

## Wealth Preservation Trusts

There has been an explosion of interest over the past ten years in trusts designed to protect assets from the assaults of plaintiffs and their lawyers. These trusts are often called “asset protection trusts” (we prefer the name “Wealth Preservation Trust”). Wealth Preservation Trusts are a relatively novel concept in the United States, where the law has generally been that a person can't elude creditors by putting his or her money into a trust of which he or she remains a beneficiary. By contrast, trusts with an objective of protecting against creditors and unstable or hostile regimes have long been used by wealthy individuals in the United Kingdom and Europe.

### What is a Wealth Preservation Trust?

A Wealth Preservation Trust (“WPT”), is any trust created by an individual (the “creator”), either in his or her home state, or in another state or an offshore (non-US) place with an objective, among others, of providing protection for the assets in the trust from creditors of the creator. A WPT generally can't be revoked by the creator acting on his or her own, at least for a certain number of years, and may or may not make payments to or for the benefit of the creator until it terminates. Only a few states, most notably Delaware, have laws permitting a WPT, while numerous offshore jurisdictions have laws that permit or encourage WPTs. In general, the more control over and access to the assets in the WPT that the creator gives up, the more difficult the WPT will be for creditors of the creator to reach.

It is important to realize that a WPT, whether formed in the US or offshore, normally has no income tax or other tax advantage for a US citizen who creates the trust.

### Who is a candidate for a Wealth Preservation Trust?

The most appropriate candidates are physicians,

other professionals and businessmen who fear that their wealth will be taken from them by a plaintiff who brings a lawsuit based on something that occurs in the future. Generally, if the event that is the basis of the lawsuit occurred before the creation of the trust, there will be a question whether the trust is valid against plaintiffs suing based on that event under laws that prohibit transfers in fraud of creditors. So, if a client has already been sued or is already aware of a claim or potential claim against him or her, it is probably too late to create a WPT that will protect assets from that creditor. Most fundamentally, the creator of a WPT must be willing to give up control over the assets in the WPT at least for a substantial period of time.

### What are the options – Delaware and offshore?

Delaware is one of a handful of U.S. jurisdictions that has passed laws permitting wealth preservation trusts in the past six years. While Delaware WPTs are quite new and untested by litigation, most commentators seem to believe they will work, if properly conceived, established and administered. As noted above, various non-US jurisdictions have laws permitting or encouraging the creation of similar trusts. These laws often include procedural obstacles for creditors seeking to attack the trust. US citizens have created WPTs in various offshore jurisdictions and this has resulted in significant litigation in a number of instances, particularly when the trust was not carefully and prudently created and administered.

### Summary

Wealth Preservation Trusts can be a useful tool, in carefully selected instances, to protect some of an individual's wealth from his or her creditors who appear after the creation of the trust.

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