

Decanting With No Carafe—The Trust Way

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I. WHAT IS DECANTING (WITH RESPECT TO TRUSTS)?

A. Definition

Webster's Dictionary defines decanting as the pouring "from one vessel into another." In the world of trusts, "decanting" means the transfer of assets from one trust to another. For purposes of this outline, the original trust will be referred to as the "transferor trust," and the new trust (or recipient trust already created) will be referred to as the "transferee trust."

The unique nature of this transfer is that the transferee trust is created by the trustee of the original trust, not the settlor (or grantor) or the beneficiary; or the trustee chooses a trust already in existence as the transferee trust.

B. Why Would A Trustee Want To Decant?

There are any number of reasons why a trustee may want to decant (or a grantor or a beneficiary may want the trustee to decant).

1. Administrative Purposes

Decanting can be used to "fix" problems in trusts with administrative provisions that are inappropriate (such as in older trusts written in different times that no longer fit into "modern" times), or perhaps

to add trust protector language, deal with provisions of the Uniform Trust Code (“UTC”), add powers to remove and replace trustees or other administrative provisions that affect the operations of the trust. Decanting can be used to change the situs of trust administration (governing law), provide for the division of responsibilities of different trustees and to add trust protectors, fix errors.

Decanting can be used for other reasons, such as to separate one trust into many, to deal with problem assets (by segregating those assets into a separate trust) or to have separate trusts with different investment strategies. There may be tax reasons to move a trust or change its provisions. The trustee may want to move a domestic trust to a foreign trust, or a foreign trust to a domestic trust. With states now passing laws allowing grantors to set up trusts for asset protection, this may be another reason to decant.

2. Dispositive Provisions

There are situations in which trustees may want to change the scheme of distributions from a trust, either for reasons personal to beneficiaries or for tax purposes. For example, if a trust directs distribution to a beneficiary at a stated age and the beneficiary has special needs, the trustee may want to change the nature of the distribution and create a special needs trust. Or, perhaps the beneficiary is very wealthy and the transferor trust is exempt from generation skipping and the beneficiary wants the trust to postpone the distribution.

C. Authority To Decant: What Gives The Trustee The Right To Decant?

The authority of the trustee to decant can only come from three sources: common law, statutes or the trust instrument itself. The act of decanting must be consistent with the discharge of the trustee’s fiduciary duties.

1. Common Law

Decanting is looked at as the expansion of the trustee’s ability to distribute from the principal of the trust. By having the ability to make distributions from principal, the trustee has a form of a special or limited power of appointment. This special or limited power of appointment authorizes the trustee to create a new trust, with some limitations.

a. Case Law

Commentators differ as to the ability to decant based on case law. Certain cases cited for the proposition that common law authorizes trustees to decant include *Phipps v. Palm Beach Trust Co.*, 196 So. 299 (Fla. 1940), *Wiedenmayer v. Johnson*, 106 N.J. Super. 161 (1969) and *In re Estate of Spencer*, 232 N.W. 2d 491 (Iowa 1975).

i. *Phipps v. Palm Beach Trust Co.*

In this case, the Supreme Court of Florida upheld the trustee's right to direct distributions to a new trust for the benefit of anyone in the class of permissible beneficiaries in the transferor trust (in this case, the settlor's descendants). The Court held that the power to distribute outright (in fee simple) includes the ability to distribute assets through a lesser estate (such as a trust) unless the trust instrument prevents this type of distribution. NOTE: If the trust stated distribution would be "outright and free of any trust whatsoever," this could be interpreted as prohibiting such a transfer to a lesser estate.

ii. *Wiedenmayer v. Johnson*

In this case, the Appellate Division of the New Jersey Superior Court held that a trustee who had the absolute and uncontrolled discretion to distribute as the trustee deemed in the best interests of the beneficiary could distribute trust assets to the beneficiary, subject to a condition that the beneficiary use those assets to fund a trust for himself.

iii. *In re Estate of Spencer*

This case discusses the importance of the testator's intent and whether or not the creation of a new trust comes within that intent. While not strictly a decanting case (the husband had a limited power of appointment over the corpus of a trust created by his spouse), the discussion covers issues that may apply to a decanting situation.

