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BY JACOB STEIN

BULLETPROOFING ASSETS

Though there is no "silver bullet" in structuring a sound asset protection plan, careful strategizing by legal counsel can prevent entanglement with voidable conveyance laws

THE GOAL of all asset protection planning is to effectively insulate assets from claims of creditors without concealment. In the age of information and transparency, concealment is difficult, as we have been reminded time and again by the Panama Papers, the Paradise Papers, and, most recently, the Pandora Papers.[1] Creditors can also run searches of public databases for assets like real property and motor vehicles, hire private detectives to locate bank and investment accounts, and subpoena third-party information to trace international wires and tally-up cash withdrawals.

Jacob Stein is the global chair of Aliant's private client practice and has focused his practice on asset protection planning for over 20 years.

ANAME KANEKO

All these asset transfers may then have to be explained by our client (the debtor) in a debtor's examination. Because examinations of debtors are conducted under oath, a debtor who relies on concealing assets may also run afoul of perjury.[2] Despite the use of the term "asset protection," protection is rarely the goal. It is usually impossible to fully protect assets. In most planning scenarios the objective is to shift the negotiating power in the debtor's favor. That can be accomplished by making assets more difficult and more expensive to reach, without having to seek the holy grail of "bulletproof asset protection."

There is no single right or wrong way of shifting that negotiating balance or perfect way of shielding assets, and no single asset protection strategy fits all. The analysis should not focus on whether a particular structure has weaknesses or imperfections but instead should focus on whether there are available better alternatives.

Before the plan can be designed, the planner should consider a multitude of issues: How risk averse is the debtor and what is the debtor prepared to do to protect his or her assets? How aggressively is the creditor likely to pursue the debtor's assets? Is the creditor well-funded? What is the likelihood of a successful voidable conveyance or alter ego challenge? Are there any available state or federal exemptions? Each of these questions leads to follow-up questions, such as timing, possibility of a prejudgment attachment, tax consequences, and property tax reassessment (in California, under Section 60 of the Revenue and Taxation Code).

It is fundamental to determine who is likely to be sued. For example, if only one of two spouses executed a personal guaranty, asset protection planning between the spouses by means of a "transmutation agreement" becomes a possibility.[3] If a tenant of an apartment building slips and falls, is he likely to sue the entity that owns the building or the individual who owns the entity and manages the building?

Knowing the nature of the claim, its timing, and the strength of the opposition can be very helpful in the planning context. For example, the identity of the creditor clarifies how aggressively the asset protection structures will be investigated and challenged. Perhaps a plaintiff's law firm working on a contingency basis will be more likely to settle than a firm working on an hourly retainer. Some government agencies (e.g., the Federal Trade Commission) possess and are known to exercise interlocutory powers to attach, freeze, and seize assets, while other agencies (e.g., Customs and Border Protection) are known to obtain judgments and not enforce them.

No consideration of asset protection planning is complete without a reference to the bankruptcy laws. There is significant cross-over in the objectives of asset protection planning and bankruptcy protection. In both instances, the debtor is hoping to preserve the greatest amount of assets while washing away creditor claims. There are two prominent distinctions between asset protection and bankruptcy law. The first is a distinction between what is practical and what is legal. An asset protection strategy may work effectively if it makes it more difficult and expensive for a creditor to pursue the debtor's assets. This often remains true even when there are strong legal arguments to challenge the structure. In the context of bankruptcy, the focus is almost entirely on the law and the application of the voidable conveyance statutes. The second distinction looks at the grand finale of each option. Bankruptcy offers the debtor the great advantage of a fresh start but at the possible cost of surrendering all assets to the bankruptcy estate.[4] Asset protection planning does not offer a fresh start but will often allow the debtor to settle claims and keep a significant percentage of the assets.

The Uniform Voidable Conveyances Act, and its California equivalent, the Uniform Voidable Transactions Act (UVTA), is both a common thread uniting bankruptcy and asset protection planning and a great challenge when implementing an asset protection plan.

A voidable conveyance (formerly, and still commonly, referred to as a fraudulent transfer) is generally either a transfer made with the actual intent of "delaying, defeating or hindering" any creditor (the actual intent test),[5] certain gratuitous transfers,[6] or a transfer for less than fair market value and the debtor is either insolvent at the time of the transfer or is left insolvent.[7] The latter does not require a showing of intent—the numbers tell the story.

