

Scientology and Estate Planning

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InterActive Legal

A KEY ESTATE PLANNING GUIDE

1

1

Scientology and Estate Planning

By: Thomas Cummins and Martin Shenkman, Esq.

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2

2

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3

3

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4

4

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- InterActive Legal
 - Vanessa Kanaga
 - (321) 252-0100
 - sales@interactivelegal.com



5

5

Religion and Estate Planning

Some General Thoughts

6

6

Ongoing Series on Religion and Estate Planning

- This presentation is the 5th in an ongoing series on religion and estate planning.
- The goal is to build awareness and sensitivity as to how estate planners (attorneys, CPAs, financial advisers, trust officers, etc.) can guide clients of any faith in planning, drafting and implementing an estate plan that comports with the client's particular faith.
- This installment will address planning for a client who is a Scientologist.
- If you are knowledgeable about a faith we have not yet covered, please contact Martin Shenkman and help us cover that faith as well.

7

7

Religion and Diversity

- An analogy for diversity, is not the rainbow, but a third world bazaar with its infinite array of scents, colors, textures, sounds, and more. You can smell, taste, touch and embrace each unique stimuli.
- Martin Luther King, Jr. in *Where do We Go from Here? Chaos or Community* "We have inherited a large house...a great 'worldhouse' in which we have to live together – black and white, Easterner and Westerner, Gentile and Jew, Catholic and Protestant, Muslim and Hindu...a family separated by ideas, culture, and interest who ...must learn somehow to live with each other in peace." That is closer to the concept of what diversity truly encompasses.

8

8

Should an Attorney Address Religious Considerations?

- Many practitioners are reluctant to address religious issues, viewing them as outside of the purview of matters appropriate for an attorney or estate planner. The tremendous impact which religious rituals and traditions can have on each estate planning document, and many of the common estate planning techniques, practically assures that important personal goals of the religious client will be violated if the planner does not address them. No practitioner would knowingly violate a client's religious wishes.
- As you seek out and address client's religious and other personal wishes, you will create a bond with them that will take the relationship beyond that of being as mere Scribner or consultant, to that of being a confidant and family adviser. The rewards of providing that level of personal service, and the strengthened client bonds, will enhance your practice, client retention and more.

9

9

The Goal of Estate Planning

- Estate Planning should not be just about the transmission of wealth.
- Estate planning should be about the transmission of values.
- For many, it should encompass the transmission of beliefs as well as values. This can be done by integrating religious considerations into the estate planning process.

10

10

Areas of Estate Planning Affected by Scientology Considerations

- Charitable giving.
- Clauses determining disability.
- Transmitting religious values to children and other heirs.
- Special provisions and requirements avoiding psychiatry and psychotropic drugs require that many provisions governing capacity, substance abuse, etc. be revised.
- Fiduciaries need authority to disburse funds for religious education (e.g. Scientology auditing), charitable giving (to inculcate a core religious value), and other purposes consistent with religious goals.
- Fiduciaries must be selected that have the appropriate knowledge and sensitivity to address Scientology religious considerations.
- Mandatory arbitration of certain claims before a Scientology religious body.
- The belief in a person's sole or "Thetan" returning in a future life.

11

11

Religion and Estate Planning

Overview of Scientology

12

12

Overview of Scientology

- L. Ron Hubbard ("LRH"), founded Scientology and defined Scientology as "Scientology is knowledge." There is an incredible array of publications that define in depth the beliefs and concepts that underlie the concepts of Scientology. Much of the literature of the Church is a record of Mr. Hubbard's observations and research into the nature of man and each individual's capabilities as a spiritual being..."
- "...the mission of the Church of Scientology is...to help the individual regain his true nature, as a spiritual being, and thereby attain an awareness of his relationship with his fellow man and the universe."
- The essential tenets of Scientology are: "You are an immortal spiritual being. Your experience extends well beyond a single lifetime. And you your capabilities are unlimited, even if not presently realized. Furthermore, man is basically good. He is seeking to survive."

13

13

Scientology is Unique and Complex

- Scientology includes many unique concepts, terminology, and doctrines, some of these can be important to the estate planning process.
- Scientology is complex, and endeavoring to summarize a few salient points of the faith cannot provide a meaningful understanding of what the faith involves. Nonetheless, some description is also necessary given the pervasive misconceptions many have. Also, the principles of Scientology are quite different than more widely observed faiths, so it will be difficult for someone not familiar with Scientology to anticipate the impact it might have on planning. Hopefully, this very brief understanding will also provide practitioners a better basis to advise Scientologist clients.