b. Restatement (Second) of Property (Donative Transfers)

c. Section 11.1 (Comment d) applies this concept and states "a power of appointment is authority, other than as an incident of the beneficial ownership of property, to designate recipients of beneficial interests in property." Section 19.4 also supports this concept, that a trustee with the discretionary power to distribute trust property should be authorized to create new trusts for the same beneficiaries. This Restatement does support the theory that the power to transfer to a new trust is analogous to a special power of appointment.

c. Restatement (Third) of Property: Wills and Other Donative Transfers

The Restatement (Third) of Property also supports this concept but does not treat the power to invade as a special power of appointment because of the fiduciary obligations of a trustee (as opposed to a third party exercising a special power of appointment who is not subject to fiduciary obligations). If a fiduciary is exercising this authority, he or she must do so in the fiduciary capacity, keeping in mind his or her fiduciary obligations to the beneficiaries. This is further expanded in the Restatement (Third) of Trusts.

d. Uniform Trust Code

Decanting provisions are not part of the UTC, which is a comprehensive model for codifying the law on trusts. Instead, the UTC focuses on provisions permitting modifications of trusts and reformation to correct mistakes or to achieve the settlor's tax objectives.

2. Statutory Provisions.

Currently 18 states have adopted statutes which allow decanting (usually presuming that the trust instrument does not prohibit decanting). The first state to adopt this type of statute was New York (effective July 24, 1992 and revised on August 27, 2011). The latest is Illinois, effective January 1, 2013. The others (in order of adoption dates) are Alaska, Delaware, Tennessee, Florida, South Dakota, New Hampshire, Arizona, North Carolina, Nevada, Indiana, Missouri, Ohio, Rhode Island, Virginia, Kentucky and Michigan. Legislation is pending in South Carolina (not passed as of February 19, 2013) and Colorado (where the Trusts and Estates Section of the Colorado Bar Association proposed the bill but the Family Law Section of the Colorado Bar Association has opposed the bill). If you live in any of these states, I recommend that you become familiar with your statute and how it applies.

Please note that the state statutes may not use the word, "decanting," in the legislation. Rather, the legislation speaks of the trustee having the power to distribute or appoint property to a new trust (a limited power of appointment exercisable under certain conditions specified in the statutes). (Indiana and Rhode Island use the word, "decanting," in their statutes.)

a. Not All Statutes Are The Same (What Else is New?)

Not all state statutes are the same, but they all operate off the same fundamental premise: if a trustee has the ability to invade principal on behalf of a beneficiary under the terms of the trust instrument, the trustee may, in the exercise of such power, appoint the trust assets to a new trust for the benefit of all or some of the beneficiaries of the transferor trust, assuming no prohibition in the trust instrument. If the trust instrument prohibits the trustee from decanting, then no authority, statute or otherwise, will overcome the trust prohibition.

One of the main differences among the statutes is the level of discretion the trustee must have in order to be able to decant. A majority of statutes allow the trustee to decant, even if the power to invade is limited to a standard (such as health, education, maintenance and support). Florida, Rhode Island, Ohio and Indiana do not agree with this approach. In those states, the trustee must have the absolute power to invade the principal of the transferor trust. The use of an ascertainable standard in those states would make decanting unavailable. In other states, the use of a standard does not prevent decanting, but may limit the types of trusts that a trustee can create (the types of transferee trusts).

In addition, some states allow decanting of principal only; but others would allow decanting as to both income and principal (except with respect to trusts where the fixed income right is tied to the tax nature of the trust — such as a marital trust).

NOTE: When speaking with your clients about this issue, it is important to cover whether or not you should include a decanting provision in the trust instrument or prohibit the trustee from exercising his or her right to decant.

- b. state provisions include: (i) level of discretion that a trustee must have in the transferor trust to allow the trustee to decant; (ii) whether a decanting provision can be based on the ability to distribute income (versus the requirement that there be an ability to invade principal); (iii) who the new beneficiaries of the transferee trust can be; (iv) tax considerations; (v) restrictions if the trustee is also a beneficiary (all statutes require that the trustee be the decantor, so to speak, but there may be limits if the trustee is also a beneficiary); (vi) whether powers of appointment not given in the transferor trust to a beneficiary can be granted to such beneficiary in the transferee trust; and (vii) procedural aspects, such as court approval, approval of beneficiaries, approval of the grantor (if living), required court proceedings, notice, etc.
- c. At all times, tax consequences must be taken into account when decanting is considered.

