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Setting up an overseas trust for your assets may protect them from litigation. The operative word is "may."

# Pulling up the drawbridge

**By Graham Button**

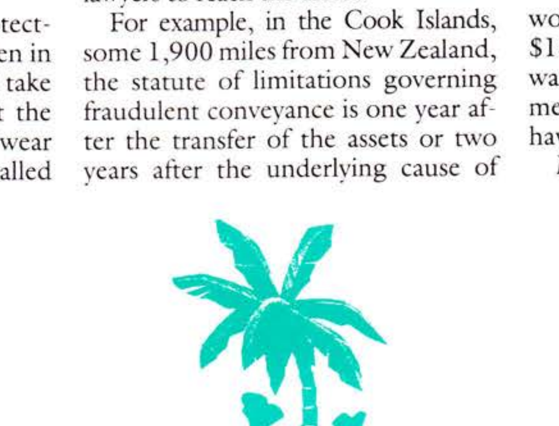
WORRIED that a big civil judgment could strip you of all your assets? Then you will not be comforted by the words of Denis Kleinfeld, a Miami-based estate planning attorney:

"In the olden days, people protected wealth by building castles. Men in armor would climb the walls and take the wealth, leaving nothing but the charred ruins. These days, they wear three-piece suits and they're called plaintiff lawyers, and when they cart everything away they don't even leave the charred ruins."

If you are affluent and Kleinfeld's words make you nervous, it's because he intends them to make you nervous. He's not at all shy about drumming up business. Kleinfeld knows just how to push the hot buttons of surgeons, real estate developers and other wealthy clients nervous about possible legal exposure. And guess what? Kleinfeld has a solution—a way to build a modern-day castle to protect what his clients have. Along with a small number of other specialists, Kleinfeld is promoting something called an asset protection trust (APT), a relatively new twist on centuries-old trust laws that allows you to sock your assets away in a seemingly impenetrable overseas trust.

Here's how it works. Traditional trusts—the kind you set up with your local bank—simply transfer assets to the control of a trustee. Usual benefits include minimizing or deferring taxes and ensuring the smooth generational transfer of assets. With an APT, the assets may or may not leave the U.S., but the trust is established in a foreign jurisdiction whose obstacle-course laws make it very hard for judgment-enforcing lawyers to reach the assets.

For example, in the Cook Islands, some 1,900 miles from New Zealand, the statute of limitations governing fraudulent conveyance is one year after the transfer of the assets or two years after the underlying cause of action, such as negligence. The Cook Islands don't recognize judgments of foreign courts, so new litigation must be brought there to reach the assets. Says Los Angeles attorney F. Bentley Mooney Jr.: "The practical effect is that by the time you find out where the money is and file your action, the statute of limitations bars the suit."



The Cook Islands laws were made debtor friendly in 1989. To varying degrees, Gibraltar, the Cayman Islands and the Bahamas followed suit. The Channel islands of Guernsey and Jersey and the British Virgin Islands may do so as well.

Engel & Rudman, an Englewood, Colo. law firm that has set up APTs protecting over $2 billion for about 400 clients, helped the government of the Cook Islands to draw up its statute. The firm charges $15,000 to set up an APT. Annual administrative costs run $2,000. Partner Barry Engel says about 24 of his firm's APT clients have been defendants in litigation. All the cases, Engel says, were settled at an average cost of 15% of the original claim. One of Engel's clients, a physician, faced over 200 malpractice claims after being the subject of a negative story on local TV. Fifteen of the suits weren't covered by insurance. The physician's total exposure on those claims was $7 million, but because most of his assets had been transferred to a Cook Islands trust, he wound up settling the suits for $18,000. The plaintiff lawyers didn't want to go to trial because any judgments in their favor would probably have been uncollectible.

Most estate planning lawyers at big firms see nothing wrong with the concept of protecting assets by moving them overseas. But there are problems. Don't try to move assets overseas after you've been sued or think you're about to be sued. And there's always the danger that so long as the physical assets remain stateside a judge may let a successful plaintiff get at them. Warns Robert Lawrence III, an estate planning attorney at New York's Cadwalader, Wickersham & Taft: "If the assets stay here, it's only a matter of time before a U.S. court finds a way to assert jurisdiction over them on behalf of an aggrieved creditor."

With judges and juries as unpredictable as they are today and with negligence lawyers as hungry as they are, asset protection trusts do make sense for some people. Alex Odishelidze, 50, a financial planner based in San Juan, P.R., set up a Cook Islands trust. His motivation: "peace of mind—feeling secure that no matter what happens, you or your family are going to wind up with the money, not somebody that's going to sue you." ■