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Sent by email to the Members of the Alaska House Labor & Commerce Committee:

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Representative Ken McCarty  
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Dear Members of the Alaska House Labor and Commerce Committee:

Re: HB 405 and 406

Admittedly rushed in only the 2 minutes that were allotted to public testimony and thrown off a prepared statement with information I wanted to convey, I was told that Representative Sponholz wanted a list of the different types of trusts. The following list is by no means exhaustive. There are more types of trusts than are covered here. Trusts are just tools by which your friends and neighbors use to do their estate planning. In some cases they are the only tool they can use.

I. Revocable Trusts- these are will substitutes.

There are many reasons for creating these trust and forms which these trusts can take. For instance a grantor creates a revocable trust to avoid the expense of a probate proceeding but which this trust there is another trust which comes into effect at the death of the client for the benefit of the child, naming a family member as trustee to manage and distribute the assets until the child becomes an age when the client feels the child has sufficient maturity to manage the assets; or

a client may want to create a revocable trust to own out-of-state real estate to avoid the expense and difficulty of a separate probate proceeding in that state; or

a parent wants to create a trust for the benefit of a disabled child so the assets will be properly managed for the benefit of that child; or

perhaps a client wants to leave property in trust for the benefit of aged parents who are lacking capacity to manage their own affairs, or

the clients want to elect into our community property system and do a community property trust to take advantage of IRC§1014(b)(6) and have the same tax advantages that a surviving spouse would have had they lived in one of the 9 community property states; or

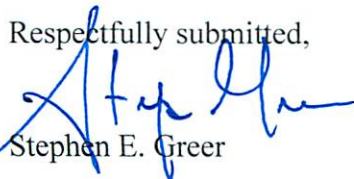
II. The clients might want to do any number of trusts which are statutorily permissible and governed by the Internal Revenue Code. Each of these have their own rules. For instance a QTIP trust governed by IRC §2056(b) might be used if there is a second marriage and each spouse has children for a previous marriage. A QDOT governed IRC § 2056A, is used if a surviving spouse isn't a U.S. citizen and the client wants to ensure a marital deduction if the client dies leaving a non U.S. citizen as the surviving spouse. The client wants to give property to charity and do a charitable split interest trust such as a CLAT, a CRAT a CRUT or a NIMCRUT, governed by IRC§ 664, et. al, thus ensuring the client a charitable deduction for any gift made to these trusts. A client wants to utilize a special valuation trust which governed by the IRC§ 2702, such as a QPRT or a GRAT or GRIT to reduce estate tax when the assets pass to his family. The client want to create an irrevocable trust for the benefit of minors governed under Sections 2503(b) and 2503(c) of the IRC, which will ensure the annual exclusion for a gift to the trust.

III. Then we have trusts for the benefit of medicaid recipients. This may take the form of a pooled income trust such as the pooled income trust which ARC has that has hundreds of beneficiaries. A Qualifying Income Trust otherwise known as a Miller trust, or a trust which is formed with the assets of the disabled beneficiary under 42 USC § 1396(p)(d)(4)(A) which will not disqualify a recipient from receiving Medicaid benefits.

IV, There are trusts for the benefit of shareholder which do not disqualify a corporation from electing S Corporation status, such a QSSTs or ESBTs governed by IRC§ 1361.

Trusts are personal in nature. In a trust here is always a trustee who is under a legal and fiduciary duty owed to the beneficiaries whose actions can always be challenged in court. The vast majority of trusts formed in this state name family members as the trustees and beneficiaries. If a corporate trustee is used these trusts are already within a reporting system to uncover the so-called "bad actor." I personally do not know, of the many thousands of trusts which I have prepared on behalf of clients over the last 3 and ½ decades, of any instance where a sanctioned person either created a trust or was a beneficiary of a trust. The reporting requirements to the state, as proposed in CS HB 405 and 406 would not only deter the average Alaskan from doing their estate planning, it would kill estate planning. If these bills became law I would have to recommend to any remaining clients that I might have that they not do their estate planning here but instead should do it in any of the other 49 states where they would be free from unwarranted government interference. Finally, in my opinion these bills would have only marginal benefit, if any, of actually catching the "bad actor." They cross party lines and affect every Alaskan. In the opinion of every estate planner with whom I have spoken, the resulting harm of these proposed bills would cause to an Alaskan far outweighs any intended benefit which the proposed bills might confer.

Respectfully submitted,



Stephen E. Greer