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Foulston Siefkin Estate Planning:

WHAT ASSET PROTECTION OBJECTIVES CAN BE ATTAINED THROUGH ESTATE PLANNING?

Among the current palpable trends in estate planning is the desire for asset protection. This trend has been driven by computerization, which has greatly enhanced the sophistication and comprehensiveness of provisions which can be economically incorporated in trust documents. It has also been driven by external forces, such as the increasingly litigious nature of our society, a high divorce rate, a trend toward increasing spousal forced inheritance rights at death, a high estate tax rate, and over the last several decades, an enhanced ability for the elderly and disabled to qualify for governmental resource benefits with proper estate planning. However, this trend is far from a bandwagon. Even today, a high percentage of estate plans still give only a modicum of attention to this issue. Estate planners should not view asset protection as just a facet of an expanded practice, but as an important goal for a high percentage of their estate planning clients.

Although the discussion below addresses in summary form asset protection strategies not involving trusts, the principal thrust is the manner in which asset protection can be achieved through the careful crafting of trust documents. Throughout the discussion is the common thread of achieving flexibility in trust provisions. This flexibility is achieved by giving the Trustee broad authority to make discretionary distributions to multiple beneficiaries, giving the Trustee broad investment authority, giving family members limited powers of appointment to alter the disposition of trust assets upon trust termination, allowing the trust situs to be changed when advantageous to beneficiaries, and in providing for the proper altering of trust provisions by authorizing a Special Trustee to make appropriate trust amendments. The overall goal is to minimize, as much as possible, the substantive differences between outright ownership versus a beneficial interest in trust assets, without significantly compromising important asset protection objectives.

Asset Protection Sought

In the absence of the appropriate use of sophisticated estate planning techniques, there can be a substantial diversion of estate assets to third parties, thereby reducing the amount of assets available for the support, maintenance and health needs of adversely affected parties and the amount of assets they are able to pass to other family members by gift or under their estate plans following their deaths.

One type of diversion that can quickly erode the value of an estate is a creditor claim. There are three main subcategories of creditor claims. One such subcategory is tort claims, such as a negligence claim. Annual litigation costs in the United States are estimated at $400 billion. Although estimates vary, the average American can expect to be sued approximately 2-3 times during his/her lifetime. Some of these risks either may not be insurable or insurance may not be sufficient to cover many of the large judgments which are being rendered. Moreover, there have been recent concerns about the stability of insurance companies. In addition, many view large liability policies as being a "magnet" for litigation.

Another subcategory creditor claim is contract claims. Contract liabilities can arise in various contexts, including the commercial area, consumer debt, vicarious partnership liabilities, or from personal guarantees.

A third type of creditor claim is a governmental claim. For example, in the labyrinth which is the Internal Revenue Code, many income tax liabilities may not only be unforeseen, but substantial in nature. Depending upon the circumstances, substantial understatement, failure to pay or negligence penalties may also be applicable. Substantial liability risk also is present under the myriad of governmental regulations designed to achieve social policy or environmental goals. For example, the Occupational Safety and Health Act ("OSHA") and the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") allow the government to impose substantial fines and environmental "clean up" costs, respectively. In the case of "CERCLA," liability can be imposed irrespective of fault; insurance may be unavailable and clean-up costs can be enormous. Resource availability may also cause the erosion of assets due to denial of governmental benefits, such as Medicaid or Supplemental Security Income ("SSI"), thereby causing what might otherwise be an avoidable required “spend down” of the assets of an applicant prior to qualifying for such benefits. Further, federal law, under the OBRA 1993 provisions, mandates each state enact a claim law against at least the probate assets of a Medicaid recipient. For example, Kansas law allows the administering state agency, the Kansas Department for Children and Families ("DCF") (formerly “SRS”) to file a claim against the estate (whether a probate estate or a non-probate estate passing under the provisions of a revocable trust or through joint tenancy or a beneficiary designation) and the estate of a recipient's surviving spouse to recoup all Medicaid benefits paid to the recipient.