14

14

Scientology May Coexist with Another Client Faith

- The goal of Scientology is not so much the belief in a particular deity and the worship of that deity through particular rituals, but the growth of the individual human being with the ultimate goal of improving society as a whole.
- Thus, a practitioner may encounter a devout Scientologist who may also have been raised in another faith, and may not have disavowed that other faith.

15

15

Scientology the Science of Knowledge

- "Scientology" could perhaps be translated as the science of knowledge. Perhaps even more so as the science of self-knowledge. The goal of Scientology is, at the core, to guide individuals to survive, but more so to help the individual improve, be happier and more fulfilled, and to live an exemplary life.
- In 1950 Hubbard published the book "Dianetics: The Modern Science of Mental Health," which developed the foundation for what eventually become known as "Scientology." Self-knowledge and inner peace is found through formal courses, reading and studying Scientology literature (L. Ron Hubbard wrote a massive library of materials), participation in the community, and services, and a process unique to Scientology called "auditing." This might very loosely be referred to as a form of guided self-exploration.

16

16

Auditing

- A fundamental process to Church doctrine is the practice of "auditing." This is a process where an individual explores, with the guidance of a trained Church member referred to as an "auditor," past experiences that may have had a negative or traumatic effect.
- An integral part of the auditing process is using a device which L Ron Hubbard invented that is called an electro-psychometer, which is commonly referred to as just an "E-meter." The E-Meter when used by Church ministers help parishioners locate the source of spiritual travail.
- The parishioner by properly exploring and understanding those past memories, the influence or impact they have can be dissipated or neutralized. When all of these negative memories are addressed, the person reaches a state of better functioning, clearer thinking, and more. This is referred to as "clear." A person is called "...a Clear because his basic personality, his self-determinism, his education and experience have been cleared of aberrative shadows.

17

17

Scientology Values Should Infuse a Scientologist Estate Plan

- The quote below and on the following slide give only the quickest overview of Scientology values and beliefs that may affect an estate plan. They reflect goals that a Scientologist client may want infused into a plan.
- *"What is important is how much service you can give the world and how much you can get done and how much better you can make things. These are important things. These are all that are important. A bank account never measured the worth of a man. His ability to help measured his worth and that's all. A bank account can assist one to help but where it ceases to do that it becomes useless."*

18

18

Scientology Values Should Infuse a Scientologist Estate Plan

- In planning bequests, for example how much and how should wealth be distributed to family, charity and perhaps others, basic tenets of the faith should be considered. This quote from a popular Scientology text provides and insight: *"But few are unhappier the those who lead a purposeless, idle and bored existence..."*
- The silver spoon or trust fund baby is not the ideal for happiness.
- Consider how much of a Scientologist client's wealth he or she wants left to heirs. Will the amount of wealth undermine the heir's industriousness? Will it empower the heir to do less then they are capable of accomplishing? Will it empower the heir to be unproductive and hence unhappy? Might a trust with a trustee who understands the heir and the Scientology goals of the client better distribute funds in a way that helps the heir achieve more, not less? Might the concept of an incentive trust be appropriate for many Scientology clients?

19

19

Religion and Estate Planning

Representing the Scientologist

20

20

Representing the Scientologist

- Generalizations are difficult, and perhaps inappropriate since every individual is different, a few general comments on how Scientologist might approach the estate planning process may be useful for professional advisers to understand.
- L. Ron Hubbard was beyond prolific in the voluminous materials he wrote and lectures he gave, all of which have been recorded. So, as a generalization, Scientologists are accustomed to reading and will generally appreciate when any adviser can provide articles or other resources to explain the estate and related planning process.

21

21

Representing the Scientologist

- Every book published by the Church has a glossary appended. Not just a short glossary with succinct definitions of a few terms, but usually a robust glossary. Professional advisers should expect to be questioned about the definitions of professional terms and acronyms. If memorandum, letters or other communications are prepared, make an effort to define all technical terms used. Many Scientology books contain the following in a note preceding the actual book: "In reading this book, be very certain that you never go past a word you do not fully understand. The only reason a person...becomes confused or unable to learn is because he or she has gone past a word that was not understood." Whereas many clients will listen as an adviser tosses about technical terminology that they may or may not understand, advisers should anticipate that Scientology clients are more likely to interrupt and request definitions.

