



# LIFE BEGINS

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Washington State Bar Association  
Senior Lawyers Section

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## Save the Date!

### Senior Lawyers Section

## 2011 Annual Meeting & CLE Seminar Friday, May 13, 2011

### Marriott, Sea-Tac Airport

Here we go again. Another informative and entertaining CLE seminar is coming your way. You will be able to bank CLE credits, meet old friends and enjoy the day while attending this CLE. Despite rising costs, we have once again held the price to \$150 for Section members and \$170 to join the Senior Lawyers Section and attend this Seminar. If there are sufficient registrations, we plan to open this CLE to all other lawyers for \$250. This remains one of the best CLE bargains anywhere. The cost includes the seminar, written materials, an excellent lunch, parking and a social hour at the end of the session.

We have arranged a distinguished lineup of presenters including Washington Supreme Court Justice Debra L. Stephens (originally of Spokane), noted criminal defense lawyer David Allen (Seattle) and Stephen P. Crossland (Cashmere), WSBA president-elect. In addition we are in the process of finalizing agreements with other presenters and panelists to appear and speak on a number of matters of interest.

Please mark your calendar for May 13, 2011, and watch for the registration form, either in the mail or at [www.wsbaclc.org/seminars.php](http://www.wsbaclc.org/seminars.php).

## WSBA Senior Lawyers Section Annual Report for 2009-2010

Period of October 1, 2009 – September 30, 2010

by Steve DeForest, Chair

Another successful Section Annual Meeting/CLE was held on April 16, 2010, at the Sea-Tac Marriott, with 186 lawyers in attendance. The Seminar provided 6.25 CLE credits, including 2.25 ethics and 4.0 general credits. The Seattle law firm of Peterson Young Putra provided financial support for the Seminar. William H. Gates, Sr. led off the CLE in the morning speaking on "RPC 6.1 and Ethical Considerations," and "Time for Rewards – Be a Pro Bono Lawyer." He was followed by the "Ethics of Protecting Client Interests When Closing Your Practice," presented by David Powell and Peter D. Roberts of WSBA; "Alejandro Revisited – Current Developments in Real Estate Purchase Disputes," by Scott B. Osborne of Seattle; and "Legal Strategies for Fighting Hate in Washington State," by George Critchlow of Gonzaga Law School. Justice Charles W. Johnson, speaking on "Law and Technology," opened the afternoon session, and was followed by "Rules of Professional Conduct for the Estate Planning and Business Lawyer," by Donald K. Querna of Spokane; "Should We Go Native? Ruminations of What We Can Learn from Native American/Indian Traditional Justice" by Gene Brandzel of Seattle; and Michael S. Wampold of Seattle concluded the CLE with "An Opening Statement in a Medical Malpractice Trial." A reception followed the last presentation.

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As a memorial to Bob Berst, a long-time leader of the Section in various capacities who passed away in January 2010, the Executive Committee donated \$1,000 to the UW Law School Library to purchase books in the areas of law in which Bob practiced.

The Executive Committee continues to question the listing of retired lawyers classified as "suspended" for non-payment of license fees. Suspension implies disciplinary action based on ethical violations.

The Executive Committee has been investigating whether reduced license fees for WSBA members who have transitioned to a reduced law practice, or who have retired, would induce them to continue their membership in the WSBA instead of dropping out completely, and encourage them to volunteer for programs providing legal services to low-income persons and assisting non-profit and community organizations. The Section membership of approximately 260 has remained essentially flat for at least the last several years, while the number of older lawyers continues to grow substantially. Keeping more lawyers engaged would benefit both the WSBA and the public.

The Section's periodic newsletter, *Life Begins*, edited by Carole Grayson, and assisted by Fred Frederickson and Jerry Greenan, contained its usual mix of interesting and informative articles during the year.

In May 2010 the Executive Committee amended the Section Bylaws to provide that a WSBA member is eligible for Section membership upon reaching his/her 55th birthday or upon being in practice for 25 years. Previously Section membership was limited to lawyers 55 years of age and older. The amendment was approved by the Board of Governors.

The WSBA Board-assigned liaison, Brian Comstock, regularly attended the Executive Committee meetings and provided helpful insight on a variety of issues affecting the Section. The Section will miss the cheerful assistance and counsel of Toni Doane, section leaders liaison, who left the WSBA staff at the end of July to take on new challenges.

Contractual arrangements were completed, with the assistance of Barbara Konior of the WSBA Education and Outreach Department, for the Section's Annual Meeting/CLE to be held on May 13, 2011, at the Sea-Tac Marriott.

