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Once Removed: **Could Artificial Intelligence Allow Settlors to Guide and Control Trusts Forever?**

Episode 48 Summary

When donors make gifts — during their lives or upon death — they typically give up control. Trusts have long been a tool for donors to maintain influence over how assets are managed and distributed by choosing trustees and drafting instructions. Traditionally, the settlor — the person creating the trust — cannot serve as trustee, especially if they want the trust to achieve certain tax or asset protection goals.

But an AI program could be trained on the settlor's wishes to make decisions the way the settlor would. This program can be incorporated into the trust structure as a settlor-trained AI (STAI) trustee, in a formal or informal way, so that a digital version of the settlor provides guidance long after the settlor can.

This episode explores the concept of the STAI trustee and summarizes key concepts from a [recent article](#) Steve authored with colleague [David Hirsch](#). The STAI trustee could be a powerful tool to help settlors structure trusts to carry out their wishes in the future, but there are pitfalls to navigate in exploring this concept.

Transcript:
(0:00):

Welcome back to Legacy Planning, Once Removed – my podcast where we explore thoughtful approaches to estate planning and legacy planning for today and for tomorrow.

I'm Steve Murphy, a trust and estates attorney with McGuireWoods LLP. And here on my podcast we talk about taxes, trusts, legacy, family, and everything else in my clients' minds.

And these days my clients talk a lot about artificial intelligence or AI and people ask me about AI in my practice.

Today we're going talk about AI, but we're going talk about a use of AI in estate planning that maybe is a little unexpected, but I think could be revolutionary.

Today we're diving into a topic that sounds like science fiction but is rapidly becoming a real-world consideration.

Can artificial intelligence help a trust settlor shape their legacy? And can artificial intelligence perhaps even guide and control that legacy after the settlor's death forever?

In this episode, we'll be summarizing some key points from a recent article that I wrote with my partner David Hirsch. And this was published in *Trust in Estates Magazine* and it's titled, "[Can a Trust Settlor Stay in Control Forever Using Settlor Trained Artificial Intelligence to Carry Out the Settlor's Wishes in Perpetuity?](#)"

In the article, David and I explore the concept of something we call settlor trained artificial intelligence or S.T.A.I. or STAI as a potential trustee or decision maker in trusts and what that could mean for the future of estate planning.

(02:02):

Let's start with the age-old problem in estate planning.

When you make a gift, whether during life or upon death, you give up control and in fact we talk a lot about that on this podcast.

Think back to the title, legacy Planning Once Removed, what is the shape of that legacy once the donor is removed from the equation?

So, for many donors that loss of control is unsettling, and trusts have long been used as a way to maintain some influence over how assets are managed and distributed by carefully choosing trustees and drafting detailed instructions for those trustees.

But again, traditionally the settlor, the person creating the trust can't serve as trustee, especially if they want the trust to achieve certain tax or asset protection goals.

In other words, at some point the settlor has to let go. At some point the settlor is removed, but what if that wasn't the case?

What if through the power of artificial intelligence, you could train a digital version of yourself to make decisions for your trust and assets long after you're gone?

That's the idea behind settlor trained artificial intelligence or S.T.A.I. or STAI, and I'll call that in this episode, the STAI trustee.

(03:27):

So, what exactly is the STAI trustee?

Let's take a step back. Generative AI models like the ones powering today's chatbots can be trained on a specific individual's data.

That means with enough information, an AI program could be programmed to respond to questions and scenarios much like the settlor would have in life.

And we've seen that in some recent tech headlines where individuals have trained a model to interact with mourners at their funeral or to interact with individuals maybe through their tombstone even after their death.

But the STAI trustee isn't just about recreating someone's voice or image for sentimental reasons.

It's about capturing their values, decision making style, and even their general intent.

So, imagine a trust where instead of relying on a human trustee to interpret your wishes and AI trained on your emails, texts, social media posts, journals, and even your responses to hypothetical scenarios could make those decisions for you.

The more data you provide, the more accurate the AI's simulation of your thinking can be. And we've seen this in these AI models.