22

22

Representing the Scientologist

- Communication is critical. Scientology writings are replete with discussions on the vital importance of maintaining lines of communications. Professional advisers might be requested to make an even greater effort than they normally do to provide status updates, reports as to progress, etc. This may not require more than an email or letter, but it might well require more than many advisers typically provide. Also, those communications should, with consideration to such matters as attorney client privilege, copy the planning team helping the particular client.

23

23

Representing the Scientologist

- "...before he starts to discuss, criticize or attempt to improve on the data presented to him, find out for himself whether or not the mechanics of Scientology are as stated and whether or not it does what has been proposed for it. He should make up his mind about each thing that is taught -- the procedure, techniques, mechanics and theory. He should ask himself these questions: does the piece of data exist is it true/ does it work? Will it produce the best possible results in the shortest time?" These may well be the questions a Scientology client explores while evaluating estate planning options.

24

24

Religion and Estate Planning

Religion and Letters of Instruction

25

25

Letters of Instruction

- Given the unique tenets of Scientology it may be particularly important for a Scientologist to write a detailed personal letter of instruction. If institutional trustees are used, this type of communication, even if not binding, may be important to guide the trustee trying to discern the client's specific desires as to how to handle various decisions.
- A letter of last instruction should be written to family and loved ones addressing religious matters. A separate letter should be written to any institutional trustee. This will enable you to communicate your feelings in your own words.
- Description of the client's Scientology beliefs and preferences.
- What about guidance for those that the client will leave behind? What type of life does the client wish for children or grandchildren to lead? Do you want them brought up with Scientology values system?
- Might the client encourage heirs to participate in auditing and other Church activities? If so, the estate planning documents (durable power of attorney, revocable trust, irrevocable trusts) might all include provisions authorizing and even directing payment for such endeavors.

26

26

Religion and Estate Planning

Therapy, Psychiatry and Drug Treatment Impact Drafting

27

27

Therapy, Psychiatry and Drug Treatment

- Scientology views as negative and inappropriate psychiatry and the use of psychotropic drugs. This consideration is fundamental to tailoring every estate plan, for any Scientologist.
- Standard forms, drafting techniques and planning include references to capacity that may raise discomfort or objections from a Scientologist.
- Planning for disability and drug use by beneficiaries and heirs may all have to be significantly modified to respect the views of a Scientologist. Standard forms, without these modifications, will not be acceptable to many Scientologists.

28

28

Therapy, Psychiatry and Drug Treatment

- Scientology has its own process which it believes replaces the role of traditional psychology, which is the auditing process described earlier. Auditing is a process that is believed to release and erase psychosomatic ills and painful emotions, thereby leaving individuals with increased powers of rationality. Thus, traditional provisions in estate planning documents that might suggest referring a beneficiary, fiduciary, principal or settlor to a traditional mental health professional to determine capacity will generally be objectionable and should be replaced with alternative language.

29

29

Therapy, Psychiatry and Drug Treatment

- The following typical clause will **not** be acceptable to a Scientologist. This clause is excerpted from Interactive Legal drafting software for a substance abuse provision.
- *"...if, in the opinion of the examining doctor or psychiatrist, the examination indicates current or recent use of a drug or substance as described above, the beneficiary must consult with the examining doctor or psychiatrist to determine an appropriate method of treatment for the beneficiary. Treatment may include counseling or treatment on an in-patient basis in a rehabilitation facility. If the beneficiary consents to the treatment, the Trustee may pay the costs of treatment directly to the provider of those services from the income or principal otherwise authorized or required to be distributed to the beneficiary, if the Trustee otherwise determines that the funds are available to do so and it is in the best interests of the beneficiary to do so."*

30

30

Therapy, Psychiatry and Drug Treatment

- The following typical clause may be acceptable to a Scientologist.
- *"One intent of this provision is to limit, to the extent permissible by law, the involvement of the medical specialties of psychiatry and psychology, in the determination of substance abuse (and capacity) for a beneficiary of this Trust. Any determination as whether a Beneficiary is abusing substances (or whether a beneficiary has mental capacity ("Evaluated Person"), shall be made solely in accordance with the tenants and beliefs of the Church of Scientology. By way of example and not limitation, no such determination of capacity shall be made by consultation with or based on an evaluation made by psychiatrists, psychologists or similar mental health professionals...."*

