The BAUMAN LETTER

— YOUR GUIDE TO ROGUE FREEDOM & BOLD PROSPERITY —

The Nevada Two-Step

The Low-Cost Maneuver to Defeat Disaster

DO you like horror stories? Good ... because the world of asset protection is full of them.

Here's a doozy. It involves a couple I met via an ex-colleague, just as I was transitioning from the nonprofit world to writing about sovereignty and asset protection.

Belinda and Ryan were at that stage in life where everything is starting to come together ... just bought a home, student loans paid off, careers looking good, bun in the oven. Nice folks.

When I met them, though, they were ashen pale with stress and worry.

Besides their new Atlanta home, Belinda and Ryan also owned a couple of inherited properties, one on the East Coast and one in the Rockies. They were also passive co-owners of a thriving business, managed by Belinda's brother. Belinda's dad, who had started the business, had left Belinda a fair chunk of money, which was doing nothing in particular in a bank account except serving as collateral for a loan they'd taken to renovate their new house.

Those renovations included construction of a new retaining wall at the back of their house, which overlooked a wooded stream, so common in Atlanta. A few days after a torrential downpour had swollen that stream a bit more than usual, the partially-completed retaining wall collapsed on a workman, killing him instantly.

Unbeknownst to them, the contractor they'd hired — at the recommendation of their architect — had no business liability insurance. Belinda and Ryan were therefore *personally* responsible for restitution to the man's family.

When I met them, they faced a multimillion-dollar lawsuit that would force them to sell almost everything they owned ... including their new house and their share of the business, which meant liquidating it entirely, drawing Belinda's brother into the turmoil and straining the family.

Two sadder faces I will likely never see. Almost there ... now, nothing.

But the *really* sad thing is that it didn't have to be like that.

A simple, quick, low-cost legal maneuver would have put the bulk of their assets out of reach of that lawsuit. Their real estate, their business and their bank balances would have been safe. They'd have had to pay something, but their legal shield would

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have led to a quick and more reasonable settlement amount.

Nobody knows where lightning may strike. But strike it does, thousands of times a day, all over the country. Sometimes it does real damage.

The odds of a lawsuit like the one against Belinda and Ryan, however, are far greater than those of a lightning strike. The U.S. has 80% of the world's lawyers. They file over 15 million tort suits in U.S. courts every year. Fifty-five percent of those are found in favor of the plaintiff. You have a one-in-five chance of being sued in any given year, unless you're in medical practice, a business owner or a landlord, in which case it's much higher.

But what if "you" and "your assets" can't be sued at the same time? A potential plaintiff can only claim what you own *personally*. If most of "your" assets aren't actually "yours," you're not much of a target.

For a few thousand dollars, you can make that happen ... and protect yourself from Belinda and Ryan's fate.

In Trusts We Trust ... Up to a Point

The Anglo-American legal tradition is rich in mechanisms that protect personal assets so that people can focus on wealth-building instead of wealth defense. There are lots of ways to reduce the risk of personal loss, thereby increasing the attractiveness of innovative business activity.

One of these mechanisms is the trust. The concept of a "trust" is fundamentally very simple: One person holds legal title to an asset for another. If I transfer title of the family business to you, and say, "Hold this business for the benefit of my family," then a trust has been created.

The basic trust has four components:

1. The person who creates the trust (the "settlor" or "grantor")
2. The trust itself and its assets
3. The person who controls the trust and its assets ("trustee"), and
4. Those who are to receive the benefits of those assets ("beneficiaries").

The concept of the trust has expanded greatly over the centuries. Large financial institutions often hold billions of dollars in trust for families all over the world. There are now many types of trusts: revocable and irrevocable trusts, grantor trusts, qualified trusts, lead trusts, life insurance and annuity trusts, unit trusts and even the bizarre "intentionally defective trust."

An asset protection trust (APT) is a trust that protects the trust assets from potential future creditors and liabilities of the beneficiaries. That is, as long as the assets are in a properly formed trust, they are not the personal property of the beneficiaries, and therefore not subject to claims arising from the beneficiaries' debts, including those generated from lawsuits, like the one against Belinda and Ryan.

Unlike a traditional revocable living trust, an APT must be an *irrevocable* trust. This is critical, because a creditor can come after any assets over which you have control.

A *revocable* living trust, by design, is one in which you have control over the assets. You can terminate the trust, withdraw funds and so on. A creditor who is awarded a claim against you would have the same ability to withdraw trust assets or funds to pay the claim. Your assets are not protected at all.

But in a traditional irrevocable trust, you relinquish

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any right to the assets and have no control over them. If you don't have control and can't benefit from or withdraw the assets, your creditors can't either. Your assets are safe.