Significant asset diversion may also result from a spousal claim. This can occur at death through a forced inheritance claim of a surviving spouse. Kansas law, as is the case with many other states, permits a spouse to file a “spousal elective share” claim for certain amounts and portions of a predeceased spouse’s estate in the absence of a waiver of such claim under a premarital agreement or the surviving spouse’s consent to the predeceased spouse’s estate plan.

Spousal claims may also result from a claim incident to a divorce or separate maintenance decree. Premarital agreements, depending upon applicable state law, may afford substantial asset protection in some states (which they do with regard to Kansas residents under the Kansas Uniform Premarital Agreement Act), but in other states may be able to be set aside if a court determines its provisions to be inequitable. In all jurisdictions, they must be comprehensively drafted to afford protection and are subject to litigation with regard to any ambiguities. They also normally create undesirable emotional elements and an accord may not be reached.

Estate taxes may also extract a substantial portion of one’s estate at death. Unless a state in which the decedent died or the decedent has property having a situs in another state having an estate or inheritance tax, which Kansas presently does not, this extraction is primarily in the form of federal estate taxes at a high marginal rate (40%) on estates over the $5.43 million applicable exclusion amount for 2015.

Methods of Achieving Creditor Protection

The manner in which such protection is achieved with respect to creditor claims is principally through one of six techniques: 1) maximizing the assets which are exempt from the claims of creditors; 2) transferring assets not exempt from creditor claims to a spouse; 3) transferring assets to entities such as limited liability companies (LLCs) or family limited partnerships (FLPs); 4) creating a trust for the benefit of the settlor (the person creating the trust); 5) creating a lifetime or testamentary trust for the benefit of a spouse, children or other beneficiaries; and 6) creating an irrevocable trust to be the recipient of the Grantor’s assets upon the Grantor’s death by virtue of a beneficiary designation.

Conversion of Non-Exempt Assets to Exempt Assets

Kansas laws which exempt certain assets from the claims of creditors are some of the most liberal in the nation. Kansas is only one of seven states which provide a total exemption on the value of a home from the claims of creditors (and up to 160 contiguous acres if the residence is in the county outside the city limits). In addition, Kansas exempts the value of a car, qualified retirement plans (also exempt under federal bankruptcy laws), IRAs (both regular and Roth) and most life insurance.

By converting non-exempt assets, such as cash, into exempt assets, additional assets can be protected from the claims of creditors. However, although Kansas creditor exemptions are also applicable in a federal bankruptcy proceeding, the Kansas exemptions do not apply to federal tax claims, which have much more limited exemptions. Nor do they apply to debt secured by exempt property which the debtor has voluntarily encumbered, e.g., a residence secured by a mortgage. It is also important to note that the 2005 federal bankruptcy law changes extend from 30 days to 1215 days the time period prior to bankruptcy in which an individual may purchase a home and still protect it from creditors in a bankruptcy proceeding.

Transfer of Assets to a Spouse During Lifetime

As a second approach to asset protection, it is important to consider that spouses are not normally liable for the debts of their spouses, unless agreed to in writing, e.g., under a promissory note co-signed by both spouses. An exception is what is called the "doctrine of necessaries," in which a spouse can be held liable for the basic living needs of a spouse in the event a debt arises with regard to such "necessaries" (normally uninsured health needs), and the creditor has been unable to satisfy the debt through litigation and attaching the assets of the debtor spouse.

Consequently, absent a creditor claim which could cause the transfer to be deemed a fraudulent conveyance under the Kansas Uniform Fraudulent Conveyance Act, non-exempt assets normally can be transferred as part of the estate planning process to a spouse and thus gain protection from the creditor claims of the transferring spouse.