3. Trust Instruments

Many draftspersons will include decanting provisions in the trust instruments that they present to clients. It is also possible that a trust instrument may prohibit decanting.

D. Tax Considerations

There is not enough time in this session to discuss the tax considerations of decanting thoroughly, but any trustee considering this approach should carefully examine those tax consequences. Please note that Rev. Proc. 2011-3 lists decanting as a subject on its no ruling list. Therefore, the IRS will not issue any further determination letters or rules on the following matters: whether decanting gives rise to a Code section 661 deduction or results in inclusion in gross income under Code section 662; whether there is a taxable gift under Code section 2501; and whether decanting causes a loss of the generation skipping tax exempt status of the trust under Code section 2612.

However, the IRS did issue Notice 2011-101, “the purpose of which was to request comments regarding when and under what circumstances transfers by a trustee of all or a portion of the principal of an irrevocable trust (Distributing Trust”) to another irrevocable trust (“Receiving Trust”), sometimes called ‘decanting,’ that result in a change in the beneficiary interests in the trust are not subject to income, gift, estate, and/or generation skipping transfer (GST) taxes.” There have been responses from a number of sources, including the New York Bar Association, the Delaware Bar Association and the American College of Trust and Estate Counsel (ACTEC); and I recommend those reports to you for a thorough discussion of the tax implications of decanting. These comments include the suggestions that the IRS publish safe harbors that can be used to avoid any adverse tax consequences and to give certainty to the tax treatment of decanting.

In this Notice 2011-101, the IRS identified certain features which could have adverse tax consequences, which include: if a beneficiary's right to or interest in the trust is changed; trust beneficiaries are added; beneficial interests are added, deleted or changed; assets are transferred from a grantor trust to a non-grantor trust or vice versa; whether or not beneficiaries of Distributing Trust must consent (or the trustees want consent before acting); the identity of the transferor (for GST purposes); whether the Distributing Trust is an exempt trust for GST purposes.

1. Income Tax Consequences

a. DNI

First is the issue of the distributable net income or DNI. When a trustee decants from the transferor trust to the transferee trust, is the income distributed for tax purposes (assuming no income beneficiary who must receive the net income each year). There is no reason to think that the transferor trust will transfer the DNI to the transferee trust (to the extent there are no transfers of income to beneficiaries). However, the IRS may consider the transferee trust to be nothing more than a continuation of the transferor trust (see PLRs 200607015, 200723014 and 200527007).

b. Tax Attributes

There is also the question as to whether or not the transferee trust or trusts inherit the tax attributes of the transferor trust (such as net operating losses, capital loss carryovers and foreign tax credit carryovers). If the transferee trust is considered a continuation of the transferor trust, this should not be a problem (only an issue if more than one transferee trusts, perhaps).

c. Gain Recognition

The IRS has addressed in private letter rulings the issue of gain recognition when one trust distributes to another trust under Code section 1001. There are two separate issues which are considered: first, whether gain must be recognized by the beneficiaries of the transferor trust; and second, whether gain must be recognized by the transferor trust itself (and not passed on to the beneficiaries). These issues should be researched when considering a transfer from one trust to another.

Private letter rulings suggest that a distribution to a transferee trust can trigger gain recognition to beneficiaries or the trust itself. The analysis is based on the interests of the beneficiary in both trusts and whether the interests were "materially different." If the interests of the beneficiary in the two trusts were not materially different, no gain was recognized. (See PLRs 201207001, 201136014, and 199951028.) This standard is based on a case called *Cottage Savings Ass'n v. Comm'r*, 499 U.S. 554 (1991). (That case was not a decanting case, but its decision is analogous to what happens when a trust transfers assets to another trust.)

It is possible that even if the beneficiary's interest in the transferee trust is materially different from his or her interest in the transferor trust, there would be no gain recognition. Certain private letter rulings indicate that a beneficiary or transferor trust would not recognize capital gains if the transfer was authorized by the trust instrument or by local law (treating the distribution as a non pro rata severance which under Treas. Reg. Section 1.1001-1(h) is not an exchange of property).

If the transfer to the transferee trust is not authorized by local law or the trust instrument, then Rev. Rul. 69-486, 1969-2 CB 159, could apply, which would cause a recognition of gain.

d. Grantor Trust Issues

How the income tax rules apply will also depend on the nature of the transferor trust and the transferee trust. If the transferor trust and the transferee trust are grantor trusts, no gain should be recognized (for income tax purposes, same person). If the transferee trust is a domestic trust but not a grantor trust, still no gain should apply (the settlor, when creating a trust, does not recognize gain or loss, and this type of situation is analogous to that).