Traditionally, this is achieved in a trust through inclusion of a "spendthrift provision" in an irrevocable trust that prohibits creditors from making claims against a beneficiary's interest in the trust, and prevents the beneficiaries from transferring or pledging their interests in the trust to someone else, such as a creditor. Even if you wanted to settle with a creditor, the provisions of the irrevocable trust wouldn't permit it.

This "spendthrift provision" protection, however, is generally unavailable to the *creator* of the trust — the "settlor" who donates its initial assets. If you establish a trust of which you are also a beneficiary — a so-called "self-settled trust" — the trust is generally ignored for purposes of the creator/beneficiary's debts and liabilities, and your assets are unprotected.

In other words, the only way trust assets could be protected from your potential creditors as creator of the trust is for you, as the settlor, to give up complete *control of and benefit from* the trust and the trust assets. That means, for example, that you couldn't put the family home into such trust and live in it, or profit from a business held in trust.

So it seems you face a choice of a trust where you can't access the assets at all or one where you can, but they aren't protected from creditors. Clearly, what's needed is a way to put assets into an irrevocable trust, so creditors couldn't access them, but still be a beneficiary of the trust's assets — say, your house, investment accounts or shares in a family business.

This is where the domestic asset protection trust (DAPT) comes in. A DAPT allows the trust creator, the settlor, to be a discretionary beneficiary, and yet the trust assets are still protected from the settlor's creditors. That's why, in the past, in order to obtain such protections, U.S. citizens often looked to offshore jurisdictions that permit spendthrift trusts that also allow the settlor to be a beneficiary, and thereby be protected from creditors.

Do the Nevada Two-Step

In 1999, the Nevada Legislature amended its trust statute to permit self-settled, first-party spendthrift trusts, commonly referred to as a Nevada Asset Protection Trust (NAPT). Under this law, as long as the settlors strictly comply with statutory requirements, they can name themselves as beneficiaries of their own trusts and enjoy the same creditor protection as third-party beneficiaries of the trust. Problem solved.

It is important to remember that an NAPT is an irrevocable trust. Once a traditional irrevocable trust is established, the settlor cannot take back the assets and terminate the trust, or even change how they are distributed — you can't change your mind later.

But Nevada law allows you, as the settlor, to keep the ability to change where the trust assets are ultimately distributed — "the power of appointment." That means you can change who the final beneficiaries are, or how the assets are distributed.

There's more. With a traditional trust, a single trustee is responsible for making distributions from the trust, taking care of all administrative matters (such as filing tax returns and bookkeeping) and overseeing investment and management of the trust assets.

That means giving up control to someone else, even if you are one of the beneficiaries of the trust. You couldn't run your own business or manage your investment portfolio, for example.

But another unique feature of the NAPT is that the powers and duties of the trustee can be allocated among more than one trustee. As a result, you, as the settlor, can also serve as a trustee of the trust.

This is important because Nevada law restricts the settlor from being the sole trustee or having the power to make distributions to himself. The settlor can only serve as a trustee of the trust with the authority to *invest and manage* the trust assets. Someone else — a second trustee — has to make any distributions that benefit the settlor, such as allowing him or her to live in a property or receive profits from a business held in trust.

With this in mind, Nevada law requires that if a non-Nevada resident is establishing an NAPT, one of the trustees must be a resident of Nevada — the trustee who takes care of the general administrative tasks and makes any distributions to the settlor/trustee/beneficiary.

The only limitation is that this second, Nevada-based trustee cannot be *required* by the terms of the trust to make distributions to the settlor. While this seems like a limitation, it is outweighed by the benefits of the powers and controls you as the settlor can retain while still having creditor protection.

Timing Is Everything

When it comes to investment, we all know that timing is critical. The same is true for asset protection trusts.

When you first hear about them, APTs sound almost magical. With the wave of a hand (OK, the stroke of a pen), your assets are legally no longer yours — but you can keep using them as if they were!

This is sort of magical, but there's an important caveat: The trick doesn't work if you are *aware* of an impending claim against you.

Let's say Belinda and Ryan called a lawyer and set up an APT the day after the accident that killed the workman happened. They knew what was coming so they moved to protect their wealth.

Nothing would stop them from setting up such an APT, but for the purposes of any lawsuit arising from the workman's death, it would be useless. That's because the transfer of assets to their new APT would be regarded as a "fraudulent conveyance."

A fraudulent conveyance is a transfer of an asset with the intent to hinder, delay or defraud a creditor. Just like you can't buy insurance after an accident has happened, you can't transfer assets to an APT and have them be protected by it once you know they will be pursued by a creditor — even if the lawsuit hasn't even been filed yet.

