**Asset Protection and Estate Planning with**
**The Family Savings Trust**

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An increasingly popular tool used for asset protection and estate planning is known as The Family Savings Trust. The term is broadly descriptive of a trust designed specifically to hold and protect a variety of assets against lawsuits and business risks. It can be very flexible in form and allows for the accomplishment of most important asset protection and estate planning goals.

**Expanding Asset Protection Laws**

Perhaps due to the difficult economic times, and widespread outrage against perceived abusive lending practices by financial institutions and questionable collections tactics by their attorneys, the law in most states is moving in a more favorable and permissive direction for asset protection planning. As long as the planning is not intended to defraud creditors, avoid spousal or child support obligations or violate existing laws against Fraudulent Transfers, there are now opportunities to achieve varied asset protection and estate planning goals within a reasonably simplified structure.

At last count 12 states* had adopted specific laws expanding the permissible uses of asset protection trusts. These laws now generally permit an individual to protect assets in a qualified trust even while drawing income or principal from the trust. Although the effectiveness and usefulness of the law differs in each state, the trend itself is positive and is dramatically increasing the available planning strategies. Similar favorable results can be achieved for residents of most other states within the existing statutory framework and case law.

**Protecting Your Home and Other Assets**

Based on these new laws and advances in technique, the purpose of the Family Savings Trust (FST) is to combine the best features of domestic and even offshore arrangements within a single trust entity. Since the FST is intended to hold a variety of assets, appropriate language should be included which addresses the particular issues associated with each asset to be placed in the FST. For example, if you wish to protect the equity in your home from any future potential claim, the FST will contain specific language to protect the residence while preserving the tax benefits associated with the home (mortgage interest, property taxes, avoidance of gain in sale) and make sure that the property can be refinanced or sold at any time in the future. If your assets consist mostly of savings and brokerage accounts and depending upon your goals and the circumstances of your case, the FST may be designed to permit you to retain the level of management and continued enjoyment of your property that you wish. For instance the trust may permit you to serve as a trustee and special beneficiary with current rights to income and principle. Alternatively, you earn enough from your practice to maintain your lifestyle without current need for the income from your savings. You may choose to set aside and accumulate your future savings until retirement, when your liability risk has diminished substantially. If you do not need to use the current income from your investments while you are practicing, this type of arrangement may provide excellent protection with maximum flexibility.

Many physicians have membership interests in existing LLCs which in turn may own related businesses or real estate investments. If these interests are valuable, or may be in the future, the FST can be drafted to protect these particular assets from "charging order" or foreclosure by a creditor or a plaintiff with a legal judgement. Similarly business assets such as accounts receivable and equipment can be shielded by the FST if these are important assets in your practice.

**Estate Planning**

The Family Savings Trust differs from a Living Trust that is often used to avoid probate and pass property upon the death of a spouse. Unlike the Living Trust which provides no asset protection benefits, the FST can be designed to accomplish both asset protection and traditional estate planning goals – some of which can be quite sophisticated. Although Congress is likely to make substantial changes in the current estate tax law, those that might be subject to an estate tax can use the FST for a variety of advanced tax planning techniques (see previous article "Coping with the New Estate Tax" )

**Planning for High Risk Specialties**

Physicians at the higher end of the liability scale – practicing in high risk specialties or in businesses with higher than usual lawsuit potential – may choose to add language to the Family Savings Trust which allows the FST to obtain certain "offshore advantages" at some later point. For example, under normal circumstances, the trust exists and is governed by whatever domestic law we choose. But, if circumstances warrant, and strategy dictates, we can convert all or a portion of the trust or its' assets into a foreign entity – usually an LLC or a trust – for enhanced asset protection and estate planning. The feature is not necessary for everyone but for those who are attractive lawsuit targets, the "offshore" capability can be a valuable additional feature.

The Family Savings Trust is a popular and effective vehicle for accomplishing a variety of asset protection and estate planning goals within a single structure with limited filing and maintenance requirements. Since every legal strategy should be analyzed fully in light of a client's unique circumstances, you should make sure to discuss your asset protection planning with your attorney and tax advisors so that your particular planning needs are considered in adequate detail.

* Nevada, Alaska, Delaware, South Dakota, Tennessee, Rhode Island, New Hampshire, Wyoming, Utah, Missouri, Oklahoma, Colorado