DC ESTATE PLANNING COUNCIL CURRENT DEVELOPMENTS

Notable Developments in 2021 and Predictions for 2022

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LEGISLATIVE TAX INITIATIVES IN 2021

- Among the legislative proposals considered in 2021 that would have significantly affected estate planning were:
  - Deemed realization on transfers by gift or at death
  - Periodic gain recognition of assets held in nongrantor trusts and in partnerships
  - Reduction of basic exclusion amount and increased transfer tax rates (automatic sunset and easy to adopt off the shelf)
  - Alignment of grantor trust rules for income and transfer tax purposes
  - Override Rev. Rul. 85-13 (can be accomplished without legislation)
  - Effectively eliminate GRATs (can be adopted off the shelf; *cf* Surface Transportation Act's adoption of "basis consistency rule" in July 2015 to meet revenue need)
  - Eliminate valuation discounts for nonbusiness assets in entities (can be accomplished by regulation but might be challenged in court)
  - Increased information reporting for trusts
  - Elimination of GST exemption for long term trusts
  - Introduce a per-donor limitation for gift tax exclusion for annual gifts
  - Wyden's mark-to-market billionaires tax and Warren's wealth tax
  - Income tax changes: increased income and capital gains tax rates, including a surtax on high income persons, expanded application of net investment income tax, limit qualified business income tax deduction to moderate income taxpayers; limit accumulation of wealth in qualified retirement plans; limit like kind exchanges, tax carried interest income as ordinary income, eliminate lower tax rate for qualified dividends

PREDICTIONS FOR 2022:
What proposals might "stick"

- Proposals in the current BBB Act – surtax and limits on accumulating wealth in qualified plans, extension of the NII tax.
- Those proposals on the shelf that are not controversial and do not have retroactive effect, e.g. revision of GRAT rules
- Those proposals that merely accelerate a sunset, e.g. lower basic exclusion amount
- Rate changes
- Those provisions that do not require legislation, e.g. valuation rules, Rev. Rul. 85-13

PRIORITY GUIDANCE PLAN

Issued 9/9/2021 for plan year ending 6/30/22: https://www.irs.gov/pub/irs-utl/2021-2022-pgp-initial.pdf

1. Final regs on user fees for closing letters, issued 9/27/21, establishes a $67 fee; procedure for requesting *see* https://www.irs.gov/businesses/small-businesses-self-employed/frequently-asked-questions-on-the-estate-tax-closing-letter; on effect of closing letter *see* CCA 202142010 (4/1/21)
2. Final regs on basis consistency (§§1040(f) and 6035)
3. Narrowing "anti-clawback" regulations (§§2001 and 2010) to address whether gifts that are includable in the gross estate should be excepted from the special rule in Reg. §20.2010-1(c). *See* https://nysba.org/NYSBA/Sections/Tax/Tax%20Section%20Reports/Tax%20Section%20Reports%202019/1410%20Report.pdf and https://www.milbank.com/images/content/1/3/v2/132309/45-EGTJ-03-Lynagh-Final.pdf
4. Regulations on alternate valuation and post-death actions. §2032 – "anti-Kohler regulations" – 14 year saga
5. Estate tax deductions of expenses and claims paid after estate tax is paid (§2053) Use of present value concepts; Graegin loans (begun in 2008)

PRIORITY GUIDANCE PLAN (CONTINUED)

6. Final regulations under §2642(g); requirements for requests for an extension of time to make GST allocation elections. Prop. Reg. §26.2642-7- the requirement of affidavits of tax professionals may be modified.
7. Taxation of gifts and bequests from covered expatriates. Needed since 2008 when §2801 was adopted. Regulations proposed in 2015 clarified that no tax will be due until final regulations adopted but then the tax imposed by §2801 will apply to post June 17, 2008 gifts and bequests, although no interest will be due for periods prior to the issuance of final regulations. Thus, the regulations will have unconscionable retroactive effect. For ACTEC comments on the proposed regulations *see* https://www.actec.org/assets/1/6/ACTEC_Comments_re_2801.pdf?hssc=1.
8. Updated actuarial tables under §7520. Mortality tables are to be updated every 10 years; thus were mandated for transfers after April 30, 2019, but the tables were not ready then. Will transition relief be granted? Life expectancy increased greatly in the last 10 years; the probability of a person age 60 surviving to age 90 increased from 21.1% to 26.6%. This change will increase the charitable deduction for CLATs and reduce the deduction for CRATs

