Cynthia Grether: Okay. I don't see you. Bear with me There's only me. Okay. Oh, but see that doesn't take you in as a, as a host. Okay. So, um, make sure you're logged into your zoom. So go to CLU.zoom.us and then log in with your log in. Okay. Yeah, be sure to end or yeah, yeah, Yeah. (Windows start noise) Okay. That's Okay. So you're not going to see it there. And so yeah, because you're a host, you're not going to see it in yours. You're a host of a meeting that she created and so, but you need to be logged in as you into the system before it's going to recognize it. So then you go back to the, the invite. Yeah. And go to that, the invitation that she sent you and then click on start meetings.

Hratch Karakachian: Okay. I see it now. Let me stop the recording. Okay. Good morning and welcome to the second Financial planning faculty study group. Today's topic is domestic asset protection trusts. And we have a small group today, so hopefully we'll get a lot more interaction and I don't want to talk the whole entire time period, so please, um, let's make this interactive as interactive as possible. I have an agenda here. Hopefully everybody can see my slides. I have a couple of introductory slides. The trusts generally and the intentionally defective grant or trusts. Um. I don't want to insult your intelligence and knowledge by discussing these points. So I just have these as, uh, part of the PowerPoint for a quick review. Well, we have the trust trinity. In a trust there's three parties, the trustor, settlor or grantor, same terminology for, uh, that party. We have the trustee and the beneficiary and there's two types of trusts, the revocable trust and an irrevocable trust. In the revocable trust context, those three individual parties named of, of the trustor, the trustee and the beneficiary are combined into one person, one individual taxpayer, or if it's a family, if it's two spouses, it's consolidate and combined introduce those two spouses. So the trustor, the trustee and the beneficiary is the same person. In the irrevocable trust context is when there's a separation between this trust trinity as I'd like to call it, that there's a trustor, the settlor, the grantor. It's typically one person or a spouse, a family, husband and wife or husband and husband or wife and wife. The trustee is generally another person and the beneficiaries, um are a separate distinct group. This is in the irrevocable trust context. Lot of revoca- revocable trust or a portion of a revoca- revocable trust becomes irrevocable upon the death of the trustor, settlor, grantor, one of the trustor, settlor, grantors. If it's a family trust, that's a spousal trust. Irrevocable trust can be set up during life by an individual by trustor, settlor, grantor and it can be set up as a grant or trust or a non grant or trust. And I'll get into that in just a moment. Any questions, comments on this slide?

Grether: No, we're good. Thank you.

Participant: We're good.

Grether: No pressure

Karakachian: So the next slide is this intentionally defective grant or trust? And what does this do? This trust is set up where it is defective or a broken trust for income tax purposes. In other words, the settlor trustor, sets this trust, generally speaking, speaking

as an irrevocable trust where all of the income and expense items that occur, all of the transactions that occur within the trust are reported by the individual uh trustor on his or her individual income tax return. Now this could be set up in two ways. It could be set up as a purely uh, asset protection trust for asset protection purposes and uh, say it would be defective for both income tax purposes as well as estate and gift tax purposes. That's not why it's typically used. This, the, the IDGT is typically used for it to be defective for income tax purposes where all the income and expense transactions are reported by the trustor uh, but it is set up to be not defective for estate and gift tax purposes. And what it does in that case, it gets the assets out of the trustor's and the trustor's spouse's estate and the bulleted list there are some of the powers that, uh, this trustor must retain for this trust to be defective, i.e. for the income and expense items to be reported by the trustor or the settlor, the party that formed and set up the trust. If the trust, if the trustor does not retain one of these or some of these uh powers listed here, that trust is a, an irrevocable trust that is not defective, it mea-, which means that it is a, it's a separate entity, it's a separate taxpayer and it has to file its own income tax return both for federal and state in states where, uh, that, um, impose an income tax on trusts and it will function as a, um, separate entity and a separate taxpayer. So let's jump in into the, uh, the heart of the subject matter of today that the domestic asset protection trust. So what is this? This is a trust that's set up where the settlor and the grantor and the trustor is a beneficiary of the trust where this party can get benefits from the trust. But the trustee can block creditors from getting access into the trust. There's 17 States and I got this information from Steve Oshin's website and Steve Oshin is an estate planning asset protection attorney based in Las Vegas. Um. He has several charts. One of them is this uh rankings chart that are available on his website at oshins.com There's 17 States that have asset protection statutes on their books, some of them and 33 States that do not. Some of the 17 States are better than others and there's a few fine plush States that are highly recommended for asset protection purposes. The um, if the settlor, trustor is a resident of one of the States, then they can get the benefits of their state statutes and receive substantial asset protection. The key is when an individual tries to take advantage of these statutes and they're not a resident of one of those States. And how does that work? And I'm kind of jumping forward a little bit to kind of introduce our hybrid domestic asset protection trust that we'll get into in just a moment here in a few minutes. So how does the, this dapped protect an individual? And who are we looking for? Uh, who are the clients? There is a comment here.