**2010-2011  
Senior Lawyers Section**

[wsba.org/lawyers/groups/seniorlawyers](http://wsba.org/lawyers/groups/seniorlawyers)

**Officers**

Chair	Stephen E. DeForest <i>sdeforest@riddellwilliams.com</i>
Chair-elect	Vacant
Secretary	John G. Bergmann <i>jbergmann@helsell.com</i>
Treasurer	Roy J. Mocerri <i>campobella@gmail.com</i>
Immediate Past Chair	Jerome (Jerry) L. Jaeger <i>jlj@seanet.com</i>
Newsletter Editor	Carole A. Grayson <i>cag8@u.washington.edu</i>

**Executive Committee Members**

Eugene I. Annis <i>gannis@lukins.com</i>
Albert Armstrong III <i>aarmstrong@purcelladams.com</i>
Gerald N. Curtis <i>curtisgl@comcast.net</i>
Frederick O. Frederickson <i>fofrederickson@aol.com</i>
Philip H. Ginsberg <i>phg@stokeslaw.com</i>
Thomas (Jerry) J. Greenan <i>jgreenan@gth-law.com</i>
Dudley B. Panchot <i>anne1700@gmail.com</i>
Joanne M. Primavera <i>1gal@verizon.net</i>
Thomas S. Wampold <i>TSWampold@aol.com</i>

**Emeritus**

Philip H. DeTurk  
*hlipkruted@aol.com*

**Board of Governors Liaison**

Brian L. Comstock  
*brian@comstocklaw.com*

**WSBA Support**

Joy Eckwood  
Barbara Konior  
Paris Seabrook

*Editor's note: This article originally appeared in the Summer 2010 newsletter of the WSBA Real Property, Probate & Trust Section. It appears with the permission of the author.*

## **Grantor's Remorse: Reverse QPRTs and Other Creative Options for Dealing with the Termination of a Qualified Personal Residence Trust**

*by Sarah Shirey MacLeod – Miller Nash LLP*

### **I. Introduction**

Since Congress enacted Chapter 14 of the Internal Revenue Code in 1990, giving rise to Qualified Personal Residence Trusts, or "QPRTs,"<sup>1</sup> practitioners have encouraged clients to use QPRTs and clients have readily agreed. For how could they refuse? A QPRT provides a relatively simple, cost-effective method to transfer one's home to the next generation at a cost far below the fair market value, saving clients bundles in estate tax, while allowing them to continue living in their homes with little or no change in the status quo ... until the QPRT ends, that is.

We have all been there. The uncomfortable client meeting that begins by congratulating a client that he has successfully outlasted the QPRT term and turns awkward as the client is reminded that he no longer owns his home and must either move out or begin paying rent to the new homeowners – who are often his children. While practitioners may take comfort in the letter sent at the funding of a QPRT carefully spelling out what will occur at the end of the QPRT term, clients often don't remember ever receiving such a letter. When the QPRT term is up, some clients simply want to pretend that they never entered into the QPRT in the first place.

This apparent change of heart, or "grantor's remorse," has become more and more common as the realities of the current economy cause well-intentioned clients to regret their decision to undertake a QPRT. At the inception of a QPRT, clients are focused on reducing the size of their overall estate to avoid estate taxes. For many clients who created QPRTs in the 1990s, estate tax was of much greater concern than it is now, because the estate tax exemption was significantly less than the exemption amounts we have seen in the past five years. Likewise, home values, as well as retirement accounts, appeared to be on an upward, never-ending trajectory. Thus, at the time, the primary concern of many clients was to relieve the estate tax burden that would fall to their children. But now, a decade or so later, many of these same clients are primarily concerned with preserving their assets for their own lifetimes.

Of course, there are other reasons why clients do not want to surrender their homes. For instance, an unforeseen rift among family members can cause concerns about transferring title to the grantor's home. These concerns are ideally dealt with at the inception of the QPRT. But while

careful planning is always the best practice, problems often arise well after a QPRT has been established.

Whether clients have experienced a change in economic fortunes or family dynamics, or simply changed their minds, clients often experience "grantor's remorse" at the end of the QPRT term. This article examines some of the possibilities for alleviating "grantor's remorse" upon the termination of a QPRT, including a new estate planning method known as the "Reverse QPRT."

### **II. QPRT Overview**

The requirements for the creation and administration of a QPRT are set forth in Treas. Reg. § 25.2702-5(c). Generally, QPRTs operate as follows: a grantor transfers his or her residence into an irrevocable trust for a term of years and names beneficiaries – such as his or her children – to be the remainder beneficiaries of the trust. During the term of the trust, the grantor retains the right to reside in the home, rent-free. Upon the termination of the QPRT, if the grantor survives the term of the trust, the residence is distributed to the remainder beneficiaries.<sup>2</sup>

The primary purpose of a QPRT is to transfer a client's residence to the remainder beneficiary for less than full market value. QPRTs are an appealing estate planning tool because, contrary to the general rule under I.R.C. § 2702,<sup>3</sup> the grantor is allowed to value his retained interest in the trust (i.e., his right to reside in the residence) under I.R.C. § 7520, even if he is transferring his residence to family members.<sup>4</sup> Thus, for gift tax purposes, the value of the "gift" to the remainder beneficiaries is the value of the remainder interest in the QPRT at the time of funding, rather than the entire value of the residence that the beneficiaries ultimately receive.<sup>5</sup> This means that the grantor is able to transfer his home, including all the appreciation during the term of the trust, while paying gift tax on only a fraction of the present fair market value.