OMITTED from the Guidance Plan is guidance regarding the basis of assets in a grantor trust if the assets are not included in the gross estate of the grantor. Rev. Proc. 2015-37 put this issue on the no rule list. See PLR 201544002 (revocable trust of a NRA); 201245006 (1014(b)(3) trust created by NRA) and Rev. Rul. 84-139 (assets inherited from NRA acquire new basis).

CORPORATE TRANSPARENCY ACT ("CTA"), PUBLIC LAW NO. 116-283 (JAN. 1, 2021)

- The CTA was adopted to create a national beneficial ownership registry for "reportable companies." Proposed regulations were issued 12/8/21. *See* https://www.federalregister.gov/documents/2021/12/08/2021-26548/beneficial-ownership-information-reporting-requirements#citation-112-p69936.
- An ordinary trust is not a reportable company. *See* Prop. Reg. 31 CFR §1010.380(c). However, an individual may be deemed to own or control an ownership interest in a reporting company through a trust. A "beneficial owner" is an individual who exercises substantial control over an entity or owns or controls not less than 25% of the ownership interests in an entity. 31 USC §5336(a)(3)(A). The beneficial owners who must be disclosed when a trust owns an interest in a reporting company are: (1) a trustee or other individual who has authority to dispose of trust assets, (2) a beneficiary who: (i) is the sole permissible recipient of income and principal or (ii) has the right to demand a distribution of or withdraw substantially all of the assets, or (3) a grantor or settlor who has the right to revoke the trust or withdraw assets of the trust. *See* Prop. Reg. 31 CFR §1010.380(d)(3)(ii)(C).
- Compare this to the FinCEN Consumer Due Diligence ("CDD") regulations that only require disclosure of the name of a trustee when a trust opens a financial account. 31 CFR §1010.230(d)(3). FinCEN rejected this rule:
  - "[T]he CDD Rule does not provide transparency with respect to complex ownership structures, extensive use of trusts, voting arrangements among owners, golden shares entitling their owners to voting rights disproportionate to their equity stake, and other mechanisms that can obscure the connection between an individual owner and a reporting company. Therefore, it is not at all clear that the CDD Rule results in the identification of all individuals who should be identified as 25 percent owners. Instead, the CDD Rule standard could permit obfuscatory behavior. In connection with trusts, for example, FinCEN believes that requiring the reporting only of the trustee under the ownership interests component would promote the misuse of trusts to hide beneficial ownership interests and complicate the ability of reporting companies to comply with the CTA and the proposed rule. As with the definition of substantial control, FinCEN believes its proposed approach would provide law enforcement with a more accurate and complete picture of an entity's true ownership, regardless of formalities."
- Comments on the proposed regulations are due Feb. 7.
- Reporting for entities created before the effective date of final regulations will be required within one year of the issuance of final regulations. (Shortening the 2-year period contemplated by the CTA.) For entities formed after the effective date of final regulations, reporting is required within 14 days of the creation of the entity. 31 CFR §1010.380(a)(1)(iii).
- Strict protocols will apply to the use of the beneficial ownership information. Generally, this information will be available only to government agencies, financial institutions and regulators. FinCEN will issue regulations detailing these protocols. FinCEN also will revise the CDD regulations to conform to the new CTA regulations.