Every word in the statute carries either a special meaning or is open to various interpretations. A conveyance of property by a debtor will be treated as a "transfer" for voidable conveyance purposes if such conveyance diminishes the value of the debtor's property.[8] This means that if the debtor conveys fully encumbered property (i.e., property with no equity), that will not be treated as a transfer.[9] Similarly, if the transferred property is covered by an available exemption, that cannot be a voidable conveyance because it does not diminish what the creditor may receive.[10]

Intent, under the actual intent test, is presumed through circumstantial evidence by applying the so-called badges of fraud, which are set out in the UVTA, and include transfers to insiders, debtor retaining possession or control of the asset, concealing the transfer, a transfer after the threat of a suit, a transfer for less than fair value, and a transfer that leaves the debtor insolvent.[11] A debtor would attempt to rebut the badges of fraud by arguing an alternative intention, such as estate planning, investment diversification, tax planning, settling family affairs, etc.

The actual intent test is the primary reason why asset protection practitioners encourage clients to plan before there is an acute reason to protect assets. It is harder (but not impossible) to find intent when there are no existing creditor claims.

Equivalent value is not necessarily fair market value and is determined with reference to the debtor's circumstances. For example, less than fair market value consideration received in a forced sale may be deemed equivalent value.[12]

Lack of equivalent value along with insolvency are in practice the two most persuasive badges of fraud, and together allow a creditor to bypass the need to search for intent. It is critically important when designing any asset protection plan to inquire into the client's solvency and to attempt to transfer assets in exchange for equivalent value.

The time limit for bringing a voidable conveyance action in California can be four years from the date of the transfer or incurring the obligation (under the actual intent test and the insolvency test),[13] one year after the transfer could have reasonably been discovered by the creditor (under the actual intent test),[14] or seven years at the utmost from the date of the transfer or when the obligation is incurred.[15] Under the so-called Cortez rule the statute of limitations does not start running until a creditor obtains a judgment, even though a creditor is permitted to bring a voidable transfer action before obtaining the final judgment.[16]

Both debtors and their counsel should stay clear of voidable conveyances. In practice, that admonition may not be easy to follow. It is often difficult to determine with any degree of certainty whether a plaintiff or creditor will bring a voidable conveyance action, whether the action will be successful, and whether the resulting remedy (most commonly, avoiding the transfer and recovering assets from the transferee)[17] will be practically possible.

Debtors often engage in a pragmatic weighing of options—what's the worst that may happen if nothing is done to protect assets and if asset protection is pursued.

All asset protection planning is based on the following two premises: 1) creditors can generally reach any asset owned by a debtor,[18] and 2) creditors cannot reach those assets that the debtor does not own.[19] Every asset protection structure aims to take assets that a debtor owns, and that a creditor can reach, and convert them into assets that the debtor does not own, without running afoul of the voidable conveyance laws.

Giving away assets is rarely something we can or want to convince our clients to do. They may as well pay off their debts. The magic is in giving away assets while in some form retaining control and the ability to revoke the transfer. The devil here is in the drafting details, as control over the assets given away or the ability to revoke the transfer can neither be directly held by or imputable to the debtor.

There are many available asset protection structures, including transmutation of community property, use of legal entities, various offshore structures, private retirement plans, equity strips, conversion of non-exempt assets into exempt assets, etc. Each structure is subject to several permutations, including different ways of funding the structures. The two most fundamental asset protection structures are the irrevocable trust and the limited liability company.

Irrevocable Trust

A properly drafted trust can remove its assets from the reach of creditors of the settlor, the beneficiaries, or both. The Internet and various asset protection promoters often popularize asset protection trusts with catchy names. How one refers to a trust is either derived from the Internal Revenue Code or is pure marketing. An asset protection trust must meet four foundational requirements—be irrevocable, incorporate a spendthrift clause, be for the benefit of a third party, and be discretionary.

A revocable trust (the so-called "living trust") may protect beneficiaries from claims of creditors but does not protect the settlor because and to the extent of the settlor's power to revoke.[20] If the trust is irrevocable, the assets of the trust are not the property of the settlor, and the settlor's creditor cannot reach trust assets.[21] Because most asset protection trusts are established to shield the assets of the settlor, an asset protection trust must be irrevocable.

