By Christopher M. Reimer

Asset Protection: Then and Now

A variety of legitimate tools have emerged to protect family and individual wealth from creditors

The field of asset protection is often stigmatized. The phrase may inspire thoughts of "deadbeats, scam artists, and tax evaders."[1] However, the concept has become common and refers to nothing more than the process of an individual or family arranging assets to preserve as much value as possible in the event of a future creditor attack. Asset protection has "gone mainstream" and estate planners now urge professionals of all types to consider planning for the risk of future liability. This risk has increased as American society has grown more litigious. In reality, asset protection has a long provenance and many states have sanctioned a variety of legitimate tools—including exemptions, business entities and protective trusts—for protecting family and individual wealth from the creditors that threaten it.

Fraudulent Transfers

In 1918, the National Conference of Commissioners on Uniform State Laws (NCCUSL) drafted the Uniform Fraudulent Conveyance Act (UFCA) and recommended its adoption by state legislatures. In 1984, the NCCUSL adopted a revised version of the UFCA to be called the Uniform Fraudulent Transfer Act (UFTA).[2] Forty-four states and the District of Columbia have enacted some form of the UFTA or the UFCA[3] and similar statutes and principles exist in most common law jurisdictions.[4]

UFTA divides creditors into two categories: those existing at the time of the transfer (present creditors) and those that don't (future creditors). For modern estate planners, the primary inquiry when analyzing a possible application of the UFCA or the UFTA is whether an estate planning technique was undertaken with an actual intent to hinder, delay or defraud one or more creditors. Even if there's no proof of actual fraudulent intent, a transfer may be deemed constructively fraudulent if it wasn't made in exchange for reasonably equivalent value and the transferor was either about to take on debts beyond his ability to pay or planning a venture with insufficient capital. Intent can be determined from circumstantial evidence, such as the 11 badges of fraud designated by the UFTA. If a creditor shows the existence of a fraudulent transfer, the transfer can be avoided to the extent necessary to satisfy the creditor's claim. This can diminish the effectiveness of any asset protection vehicle, whether it's a trust or a business entity. While limitations periods may vary in individual states, creditors typically must bring claims to set aside fraudulent transfers within four years after a transfer, within one year after a claim could have reasonably been discovered or within one year after the transfer was made, depending on the type of transfer and creditor.[5]

A small number of offshore "haven" jurisdictions offer narrower interpretations of fraudulent transfer law. For example, the Cook Islands places the burden on creditors to prove beyond a reasonable doubt that a settlor transferred property to an international trust with fraudulent intent and that the transfer rendered the settlor insolvent.[6] In addition, such statutes may provide that bankruptcy won't void a transfer, that creditors may only satisfy claims against the property that's the subject of the suit and that transfers aren't fraudulent against future creditors. Finally, such statutes may eliminate consideration of certain badges of fraud and provide for shorter limitations periods in which creditors may bring fraudulent transfer claims. For many years, such features (in combination with innovative asset protection vehicles like self-settled

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spendthrift trusts) have made offshore jurisdictions attractive to high-net-worth clients seeking to preserve their estates.

FLPs AND LLCs

The corporate form has long provided some degree of liability protection to shareholders and directors. However, a corporation is of limited use as an asset protection vehicle because it only protects individuals from liability for the corporation's activities (rather than directly shielding the assets owned by the corporation) and can have its veil of limited liability pierced under many circumstances. Family limited partnerships (FLPs) and limited liability companies (LLCs) provided superior asset protection by allowing property owned by an organization to obtain protection, regardless of the source of a creditor's claim.

Traditionally, creditors have one way to satisfy a judgment against a debtor out of that debtor's interest in a partnership: the charging order. The charging order emerged as a means of balancing the interests of creditors against the rights of innocent partners.[7] It was thought unjust to impede the rights of innocent partners by allowing their debtor-partners' creditors to disrupt and liquidate their partnerships. It was also thought that an innocent partner shouldn't be forced to accept a creditor as a new partner. Consequently, creditors of individual partners (as opposed to the partnership itself) were only entitled to a charging order, which allowed the creditor to satisfy judgments from profit distributions and liquidating distributions to the debtor-partner, not from partnership property.[8] Creditors aren't generally entitled to obtain the debtor-partner's management rights without the consent of the other partners. This makes the charging order an unattractive remedy to many creditors because the creditor can't compel distributions.[9] This may allow a partnership to withhold distributions to the debtor-partner until the parties can agree to a favorable settlement. The NCCUSL provided the charging order as the sole remedy against both partnerships and limited partnerships and many state statutes have followed suit.

