

Creditor Protection for Life Insurance and Annuities

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Unlike man, all assets are not created equal—at least from an asset protection planning standpoint. Instead, some assets are favored by statute so as to provide their owner (herein referred to generally as the "debtor") a greater level of protection from the claims of creditors than do other assets. Usually this heightened level of protection, offered under either the federal Bankruptcy Code¹ or a state's alternate statutory exemption scheme² is provided because the asset is considered essential for the debtor and the debtor's family to maintain at least a minimum level of financial well-being and thereby avoid becoming a burden to the state. The extent of such creditor protection is, of course, tempered by society's proper concern for the creditor's competing rights to access the debtor's property for the satisfaction of legitimate claims.

After the homestead exemption, retirement plans and individual retirement accounts (IRAs) are, perhaps, the most widely recognized and obvious examples of such favored assets since, like the homestead exemption, they help to ensure a debtor's financial subsistence.³ Since commercial annuities often substitute for or supplement retirement plans and IRAs, it should come as no surprise that, to a greater or lesser extent, they too are generally exempted by statute from the claims of creditors. Life insurance is often similarly favored because it can serve a similar function with regard to the debtor's spouse and dependents after the "bread winning" debtor's death. (This discussion assumes that the purchase of the annuity or insurance contract does not constitute a fraudulent transfer under applicable federal or state law since, under that scenario, any protections that would otherwise be afforded are vitiated by the fact of the fraudulent transfer.)

Notwithstanding the foregoing, however, the exemptions afforded to life insurance and annuities are frequently more limited, more widely varied by jurisdiction, and seemingly more subject to the vagaries of the presiding courts than are the exemptions afforded to retirement plans and IRAs. For example, the Supreme Court has ruled, in *Patterson v. Shumate*,⁴ that retirement plans that are qualified under ERISA (29 U.S.C. section 1001, et seq.) are exempt from the claims of the employee's creditors pursuant to 11 U.S.C. section 541(c)(2) as an enforceable spendthrift trust under "applicable non-bankruptcy law." Furthermore, by association, IRAs established under Internal Revenue Code (IRC) Section 408 (and most likely Roth IRAs established under IRC Section 408A, as well), may be exempt under 11 U.S.C. section 522(d)(10)(E), which exempts "a payment under a stock bonus, pension, profit sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service. . . ." or under state exemption statutes. Seemingly, this reasoning would also extend to commercial annuity products, at least if held for true retirement planning purposes (rather than as they are sometimes marketed-as a tax-favored investment vehicle), but significant issues remain.

Notwithstanding these factors, the potential value of such exemptions to a debtor or potential debtor means that the exemptions warrant a careful and considered review by both asset protection planners and bankruptcy counsel acting in a pre-bankruptcy planning function. (Although foreign life insurance and annuity products may offer more protection from creditors than do their domestic counterparts, such products are beyond the scope of this article.)

Life Insurance

Consideration of the potential creditor protections afforded to life insurance contracts is complicated by the several capacities in which the debtor may have an interest in the policy. For example, the debtor can be the owner of the policy, the insured, or both the owner and the insured. Alternatively the debtor may be the beneficiary of the policy or the owner of a policy that names his or her estate as the beneficiary of the policy. To further complicate matters, since the exemptions afforded to life insurance are intended to further particular public policy goals (i.e., protecting the debtor's dependents from financial destitution in the event of the debtor's untimely demise), the relationships between the owner and the insured and between the owner and the beneficiary are often key to determining whether and to what extent the particular life insurance policy at issue may be protected from creditor claims. These additional permutations exponentially increase the complexity of determining whether the life insurance policy may be exempted in any particular circumstance.

The federal bankruptcy exemptions for life insurance policies owned by the debtor are found at 11 U.S.C. sections 522(d)(7) and (8), where their relative importance to the average person is, perhaps, evidenced by their placement between the exemptions for the debtor's professional books and tools of the trade and the debtor's professionally prescribed health aids. More specifically, the federal bankruptcy exemptions for life insurance shield unmaturing policies owned by the debtor (other than a credit life insurance contract)⁵ and up to \$8,625⁶ of the debtor's aggregate interest in any accrued dividend or interest under, or loan value of, an unmaturing life insurance contract, provided that the insured is either the debtor or an individual of whom the debtor is a dependent.⁷ Since, however, federal bankruptcy law broadly defines a dependent as including a spouse, regardless of whether the debtor's spouse is actually dependent on the debtor, the exemption will apply without further inquiry so long as either the debtor or the debtor's spouse is the insured.⁸

The effect of the foregoing exemption is to protect the actual insurance element of the policy and little else, since only a minimal portion of the cash surrender value of the policy is afforded any exemption. While the exemption of an unmaturing life insurance contract without the exemption of the cash surrender value may prove invaluable in certain limited circumstances (for example, if the debtor has become uninsurable since the life insurance policy was originally purchased), it obviously does not provide significant opportunities for asset protection or pre-bankruptcy planning for the insured.

That the primary intent of the Bankruptcy Code as it relates to the exemption of life insurance is to protect a dependent's interest in the life insurance policy, rather than the owner's own interest, is further supported by 11 U.S.C. section 522(d)(11)(C). That section concerns the debtor as the beneficiary of the policy (rather than as the owner of the policy) and exempts the debtor's entitlement to the proceeds of a life insurance contract, without any specific dollar limitation, to the extent that such proceeds are "reasonably necessary" for the support of the debtor and any dependent of the debtor. For the exemption to apply the debtor has to have been a dependent of the insured at the time of the insured's death.

Since the federal exemption scheme for life insurance that is owned by the debtor is so parsimonious, if an exemption under an alternative state scheme is provided, it should be carefully considered. Following the model of the federal exemption scheme, some states provide very limited exemptions for the cash surrender value of life insurance. For example, South Carolina offers only a \$4,000 exemption for the cash surrender value of life insurance (again, provided that the insured is either the debtor or an individual on whom the debtor is dependent).⁹ Proceeds payable to the insured's spouse, children, or dependents are, however, generally fully exempt from the creditors of the insured.¹⁰ Wisconsin also exempts only \$4,000 (provided that the insured is either the debtor, a dependent of the debtor, or an individual on whom the debtor is dependent).¹¹ If the debtor is the beneficiary of the life insurance policy, however, and provided that the debtor was dependent on the insured, Wisconsin law exempts payments to the extent reasonably necessary for the support of the debtor and the debtor's dependents.¹²

Other states, however, have exemption schemes that provide for far greater protection of the cash surrender value of life insurance policies than does the federal exemption scheme. For example, in keeping with its generally pro-debtor stance, Florida specifically exempts the entire cash surrender value of life insurance policies from the reach of creditors¹³ and the entire death benefit from the creditors of the insured.¹⁴ Hawaii similarly specifically exempts the entire death benefit and cash surrender value of life insurance policies from the reach of creditors of the owner of the life insurance policy, provided, however, that the policy is payable to a spouse of the insured, or to a child, parent, or other person dependent on the insured, except as to premiums paid in fraud of creditors.¹⁵ Louisiana also specifically exempts the entire proceeds (including the full cash surrender value) of life insurance policies from the reach of creditors. The exemption is, however; limited to \$35,000 of the cash surrender value if the life insurance policy was issued within nine months of a bankruptcy filing.¹⁶ Exhibit 1 contains a state-by-state tabulation of the exemptions.

