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Steve Leimberg's Asset Protection Planning
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Subject: Jonathan Blattmachr, Matthew Blattmachr, Martin Shenkman & Alan Gassman on *Toni 1 Trust v. Wacker* - Reports of the Death of DAPTs for Non-DAPT Residents Is Exaggerated

"All that the Supreme Court of Alaska held was that Alaska could not require that proceedings relating to the transfer of assets to an Alaska self-settled trust be before an Alaska court. It did not invalidate self-settled trusts created in that state. Although courts in other jurisdictions entered a default judgment on fraudulent transfer allegations, the viability of Alaska self-settled trusts to shield trust assets from the claims of the grantor's creditors was not disturbed. Certain commentary seems to confuse that any transfer, whether to a self-settled trust or otherwise, that is fraudulent will be voided in every state in the union. But even if the grantor resides in a state that offers no protection from creditors for a self-settled trust, where the transfers to the trust are not fraudulent, self-settled trusts created Domestic Asset Protection Trusts ("DAPTs") jurisdictions continue to offer benefits to many Americans."

Jonathan Blattmachr, Matt Blattmachr, Marty Shenkman, and **Alan Gassman** provide members with their analysis of the Alaska Supreme Court's holding in *Toni 1 Trust v. Wacker* and practical implications of the holding to practitioners.

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216&sr=1-5&keywords=martin+shenkman or as a PDF download on www.estateplanning2018.com. Steve Leimberg recently noted that: Every tax professional in the country will (or should be) reading this book! This is the most complex and far reaching tax law passed in the over 50 years I've been studying, teaching, and writing about tax law and this resource arms you not only with the necessary and vital information you need to know but also the thinking and planning concepts of three of the brightest minds in the tax world!

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Here is their commentary:

EXECUTIVE SUMMARY:

The Alaska Supreme Court affirmed the dismissal of a declaratory judgment lawsuit brought by the trustee of an Alaska Domestic Asset Protection Trust (DAPT), which sought to declare that fraudulent transfer judgments entered in Montana and the U.S. Bankruptcy Court which voided

transfers of Montana property to the Alaska DAPT were void and unenforceable, because Alaska courts could not restrict the forum for decisions relating to transfers to self-settled trusts formed under Alaska law exclusively to themselves. However, the Alaska decision did not hold or even indicate that Alaska self-settled trusts were void or voidable. In fact, the decision has no bearing on the viability of a self-settled trust created under the law of any state which does not allow the settlor's creditors access to the trust assets when the transfers to the trust were not fraudulent.

FACTS:

After both Montana and the US Bankruptcy Courts entered default judgments on a lawsuit claiming that the transfers to an Alaska trust were fraudulent, the trustee commenced an action in the Alaska courts seeking a judgment that the decisions in Montana and before the US Bankruptcy Court were essentially void because Alaska Statute 34.40.110 provides that any court proceeding relating to transfers to self-settled Alaska trusts must be determined exclusively by Alaska courts. Some have contended that the decision is the death knell for self-settled trusts created in any DAPT state by a resident of a non-DAPT state.

COMMENT:

The recent Alaska Supreme Court decision of *Tony 1 Trust v. Wacker* has stoked certain commentary that seems to be misinterpreted and hence overstated.[i]

The court simply held that a provision of Alaska law that says that all legal actions involving transfers to Alaska self-settled trusts must be decided by Alaska courts was not enforceable when the courts of another state, or the US Bankruptcy Court, have jurisdiction over the matter and the parties.

Essentially, the Montana Courts had jurisdiction over the parties, including the trustee of a trust that purported to be an Alaska trust, and default judgments to the charge of fraudulent transfers were entered in both the Montana and US Bankruptcy Courts.