FLPs are limited partnerships among family members. They allow families to hold family wealth in a form that provides heightened protection from individual family members' creditors. In addition to the benefits of charging order protection, an FLP will bar a creditor from gaining control over a family member's partnership interests and will enable various kinds of discounts that can reduce the value of FLP owned property.

In 1977, Wyoming became the first state to recognize the creation of LLCs.[10] LLCs provided many of the same asset protection advantages as FLPs, including the charging order as a creditor's sole remedy.[11] In addition, many states permit LLCs with only a single member, LLCs don't require general partners, and members may manage LLCs without risking limited liability status. There has been some controversy as to whether the charging order should be the sole remedy against a single-member LLC, largely because the policy justifications for that rule don't apply as strongly when there are no innocent members to protect. Consequently, some courts have held that the charging order isn't the sole remedy against a member's interest in a single-member LLC.[12] In *In re Albright*, a bankruptcy court allowed a Chapter 7 trustee to step into the shoes of a member of a single-member Colorado LLC and to sell the company's real property and distribute the proceeds to the bankruptcy estate.[13] The *Albright* line of cases may bring the effectiveness of an LLC as an asset protection tool for single individuals into question. Many commentators have criticized such decisions, arguing that they strain the meaning of state LLC statutes.[14] In addition, some states have amended their statutes to clarify that a charging order is a creditor's sole remedy against an

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LLC, regardless of how many members it has.[15] After its amendment in 2010, Wyoming's statute provides:

> [The charging order] provides the exclusive remedy by which a person seeking to enforce a judgment against a judgment debtor, including any judgment debtor who may be ***the sole member***, dissociated member or transferee, may, in the capacity of the judgment creditor, satisfy the judgment from the judgment debtor's transferable interest or from the assets of the limited liability company. Other remedies, including foreclosure on the judgment debtor's limited liability interest and a court order for directions, accounts and inquiries that the judgment debtor might have made are not available to the judgment creditor attempting to satisfy a judgment out of the judgment debtor's interest in the limited liability company and may not be ordered by the court (emphasis added).[16]

LLCs formed in jurisdictions that have adopted such statutes provide at least as much, if not more, asset protection than FLPs, even if they only have a single member. Creditors don't have the right to judicial foreclosure, broad charging orders affecting management of the entity and account management are prohibited and the possibility of reverse veil piercing is minimized.

Protective Trusts

Spendthrift trusts. Individuals have used trusts and trust predecessors to protect their wealth for a very long time. English courts developed the early common law of trusts, which was subsequently imported to the United States.[17]

A spendthrift trust protects assets by placing control of them beyond the reach of both the beneficiary and his creditors. It does so by preventing the beneficiary from alienating the right to distributions and preventing creditors from attaching the beneficiary's interest in a trust. The common law and the vast majority of states recognize the legitimacy of spendthrift trusts.[18] Spendthrift provisions are typically subject to limits. For instance, a spendthrift trust may be ineffective in preventing attachment by a beneficiary's spouse, former spouse or child who has obtained a judgment or court order for support or maintenance.[19] Spendthrift protection may also be ineffective against government claims.[20]

One of the most important limitations on spendthrift trusts is the traditional U.S. rule that a settlor can't create a spendthrift trust for his own benefit.[21] If the settlor retains any beneficial interest in the trust, the spendthrift provision will be void with respect to that interest against both present and future creditors.[22] According to Professor Austin W. Scott, the rationale for this rule is that, "[i]t is against public policy to permit a man to tie up his own property in such a way that he can still enjoy it but can prevent his creditors from reaching it."[23] At least one commentator, Professor Robert T. Danforth, has criticized this rule, arguing that it's based on a misreading of the common law of trusts and fiduciary relations.[24] Nonetheless, other than the 12 states that have enacted some form of a modern domestic asset protection trust statute, U.S. jurisdictions don't allow a spendthrift clause to protect self-settled trust interests from creditors.