A spendthrift trust is a type of trust that either limits or altogether prevents a beneficiary from being able to transfer or assign his interest in the income or the principal of the trust.[22] Spendthrift trusts have traditionally been used to provide for beneficiaries who are incompetent or are simply unable to take care of their own financial affairs. Today, almost every trust incorporates a spendthrift clause. If a trust does so and the beneficiary is therefore precluded from transferring his interest in either income or principal, then the beneficiary's creditor will not be able to reach the beneficiary's interest in the trust.[23]

The protection of the spendthrift trust extends solely to the property that is in the trust. Once the property has been distributed to the beneficiary that property can be reached by a creditor, except to the extent the distributed property is used to support the beneficiary.[24] If a trust calls for a distribution to the beneficiary, but the beneficiary refuses such distribution and elects to retain property in the trust, the spendthrift protection of the trust ceases with respect to that distribution and the beneficiary's creditors can now reach trust assets.[25]

If the settlor of a trust is also a beneficiary of a trust, then the assets that the settlor has retained a benefit in will not be protected by the trust's spendthrift clause.[26] This is known as a prohibition against "self-settled" trusts.

The prohibition against self-settled trusts in California is well-settled. In *DiMaria v. Bank of California National Association*,[27] the settlor-beneficiary of a trust retained the right to the income for life and to invade principal if income was insufficient for her support, with remainder interest given to her children. The trustee was required to make distributions pursuant to an ascertainable standard. The settlor could not revoke the trust.

The court held that only "the income and the additional corpus required for her support and obtainable by her from the trustee" is subject to creditor claims.[28] The rest of the corpus, including the remainder interest were not for the benefit of the settlor-beneficiary, and thus not self-settled (and therefore not reachable by the settlor's creditors).

Several U. S. jurisdictions now allow self-settled trusts to afford their settlors the protection of the spendthrift clause. Alaska was the first jurisdiction to enact such laws in 1997[29] and as of today, seventeen states allow domestic self-settled asset protection trusts (DAPTs).[30] Federal bankruptcy law likely recognizes this protection as well, although there is less available case law. Section 541(c)(2) of the Bankruptcy Code states that a "restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable non-bankruptcy law is enforceable in a case under this title." This position is also implicitly validated by Section 548(e) which extends the two-year statute of limitations for a voidable conveyance to ten years, when the transfer is to a DAPT.

Using Delaware as sample DAPT jurisdiction, a Delaware DAPT must comply with the following requirements: 1) the trust must be irrevocable and spendthrift, 2) at least one Delaware resident trustee must be appointed, 3) some administration of the trust must be conducted in Delaware, and 4) the settlor cannot act as a trustee.[31]

The DAPT jurisdictions appear to be a simple solution for a settlor of a self-settled trust seeking asset protection, and DAPTs have been heavily marketed for these purposes. The DAPTs do work well for settlors who are resident in the DAPT jurisdiction and have assets in the jurisdiction. California residents with California assets may not be able to reap the asset protection benefits of these trusts.

With respect to personal property, trusts are generally governed by the laws of the jurisdiction that is designated by the settlor as the governing jurisdiction.[32]

While it is simple to designate a DAPT jurisdiction as the governing law of a trust instrument, a state will not recognize the laws of a sister state that violate its own public policy.[33]

In determining whether a law of another state would be enforceable in California, the court would analyze whether the law of the other state is contrary to a fundamental policy of California and would then determine whether California has a "materially greater interest" than the other state in adjudicating the issue.[34]

This exact issue was addressed by the Bankruptcy Court in *In Re Huber*.[35] Huber, a resident of Washington State established an Alaska trust and appointed an Alaska trustee. Following the federal choice of law rules (which rely on the *Restatement (Second) of Conflict of Laws*), the bankruptcy court noted that Huber's choice of Alaska law should be upheld if Alaska had a substantial relation to the trust.[36] Substantial relationship exists between a state and a trust if at the time the trust is created: 1) the trustee or settlor is domiciled in the state, 2) the assets are located in the state, or 3) the beneficiaries are domiciled in the state.[37]

The only relationship that Huber's trust

had to Alaska was the governing law designation and one of the trustees was in Alaska. The court concluded that Alaska had minimal relationship to the trust while Washington had a substantial relationship.[38] Once the court determined that Washington had a substantial relationship to the trust, it could examine Washington's public policy with respect to self-settled trusts. Finding that Washington had a strong anti-self-settled asset protection trust policy, the bankruptcy court went on to apply Washington law to the trust.