However, such transfers under certain circumstances may have an adverse effect upon a property division should the couple later divorce (e.g., one spouse transfers property that was inherited by such spouse or brought into the marriage to the other spouse). Under Kansas law, all property accumulated by spouses do due their separate or joint efforts during the marriage is normally evenly divided by the Court in a divorce or under a separate maintenance decree, irrespective of which spouse owns it. Although property brought into the marriage or inherited during the marriage is normally given special consideration by Kansas courts in favor of the inheriting party or the party who brought the property into the marriage under a property division in a subsequent divorce, this benefit could be lost if the spouse who brought the property into the marriage or who received it by gift or inheritance during the marriage had transferred it in whole or in part to his or her spouse notwithstanding it was only for asset protection purposes.

Use of FLPS and LLCS

A third method of asset protection is to transfer assets to an entity affording protection under statutory law from the claims of creditors. For example, transferring assets to a corporation or limited liability company (LLC) can afford protection from personal liability for what is termed vicarious liability, i.e., the actions or negligence of other employees or members of the corporation of LLC. A member still remains personally liable for the member's own actions. As another example, a physician operating under a professional corporation would remain liable for his or her own negligence. Further, all corporate or LLC assets normally also would be subject to liability claims for the actions of personnel in the furtherance of the business purpose of the entity.

Creating an entity such as an LLC or family limited partnership (FLP) can, however, limit the availability of assets to satisfy an "outside claim" against an LLC member or partner in the FLP, i.e., a claim personal in nature unrelated to the member's or partner's activities with the LLC or FLP. Normally, creditors who attach an LLC or FLP interest to satisfy a personal liability claim of a member or partner can only receive what is termed a "charging order", i.e., the right to receive distributions if and when the other members of the LLC or general partners of the FLP decide to make distributions. Such creditors normally cannot compel a distribution of LLC or FLP assets to the member or partner, nor force a liquidation of the LLC or FLP. Further, following the attachment of an LLC or FLP interest to satisfy a claim or judgment of a member or partner, creditors will "step into the shoes" of the member or partner for income tax purposes. This normally results in the creditor being taxed upon the member's or partner's share of income of the LLC or FLP, even if such income is not distributed and retained in the LLC or FLP for business purposes. This is what has been termed the "KO" by the K-1. Consequently, a creditor is normally quite reluctant to attach or execute upon a member's or partner's interest in an LLC or FLP to satisfy a personal liability of the member or partner.

Use of "Delaware Business Trust"

The laws of Delaware also permit the creation of an entity similar to an FLP or LLC in its structure called a "Delaware business trust." A "Delaware business trust," like an FLP or LLC, can be favorably taxed as a partnership. Moreover, the beneficial interest of its beneficiaries who contributed property to the trust may be transferred. However, unlike an interest in an FLP or LLC, a creditor of a trust beneficiary cannot attach the interest and get the benefit of a "charging order" in the event later distributions are made out of the trust. However, these entities must be set up under the laws of the state of Delaware.

The benefits of creating an LLC or FLP, or a "Delaware business trust" for the purpose of limiting the ability of a creditor to satisfy a claim against a member or partner must be balanced against its attendant costs, possible tax liabilities, and organizational complexities.

Creation of Irrevocable Trust for Grantor's Benefit

The fourth strategy is to transfer assets into an irrevocable trust for the benefit of a trust beneficiary or beneficiaries.

However, with respect to a settlor transferring assets to an irrevocable trust for the benefit of the settlor (the person creating the trust), the laws of most states are quite unfavorable to this technique. Such trusts are termed "self-settled" trusts, as they are created by the settlor (also sometimes referred to as the "grantor") for the benefit of the settlor. Due to public policy considerations incorporated into common law or under state statutes, most states, including Kansas, proscribe the ability of a settlor to transfer assets owned by the settlor, which were subject to the claims of a spouse or creditor of a settlor prior to the transfer, into an irrevocable trust which protects the trust assets from creditor claims while the settlor continues to enjoy a beneficial interest in the trust assets. Assets in these trusts normally remain subject to most claims of the creditors of the Grantor to the extent that the assets of the trust are distributable, even in the Trustee's discretion, to the Grantor.

An exception is for "offshore" trusts not governed by U.S. law, such as in the Isle of Wright or Cayman Islands, the laws of which exempt self-settled trust assets from being subject to the claims of the Grantor's creditors. However, "offshore" trusts not only have an element of risk to uncertain laws, as they have a situs outside the United States, they can be quite expensive to create and maintain and there is no guarantee they will be effective.

