



The Sea Change In Generational Wealth

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Originally published in *Financial Advisor* magazine
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Written By:
James R. Robinson
Stephen B. Wilkins

In the space of not much more than ten years, the trusts and estates practice, particularly for high-net-worth clients, has undergone tremendous, even fundamental, change. In that time, two of the major historical constants on long-term planning—the temporal limitations of the trust form as dictated by the Rule Against Perpetuities, and the inability of a trust settlor to avail him- or herself of spendthrift protection—have been undone in a growing number of jurisdictions. These developments, combined with the diminishing (although still important) role of wealth transfer taxes and a shift in focus by the most forward-thinking families and family offices toward a long-term "endowment" model that regards taxes as one of many risks to be managed (and often not the most significant), have presented new challenges, and new opportunities, for planners. With the removal of those two ancient limitations, we now find ourselves asked to create perpetual structures designed to sustain a family's wealth and legacy for generations.

This article examines these developments, and the effects we have seen on our own high-net-worth practices over the past several years. In addition, we offer several observations both as to some of the practical issues involved in designing and implementing perpetual and self-settled trusts, and as to the possibility of leveraging wealth transfer through selected strategies, including GRATs, sales to defective grantor trusts, and life insurance.

Introduction: The Family Endowment

In 2005, the Family Office Exchange (FOX) held its second "Thought Leaders Program," a multidisciplinary panel discussion designed to identify and explore the concerns and issues facing wealthy families. The particular focus of the program was "understanding, measuring and managing uncertainty for families of significant wealth."¹ The panel's conclusions, compiled as "Recasting the Central Role of the Family Office as Risk Manager," identified the changing role of the family office.

In brief, the panel concluded that the role of the family office is undergoing a "fundamental shift," from investment or wealth management to risk management, and assuming the role of the family's principal risk management agent. The panel identified four broad categories of risk: (1) business ownership and control; (2) wealth preservation and enhancement; (3) financial security and compliance; and (4) family continuity and governance.² Each of these broad categories subsumes numerous examples of more specific risks, such as concentrated equity positions, personal health and wellness, and legal exposure. The broader point is that the central role of the family office—and, by extension, of the family's financial, legal and other professional advisors—is increasingly becoming one of identifying, implementing and maintaining structures, mechanisms and processes that preserve family wealth through risk management.

In one sense, there is nothing particularly new about this process. At some point, an individual or a family may accumulate sufficient wealth that the foreseeable needs of the senior generation are met—assuming proper management of risk. The focus turns from wealth accumulation to wealth preservation, not only for the current generation, but for succeeding generations as well.

Certainly, more than just financial considerations inform, and are important to, this dynamic. Shared values and goals, transmitted down the generations, may be the primary consideration for a number of families, and may be what the senior generation identifies as its legacy. Our focus in this article, though, is what might be called the "financial family," that is, the family as an economic unit. For the coherence of the financial family—and, indeed, for the sustainability of the other aspects of the family's legacy—a sustainable pool of wealth, or endowment—is of major importance, if not essential. Indeed, the shift in focus from accumulation to preservation might best be characterized as a shift to "endowment thinking," to thinking of one's wealth as a patrimony that can be sustained over multiple generations and provide the family with a secure financial base without destroying the family's initiative or compromising its shared values.

The Perpetual Trust As Endowment Platform

The establishment of a long-term, or even perpetual, fund requires enabling financial and legal structures. The prototypical legal structure for the establishment of a sustainable pool of family wealth is the discretionary spendthrift trust. However, the lifespan of the trust historically has been, and largely continues to be, limited by the Rule Against Perpetuities (the "Rule" or "RAP") long after the Rule, or any other durational limit, has ceased to apply to other entities such as partnerships and corporations.

