



**JUST LIKE STARTING OVER**

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**DECANTING TRUSTS**

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# BE THE CHANGE

- ❖ What is Decanting?
- ❖ Tax Considerations
- ❖ Uses of and Restrictions on Decanting
- ❖ Procedural Issues
- ❖ Fiduciary Issues

# WHAT IS DECANTING?

- ❖ **Modifying Irrevocable Trusts**
- ❖ **Decanting**
- ❖ **Theory of Decanting**
- ❖ **Evolution of Decanting**
- ❖ **Uniform Law**

# TAX CONSIDERATIONS

*(WARM UP)*

- ❖ Income Taxes
- ❖ Federal Wealth Transfer Taxes
- ❖ IRS Won't Rule on Decanting
- ❖ Priority Guidance Plan
- ❖ Comments

# USES OF DECANTING

- ❖ **Change Administrative Provisions**
- ❖ **Beneficiary-Related Change of Circumstances**
- ❖ **Changes Related to Tax Planning**
- ❖ **Changes to Correct Errors or Address Ambiguities**



# IS DECANTING PERMITTED UNDER STATE LAW?

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- ❖ **Applicability of State Statute**
- ❖ **Trust Prohibitions**
- ❖ **Participants**
- ❖ **Grantor's Intent**



# IS DECANTING PERMITTED UNDER STATE LAW?

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- ❖ **Discretionary Distribution Authority**
- ❖ **Restrictions on Trustees**
- ❖ **Court Approval**

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# CHANGING BENEFICIAL INTERESTS

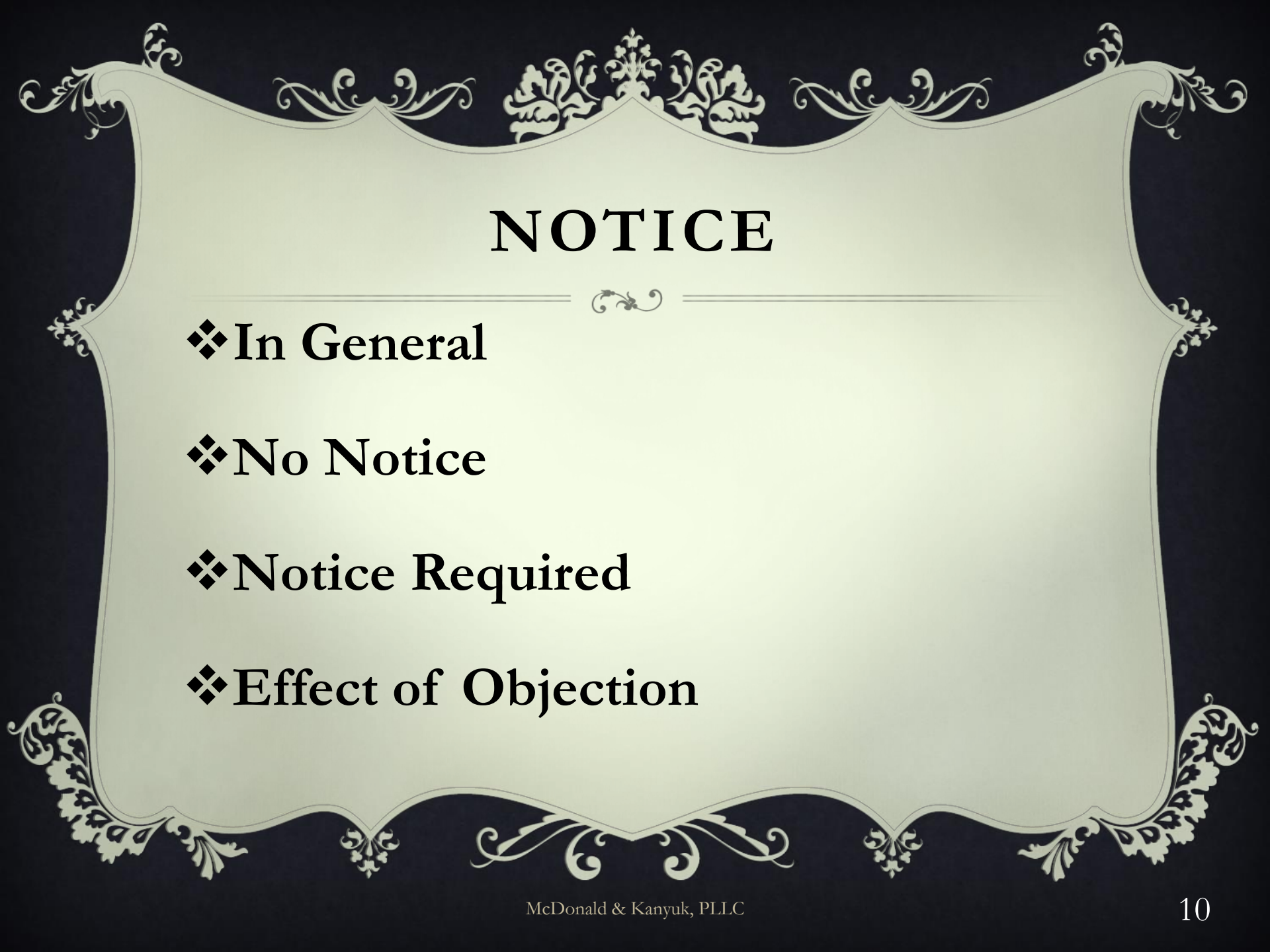
- ❖ **Beneficiaries – Adding and Removing**
- ❖ **Standard for Distributions**
- ❖ **Mandatory Distributions & Withdrawal Rights**



A decorative border with intricate scrollwork and floral patterns surrounds the text. The border is white and set against a dark background.

## OTHER RESTRICTIONS ON DECANTING

- ❖ Rule against Perpetuities
- ❖ Tax Restrictions
- ❖ Beneficiary as Trustee
- ❖ Change of Grantor Trust Treatment
- ❖ Restrictions on Trustee Mischief



# NOTICE

❖ In General

❖ No Notice

❖ Notice Required

❖ Effect of Objection

# TRUSTEE LIABILITY

- ❖ **Duty to Decant**
- ❖ **Duty of Impartiality**
- ❖ **Trustee Procedures – Memo to the File**

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# TAX ISSUES

(AGAIN)

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❖ Overview

❖ Income Tax

❖ Gift & Estate Tax

❖ Generation-Skipping Transfer Tax

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# ADVICE TO PRACTITIONERS & TRUSTEES

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- ❖ In General
- ❖ Steps to Take
- ❖ Fiduciary Liability



# ***THE END***

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