31

31

Therapy, Psychiatry and Drug Treatment - Continued

- *"...Nothing in this provision shall restrict in any manner the hiring of, evaluations or recommendations of any of legal counsel, licensed physicians or neurologists, or Scientology auditors, or other appropriate Scientology practitioners, for an Evaluated Person. The Individual Trustee (or if none the Trust Protector) in his, her or its discretion may rely on any such authorized person or expert's determination as to the substance abuse or capacity of an Evaluated Person. To the extent permitted by law, any court interpreting the provisions herein, or evaluating the capacity of any Evaluated Person, endeavor to respect and adhere to the mandates herein. Any treatment for substance abuse shall be made by appropriate Church authorized organizations."*

32

32

Therapy, Psychiatry and Drug Treatment

- Following is another illustrative clause practitioners might consider:
- *"In making any discretionary distributions to any beneficiary hereunder the Trustee shall not make any direct distributions to pay for psychiatric treatment (including but not limited to counseling or therapy with psychiatrists, psychologists or similar mental health professionals), or for the purchase of psychotropic drugs, no matter how safe or effective they may be presumed to be, nor how harsh the consequences of withdrawal from such medications may be. Further, if a beneficiary has any drug, drinking or other substance abuse problem the Trustee shall not make any direct distributions to pay for rehabilitation or other treatment for same other than as permitted below. These prohibited expenditures shall supersede any provision in this Trust Agreement to the contrary."*

33

33

Therapy, Psychiatry and Drug Treatment

- Following is another illustrative clause practitioners might consider:
- *"If a beneficiary has, or may have any drug, alcohol, or other substance abuse problem, the Trustee is authorized to pay directly for treatments provided by or recommended by Association for Better Living and Education, Narconon International, or Narconon, or any successor organization sponsored, approved, or recommended by the Scientology organization, or based on "Dianetic Counseling," that promotes the theories of founder L. Ron Hubbard regarding substance abuse treatment and addiction. The Trustee shall have no liability whatsoever for making such distributions regardless of whether any independently recognized studies confirm the efficacy of the Narconon or other Scientology based programs."*

34

34

Religion and Estate Planning

Religion and Living Wills and Health Proxies

35

35

Living Wills and Health Proxies

- Many of the common issues that other faiths grapple with, such as the definition of death, whether an agent may ever withhold nutrition and hydration, whether quality of life has relevance to end of life medical decision may not have any unique considerations to the Scientologist.
- As noted above some Scientologists might retain certain beliefs, even affiliation, with a faith that they held before becoming involve with Scientology. Thus, practitioners should inquire whether the client has any other faith based preferences that he or she might wish to have reflected in their health care related documents.
- However, there are profoundly important differences unique to Scientology.
- Therapy, psychiatry and drug treatment clauses may all have to be modified. Because these are so unique to Scientology, and affect perhaps every estate planning document prepared for a Scientologist, they are discussed above in their own segment.

36

36

Religion and Estate Planning

Religion and Powers of Attorney

37

37

Powers of Attorney - 1

- Considering the value system portrayed above in the general discussion of Scientology, charitable giving is a significant goal of many Church members. Thus, enabling an agent under a durable power of attorney for a Scientology client to make charitable gifts in the event of the client's disability or incapacitation may be important.
- If children or grandchildren are to be aided with Scientology religious education and auditing the client may wish to expressly provide your agent with the authority under a power of attorney to pay such expenses.

38

38

Religion and Estate Planning

Scientology, Wills and Revocable Trusts

39

39

Scientology Wills and Revocable Trusts

- There do not seem to be any particular tenants of Scientology that may affect a client's will.
- Given the legal issues and perceptions of Scientology, relying on a funded revocable trust, with a mechanism to change governing law and situs, may be advisable.
- If the Scientologist testator may bequeath significant wealth to the Church, which is common, or make different provisions for heirs that are active in the Church or not, reinforcing that dispositive scheme with consistency across various documents, or perhaps a pre-mortem probate, might be advantageous to consider.