Offshore asset protection trusts. The creditor friendly trust laws of many U.S. jurisdictions, such as the rule against self-settled spendthrift trusts, created an opportunity for offshore jurisdictions. In the early 1980s, after the commercial real estate market collapsed, a Denver attorney named Barry Engel assisted the Cook Islands in drafting the first asset protection trust statute. The International Trusts Act of 1984 authorized the creation of international trusts, which, among other things, can provide spendthrift protection to a beneficial interest retained by a settlor.[25] Other offshore common law jurisdictions followed suit, creating a variety of foreign locales where U.S. settlors may consider settling trusts for asset protection purposes.[26] Since the law of the jurisdiction in which a trust is primarily administered will typically determine the validity of a spendthrift provision, there's a large incentive for U.S. citizens to create or resettle trusts in offshore asset protection jurisdictions. Other possible advantages of offshore asset protection trusts include practical and psychological barriers to creditor claims, the lack of full faith and credit or comity towards U.S. judgments, a smaller array of local professionals for creditors to take advantage of, higher creditor expenses and generally settlor friendly laws. Asset protection trust jurisdictions aren't uniform, and a settlor should scrutinize a wide range of factors, including the trust legislation itself, the availability of local professionals, economic and political stability and practical considerations before deciding where to locate an offshore trust.

Offshore asset protection trusts pose several

difficulties for U.S. settlors. The recently enacted Federal Account Tax Compliance Act imposes increased tax penalties and reporting requirements on foreign trusts with U.S. beneficiaries.[27]

Foreign trusts can also be very complicated and expensive to set up, a problem that's compounded by the typical requirement that the trust obtain a local trustee. An onshore asset protection trust is typically half the cost of its offshore counterpart. The degree of asset protection offered by an offshore jurisdiction is often inversely proportional to the degree of control that the settlor can retain over assets, something that many settlors may find disconcerting, especially if they don't have friends, family or acquaintances in the offshore jurisdiction. Offshore trusts carry the inherent risk of political and economic upheaval, unenforceable trust terms and unaccountable trustees.

Settlors of offshore trusts also face the risk of challenges from an often hostile U.S. government. Investigation of offshore locations has increased since Sept. 11, 2001. U.S. courts have also found creative ways to indirectly exercise jurisdiction over offshore assets. For instance, a court may be able to exercise jurisdiction if the settlor makes the mistake of establishing a foreign trust that has a custodial arrangement with a foreign branch of a U.S. bank. One court has included the value of a Cook Islands trust in a settlor's marital estate.[28]

Courts also have the considerable power to hold settlors of offshore trusts in contempt for failure to repatriate offshore assets.[29] In the notorious *Anderson* case, a federal district court temporarily incarcerated the settlor of a Cook Islands trust following a judgment related to a Ponzi scheme because the settlor failed to repatriate foreign trust assets.[30] While settlors may draft offshore trusts to make repatriation impossible, courts will likely be very skeptical of such self-created impossibility.

Domestic asset protection trusts. In 1997, the Alaska state legislature enacted the first modern U.S. statute authorizing the creation of self-settled spendthrift trusts (also known as domestic asset protection trusts and qualified spendthrift trusts).[31] Twelve states now recognize self-settled spendthrift trusts.[32] While such statutes vary, they typically require that a trust be irrevocable,[33] although some types of control won't cause a trust to lose its irrevocable status. Settlors should consider varying characteristics of asset protection trust legislation, including the extent of power that a trustee may retain without causing a trust to be considered revocable, the degree of due diligence required before transferring assets to an asset protection trust, the availability of failsafe provisions, liability protections for attorneys and trustees and whether trust assets will be protected from different types of claims. A creditor may avoid fraudulent transfers to a domestic asset protection trust, although the period within which a creditor may bring a claim depends on the state.[34] Settlors and attorneys should carefully consider the advantages and disadvantages of different states' statutes along with other factors—including state income and excise tax exposure and applicable rule against perpetuities (RAP) periods—before deciding where to locate a domestic asset protection trust.