Chia-Li Chen: I'll just put the link there.

Karakachian: Okay. Thank you.

Chen: I found a 17 ranking very helpful.

Karakachian: Yeah. Um, so who would benefit from these domestic asset protection trust people who are going to be, uh, in high stakes litigation? What are some of the professions that would benefit from that?

Chen: Doctors.

Karakachian: Orthopedic surgeon.

Chen: Yeah. Doctors and uh heart surgeon.

Karakachian: Your brain surgeon? Yeah. Most doctors will benefit Also real estate developers that are highly leveraged. In the good times, it's great because they can get loans and jump from one project to the other. And when the economy goes on the downswing and real estate is, gets hit hard. Like it does every 10, 15 years or so, like in the early nineties, early two thousands and 2008, nine specifically. Those could benefit from this. And then other parties that are involved in, in litigation may be a business owner that, um, is in a, um, uh, is in a, in a design manufacturing and something goes wrong. Primarily small business owners or midsize business owners that have that manufacturer,

Chen: So I have a questions here.

Krarkachian: potentially risky products. Yes, go ahead.

Chen: So, so I'm glad that you mentioned about uh, who is this for? So for people generally speaking, potentially get sued and so you mentioned about real estate developer. Um, so, so, so if I think about it's probably, um, people that are are, are above to some sort of limit. So they wanted to get protection from, and I'm assuming this protection is for any kind of assets, right? What are their specific assets needs to be transferred into this?

Karakachian: Um, ERISA based retirement plans are protected under federal law.

Chen: Correct

Karakachian: What we can protect here is other investment assets, other brokerage accounts.

Chen: Well, um, yeah. So for example, if, um, every state has annuity has a certain level protected, right? And it doesn't have to be qualified or non-qualified. So annuity itself has some sort of insurance protection on there. Every state is different. So I would assume that if this were for investment protection, so outside of the ERISA, outside of the minimum annuity protection, so um in California, how much would that be?

Karakachian: There's additional protections to under the bankruptcy statutes that provide some protection as well. Very limited protection,

Chen: Very Limited, okay.

Karakachian: again on States and the federal banks or bankruptcy laws provide some hyper protection as well.

Chen: Okay. Okay.

Karakachian: Items.

Chen: Um, so basically, um, so basically it's anything outside of those protections, this is where, where this will be very useful in case of someone trying to sue, uh, for your existing assets.

Karakachian: Yes.

Chen: Okay.

Karakachian: Let me, but that's a qualified yes. Because, um, the, the two, let me take a step back. The two items that would be very beneficial to put in these types of trusts is a, is a taxable brokerage type account and investment account and real estate, including a primary residence, the primary residence could be included in there as well. Mmm. One recommendation that most asset protection lawyers make their clients is for them not to be too greedy and not to put their entire net worth into a, into a trust, but, but put some, let's say 30, 40, 50% of their net worth and keep some outside. Um, just to provide some level of, of um, uh, protection against attacks. Um, most judges and a lot of lawyers do not like this, not like this planning idea.

Chen: Well Um, so, so I have another question. So, so that's, this is um intentionally trying to protect certain assets but if it's a husband and wife situation where can husband intentionally put these assets into this and then not allow the wife to have access to it? I'm just curious.

Karakachian: Yes, it is possible.

Participant: Is this independent if it's a community property state or common law state, I mean community property, state. I can have separate assets that are mine that my wife has no right to because I've had a former marriage um which is sort of like the common law States that still practice where husband and wife assets are still separate.

Karakachian: Yeah, this works.

Participant: It's helpful.