New York's scheme for the exemption of life insurance¹⁷ is worth noting because it clearly distinguishes between the several permutations which can result depending on whether the debtor is the owner of the policy (referred to under the New York statute as the person "effecting the policy," and need not be the

person who actually purchased the policy), the insured, the beneficiary, or some combination thereof. More specifically, the New York State exemption scheme for life insurance provides that:¹⁸

1. If the owner of a life insurance policy insures his or her own life for the benefit of another (i.e., a beneficiary other than the owner's estate), that other person shall be entitled to the proceeds and avails of the policy as against the creditors of the owner. (In other words, the beneficiary's interest in a life insurance policy owned by another is protected from claims of the policy owner's creditors, notwithstanding the fact that a power to change the beneficiaries of the life insurance policy has been reserved.)
2. If the owner of a life insurance policy insures the life of another for the owner's own benefit, the owner is entitled to the proceeds and avails of the policy as against the creditors of the insured. (In other words, the interest of an owner of life insurance in the policy is protected from the creditors of the insured).
3. If the owner of a life insurance policy insures the life of his or her spouse for the owner's own benefit, the owner is also entitled to the proceeds and avails of the policy as against his or her own creditors. (In other words, the interest of an owner/beneficiary of life insurance in the policy is protected from the owner/beneficiary's own creditors if the insured is the owner's spouse).
4. If the owner of a life insurance policy insures the life of another person for the benefit of a third party, the third party is entitled to the proceeds and avails of the policy as against the creditors of both the owner and the insured. (In other words, the beneficiary's interest in a life insurance policy is protected from claims of the creditors of both the owner of the policy and the insured).
5. The owner of a life insurance policy, regardless of the identity of the insured, is entitled to accelerated payment of the death benefit or accelerated payment of a special surrender value permitted under such policy as against the creditors of the owner. (In other words, the owner's interest in the cash surrender value of a life insurance policy is protected from claims of the owner's own creditors).

Even the extensive New York exemption statute does not, however, cover all possible permutations. For example, in *Dellefield v. Block*,¹⁹ a husband took out two paid-up life insurance policies on his own life with his wife as beneficiary.

Thereafter, both the husband and his wife became debtors of the same judgment creditor. Since the law in effect at that time provided that a life insurance policy insuring the owner's own life for the benefit of another is protected from the owner's creditors, but did not then expressly provide that the same life insurance policy is protected from the debtor beneficiary's own creditors, the novel issue arose as to whether a joint judgment creditor could enforce its judgment against the life insurance policies. Based on a liberal interpretation of legislative intent to the effect that the statutory exemption of the debtor/owner's interest was intended to protect all cases in which a person invested his or her own money to insure his or her own life for the benefit of another, the *Dellefield* court held that the life insurance policies could not be reached by the parties' joint judgment creditor.

Other issues, of course, exist as well. For example, in the New York statute, the phrase "proceeds and avails" is defined to include ". . . death benefits, cash surrender and loan values, premiums waived, and dividends, whether used in reduction of premiums or in whatever manner used or applied, except where the

debtor has, after issuance of the policy, elected to receive the dividends in cash."²⁰ Unlike New York, however, not all state statutes expressly define which incidents of value of a life insurance policy (i.e., specifically the debtor's ability to shield the cash surrender value of a life insurance policy versus the debtor's entitlement to the proceeds of a matured policy on the life of another) are covered by the exemption scheme at issue. Therefore, the issue may arise as to whether and to what extent the cash surrender value may be exempted when the statute refers only to "monies paid out of a life insurance policy" or similarly ambiguous language. In this regard, in *In re Worthington*,²¹ a bankruptcy court, interpreting a Kentucky exemption statute that provided simply that "[a]ny money or other benefit to be paid or rendered by any assessment or cooperative life or casualty insurance company is exempt from execution or other process"²² determined that an unlimited exemption was provided for the cash surrender value of life insurance policies. The *Worthington* court stated that:

This statute does not restrict "any money or other benefit to be paid . . ." as exemptible only upon death but rather it denotes an exemption extending to the debtor on any monetary value or benefits accruing by virtue of ownership. Thus, the loan values or the cash surrender values by virtue of the enactment of the Kentucky Legislature have been deemed exempt since the term "any money . . . to be paid" is not restricted as to time of election and offers no alternative but to include the cash surrender value within its definition. . . . The Kentucky legislature has, after due deliberation and in its wisdom, determined that any monetary value in life insurance policies owned by its citizens is exempt without monetary limitation. . . .²³

Similarly, it has been held that when reference is made to the "proceeds and avails" of a life insurance policy, such reference comprehends the protection of cash surrender values and other values built up during the life of the policy as well as the protection of its death benefit, even if not expressly so provided by statute.²⁴

Notwithstanding the express unlimited exemption that exists in some states, however, the actual use of such an exemption may have the unintended effect of reducing the debtor's general exemption for personal property.

The fact that the unlimited exemption for the cash surrender value of life insurance that exists in some states can be abused by dishonest debtors has been considered by the bankruptcy court and appropriately disregarded as a basis for judicially recasting the import of the exemption statutes. For example, in *In re White*,²⁵ the bankruptcy trustee, objecting to the debtor's argument that the cash surrender value of his life insurance policy should be exempted as part of the unlimited exemption for the "proceeds and avails" of life insurance referred to under West Virginia's exemption statute, poignantly argued that to hold the cash surrender value exempt would:

. . . provide a debtor with an avenue for depositing his funds, in unlimited amounts, in a species of property which would place it beyond the reach of his creditors, but not beyond his own reach after his discharge in bankruptcy.

