

The Busy Practitioner's Guide to **Student-edited** Law Journals

Which articles appearing in student-edited law journals should estate planners and wealth advisors be familiar with? We identified six diverse articles from the first half of 2011 that we think could be of great interest to you. We then asked our board members to review them

for your benefit and to determine if they are “must reads.” The articles themselves can be found on our website, www.trustsandestates.com. We hope you enjoy the reviews.

— David H. Lenok, *associate legal editor,*
Trusts & Estates



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AUTHOR: **Christopher M. Reimer**, partner, Long Reimer Winegar Beppler LLP, Jackson, Wyo.

ARTICLE: “**The Undiscovered Country: Wyoming’s Emergence as a Leading Trust Situs Jurisdiction,**” 11 *Wyo. L. Rev.* 165 (2011)

If you find that the issues surrounding and informing trust situs selection are complicated and difficult to keep up with, then Christopher M. Reimer’s article will be a great help. His point isn’t subtle: *Look at Wyoming—we’re the place to be for good trust law.* Happily, along the way he provides a good overview of the issues and considerations and makes a strong case for situsing a trust in Wyoming too.

The article describes the law of Wyoming and other popular trust jurisdictions regarding income tax, asset protection and administrative flexibility; it also delves into Wyoming’s law regarding limited liability companies, family limited partnerships and private trust companies. We learn some interesting tidbits—for example, Wyoming has no income tax and a state constitutional provision makes an income tax impractical to enact—and Reimer provides thoughtful comments about trust protectors, virtual representation and trust privacy. The section on the rule against perpetuities offers as good a discussion of the Delaware tax trap as I’ve ever read. The article also reviews, briefly but in enough detail for the reader to catch the point, how U.S. citizens must report offshore trusts and why, at least in the eyes of many, onshore planning is now much simpler and safer for most clients.

If pressed to mention omissions, two would come to mind. Some states, particularly Delaware, offer significant judicial expertise in trust disputes; what do Wyoming and other states offer? Similarly, two states—

Alaska and Tennessee—offer community property opt-in trusts, which haven’t caught on (yet?) in Wyoming or in the other key competitor states. Why not?

Those who like to think of state competition for trust business as a “race to the bottom” will nod knowingly when they read that Wyoming insulates from the claims of creditors self-settled trusts, even if the settlor retains an inter vivos general power of appointment and that not only can’t a beneficiary’s creditors lay claim to the beneficiary’s discretionary rights, but also they don’t have any rights to compel mandatory distributions (even if the beneficiary is a trustee). Wyoming goes that extra step in other areas. For example, Wyoming will take jurisdiction over a trust automatically upon a Wyoming trustee accepting trusteeship and beginning administration and, if necessary, Wyoming jurisdiction can be confirmed on a retroactive basis.

This article is useful to those thinking about law reform. Many states could benefit from statutes dealing with trust advisors and protectors, virtual representation, domestication of out-of-state trusts, powers of appointment and various administrative provisions. The Uniform Law Commission is working on some of these either through the Uniform Trust Code or as stand-alone statutes (for example, a uniform power of appointment statute is currently being drafted). Practitioners and legislators should give these issues careful attention. Clear and comprehensive legislation needn’t be a race to the bottom.