Of course, the advantages of a QPRT can be realized only if, upon termination, the grantor takes proper steps to ensure that the residence remains out of his estate for estate tax purposes.<sup>6</sup> In general, there are two options for a grantor to prevent estate tax inclusion at the end of a QPRT: (1) move out of the residence or (2) continue to reside in the residence but pay fair market rent.<sup>7</sup>

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As discussed above, these two options are often unacceptable to the grantor at the end of the QPRT term. For this reason, variations on these options have evolved over time, including a rather recent development – the Reverse QPRT. While all of the variations have considerable drawbacks of their own, they may help to mitigate a difficult situation if the grantor experiences grantor's remorse when the QPRT ends.

### III. Options for Dealing with the Termination of a QPRT

#### A. Option #1: Minimize Rent.

For grantors who desire to remain in their residences, the first step after the termination of a QPRT is determining the necessary fair market rent. Fair market rent should be determined by a qualified appraiser or real estate agent with significant knowledge of the local rental market, and the parties should enter into a formal lease agreement setting forth the terms of the leasing arrangement.<sup>8</sup> If the IRS determines that the rent amount paid was too low, then the home could be includable in the grantor's estate under I.R.C. § 2036.<sup>9</sup>

For many clients, paying the necessary rent can be a significant drain on their available cash flow. In order to assist clients in making rent payments, practitioners should suggest creative rental arrangements by which clients can minimize rent.<sup>10</sup> For instance, some portion of the rent payments may be paid "in kind," by including the grantor's maintenance and upkeep of the property as part of the rent.<sup>11</sup> Likewise, the grantor's continued tax, insurance, or other expense payments relating to the home after the QPRT term may all be considered part of the "rent" payment.<sup>12</sup> Finally, if possible, property can be divided in such a way that allows the grantor to rent only the portion of the property that he occupies.<sup>13</sup> For instance, if the property contains separate buildings or separate quarters that are not occupied by the grantor, the remainder beneficiaries may adjust the rent to factor in these unused spaces.

#### B. Option #2: Continue Residing in the Home, But Don't Pay Rent.

As stated above, if a grantor continues living in his home after the QPRT terminates but does not pay fair market rent, then the IRS will consider the grantor to have "constructively retained" his home for estate tax purposes.<sup>14</sup> Thus, the full market value of the home will be included in the grantor's estate upon his death.<sup>15</sup> While estate planners may cringe at this potential waste of gift tax credit and the time and expense that went into creating the QPRT in the first place, this option to not pay fair market rent may be a viable solution for some clients.<sup>16</sup> In particular, clients

whose estates are for one reason or another no longer at risk of being subject to the estate tax might want to consider foregoing the rental payments.

For those clients who do not face estate tax, the likelihood of paying capital gains on the sale of their residences after their death remains an important planning consideration. One of the added benefits of this option is that by not paying fair market rent, the house will be considered part of the grantor's estate under I.R.C. § 2036 and thus the grantor's heir's income tax basis in the property will be adjusted up to the property's fair market value as of the grantor's death.<sup>17</sup>

Of course, the choice to not pay fair market rent is not without its shortcomings. First, because the remainder beneficiaries now own the residence, any expenses paid by the grantor to maintain the property could be viewed as rental payments and therefore reportable as taxable income by the remainder beneficiaries on their personal income tax returns.<sup>18</sup> In addition, any capital improvements or expenses paid in excess of the fair market rent would be seen as a gift by the grantor to the remainder beneficiaries.<sup>19</sup> Likewise, in theory, the failure to charge monthly rent payments could be "construed" as a taxable gift by the remainder beneficiaries to the grantor and, as such, taxable income to the remainder beneficiaries.<sup>20</sup> For these reasons, the remainder beneficiaries may not agree to allow the grantor to remain in the property rent-free.

Practitioners should not mistake the option to not pay rent with an option to undo the QPRT. That is, upon the termination of the QPRT, it is important to transfer title of residence to the remainder beneficiaries rather than to transfer it back into the grantor's name. A transfer back to the grantor would be viewed as a gift from the remainder beneficiaries to the grantor of the full value of the residence and thus should be avoided.<sup>21</sup>

Likewise, attempting to have the remainder beneficiaries exercise a disclaimer at the end of the QPRT term to undo the QPRT will not work.<sup>22</sup> In order to unwind a QPRT by disclaimer, all the QPRT beneficiaries must execute the disclaimer within nine months of the funding of the QPRT.<sup>23</sup> Because it is rare for a grantor to recognize the problems with a QPRT within its first nine months, as a practical matter, disclaimers are not a useful option for unwinding a QPRT.

#### C. Option #3: Use a Promissory Note.

In cases in which the grantor cannot afford to pay fair market rent even after adjustments have been made to minimize the rent, a helpful option could be to have the

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grantor pay rent using a promissory note payable to the beneficiaries upon the grantor's death.<sup>24</sup> The note must be commercially reasonable and bear interest at the required rate in order to be considered valid.<sup>25</sup> Upon the grantor's death, the note will be considered a liability of the estate, which the grantor's executor can either pay or, if the holders of the note are the same as the beneficiaries of the estate, the note will effectively cancel out as the same parties will be both the holder and maker on the note.