Consistent with Robert Sitkoff's characterization of the jurisdictional competition for trust funds as an "interest group" process,³ several states, in their efforts to attract investments and fiduciary business, have responded to the need for enabling structures in two principal, related ways. Since the mid-1990's, and particularly since Delaware's repeal of the Rule in 1995, we have seen a remarkable, and remarkably rapid, erosion of the Rule. An increasing number of states have either eliminated it altogether or extended it into virtual irrelevance, thereby permitting the creation of a private endowment in the form of a perpetual or "dynasty" trust.⁴ Second, they have facilitated the management of risk and the preservation of assets, not only for future generations, but for the current one as well, in the form of the self-settled asset protection trust: the domestic asset protection trust or "DAPT." Taken together, these two vehicles provide the optimal, if not ideal, framework for the preservation and perpetuation of family wealth.

The apparent winner, at least to date, in this competition for trust funds has been Delaware.⁵ Although a few states before Delaware did allow perpetual trusts, in our opinion Delaware's position as jurisdiction of choice among "non-RAP" states is attributable to two main features: (1) no state income tax on undistributed trust income, and (2) a streamlined trust code whose principal characteristics are flexibility and freedom of contract. These features, combined with the repeal of the RAP, have led to what Sitkoff has characterized as a movement of between \$100 billion and \$200 billion in personal trust assets to Delaware and similar states (e.g., Alaska, Nevada and most recently Tennessee) and the death of the RAP.⁶

In addition to this dramatic movement in wealth, these developments have quickly, and drastically, altered the estate planner's landscape. What once simply was not part of the discussion now has become an integral part of the planning process.

Dynastic Considerations

Although it is impossible to generalize, the idea of "dead hand" control—that is, the ability to dictate one's own terms past death—does not appear to be central, or even very relevant, to the endowment model. Clients are well-advised to provide for flexibility in perpetual trusts; most practitioners probably can relate numerous stories of difficulties encountered with restrictive trust provisions drafted even a few decades ago that did not anticipate changed circumstances.

At the same time, trusts by their very nature serve the settlor's desire to "protect the beneficiaries from themselves," in many senses of that phrase. If a typical dynasty trust is established with the primary goal of preserving the family wealth from the largest potential creditor—the federal government, in the form of wealth transfer taxes—the desire to protect heirs from creditors, voluntary or otherwise, plays a significant role as well. For most practitioners, drafting a third-party dynasty trust without spendthrift protection is unthinkable. Similarly, the settlor can mandate professional investment management, while giving another person—the beneficiaries, a protector, another third party—the ability to "police" the Trustee with the power to monitor the Trustee's performance and to remove and replace a Trustee that does not perform adequately.

The appropriate structure, therefore, would be one that offers both permanency and flexibility, in order to capture and retain the benefits of both:

Benefits of permanency:

- Centralized and continuous management, and a structure for orderly succession
- Deferral of transfer (and state income) taxation
- Protection from external risks (creditors)
- Protection from internal risks (beneficiaries)

Benefits of flexibility:

- Ability to respond to unanticipated developments
- Division of responsibilities
- Mobility

If one takes Delaware as the bellwether, trust law is rapidly evolving to provide the structures necessary to meet these needs, and to make the trust the preferred vehicle for permanence of legacy.

While statutory developments can provide the appropriate framework, it necessarily falls to the drafting attorney to develop a document appropriate to the circumstances. This can be a daunting challenge; the notion that one is drafting a document that in ideal circumstances will last forever is (or

should be) enough to give even seasoned drafters pause. The process requires careful consultation with the family in order to achieve, if not consensus, at least understanding of the objective and parameters of the trust and its relationship to the other aspects of the family plan.

In the authors' experience, the dispositive provisions tend to be rather straightforward. Again, most clients are ill-advised to be overly specific in laying out the parameters of the Trustee's discretion in making distributions; the "incentive trust," often a misbegotten idea in the first place,⁷ does not make a good fit with the perpetual trust, with its twin objectives of permanency and flexibility. At the same time, if one thinks of the trust as an endowment, a family mission statement probably should be included, particularly when one considers the difficulties inherent in reading and interpreting a document (and the intent of its makers) two decades, let alone two generations or two centuries, after it was drafted. Similarly, although much should be left to the Trustees' discretion when it comes to making distributions, guidance as to the meaning of the standards for distribution—"health," "support," etc.—is advisable, if not indispensable.⁸