40

40

Scientology Wills and Revocable Trusts

- Some heirs may become members of a division of the Church known as "Sea Org." These participants may own little or no personal wealth and will be provided for by the Church so long as they remain members of Sea Org. This might be viewed as analogous to members of other faith's that join clergy or orders that generally limit the accumulation of personal wealth. In such cases, trusts might be created to provide for the heir or supplement what the heir might receive from Sea Org. Depending on the particular testator's personal viewpoint, provisions may be more generous should the heir disassociate from Sea Org in the future, or perhaps less generous to encourage continued involvement. These would all be matters to discuss with the client to determine personal wishes.

41

41

Scientology Wills and Revocable Trusts

- In drafting a revocable trust some of the following modifications may warrant consideration:
 - Tailoring language governing the determination of capacity and drug use as discussed above.
 - Incorporate the values in trust for descendants discussed above.
 - Consider Code Sec. 642(c) language to facilitate continued charitable contributions in irrevocable trusts following the settlor's demise.
 - Mandatory arbitration of disputes (or perhaps only certain disputes) before a Church arbitration body.
 - Successor trust provisions or mechanisms to address future lives as discussed below.

42

42

Religion and Estate Planning

Thetan and its Impact on Planning

43

43

Components of Man; Thetan and Past and Future Lives

- Scientology believes that man consists of three components: (1) the body, (2) the mind (which consists of the analytical mind and the reactive mind), and (3) the sprit.
- Each person is a life spirit or soul, called thetan. This term is from the Greek letter "theta."
- The thetan is the individual or the spiritual being. The soul is eternal and may have lived in prior lives, and may return in future lives.
- "Theta is thought, life force, elan vital, the spirit, the soul or any other numerous definitions it has had for some thousands of years."
- This is central to Scientology theology, and can have important estate planning implications

44

44

Estate Planning for Future Lives

- Fundamental to Scientology beliefs is the belief that the spirit, or "Thetan" may return in a different physical body. The Church has a protocol and process to identify these situations.
- As to estate planning, this belief can have profound and challenging planning implications. What if a wealthy Scientologists wishes to provide for when he or she might return in a future life? With dynastic trust planning the norm in estate planning, how can that construct be modified to encompass a settlor who returns as a different person with the same spirit?
- A simple approach to address the above drafting challenge could be to give someone in a non-fiduciary capacity to add a beneficiary, so that if the client returns, and is recognized as being that client under the aforementioned protocol, he or she could be made a beneficiary of the dynasty trust.

45

45

Estate Planning for Future Lives

- A variant of the approach of adding a beneficiary might be to name a person in the trust instrument, to act in a non-fiduciary capacity, and provide that person the power to direct the trustee to make distributions to the client when they have returned and been confirmed by appropriate Church processes as being that person.
- Both of the above approaches raises potentially significant risk of abuse and problems. The potential universe of appointees is anyone alive at the time the decision has to be addressed. That would all seem very problematic in the context of controlling or limiting the exercise of these powers. Further, if a trust document stated that it was open to making distributions to the settlor creating the trust, even if in a different persona, how would that be interpreted by the courts or IRS.

46

46

Estate Planning for Future Lives

- There might be another approach applying in a different manner modern trust drafting techniques that use special purpose entities to "house" various fiduciary and non-fiduciary positions. This is actually a growing trend in modern trust drafting that can be readily adapted to address the desire of a Scientologist to have some measure of involvement with his or her wealth in a future life.
- Consider structuring a dynastic trust with special purpose LLCs designated to serve as a distribution director and investment director. These applications, if the managers of the respective LLCs are all members in good standing of the Church of Scientology, may provide a mechanism to permit a client returning in a future life to remain involved in their financial empire at that future date, without the same risks and issues posed by the use of powers of appointment described above. Thus, grafting a business entity structure onto the estate plan, may provide an avenue to address the client's religious wishes.