Similarly in *In re Beckman*,²⁶ the bankruptcy trustee argued that to hold the cash surrender value of the debtor's life insurance policy exempt would be to make an insurance policy "a refuge for fraud." In each case, however, the bankruptcy court responded by stating that such an argument overlooks the fact that the exemption statute expressly provides that premiums paid in fraud of creditors would, nevertheless, inure to the benefit of creditors. In any event, ". . . [i]f abuses to enacted exemptions are deemed to exist, the remedy is by other than judicial legislation." Such reasoning would seem to exempt even single premium policies purchased as a safe harbor for otherwise non-exempt funds; provided, however, that it cannot be proven that the single premium payment constituted a fraudulent transfer.

Therefore, for the residents of certain states at least, valuable asset protection and pre-bankruptcy planning opportunities exist using life insurance policies; provided, as always, that the conversion of non-exempt assets into exempt assets (be they cash surrender value life insurance policies or otherwise) is not made with the intent to hinder, delay, or defraud creditors. (The reorganization of a debtor's holdings into exempt assets prior to bankruptcy for the purpose of shielding such assets from creditors is generally held to be acceptable pre-bankruptcy planning rather than transfers fraudulent as to creditors.)

Notwithstanding the foregoing, however, the greatest protection for life insurance exists irrespective of the exemptions afforded by applicable law, relying instead on traditional (and not so traditional) estate planning techniques. For example, the owner of the policy (the settlor) may transfer his or her policies to an irrevocable spendthrift trust (or even better, the settlor can create an irrevocable spendthrift trust to acquire the life insurance policy in the first instance), thereby protecting the value of the life insurance policy not only from creditors (both those of the settlor and those of the trust beneficiaries, and regardless of their relationship to each other or to the insured), but from taxation in the settlor's estate as well under IRC Section 2042. IRC Section 2035(a)(2), however, includes in the settlor's gross estate the proceeds of any life insurance policies that were transferred within the three-year period ending on the date of the settlor's death. At the same time, there is little doubt that section 541(c)(2) of the Bankruptcy Code would also serve to exclude the trust property from the settlor/debtor's bankruptcy estate as a spendthrift trust enforceable under applicable non-bankruptcy law.

Furthermore, the transfer of life insurance policies to an irrevocable life insurance trust need not place the potential benefit of the cash surrender value of such policies beyond the settlor's reach. A married settlor can name his or her spouse as a discretionary beneficiary of the trust and, therefore, to the extent that the trustees are amenable to making a distribution of property out of the trust to the spouse of the settlor, the settlor can attain an indirect benefit from the trust property for so long as the spouse survives. If, however, the settlor is unmarried, or if the settlor is concerned with the possibility that his or her spouse may be the

first of the pair to die, the settlor can establish the trust under the laws of Alaska or Delaware (or, alternatively, under the law of certain, select, off-shore jurisdictions such as the Cook Islands), since the law of each of those jurisdictions provides that the owner of property (including life insurance policies) can create a discretionary trust for his or her own benefit without leaving the transferred property subject to the claims of his or her creditors. (There may, however, be a risk of creditor attachment in such a self-settled trust if the assets are within the U.S. court's jurisdiction.) Through the interaction between Chapters 11, 12, and 13 of the IRC and local law governing creditors' rights, the death benefit of the life insurance policy will most likely be excluded from the settlor's gross estate for transfer tax purposes, notwithstanding the fact that the settlor can benefit from the cash surrender value of the policy during the settlor's lifetime.²⁷

Annuities

The federal bankruptcy exemption for annuity payments is found at 11 U.S.C. section 522(d)(10)(E). Like the federal exemption for the cash surrender value of life insurance policies, the exemption for the right to receive an annuity is not overly generous and does not lend itself to asset protection or pre-bankruptcy planning. Specifically, the federal exemption for the right to receive an annuity provides that payments may be exempted only if payable by reason of ". . . illness, disability, death, age, or length of service . . ." and even then, only to the extent "reasonably necessary" for the support of the debtor and any dependent of the debtor. Therefore, planning opportunities under the federal exemption for the right to receive an annuity are limited because of the requirement that the annuitant be ill, aged, dead, or have performed a certain length of service. Even if the debtor was the beneficiary of such a fortuitously placed annuity, the exemption of the payments to be received by the debtor would most likely be subject to litigation to resolve whether they are in an amount required under the exemption's "reasonably necessary" standard. While the "reasonably necessary" standard is sensitive to the debtor's particular situation, the courts have generally proven extremely spare in applying the exemption under such standard. In *Warren v. Taff*,²⁸ the court stated that "[t]he reasonably necessary standard requires that the court take into account other income and exempt property of the debtor, present and anticipated . . . the appropriate amount to be set aside for the debtor ought to be sufficient to sustain basic needs, not related to [the debtor's] former status in society or the lifestyle to which [the debtor] is accustomed. . . ." In *In re Hunsucker*,²⁹ for example, a 57-year-old teacher's aide was allowed to exempt a commercial annuity when her anticipated teacher's retirement benefits were only \$50 per month.

State law exemptions for the right to receive an annuity, on the other hand, vary greatly from one state to another, but generally align with the state's exemption for the cash value of life insurance policies. Florida, for example, exempts the proceeds of annuity contracts without limitation. In contrast to Florida, Pennsylvania generally permits the exemption of only \$100 per month of the

proceeds of an annuity,³⁰ and North Carolina does not appear to permit the exemption of the proceeds of an annuity to any extent. Still other states, such as Missouri, follow the federal scheme and exempt only so much of an annuity as may be "reasonably necessary" for the support of the debtor and the debtor's dependents.³¹ New York's exemption for annuities at first seems to follow that of the Florida model in that it initially provides that "[t]he benefits, rights, privileges and options which, under any annuity contract are due or prospectively due the annuitant, who paid the consideration for the annuity contract, shall not be subject to execution."³³ Unfortunately the New York exemption statute goes on to provide that:

. . . the court may order the annuitant to pay to a judgment creditor or apply on the judgment in installments, a portion of such benefits that appears just and proper to the court, with due regard for the reasonable requirements of the judgment debtor and his family, if dependent upon him. . . .³³

Moreover, the New York exemption for the right to receive an annuity is further qualified by New York Debtor and Creditor Law § 283(1), which generally provides that the exemption for annuity contracts initially purchased by the debtor within six months of the debtor's bankruptcy filing are capped at \$5,000, irrespective of the reasonable income requirements of the debtor and his or her dependents. The intent of this latter section of the statute, according to the bankruptcy court in *In re Moore*,³⁴ is to ". . . limit the debtor's ability to deliberately 'load up' on exempt property" Exhibit 1 contains a state-by-state tabulation of the exemptions.