Some argue that courts may not be required to enforce other state courts' judgments against self-settled spendthrift trust assets.

Domestic asset protection trusts also pose difficulties. The foremost problem is the possibility that a court in a state that recognizes such trusts will give full faith and credit to a judgment from a court in a state that doesn't recognize such trusts. The U.S. Constitution provides that, "Full Faith and Credit shall be given in each State to ... judicial Proceedings of every other State."[35] Many commentators believe that domestic asset protection trusts are susceptible to creditor attachment if courts are required to give full faith and credit to judgments obtained in states that don't recognize the trusts' spendthrift provisions.[36] Some commentators disagree and argue that courts may not be required to enforce other state courts' judgments against self-settled spendthrift trust assets.[37] Courts located outside a trust's situs may lack personal jurisdiction if the trustee doesn't have the requisite minimum contacts with the state where the judgment is rendered. A court may also avoid granting full faith and credit if it finds that it has primary supervision over a trust's administration. This exception

is somewhat narrow and may only apply if the "dignity and fundamental interests" of an individual state are in question.[38] Finally, states may be able to sidestep the problem by applying their statutes of limitation, which are procedural and not generally entitled to full faith and credit.[39]

Domestic asset protection trusts face other arguable problems from the U.S. Constitution. The contract clause states that, "No State shall ... pass any ... law impairing the obligation of contracts."[40] Some commentators argue that state recognition of self-settled spendthrift trusts violates this provision because such statutes impair contractual obligations.[41] However, this argument may be tenuous, since the clause is generally not applied to prohibit the prospective modification of contracts. The supremacy clause may also impede domestic asset protection trusts, since it prohibits states from protecting debtors from federal laws, such as bankruptcy proceedings. Unfortunately, no court has yet determined the constitutionality of a domestic asset protection trust. While offshore asset protection trusts have one major advantage over their domestic counterparts (no full faith and credit or comity), domestic trusts have some advantages. They're much less expensive and less complicated to create and administer. Settlors may be more comfortable with the familiarity, control and proximity that they may have with respect to onshore fiduciaries. The United States has extremely strong and stable economic and political structures and institutions relative to offshore jurisdictions, where asset protection structures are often implemented. Onshore jurisdictions offer economies of scale that can keep costs down and a wide variety of professionals and financial services. Onshore judiciaries also have expertise in trust law and often have excellent reputations for the efficient management of equitable matters. Finally, domestic asset protection trusts may mitigate the perception of fraudulent intent and are much less likely to anger a court than a trust administered in a jurisdiction that has received a reputation (whether deserved or not) as a haven for tax evasion and fraud.

Discretionary trusts. Regardless of a spendthrift clause, a trust may offer asset protection by providing that the trustee has absolute discretion to make distributions of income or principal to a beneficiary without reference to an ascertainable standard. Since the beneficiary lacks a property interest in the trust, a creditor can't stand in the beneficiary's shoes and attach trust distributions. This protection is nearly complete, although it requires that the beneficiary be subject to the trustee's will. Despite the widespread availability of discretionary trust protection, not all states are equal. Settlors should evaluate whether a state's law clearly defines "discretionary" and "discretionary trust" to ensure that protection will be available.[42]

Some states may also provide limited creditor protection to mandatory trusts. The trustee of such a trust must make distributions according to the terms of the trust agreement, creating a property right that a creditor may attach. However, some state laws provide that a creditor has no right to distributions until the beneficiary receives them.[43] Creditors may be unable to bring a lawsuit to force a trustee to make a distribution or compel the beneficiary to bring a lawsuit, allowing the trustee to withhold distributions and wait out the dispute between the beneficiary and his creditor before making distributions.

Dynasty trusts. The common law RAP may sharply limit the utility of trusts as asset protection vehicles. Under the common law RAP, a property interest is void unless it must vest no later than 21 years (plus a reasonable period of gestation) after some life in being at the time that the interest is created.[44] The RAP has long limited the maximum possible duration of trusts, requiring that they eventually terminate, at which point their ability to shield assets from creditors and transfer taxes must come to an end. Over time, most U.S. jurisdictions have chipped away at the rule in various ways. Some states, including Delaware, Idaho, South Dakota and Wisconsin, now allow for perpetual trusts. Other states don't permit perpetual trusts, but allow trusts that exist for very long time periods. For example, Utah and Wyoming permit 1,000-year trusts. This creates the possibility of so-called "dynasty trusts," which can exist outside of transfer tax regimes and provide asset protection for countless generations.