The trustee of the trust then brought an action in Alaska asking that the Montana and Bankruptcy court judgments be found to be void because AS 34.40.110 grants Alaska courts exclusive jurisdiction on matters involving transfers to Alaska self-settled trusts. It is interesting to note that even if

the Alaska Supreme Court had held that only its courts had exclusively jurisdiction, the trustee of the trust would most likely not have prevailed because: (1) Alaska law does not protect a self-settled trust if the transfer to it was fraudulent (and the transfer in the case may have been so found), and (2) it is not clear if the proper formalities for creating a self-settled trust in Alaska (e.g., the settlor's completion of an affidavit of solvency) were followed. In fact, in footnote one of the case the Court noted: "The appellees argue that (1) the Trust is not an Alaska trust at all and (2) even if it is, the Trust is not subject to the Alaska statute because it was not created in compliance with applicable statutory requirements. The superior court did not resolve these factual questions, and we assume, without deciding, that the Trust is an Alaska trust subject to AS 34.40.110."

The Alaska Supreme Court acknowledged that the claims by the trustee on the jurisdictional questions were not frivolous, but concluded that the attempt to grant exclusive jurisdiction to the Alaska courts would not be upheld. The Alaska Court based its decision on the Tennessee Coal holding.[ii] But the Court also noted "The basic principle articulated in Tennessee Coal has not changed in the last century." So, if the principle of law is old and unchanged, why is Wacker being advocated as a new revelation as to the non-viability of DAPTs?

Some now claim that self-settled trusts formed in the 17 states which do not allow creditors to reach into trust assets to satisfy the claims of a settler cannot be used except by residents of those states. That claim is overblown.

Self-Settled Trusts. Whenever someone creates a trust from which he or she may receive distributions, it is a self-settled trust—that is one created (or settled as the English say) for one's self. That is not per se sinful. Indeed, all IRAs and other retirement trusts are self-settled and are protected and encouraged by federal law and the law of most states. The key is that, in all US jurisdictions, before 1997 when the Alaska Trust Act was passed, creditors of the grantor of a trust could attach assets in a self-settled trust, even if the grantor had no intention of trying to hinder, delay, or defraud a creditor, and no matter when the claim arose. It is important to note that the intent of the Alaska Trust Act was to encourage individuals to use their lifetime wealth transfer exemptions, and not to compete with foreign jurisdictions, as many believe, to intentionally thwart creditors. We discuss this later in the article.

It is vitally important to appreciate that making a fraudulent transfer is quite different than simply creating a self-settled trust.

Fraudulent Transfers. All states basically void, or make voidable, fraudulent transfers (although actions do so may be dismissed if not timely made under state or US Bankruptcy Code statutes of limitations). And even though most fraudulent transfer claims are made under state law, the US Bankruptcy Code was amended in 2005 to add additional restrictions. US Bankruptcy Code Section 548(e) provides that a transfer to a self-settled trust (or similar device) may be set aside if it occurred within ten years of the filing of the petition for bankruptcy and was made "with an actual intent to hinder, delay or defraud" a creditor.

And, of course, a fraudulent transfer can be set aside regardless of the entity or person to whom the property is transferred. In other words, a transfer to a spouse or other relative, or even a friend, which is fraudulent will be set aside if the action is commenced before the running of the statute of limitations. There is no reason for the transfer to be to a self-settled trust to be set aside.

The Uniform Voidable Transfers Act ("UVTA") at Section 4, Comment 8, makes mention that a transfer to a self-settled DAPT is voidable if the transferor's home state does not have DAPT legislation. The Comment provides: "By contrast, if Debtor's principal residence is in jurisdiction Y, which also has enacted this Act but has no legislation validating such trusts, and if Debtor establishes such a trust under the law of X and transfers assets to it, then the result would be different. Under § 10 of this Act, the voidable transfer law of Y would apply to the transfer. If Y follows the historical interpretation referred to in Comment 2, the transfer would be voidable under § 4(a)(1) as in force in Y." Some commentators have criticized this comment as not being supported by applicable law or precedent and point out that it is merely a comment, and not an actual proposed law.[iii] Many expect that some states that adopt this Act in the future will do so without adopting or endorsing this controversial comment.