In states where the exemption for the right to receive an annuity is unlimited, litigation has centered around the issue of whether the interest held by the debtor is, in fact, an annuity under the exemption statute at hand. In Florida, at least, the courts have broadly construed the scope of the term to maintain the breadth of the exemption. For example, in *In re McCollam*,³⁵ the court held that under the Florida exemption scheme, an annuity received by the debtor pursuant to a structured settlement of her deceased father's wrongful death claim was exempt as an annuity rather than non-exempt as the equivalent of an account receivable by the debtor. The court was expressly cognizant of the fact that a literal interpretation of the exemption statute would permit the debtor to conceal her award as an asset, but stated that ". . . had the legislature intended to limit the exemption to particular annuity contracts, it would have included such restrictive language when the statute was amended to include annuity contracts." In contrast, however, the bankruptcy court in *In re Pizzi*³⁶ held that the annual payment of a debtor's lottery winnings through a commercial annuity purchased by the state for the purpose of ensuring payment of the debtor's lottery winnings was not exempt from the bankruptcy estate as an annuity under Florida law. Seemingly the *Pizzi* court allowed form to prevail over substance since the defining feature of the case to the *Pizzi* court was the fact that the state was named the beneficiary of the annuity contract for the purpose of ensuring the payment of the lottery winnings to the debtor over time rather than the debtor

having been named individually on the annuity contract. Interestingly the court noted, in dicta, that under Florida law ". . . the purpose and nature of an annuity is irrelevant if the contract fits within the broad definition of an annuity contract," and then went on to state that had the state named the debtor as the beneficiary of the annuity contract, the payments would have fallen within the purview of the Florida exemption statute and been exempt. The court in *Solomon v. Guardian Life Insurance Co. of America*,³⁷ declined to follow the bankruptcy court's reasoning of *In re Pizzi*,³⁸ and held that ". . . not only annuities in the nature of retirement instruments can be exempted under § 222.14 but also debts structured as annuities." Holding that the debtor could not exempt her stream of payments under an equitable distribution arrangement, the court in *In re Conner* stated, "[t]he critical distinction between this case and the cases cited by the parties is that the contract in those cases is identified as an annuity within the four corners of the contract."

*In re Mart*³⁹ took the broad definition of an annuity under Florida's exemption scheme one step further. Here, the debtor's daughter-in-law established an irrevocable trust for the benefit of seven children, nieces and nephews of the debtor, and minimally funded the trust with \$2,000. The debtor's daughter was appointed as trustee of the trust. The day after the trust was created, the debtor and his spouse entered into an annuity agreement with their daughter as trustee. In furtherance of the annuity agreement, the debtor and his spouse transferred \$350,000 to the trust in exchange for a return stream of annuity payments of \$3,000 per month. Thirteen months later, the debtor filed bankruptcy and claimed that the annuity was exempt under Fla. Stat. § 222.14. Substantively identical to the arguments made with regard to the unlimited exemption of the cash surrender value of life insurance by the creditors in *In re White*,⁴⁰ the objecting creditors argued that:

. . . if (the debtor's income stream from the transfer of this property is an Annuity, any debtor can go to his cousin and give him all of his property in return for a promised stream of income. That debtor need only pull out his big rubber stamp with the word Annuity on it and label the agreement from his cousin to pay the money.

Notwithstanding the piquancy of this argument, and like its predecessor in *In re White*, the bankruptcy court in *In re Mart* dismissed this argument to find in favor of the debtor. *In re Mart*, however, gave more of an explanation of its reasoning than did *In re White*, stating that:

I agree that this statutory exemption, perhaps like all exemptions, invites abuse. I also agree that the debtor's relationship with the . . . trustee, her evident willingness to accept her father's proposals, and the fact that this is a completely private arrangement are grounds for careful scrutiny. . . . I reject the argument and the objections, however, because, (1) . . . the statutory exemption is not restricted to annuities provided by completely unrelated, public entities, and (2) I find no intent to defraud creditors in this debtor's conversion of his non-exempt assets to exempt assets through the establishment of this annuity contract.

In contrast, the court in *In re Gefen*,⁴¹ determined that the debtor's conversion of a non-exempt individual retirement account to an annuity with an intent to defraud creditors was a fraudulent transfer voidable under the Florida statute.

Like life insurance, the exemption for the right to receive an annuity is provided under applicable federal and state law for a particular purpose; to allow persons to ensure their retirement savings through vehicles peculiarly structured to provide an income stream during retirement (i.e., the minimum distributions required for ERISA qualified plans and IRAs, or the delayed lifetime income stream provided by the traditional annuity). In the past, annuity contracts were generally held by government workers and the employees of not-for-profit institutions (for example, the Teachers' Insurance and Annuity Association (TIAA-CREF), which is one of the country's largest providers of annuities) for whom other retirement plans were unavailable, as well as by those retirees who chose to receive distributions from other retirement plans in the form of an annuity rather than via a "roll-over" into an IRA. More recently however, commercial annuities (such as variable annuity contracts) are being purchased by individuals purely as a tax-favored investment vehicle without any view towards the annuity's traditional use for retirement savings. Such products were most likely never intended to be exempt and a colorable argument can be made by creditors to the effect that such products should not be held exempt, notwithstanding that they are, in fact, annuities.

A similar issue arises when a debtor converts non-exempt assets into an exempt annuity shortly prior to bankruptcy since the purpose of such conversion is likely less to provide for retirement needs than to "avoid" creditors (although not necessarily with any noisome connotation). In *In re Johnson*,⁴² the debtor, a physician, personally guaranteed \$19 million of the obligations of a corporation of which he was a 2% share-holder. Following the corporation's default on the obligations, judgments were entered against the debtor on his guarantees. Thereafter, on the advice of counsel, and in furtherance of what the bankruptcy court termed "bankruptcy estate planning with a vengeance," the debtor liquidated most of his non-exempt assets and purchased, inter alia, an annuity with a face value approximating \$250,000. In finding that the debtor's specific intent to put all of his rather substantial personal wealth beyond the reach of his business creditors pursuant to the Minnesota exemption scheme did not void the exemption of the debtor's annuity interests, the *Johnson* court recognized that "[t]he gut level difficulty with the case at bar stems both from the massive amounts of money involved and from debtor's status as an affluent physician enjoying sound professional status, excellent current income, and unlimited future earning potential." Nevertheless, the *Johnson* court denied the bankruptcy trustee's motion to deny the debtor a discharge. According to the court:

. . . what is truly blame-worthy about a debtor's intentional resort to "bankruptcy estate planning," standing alone? From a purely legal perspective, and only in the context of an objection to discharge, the answer is "nothing"-at least where the debtor has not perpetrated actual fraud on a creditor, creditors, receiver, trustee, or other party in

interest during the process. . . . The case law in this Circuit has long recognized the principle noted in the legislative history-that the pre-petition conversion of non-exempt assets to an exempt form is not fraudulent per se. . . .⁴³

Therefore, annuities need not necessarily further retirement purposes to fall within the current exemption schemes, although obviously a more moving argument can be made for the exemption of such an asset where it does so.