Perpetual and near-perpetual trusts aren't without their complications. Settlors in states that have abolished the RAP but haven't adopted a rule against the suspension of the power of alienation risk falling into the "Delaware tax trap," which means that the value of a trust's principal will be included in the settlor's taxable

estate because there's no time limit within which the trust interests must vest.[45] Most perpetual trust states, including Delaware, have amended their statutes to avoid application of the Delaware tax trap. However, commentators continue to disagree as to which state statutes avoid the problem. Dynasty trusts have been subject to a range of other critical analyses on practical, economic and political grounds. Nonetheless, it's likely that they remain powerful components of a long-term asset protection plan.

Ethics and Criminal Liability

As a matter of public policy, asset protection has always proven highly contentious. Large sums of money are at stake, and attorneys and financial planners need to be careful about counseling fraudulent or criminal activity, such as money laundering. For instance, an attorney may be liable for participating in a scheme in which he knows that funds have been derived from unlawful activity and intends to further the scheme or conceal the true nature of the assets.[46] In addition, it's a crime to conceal or transfer property in the context of a bankruptcy, subjecting an attorney to possible criminal[47] and disciplinary sanctions.[48] It's also generally a crime to violate state laws against fraud. Finally, an attorney who assists a client in concealing assets from the Internal Revenue Service may be subject to federal criminal liability.[49]

Regardless of the asset protection vehicle, attorneys should be careful to engage in pre-planning investigation of potential clients, including financial conditions, present or threatened claims, solvency and possible criminal activity. This has caused scholars, attorneys and policymakers to criticize asset protection for its confluence with fraud. Some commentators characterize interstate competition to develop the most debtor friendly asset protection laws as a race to the bottom.[50]

Despite the dim views of asset protection assets held by individuals in some quarters, it's likely an inevitable facet of estate planning. An attorney or financial planner may be doing a disservice to a client by failing to suggest legally recognized asset protection tools to protect a client from future creditor claims. Business owners and professionals operating in the 21st century face heightened risk of liability, whether from tort and contract litigants or expanding regimes of regulatory strict liability. Individuals may also seek to maintain control over family wealth and business interests in the wake of federal transfer taxes and possible litigation between future heirs. All U.S. jurisdictions recognize the validity of some form of asset protection as a matter of public policy. At the very least, estate planning attorneys' ethical obligations to zealously represent their clients suggest that attorneys engage in due diligence regarding possible asset protection tools or exclude the topic of asset protection from the scope of the attorney-client relationship entirely. All clients arguably require some degree of asset protection. The question is what form that protection should take in light of the client's goals, assets and potential liabilities and the available legal tools. While some individuals may be satisfied with traditional estate planning documents and statutory exemptions, others may require more complex vehicles, whether in the form of a basic will-trust combination or a complicated offshore structure involving multiple entities and asset protection trusts in the Bahamas. Due diligence and client investigation should allow an attorney to adhere to his profe TE sional duty to provide adequate representation while not enabling criminal or fraudulent conduct.

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Endnotes

1. Deborah L. Jacobs, "Going Under Cover," *Bloomberg Wealth Manager*, March 2005, at p. 85.
2. Uniform Fraudulent Transfer Act (UFTA) (1984).
3. Legislative Fact Sheet, UFTA, Uniform Law Commission, available at *www.nccusl.org/LegislativeFactSheet.aspx?title=Fraudulent%20Transfer%20Act.*
4. 11 United States Code Section 548(a).
5. UFTA Sections 4, 5, 7(a)(1) and 9, cmt. 1.
6. Cook Island International Trusts Act of 1984.
7. *Bank of Bethesda v. Kotch*, 408 A.2d 767, 770 (Md. 1979) ("A ... charging order is nothing more than a legislative means of providing a creditor some means of getting at a debtor's ill-defined interest in a statutory bastard, sir named 'partnership,' but corporately protecting participants by limiting their liability as are corporate shareholders ... ").
8. *City of Arkansas City v. Anderson*, 752 P.2d 673, 681-83 (Kan. 1988) (discussing the history and policy of the charging order in the context of English and