If the comment becomes law this will be bad for the debtor who makes the fraudulent transfer and may be worse for his or her advisors. In a 2014 case, an Iowa lawyer who merely prepared documents of transfer and had advised his clients not to make fraudulent transfers was charged with unethical behavior for providing the transfer instruments. Although the Iowa Supreme Court found that he had not violated attorney ethical rules, it shows that a lawyer may face serious discipline, possibly disbarment, for

knowingly assisting in a fraudulent transfer. No lawyer and no other person should ever help another in doing so if state or Federal law makes this illegal, although in some states the opposite may apply, as a lawyer has a fiduciary duty to do what is best for a client within the bounds of the law. In those states it is common to refer the client to an advisor who is willing to give proper advice and assist as appropriate within the confines of the law.

Contrast to Self-Settled Trusts. Self-settled trusts are clearly different than fraudulent transfers. Nearly everyone in America takes some action to avoid future claims that might otherwise arise. Informed individuals enter prenuptial agreements when they marry to protect their assets if they get divorced. In fact, a common use of DAPTs is not nefarious or inappropriate avoidance of creditors, but as a backstop to legitimate premarital planning. See Sandra D. Glazier, Martin M. Shenkman & Alan Gassman on "DAPTs & Klabacka - At the Intersection of Estate Planning and Family Law," Steve Leimberg's Asset Protection Planning Email Newsletter Archive Message #357, Date: 01-Feb-18. No rational person can claim that is morally wrong, and that the law should not respect such actions. Similarly, few would contend that a resident of Florida, Michigan or Texas is doing something untoward by buying a home and arranging its ownership under the state's homestead law to protect it from claims of creditors. Millions of Americans make contributions to IRAs which are self-settled trusts, but which are protected under State law from claims of creditors. Many clients convert traditional IRAs to Roth IRAs, paying the tax cost on conversion out of non-IRA assts. The result of this is to convert pre-tax to post-tax protected dollars in a state that provides protection to Roth IRAs. While income tax benefits of Roth IRAs are certainly a motive, many of these conversions are undertaken for asset protection benefits. Additionally, almost all competent advisors recommend that individuals create limited liability entities, such as an LLC or corporation, to operate their businesses and thereby protect their personal assets from creditors of the business enterprise. Setting up irrevocable life insurance trusts ("ILITs") has been part of estate planning for many decades. While increasing estate tax savings by using a trust to own insurance has certainly been a motive, protecting insurance proceeds from creditors and divorce has also been a motive. Now that the estate tax is irrelevant to most Americans, the protective benefits of ILITs are perhaps now the only motive for many. The point is that while some commentators suggest that there is something inappropriate in using self-settled trusts or even taking normal asset protection steps generally, most people and

practitioners commonly do and should pursue asset protection strategies, and in the opinion of some might be committing malpractice if they don't.

Yet until 1997, all but possibly one state seemed to have a rule that allowed creditors of a grantor access to assets in a self-settled trust even if the creditor was not trying to defraud anyone, and even if the creditor's claim arose decades after the trust was created.[iv] It was just a rule. Alaska in 1997 changed the rule and adopted a statute that protected the trust assets in a self-settled trust if, among other things, the transfer was not a fraudulent one. If it is fraudulent, the Alaska trust provides no protection at all (again, as long as the claim is brought before the running of the statute of limitations).

Legitimate Reasons for a Self-Settled Trust. There are many reasons people create self-settled trusts other than to make fraudulent transfers. One is to engage good estate tax planning. Today, the estate tax exemption is enormous--$11.18 million per taxpayer, which is much larger than what most individuals will ever need to protect their wealth from estate tax. However, the exemption is scheduled to decline to about $5.5 million after 2025, which is where it was before 2018. Although, again, since the vast majority of people will not come close to needing to use even this smaller exemption, there is the risk of it being further rolled back by later legislation. Also, an individual's wealth likely will not remain stagnant. Most well invested wealth grows. In fact, if it grows at a rate of 7.2% a year, it will double every ten years. Hence, a 50-year-old who lives to 90 could see her current wealth of $2 million grow to $32+ million if she earns 7.2% a year. If she only earned 5.2% her estate would grow to more than $15 million. At 9.2% compounded it would grow to close to $68 million.