Karakachian: Yeah. This works well for um, a, um divorce situation. It also works really well as Lee mentioned, if either one, one of the spouses has substantial amount of separate property assets too.

Chen: I see.

Karakachian: There is a, there is a wrinkle if this trust is set up after the marriage and trying to get community property assets into the trust. And I will get into that after a few slides when I discussed the hybrid domestic asset protection trust because it's a little different in that in that context, I'll mention it now. Uh, just to kind of give you a little background in that context, the settlor is not a beneficiary of the trust, but rather the spouse is going to be a beneficiary of the trust.

Chen: Okay.

Karakachian: But let me get to that after a few slides. Let me cover a couple of points here

Chen: Can I ask one more question while you're at the point of who is this um uh best for?

Karakachian: Yes.

Chen: Oftentimes when, when recommending to the clients, of certain techniques like these, I always think about is there a threshold of a certain assets amount to be worthwhile of doing this because there's always going to be some sort of fee expense and on an ongoing basis to maintain this. So are there any kind of threshold guidelines other than who is the best candidate for this? What type of assets, are there any threshold of how much of the assets value is worthwhile of doing something like this?

Karakachian: Yeah, um that's a good point. Obviously the, the, the bigger, the higher the net worth, the better. My gut feel tells me, um, funding this with a million dollars would make sense. But I believe that if, if an individual really wants it going down to say $500,000 would make sense as well. Um, there is the fee to set these up where an attorney is, is needed to draft these documents, um. That's going to be um, substantial costs. Although some attorneys that do this, uh, yup. As a large portion of their practice have it down to, to a science. So that's more of a commodity type practice for them. So those, their fees might be a little bit lower. And there's the annual maintenance fee, potentially the filing of tax returns and also having the, uh, local trustee. Mmm. So mmm, if you're a, you're not a resident of one of these 17 States and you would like to set up a trust in one of these States, the statutes require the trust to have a resident trustee, that resident trustee,

Chen: I see.

Karakachian: can be an individual or it could be a bank or financial

Chen: So is a trust company.

Karakachian: trust company and that, and that company is going to charge an annual maintenance fee. Um, you know, they're in the business of making money, so they're going to require a fee. And I listened to a seminar and the speaker said that

there was a trust company that he worked with that was charging $1,800 a year. So it's not a huge number. And depending on what type of services they're providing, obviously the more services they're providing, it's going to be more expensive. So for the bare bones, it looks like it's a few thousand dollars, a couple of thousand dollars. So anything less than several hundred thousand dollars or a million may not be worth the cost. Um, of having these, of course, it's also facts and circumstances driven as well. Uh, let me discuss the most important aspect of this asset protection trust. And that is the protection against the creditors. A lot of times when I get these calls and I've gotten a few of these calls over my practice and it's too late actually, at least as far as I could tell, well, somebody got, has gone into a car crash and there's some, there's a serious injury and they only have very low or very limited insurance coverage on their vehicle. Well, at that point, if they know or they're expecting a lawsuit and they get into this type of planning, it's going to be very, very difficult or almost impossible to provide protection because of the fraudulent conveyance laws. I would like this, this is a very, they're important point. And every, all 50 jurors, all 50 States in the United States have a fraudulent conveyance laws, which primarily state that, um, assets can not be transferred with the intent before or to make it difficult for a, a known or an expect, an expected creditor from getting, uh, paid on their claim. Um. So if there's a car accident where there's a death or if a doctor, it has a brain is a brain operation and the patient dies and they're trying to determine whether they should set up this trust after that fact and they have some inclination that they may have done something wrong, both with the car accident, if there's, there's some liability, there's some fault. Or if the doctor as some gut feel that he did something wrong during the surgery, yes, it's going to be too late under the fraudulent conveyance laws to set these up.

Participant: A question. What about college loans? It seems to me we get college loan, I'm in college, I get out and I see my payment's going to be 5,000 a year and I'm only earning 25,000 a year because I'm a social worker. Uh, can I get out of it here or is the same fraudulent law gonna apply because they're ones I run into this are people who have large college loans and quite honestly don't have an income necessarily able to support the payment of that loan.

