USING OUT-OF-STATE TRUSTS TO ENHANCE YOUR PRACTICE

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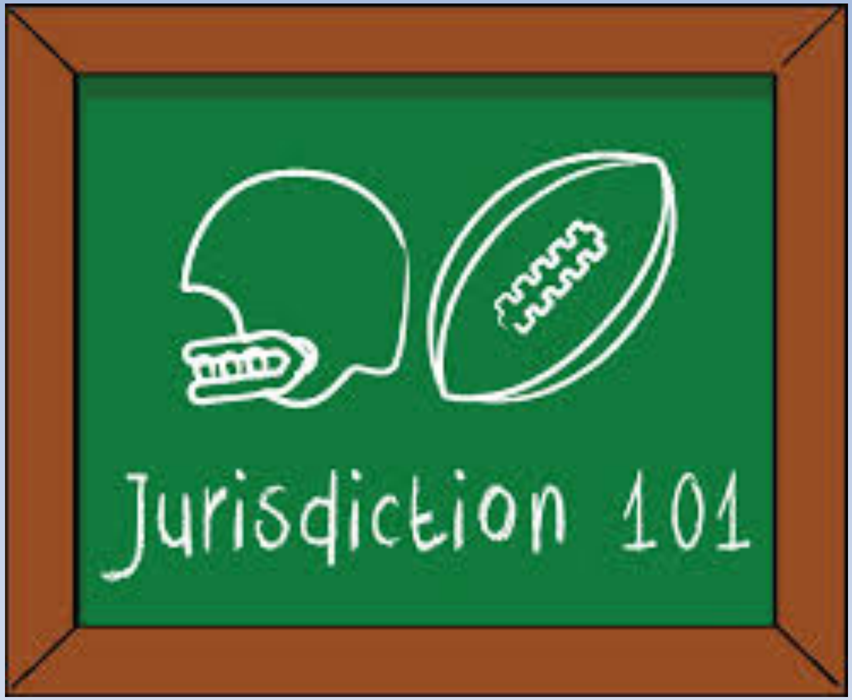
Choice of Jurisdiction



Many planners fail to take advantage of jurisdictional opportunities

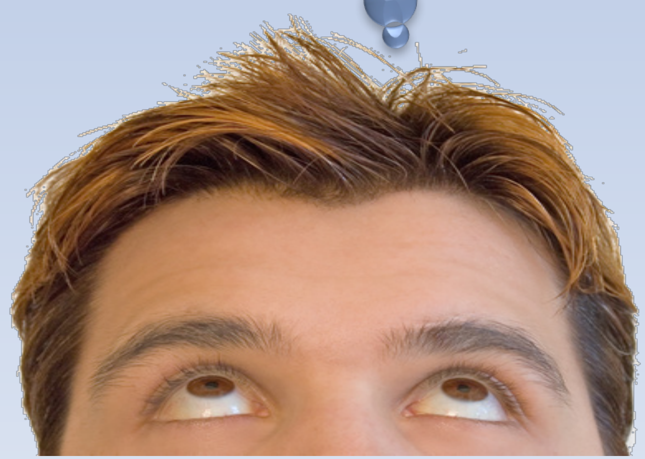
They assume that it must be too complicated or too expensive

Opportunities using Out-of-State Trusts

- There are significant opportunities using out-of-state trusts
  - Dynasty Trusts
  - Domestic Asset Protection Trusts
  - Hybrid DAPTs
  - Trust Decanting
  - State Income Tax Savings

Dynasty Trust

The Dynasty Trust should be the centerpiece of nearly EVERY estate plan!



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Dynasty Trust

- A "Dynasty Trust" is an irrevocable trust that is not subject to estate taxes for as long as state law allows
  - It can also be drafted to be protected from creditors and divorcing spouses
  - Nevada, South Dakota, Alaska and Delaware are generally considered the Tier 1 states

Staggered Distribution Trust

- Nearly every trust you see is drafted as a staggered distribution trust
  - A “staggered distribution trust” is a trust that makes mandatory distributions to the beneficiary at staggered ages
  - This subjects the trust assets to potential estate taxes, creditors and divorcing spouses
  - Why not just pick an age to give the primary beneficiary control?

Why do we use Dynasty Trusts?