So, there is good reason to use the temporary enhanced exemption but few can afford to walk away from large amounts of wealth. By making such a gift to a self-settled trust, the grantor may be able to benefit from the property in the future if a need arises, and it is not a fraudulent transfer if the grantor is not trying to avoid a known or expected creditor.

For moderate wealth clients, using the exemption will require more access to assets to achieve a sufficient level of comfort to make gifts. Several options exist to meet this goal post-TCJA.

So, what can a person who wishes to use the temporary increase in the exemption do? He or she could create a self-settled trust, from which he or she could benefit later in life, under the laws of his or her own state. But if

that state allows his or her creditors to attach the assets in the trust, even though there was no fraudulent transfer, the plan will fail. The IRS has long held that assets transferred to an irrevocable trust will be included in the grantor's gross estate for Federal estate tax purposes if his or her creditors can attach the trust assets under the state law applicable to the trust. See Rev. Rul. 76-103, 1976-1 293. But it also seems clear that the trust will not be included in the grantor's gross estate if the trust is governed by the law of a state that does not permit his or her creditors to attach the assets in the trust.

So, if a taxpayer resides in a state that permits perpetual access by the grantor's creditors to the assets of a self-settled trust governed by laws of his or her state, as more than half of American states do, then he or she cannot use his or her exemption and remain an eligible beneficiary of the trust. But, as indicated, he or she could create a trust in one of the several jurisdictions that do not subject assets in a self-settled trust permanently to the claims of the grantor's creditors.

A planning structure that has become relatively common will serve as a foundation for many moderate wealth clients post-TCJA. That plan is the use of non-reciprocal, dynastic, GST exempt, spousal lifetime access trusts ("SLATs"). SLATs have and continue to serve many clients as a means to use exemption, but nonetheless preserve access to the assets transferred to the trusts. A planning issue for SLATs has always been to avoid the reciprocal trust doctrine which might be used by the IRS to uncross the trusts causing estate inclusion, or allowing creditors to pierce the plan.

For single clients wishing to use the exemption, the planning challenges are greater. Single clients might implement non-reciprocal trusts with another family member. Indeed, the first significant estate tax reciprocal trust doctrine involved two brothers. Lehman v. Commissioner, 109 F.2d 99 (2nd Cir. 1940). Alternatively, a non-married person (or a married one but who does not wish to implement a non-reciprocal trust with his or her spouse) is most likely to have to look to a DAPT, or variations of a self-settled trust, to use his or her exemption. In fact, the use of DAPTs might be more common to facilitate single clients. Because of the concern some commentators have over the use of DAPT, variations thereof, which might be referred to as "almost-DAPTs", may be more popular. For almost-DAPTs, the settlor is not named as an immediate beneficiary, but rather a person in a non-fiduciary capacity is given the power to add the settlor as a beneficiary. Another approach might be to provide for distributions to the

settlor (or to descendants of the Settlor's grandparents) only at the discretion of a non-fiduciary in the same way that beneficiaries of trusts are often given the power to appoint assets to anyone they may choose other than creditors, their estate, or creditors of their estate. This power to add the Grantor may enhance asset protection of the trust, since a trust which does not permit distributions to the settlor by the trust is, by definition, not a self-settled trust (The Restatement (Second) of Trusts, Section 156(2) (1959) provides in relevant part "[w]here a person creates for his own benefit, a trust for support or a discretionary trust, his transferee or creditors can reach the maximum amount which the trustee under the terms of the trust could pay to him or apply for his benefit."