There are two exceptions: one, if the transferee trust is a foreign trust; and two, if property transferred is subject to debt greater than the basis of such property in the hands of the transferor trust.

For these purposes, it is important to determine who is the grantor of the transferee trust. For most purposes, the grantor of the transferor trust will also be the grantor of the transferee trust, if the analogy of the trustee exercising a limited power of appointment holds (see Treas. Reg. Section 1.671-2(e)(5)).

2. Gift Tax Issues

The gift tax issues are based on what trustee is decanting — for example, is the decanting trustee a beneficiary of the transferor trust. There is also the potential for a Delaware tax trap (a decanting that creates a power of appointment that exceeds the perpetuities statute — see discussion below).

a. No gift where the decanting trustee is not a beneficiary.

Again, using the analogy that the trustee is exercising a limited power of appointment when he or she decants, there should be no gift (no taxable event). However, if the state statute requires that a beneficiary consent to the act of decanting, there is an issue as to whether the beneficiary exercised a general power of appointment (he or she would be a beneficiary of the transferee trust and therefore would have appointed the property to himself or herself). Most of the decanting provisions require notice to the beneficiary or beneficiaries, but not consent — but be prudent and check your statutes.

b. When The Decanting Trust Is Also A Beneficiary

There could be a gift from the decanting trustee to a transferee trust if a beneficiary's interest of the decanting trust is decreased to the benefit of other beneficiaries. There could also be a gift if the trustee is a beneficiary or if the trustee must obtain the beneficiary's consent (treated as if this was a general power of appointment held by the beneficiary who was the trustee or who gave consent). This could also cause inclusion in the gross estate of a trustee/beneficiary who has the ability to decant, based on the same analysis.

c. Delaware Tax Trap

If the transferee trust provides that distributions will be beyond the perpetuities period of the transferor trust, the Delaware tax trap will apply. This will cause a taxable gift by the trustee of the transferor trust. However, the Delaware tax trap should not apply if state law prohibits the transferee trust to extend beyond the initial perpetuities period or the trustee has no beneficial interest in the transferor trust.

3. Generation Skipping Tax ("GST")

It has been suggested that the concepts which are applied when GST exempt trusts are modified also apply when decanting occurs. Any trustee interested in decanting from a GST exempt trust should review the Treasury regulations regarding "grandfathering" of these trusts before anything is done (see Treas. Reg. §26.2601-1(b)). There is a safe harbor listed in the regulations. These require that the trustee was authorized to make distributions to a new trust either by common law or state law; neither beneficiary consent nor court approval is required for the new trustee to exercise this authority; and the new trust will not extend beyond the perpetuities period of the original trust under federal law. If this safe harbor cannot be met, there is another under the rules of trust modification (Treas. Reg. §26.2601-1(b)(4)(i)(D) which could apply. And, if the transferred trust is created to involve only administrative changes, there should be no change in the GST status of the trust from the old to the new. There are examples in the regulations that give guidance on how these rules apply.

II. SO YOU WANT TO DECANT – ISSUES FOR TRUSTEES

Generally, the trustee is the person who actually carries out the decanting. If you, as the attorney for the trust, are approached by a trustee to investigate his or her ability to change the trust by decanting, how do you proceed?

A. Check Your Sources and the Trustee's Responsibilities.

1. Check Your Trust Instrument.

Does the trust instrument contain a provision that would prohibit the trustee from decanting? Does the trust instrument contain a provision that allows decanting but restricts the authority of the trustee in some fashion?

2. Check State Statutes

Is there a state statute that will grant the trustee the right to decant (which law governs the administration of the trust)? If the state law governing the trust does not include a decanting statute, can you move the administration of the trust to a different situs that will afford you that ability? And, if you move the situs, what other issues will be raised (will that change the income taxation of the trust or have other provisions in its laws that will affect the operations of the trust, such as provisions contained in the UTC)? Are there other alternatives? If your instrument does not permit decanting and the state law does not permit decanting, a trustee should not rely on common law (the risk is too great).

