TRUST AND ESTATE PLANNING FOR REAL ESTATE, PART 1 & PART 2

First Run Broadcast: June 19 & 20, 2019
1:00 p.m. E.T./12:00 p.m. C.T./11:00 a.m. M.T./10:00 a.m. P.T. **(60 minutes each day)**

Trust and estate planning for real estate and real estate entrepreneurs is full of special challenges. Real estate is illiquid, its value can swing wildly, and it can be difficult to value. Commercial real estate may be owned in an LLC or subject to complex contractual relationships that make transferring it difficult. There are also the challenges of transferring a unique family property – a personal residence, or family vacation property, a farm or ranch. Ensuring liquidity, obtaining tax savings, restructuring and facilitating the transfer of property, and possibly making charitable donations are the interconnected and substantial challenges of planning with real estate. This program will provide you a detailed guide to trust and estate planning for real property assets and for real estate entrepreneurs.

Day 1: June 19, 2019:

- Planning opportunities and challenges for real estate and real estate entrepreneurs
- Planning for lifetime giving of fractional interests in real estate
- Asset protection techniques for real estate assets
- Issues related to restructured real estate assets
- Planning for family properties – QPRTs, SERTs, and LLC techniques

Day 2: June 20, 2019:

- Unique challenges of planning for liquidity with illiquid assets
- Valuation discount issues and planning in a rising but volatile market
- Value freezing techniques using LLCs
- Grantor Retained Annuity Trust (GRAT), sales to defective grantor trusts, and sales of self-cancelling installment notes
- Charitable giving techniques for real estate

Speakers:

Missia H. Vaselaney is a partner in the Cleveland office of Taft, Stettinius & Hollister, LLP, where her practice focuses on estate planning for individuals and businesses. She also represents clients before federal and state taxing authorities. Ms. Vaselaney is a member of the American Institute of Certified Public Accountants and has been a member of the Steering Committee for AICPA's National Advanced Estate Planning Conference since 2001. Ms. Vaselaney received her B.A. from the University of Dayton and her J.D. from the Cleveland-Marshall College of Law.

Michael Sneeringer an attorney in the Naples, Florida office of Porter Wright Morris & Arthur LLP, where his practice focuses on trust and estate planning, probate administration, asset protection planning, and tax law. He has served as vice chair of the asset protection planning committee of the ABA's Real Property, Trust and Estate Section and is an official reporter of the Heckerling Institute. Mr. Sneeringer received his B.A. from Washington & Jefferson College, his J.D., *cum laude*, St. Thomas University School of Law, and his LL.M. from the University of Miami School of Law.

VT Bar Association Continuing Legal Education Registration Form

Please complete all requested information, print this application, and fax with credit info or mail it with payment to: Vermont Bar Association, PO Box 100, Montpelier, VT 05601-0100.
Fax: (802) 223-1573 **PLEASE USE ONE REGISTRATION FORM PER PERSON.**

First Name ________________________ Middle Initial____ Last Name__________________________

Firm/Organization ____

Address ____

City _________________________________ State ____________ ZIP Code ______________________

Phone # ____________________________Fax # ______________________

E-Mail Address ____

Trust & Estate Planning for Real Estate, Part 1
Teleseminar
June 19, 2019
1:00PM – 2:00PM
1.0 MCLE GENERAL CREDITS

VBA Members $75
Non-VBA Members $115

NO REFUNDS AFTER JUNE 12, 2019

PAYMENT METHOD:

Check enclosed (made payable to Vermont Bar Association) Amount: _________

Credit Card (American Express, Discover, Visa or Mastercard)

Credit Card # _______________________________________ Exp. Date _______________

Cardholder: ____

VT Bar Association Continuing Legal Education Registration Form

Please complete all requested information, print this application, and fax with credit info or mail it with payment to: Vermont Bar Association, PO Box 100, Montpelier, VT 05601-0100.
Fax: (802) 223-1573 **PLEASE USE ONE REGISTRATION FORM PER PERSON.**

First Name ________________________ Middle Initial____ Last Name__________________________

Firm/Organization ____

Address ____

City _________________________________ State ____________ ZIP Code ______________________

Phone # ____________________________Fax # ______________________

E-Mail Address ____

Trust & Estate Planning for Real Estate, Part 2
Teleseminar
June 20, 2019
1:00PM – 2:00PM
1.0 MCLE General Credits

VBA Members $75
Non-VBA Members $115

NO REFUNDS AFTER JUNE 13, 2019

PAYMENT METHOD:

Check enclosed (made payable to Vermont Bar Association) Amount: _________

Credit Card (American Express, Discover, Visa or Mastercard)

Credit Card # _______________________________________ Exp. Date _______________

Cardholder: ____

Vermont Bar Association

CERTIFICATE OF ATTENDANCE

Please note: This form is for your records in the event you are audited

Sponsor:	Vermont Bar Association
Date:	June 19, 2019
Seminar Title:	Trust & Estate Planning for Real Estate, Part 1
Location:	Teleseminar - LIVE
Credits:	1.0 MCLE General Credit
Program Minutes:	60 General

Luncheon addresses, business meetings, receptions are not to be included in the computation of credit. This form denotes full attendance. If you arrive late or leave prior to the program ending time, it is your responsibility to adjust CLE hours accordingly.