Karakachian: Yeah. Um, I believe it's gonna be impossible to get out of that college loan, Lee, because, uh, the federal government put in some statutes in place a few years ago that made student loans federally guaranteed student loans. Now there's a category and most of the student loans, the lion's share of the students, those are going to be federal federally guaranteed. They will survive bankruptcy. They're not dischargeable in bankruptcy. And they, will be a burden on the individual that took out the student loan and the parties that co-signed them such as a parent for uh forever. Um, and I've did some research on this. Um. It's going to fall under the category of this preexisting creditors, the student loan. And these 17 States, 15 out of the 17, if you look at bullet number three, have statutorily mandated exception creditors, these include things such as alimony, child support, and also toward based creditors. Um, I don't know about student loans. Um, if it's federal guaranteed wait, some research has to be done and the federal statutes to see if those would qualify as statutorily, except that creditors are not. So with respect to statutory excepted creditors, domestic asset

protection trusts don't help. So for example, in a divorce as a spouse can get into the trust and get child support or alimony toward creditors, preexisting toward creditors can get into the trust and get paid on if they have a judgment and try to, when they're trying to enforce that judge that's 15 other States, 15 out of the 17 that have asset protection statutes. But the two States that don't have pre-existing creditors are Nevada and Utah. And I understand that Utah, if you're not a resident of the state of Utah, these provisions do not help.

Chen: So, um, question, can you, can you give us some example of uh, of a tour creditors? Just, just one or two example?

Karakachian: Yeah. Somebody rear ends a vehicle and the person driving the, the car that has been rear-ended dies.

Chen: Okay.

Karakachian: And that person has a claim, has a potential claim against the person that rear-ended them.

Chen: Okay. Got it.

Karakachian: That would be a court thwart creditor.

Chen: Okay. Got it. So that means that this, this trust doesn't help. If that's the situation.

Karakachian: In those States that have exception creditors, that includes a preexisting court creditor. No, it doesn't.

Participant: What abou-

Karakachian: Go ahead.

Participant: What about prenuptial agreements? I had a client a few years ago who was about 30 years older than his wife and they signed a prenuptial agreement and after a couple of years, make a long story short, they were getting divorced and she tried enforces prenuptial agreement and because of that it was a jury trial. She got it. But I'm thinking if he would have had the asset protection trust, would he be able to get out of that?

Karakachian: Um. My experience has then been, has been that, um, the prenuptial agreement is recommended on its own separate from the asset protection trust. The asset protection trust could be set up as a second level or as a second step or the second line of defense. Generally, if, if the parties complying with the statutory requirements of a prenuptual agreement, prenuptial agreement are iron clad. I'm curious of how the uh younger spouse in your situation was, was able to break that prenuptial agreement. Um,

Participant: Um, yeah.

Karakachian: They're they're very very strict in California.

Participant: Yeah. It was a case where they came and uh, he came, he came in to see me about six months after the fact. I see. And I really didn't, I got his side of the story, but I have no idea her side.

Karakachian: Yeah. Is one party

Participant: I just was fascinated by the fact that, uh, cause I always assumed prenuptial agreements was there was a real challenge to be able to,

Karakachian: Yeah, there are,

Participant: there's always some little asset you forget

Karakachian: There. Well, there is one aspect of a prenuptial agreement that could be used to buy the out outed spouse to break the prenup. And that is when the parties are not represented by council. That's one of the re one of the, um, items that comes to mind that can be used by the non-represented spouse. And also there's a slew, there's a very famous case, Barry Bonds' case. Um. That settled the law in California and it was, uh, Oh, the state legislature adopted some legislation to codify the provision in the case and there's several provisions if those provisions are satisfied and strictly complied with, the prenup survives. Now, if your client had an asset protection trust that could have help, particularly if he had put in his separate property into a trust and one of these friendly jurisdictions. Um. So the asset dome- the these trusts protect or, um, non preexisting creditors. So creditors that arise after the trust is set up and there are ways to protect against preexisting creditors and each, uh, jurisdiction has a certain statute of limitations anywhere from two years to four years. And in some of these accepted creditors, there is no statute of limitations. So by using a jurisdiction which provides for shorter statute of limitations, some of these preexisting creditors or known or unknown can be thwarted by providing notice. Uh. And you have to look at the jurisdiction whether it requires actual notice or notice by publication. Nevada for example, will pr will allow notice by publication and by notifying a, an unread newspaper saying, okay, so and so set up an, uh, is setting up a trust and transferring assets. Well, shorten that statute of limitation, um, from two years to six months, for example. And that would provide protection for, um I guess, preexisting creditors. There's a group of seven states that make this the, their asset protection laws very unfriendly. And that requires a, an affidavit of solvency by the settlor. Every time it trans- it transfer's made into the trust. So that makes it very difficult and cumbersome. Every time a settlor's going to transfer funds into a asset protection trust and this trust, by the way, so not the entire assets of the individual or um, or a big chunk of them do not have to be transferred or funded at the same time. Additional contributions can be made into a trust, um, over um, several

years. So these states require this affidavit of solvency and for this reason they're not very friendly and not workable. Questions?