When a trust owns real property, the situs of the property determines the governing law.[39] This problem may be remedied to some extent by having a DAPT own real estate through a limited liability company or a limited partnership organized under the laws of the DAPT jurisdiction. This way the trust no longer owns California (or other non-DAPT) realty but owns an intangible governed by the laws of the DAPT jurisdiction.[40]

The Full Faith and Credit Clause of the Constitution provides that each state must give full faith and credit to the laws of every other state.[41] This means that if a California court refuses to recognize the protection of a DAPT and enters a judgment for the creditor, the creditor may be able to enforce the judgment against the trustee of the DAPT, even if that trustee is in the DAPT jurisdiction.

However, even under the Full Faith and Credit clause the states are not required to recognize the laws of sister states that are contrary to their own public policy.[42] Consequently, a DAPT jurisdiction court may refuse to enforce a California judgment because it was entered under trust laws substantially different from those of the DAPT jurisdiction.

At this point the analysis becomes quite circular. A creditor argues in California court that the court should apply California law and not Alaska law to an Alaska trust because Alaska trust law violates California public policy against self-settled trusts. In turn, Alaska refuses to recognize the California judgment because it violates Alaska public policy in protecting self-settled trusts.

Pursuing the self-settled trust route has another downside. If the debtor seeks bankruptcy protection, or is forced into an involuntary bankruptcy, a transfer of assets into a self-settled trust is subject to a 10-year look back.[43]

Why would a California resident, or a resident of any other non-DAPT state seek to establish a self-settled trust? The answer lies with the settlor's desire to retain control. It is a tall order to ask a client to transfer assets to an irrevocable trust for the benefit of a third party, even if that third party is a child of the client. If the settlor-client is also the beneficiary of the irrevocable trust, then while the client cannot revoke the transfer of assets, the trustee can distribute only to the client.

Perhaps with a traditional irrevocable trust this was a necessary patch. Today, there are alternative mechanisms to allow the settlor to retain control, without using a self-settled trust. These include preserving the powers to revoke, terminate, amend, replace a trustee or a beneficiary, and others. These powers are conferred on a third party commonly referred to as a trust protector. To prevent the attribution of the protector's powers to the settlor, the trust must be carefully drafted to avoid the creation of a principal-agent relationship between the settlor and the protector. The settlor should also refrain from exercising any control over the trust in practice or using trust assets for his or her own benefit.[44]

What then is the meaning of retaining control if it cannot be exercised? Timing is key. Settlors should not exercise control while they need the asset protection features of the trust but can exercise control (or have it exercised on their behalf in the protector's discretion) once the asset protection need has passed.

A trust is called "discretionary" when the trustee has discretion (as to the timing, amount, and the identity of the beneficiary) in making distributions.[45] There must not be any trust provisions that mandate a distribution, but there may be provisions that set standards for distributions.[46] Because the trustee is not required to make any distribution to any specific beneficiary, or may choose when and how much to distribute, a beneficiary of a discretionary trust may have such a tenuous interest in the trust so as not to constitute a property right at all. If the beneficiary has no property right, but a mere expectancy, there is nothing for a creditor to pursue. The statutes follow this line of reasoning by providing that a trustee cannot be compelled to pay a beneficiary's creditor if the trustee has discretion in making distributions of income and principal.[47]

When drafting a trust that allows the trustee to exercise discretion and limiting such discretion with a standard (including an ascertainable standard), the discretion clause should be carefully worded. Practitioners should always favor using permissive phrases such as "trustee may pay to the beneficiary" instead of mandatory phrases such as "trustee shall pay to the beneficiary." In *U.S. v. Taylor*,[48] the trust provided that the trustee "shall pay" to the beneficiary so much of the income from the trust as the trustee deemed necessary for the support of the beneficiary. The court interpreted that language to mean that the trustee was mandated to make distributions, and the trustee's discretion was limited only to determining the amount "necessary."[49]

If the trustee of a self-settled trust has any discretion in making distributions, the creditors of the settlor may reach the maximum amount that the trustee may distribute in his discretion to the settlor-beneficiary.[50] This is another reason to avoid the use of self-settled trusts.

When asset protection trusts are set up in California, as DAPTs, or offshore, they should not be self-settled, and should confer on the trustee the maximum possible discretion as to distributions.

Trusts serve as a protective mechanism because they restrict a beneficiary's (or settlor's) access to the assets of the trust and therefore, and to the same extent, restrict a creditor's access to the assets of the trust.