Conclusion

Even in those states that have generous exemptions for the cash surrender value of life insurance or the right to receive an annuity, the efficacy of any asset protection planning and pre-bankruptcy planning will likely turn on the court's perception of the debtor's purpose in holding the life insurance or annuity contract, even if the acquisition of such an asset did not constitute a fraudulent conveyance. While the law governing the extent to which pre-bankruptcy or asset protection planning is a permissible exercise of simple prudence is outside the scope of this article, consideration should be given to the gulf between the typical no-consideration transfer and planning for the conversion of non-exempt assets into cash surrender value life insurance and annuities. Since there are numerous reasons for effecting the latter that have nothing to do with avoiding an individual's creditors, the finding of an intent to hinder, delay or defeat creditors is probably unlikely except in the most egregious transactions. Moreover, even where the ultimate resolution of whether a life insurance policy or annuity contract remains in doubt, such conversions may in the end, provide a debtor with the additional leverage he or she needs to force a settlement with his or her creditors at something less than the full value of their claims.

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<u>State Name</u>	<u>Life Insurance Proceeds</u>	<u>Annuity Proceeds</u>	<u>Applicable Section(s)</u>
Alabama	Beneficiary's interest in "proceeds and avails" wholly protected from creditors of owner and insured. Owner's interest in "proceeds and avails" wholly protected from	Maximum \$250 per month of benefits under all annuity contracts exempt from creditors.	Ala. Code §§ 6-10-8 and 27-14-32

<u>State Name</u>	<u>Life Insurance Proceeds</u>	<u>Annuity Proceeds</u>	<u>Applicable Section(s)</u>
	creditors of insured if owner (or owner's spouse) is insured, and spouse and/or children (or owner and/or children) are beneficiaries.		
Alaska	<p>Owner's interest in up to \$12,000 of value of unmaturred policy is exempt.</p> <p>Maximum interest of \$420 per week of spouse or dependent beneficiary is exempt.</p>	Owner's interest in up to \$12,000 of value of unmaturred policy is exempt.	<p>Alaska Stat. §§ 09.38.025 and 09.38.030</p> <p>Alaska Admin. Code Tit. 8 § 95.030.</p>
Arizona	<p>Maximum interest of \$20,000 of spouse or child beneficiary in death benefit is exempt.</p> <p>Owner's interest in up to \$25,000 of cash surrender value is exempt if (i) policy held for at least two years and (ii) spouse, child, parent, sibling, or other dependent family member is beneficiary.</p> <p>Beneficiary's interest in proceeds wholly protected from creditors of owner.</p>	Exempt only if qualified under Code §§ 401(a), 403(a), 403(b), 408, or 409.	Ariz. Rev. Stat. §§ 20-1131 and 33-1126(A)(1) and (6), and (C)
Arkansas	Note:		

<u>State Name</u>	<u>Life Insurance Proceeds</u>	<u>Annuity Proceeds</u>	<u>Applicable Section(s)</u>
	<p>In re Hudspeth, 92 Bankr. 827 (1988), the court held that the state exemption contained in Ark. Code Ann. § 16-66-209 of the value of all insurance benefits without limitation is unconstitutional because it directly conflicts with Arkansas's Constitution. Article 9 § 2 of Arkansas's Constitution imposes a \$500 limited exemption from creditors claims. The Bankruptcy Court refused to use § 16-66-209 to exempt property from inclusion in the debtor's estate pursuant to § 16-66-218(b)(7). In Federal Sav. & Loan Ins. Co. v. Holt, 894 F.2d 1005 (8th Cir. 1990), the court also imposed a \$500 exemption ceiling on life insurance benefits and policies' cash surrender value.</p>		
California	<p>Unmatured policy wholly exempt from creditors; provided, however, that loan value of only \$8,000 (\$16,000 if debtor married) is exempt.</p> <p>Death benefits exempt to extent reasonably necessary for support of debtor, and spouse and dependents of debtor.</p>	Unmatured policy wholly exempt from creditors.	Cal. Code Civ. Proc. § 704.100.
Colorado	<p>Interest in up to \$50,000 of cash surrender value (except for increase attributable to previous 48 months contributions) exempt from creditors of insured except where beneficiary is estate of insured.</p> <p>Death benefit payable to beneficiary (other</p>	None.	Colo. Rev. Stat. §§ 13-54-102(1)(l) and (s).

<u>State Name</u>	<u>Life Insurance Proceeds</u>	<u>Annuity Proceeds</u>	<u>Applicable Section(s)</u>
	than estate of insured) wholly exempt from creditors of insured.		
Connecticut	<p>Interest of beneficiary (other than insured) in proceeds wholly protected from creditors of insured.</p> <p>Interest of owner of unexpired policy in up to \$4,000 of accrued interest or dividend, or loan value, is exempt provided insured is owner or person upon whom owner is dependent.</p>	Only if ERISA qualified.	Conn. Gen. Stat. §§ 13-54-102(s), 38a-453 and 52-352b(s)
Delaware	Beneficiary's interest in "proceeds and avails" wholly protected from all creditors.	Maximum \$350 per month of benefits under all annuity contracts exempt from creditors.	Del. Code Ann. Tit. 18 §§ 2725 and 2728
District of Columbia	Maximum exemption of \$200 per month for a beneficiary providing principal support of a family or \$60 per month for a beneficiary not providing principal support of a family.	Maximum exemption of \$200 per month for a beneficiary providing principal support of a family or \$60 per month for a beneficiary not providing principal support of a family.	D.C. Code Ann. § 15-503