Participant: No. Busy taking notes.

Karakachian: All right. Um, let's see. Setting up these asset protection trust. The timing is critical. As the saying goes, timing is everything. Timing is very, very important to get it done. Um, early on before problems start creeping up or problems start happening. Unfortunately, um, working with these high risk individuals, it's very difficult to convince them to pull the trigger and sign on the dotted line. And even though I've had conversations with people regarding, uh, setting these up, the compliance aspects and the, and the cost aspects is a, is a hindrance to a lot of people. So most people, don't do anything and they just let it go until it, and sometimes it's too late. Other times it's okay because nothing happens and there's no issues. But sometimes it's, it’s a little bit too late. So, what do we do for individuals that do not reside in those 17 states and California is not one of them. I knew you knew California in New York are not one of those 17 States that protect individuals. So what do we do? Well, we set up a hybrid domestic asset protection trust. And what is, what is the hybrid? Remember -er a few slides ago, I said a domestic asset protection trust. The set, the trustor, settlor grantor, the individual that forms. The trust is a beneficiary of the trust. So the trustor can get distributions out of the domestic asset protection trust. If we have a resident in one of the 33 States that do not provide protection, the the trustor cannot be a beneficiary of the, of the trust. Why? It defeats the purpose. So what do we do in that case? While, well, we, we do not include this, the trust or set lore as a beneficiary. So who becomes a beneficiary?

Participant: I would say the spouse.

Karakachian: The spouse becomes a beneficiary and the children,

Participant: So I could. Go ahead. Sorry.

Karakachian: Yeah yeah go ahead Lee.

Participant: Uh, I have an Alaskan trust.

Karakachian: Yes.

Participant: That I got in Arizona. I think I should be adding this to it to protect the assets that I have in that trust because I don't benefit um from the trust, but it, my children and grandchildren benefit and um, they, it seems to me having the Alaskan indefinite period plus this would be fantastic.

Karakachian: Um. If you're not a beneficiary of the trust, then your creditors will most likely not be able to get access to that trust. Are you the trustee?

Participant: Grey gray area.

Karakachian: Yeah. Well there's some,
there's some issues.

Participant: It's uh.

Karakachian: Provides the Alaska statutes provide some protection, but they're not as good as, as Nevada for example. Um. Nevada is probably the top asset protection states that provides the most friendly rules and here's, and you have to look at each state statute, to see if this trustor settlor is protected. In your case, Lee, you have to look at the Alaska statute to see if you're protected and the way that Nevada provides the protection is this, the trustor settlor cannot be a current beneficiary, but the spouse can be a beneficiary and which is well and good in a long term stable marriage. But how about a newer marriage or an unstable marriage? What do you do? Well. There's this changing spouse language that is being used where the, that spouse as the beneficiary is not named, but rather some general generic languages use just the refer as the trustor spouse. So if the trustor gets divorced, for example, and remarries the second or third or fourth spouse would be covered under this language, the changing spouse language. Um. The trustor can be an investment trustee can make decisions of what assets to invest in and provide asset allocation. Maybe get involved in the sale of an asset or get involved in a 10 31 exchange for example, but the trustor can not be a distribution trustee. So that's where the third party, uh, individual or fiduciary company comes into play where they become a distribution trustee. Obviously, if the trustor is the distribution trustee, they can make distributions to themselves and that would defeat the purpose. Again, as I mentioned earlier, at least one trustee must be a Nevada resident and this, there are some low cost options for this. The last three items, these powers, if the trustee has these powers can remove and change the trustee, can veto potential distributions and can have a lifetime or testamentary power of appointment. These three will not, if, if the Nevada statutes allow the trustee to have these, the the the trust store, the settlor, are principal in our example to have these powers. But if the, if our principal has these powers, then this trust will not be helpful from, from a and estate planning or an estate and gift tax perspective because it will not remove the assets out of the estate. Additionally, uh, there's a new concept now, well newer, it's, I haven't seen a lot of litigation in this area, but it's being used in a lot more frequency. The trust protector. A trust protector is an individual who is not a trustee but can make changes to the trust. And typically it's a friendly party that will make changes that benefit the trust and it benefits the beneficiary. And in certain circumstances it benefits the, um, the, uh, the trustor. Uh, now a lot of these asset protection trusts are drafted where the trustor, the settlor or principle can be added as a beneficiary. But that provision is um. Not included in there for use. Uh, except in some extreme limited circumstances. And the circumstances that I can think of is when a trust is set up and the spouse is being used as a current beneficiary. So the funds are going to go to the spouse but not the principal, not the settlor. And the spouse is going to pay the bills. The spouse is going to pay the Amex bill, the spouse is going to pay the water bill and the gas bill. And the, and the, uh, the trip to Hawaii or the cruise in Europe, et cetera.