American partnership law).
9. Christopher M. Reimer, "The Undiscovered Country: Wyoming's Emergence as a Leading Trust Situs Jurisdiction," 11 *Wyo. L. Rev.* 165, 198 (2011).
10. Larry E. Ribstein and Robert R. Keatinge, *Ribstein and Keatinge on Limited Liability Companies 1–7* (2d ed. 2004); *see also* Wyoming Statutes Annotated Section 17-15-101 to 147 (1977) (repealed and superseded 2010).
11. *See* Revised Uniform Limited Liability Company Act, Section 503 (2006).
12. *See Olmstead v. Federal Trade Commission*, 44 So.3d 76, 82–83 (Fla. 2010); *In re Albright*, 291 B.R. 538, 540–541 (Bankr. D. Colo. 2003); *In re Desmond*, 316 B.R. 593, 595-96 (Bankr. D.N.H. 2004); *In re A—Z Electronics, LLC*, 350 B.R. 886, 890-91 (Bankr. D. Idaho 2006); and *In re Modanlo*, No. 05-26549-NVA, 2007 WL 2609470, at *35–37 (Bankr. D. Md. May 19, 2006).
13. *Albright, supra* note 12, at pp. 540–41.
14. *See e.g.*, Larry E. Ribstein, "Reverse Limited Liability and the Design of Business Associations," 30 *Del. J. Corp. L.* 199, 221-24 (2005).
15. *See* Wyo. Stat. Ann. Section 17-29-503(g).
16. *Ibid.*
17. George Gleason Bogert, George Taylor Bogert and Amy Morris Hess, *Bogert's Trusts and Trustees*, Section 2 (2010).
18. *Ibid.*, Section 222; *see also Restatement (Third) of Trusts* Section 58(1); Uniform Trust Code (UTC) Section 502 (2005).
19. UTC Section 503 (b) (1).
20. *Ibid.*, Section 503(b)(3); *Restatement (Third) of Trusts* Section 59, cmt. a(1) ("It is implicit in the rule of this Section, as a statement of the common law, that governmental claimants, and other claimants as well, may reach the interest of a beneficiary of a spendthrift trust to the extent provided by federal law or an applicable state statute").
21. *See, e.g.*, 2A Austin W. Scott and William F. Fratcher, *Scott on Trusts*, Section 156.2 (4th ed. 1987); *Restatement (Third) of Trusts* Section 58(2); UTC Section 502, cmt.
22. *Restatement (Third) of Trusts* Section 58(2), cmt.
23. Scott, *supra* note 21, Section 156.
24. *See* Robert T. Danforth, "Rethinking the Law of Creditors' Rights in Trusts," 53 *Hastings L.J.* 287, 310 (2002).
25. *Supra* note 6.
26. An incomplete list of asset protection jurisdictions includes Anguilla, Bahamas, Belize, Cayman Islands, Gibraltar, Nevis and Turks and Caicos.
27. *See* HIRE Act, Pub. L. No. 111-147, 124 Stat. 71 (2010) (to be codified in scattered sections of 26 U.S.C.).
28. *Riechers v. Riechers*, 2667 A.D.2d 445, 446 (N.Y. App. Div. 2d Dep't 1999).
29. *See FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1238-39 (9th Cir. 1999); *In re Lawrence*, 238 B.R. 498, 500 (Bankr. S.D. Fla. 1999).
30. *FTC v. Affordable Media, LLC, supra* note 29.
31. *See* Alaska Statutes Section 34.40.110.
32. *See* Del. Code Ann. title 12, Sections 3570(11)(a) and (b); Haw. Rev. Stat. Section 554G; Mo. Rev. Stat. Section 456.5-505(3)(2); Nev. Rev. Stat. Section 166.040(1)(b); N.H. Rev. Stat. Ann. Section 564-D:1–18; Okla. Stat. Ann. tit. 31, Sections 10–18; R.I. Gen. Laws Section 18-9.2-2(10); S.D. Codified Laws Sections 55-16-1 to 55-16-17; Tenn. Code Ann. Sections 35-16-101 to -112; Utah Code Ann. Section 25-6-14(1)(a); Wyo. Stat. Sections 4-10-510. Colorado has an old statute that could be interpreted as providing limited asset protection to self-settled trusts, Colo. Rev. Stat. Section 38-10-111, but dicta from the Colorado Supreme Court creates strong doubts as to this interpretation. *See In re Cohen*, 8 P.3d 429, 433 (Colo. 1999) (stating that self-settled spendthrift trusts are invalid).