- To save estate taxes?
- To protect assets from creditors and divorce?
- To shift income to lower federal tax brackets?
- To save state income taxes?
- To be able to give beneficiaries GPOAs over low basis assets

Domestic Asset Protection Trust

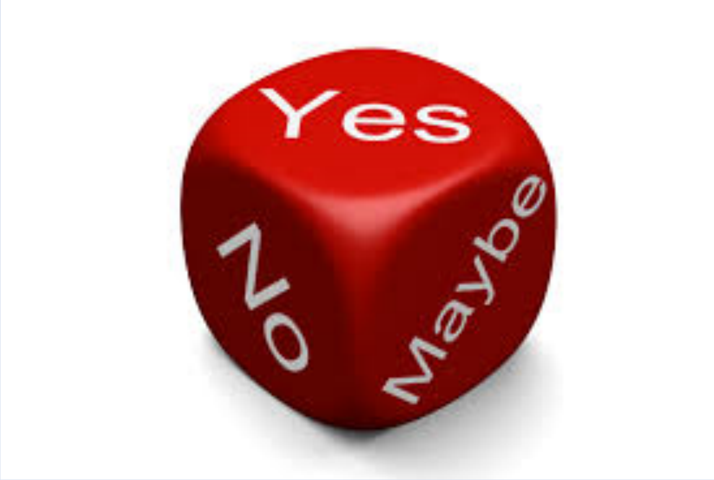
A DAPT is a U.S. asset protection trust in which the trust grantor is a permissible beneficiary

Domestic Asset Protection Trust

- Nevada is considered the leading DAPT jurisdiction
  - Two-year statute of limitations
    - Pre-existing creditors versus non-pre-existing creditors
  - No statutory exception creditors
- Fraudulent conveyance laws—transfer with the intent to hinder, defraud or delay

Does a DAPT Work?

- A DAPT definitely works for a resident of the DAPT state
- Does it work for a resident of a non-DAPT state who sets it up under the laws of a DAPT state?



Hybrid DAPT

- A "Hybrid DAPT" is a Third-Party Irrevocable Trust that can be turned into a DAPT
- Does the grantor really need to see his name in the trust agreement as a discretionary beneficiary?
  - Assuming a good relationship with spouse, a trust for spouse and descendants isn't much different than a DAPT
  - Give Trust Protector the power to add the grantor or remove the grantor as a permissible beneficiary

Getting Cash Flow Without Being a Beneficiary

- Assume grantor sets up Hybrid DAPT for benefit of spouse and descendants

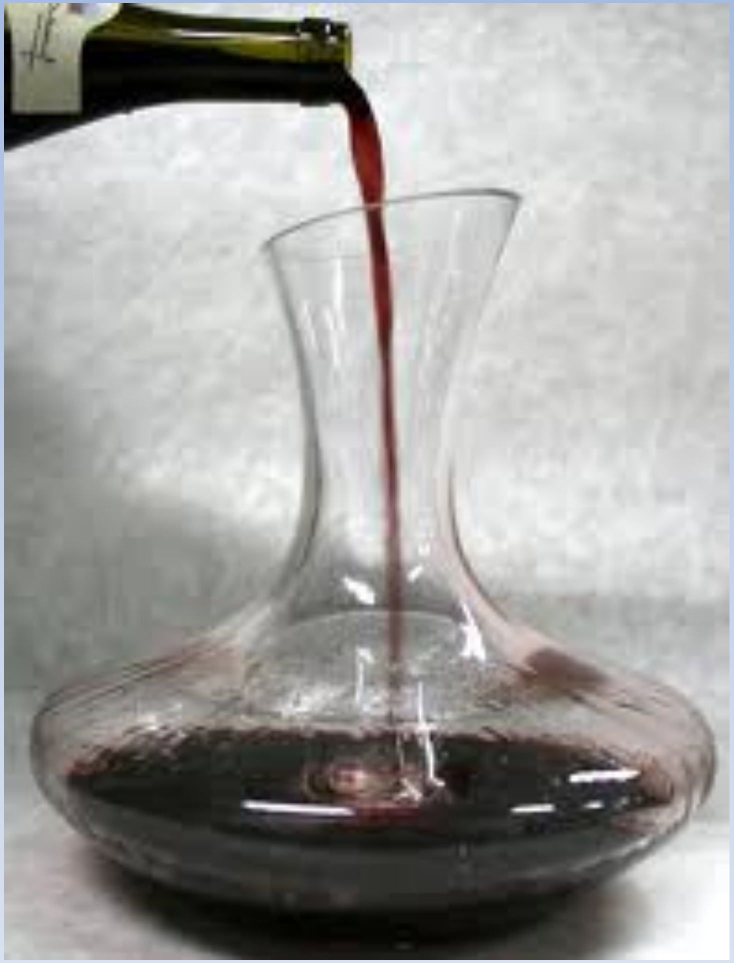
Getting Cash Flow Without Being a Beneficiary