Apart from the family's goals and values, where much emphasis tends to, and should, be placed is on the fiduciary powers and appointment provisions. A perpetual trust that did not grant the full panoply of fiduciary powers would be rare indeed. Although there may be exceptions,⁹ most settlors will not seek to restrict the ability of the Trustee to manage the investments of the trust or to take other actions necessary to the administration of the trust. On the contrary, even in the case of a family-owned business most settlors are unlikely to want to mandate retention of a particular asset or assets indefinitely, but rather to provide the fiduciaries (however their responsibilities may be defined and allocated) with the power and authority necessary to deal with changing and unforeseen circumstances.

The Domestic Asset Protection Trust

Nearly simultaneously with the abolition of the Rule, many of the same states implemented even more radical legislation: in a complete break with centuries of trust law and public policy, these states permitted the creation of self-settled spendthrift trusts.¹⁰

While extraordinary for the law of trusts, the concept of an entity as a liability shield is hardly a new one. The corporate form is predicated upon the notion both that the shareholders' liability is limited to their investment, and upon the notion that the corporation's assets should be difficult for a shareholder's creditors to reach. This latter notion has been further refined in modern limited partnership and LLC statutes with the introduction of the "charging order" concept,¹¹ which precludes an owner's creditors from reaching the entity's assets.

Nevertheless, the DAPT does represent a novel, and radical, development for trust law, so novel that substantial questions remain as to its efficacy. It is as yet unknown whether the DAPT will withstand challenge in court, particularly if a plaintiff is able to establish jurisdiction over the DAPT trustee in a state that has a strong public policy against self-settled spendthrift trusts—in other words, most of the

50 states other than those that have enacted DAPT statutes. Given the current state of the global economy, interest in, and challenges to, this vehicle is likely to increase substantially.

When used in conjunction with a perpetual trust, the DAPT may produce a favorable result. Consider, for example, the following structure:

1. A non-resident settlor establishes a non-grantor DAPT in Delaware.¹² The trust provides for completely discretionary distributions to a broad class of beneficiaries, including the settlor.
2. Subject to the considerations outlined above and also to the fraudulent conveyance issues typical to any asset protection strategy, the trust assets should be protected from the settlor's creditors.
3. Moreover, in a state such as Delaware, there should be no state income tax on undistributed income of the trust.¹³
4. The trust assets may or may not be included in the settlor's estate, depending primarily on whether he or she retains the right (testamentary) to direct or alter the distribution of the trust property.¹⁴ If the settlor has not made a completed gift on the funding of the trust, then distributions to beneficiaries other than the settlor will be taxable gifts. Otherwise, a taxable transfer occurs at death. Careful consideration should be given to the trade-off between a current taxable gift and estate tax inclusion.
5. The settlor therefore achieves the benefits of creditor protection and state income tax deferral, while retaining both the potential for distributions back to him or her and the ability to control, to one degree or another, the eventual disposition of the trust assets, in exchange for outright control over those assets.
6. Assuming that allocation of GST exemption can be properly managed, the dynasty trust can be a beneficiary of distributions from the trust, whether during the life of the settlor or at his or her death (or both). The settlor can appoint a "family" trustee to facilitate this process and enhance the effectiveness of the DAPT as a platform for further generational planning, and also can retain a veto power over distributions (although perhaps not without adverse estate tax consequences).¹⁵

The DAPT strategy still has a number of unanswered questions, chiefly its basic efficacy as an asset protection strategy. Substantial doubt exists whether a court in a non-DAPT state would apply the law of the DAPT state, rather than its own state law, particularly if the Trustee were subject to the jurisdiction of the court.¹⁶ A court in a DAPT state may find itself obliged under the Full Faith and Credit Clause of the Constitution to give effect to a judgment rendered in a non-DAPT state. Finally, and perhaps most significantly, the DAPT was severely limited in the bankruptcy context by the imposition of a 10-year lookback period by the 2005 Bankruptcy Abuse Prevention and Consumer Protection Act.¹⁷

However, even if the asset protection features of the DAPT eventually fail to withstand challenge, the benefit of state income tax deferral alone may justify the transaction costs, loss of outright control, and general inconvenience involved. Moreover, if the trust is funded, in whole or in part, with assets that are otherwise exempt from creditors' claims, the other planning opportunities outlined above may make the vehicle attractive even if its "principal" advantage remains uncertain.