NOTABLE RECENT CASES

- ***Warne v. Com'r**.* T.C. Memo 2021-7 (2/18/21). Values of LLC interests passing at death to two charities must be discounted in calculating the charitable deduction even though the estate owned 100% of the LLC interests. This caused a $2.5mm reduction in the charitable deduction on which estate tax is due. Cf., *Ahmanson Foundation v. US,* 674 F2d. 761 (9th Cir. 1981) in which a 99% interest passing to charity was discounted where the decedent's 1% interest passed to an individual. Same result obtains where 100% of decedent's interest passes to different charities. This result could have been avoided by leaving the assets to a DAF or private foundation and directing the DAF or foundation to make the charitable gifts. The same problem arises in the marital deduction area. *Cf.*, *Estate of Disanto v. Com'r*. T.C. Memo 1999-421 in which the marital deduction was reduced for discounts attributable to the spouse receiving only a minority interest in closely held stock due to her disclaimer. If the decedent's will devises a majority owned asset to several charities or to charities and individuals or to a spouse and other persons, this issue can arise. Giving the charity or spouse a put right might help. Note that this problem also can arise in a case when a partnership's assets are included in the gross estate under §2036 and the asset that pass to the surviving spouse is an interest in the partnership to which DLOM apply. *See,* Angkatavanich, "*Black Shirts (Black Shurtz) and the Marital Deduction Mismatch*," Trusts & Estates 37 (June 2010).
- ***Smaldino v. Com'r**.* T.C. Memo 2021-127 (11/10/21) A purported gift by H to W followed by W's purported gift to a trust was really an indirect gift by H to the trust. On 4/14/2013, H transferred to W approximately a 41% nonvoting interest in an LLC controlled by H using a Wandry clause (units having a value of $5,249,118.58, which was W's BE). On 4/15/2013, W transferred the same interest to an irrevocable trust created by H to which he had previously transferred an 8% nonvoting interest in the LLC. Documents failed to indicate the dates they were signed. The LLC agreement and its tax returns never showed W as an owner. Court applied a "substance over form" argument. The transfers to W were never effected and the transactions were part of ***a pre-arranged plan***. There were bad facts: W acknowledged that she committed to re-transfer the membership interest after she received them, the transfers were contemporaneous, and there were a number of foot-faults in the documentation. However, the reasoning of the case is cause for concern. Consider the application of §2036 if H gifts to W and W gifts to a SLAT fbo H. *Cf.*, *Brown v. U.S*. 329 F. 3d. 664 (9th Cir. 2003) (H made gift to W and W made gift to trust; H died within 3 years, step transaction doctrine applied so that §2035 applied to the gift tax paid within 3 years of the death of H who was the real donor.) Consider transmutations of community property made to allow a donative transfer by one spouse rather than a joint transfer. Compare a division of jointly-held assets to facilitate spouses making separate gifts.

NOTABLE RECENT CASES (CONTINUED)