- Ways to access cash flow?
  - Distribution to spouse who shares it with grantor
  - Give a beneficiary a broad non-general power of appointment that includes the grantor
  - Sell assets to Hybrid DAPT for promissory note
    - So Hybrid DAPT can get cash flow to grantor by paying down promissory note
  - Have trust loan money to the grantor for promissory note

Down and Dirty
Splitting the Trust

- Another option is to have the trustee split the Hybrid DAPT into two separate trusts
  - Trust A = Clean Trust: Still a Hybrid DAPT
  - Trust B = Dirty Trust: Grantor is added in as a discretionary beneficiary and multiple distributions are made to him without hesitation
- We know the Clean Trust still works
- The Dirty Trust might not work, but at least we protected the Clean Trust assets

Decanting



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Irrevocable

I can't change my trust???
How could I have anticipated my children having drug and divorce problems?

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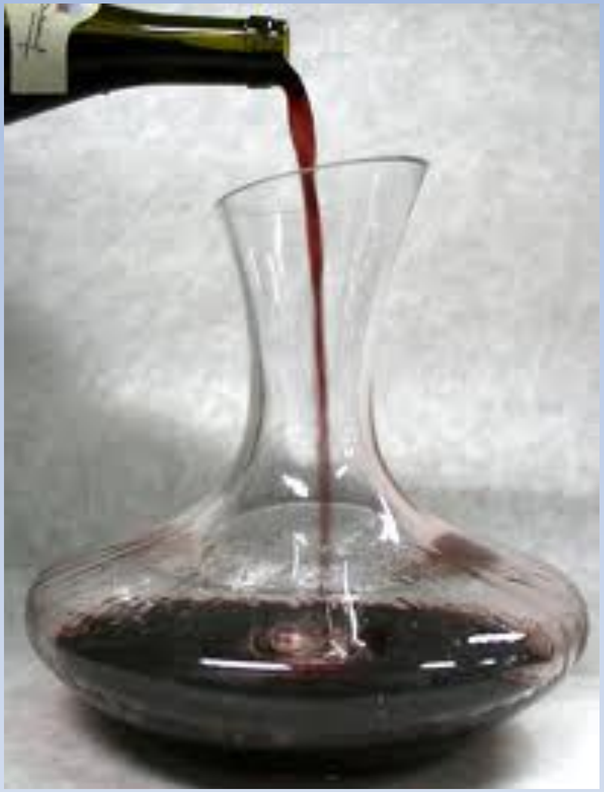
Decanting



de·cant (d -k nt)
tr.v. **de·cant·ed**, **de·cant·ing**, **de·cants**
1. To pour off (wine, for example) without disturbing the sediment.
2. To pour (a liquid) from one container into another.

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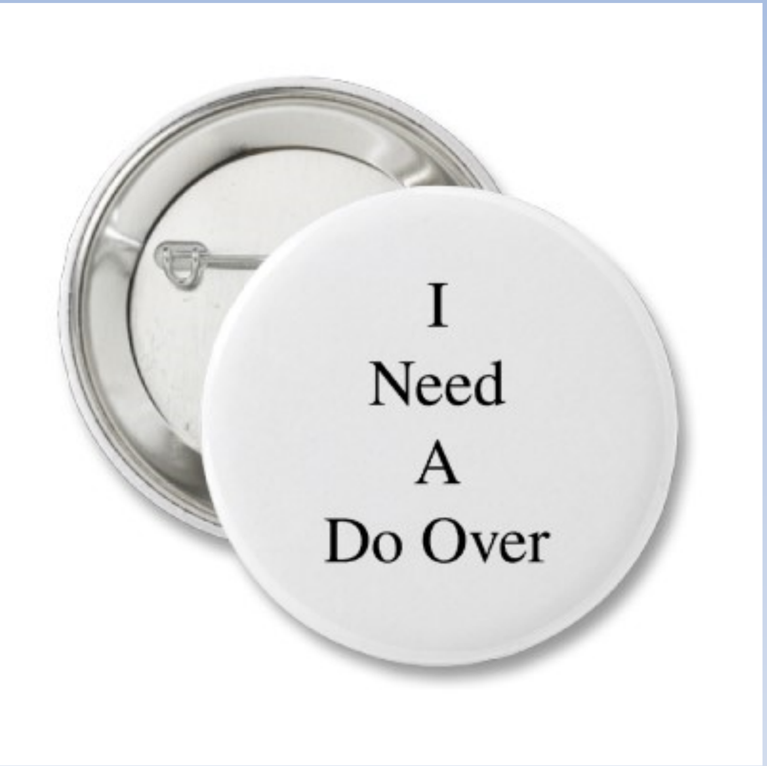
Decanting a Trust

