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Steve Leimberg's Asset Protection Planning Email Newsletter - Archive Message #336

Date: 07-Dec-16

From: Steve Leimberg's Asset Protection Planning Newsletter

Subject: Steve Oshins on Kloiber: The Aftermath

"In Asset Protection Planning Newsletter #332, I reported the existence of the settlement agreement, but all dollar amounts were kept under seal by the Delaware Court of Chancery, likely due to the high profile of the Kloiber family. However, I can now report that Beth Kloiber's ["Severed Declaration of Trust"](#) (i.e., the trust branched off from Daniel's Delaware Dynasty Trust) has received a mansion at 1040 S. Ocean Blvd., Manalapan, Florida with a property tax value of \$29,448,569.99 in the name of Whimsical Florida, LLC with Beth as manager and registered agent and with her Kentucky address. Other assets that may have also passed to her trust via the divorce are private and haven't been disclosed. The deed is at <http://www.oshins.com/images/KloiberDeed.pdf>."

Steven J. Oshins, Esq., AEP (Distinguished) is an attorney at the Law Offices of Oshins & Associates, LLC in Las Vegas, Nevada. Steve is a nationally known attorney who was inducted into the NAEPC Estate Planning Hall of Fame® in 2011. He is listed in The Best Lawyers in America®. He has written some of Nevada's most important estate planning and creditor protection laws. Steve can be reached at 702-341-6000, x2 or at soshins@oshins.com. His law firm's web site is <http://www.oshins.com>.

Steve authors three different annual state rankings charts and one state income tax chart:

- [The Annual Domestic Asset Protection Trust State Rankings Chart](#)
- [The Annual Dynasty Trust State Rankings Chart](#)
- [The Annual Trust Decanting State Rankings Chart](#)
- [The Annual Non-Grantor Trust State Income Tax Chart](#)

The estate planning community has been discussing the Daniel and Beth Kloiber divorce action for the past few years. A settlement has recently been reached by the parties.

The terms of the settlement were sealed by the Delaware Court of Chancery, so that's it, right? No, not so fast! Some very material information has recently become public. And this information is so significant, especially given the importance of the *Kloiber* case to the selection of a trust situs, that it had to be reported in LISI. Before we get to Steve's commentary, please note that frequent LISI commentators Steve Oshins and Bob Keebler will be co-presenting a 90-minute national

teleseminar for Ultimate Estate Planner, Inc. on Tuesday, December, 13, 2016 at 9am PST/12pm EST titled, "Viable Estate Reduction Techniques after the New 2704 Regulations Become Final." For more information and to register, click this [link](#).

Now, here is Steve Oshins' commentary:

EXECUTIVE SUMMARY:

This divorce case has been one of the most-watched cases in the estate planning industry over the past few years. Read "*Steve Oshins on the Kloiber Case: Delaware Dynasty Trust Broken into Pieces by Beneficiary's Divorcing Spouse*," LISI Asset Protection Planning Newsletter #332 (October 24, 2016) at <http://www.leimbergservices.com> which broke the news that the *Kloiber* divorce case was finally settled. The "[Proposed] Order Severing Trust" is at http://www.oshins.com/images/Kloiber_Order.pdf whereby Beth Kloiber was able to access part of Daniel Kloiber's Delaware Dynasty Trust after making a [Garretson v. Garretson](#) argument.

COMMENT:

What Was at Stake?

The Kloiber Dynasty Trust was a Delaware health, education, maintenance and support trust (i.e., a Delaware support trust) for the benefit of Daniel and other beneficiaries. Based on certain large sales of trust assets, there was roughly \$310 million in the trust, plus or minus whatever was kept private.

Why Was This Important?

Delaware, along with Nevada, South Dakota and Alaska, are the most high-profile trust jurisdictions. Of the four jurisdictions, Delaware is the only one with a "bad" case on its books...the [Garretson v. Garretson](#) case. So the Kloiber divorce included an attack under the same theory...which is that Delaware law doesn't consider a divorcing spouse to be a creditor and therefore doesn't protect a third-party trust via a spendthrift provision.

And Now for the Update Since the LISI Newsletter Was Released

In Asset Protection Planning Newsletter #332, I reported the existence of the settlement agreement, but all dollar amounts were kept under seal by the Delaware Court of Chancery, likely due to the high profile of the Kloiber family. However, I can now report that Beth Kloiber's "[Severed Declaration of Trust](#)" (i.e., the trust branched off from Daniel's Delaware Dynasty Trust) has received a mansion at 1040 S. Ocean Blvd., Manalapan, Florida with a property tax value of \$29,448,569.99 in the name of Whimsical Florida, LLC with Beth as manager and registered agent and with her Kentucky address. Other assets that may have also passed to her trust via the divorce are private and haven't been disclosed. The deed is at <http://www.oshins.com/images/KloiberDeed.pdf>.

Does a Delaware Dynasty Trust Still Work?

Yes, but only if it's a fully discretionary trust. Do not ever draft a Delaware trust with health, education, maintenance and support distribution language since that is susceptible to the *Garretson v. Garretson/Kloiber v. Kloiber* problem given that a "support trust" must rely on a spendthrift provision to protect its assets and Delaware law doesn't treat the divorcing spouse as a creditor.

You can avoid this problem altogether by using Nevada, South Dakota or Alaska law, each of which does not have statutory case law subjecting a support trust to divorcing spouses. But Delaware law works just fine if the scrivener drafts the trust as a discretionary trust.

Many Thanks To:

Many thanks to Darrell Hofheinz, writer for the Palm Beach Daily News, who was the first to break the news about the transfer of the Kloiber property via his article at:

<http://www.palmbeachdailynews.com/news/news/local/deed-unfinished-mansion-in-manalapan-changes-hands/ns72q/>. Darrell was very helpful to me in sharing information.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Steve Oshins

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