In recent decades, however, laws have been enacted in some states (e.g., Alaska, Rhode Island, Nevada and Delaware) to provide significant creditor protection to settlors of certain types of "Grantor Trusts" created and maintained (by requiring a local Trustee) in their states. The potential drawbacks are exceptions from creditor protection in the laws of these states with respect to certain claims against the settlor, additional expenses incurred in creating such "out of state" trusts, and the degree of creditor protection truly afforded by creating a trust which has a more favorable creditor protection situs than under the laws of the state of the Grantor (such as an Alaskan trust created by a Kansas domiciliary) is not yet well settled.

Moreover, the 2005 federal changes in bankruptcy laws ("The Bankruptcy Abuse and Consumer Protection Act of 2005) will have a negative effect on the use of these self-settled trusts set up in the foregoing states as an asset protection technique. Normally, federal law has a two year "look back" for fraudulent conveyances designed to avoid creditor claims. The 2005 bankruptcy laws changed this "look back" to ten years with respect to self-settled trusts. This extended "look back" period conceivably may not only apply to transfers to avoid an existing creditor claim, but perhaps also transfers designed to avoid future creditor claims as well.

Consequently, as a result of the foregoing costs and uncertainties, whether such "self-settled" trusts are created "offshore" or under the law of a state sanctioning them, irrevocable trusts created for the benefit of the Grantor normally should be viewed as an asset protection technique of last resort.

Creation of Irrevocable Trust for the Benefit of a Spouse or Other Third Party

The laws of all states are much more favorable with regard to creditor protection for claims against a trust beneficiary if the trust beneficiary did not create the trust for his or her benefit. These so-called "third party" trusts are created when an individual transfers assets to an irrevocable trust which is either created during lifetime or at death under a testamentary trust (created under a Will or Revocable Trust). Properly drafted, such "third party" trusts can provide for the needs of the trust beneficiaries, while at the same time substantially protecting assets from the claims of the beneficiaries' creditors or a spouse of a beneficiary. The reason these types of trusts are treated much more favorably than "self-settled" trusts with respect to claims of the creditor of trust beneficiaries is that the assets in the trust were not owned by the beneficiaries and subject to the claims of their creditors prior to the transfer. Thus, the public policy of almost all jurisdictions as reflected in common law or state statutes is to permit a settlor to leave assets in trust (either during lifetime or following death under a testamentary instrument such as a Revocable Trust) for beneficiaries other than the settlor with whatever restrictions the settlor wishes to provide in the trust instrument with regard to such matters as to who is entitled to a trust distribution and under what circumstances distributions of trust assets are authorized.

Protection from creditor claims in "third party" trusts is achieved through the inclusion of what is termed a "spendthrift clause" in the trust instrument. "Spendthrift clauses" preclude a creditor of beneficiary from attaching trust assets to satisfy a claim a creditor may have against a beneficiary (e.g., a tort or contract claim), including a claim of a spouse of a beneficiary (including that of a subsequent spouse of a surviving spouse of the person creating the trust), such as otherwise might result from a divorce or forced inheritance claim following the beneficiary's death. Although spendthrift clauses are generally recognized by courts interpreting governing state law across the country, some states have carved out certain exceptions to the validity of "spendthrift clauses," either by statute or under common law.