- ***Buck v. US,*** 128 AFTR 2d 2021-6041 (D. Conn.) District Court sustains taxpayer's position that gifts of 48% undivided interests as tenants in common in real estate to two separate donees should be valued separately and not aggregated, thereby allowing a 55% discount. Government argued that no discount should be allowed unless the donor owned a minority interest before the transfer. The allowance of a discount even where the donor owned a majority of the interests prior to making the gift was accepted in Rev. Rul. 93-12. Oddly, the District Court did not even cite Rev. Rul. 93-12. See, *Rauenhorst v. Com'r*, 119 T.C. 157 (2002) where the Tax Court criticized the IRS for disregarding its own rulings.
- ***Estate of Morrisette v. Com'r.***, T.C. Memo 2021-60 (5/13/21). Decedent's revocable trust paid $29.9 million of insurance premiums on policies insuring the lives of her three sons. The policy was owned by a dynasty trust under a split dollar agreement that allowed the decedent to receive the greater of the premiums advanced and the cash values of the policies payable when (i) the policies matured, (ii) the policies were canceled or (iii) the parties otherwise agreed. The estate valued the rights to be repaid at $7.5 mm. The IRS valued the policies at $32.6 mm, the cash surrender value when the decedent died. The court concluded that the value was $27.9 mm on the assumption that the split dollar agreement would be terminated 3 years after the estate tax return was filed. The court did not accept the government's argument that the premiums advanced were includable under §§2036 or 2038. The court held that the agreement was a *bona fide* sale for full and adequate consideration, and §2703 does not apply to cause the cash value of the policies to be includable in the estate because the arrangement was a *bona fide* business arrangement. Both parties relied on a discounted cash flow valuation approach and the principal disagreement was the time of termination of the agreement. The 40% gross undervaluation penalty applied because reliance on the appraiser's valuation was unreasonable.
- ***Connelly v. US***, 128 AFTR 2d 2021-5955 (E. D. Mo. 9/2/21). A buy-sell agreement required that a company purchase a decedent's shares of a corporation that was owned by two brothers. The corporation purchased life insurance to fund the obligation. The brothers did not follow the terms of the agreement that required them to fix values annually by agreement or by obtaining an appraisal. Upon the death of the decedent, who owned 77% of the company, the estate and the company agreed to redeem the decedent's shares for $3 million using some of the $3.5 mm insurance proceeds that were payable to the corporation. The estate reported the value of the shares at $3 million. The IRS asserted a value of $4 million and argued that the $3.5 million life insurance proceeds should have been taken into consideration in setting the value. At trial the sole issue was whether the life insurance proceeds had to be considered in determining value. Held: the buy sell agreement did not fix value because it failed the tests in §2703 and the value of life insurance must be considered. The court disagreed with *Estate of Blount v. Com'r*, 428 F.3d 1338 (11th Cir. 2005) that the company's obligation to redeem shares offsets the value of the life insurance proceeds because the obligation owed by the corporation to the purchaser of the decedent's shares would not reduce the value of the purchased shares. A buy sell agreement that fails to account for the value of corporate owned life insurance in determining the value of the shares will fail the bona fide business arrangement test necessary to fix value under §2703. The court also found that failure to consider control premiums or minority discounts caused the agreement to fail the "device" test. This is troubling because it is typical for buy sell agreements to ignore discounts and premiums.

NOTABLE RECENT CASES (CONTINUED)

- ***Nelson v. Com'r***, 128 AFTR 2d 2021-6532 (5th Cir. 11/3/21), *aff'g* T.C. Memo 2020-81. Taxpayer made a gift of a limited partnership interest having a value of $2,096,000 as of 12/31/2008 *as determined by a qualified appraiser within 90 days of the effective date of this assignment.* Similar terms were used for a sale made in in January 2010 of interests worth $20 million. Held: the formulae were effective to determine the amounts transferred by gift and sale but, by the unambiguous language of the transfer instruments, did not allow adjustments of the amounts transferred based on values as finally determined for federal gift tax purposes. The taxpayer unsuccessfully argued that the formula language was like the one used in *Wandry v. Com'r* T.C. Memo 2012-88 and transferred a specific dollar amount and not a fixed percentage of the partnership that was subject to adjustment on audit. The case endorses the use of contemporaneous appraisals to determine the amount of a transfer and has no relevance to the viability of Wandry clauses.
- ***Estate of Grossman v. Com'r***, T.C. Memo 2021-65 (5/27/21). IRS attempted to disallow the marital deduction on the grounds that the decedent's marriage was invalid under New York law. The decedent obtained a religious divorce from his former spouse in New York and then married again in Israel. New York does not recognize religious divorces, but Israel does. New York defers to the law of the place of the celebration of the marriage, in this case Israel. Because the divorce and remarriage were valid under Israeli law, the decedent's marriage would be respected under New York law. The Tax Court awarded summary judgement for the estate.
- ***Hewitt v. Com'r***, Case No. 20-13700 (11th Cir. 12/29/21). The Court of Appeals overruled the Tax Court decision disallowing a deduction for a contribution of a conservation easement on the grounds that it did not satisfy the "protected-in-perpetuity" requirement of §170(h)(5) because the easement violated the judicial extinguishment proceeds formula in Treas. Reg. §1.170A-14(g)(6)(ii). In the event of a judicial extinguishment of the easement (e.g. because the property subject to the easement was taken in an eminent domain proceeding) the easement deed subtracted the value of post-donation improvements to the property from the extinguishment proceeds before determining the donee's share of the proceeds. The regulation requires that all proceeds be apportioned between the owner of the property and the donee in the same proportion as the value of the easement bears to the total property at the time of the grant. On appeal, the taxpayer argued that the regulation was procedurally invalid under the Administrative Procedures Act ("APA") or substantively invalid under the *Chevron* doctrine as an unreasonable interpretation of the statute. The regulation was held to be arbitrary and capricious for violating the procedural requirements of the APA because Treasury failed to respond to significant comments as to the issue in promulgating the regulation. The court did not reach the *Chevron* argument because it found that the procedural requirements of the APA were not met. The APA requires an agency to "consider and respond to significant comments received during the period for public comment and give adequate reasons for its decisions. Treasury received 90 comments on the proposed regulation of which 13 offered comments on the extinguishment regulation. Only one, from the NY Landmarks Conservancy, was a detailed comment. When final regulations were issued, Treasury issued a statement that it had considered all comments but did not discuss or respond specifically to the comment by the NYLC and others on the extinguishment regulation. Held, the NYLC comment was **significant** and therefore required a specific response explaining the basis for its decision.