The harsh interpretation of the Wacker case, which the authors believe inaccurate, would inhibit the use of DAPTs by single clients, thus significantly disadvantaging non-married clients as compared to married clients who can use non-reciprocal SLATs. Why should asset protection planning be permitted for married clients (has anyone challenged the use of non-reciprocal SLATs with the same tenor as DAPTs?) but not for single clients seeking the same reasonable objectives?

Enhancing Self-Settled Trust Planning.

Practitioners can take numerous steps to improve the application of DAPT type planning. Some suggestions follow.

As mentioned above, some commentators have used what has been dubbed a "hybrid DAPT" that is not a self-settled trust at inception, but rather a typical third-party trust. However, a named person, expressly acting in a non-fiduciary capacity, can appoint as additional beneficiaries the descendants of the settlor's grandparents. Thus, unless and until distributions are needed to the settlor, the settlor need not be a beneficiary thereby circumventing the DAPT issue (although the other precautions noted below could all be taken in any event). Another variant of this planning is to have a person in a non-fiduciary capacity have the authority to direct the trustee to make a distribution to the settlor. Unless applicable law mandates that such person has to act in a fiduciary capacity as a result of holding what might be viewed as a traditional fiduciary power, this approach may avoid the issue as well. What of giving someone a limited power of appointment to appoint during lifetime to anyone other than their creditors, their estate, or creditors of their estate? Might that provide the needed safety valve without characterizing the trust as a self-settled trust?

To be even safer, a trust may provide that the Grantor cannot be added or appointed to be a beneficiary unless certain circumstances occur, such as divorce, loss of creditor exempt assets below a certain dollar value, a certain number of years after retirement, elimination of the Federal estate tax, death of spouse/no-spouse, etc. Including a power for the trust to be divided could facilitate the action to provide access to apply only to a portion of the assets, thus preserving a majority of the assets in a resulting trust that should remain protected as not constituting a DAPT.

Some trust companies and other advisers have rules of thumb they have long used as to what portion of a client's asset should be transferred to a DAPT, or other irrevocable trust structure, or otherwise given away. Should advisers and trust companies loosen old rules of thumb on the percentage of wealth that can be transferred? If those old rules of thumb, created when exemptions were not only smaller but also perceived as being completely permanent (acknowledging the similar fear of exemption decline that existed in 2012), are not loosened, those rules could effectively prevent a client from maximizing the use of the new temporary exemptions. As larger percentages of wealth are transferred to completed gift structures, steps might be taken; e.g. corroborating financial forecasts demonstrating the ability of the client to make such transfers while still meeting his or her needs. Further, those same forecasts can corroborate the growth of the estate relative to the anticipated exemption post-2025 to corroborate the estate tax minimization motive for the planning.

Should solvency affidavits and other due diligence be used more frequently with plans that include greater portions of the client's wealth being transferred, or perhaps uniformly for transfers to self-settled trusts (any variation of them), regardless of whether state law requires it? Lien, judgement, and other searches as well the completion of a balance sheet, perhaps even signed by the client, confirming the client's financial position should be added to the pre-transfer precautions.[v]

Access to assets transferred to use the new higher exemption may be critical for some taxpayers. Does this change the calculus of using long term care and life insurance to protect transferors and their families? Perhaps, robust insurance coverage should be used to backstop planning to use the exemption, regardless of the fact that the large exemption might on initial reaction suggest less need for insurance. Potentially, the need for life insurance coverage is not less, just different. Perhaps long-term care coverage should be considered in the context of backstopping anticipated

transfers, and not merely to meet possible future care needs. An independent review of the adequacy of all personal and business liability coverage is always well advised.