Vermont Bar Association

CERTIFICATE OF ATTENDANCE

Please note: This form is for your records in the event you are audited

Sponsor:	Vermont Bar Association
Date:	June 20, 2019
Seminar Title:	Trust & Estate Planning for Real Estate, Part 2
Location:	Teleseminar - LIVE
Credits:	1.0 MCLE General Credit
Program Minutes:	60 General

Luncheon addresses, business meetings, receptions are not to be included in the computation of credit. This form denotes full attendance. If you arrive late or leave prior to the program ending time, it is your responsibility to adjust CLE hours accordingly.

Trust and Estate Planning for Real Estate, Part 1 & Part 2

Michael A. Sneeringer
Porter Wright Morris & Arthur LLP
msneeringer@porterwright.com
&
Missia H. Vaselaney
Taft Stettinius & Hollister LLP
mvaselaney@taftlaw.com

PART 1:

- Overview: Planning opportunities and challenges for real estate and real estate entrepreneurs
- Planning for lifetime giving of fractional interests in real estate
- Asset protection techniques for real estate assets
- Issues related to restructured real estate assets
- Planning for family properties – Using QPRTs, Corporations, Partnerships and LLCs

PART 2:

- Unique challenges of planning for liquidity with illiquid assets
- Valuation discount issues and planning in a rising but volatile market
- Value freezing techniques
- Grantor Retained Annuity Trust (GRAT), sales to defective grantor trusts, and sales of self-cancelling installment notes
- Charitable giving techniques for real estate

Overview of Planning for Family Real Estate

- Federal Transfer Taxes
- Testamentary Planning
- Lifetime Planning

Federal Transfer Taxes

- What opportunities do increased exemptions present real estate entrepreneurs?
- Estate and Gift Tax
  - 40 percent rate
  - $11,400,000 exemption
  - Marital deduction
- Generation Skipping Transfer Tax
  - 40 percent rate
  - $11,400,000 exemption

Testamentary Planning

- Outright distributions
  - No tax planning opportunities
  - No protection from self or creditors
- Testamentary Trusts
  - Tax planning
  - Asset protection
  - Protection from beneficiary excess
  - “Endowment Fund”
  - Buy-Sell Agreement

Planning for lifetime giving of fractional interests in real estate

- Use of Intentionally Defective Irrevocable Trust (IDIT)
  - Designed to be excluded from estate for estate, gift and GST purposes
  - Designed to cause grantor to be taxed on trust income ("defective" for grantor trust purposes)

Planning for lifetime giving of fractional interests in real estate

- Intentionally Defective Irrevocable Trust Sale is simply a sale of real estate or LLC interests to the trust in return for a promissory note
- Objective is for assets held in trust to outperform interest rate on note
  - Use of rent for interest payments?
- Beware state and local conveyance taxes?

Basic Asset Protection Planning

- Insurance Trusts (for liquidity)
- Spousal Lifetime Access Trust ("SLAT")
- Inter vivos QTIP Trust
- Homestead

Life Insurance Trust . . .And Real Estate?

- Excludes insurance from taxable estate
- Single life or second-to-die
- Can provide for endowment fund to maintain property

Spousal Lifetime Access Trust ("SLAT")

- Structure
  - Trust with spouse and descendants as beneficiaries
  - Funded with:
    - Annual gifts using $14,000 exclusion
    - Couple with LLC to simplify gifting
    - Larger gifts using lifetime gift tax exemption
- Benefits
  - Estate freeze
  - Can be generation skipping
  - Grantor trust

Homestead

- Florida and Texas
- Asset Protection Benefits
- Cap on Property Taxes
- Planning with Real Estate in a Jurisdiction having a generous Homestead Exemption
- Beware Bankruptcy

Issues related to restructured real estate assets

- Is the restructuring practical (can you show a business purpose)?
- Amortization schedule for restructured real estate loans should be reasonable and reflective of the underlying risk