Limited Liability Company

An irrevocable trust can be used to protect any asset from creditor claims, but it should not be used for every asset. Because a third party will be the beneficiary of a trust, if the settlor places cash-flowing assets into the trust, the cash flow can be distributed only to the beneficiaries. If the settlor needs access to the cash flow, a limited liability company (LLC) or a limited partnership (LP) should be used. Further, if an asset is otherwise protected by a state law exemption, transferring ownership to an irrevocable trust would cause the settlor to lose the exemption.[51]

Trusts serve as a protective mechanism because they restrict a beneficiary's (or set-

tlor's) access to the assets of the trust and therefore, and to the same extent, restrict a creditor's access to the assets of the trust. By contrast, LLCs and LPs completely restrict a creditor's ability to access the assets of the entity, because assets owned by the entity are not owned by its members or partners.[52]

A receiver may be appointed to effectuate the collection of distributions,[53] and if it can be shown that the creditor will not be paid through distributions within a reasonable time, then the transferable interest may be foreclosed.[54] The foreclosure of the transferable interest may do the creditor more harm than good, because once foreclosed the creditor owns the transferable interest for income tax purposes and is allocated taxable income without receiving a corresponding distribution of cash.[55]

A significant asset protection benefit of LLCs and LPs is attributable to the so-called charging order limitation, which provides that a lien on a member's or partner's transferable interest[56] is the sole remedy of a creditor.[57] The lien requires the legal entity to pay over to the creditor any distribution that would otherwise be paid to the judgment debtor. In practice, the effectiveness of the charging order lien (and a possible foreclosure) depends on several factors. If the debtor is a member /partner in a large legal entity (like a hedge fund), then the lien of the distributions will be effective and easier to enforce. If the debtor is in control of the legal entity and can forgo distributions, then the charging order or even a foreclosure of the interest may be toothless remedies in most cases.

California law allows a written operating agreement to override the default statutory provisions (with some exceptions),[58] and a well-drafted LLC agreement can further enhance the asset protection benefits of the charging order limitation and potentially negate the creditor's ability to foreclose. For example, the agreement may incorporate several different forms and variations of a "poison pill," not only allowing the other partners to buy out the debtor-partner's interest for a nominal amount on the occurrence of a triggering event, but also "poisoning" the creditor's ability to exercise its economic interest and to foreclose on an interest. Similarly, the agreement can preclude the assignability of membership or partnership interests, which speaks to the creditor's ability to charge the "transferable" interest.

Neither an irrevocable trust nor an LLC makes assets unreachable. It is important to keep in mind that the objective of asset protection planning is to frustrate the creditor by pursuing the most protective option available, within the boundaries selected by the client. Thus, reviewing applicable statutes and case law is merely the beginning of the asset protection inquiry. A significant dose of practical reality is a necessary consideration. Just because a creditor can challenge a structure on substantive grounds or a transfer of assets as a voidable conveyance does not mean the creditor will. Even if challenged, a court may rule in the debtor's favor, and even when the court rules in the creditor's favor, the traditional remedy is to recover the transferred asset. Many debtors are willing to play the odds and take their chances. They are often successful, because so few structures and transfers are challenged.

If the debtor decides to act, then selecting the correct structure is key. There is no silver bullet asset protection structure. Different types of assets and different circumstances call for different solutions. Often there is a tug of war between the debtor and the debtor's counsel. Debtors want to protect their assets and retain control. Counsel should prioritize protecting assets, without running afoul of the voidable conveyance laws and applicable ethical rules. ■

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1 Dean Starkman et al., *Frequently asked questions about the Pandora Papers and ICIJ*, Int'l Consortium of Investigative Journalists (Oct. 19, 2021), https://www.icij.org/investigations/pandora-papers/frequently-asked-questions-about-the-pandora-papers-and-icij/

2 Code Civ. Proc. §708.110(a).

3 *See* Fam. Code §850; Jacob Stein, *McCourt Divorce Shines a Light on Asset Protection*, L.A. Daily J., Sept. 10, 2010.

4 11 U.S.C. §541.

5 Civ. Code §3439.04(a)(1).

6 Civ. Code §3439.04(a)(2).

7 Civ. Code §3439.05(a).

8 Collier on Bankruptcy (15th ed. 1993).

9 Civ. Code §3439.01(a)(1). Mehrtash v. ATA Mehrtash, 93 Cal. App. 4th 75 (2001) (the transfer of real property subject to encumbrances, including judgment liens, could not be set aside as a fraudulent transfer, as the creditor could not show how she was injured).

10 Civ. Code §3439.01(a)(2); Reddy v. Gonzalez, 8 Cal. App. 4th 118, 122 (1992) (homestead property not subject to fraudulent transfer laws).