33. Oklahoma law provides a notable exception and permits technically revocable asset protection trusts. *See* Okla. Stat. title 31, Section 13.
34. Most asset protection trust jurisdictions impose limitations periods derived from UFTA, but some states set shorter periods: Nevada (two years after the transfer or six months after reasonable discovery); South Dakota (three years after transfer or one year after reasonable discovery); and Utah (three years after a proceeding or judgment). *See* Nev. Rev. Stat. Section 166.170(1); S.D. Codified Laws Section 55-16-10; Utah Code Ann. Section 25-6-14(c).
35. U.S. Constitution, Article IV, Section 1.
36. Lynn Foster, "Fifty-One Flowers: Post-Perpetuities War Law and Arkansas's Adoption of USRAP," 29 *U. Ark. Little Rock L. Rev.* 411, 432–33 (2007); John Paul Parks, "Evaluating the Alaska Trust's Ability to Shield Assets from the Claims of Creditors," 35 *AZ Attorney* 28, 29–30 (1998).
37. Richard W. Nenno, *Planning with Domestic Asset-Protection Trusts*, pp. 63–73 (2005).
38. *Restatement (Second) of Conflict of Laws* Section 103, cmts a and b.
39. *See Watkins v. Conway*, 385 U.S. 188, 190–91 (1966) (stating that full faith and credit wouldn't require a state court to honor a judgment where its own statute of limitations on the claim had lapsed); *Matanuska Valley Lines, Inc. v. Molitor*, 365 F.2d 358 (9th Cir. 1965) ("Application of the forum's statute of limitations entails no violation of the full faith and credit clause of the Constitution since such statutes are deemed to affect procedure only").
40. U.S. Constitution, Article I, Section 10, clause 1.
41. Leslie C. Giordani and Duncan E. Osborne, "Will the Alaska Trusts Work?" *Journal of Asset Protection*, September/October 1997, at p. 13; Duncan E. Osborne, Leslie C. Giordani and Arthur T. Catterall, "Asset Protection and Jurisdiction Selection," 33 *University of Miami Philip E. Heckerling Institute on Estate Planning* 14–27 (1999).
42. *See* S.D. Codified Laws Section 55-1-38; Wyo. Stat. Ann. Sections 4-10-103 and 4-10-504.
43. *See* Wyo. Stat. Ann. Sections 4-10-504 and 4-10-508.
44. John Chipman Gray, *The Rule Against Perpetuities* 191 (4th ed. 1942).
45. Jesse Dukeminier and James E. Krier, "The Rise of the Perpetual Trust," 50 *UCLA L. Rev.* 1303, 1333 (2003); *see also* Internal Revenue Code Sections 2514(d) and 2041(a)(3) (2006) (providing that if a power of appointment is created after 1942 and is exercised to create another power of appointment, vesting may not occur "without regard to the date of the creation of the first power").
46. 18 U.S.C. Section 1956 (2006).
47. *Ibid.*, Sections 2 and 152.
48. *See People v. Schwartz*, 814 P.2d 793, 794–95 (ordering disbarment of an attorney convicted of bankruptcy fraud).
49. *See United States v. Wilson*, 118 F.3d 228 (4th Cir. 1997); *U.S. v. Noske*, 117 F.3d 1053 (8th Cir. 1997).
50. J.M.W. Bean, *The Decline of English Feudalism, 1215-1540*, at pp. 132-33, 135, 137 (1968)). The English government used a number of tools to restrict the effectiveness of asset protection vehicles, including the Statute of Uses and the common law Rule Against Perpetuities. *See* 27 Hen 8, ch. 10 (1535) (Eng.).