NOTABLE RECENT CASES (CONTINUED)

- ***TOT Property Holdings LLC v. Com'r.*** ,1 F.4th 1354 (11th Cir. 6/23/21) involved the same regulation and the same Circuit Court of Appeals as *Hewitt*, but this time the government won. In *Hewitt,* the Court distinguished this case on the grounds that the taxpayer did not argue that the regulation was invalid. Instead, the taxpayer argued that a tax savings clause in the deed of gift caused the deed to meet the requirement of the regulations. The deed said that if the easement was extinguished through eminent domain proceedings, the donee would receive "the stipulated FMV of this Easement, or a proportionate part thereof, as determined in accordance with Section 9.2 [of this deed] *or section 1.170A-14, if different*." Section 9.2 defined stipulated FMV as a proportionate share of the value of the easement reduced by "any increase in value after the date of this grant attributable to improvements." The deed also stated that "[i]t is intended that this Section 9.2 be interpreted to adhere to and be consistent with 26 CFR section 1.170A-14(g)(6)(ii)." The court held that Section 9.2 was unambiguous so there was nothing to "interpret" and the savings clause would rewrite the plain text of the deed. The court held that the clause was void as a condition subsequent, citing *Com'r v. Procter,* 142 F.2d 824 (4th Cir. 1944).
- There were a number of other cases involving the same regulation: *Sells v. Com'r*. T.C. Memo 2021-12 (Jan. 28, 2021); *Soddy Creek Preserve, LLC v. Com'r,* Tax Ct. Dkt 22271-17 (Feb. 9, 2021); *Buckelew Farm LLC v. Com'r* Tax Ct. Dkt. 14273-17 (Nov. 22, 2021); *Little Horse Creek Property LLC v. Commissioner*, No. 7421-19 (T.C. stipulated decision Sept. 22, 2021). *See,* Hale, Shepperd, "Reasonable IRS Appraisal Triggers Conservation Easement Settlement" Tax Notes Posted on Jan. 3, 2022. In CCA 202130014, the IRS offered sample conservation easement language. The BBB Act would have allowed the taxpayer the opportunity to correct defective language. A group of teachers, scholars and practitioners objected to this proposal. *See,* Kristen A. Parillo, "Group Pushes for Removal of Easement Proposal's Curing Provision," 173 Tax Notes Federal, 391) Oct. 18, 2021.
- ***Estate of Moore v. Com'r***, 128 AFTR 2d 2021-6604 (9th Cir. 11/8/21) *aff'g* T.C. Memo 2020-40 (April 7, 2020). Decedent created five trusts and a limited partnership about 3 months prior to death. The Court held that §2036 applied to include partnership assets in the decedent's gross estate. The court rejected the estate's claim for an offsetting charitable deduction for two reasons. First, the language of the irrevocable trust that owned LP interests said that "***any asset of this trust*** which is includable in my gross estate" shall be transferred to the decedent's revocable trust which made a gift to charity. The court noted that amounts included in the gross estate under §2036 were not assets of the irrevocable trust and therefore a literal reading did not transfer any additional amount indirectly to charity. Second, the court identified what it called a more general problem: charitable deductions cannot depend on actions of a decedent's beneficiary or executor and the charitable deduction must be ascertainable at the decedent's date of death. Whether assets would pass to charity would not be determined until after an audit ultimately resulted in the value of additional property being included in the gross estate. The court distinguished formula clauses in *Estate of Christiansen v. Com'r*, 130 T.C. 1 (2008) and *Petter v. Com'r,* T.C. Memo 2009-280 *aff'd* 653 F.3d 1012 (9th Cir. 2011). On appeal, the 9th Circuit affirmed on the narrow ground of the "any asset of this trust" wording.

