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   o The statutory decanting power may now be exercised by a trustee who is also a beneficiary of the trust. Previously, a statutory decanting could only be performed by a non-beneficiary trustee.
   o Under the prior statute, 60 days’ notice of a statutory trust decanting must be given to the qualified beneficiaries of the trust with respect to which the decanting power is being exercised. Under the new statute, such notice must also be given to the settlor of the trust (but only if the post-decanting trust would be a grantor trust with respect to the settlor), any person with the power to remove or replace the fiduciary performing the decanting, and all other fiduciaries of the trust. The notice must now include a copy of the original trust in addition to the post-decanting trust. Any party entitled to notice of a proposed decanting may initiate a court proceeding to approve or disapprove of such proposed decanting.
   o If the decanting would eliminate the ability of the settlor or another person to terminate grantor trust status with respect to the trust, or if it would convert the trust to a grantor trust without providing the settlor the ability to terminate grantor trust status, then the settlor may unilaterally prevent the decanting from occurring.
   o Statutory trust decanting is no longer expressly considered to be the exercise of a special power of appointment with respect to the trust property.
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M. Kemp Mosley — Raleigh / Smithfield

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CHAPTER III

Twenty (Plus) Years Later: Developments in Asset Protection Since 1997; Focus on Domestic Asset Protection Trusts

John A. “Jack” Terrill, II — West Conshohocken, PA

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Sandi O. Thorman - Charlotte

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