Consider, for example, a DAPT that owns permanent life insurance on the settlor (or on the joint lives of the settlor and her spouse). Permanent life insurance policies with cash value offer significant opportunity for asset protection. In some states there is creditor protection of some or all of the cash value while living, although this typically is limited to resident insureds.¹⁸

The following states have unlimited exemption for the proceeds of life insurance: Alabama, Idaho, Kansas, Michigan, New Mexico, North Dakota, Oregon, Texas, Washington, Delaware, Illinois, Kentucky, Missouri, New York, Ohio, Rhode Island, Vermont, Wyoming, Florida, Indiana, Massachusetts, New Jersey, North Carolina, Oklahoma, Tennessee, and Virginia.

A majority of states will not subject the proceeds of a life insurance policy to the claims of the insured's creditors, unless they are payable to the insured's estate or otherwise assigned for the benefit of creditors.¹⁹ However, protection can be lost in some states by the following:

- Making a change of the beneficiary while going through bankruptcy or insolvency.
- Making an assignment of the policy to a creditor such as a bank.
- In some states, naming a beneficiary other than a spouse, child or another dependent.²⁰
- Reserving the power to make a beneficiary change.

Presumably, then, the life insurance held in the DAPT would be exempt from creditors' claims regardless of the efficacy of the DAPT as an asset protection structure.

Selected Funding Mechanisms

The perpetual trust can be particularly effective when combined with wealth transfer strategies designed to leverage value, i.e., to transfer significant value at a reduced (or no) transfer tax cost. We have selected three such strategies to highlight the possibilities offered by the perpetual trust, whether by itself or in conjunction with the DAPT.

Grantor Retained Annuity Trust/Sale to Defective Grantor Trust

The grantor retained annuity trust, or GRAT, has become one of the favored planning tools. This strategy, which is sanctioned by Section 2702 of the Internal Revenue Code and is well-understood by sophisticated planning counsel, enables a settlor to transfer appreciation (above the adjusted AFR, currently hovering at or near historic lows) to beneficiaries with little or no taxable gift. (Pending legislation in Congress would drastically curtail the tax-saving potential of GRATs).

Although these characteristics make the GRAT a particularly useful vehicle for funding inter vivos transfers, it has been disfavored for generation-skipping planning because of the "ETIP" rules, which

effectively preclude allocation of generation-skipping transfer tax to a transfer of property that might be brought back into the transferor's estate, until that possibility ends. Most practitioners have assumed that this prevents allocation of GST exemption to a GRAT until the end of the GRAT term, at which time the remainder interest may be well in excess of the settlor's GST exemption, if the strategy has worked particularly well. Some respected practitioners have suggested that this may not be the case, particularly in the case of a younger settlor or a short-term GRAT, if the possibility of inclusion is "so remote as to be negligible" (i.e., less than 5%).²¹

Even if one resolves this difficulty, the GRAT may present other practical hurdles as well. In particular, the GRAT requires payments back to the settlor annually. If the assets contributed to the GRAT are illiquid and produce little or no income, this requirement necessitates paying the settlor back in the assets themselves, which reduces the strategy's effectiveness and often necessitates additional expenditures, for example for appraisal of the assets.

The sale to a defective grantor trust presents a functionally similar alternative, one that addresses both of the difficulties just discussed. The ETIP rules will not apply to a typical defective grantor trust (i.e., one that is "seeded" with a completed gift and over which the settlor retains no interest or powers that would cause the assets to be included in his or her estate), and so GST exemption can be allocated when gifts are made to the trust. The note can be structured as an interest-only note with a balloon payment of principal at the end of its term, thereby greatly reducing (although not eliminating) the problem of annual payments.