While such promissory notes are relatively simple to set up and may appear to be an easy solution, they are not without problems of their own. Paying rent by way of promissory note will cause the beneficiaries to recognize phantom income on their personal income tax returns.<sup>26</sup> That is, beneficiaries will be required to report rental payments and interest on the notes as income on their personal returns whether or not they actually receive any cash within the reporting year.<sup>27</sup> In addition, because the grantor's executor will be required to attach the promissory notes on the grantor's estate tax return, there is the potential that the IRS will question the validity of the original QPRT transaction.<sup>28</sup> For this reason, it is important to evidence that there was not an arrangement at the outset of the QPRT to avoid having the grantor make actual rent payments. This could be accomplished in part by documenting the economic hardship encountered by the grantor at the end of the QPRT term requiring the grantor to issue promissory notes in lieu of actual rent payments.

#### **D. Option #4: The Reverse QPRT.**

The final option for dealing with grantor's remorse is a relatively new estate planning tool known as the "Reverse QPRT." Reverse QPRTs operate much like ordinary QPRTs except that rather than the grantor giving away the remainder interest and retaining the right to reside for a term of years, in a Reverse QPRT, the grantor gives away the right to reside in the home and retains the remainder interest for himself. In 2008, the IRS issued the first Private Letter Ruling sanctioning the use of Reverse QPRTs to allow the original grantor to remain in a residence rent-free after the termination of the original QPRT.<sup>29</sup>

Imagine a situation where a grantor creates an ordinary QPRT for a term of years. He names his son as remainder beneficiary of the QPRT and transfers his residence into the trust. After the term expires, the QPRT terminates and the house distributes to the son. By the end of the term, home prices and rental values in the area have skyrocketed, and the father has reconfigured his asset portfolio and is now on a fixed income. As a result, the father cannot afford to pay the necessary fair market rent. Here is where the Reverse QPRT comes in. In order for the father to remain living in

the home without paying rent, the son transfers the home to a Reverse QPRT. Under the terms of the Reverse QPRT, the son grants his father the right to reside in the home for a term of five years but retains a reversionary interest for himself. Thus, at the end of the Reverse QPRT term, the trust will terminate and the entirety of the trust property, including the right to reside, will revert back to the son.

What makes Reverse QPRTs especially useful is that, like ordinary QPRTs, they are considered a "qualified" exception from I.R.C. § 2702, meaning that although the grantor is transferring the house to a family member, the grantor is still able to value his retained interest (in this case the son's reversionary interest in the trust) using I.R.C. § 7520.<sup>30</sup> Thus, the value of the "gift" to the father is merely the value of the right to reside in the home over the term of the QPRT.<sup>31</sup>

The IRS has sanctioned Reverse QPRTs in more than a dozen similar private letter rulings within the past two years.<sup>32</sup> Each of these rulings have been written by the same author at the IRS.<sup>33</sup> Commentators note that it is unusual for the IRS to issue repetitive rulings on whether a trust qualifies as a QPRT as the IRS has provided taxpayers with sample trust provisions.<sup>34</sup> Thus, these uncommon repetitive rulings may be seen as an attempt by the IRS to make practitioners comfortable with using Reverse QPRTs in situations where paying fair market rent or moving out of a residence are not viable options at the end of the original QPRT term.<sup>35</sup>

While Reverse QPRTs appear to be a promising solution for dealing with grantor's remorse, there are serious considerations to be made before undertaking one. First and foremost, in each of its private letter rulings, the IRS has been careful to reserve the issue of whether entering into a Reverse QPRT may cause the home to be includable in the original grantor's estate (i.e., the father's estate).<sup>36</sup> Thus, the overall estate tax consequences of entering into a Reverse QPRT remain uncertain. While such a refusal to address this point does not necessarily indicate that the IRS will find I.R.C. § 2036 inclusion in every case where Reverse QPRTs are used, it certainly should give practitioners pause before recommending them.

Another consideration is the fact that by creating a Reverse QPRT, the son will need to use some or all of his lifetime gift tax credit in order to fund the trust.<sup>37</sup> Depending on the value of the home and the term of the Reverse QPRT, the amount of the son's gift tax credit used could be significant.<sup>38</sup>

Finally, determining the term of the Reverse QPRT can be difficult.<sup>39</sup> The shorter the term of the Reverse QPRT, the smaller the gift made by the son. But if the value of the

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home is rapidly appreciating and it remains unlikely that the father's economic circumstances will improve, then setting a longer term on the Reverse QPRT may be advisable. Otherwise, as soon as the Reverse QPRT terminates, the home will need to be transferred into a new Reverse QPRT for an additional term. As a result, the son will be seen as making another gift and the right to reside will need to be recalculated based on the appreciated value of the home at the time of funding the new Reverse QPRT.<sup>40</sup> Over the long term, funding several short Reverse QPRTs could prove to be much more costly from a gift tax perspective than funding one longer-term Reverse QPRT at the outset.

