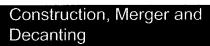


Construction, Merger and Decanting

- Why change the document?
 - Mistake, lengthen term, add Grantor Trust provisions, remove grantor trust provisions, better spendthrift language, etc
 - -How do you do that?



- -Construction / Reformation
 - Cost, time, multiple representation of generations
- -Merger with another trust
 - Similar Trust If substantially later creation, then issue of perpetuities beginning date
- Decanting
 - · Perhaps the best of all worlds

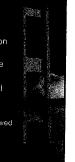
Construction, Merger and Decanting

- Focus Upon Decanting
- Origin in Common Law, but virtually all statutes have grown out of NY decanting statutes
- Concept is that if principal may be paid for any purpose, then one of purposes can be for trustee to create new trust
- Declaration of Trust New Provisions,
 Declared by the Trustee



Construction, Merger and Decanting

- Alaska and Delaware revisions that can decant even if the power of distribution is on an ascertainable standard, and even if no distributions would currently be appropriate under that HEMS standard.
- This is in contrast to NY law, and almost all original decanting statutes, which require complete discretion as to payment
 - No decanting if distribution of principal only allowed for HEMS
- But the "decanted trust" must have same distribution standard as "decanting trust."

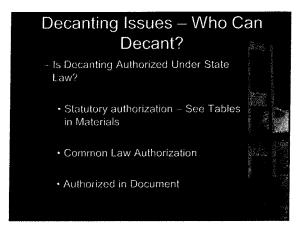


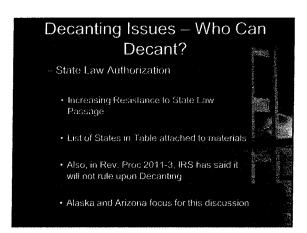
Construction, Merger and Decanting

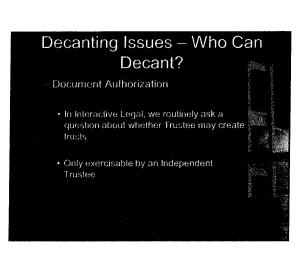
- Under modern decanting statutes, there is an express authorization to decant even if under an ascertainable standard like HEMS
- And in the best, additional provisions that decanting is authorized, whether or not a current distribution would be authorized under HEMS standard

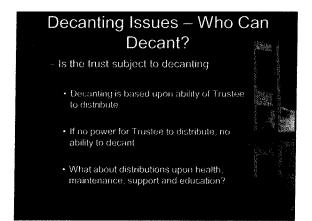


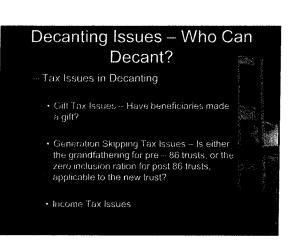
Construction, Merger and Decanting - Under some statutes, there is an additional requirement than the decanting not place any beneficiary or trustee in a worse tax provision than they were before decanting - This seems to me to be an issue, what is a worse position? - If changing from a complex frust to a grantor trust, is that a worse tax position for the grantor?





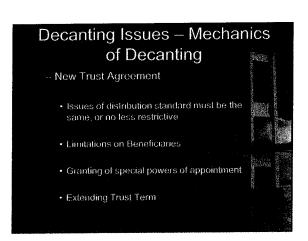


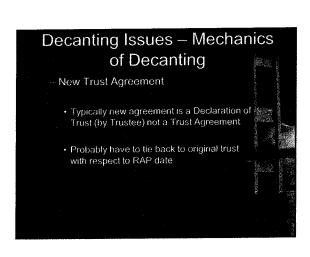


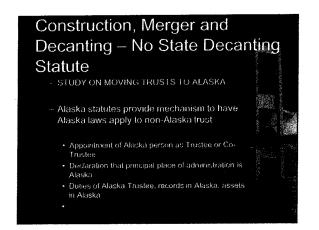


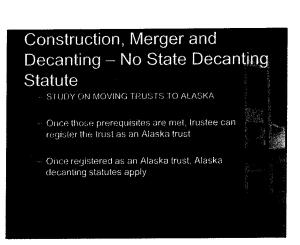
Decanting Issues – Rule Against Perpetuities Issues - Delaware Tax Trap – Sec 2041(a)(3) - Changing the Measuring Lives, versus changing the Measuring Date for Lives in Being - Careful drafting can result in major gains for clients

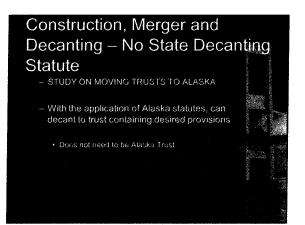
Decanting Issues — Mechanics of Decanting - Power of decanting is in the nature of a special power of appointment - Exercised through a writing, exercising a special power of appointment held by the Trustee - Could combine exercise with new Trust Agreement, or separate the two











Construction, Merger and Decanting – Summary

- Very Powerful Tool to extend trusts, correct errors, provide flexibility
- State Law applicability, or move trust to appropriate jurisdiction
- More attractive in trusts which are not grandfathered for GST purposes