And that's going to be fine because our principal is not going to have funds in their own bank account and their, so their bank account is not going to be subject to levy or if it is going to be subject to levy, there's not going to be anything in the account to levy, the funds are going to go to the spouse. Um. What if the spouse develops a gambling habit or a drug habit? So that creates an issue. And this provision here all the way at the bottom, the underlying provision can be used in this extreme circumstance, to add the, the, our principal, our trustor as a beneficiary. Or remove the, the, the current spouse as the beneficiary and leave the children. Although getting money from your kids is going to be a difficult task. Any questions or comments?

Participant: Uh, question and that, um, third party trust protec- protectors not found in all states or,

Karakachhian: Right.

Participant: uh, found in California.

Karakachian: Correct.

Participant: Um, so what would I do here in California?

Karakachian: Um. For your Alaska trust or for your California trust?

Participant: Uh, let's say to make, say the California trust,

Karakachian: You can have, you can, well you can do a, uh, an amendment or a caught assault of the trust document to add a trust protector and give this trust protector some powers that you did not retain. So this functions, this is used, um, and primary purposes of using the trust protector is in a case where the trustor, the settlor, the grantor, has given up their powers. Um, and it's an irrevocable trust where the, where the settlor does not have any powers and the trustee is a third party trustee. So a, so a trust protector can be added in and given certain powers the powers to decant the trust. For example, the powers to remove the trustee, the power to remove and add beneficiaries, the pro, the power to move the trust from California to another jurisdiction. Those are some of the powers that the trust protector can have, um, that the set lore gave up when the irrevocable trust was formed. And when the trust protector is a friendly party, obviously there's going to be communication between the trustor and the trust protector and or the trustee and the trust protector. To make the, and so the trust protector can make decisions that would benefit the trust and the beneficiaries and indirectly benefit the trustor. Does that answer your question, Lee?

Participant: Yeah. So in my case, um, the trust benefits my children does not mention my grandchildren at all. So I have a 30 year old grandson. I could use him as the trust protector and obviously he has a vested interest in it, but he's not, he's not a beneficiary.

Karakachian: Yeah. Well if your, if your trust document says that at the death of one of your children,

Participant: It doesn't

Karakachian: um, they're their the descendants. Okay. The other

Participant: I just mentioned the two two children.

Karakachian: Okay. So what happens at the death of one child who inherits the Corpus?

Participant: I would suspect the other child

Karakachian: And then what happens at the death, at the death of the survivor?

Participant: Uh. It would be intestate. Um.

Karakachian: Do you have a cat? Do you have a residual clause that will grab,

Participant: That's it. That's the thing I forgot was the residual cause. Yes, I have a residual clause.

Karakachian: Well, who's the beneficiary of the residue? Right? Is it the descendants of both children or is it that this descendant of the survivor?

Participant: No, it's neither. It's a charity.

Karakachian: It's a charity. Okay.

Participant: I want the kids to benefit. Uh,

Karkachian: And then I take it this is an
irrevocable trust Lee.

Participant: Pardon?

Karakachian: It's an irrevocable trust.

Participant: Yes.