While there currently appear to be no guarantees for avoiding estate inclusion when using a Reverse QPRT, there may be some best practices to follow. It is recommended that the original QPRT grantor pay rent for several months after the termination of the QPRT in order to show that the entirety of the property, including the right to reside, was actually transferred as intended to the remainder beneficiary.<sup>41</sup> In addition, the grantor's hardship in paying the rent should be documented along with evidence that several options were explored before determining to enter into a Reverse QPRT.<sup>42</sup> Finally, parties should never enter into an agreement at the outset of a QPRT to create a Reverse QPRT at the termination of the original trust, because this could be seen by the IRS as a clear indication that a grantor never truly intended to surrender his right to reside.<sup>43</sup>

#### IV. Given the Unknowns, Are QPRTs Worth It?

While practitioners may be reluctant to recommend QPRTs because of the practical difficulties faced by QPRT grantors at the end of a QPRT term, QPRTs remain a valuable estate planning tool. Especially in this time of depressed real estate values, QPRTs should not be overlooked.

In creating new QPRTs, however, practitioners must learn from past experience and better prepare clients for the end of the QPRT term. This requires careful drafting, as well as good client communications about possible issues that may arise at the end of the QPRT term.<sup>44</sup> Practitioners need to be up front and specific with clients about exactly how the QPRT works and who will ultimately benefit – meaning who will ultimately own the grantor's home at the end of the QPRT term. In addition, practitioners should raise the issue of designating a trust as remainder beneficiary of the QPRT in case family relations become strained or a QPRT beneficiary runs into creditor trouble during the QPRT term.<sup>45</sup> Finally, practitioners need to advise clients that when planning for retirement they should include in their budget the rent payments that will commence at the end of the QPRT term.

Even the most careful planning cannot completely eliminate the possibility of grantor's remorse at the end

of every QPRT term. For this reason, practitioners may consider creative options, such as minimizing rent, using promissory notes, and establishing Reverse QPRTs, to assist clients in alleviating regret.

- 1 In 1990, Congress enacted Chapter 14 of the Internal Revenue Code as an attempt to prevent what the IRS viewed as potential valuation abuse of intrafamily transfers of property. While the IRS eliminated several commonly used transfer methods in Chapter 14, the new chapter specifically provided for QPRTs. *See* I.R.C. § 2702.
- 2 Treas. Reg. § 25.2702-5(c)(i).
- 3 The general rule under I.R.C. § 2702(a)(1)-(2) is that if a grantor transfers an interest in trust to a family member – as defined in I.R.C. § 2701(e)(2) – and retains an interest in the trust, then the grantor's retained interest is valued at zero for gift tax purposes. Thus, the value of the transfer of the remainder interest to the family member equals the value of the entire trust interest.
- 4 I.R.C. § 2702(a)(3)(A)(ii).
- 5 Treas. Reg. § 25.2702-5(a)(1).
- 6 *See* Blattmachr, Slade, & Zeydel, 836-2nd T.M., *Partial Interests – GRATs, GRUTs, QPRTs (Section 2702)*.
- 7 *See* PLR 199916030 (Apr. 23, 1999); PLR 9626041 (June 28, 1996); PLR 9448035 (Sept. 4, 1992).
- 8 Natalie B. Choate, *The QPRT Manual* 233 (1<sup>st</sup> ed. 2004).
- 9 Conversely, if the IRS determines that the rent paid was too high, then at least a portion of the rent may be viewed as having been a gift to the remainder beneficiaries subject to gift tax. *See* David M. Kushner, *Home Sweet Home – Or at Least Until the QPRT Ends!*, 18 Prob. & Prop. 38 (2004).
- 10 Choate, *QPRT Manual* at 337.
- 11 Bruce J. Bettigole, *QPRT Exit Strategy*, Tr. & Est., May 2009, at 38.
- 12 *Id.*
- 13 Choate, *QPRT Manual* at 339.
- 14 *See Guynn v. United States*, 437 F.2d 1148 (4th Cir. 1971) (holding that the value of a residence occupied by the grantor was includable in her estate after she transferred title to her daughter because she failed to pay fair market rent under I.R.C. § 2036(a)(1)). *See also Estate of Timothy J. Tehan*, TC Memo 2005-128 (finding value of condominium included in decedent's gross estate under I.R.C. § 2036(a)(1) because decedent had transferred title of condominium to children but continued to live in condominium rent-free, paying only expenses and improvements related to condominium).
- 15 Choate, *supra*, *QPRT Manual* at 233.
- 16 Charlie Douglas, *When a QPRT Becomes a Bad Hand*, 8 J. Pract. Est. Plan. 51 (2006-2007).