47

47

Illustrative Estate Plan for Future Lives - 1

- **Example:** The client creates a dynastic trust in South Dakota. The trust instrument names a particular LLC to make all investment decisions in the above example. Let's call that Management Decision, LLC. A second special purpose LLC is created to hold trust investments. Let's call that LLC "Private Equity, LLC." Thus, the trust owns interests in just one LLC, Private Equity, LLC. The sole member of Private Equity, LLC is the trust. This LLC is a disregarded entity for tax purposes so any assets it owns, and income it earns, is deemed for income tax purposes to be that of the trust. The client gifts (or if the dollar figures are large enough, sells using a note sale transaction) various business interests to Private Equity, LLC. The client can serve as the manager of both of these LLCs during lifetime and control investments similar to how an investment advisor or investment trustee might control investments in many estate plans. In the event of disability or death, a successor manager is named in each LLC.

48

48

Illustrative Estate Plan for Future Lives - 2

-To provide greater security to the client's wishes, the successor manager is actually a board of managers comprised solely of active recognized members of the Church of Scientology. By having a board of managers, if one manager chooses not to respect the client's wishes and the intent of the plan, that manager will only have one vote. If the client returns in a future life, and is recognized as the client under appropriate Church protocols, that person can be added to the board, made chairman of the board, of each LLC. Thus, that person can resume managing the person's business and wealth, and earn compensation from the LLCs commensurate with the contribution made. The trust structure remains intact and unaffected by the integration of the client's Scientology religious beliefs into the plan.... (Continued)

49

49

Religion and Estate Planning

Arbitration

50

50

Arbitration

- Because of the many unique tenets of Scientology it may be advisable for certain issues or decisions that might arise in a will, trust or even business entity document (especially if part of the estate plan) to incorporate a mandatory arbitration before a Church body.
- As with all faith based arbitration clauses (and other mandatory arbitration clauses) there are issues as to the enforceability of such clauses on beneficiaries who have not consented. It might be worth considering having beneficiaries consent in writing in advance to such arbitration provisions, and documenting that they have been advised to consult with independent counsel in advance of signing.

51

51

Arbitration – Sample Clauses - 1

- *"Any determination of any issue arising internally or externally, under or pertaining to this Article, shall solely be made by an appropriate body that adheres to the goals, purposes and policies of the Grantor, which are based upon the principals of the Church of Scientology and its Judicial Procedures.*
- *Any arbitration panel that shall be formed shall be comprised of Public Parishioners (non-staff) members of the Church of Scientology.*
- *The panel shall consist of three Public Parishioners (non-staff) Scientologists in "good standing," as such term is defined in accordance with Church doctrine, and who are trained in Scientology Judicial Procedures. The Scientology Arbitration Panel shall determine and resolve any issues arising as to interpretation of the Grantor's goals, purposes, and policies. The Trustees are expressly directed and authorized to consult with the Scientology Arbitration Panel concerning the resolution of such matters.*

52

52

Arbitration – Sample Clauses

- *"If any beneficiary hereunder, in any manner, directly or indirectly, contests the application of this provision or the holding of the Scientology Arbitration Panel, including but not limited to any interpretation given to the distribution provisions intended to be in accordance with the dictates of the Church of Scientology, or brings suit or other action against any other beneficiary or the Trust, with respect to any matter authorized hereunder to be within the purview of the Scientology Arbitration Panel, then such contest or dispute shall be submitted to binding, non-appealable, arbitration, before such Scientology Arbitration Panel."*

53

53

Religion and Estate Planning

Religion and Financial Planning

54

54

Scientology Financial Planning

- In evaluation financial planning decisions for the Scientologist, there is also Church literature about financial planning that encourages prudence, planning for emergency situations, etc. that warrants consideration.
- *"An understanding of the basics of money and solvency is essential if you want to maintain economic prosperity. Successfully managing your cash as it earns more for you allows you to stay ahead of rising costs. Effective control of your finances allows you to get the things you need while eliminating money worries and reducing stress, all of which add up to an improved ability to generate still more income to stay ahead of rising costs."*

55

55

Religion and Estate Planning

Conclusion

56

56

Conclusion

- For a client who is a Scientologist many planning constructs and documents will have to be modified to comport with the tenets of their faith.
- Some of the issues that are common among other faiths are not a concern for Scientologist.
- Some of the unique doctrines and beliefs of Scientologists are complex and will require rethinking and redrafting clauses and techniques commonly used for other clients.
- This presentation had endeavored to highlight many of these to help estate planners meet the needs and personal wishes of clients who are Scientologists.

57

57

Questions or Comments

- **Marty Shenkman**
shenkman@shenkmanlaw.com

58

58

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59

59