A power to loan money to the grantor has traditionally been used to achieve grantor trust status. See IRC Sec. 675(2). Perhaps, that power should be revisited and strengthened for the purpose of permitting the settlor access to assets. Perhaps, the power to loan to beneficiaries should generally be evaluated so that a much greater portion of family wealth is transferred to irrevocable trusts. Caution must be taken to ensure that any power to borrow held by the settlor or a beneficiary will not cause the property in the trust to be included in the gross estate of the settlor or the beneficiary, and to keep terms and conduct at arm's length so as to not invite a challenge by creditors that may challenge loans to the grantor as being distributions with no intention of repayment that could evidence that the grantor is a defacto beneficiary. Inclusion of a power to loan the settlor funds with adequate interest, but without regard to adequate security, might provide a reasonable means to the settlor to access funds in the trust without having to have the settlor added as a beneficiary, but it will often be advisable to let the trust have collateral, which can protect otherwise exposed assets from unsecured creditors who may come into existence after such loans have been taken. If the DAPT is structured as a non-grantor trust, perhaps someone in a non-fiduciary capacity could be given the power to add a loan provision to the trust as a preliminary step before adding the settlor as a beneficiary.

Practitioners might consider adding a restriction that, no matter what, no distributions to the settlor can be made until 10 years and one day after transfer to the trust to attempt to circumvent the BOPA 2015 restriction on transfers to self-settled trusts and similar devices. But note that while this may circumvent fraudulent transfer set aside concerns, it may not address state law issues if the law of the settler's domicile is the applicable law and the settler is a beneficiary, assuming that the creditor pursues this after the 10th year.

With the above precautions, preliminary steps, and arguably reasonably non-asset protective motives, this use of a DAPT might be viewed by some, perhaps many, practitioners as quite different then the application of a DAPT as in Wacker, and other arguably "bad fact" DAPT cases.

Are Bad FLP cases Viewed Differently than Bad DAPT Cases? Nearly every year there seems to be a terrible FLP case (Last year Powell), yet no

commentators seem to suggest that FLPs or discounts are not viable. Rather, practitioners endeavor to avoid bad facts and structuring transactions differently to make plans more bullet proof that was thought to be needed before. Yet it appears that each bad DAPT case becomes a focal point of criticism from skeptics that DAPTs are somehow nefarious and used by bad actors to achieve immoral ends. For example, in the aftermath of the bad fact Rush University case, not only did DAPT planning continue, but many additional states enacted enabling legislation. See Marty Shenkman & Gideon Rothschild, "Self-Settled Trust Planning in the Aftermath of "the Rush University Case," Leimberg's Asset Protection Planning Email Newsletter - Archive Message #215 06-Dec-12, Steve Leimberg's Asset Protection Planning Newsletter. In fact, it appears that the crescendo of attacks on the use of DAPTs has grown almost in lockstep with the number of new states enacting DAPT enabling legislation.

Back to the Toni I Trust Case. Now, let's go back to the Toni I Trust v. Wacker case. The only holding by the Alaska Supreme Court is that the statute that purported to grant the Alaska courts exclusive jurisdiction to decide matters relating to the transfer of assets to a self-settled trust could not block other state or federal courts from deciding matters relating to such a transfer. The court did not hold that Alaska law would allow the creditors of the grantor access to the trust's assets. And that is the key. If the trust is located in a jurisdiction, such as Alaska, Nevada or Delaware, which does not automatically and permanently subject trust assets to the claims of the grantor's creditors, it may well be upheld. It depends upon many factors as discussed in detail in Rothschild, Rubin & Blattmachr, "Self-Settled Spendthrift Trusts: Should a Few Bad Apples Spoil the Bunch:" 32 Vanderbilt J. Transnational Law 1549 (1999).

What Should Practitioners Do? There are a number of issues practitioners might consider addressing. As to the use of the large, new, temporary exemptions, many clients will benefit from the use of self-settled trusts. Practitioners should consider advising clients of the recent developments, such as the Wacker case, and take as many of the above noted precautions, and any others that might be appropriate to corroborate the tax-driver for the planning and the economics of the client. This planning cannot feasibly be done without active involvement of the client's insurance consultant and wealth adviser. If the client views the risks as too great, then the client can opt for other planning options (enhanced life insurance, etc.). Practitioners should also consider what, if anything, to communicate to existing and prior clients who may have completed DAPTs