Karakachian: Okay. So, um, In order to make changes to an irrevocable trust to add trust protector language, I believe that you have to file a court petition and the beneficiaries have to agree, including the contingent beneficiary or the residual residual beneficiary.

Participant: Um hm.

Karakachian: It would be difficult, not impossible to add trust protector language in this specific situation.

Participant: Good. That good to think about

Karakachian: But in my opinion, Lee, I believe that your grandchild can be a trust protector because he's not, he's not a current beneficial, he or she is not a current beneficiary and not a contingent beneficiary because the residual clause, everything is going to charity and they're unrelated. Although typically my experience has been to use trust protectors that are unrelated, not family members. Usually it's a business associate, a trusted close friend or, um, law partner or, or a, uh, very, very uh, or longterm college classmate. Those are the, the, um, the ideal candidates for trust protector.

Participant: Could a trust company be a trust protector?

Karakachian: Um. If they're willing to take on that responsibility. I don't believe many trust companies would want to do take on this responsibility. I prefer it to be an individual where there could be um opportunities to communicate with them and provide some advice and support. I believe a trust company is going to have its hands tied.

Participant: Uh huh. Thank you.

Karakachian: so, we talked about these briefly earlier, so the funds go out to the spouse and the spouse makes the payments. Now does this help the domestic asset protection trust or the hybrid domestic asset protection trust for individuals that do not reside in those States? Does it help? There has not been many cases in this, in this area that have gone through the courts of appeal. Maybe a handful, maybe a half a dozen cases. Even though this, the regime is, has been, it has been on the books for 10, 15 years or so in um, several jurisdictions. What it helps is the legal fees that will be imposed on the creditor, that try to get access to the trust and go to these other jurisdictions to try to get access to the trust or undo these trusts. And that provides a big motivation for the creditors to settle. So that's the primary motivation. In fact, I have several estate asset protection lawyers that are recommending to clients and prospective clients that go ahead and set these up even after that toward action happens. For example, even after that car crash happens where the um, individual in the vehicle that was rear-ended, dies, or the surgeon that botches a surgery and the patient dies or is permanently disabled, these asset protection lawyers are recommending these trust set up despite the existence of fraudulent conveyance rules on the books. And it's their rationale, their thinking is, what do you have to lose? At the same token, they're not, um, they're not telling their clients, well, you're going to end up in current 10, 15 or $20,000 in legal and administrative and other fees, to set this up and not, not the least of which would be a disruption to your life because a lot of your assets have to be transferred. So there's quite a bit of paperwork involved in setting these up.

Uh, but they're still recommending this and saying, okay, well let the creditors go to court and try to prove a fraudulent conveyance and that will create a burden on the creditor of additional legal fees and costs a well, which will, which will motivate the creditors to settle. Now, I don't know whether that's good advice or not. I don't like it personally. Um, but it is out there and I wanted to mention that. Some additional ways that a are the principal, the trustor can get and receive funds. Obviously the most common one is a distribution directly to the beneficiary, which is the spouse who ends up paying the bills. The other one could be to children if there's no spouse. Uh, if there, if the spouse, if there was a divorce, um, and the spouse, the, the principal, the trustor did not remarry. For that reason. It's important to have more than one beneficiary as such as a child or children included. The other way would be for the settlor to sell assets to the trust in return for note and as the trust is making payments on the note, but trustor can get some funds. And then lastly, the trustor can borrow money from the trust, which is a little bit riskier. Out of the other options. This is probably the riskiest because the creditors can, uh, show to the court that the trustor is borrowing money from the trust and the court. Um, rule that the trustor needs to go and borrow additional funds from the trust to pay the creditor. So obviously borrowings have to, all of the I's have to be done and all of the T's have to be crossed. It has to be a valid enforceable defensible loan where payments are being made. Um, so the, the more it looks like a real loan, the better it is for the trustor. But, and this one would be a third, um, option to consider. There's some others protections too for asset protection purposes. Outside of the trust context, they can be used in trust and that is the charging order and that's probably a lecture or a discussion, um, on its own. And what, let me just mention it briefly here. And what this does is they put the use of Nevada LLCs and Nevada has a special statutory regime where if it's a Nevada LLC, that the operating agreement could be drafted in the way to prevent creditors to foreclose on the LLC interest. So what happens is if we have a member of the LLC, a partner for tax purposes or an LLC member for tax purposes and state law purposes, and it's a Nevada LLC and it could be operating anywhere, by the way. But this Nevada LLC does not have to operate in Nevada at all. So long as there's a, as an agent for service of process in the state, the Nevada LLC could have operations anywhere in the United States or overseas. What the Nevada statute provide the following is if one of the members, it has a judgment against them, the creditor can step into the shoes, will step into the shoes of the, um, of the LLC member, but cannot force distributions out of the LLC. So they be. So if they foreclose the um, interest of, um, of this, um, for-teaser for example, and they'd take over this individual's mem member interest, they become a member for all intents and purposes except forcing the cash distributions out. So they would be sitting there as a member of this entity. They would be charged with the income and the expenses that happened in the LLC, but they can not force any distributions. This is a very, very powerful tool that could be used independently and as part of a, the asset protection trust where the trust could own the LLC. So that adds another layer of protection. Um, the second point, as I mentioned earlier, is not to be too greedy and to transfer a portion but not the entire wealth of the individual for asset protection purposes. There's some other um planning options. She was to split the trusts into protected trusts and unprotected trusts. Where are the unprotected trust could be subject to creditor claims, where as the protected trust would not. Um. And then lastly, as I mentioned earlier, a, um,um provision could be, could be