Although Kansas Courts had not previously recognized any common law exceptions to the validity of spendthrift clauses (principally due to such issues not being raised), spendthrift clauses were given further efficacy under legislation enacted this past decade. The 2002 Kansas legislature passed, and Governor Graves signed into law, the Uniform Trust Code (the UTC), effective January 1, 2003. The UTC, as enacted in Kansas, has no exceptions to the protection afforded by a spendthrift clause from the claims of creditors of beneficiaries, including their spouses. The exceptions that were in the UTC were deleted when Kansas enacted the UTC. Moreover, such statute provides that a spendthrift provision, which restrains involuntary or voluntary transfers of the beneficiary's interest, may be created simply stating that the assets are being held in a "spendthrift trust." With regard to discretionary distributions, such clauses are valid even if the Trustee has abused the Trustee's authority in not making a required distribution. However, if the beneficiary is serving as sole Trustee, distributions to the beneficiary must be limited to the beneficiary's health, education, maintenance and support needs for the trust estate to be afforded asset protection against the beneficiary's creditors. The only exception to such asset protection is for mandatory distributions of income or principal if such distributions have not been made within a reasonable amount of time. As such, Kansas has one of the strongest statutes in the country giving effect to spendthrift clauses. This statute should preclude a Kansas court from creating any common law exception.

If the principal beneficiary is not financially responsible or suffers some disability or undesirable spousal influence, a third party could be named as trustee of a trust created for such beneficiary's benefit to ensure the trust assets are responsibly managed. However, if the principal beneficiary has legal capacity and is mature and responsible, under a carefully crafted trust such beneficiary normally may be named to serve as his or her own Trustee without compromising the asset protection objectives of the trust. For example, as above noted, the trust may provide for discretionary distributions for the beneficiary's health, education, support and maintenance, with distributions being authorized to be made by the trustee indirectly for such purposes to third parties for the benefit of the beneficiary to minimize exposure to creditor claims. In addition, the beneficiary may be given a limited power of appointment (exercisable under the provisions of the beneficiary's Will or Revocable Trust) which authorizes the trust beneficiary to determine the amounts and manner in which the trust assets are to be distributed upon the beneficiary death, e.g., to the beneficiary's spouse or children, other descendants of the person creating the trust, or charities. With this technique, assets can be left in a trust having the foregoing attributes which give the principal beneficiary property rights not far from the of outright ownership, while still affording substantial protection of the trust estate from the claims of the principal beneficiary's spouse and creditors.

In order to maximize the benefits of this technique regarding assets left in trust for a spouse, as it normally cannot be ascertained with any reasonable degree of certainty which spouse will predecease the other, as noted elsewhere in this booklet, each spouse may give the other what is termed a "general power of appointment" under the provisions of their Wills or Revocable Trusts. This appointment right would permit each spouse, should they predecease the other spouse, to "appoint" the assets of the surviving spouse under the provisions of the predeceased spouse's Will or Revocable Trust. By virtue of this technique, all of the assets owned by both spouses at the time of the predeceased spouse's death (other than assets in tax deferred annuities, qualified retirement plans and IRAs which would occur immediate income taxation if they could be appointed under this technique) normally can pass at the time of the first spouse's death under the provisions of the predeceased spouse's Will or Revocable Trust and thus be left in an asset protection trust for the benefit of the surviving spouse. This will not only protect the assets of the predeceased spouse left in trust for the benefit of the surviving spouse from the claims of the surviving spouse's creditors, but, although the issue is subject to some uncertainty, quite possibly the assets of the surviving spouse appointed under the provisions of the predeceased spouse's Will or Revocable trust in trust for the benefit of the surviving spouse as well. In addition, it also should afford significant asset protection of assets so left in trust for the surviving spouse from a divorce or inheritance claim of a "new spouse" should the surviving spouse remarry and legally preclude the surviving spouse from voluntarily transferring (perhaps as a result of pressure from the "new spouse") any of such trust assets to a "new spouse." It would also legally preclude the surviving spouse from voluntarily giving, or being pressured to give, assets to a new spouse which the surviving spouse brought into the marriage.