NOTICES

- **CCA 202152018** considered (i) whether a pending merger must be considered for purposes of valuing stock for gift tax purposes and (ii) whether a donor retained a qualified annuity interest in a GRAT when the donor used an outdated appraisal that did not take into account a pending merger. The answer to (i) was yes and the answer to (ii) was no even though the terms of the GRAT contained all the necessary language to create a qualified interest under §2702. Grantor created a GRAT 3 days after receiving 5 purchase offers for the stock and valued the shares based on an appraisal made 6 months earlier that did not take into account a possible sale. Post-valuation date events that are reasonably foreseeable are relevant to value. (The appraisal had been made for §409A purposes.) At a later date, the taxpayer gifted shares to a CRT and valued the shares based only on the tender offer. Several weeks after the contribution to the CRT, the taxpayer accepted the purchase offer. The final price was 3x the appraised value of the shares used to fund the GRAT. The ruling cited *Ferguson v. Com'r* 174 F. 3d 997 (9th Cir. 1999), which applied an assignment of income doctrine to tax the donor, rather than the charitable donee, on gain realized shortly after the donation of stock because at the time of the gift the tender offer for the stock was "practically certain" to occur and therefore had "ripened" into a fixed right to receive cash, and *Atkinson v. Com'r.* 114 T.C. 26 (20000), aff'd 309 F.3d 1290 (11th Cir. 2002), disqualifying a CRAT that failed to make timely annuity payments because it did not operate as a CRAT. The ruling did not address assignment of income issue, but cited *Ferguson* only to point out the relevance of a pending offer. More reliance was placed on *Atkinson*. The GRAT did not operate as a GRAT because the annuity payments were based on the faulty appraisal. Because the ruling recites that the trust satisfied all the requirements of §2702, it is not clear whether the IRS was ignoring language in the trust requiring that the annuity be based on values as finally determined for gift tax purposes. If this happened, which is likely, the "defined value" formula protection of a GRAT will be eliminated. There is no basis for distinguishing under-valuations based on faulty appraisals from under-valuations based on differences of opinion. If this approach is followed, donors may be safer relying on *Wandry*-type clauses than relying on GRATs because they will not have to worry about failing to meet operational tests. CCA 202152018 also points out the need to address pending transactions. How does one factor in the likelihood of a future event? What data supports a determination of the likelihood of a transaction occurring?