<u>State Name</u>	<u>Life Insurance Proceeds</u>	<u>Annuity Proceeds</u>	<u>Applicable Section(s)</u>
Florida	<p>Beneficiary's interest in proceeds wholly protected from insured's creditors unless policy payable to insured or his estate.</p> <p>Owner's interest in cash surrender value wholly exempt.</p>	Interest in proceeds of policy wholly exempt.	Fla. Stat. §§ 222.13 and 222.14
Georgia	<p>Owner's interest in unmaturing policy (except credit life insurance) wholly exempt; provided that only \$2,000 maximum accrued dividend or interest, or loan or cash value, exempt (provided insured is debtor or individual upon whom debtor dependent).</p> <p>Beneficiary's interest in death benefit exempt to extent reasonably necessary for support or debtor and dependent if insured was individual of whom debtor was a dependent.</p>	Proceeds of policy exempt to extent reasonably necessary for support of debtor and dependents	Ga. Code Ann. §§ 44-13-100(a)(2)(E), 44-13-100(a)(8), 44-13-100(a)(9) and 44-13-100(a)(11)(C).
Hawaii	Proceeds and cash value payable to insured's spouse, child, parent or other dependent is wholly	Proceeds payable to spouse, child, parent or other dependent is wholly exempt	Haw. Rev. Stat. § 431:10-232

<u>State Name</u>	<u>Life Insurance Proceeds</u>	<u>Annuity Proceeds</u>	<u>Applicable Section(s)</u>
	exempt from insured's creditors.	from insured's creditors.	
Idaho	Beneficiary's interest in "proceeds and avails" wholly protected from all creditors.	Maximum \$1,250 per month of benefits under all annuity contracts exempt from creditors.	Idaho Code §§ 41-1833 and 41-1836.
Illinois	<p>Proceeds and cash value payable to insured's spouse, child, parent or other dependent is wholly exempt from insured's creditors.</p> <p>Beneficiary's interest in payment under policy insuring individual of whom beneficiary was a dependent is exempt to extent necessary for support of beneficiary and dependents.</p>	Proceeds payable to spouse, child, parent or other dependent is wholly exempt from insured's creditors.	215 Ill. Comp. Stat. § 5/238(a), 735. Ill. Comp. Stat. § 5/12-1001(f) and (h)(3).
Indiana	If contract so provides, benefits payable to person other than person effecting policy are wholly exempt from creditors.	If contract so provides, benefits payable to person other than person effecting policy are wholly exempt from creditors.	Ind. Code § 27-2-5-1
Iowa	Interest in accrued dividend or interest, or loan or cash	Proceeds wholly exempt except for payments	Iowa Code §§ 627.6(6) and (8)(e)

<u>State Name</u>	<u>Life Insurance Proceeds</u>	<u>Annuity Proceeds</u>	<u>Applicable Section(s)</u>
	<p>surrender value, wholly exempt if beneficiary is spouse, child or dependent; provided that increases attributable to prior two years limited to \$10,000.</p> <p>Maximum \$15,000 of death benefit exempt if payable to spouse, child or dependent.</p>	<p>resulting from excessive contributions within prior year.</p>	
Kansas	<p>Policy and its reserves, or their present value, wholly exempt from claims of all creditors unless purchased within past year.</p>	<p>Annuities qualifying under certain Kansas statutes wholly exempt.</p>	<p>Kan. Stat. Ann. §§ 40-414(a) and (f), and 60-2313</p>
Kentucky	<p>Beneficiary's interest in "proceeds and avails" wholly protected from all creditors.</p> <p>Owner's interest in policy wholly exempt.</p>	<p>Maximum \$350 per month of benefits under all annuity contracts exempt from creditors.</p>	<p>Ky. Rev. Stat. Ann. §§ 427.110(1), 304.14-300 and 304.14-330</p>
Louisiana	<p>Interest of beneficiary (including estate of insured) in "proceeds and avails" wholly protected from all creditors.</p>	<p>Interest in proceeds of policy wholly protected from all creditors; provided that maximum \$35,000 exempt if bankruptcy filed within nine months of policy</p>	<p>La. Rev. Stat. Ann. § 22:647</p>

<u>State Name</u>	<u>Life Insurance Proceeds</u>	<u>Annuity Proceeds</u>	<u>Applicable Section(s)</u>
		issuance.	
Maine	<p>Beneficiary's interest in "proceeds and avails" wholly protected from all creditors.</p> <p>Owner's interest in unmatured policy (except credit life insurance) wholly exempt; provided that only \$4,000 maximum accrued dividend or interest, or loan value, exempt (provided insured is debtor or individual upon whom debtor dependent).</p>	Maximum \$450 per month of benefits under all annuity contracts exempt from creditors	Me. Rev. Stat. Ann. Tit. 24-A, §§ 2428 and 2431, Tit. 14 §§ 4422(10) and (11).
Maryland	Proceeds wholly exempt if payable to the spouse, child, or dependent relative of the insured.	Proceeds wholly exempt if payable to the spouse, child, or dependent relative of the insured.	Md. Code Ann., Ins. § 16-111
Massachusetts	Beneficiary's interest in "proceeds" wholly protected from creditors of owner.	None.	Mass. Gen. Laws ch. 175 § 125
Michigan	Proceeds (including cash value) wholly exempt from creditors.	Proceeds wholly exempt.	Mich. Comp. Laws § 500.2207
Minnesota	Proceeds wholly	Proceeds wholly	Minn. Stat. §§

<u>State Name</u>	<u>Life Insurance Proceeds</u>	<u>Annuity Proceeds</u>	<u>Applicable Section(s)</u>
	<p>exempt from creditors of person effecting the policy.</p> <p>Maximum \$20,000 of proceeds payable to a spouse or child is exempt from other creditors (increased by \$5,000 for each dependent of the spouse or child).</p> <p>Maximum \$4,000 interest in any accrued dividend or interest, or loan value, exempt (provided insured is debtor or individual upon whom debtor dependent).</p>	<p>exempt from creditors of person effecting the policy.</p>	<p>61A.12 and 550.37(10) and (23)</p>
Mississippi	<p>Proceeds (including cash surrender and loan value) wholly protected from creditors of insured; provided maximum \$50,000 cash surrender or loan value exempt if from premiums paid in past twelve months.</p>	<p>Exempt to extent reasonably necessary for support of debtor and dependent if on account of illness, disability, death, age, or length of service and qualifies under Code §§ 401(a), 403(a), 403(b), 408, or 409.</p>	<p>Miss. Code Ann. §§ 85-3-1 and 85-3-11</p>
Missouri	<p>Owner's interest in unmaturred policy (except credit life insurance) wholly</p>	<p>Exempt to extent reasonably necessary for support of debtor</p>	<p>Mo. Rev. Stat. §§513.430(7), (8) and (10)(e).</p>