Although not strictly under the umbrella of "asset protection," such as that provided with respect to creditor and spousal claims, tax savings and increased governmental resource benefits obtainable through the creation of properly drafted "third party" trusts (i.e., not a "self-settled" trust, but a trust created for a third party either during lifetime or at death) should also be considered. Assets left in such "third party" trusts having the foregoing provisions can be excluded from a beneficiary's estate for federal and state death tax purposes (although trust assets may be subject to the possibility of a "generation-skipping tax" in larger estates). In addition, as trust income is normally taxable to the beneficiary receiving a distribution of trust income, the trustee may be authorized to distribute trust income to beneficiaries other than the primary beneficiary, e.g., the children of the primary beneficiary, in circumstances where the needs of the primary beneficiary are otherwise satisfied. This has the potential for taxing the trust income at income tax brackets lower than that of the primary beneficiary (subject to some exceptions, including taxing the income of minor beneficiaries at the income tax brackets of their parents). Finally, the assets of a properly drafted "third party" trust normally should not be considered a resource to trust beneficiaries so as to disqualify such beneficiaries from Medicaid, SSI, or other types of otherwise available government benefits. Thus, the trust assets can be made "supplemental to governmental benefits" in providing for support, maintenance and health needs not provided for governmental resources. However, due to a Kansas Supreme Court decision a few years ago, to the extent the surviving spouse had survivorship rights to the predeceased spouse's estate (e.g., spousal allowance, homestead and elective share to the augmented estate), even if waived, such spousal rights portion of such assets left in trust for a surviving spouse will still have to be "spent down" under Kansas law prior to a surviving spouse qualifying for SSI or Medicaid benefits.

The foregoing high level of asset protection afforded by "third party trusts" cannot be obtained by leaving property outright to beneficiaries or providing for mandatory distributions of trust income or principal to trust beneficiaries (e.g., trust income or outright distributions of trust principal at certain ages). Once property is distributed outright to a beneficiary, options to protect assets from creditor claims of the beneficiary become much more restrictive. Normally, such options are limited to those listed above, i.e., converting non-exempt assets into assets exempt from the claims of creditors, transferring assets to a spouse, creating an entity such as an FLP or LLC, or creating a "self-settled" trust. Even should a "self-settled" trust be able to achieve some measure of asset protection (albeit usually at significant additional cost), unlike "third party" trusts, normally the income of the trust would be taxable to the beneficiary creating the trust irrespective of whether it was accumulated in the trust or distributed to the settlor or other beneficiary of the trust, the assets in any such "self-settled" trust would still be includible (as a "retained interest") in the settlor's estate for federal estate and state death tax purposes, and the trust assets would still be considered available to the settlor so as to disqualify the settlor from otherwise available governmental benefits subject to a resource test, such as SSI or Medicaid.

Avoiding Creditor Claims at Death

As almost all Kansas practitioners are aware, Kansas probate law provides that the probate estate of a debtor is subject to creditor claims. The same is true under the Kansas Uniform Trust Code with respect to the assets in a debtor's revocable trust estate following the death of the debtor. However, there is no provision under Kansas law for a decedent's creditor to make a claim against the assets of a decedent which pass under the laws of joint tenancy or through a beneficiary designation, including POD and TOD beneficiary designations.

Thus, individuals who desire a cohesive estate plan which avoids probate, provide for a fiduciary to administer their assets, and perhaps leave assets in trust for family members for asset protection reasons, could create an irrevocable trust which is minimally funded during lifetime, say with ten dollars. The trust would not provide for the payment of any debts or taxes of the decedent in the same manner as a revocable trust. The provisions of the irrevocable trust would only include provisions addressing the disposition of their assets following death. Following the death of the Grantor, the irrevocable trust would become fully funded with the vast majority of the individual's assets having a beneficiary designation naming the trust as primary beneficiary on such assets.

Should the individual desire to subsequently change the trust provisions, same could be done through a Special Trustee or perhaps better, by simply creating a new irrevocable trust with the more desirable provisions and change all beneficiary designations to the trustee of the subsequent trust.

It is also desirable for the individual to also create a second revocable trust having a very modest amount of assets. Following the Grantor's death, such trust could provide for the payment of the decedent's debts, taxes and post-death administration expenses, and perhaps provide for the distribution of tangible personal property items. The remainder would be distributed in the same manner as assets in the irrevocable trust, with provisions allowing such remainder of the trust estate held in trust to be merged with similar trusts created under the irrevocable trust for the same beneficiaries. Having an additional revocable trust, in addition to the irrevocable trust, should diminish any argument, however weak, that the irrevocable trust was simply a substitute revocable trust and thus should remain subject to the claims of the decedent's creditors. Limiting the amount of assets in the revocable trust should limit the exposure to third party claims of the decedent's assets to the assets held in the revocable trust.