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- 17 With the change in basis allocation rules for 2010, it may not be possible to step up the basis of all assets includable in the estate of a decedent dying in 2010. See Economic Growth and Tax Relief Reconciliation Act of 2001; I.R.C. § 1014. Likewise, there remains uncertainty about future basis allocation rules as Congress considers new federal estate and gift tax legislation.
- 18 See IRS Publication 527 (2009), Residential Rental Property.
- 19 See Douglas, *supra*, 8 J. Pract. Est. Plan. 55.
- 20 *Id.*
- 21 *Id.*
- 22 Choate, *supra*, *QPRT Manual* at 317.
- 23 I.R.C. § 2518(b)(2) requires that a disclaimer be made "not later than the date which is 9 months after the later of (A) the date on which the transfer creating the interest in such person is made, or (B) the day on which such person attains age of 21 years." Thus, if a remainder beneficiary attempts to "disclaim" her or her interest at the end of the termination of the QPRT, the remainder beneficiary's interest will simply pass to the contingent beneficiary per the terms of the trust instrument and will not undo the entire QPRT. See Douglas, *supra*, 8 J. Pract. Est. Plan. 51.
- 24 Bettigole, *supra*, Tr. & Est., May 2009, at 38.
- 25 *Id.* (citing I.R.C. § 7872).
- 26 Choate, *supra*, *QPRT Manual* at 340.
- 27 *Id.*
- 28 *Id.*
- 29 PLR 200814011 (Apr. 4, 2008).
- 30 See PLR 201019006 (May 14, 2010); PLR 201019007 (May 14, 2010); PLR 201019012 (May 14, 2010); PLR 201014044 (Apr. 9, 2010); PLR 201006012 (Feb. 12, 2010); PLR 200920033 (May 15, 2009); PLR 200904023 (Jan. 23, 2009); PLR 200904022 (Jan. 23, 2009); 200901019 (Jan. 1, 2009); PLR 200848008 (Nov. 28, 2008); PLR 200848003 (Nov. 28, 2008); PLR 200848007 (Nov. 8, 2008); PLR 200816025 (Apr. 18, 2008); PLR 200814011 (Apr. 4, 2008).
- 31 If Reverse QPRTs did not meet this qualified exception, then the grantor's share would be valued at zero for the purposes of determining gift tax. As discussed above, transfers of personal residences in the form of a plain-vanilla QPRT have long been an accepted exception to this general rule (as they are in fact spelled out in statute). Only within the past several years, however, has the IRS begun recognizing Reverse QPRTs, in which the QPRT grantor retains the remainder interest and gives to someone else the right to reside, as an acceptable exception to I.R.C. § 2702.
- 32 See PLR 201019006 (May 14, 2010); PLR 201019007 (May 14, 2010); PLR 201019012 (May 14, 2010); PLR 201014044 (Apr. 9, 2010); PLR 201006012 (Feb. 12, 2010); PLR 200920033 (May 15, 2009); PLR 200904023 (Jan. 23, 2009); PLR 200904022 (Jan. 23, 2009); 200901019 (Jan. 1, 2009); PLR 200848008 (Nov. 28, 2008); PLR 200848003 (Nov. 28, 2008); PLR 200848007 (Nov. 8, 2008); PLR 200816025 (Apr. 18, 2008); PLR 200814011 (Apr. 4, 2008).
- 33 Lorraine E. Gardner, Senior Counsel, Branch 4, Office of the Associate Chief Counsel, Passthroughs and Special Industries, authored each of the private letter rulings cited in footnote 30.
- 34 Bruce Givner & Owen Kaye, *Reverse QPRTs to the Rescue*, 3 Wealthcounsel Q. 3 (July 2009) (citing Rev. Proc. 2003-42, 2003-1 C.B. 993).
- 35 Givner & Kaye, *supra*, 3 Wealthcounsel Q. 3, at 1-2.
- 36 See PLR 201019006 (May 14, 2010); PLR 201019007 (May 14, 2010); PLR 201019012 (May 14, 2010); PLR 201014044 (Apr. 9, 2010); PLR 201006012 (Feb. 12, 2010); PLR 200920033 (May 15, 2009); PLR 200904023 (Jan. 23, 2009); PLR 200904022 (Jan. 23, 2009); 200901019 (Jan. 1, 2009); PLR 200848008 (Nov. 28, 2008); PLR 200848003 (Nov. 28, 2008); PLR 200848007 (Nov. 8, 2008); PLR 200816025 (Apr. 18, 2008); PLR 200814011 (Apr. 4, 2008).
- 37 PLR 201019006 (May 14, 2010); PLR 201019007 (May 14, 2010); PLR 201019012 (May 14, 2010).
- 38 Note, however, that the gift by the son to the father may be offset somewhat by the annual gift tax exclusion as the gift of the right to reside in the home is a gift of a present interest eligible for the annual gift tax exclusion under Treas. Reg. 25.2503-3(b). See Givner & Kaye, *supra*, 3 Wealthcounsel Q. 3, at 5.
- 39 See Givner & Kaye, *supra*, 3 Wealthcounsel Q. 3, at 5.
- 40 *Id.*
- 41 *Id.*
- 42 Cannon Financial Institute, *Cannon Insights, Taxes: Private Letter Ruling on Reverse Qualified Personal Residence Trust (QPRT)* (2009), www.cannonfinancial.com.
- 43 See Choate, *supra*, *QPRT Manual* at 340.
- 44 Note that practitioners should not put anything into the QPRT agreement itself or in a separate writing by which the QPRT grantor and beneficiaries agree at the outset of the QPRT to an alternative arrangement for dealing with the end of the QPRT term. For instance, as stated in the article, grantors and remainder beneficiaries should not agree up front to enter into a promissory note or Reverse QPRT at the end of the QPRT term because such an agreement could cause the IRS to question the validity of the entire transaction. Rather, to avoid estate tax inclusion it is important that the grantor demonstrate that he had every intention of fully surrendering his home to the remainder beneficiaries at the end of the QPRT term.
- 45 See Blattmachr, Slade, & Zeydel, *supra*, 836-2<sup>nd</sup> T.M., at A-32.