3. Fiduciary Obligations

Is decanting consistent with the trustee's fiduciary obligations under the trust, such as loyalty, duties of care, impartiality? Will the decanting change the grantor's purpose for the trust (or is that not relevant anymore)? Some of the state statutes take all of this into consideration when authorizing a trustee to decant. Those statutes state that the trustee still has the duty to exercise the power to decant in the best interests of the beneficiaries of the transferor trust or in good faith; and some statutes require that the grantor's purpose cannot be defeated.

The trustee should ensure that the risks of liability from decanting are minimized. Some state statutes provide that a trustee does not have the duty to decant and is not obligated to decant just because he or she has the ability to do so. The trustee, however, must look at the possibility of decanting, when it is not prudent to decant and should not be in the dark (be unaware that the possibility of decanting exists).

The trustee should also be aware of other options, such as going for a trust modification with a judicial determination, especially if the state law which applies includes the UTC or a version of it. This may require the consent of all interested parties, which might not be doable.

It may be prudent for the trustee to obtain judicial approval, if practical, even if the state statute does not require such approval.

4. Power Of Invasion

As mentioned above, a statute may limit the ability to decant based on the "absolute" nature of the trustee to invade principal as set out in the trust instrument. How "absolute" must the power be?

You should be very careful when reviewing the trust instrument and reviewing the state statute to see what restrictions exist because of the limitations on the trustee's power to invade.

5. Spendthrift Provisions

Generally, decanting is not prohibited if the transferor trust contains a spendthrift clause.

6. What Kinds of Provisions Must The Transferee Trust Contain?

The state statute which you are applying may have restrictions on the provisions of the transferee trust beyond the issue of the standard for invasion. This is another reason why you need to carefully review your state statute to see if you can fulfill its requirements and still accomplish the goals of the trustee of the transferor trust. Who are the permissible beneficiaries of the transferee trust? Can you avoid the Delaware Tax Trap? Some states prohibit the elimination by decanting of certain rights that beneficiaries have over the trust, such as reducing a fixed interest that the beneficiary may have (such as the right a beneficiary may have to net income of a trust or a fixed percentage payout each year). Other states do not have such restrictions, unless they are necessary to preserve the tax status for the trust (where the right to fixed income can be modified unless the transferor trust is a marital trust).

Some state laws permit the expansion of the class of beneficiaries or the reduction in the class of beneficiaries. Beneficiaries of the transferee trust may be given additional powers that were not available in the transferor trust (such as a limited power of appointment). Another issue is the ability to change a beneficiary's right of withdrawal. Some states provide that if the beneficiary has the right of withdrawal under the transferor trust of a certain asset or class of assets, this right has to be repeated in the transferee trust; but other statutes do not require this treatment.

7. What Are The Tax Consequences?

The trustee (and you, as his or her lawyer) do not want to face beneficiaries or grantors who discover adverse tax consequences to the decanting after the fact, which could impair the trust. Educate yourself as to the possible negative impacts and then educate your client, so that there are no surprises. The trustee's inclination might be to obtain the consent of the beneficiaries but this could lead to adverse tax consequences to them.

B. The Mechanics Of Decanting

1. How Does A Trustee Decant? Why Would The Trustee Want To Decant?

- a. First step, check your trust instrument and then check your statute (are you tired yet of this advice? I cannot say it enough times!). If the trust instrument does not contain sufficient provisions that would allow the statute to apply, **STOP THERE**. Consider alternatives.

If the statute sets out the procedures, follow them. In most cases, the trustee will have to create the new transferee trust. Whether this must be a new trust instrument or an amendment to the current trust is a matter of state law in most instances. If your state does not have a statute that permits decanting, consider other methods to achieve the goal (such as trust modification, trust reformation, trust instruction (by a petition to the court), or if in Delaware, the use of a consent petition (as an alternative).

- b. Once you have determined that the trustee can decant, now you must discuss with the trustee if he or she really wants to do this. Clearly as the attorney who is giving advice, you should evaluate the trustee's relationship with the beneficiaries. The trustee may be doing this at the request of one of the beneficiaries because of personal or financial needs — in that case it may be easier because the provisions of the transferee trust may only be applicable to a specific class of beneficiaries. The better the relationship that a trustee has with the beneficiaries, the better the outcome. The trustee should also consult with the trust creator, if living.

The trustee should try to avoid showing preferential treatment from one class of beneficiaries to another, unless expressly requested to do so by the beneficiaries.