Summary

A substantial amount of asset protection can be obtained through comprehensive estate planning using sophisticated techniques. There is a significant exposure in today's litigious environment to creditor claims, including the claims of spouses. When a married couple is dividing assets in the estate planning process, asset protection objectives and strategies should be taken into consideration. In addition, the use of trusts, rather than outright distributions, should also be considered to afford beneficiaries to whom property would otherwise be given outright a substantial measure of asset protection from third party claims. In situations where assets are already owned outright and the owner is in need of asset protection, an LLC or FLP should be considered in order to convert assets into an LLC or FLP interest which is far less desirable to creditors. In more egregious circumstances where potential claims are severe and greater immunity from creditor claims is desired, an "offshore" trust in a foreign jurisdiction, or a domestic "out of state" trust in a state jurisdiction having protective laws with respect to "self-settled" trusts may be considered. Finally, in all situations when there are asset transfers during lifetime (as opposed to under the provisions of a Will or Revocable Trust) designed to afford asset protection, the opinion of knowledgeable legal counsel should be obtained to ensure that any transfers or conveyances under the circumstances do not constitute "fraudulent conveyances" which are violative of state or federal law and therefore not only voidable, but which could deny relief from creditors in a bankruptcy proceeding.

The foregoing techniques are vastly under utilized in most estate plans. A very high percentage of informed clients will not only normally employ at least the lifetime techniques discussed above, but will also leave their assets in trust, rather than outright, for the benefit of family members following their deaths for the express purpose of gaining such asset protection benefits for the beneficiaries of such trusts.

Important Note: In all situations when there are asset transfers during lifetime designed to afford asset protection, the opinion of knowledgeable legal counsel should be obtained to ensure that any such transfers or conveyances do not constitute "fraudulent conveyances" which violate applicable state or federal law and are therefore not only legally voidable by creditors and bankruptcy trustees, but also which could preclude the debts of the transferor from being discharged in bankruptcy.

Foulston Siefkin's Estate Planning and Probate Group

Foulston Siefkin LLP, the largest Kansas law firm having offices exclusively in the state of Kansas, has more than 90 attorneys and is headquartered in Wichita, Kansas. The firm has additional offices in Kansas City and Topeka. The firm's Estate Planning and Probate Practice Group currently consists of eleven attorneys who collectively practice in all significant estate planning, probate and trust areas. Viewers are invited to "click" on the link to the Group's website below for information on the Group's practice areas and attorneys, law summaries of estate planning areas of special interest, regional and national estate planning articles authored by Group attorneys, related links and other estate planning information which may be of interest.

This estate planning law summary above was authored by the firm's Estate Planning and Probate Practice Group. Provided as a service to viewers, it is intended to be a general discussion of one of the Group's major areas of emphasis, asset protection estate planning. The strategies discussed therein are not designed to be an exhaustive discussion of all asset protection strategies or even any one strategy. Moreover, they are subject to exceptions for which space did not permit a discussion, often are Kansas law specific, and are subject to varying and changing federal and state laws which may alter or diminish their efficacy. This document has been prepared by Foulston Siefkin for informational purposes only and is not a legal opinion, does not provide legal advice for any purpose, and neither creates nor constitutes evidence of an attorney-client relationship.

For Further Information

Foulston Siefkin regularly counsels clients on issues relating to Estate Planning and Probate. If you are interested in additional information regarding these matters, please visit our website at **www.foulston.com** or if you would like to discuss specific ways in which Foulston can help you, contact Tim O'Sullivan at 316.291.9564 or **tosullivan@foulston.com**, or Stewart Weaver at 316.291.9736 or **sweaver@foulston.com**, or Matt Bish at 316.291.9729 or **mbish@foulston.com**.

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