## Boston: Where Good Beans Go to Die

by Phil De Turk

Hang a lantern aloft in the belfry-arch  
Of the North Church tower...  
I on the opposite shore will be (in Charlestown) ...  
– Longfellow –

Why would any sane person want to visit Boston? Yes, I guess the Celtics, Fenway, the Ha-baah, and even the U.S.S. Constitution. But really, Boston?

In September 2010, I spent six delightful days attending a Road Scholar program in that very city. Since it was themed around the American Revolution as it affected Boston, we did all of the things most visitors shun who opt for more modern events. Indirectly we did those too, as our travels around Bean-Town took us to the finish line of the Marathon (with its large placard listing past winners), to the Fine Arts Museum, to the downtown for meals, and even through Harvard (Cambridge) en route to Lexington.

Since we were staying at the Constitution Inn located in Charlestown, we crossed the Harbor at least six times; each of them was a delight, reminding me of the ferry rides on the then-7 cent trips from Kowloon to Hong Kong (they are now 13 cents but seniors ride free). Since the weather was mostly delightful, we sat outside watching the skyline diminish in size the closer we came to Charlestown, 20 minutes away.

I have been to Boston at least five times over the past 12 or so years. This was the first time the gigantic ditch was gone. For years it was something to detour around as the City built a massive tunnel allowing traffic to enter the Boston corridor with the ability to access Charlestown and Cambridge without much difficulty. Still it is a nice place to visit, but I would not want to live there.

### Bells and Bones

It was April 18, 1775, when Robert Newman, the sexton of the Old North Church, deigned to signal yon Paul of the coming of the British. With the help of friends, Revere was able to get the word all the way to Concord, which we also visited.

The church is Boston's oldest standing church building. The belfry is still intact. We were able to climb several stairways to attain it; once there we watched a video showing how the eight bells are still rung, by eight bell-ringers who are greatly crowded and guided by the conductor so that a melody will be produced. We also looked around the tower, which at 191 feet is Boston's tallest, and viewed the ancient interior of this building which dates from 1723.

After our ascent, the guide took us down, down, down into the vaulted area of tombs and bones. Much work has been done here, so few graves are intact. Yet the narrow

walkway afforded an opportunity to learn more about this still-used religious edifice.

The church is situated in the area of Boston known as the North End. At present it is not only the home of Paul Revere's house, the Mariner home (not the baseball team), and the Church, but also of dozens of Italian restaurants. There are also countless condos, apartments, and even houses, since the area is very accessible to the city. One note of interest: In order to park overnight one must have a certificate permitting such attached to the motor vehicle.

### Life, Liberty, and Red Coats

Our trip to Concord, which came on another day, allowed us to understand the distance Mr. Revere and his cohorts had to travel to get out the word to the rural troops, farmers serving as a militia when needed. At Concord we visited the National Park Service's domain which recreates the killing of some of the first British forces. Lexington and Concord were actually the first battles of the Revolutionary War, the one at Bunker Hill coming later. The militia with their ragged uniforms and self-owned weapons attacked the red coats who marched with precision to their deaths. This is not intended to be a primer on the Revolution; suffice it to say that the reason for resistance by the farmers was that they wanted to protect their liberty. For over 100 years the Americans had more freedom than those left in London, and they did not want to lose it.

On another day we went to the Granary Burying Ground. This is not an artsy cemetery like ones I have visited in Rio de Janeiro and Paris, but a plain and simple one with few headstones of any size. Yet the people buried there include Paul Revere, Sam Adams, the victims of the Boston Massacre, as well as three signers of the Declaration of Independence (including the very wealthy John Hancock). It is a two-acre plot near the Boston Common first used in 1660. The large cenotaph in the center commemorates the burial spot of Benjamin Franklin's parents.

Near this monument is the tomb of Elizabeth Goose, who raised 20 children before dying in 1757. However, she was not the original of that name since the Mother Goose story preceded her life.

Continuing around the city blocks, and only a few at that, we came upon the old city hall, the old book store (which in its day was the foremost publishing house

*continued on next page*

*Boston: Where Good Beans Go to Die* from previous page

of the young country) and the old State House. In the latter many important official meetings predating the actual battles took place. Attendees were incensed at every action England took to raise taxes or govern them.

Faneuil Hall was nearby, too. It was here the people gathered to protest the tea tax and other inflictions that Britain wished for them. This area is primarily now a place to meet others for planned meals, since next to the historic building and its large auditorium is a building with many fast-food places as well as a large McCormick and Schmick's with a patio suitable for summer outdoor drinking.

### Old Ironsides

The Constitution Inn was our hotel. It was about six blocks from Bunker Hill in one direction, the Navy Yard in another. The former features a monument atop the hill where a portion of the famous battle took place; the rest of the war area is now used by the homes and town houses that surround the block-square park. The 221-foot granite obelisk was completed in 1825 when Lafayette laid the cornerstone. One can *climb* to the top; there is no elevator. (By way of contrast, the Washington Monument is 40 years younger and over two times taller.)