<u>State Name</u>	<u>Life Insurance Proceeds</u>	<u>Annuity Proceeds</u>	<u>Applicable Section(s)</u>
	exempt; provided that only \$150,000 maximum accrued dividend or interest, or loan value, exempt (and provided insured is debtor or individual upon whom debtor dependent).	and dependents provided benefits are by reason of age, illness, disability, death or length of service.	
Montana	Beneficiary's interest in "proceeds and avails" wholly protected from creditors of owner and insured. Maximum \$4,000 in value of unmatured life insurance contract is exempt.	None.	Mont. Code Ann. §§ 33-15-511 and 25-13-609(4)
Nebraska	Maximum \$10,000 of proceeds, cash value, and benefits exempt from insured's creditors (unless beneficiary is estate of insured); also exempt from beneficiary's creditors if beneficiary related by blood or marriage to insured.	Maximum \$10,000 proceeds of policy exempt.	Neb. Rev. Stat. §§ 44-371
Nevada	Beneficiary's interest in "proceeds and avails" wholly protected from all creditors.	Maximum \$350 per month of benefits under all annuity contracts exempt from creditors.	Nev. Rev. Stat. §§ 21.090(1)(k), 687B.260 and 687B.290

<u>State Name</u>	<u>Life Insurance Proceeds</u>	<u>Annuity Proceeds</u>	<u>Applicable Section(s)</u>
	Owner's interest in all money, benefits, privileges or immunities, exempt to extent premium not in excess of \$1,000 per year.		
New Hampshire	Beneficiary's interest in proceeds wholly protected from creditors of person effecting policy unless policy payable to insured's estate.	None.	N.H. Rev. Stat. Ann. § 408:2
New Jersey	Beneficiary's interest in "proceeds and avails" wholly protected from all creditors provided beneficiary is not owner or insured.	Maximum \$500 per month of benefits under all annuity contracts exempt from creditors.	N.J. Stat. Ann. §§ 17B:24-6 and 17B:24-7
New Mexico	Cash surrender value and withdrawal value wholly exempt from all creditors.	Proceeds of policy wholly exempt from all creditors.	N.M. Stat. Ann. §§ 42-10-3 and 42-10-5
New York	Beneficiary's interest in "proceeds and avails" wholly protected from all creditors provided beneficiary is not owner or insured. Owner's interest in proceeds and avails of policy insuring another is exempt as	Court has discretion to order "just and proper amount" paid to creditors with due regard to reasonable requirements of debtor and dependent family; provided maximum \$5,000	N.Y. Ins. Law § 3212; N.Y. Debtor & Creditor Law § 283.

<u>State Name</u>	<u>Life Insurance Proceeds</u>	<u>Annuity Proceeds</u>	<u>Applicable Section(s)</u>
	against creditors of insured (and owner's own creditors if insured is owner's spouse).	exempt if annuity purchased within prior six months.	
North Carolina	Beneficiary's interest in "proceeds" wholly protected from creditors of insured provided beneficiary is not owner or insured.	Only individual retirement annuity under Code § 408 is exempt.	N.C. Const. § 5; N.C. Gen. Stat. §§ 1C-1601 and 58-58-115
North Dakota	Maximum exemption of proceeds or cash surrender value of \$100,000 per policy and \$200,000 aggregate (unless more is reasonably necessary for the support of insured and dependents), provided payable to spouse, children, or any dependent relative.	Maximum exemption of \$100,000 per policy and \$200,000 aggregate (unless more is reasonably necessary for the support of insured and dependents), provided payable to spouse, children, or any dependent relative.	N.D. Cent. Code § 28-22-03.1
Ohio	"Proceeds and avails" wholly protected from creditors of insured provided beneficiary is spouse, child or dependent.	Wholly protected from creditors of annuitant provided beneficiary is spouse, child or dependent.	Ohio Rev. Code Ann. § 3911.10
Oklahoma	Policy proceeds and cash values wholly	Wholly protected from all creditors.	Okla. Stat. Tit. 36 § 3631.1(A)

<u>State Name</u>	<u>Life Insurance Proceeds</u>	<u>Annuity Proceeds</u>	<u>Applicable Section(s)</u>
	protected from all creditors.		
Oregon	Beneficiary's interest in "proceeds" wholly protected from creditors of insured provided beneficiary is not owner or insured. Owner/insured's interest in cash value wholly exempt provided beneficiary is not owner/insured's estate.	Maximum \$500 per month of benefits under all annuity contracts exempt from creditors.	Or. Rev. Stat. §§ 743.046 and 743.049
Pennsylvania	Proceeds payable to spouse, child or dependent relative of insured wholly exempt from creditors of insured. Proceeds exempt from own creditors to extent necessary to provide for maximum income or return of \$100 per month.	Proceeds payable to spouse, child or dependent relative of insured wholly exempt from creditors of insured. Proceeds exempt from own creditors to extent necessary to provide for maximum income or return of \$100 per month.	42 Pa. Cons. Stat. § 8124(C)
Rhode Island	Beneficiary's interest in "proceeds and avails" wholly protected from creditors of insured provided beneficiary	Only individual retirement annuity under Code § 408(b) is exempt.	R.I. Gen. Laws §§ 9-26-4(11) and 27-4-11

<u>State Name</u>	<u>Life Insurance Proceeds</u>	<u>Annuity Proceeds</u>	<u>Applicable Section(s)</u>
	is not owner or insured.		
South Carolina	Beneficiary's interest in proceeds and cash surrender values wholly protected from creditors of insured provided beneficiary is spouse, child or dependent of insured. Maximum \$4,000 exemption for owner's interest in accrued dividend or interest under, or loan value of, unmaturred policy under which insured is debtor or individual of whom debtor is dependent.	Exempt if on account of illness, disability, death, age, or length of service and qualifies under Code §§ 401(a), 403(a), 403(b), 408, or 409.	S.C. Code Ann. §§ 14-41-30(8), 15-41-30(10)(E) and 38-63-40
South Dakota	Maximum \$10,000 exemption for proceeds payable to estate or maximum \$20,000 exemption for proceeds payable to spouse or children.	Maximum \$250 per month of benefits under all annuity contracts exempt from creditors.	S.D. Codified Laws §§ 43-45-6, 58-12-4, 58-12-6 and 58-12-8
Tennessee	Beneficiary's interest in amounts payable under policy wholly protected from creditors of insured provided beneficiary is spouse, child or dependent relative of insured.	Beneficiary's interest in amounts payable under policy wholly protected from creditors of insured provided beneficiary is spouse, child or dependent	Tenn. Code Ann. § 56-7-203