The trustee should examine the tax consequences (proceed with caution). Rely on independent trustees, not trustees who are beneficiaries (and if you do not have an independent trustee, check to see if one can be appointed).

- c. A trustee must really examine the benefits of decanting if he or she is doing it without input from the beneficiaries. Does the trustee really want to expose himself or herself to the potential liability? After all, in most cases, the trust is not for the trustee alone (check the statutes to see if a trustee/beneficiary is even able to decant). Unless decanting is something the parties to the trust want, why would a trustee be left vulnerable to objections and other legal ramifications, especially if the tax consequences are not clear.
- d. If the trustee, with your input, still wants to proceed, exercise the power in writing. Check the state law to see if the exercise must be witnessed and/or acknowledged. Also, verify where the original exercise of this power must be stored (some require that the written instrument of decanting be stored with the files of the transferor trust — if the transferor trust is a testamentary trust, perhaps a filing with the probate court is required or recommended).

Some states may require that the decanting instrument specify if all or only a portion of the transferor trust assets are being distributed to the transferee trust.

2. The Contents Of The Transferee Trust

Someone has to draft the transferee trust (either as a separate trust instrument or a modification of the current trust). The new trust should reference the transferor trust, identify the beneficiaries,

perhaps recite the purposes of the decanting, the source of the authority to decant and other information to identify the transferor trust.

The trustee should comply with all requirements of the state statute, as the failure to do so could jeopardize the success of the venture.

The trustee should also limit the term of the transferor trust so as not to go beyond the perpetuities period of the transferor trust. And finally, in the transferee trust, give the trustee the right to decant!

3. Who Gets Notice?

I gather at this point you can guess my first suggestion — check your statutes. Some states have a provision that requires notice be sent to the beneficiaries of the transferor trust within a certain period of time; while others may not require that all beneficiaries be informed. The statutes may also define who gets notice, for example: legally competent beneficiaries and/or presumptive remainder beneficiaries; attorney general if charitable beneficiaries; permissible distributees and qualified beneficiaries of the transferee trust; trust creator if living; and all persons with the right to remove and replace the trustee.

What constitutes adequate notice is also different, depending on the statute. Most statutes are silent as to this issue. It is recommended that the persons in the group required to get notice receive at least a copy of the decanting instrument; but perhaps, these persons should also get a copy of the transferee trust. Some states require that copies of the transferor trust and transferee trust be given to the class of persons required to get notice (such as New York).

4. Court Involvement

Most state statutes provide that the authority to decant resides with the trustee only. Only Ohio requires court approval, but other states may require a court filing (such as New York). And other state laws allow for court approval, even if not required.

State laws may contain provisions permitting beneficiaries to object to the decanting, but most do not require consent (a requirement of consent could lead to adverse tax consequences). Nevada requires beneficiary consent if a specific asset is allocated to that beneficiary in the transferor trust but not the transferee trust; and Ohio requires consent if the compensation of the trustee is affected (where the transferee trust increases the compensation of the trustee or the formula for setting compensation, where it is possible that the compensation of the trustee would be increased).

Pay particular attention when the rights of beneficiaries of the transferor trust are affected by the transferee trust. A significant change may trigger different notice requirements or court involvement and may also trigger tax consequences.

III. USE YOUR COMMON SENSE

You are a trained professional. Use your common sense and judgment when advising clients in this new and exciting frontier. If your gut tells you this might not be a good idea, explore that instinct before rushing in to advise clients to proceed.

IV. SUGGESTED PROVISIONS IN TRUST DOCUMENTS

You will notice that I did not include in this outline any suggested provisions for decanting for you to insert in your trust instruments. This is intentional. Often, we get suggestion provisions and we use them almost without thought. I did not want to give you anything you would use without really thinking about whether or not a provision for decanting is appropriate for a trust you are drafting. I leave it to your own research to determine if you want to include decanting in your trust instruments and what language such a provision should contain.

(Note: In preparation of this outline, I found certain documents extremely useful. This included the Comments of the American College of Trust and Estate Counsel (ACTEC) on Transfers by a Trustee from an Irrevocable Trust to Another Trust (response to Notice 2011-101 issued by the IRS) — these comments were contained in a letter to the IRS dated April 2, 2012. Also extremely helpful is the outline presented at the 2013 annual meeting of ACTEC on March 8-9 (“Decanting Come of Age”). I recommend both to anyone interested in this topic.”