An excellent museum on the hotel's property is managed by the Park Service. Besides the numerous artifacts, there is a 360-degree painting depicting the battle of 1775. The British won it, in one of the more famous Pyrrhic victories of yesteryear.

We visited the Navy Yard on our last day. Throughout this tour the NE weather remained wonderful, making our various tour stops enjoyable for all. This facility dates back to 1800, three years after the launching of the U.S.S. CONSTITUTION. The Navy Yard was an important installation for 174 years, and its main attraction is the ship sometimes

known as Old Ironsides (however, its hull is built partially of live oak from the Georgia Sea Islands).

Over the years it has been refurbished, rebuilt, restored and preserved to the point it still makes several annual sails around Boston Harbor. Our tour included going on the upper deck of the ship and then descending into its bowels. Strangely there was almost ample room for my head to pass around below ship without ducking. While we were there naval dignitaries were preparing to have a meeting in that subterranean area.

### Lots to Do, So Little Time

Of course Boston offers other places to visit. Whereas I used our free afternoon to visit the Art Museum and then take several subway rides including one past Logan Airport to some famous beach areas used throughout the summer, others did differently.

They visited the Kennedy Museum, which I had seen twice before, they went on a tour of Fenway Park, spent time on the Boston Common, retraced a Scott Spencer parks thriller, sat around the harbor enjoying beverages or perhaps redid some of the visits we had already made but which were covered too quickly. For instance we spent little time at Paul Revere's home. It is tiny, as suited his station in life as a silversmith. The surrounding displays are contemporary and managed by the ubiquitous Park Service.

If you are interested in these types of activities, you can visit these places without a tour guide. Fly into Logan Airport, from which Boston is very accessible. Just across the harbor, stay at the aforementioned Inn, which while not expensive and without many amenities (though it had an exercise room and swimming pool), is close to what you will want to see. Take the harbor cruise (the boats cross about every 30 minutes), and walk. Enjoy.

## Seattle U. Law School Reunion Coming in April

***Does Your Diploma say UPS Law School? You're also Invited!***

*by Al Armstrong*

Seattle University School of Law's annual Alumni Weekend is scheduled for Friday and Saturday, April 15 and 16, 2011, at the school's Sullivan Hall on the Seattle University campus, Grace Greenwich, director of the Law School's Office of Alumni Relations, has announced. "This homecoming is our time to celebrate the contributions of our alumni world-wide. We are thrilled to welcome our esteemed graduates," she said.

As in the past, several activities are planned for the two-day affair, including reunions, champagne receptions honoring Alumni Award recipients, and a Distinguished Speakers' Program featuring well-known experts addressing current events. The Law School classes of 1981, 1991 and 2001 will celebrate their 10-, 20- and 30-year reunions, but Greenwich stresses that April's get-together is for all alumni.

Greenwich noted that the Law School is proud of its ten-thousand-strong alumni community (many of them from the days, until the 1990's, when it was the University of Puget Sound School of Law), and, in keeping with past years, will host an Alumni Awards Luncheon during the reunion. Award recipients (nominated by alumni) are recognized for their contributions to their profession and to the wider community. The alumni community plays a crucial role in assisting students in their preparation for a life in the law or other pursuits. Many volunteer as Moot Court judges, mentors, or as job-shadow hosts exposing students to a variety of career possibilities.

"Our alums render invaluable service in mentoring and recruiting our students and recent graduates," said Greenwich, "and we spend a large part of our Alumni Weekend thanking these individuals." She estimates that literally

thousands of alums have lent their respective talents to the Law School. She said the alumni community can take great pride in the success of the Law School, home to the country's top-ranked Legal Writing Program.

### **Tours pour Tout**

Tours of the school's facilities will be conducted throughout the weekend, including Sullivan Hall (the main Law School building, it houses the law library, classrooms, and administration) and the new School of Law Annex, home to the Law School's growing clinical and externships programs, as well as student journals.

Special reunions will be held for alumni of the Law Review, the Seattle Journal for Social Justice, and Moot Court/Dispute Resolution during Alumni Weekend.

The Alumni Weekend is sponsored by the Law Alumni

Board, which hosts its Alumni Association Meeting and Luncheon as part of the festivities. All alumni are invited to attend and to help welcome new Board members and to congratulate outgoing members.

Special tribute will be paid to the Law School's new Dean, Mark Niles, who will be completing his first year at the helm of the law school. "Dean Niles is a great voice for justice as well as for academic excellence and has proven to be a perfect match for our school and its aims," noted Greenwich. "He is committed to ensuring the Law School's continued excellence."

In closing, Greenwich extends a hearty welcome to all Seattle University Law graduates to come celebrate their school and its many successes this April.



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## Article Ideas? Your Input Is Needed!

*Life Begins*, the Senior Lawyers Section newsletter which you are reading at this very moment, works best when section members actively participate. We welcome your articles and suggestion regarding *your lives in or out of the law*.

Please contact Carole Grayson, editor, to submit an article, or if you'd like to write an article, or if you have ideas for article topics. Here's how to reach her: phone (206) 543-6486, email [cag8@uw.edu](mailto:cag8@uw.edu), fax (206) 543-3808, or snail mail at UW Student Legal Services, Box 352236, Seattle, WA 98195.

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