<u>State Name</u>	<u>Life Insurance Proceeds</u>	<u>Annuity Proceeds</u>	<u>Applicable Section(s)</u>
		relative of insured.	
Texas	Policy proceeds and cash values wholly protected from all creditors (subject to disagreement among courts as to interpretation and interaction of statute).	Policy proceeds wholly exempt from all creditors.	Tex. Ins. Code § 21.22
Utah	Exemption for proceeds or benefits paid to a spouse or dependent upon death of insured to extent reasonably necessary for support of beneficiary and dependents. Maximum \$5,000 exemption for owner's interest in unmaturred life insurance	Assets held and proceeds paid to extent reasonably necessary for support of beneficiary and dependents.	Utah Code Ann. §§ 78-23-6, 78-23-7.
Vermont	Owner's interest in unmaturred policy (except credit life insurance) wholly exempt. Beneficiary's interest in payment under policy insuring life of individual on whom debtor was dependent wholly exempt; otherwise exempt from creditors	Maximum \$350 per month of benefits under all annuity contracts exempt from creditors.	Vt. Stat. Ann. Tit. 12 §§ 2740(18) and (19)(H); Tit. 8 §§ 3706 and 3709

<u>State Name</u>	<u>Life Insurance Proceeds</u>	<u>Annuity Proceeds</u>	<u>Applicable Section(s)</u>
	of owner and insured only.		
Virginia	Beneficiary's interest in proceeds wholly protected from creditors of owner and insured, provided that beneficiary is not owner or insured.	None.	Va. Code Ann. § 38.2-3122
Washington	Beneficiary's interest in "proceeds and avails" wholly protected from all creditors.	Maximum \$250 per month of benefits under all annuity contracts exempt from creditors.	Wash. Rev. Code §§ 48.18.410 and 48.18.430
West Virginia	Beneficiary's interest in "proceeds and avails" wholly protected from all creditors of owner and insured, provided that beneficiary is not owner or insured.	None.	W. Va. Code § 33-6-27
Wisconsin	Maximum \$4,000 exemption for debtor/owner's interest in unmaturred policy (other than credit life insurance), if debtor, dependent, or individual of whom the debtor is a dependent is insured. Beneficiary's interest in payment under policy insuring	Wholly exempt provided benefits are by reason of age, illness, disability, death or length of service.	Wis. Stat. § 815.18

<u>State Name</u>	<u>Life Insurance Proceeds</u>	<u>Annuity Proceeds</u>	<u>Applicable Section(s)</u>
	individual of whom debtor was dependent is exempt to extent reasonably necessary for support of debtor and dependents.		
Wyoming	Beneficiary's interest in "proceeds" wholly protected from all creditors of owner and insured, provided that beneficiary is not owner or insured.	Maximum \$350 per month of benefits under all annuity contracts exempt from creditors.	Wyo. Stat. Ann. §§ 26-15-129 and 26-15-132

Although the authors have attempted to interpret and reflect the most current and appropriate statutory authority, planners are urged to refer to the current statutes and court decisions in their jurisdictions.

The foregoing exhibit was updated as of October 2003.

¹ The Bankruptcy Code is codified at 11 U.S.C. sections 101, et seq.

² Section 522(b) of the Bankruptcy Code provides the states with the authority to substitute their own exemption schemes for the federal exemption scheme set out in section 522(d) of the Bankruptcy Code.

³ For an in-depth analysis of the creditor protections afforded retirement plans and individual retirement accounts, see Rothschild and Alliotts, "Protecting Retirement Plans," 2 JOAP 35, (March/April 1997).

⁴ 504 U.S. 573 (1992).

⁵ 11 U.S.C. section 522(d)(7).

⁶ 11 U.S.C. section 522(d)(8) states that the exemption is only \$8,000. Pursuant to 11 U.S.C. section 104(b), however, this amount is subject to periodic adjustment by detailed formula for inflation.

⁷ 11 U.S.C. section 522(d)(B). The exempt amount is reduced by amounts taken by an insurance company to pay premiums or carry out a non-forfeiture option if such option is automatic under the policy

⁸ 11 U.S.C. section 522(a)(1).

⁹ S.C. Code Ann. § 15-41-30(8).

¹⁰ S.C. Code Ann. § 38-63-40(A).

¹¹ Wis. Stat. Ann. § 815.18(f).

¹² Wis. Stat. Ann. § 815.18(i)(a).

¹³ Fla Stat. Ann. § 222.14.

¹⁴ Fla Stat. Ann. § 222.13.

¹⁵ Hawaii Rev. Stat. § 431:10-232(a).

¹⁶ La. Rev. Stat. Ann. § 22.647(A).

¹⁷ N.Y. Insurance Law § 3212; See also, N.Y. Civil Practice Law and Rules § 5205(i).

¹⁸ N.Y. Insurance Law § 3212(b).

¹⁹ 40 F.Supp. 616 (SD N.Y., 1941).

²⁰ N.Y. Insurance Law § 3212(a)(2).

²¹ 28 Bkrptcy Rptr. 736 (Bkrptcy. WD Ky, 1983).

²² Ky. Rev. Stat. § 427.110(1).

²³ Note 21, *supra*.

²⁴ See, e.g., *In re White*, 185 F.Supp. 609 (N.D. W.Va. 1960); *In re Beckman*, 50 F.Supp. 339, (N.D. Ala. 1943).

²⁵ Note 24, *supra*.

²⁶ Note 24, *supra*.

²⁷ See Rothschild, "Coming in From the Cold-Estate Planning Using Alaska Trusts," CCH Financial and Estate Planning 26-303 (August 1997).

²⁸ 10 Bkrptcy. Rptr. 101, (Bkrptcy. D Conn., 1981).

²⁹ 106 Bkrptcy. Rptr. 220 (Bkrptcy. D Mont., 1988).

³⁰ 42 Pa. Cons. Stat. Ann. § 8124(c)(3).

³¹ Mo. Ann. Stat. § 513.430(10)(e).

³² N.Y. Insurance Law § 3212(d)(l).

³³ N.Y. Insurance Law § 3212(d)(2).

³⁴ 177 Bkrptcy. Rptr. 437 (Bkrptcy. ND N.Y., 1994).

³⁵ 986 F.2d 436 (CA-11, 1993).

³⁶ 153 Bkrptcy. Rptr. 357 (Bkrptcy. SD Fla., 1993).

³⁷ 186 Bkrptcy. Rptr. 535 (Bkrptcy. SD Fla., 1995).

³⁸ 172 Bkrptcy. Rptr. 119 (Bkrptcy. MD Fla., 1994).

³⁹ Bkrptcy. Rptr. 436 (Bkrptcy. SD Fla., 1988).

⁴⁰ Note 24, *supra*.

⁴¹ 35 Bkrptcy. Rptr. 368 (Bkrptcy. SD Fla., 1984).

⁴² 80 Bkrptcy. Rptr. 953 (Bkrptcy. D Minn., 1987).

⁴³ *Id.*