

## ADVANCED ESTATE AND CHARITABLE PLANNING WITH PERPETUAL TRUST PROJECT

The Hagemann Center is sponsoring this collaborative, estate-planning project because of its significant worth to South Dakota State Bar members. In connection with discussions about estate tax reform, the researchers are concluding that there are only a handful of jurisdictions with the law to create the type of estate planning opportunity developed in this project, and they “believe that SD is objectively the best jurisdiction for perpetual trust situs.”

### BRIEF DESCRIPTION OF THE PROJECT

The perpetual trust has impacted the trust world in two important ways—first, it has created the potential to empower generations of families to be better stewards of their wealth; and second, it has created great competition among the various jurisdictions for supremacy and the economic rewards of being the best. This project provides a comprehensive look at perpetual trust planning opportunities that are available under the present gift, estate, and generation skipping transfer tax system (transfer tax system), especially to families and advisors who avail themselves of the benefits of the superior choice of law presented by a small handful of jurisdictions — South Dakota being the best. Statistical tables and support documentation will be provided.

### PROJECT PARTICIPANTS

Dan Worthington is the former Associate Dean of the University of South Dakota Law School. He is presently CEO of Worthington Everidge Group and Family Office<sup>®</sup> USA, headquartered Orlando, Florida. Pierce McDowell III is the President of the South Dakota Trust Company, headquartered in Sioux Falls, South Dakota. Dan Mielnicki is a senior partner and director of the wealth transfer group for the Law Firm of Berger Singerman, of Boca Raton, Florida.

### PROJECT SUMMARY

The first part of the study addresses how perpetual trusts are possible given the present transfer tax system and why they provide such an advantage to planners and their clients. The full use and benefit of the GST transfer tax exemption will be discussed, especially in how it is applied to create trusts that are 1) truly perpetual and 2) exempt for all future transfer taxes.

Part two provides a comparison of 27 perpetual and near perpetual trust jurisdiction through the United States. Only a handful permit truly perpetual trusts, and only a select few states have developed both trust law and asset protection laws that provide the required flexibility for grantors and the beneficiaries in a perpetual trust.

The third section looks at planning strategies, tools, and techniques that are often deployed in a perpetual trust setting. Planning with perpetual trusts, offers a new paradigm for the ownership and control of family assets, akin to a new class of property ownership. Rather than being “ruled by the dead hand,” modern perpetual trust theory provides benefits that are often considered superior to outright property ownership with its attendant tax and legal liabilities.

The final part provides several case examples of perpetual trust planning in the application of an experiential planning approach.