This is where the NAPT is unquestionably the best of its kind in the U.S.

Specifically, under Nevada law, if a creditor was a creditor of the settlor *at the* time the settlor made the transfer to an NAPT, the creditor must commence an action to challenge the transfer within the later of (a) two years after the transfer, or (b) six months after the creditor discovers — or reasonably should have discovered — the transfer.

A creditor who was not a creditor of the settlor at the time the settlor made the transfer to an NAPT must commence an action to challenge the transfer within two years of the transfer. If a creditor does not bring a claim against the settlor within the prescribed period, the claim is barred.

This two-year statute of limitations on fraudulent conveyance for NAPTs is one of the shortest in the country. Note that the act that starts the statute of

The Limits of Liability Insurance

Belinda and Ryan had personal liability insurance on their Atlanta home. But that actually encouraged the lawsuit that hit them. It told the plaintiff's attorney that Belinda and Ryan's insurer could pay. But like all insurance, Belinda and Ryan's liability insurance was subject to a maximum benefit, which the suit easily exceeded, since Georgia is a state where civil awards are made by jury. To get the level of protection they needed, Belinda and Ryan would have ended up paying through the nose in premiums.

The couple had a homeowner's policy that included $1 million in liability coverage. That cost them $1,500 a year. They had purchased $2 million in umbrella liability insurance for an additional $600 a year, taking their total liability coverage up to $3 million, at a cost of $2,100 a year. But the workman's family successfully sued for $7.5 million.

By contrast, an APT that would probably have forced the plaintiff's attorney to settle for much less would have cost them only a few hundred dollars a year. ■

limitations running is the transfer of assets from the settlor to the NAPT. Therefore, each time assets are transferred to the NAPT, a new transfer has occurred, and the statute will begin to run on a claim against that specific asset.

Even if the statute of limitations does not bar the claim, the creditor is required to show that the transfer was a fraudulent conveyance. This may be difficult for the creditor to prove, especially if the creditor's claim arose after the transfer of assets to an NAPT.

Seven Additional Benefits

In 2009, the Nevada legislature passed important changes affecting NAPTs. These include some critical enhancements:

1. The trustee of an NAPT can "decant" or transfer the trust property to a second trust with different provisions, without first obtaining court approval.
2. "Directed trusts" are allowed, which permit the delegation of the trustee's investment powers over the trust's assets to a third-party investment adviser.
3. "Trust protectors" are allowed. These are non-trustees who have certain discretionary powers over an otherwise irrevocable trust.
4. No "exception creditors" are allowed. Previously, divorcing spouses' claims against an NAPT were not included in the trust protections. Now they are.

Here's what that means for you — in addition to some preexisting benefits of the NAPT.

• Decanting

"Decanting" a trust is when the trustee distributes the trust's assets into a different trust with different terms for one or more of the same beneficiaries of the original trust. In most cases, this second trust is brand-new. Traditionally, this requires the permission of a judge, since it could easily be used to defeat the purpose of the original trust.

Nevada has traditionally been one of the most innovative states when it comes to decanting. In 2015, Nevada legislators approved SB484, which essentially gives an NAPT trustee a "do-over" to make changes to trust terms that traditionally would not have been permitted without a judge's permission.

Most importantly, it is now possible to decant an NAPT to remove a mandatory income distribution under the terms of the original NAPT. This creates two opportunities.

First, it allows a trustee — which, remember, can be the settlor, i.e. you — to decant trust assets that were subject to a mandatory income distribution under the original NAPT to a new trust where they are not. For example, if the original NAPT called for trust-investment income to be directed to a child or spouse who has become alienated from the settlor, the investments that generate this income can be decanted to a new trust that does not contain such a provision.

Second, if an NAPT is designed to direct all income to one particular beneficiary, there is no ability to shift income to the lower federal and state income tax brackets of other trust beneficiaries, or to retain income in the trust for taxes that the beneficiary must pay if receiving the distribution. Decanting income-producing assets to a second trust overcomes this by changing the terms of distributions.

• Investment Advisers

As I often recommend in the case of offshore trusts and limited liability companies (LLCs), an investment adviser can play an important role in maximizing the investment returns of your assets.

If you're lucky, the Nevada-based trustee for your NAPT can do this. But in most cases — especially where the settlor, as second trustee, has investment expertise — it's too much to expect the trustee to handle this. In such cases, Nevada law allows you to appoint an investment adviser who is authorized under the terms of the trust to advise the trustees on investment decisions. This could easily be someone with whom you already work and in whom you have established trust.