or DAPT-like planning. While there is uncertainty as to what obligations an attorney has to a former client, the safer approach might be to notify all former and current clients of the Wacker case and other developments. This might be a safer approach if the practitioner is not certain that the file was properly closed as to a former client. The client might not view himself or herself as “former.” Also, there is some uncertainty as to what obligation, if any, a practitioner has to inform a former client of a change in the law (bearing in mind that, according to some interpretations, the Wacker case may not even constitute a change in the law). Perhaps the safest approach, even if not required, might be notification. If a communication is sent to a client that may have other counsel, the letter should indicate that the notification is merely providing information as to a change in the law that may be relevant, and if the recipient is represented by other counsel he or she should give the notification to his or her new counsel. Further, some might argue that such a mailing might constitute attorney advertising (even if the sole purpose is to inform of a possible change in the law). Practitioners might thus protect themselves further by adding a disclosure to the communication that the letter might be construed as attorney advertising.

What might be suggested for clients with existing DAPTs? For DAPTs in process, transforming them to hybrid DAPTs or using some of the other techniques available might be a worthwhile enhancement. For any DAPT that is in process and not yet funded (or to which additional funding will be considered), taking advanced precautions, such as those noted above (solvency affidavit, balance sheet, financial forecasts, etc.) might be advisable.

For existing DAPTs, consideration of having Trust Protectors modify the trust, or decanting them, into trusts that are either hybrid DAPTs or that have other mechanisms may be feasible. In some instances, DAPTs completed in the rush to plan before the end of 2012 when it was anticipated that the exemption might decline from $5 million to $1 million may no longer be necessary. The growth in the stock market since 2012 may have obviated the need for the settlor to have access to the trust. In such cases it might be advisable for the settlor to renounce any rights as a beneficiary. Consideration might be given to filing a gift tax return to report that renunciation as it may be considered a gift transfer to other beneficiaries, although in a discretionary trust it is not certain how that possible gift could be valued.

Conclusion

With careful planning, individuals in all states may be able to create a self-settled trust in a state that does not automatically and permanently subject the assets to claims of the grantor's creditors and, if the transfer is not a fraudulent one, protect the assets from claims of the grantor's future creditors.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

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CITES:

Toni 1 Trust v. Wacker, 2018 WL 1125033 (Alaska, Mar. 2, 2018); Alaska Statute 34.40.110; Rev. Rul. 76-103, 1976-1 CB 293.

CITATIONS:

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[i] Toni 1 Trust v. Wacker, 2018 WL 1125033 (Alaska, Mar. 2, 2018).

[ii] Tenn. Coal, Iron, & R.R. Co. v. George, 233 U.S. 354, 360 (1914).

[iii] *See,* George D. Karibjanian, esq., Richard W. Nenno, Esq., and Daniel S. Rubin, Esq., *The Uniform Voidable Transactions Act: Why Transfers to Self-Settled Spendthrift Trusts by Settlors in Non-APT States Are Not Voidable Transfers Per Se*, Bloomberg Tax Management Estates, Gifts and Trusts Journal, Vol. 42, no. 4, 173,(07/14/2017). Stating that the comment is flawed in 2 aspects: (1) "the law does not provide that a transfer to an SSST is a voidable transfer per se, but rather that the transfer must still be proven to have been made either with an intent to hinder, delay, or defraud creditors or in connection with the debtor's insolvency," and (2) "the applicable law in connection with the question of the creditor protection afforded through a transfer to a trust, including an SSST, has historically been … under Chapter 10 (§267–§282) of the Second Restatement of Conflict of Laws,14 and not fraudulent-transfer law (including the UFTA and the UVTA)."

[iv] *But see,* In re Baum, 22 F.3d 1014 (10th Cir. 1994).

[v] Alan Gassman and Dena Daniels, *The Affability of Affidavits in Domestic Asset Protection Trust Planning*, Steve Leimberg's Asset Protection Planning Newsletter (Apr. 28, 2015).