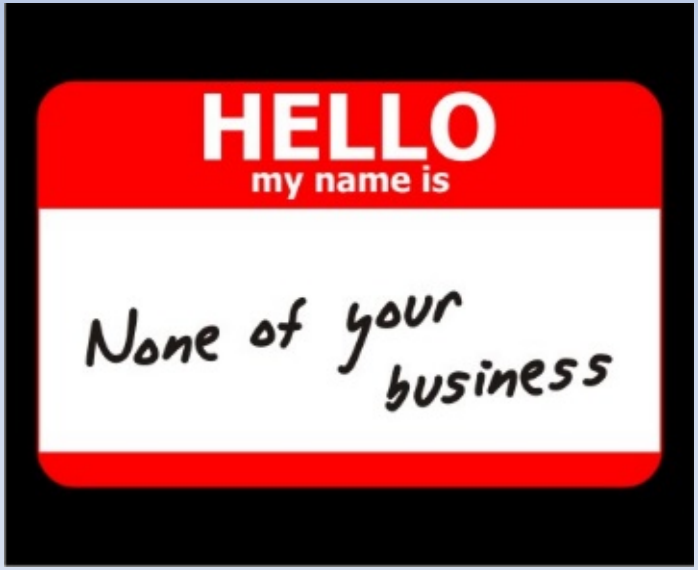


Just as you can decant wine by pouring it from its original bottle into a new bottle, leaving the unwanted sediment in the original bottle, you can pour the assets from one trust into a new trust, leaving the unwanted terms in the original trust.

Private Decanting

- There are 29 states with decanting statutes
- Seven of those states do not require notice to beneficiaries

1. South Dakota
2. Nevada
3. Tennessee
4. New Hampshire (except charitable trusts)
5. Delaware
6. Wyoming
7. Arizona



Common Reasons to Decant

- Extending the term of the trust

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Common Reasons to Decant

- Changing a support trust into a discretionary trust

Common Reasons to Decant

- Saving state income tax on undistributed income

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Common Reasons to Decant

- Indirectly adding a beneficiary

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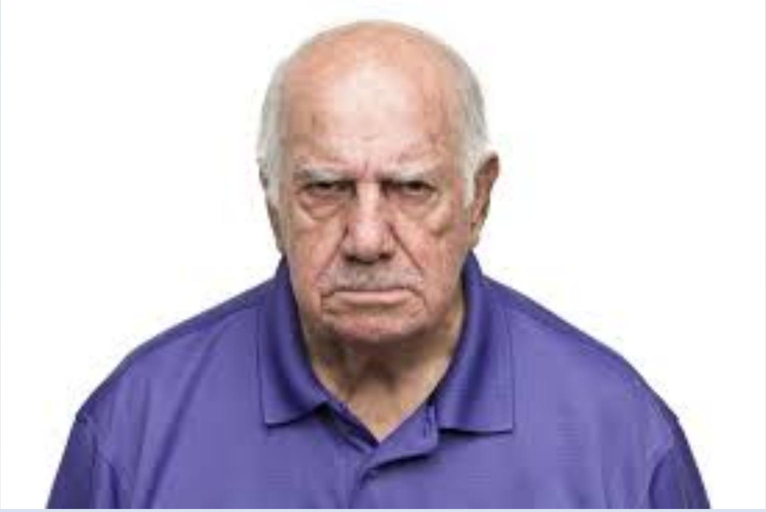
Common Reasons to Decant

- Correcting drafting errors or ambiguous terms

Non-Grantor Trust

I hate paying state income taxes on accumulated trust income!



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Non-Grantor Trust

- Do you have a client who has a trust that is paying state income taxes?
- Solution: Move the trust to Nevada (or another state with no state income tax)
  - On a state-by-state basis
  - Take a look at the trust and the state tax laws

Nevada Incomplete Gift Non-Grantor Trust

There must be a way to save state income taxes on my personal assets!

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The Opportunity #1

- Resident of state with state income tax contributes low basis asset to NING Trust
  - Trustee sells low basis asset
  - Avoids state income tax on the sale

The Opportunity #2

- Resident of state with state income tax contributes investment portfolio to NING Trust
  - Trustee continues to invest portfolio
  - Avoids state income tax on gains

NING Trust Description

- NING Trust
  - Non-grantor trust for income tax purposes
    - Distribution Committee made up of adverse parties
  - Incomplete gift for gift tax purposes
    - Retained testamentary power of appointment
    - Retained non-fiduciary inter vivos power of appointment over corpus for HEMS

Thank You For Attending Today's Seminar

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