• The Trust Protector

The requirement that one trustee of an NAPT be a Nevada-based person is central to the legislature's intentions, which was to make the state a center of business incorporation and associated services. But, as with any relationship with a potential stranger, you can never be entirely certain that you'll always see eye-to-eye ... or that the trustee won't abuse his position to enrich himself through excessive fees, etc.

To deal with this, Nevada trust law allows an innovation that originally appeared in offshore APTs — the "trust protector" or often just "protector." The idea behind the protector is to have somebody who can watch over the trustee, and terminate the trustee for any misconduct.

Nevada law incorporates all the experience of offshore APTs in this regard. Originally, the only power the protector had was to fire the trustee. But as offshore APTs evolved, protectors were sometimes given additional powers, such as to appoint the successor trustee if one was fired. This creates the theoretical threat if the protector has the power to both fire and appoint a trustee, the protector might appoint herself as the trustee. Thus, offshore APTs further evolved to prohibit a protector from being the trustee or appointing somebody close to the protector.

All trusts should have a protector — even if you are the trustee and beneficiary of your own trust. This seems odd: You get to control and use the trust assets freely while you are alive, so why would you need a protector?

The problem is that you will eventually die, and whoever you have appointed as the successor trustee in your trust document will become the acting trustee. It's this trustee you have to worry about — with you gone, this new trustee could potentially abuse the trust for fees, leaving the beneficiaries with no recourse except to engage in expensive litigation. With a protector, the misbehaving trustee can be fired.

• No Exceptions!

All other U.S. states provide for some type of "exception creditors," typically as divorcing spouses or preexisting tort claims. Essentially, this means that in such jurisdictions, even if you have made it past the statute of limitations and there are no fraudulent conveyance issues, the exception creditor could still get at the trust's assets.

Nevada is the only U.S. jurisdiction that does not allow exception creditors. This has made NAPTs an alternative to prenuptial agreements — by agreeing to put assets in an NAPT, prospective spouses are essentially agreeing to surrender their right to attach them absent common agreement. By acting before marriage, you're basically stashing away a "nest egg," and setting aside a certain amount of your assets to be protected in the event the relationship unexpectedly terminates — notwithstanding your hope and expectations to the contrary.

A Special Bonus for Foreigners

The U.S. government adopted the Foreign Account Tax Compliance Act (FATCA) in 2001. It requires U.S. taxpayers to report offshore financial accounts above a certain threshold to the IRS every year. Just to make sure this happens, FATCA also requires foreign banks and other financial institutions to report on U.S. taxpayer accounts held by them, under threat of severe penalty. As of March 2016, this includes $50,000 or more in foreign financial assets held by a U.S.-based trust or other entity for the benefit of a U.S. taxpayer.

FATCA has encouraged foreign governments to emulate it. The Organization for Economic Cooperation and Development (OECD) has developed rules that require most participant states to share financial and tax information about each other's taxpayers. The U.S., however, has not signed up for this scheme.

That means that under current law, foreign individuals with U.S. financial and other assets that do not generate U.S.-source income (and are therefore not taxed and recorded by the IRS) can keep those assets in an entity such as an NAPT without having to worry about the IRS reporting them to a foreign government. This makes the NAPT an ideal vehicle for financial privacy for non-U.S. persons.

This is nice, but NAPT planning related to marriage shouldn't wait until right before a divorce — or even during a marriage. That's because establishing an NAPT might be regarded as a fraudulent transfer, a breach of a fiduciary duty owed by one spouse to the other.

• Taxation

Because the settlor retains powers and controls in an NAPT, the trust is treated as a "grantor trust" for tax purposes. This means that all income and losses of the trust pass through and are reported by the settlor on his or her tax return; there are no additional taxes; and you retain any personal tax deductions.

Similarly, because transfers into an NAPT are not regarded as a "completed" gift, there are no gift tax implications — unless you design it so that transfers to the trust are treated as completed gifts and therefore excluded from your estate.

The values of the NAPT assets, however, are included in the settlor's estate for estate tax purposes ... unless you adopt the next nifty trick.

• Dynasty Trusts

A dynasty trust is a trust designed to avoid or minimize estate taxes on wealth transfers to subsequent generations. By holding assets in the trust and making well-defined distributions to each generation, the entire wealth of the trust is not subject to estate taxes with the passage of each generation.

Dynasty trusts avoid the generation-skipping transfer tax that occurs when traditional trusts attempt to bypass transferring all assets to spouses or children — for example, reserving property assets to one's great-great-great-great grandchildren, to be held in trust for them, but not fully owned, by the intervening generations.