In the article, David and I give some historical context for why this idea of the STAI trustee could be so powerful.

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We talk about the famous Buck Trust case. Beryl Buck left a fortune to benefit the needy in a particular county in California, but after her death, the trusts value skyrocketed, and the trustees wanted to potentially expand its reach to benefit people in other counties.

But the courts had to interpret her intent. Would she have wanted to help more people, or would she have wanted to stick to her original local focus?

Or we talk about Joseph Pulitzer who left instructions for his family to preserve his newspaper, *The World*.

He wanted them to keep *The World* in place for higher motives than just profit.

But when the paper started losing money after his death, the trustees and courts had to guess what Pulitzer really would have wanted in that specific scenario.

In both cases, the decision makers were left to interpret the settlor's intent, sometimes decades after the fact.

But what if you could just ask the set lawyer?

What if you could just call up Barrell buck or call up Joseph Pulitzer?

Well, with the STAI trustee, that's the idea.

The AI program could be queried for guidance and could provide answers consistent with the settlor's values and wishes.

(06:15):

Of course, this raises a host of legal and practical questions, and we talk about these in the article.

Just a few are here.

First, can an AI program actually serve as a trustee legally?

You know, under current law, the answer seems to be no.

In most states, only individuals or certain entities like banks or trust companies can serve as trustees.

AI as software isn't a legal person or entity, for example, it can't be sued or held liable or regulated in that same way. But there seem to be workarounds.

In the article, we suggest using a limited liability company or LLC as the actual trustee entity and then the LLC could be managed by a human and its operating agreement could require the manager to follow the directions of the STAI trustee.

This way, the human manager provides a human in the loop, a safeguard against AI errors or hallucinations while the AI still drives the decision making.

Alternatively, the state trustee could serve in other roles like a trust director or trust protector with varying degrees of authority and oversight.

And the trust could be structured so that the state trustees' recommendations are just that recommendations or so that it shares the decision-making power with human co-trustees.

Our article lays out a spectrum of possible structures from the most conservative where the state trustee simply advises a human trustee to the most radical, where the state trustee is the primary decision maker with only minimal human oversight.

And in the article, we talk about how the state trustee could act like a living letter of wishes.

(08:03):

Something we've talked about on this podcast a number of times where the set law provides written instructions for the future.

But aside from those legal issues of how to structure the STAI trustee model, there are some other considerations.

How about tax? If the settlor retains too much control through the STAI trustee, it's possible that the trust could be pulled back into their taxable estate or fail to achieve the asset protection goals or other goals of the trust in the first place.

Let's also think about privacy training and AI model on your personal data raises concerns about confidentiality and data security maybe now or maybe even after your death when all those comments would be part of some kind of record if there's a dispute.

And what about ethical issues?

There's this question of dead hand control.

Should a settlor be able to control their assets and the lives of their beneficiaries forever?

Could this stifle the independence and growth of future generations?

You know, we talk about that issue a lot on this podcast.

In the article, David and I also note that new laws are emerging to regulate AI decision making specifically in certain high-risk kind of areas.

And estate planners who talk about the state trustee will need to keep a close eye on those developments.

(09:33):

So, what's the bottom line here?

Well, I think the settlor trustee offers a fascinating new tool for settlors who want to ensure their wishes are carried out even in unforeseen circumstances.

And who knows, with careful planning, it may be possible to balance the benefits of AI driven decision making with the safeguards of human oversight.

But as with any innovation, the question isn't just whether we can do it, but whether we should.

That's all for today's episode of Legacy Planning, Once removed, if you're intrigued by this idea of using AI in your estate plan or if you have questions or comments about how this could be incorporated, reach out to your estate planning or other legal advisors or as always, just send me a question by email, or maybe if we can talk about this more in a future episode.

I'm Steve Murphy and this has been Legacy Planning Once removed my podcast on thoughtful legacy planning for today, and yes for tomorrow.

Thanks for listening.

And until next time: Walk like you leave footprints.