The grantor trust strategy does present its own difficulties. First, the consensus of most practitioners is that the trust must have sufficient substance prior to the sale that the settlor's interest in the assets is debt, and not equity, in order to avoid either having the sale characterized as a gift or risking estate tax inclusion of the assets on the basis of a retained income interest in the settlor. Therefore, a taxable gift and, if the dollars involved are large enough, the payment of gift tax may be involved.

Second, the income tax consequences if the grantor dies prior to completion of the sale are at best unclear. A conservative approach would suggest that when the settlor dies and the trust is no longer a grantor trust for income tax purposes, the remaining taxable gain on the sale is recognized. At a minimum, this is a risk inherent in the strategy, although one that under the right circumstances has a solution, as discussed below.

Life Insurance

Life insurance can serve as an excellent tool to leverage the aforementioned estate planning techniques. It enhances the overall wealth transfer strategy by leveraging existing assets into tax free death proceeds. This typically works to transition more wealth to the next generation(s) due to the inherent leverage life insurance provides. There is further benefit derived by having the perpetual trust own the coverage. This accomplishes similar goals of the other estate planning techniques available in that the insurance is in an estate tax/generation skipping tax free environment. Life insurance also works to anchor the other estate techniques employed. For example, if the assets do

not perform as expected in a GRAT or sale strategy, the life insurance can provide an infusion of cash to bolster the trust assets.

The following is an example of a 65 year old couple who employed life insurance in their estate plan. Their estate was highly liquid, and so they did not need the insurance to create cash to help pay estate taxes. Their aim was to establish a tax free vehicle that could potentially generate a higher internal rate of return (IRR) than some of their other more conservative holdings. Figure 1 shows the IRR on cumulative premiums paid to death benefit generated on a second to die policy. It shows the second death occurring at age 85, 90, and 95. The chart also shows the IRR that would have to be achieved in a taxable investment to equal the tax free insurance return. It also models the IRR taking into account that the death benefit is free of estate tax.

Figure 1

Age (married couple)	Cumulative Premium ¹	Death Benefit	Internal Rate Of Return (IRR)		
			Unadjusted ²	Adjusted For Income Tax ³	Adjusted For Income & Estate Tax ⁴
85/85	\$2,030,406	\$10,000,000	12.92%	16.49%	29.99%
90/90	\$2,513,836	\$10,000,000	9.10%	11.62%	21.12%
95/95	\$2,997,266	\$10,000,000	6.72%	8.58%	15.60%

¹Illustrated is a Survivorship No-Lapse Guarantee Universal Life policy with both individuals rated as preferred non-smokers. \$10 million level death benefit guaranteed to age 105 with \$96,868 annual premiums.

²Internal rate of return of death benefit proceeds to premium payments.

³Equivalent pre-income tax IRR. Assumes a 35% federal income tax rate/15% federal capital gains and an investment portfolio of 2/3 capital gain returns and 1/3 ordinary income items.

⁴Equivalent pre-income and estate tax IRR. Assumes a 45% federal estate tax rate and third-party ownership of policy.

The couple had limited available annual exclusion and lifetime gifting capacity. Therefore, they entered into a private split dollar agreement with the trust to mitigate exposure to potential gift taxes. Assuming the \$10 million tax free death benefit is paid at age 95, the IRR is an adjusted rate of 6.72%. The equivalent pre-income tax rate of return on a taxable investment would be 8.58%. There are two important points to note about this strategy: 1) The joint mortality age of 95 is past their joint life expectancy, thus potentially improving the IRR upon an earlier death. 2) This product has a no lapse guarantee rider, which guarantees the premium and the death benefit. This rider removes the concern of policy performance relative to increased internal charges and declining crediting rates to cash value. One of the most important concerns of this strategy is to utilize the life

insurance companies with the strongest financials. One way to alleviate this concern is to possibly diversify the coverage among several carriers. The financial soundness of insurance companies has never been more important than in these trying economic times.