In most cases, the common law rule against "perpetuities" forbids any legal instrument — contracts, wills, trusts and so on — from tying up property for too long a time beyond the lives of people living when the instrument was written. (Charitable remainder trusts are excepted.) For example, the head of a family might stipulate in a trust document that assets be used in a certain way forever, preventing a spouse or heirs from accessing them after his death.

The common-law tradition is that any heritable "interest" must vest to heirs no later than 21 years after the death of the last identifiable individual living at the time the interest was created. A 2005 Nevada law, however, explicitly allowed for dynasty trusts that can last for 365 years — thus permitting skipping many generations for estate tax purposes. Although this was challenged, the Nevada Supreme Court ruled in March 2015, in the case of Bullion Monarch Mining, Inc. v. Barrick Goldstrike Mines, Inc., that the 365-year perpetuities law is the law in Nevada.

• Combining an NAPT with a Limited Liability Company

As I've written before, the limited liability company (LLC) format provides an excellent form of protection, especially for real estate holdings. There's nothing stopping you from creating an LLC to hold certain assets under an NAPT — and plenty of advantages to doing so.

Here's why. All states permit personal creditors of an LLC member (i.e., owner) to obtain a "charging order" from a court against the debtor-owner's "membership interest" — i.e. their proceeds from the LLC's operation, such as rental income from properties owned by it. But most states' charging orders only give creditors the debtor-member's "financial rights." A creditor with a charging order doesn't get to participate in LLC management, so they can't order a distribution of cash or liquidation of assets.

So if the LLC members direct the LLC manager not to make a distribution to the debtor-member, or refuse the sell the real estate in question, the creditor is stuck. Moreover, because a creditor with a charging order has the debtor-member's "financial rights," the IRS could hold the creditor responsible for taxes on the debtor-member's share of LLC profits — regardless of whether or not any profit distributions are made! That makes lawsuits against assets owned by a properly constituted LLC very unattractive indeed.

The problem is that many states allow alternative remedies for creditors beyond the charging order. Such remedies are known as "piercing the veil," since they allow the creditor or litigant to get directly at the LLC1s members.

Not Nevada. Charging-order protection is the exclusive remedy for the creditor of a member of a Nevada LLC. Nevada also allows single-member LLCs, which receive the same protection from charging orders and multimember LLCs. That means the trustee of your NAPT could also be the sole member of an LLC owned by the trust, in which you could hold rental properties, for example. This LLC will protect the other assets held by it from any claims or liabilities arising from other assets owned by it.

How an NAPT Could Have Helped Belinda and Ryan

If Belinda and Ryan had placed their home, other properties, business interests and inherited cash assets in an NAPT, they would have been insulated from the lawsuit brought by the workman's family. The spendthrift provision inherent in the nature of the irrevocable NAPT would have prevented either of them from agreeing to attachment of assets in trust, even if they wanted to do so.

Of course, this would have entailed some careful planning. For example, Belinda and Ryan's own home and inherited bank accounts would need to be owned directly by the NAPT, which would insulate them from liquidation (as would Georgia's homestead exemption for personal residences). Their other two inherited properties should be in an LLC owned by the trust, set up specifically as a "series" LLC, which insulates each property for liabilities arising from the other. Their shares in the family business managed by their brother could have been in a separate trust-owned LLC.

Having an NAPT doesn't mean Belinda and Ryan could dispense with liability insurance on their home, however.

After all, the legal fees to defend against the lawsuit would need to be paid, and without insurance, any award to the plaintiff would require liquidating assets not owned by the trust, like vehicles, furniture and other personal items.

A Special Deal on the NAPT

The NAPT is a great vehicle for domestic asset protection. It can do almost everything that an offshore APT can do, at a fraction of the cost.

This makes the NAPT ideal for folks who want a low-cost quick, easily-manageable route to strong domestic asset protection. And as an exclusive for *The Bauman Letter* readers, I've managed to secure a great deal on getting one set up.

My good friend, attorney Josh Bennett, will set up a properly constituted NAPT as I've described it in this report for an all-inclusive cost of $20.000. That's about half of what you'd normally pay. That includes all of the first-year setup and registration costs, including drafting the trust document, appointing a Nevada-based trustee and completing all the requisite paperwork.

Now, you will find offers for rough-and-ready NAPTs on the Internet. *Don't do it.*

As should be clear from what I've shared with you here, it is critical to have an experienced, qualified attorney draft the specific trust agreement and other documents that you need to address your particular needs. You're not going to get that off the Internet.

Instead, I strongly encourage you to contact Josh to get started on your personal asset protection plan right away... after all, you can never know if and when the lightning bolt that struck Belinda and Ryan will strike you.

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