included and is generally included to add the settlor as a beneficiary in extreme circumstances. Um. Questions?

Participant: No, it's very interesting.

Karakachian: Yeah. The -

Chen: Wow fascinating,

Karakachian: In my opinion, the the, Um, I think the primary, the real motivation of setting these up is to create a burden for the creditors and the burden being the high legal fees of prosecuting an action. And as soon as attorneys find out that there's uh Nevada LLCs or Nevada based asset protection trust, where the bennit, where the target, our principal is not a current beneficiary, lawyers are not going to be motivated to pursue these types of claims. Number one. And number two, they're going to tell their client the creditor, the person was interested in suing or trust or that it's going to cost a lot of money and it's um, better to settle. And I thought of an example as I was preparing for this, um, presentation discussion. If we have a $1 million potential claim, for example, um, if the plaintiff's lawyer's going to charge one third as their legal fee, that contingency fee of one third After our creditor wins their lawsuit and they're able to collect on their judgment, they're going to get somewhere around $700,000, 1 million, uh, minus one third legal fees that are paid to the attorney plus costs that are going to get 700 or maybe less than 700, let's say 600 for discussion purposes. And, and this is after years, not years, but maybe several months, could be years of litigation and even an enormous amount of time, effort and energy. And if this individual is offered a settlement of say, half of that, what there, they expect the net 300 or 350, but you might just, well take it and leave um and say and call it a day. Um, and that is the, I believe, the primary motivation of, of uh, creating these as barriers for potential attacks.

Participant: Okay, I gotta leave but I sure say this is very well worth the timeframe. (inaudible)

Chen: I think the example

Participant: Especially if any financial planner,

Karakachian: Yeah

Chen: I think the example that you mentioned about that, that million dollars example, I think that you know from, and you're absolutely right that actually discourage people to pursue further and then just take the settlement. And that's probably in some cases are better off for, for the, for the, for the people who's actually suing.

Karakachian: Yeah, they're better off from a um from a, a, um, uh, emotional perspective too. If not financial, they're, they're better off emotionally because litigation takes a real heavy toll on an individual. Um, of course, if it's a corporation or an entity, it

might not be the case. But if it's an individual it would help take the settlement than just close the book and and move on. And here's my final thoughts as usual. Well, this was a, um, nice presentation. Um. Shall I stop the recording? Chia?

Chen: Yeah. Uh I think that the, um, well I definitely learned something today. I think that the, uh, the tool is, is helpful, but, um, it’s like any other planning tool, you have to have them ahead of time. You can't be doing this after something. already happened.

Karakachian: Yeah. And they have, and the individuals have to be, have to be motivated and, and ready to get into it because it's not easy being,

Chen: It's not an easy task. And also the fee surrounding it is also a consideration.

Karakachian: True

Chen: Um, so I, I still, I still see that there ought to be some sort of threshold to make it more worthwhile.

Karakachian: Yes.

Chen: We're doing this.

Karakachian: Yes.

Chen: Well, great job. You really,

Karakachian: Yeah. Thank you, thank you.

Chen: great, this is great.