Figure 2

Age (married couple)	Life Insurance Policy ¹		
	Annual Premium	Cash Surrender Value	Death Benefit
65/65	\$96,686	\$0	\$10,000,000
70/70	\$96,686	\$15,063	\$10,000,000
75/75	\$96,686	\$573,057	\$10,000,000
80/80	\$96,686	\$1,119,351	\$10,000,000
85/85	\$96,686	\$1,442,218	\$10,000,000
90/90	\$96,686	\$750,499	\$10,000,000
95/95	\$96,686	\$0	\$10,000,000

¹Illustrated is a Survivorship No-Lapse Guarantee Universal Life policy with both individuals rated as preferred non-smokers. \$10 million level death benefit guaranteed to age 105 with \$96,868 annual premiums.

Under the 2003 final split dollar regulations, they had the choice of executing the agreement under the ban of economic benefit regime. The loan regime assumes that each premium payment is a separate loan from the couple to the trust. The interest rate typically used is the long term applicable federal rate (AFR), which is now 3.52%. The interest each year serves as the amount the couple gifts to the trust. As the cumulative premiums increase, so does the total loan and the interest follows. Upon death or termination of the split dollar agreement, the cumulative premiums and any paid interest is returned to the couple.

Figure 3

Age (married couple)	Donor/Insured		
	Annual Premium Paid	Amount Due Per Split Dollar Agreement ¹	Net Death Benefit ²
65/65	\$96,686	\$96,686	\$96,686
70/70	\$96,686	\$580,116	\$580,116
75/75	\$96,686	\$1,063,546	\$1,063,546
80/80	\$96,686	\$1,546,976	\$1,546,976
85/85	\$96,686	\$2,030,406	\$2,030,406
90/90	\$96,686	\$2,513,836	\$2,513,836
95/95	\$96,686	\$2,997,266	\$2,997,266

¹Under the Final regulations, utilizing the economic benefit regime, the donor is entitled to the greater of (1) premiums paid or (2) cash surrender value of the policy.

²Unless the split dollar arrangement is terminated prior to the second-to-die, the amount due to the donor's estate will be paid from the death benefit proceeds. This amount will be included in the gross estate and possibly subject to estate taxation at 45%.

The economic benefit regime is similar to a loan, except that the amount of the gift to the trust is calculated based on the economic benefit of the net death to the trust. For example, Figure 4 shows that at age 80 the gift to the trust is \$25,792. The gift is calculated based on the Table 2021 rates prescribed by the IRS. If they died in this year the trust receives \$8,453,024 of death benefit, while the couple receives the greater of the cash value or cumulative premiums paid which is \$1,546,976. After reviewing both options, they decided to employ the economic benefit regime because it produced a lower gift to the trust for a longer period of time than the loan regime. Overall, the private split dollar method dramatically reduced their gift and produced a large sum of tax free money to the trust. To put in perspective, the cumulative gift made by age 85, equaled \$374,685 with a total wealth transfer to the trust of \$7,969,594. This worked well with their gifting limitation and provided the flexibility they desired.

Figure 4

Age (married couple)	Trust		
	Economic Benefit/ Gift To Trust ¹	Net Death Benefit ²	Net To Heirs ³
55/65	\$1,437	\$9,903,314	\$9,956,491
70/70	\$4,105	\$9,419,884	\$9,738,948
75/75	\$10,005	\$8,936,454	\$9,521,404
80/80	\$25,792	\$8,453,024	\$9,303,861
85/85	\$64,357	\$7,969,594	\$9,086,317
90/90	\$159,778	\$7,486,164	\$8,868,774
95/95	\$374,277	\$7,002,734	\$8,651,230

¹The amount of the gift to the trust from the donor is calculated based on the economic benefit of the net death benefit provided to the trust. The insurance rates used can be the lower of Table 2001 rates (as adjusted for joint lives) or alternative carrier rates (if offered and provided by the carrier). The economic benefit calculation in this exhibit used the government's Table 2001 rates, representing the highest possible gift amount using this strategy.