NOTICES (CONTINUED)

- **Notice 2021-56** (Oct. 21, 2021): IRS sets forth standards for tax-exemption for LLCs owned by charities and government units.
- **Rev. Proc. 2021-40** (Sept. 22, 2021): Added to “no rule” list rulings on INGs, and rulings on whether self-dealing occurs under §4941 when a private foundation owns an interest in an LLC that owns a promissory note issued by a disqualified person.
- **PLR 202118002** (Feb. 11, 2021): A nongrantor trust for the benefit of “A” was deemed to hold annuity contract as agent for A and therefore did not violate §72(u) which requires that annuity contracts be held by “individuals” or by a trust or other entity as “agent” for a natural person.
- **CCA 202118008** (2/1/2021): IRS rules that a commutation of a QTIP is a taxable gift of the remainder under §2519 which is not offset by the remainder beneficiaries’ reciprocal gifts of the value of the remainder. The IRS asserted that an offset would be inappropriate because the children’s gift of the remainder did not augment the surviving spouse’s estate; the remainder would be taxable in her gross estate under §2044. The spouse used the amount received from the trust to fund a new irrevocable trust and sell assets to that trust for a promissory note. The objective of freezing the amount in the spouse’s estate could have been achieved by the QTIP selling assets to an irrevocable trust, although gain would likely be recognized, or by exercising discretion to distribute principal to the spouse and then the spouse engaging in the same gift and sale transaction.

NON TAX CASES OF INTEREST

- ***Potter v. Potter***, 252 A.3d 17 (MD Ct. Special Appeals 2021). A provision in an operating agreement of a MD LLC that purports to "automatically and immediately" transfer a member's interest to a designated successor upon the member's death is not effective unless the operating agreement is executed with the formalities of the statue of wills. The decedent, James Potter, named his then wife Ruby as the designated taker in the LLC agreement. Upon their divorce, Ruby released all claims to the LLC interest, but James failed to change the LLC agreement. James later married Denise and died intestate. Denise claimed that the operating agreement was a testamentary disposition that failed to meet the execution standards of the wills act and was void, so that James' estate was entitled to his membership interest. The conclusion that a contract transferring a property interest upon death is testamentary is against the weight of authority. David Horton, "Tomorrow's Inheritance: The Frontiers of Estate Planning Formalization," 58 B. C. L. Rev. 539 (2017), and John H. Langbein, "The Nonprobate Revolution and the Future of the Law of Succession," 97 Harv. L. Rev. 1108 (1984). This case highlights the need for estate planners to coordinate all dispositive devices when drafting wills.
- ***Platt v. Griffin***, 853 SE 2d 63 (Va. 2021). Beneficiaries of estate (testator's daughters) whose bequests lapsed due to ademption by extinction (due to sale of the asset during the testator's lifetime) lacked standing to challenge the *bona fides* of the deed of conveyance. The personal representative of the estate (testator's son) alone had the right to challenge the deed even though the personal representative had a conflict of interest because the deed conveyed the property to him. Daughters erred in not filing a petition to remove their brother as personal representative.
- ***Strope-Robinson v. State Farm Fire and Casualty Insurance Co***. 2021 WL 406915 (8th Cir.) . Decedent signed and filed a transfer on death deed to his niece. He failed to transfer his homeowner's insurance policy to her. Upon his death, his ex-wife torched the property and State Farm rejected the claim. The niece could not recover because she did not own the policy and the estate could not recover because it did not own an insurable interest in the property.
- ***Wilmington Trust Co. v. Mills***, 2021 WL 2620585 (Del. Ch. Ct.). Under §305(c) the UPPA and common law rules announced by Restatement (Third) of Property: Wills and Other Donative Transfers §19.14, a limited power of appointment may be exercised to created another limited power of appointment but the second power cannot be exercised to benefit a person who was not an object of the original power. This rule has since been modified in Delaware and many other states and similar reform of the uniform laws is overdue. In this case, Felix DuPont granted to his daughter Alice a life estate and limited POA in favor of her descendants. Alice exercised the power to appoint to her daughter, Phyllis, a life estate and a limited POA exercisable in favor of her descendants *and charity* ***to the extent permissible***. Alice could have granted the property outright to Phyllis or could have granted Phyllis a GPOA which in either case could have allowed Phyllis to benefit charity. But because Alice's power was a limited power, Phyllis' exercise of the power in favor of charity was void.