11 Civ. Code §3439.04(b).

12 In re BFP, 511 U. S. 531, 545 (1994).

13 Civ. Code §3439.09(a)-(b).

14 Civ. Code §3439.09(a)

15 Civ. Code §3439.09(c).

16 Cortez v. Vogt, 52 Cal. App. 4th 917 (1997).

17 Civ. Code §3439.07(a).

18 Code Civ. Proc. §695.010(a).

19 *Id.*

20 Prob. Code §18200.

21 Prob. Code §18200; DiMaria v. Bank of Cal., 37 Cal. App. 2d 254, 258-259, 46 (1965); Laycock v. Hammer, 141 Cal. App. 4th 25 (2006).

22 County Nat'l Bank etc. Co. v. Sheppard, 136 Cal. App. 2d 205 (1955); 11 Witkin, Summary of Cal. Law (9th ed. 1990) Trusts, §165; Restatement of the Law (Second) of Trusts §152(2) .

23 Code Civ. Proc. §695.030(a); Prob. Code §§15300, 5301(a); Matter of Moody, 837 F. 2d 719 (5th Cir. 1988), applying (Bankruptcy) 11 U.S.C. §541(c)(2).

24 Prob. Code §§15300, 15301(a), 15306.5(c); Frazier v. Wasserman, 263 Cal. App. 2d 120, 127 (1968).

25 Prob. Code §15301(b).

26 Prob. Code §15304(a); Restatement of the Law (Second) of Trusts §156(1).

27 237 Cal. App. 2d 254 (1965).

28 *Id.* at 258.

29 Ala. Code §34.40.110.

30 In addition to Alaska, Delaware, Hawaii, Michigan, Mississippi, Missouri, Nevada, New Hampshire, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Virginia, West Virginia, and Wyoming.

31 Del. Code Ann. tit. 12, §§3570(8), (11).

32 Prob. Code §17005(c); Restatement of the Law (Second) of Conference of Laws §§270, 272; Uniform Trust Code §107(1): "The meaning and effect of the terms of a trust are determined by...the law of the jurisdiction designated in the terms unless the designation of that jurisdiction's law is contrary to a strong public policy of the jurisdiction having the most significant relationship to the matter at issue...."

33 Washington Mut. Bank v. Superior Ct., 24 Cal. 4th 906, 916-917 (2001); Restatement of the Law (Second) of Conference of Laws §187(2); Uniform Trust Code §107(1).

34 Washington Mut. Bank at 916.

35 In Re Huber, 493 B.R. 798 (2013).

36 Id. at 807.

37 Restatement of the Law (Second) of Conference of Laws §270, cmt. b.

38 Id. at 809.

39 Restatement of the Law (Second) of Laws §§277-280.

40 Corp. Code §§15691, 17450(a).

41 U.S. Const. art. IV, §1.

42 Nevada v. Hall, 440 U.S. 410, 424 (1978).

43 11 U.S.C. §548(e)(1).

44 In re Krause, 386 B.R. 785 (Kan. 2008). The bankruptcy court held that irrevocable trusts were the nominees of the settlor-debtor due to a substantial record of the debtor using and controlling the trusts for himself.

45 11 Witkin, Summary of Cal. Law §166 (9th ed. 1990).

46 Prob. Code §15303(c).

47 Prob. Code §15303(a).

48 U.S. v. Taylor, 254 F. Supp. 752 (N.D. Cal. 1966).

49 *Id.* at 755.

50 Prob. Code §15304(b).

51 In re Barnes, 275 B.R. 889, 895-896 (Cal. App. 2002) (Settlor was not the owner of the assets of an irrevocable trust and hence trust assets were not protected by exemptions available to settlor.).

52 *See, e.g.*, Del. Code Ann. tit. 18, §701, Corp. Code §15907.03(f).

53 Corp. Code §17705.03(b)(1).

54 Corp. Code §17705.03(b)(3).

55 *See* Rev. Rul. 77-137, 1977-1 C.B. 178; 26 U.S.C. 704(b).

56 Transferable interest is defined in the California Uniform Limited Partnership Act of 2008 and the California Revised Uniform Limited Liability Company Act as the right to receive distributions and does not include the right to vote. Corp. Code §§15901.02(ak), 15907.02(a)(3), 17701.02(aa), 17705.02(a)(3)(A). The transferable interest was referred to as the "economic interest" in the older versions of two Acts.

57 *See, e.g.*, Corp. Code §17705.03(a).

58 Corp. Code §17701.10(d).