Planning for Family Properties

- Qualified Personal Residence Trust (QPRT)
  - Grantor transfers personal residence to trust and retains right to live in residence for a period of years (“term”)
  - At end of term, residence passes to children

Planning for Family Properties

- Qualified Personal Residence Trust (QPRT) Risks
  - What happens if grantor dies before the QPRT ends?
    - Residence is distributed back to grantor's estate and is taxed
    - Nothing is gained
    - Nothing lost for federal tax purposes
  - Capital gains considerations
  - Client wants to get out of QPRT based on increased exemption

Planning for Family Properties

- Corporations, Partnerships and LLCs
  - Preference for pass-through entities
  - Liability Protection
  - Ease of transfer
  - Valuation discounts
  - Ancillary probate avoidance
  - Provisions for ongoing management and use of the property by multiple beneficiaries and generations

PART 2:

- Unique challenges of planning for liquidity with illiquid assets
- Valuation discount issues and planning in a rising but volatile market
- Value freezing techniques
- Grantor Retained Annuity Trust (GRAT), sales to defective grantor trusts, and sales of self-cancelling installment notes
- Charitable giving techniques for real estate

Unique challenges of planning for liquidity with illiquid assets

- Use of life insurance to generate liquidity (including cash value)
- Use of promissory notes and trusts to generate liquidity
- Rent of illiquid assets

Valuation discount issues and planning in a rising but volatile market

- Use of discounting in real estate
  - Why would somebody pay for a fractional interest in real estate where other owners are related?
  - Percentage discount amount? 30%? 15%?
  - Use of blockage discount
- Planning
  - Gifting versus death and basis step-up
  - Regret post transaction (unwinding risks)

Value freezing techniques

- Use of LLCs
- Use of retained interest trusts to shift asset appreciation – GRATs, GRITs, GRUTs
- Installment note sales of closely-held companies to heirs
- Use of self-cancelling installment notes and private annuities
- Qualified Personal Residence Trusts

Grantor Retained Annuity Trust (GRAT),

Sales to defective grantor trusts,

Sales of self-cancelling installment notes

GRAT

- GRAT
  - Grantor
  - Retained
  - Annuity
  - Trust
- Does the client own assets that may appreciate in the future?
- Term?
- Internal Revenue Code Sections 2501, 2702 and 2704(c)(2)

GRAT

- Common Traps
  - Not timely making annuity payments
  - Grantor does not survive the term
  - Not filing a gift tax return

GRAT

- Circumstances in which GRATs are best used
  - Assets that may appreciate in the future
  - Client wants to annuitize an asset while passing on future appreciation to trusts for children or more remote descendants
  - Client is motivated to initiate advanced estate planning techniques but has little to no unified credit left

GRAT

- Circumstances in which GRATs are best avoided
  - Asset protection concerns
  - Generation-skipping transfer tax planning
  - Collateral use of transferred assets
  - Congressional uncertainty

Sales to defective grantor trusts

- Real estate owner establishes an irrevocable trust
- Real estate owner's real estate is held in an entity (LLC taxed as a partnership; partnership)
- Real estate owner makes a gift to the trust

Sales to defective grantor trusts

- Sometime later, real estate owner sells an interest in real estate to trust in return for promissory note
  - Note provides for payment of interest-only for 9 years with a balloon payment of principal due at the end of the 9 year term
  - Interest rate is set at the lowest rate permitted under the tax code
  - Interest payments made from real estate owner's closely held entity

Sales of self-cancelling installment notes

- Sale of property to a buyer in exchange for an installment note that expires upon a certain cancellation event, typically the seller’s death
- If the real estate sold appreciates in value, the SCIN freezes the future estate tax by shifting any excess appreciation in the transferred property to the seller’s designated heirs

Sales of self-cancelling installment notes

- Allows younger generation to “subsidize” older family member’s retirement without gift tax
- Allows sellers the opportunity to defer the recognition of gain
- Risk premium: SCIN payments generally exceed conventional installment sales

Charitable giving techniques for real estate

- Trusts (CRAT, CRUT, CLAT, CLUT)
- Pledging a building directly to charity
- Partial interests in real estate for charitable purposes
- Conservation Easements

Thank you!

Presented by:
Michael A. Sneeringer
Porter Wright Morris & Arthur LLP
9132 Strada Place, 3rd Floor
Naples, Florida 34108-2683
Direct Dial: (239) 593-2967
msneeringer@porterwright.com

&

Missia H. Vaselaney
Taft Stettinius & Hollister LLP
200 Public Square, Suite 3500
Cleveland, Ohio 44114-2302
Direct Dial: (216) 706-3956
mvaselaney@taftlaw.com