²The net death benefit to the trust is the death benefit proceeds from the policy less the amount due to donor(s) per the split dollar trust.

³Net to heirs is equal to the trust's net death benefit plus the amount due to the donor's estate after adjusted for estate taxes at a 45% rate.

Conclusion

The planning landscape has dramatically altered in the past decade. In the wake of the current economic turmoil, it is likely to change further, as families seek not only to provide a sustainable pool of wealth for succeeding generations, but also for the current generation as well. We have highlighted the most significant of these changes, and some of the planning advantages they present. These advantages present significant opportunities for planners, and clients, who are prepared to embrace change and navigate the altered landscape.

James R. Robinson (jrobinson@schiffhardin.com) is a partner in the Private Clients, Trusts and Estates Practice Group at Schiff Hardin LLP, where he specializes in estate and gift planning, business succession planning, wealth preservation, sophisticated tax planning, charitable giving and fiduciary advising.

Stephen B. "Bo" Wilkins (bwilkins@nlec.com) is a partner of the life insurance advisory firm of Nease, Lagana, Eden & Culley, Inc., where he specializes in wealth transfer, business succession and charitable planning.

Footnotes:

1 *Family Office Exchange, Recasting the Central Role of the Family Office as Risk Manager (2006)*, at v.

2 See *id.* at 5.

3 Robert H. Sitkoff & Max M. Schanzenbach, *Jurisdictional Competition for Trust Funds: An Empirical Analysis of Perpetuities and Taxes*, 115 *YALE L.J.* 356, 416 (2005) (hereinafter "Sitkoff").

4 See *id.* at 376-77.

5 See *id.* at 375 n.62.

6 See *id.* at 359.

7 See, e.g., Michele C. Marquardt, Esq., *Incentive Trusts? Beware!*, 33 *EST. GIFTS & TR. J.* 204 (2008).

8 See Jon J. Gallo, et al., *An Examination of Trustees, Beneficiaries and Distributive Provisions*, 42 *U. MIAMI EST. PLAN. Ch. 15* (2008).

9 See, e.g., *Estate of Schutt v. Commissioner*, T.C. Memo. 2005-126.

10 See Sitkoff, at 381-82.

11 See, e.g., UNIF. LIMITED LIAB. CO. ACT § 503, enacted in numerous states.

12 This may not be easily accomplished. One potential means is to give an adverse party, i.e., another beneficiary, a veto power over distributions. See I.R.C. § 674.

13 DEL. CODE ANN. Tit. 30, § 1636.

14 See Richard W. Nenko, *Planning with Domestic Asset-Protection Trusts*, 16 *ANN. REAL PROP., PROB. & TR. SYMPOSIA* (Apr. 29, 2005), at 39-43 (available at www.abanet.org/rppt/meetings_cle/2005/spring/pt/AssetProtectionPlanning/NENNO_hand.pdf).

15 See DEL. CODE ANN. Tit. 12 § 3570; I.R.C. § 2038.

16 For an analogous case involving an offshore trust, see *In re Stephan Jay Lawrence*, 279 F.3d 1294 (11th Cir. 2002).

17 See 11 U.S.C. § 548(e).

18 See, e.g., FLA. STATS. § 222.14; N.Y. INSURANCE LAW § 3212; compare DEL. CODE ANN Tit. 18, §§ 2701, 2725 (not restricted to resident, but restricted to insurance contracts "issued for delivery" or "delivered" in-state). These statutes also offer varying degrees of protection for annuity proceeds.

19 See, e.g., GA. CODE ANN. § 33-25-11(a).

20 See, e.g., HAW. REV. STAT. § 431:10-232.

21 See, e.g., 41 *U. MIAMI EST. PLAN.* at ¶ 1218 (2007); Edward M. Manigault and Milford B. Hatcher Jr., *GRATs and GST Planning – Potential Pitfalls and Possible Planning Opportunity* 20 *PROB. & PROP. NO. 6* (Nov./Dec. 2006).

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