is discussed in Michael J. Myers and Rollyn H. Samp, *South Dakota Trust Amendments and Economic Development: The Tort of "Negligent Trust Situs" at its Incipient Stage*, 44 S.D. L. Rev. 662 (1998).

• **Omitted spouse.** David E. Wagner explores South Carolina's omitted spouse statute in *The South Carolina Probate Code's Omitted Spouse Statute and* In Re Estate of Timmerman, 50 S.C. L. Rev. 979 (1999).

• **Professional athletes.** For a view of estate planning for the professional athlete, see Joseph D. Wright's *Skyrocketing Dollars and the Tax Reform Act of 1997: Estate Planning for the Professional Athlete in a New Millennium*, 6 Sports Law J. 27 (1999).

• **Professional responsibility.** The Judge Advocate General's School shares its experience in *TJAGSA Practice*

Note: Wills and Professional Responsibility Notes, Army Law. 30 (July 1999).

• **Purpose trusts.** Adam J. Hirsch reviews the purpose trust provisions of the UPC in *Trusts for Purposes: Policy, Ambiguity, and Anomaly in the Uniform Laws*, 26 Fla. St. U. L. Rev. 913 (1999).

• **QTIP election.** June R. Kitagawa examines Code § 2056 in *QTIP Election Invalid Where the Will Allowed Reduction in the Surviving Spouse's Interests:* Estate of Rinaldi v. United States, 52 Tax Law. 617 (1999).

• **Qualified retirement plan.** Louis S. Harrison shares his methods for minimizing at-death transfers of tax-deferred assets in *Creative and Strategic Estate Planning for Transfer of Qualified Retirement Assets*, 87 Ill. B.J. 480 (1999).

• **Tax liens on inherited property.** Andrew J. Lawrence recommends strategies in *State Law Disclaimer Did Not Prevent the Attachment of Federal Tax Liens to Inherited Property:* Drye Family 1995 Trust v. United States, 52 Tax Law. 627 (1999).

• **Tax returns.** Glen A. Yale shares his instructions and checklist in *Obtaining Information to Complete the Form 706*, Prac. Tax Law. 29 (Summer 1999).

• **Trust companies.** Anne Luke Boozer, Hal Pennington and William W. Rodgers discuss the trust industry in *Case Study: A Trust Culture That Works*, Tr. & Est. 28 (Aug. 1999).

• **Trust taxation.** Robert T. Danforth offers *A Proposal for Integrating the Income and Transfer Taxation of Trusts* in 18 Va. Tax Rev. 545 (1999).

• **Trusts.** For an overview of recent developments, see Edward C. Halbach, Jr., *Significant Trends in the Trust Law of the United States*, 32 Vand. J. Transnat'l L. 531 (1999).

• **Undue influence.** Brian Alan Ross argues that a woman's testamentary choices are often overruled as punishment for her challenging traditional gender roles in *Undue Influence and Gender Inequity*, 19 Women's Rts. L. Rep. 97 (1997).

• **Uniform prudent investor** Act. Martin D. Begleiter shares the results of his study in *Does the Prudent Investor Need the Uniform Prudent Investor Act - An Empirical Study of Trust Investment Practices*, 51 Me. L. Rev. 28 (1999).

• **Valuation of lottery winnings.** Ja Lee Kao focuses on *Valuing Future Lottery Winnings for Estate Tax Purposes:* Estate of Shackleford v. United States, 52 Tax Law. 609 (1999).

• **Viatical settlements.** Miriam R. Albert's proposal for decreasing fraudulent viatical settlements is found in *The Future of Death Futures: Why Viatical Settlements Must be Classified as Securities*, 19 Pace L. Rev. 345 (1999).

• **Will contests.** Ronald Chester examines mediation as an alternative to will contests in *Less Law, But More Justice?: Jury Trials and Mediation as Means of Resolving Will Contests*, 37 Duq. L. Rev. 173 (1999).

LEGISLATION

• **California authorizes nonprofit charitable corporations to be appointed as trustees under specified circumstances.** 1999 Cal. Legis. Serv. ch. 424.

• **California creates statewide registry for guardians and conservators.** 1999 Cal. Legis. Serv. ch. 409.

• **California establishes presumption that transfer of community and quasi-community property to a revocable trust is an agreement that those assets retain their character.** 1999 Cal. Legis. Serv. ch. 263.

• **California revises creditor claims procedures.** 1999 Cal. Legis Serv. ch. 263.

• **Illinois prohibits discrimination of recipients of donated organs based on potential donee's disability.** 1999 Ill. Legis. Serv. P.A. 91-345.

• **Illinois requires reporting of charitable trust for the benefit of a minor or a disabled person to the person's parent or guardian.** 1999 Ill. Legis. Serv. P.A. 91-620.

• **New York revises estate tax apportionment statute relating to qualified terminable interest property.** 1999 N.Y. Legis. ch. 380.

• **North Carolina clarifies the circumstances under which an agent may make gifts under a durable power of attorney.** N.C. Laws S.L. 1999-385.

• **Ohio revises probate laws, including will revocation and bonding requirements.** 1999 Ohio Legis. file 71.

Keeping Current—Probate Editor: Gerry W. Beyer, Visiting Professor, Santa Clara University School of Law, 500 El Camino Real, Santa Clara, CA 95053. Contributors include Alexandra F. Caradimitropoulo, Dave L. Cornfeld, William P. LaPiana, Bridget Lovett and Theresa A. Sutton.

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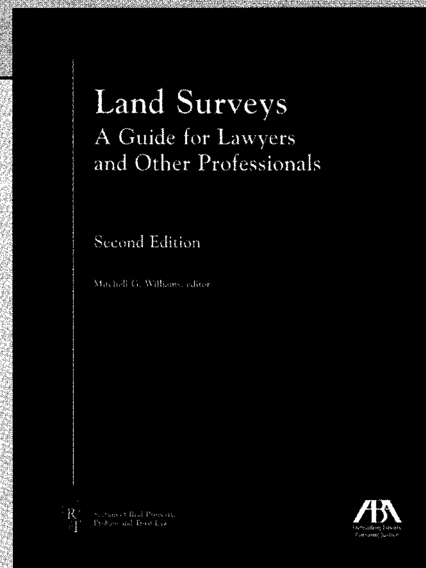

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